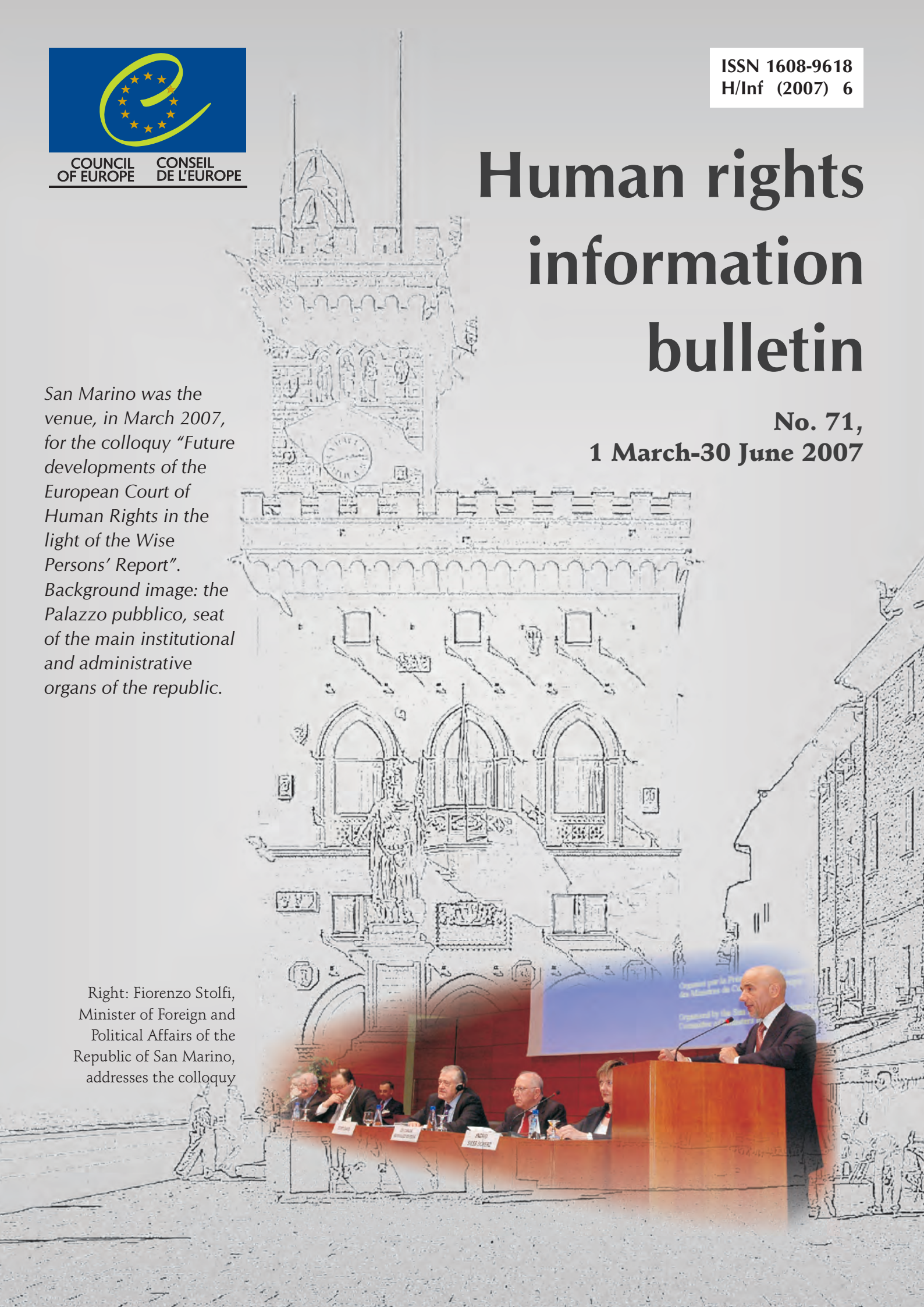
ISSN 1608-9618
H/Inf (2007) 6

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

No. 71,
1 March-30 June 2007

San Marino was the venue, in March 2007, for the colloquy "Future developments of the European Court of Human Rights in the light of the Wise Persons' Report". Background image: the Palazzo pubblico, seat of the main institutional and administrative organs of the republic.



Right: Fiorenzo Stolfi, Minister of Foreign and Political Affairs of the Republic of San Marino, addresses the colloquy

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The *Human rights information bulletin* is published three times a year by the Directorate General of Human Rights, Council of Europe, F-67075 Strasbourg Cedex.

This issue published October 2007. Date of next issue: January 2008.

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

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

Treaties and conventions

Signatures and ratifications

European Convention on Human Rights

Protocols Nos. 1, 4, 7 and 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms were signed by **Andorra** on 31 May 2007.

European Social Charter

The European Social Charter (revised) was signed by **Germany** (29 June 2007) and **Latvia** (29 May 2007).

Council of Europe Convention on Action against Trafficking in Human Beings

The convention was signed by **Ireland** (13 April 2007) and the **United Kingdom** (23 March 2007). It was ratified by **Bulgaria** (17 April 2007), **Georgia** (14 March 2007) and **Slovakia** (27 March 2007).

The convention requires ten ratifications before it enters into force.

Montenegro joins the Council of Europe

Montenegro became the 47th member state of the Council of Europe on 11 May 2007.

The Government of the Republic of Montenegro declared that it considers itself bound since 6 June 2006 by all the relevant conventions and protocols to which the State Union of Serbia and Montenegro had previously been a Party.

See also the simplified table of ratifications, page 121.

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 procedure of joint examination of admissibility and merits under Article 29 §3 of the Convention is now used frequently. Separate admissibility decisions are only adopted in more complex cases. This facilitates the processing of applications, doing away with one procedural step.

Court's case-load statistics (provisional), 1 March-30 June 2007:

- 503 (576) judgments delivered
- 460 (529) applications declared admissible, of which 419 (481) in a judgment on the merits and 41 (48) in a separate decision
- 8954 (8961) applications declared inadmissible
- 359 (369) applications struck off the list.

The figure in parentheses reflects the fact that a judgment/decision may concern more than one application.

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.

Ramsahai and others v. the Netherlands

Right to life (Article 2)

Judgment of 15.5.2007
Concerns:
Fatal shooting by a police officer during an attempted arrest, and investigation into the death
Conclusions of the Court: violations/no violations

Facts and complaints

The case was introduced by the father and grandparents of Moravia Ramsahai, who was shot dead by a policeman.

Moravia Ramsahai had stolen a scooter from its owner at gunpoint. Two police officers tried to arrest him. As he drew a pistol from his trouser belt, one of the two police officers ordered him to drop his weapon but he failed to do so and he pointed its pistol towards the second officer, B, who fired. Moravia Ramsahai was hit in the neck.

A criminal investigation was ordered. For the first fifteen hours, it was carried out by the Police Force to which the two officers belonged, after which it was taken over by an officer of the State Criminal Investigation Department.The public prosecutor, finding that B. had acted in legitimate self-defence, decided that no prosecution should be brought. That decision was endorsed by the Court of Appeal.

In its Chamber judgment (10/11/05), the European Court of Human Rights held that there had been no violation of Article 2 concerning the shooting of Moravia Ramsahai, and that there had been violations of the Article concerning the investigation into his death. Upon request of the Government, the case was referred to the Grand Chamber.

Decision of the Court

Article 2

The shooting of Moravia Ramsahai

The Chamber's establishment of the facts had not been seriously contested. Moreover, the account of Moravia Ramsahai's behav-

European Court/Commission of Human Rights case-law cited in the judgment:
Aktas v. Turkey, Anguelova v. Bulgaria, Cyprus v. Turkey, Hugh Jordan v. the UK, McKerr v. the UK, Nachova and Others v. Bulgaria, Ogur v. Turkey, Ramsahai and Others v. the Netherlands, Romijn v. the Netherlands, Salman v. Turkey, Tahsin Acar v. Turkey

iour given by the two officers was consistent with other information. The Grand Chamber consequently found that the fatal shot had been "no more than absolutely necessary": there had been no violation of Article 2.

The investigation into the shooting

– Adequacy of the investigation

The Grand Chamber noted the failure to test the hands of the two officers for gunshot residue and to stage a reconstruction of the incident, as well as the apparent absence of any examination of their weapons or ammunition and the lack of an adequate pictorial record of the trauma caused to Moravia Ramsahai's body by the bullet. What was more,the two officers had not been kept separated after the incident and had not been questioned until nearly three days later. Those shortcomings in the investigation were all the more regrettable in that there were no witnesses of the fatal shot. There had therefore been a violation of Article 2 concerning the inadequate investigation.

– Independence of the investigation

The Court observed that fifteen-and-a-half hours had passed from the time of Moravia Ramsahai's death until the State Criminal Investigation Department became involved in the investigation. During that time essential parts of the investigation had been carried out by the same force to which the two officers belonged. After the State Criminal Investigation Department – a department invested with the necessary independence – took over, further investigations had been undertaken by the Amsterdam/Amstelland Police Force, although at the State Criminal Investigation Department's behest and under its responsibility.

The Grand Chamber found that there had been a violation of Article 2 in that the police investigation was not sufficiently independent.

– The role of the public prosecutor

The Grand Chamber noted that the police investigation had been carried out under the supervision of an Amsterdam public prosecutor who was specifically responsible for the police work carried out at the police station to which the two officers belonged. The same public prosecutor had taken the decision not to prosecute Officer B.

In the Grand Chamber's view, it would have been better if the investigation had been supervised by a public prosecutor unconnected to the Amsterdam/Amstelland Police Force. Even so, note had to be taken of the degree of independence of the Netherlands Public Prosecution Service, and of the possibility of review by an independent tribunal – and the applicants had actually made use of it – there had been no violation of Article 6 concerning the role of the public prosecutor.

Involvement of the applicants

The Grand Chamber considered that the applicants had been granted access to the information yielded by the investigation to a degree sufficient for them to participate effectively in proceedings aimed at challenging the decision not to prosecute Officer B.

Procedure followed by the Court of Appeal

The Grand Chamber agreed with the Chamber that the Court of Appeal's proceedings did not have to be open to the public. However, it took the view that the Court of Appeal's decision was not required to be made public either. The applicants had been allowed full access to the investigation file and had been enabled to participate effectively in the Court of Appeal's hearing; they had been provided with a reasoned decision. It was thus unlikely that any authority involved in the case might have concealed relevant information from the Court of Appeal or the applicants. In addition, given that the applicants had not been prevented from making the decision public themselves, the Grand Chamber took the view that the requirement of publicity had been satisfied to an extent sufficient to obviate the danger of any improper cover-up by the Netherlands authorities. There had not therefore been a violation of Article 2 concerning the procedure followed by the Court of Appeal.

Evans v. the United Kingdom

Right to life (Article 2), Right to respect for private and family life (Article 8), Prohibition of discrimination (Article 14)

Judgment of 10.4.2007
Concerns:
Requirement of father's consent for the continued storage and implantation of fertilised eggs
Conclusions of the Court: no violations

Facts and complaints

In July 2000, the applicant and her partner J started fertility treatment at an Assisted Conception Clinic. In October 2000, Ms Evans was diagnosed with a pre-cancerous condition of her ovaries and was offered one cycle of in vitro fertilisation (IVF) treatment prior to the surgical removal of her ovaries. Ms Evans and J were informed that they would each need to sign a form consenting to the treatment and that, in accordance with the provisions of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act"), it would be possible for either of them to withdraw his or her consent at any time before the embryos were implanted. Six embryos were created. In May 2002 the relationship between the applicant and J ended and J

informed the clinic that he did not consent to Ms Evans using the embryos or their continued storage. The applicant brought proceedings before the High Court seeking, among other things, an injunction to require J to give his consent. Her claim was refused, and the Court of Appeal upheld this decision. In January 2005 the clinic informed the applicant that it was under a legal obligation to destroy the embryos. The European Court of Human Rights, to whom the applicant had applied, requested, that the United Kingdom Government take appropriate measures to prevent the embryos being destroyed before the Court had been able to examine the case.

In a Chamber judgment (07/03/2006), the Court held that there had been no violation of the three articles on which the applicant relied. The case was referred to the Grand Chamber at the applicant's request. The applicant complained that domestic law permitted her former partner effectively to withdraw his consent to the storage and use by her of embryos, preventing her from ever having a child to whom she would be genetically related.

Decision of the Court

Article 2

The Grand Chamber, for the reasons given by the Chamber, found that the embryos created did not have a right to life within the meaning of Article 2.

Article 8

The dilemma central to the case was that it involved a conflict between the Article 8 rights of two private individuals with interests entirely irreconcilable. In addition, the case involved also a number of wider, public interests, in upholding the principle of the primacy of consent and promoting legal clarity and certainty, for example. The principal issue was whether the legislative provisions as applied in the case struck a fair balance between the competing public and private interests involved.

Expressing its great sympathy for the applicant, the Court did not consider however that her right to respect for the decision to become a parent in the genetic sense should be accorded greater weight than J's right to respect for his decision. It relied on the following considerations:

– The 1990 Act was the culmination of an exceptionally detailed examination of the social, ethical and legal implications of developments in the field of human fertilisation and embryology;

– The legal obligation of the clinic to explain to Ms Evans the consent provisions on IVF treatment and to obtain her consent in writing was observed;

– There was no uniform European approach in the field.

The Court found that the absolute nature of the law pursued general interests which were legitimate and consistent with Article 8: respect for human dignity and free will, as well as a desire to ensure a fair balance between the parties to IVF treatment, wish to promote legal certainty and to avoid the problems of arbitrariness and inconsistency.

Article 14

The Grand Chamber found that it was not required to decide in the applicant's case whether she could properly complain of a difference of treatment as compared to another woman in an analogous position, because the reasons given for finding that there was no violation of Article 8 also afforded a reasonable and objective justification under Article 14.

Note:
The Court was obliged to examine the case under Article 2, and reiterated its ruling in Vo v. France (2006), which stated that the issue of when the right to life begins comes within the margin of appreciation of States.
In a joint dissenting opinion, two judges find that given the facts of such an exceptional case, there should be a deep consideration the individual interests at stake. They propose the following approach: the interests of the party who withdraws consent and wants to have the embryos destroyed should prevail (if domestic law so provides), unless the other party: (a) has no other means to have a genetically-related child; and (b) has no children at all; and (c) does not intend to have recourse to a surrogate mother in the process of implantation.

European Court/Commission of Human Rights case-law cited in the judgment:
Odièvre v. France, Pretty v. the UK, Vo v. France, X., Y. and Z. v. the UK

O'Halloran and Francis v. the United Kingdom

Right to a fair trial (Article 6)

Judgment of 29.6.2007
Concerns:
Obligation for the registered keeper of a vehicle to provide information identifying the driver where a road-traffic offence is suspected
Conclusions of the Court:
no violation

Facts and complaints

The applicants' vehicles were caught on speed cameras driving in excess of the speed limit. In each case the applicant was asked for the full name and address of the driver of the vehicle on the relevant occasion or to supply other information that was in his power to give and which would lead to the driver's identification. Each applicant was further informed that failing to provide information was a criminal offence under section 172 of the Road Traffic Act 1988.

Mr O'Halloran answered his letter confirming that he was the driver at the relevant time. Mr Francis, however, wrote to the police invoking his right to silence and privilege against self-incrimination.

– Mr O'Halloran was tried before a Magistrate's Court. Prior to the trial, he sought unsuccessfully to have his confession excluded as evidence, relying on sections 76 and 78 of the Police and Criminal Evidence Act 1984 read in conjunction with Article 6 of the Convention. He was convicted of driving in excess of the speed limit and fined GBP 100, ordered to pay GBP 150 costs and had his licence endorsed with six penalty points. His application for judicial review of the magistrates' decision was refused.

– Mr Francis was summoned to the Magistrates' Court for failing to comply with section 172(3) of the Road Traffic Act 1988. He was convicted and fined GBP 750 with GBP 250 costs and three penalty points. He maintains that the fine was substantially heavier than that which would have been imposed had he pleaded guilty to the speeding offence.

Mr O'Halloran complained that he was convicted solely or mainly on account of the statement he was compelled to provide. Mr Francis complained that his right not to incriminate himself was infringed.

Decision of the Court

The Court did not accept the applicants' argument that the right to remain silent and the right not to incriminate oneself were absolute rights and that to apply any form of direct compulsion to require an accused person to make incriminatory statements against her or his will of itself destroyed the very essence of that right.

European Court/Commission of Human Rights case-law cited in the judgment:
Allen v. the UK, Funke v. France, Heaney and McGuinness v. Ireland, J.B. v. Switzerland, Jalloh v. Germany, John Murray v. the UK, P., R. and H. v. Austria, Saunders v. the UK, Serves v. France, Shannon v. the UK, Weh v. Austria

In order to determine whether the essence of the applicants' right to remain silent and privilege against self-incrimination was infringed, the Court focused on the nature and degree of compulsion used to obtain the evidence, the existence of any relevant safeguards in the procedure, and the use to which any material so obtained was put.

Nature and degree of the compulsion

The Court accepted that the compulsion was of a direct nature. It also noted that anyone who chose to own or drive a car knew that they subjected themselves to a regulatory regime, imposed because the possession and use of cars was recognised to have the potential to cause grave injury. Those who choose to keep and drive cars could be taken to have accepted certain responsibilities and obligations as part of the regulatory regime relating to motor vehicles, and in the legal framework of the United Kingdom, those responsibilities included the obligation, in the event of suspected commission of road traffic offences, to inform the authorities of the identity of the driver on that occasion.

A further aspect of the compulsion applied in the applicants' cases was the limited nature of the inquiry which the police were authorised to undertake. Section 172(2)(a) applied only where the driver of the vehicle was alleged to have committed a relevant offence, and authorised the police to require information only "as to the identity of the driver".

Safeguards

In cases where the coercive measures of section 172 of the 1988 Act were applied, the Court noted that by section 172(4), no offence was committed under section 172(2)(a) if the keeper of the vehicle showed that he did not know and could not with reasonable diligence have known who the driver of the vehicle was. The offence was therefore not one of strict liability, and the risk of unreliable admissions was negligible.

Use to which the statements were put

– As to the use to which the statements were put, Mr O'Halloran's statement that he was the driver of his car was admissible as evidence of that fact by virtue of section 12(1) of the Road Traffic Offenders Act 1988. It remained for the prosecution to prove the offence beyond reasonable doubt in ordinary proceedings, including protection against the use of unreliable evidence and evidence obtained by oppression or other improper means (but not including a challenge to the admissibility of the statement under section 172), and the defendant could give evidence and call wit-

nesses if he wished. The identity of the driver was only one element in the offence of speeding, and there was no question of a conviction arising in the underlying proceedings in respect solely of the information obtained as a result of section 172(2)(a).

– As Mr Francis refused to make a statement, it could not be used in the underlying proceedings, and indeed the underlying proceedings were never pursued. The question of the use of the statements in criminal proceedings did not arise, as his refusal to make a statement was not used as evidence: it constituted the offence itself.

Having regard, inter alia, to the special nature of the regulatory regime at issue and the limited nature of the information sought by a notice under section 172 of the Road Traffic Act 1988, the Court considered that the essence of the applicants' right to remain silent and their privilege against self-incrimination had not been destroyed.

Note:

The judgment raised the important question of the scope of the right not to self-incriminate and of the presumption of innocence. It gave rise to dissenting opinions:

– For one judge, the Contracting States would have only two options: either to prosecute offenders in full compliance with the requirements of Article 6 or, if that is not possible owing to the huge number of offences committed by the population, to decriminalise an act which is so widely committed.

– Another judge put forward that, in order that the Court be able to deal with the real core issues, it could be accepted that the handling of traffic offences would no longer fall within the ambit of Article 6.

Vilho Eskelinen and others v. Finland

Right to a fair hearing (Article 6), Right to an effective remedy (Article 13), Protection of property (Article 1 of Protocol No. 1)

Judgment of 19.4.2007
Concerns:
Dispute regarding police personnel's entitlement to a special allowance
Conclusions of the Court: violations/no violations

Facts and complaints

The applicants all worked for the Sonkajärvi District Police. Under a collective agreement of 1986, they were entitled to a special allowance for working in a remote area. They lost this advantage in 1991. The applicants' appeal was rejected and the procedure ended in April 2000 with a Supreme Administrative Court's decision that they had no statutory right to the individual wage supplements and that it was unnecessary to hold a hearing.

The applicants complained about the excessive length of the proceedings and the lack of an oral hearing. They further complained that they had lost their entitlement to a special allowance and had received no compensation. Finally, they maintained that they were treated differently from other police personnel.

Decision of the Court

Article 6 §1

Applicability

The Government questioned the applicability of Article 6 on two grounds, namely as to whether there was a "right" and as to whether it was "civil" in nature. It had argued that Article 6 was not applicable since, under the Court's case-law, disputes concerning servants of the State such as police officers over their conditions of service were excluded from its ambit.

After having concluded that the applicants could claim to have had a right, the Court recalled that, with a view to removing uncertainty in previous case-law in this area, it had introduced a functional criterion based on the nature of the employee's duties and responsibilities (judgment of Pellegrin v. France, 8.12.1999): it had ruled that the only disputes excluded from the scope of Article 6 §1 were those concerning public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities was provided by the armed forces and the police.

After reviewing the operation of this functional criterion, the Court concluded that it had not simplified the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or brought about a

European Court/Commission of Human Rights case-law cited in the judgment:
Abdulaziz, Cabales and Balkandali v. the UK, Abenavoli v. Italy, Ahmed and Others v. the UK, Cazenave de la Roche v. France, Christine Goodwin v. the UK, Couez v. France,De Santa v. Italy, Domalewski v. Poland, Engel and Others v. the Netherlands, Ferrazzini v. Italy, Francesco Lombardo v. Italy, Frydlender v. France, Gaygusuz v. Austria, Glasenapp v. Germany, Golder v. the UK, Hellborg v. Sweden, Hertel v. Switzerland, Janssen v. Germany, Jussila v. Finland, Kanayev v. Russia, Kangasluoma v. Finland,Kepka v. Poland, Kjartan Ásmundsson v. Iceland, König v. Germany, Kopecky v. Slovakia, Kudla v. Poland, Lapalorcia v. Italy, Le Calvez v. France, Maaouia v. France, Mamatkulov and Askarov v. Turkey, Martinie v. France, Massa v. Italy, Meftah and Others v. France, Neigel v. France, Neves e Silva v. Portugal, Nicodemo v. Italy, Pellegrin v. France, Perez v. France, Philis v. Greece (No. 2), Posti and Rahko v. Finland, Pudas v. Sweden, Schmidt and Dahlström v. Sweden, Z and Others v. the UK, Zumtobel v. Austria

greater degree of certainty in this area. It considered that Pellegrin should be understood in the light of the earlier case-law as constituting a first step away from the previous principle that Article 6 did not apply to the civil service. It reflected the basic premise that certain civil servants, because of their functions, were bound by a special bond of trust and loyalty towards their employer. It was evident from the cases decided since, that in very many Contracting States access to a court was accorded to civil servants, allowing them to bring claims for salary and allowances, even in relation to dismissal or recruitment, on a similar basis to employees in the private sector. The domestic system, in such circumstances, perceived no conflict between the vital interests of the State and the right of the individual to protection.

The Court therefore decided to adopt a new approach in this area, according to which in order for the respondent State to be able to rely on the applicant's status as a civil servant to exclude the application of Article 6, two conditions had to be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant was in a sector or department which participated in the exercise of power conferred by public law was not in itself decisive. In order for the exclusion to be justified, it was not enough for the State to establish that the civil servant in question participated in the exercise of public power or that there existed, to use the words of the Court in the Pellegrin judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. The State would also have to show that the subject matter of the dispute in issue was related to the exercise of State power or that it had called into question the special bond. Thus, there could in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There would, in effect, be a presumption that Article 6 applied. It would be for the respondent Government to demonstrate, first, that a civil-servant applicant did not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant was justified.

In the case under review it was not disputed that the applicants had all had access to a court under national law. Accordingly, Article 6 §1 was applicable.

Compliance with the article

– Reasonable time

The proceedings had lasted over seven years, delays for which the Court found no sufficient explanation. There had therefore been a violation of Article 6 §1 on account of the length of the proceedings.

– Lack of an oral hearing

As regards the applicants' complaint that they had been denied an oral hearing, the Court noted that they had not been prevented from requesting an oral hearing, although it had been for the courts to decide whether a hearing was necessary. The administrative courts gave consideration to the request and provided reasons for not granting it. Since the applicants had been given ample opportunity to put forward their case in writing and to comment on the submissions of the other party, the requirements of fairness had been complied.

Article 13

The Court found that there had been no specific legal avenue whereby the applicants could have complained of the length of the proceedings in question with a view to expediting the determination of their dispute. There had been a violation of Article 13.

Article 1 of Protocol No. 1 alone or in conjunction with Article 14

The applicants complained that the national authorities and courts had wrongfully applied the national law when refusing their claim.

The Court recalled that for a claim to be regarded as an "asset" attracting the protection of Article 1 of Protocol No. 1 it had to have a sufficient basis in national law, for example where there was settled case-law of the domestic courts confirming it. In the case under review it followed from the implementing instruction that the applicants did not have a legitimate expectation of receiving an individual wage supplement since, as a consequence of the change in duty station, the entitlement to the wage supplement ceased. Nor was there under the domestic law any right to be compensated for commuting costs.

As regards Article 14 of the Convention, there could be no room for its application unless the facts at issue fall within the ambit of one or more of them.

In the circumstances the Court found that there had been no violation of Article 1 of Protocol No.1 to the Convention either taken alone or in conjunction with Article 14.

Note:

With this judgment the Court has overturned a fairly recently established case-law regarding the application of Article 6 to civil servants. The Pellegrin judgment was a landmark judgment as it sought to clarify the Court's unsteady case-law

on the matter by introducing a functional criterion based on the nature of the employee's duties and responsibilités.

In a joint dissenting opinion, several judges are not convinced by the new criterion based on access to a court. They argue that the applicability of Article 6 to disputes between the state and its agents will come down to examining whether there is access to a court under domestic law or not, which, they underline, will vary a lot according to each legal system.

Chamber judgments

Garabayev v. Russia

Prohibition of inhuman or degrading treatment (Article 3), Right to liberty and security (Article 5 §1), Right to have lawfulness of detention decided speedily by a court (Article 5 §4), Right to be brought promptly before a judge (Article 5 §3), Right to an effective remedy (Article 13)

Judgment of 12.6.2007
Concerns:
Arrest in breach of domestic law and extradition in circumstances in which the applicant faced a real risk of ill-treatment
Conclusions of the Court:
violation of the three articles

Facts and complaints

The applicant, Murad Redzhepovich Garabayev, is a citizen of Russia and Turkmenistan. He was an accountant in the Central Bank of Turkmenistan. On 4 March 2002 he was registered at the Russian Consulate in Turkmenistan as a Russian citizen living in Ashkhabad, and, on 17 March 2002, was issued with a Russian passport.

On 27 September 2002 the Prosecutor General of Turkmenistan sent a request to the Prosecutor General of the Russian Federation to detain and extradite the applicant, who was charged with withdrawing and not returning financial assets worth 40 million US dollars from the correspondent account of the Central Bank of Turkmenistan in the Deutsche Bank AG. The applicant was arrested in Moscow that day and placed in detention.

The applicant's lawyer complained to the Prosecutor General's Office (PGO) that the applicant could not be extradited to Turkmenistan according to, among other things, the Code of Criminal Procedure (CCP), because he was a Russian national. She referred to humanrights reports which indicated that the applicant risked facing torture or inhuman or degrading treatment if extradited. The Russian NGO Memorial and Sergey Kovalev, a member of the State Duma, also contacted the prosecutor general concerning the applicant's case.

On 24 October 2002 Mr Garabayev was extradited to Turkmenistan. The applicant submitted that he was shown a copy of the decision to extradite him for the first time at the airport that day and that his request to see a lawyer was rejected.

On 18 and 24 October 2002 the applicant's lawyer challenged his detention and extradition. Moscow City Court replied that it did not have jurisdiction to deal with the complaint about detention and that the complaint about the unlawfulness of the decision to extradite could not be reviewed in the applicant's absence.

On 14 November 2002 the European Court of Human Rights requested information from the Russian Government concerning the applicant's detention and extradition to Turkmenistan, and asked whether his claims that he might be subjected to treatment contrary to Article 3 had been reviewed by a competent national authority.

On 5 December 2002 Moscow City Court reviewed the lawyer's complaint and found that the decision to extradite the applicant had been unlawful in view of his Russian nationality. It further found that the decision had not been officially served on the applicant or his lawyer, as a result of which he had been deprived of the possibility to challenge it under national law. The applicant's detention was also found to be unlawful.

On 1 February 2003 the applicant was returned to Moscow, where he was arrested and placed in pre-trial detention, charged with swindling on a large scale.

On 2 April 2003 the European Court of Human Rights requested the Russian Government, under Rule 39 of the Rules of Court, not to extradite the applicant to Turkmenistan until further notice.

On 9 March 2004 the applicant was found guilty of using a forged document and sentenced to a 5 000 rouble fine. He was acquitted of the other charges and released from detention.

Decision of the Court

Article 3

The Court noted that the Russian Government did not dispute that, immediately after Mr Garabayev's arrest several letters by his lawyers and various public figures had been addressed to the prosecutor general, expressing fears of torture and personal persecution of the applicant for political motives

and seeking to prevent his extradition on those grounds. They also referred to the general situation in Turkmenistan. The competent authorities were thus made sufficiently aware of a risk of ill-treatment in case of the applicant's return to Turkmenistan. However, no assurances of the applicant's safety from treatment contrary to Article 3 were sought, and no medical reports or visits by independent observers were requested or obtained.

Furthermore, the applicant was informed of the decision to extradite him only on the day of his transfer to Turkmenistan and he was not allowed to challenge it or to contact his lawyer. The decision of the domestic court which found the extradition unlawful after it had occurred also failed to take into account the submissions under Article 3. In such circumstances, the Court concluded that no proper assessment was given by the competent authorities to the real risk of ill-treatment.

The Court observed that, not only was the applicant extradited to Turkmenistan, he was returned to Russia three months later. He produced an account of the events which had occurred while he was there. The Court was thus able to look beyond the moment of extradition and to assess the situation in view of those later developments. The Government did not contest those submissions. The Court therefore concluded that there had been a violation of Article 3.

Article 5 §1(f)

Concerning the lawfulness of the applicant's detention before his extradition, the Court noted that he had been detained in Russia under a detention order issued by a prosecutor in Turkmenistan. His detention was not confirmed by a Russian court, contrary to the provisions of the Code of Penal Procedure, which required such authorisation unless the detention in the country seeking extradition had been ordered by a court. Therefore the applicant's detention pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5 §1.

Furthermore, the decision of 5 December 2002 found the applicant's extradition unlawful in view of his Russian nationality. The information about Mr Garabayev's nationality had already been available to the competent authorities at the time of the applicant's arrest because the applicant and his lawyer had raised the issue and his Russian passport had been in his extradition file. On that basis Moscow City Court had declared the applicant's detention for the purpose of extradition unlawful from the outset. The Court considered that the procedural flaw in the order authorising the applicant's detention was so fundamental as to render it arbitrary and invalid. That conclusion was further strengthened by the absence of judicial review of the lawfulness of the applicant's detention until his extradition had taken place.

Article 5 §3

Concerning the justification of detention after 30 January 2003, the Court noted that once the applicant was returned from Turkmenistan on 1 February 2003 and arrested in Russia, he should have been promptly brought before a judge. However, he was not brought before a judge until 19 March 2003. There had therefore been a violation of Article 5 §3 on the account of a failure to be brought promptly before a judge.

Article 5 §4

Concerning the availability of judicial review of the detention prior to extradition, the Court noted that the applicant was detained in Russia under an arrest warrant issued by the Prosecutor General of Turkmenistan. The applicant's detention was not authorised by a Russian court, in violation of the relevant domestic provisions. Moscow City Court refused to consider the complaints concerning the unlawfulness of detention for lack of jurisdiction, but did not indicate which court would be competent to review them. It nevertheless addressed the issue of detention in the context of the extradition proceedings, but only after the applicant's extradition had taken place. Thus, the lawfulness of the applicant's detention during the period in question was not examined by any court, despite his appeals. A court would also have been much better placed to uncover the fundamental flaw in the detention order and order the applicant's release. There had therefore been a violation of Article 5 §4 on account of the absence of judicial review of the applicant's detention pending extradition.

Article 13

The Court considered that the applicant was not provided with an effective remedy as regards the complaint concerning the risk of ill-treatment if extradited: he was only informed of the decision to extradite him on the day of his transfer; he was not allowed to contact his lawyer or to lodge a complaint, in breach of the relevant provisions of domestic legislation; and, the compatibility of the scheduled removal with Article 3 was not examined by the relevant authorities before it had occurred. The Court concluded that

European Court/Commission of Human Rights case-law cited in the judgment:
Albert and Le Compte v. Belgium, Bordovskiy v. Russia, Bracci v. Italy, Chahal v. the U K, Conka v. Belgium, De Wilde, Ooms and Versyp v. Belgium, Dimitrov v. Bulgaria, 9 May 2006, Dougoz v. Greece, Gridin v. Russia, H.L.R. v. France, Ireland v. the UK, K. and T. v. Finland, Khudoyorov v. Russia, Kudla v. Poland, Mamatkulov and Askarov v. Turkey, N.C. v. Italy, Papamichalopoulos and Others v. Greece, Prokopovich v. Russia, Soering v. the UK, Vilvarajah and Others v. the UK

there had been a violation of Article 13 in connection with Article 3.

Erdogan Yargiz v. Turkey

Prohibition of inhuman or degrading treatment (Article 3)

Judgment of 6.5.2007
Concerns:
Failure to take into account a prisoner's serious invalidity
Conclusions of the Court: violation

Facts and complaints

The applicant, who had been employed as a doctor by the Istanbul security police for fifteen years, was arrested in the car-park outside his workplace because a woman had complained that two people had threatened her, alleging that they were protected by "security police chief Erdogan".

The applicant was handcuffed in public and subsequently exposed in handcuffs in front of his family and neighbours when searches were carried out at his home and place of work. He was then held in police custody at his workplace, where staff could see him handcuffed, but was not informed of the charges against him.

Two days after he was released, a psychiatrist diagnosed him as suffering from psychiatric shock and certified him unfit for work for twenty days. His sick leave was extended several times on account of acute depression. He was informed that he was to be suspended until the close of the criminal investigation on account of his relations with individuals who had been convicted of blackmail, looting and unlawful imprisonment as members of an organised gang. Three days later the factory where he worked as a doctor under an individual contract terminated his employment, criticising him for failing to give the staff his care and attention, and referring to the fact that he was under psychiatric treatment.

The prosecuting authorities discontinued the case against the applicant, and he was reinstated in his post at the security police. However, on account of aggravated psychosomatic symptoms, he was retired early on health grounds. Since then he has been admitted several times as a psychiatric patient to an hospital neuropsychiatry department.

He lodged a complaint against five police officers, alleging that he had been handcuffed and then insulted in front of his family and police personnel. The proceedings were discontinued.

Decision of the Court

Article 3

In the present case the medical and psychiatric reports showed that the applicant had been mentally affected by the treatment inflicted. Wearing handcuffs in public, at his workplace and in front of his family had caused him a strong feeling of humiliation and shame. His mental state had been irreversibly marked by the incident and he had been incapable of overcoming the ordeal.

The Court further considered that wearing handcuffs was not a measure made necessary by the applicant's conduct, but intended to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his moral resistance. It constituted degrading treatment contrary to Article 3.

European Court/Commission of Human Rights case-law cited in the judgment:
Albert and Le Compte v. Belgium, Ireland v. the UK, Kalashnikov v. Russia, Klaas v. Germany, Kudla v. Poland, Peers v. Greece, Raninen v. Finland, Smith and Grady v. the UK, Tyrer v. the UK, V. v. the UK

Hüseyin Yildirim v. Turkey

Prohibition of degrading treatment (Article 3)

Judgment of 3.5.2007
Concerns:
Failure to take into account a prisoner's serious invalidity when arranging for his detention and transfers
Conclusions of the Court: violations

Facts and complaints

In May 2001 the applicant was involved in a serious traffic accident, as a result of which he sustained after-effects infirmities. He was arrested at his home during the night of 5 July 2001.

The applicant, who was incapable of moving, was placed on a foam mattress and questioned as he lay prone on it. He was placed in pre-trial detention, where he was immediately placed in the hospital unit for a few days before being transferred to another prison.

Mr Yildirim's state of health deteriorated during his detention. He was obliged to undergo a bifrontal craniotomy on account of a rupture of the cerebral membrane. He subsequently began to suffer from sphincteral problems, requiring him to wear a urethral catheter, and was subject to various more or less serious dermatological, neurological or respiratory illnesses; he also showed signs of chronic depression. Several medical boards held that he was suffering from permanent after-effects and that his state of health was incompatible with his imprisonment.

During his detention the applicant was assisted by the prisoners sharing his cell, who prepared his food and fabricated a commode by making a hole in a plastic stool. During he was in hospital, he was under the care of his brother and sisters.

In September 2002 Mr Yildirim was transferred in a police van to a hearing at Istanbul State Security Court. At the close of the hearing, the gendarmes who were accompanying him allegedly dropped him; the press published photographs which showed him on the ground.

On 11 December 2002 the applicant was sentenced to life imprisonment; he was released on 25 June 2004 under a presidential pardon.

Decision of the Court

The applicant's conditions of detention

The Court noted that the applicant was disabled to such an extent that he could not carry out the majority of basic everyday tasks without the assistance of others. In spite of his disability, he had been left to the supervision and assistance of his fellow prisoners and his family. The Court considered that that situation, in which the applicant had been placed for about three years, could not but arouse in him constant feelings of anguish, inferiority and humiliation that were sufficiently strong to amount to "degrading treatment" within the meaning of Article 3.

European Court/Commission of Human Rights case-law cited in the judgment:
Eroglu v. Turkey, Farbtuhs v. Latvia, Ilhan v. Turkey, Inan Eren v. Turkey, Kudla v. Poland, Labita v. Italy, Mouisel v. France, Nikolova v. Bulgaria, Price v. the UK, Raninen v. Finland, Scozzari and Giunta v. Italy, Tarkan Ugurlu v. Turkey, Tekin Yildiz v. Turkey, Vincent v. France

The conditions of transfers

The Court wondered how responsibility for such a disabled prisoner could have been entrusted to gendarmes who were certainly not qualified to foresee the medical risks inherent in the transportation of such an ill person. Consequently, it concluded that the events of that day had also amounted to degrading treatment.

The treatment provided to the applicant

As the applicant had consistently refused to comply with the medical prescriptions issued to him, the Court considered it unnecessary to evaluate the allegations concerning solely the quality of the treatment given.

The applicant's continued detention

The Court noted that Article 399 of the Code of Criminal Procedure allowed for the release of prisoners on health grounds. It considered that the reasons put forward by the Turkish courts and Government were not sufficient to justify the applicant's continued detention until 25 June 2004, in defiance of medical reports which strongly urged his release.

In conclusion, the Court considered that the applicant's detention had infringed his dignity and had undoubtedly caused him both physical and psychological suffering, beyond that inevitably associated with a prison sentence and medical treatment.

Note:
The Court specifies that the pain produced by an illness can, as such, fall under Article 3 if it is, or can possibly be, aggravated by conditions of detention for which the authorities are responsible. The Convention does not provide for a general obligation to release a prisoner on the ground of health considerations; however, the clinical picture is one of the situations for which the question of the capacity to be detained arises under Article 3.

Çiloglu and others v. Turkey

Prohibition of inhuman or degrading treatment (Article 3), Right to freedom of expression (Article 11)

Judgment of 6.3.2007
Concerns:
Break-up of an irregular pacific demonstration
Conclusions of the Court:
no violations

Facts and complaints

This case concerned a number of demonstrations held in the form of weekly sit-ins in front of a high school in Istanbul, to support a protest by prisoners against plans to build an F-type prison. The applicants took part in one of these sit-ins during more than three years, but, in September 1998, the group of demonstrators, consisting of some sixty people were ordered by the police to disperse. When they refused, the police used tear gas and took the applicants into custody.

The applicants were released on the same day. Criminal proceedings were brought against them for a breach of the law on public gatherings and demonstrations. The court hearing the case decided in January 2001 to defer its judgment.

Moreover, a complaint by the applicants that there had been abuse of authority and ill-treatment led to a finding that there was no case to answer.

Decision of the Court

Article 3

The Court observed that the applicants had not submitted any medical report to show that they had suffered, as alleged, from the

harmful effects of exposure to gas. Having been released shortly after their arrest, they also failed to have themselves examined by a doctor in order to establish the possible adverse effects of the gas.

As regards the bruising indicated in the medical reports concerning seven of the applicants, the Court found that these injuries appeared to have occurred during their jostle with the police at the time of the arrest. Accordingly, the Court considered that the injuries had not attained a sufficient degree of severity to fall within the scope of Article 3.

Article 11

The Court noted that the demonstration had been unlawful and that the demonstrators had been informed of this. It was obvious that such a gathering in a public place, held regularly every Saturday morning for over three years, had become an almost permanent event which had the effect of disrupting traffic and clearly caused a breach of the peace. In view of the length and number of previous demonstrations, the Court considered that the authorities had reacted within the margin of appreciation afforded to States in such matters.

European Court/Commission of Human Rights case-law cited in the judgment:
Assenov and Others v. Bulgaria, Ataman v. Turkey, Chahal v. the UK, Chorherr v. Austria,Cisse v. France, Djavit An v. Turkey, Karakas and Bayur v. Turkey, Kiliçgedik v. Turkey, Klaas v. Germany, Labita v. Italy, Oya Ataman v. Turkey, Pélissier and Sassi v. France, Piermont v. France, Plattform "Ärzte für das Leben" v. Austria,Raninen v. Finland, Selmouni v. France, Steel and Others v. the UK, V. v. the UK

Note:
See Oya Ataman v. Turkey where, by contrast, the Court found a violation under Article 11 in a somewhat similar case. In that case, the Court was struck by the haste with which the authorities arrested demonstrators thirty minutes after the beginning of the gathering. It found that in the absence of any violent behaviour of demonstrators it is important that the authorities show tolerance in respect of peaceful gathering in order for the freedom of assembly not to be devoid of substance.

Tysiac v. Poland

Prohibition of inhuman or degrading treatment (Article 3), Right to respect for private life (Article 8)

Judgment of 20.3.2007
Concerns:
Refusal to perform a therapeutic abortion
Conclusions of the Court:
no violation of Article 3, violation of Article 8

Facts and complaints

The applicant had suffered from severe myopia for many years. On becoming pregnant for the third time she was concerned that her pregnancy might affect her health. The three ophthalmologists she consulted concluded that there would be a serious risk. However, they refused to issue a certificate authorising the termination of her pregnancy. As by the second month of her pregnancy, her myopia had already significantly deteriorated in both eyes, she consulted a general practitioner, who issued the certificate. She went to the hospital for performing a therapeutic abortion, but the head of the gynaecology and obstetrics department found no medical grounds for performing it. Following the applicant's delivery, her eyesight further deteriorated considerably. She lodged a criminal complaint against the hospitals' gynaecologist, which was discontinued.

Ms Tysiac, who is raising her three children alone, is now registered as significantly disabled. She cannot see objects more than 1.50 metres away and fears that she will eventually become blind.

Before the Court, Ms Tysiac maintained that the fact that she was not allowed to terminate her pregnancy in spite of the risks to which she was exposed amounted to a violation of Articles 8, 3 and 13; that no procedural and regulatory framework had been put in place to enable a pregnant woman to assert her right to a therapeutic abortion, thus rendering that right ineffective; and that she had been discriminated against on the grounds of her sex and her disability.

Decision of the Court

Article 3

The Court found that the facts did not reveal a breach of Article 3. It considered that it was more appropriate to examine Ms Tysiac's complaints under Article 8.

Article 8

The Court observed that, under the 1993 Pregnancy Termination Act, abortion was

European Court/Commission of Human Rights case-law cited in the judgment:
Agosi v. the UK, Airey v. Ireland, Boyle and Rice v. the UK, Capital Bank AD v. Bulgaria, Carbonara and Ventura v. Italy, Bruggeman and Scheuten v. Germany, Glass v. the UK, Hasan and Chaush v. Bulgaria, Hatton and Others v. the UK, Iatridis v. Greece, Ilhan v. Turkey, Jokela v. Finland, Keegan v. Ireland,Malone v. the UK, Nikolova v. Bulgaria, Nitecki v. Poland, Odièvre v. France, Olsson v. Sweden, Pentiacova and Others v. Moldova, Pretty v. the UK, Rotaru v. Romania, Różanski v. Poland, Sentges v. the Netherlands (dec.) no. 27677/02, 8 July 2003 ; Smith and Grady v. the UK, Sokur v. Ukraine, Storck v. Germany, Sunday Times v. the UK (No. 1), X and Y v. the Netherlands

lawful in Poland where pregnancy posed a threat to the woman's life or health and that it was, therefore, not the Court's task, in the applicant's case, to examine whether the Convention guaranteed a right to have an abortion.

The Court found that the case related to Ms Tysiac's right to respect for her private life and it decided to examine the complaint from the standpoint of the State's positive obligation to secure the physical integrity of mothers-to-be.

The Court examined how the legal framework regulating the availability of a therapeutic abortion in Polish law had been applied to the applicant's case. It found that there was no particular procedural framework to address and resolve disagreement as to the advisability of therapeutic abortion, either between the pregnant woman and her doctors, or between the doctors themselves. It therefore concluded that that Polish law did not contain any effective mechanism capable of determining whether the conditions for obtaining a lawful abortion had been met. That created a situation of prolonged uncertainty for Ms Tysiac and, as a result, she suffered severe distress and anguish about the possible negative consequences on her health of her pregnancy and the imminent birth.

The provisions of Polish civil law on tort did not give Ms Tysiac the opportunity to uphold the right to respect for her private life either. Those provisions were retroactive and could only have resulted in the courts granting compensation. Similarly, criminal proceedings against the hospital's gynaecologist could not have prevented the damage to the applicant's health from arising.

The Court concluded that the Polish State had failed to safeguard Ms Tysiac's right to the effective respect for her private life and that there had therefore been a breach of Article 8.

Note:
It can be of interest to compare the Court's case-law in this case and in the case of D. v. Ireland (27/06/2006).

Gercely v. Romania, Kalanyos and others v. Romania

Prohibition of inhuman or degrading treatment (Article 3), Right to a fair trial (Article 6), Right to respect for private and family life (Article 8), Right to an effective remedy (Article 13), Prohibition of discrimination (Article 14)

Judgment of 26.4.2007
Concerns:
Burning of houses belonging to Roma
Conclusions of the Court:
struck out of the list (friendly settlement)

Facts and complaints

The cases concern the burning of houses belonging to Roma villagers by local population, the poor living conditions of the victims and the authorities' failure to prevent the attack and to carry out an adequate criminal investigation, depriving the applicants of their right to bring a civil action to establish liability and recover damages.

The Government accepted that the events at issue had constituted violations of Articles 3, 6, 8, 13 and 14 of the Convention and undertook to pay each of the applicants €30 000-36 500 in compensation as well as costs and expenses. They also undertook to adopt several general measures involving the judicial system, the educational, social and housing programmes and aimed at fighting discrimination against the Roma, stimulating their participation in the economic, social, educational, cultural and political life of the local community, supporting positives changes in public opinion in their respect, as well as preventing and solving conflicts likely to generate violence.

The applicants requested the Court to dismiss the Government's proposals and to continue the examination of the merits of the cases.

Decision of the Court

The Court noted that although the violations complained about were of a very serious and sensitive nature, they had already been exhaustively addressed in the case of Moldovan v. Romania (No. 2). Moreover, the Government had acknowledged these violations and proposed several individual and general measures with a view to redressing the situation and to remedy the flaws in the judicial system. The implementation of the measures proposed had already started under the supervision of the Committee of Ministers.

Having regard to the nature of the Government's admissions as well as the scope and extent of their various undertakings, together with the amount of compensation proposed, respect for human rights did not require the Court to continue the examination of the applications. It struck out them of the list of cases.

European Court/Commission of Human Rights case-law cited in the judgment:
Meriakri v. Moldova, Swedish Transport Workers Union v. Sweden, Tahsin Acar v. Turkey, Van Houten v. the Netherlands

97 members of the Gldani Congregation of Jehovah's Witnesses and 4 others v. Georgia

Prohibition of inhuman or degrading treatment (Article 3), Right to freedom of thought, conscience and religion (Article 9), Prohibition of discrimination (Article 14)

Judgment of 3.5.2007
Concerns:
Violent assault on Jehovah's Witnesses and lack of an effective investigation
Conclusions of the Court: violations

Facts and complaints

The case concerns an incident in which a fanatical group of Orthodox believers led by a defrocked priest (known as "Father Basil") attacked a congregation of Jehovah's Witnesses.

In October 1999, dozens of individuals surrounded and entered the theatre in which 120 members of the Congregation were gathered. Although some of the members managed to escape, 60 others, including women and children, were violently assaulted by the attackers, who punched and kicked them, struck them with sticks, iron crosses and belts and pushed them down staircases. One man's head was shaved by a group of chanting assailants. The Jehovah's Witnesses were then searched, their personal effects were removed and any symbols of their beliefs they were carrying were thrown into a fire. The attack was filmed by one of Father Basil's supporters.

Although attempts were made to alert the police, the officers on duty were initially reluctant to intervene. One of the applicants was even told by the officer in charge that he would have given the Jehovah's Witnesses "an even worse time".

At the end of the attack, 16 people were admitted to hospital, mainly suffering from head injuries and headaches.

Two national television channels broadcast recordings of the attack from which Father Basil and other members of their group were clearly identifiable. The recording showed a fire with the burning books, with Father Basil and his supporters expressing theirs satisfaction and explaining the validity of their actions.

On the day following the attack, 42 applicants lodged a complaint. Criminal proceedings were opened, but only 11 applicants were recognised as civil parties in the case. The case was transferred between the various departments of the prosecution service and the police. The proceedings were suspended on several occasions, on the ground that it was impossible to identify the perpetrators of the attack.

The police investigator responsible for the case stated that, on account of his Orthodox faith, he could not be impartial in conducting the investigation. During that investigation, he organised an identification parade, in the course of which one of the applicants recognised two persons as those who had attacked him; the police officer decided to place that applicant under examination and no follow-up action was taken with regard to the identification. Sent for trial with two of Father Basil's supporters who were suspected of having burnt the religious literature, the applicant in question was convicted of having committed acts endangering public order, although the charge against Father Basil's two supporters was sent for further investigation; that investigation was never completed.

From October 1999 to November 2002 138 violent attacks were carried out against the Jehovah's Witnesses and 784 complaints were lodged with the Georgian authorities. No careful and serious investigation was carried out into any of those complaints. The Parliamentary Assembly of the Council of Europe, the UN Committee against Torture and several NGOs condemned the violent attacks committed against religious minorities in Georgia and particularly against the Jehovah's Witnesses.

Decision of the Court

Article 3

As to the treatment inflicted on the applicants

The Court noted that the allegations of ill-treatment made by 10 applicants were corroborated by their medical records and the video recording of the attack. In addition, 15 other applicants had provided precise descriptions of the ill-treatment to which they had been subjected, and those descriptions had not been challenged by the Georgian Government. Accordingly, the Court considered that, with regard to those 25 applicants, the treatment inflicted on them could be described as inhuman.

European Court/Commission of Human Rights case-law cited in the judgment:
A. v. the UK, Abdülsamet Yaman v. Turkey, Amy v. Belgium, Anguelova v. Bulgaria, Assanidzé v. Georgia, Assenov and Others v. Bulgaria, Bati and Others v. Turkey, Berktay v. Turkey, Camp and Bourimi v. the Netherlands, Cha'are Shalom Ve Tsedek v. France, Chahal v. the UK, Chamaiev and Others v. Georgia and Russia, Davtian v. Georgia, Donadzé v. Georgia, Metropolitan Church of Bessarabia and Others v. Moldova, Güneri v. Turkey, Hasan and Chaush v. Bulgaria, Indelicato v. Italy, Ireland v. the UK, Keenan v. the UK, Kokkinakis v. Greece, Kurt v. Turkey, Labita v. Italy, Larissis and Others v. Greece, M.C. v. Bulgaria, M.M. v. the Netherlands, Maestri v. Italy, Manoussakis and Others v. Greece, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, Nikolova v. Bulgaria, Oberschlick v. Austria (No. 1), Okkali v. Turkey, Paul and Audrey Edwards v. the UK, Pretty v. the UK, Raninen v. Finland, Refah Partysi (the Welfare Party) and Others v. Turkey, Selmouni v. France, Serif v. Greece, Thlimmenos v. Greece, Z and Others v. the UK

The Court also considered that the 6 applicants whose children had been beaten up were indirect victims of the inhuman treatment inflicted on their children.

Furthermore, with regard to 14 other applicants whose statements did not specify the nature and gravity of the treatment inflicted, the Court considered that the video recording showed that they had been subjected to degrading treatment. In that respect, it attached importance to the fact that the attack had been filmed by one of the attackers. and was broadcast on two national television channels over several days.

The Court therefore concluded that there had been a violation of Article 3 with regard to 45 of the applicants and no violation in the cases of 16 applicants who had escaped the attack and 37 who had not lodged a complaint with the Georgian authorities.

As to the authorities' reaction and the action taken in response to 42 applicants' complaints

The Court considered that it had not been shown that the authorities were aware that Father Basil was planning to carry out the attack in question. On the other hand, it noted that, after being informed, the police officers had not acted with diligence.

At the same time, thirty-one applicants received no response to their complaints and eleven other complaints were unsuccessful. The investigator responsible for the case had made clear his bias from the start of the investigation and the identification of several attackers resulted in the victim in question being placed under examination.

The Court regretted that the Georgian Government continued to claim that it had been impossible to identify the perpetrators of the violence. Such an attitude on the part of authorities was liable to undermine the effectiveness of any other remedies that may have existed.

The Court concluded to a violation of the Convention in respect of 42 of the applicants.

Article 9

The Court noted that, through their lack of action, the Georgian authorities had failed in their duty to adopt the necessary measures to ensure that the group of Orthodox extremists lead by Father Basil would tolerate the existence of the applicants' religious community and enable them to enjoy free exercise of their right to freedom of religion. It therefore concluded that there had been a violation of Article 9 in respect of 96 applicants, 5 other applicants having been unidentifiable.

Article 14 taken together with Articles 3 and 9

The Court considered that the comments and attitudes of the State employees who were alerted about the attack or subsequently instructed to conduct the investigation could not be considered compatible with the principle of equality of every person before the law. No justification for that discriminatory treatment in respect of the applicants had been put forward by the Georgian Government. Indeed, the authorities' attitude had enabled Father Basil to continue to advocate hatred through the media and to pursue acts of religiously-motivated violence, while alleging that the latter enjoyed the unofficial support of the authorities, which had suggested that the State had been complicit with the criminals.

The Court therefore concluded that there had been a violation of Article 14 taken together with Articles 3 and 9.

Note:

In general, actions incompatible with Article 3 incur the liability of a contracting State only if they were inflicted by persons holding an official position. However, the obligation on the High Contracting Parties under Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals.

Furthermore, Article 3 gives rise to a positive obligation to conduct an official investigation. Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents.

Šečić v. Croatia

Prohibition of inhuman or degrading treatment (Article 3), Prohibition of discrimination (Article 14)

Judgment of 31.5.2007
Concerns:
Failure to carry out an effective investigation into racist attack
Conclusions of the Court: violations of both Articles

Facts and complaints

The applicant, of Roma origin, was attacked by two unidentified men in Zagreb in April 1999. He sustained multiple rib fractures and had eight days subsequent hospitalisation.

He was later diagnosed as suffering from post-traumatic stress disorder.

His lawyer lodged a criminal complaint. However, neither the applicant nor the eye-witnesses were able to give the police a clear description of the attackers. A few months later, the lawyer informed the state

attorney's office that the persons responsible for the attack on the applicant had certainly also carried out a number of other attacks on Roma. One of the victims was able to identify one of the attackers as he had a very noticeable scar in the face. Furthermore, an eye witness had identified one of he attackers and a television interview in which a young skinhead had admitted engaging in attacks on the Roma population in Zagreb. The person identified by the eye witness was eliminated from the inquiry despite his important scar and the police were unable to question the person who had appeared on the television interview as the journalist refused to reveal his identity.

Later on, the applicant's lawyer informed the prosecuting authorities of several further attacks on the Roma population by skinheads and gave the names and addresses of the victims and witnesses. An attempt by the applicant to expedite matters by a complaint to the Constitutional Court was dismissed on the grounds that it had no jurisdiction in such cases.

The criminal proceedings are still at the pre-trial stage.

Decision of the Court

Article 3

The Court considered that the injury suffered by the applicant was sufficiently serious to amount to ill-treatment within the meaning of Article 3.

European Court/Commission of Human Rights case-law cited in the judgment:
A. v. the UK, Assenov and Others v. Bulgaria, Beyeler v. Italy, E. and Others v. the UK, M.C. v.Bulgaria, Menson v. the UK, Nachova and Others v. Bulgaria, Price v. the UK, Yasa v. Turkey, Z and Others v. the UK

The Court reiterated that states which had ratified the European Convention on Human Rights were required to take measures designed to ensure that individuals within their jurisdiction were not subjected to ill-treatment, including ill-treatment by private individuals. Article 3 might also give rise to a positive obligation to conduct an official investigation. The applicant's injuries were sufficiently serious to amount to ill-treatment.

In the case, the criminal proceedings had been pending in the pre-trial phase for almost seven years. The police could have sought a court order to compel the journalist to reveal his source, without infringing the freedom of the media guaranteed under Article 10 of the Convention, since it would have been for the competent court to weigh up all the interests and to decide whether the source's identity should be revealed.

The Court concluded that the investigation did not meet the requirements of Article 3. There had, therefore, been a violation of this provision.

Article 14 in conjunction with Article 3

The Court observed that it was suspected that the applicant's attackers belonged to a skinhead group, which was by its nature governed by extremist and racist ideology. Both the police and the Government admitted that fact. It was therefore unacceptable that, being aware that the event at issue was most probably induced by ethnic hatred, the police allowed the investigation to last for more than seven years without undertaking any serious steps to identify or prosecute the perpetrators. Consequently, the Court considered that there had been a violation of Article 14 taken in conjunction with the procedural aspect of Article 3.

Castravet v. Moldova

Right to liberty and security (Article 5 §3), Right to have lawfulness of detention decided speedily by a court (Article 5 §4)

Judgment of 13.3.2007
Concerns:
Failure to give detailed reasons for the continued detention of a remand prisoner. Remand prisoner prevented from communicating effectively with his lawyer
Conclusions of the Court: violations

Facts and complaints

The applicant was arrested in May 2005 on charges of embezzlement. At the time he had a job and a fixed abode. He did not have a criminal record. Following, his arrest, he was detained in a remand centre run by the Centre for Fighting Economic Crime and Corruption. He made various applications for release, but these were dismissed on the grounds, *inter alia*, of the seriousness of the offence and the risk of his absconding or obstructing the investigation. His meetings with his lawyer at the remand centre were conducted in a room in which visiting lawyers were separated from the detainees by a glass partition with no aperture. Mr Castravet was released in October 2005.

Decision of the Court

Article 5 §3

The reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention merely paraphrased the permitted grounds for detention set out in the Code of Criminal Procedure, without any explanation of how they applied to the applicant's case. Accordingly, they were not relevant and sufficient.

European Court/Commission of Human Rights case-law cited in the judgment:
Amihalachioaie v. Moldova, Artico v. Italy, Assanidze v. Georgia, Bouamar v. Belgium, Campbell v. the UK, jIlascu and Others v. Moldova and Russia, Imbrioscia v. Switzerland, John Murray v. the UK, Kurt v. Turkey, Labita v. Italy, Lukanov v. Bulgaria, McKay v. the UK, Modârca v. Moldova, Neumeister v. Austria, Reinprecht v. Austria, Sarban v. Moldova, Winterwerp v. the Netherlands, Yagci and Sargin v. Turkey

Article 5 §4

The Court observed that the glass partition in the meeting room had no opening making the exchange of documents difficult and that Mr Castravet did not present any obvious security risk. Furthermore, given that the background of lawyer-client confidentiality had been a matter of serious concern for Moldovan lawyers (it had even been the cause of a strike by the Moldovan Bar Association), the Court found that the applicant and his lawyer had reasonable grounds to believe that their conversation in the Centre meeting room had not been confidential.

Asebeha Gebremedhin v. France

Right to liberty and security (Article 5), Right to an effective remedy (Article 13) taken in conjunction with Article 3 (prohibition of inhuman or degrading treatment)

Judgment of 26.4.2007
Concerns:
Continued detention of an asylum-seeker in an airport waiting area.
Lack of a remedy with automatic suspensive effect against an order refusing entry to the territory
Conclusions of the Court:
violation/no violation

Facts and complaints

In 1998, the applicant and his family were displaced from Ethiopia to Eritrea, where he worked as a reporter and photographer for the independent newspaper Keste Debena. He was arrested at the same time as the newspaper's editor. Both men were imprisoned for several months.

After spending some time in Sudan the applicant, according to his version of events, arrived on 29 June 2005, without any identity documents, at Charles de Gaulle airport in Paris. The French Government disagree. On 1 July 2005 he applied for leave to enter France on grounds of asylum. His request was rejected on the ground of inconsistencies in his claims. The following day the Ministry of the Interior dismissed his application and gave directions for his removal "to Eritrea, or if need be to any country where he may be legally admissible". An appeal by the applicant against that decision was dismissed, on 8 July 2005, by the urgent applications judge of the Administrative Court.

The applicant lodged an application with the European Court of Human Rights, which indicated to the French Government, on 15 July 2005, pursuant to Rule 39 (interim measures) of the Rules of Court, that it was desirable not to remove him to Eritrea prior to the forthcoming meeting of the appropriate Chamber. On 20 July 2005 the French authorities granted him leave to enter France and then issued him with a temporary residence permit.

On 7 November 2005, the applicant was granted the refugee status.

The applicant complained that under French law there was no remedy with suspensive effect against decisions refusing leave to enter or directing removal. He further complained that he had been unlawfully deprived of his liberty while he was held in the international zone and subsequently in the waiting area.

Decision of the Court

Article 13 in conjunction with Article 3

The Court observed that, under French law, a decision to refuse entry to the country acted as a bar to lodging an application for asylum; moreover, such a decision was enforceable, with the result that the individual concerned could be immediately returned to the country he or she claimed to have fled. In the instant case, following the application of Rule 39 of the Rules of Court, the applicant had been granted leave to enter France and had hence been able to lodge an application for asylum with OFPRA, which granted him refugee status in November 2005.

The Court recalled that, in its admissibility decision, it had found that the applicant could no longer claim the status of victim of an alleged violation of Article 3 of the Convention since, under the Geneva Convention of 28 July 1951 relating to the Status of Refugees, he could no longer be deported to his country of origin once he had been granted refugee status. However, a question arose in the present case as to the applicability of Article 13 taken in conjunction with Article 3 of the Convention.

European Court/Commission of Human Rights case-law cited in the judgment:
Amuur v. France, Association SOS attentats and de Boëry v. France, Chamaiev and Others v. Georgia and Russia, I.J.L. and Others v. the UK Jabari v. Turkey du 11 July 2000, no. 40035/98, ECHR 2000-VIII, §39 ; Mazelié v. France du 23 October 2006, no. 5356/04, §38 ; Rotaru v. Romania

Under French law, in order to lodge an application for asylum, foreign nationals had to be present on French territory. Consequently, they could not submit an application on arrival at the border unless they had previously been granted leave to enter. If they did not have the necessary documents for that purpose, they had to apply for leave to enter the country on grounds of asylum; they were then held in a "waiting area" for the time needed to examine whether or not their planned asylum application was "manifestly ill-founded". If the authorities so decided, they rejected the request, and the individual concerned was automatically liable to be removed.

The individuals concerned by this procedure, known as "application for asylum at the frontier", could appeal against the ministerial decision refusing them leave to enter, but could also apply to the urgent applications judge. While the latter procedure appeared on the face of it to offer solid guarantees, it did not have an automatic suspensive effect, with the result that the person concerned could, quite lawfully, be deported before the urgent applications judge had given a decision.

Given the importance which the Court attached to Article 3 of the Convention and the irreversible nature of the harm that might occur if the risk of torture or ill-treatment materialised, it was a requirement of Article 13 that the persons concerned should have access to a remedy with automatic suspensive effect.

As the applicant, while in the "waiting area", had not had access to such a remedy, he had been deprived of an "effective remedy" in respect of his complaint under Article 3. The Court therefore held that there had been a violation of Article 13 taken in conjunction with Article 3.

Article 5 §1(f)

There was nothing in the case file to suggest that the applicant had arrived at the airport before 1 July 2005. The Court therefore considered that the deprivation of the applicant's liberty had begun when he was placed in the "waiting area" on 1 July 2005, and had lasted until 20 July 2005, when he was given leave to enter France. On the twentieth day after being placed in the waiting area, the applicant had been granted leave to enter the country and been issued with a safe conduct, putting an end to his deprivation of liberty. Not only had the overall period of detention not exceeded the legal maximum of twenty days, but the applicant's detention in the waiting area from 15 to 20 July 2005 had also been based on a court decision.

Furthermore, since the applicant, by his own admission, had had no travel papers, the Court saw no reason to doubt the Government's good faith in stating that the authorities had had to conduct checks as to his identity before granting him leave to enter the country.

Finally, the Court considered that the length of time for which the applicant had been held in the waiting area for that purpose had not exceeded what was reasonable in the circumstances of the case. His detention in the waiting area after 15 July 2005 had therefore amounted to "lawful detention of a person to prevent his effecting an unauthorised entry into the country".

Accordingly, the Court held that there had been no violation of Article 5.

Harutyunyan v. Armenia

Right to a fair trial (Article 6)

Judgment of 28.6.2007
Concerns:
Use at trial of statements obtained through torture
Conclusions of the Court: violation

Facts and complaints

In June 1998 the applicant was drafted into the army and assigned to a military unit on the border with Azerbaijan. In April 1999 he was accused of killing a fellow serviceman with whom he had apparently had an argument earlier in the day. Ultimately, he was found guilty of premeditated murder and sentenced to ten years' imprisonment.

Mr Harutyunyan complained that his right not to incriminate himself and his right to a fair trial had been breached by the use at his trial of statements which had been obtained from him and two witnesses through torture.

Decision of the Court

The Court noted that the applicant and the two witnesses had been coerced into making confessions and that that fact had been confirmed by the domestic courts when the police officers concerned were convicted of ill-treatment. It concluded that the use of such evidence rendered the applicant's trial unfair and held unanimously that there had been a violation of Article 6 §1.

It further held unanimously that there was no need to examine separately the complaint under the same article concerning an alleged violation of the applicant's right not to incriminate himself.

European Court/Commission of Human Rights case-law cited in the judgment:
Jalloh v. Germany, Jovanovic v. Croatia, Khan v. the UK, P.G. and J.H. v. the UK, Schenk v. Switzerland, The Sunday Times v. the UK (No. 1)

Sialkowska v. Poland and Staroszczyk v. Poland

Access to court (Article 6)

Judgment of 22.3.2007
Concerns:
Inability of legally-aided clients to appeal to the Supreme Court owing to their lawyers' advice that they did not have reasonable prospects of success
Conclusions of the Court: violation

Facts and complaints

Ms Sialkowska's application concerned proceedings in which she claimed a widow's pension. Marianna and Stanislaw Staroszczyk's application concerned proceedings in which they requested that, following the sale of a property belonging to them, a plot of land be allotted to their son as promised by Pruszków City Council.

The applicants complained about the unfairness of the proceedings, referring to the fact that the lawyer appointed under the legal aid scheme failed to take the necessary steps to represent their interests effectively and refused to bring a cassation appeal to the Supreme Court – where legal representation was mandatory – against a judgment of the appellate court.

Decision of the Court

The Court pointed out that there was no obligation under the Convention to make legal aid available for disputes in civil proceedings and the requirement for an appellant to be represented by a qualified lawyer before the highest court examining appeals on points of law was not, in itself, in breach of the right to a fair hearing.

However, the method chosen by the domestic authorities to ensure access to domestic courts in a particular case had to be compatible with the Convention. The State also had to show diligence in protecting the rights guaranteed under Article 6 and the legal aid system had to offer individuals substantial guarantees to protect them from arbitrariness.

The Court noted that the independence of the legal profession was crucial for the administration of justice to function effectively. It was not the role of the State to oblige a lawyer, whether appointed under a legal aid scheme or not, to take any specific steps when representing their clients. Such State powers would be detrimental to the essential role of an independent legal profession in a democratic society founded on trust between lawyers and their clients. It was the responsibility of the State to ensure a proper balance between access to justice and the independence of the legal profession.

However, the Court was of the view that the refusal of a legal aid lawyer to lodge a cassation appeal should meet certain quality requirements.

Case of Staroszczyk

The applicable domestic regulations did not require the legal-aid lawyer to prepare a written legal opinion on the prospects of the appeal. Had he been required to provide a written opinion with reasons, it would have been possible, subsequently, to have had an objective assessment of whether his refusal to prepare the cassation appeal was arbitrary.

Case of Sialkowska

The Court observed that the applicable domestic regulations did not specify the time-frame within which the applicant should be informed about the refusal to prepare a cassation appeal.

The Court concluded, in both cases, that the applicants had not been able to secure access to a court in a "concrete and effective manner". It therefore held that there had been a violation of Article 6 §1.

Note:
In the case of Staroszczlyk, one judge disagreed with the majority that there has been a breach of Article 6 §1 of the Convention in this case as he did not think it was fair or necessary to require from a legal aid lawyer to formulate his opinion in writing so long as such a requirement did not exist under the domestic law in respect of the other lawyers to whom any individual might have had recourse on payment for lodging a cassation appeal. Moreover, he considered that there was no concrete evidence to show that if the refusal to lodge such an appeal was given in writing the applicant would have been in a better position or that the opinion would have been more useful. In any case, the applicant did not allege that he did not comprehend the legal opinion given by the legal aid lawyer nor did he seek a second legal opinion.
Another judge's finding of a violation was based on reasoning different from that of the majority: she considered that the violation resulted from a lack of effectiveness of the legal aid proceedings as a whole and not from a requirement to provide a written legal opinion. She expressed the same considerations in the case of Sialkowska.

European Court/Commission of Human Rights case-law cited in the judgment:
Airey v. Ireland, Artico v. Italy, Daud v. Portugal, De Cubber v. Belgium, Del Sol v. France, Edificaciones March Gallego S.A. v. Spain, Essaadi v. France, Garcia Manibardo v. Spain, Gillow v. the UK, Gnahoré v. France, Goddi v. Italy, Golder v. the UK, Imbrioscia v. Switzerland, Levages Prestations Services v. France, Meftah and Others v. France, Poitrimol v. France, R.D. v. Poland, Rutkowski v. Poland, Stubbings and Others v. the UK, Tinnelly & Sons Ltd and Others and McElduff and Others v. the UK, Tuzinski v. Poland, Vacher v. France, Zwiazek Nauczycielstwa Polskiego v. Poland

Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Lelox et Mox v. France

Right to a fair trial (Article 6 §1)

Judgment of 12.6.2007
Concerns:
Order for the payment of a multinational's costs against an association in environmental-protection proceedings
Conclusions of the Court: no violation

Brief summary (the judgment having not being translated into English)

The applicant association complained of an infringement of the principle of equality of arms on account of the fact that the Conseil d'Etat had not questioned the standing of a private-law company, COGEMA, to intervene in administrative proceedings concerning a decision it had not taken itself.

European Court/Commission of Human Rights case-law cited in the judgment:
Ankerl v. Switzerland, Fretté v. France, Kress v. France, ; Nideröst-Huber v. Switzerland, Yvon v. France, Zander v. Sweden

Matyjek v. Poland

Right to a fair trial (Article 6 §§1 and 3)

Judgment of 24.4.2007
Concerns:
Restrictions on access to case file in lustration proceedings resulting in politician's temporary disqualification from public office
Conclusions of the Court: violation

Facts and complaints

This is the first judgment in a case concerning so-called "lustration proceedings" in Poland. These are proceedings aimed at exposing persons who had worked for or collaborated with the State's security services during the communist period.

The Law of 11 April 1997 obliged persons exercising public functions in Poland to disclose whether they had worked for or collaborated with the State's security services between 1944 and 1990. Mr Matyjek, who had been a member of the Polish Parliament (Sejm), declared that he had not collaborated with the secret services during this period. Subsequently, proceedings were brought against Mr Matyjek by the Commissioner of Public Interest. Hearings were held in camera between September and October 1999.

On 17 December 1999 the Warsaw Court of Appeal, relying on an expert opinion prepared by the State Security Bureau's Department of Criminology and Chemistry, found that Mr Matyjek had been a deliberate and secret collaborator with the secret services and that he had therefore lied in his lustration declaration. The operative part of the judgment was served on him, but the reasoning was considered "secret". The reasoning could only be consulted in the court's "secret registry".

Mr Matyjek appealed, maintaining that his contacts with the Civil Militia and a secret service agent had been purely private and had never taken the form of conscious collaboration. He also requested the examination of more witnesses and called for an independent opinion to be commissioned from an expert who did not belong to an agency of the State Security Bureau. On 17 February 2000 his appeal was dismissed, the written reasoning again not being served on him.

Subsequently, the Supreme Court quashed that judgment, finding a serious procedural shortcoming in so far as Mr Matyjek's request to call two additional witnesses had been disregarded.

In December 2000 the Head of the State Security Bureau lifted the confidentiality restrictions from Mr Matyjek's case-file.

In the course of further proceedings, the Court of Appeal examined witnesses named by Mr Matyjek, received further documents concerning Mr Matyjek from the State Security Bureau, held a public hearing and ordered an expert opinion from the Warsaw University Institute of Criminology. However, following another hearing held in camera, the Warsaw Court of Appeal found that Mr Matyjek had lied in his lustration declaration. In May 2003 the Supreme Court finally dismissed Mr Matyjek's cassation appeal.

According to the domestic law in force at the relevant time, the Court of Appeal's judgment of 17 February 2000 was considered final. Therefore, with effect from that date Mr Matyjek was deprived of his mandate as a Member of Parliament and was banned from being a candidate in elections or from holding any other public office for the next 10 years.

Relying on Article 6 of the Convention, Mr Matyjek complained about the unfairness of the lustration proceedings against him. He particularly referred to the proceedings' unequal and secret nature, document confidentiality and the unfair procedures governing access to the case file.

Decision of the Court

The Government had complained that Mr Matyjek had not exhausted domestic remedies as he had not raised his allegation about the unfairness of the lustration proceedings in the domestic courts. The Court considered

that the question whether he could have effectively challenged the aspects of the lustration proceedings was linked to the assessment of the merits of his complaints and would be considered together with them.

The Court considered it appropriate to examine Mr Matyjek's complaints under Article 6 §1 and §3 taken together.

The Court recalled the judgment Turek v. Slovakia, which also dealt with lustration proceedings. In that case, the Court had been of the view that it could not be assumed that it was still in the public interest to continue restricting access to classified material under former regimes. Indeed, lustration proceedings, by their very nature, aimed to establish facts dating from the communist era and were not directly linked to the functioning of the security services at the time of the Turek case.

Furthermore, if a State were to adopt lustration measures, the persons against whom proceedings were brought should benefit from all procedural guarantees under the Convention. Denying access to a person's classified file, in the context of lustration proceedings, severely curtailed those persons' ability to contradict the security services' statements. The Court found that those considerations were also relevant to the present case.

At least part of the documents relating to Mr Matyjek's lustration had been classified as "top secret". The security services had had the power to lift that confidentiality rating, which it had done in December 2000 in respect of certain material in the case file. However, although Mr Matyjek had been allowed access to his file from that date onwards, restrictions still applied to any documents subsequently added to the file. The Government had acknowledged that documents had indeed been added to the file after December 2000.

The Court also observed that the first stage of the proceedings had been all the more crucial for Mr Matyjek as the judgment of 17 February 2000 was considered final under domestic law and the sanctions ordered by the Lustration Act took effect from that date onwards.

At the pre-trial stage, the Commissioner of Public Interest had had right of access to all material on Mr Matyjek collated by the former security services. When the trial had begun, Mr Matyjek had been given access to his file but any confidential documents could only be consulted in the "secret registry" of the court. No copies could be made of material in the file. Any notes taken when consulting the file or during hearings, which were mostly held in camera, had to be made in special notebooks which were then sealed and left at the "secret registry". Identical restrictions were imposed on his lawyer. Mr Matyjek had had to rely solely on memory and this had prevented him from using the notes effectively or showing them to an expert for opinion. Even more importantly, he claimed that he had not been allowed to use those notes to defend himself during his trial, an allegation which had not been contested by the Government.

Given what had been at stake in the lustration proceedings, the Court considered it had been important for him to have unrestricted access to his file and to any notes he had made, including, if necessary, the possibility of obtaining copies of relevant documents.

The Court was not persuaded by the Government's argument that the Commissioner of Public Interest had been subject to similar restrictions at the trial stage as regards access to confidential documents. In fact, he had had powers identical to those of a public prosecutor. He had had right of access to all documentation on Mr Matyjek and could hear witnesses and order expert opinions. He had had at his disposal staff who had had official clearance for access to classified documents and who had been employed to analyse lustration declarations and prepare case files for trial.

Finally, the Court observed that the applicant had only been notified of the operative parts of the judgments given on 17 December 1999 and 17 February 2000.

The Court accepted that, in certain situations, there could be a compelling reason for maintaining secrecy of documents, even those produced under the former regime. Nevertheless, such a situation could only arise exceptionally. It was for the Government to prove the existence of such an interest and should be the exception rather than the rule.

The Court found that Mr Matyjek's ability to prove that he had not been guilty of "intentional and secret collaboration" with the communist-era secret services had been significantly curtailed. It followed that that an unrealistic burden had been placed on Mr Matyjek, which had not respected the principle of equality of arms. Given the Government's statement that the rules on access to classified files had been regulated by successive laws on State secrets and the Code of Criminal Procedure and that those legal provisions had been complied with in this case, the Court was not persuaded that Mr Matyjek, in his appeals or cassation appeals, could have successfully challenged the domestic law in force. It further pointed out that the Lustration Act had on several occasions been unsuccessfully challenged before

European Court/Commission of Human Rights case-law cited in the judgment:
Bulut v. Austria, Doorson v. the Netherlands, Edwards v. the UK, Foucher v. France, Jalloh v. Germany, Jespers v. Belgium, Matyjek v. Poland, Pullicino v. Malta, Turek v. Slovakia, Van Mechelen and Others v. the Netherlands

the Constitutional Court and that the Government had not referred to any other domestic remedy at Mr Matyjek's disposal by which to challenge the legal framework of lustration proceedings. Consequently, the Government's objection as to the exhaustion of domestic remedies was rejected.

The Court concluded that the lustration proceedings against the applicant, taken as a whole, were unfair under Article 6 §1 taken together with Article 6 §3.

Grzinčič v. Slovenia

Right to a fair trial (Article 6), Right to an effective remedy (Article 13)

Judgment of 3.5.2007
Concerns:
Effectiveness of new domestic remedy concerning length of judicial proceedings
Conclusions of the Court:
violation/inadmissible

Facts and complaints

In 1996 the applicant instituted civil proceedings seeking compensation for non-pecuniary damage suffered as a result of unjustified detention. In 2004 a final judgment awarding the compensation was given. Besides, in 1999 criminal proceedings were instituted against the applicant. They are still pending.

The applicant complained about the excessive length of proceedings and that he had had no effecive remedy in this respect.

Decision of the Court

Civil proceedings

Following the judgment in Lukenda v. Slovenia (6 October 2005), the Slovenian Government adopted a Joint State Project on the Elimination of Court Backlog, part of which was the 2006 Act on the Protection of the Right to a Trial without undue Delay. The Act provides for two remedies to expedite pending proceedings: a supervisory appeal and a motion for a deadline and, ultimately, for a claim for just satisfaction in respect of damage sustained because of the undue delay.

Given that the impugned civil proceedings had ended and the present application had been communicated to the respondent Government before the 2006 Act became operational, the remedy provided therein could not be regarded as effective. The length of proceedings had been excessive. There has been a violation of Articles 6(1) and 13.

Criminal proceedings

The applicant had been entitled to seek their acceleration and redress, when the Act became operational. As a matter of ract, the 2006 Act applied not only for applications lodged after the date on which it became operational, but also for those concerning domestic proceedings pending at first and second instance which were already on the Court's list of cases by that date. The complaint was therefore inadmissible on the ground of non-exhaustion of domestic remedies as regards Article 6 and manifestly ill-founded as regards Article 13.

European Court/Commission of Human Rights case-law cited in the judgment:
Andrasik and Others v. Slovakia, Baumann v. France, Belinger v. Slovenia, Broniowski v. Poland, Brusco v. Italy, Frydlender v. France, Giacometti and Others v. Italy, Kudla v. Poland, Lukenda v. Slovenia, Michalak v. Poland, Nogolica v. Croatia, Scordino v. Italy (No. 1), Selmouni v. France, Van Oosterwijck v. Belgium

Copland v. the United Kingdom

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

Judgment of 3.4.2007
Concerns:
Monitoring of a State employee's telephone, e-mail and internet usage without a statutory basis
Conclusions of the Court:
violation

Facts and complaints

In 1991, the applicant was employed by Carmarthenshire College, a statutory body administered by the State. From the end of 1995 she was required to work closely with the newly-appointed Deputy Principal. Her telephone, e-mail and internet usage were subjected to monitoring at the deputy principal's instigation. The College did not have a policy on monitoring at the material time. Nor there was any general right to privacy in English law although legislation was subsequently introduced providing for the regulation of the interception of communications and the circumstances in which employers could record or monitor employees' communications without their consent.

Decision of the Court

The Court considered that the collection and storage of personal information relating to Ms Copland interfered with her right to respect for her private life and correspondence, and that that interference was not "in accordance with the law", there having been no domestic law at the relevant time to regulate monitoring.

While the Court accepted that it might sometimes have been legitimate for an employer

European Court/Commission of Human Rights case-law cited in the judgment:
Amann v. Switzerland, Halford v. the UK, Khan v. the UK, Lorsé and Others v. the Netherlands, Malone v. the UK, P.G. and J.H. v. the UK, Schouten and Meldrum v. the Netherlands

to monitor and control an employee's use of telephone and internet, in the present case it was not required to determine whether that interference was "necessary in a democratic society".

The Court therefore held that there had been a violation of Article 8 and that it was not necessary to examine the case under Article 13.

Note:
Although the Court did not pronounce on whether the measures taken were "necessary in a democratic society", it did state that it would not exclude that the monitoring of an employee's use of a telephone, e-mail or internet on business spremises may be considered as such in certain situations in pursuit of a legitimate aim.

Dumitru Popescu v. Romania (Nos. 1 and 2)

Right to respect for private and family life (Article 8), Prohibition of inhuman and degrading treatment (Article 3), Right to a fair trial (Article 6)

Judgment of 26.4.2007
Concerns:
Monitoring of telephone communications in the absence of a prosecutor's warrant or a legislative framework affording adequate safeguards
Conclusions of the Court:
violations/no violations

Facts and complaints

The applicant, who was at the material time the majority share-holder of an aircraft charter company, was arrested on suspicion of smuggling and criminal conspiracy. He was accused of being involved in trafficking cigarettes that had arrived illegally in Romania at a Military Airport.

The parties differed as to the circumstances of Mr Popescu's arrest: the applicant maintained that some people had made him get out of his car, threatened him with their weapons, beaten him and taken him in handcuffs to the headquarters of the National Police Inspectorate in Bucharest. The Government asserted that the members of the Special Intervention and Action Unit had to use force to counter the resistance offered by the applicant. They had immobilised him using handcuffs, causing him a few superficial wounds. At the public prosecutor's request, the applicant underwent medical examinations, which revealed that the applicant had several abrasions and bruises.

Following a preliminary inquiry, the investigation was discontinued on the grounds that the force used against the complainant had been mild and that the means employed had been appropriate and not disproportionate to the aim of the operation.

The applicant was committed to stand trial in the Bucharest Regional Military Court. The public prosecutor submitted transcripts and cassettes of the applicant's telephone conversations that had been intercepted by the Romanian intelligence services. The Court found the applicant guilty of smuggling and criminal conspiracy and sentenced him to twelve years' imprisonment. The conviction was upheld on appeal and the Supreme Court of Justice dismissed an application by the applicant to have the conviction quashed.

The applicant complained that he had been ill-treated during his arrest. He also complained that he had been convicted on the basis of evidence that had not been obtained lawfully.

Decision of the Court

Article 3

Allegations of ill-treatment

Having assessed all the relevant evidence, including the medical certificates attesting to the mildness of the injuries caused to the applicant, the Court considered that the means employed by the authorities had not been inappropriate and disproportionate to the aim of the operation, namely the applicant's arrest.

Effectiveness of the investigation

The Court noted that an investigation had indeed been carried out but that it had resulted in the proceedings being discontinued by the military prosecutors attached to the Supreme Court of Justice. However, the Court noted that it had previously held that, at the relevant time, the military prosecutors had not been independent. It considered that the investigation had lacked effectiveness, and therefore held that there had been a violation of Article 3 on that account.

European Court/Commission of Human Rights case-law cited in the judgment:
Popescu No. 1: Aydin v. Turkey, Barbu Anghelescu v. Romania, Berktay v. Turkey, Beyeler v. Italy, Dalia v. France, Egmez v. Cyprus, Ergi v. Turkey, Güleç v. Turkey Hugh Jordan v. the UK, Iatridis v. Greece , Ipek v. Turkey, Ireland v. the UK, Kelly and Others v. the UK, Klaas and Others v. Germany, Labita v. Italy, Notar v. Romania, Ogur v. Turkey, Pantea v. Romania, Prodan v. Moldova, R.L. and M.-J.D. v. France, Ribitsch v. Austria, Rivas v. France, Selmouni v. France, Tekin v. Turkey, Tomasi v. France, Yasa v. Turkey
Popescu No 2: Aalmoes and 112 autres v. Netherlands, Amann v. Switzerland, Artico v. Italy, Assanidzé v. Georgia, Bernard v. France, Coëme and Others v. Belgium, Edwards v. the UK, Garcia Ruiz v. Spain,Halford v. the UK, Hugh Jordan v. the UK, Huvig v. France, Khan v. the UK, Klass v. Germany, Kruslin v. France, Lamanna v. Austria, Maestri v. Italy, Malone v. UK, McKerr v. the UK, Ögur v. Turkey, P.G and J.H v. the UK, Pantea v. Romania, Perez v. France, Prado Bugallo v. Spain, Rotaru v. Romania, Rupa v. Romania, Schenk v. Switzerland, Scozzari and Giunta v. Italy, Silver and Others v. the UK, Syndicat suédois des conducteurs de locomotives, Thlimmenos v. Greece, Turquin v. France, Valenzuela Contreras v. Spain, Van de Hurk v. the Netherlands, Vasilescu v. Romania, Vermeire v. Belgium, Weber and Saravia v. Germany

Article 8

According to the Romanian Government, the tapping of the applicant's telephone calls had been ordered on the basis of section 3 of Law no. 51/1991, which listed acts constituting a threat to national security. The Court considered that only a broad interpretation of that provision could allow it to be taken as a legal basis for the interference with the applicant's right to respect for his private life, having regard to the circumstances in which the cigarette smuggling had taken place, namely at a military airport, a fact that could possibly have affected the country's defence capacity.

Even supposing that such a legal basis had been established, the Court had a duty to determine whether the conditions laid down by law for the interception of telephone communications had been satisfied and accompanied by the necessary safeguards. For this purpose, it must determine whether Romanian law had been capable of protecting the applicant against arbitrariness on the authorities' part by providing for sufficient safeguards in such a sensitive area as the right to respect for private life.

The Court noted in the first place that telephone tapping had been left to the public prosecutor's discretion, who did not satisfy the requirement of independence from the executive. Furthermore, at the relevant time permission to carry out telephone tapping was not subject to any prior or ex post facto review by a judge or other independent authority. The Court also observed that Romanian law did not provide for any safeguards concerning the need to keep recordings of telephone calls intact and in their entirety, or their destruction. Lastly, the Court noted that doubts might have been cast on the independence and impartiality of the Romanian intelligence service, the only authority empowered to certify that recordings were genuine and reliable.

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

Article 6

The Court could not accept the applicant's argument that the Romanian courts had not examined his submission concerning the incompatibility of national legislation with Article 8 of the Convention. It further considered that the use in evidence of the recordings in question had not deprived the applicant of a fair trial.

Wagner and J.M.W.L. v. Luxembourg

Right to respect for family life (Article 8), Right to a fair trial (Article 6), Prohibition of discrimination (Article 14 taken in conjunction with Article 8)

Judgment of 28.6.2007
Concerns:
Refusal to enforce a full adoption order by a foreign court
Conclusions of the Court: violations

Facts and complaints

The applicants are Jeanne Wagner, a Luxembourg national, and her adoptive daughter, J.M., who was born in Peru in 1993. Both applicants live in Luxembourg. Ms Wagner is the mother of four children who attend schools in Luxembourg.

Under a Peruvian judgment of November 1996, Ms Wagner adopted a three-year-old Peruvian girl who had been declared abandoned.

In 1997 the applicants brought a civil action seeking to have the Peruvian decision declared enforceable in Luxembourg for the purposes, in particular, of the child's civil registration and acquisition of Luxembourg nationality.

On 2 June 1999 the district court dismissed the applicants' application for an order to enforce the Peruvian adoption judgment, on the ground that the latter was contrary to Article 367 of the Civil Code, whereby full adoption was not available to a single woman. The applicants appealed, arguing in particular that the judgment given at first instance was incompatible with Article 8 of the European Convention on Human Rights. The appeal was declared unfounded on 6 July 2000 on the ground that the first-instance court had correctly found the Peruvian decision to be at odds with the Luxembourg legislation on conflict of laws, which stipulated that adoptions were governed by the law of the country of which the adopter was a national. The court concluded from that that it was unnecessary to examine the other conditions for declaring the judgment enforceable, including that of compatibility with good international relations.

The Court of Cassation upheld the conclusions of the first-instance and appeal courts. It found firstly that the court of appeal had no longer been required to respond to the applicants' ground of appeal, as there was no longer any point to the question, given the decision not to apply Peruvian law. Secondly, it found that the arguments contained in the applicants' appeal concerning Article 8 of the Convention "did not amount to a ground of appeal requiring a reply, given their doubtful, vague and imprecise nature".

The applicants also brought administrative proceedings following the refusal by the Minister for the Family, Social Solidarity and Youth to take the necessary measures to ensure that the full adoption was recognised by the Luxembourg authorities. Their action was upheld at first instance but was dismissed

on 1 July 2004 by the higher administrative court, ruling on an appeal by the Ministry.

The applicants submitted that they had been deprived of a fair hearing because the Luxembourg civil courts had failed to examine their argument based on a violation of Article 8. They further complained under Article 8 of the failure by the Luxembourg authorities to recognise the family ties created between them by the judgment of full adoption delivered in Peru. Lastly, they considered that they had suffered unjustified discrimination on account of the refusal to recognise the full adoption.

Decision of the Court

Article 6

The Court reiterated that even though courts were not required to explain the reasons for dismissing each and every argument a party might raise, they were not absolved from the obligation to give due consideration to and reply to a party's main submissions. If, in addition, those submissions concerned the "rights and freedoms" guaranteed by the Convention or the Protocols thereto, the national courts were obliged to examine them with particular care and attention.

In the present case, the Court of appeal had omitted to reply to the submission that public policy dictated precisely that the Peruvian adoption decision should be declared enforceable, in accordance with Article 8. Moreover, the Court of Cassation had upheld the stance taken by the first-instance and appeal courts, despite its case-law according to which the Convention produced direct effects in the Luxembourg legal system.

In the circumstances, the Court considered that the applicants had not been given an effective hearing before the Luxembourg courts, which had failed to guarantee their right to a fair hearing.

Article 8

Although the refusal by the Luxembourg courts to declare the Peruvian judgment enforceable stemmed from the absence of provisions in Luxembourg legislation enabling an unmarried person to be granted full adoption of a child, the Court considered that it amounted in the present case to "interference" with the applicants' right to respect for their family life.

This refusal had been aimed at protecting "health or morals" and the "rights and freedoms" of the child. The Court considered that it was not unreasonable for the Luxembourg authorities to adopt a cautious approach in examining whether the adoption order had been made in conformity with the Luxembourg rules on conflicting laws.

As to whether the impugned measures had been "necessary in a democratic society", the Court reiterated that it was not its task to take the place of the Luxembourg authorities responsible for defining the most appropriate policy regulating adoption, but rather to review under the Convention the decisions they had taken pursuant to their power of appreciation.

In that connection the Court observed that a broad consensus existed in Europe on the issue of adoption by unmarried persons. It also noted that it had been the practice in Luxembourg to automatically recognise Peruvian judgments granting full adoption. Mrs Wagner had been entitled to expect that the Peruvian judgment would be registered. However, the practice of registering judgments had been suddenly abandoned and their case had been submitted for examination to the Luxembourg judicial authorities, which had refused the application for an order to enforce the judgment.

The Court took the view that the decision not to declare the judgment enforceable did not take account of social reality. Reiterating that the child's best interests had to take precedence in cases of that kind, the Court considered that the Luxembourg courts could not reasonably disregard the legal status which had been created on a valid basis in Peru and which corresponded to family life. Accordingly, the Court held that there had been a violation of Article 8.

Article 14

The Court noted that, as a result of the refusal to declare the judgment enforceable, J.M. had been subjected in her daily life to a difference in treatment compared with children whose full adoption granted abroad was recognised in Luxembourg. The Court saw no justification for such discrimination, and therefore held that there had been a violation of Article 14 taken in conjunction with Article 8.

European Court/Commission of Human Rights case-law cited in the judgment:
Albina v. Romania, Artico v. Italy, Bottazzi v. Italy, Cianetti v. Italy, Colombani and Others v. France, Donadzé v. Georgia, Fretté v. France, Helle v. Finland, Hokkanen v. Finland, Hussin v. Belgium, Johnson v. the UK, Karlheinz Schmidt v. Germany, Kroon and Others v. the Netherlands, Kutzner v. Germany, Maire v. Portugal, Mazurek v. France, Mizzi v. Malta, Perez v. France, Pini and Others v. Romania, Rasmussen v. Denmark, Ruiz Torija v. Spain, Stjerna v. Finland, Thoma v. Luxembourg, Van Raalte v. the Netherlands, X, Y and Z v. the UK, X. v. France

Hachette Filipacchi Associés v. France

Freedom of expression (Article 10)

Judgment of 14.6.2007
Concerns:
Order requiring a magazine to issue a statement explaining that a photograph had been published without the family's consent
Conclusions of the Court:
non violation

Facts and complaints

The case concerned an order made against the applicant company on account of the publication in a magazine of a photograph of the dead body of the Prefect of Corsica, Claude Erignac, just after he was murdered in Ajaccio in February 1998.

The widow and children of Prefect Erignac sought injunctions against several companies, including Hachette Filipacchi Associés, asking the courts to order the seizure of the copies of any magazine in which a photo of the body appeared and to enforce prohibition of their sale by means of coercive fines.

On 12 February 1998 the urgent applications judge, citing Article 809 of the new Code of Civil Procedure, issued an injunction requiring the Hachette Filipacchi company to publish at its own expense in Paris-Match a statement informing readers that Mrs Erignac and her children had found the offending photograph deeply distressing.

Hachette Filipacchi appealed, arguing that the photograph was the image, in dark halftones, of an historic event, and could not, as such, constitute an intrusion into the Erignac family's private life. On 24 February 1998 the Paris Court of Appeal upheld the injunction, noting, among other considerations, that publication of the photograph, while Prefect Erignac's close family were still mourning his loss, and given the fact that they had not given their consent, constituted a gross disturbance of their grief, and accordingly of the intimacy of their private life. It ordered the Hachette Filipacchi company to publish in Paris-Match a statement informing readers that the photograph had been published without the consent of the Erignac family. On 20 December 2000 the Court of Cassation dismissed an appeal on points of law by the applicant company.

The applicant company complained of the injunction requiring it to publish, on pain of a coercive fine, a statement informing readers that the photograph had been published without the consent of the Erignac family.

Decision of the Court

The Court considered that the obligation to publish a statement amounted to interference by the authorities with the applicant company's exercise of its freedom of expression.

As to whether this interference was prescribed by law, the Court noted that Article 9 of the Civil Code gave the judges called upon to oversee its application the precisely circumscribed power to prevent or cause to cease an intrusion into the intimacy of private life. In a very flexible way Article 9 had made it possible to develop the concept of "private life" and the "right to protection of one's image", which was itself derived from a case-law development that was now well established, and had provided a way to adapt to numerous factual situations which might arise and to developments in social relations, mentalities and techniques.

The Court further noted that the practice of requiring publication of a statement was sanctioned by a long tradition of settled French case-law and was regarded by the French courts as "one of the ways of making good damage caused through the press." It considered that this case-law satisfied the conditions of accessibility and foreseeability required for a finding that this form of interference was "prescribed by law" within the meaning of Article 10 §2 of the Convention.

The Court also considered that the interference complained of had pursued a legitimate aim – protection of the rights of others – and noted that the rights concerned fell within the scope of Article 8 of the Convention, guaranteeing the right to respect for private and family life.

The question which the Court therefore had to answer was whether the interference had been "necessary in a democratic society". In order to answer that question, the Court took into account the duties and responsibilities inherent in exercise of the freedom of expression and the potentially dissuasive effect of the penalty imposed.

As regards the "duties and responsibilities" inherent in exercise of the freedom of expression, the Court reiterated that the death of a close relative and the ensuing mourning, which were a source of intense grief, must sometimes lead the authorities to take the necessary measures to ensure respect for the private and family lives of the persons concerned. In the present case, the offending photograph had been published only thirteen days after the murder, in violent circumstances which were traumatic for his family.

The Court then examined to what extent the obligation to publish a statement might have a dissuasive effect on exercise of the freedom of the press. It noted that the French courts

European Court/Commission of Human Rights case-law cited in the judgment:
Brasilier v. France, Chauvy and Others v. France, Colombani and Others v. France, Fressoz and Roire v. France, Goodwin v. the UK, Monnat v. Switzerland, Perna v. Italy, Ploski v. Poland, Radio France and Others v. France, Rekvényi v. Hungary, Tolstoy Miloslavsky v. the UK, Von Hannover v. Germany

had refused the Erignac family's application for an order to seize the offending copies of Paris-Match, among other publications. The Court considered that the wording of the statement revealed the care the French courts had taken to respect the editorial freedom of Paris-Match. That being so, the Court considered that of all the sanctions which French legislation permitted, particularly in view of the way Article 9 of the Civil Code had been interpreted by the French courts, the order to publish the statement was the one which, both in principle and as regards its content, was the sanction entailing the least restrictions on exercise of the applicant company's rights. It noted that the applicant company had not shown in what way the order to publish the statement had actually had a dissuasive effect on the way Paris-Match had exercised and continued to exercise its right to freedom of expression.

In conclusion, the Court considered that the order requiring Paris-Match to publish a statement, for which the French courts had given reasons which were both "relevant and sufficient", had been proportionate to the legitimate aim it pursued, and therefore "necessary in a democratic society". It accordingly held that there had been no violation of Article 10.

Note:
According to dissenting opinions, this decision constitutes an infrigment to liberty of expression and to the right for the public to be informed about questions of general interest such as any murders of public persons or natural or military disasters which spread death.

Basque Nationalist Party – Ipparalde Regional Organisation v. France

Freedom of assembly and association (Article 11)

Judgment of 7.6.2007
Concerns:
Statutory ban on financing of a French political party by a foreign political party
Conclusions of the Court: no violation

Facts and complaints

The applicant is the Iparralde regional branch of the Basque Nationalist Party, an association which has its registered office in France.

In order to be allowed to receive funds, the applicant party formed a funding association in accordance with the 1988 Law on financial transparency in political life. In September 1998 it made an application for approval of the association, which was rejected by the National Commission on Election Campaign Accounts and Political Funding (the CCFP) on the ground that the 1988 Law prohibited the funding of a political party by a foreign legal entity.

The CCFP also dismissed a subsequent request by the applicant party to reconsider its decision. The party then applied to the Conseil d'Etat, which rejected its application.

The applicant party complained of the refusal of its request for approval of the funding association it had set up on the ground that most of its funding took the form of financial support from the Spanish Basque Nationalist Party.

Decision of the Court

The Court considered that the refusal of the request for approval of the funding association amounted to interference with the exercise by the applicant party of the rights guaranteed by Article 11. The interference in question had been prescribed by law and pursued the legitimate aim of preventing disorder.

As to whether the interference had been necessary, the Court considered that the fact that political parties were not permitted to receive funds from foreign political parties was not in itself incompatible with Article 11 of the Convention. In that connection it pointed out in particular that, while the party could not receive financial assistance from the Spanish Basque Nationalist Party, it could nevertheless fund its political activities with the help of members' contributions and donations from individuals – including those from outside France – which it could collect through a financial agent or a funding association approved on the basis of a new application. Furthermore, there was nothing to prevent it from receiving funds from other French political parties or from taking advantage of the system of public funding put in place by the French legislature.

In conclusion, the Court found that the measure in question did not have a disproportionate impact on the ability of the applicant party to conduct its political activities. While the prohibition on receiving contributions from the Spanish Basque Nationalist Party had an effect on the party's finances, the situation in which it found itself as a result was no different from that of any small political party facing a shortage of funds. Consequently, it held that there had been no violation of Article 11 taken alone or in conjunction with Article 10. It also considered that there was no need to examine the case under Article 3 of Protocol No. 1 (right to free elections).

European Court/Commission of Human Rights case-law cited in the judgment:
Ezelin v. France, Organisation macédonienne unie Ilinden and Others v. Bulgaria, United Communist Party of Turkey and Others v. Turkey, Socialist Party and Others v. Turkey, Refah Partysi (Party de la prospérité) and Others v. Turkey, Sidiropoulos and Others v. Greece

Bšczkowski and others v. Poland

Freedom of association and assembly (Article 11), Right to an effective remedy (Article 13), Prohibition of discrimination (Article 14)

Judgment of 3.5.2007
Concerns:
Unlawful refusal to grant permission for a march and meetings to protest against homophobia
Conclusions of the Court: violations

Facts and complaints

In the context of a campaign called "Equality Days", organised from 10 to 12 June 2005, the applicants wished to organise a march to take place in the streets of Warsaw. The march was aimed at bringing public attention to discrimination against minorities, women and the disabled. The applicants also intended to hold rallies on 12 June in seven different squares in Warsaw. They submitted their request for permission to organise the march in due time.

On 20 May 2005 a national newspaper, published an interview with the Mayor of Warsaw who, in reply to questions about the applicants' pending request to hold a demonstration, said that he would ban it in all circumstances and that, in his view, "propaganda about homosexuality is not tantamount to exercising one's freedom of assembly".

On 3 June 2005 a representative of the Mayor of Warsaw refused permission for the march on the ground of the organisers' failure to submit a traffic organisation plan in accordance with Article 65 (a) of the Road Traffic Act. The applicants alleged that they had never been requested to submit such a document.

On 9 June 2005 the Mayor gave decisions banning the rallies. He relied on the argument that, under the provisions of the Assemblies Act of 1990, rallies had to be organised away from roads used for road traffic given that more stringent requirements applied when using roads so as to avoid disturbance. Permission was also refused on the ground that there had been a number of other requests to organise rallies with opposing ideas and intentions and that it could have resulted in clashes between the demonstrators.

On the same day the rallies concerning discrimination against women were given permission to take place. Permission was also granted to various other demonstrations with such themes as: "Against propaganda for partnerships"; "Christians who respect God's and nature's laws are citizens of the first rank" and "Against adoption of children by homosexual couples".

Despite the decision of 3 June the march did take place on 11 June 2005. It was attended by some 3 000 people and was protected by the police. The authorised rallies were held on the same day.

On 17 June and 22 August 2005 the appellate authorities quashed the decisions of 3 and 9 June on the ground that they had been poorly justified and in breach of the applicable laws. Those decisions of 17 June and 22 August 2005 were pronounced after the dates on which the applicants had planned to hold the demonstrations. The proceedings, henceforth devoid of purpose, were therefore discontinued.

On 18 January 2006 the Constitutional Court examined a request submitted to it by the Ombudsman to determine the compatibility with the Constitution of certain provisions of the Road Traffic Act. It gave a judgment in which it found that the provisions of the Road Traffic Act as applied in the applicants' case had been incompatible with constitutional guarantees of freedom of assembly.

Decision of the Court

Article 11

The Court reiterated that it attached particular importance to pluralism, tolerance and broadmindedness. The positive obligation of a State to secure effective respect for freedom of association and assembly is of particular importance to those with unpopular views or belonging to minorities, because they are more vulnerable to victimisation.

The Court acknowledged that the demonstrations had eventually been held on the planned dates. However, the applicants had taken a risk given the official ban in force at that time.

Therefore, the Court found that there had been an interference with the applicants' rights. Furthermore, given the decisions whereby the first-instance decisions had been quashed, that interference had not been "prescribed by law". That conclusion could only be reinforced by the Constitutional Court's judgment of 18 January 2006. There had been a violation of Article 11.

Article 13 in conjunction with Article 11

The Court considered that it was in the nature of democratic debate that the timing of public meetings held in order to voice certain opinions might be crucial for its political and social weight. The freedom of assembly – if prevented from being exercised in good time – could even be rendered meaningless.

European Court/Commission of Human Rights case-law cited in the judgment:
Allenet de Ribemont v. France, Butkevicius v. Lithuania, Castells v. Spain, Chahal v. the UK, Chassagnou and Others v. France, Daktaras v. Lithuania, De Cubber v. Belgium, Dudgeon v. the UK, Findlay v. the UK, Gaygusuz v. Austria, Gorzelik and Others v. Poland, Informationsverein Lentia and Others v. Austria, Marckx v. Belgium, Ouranio Toxo v. Greece, Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, Türek v. Turkey (No. 1) Van Raalte v. Netherlands, Warsicka v. Poland, Wilson & the National Union of Journalists and Others v. the UK, Young, James and Webster v. the UK

Hence, in the circumstances, the notion of an effective remedy had implied the possibility to obtain a ruling before the time of the planned events.

The Court was not persuaded that the remedies available, all post hoc, could have provided adequate redress to the applicants and found that they had therefore been denied an effective domestic remedy in respect of their complaint. There had therefore been a violation of Article 13 in conjunction with Article 11.

Article 14 in conjunction with Article 11

The Court noted that there was no overt discrimination behind the first-instance decisions as they were focused on technical aspects of the organisation of the demonstrations and their compliance with certain requirements.

The refusal of the march had been based on the applicants' failure to submit a "traffic organisation plan" whereas, the Court observed, other organisers had not been subject to a similar requirement. As concerned the rallies, they had been refused due, in particular, to the risk of violent clashes between demonstrators. It was not, however, disputed that the authorities had given permission to other groups to hold their counter-demonstrations on that very same day.

The Court could not speculate on the existence of motives other than those expressly referred to in the administrative decisions. It could not though overlook the Mayor's interview of 20 May 2005 in which he had expressed strong personal opinions about freedom of assembly and "propaganda about homosexuality" and had stated that he would refuse permission to hold the demonstrations.

The Court reiterated that there was little room under Article 10 for restrictions on political speech or debate. That freedom, however, with respect to elected politicians who at the same time held public offices at executive level of the government, entailed particular responsibility. They should therefore show restraint when exercising this freedom, especially having borne in mind that their views could be regarded as instructions by civil servants, whose employment and careers depended on their approval.

The Court observed that the decisions concerning the applicants' request for permission to hold the demonstrations had been given by the municipal authorities acting on the Mayor's behalf and after he had already made known to the public his opinion on the matter. It concluded that it could be reasonably surmised that the Mayor's opinions affected the decision-making process and, as a result, infringed the applicants' right to freedom of assembly in a discriminatory manner.

Nurmagomedov v. Russia

Right of individual petition (Article 34), Right to a fair trial (Article 6)

Judgment of 7.6.2007
Concerns:
Refusal by penitentiary officials to send an application to the European Court of Human Rights
Conclusions of the Court: violation of article 34/no violation of article 6

Facts and complaints

The applicant, Tagir Suleymanovich Nurmagomedov, is serving a custodial sentence in Yemva (Russia).

In April 1991 he was convicted, in particular, of aggravated robbery for which he was sentenced to eight years' imprisonment in a correctional colony. He was granted home leave in March 1994 and, having found his family in a precarious situation, he decided not to return to the colony but to work and support his family. As a result, criminal proceedings were brought against him for evading punishment and, in November 2000, he was convicted and sentenced to six months' imprisonment to run consecutively with the time he had left to serve from the previous conviction. Following new legislation in which the Criminal Code provided for more lenient punishment regarding aggravated robbery, Mr Nurmagomedov filed an application for supervisory review of the 1991 judgment.

Mr Nurmagomedov alleged, in particular, that the post-conviction proceedings for bringing his sentence into conformity with the new Criminal Code had not been fair or public. He further complained that he had been prevented from sending his application to the Court by officials at the correctional colony.

Decision of the Court

Article 6

The Court found that the proceedings which the applicant complained about fell outside the scope of the application of Article 6 and therefore held, unanimously, that there had been no violation of that provision.

Article 34

The Court found that, at the relevant time, Russia's Penal Code had not treated correspondence with the Court as privileged and penitentiary officials had even been formally directed not to send complaints to certain bodies or organisations. Furthermore, the Court could not see any other explanation why the applicant had sent his application

European Court/Commission of Human Rights case-law cited in the judgment:
Aerts v. Belgium, Akdivar and Others v. Turkey, Delcourt v. Belgium, Eckle v. Germany, Fedotov v. Russia, Fedotova v. Russia, Lukanov v. Bulgaria, McShane v. the UK, Nikitin v. Russia, T. v. the UK, Tanrikulu v. Turkey

through "informal channels", thus risking detention in the disciplinary wing, unless he had been unable to send his application through the colony's correspondence office. Accordingly, the Court found that the Russian authorities had attempted to discourage, even prevent, the applicant from pursuing a Convention remedy and held, unanimously, that there had been a hindrance to the applicant's right of individual petition.

Baysayeva v. Russia

Obligation for the defendent State to furnish the Court all necessary facilities for the examination of the case (Article 38 (1) (a))

Judgment of 5 April 2007

Facts

The case concerned the disappearance of the applicant's husband, who was last seen leaving home for work in a neighbouring village in Chechnya on the morning of 2 March 2000. After the applicant made various attempts to locate her husband, she could buy to a masked man a video, in which her husband could be seen lying on the ground in a brown sheepskin coat, being kicked by a soldier. He was then seen being led away by soldiers in the direction of buildings that had been partially destroyed. The applicant obtained photographs, a sketch map allegedly showing where her husband was buried and later a copy of the videotape from the man, who told her that the prosecutor's office was already aware of its existence. This was confirmed by the prosecuting authorities. A few weeks later the applicant accompanied an investigator to the location indicated on the sketch map. It turned out to be within a military compound near the checkpoint through which her husband would have passed. They were denied entry. In December 2001 she returned there with two investigators and located the building shown on the videotape. They also dug up a piece of brown cloth, resembling rotten sheepskin, at a site which the investigators considered might be a burial place. They had intended to return there but the next day the applicant was told that the two investigators had died when their car had blown up on their way to the prosecutor's office. She claimed she was warned to stop searching for the body if she did not wish to put her and her children's safety at risk.

In August 2003 the prosecutor's office informed the applicant that her husband had been wounded in the shooting near the village and taken away in a vehicle by unidentified persons. The investigation had been adjourned because the culprits could not be identified.

In February 2004 and December 2005 the European Court of Human Rights asked the Russian Government for a copy of the complete case file. The Government submitted certain documents, but stated that disclosure of the remaining documents would violate Article 161 of the Code of Criminal Procedure.

Decision of the Court concerning Article 38 (1) (a)

The Court remarked that Article 161 of the Russian Code of Criminal Procedure did not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure. The Government failed to specify the nature of the documents and the grounds on which they could not be disclosed.

The Court also recalled that, in a number of comparable cases reviewed and pending before the Court, similar requests had been made to the Russian Government and that the documents from the investigation files had been submitted without reference to Article 161. For those reasons the Court considered the Government's explanations concerning the disclosure of the case file insufficient to justify the withholding of the key information requested by the Court.

The Court pointed out that a Government's obligations under Article 38 to assist the Court in its investigation of the application became applicable after the case had been declared admissible. Noting that the Government had failed to comply with the request to provide the entire case file or to furnish almost any documents from the case-file after the admissibility decision, the Court considered that there had been a breach of Article 38.

Akhmadova and Sadulayeva v. Russia

Obligation for the defendent State to furnish the Court all necessary facilities for the examination of the case (Article 38 (1) (a))

Judgment of 5 April 2007

Facts

The applicants are the mother and widow of Shamil Said-Khasanovich Akhmadov, who was killed after being taken into detention on 12 March 2001. Ms Sadulayeva submitted that, on 12 March 2001, while a military "mopping-up" operation was underway in Argun, she saw her husband being taken away by armed servicemen in an APC and

that she and Ms Akhmadova reported the incident at the military commander's office. Shortly after the "mopping-up" operation in Argun, four bodies with bullet wounds to their backs and the back of their heads were discovered near the Russian main military base in Khankala.

On 28 May 2001 Ms Akhmadova was informed that a criminal investigation into her son's disappearance had been opened on 23 March 2001. The letter further stated that "in the course of the investigation the involvement of military servicemen was established in the abduction of your son and others".

In late April 2002 a body was found in a field outside Argun which Ms Sadulayeva later identified as that of her deceased husband, recognising the clothes he had been wearing on the day of his apprehension. She said that his right leg was broken, that the upper half of his skull was missing and that there were bullet holes in his clothes around his chest.

On 8 June 2002 the Argun Prosecutor's Office issued a certificate confirming that the body was that of Shamil Akhmadov and that he had met a violent death, which probably occurred in March 2001.

Decision of the Court concerning Article 38(1)(a)

The Court observed that it had, on several occasions, asked the Russian Government to submit copies of the investigation files opened into the disappearances of the applicants' relative. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the case. The Court noted, further, that it had found insufficient the reasons cited by the Government for refusing to disclose the requested documents. The Court therefore found that the Russian Government fell short of their obligations under Article 38 §1 of the Convention.

Scordino v. Italy (No. 3) (Just satisfaction)

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

Judgment of 6.3.2007
Concerns: Compensation for unlawful occupation and seizure of land by the State

Facts and complaints

The authorities took physical possession of land belonging to the applicants in 1980 with a view to expropriating it. The Italian courts ruled that such possession was illegal but held that, in accordance with the constructive-expropriation rule established by judicial precedent, ownership of the property had been transferred to the authorities. Pursuant to the Budget Act, which placed a ceiling on the amount of compensation to be granted in cases of constructive expropriation, the applicants were awarded amounts which, in their opinion, did not reflect the compensation to which they were entitled.

In its judgment of 17 May 2005 on the merits the Court noted that the authorities had appropriated the applicants' land in breach of the rules governing expropriation and that the Italian courts had condoned the authorities' unlawful conduct by applying the constructive-expropriation rule. It considered that the question of just satisfaction was not ready for decision.

Decision of the Court

Article 46

Although in principle it was not its task to determine what measures a State should take to satisfy its obligations under Article 46 of the Convention, the Court decided, in view of the systemic nature of the violation it had found in the applicants'' case, to give Italy indications as to the type of measures to take in order to put an end to the situation.

Given the large number of persons affected and the numerous judgments already delivered by the Court, it was a structural deficiency within the Italian legal order that was not only an aggravating factor as regards the State's responsibility for an existing or past state of affairs, but also represented a threat to the future effectiveness of the Convention machinery. Accordingly, general measures at national level were called for in execution of the present judgment capable of remedying the systemic defect by implementing, *inter alia*:

– A mechanism that would provide injured persons with compensation for the violation in question. Above all, the State should take measures to prevent any unlawful possession of land, whether it be possession without lawful title from the outset or possession that had initially been authorised but had subsequently become unlawful. For that purpose it was conceivable to allow possession of land only where it was established that the expropriation plan and decisions had been adopted in accordance with fixed rules and accompanied by a budgetary provision capable of guaranteeing the expropriated party rapid and adequate compensation.

– Furthermore, the respondent State should discourage practices that did not comply with the rules on lawful expropriation by enacting provisions that served as a deterrent and by seeking to establish liability on the part of those who engaged in such practices.

– In every case where possession of land had already been taken without title and transformed in the absence of an expropria-

tion order, the respondent State should eliminate the legal obstacles that systematically prevented, as a matter of principle, the restitution of land. Where land could not be returned for plausible and concrete reasons, the respondent State should ensure payment of a sum corresponding to the value of restitution in kind. The State should also take appropriate steps from a budgetary perspective to award damages, if need be, for losses sustained which would not be covered by restitution in kind or the sum paid in lieu.

Article 41

The Court restated the principle that a lawful expropriation which infringed Article 1 of Protocol No. 1 on the ground that the compensation was inadequate could not be viewed in the same manner as a case such as the present one, in which the violation resulted from a breach of the principle of lawfulness. Accordingly, compensation for constructive expropriation was not comparable to compensation in cases of lawful expropriation. The unlawfulness of the expropriation of the land was reflected in the applicable criteria for determining the compensation due from the respondent State.

In the present case the nature of the violation found in the principal judgment militated in favour of the principle of restitutio in integrum. Accordingly, restitution of the land in question – together with the existing buildings – would have placed the applicants as far as possible in the position they would have been in had there been no violation of the requirements of Article 1 of Protocol No. 1; and would compensate them fully for the consequences of the loss of enjoyment alleged. Failing restitution, the Court held that the compensation to be awarded to the applicants was not limited to the value of their property on the date of unlawful dispossession. It decided that the State should pay them a sum corresponding to the current value of the land (€1 329 840), from which should be deducted the compensation obtained by the applicants in the domestic proceedings and converted to present-day levels (approximately €436 000). To that amount should be added a sum for the appreciation brought about by the existence of buildings – which in the present case was estimated to be at the same level as the construction cost – and was capable of compensating the applicants for any other loss they had sustained. With regard to determining the amount of this compensation, in the absence of any expert report filed by the Government and any comments on the amounts claimed the Court based its decision on the expert report filed by the applicants. Ruling on an equitable basis, the Court awarded the applicants €3 300 000. For non-pecuniary damage it awarded €10 000 to each applicant and certain sums for costs and expenses.

Note:

Interim Resolution ResDH (2007) 3 of the Committee of Ministers of the Council of Europe relating to systemic violations of the right to the peaceful enjoyment of possessions by Italy reproduces information provided by Italy concerning indirect expropriation.

Execution of the Court's judgments

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

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

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 interests in case of late payment). Where this is not sufficient to redress the violation found, the Committee ensures, in addition, that specific measures are taken in favour of the applicant: granting of a residence permit, reopening of criminal proceedings, striking out of convictions from the criminal records, etc.

The prevention of 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 992nd and 997th Human Rights (HR) meetings[1] (April and June 2007) is presented here. Further information is available from the Directorate General of Human Rights and Legal Affairs, as well as on the on the Internet site of the Department for the Execution of Judgments of the European Court of Human Rights (DGHL).[2]

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 HR meeting, in the document called "annotated agenda and order of business" available on the Committee of Ministers' Web site[2] (see Article 14 of the new Rules for the application of Article 46 §2 of the Convention adopted in 2006).[3]

Interim and Final Resolutions are accessible online through the Hudoc[2] database: select "Resolutions" on the left of the screen and search by application number and/or by the name of the case. For resolutions referring to grouped cases, resolutions can more easily be found by their serial number: type in the "text" search field between braces the year followed by NEAR and the number of the resolution. Example: {2007 NEAR 75}.

1. Meetings especially devoted to the supervision of the execution of judgments.
2. Internet addresses: Department for the Execution of Judgments, http://www.coe.int/Human_Rights/execution/; Committee of Ministers: http://www.coe.int/cm/; HUDOC: http://hudoc.echr.coe.int/.
3. Replacing the Rules adopted in 2001.

992nd and 997th HR meetings – General information

During the 992nd and 997th meetings (April and June 2007), the Committee respectively supervised payment of just satisfaction in some 761 and 808 cases. It also monitored, in some 95 and 115 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 112 and 175 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 225 and 346 new Court judgments and considered draft final resolutions concluding, in 137 and 274 cases respectively, that states had complied with the Court's judgments.

Main points examined as regards individual measures to grant redress for violations of the applicants' rights

Issues arising from **arbitrary and unlawful detention of the applicants** in the **"Moldovan Republic of Transnistria"** (*Ilaşcu and others v. the Russian Federation and Moldova*);

Turkey's response to the CM's two Interim Resolutions urging to reopen domestic proceedings or otherwise redress the situation of the applicants convicted in violation of their right to a fair trial and still serving heavy prison sentences (*Hulki Güneş, Göçmen, Söylemez*);

Reopening of proceedings in the applicant's case, on the basis of a new law adopted by **Belgium**, and other possible measures to fully remedy the violations of his right to a fair trial (*Goktepe*);

Continuing obligation to conduct effective investigations into alleged killing by security forces in **Northern Ireland** (*McKerr v. the United Kingdom*), **Chechnya** (*Khashiyev v. the Russian Federation*) and **northern Cyprus** (*Kakoulli v. Turkey*);

Re-establishing parents' access to or regular relationship with their children, to remedy violations of their right to family life by **Austria** (*Moser*) **Germany** (*Görgülü*), **Italy** (*Scozzari and Others*), **Poland** (*Zawadka*), **Portugal** (*Reigado Ramos*), **Romania** (*Lafargue*) **Switzerland** (*Bianchi*) and **Ukraine** (*Hunt*);

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 (*Ülke*);

Prevention of expulsion from Turkey (*D and others*);

Improvement of detention conditions of a person with a mental disorder in **France** (*Riviere*);

Putting an end to dangerous industrial pollution as ordered by court decisions which remain unexecuted in **Turkey** (*Taskin, Öçkan, Ahmet Okyay*);

Remedying the persistent infringement in Bulgaria 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*).

Main points examined as regards general measures (constitutional, legislative and/or other reforms, including the setting up of effective domestic remedies), taken or under way, to prevent new violations similar to those found in the judgments

Issue of missing persons and living conditions in the northern part of Cyprus, property rights of displaced Greek-Cypriots (*Cyprus v. Turkey*);

Preventing non-compliance with domestic court decisions in **Italy, the Russian Federation** and **Ukraine**; and **violations of the legal certainty requirement** through supervisory review procedure in the **Russian Federation**;

Progress achieved by recent **bankruptcy reform** in **Italy** (*Luordo*);

Improving freedom of religion in Moldova (*Metropolitan Church of Bessarabia*), **freedom of expression** in **Turkey** (*67 judgments*) and **gender balance** in **Turkey** (*Ünal Tekeli*);

Need for adequate judicial review of expulsions on grounds of national security in **Bulgaria** (*Al-Nashif*);

The problem of **excessive length of judicial proceedings**, and/or **setting up an effective domestic remedy** in this respect in cases, in particular, against **Belgium**, **Bulgaria**, **Croatia**, **Cyprus**, **Czech Republic**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Italy**, **Ireland**, **Lithuania**, **Luxembourg**, **Poland**, **Portugal**, **Romania**, the **Russian Federation**, **San Marino**, **Slovakia**, **Slovenia**, **Sweden**, **"the former Yugoslav Republic of Macedonia"**, **Turkey** and **Ukraine**;

Functioning of the new compensation mechanism in Poland for property abandoned in the territories beyond the Bug River (the eastern provinces of pre-war Poland) in the aftermath of the Second World War (*Broniowski*);

Assessment of the reforms adopted by the United Kingdom to ensure effective investigations into cases of alleged killings by members of the security forces in Northern Ireland (*McKerr and others*);

Ensuring adequate protection of children against ill-treatment or punishment in the **United Kingdom** (*A*);

Progress of the reform to **ensure adequate legal safeguards concerning storage and use of personal data by intelligence service** in **Romania** (*Rotaru*);

Preventing industrial pollution violating the right to private life in **Russia** (*Fadeyeva*);

Assessment of the measures adopted by Poland and of outstanding issues with regard to the structural problem of **excessively lengthy pre-trial detention** in Poland (*Trzaska*).

Main texts adopted

Information documents opened to public access

– Memorandum CM/Inf/DH (2006) 19 revised 3: Non-enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgments

– Memorandum CM/Inf/DH (2006) 32 revised 2: Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments

– Memorandum CM/Inf/DH (2007) 4: Detention on remand in the Russian Federation: Measures required to comply with the European Court's judgments

– Memorandum CM/Inf/DH (2007) 7: Industrial pollution in breach of the European Convention: Measures required by a European Court judgment [Case of *Fadeyeva v. Russia*]

– Memorandum CM/Inf/DH (2007) 20: Freedom of expression in Turkey: Progress achieved – Outstanding issues – General and individual measures required by the judgments of the European Court of Human Rights Follow-up to Interim Resolutions ResDH (2001) 106 and ResDH (2004)38

– Memorandum CM/Inf/DH (2007) 30: Non-enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court's judgments

– Conclusions of the round table of 21-22 June 2007 (Strasbourg) on non-enforcement of domestic court decisions in Council of Europe member states – General measures to comply with European Court of Human Rights judgments

Selection of decisions adopted (extracts)

During the meetings concerned, the Committee of Ministers examined respectively 2 814 and 3 251 cases and adopted for each of them a decision, available on the Internet site of the Committee of Ministers (see note 2, page 34). Whenever the Committee concluded that the execution obligations had not been entirely fulfilled yet, it decided to resume consideration of the case at a later meeting. In some cases, it also expressed in detail in the decision its assessment of the situation. A selection of these decisions is presented below, by alphabetical order of the state concerned.

Goktepe v. Belgium

Unfairness of criminal proceedings against the applicant and two co-accused, lack of individual examination on the question of the extent of the applicant's guilt (existence of aggravating circumstances) (violation of Article 6 §1)

Decision adopted at the 997th meeting. 50372/99, judgment of 02/06/2005, final on 02/09/2005

The Deputies,

1. noted with great satisfaction the adoption on 15/03/2007 by the Parliament of the Act authorising reopening of criminal proceedings following a judgment of the European Court and the fact that this law is also applicable to proceedings which are the object of judgments still pending before the Committee of Ministers; this Act has was published on 09/05/2007 and will enter into force on 01/12/2007;

2. noted thus that the applicant will be able to ask for reopening of the proceeding at issue and that in the meantime he has been at liberty on license since 03/05/2007;

3. decided to resume consideration of this item not later than in one year.

Al-Nashif and others v. Bulgaria

Impossibility of reviewing lawfulness of detention pending expulsion on national security grounds (violation of Article 5, paragraph 4), inadequate safeguards in relation to such expulsion (violation of Article 8), lack of effective remedy against the expulsion (violation of Article 13)

Decision adopted at the 992nd meeting. 50963/99, judgment of 20/06/02, final on 20/09/02

The Deputies [...]

1. noted with satisfaction the adoption on 23 March 2007 of the draft law amending the Aliens Act which introduced judicial control by the Supreme Administrative Court of the expulsion, the revocation of a residence permit and of bans on entry into the territory ordered on national security grounds;

2. recalled however that certain additional issues need to be clarified;

3. noted the information provided by the authorities concerning the present situation of the applicants but recalled that they 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 strongly hoped that the authorities will remedy this situation;

4. [...].

Decision adopted at the 997th meeting

The Deputies decided to resume consideration of this item at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning individual measures, in particular to lift the ban on the applicant's re-entry into the territory, and general measures, in particular the introduction of the possibility to have a suspensive effect of the remedies provided in case of expulsion based on considerations of national security.

Decision adopted at the 997th meeting. 59489/00, judgment of 20/10/2005, final on 20/01/2006, 59491/00, judgment of 19/01/2006, final on 19/04/2006, CM/Inf/DH (2007) 8

United Macedonian Organisation Ilinden-Pirin and others v. Bulgaria

United Macedonian Organisation Ilinden and others v. Bulgaria

Infringement of the freedom of association of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" - prohibition of their meetings, dissolution of their political party and refusal to register their association, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Articles 11 and 13)

The Deputies,

1. took note of the continuing commitment of the Bulgarian authorities to ensure without further delay full implementation of these judgments of the Court, with a view to preventing any new violation of the freedom of association of the applicant organisations and their members;

2. took note of the concerns expressed by UMO Ilinden-Pirin relating to the problems it has encountered in obtaining a new registration as a political party, and in particular those due to the application in this process of new, more severe criteria foreseen by the new law on political parties, which the authorities could not have legally imposed in the absence of the violation of the Convention;

3. invited the Secretariat, in view of these particular problems, rapidly to examine, in co-operation with the Bulgarian authorities and the applicants, the avenues at the applicants' disposal with a view to obtaining the registration of UMO Ilinden-Pirin;

4. invited the Bulgarian authorities to continue to keep the Committee of Ministers informed of the progress made in the adoption and the implementation of the additional general measures required, in particular those concerning the awareness raising of the competent authorities concerning the problems raised in these judgments,

5. decided to resume consideration of all the measures necessary for the implementation of these judgments at their 1007th meeting (15-17 October 2007) (DH).

Decision adopted at the 992nd meeting. 74969/01, judgment of 26/02/04, final on 26/05/04, rectified on 24/05/2005

Görgülü v. Germany

Violation by a domestic court of a father's right to custody of and access to his child born out of wedlock in 1999 (violation of Article 8)

The Deputies

1. took note of the recent progress following the decision of the Naumburg Court of Appeal of 15 December 2006 (now final) explicitly acknowledging the violations found by the European Court and granting the applicant extended visitation rights;

2. decided to resume consideration of this item at the latest at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning individual measures, in particular the full implementation of this decision with a view to ensuring that the applicant may regularly visit his child to build up a genuine father-son relationship.

Decision adopted at the 997th meeting. 45701/99, judgment of 13/12/01, final on 27/03/02. Interim Resolution ResDH (2006) 12

Metropolitan Church of Bessarabia and others v. Moldova

Failure of the Government to recognise the applicant Church (violation of Article 9) and absence of effective domestic remedy in this respect (violation of Article 13)

The Deputies

1. recalled, as far as general measures are concerned, Interim Resolution ResDH (2006) 12, adopted in March 2006, in which the Committee of Ministers urged the Moldovan authorities to adopt, without further delay, the legislation necessary to ensure the right of freedom of religion of churches and their members by defining clearly the right to obtain recognition as a religious community and by introducing a remedy in the case of refusal, in conformity with the requirements of the European Convention;

2. noted that the new draft law was adopted by the Moldovan Parliament in the second and last reading on 11/05/2007 and that, for the time being, it is pending before the President of the Republic;

3. regretted that the text of the adopted law has still not been communicated to the Committee of Ministers;

4. declared that they expected that the findings of the European Court have been taken into account in the recently adopted law in order to guarantee its conformity with the Convention, and that this law also reflects the different expertise done by the Secretariat

and the experts of the Council of Europe and noted the assurances given by the Moldovan authorities on this matter;

5. declared that they expected, as far as the individual measures are concerned, that the concerns expressed by the applicant Church in February 2007 concerning in particular the registration of certain parishes are resolved by the new law;

6. invited, however, the Moldovan authorities rapidly to remedy all problems that can still be outstanding in the registration of certain entities of the applicant Church, in direct consultation with the Secretariat;

7. decided to resume consideration on the basis of a new draft interim resolution, if need be, of all necessary measures for the execution of this judgment at their 1007th meeting (15-17 October 2007) (DH).

Broniowski v. Poland

Lack of an effective mechanism to implement the applicant's right to compensation for property abandoned as a result of boundary changes following the Second World War (violation of Article 1 of Protocol No. 1)

The Deputies

1. took note with interest of the information provided by the Polish authorities on the implementation of the new compensation mechanism for claimants concerned by property abandoned in the territories beyond the Bug River implementation of the new compensation mechanism;

2. agreed to resume consideration of this item at the latest at their first DH meeting in 2008, in particular in the light of the evaluation of this mechanism by the European Court which is expected in two similar cases, recently communicated to the parties.

Decision adopted at the 997th meeting. 31443/96, judgment of 22/06/2004 (Grand Chamber) and of 28/09/2005 – Friendly settlement (Article 41). Interim Resolution ResDH (2005) 58

Reigado Ramos v. Portugal

Failure by the respondent state to take adequate and sufficient action to locate the mother and the child and to enforce the applicant's right of access to his child (violation of Article 8)

The Deputies

1. took note of the information on individual measures provided by the Portuguese authorities, in particular as regards the meeting scheduled for 20 June 2007 with all the persons involved in the matter, including both parents of the child in question;

2. called upon the authorities of the respondent state to continue their efforts with a view to enforcing the agreement regarding the applicant's visiting rights, as required by the Court's judgment, and to provide the Committee with information in this respect;

3. invited the authorities to submit further information on general measures taken or envisaged;

4. decided to resume consideration of this item at their 1007th meeting (15-17 October 2007) (DH), on the basis of further information to be provided on individual measures;

5. decided to resume consideration of this item at their 1013th meeting (3-5 December 2007) (DH), on the basis of further information to be provided on general measures.

Decision adopted at the 997th meeting. 73229/01, judgment of 22/11/2005, final on 22/02/2006

25 cases of length of judicial proceedings v. Portugal

Excessive length of judicial proceedings before civil, criminal, administrative, family and labour courts (violation of Article 6 §1)

The Deputies

1. took note of the information provided by the Portuguese authorities on the progress of the pending domestic proceedings in several cases, and invited them to provide further information on progress in and possible acceleration of the cases that are still pending at the domestic level;

2. noted with interest that many general measures have been taken by the respondent state to remedy the problem of the excessive length of judicial proceedings, but recalled that further information is still awaited, in particular as regards the effectiveness of the reforms;

3. decided accordingly, to resume consideration of these items at their 1007th meeting (15-17 October 2007) (DH) in the light of a draft interim resolution to be prepared by the Secretariat, taking stock of the progress achieved and identifying the outstanding issues.

Decision adopted at the 997th meeting. Oliveira Modesto and others, judgment of 08/06/00, and other cases; Jorge Nina Jorge and others, judgment of 19/02/04, and other cases; Gil Leal Pereira, judgment of 31/10/02, and other cases; Figueiredo Simoes, judgment of 30/01/03; Farinha Martins, judgment of 10/07/03

Lafargue v. Romania

Failure by respondent state to make adequate and sufficient efforts to ensure respect for applicant's right of access to his child (violation of Article 8)

The Deputies

1. noted with interest the measures taken by the Romanian authorities to set up a psychological support for the child;

2. urged the authorities of the respondent state to continue their efforts to ensure the exercise of the visiting and residence rights by

Decision adopted at the 997th meeting. 37284/02, judgment of 13/07/2006, final on 13/10/06

the applicant and to provide regularly the Committee with information in this respect;

3. invited the authorities to submit additional information as regards general measures in this case;

4. decided to resume consideration of this item at their 1007th meeting (15-17 October 2007) (DH), in the light of information to be provided on individual measures and at their 1013th meeting (3-5 December 2007) (DH) in the light of information to be provided on general measures.

Decision adopted at the 997th meeting. 28341/95, judgment of 04/05/00 (Grand Chamber), Interim Resolution ResDH (2005) 57

Rotaru v. Romania

Lack of sufficient legal safeguards concerning the storage and use, by the intelligence service, of personal data (violation of Article 8); lack of an effective remedy in this respect (violation of Article 13); failure of a court to rule on a request of the applicant (violation of Article 6 §1)

The Deputies

1. recalled Interim Resolution ResDH (2005) 57 in which the Committee of Ministers called upon the Romanian authorities rapidly to adopt the legislative reforms necessary to respond to the criticism made by the Court in its judgment concerning the Romanian system of gathering and storing of information by the secret services;

2. regretted that more than seven years after the date of the judgment of the European Court, the necessary general measures have not yet been adopted;

3. took note of the ongoing legislative reforms in the field of national security;

4. invited the Romanian authorities to provide more concrete information on the relevant legal provisions contained in the reform package, and the possible timetable of their adoption;

5. insisted on the urgency of fully executing this judgment of the European Court;

6. decided to resume consideration of this item at their 1007th meeting (15-17 October 2007) (DH), on the basis of further information to be provided on general measures, if appropriate on the basis of a new draft interim resolution.

Decision adopted at the 997th meeting. 57950/00, judgment of 24/02/2005, final on 06/07/2005 and other cases. CM/Inf/DH (2006) 32 revised

Isayeva v. the Russian Federation and 4 other cases

Action of the Russian security forces during military operations in Chechnya in 1999 and 2000: State's responsibility for killing of the applicants' relatives or failure to protect their right to life (violation of Article 2); Lack of effective investigations into the killings and alleged torture (violation of Article 2 and/or Article 3, and violation of Article 13); destruction of one applicant's property (violation of Article 1 of Protocol No. 1)

The Deputies

1. noted with interest the information provided by the Russian authorities on the progress of the new investigations and on several other questions raised by the judgments, in response to Memorandum CM/Inf/DH (2006) 32;

2. invited the authorities to keep the Committee informed of further progress in the investigations conducted in order to remedy the procedural shortcomings identified by the European Court's judgments and to submit further information concerning the general measures, in particular with regard to the issues highlighted in the Memorandum CM/Inf/DH (2006) 32 revised;

3. decided to declassify the Memorandum CM/Inf/DH (2006) 32 revised 2 and to resume consideration of these cases at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning payment of just satisfaction, if necessary, as well as individual and general measures, possibly on the basis of the updated version of the Memorandum.

Decision adopted at the 997th meeting. CM/Inf/DH (2006) 19 revised 2 and CM/Inf/DH (2006) 45, CM/Inf/DH (2006) 19 revised 3. 58263/00 Timofeyev, judgment of 23/10/03, final on 23/01/04 and other cases

62 cases v. the Russian Federation concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

Failure or serious delay by the Administration in abiding by final domestic judicial decisions and violations of applicants' right to peaceful enjoyment of their possessions (violation of Article 6 §1 and of Article 1 of Protocol No. 1)

The Deputies

1. welcomed the positive responses of the authorities concerned to the questions raised during the Round Table (Strasbourg, 30-31 October 2006) and in the Memorandum CM/Inf/DH (2006) 19 revised 2 on the failure to enforce domestic judicial decisions by the public authorities;

2. decided to consider separately the cases in which sector-specific measures have been taken (namely the cases of *Konovalov, Shpakovskiy, Teteriny, Malinovskiy* and *Mikryukov*) and to resume consideration of these items at their 1007th meeting (15-17 October 2007) (DH), in particular in the light of the analysis to be made by the Secretariat of measures taken so far;

3. decided to resume consideration of the remaining part of the group at their 1007th meeting (15-17 October 2007) (DH) in the light of information to be provided on payment of the just satisfaction, if necessary, and at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided on individual and general measures;

4. decided to declassify Memorandum CM/Inf/DH(2006)19 revised 3.

Ryabykh v. the Russian Federation and 11 other cases concerning the quashing of final judicial decisions following a supervisory review

Decision adopted at the 997th meeting. 52854/99, judgment of 24/07/03, final on 03/12/03. CM/Inf/DH (2005) 20

Non-respect of the final character of judicial decisions; quashing of final decisions by means of extraordinary proceedings instituted by State official (violation of Article 6 §1)

The Deputies, having considered the draft law provided by the Russian authorities:

1. welcomed the initiative taken by the Supreme Court of the Russian Federation and noted the intention of the Russian authorities to organise consultations with the Secretariat with a view to ensuring that the reform is in accordance with the Convention's requirements;

2. recalled that confirmation on the outcome of the proceedings in the Volkova case is awaited;

3. decided to resume consideration of these items at their 1007th meeting (15-17 October 2007) (DH), in the light of the outcome of these consultations and of further information to be provided on payment of just satisfaction, if necessary, and individual and general measures.

Cyprus v. Turkey

Decision adopted at the 997th meeting. 25781/94, judgment of 10/05/01 (Grand Chamber). CM/Inf/DH (2007) 10 rev3, CM/Inf/DH (2007) 10/1 rev, CM/Inf/DH (2007) 10/3 rev2, CM/Inf/DH (2007) 10/5, CM/Inf/DH (2007) 10/6, Interim Resolutions ResDH (2005) 44, CM/ResDH (2007) 25

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning: Greek-Cypriot missing persons and their relatives; Home and property of displaced persons; Living conditions of Greek Cypriots in Karpas region of northern Cyprus; Rights of Turkish Cypriots living in northern Cyprus

The Deputies, recalling their Interim Resolution CM/ResDH (2007) 25 of 4 April 2007 and reiterating the various questions and concerns it contains,

- On the issue of missing persons:

1. noted with satisfaction the progress achieved by the CMP and invited the Turkish authorities to continue to keep the Committee of Ministers informed of the developments in this context, in particular as regards the first returns to the families of the remains of their relatives, which are reported to be imminent;

2. recalled, moreover, that the Turkish authorities had been invited to provide information on the additional measures required to ensure the effective investigations called for by the Court's judgment;

- On the issue of the property rights of the enclaved persons:

3. noted that it seems that an interference in the property rights of these persons still subsists and invited the Turkish authorities to provide further information in this respect;

4. also noted that the very recent information submitted by both the Turkish and the Cypriot authorities raises important questions requiring deeper consideration;

- On the issue of property rights of displaced persons:

5. recalled the interim resolution of 4 April 2007 in which the Turkish authorities are invited to provide without delay detailed and concrete information on changes and transfers of property at issue in the judgment, as well as information on measures taken to safeguard the property rights of the displaced persons as these have been recognised in the judgment of the European Court

6. in this context took note of the finding of the Court in its judgment on the application of article 41 in the case of Xenides-Arestis of 7 December 2006, which became final on 23 May 2007, according to which "the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005";

7. took also note of the fact that the Court "points out that the parties failed to reach an agreement on the issue of just satisfaction where, like in the case of *Broniowski v. Poland* […] it would have been possible for the Court to address all the relevant issues of the effectiveness of this remedy in detail";

8. invited the Turkish authorities regularly to provide all additional information on the functioning of the new compensation and restitution mechanism set up in the north of Cyprus, as well as on the concrete results achieved in this context,

9. decided to resume consideration of the issues raised in this case at their 1007th meeting (15-17 October 2007) (DH).

Decision adopted at the 997th meeting. 15318/89, judgment of 18/12/96 (merits), Interim Resolutions CM/ResDH (99) 680, CM/ResDH (2000) 105, CM/ResDH (2001) 80

Loizidou v. Turkey

Continuous denial of access to her property in the northern part of Cyprus opposed to the applicant and consequent loss of control thereof (violation of Article 1 of Protocol No. 1)

The Deputies

1. recalled 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;

2. noted with concern that to date the Turkish authorities did not make any concrete proposal to the applicant, aimed at putting an end to the continuing violation of her property rights found in this judgment and redressing its consequences;

3. urged the Turkish authorities to adopt without further delay the measures necessary to remedy the consequences of the continuing violation of the applicant's property rights,

4. decided to resume consideration of this case at their 1007th meeting (15-17 October 2007) (DH).

Decision adopted at the 997th meeting. 46347/99, judgments of 22/12/2005, final on 22/03/2006 and of 07/12/2006, final on 23/05/2007

Xenides-Arestis v. Turkey

Violation of the applicant's right to respect for his home (violation of Article 8) and denial of access, control, use and enjoyment of property and of compensation for this interference (violation of Article 1 of Protocol No. 1)

The Deputies

1. took note of Memorandum CM/Inf/DH (2007) 19 prepared by the Secretariat on the issue raised by the judgment of 22/12/2005 concerning the payment of the VAT;

2. took note of the finding of the Court in its judgment on the application of Article 41, according to which "the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005";

3. took also note of the fact that the Court "points out that the parties failed to reach an agreement on the issue of just satisfaction where, as in the case of *Broniowski v. Poland* […], it would have been possible for the Court to address all the relevant issues of the effectiveness of this remedy in detail";

4. decided to resume consideration of the issues raised in this case at their 1007th meeting (15-17 October 2007).

Decision adopted at the 997th meeting. 39437/98, judgment of 24/01/2006, final on 24/04/06

Ülke v. Turkey

Degrading treatment as a result of applicant's repeated convictions and imprisonment for refusal to perform compulsory military service due to convictions as a pacifist and a conscientious objector (violation of Article 3)

The Deputies, having examined the latest information submitted by the Turkish authorities concerning the implementation of the European Court's judgment in the present case,

1. noted that a draft law has been prepared by the competent Turkish authorities aiming to prevent new violations of Article 3 similar to that found in the present case, and that this draft would be transmitted to the Prime Minister's Office for submission to Parliament;

2. noted in particular the Turkish authorities' declaration that this law, once adopted, will prevent repetitive prosecutions and convictions of those who refuse to perform military service for conscientious or religious reasons, on grounds of "persistent disobedience" of military orders;

3. noted the authorities' information that this draft law is intended to remedy all negative consequences of the violation for the applicant;

4. invited the Turkish authorities to submit a copy of the draft law to the Committee of Ministers and encouraged them to take the necessary steps to ensure its rapid adoption by the Parliament;

5. decided to resume the consideration of this item at their 1007th meeting (15-17 October 2007) in the light of the information to be provided on the adoption of the draft law.

Decision adopted at the 992nd meeting. 22678/93 Inçal, judgment of 09/06/98 and other cases. Interim Resolutions ResDH (2001) 106 and ResDH (2004) 38; CM/Inf/DH (2003) 43, CM/Inf/DH (2007) 20

67 cases v. Turkey concerning freedom of expression

Unjustified interferences with applicants' freedom of expression (publication of articles and books or the preparation of messages addressed to a public audience); lack of independence and impartiality of state security courts (violation of Article 10 and of Article 6, paragraph 1)

The Deputies, having assessed the recently adopted provisions of the Criminal Code and the Law on Anti-Terrorism in the light of the available examples of decisions by domestic courts and prosecutors,

1. noted with satisfaction that in certain of the decisions examined, courts and prosecutors directly relied on the Convention requirements in order to protect the right to freedom of expression;

2. noted, however, that these examples do not allow to conclude that the new permissible legal restrictions on the right to freedom

of expression, such as "incitement to violence" or "public interest", are consistently applied in accordance with the Convention and the Court's judgments;

3. encouraged the Turkish authorities to continue their efforts to bring the relevant provisions fully in conformity with the Convention requirements and thus to prevent any risk of new violations of the Convention similar to those found in the present cases;

4. invited the authorities to strengthen the direct effect of the Convention and of the Court's judgments in prosecutors' practice and in domestic courts' case-law, in particular by systematically including the relevant requirements in initial and in-service training for judges and prosecutors and by taking more targeted measures where appropriate;

5. urged the authorities to take all necessary measures in order to grant the applicants appropriate redress by erasing all effects of those convictions which were found by the Court in violation of the Convention;

6. decided to resume consideration of these cases at their 997th (5-6 June 2007) (DH) in the light of further information to be provided on payment of just satisfaction, if necessary;

7. decided to resume consideration of these cases at their 1007th meeting (15-17 October 2007) (DH) in order to assess progress in the adoption of general measures as well as individual measures.

8. decided to declassify the Memorandum prepared by the Secretariat CM/Inf/DH (2007) 20.

Decision adopted at the 997th meeting. 28490/95, judgment of 19/06/03, final on 19/09/03, Interim Resolutions ResDH (2005) 113 and CM/ResDH (2007) 26

Hulki Güneş v. Turkey and 2 other cases

Unfairness of proceedings, ill-treatment of the applicants while in police custody, (in the cases of Hulki Güneş and Göçmen) lack of independence and impartiality of state security courts; (in the case of Göçmen) excessive length of proceedings; (in the cases of Göçmen and Söylemez) absence of an effective remedy (violation of Article 6 §§1 and 3, of Article 3 and of Article 13)

The Deputies

1. noted with grave concern that the Turkish authorities have still not responded to Interim Resolution CM/ResDH (2007) 26 of 4 April 2007 calling upon them to abide by their obligation under Article 46, paragraph 1, of the Convention to redress the violations found in respect of the applicant and strongly urging them to remove the legal lacuna preventing the reopening of domestic proceedings in the case of *Hulki Güneş*, as well as in the cases of *Göçmen* and *Söylemez*;

2. deplored in particular that no progress has been reported by the Turkish authorities regarding the legislative reform under way and that no time-frame has been provided for this reform;

3. strongly urged once more the Turkish authorities to abide without further delay by their obligation under Article 46, paragraph 1, of the Convention to redress the violations found in respect of the applicants;

4. decided to resume consideration of these items at their 1007th meeting (15-17 October 2007) (DH), if necessary, on the basis of a new draft interim resolution to be prepared by the Secretariat.

Decision adopted at the 997th meeting. 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; Okyay Ahmet and others, judgment of 12/07/2005, final on 12/10/2005 – Interim Resolution CM/ResDH (2007) 4

Taşkın and others; Öçkan and others; Okyay Ahmet and others v. Turkey

Violation of the applicants' right to their private and family life due to decisions by the executive authorities to allow continuation of a gold-mining operation likely to cause harm to the environment (violation of Article 8), the non-enforcement of domestic court decisions ordering the stay of execution of the production at the gold mine (violation of Article 6)

The Deputies

1. noted the state of progress in the pending proceedings concerning the annulment of the new operation permit of the mining company and the annulment of the urban plan of the mining area;

2. noted that the Turkish authorities are expected to inform the Committee of the general measures envisaged;

3. decided to resume consideration of this item at their 1007th meeting (15-17 October 2007) (DH) in the light of information to be provided on the outcome of the pending domestic proceedings, general measures as well as payment of just satisfaction if appropriate.

Decision adopted at the 997th meeting. 56848/00 Zhovner, judgment of 29/06/04, final on 29/09/04 and other cases

153 cases v. Ukraine concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

Failure or serious delay by administration in abiding by final domestic judgments; absence of effective remedy in relation to delays in the enforcement proceedings; violation of applicants' right to protection of their property (violation of Article 6 §1, of Article 13 and of Article 1 of Protocol No. 1)

The Deputies

1. welcomed a number of legislative and other measures planned or being taken to

resolve the structural problem of the state's delay or failure to enforce domestic court decisions;

2. noted, however, that a number of outstanding issues remain to be settled by the authorities with a view to finding a comprehensive solution to the said structural problem and invite them to consider the proposals made in the Memorandum CM/Inf/DH (2007) 30 prepared by the Secretariat;

3. invited the authorities to prepare, in consultation with the Secretariat, an action plan for the adoption of the necessary measures;

4. decided to resume consideration of these cases at their 1007th meeting (15-17 October 2007) (DH), in the light of information to be provided concerning payment of just satisfaction, if necessary, as well as progress in the preparation of the action plan and the adoption of the necessary individual and general measures.

Interim resolutions (extracts)

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted 8 *interim resolutions*. These resolutions may notably provide information on adopted interim measures and planned further reforms, they may 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, they may 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.

Relevant extracts from the Interim resolutions adopted are presented below, by their chronological order. The full text of these resolutions is available on the website of the Department for the Execution of Judgments of the European Court of human Rights, the Committee of Ministers' website and the HUDOC database of the European Court of Human Rights (see note 2, page 34).

Adopted at the 992nd meeting, 25781/94, Cyprus v. Turkey, judgment of 10/05/2001

Interim Resolution CM/ResDH (2007) 25 – Cyprus v. Turkey

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning: Greek-Cypriot missing persons and their relatives; Home and property of displaced persons; Living conditions of Greek Cypriots in Karpas region of northern Cyprus; Rights of Turkish Cypriots living in northern Cyprus

In this resolution, the Committee of Ministers notably: […]

- On the issue of missing persons […]

Welcomes the progress achieved in the work of the CMP, and in particular through the Exhumation and Identification Programme, and encourages the continuation of the efforts so far deployed;

Calls upon Turkey, however, to rapidly provide information on additional measures required to ensure the effective investigations called for by the Court's judgment;

- On the issues relating to education […]

Decides to close the examination of the issues relating to the violations found under Article 2 of Protocol No. 1 and Article 10 of the Convention;

- On the issues relating to the freedom of religion […]

Decides to close the examination of the issues relating to the violations found under Article 9 of the Convention;

- On the issues relating to home and property of displaced persons […]

Urges the Turkish authorities to provide without delay […] information [on changes and transfers of property at issue in the judgment and on the measures taken or envisaged regarding this situation], as well as information on measures taken to safeguard the property rights of the displaced persons as these have been recognised in the judgment of the European Court, without prejudging the redress required by the Convention, be it restitution, compensation, exchange or otherwise.

- Other outstanding issues

Recalling that additional issues remain outstanding regarding further aspects of the living conditions of Greek Cypriots in northern Cyprus, notably those related to their property rights and their right to effective remedies;

Taking note of the fact that the Turkish authorities have recently submitted further information regarding these issues which remains to be assessed

- [General conclusions]

Welcomes the progress achieved in the execution of this judgment since the first interim

resolution, which now allows the Committee to also close its examination of the violations established in relation to the issues of education and freedom of religion,

Requests Turkey to rapidly take all the additional measures required to ensure the full and complete execution of the judgment;

Decides to resume the consideration of the outstanding issues at its 997th meeting (5-6 June 2007), and

Decides to continue the supervision of progress accomplished until all necessary measures have been taken.

Interim Resolution CM/ResDH (2007) 26 – Hulki Güneş v. Turkey

Unfairness of proceedings, ill-treatment of the applicant while in police custody, lack of independence and impartiality of state security courts (violation of Article 6, §§1 and 3)

In this Resolution the Committee of Ministers notably: […]

Calls upon the Turkish authorities, without further delay, to abide by their obligation under Article 46 paragraph 1 of the Convention to redress the violations found in respect of the applicant;

Strongly urges the Turkish authorities to remove the legal lacuna preventing the reopening of domestic proceedings in the applicant's case.

Adopted at the 992nd meeting. 28490/95, Hülki Güneş v. Turkey, judgment of 19/06/2003, final on 19/09/2003, Interim Resolution ResDH (2005) 113

Interim Resolution CM/ResDH (2007) 27 – Bankruptcy proceedings in Italy

Disproportionate restrictions of applicants' rights due to excessively long bankruptcy proceedings (right to property – violation of Article 1 of Protocol No. 1; right of access to a court – violation of Article 6 §1; freedom of movement – violation of Article 2 of Protocol No. 4; right to respect for correspondence – violation of Article 8; right to an effective remedy – violation of Article 13)

In this resolution the Committee of Ministers notably: […]

Invites the authorities to bring an end as soon as possible to the 14-year-old proceedings in the case of S.C., V.P., F.C. and E.C and to erase thus all remaining effects of the violations found by the European Court;

Welcomes the 2006 reform of bankruptcy proceedings and its immediate effect in erasing many restrictions of rights and freedoms criticised in the Court's judgments;

Decides to examine these cases in conjunction with those related to the more general problem of the excessive duration of judicial proceedings and to resume examination of the measures required in the context of its next examination of that problem which is scheduled for before 1 November 2008;

Calls on the Italian authorities and the Secretariat to keep it regularly informed of progress achieved in setting up the new national strategy to overcome the general problem of the duration of judicial proceedings in Italy as well as the effects of the reform on the acceleration of bankruptcy proceedings.

Adopted at the 992nd meeting. 32190/96 Luordo v. Italy, judgment of 17/07/03, final on 17/10/03 and other cases

Interim Resolution CM/ResDH (2007) 28 – 143 cases v. Poland relating to the excessive length of criminal and civil proceedings and the right to an effective remedy

Excessive length of criminal and civil proceedings (violation of Article 6, paragraph 1) and right to an effective remedy (violation of Article 13)

In this Resolution the Committee of Ministers notably: […]

Encourages the Polish authorities, in view of the gravity of the systemic problem concerning the excessive length of judicial proceedings:

- to continue the examination and adoption of further measures to accelerate judicial proceedings and reduce the backlog of cases;
- to establish a clear and efficient mechanism for evaluating the trend concerning the length of judicial proceedings; and
- to ensure that the new domestic remedy is implemented in accordance with the requirements of the Convention and the case-law of the Court and to consider introducing such a remedy as regards the pre-trial stage of criminal proceedings;

Expects to receive further information soon on additional measures planned or already taken to comply with the judgments concerning the excessive length of judicial proceedings and on the implementation in practice of the new remedy introduced in June 2004 and,

Decides to resume consideration of the outstanding individual measures and the general measures in these cases, in one year at the latest.

Adopted at the 992nd meeting. 27916/95, Podbielski v. Poland, judgment of 30/10/98 and other cases. 30210/96, Kudła, judgment of 26/10/00 (Grand Chamber) and other cases

Adopted at the 997th meeting. 28883/95, McKerr v. the United Kingdom, judgment of 04/05/01, final on 04/08/01 and 5 other cases

Interim Resolution CM/ResDH (2007) 73 – Action of the Security Forces in Northern Ireland

Action of security forces in Northern Ireland: shortcomings in investigation of deaths; lack of independence of investigating police officers; lack of public scrutiny and information to victims' families on reasons for decisions not to prosecute (violation of Article 2)

In this Resolution the Committee of Ministers notably: […]

• General measures

– The lack of independence of police investigators investigating an incident from those implicated in the incident […]

Invites the government of the respondent state to provide the committee with the police ombudsman's report of the five-yearly review of her powers and with the response of the authorities to its content;

– Defects in the police investigations […]

Welcomes the progress achieved as regards the establishment of appropriate institutions for the purpose of conducting effective police investigations;

Invites the authorities to continue to keep the Committee informed as regards the progress made in the investigation of historical cases, and in particular to provide information concerning concrete results obtained in this context both by the HET and by the Police Ombudsman;

[Decides to close its examination of the following issues:

– the lack of public scrutiny of and information to victims' families on reasons that all necessary individual measures have been taken to erase the consequences of the violations found for the applicants for decisions of the Director of Public Prosecutions not to bring any prosecution;

– the fact that the public interest immunity certificate in McKerr had the effect of preventing the inquest examining matters relevant to the outstanding issues in the case;

– the application of the package of measures to the armed forces;]

– The fact that the inquest proceedings did not commence promptly and were not pursued with reasonable expedition […]

Invites the authorities of the respondent State to continue to keep the Committee informed as regards the concrete effects of the reforms of the Coroners Service of Northern Ireland, in particular on the length of inquest proceedings and the length of the period before an inquest is opened;

• Individual measures […]

Urges the authorities of the respondent State to take, without further delay, all necessary investigative steps in these cases in order to achieve concrete and visible progress;

Invites the Government of the respondent State to keep the Committee regularly informed thereof;

• [General conclusions]

Decides to pursue the supervision of the execution of the present judgments until the Committee has satisfied itself that all general measures have been adopted and their effectiveness in preventing new, similar violations has been established and,

Decides therefore to resume consideration of these cases, as regards outstanding individual measures at each of its DH meetings and as regards general measures at intervals not longer than six months.

Adopted at the 997th meeting. 70626/01 Manios v. Greece, judgment of 11/03/2004, final on 11/06/2004 and other cases. 53401/99 Konti-Arvaniti v. Greece, judgment of 10/04/03, final on 10/07/03 and other cases

Interim Resolution CM/ResDH (2007) 74 – excessively lengthy proceedings in Greek administrative courts and lack of an effective domestic remedy

Excessive length of proceedings before administrative and civil courts and lack of an effective remedy (violation of Article 6 §1 and of Article 13)

In this Resolution the Committee of Ministers notably: […]

Urges the Greek authorities, in view of the gravity of the systemic problem at the basis of the violations:

– to accelerate the adoption of the new draft legislation aimed at the acceleration of proceedings before all administrative courts and to envisage additional measures such as further increase of the posts of judges and of administrative staff in these courts and further improvement of their infrastructure;

– to make all possible efforts to accelerate the adoption of the new draft legislation providing for a remedy and to ensure that this is implemented in accordance with the requirements of the Convention and the case-law of the Court;

Decides to resume consideration of these cases, at the latest, at its 1013th meeting (3-5 December 2007) (DH).

Adopted at the 997th meeting. Trzaska v. Poland, judgment of 11/07/00, and other cases

Interim Resolution CM/ResDH (2007) 75 – 44 cases v. Poland relating to the excessive length of detention on remand

Excessive length of pre-trial detention (violation of Article 5 §§3 and 4). Deficiencies of the procedure for review of lawfulness

In this Resolution the Committee of Ministers notably: […]

Encourages the Polish authorities, in view of the extent of the systemic problem concern-

ing the excessive length of detention on remand:

• to continue to examine and adopt further measures to reduce the length of detention on remand, including possible legislative measures and the change of courts' practice in this respect, to be in line with the requirements set out in the Convention and the European Court's case-law; and in particular

– to take appropriate awareness-raising measures with regard to the authorities involved in the use of detention on remand as a preventive measure, including judges of criminal courts and prosecutors;

– to encourage domestic courts and prosecutors to consider the use of other preventive measures provided in domestic legislation, such as release on bail, obligation to report to the police or prohibition on leaving the country;

– to establish a clear and efficient mechanism for evaluating the trend concerning the length of detention on remand;

Expects to receive further information on additional measures planned or already taken to comply with the judgments concerning the unreasonable length of detention on remand and,

Decides to resume consideration of the outstanding measures in these cases, within one year at the latest.

Interim Resolution CM/ResDH (2007) 106 – Ilaşcu and others v. Moldova and the Russian Federation

Adopted at the 1002nd meeting. 48787/99 Ilaşcu and others v. Moldova and the Russian Federation, judgment of 08/07/2004 (Grand Chamber), Interim resolutions CM/ResDH (2005) 42, CM/ResDH (2005) 84, CM/ResDH (2006) 11 and CM/Res (2006) 26

Responsibility of Moldova due to its failure to respect its positive obligations towards the applicants, arbitrarily detained in Transdniestria (violation of Article 1); responsibility of the Russian Federation as to the fate of the applicants, arbitrarily detained in Transdniestria (violation of Article 1); ill-treatment of the applicants and poor conditions of detention (violation of Article 3); detention on the basis of conviction by a court of a regime not recognised in international law (violation of Article 5); breach of right of individual petition (violation of Article 34)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"),

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilaşcu and others v. Moldova and the Russian Federation, in which the Court held that the two respondent states were to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and to secure their immediate release;

Noting with relief that the applicants Ivanoc and Popa have finally regained their freedom, but deeply regretting that, despite the injunction of the Court, they were only released on 2 and 4 June 2007 respectively;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the efforts they have made to secure the applicants' release;

Recalling the various interim resolutions adopted by the Committee of Ministers and most particularly the call made upon the authorities of the member states of the Council of Europe to take such action as they deem appropriate to ensure the compliance by the Russian Federation with its obligations under this judgment; noting the various steps taken by the states following this call; also noting, in this context, the support of the European Union and of numerous other states with a view to achieving the execution of this judgment;

Renewing its profound regret that despite these steps, the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment;

Reaffirming most firmly that the obligation to abide by the judgments of the Court is unconditional and is a requirement for membership of the Council of Europe;

Recalling that the Court stated that "any continuation of the unlawful and arbitrary detention of the […] applicants would necessarily entail […] a breach of the respondent states' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment";

Deeply deploring the prolongation of the applicants' unlawful and arbitrary detention after the judgment of the Court and underlining, in the light of this situation, the obligation incumbent on respondent states under Article 46, paragraph 1, of the Convention to erase, as far as possible, the consequences of the violations at issue in this case;

Noting, in this respect, that Mr Ivanoc and Mr Popa have lodged a new application with the Court, v. Moldova and the Russian Federation (No. 23687/05), on the ground of the prolongation of their arbitrary detention beyond 8 July 2004;

Decides to suspend its examination of this case and to resume it after the final determination of the new application by the European Court of Human Rights.

Selection of Final Resolutions (extracts)

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 992nd and 997th meetings, the Committee adopted respectively 44 and 30 *Final Resolutions*, (closing the examination of 137 and 274 cases), among which 33 and 27 took note of the adoption of new general measures. Some examples of extracts from the Resolutions adopted follow, in their chronological order. Full text of the resolutions is available on the Internet; see note 2, page 34.

Adopted at the 992nd meeting. 66485/01, judgment of 13/11/ 2003, final on 13/02/ 2004

Final Resolution CM/ResDH (2007) 29 – Napijalo v. Croatia

Unjustified confiscation of the applicant's passport by the authorities for more than two years (violation of Article 2 of Protocol No. 4) and excessive length of the civil proceedings concerning the return of the passport (violation of Article 6 §1)

- Individual measures

The applicant's passport was returned to him in April 2001. His action for damages as a result of the seizure of his passport was still pending when the Court delivered its judgment. On 15 April 2004 the first instance court awarded the applicant 15 000 Croatian kunas (about 2 000 euros). Following an appeal, these proceedings are still pending at national level. The competent courts' attention was drawn to the European Court's findings with a view to accelerating the proceedings as far as possible.

- General measures

– Measures concerning the breach of the freedom of movement

The government is of the opinion that the law applicable at the material time governing the conditions under which the authorities may seize passports provided sufficient safeguards, but that it was wrongfully applied in the present case, which is an isolated one. These legal provisions have been replaced by the Act on Travel Documents of Croatian Citizens (*Official Gazette*, No. 77/99), which contains provisions similar to those into force at the relevant time.

Moreover, the government considers that the direct effect of the case-law of the European Court, which domestic courts are beginning to recognise, will prevent new violations in future similar to that found in the present case by ensuring that the law is interpreted in conformity with the requirements of the Convention. With a view to facilitating this development, the authorities published the judgment of the European Court, in Croat, on the official website of the Ministry of Justice (http://www.provosudje.hr/) and transmitted it to all customs and police services and to the competent courts.

– Measures concerning the excessive length of civil proceedings

Measures have already been adopted in the framework of the examination of the Horvat case (judgment of 26 July 2001) closed by Resolution ResDH (2005) 60 following:

– the adoption of general measures to improve the efficiency of the judicial system and avoid new violations (Act amending the Act on Civil Procedure, adopted on 14 July 2003, which aims at strengthening procedural discipline and simplifying civil proceedings) and

– the introduction of an effective remedy against the excessive length of judicial proceedings (new Article 63 of the Act on the Constitutional Court, into force since 15 March 2002).

Adopted at the 992nd meeting. 56526/00, judgment of 15/03/2005, final on 15/06/2005

Final Resolution CM/ResDH (2007) 31 – Soudek v. the Czech Republic

Lack of access to the Constitutional Court due to a particularly strict interpretation of the procedural requirements (violation of Article 6 §1)

- Individual measures
- [...]
- General measures

This case presents similarities to that of *Zvolský and Zvolská* and to that of *Beles and others v. the Czech Republic*. Following the European Court's judgments in the cases of *Beles* and *Zvolský*, the Czech Constitutional Court in 2003 announced a change in its practice concerning admissibility criteria for constitutional appeals. According to this general decision, the deadline of sixty days for introducing a constitutional appeal will run from the date of notification of the decision at extraordinary appeal (such as an appeal on points of law) regardless of the outcome. The deadline is also considered to be met in relation to an earlier decision given at appeal and having acquired the status of *res iudicata*.

Subsequently, Parliament adopted Law No. 83/2004 (which entered into force on 1 April 2004), which modified the previous Law, No. 182/1993 on the Constitutional Court. According to the new law (Article 75 §1), it is not indispensable to have recourse to an extraordinary appeal, admissibility of which depends only on the discretionary assessment of the competent organ, such as the appeal on points of law at issue in the present case, before bringing the case before the Con-

stitutional Court. What is more, in cases where an extraordinary appeal is declared inadmissible by the competent organ solely on the basis of its discretionary assessment, a constitutional complaint may be lodged within 60 days from notification of the decision on the admissibility of the appeal at issue (Article 72 §4).

The judgment of the European Court has been published on the website of the Ministry of Justice (http://www.justice.cz/) and has been sent out to the authorities concerned.

Final Resolution CM/ResDH (2007) 32 – Alver v. Estonia

Adopted at the 992nd meeting. 64812/01, judgment of 08/11/2005, final on 08/02/2006

Inhuman and degrading treatment of the applicant while in detention on remand in 1996-1999 (violation of Article 3)

- Individual measures

[...]

- General measures

Tallinn Central Prison was closed in 2002 and the premises are no longer used as a prison. As regards the Jögeva Arrest House and other arrest houses, the Ministry of the Interior has prepared a complex programme to build or very extensively renovate them. The programme provides seven new establishments and the closure of the existing ones during 2007-2010. The necessary funds have been included in the "State Budget Strategy 2007-2010". The Jögeva Arrest House will be closed down and a new building should be ready for use in January 2009.

Meanwhile, pending the completion of the rebuilding programme, measures have been taken to improve the standard of the existing arrest houses. In 2003, police prefectures were ordered to improve health services and everyday conditions in arrest houses. They were ordered to take measures to improve artificial lighting and ventilation, to procure bed linen, to organise regular changing and cleaning of linen and to provide the necessary toilet articles for detainees. They were also instructed to allow at least one hour's outdoor exercise daily for all detainees and to make sure that everyone taken into detention passes a medical examination.

Moreover, detainees may file complaints either through the prison system or directly to the Ministry of Justice, the Legal Chancellor, the President of the Republic, the prosecutor, the investigator or a court.

The judgment of the European Court has been translated into Estonian, published on the website of the Council of Europe Information Office in Tallinn (http://www.coe.ee/) and widely disseminated, particularly to all prison directors.

Final Resolution CM/ResDH (2007) 33 – Sulaoja and Pihlak v. Estonia

Adopted at the 992nd meeting. 55939/00 and 73270/01, judgments of 15/02/2005 and 21/06/2005, final on 15/05/2005 and 21/09/2005

Unjustified extension of the applicants' detention on remand and failure to examine their applications for release promptly (violations of Articles 5 §§3 and 4)

- Individual measures

[...]

- General measures

Under the Estonian Code of Criminal Procedure (which entered into force mainly in 2004 and 2005), a person may not be kept in pre-trial detention for more than six months unless there are exceptional reasons for it. After the initial arrest warrant a detainee may, within two months, ask the preliminary investigation judge or a court to verify the reasons for the detention. A new request may be submitted two months after the previous one. The preliminary investigation judge must decide on such requests within five days of receipt. If the term of the pre-trial detention has been extended for more than six months, the preliminary investigation judge must verify the reasons for the detention at least once a month regardless of whether this has been requested or not.

The judgments of the European Court have been translated into Estonian, published on the internet site of the Council of Europe information office (http://www.coe.ee/) and widely distributed to courts, to ministries and other relevant authorities, to draw their attention so that due account may be taken of the violations found by the European Court in the future.

Final Resolution CM/ResDH (2007) 34 – K.A v. Finland

Adopted at the 992nd meeting. 27751/95, judgment of 14/01/2003, final on 14/04/2003

Failure of the authorities to take adequate measures to reunite the applicants with their children placed in foster care (violation of Article 8)

- Individual measures

The two older children have already reached the age of majority. In its letter of 18 June 2003, the Finnish delegation stated that the youngest child, J., who was nearly seventeen, met his parents each month and did not wish to leave his foster family. No complaint about this arrangement has been received from the applicant. The youngest child has now also reached the age of majority.

- General measures

[…]

1. Legislative changes: The Child Welfare Act was partially modified by a law which

entered into force on 1 November 2006. The law, *inter alia*, regulates in more detail contacts between a child placed in substitute care and his or her parents and clarifies the way in which appeals may be lodged against decisions imposing restrictions on these contacts.

Furthermore, the Child Welfare Act is to be replaced by a new child welfare act which was already presented to Parliament on 3 November 2006. The purpose of the new act is to review and render more explicit some aspects of the Child Welfare Act, the following elements in particular:

– municipal decision-making from the point of view of the legal protection of the child and the family in child welfare matters of extreme importance;

– child participation, in particular, taking truly into account the points of view of children of all ages when carrying out measures pertaining to child welfare;

– considering how and at what stage a child becomes a client of social welfare authorities, analysing the contents and extent of the needs of child welfare;

– provisions concerning the notification made to the social welfare authorities concerning the need of a child to be protected; determining who is under the obligation of giving such a notification, the extension of the contents or reasons for giving such a notification;

– procedures connected to individual and family-oriented child welfare;

– a more precise description in the new law than in the existing one of the procedure for taking a child into custody, including the preparative measures;

– the situation and status of a child in substitute care and the quality of substitute care;

– the procedure of decision-making concerning custody directly enforced by an Administrative Court.

The new Child Welfare Act was adopted by the Parliament on 14 February 2007 and it will enter into force on 1 January 2008.

2. Training: A child welfare promotion programme, which aims at enhancing the knowledge of Social Affairs staff, is being carried out until the end of 2007. Also, within the framework of the programme, an internet-based manual on child welfare will be prepared for the use of professionals.

3. Publication and dissemination: The judgment of the European Court has been translated and published in the *Finlex* database and distributed to the relevant authorities, the highest courts, the Parliamentary Ombudsman, etc.

Adopted at the 992nd meeting. 38885/02, judgment of 26/07/2005, final on 30/11/2005

Final Resolution CM/ResDH (2007) 35 – N v. Finland

Risk of ill-treatment in case of expulsion to Congo and the problem in assessing the evidence submitted by the applicant (violation of Article 3)

• Individual measures

The applicant's case was re-examined by the Directorate of Immigration on 16 January 2006. The Directorate referred in its decision to the European Court's judgment and granted the applicant a temporary residence permit for one year on the basis of his need for protection. The applicant now has a continuous residence permit which will be automatically renewed provided that he does not commit any serious offences.

• General measures

The judgment of the European Court has been published in the *Finlex* database and sent out to the Parliamentary Ombudsman, the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, the Ministry of Justice, the Ministry of Internal Affairs and to the Directorate of Immigration.

Adopted at the 992nd meeting. 35083/97 and 36404/97, judgments of 17/01/2006, final on 17/04/2006

Final Resolution CM/ResDH (2007) 36 – Goussev and Marenk v. Finland; Soini and others v. Finland

Interference with the applicants' right to freedom of expression due to the seizure of certain pamphlets and posters on uncertain legal grounds (violations of Article 10)

• Individual measures

[...]

• General measures

The Freedom of the Press Act was repealed by the Act on the Exercise of Freedom of Expression in Mass Media which entered into force on 1 January 2004. The new Act served to clarify the relationship between legislative provisions on publications and the Coercive Measures Act.

The Court's judgment has been published in the judicial database FINLEX (http://www.finlex.fi/).

Adopted at the 992nd meeting. 51431/99, judgment of 17/01/2006, final on 17/04/2006

Final Resolution CM/ResDH (2007) 38 – Aristimuño Mendizabal v. France

Breach of the right to private and family life of the applicant, a citizen of a member state of the European Union, on account of the excessively long period taken by the French authorities to issue her the residence permit to which she was entitled according to national and Community law (violation of Article 8)

• Individual measures

In December 2003, the applicant was issued with a ten-year residence permit (*carte de séjour*).

Furthermore the damage suffered by the applicant because of the violation has been compensated, as the European Court granted her just satisfaction.

• General measures

The dysfunction which led to the violation of the Convention was an isolated one.

New, similar violations should be avoided as, in addition:

– the authorities concerned have been duly informed of the requirements of the Convention resulting from this judgment; thus the Ministry of the Interior has published a commentary on the present judgment on its intranet site, which may be consulted by all Ministry and prefecture officials;

– the European Union directive of 29/04/2005 on the right of residence of EU citizens has been transposed into national law by a law of 24/07/2006. This should further reduce the probability of such problems. Articles L 121-1 to L 121-3 of the Code on Entry and Residence of Foreigners in France and on the Right to Asylum provides a 5-year right of residence for EU citizens, during which period they need no formal residence permit and at the end of which they obtain a permanent residence permit.

Final Resolution CM/ResDH (2007) 39 – 10 cases concerning the excessive length of criminal proceedings v. France

Adopted at the 992nd meeting. 44797/98, Etcheveste and Bidard, judgment of 2/03/2002, final on 21/06/2002 and other cases

Excessive length of certain proceedings before criminal courts (violations of Article 6 §1)

• Individual measures

[...]

• General measures

1. Measures taken to avoid the excessive length of criminal proceedings

a. Measures taken to avoid the excessive length of criminal proceedings as a whole

The five-year orientation and programming law for Justice (*loi quinquennale d'orientation et de programmation pour la justice,* LOPJ) was adopted on 9 September 2002, with several objectives, principally to improve the effectiveness of justice in particular by reducing the length of civil and criminal cases.

First, this requires a large increase in court staff. In this respect, it is recalled that between 1998 and 2002 more than 2400 new posts had already been created in the judicial services. The LOPJ amplified this trend, as 4450 supplementary posts have been planned by 2007 (950 magistrates and 3500 state employees and agents of the judicial services). In 2004 only, 709 additional posts, including 150 magistrates and 380 court clerks were created. This should result in a marked reduction of the time taken by courts to deliver judgments, in civil as well as in criminal cases, and the absorption of backlogs. It is also worth noting that the rate of recruitment of magistrates has considerably increased in recent years, exceeding 300 posts a year. The trend is similar for clerks of court and senior clerks of court.

The financial means have also been reinforced (by more than 11% for 2004 and 2005).

Moreover, "objective-setting contracts" were signed with certain pilot sites (Douai and Aix-en-Provence Courts of Appeal). In return for additional staff and financial means, the courts have undertaken to reduce considerably the time taken to deliver judgments. The pilot sites achieved positive results in 2003: for example in Douai, 23 staff were recruited, including 11 magistrates. The court's productivity increased by 44%, the backlog decreased by 17% and the time taken to deliver judgments was reduced by 1.7 months. In Aix, 27 new staff were brought in (15 magistrates), productivity increased by 8%, the backlog was reduced by 10.84% and the time taken to deliver judgments was reduced by 2 months (Source: *Key figures of justice*, Internet site of the Ministry of Justice). Such "objective-setting contracts" have been generalised to all appeal courts from 1 January 2006.

In addition, new three-monthly statistics are now compiled in order to identify any anomaly as quickly as possible. These precise figures, now available 5 to 6 weeks after the end of each quarter (period of reference), include the number of new cases, the number of closed cases, the backlog of cases at the beginning of the period and the average time taken by the closed cases.

b. Measures taken to avoid the excessive length of the pre-trial investigation stage in particular

On 15 June 2000, Law No. 2000-516 was adopted, modifying certain provisions of the Code of Criminal Procedure concerning judicial inquiries on criminal issues (articles 89-1, 116, 175-1, 175-2, 207-1 and 221-1 of the Code of Criminal Procedure).

These judicial inquiries are subjected to a proceedings schedule and new rights have been granted to the parties (indicted persons, *"témoins assistés"*, i.e. persons who have not been indicted on account of the inadequacy of the evidence against them but who benefit from certain procedural rights, and civil party, i.e. third persons associated in criminal proceedings for damages) in order to avoid extension of the proceedings.

Henceforth, Article 116 of the Code of Criminal Procedure provides that if the investigating magistrate feels that the expected time for the completion of the investigation is less than a year in the case of a misdemeanour or eighteen months in the case of a felony, the investigating magistrate informs the person of this expected time. He also advises that at the expiry of this time limit, he/she will be able to request the closure of the proceedings, pursuant to the provisions of Article 175-1. If the investigating magistrate feels that the expected time for the completion of the investigation is superior to that, he indicates to the person that he/she can request the closure of the proceedings at the end of a year in the case of a misdemeanour, or eighteen months in the case of a felony.

According to Article 175-1 of the Code of Criminal Procedure, the request to close the investigation may also be made when no investigating act has been carried out for a period of four months.

According to the same article, when the person under judicial examination asks the investigating magistrate, at the expiry of this period of four months, to bring the case before the trial court or to declare that there is no case to answer, the investigating magistrate must answer this request within a month of receiving it.

If the investigating magistrate declares, in a reasoned decision, that there are grounds for seeking further information, or if the judge has failed to rule within the allotted month, the person under judicial examination may transfer the case to the president of the investigating chamber. Seising the court in such a way must be done within the five days of notification of the magistrate's decision, or at the end of a one-month time limit.

Where the investigating magistrate has declared that he is continuing with his investigation, a new application may be made at the end of a six month period.

Moreover, according to Article 175-2 of the Code of Criminal Procedure, the length of the investigation must not exceed a reasonable length of time, with consideration to the seriousness of the charges brought against the person under judicial examination, the complexity of the investigations needed to establish the truth, and the exercise of the rights of the defence. If, two years after the investigation was opened, it has not been concluded, the investigating magistrate delivers a reasoned judgment, with reference to the criteria provided for in the previous paragraph, explaining the reasons for the length of the proceedings, including indications justifying the continuation of the investigation and specifying the prospects for completion. This ruling is communicated to the president of the investigating chamber, who can, if he requests it, transfer the case to this court, in accordance with the provisions of article 221-1. The order provided in the previous paragraph must be renewed every six months.

Furthermore, according, to Article 207-1 of the Code of Criminal Procedure, the president of the investigating chamber before whom the continuation of the investigation is contested, decides within eight days of receiving the case file whether there are grounds for referring the case to the investigating chamber, by a ruling that is not open to appeal. Once seised of the case, the investigating chamber may either send the case to the trial court or indict the defendant before the assize court, rule that there are no grounds to proceed, or call the case in and order an additional investigatory step, or send the case file back to the same investigating judge or to another, in order to carry on the investigation.

All these provisions relating to the respect for procedural deadlines are also available to the "témoin assisté" and the civil party (see above) (Articles 89-1, 116 § 8 and 175-1 of the Code of Criminal Procedure).

2. Effective remedy to complain about the excessive length of criminal proceedings

The European Court considers (see in particular the *Nouhaud* case, judgment of 09/07/2002), that an application for compensation under Article L 781-1 of the Code of Judicial Organisation had, since the facts at the origin of the present cases, acquired sufficient legal certainty to be considered an effective remedy.

- Conclusions of the respondent state

The government considers that the measures adopted have fully remedied the consequences for the applicants of the violations of the Convention found by the European Court in these cases. It further considers that all the above shows that it has acknowledged the difficulties confronting criminal courts in the exercise of their functions and taken measures to deal with them. France will continue to make all the necessary efforts so as to avoid new violations similar to those found in these cases. Hence, the government considers that France has thus complied with its obligations under Article 46, paragraph 1, of the Convention.

Final Resolution CM/ResDH (2007) 44 – Kress v. France and 5 other cases concerning the right to a fair trial before the *Conseil d'Etat* (participation of the Government Commissioner in the deliberations)

Adopted at the 992nd meeting. Kress, application No. 39594/98, judgment of 07/06/2001 (Grand Chamber) and other cases

Lack of a fair trial due to the participation of the Government Commissioner in the deliberations of the Conseil d'Etat; (cases of Kress and Maisons Traditionnelles) excessive length of proceedings before administrative courts (violations of Article 6 §1)

- Individual measures

[...]

- General measures

– On the participation of the Government Commissioner in the deliberations of the *Conseil d'Etat*

The French government modified the Code of Administrative Justice by a Decree of 1 August 2006, published in the *Official Journal* on 3 August 2006 and which entered into force on 1 September 2006.

This decree lays down a distinction between the *Conseil d'Etat*, which guarantees the consistency of administrative case-law, and ordinary courts and administrative courts of appeal.

The Government Commissioner will no longer intervene in deliberations in proceedings before courts and administrative courts of appeal.

In proceedings before the *Conseil d'Etat* it will be open to parties to request that the Commissioner does not take part in deliberations (see Article R. 733-2 which may be translated as follows: "The Government Commissioner is present at deliberations, unless any party requests that he is not. He does not take part. Requests [that the Government Commissioner should not be present at deliberations] must be submitted in writing and may be made at any point in the proceedings prior to the deliberations"). Parties are informed of this right in the summons, which quotes the terms of the Decree of 1 August 2006. If no such request is submitted, the Government Commissioner will be present at the deliberation in the interest of the consistency of administrative case-law and the greater legal security of the parties.

– On the length of proceedings before administrative courts

Measures have already been taken, in particular with the adoption of the Law No. 2002-1138 of 9 September 2002, which provides, *inter alia*, the recruitment of staff, the creation of new courts, and provision of budgetary resources and which, through the adoption of procedural measures enables administrative courts both to reduce their backlogs more quickly and to reduce the flow of incoming cases (see ResDH (2005) 63 in the case of Sapl).

It should also be recalled that in the case of Broca and Texier-Micault (judgment of 21 October 2003), the European Court found that a remedy now exists in French law whereby a complaint may be lodged against the excessive length of proceedings before administrative courts.

Final Resolution CM/ResDH (2007) 47 – Motais de Narbonne v. France

Adopted at the 992nd meeting. 48161/99, Judgment on the merits of 02/07/2002, Final on 02/10/2002 and judgment on the just satisfaction of 27/03/2003 final on 24/09/2003

Excessive burden imposed on the applicants as a result of a compulsory purchase (violation of Article 1 of Protocol No. 1)

- Individual measures

[...]

- General measures

To avoid new, similar violations, the European Court's judgment in the case of Motais de Narbonne has been transmitted to the authorities concerned and brought to the attention of the public.

In particular, it is known to the relevant Ministries, such as the Ministry of Transport, Infrastructure, Tourism and Marine Affairs (which paid the just satisfaction and mentioned this judgment in a guidebook (http://www.urbanisme.equipement.gouv.fr/publi/amenagt_intervurbaines/doc.pdf/Prendre_progloc.pdf) concerning local land policies), as well as the Ministry of Economy and Finance. The judgment has also been notified to the *Court de Cassation*, which applies the Convention and the case-law of the European Court directly. Finally, the judgment has been published or summarised in several publications, such as the *Information Bulletin* of the Court de Cassation (BICC) No. 562 of 15 September 2002.

Final Resolution CM/ResDH (2007) 48 – Richard v. France and 6 other cases requiring "exceptional diligence" before the administrative courts

Adopted at the 992nd meeting. Richard, application No. 33441/96, judgment of 22/04/1998 and other cases

Excessive length of certain proceedings concerning civil rights or obligation before administrative courts, for compensation for harm sustained by the applicants or by their relatives on account of the applicants' infection, or on account of their relatives' infection with the HIV virus and/or the

Hepatitis C virus as a result of blood transfusions (violations of Article 6 §1)

- Individual measures

All compensation proceedings pending before the French courts when the Court delivered its judgments were completed within the months following the dates on which the Court judgments were delivered.

- General measures

Measures were rapidly adopted in the administrative court to ensure that the cases submitted by persons infected with the HIV virus were processed with the "exceptional diligence" required by the European Convention.

Such cases are given priority treatment by the registry, following notification by the judges. The deadlines given to the parties for their submissions are shortened and set by the examining judge, with due regard for the adversarial principle.

In addition, the president of the bench may, at short notice, set a date for the end of the investigation and an indicative date for the hearing, in accordance with the provisions of Article R611-11 of the Code of Administrative Justice (former Article R142.2 of the Code of Administrative Courts and Administrative Appeal Courts).

Article R611-11 is worded as follows: "Where justified by the circumstances of the case, particularly in the event of a stay of execution of the impugned decision, the president of the bench may, once the application has been registered, make use of the power provided in Article R. 154.1 to set a date on which the investigations shall be closed. At the same time as this is notified to the parties, the latter are also notified of the anticipated date of the hearing […]."

In view of the direct effect given to the Convention and the case-law of the European Court of Human Rights in French law (cf *Cass. Sociale* 14 January 1999 Bozkurt, *Cass. criminelle* 16 January 2001 judgment No. 7688, *Cass. criminelle* 16 May 2001 judgment No. 3659), the French government is convinced that the courts, in assessing these criteria, will have due regard for the case-law of the European Court.

Adopted at the 992nd meeting. 27019/95; Interim Resolution DH (99) 355, adopted on09/06/1999 under former Article 32 of the Convention; decision on just satisfaction of 03/12/1999

Final Resolution CM/ResDH (2007) 50 – Slimane-Kaïd v. France

Opening by the prison authorities of letters sent to the applicant by his lawyers and of a letter sent by the former European Commission of Human Rights (violations of Article 8)

- General measures

This case concerns first of all a violation of the applicant's right to respect for his correspondence in view of the fact that the prison services opened mail sent to the applicant by his lawyers.

Underlying the violation was former Article D.419 of the Code of Criminal Procedure which governed the monitoring of prisoners' correspondence, making a distinction between lawyers who assisted the accused in the proceedings for which they had been detained and others: correspondence between the accused and lawyers who had assisted them in the proceedings for which they had been detained was subject to no monitoring; correspondence between the accused and lawyers who had not assisted them in the proceedings was subject to monitoring and the prosecution service could authorise this monitoring to be lifted.

Decree No. 2000-1213 of 13 December 2000 amending the Code of Criminal Procedure relating to the application of sentences amended Article D.419 and removed this distinction. Article D.419 of the Code of Criminal Procedure is now worded as follows: "lawyers may communicate, in accordance with the conditions provided for in Article D.69, with detainees and convicted persons."

With regard to the second violation found in this case (violation of Article 8 in view of the fact that the prison services opened a letter sent to the applicant by the Commission), the French government points out that measures have been taken to avoid any further similar violations. These include a memorandum sent to prison governors specifying that detainees' correspondence with the European Commission of Human Rights, whatever the organ (i.e., the president, a member or the Secretariat) should remain unopened (cf. Resolution DH(97)482 in the *A.B.* case).

Article A40 of the Code of Criminal Procedure (Order of 16 September 2005), which lists the administrative and judicial authorities with which detainees may correspond without their letters being opened makes explicit mention of the president of the European Court of Human Rights, the registry of the European Court of Human Rights and all members of the European Court of Human Rights;

Lastly, the French government states that the Commission's report and the Committee of Ministers' decision have been forwarded to the authorities directly concerned.

Adopted at the 992nd meeting. 57671/00, judgment of 27/07/2004, final on 27/10/2004

Final Resolution CM/ResDH (2007) 51 – Slimani v. France

Applicant's inability to take part in the inquiry to establish the cause of the death of her partner (violation of Article 2)

- Individual measures

[...]

• General measures

The Court found that compliance with Article 2 of the Convention would have required permitting the applicant to take part in the inquiry into the cause of her partner's death without having to lodge a criminal complaint beforehand, which did not happen in this case.

Since the material time, French law has been recently modified in this respect, as the Court itself noted (paragraph 48 of the judgment). Henceforth, persons close to the deceased may become civil parties to the enquiry and thus obtain access to it, without having to lodge a criminal complaint (Art. 80-4 of the Code of Criminal Procedure instituted by Law No. 2002/1138 of 09/09/2002).

Furthermore, the judgment of the Court was posted, with an explanatory note, on the intranet site of the Ministry if justice, where it may be consulted by all magistrates including investigating magistrates.

Final Resolution CM/ResDH (2007) 52 – Tricard v. France

Adopted at the 992nd meeting. 40472/98, judgment of 10/07/2001, final on 10/10/2001

Lack of access to a court (violation of Article 6, paragraph 1), due to the application in this case of the rules relating to time-limits for appealing on points of law deprived the applicant – domiciled in French Polynesia and party to criminal proceedings in metropolitan France – of the possibility of seising effectively the Cour de cassation

• Individual measures

The applicant might have asked for the re-opening of the appeal on basis of Articles 626-1 to 626-7 of the Code of Criminal Procedure. He did not do so.

• General measures

The judgment has been sent to the *Cour de cassation* and to all appeal court judges designated as human rights correspondents.

Accordingly the *Cour de cassation*, which like all French courts applies the Convention and the European Court's case-law directly, is in a position to draw conclusions from the Tricard judgment. Although not provided expressly in the Code of Criminal Procedure, the Criminal Chamber now admits that appeals may be accepted even after the expiry of the time limit if, "due to a case of *force majeure* or to an insuperable obstacle beyond his/her control, the complainant was unable to comply with the time limit". Given the exceptional nature of the circumstances, the *Cour de cassation* has not been seised of any new case concerning this issue since that of Tricard. If a similar case were to occur, the *Cour de cassation* has indicated that it would invoke the *force majeure* doctrine in order to accept the appeal.

Final Resolution CM/ResDH (2007) 55 – Frommelt v. Liechtenstein

Adopted at the 992nd meeting. 49158/99, judgment of 24/06/2004, final on 24/09/2004

Absence of an adversarial hearing concerning the decision, taken in 1997, to extend the applicant's detention on remand (violation of Article 5 §4)

• Individual measures

[...]

• General measures

It may be noted that the Liechtenstein Code of Criminal Procedure (StPO) does not require a detainee to be heard prior to a decision to prolong his detention to the maximum period of one year under paragraph 138 section 2 StPO. However, given the severity of such a decision and the requirement of the case-law of the European Court, the respondent state has informed the Secretariat that it has changed its procedural practice accordingly. Before the third Senate of the superior court (*Fürstliches Obergericht*), which is responsible for such decisions, decides to prolong a pre-trial detention, the detainee is given the opportunity to comment either directly or via his legal representative.

The judgment of the European Court has been sent out to the courts and the justice authorities concerned, including public prosecutors.

The judgment was published in the *Liechtensteinische Juristen-Zeitung* (LJZ), September 2005, pp. 121-124 as part of the official compilation of decisions (*Liechtensteinische Entscheidungssammlung*, LES). Furthermore, the Web site of the respondent state provides for a direct link to the European Court's Web site (http://www.liechtenstein.li/ – *Staat – Aussenpolitik – Multilaterale Beziehungen/Internationale Organisationen – Europarat*).

Final Resolution CM/ResDH (2007) 56 – Rosca v. Moldova

Adopted at the 992nd meeting. 6267/02, judgment of 22/03/2005, final on 22/06/2005

Right to a fair hearing and to the peaceful enjoyment of possessions, breached as a result of the quashing of a final judgment favourable to the applicant (violation of Article 6 §1 and Article 1 of Protocol No. 1)

• Individual measures

The European Court considered that the domestic judgment of 15 December 2004 had restored the applicant to his rights. The initial judgment has now been enforced and the amount of 102 653 Moldovan lei paid to the applicant on 16 May 2005. In addition, the European Court awarded the applicant just satisfaction in respect of the pecuniary and

non-pecuniary damage sustained as a result of the overturning of the original judgment.

• General measures

The law in force at the material time was repealed by the new Code of Civil Procedure which entered into force on 12 June 2003. According to the new Code, final judgments may no longer be annulled on the basis of a request lodged by the Prosecutor General.

The judgment of the European Court has been translated, published and sent out to all judicial authorities, to the Department of Execution of Judicial Decisions and to other state organs.

Adopted at the 992nd meeting. 28369/95, judgment of 3/10/2000

Final Resolution CM/ResDH (2007) 57 – Camp and Bourimi v. the Netherlands

Impossibility for the second applicant to establish retroactively his relationship with his late father (partner of the first applicant) and thus to inherit (violation of Article 14 taken together with Art. 8)

• Individual measures

[...]

Therefore no individual measure other than the payment of just satisfaction was required in this case.

• General measures

The government recalls that the discrimination found in this case originated in the non-retroactivity of the letter of legitimisation which constituted recognition of the second applicant's status as his father's child.

The government further recalls that the Civil Code has been changed and the option of letters of legitimisation has been replaced by a judicial declaration of paternity (*gerechtelijke vaststelling van vaderschap*, Article 1:207) and that such a declaration has retroactive force from the time of a child's birth (see §19 of the judgment).

In addition, the Court's judgment has been translated and published in the *Nederlands Juristenblad.*

Adopted at the 992nd meeting. 34619/97, judgment of 23/07/2002, final on 21/05/2003

Final Resolution CM/ResDH (2007) 59 – Janosevic v. Sweden

Lack of access to a court to determine criminal charges in taxation proceedings (violation of Article 6, paragraph 1) and excessive length of proceedings (violation of Article 6 §1)

• Individual measures

[...]

• General measures

The judgment of the European Court has attracted a great deal of attention in Swedish media and is well known. Explanatory reports, together with copies of the judgments in the present case and that of *Västberga Taxi Ab and Vulic* (see Resolution CM/ResDH (2007) 61), have been sent to the relevant judicial authorities to draw their attention to their obligations under the Convention. The judgments were commented on in an important legal journal, *Svensk Juristtidning*, and summaries of the judgments are available on the government's website (http://www.manskligarattigheter.gov.se), from where there are links to the judgments on the HUDOC website.

Following the Court's judgments in the present case and that of *Västberga Taxi Ab and Vulic*, the Swedish Tax Agency issued guidelines concerning time-limits for the reconsideration of taxation decisions. This should now be completed within one month or, if further investigations are necessary, within three months. According to the statistics available for 2003, the median time for a decision was 112 days. The Swedish government has also set operational objectives for county administrative courts and administrative courts of appeal regarding the turnaround time of cases and it has asked the National Courts Administration (*Domstolverket*) to evaluate the situation concerning the handling of tax cases. The Swedish authorities have not considered it necessary to introduce new legislation with respect to the slow processing of cases, since existing legislation already provided that tax authorities should deal promptly with cases and imposed a requirement of diligent processing on administrative courts. Furthermore, the European Court's judgments are part of the Swedish legal order. However, there is one novelty regarding length of proceedings, in that tax authorities and courts are now empowered to remit or reduce a tax surcharge when the individual has not had his or her case determined within a reasonable time within the meaning of Article 6 (Chapter 5, section 14 of the Taxation Act and Chapter 15, section 10 of the Tax Payment Act).

Under the Tax Payment Act, which came into force on 1 July 2003, the taxpayer now has an unconditional right to be granted a stay of execution with respect to tax surcharges until the tax authority has reconsidered its decision or, if an appeal is lodged, until the competent county administrative court has examined the appeal (Chapter 17, sections 2a and 9 of the Act). Moreover, the taxpayer is not required to provide security in order to be granted such a stay of execution (Chapter 17, section 3 of the Act).

In addition, even though the Court did not find a breach of the presumption of innocence, certain amendments have been introduced in the provisions dealing with grounds for remission of tax surcharges (Chapter 5,

section 14 of the Taxation Act and Chapter 15, section 10 of the Tax Payment Act).

Final Resolution CM/ResDH (2007) 61 – Västberga Taxi Aktiebolag and Vulic v. Sweden

Adopted at the 992nd meeting. 36985/97, judgment of 23/07/2002, final on 21/05/2003

Lack of access to a court to determine criminal charges in taxation proceedings (violation of Article 6, paragraph 1) and excessive length of proceedings (violation of Article 6 §1)

- Individual measures

Acceleration of the pending proceedings concerning the first applicant was requested, particularly to remedy the applicant's lack of effective access to a court. The Administrative Court of Appeal rejected the first applicant's appeal on 4 March 2004. It noted, first, that a company that had been dissolved in bankruptcy lacked capacity to be a party to legal proceedings but that some exceptions to this rule had been made in Swedish law; secondly, that the Supreme Administrative Court had found that by virtue of the applicability of Article 6 of the Convention to proceedings concerning tax surcharges, a taxpayer always had the right to have such a decision tried by an administrative court, even if the taxpayer in question was a company that had been dissolved and lacked legal capacity, but that this did not entail a right to a judicial examination of such cases at more than one instance; and finally, that the judicial examination of the first applicant's appeal by the County Administrative Court had been adequate. In consequence, the Administrative Court of Appeal found that the applicant's right of access to a court had not been violated and that there was no reason to grant the company the capacity to pursue legal proceedings further.

The applicant sought leave to appeal against the judgment of the Administrative Court of Appeal to the Supreme Administrative Court. The Supreme Administrative Court refused leave to appeal on 22 July 2004. The judgment of 22 May 2003 has thereby become final and the proceedings have been terminated.

- General measures

This case presents strong similarities to the case of *Janosevic v. Sweden* (judgment of 23 July 2002, see final Resolution CM/ResDH (2007) 59).

Final Resolution CM/ResDH (2007) 76 – A.T. v. Austria

Adopted at the 997th meeting. 32636/96, judgment of 21/03/2002, final on 21/06/2002

Lack of a hearing in compensation proceedings under the Austrian Media Act (violation of Article 6 §1)

- Individual measures

No request by the applicant for individual measures has been made known to the government. The possibility of reopening criminal cases following a judgment of the European Court in accordance with Committee of Ministers' Recommendation Rec (2000) 2, is provided for by section 363a of the Austrian Code of Criminal Procedure.

- General measures

II.1. Interim measures adopted by Austria

The European Court's judgment was promptly sent out by the Ministry of Justice to all competent judicial authorities and published in the Newsletter of the *Österreichisches Institut für Menschenrechte,* 2002/No. 2, 57-60 (http://www.menschenrechte.ac.at/), as well as in the *Österreichische Juristenzeitung,* 2002, 469-470. In this context it is to be stressed that the Convention and the Court's case-law enjoy direct effect in Austrian law.

It is also to be noted that all judgments of the European Court relating to criminal proceedings are sent by the Ministry of Justice to the President of the Higher Regional Court in the region where the violation occurred, with a request to inform all competent judicial authorities as appropriate. Austrian courts are also systematically informed about summaries in German of all significant judgments of the European Court regarding Austria, which are available in the database of the Ministry of Justice. This database, internally accessible to all judges and public prosecutors, also provides a link to the HUDOC system of the European Court.

II.2. Adoption of new legislation

The Austrian authorities began work on amending the Media Act of 1981, applied in this case, following the judgment of the European Court. Following extensive consultations with all competent authorities and interested sections of Austrian society, an amendment to the Media Act was adopted by the Parliament on 12 May 2005 and entered into force on 1 July 2005. It is available on the Internet at http://www.ris.bka.gv.at/.

According to new Article 1 §41 (5), in criminal proceedings initiated under this Act by a natural or legal person other than the state, the court may choose not to hold an oral, public hearing only if these persons have explicitly waived their right thereto. In this context, it is noted that the explanatory note to the relevant Bill on this new provision makes an express reference to the present judgment of the European Court.

Adopted at the 997th meeting. 69949/01, judgment of 22/06/2004, final on 22/09/2004

Final Resolution CM/ResDH (2007) 77 – Aziz v. Cyprus

Applicant's right to vote in parliamentary elections (violation of Article 3 of Protocol No. 1) and discrimination against him on the ground of his Turkish origin (violation of Article 14 in conjunction with Article 3 of Protocol No. 1)

- Individual measures

[...]

- General measures

Immediately after the Court's judgment, the Cypriot authorities began the drafting of new legislation in order to comply fully with the judgment. Law 2 (I) of 2006 on "the exercise of the right to vote and to be elected by members of the Turkish community with habitual residence in free territory of the Republic" entered into force on 10/02/2006. In conformity with the Court's judgment (as noted in the introduction to the Law), this Law gives effect to the right to vote and to be elected in parliamentary, municipal and community elections of Cypriot nationals of Turkish origin habitually residing in the Republic of Cyprus, thus preventing new, similar violations. In addition, Cypriot nationals of Turkish origin now have the right to vote in presidential elections. As a consequence, in the parliamentary elections of 21 May 2006 two hundred and seventy (270) Turkish Cypriots cast their ballot while one Turkish Cypriot was a candidate MP.

Finally, the Court's judgment was promptly translated and published on the Web site of the Cyprus Bar (http://www.cyprusbarassociation.org/), as well as in the widely-read *Cyprus Law Tribune*, 2005, issue No. 2, 66 ff. It was also immediately and directly applied by the Supreme Court (see judgment in the case of *Arif Moustafa v. Ministry of Interior*, 24/09/2004 - the case concerned the right to protection of property of a Cypriot citizen of Turkish origin, available at http://www.cylaw.com/).

Adopted at the 997th meeting. 33656/96, Interim Resolution ResDH(2000)16, adopted on 14/02/2000 under former Article 32 of the Convention; decision on just satisfaction of 14/02/2000

Final Resolution CM/ResDH (2007) 78 – Lemoine Daniel v. France

Lack of access for the applicant to a court to contest a decision, taken by his employer, the French railway company (Société nationale des chemins de fer – SNCF), discharging him from his post on grounds of physical unfitness, and excessive length of judicial proceedings before civil courts (violation of Article 6 §1)

The Committee of Ministers […]

Noting with regret that the courts seised by the applicant to have the decision discharging him from his post annulled in view of the breach of his right of access to a court, did not consider finally that they were competent to re-examine the situation, after years of proceedings during which the applicant could hope for another outcome;

Noting, however, that the alternative avenues indicated by the government offered, and still offer the applicant the possibility of obtaining a further compensation for the consequences of the violation which would possibly not have been repaired, and noting that only this kind of redress would be possible today in view of the time elapsed (see details in Appendix),

Declares, taking into account the measures taken by the government, among other things to avoid new, similar violations, the applicant's specific situation, as well as the possibilities of compensation which are still open, that it has exercised its functions under former Article 32 of the Convention in this case.

Appendix to Resolution CM/ResDH (2007) 78

Individual measures

- Access to a court

On several occasions, the applicant indicated that in his opinion the only measure likely to erase the consequences, for him of the violation concerning the access to a court was to ensure that the initial requests he had made in the national proceedings were examined by a "court", within the meaning of the Convention, following the finding of a violation.

The internal avenues offering a possibility of redress for this violation not having been clear, the applicant tried to obtain the annulment of the SNCF decision at issue, by bringing his claims before the French courts. However, these courts (and most recently the *Cour de cassation* in a judgment of 30 September 2005) dismissed his requests, holding themselves incompetent to review the question of their competence, in spite of the finding of a violation of the Convention, because of the *res iudicata* principle.

In these circumstances, while regretting the problems met by the applicant, the government nevertheless indicated that some avenues remain open to him, especially as a full reopening of the initial case on the applicant's discharge on grounds of physical unfitness would, obviously, at the most lead to compensation for the applicant, in particular in view of the time elapsed since the relevant time (almost 20 years) and the applicant's age.

French law offers the applicant possibilities to request compensation before the administration, even if it is not possible to give *a priori* guarantees that he will succeed. The applicant could, for example request compen-

sation on the basis of the finding of violations of the Convention and/or on the merits of the dispute between him and the SNCF.

If he fails, he could appeal before the administrative courts, requesting compensation on the basis of the provisions on which the initial, contested decision had been based. To deliver a judgment, these courts could be led to examine the merits of his claims and/or possibly grant him compensation for loss of opportunity. These courts apply the Convention and the Court's case-law directly and would thus be in a position to take account of the findings of violations to erase, as far as possible, their negative consequences (see also Final Resolution ResDH (2006) 52 of the Committee of Ministers in the case of *Chevrol v. France*).

- Excessive length of proceedings

The proceedings at issue ended in 1999. The damage suffered by the applicant has been compensated by the just satisfaction.

General measures

- Access to a court

Since the facts of the case, a new procedure has been instituted (modification in 1999 of the Rules on health and the organisation of the occupational health service).

According to the new procedure, decisions concerning unfitness for work are taken by doctors from the occupational health service.

Where "[…] an agent contests a decision taken by the company occupational health officer declaring him/her unfit for his/her job, the agent may seise the transport labour inspector, who will take a decision after consulting the transport occupational health officer".

There are several possibilities to appeal against decisions by transport labour inspectors (who in fact are ordinary labour inspectors): submission for an out-of-court settlement to the inspector who took the decision; disciplinary complaint to the Minister of Transport; finally, submission for a legal settlement before the administrative court.

The French authorities confirm that according to the law currently in force, these provisions would fully apply to a person in a situation similar to that of Mr Lemoine.

- Length of the proceedings

It is recalled that general measures have already been taken to avoid excessive length of civil proceedings, in particular before the *Cour de cassation*. These measures were examined in the framework of the execution of the *Hermant* case (application No. 31603/96, Final Resolution ResDH (2003) 88).

Conclusions of the respondent state

Concerning the violation of the right of access to a court, the government recalls that, event if Mr Lemoine's appeal before the labour courts has not been successful, the alternative avenues it has indicated offered, and still offer him the possibility to obtain further compensation for the consequences of the violation which might possibly not have been repaired. It notes that only this kind of redress would be possible today in view of the time elapsed. Furthermore, the Government considers that no individual measure is necessary concerning the excessive length of proceedings, over and above the payment of the just satisfaction. Finally, the government considers that the general measures adopted will prevent new, similar violations. Consequently, the government considers that France has complied with its obligations under former Article 32 of the Convention in this case.

Final Resolution CM/ResDH (2007) 79 – Yvon v. France

Adopted at the 997th meeting. 44962/98, judgment of 24/04/2003, final on 24/07/2003

Infringement of the principle of equality of arms because the Government Commissioner (a party to the proceedings for assessing for compensation expropriation, defending the same interests that those of the expropriating authority – the state, in this case) had a privileged position in the proceedings before the expropriations judge (violation of Article 6 §1)

The Committee of Ministers […]

Noting with regard to individual measures that French law provides no possibility to examine the need for reopening or re-examining the present case, following the judgment of the European Court;

Considering that this situation does not dispense the Committee, from the point of view of the Convention, from examining whether appropriate measures to ensure, as far as possible, *restitutio in integrum* are nevertheless necessary;

Considering however, after a detailed examination of the elements at its disposal, that in this case the applicant does not appear to have undergone very serious negative consequences as a result of the violation, and noting in addition that the applicant made no representation while the case was before the Committee of Ministers;

Concluding accordingly that France was not in the present case called upon, under Article 46, paragraph 1, of the Convention, to adopt any individual measure over and above the payment of the just satisfaction awarded by the Court;

Recalling that, on the occasion of the examination of the Yvon case, the question of the reopening of "civil" proceedings within the meaning of the Convention following the finding of a violation of Article 6 by the Court, was discussed, and that a more gen-

eral reflection by governments is going on, *inter alia* in the Council of Europe's intergovernmental bodies, concerning the development in national legal systems of appropriate procedures for re-examining cases, including re-opening (see *inter alia* Recommendation Rec (2000) 2 of the Committee of Ministers and the judgments of the Court: *San Leonard Band Club v. Malta* of 29 July 2004, *Lungoci v. Romania* of 26 January 2006, *Gurov v. Moldova* of 11 July 2006 and *Yanakiev v. Bulgaria* of 10 August 2006),

Declares, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and

Decides to close the examination of this case.

Appendix to Resolution CM/ResDH (2007) 79

Individual measures

The unfair proceedings concerned the amount of compensation the state was to pay to the applicant, in return for the expropriation of 21 hectares belonging to him, to improve a major road.

In the absence of an agreement between the applicant and the state as the expropriating authority on the amount of compensation to be paid, he applied to the expropriations judge (paragraph 10 of the Court's judgment).

The amount of compensation finally granted to the applicant following the proceedings was lower than the applicant's claims, but higher than the Government Commissioner's assessment.

With regard to the application of Article 41 of the Convention, the applicant requested, as pecuniary damage, the difference between the compensation for expropriation that, in his opinion, he should have received and the sum which he had been awarded by the expropriations courts. The European Court, holding that it could not speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6, paragraph 1, of the Convention not occurred, dismissed the applicant's claims in this respect (paragraphs 42-44 of the Court's judgment). As to the non-pecuniary damage, the Court considered it sufficiently compensated by the finding of a violation.

There is no possibility to examine the need for re-opening or re-examining the present case at national level, following the judgment of the European Court. Furthermore, in the circumstances of the case, there is no possibility for the applicant to lodge an appeal for an *ex gratia* compensation either.

In these circumstances, it was nevertheless necessary to consider whether, in this case, an individual measure – and more particularly the re-examination of the re-opening of the case – was required according to the practice of the Committee of Ministers or Recommendation Rec (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.

The applicant made no representation while the case was before the Committee of Ministers,

Thus, after a detailed examination by the Committee of Ministers, it appeared that the applicant does not appear to have undergone very serious negative consequences as a result of the violation.

General measures

First, from 9 June 2004, the *Cour de cassation*, directly drawing the consequences of the present judgment of the European Court, held that some of the national provisions at issue in the Yvon case caused an imbalance incompatible with the principle of equality of arms to the advantage of the Government Commissioner, and that implementing them would breach Article 6, paragraph 1, of the Convention.

Secondly, on 13 May 2005 the French authorities enacted a decree, No. 2005/467 (which entered into force on 01/08/2005). A circular explaining this decree was also issued. It was published in the Ministry of Justice's official bulletin No. 100 (1 October to 31 December 2005), and expressly cites the *Yvon* judgment (see the *Roux v. France* judgment of 25 April 2006, §14). The new decree provides the following.

- Concerning the government Commissioner's advantage to assess the expropriated land.

Although it did not increase this access, the decree (Article R 13-32) now requires the Government Commissioner's conclusions to set out the references to the elements upon which he relied to reach the proposed assessment, as well as the reasons for which the elements which were not relevant were dismissed. Thus, the party whose land has been expropriated would be in a position to access the same information as the Commissioner.

- Concerning the Government Commissioner's dominant position in proceedings.

a. The Government Commissioner must now notify his conclusions to the parties (by recorded delivery with acknowledgement of receipt) at least eight days before the visit of the land. If he does not respect this obligation, his conclusions are inadmissible.

b. To compensate for the fact that the Commissioner addresses the judge last, the other parties may now reply to his conclusions by a written note (notified to the parties by

recorded delivery with acknowledgement of receipt), until the day of the hearing.

c. The provision giving particular weight to the Commissioner's conclusions when the assessment he proposes is lower than that proposed by the expropriating authority has been repealed and replaced by the following provision: "The judgment must indicate the reasons in law and in fact for granting any principal or secondary compensation" (Article R 13-36). Accordingly there is now legal parity of treatment as between the Government Commissioner's and the claimant's proposals.

Finally, concerning the question of the possibility for the judge to appoint another expert:

– at first instance, the judge may now appoint an expert (or a solicitor – *notaire*), by a reasoned decision, when there is a special difficulty regarding the assessment;

– at appeal, the assistance of an expert is no longer limited to exceptional circumstances. The decision is taken by a motivated decision of the court of appeal and the expert is chosen by the Chamber President if there is no agreement between the parties on this point.

The government has indicated that this decree is the precursor of a broader reform of the law of expropriation, and that a government order (*ordonnance*) would be adopted on the basis of a law of 9 December 2004. It also pointed out that the procedural principles set out in the Decree of 13 May 2005 in response to the European Court's judgment in Yvon, would not be changed.

Conclusions of the respondent state

The government declares that French law gives no possibility of re-judging the case, or of providing any other individual measure in this case, apart from the payment of just satisfaction. Since the applicant has not suffered very serious negative consequences resulting from the violation, the payment of the just satisfaction awarded by the European Court ensures, concerning the individual aspects of the case, full execution of the judgment. Furthermore, the government is of the opinion that the general measures adopted will prevent new, similar violations. Consequently, the government considers that France has complied with its obligations under Article 46, paragraph 1, of the Convention.

Final Resolution CM/ResDH (2007) 81 – Yagtzilar and others v. Greece

Adopted at the 997th meeting. 41727/98, judgment of 06/01/2001, final on 10/07/2002 and judgment of 15/01/2004, final on 15/04/2004

Disproportionate constraint on the applicants' right of access to a court to pursue their claims for compensation for land occupied in 1925, and subsequently expropriated, and the excessive length of these proceedings (violations of Article 6 §1, violation of Article 1 of Protocol No. 1)

- Individual measures

[...]

- General measures

1. As regards the problem of access to a court in this case, it appears to have been of an exceptional nature and publication and dissemination of the judgment of the European Court has been regarded as sufficient for execution. The judgment has been sent out to the competent judicial authorities and translated and published on the site of the State Legal Council (http://www.nsk.gr/).

2. As regards the expropriation-related proceedings, Greece has in particular adopted Law 2915/2001 on the acceleration of civil proceedings (see details in Final Resolution ResDH (2005) 64 on Academy Trading Ltd and others and other cases), as well as Law 2882/2001 (amended by Law 2985/2002) on land expropriation procedure. After the entry into force of Law 2915/2001, the main effect of which was to shorten the evidentiary phase of proceedings, first-instance proceedings are now concluded within one and a half years maximum, while in the past they used to last up to four years.

Law 2882/2001 has introduced the following major changes: (a) expropriation decisions are to be taken and notified to the individuals concerned within specific deadlines; (b) the registration of land subject to expropriation is to be carried out upon the initiation of the expropriation procedure; the individual concerned may challenge this registration without interrupting the progress of the procedure; (c) the law now makes it possible to have joint proceedings covering both recognition of ownership and compensation and (d) in cases of delayed payment of compensation, the individual concerned may be awarded additional compensation, if he is not liable for the delay.

Final Resolution CM/ResDH (2007) 82 – Arnarsson v. Iceland

Adopted at the 997th meeting. 44671/98, judgment of 15/07/2003, final on 15/10/2003

Breach of the right to a fair hearing, in that the Supreme Court based the final conviction given on appeal solely on the oral evidence given before the lower court (violation of Article 6 §1)

- Individual measures

The applicant's counsel has indicated that the applicant does not wish to apply for reopening.

- General measures

According to the Icelandic authorities, the origin of the violation found by the Court did not stem from the wording of the law but lay in the circumstances of the case. Therefore, the judgment of the European Court has been translated, disseminated and published on the website of the Ministry of Justice so that the courts can take it into account in the future.

In fact, even though the jurisprudence of the European Court has no binding direct effect in Icelandic Law (Law No. 62 of 1994), the Supreme Court takes it regularly into account. Thus, since the facts in this case, the Supreme Court has used the possibility to receive oral evidence and to invalidate the lower court's judgments in several cases. According to the Icelandic authorities, the Supreme Court will continue to follow this practice in accordance with the European Court's case-law.

Adopted at the 997th meeting. 33286/96, Interim Resolution DH (99) 258 of 15/04/99 (violation) under former Article 32 of the Convention, Interim Resolutions ResDH (2002) 30 of 19/02/02, ResDH (2004) 13 of 10/02/04 and ResDH (2005) 85)

Final Resolution CM/ResDH (2007) 83 – Dorigo v. Italy

Unfairness of criminal proceedings on account of the impossibility for the applicant to question witnesses against him, or have them questioned (violation of Article 6 §1 in conjunction with Article 6 §3).

The Committee of Ministers […]

- General measures

[...]

- Individual measures

[...]

Deploring, first, the considerable delays noted in implementing its decisions and resolutions in this case, notwithstanding the importance and urgency of the measures required to remedy the consequences of the violation for the applicant, and, secondly, the fact that the applicant has thus been obliged to serve nearly all the prison sentence passed on him in the unfair trial;

Considering, however, that the Italian authorities' recent decisions respond positively to the requirements stated in its own decisions in this case, i.e. remedy, as far as possible, the serious consequences of the violation for the applicant;

Taking note with satisfaction, more specifically, of the firm action taken by the public prosecutor in Udine, who applied first to the Assize Court and then to the Court of Cassation to release the applicant, arguing that his detention was rendered unlawful by the violation of the Convention found in this case;

Welcoming the judgment given, in response to this action, on 1 December 2006 by the Court of Cassation, which declared the applicant's detention unlawful, and ordered his final release, referring to the direct effects of the Convention in Italian law, noted Italy's prolonged failure to take action, in persistent violation of the Convention – in spite of the various interim resolutions adopted by the Committee of Ministers;

Noting moreover with satisfaction the conclusion of the Court of Cassation concerning the urgent need for legislative intervention to introduce into Italian Law the possibility to reopen criminal proceedings following judgments of the European Court;

Believing that it is for the competent Italian authorities to draw all the necessary consequences from the decision of the court of Cassation and the requirements of the Convention, both generally and in the present case, particularly with regard to the erasure of the negative effects for the applicant of mentioning the conviction in his criminal record, as well as any other redress which may be due to him;

Strongly urging the Italian authorities to complete, as rapidly as possible, the legislative action needed to make it possible, in Italian law, to reopen proceedings following judgments given by the Court,

Declares, having examined the measures taken by the respondent state (see details in appendix), and noting that the applicant now has effective means of securing, as far as this is possible, erasure of the consequences of the violation, that it has fulfilled its obligations under the former Article 32 of the Convention in the present case, and

Decides to close the examination of this case.

Appendix to Resolution CM/ResDH (2007) 83

Individual measures

1. Measures expected: Italy's obligation to take individual measures was emphasised by the Committee of Ministers from the time the violation was found, in 1999. Specifically, it noted that the violation had had very serious negative consequences for the applicant. The payment of just satisfaction, covering only the non-pecuniary damage suffered up to 1999, was not in itself sufficient to erase these consequences, since the violation of the rights of the defence raised serious doubts concerning the validity of the conviction itself. Since no adequate execution measures had been taken, the Committee was obliged to adopt a series of measures to encourage the Italian authorities to respect their obligations under the Convention.

2. Various initiatives taken by the Council of Europe:

- The Committee of Ministers: To accelerate execution in this case, the Committee

adopted several interim resolutions between 2002 and 2005 (see in particular ResDH (2002) 30 of 19/02/2002, ResDH (2004) 13 of 10/02/2004 and ResDH (2005) 85 of 12/10/2005). In the last of those resolutions, it firmly reminded all the authorities concerned of their obligation to ensure the adoption of adequate execution measures benefiting the applicant, and called, in particular, for the adoption of legislation making it possible to reopen judicial proceedings when this was necessary to repair, as far as possible, the consequences of violations of the Convention (see, on this question, Committee of Ministers Recommendation (2000) 2.)

This resolution was adopted in response to the unsatisfactory reply received from the Italian Minister of Foreign Affairs, Mr Fini, to a letter of 18/01/2005 from the Chairman-in-Office of the Committee, the Polish Minister of Foreign Affairs, Mr Rotfeld, requesting rapid practical action to benefit the applicant.

• The Parliamentary Assembly also reacted on several occasions to Italy's failure to take action, particularly in Recommendation 1684 (2004) and Resolution 1411 (2004), both of 23/11/2004, and Resolution 1516 (2006) of 2 October 2006, and also in several parliamentary questions: by Mr Jurgens, No. 13 of 05/10/2004, Ms Bemelmans-Videc, No. 15 of 26/01/2005, and Mr Lloyd, No. 13 of 22/06/2005).

3. Principal measures examined by the Committee of Ministers:

Over the years, the Committee specifically considered the following solutions in this case.

– Presidential pardon: this possibility was referred to in the Committee in July 2004 (see Addendum 4 to the annotated agenda for the 948th meeting, 29-30 November 2005). The Italian delegation said, however, that a pardon was unlikely to be obtained rapidly. The Deputies concluded that this was an ineffective remedy, even if coupled with adequate complementary measures (see CM/Inf/DH(2005)13), and so did not discuss it further.

– Reopening of the unfair proceedings: The Interim Resolutions, ResDH (2002) 30 of 19/02/2002, ResDH (2004) 13 of 10/02/2004 and ResDH (2005) 85 of 12/10/2005 emphasised that reopening the proceedings complained of was still the best way of securing restitutio in integrum in this case. Several bills providing for reopening of the proceedings were tabled in Parliament. One was approved by one chamber, but not by the other.

At its 960th (March 2006) and 966th (July 2006) meetings, in view of the difficulties encountered with the adoption of effective measures, the Committee again called on the Italian authorities to remedy the consequences of the violation without delay, either by changing the law or developing the case-law.

4. Measures adopted in 2006: Notwithstanding the lack of progress on reopening the proceedings or securing a pardon, recent proceedings in two courts have produced practical results, i.e.:

• The proceedings for review of sentence, brought by the applicant in the Bologna Appeal Court. In March 2006, the Bologna Appeal Court questioned the constitutional legitimacy of domestic law, insofar as it did not allow the reopening of proceedings on the basis of a finding of a violation by the European Court. Pending the Constitutional Court's decision, the Appeal Court decided to suspend execution of Mr Dorigo's sentence, and he was provisionally released in March 2006.

• The proceedings brought in the Assize Court by the public prosecutor in Udine: the public prosecutor in Udine referred the case to the Assize Court, arguing that the applicant's detention was rendered unlawful by the European Court's finding that the Convention had been violated. In January 2006, the Assize Court rejected his application, whereupon he appealed. On 1 January 2006 the Court of Cassation set the Assize Court's decision aside, without referring it back, and ordered Mr Dorigo's unconditional release.

In this judgment, the Court of Cassation confirmed that the direct effect of the Convention was an established principle in the Italian judicial system. It insisted that machinery for the reopening of domestic proceedings was urgently needed, and noted that this was already possible in the case of *in absentia* judgments.

The Court of Cassation also emphasised that the Constitutional Court had not yet answered the question put to it by the Bologna Appeal Court, and that this created a legal vacuum. In these circumstances, and in view of Italy's prolonged inaction – despite the interim resolutions adopted by the Committee of Ministers and the persistent violations of Article 46 of the Convention – it ruled that the detention of the applicant, who had been convicted in unfair judicial proceedings, was unlawful.

• Subsequent action: In view of the Court of Cassation's decision, the applicant now has several new remedies which he can use to obtain compensation for his unlawful detention, and secure deletion of the conviction from his criminal record.

General measures

Adopted (See Resolution ResDH (2005) 86 in the Lucà v. Italy case). Article 111 of the Italian Constitution, as amended in November

1999, gave constitutional status to certain requirements laid down in Article 6 of the Convention. This new constitutional provision was implemented by Act No. 63 of 1 March 2001, which amended Article 513 of the Code of Criminal Procedure. Under the law as it stands, statements made by other accused persons in a non-adversarial context outside the court may be used in court against an accused person only with his consent (unless the judge finds that the other accused persons' refusal to be questioned at the trial results from corruption or intimidation). This rule applies not only to statements made in the same, but also in different proceedings. In current proceedings, Act No. 35 of 25 February 2000 provides that statements made by witnesses who have not been exposed to questioning may be used against an accused person in court only if corroborated by other evidence.

Adopted at the 997th meeting. 22774/93, Immobiliare Saffi, judgment of 28/07/1999 and other cases

Final Resolution CM/ResDH (2007) 84 – Non-execution of court orders to evict tenants (Immobiliare Saffi and 156 other cases v. Italy)

Systematic infringements of landlords' right to respect for their property because of failure to implement domestic court decisions ordering the eviction of the tenants, this failure resulting from a combination of the staggering of executions, the lack of assistance from the police and legislation authorising temporary suspension (violations of Article 6 §1 and of Article 1 of Protocol No. 1)

The Committee of Ministers […],

[...]

Having noted that, since 1998, Italy has introduced reforms in this area, in particular giving courts sole authority to determine the dates of tenants' evictions, and that on a number of occasions the higher courts have made rulings protecting the rights of owners;

Noting nevertheless the persistent nature of the problem and having therefore adopted Interim Resolution ResDH (2004) 72 [...];

Finding that all the domestic judgments concerning all these cases have now been enforced, thus putting an end to the violations found by the Court;

Finding also that all the measures that have now been adopted by the authorities have led to a significant reduction in the structural problem underlying these violations, as is shown by national statistical data and the very limited number of similar cases currently pending before Court, all of which relate to past events;

Noting in particular that the Italian legal system now offers several effective remedies for securing compensation where there are delays in enforcing court eviction orders, particularly through automatic compensation in the event of legislative suspension, proceedings against tenants, and proceedings against the state for failure of the police to provide assistance and for delays in judicial proceedings and enforcement (the Pinto Act);

Noting and stressing that the merits and scope of any new legislation on suspension of enforcement is now subject to review by the Italian Constitutional Court, which, in its judgment No. 155 of 2004, ruled that the existing legislative rationale could not be considered justified in the future;

Noting in this regard that this form of supervision corresponds to the requirements of the Convention,

Declares, after considering all the measures taken by the respondent state (see Appendix I), that it has exercised its functions under Article 46 §2 of the Convention in these cases, and

Decides to close their examination.

Appendix I to Resolution CM/ResDH (2007) 84

Individual measures

All the judicial decisions in these cases have been executed and the applicants have been able to take possession of their property.

General measures

- The nature of the problem underlying the violations

It should be specified from the outset that the evictions in these cases were not on account of the tenants' failure to pay rent but because their tenancies had expired. The Committee of Ministers noted in Interim Resolution ResDH (2004) 72 "that the failure to enforce the court orders in these cases was the result either of legislation suspending or staggering enforcement or simply of the applicants' inability to obtain assistance from the police and that no satisfactory remedies were available to enable the applicants to establish the state's liability and obtain compensation for delays in, or lack of, enforcement".

- 1998 reform – new procedure for staggering enforcement

The power granted to the administrative authorities – the prefects – to establish priorities for the implementation of eviction orders was abolished by Act No. 431 of 1998, which also freed rents. Following this reform, only the courts have power to order evictions, and they are also empowered to set the date of eviction (generally within six months) and to balance the interests of the owner and tenant.

Nevertheless, the Committee has found that "in spite of the legislative reforms adopted in 1998, the underlying problems which led to these cases have not been resolved, as demonstrated by the continuing stream of new applications to the Court and the fresh violations it continues to find on a systematic basis" (Interim Resolution ResDH (2004) 72).

• Further progress achieved

Three years after the adoption of the interim resolution, further progress has been made towards preventing new violations of this type. There follows an assessment of the current situation concerning the specific causes of violations and compensation for injured owners.

– Laws suspending execution

Italy has continued to enact suspensive legislation for varying periods. The scope of such laws has varied but their practical impact has continued to decline. Act No. 148 of 2005 had no tangible effect and its successor (No. 86 of 2006) limited such suspension to a few major cities and to fairly restricted categories of tenants: persons over 65, severely disabled persons and persons without the means to pay a rent. On the other hand, the most recent law (Act No. 9 of 2007) suspended implementation of eviction orders for eight months and extended its application to several other towns and cities and broader categories of tenants.

In its judgment No. 155 of 2004, the Constitutional Court ruled that the suspensions had been justified until 2003 because of their transitional and restricted nature. However, this legislative rationale could not be considered justified in the future. The matter has not been referred to the Constitutional Court since 2004, but the legislation in question is still subject to Constitutional Court review.

– Impossibility of obtaining police assistance

Under the law, police assistance must be provided, with immediate effect, via court bailiffs. However, certain violations were based on the refusal of the police, in practice, to grant assistance. Progress in this regard is shown by interior ministry statistics (http://pers.mininterno.it/dcds/). Over the last ten years (1995-2005), the annual number of evictions carried out has risen from 17 367 to 25 369, an increase of 46%, whereas court eviction orders have fallen from 23 175 to 10 953, a decline of 52%. It is clear that, on the one hand, evictions have become more numerous and more effective while, on the other, citizens find it less necessary to appeal to the courts to recover their properties.

– New applications before the European Court

Only a few applications are currently pending before the Court and all concern events in the past.

– Compensation for delays in enforcement

a. Proceedings against tenants, including those connected with suspension of evictions

Under Article 1591 of the Civil Code, tenants must compensate landlords for the late return of housing. The Court of Cassation has ruled (No. 13628 of 22/07/2004) that the burden of proof lies with the owner, but that the assessment may be based on the particular circumstances of each case and may also rely on indirect evidence (*presunzioni*).

The suspension laws referred to above set a ceiling on compensation equal to the rent, adjusted to take account of cost of living rises, plus 20% for the entire period when the owner was unable to benefit from his or her property (see Act No. 61/1989). In the event of suspension, owners are not required to take court action or show that they have suffered detriment. Owners are also granted tax benefits. The most recent law (Act No. 9 of 2007) stipulates that if payment is more than twenty days overdue, the suspension ceases to apply.

In its judgment No. 482 of 2000, the Constitutional Court ruled that the maximum level of compensation should not apply in any case where the conduct of the tenant rather than legislation made it impossible to re-establish possession of the property. The Court of Cassation has also ruled that the ceiling on compensation only applies during periods of suspension of eviction laid down in law.

b. Remedies against the state for failure of the police to provide assistance

In its judgment No. 3873 of 2004, confirming its previous case-law, the Court of Cassation ruled that owners who had been granted a court order were entitled to all the assistance they required from the authorities to secure its enforcement. For their part, the authorities were obliged to make police assistance available and only had technical discretion to decide on the precise moment when this should be granted.

In exercising their discretion, the authorities must abide by the following principles: a. court orders must be carried out at once, b. rapid assistance must be provided, c. structural deficiencies in police arrangements do not exempt the authorities, d. court bailiffs must be informed in advance of any occasional inability of the authorities to take action, e. refusal to provide assistance on a date indicated by a bailiff must be assessed in terms of whether an alternative time or, exceptionally, day has been specified and whether reasons for not providing assistance have been given for each case in question, f. any inability to offer assistance must be assessed with particular strictness.

The Court of Cassation has also stated that where the police fail to provide assistance, owners are entitled to seek damages from the authorities in the ordinary courts. Effectively,

the Court has made it clear that compensation is an essential minimum safeguard to protect constitutional rights, including the enforcement of a court order, since the right to bring legal proceedings extends to the execution of judicial decisions. In actions for damages, the authorities must show that it was impossible for them to provide assistance and can only be exempted from this requirement in exceptional and unforeseeable circumstances. The Court has stated in this regard that, far from constituting such a circumstance, situations of permanent judicial or administrative crisis create a presumption that the authorities do bear responsibility.

c. Remedies against the state under the Pinto Act

Act No. 89 of 2001, which makes the state liable for detriment suffered as a result of excessively lengthy judicial proceedings, is applicable to delays in eviction proceedings against tenants. This remedy enables citizens to obtain compensation for pecuniary and non-pecuniary damage suffered.

In its judgment No. 14885 of 2002, the Court of Cassation stated that in assessing length of proceedings, account also had to be taken of delays caused by the application of legislation suspending enforcement. In its inadmissibility decision in the *Provvedi* case (2/12/2004), the Court ruled that proceedings under the Pinto Act were one of the remedies to be exhausted in this type of case to comply with Article 35 §1 of the Convention, in connection with complaints based on both Article 6 §1 and Article 1 of Protocol No. 1.

- Publication and dissemination of the European Court's judgment

The Immobiliare Saffi judgment and the Court's case-law concerning this group of cases has been published and commented on in several legal journals, including *Rivista internazionale dei diritti dell'uomo*, No. 1/2000, Documenti Giustizia n. 1-2/2000, Guida al diritto n. 5/2003. Some of the judgments concerning this group of cases have been published on Italian legal sites on the Internet (see http://www.dirittiuomo.it/Corte%20Europea/Italia/2002/Ghidotti.htm).

Adopted at the 997th meeting. 14084/88; decisions taken under former Article 32 of the Convention on 15/05/1992, 21/09/1993, 09/03/1993

Final Resolution CM/ResDH (2007) 86 – R.V. and others v. the Netherlands

Violation of the applicants' right to respect for their private life on account of the surveillance of their activities by the intelligence and security services, the compilation and retention of personal information concerning them, as well as the refusal of access to this information (violation of Article 8)

The Committee of Ministers […]

Noting that in the circumstances of the case no question of individual measures over and above the just satisfaction awarded has been raised.

Noting with satisfaction, with regard to general measures, the decision of the Administrative Court Division of the Council of State, which rapidly gave effect to the Committee of Minister's finding of a violation of Article 8 in this case;

Having further regard to Interim Resolution DH (2000) 25 adopted by the Committee of Ministers on 14 February 2000, at its 695th meeting in which it took note of the case-law development and the other measures adopted so far by the Netherlands to prevent new, similar violations (see Appendix) [...],

Declares, having examined the measures taken by the Netherlands, that it has exercised its functions under former Article 32 of the Convention in this case.

Appendix to Resolution CM/ResDH (2007) 86

General measures

The violation of Article 8 in the *R.V. and others* case was due to the fact that the Royal Decree of 5 August 1972 on intelligence and security services did not indicate in sufficiently clear terms the circumstances in which and the conditions under which the authorities were empowered to carry out measures of secret surveillance.

The Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten; Wiv*) entered into force on 1 February 1988. This Act contained substantive modifications with regard to the conditions under which information procured may be registered and passed on to other bodies or persons. These modifications were laid down in sections 8 and 16 of the new Act. Section 8 described the duties of the National Security Service (*Binnenlandse Veiligheidsdienst*) and section 16 concerned the distribution of personal information to parties other than government bodies. However, the Act did not introduce any change in regard of the circumstances in which covert modes of surveillance may be deployed.

On 16 June 1994 however, the Administrative Law Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) decided that section 8 and section 16 of the Intelligence and Security Services Act must remain inapplicable, as they were not in accordance with Article 8 of the Convention. According to the Division, section 8 was not clear about the circumstances under which

information could be collected and about the means by which this information could be collected. Section 16 made implicit reference to section 8 and was therefore considered inapplicable as well. In its decision the Division referred to case-law of the European Court, in particular the *Leander* case, the *Klass* case, the *Malone* case and the *Sunday Times* case. After this decision, requests for access to security service files were to be examined under the Government Information (Public Access) Act.

Following this decision, on 29 May 2002 a new law came into force, the Intelligence and Security Services Act 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002; Wiv 2002*). The delay between the decision of the Division and the enactment of the new law is partly explained by numerous modifications of the law made by the government, numerous amendments to the law made by Parliament and by a delayed European Union notification procedure, all during the course of the examination of the draft law. This Act was designed better to formulate the circumstances and conditions in which the authorities are empowered to carry out measures of secret surveillance and to provide a new procedure concerning requests for access to security service files.

The Act in particular provides a definition of persons liable to be subject to measures of secret surveillance and contains a description of the means to be employed to that end.

The procedure for the treatment of requests for access to security service is outlined in the Act, as well as the instance competent to receive appeal.

The Act lays an obligation on the security services to publish an annual report which is submitted to Parliament, in which areas of specific attention of the services for the past and coming year are outlined.

An article about the report of the Commission in this case has been published in a national newspaper (*NRC Handelsblad*) on 16 April 1993.

Final Resolution CM/ResDH (2007) 88 – Maire v. Portugal (international child abduction and the right to respect for bereft parent's family life)

Adopted at the 997th meeting. 48206/99, judgment of 26/09/2003, final on 29/09/2003

Authorities' failure to enforce judicial decisions rendered from 1996 until 1999, relating to the exercise by the applicant of custody of his child (violation of Article 8)

- Individual measures

The government notes that the applicant's child, born in 1995, was abducted in France by its mother, a Portuguese national, on 03/06/1997 and, thereafter, has been living with her in Portugal. Following the hearing of 20/05/2004 before the Cascaís Court regarding parental responsibility, custody of the child was awarded to the mother, accepting the child's integration in his new environment (judgment of 12/07/2004). According to this judgment, the applicant may exercise his visitation rights but will not be allowed to leave Portugal with the child without the mother's permission. Thereafter, no further issue has been raised by the applicant.

- General measures

1. Immediate publication and wide dissemination of the Court's judgment: The Court's judgment has been promptly translated and published on the Attorney General's website (http://www.gddc.pt/direitos-humanos/index-dh.html). Also, in September 2003 the Ministry of Justice forwarded a translation of the Court's judgment to the Portuguese Central Authority (the Institute of Social Reintegration, see below) and at the same time it was brought to the attention of the Deputy Minister of Justice, the Supreme Council of Judges, the Ministry of the Interior and the Government's Office of Legislative Policy and Planning. Accordingly, the Court's judgment has become part of the training offered by the Centre for Judicial Studies, a state organisation responsible for holding annual training sessions for judges and prosecutors involved in cases relating to children's protection, in collaboration with the Portuguese Central Authority.

2. Application by Portugal of the Convention of Judicial Co-operation between Portugal and France on the protection of minors (signed on 20/07/1983): This Convention was applied in the present case. The delays which occurred were exceptional and due to the attitude of the mother who, having abducted the child, remained in a situation of illegal displacement from 1997 until 2001, refusing to abide by the law, as also noted by the Court (see also §76 of the judgment).

2.1. Statistics: Between 2002 and 2004 Portugal was involved as a requested state in 104 cases relating to the application of international treaties concerning the return of children. Nine of these cases concerned the return of children to France in the context of the bilateral Convention mentioned above. As at 10/10/2005, only one of these returns had not yet been concluded. The average duration of proceedings before the Portuguese Central Authority has been 7.3 months. There have been only four cases in which the children's return was obtained by judicial means.

2.2. Application of above Convention in the context of Portuguese and new EU legislation: The Portuguese Government notes that the Convention between Portugal and France provides that the respective central

authorities of each country must adopt measures necessary for the return of children unlawfully displaced from one state to another. Thus, upon the lodging by France of a request to the Portuguese Central Authority, this request is promptly forwarded to the prosecutor of the "Court for family and children" (*Tribunal de Família e Menores*) of the presumed place of residence of the abducted minor. It is this court which, having locating the child, adjudicates on the request of the individual or institution alleging violation of a right of custody. The Portuguese Central Authority is bound by the Convention to follow the procedure, to follow up possible requests for supplementary information to the applicant or the French Central Authority and to advise the above-mentioned court as to the urgent nature of these procedures.

Additional safeguards for the prompt enforcement of judicial decisions in this field have been provided by the EC Council Regulation No. 2201/2003 (applicable as from 01/03/2005) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

As a consequence, the Portuguese authorities do not regard it necessary to amend any further the current legislation on minors (Legislative Decree 314/78, especially Articles 181 and 191) which, in conjunction with Article 519 of the Code of Civil Procedure and Articles 249 and 348 of the Criminal Code, provides a legal framework safeguarding the execution of judicial decisions and the imposition of financial penalties or imprisonment (of up to one year) of child abductors who refuse to abide by the law (see §§59-60 of judgment and §§35-36 of judgment in the case of *Reigado Ramos v. Portugal*, 22/11/2005).

2.3. The special issue of provision of legal aid to bereft parents under Portuguese and new EU legislation: In accordance with the positive obligations emanating from Article 8 of the Convention, in cases where the "Court for family and children" rejects a request for the return of a child and orders its stay in Portugal, the Portuguese Central Authority provides the applicants legal guidance (as in cases involving application of the 1980 Hague Convention on the civil aspects of international child abduction) by informing them of the possibility of obtaining cross-border legal aid (in this respect, see also Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes), and in particular of the possibility to appeal a decision rejecting their request for return or to initiate other proceedings before the competent Portuguese court, aimed at specifying the modalities of the exercise of the child's parental responsibility.

Adopted at the 997th meeting. 33290/96, judgment of 21/12/1999, final on 21/03/2000

Final Resolution CM/ResDH (2007) 89 – Salgueiro da Silva Mouta v. Portugal

Infringement of the applicant's right to respect for his family life as well as discrimination based on sexual preference on account of the decision by Portuguese courts conferring on his ex-wife parental authority in respect of his daughter, this decision being based solely on the applicant's homosexuality (violation of Article 8 combined with Art. 14)

- Individual measures

In 1999 the applicant introduced a new application before the domestic courts and the question of his parental authority was re-examined. In this connection, the Portuguese authorities underlined that, in conformity with the direct effect of the Convention in Portuguese law, the courts would assess the interest of the child without referring to the grounds which had been considered to violate the Convention. They also recalled that it was possible to modify parental authority rights at any time, depending on any new circumstance justifying a re-examination of the situation.

- General measures

The government considers that, given the direct effect of the Convention and its jurisprudence in Portuguese law, the domestic courts will interpret the relevant provisions, in particular those concerning parental authority and custody rights, in such a way as to prevent new violations similar to that found in this case.

With a view to facilitating this, the government forwarded the judgment to the relevant authorities and published it on the website of the Documentation and Comparative Law department of the Office of the General prosecutor of the Republic: http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos/salgueirodasilva.pdf ; and in Portuguese at http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos/traducoes/Trad_Q33290_96.pdf.

This judgment was furthermore selected as one the study-cases to be analysed in training sessions on the European Convention of Human Rights in the framework of the initial and continuous training of judges organised by the Centre for Judicial Studies.

Final Resolution CM/ResDH (2007) 90 – Brumãrescu and 30 other cases v. Romania

Adopted at the 997th meeting. 28342/95, Brumărescu judgment of 28/10/1999 (Grand Chamber) and other cases

Violations of the applicants' right to the peaceful enjoyment of their possessions as well as of their right to have their claims examined by a court, in fair proceedings, on account of the Supreme Court's annulment of final court decisions delivered at first instance establishing the validity of the applicants' title to property previously nationalised (violations of Article 6 §1 and of Article 1 of Protocol No. 1)

• Individual measures

In accordance with the decisions of the European Court, the state has, in all these cases, under Article 41 of the Convention, either returned the properties at issue to the applicants or paid an amount of money corresponding to the current value of the properties at issue.

Concerning the Nagy case, the Romanian authorities indicated that the land register contained two successive notations, which were not conflicting, so that the applicant is recognised in domestic law as the sole owner of the property at issue.

• General measures

Article 330 of the Code of Civil Procedure, as amended in 2000, was repealed by Article 1 §17 of Emergency Ordinance No. 58 of 25/06/2003 adopted by the government and published in the *Official Gazette* on 28/06/2003. This reform was approved by Parliament on 25/05/2004. Accordingly, it is no longer possible to annul final judicial decisions establishing the right to have nationalised property restored.

Final Resolution CM/ResDH (2007) 92 – Petra v. Romania

Adopted at the 997th meeting. 27273/95, judgment of 23/09/1998

Monitoring of the applicant's correspondence, during his detention, with the former European Commission of Human Rights (violations of Article 8 and former Article 25)

• General measures

– Legislative change

An "Emergency ordinance" (No. 56/2003) was adopted by the government on 25/06/2003 and ratified by Parliament on 07/10/2003.

The new legislation provides for the confidentiality of requests or applications addressed by detainees to the public authorities, judicial bodies or international organisations or courts whose competence has been accepted or recognised by Romania. The law indicates that such letters cannot be opened or retained. The law also provides the possibility to challenge measures restricting the rights of prisoners before a judge. The Law furthermore provides that, for detainees lacking the necessary means, mailing costs for correspondence with the European Court are covered by the prison administration. Finally, the law also applies to prisoners on remand.

In 2003, pursuant to these provisions, the National Prisons Administration on several occasions ordered prison staff to respect the principle of confidentiality and set up rules for the organisation of the exercise of detainees' right to confidentiality of their correspondence (e.g. post boxes have been installed, to which detainees have been granted daily access).

– Publication and dissemination of the judgment

The judgment of the European Court was translated into Romanian, sent to the Information Centre in Bucharest, together with an explanatory note and widely disseminated to the authorities concerned. It was furthermore published in the official gazette and a circular was addressed, on 19 October 1999, to prison administrations concerning prisoners' right to the respect of their correspondence.

Final Resolution CM/ResDH (2007) 93 – Surugiu v. Romania

Adopted at the 997th meeting. 48995/99, judgment of 20/04/2004, final on 10/11/2004

Inadequacy of measures taken by authorities to stop incursions into the applicant's courtyard by third parties granted title to the land by an administrative authority despite recognition of the applicant's title by the courts (violation of Article 8)

• Individual measures

[...]

• General measures

In order to deter future infringements of the right to respect for one's home as established by the Court's case-law, trespass is promptly and efficiently punished by the Romanian criminal system. Thus, 1097 persons were indicted for this offence in 2003, 859 in 2004 and 402 during the first months of 2005.

As regards the responsibility of the local administrative authorities who caused the controversy by delivering title to the third parties despite court decisions recognising the applicant's legal ownership (§§64-65), attention is drawn to the July 2005 reform of the Land Act (Law No. 247/2005). This law includes a provision criminalising acts of members of administrative commissions responsible for the application of this law who obstruct or unjustifiably delay the restitution of plots of land to their recognised owners, or who issue ownership titles in breach of the legal provisions.

The judgment of the European Court has been translated and published in the *Official Journal*. It was also included in a collection of judgments of the European Court published in 2006 by the Romanian Ministry of Foreign Affairs in co-operation with the Council of Europe Information Office in Bucharest, to be distributed to judges and prosecutors.

Finally, the judgment is part of the syllabus of the course on the European Court's case-law, included in the curricula of the National Magistracy Institute. It seems that the situation criticised by the European Court in this case was an isolated one and therefore no further measure appears necessary.

Adopted at the 997th meeting. 27053/95, judgment of 22/05/1998

Final Resolution CM/ResDH (2007) 94 – Vasilescu v. Romania

Retention of valuables unlawfully seized by the militia in 1966, and the impossibility for the applicant to have access to an independent tribunal competent to order their return (violations of Article 6 §1 and of Article 1 of Protocol No. 1)

• General measures

– Case-law change

According to Article 20, paragraph 2, taken together with Article 11, paragraph 2, of the Romanian Constitution, human rights which are guaranteed by international treaties are pre-eminent over internal law. The Convention and the judgments of the Court in Romanian cases have accordingly a direct effect in Romanian law.

By a judgment of 02/12/1997, the Constitutional Court rectified the problem at the origin of the violation of Article 6 §1 to a great extent by interpreting Article 278 of the Code of Criminal Procedure so as to provide a judicial appeal against the acts of prosecutors (see Interim Resolution DH(99)676 of 08/10/1999).

Judicial practice has subsequently changed and, as result, appeals against prosecutors' acts are now accepted by courts.

– Legislative change

By letter of 11/09/2003, the Romanian delegation indicated that Article 168 of the Code of Criminal Procedure had been amended on 24/06/2003 to allow judicial recourse against seizure measures adopted during the criminal investigations.

Furthermore, Article 330 of the Romanian Code of Civil Procedure was repealed by an emergency ordinance adopted by the government and published in the *Official Gazette* on 28/06/2003. This reform was approved by Parliament on 25 May 2004. Accordingly, it is no longer possible to annul final judicial decisions at any moment.

– Publication and dissemination of the judgment

In order to ensure that other aspects of the case are taken into account, in particular the European Court's decision in respect of Article 1 of Protocol No. 1, a translation of the judgment into Romanian was handed by the government's agent to the Presidents of the fifteen Courts of Appeal of Romania during an informal meeting on 3 June 1998. Furthermore, the judgment was sent to the Office of the President of Romania, the President of the Constitutional Court, the President of the Supreme Court of Justice and the General Prosecutor to the Supreme Court, the President of the Gaesti Court of first Instance and of the Dambovita Tribunal, as well as to the University of Bucharest Faculty of Law. Finally, the judgment was published in December 1998 in the monthly law journal *Dreptul* (ANUL IX; Seria a III-a: No. 12/1998).

Adopted at the 997th meeting. 42853/98, Güneri, judgment of 12/07/2005, final on 12/10/2005 and other cases

Final Resolution CM/ResDH (2007) 97 – Güneri and others and 5 other cases v. Turkey

Absence of an effective remedy against the transfer of the applicants' posts to other towns under the state of emergency legislation (violation of Art. 13) and (in the cases of Güneri and others and Yeilgöz) denial of access to members of an association and of a political party to certain towns under state of emergency rule (violation of Art. 11 and 13)

• Individual measures

[...]

• General measures

Legislative Decree No. 285 declaring the state of emergency was cancelled in November 2002. Since the decree is no longer in force, current legislation provides sufficient safeguards to all individuals for grievances under the Convention. In addition the judgment of the European Court in the case of *Güneri and others* was translated and circulated to the relevant authorities, including the Ministry of Justice and the Ministry of the Interior.

Final Resolution CM/ResDH (2007) 98 – I.R.S and others v. Turkey

Adopted at the 997th meeting. 26338/95, judgment of 20/07/2004 (judgment on just satisfaction of 31/05/2005), final on 15/12/2004 (judgment on just satisfaction final on 31/08/2005)

Applicants' inability to obtain compensation following the occupation of their land for purposes of public use without expropriation (violation of Article 1 of Protocol No. 1)

- Individual measures

[...]

- General measures

In a decision of April 2003 the Turkish Constitutional Court declared Article 38 of the Law on Expropriation unconstitutional on the grounds that its application was not in conformity with the principle of the rule of law and that it violated the requirements of the Convention. As a result this provision is null and void.

Final Resolution CM/ResDH (2007) 99 – Abdurrahman Kılınç **and others v. Turkey**

Adopted at the 997th meeting. 40145/98, judgment of 07/06/2005, final on 07/09/2005

Failure to protect the right to life of the applicant's son, who committed suicide while performing his military service (Article 2)

- Individual measures

[...}

- General measures

The Turkish authorities pointed out that ten years had elapsed since the events at issue took place and drew the Committee's attention to the measures taken since 1995, namely:

1. The regulatory framework concerning the conditions to be fit for military service:

a. The relevant provisions of the "Regulation on Health Capacity" were amended in 2004 with a view to facilitating the conditions for exemption from conscription for those who suffer from psychological problems.

b. The Ministry of Health and the Ministry of Defence have signed two protocols, in 1999 and 2005, with the aim of identifying those who suffer from psychological problems before their conscription. In this context, the Ministry of Health undertook to inform Conscription Offices of the identity of males older than 17 who had undergone psychological treatment. The Ministry should seek the consent of those concerned before revealing any data.

c. Since 2000, the medical reports of those future conscripts who have been diagnosed as suffering from drug or alcohol addiction or mental disorder have been taken into consideration during the conscription process.

d. Since 2003, potential conscripts have been requested to fill in a questionnaire before their conscription with a view to establishing any health problems they might have, including psychological problems.

e. The conscripts are now provided with better health services; in particular the number of doctors has been increased and medical examination periods have been extended.

2. The supervision of conditions during military service and the duties of those responsible for supervising any irregular situation of conscripts who are considered to be fit for military service.

a. Since 1999, conscripts who are suspected of having psychological problems have been transferred to special training units and their health situation is followed by psychiatrists at military hospitals.

b. In 1997 Psychological Assistance Services were established in garrisons and barracks. Since 2001 these centres have provided assistance for those who suffer psychological problems on a permanent basis. In 2003, a set of guidelines concerning the working methods and activities of these services was published. Furthermore, a free telephone line was introduced to facilitate the access of conscripts to the assistants in these centres.

c. A "Leader Consultancy" scheme was introduced among the troops whereby conscripts are provided with assistance for their personal problems and needs. This scheme is aimed at solving problems before they give rise to crisis situations.

d. Since 2003, training programmes have been introduced for staff and conscripts on psychological problems and illnesses.

e. In 2002, the Centre for Family Communication was established within the Land Forces whereby communication by post and telephone between the conscripts and their family members could be facilitated.

f. In order to raise awareness among staff and conscripts, several brochures and booklets, such as "Leading Staff Guide", "Security and Accident Prevention" and "Judicial Assistance", have been made available.

g. The Armed Forces regularly issue "orders" concerning the procedures to be followed regarding conscripts suffering from psychological problems. According to an order issued on 19 January 2005, conscripts whose psychological problems are established by medical reports shall not be given arms and will be assigned to administrative or similar posts.

h. Lastly, in the event of a suicide, the authorities are under an obligation to prepare an "Incident Assessment Report" immediately with a view to ascertaining the circumstances surrounding the incident. Moreover, judicial and administrative investigations shall be carried out against those who are responsible.

3. The judgment of the Court was translated into Turkish and sent out to the relevant authorities. The judgment is also

available on the website of the Court of Cassation (http://www.yargitay.gov.tr/).

Adopted at the 997th meeting. 19392/92, United communist party, judgment of 30/01/1998 (Grand Chamber) and other cases

Final Resolution CM/ResDH (2007) 100 – United Communist party of Turkey and 7 other cases against Turkey concerning the dissolution of political parties between 1991 and 1997

Dissolution of political parties by the Constitutional Court between 1991 and 1997 (violation of Article 11)

The Committee of Ministers […]

Noting with satisfaction, as far as individual measures are concerned, that all applicants have been able to resume their political activity without further interference contrary to the Convention, both by taking part individually in elections and by securing the re-registration of their parties or the registration of new parties;

Deploring nonetheless that, shortly after the delivery of the Court's judgment in the case of the Socialist Party and others, one of the applicants was convicted on the basis of the same facts as those at the origin of the dissolution of his party and the consequences of this conviction could not be erased without successive interventions by the Committee of Ministers (see Interim Resolutions ResDH (99) 245 and ResDH (99) 529 followed by the conditional release of the applicant and restoration of his civil and political rights); and by the Court, following a further application (No. 46669/99, judgment of 21 June 2005, just satisfaction for remaining prejudice);

Emphasising with the Court the essential role played by political parties in maintaining the pluralism and proper functioning of democracy, and the need to avoid restricting their freedom of association and expression unless there are convincing and compelling reasons for doing so, and recalling that a political party may campaign to change the law or the legal or constitutional structures of a state subject to two conditions: (1) the means used to this end must be legal and democratic in every respect; and (2) the change advocated must itself be compatible with the fundamental principles of democracy;

Noting in this connection the constitutional changes of 2001 and the amendments to the Law on Political Parties adopted in 2003 which reinforced the requirement of proportionality for any interference by the state in the freedom of association;

Recalling the importance in this situation of the Turkish authorities' continued efforts to ensure the direct effect of the Court's judgments in the interpretation of the Turkish Constitution and law (see, for example the authorisation of the Communist Party to take part in the 2003 general election despite the formal constitutional ban on using the name "Communist"; see also the more general efforts described in Resolution ResDH (2001) 71 in the ***Akkuş*** case and Interim Resolution ResDH (2005) 43 concerning the actions of the security forces in Turkey);

Welcoming the 2004 amendment to Article 90 of the Constitution, henceforth providing that international human rights treaties take precedence over any incompatible national legislation;

Strongly encouraging the Turkish authorities to pursue their efforts to give direct effect of the Court's case-law in the implementation of Turkish law;

Recalling that the Committee of Ministers' decisions under Article 46, paragraph 2, of the Convention are entirely without prejudice to the Court's consideration of the other cases currently pending before it concerning the dissolution of political parties,

Declares that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases and

Decides to close the examination of these cases.

Appendix to Resolution CM/ResDH (2007) 100

Individual measures

The political bans imposed on applicants who were leaders or active members of the dissolved parties have been lifted, not least by the constitutional reforms (see "General measures" below).

The obstacles to re-registering the dissolved parties or registering similar parties have been removed. The Communist Party and the Socialist Party were able to take part in the 2003 general election (see also "General measures"). The participation of the Communist Party was particularly noteworthy given that it was authorised without formally repealing the constitutional ban on parties using the denomination "communist".

In the Socialist Party case in particular, in which the party leader, Mr Perinçek, was sentenced to 14 months' imprisonment shortly after the Court's judgment on the basis of the same statements as has had occasioned the dissolution of the party, the Committee of Ministers took specific action to erase the consequences of this conviction, which had been imposed in violation of Turkey's obligations under the Convention.

Following a reminder concerning its obligations from the Committee of Ministers in Interim Resolutions DH(99)245 and 529 and

a letter from the Chairman of the Committee of the Ministers to the Turkish Minister for Foreign Affairs, Mr Perinçek was granted conditional release. In application of a Law on the Suspension of Sentences and Judgments (Law No. 4454 of 28/08/1999), he was restored to his civil and political rights – on condition that he "committed no further crime" – and he was able to found a new political party and take part in the 2003 general election.

Fully in line with the Committee of Ministers' resolutions mentioned above, the court subsequently found, in a new judgment of 21 June 2005 (application No. 46669/99) that the conviction of Mr Perinçek had been in contravention of the Convention and granted him just satisfaction in respect of the damage sustained as a result of his wrongful conviction. In this judgment it is noted that the Turkish Court of Cassation, when it confirmed Mr Perinçek's conviction of July 1998 criticised in that judgment, took insufficient account of the European Court's judgment in the case of the Socialist Party against Turkey. The Committee considered this question separately in the context of the latter judgment.

General measures

- Constitutional reforms

The 1995 constitutional reform transformed the permanent prohibition placed on members of dissolved parties, from exercising political activity of any kind, into a five-year ban applicable only to party leaders.

Subsequently, after the facts at the origin of these cases, further constitutional changes entered into force on 17 October 2001, which made it possible to comply with the Convention obligation not to sanction a political party on the sole basis of its manifesto or without any evidence of clearly anti-democratic activity. They also introduced a requirement of proportionality, providing recourse to lesser penalties than dissolution (partial or total withdrawal of public financial support, depending on the gravity) for breaches of the authorised limitations placed upon political activity.

In addition, the new text of Article 90 of the Constitution as amended in 2004 gives international human rights treaties a superior status to national law in case of conflict.

- Law reforms

The Law on Political Parties (LPP) was amended on 11 January 2003 (Law No. 4748/2002) so as to give effect to the constitutional changes of 2001. Accordingly:

– the conditions for political party membership have been eased (conviction under Article 312 of the Penal Code no longer constitutes a bar on membership);

– Articles 98, 100, 102 and 104 of the LPP have been amended to bring them into conformity with the constitutional changes regarding both the criteria for imposing penalties and the proportionality of the penalties themselves;

– political parties have been given a right of appeal against motions for dissolution by the Prosecutor before the Constitutional Court;

– the majority required for deciding to dissolve a political party has been increased.

- Changes in practice

The governmental recalls at the outset that the Constitution has been brought into line with the Court's case-law. Thus the Communist Party was authorised to take part in the 2003 general election even though the prohibition provided in Article 96 (3) of the LPP – which was at the origin of the violation in the United Communist Party case – was still in place.

The government emphasises that the direct effect of the court's judgment thus accepted is the reflection of a more general development (see Resolution ResDH (2001) 71 in the ***Akkuþ*** case) which has been encouraged by the Turkish legislature through the amendment of Article 90 of the Constitution (see above) and by the government (see for example Interim Resolution ResDH (2005) 43 concerning the actions of the Turkish Security Forces.

In the light of these developments, the government now expects that all domestic courts, including the constitutional court, will give direct effect to the Convention and the case-law of the European Court, not least when deciding matters relating to the dissolution of parties or the penalties to be imposed on their members.

- Publication of the European Court's judgments

All the judgments of the European Court in these cases have been translated into Turkish and published in the *Official Journal* of the Ministry of Justice.

Conclusions of the respondent state

The government considers that the measures taken have entirely remedied the consequences for the applicants of the violations found in these cases, that the general measures, particularly given the efforts made to ensure the direct effect of the Court's case-law in the interpretation of the Turkish Constitution and law, will prevent new, similar violations in the future and that Turkey has thus fulfilled its obligations under Article 46, paragraph 1, of the Convention.

Adopted at the 997th meeting. 50196/99, judgment of 17/03/2005, final on 17/06/2005

Final Resolution CM/ResDH (2007) 101 – Bubbins against the United Kingdom

Absence of an effective remedy whereby the applicant might seek compensation for non-pecuniary damage following the lawful killing of her brother by a police officer (violation of Article 13)

- Individual measures

[...]

- General measures

The United Kingdom authorities indicated that the following the entry into force on 2/10/2000 of the Human Rights Act 1998, a person in the situation of the applicant could bring a claim against the police under section 7 of that Act (that is to say, section 7 (1) taken together with sections 7 (7) and 6 (1) of that Act) in respect of allegations of a breach of Article 2 of the Convention. Such proceedings would provide a forum in which a claim for compensation for non-pecuniary damages in respect of any civil liability of the police could be assessed.

Moreover, the United Kingdom authorities furnished the *Van Colle and another v. Chief Constable of the Hertfordshire Police case [2006] EWHC 360 (QB) (10/03/2006)* as an example of case-law under that section. This case concerns Giles Van Colle, a 25-year old prosecution witness who died, almost instantaneously, following an attack by a suspect in a forthcoming trial. The deceased had received threats from and had been subjected to intimidation by the suspect, which he communicated to a police officer. A Disciplinary Panel found the police officer guilty of failing to perform his duties conscientiously and diligently in connection with the intimidation by the suspect of prosecution witnesses.

Proceedings were brought against the police under the section 7 (1) of the Human Rights Act 1998 by the parents of the deceased as Claimants on their own behalf alleging that Article 2 and Article 8 had been violated, and by his father, as Administrator, on behalf of the estate of the deceased. The High Court of Justice noted that section 7 of the Human Rights Act created a new cause of action, which can found a claim for relief, including damages, against a public authority which has acted unlawfully in breach of Convention rights. The High Court granted a declaration that the Defendants had acted unlawfully, in violation of both Article 2 and Article 8, by failing to discharge their positive obligation to protect the life of the deceased. After having noted that in similar cases, the European Court awarded non-pecuniary damages for both the estate of the deceased and for the distress of surviving spouses or relatives, including parents or siblings, the High Court awarded 15 000 GBP in respect of the deceased's distress in the weeks leading up to his death and 35 000 GBP for the Claimants' own grief and suffering.

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.

117th Session of the Committee of Ministers

Strasbourg, 10-11 May 2007

The 117th Session of the Committee of Ministers, chaired by Mr Fiorenzo Stolfi, Minister of Foreign Affairs of San Marino, reviewed the implementation of the decisions taken at the 3rd Summit of Heads of State and Government held in Warsaw in May 2005.

The Ministers welcomed their colleague from the Republic of Montenegro, Mr Milan Rocen, on the occasion of the accession of Montenegro as the 47th member state of the Council of Europe.

Accession ceremony of the Republic of Montenegro: Bernard Schreiner, Vice-President of the Parliamentary Assembly; Milan Rocen, Foreign Minister of the Republic of Montenegro; Terry Davis, Secretary General of the Council of Europe; and Fiorenzo Stolfi, Minister for Foreign Affairs of San Marino

Relations between the Council of Europe and the European Union

The Memorandum of Understanding between the Council of Europe and the European Union which constitutes the new framework for enhanced co-operation the Heads of State and Government called for in Warsaw was signed. This text is the first significant step in the follow-up to the report on the relations between the Council of Europe and the European Union prepared in his personal capacity by Jean-Claude Juncker, Prime Minister of Luxembourg, at the request of the Heads of State and Government. Responding to one of the recommendations of the Juncker report, it was decided to revise the procedure concerning the appointment of the Secretary General in order to enhance the visibility of the work conducted by the Council of Europe and its relations with the European Union. It was agreed that work on follow-up to the Juncker report would be continued and kept under regular review at the future sessions.

The Regulation establishing the European Union Agency for Fundamental Rights, adopted by the Council of the European Union on 15 February 2007 includes an express reference to the Convention for the Protection of Human Rights and Fundamental Freedoms. This Regulation provides for co-ordination of the Agency's activities with those of the Council of Europe in a sense of comple-

mentarity and added value, in order to ensure the coherence of the human rights protection system in Europe.

Consolidation of the Council of Europe system of human rights protection

The Ministers recalled the significant efficiency and capacity increases that Protocol No. 14 to the Convention would introduce. They expressed their strong hope, stressing the need for solidarity between all member states as collective guarantors of the Convention, that Protocol No. 14 will come into force in the near future and will become an important element of the Convention system.

They reaffirmed that they will provide the Court with the necessary support in conformity with the Warsaw Action Plan, bearing in mind the necessary accompanying measures in the Organisation which contribute to securing the long-term effectiveness of the human rights protection system of the European Convention on Human Rights.

They also determined to reinforce the institution of the Human Rights Commissioner of the Council of Europe in conformity with the Warsaw Action Plan. They looked forward to the memorandum on prospects for reinforced co-operation with the European Union, which the Commissioner would submit to their Deputies before the end of the year.

They asked their Deputies to present a comprehensive report at their 118th Session in May 2008, covering not only the follow-up to the *2006 Declaration on sustained action to ensure the effectiveness of the European Convention on Human Rights at national and at European levels* but also the effects produced by Protocol No. 14 following its entry into force. They also welcomed the work of the European Commission on the Efficiency of Justice (CEPEJ), both its first report on the efficiency of European legal systems, and those dealing with the length of domestic procedures.

Follow-up to other priorities resulting from the Warsaw Summit

Council of Europe activities to develop intercultural dialogue

They noted with satisfaction the progress made in the the implementation of the strategy for developing intercultural dialogue. They welcomed in particular the open and inclusive consultations in the preparation of the "White Paper on Intercultural Dialogue" to be worked out in 2007.

They were also pleased that agreement was reached to hold the "Council of Europe annual exchanges on the religious dimension of intercultural dialogue", on an experimental basis, in spring 2008. This meeting which would provide an opportunity to conduct an open and transparent dialogue with participants representing the religions traditionally present in Europe and civil society on a theme inherent in the values of the Council of Europe.

Implementation of Chapter V of the Action Plan of the Third Summit

The Ministers reaffirmed the importance they attach to the reform process and instructed the Deputies and the Secretary General to make increased efforts centred on measures for greater cost effi-

ciency, effectiveness, internal co-operation and transparency.

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

The Ministers reaffirmed their commitment to reinforce their action for democracy and good governance. They expressed their gratitude to Sweden for hosting the next session of the Forum for the future of democracy on 13-15 June 2007 on the theme "Power and Empowerment – The interdependence of democracy and human rights".

Relations with other international organisations

In this connection, the Deputies adopted decisions to achieve greater synergy between the activities of the Council of Europe and the United Nations in human rights matters. As regards co-operation with the OSCE, an impetus was given over the past two years to co-operation through the Council of Europe/OSCE Co-ordination Group and the organisation of an increasing number of joint activities.

Combating terrorism

On 1 June 2007, the Convention on the Prevention of Terrorism was entered into force; member states are called to sign and ratify it as soon as possible.

Serbia announces priorities for Committee of Ministers Chairmanship

Handover of Chairmanship: Vuk Draskovic, Serbia's Minister of Foreign Affairs, new Chairman of the Committee of Ministers, and Fiorenzo Stolfi, Minister for Foreign Affairs of San Marino

At the close of the 117th ministerial session, Serbia took over the presidency of the Committee of Ministers from San Marino, for the period May-November 2007. On 11 May 2007, Vuk Draskovic, Serbian Foreign Minister, presented the priorities of his presidency at the end of the discussions.

Serbia will pursue the following four priorities under the slogan **"One Europe – our Europe":**

1. Promoting the core values of the Council of Europe: human rights, democracy and the rule of law

– Further strengthening conventional and monitoring mechanisms, including the European Court of Human Rights, the Committee for the Prevention of Torture, the European Commission against Racism and Intolerance and the Human Rights Commissioner;

– Consolidating democracy and the rule of law throughout Europe: through the Forum for the Future of Democracy, the Conference of European Ministers of Justice and the Venice Commission

2. Enhancing the security of persons – especially combating terrorism, organised crime and corruption

Serbia will ratify a number of Conventions in these fields and encourage other member states to sign and/or ratify them

3. Building a more humane Europe – towards more active participation of all citizens

– Fostering European identity and unity based on shared fundamental values, respect for our common heritage and cultural diversity: White paper on Intercultural Dialogue, European Heritage Days;

– Building the capacities of local communities and individuals: launching of the "Local Democracy Week", creation of partnerships between regions, cities and municipalities.

4. Strengthening co-operation and good neighbourly relations through full respect of values and implementation of Council of Europe standards in

south-eastern European countries, thus fostering the European perspective of the region

– Promotion of inter-regional, transfrontier and cross-border co-operation;

– Strengthening co-operation and co-ordination with other international institutions (European Union, OSCE, United Nations)

The Serbian Chairmanship will fully support the institutional reform process of the Council of Europe, which should result in greater general efficiency while providing better visibility and external communication.

Serbia will also continue to support and promote the various Council of Europe campaigns (on the subjects of children, Roma, violence against women and domestic violence, as well as the "All different – All equal" campaign).

Declaration

Declaration of the Committee of Ministers on the occasion of the 1000th meeting of the Ministers' Deputies (Belgrade, 22 June 2007)

"One Europe – Our Europe"

The representatives of the Council of Europe 47 member states attending the 1000th meeting of the Ministers' Deputies in Belgrade on 22 June 2007:

– Renew their commitment to the common values of democracy, human rights and the rule of law as enshrined in the Statute of the Council of Europe, as well as their attachment to the aim of the Council of Europe to achieve a greater unity between its members, thus facilitating their economic and social progress;

– Solemnly reiterate their determination to work for the construction of a Europe without dividing lines through the full respect for these shared values, thereby promoting the democratic stability, security and justice to which European societies and citizens aspire;

– Reaffirm their determination to mobilise all efforts in order to pursue the implementation of the decisions adopted at the Third Summit of Heads of State and Government of the Council of Europe held in Warsaw, focusing on the core objective of preserving and promoting human rights, democracy and the rule of law and ensuring the implementation of the Action Plan;

– Resolve to ensure the long-term effectiveness of the unique system for the protection of fundamental rights and freedoms constituted by the European Convention on Human Rights and guaranteed by the Court;

– Reiterate their desire to build more humane and inclusive societies founded on the principles of justice, freedom, solidarity, tolerance, equality, respect for diversity and reconciliation, by transcending the wounds of the past in a spirit of remembrance, overcoming prejudices and preventing the spread of extremism;

– Reconfirm the concern expressed at the Third Summit on unresolved conflicts that still affect certain parts of the continent;

– Emphasise that in order to avoid the tragedies which Europe has witnessed, the values of the Council of Europe should be promoted among new generations through human rights and citizen-

ship education, and by fostering intercultural dialogue;

– Underline the particular importance they attach to the significant contribution of local authorities and civil society in promoting the values and principles that underpin the Council of Europe's activities, and stress the important role of the Forum for the Future of Democracy in this context;

– Pay tribute to all those who, in political, cultural and social life, through individual or collective action, sometimes through personal sacrifice, have fought for or are defending these values and principles;

– Confirm their resolve to work together with other international bodies, in the pursuit of justice, progress and peace, and to reinforce common values;

– Encourage member states, in view of the experience acquired by regional co-operation mechanisms, to reinforce their regional co-operation in all areas of competence of the Council of Europe, including in the fight against new threats such as terrorism, organised crime, corruption and trafficking in human beings and illicit substances;

– Thank the Serbian authorities for their hospitality and the initiatives taken in the context of their Chairmanship of the Committee of Ministers of the Council of Europe to promote the values of the Organisation for Europe, our Europe.

Events organised by the Committee of Ministers

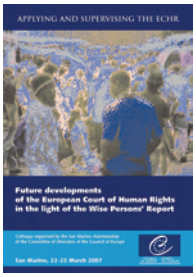
Colloquy on "Future developments of the European Court of Human Rights in the light of the Wise Persons' Report"

San Marino, 22-23 March 2007

This colloquy, organised by the the San Marino Chairmanship of the Committee of Ministers, was the first opportunity for a broad and open exchange of views at a high technical level on the various measures recommended in the report by the Group of Wise Persons. In a relatively informal setting, the various partners concerned – including representatives of the governments, the Court, the Parliamentary Assembly and civil society – will discuss the range of proposals aimed at improving the long-term effectiveness of the European Convention on Human Rights and steps taken by member states to deal with the influx of applications.

Among the 130 or so participants in this event: Carlos Rodríguez-Iglesias, Chair of the Group of Wise Persons; Jean-Paul Costa, President of the European Court of Human Rights; Marie-Louise Bemelmans-Videc, member of the Parliamentary Assembly; Wilhelmina Thomassen, judge at the Supreme Court of the Netherlands; and Thomas Hammarberg, Council of Europe Commissioner for Human Rights.

The Committee of Ministers resumed discussion of the issue at its May 2007 session prior to mapping out the contours of a sustainable reform that will enable the system to function smoothly.



The proceedings of the colloquy were published in May 2007 and can be consulted on the Internet: http://www.coe.int/t/e/human_rights/San_Marino_Actes.pdf

European Conference on "The religious dimension of intercultural dialogue"

San Marino, 23-24 April 2007

This Conference was organised by the San Marino Chairmanship of the Committee of Ministers. It focused on two main themes:

– the issues and perspectives of dialogue between the religious communities traditionally present in our continent, civil society and the Council of Europe;

– evaluation of the importance of the religious dimension in the promotion of intercultural dialogue notably in the light of the preparatory consultations on the Council of Europe "White Paper on Intercultural Dialogue".

The event provided an opportunity to discuss the implications of religious and cultural diversity in Europe with a view to promoting diversity as a source of mutual enrichment, inter alia, by fostering inter-cultural and inter-religious dialogue as prescribed in the Warsaw Action Plan. The Conference was attended by a large and varied number of participants, including representatives from those religions traditionally present on the European continent (Christians, Muslims and Jews). The participants highlighted the importance of inter-religious dialogue between public authorities at all levels (local, national and supranational) and religious communities and, in this framework, they considered that "good practices" of member States deserved particular attention. The conclusions of the Conference appear in the "San Marino Declaration", adopted by the participants on 24 April 2007.

Forum for the Future of Democracy: "Power and empowerment – the interdependence of democracy and human rights"

Stockholm and Sigtuna on 13-15 June 2007

Organised in co-operation with the Swedish Government, the Riksdag (the Swedish Parliament) and the Swedish Association of Local Authorities and Regions, the third Council of Europe Forum for the Future of Democracy took place in Stockholm and Sigtuna with the theme "Power and empowerment – the interdependence of democracy and human rights".

The Forum was established following a decision by the 3rd Summit of Heads of State and Government in Warsaw (May 2005). It's an inclusive process under the auspices of the Council of Europe, associating all main stakeholders of a genuine democratic society (parliaments, governments, local and regional authorities, civil society, media and academia), aimed at the promotion of democracy at all levels across the continent and furthering pan-European reflection on its multifarious aspects.

The previous session was held in Moscow, in October 2006 and was devoted to the role of political parties in the building of democracy.

The third session of the Forum addressed issues such as the role and responsibilities of the opposition, representative democracy at the local and regional level, empowerment of the individual and non-discrimination, respect for freedom of expression and association for civil society, and fostering democracy, human rights and social networks. This session has laid emphasis on new forms of dialogue and innovative methods. The process will be carried forward at the next sessions of the Forum.

More information is available on Swedish Government website dedicated to this forum: http://www.sweden.gov.se/sb/d/9048/a/83476.

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

Debate on the state of human rights and democracy in Europe

On 18 April 2007, in a new initiative supported by Assembly President René van der Linden, greater Europe's parliamentarians joined with leading figures from the global human rights community as well as the heads of the main Council of Europe monitoring mechanisms for an unprecedented debate on the question: what is the state of human rights and democracy in Europe today?

Special guests from the global human rights community

Louise Arbour, United Nations High Commissioner for Human Rights

Kenneth Roth, Executive Director of Human Rights Watch

Irene Khan, Secretary General of Amnesty International

Speakers from the Council of Europe

Thomas Hammarberg, Council of Europe Commissioner for Human Rights

Terry Davis, Secretary General of the Council of Europe

Jean-Paul Costa, President of the European Court of Human Rights

Halvdan Skard, President of the Congress of Local and Regional Authorities of the Council of Europe

Ugo Mifsud Bonnici, Vice-President of the the Venice Commission

Jean-Michel Belorgey, General rapporteur and former President of the European Committee of Social Rights

Mauro Palma, President of the European Committee for the Prevention of Torture

Eva Smith Asmussen, President of the European Commission against Racism and Intolerance

Alan Phillips, President of the Advisory Committee of the Framework Convention for the Protection of National Minorities

The same day the Assembly adopted Resolution 1547 (2007) and Recommendation 1791 (2007), both on the state of human rights and democracy (see below). For more information, see the Web site dedicated to the debate: http://assembly.coe.int/Sessions/2007/Debate/ENDemocracy.htm.

Democracy and legal development

Resolution 1547 (2007) and Recommendation 1791 (2007) adopted on 18 April 2007 [See documents 11202, 11203, 11215, 11216, 11217, 11218, 11219, 11220 of the Assembly]

State of human rights and democracy in Europe

The state of human rights in Europe

The Assembly is concerned by the gap between solemn declarations and commitments undertaken by member states and the situation in practice, where human rights violations often remain without redress or remedy. The Assembly considers that it is now time to end hypocrisy and to turn words into deeds. According to the Assembly, the most effective method of preventing human rights violations is by showing zero tolerance towards such violations.

It also calls upon all member states of the Council of Europe, and in particular their respective parliamentary bodies and in particular, to:

– take all appropriate measures in a resolute effort to eliminate all human rights violations;

– root out impunity of human rights violators;

– fully implement the judgments of the European Court of Human Rights within the legal order of all member states;

– develop human rights education as a basic requirement of school education and lifelong learning;

– better protect the rights of persons in particularly vulnerable situations;

– combat effectively all forms of discrimination based on racial, ethnic or religious origin, in particular the upsurge of anti-Semitism and islamophobia;

– better protect the rights of persons belonging to national and other minorities;

– fully uphold and apply social and economic rights.

The state of democracy in Europe

The Assembly is deeply concerned by reported cases of violations of basic standards of democracy in a number of Council of Europe member states. In particular, there have been worrying reports of restrictions of freedom of expression, attempts to limit freedom of

association, of the absence of free and fair elections and of distortions concerning representative, participatory and inclusive democracy. Likewise, there is evidence of insufficient implementation of other basic democratic principles, including separation of powers, checks and balances and the rule of law.

The Assembly believes that the Council of Europe's standard-setting function should be instrumental in facing deficits in democracy. Profound analysis and identification of problems and solutions should be followed by suggestions for action, recommendations for reforms and ideas for guidance. In particular, the identification of the challenges should be followed by the elaboration of legal instruments or policy guidelines.

The Venice Commission should be given adequate resources to be able to step up its action in providing legal advice and assistance in democracy building. Furthermore, it is encouraged to carry out a study which would develop the concept of classification of categories of democracy building and would illustrate how it could be used as a basis for future assessments of the state of democracy in Europe and thereby enhance the ability of the Assembly to propose useful reforms.

The Assembly resolves to closely assess the state of democracy in Europe, to improve its ability to propose the necessary reforms and to hold a debate on this matter on a regular basis.

The image of women in advertising

Resolution 1557 (2007) and Recommendation 1799 (2007 adopted on 26 June 2007 [see document 11286 of the Assembly]

Too often, advertising shows women in situations which are humiliating and degrading, or even violent and offensive to human dignity. Respect for human dignity should be one of the advertisers' constant aims.

It asks the Council of Europe's member states to take the necessary action to ensure that women are portrayed in any format in a dignified and non-discriminatory manner, while respecting the basic principle of freedom of expression, which rules out any form of censorship.

It recalls the importance of the Declaration and Platform for Action of the Fourth World Conference on Women (Beijing, September 1995), which recommends, among other things, that the media and advertising bodies "develop, consistent with freedom of expression, professional guidelines and codes of conduct and other forms of self-regulation to promote the presentation of non-stereotyped images of women".

The Assembly accordingly recommends that the Council of Europe's member states:

– ratify the Optional Protocol to the 1979 Convention on the Elimination of all Forms of Discrimination against Women;

– introduce a prize awarded by advertising professionals, and a prize awarded by the public, for the advertising which breaks most effectively with sexist stereotypes.

Europe's social dimension: full implementation of the revised European Social Charter and evaluation of new labour regulations and minimum wages

Resolution 15559 (2007) adopted on 26 april 2007 [see documents 11277 and 11317 of the Assembly]

Fifty years after the signing of the Rome Treaties, we are still confronted with the task of uniting Europe in social terms. Various basic problems, such as poor economic growth, high unemployment and growing inequalities, must be tackled without delay.

The Parliamentary Assembly is convinced that a comprehensive change of direction in social policy holds the only key to overcoming the growing inequalities in social security at European level. Against this background, it insists on the need for reforms which create a better balance between flexibility and security

on the labour market – the so-called flexicurity approach.

The Assembly points out that, in nearly all areas of reform, the revised European Social Charter contains provisions which most of the member states accept. Yet the public and the political decision-makers are both insufficiently aware of its content.

Yet the revised European Social Charter offers ready-made solutions to many of the problems faced by the reformers. The Assembly accordingly calls on member states to ensure that the Charter's relevant key elements are incorporated in future national reforms, with a view to giving them a European character.

It proposes that regular social policy debates be held in support of the member states' efforts to give the Charter a bigger role when social policy instruments are being prepared in an enlarged Europe.

There are also, however, a few simple needs which the Charter itself cannot satisfy. In particular, we need new regulations to deal with increasing liberalisation of the labour market, services and locations. Hence the vital need to extend the European Social Charter to cover these important issues.

With a view to developing the European Social Charter, the Assembly proposes that the Sub-Committee on the Charter and the European Committee of Social Rights work together on guidelines to supplement the text, embodying minimum standards to govern opening of the labour, service and location markets.

In addition, it believes that it is urgently necessary for the Council of Europe and the European Union to look beyond each other and work more intensively with other multilateral organisations on giving globalisation a social dimension and setting a European social model against the global "race to the bottom" trend in social standards. In view of its expertise in the social security field – and particularly its Decent Work Agenda of 1999 – the International Labour Organisation would be an ideal partner here.

Resolution 1560(2007) adopted on 26 April 2007
[see documents 11303 and 11321 of the Assembly]

Promotion by Council of Europe member states of an international moratorium on the death penalty

The Parliamentary Assembly confirms its strong opposition to the death penalty in all circumstances. The death penalty is the ultimate cruel, inhuman and degrading punishment.

The Assembly has also on several occasions taken a strong stand against executions in other parts of the world, and in particular in the Council of Europe observer states which retain the death penalty, namely Japan and the United States of America.

The small number of countries that still resort to executions on a significant scale is becoming increasingly isolated in the international community. The time is now ripe for a fresh push in favour of a death penalty-free world.

The Assembly therefore strongly welcomes Italian efforts in advocating for the death penalty moratorium in the UN General Assembly as well as the support of the European Union for this initiative and expects it to be proceeded with in such a manner as to guarantee the best possible success within the United Nations.

The Assembly calls on all member and observer states of the Council of Europe to actively support the initiative for the abolition of the death penalty in the UN General Assembly and to make the best use of their influence in order to convince countries that are still on the sidelines to join in. In this context, it warmly welcomes the resolution in the same sense, adopted by the European Parliament on 26 April 2007, on the initiative for a universal moratorium on the death penalty.

For the sake of the strong and unified signal to be sent by the Council of Europe as a whole, the Assembly calls on the countries concerned to sign and ratify the Protocols No. 6 (abolition of the death penalty) and No. 13 (abolition of the death penalty in all circumstances,

including in time of war or imminent threat of war) without further delay.

It fully supports the Conference to establish a European Day against the Death Penalty, to be held in Lisbon on 9 October 2007. Given its pioneering work on abolition of the death penalty in Europe and beyond, the Assembly must play a central role, including through involvement in the drafting of the joint declaration, which its President should co-sign at the inaugural conference. The Assembly would stand ready to contribute to publicity and promotion, including through co-ordination of supporting events in member states' national parliaments.

Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report

Resolution 1562 (2007) and Recommendation 1801 (2007) adopted on 27 June 2007 [see document 11302 of the Assembly]

The Parliamentary Assembly refers to the report of 12 June 2006 revealing the existence of a "spider's web" of illegal transfers of detainees woven by the CIA in which Council of Europe member states were involved, and expressing suspicions that secret places of detention might exist in Poland and Romania.

Dick Marty, Rapporteur of the Human Rights and Legal Affairs Committee

It now considers as established with a high degree of probability that such centres operated by the CIA have existed for some years in these two countries.

These secret places of detention formed part of the "HVD" (High Value Detainees) programme. The implementation of this programme has given rise to repeated serious breaches of human rights.

The Assembly notes the fact that the concepts of state secrecy or national security invoked in different ways and with different consequences by many governments make it more difficult to conclude judicial and/or parliamentary proceedings aimed at ascertaining responsibility for rehabilitating and compensating the alleged victims of violations.

The Assembly solemnly restates its position that terrorism can and must be combated by methods consistent with human rights and rule of law. This position of principle, founded on the values upheld by the Council of Europe, is also the one that best guarantees the effectiveness of the fight against terrorism in the long term.

The Assembly therefore calls upon the governments of all Council of Europe member states to make a full commitment that they will play no future part in allowing the transportation through their states, or the holding for any length of time, of any remaining detainees currently held at Guantánamo Bay.

It calls upon the parliaments and judicial authorities of all Council of Europe member states to elucidate fully, the restrictions of transparency founded on concepts of state secrecy and national security, and ensure that the victims of such unlawful acts are fittingly rehabilitated and compensated.

Finally, the Assembly reaffirms the importance of setting up within it a genuine European parliamentary inquiry mechanism.

Combating anti-Semitism in Europe

Resolution 1563 (2007) adopted on 27 June 2007 [see document 11292 of the Assembly]

Far from having been eliminated, anti-Semitism is today on the rise in Europe. It appears in a variety of forms and is becoming relatively commonplace, to varying degrees, in all Council of Europe member states. This upsurge should prompt Council of Europe member states to be more vigilant and tackle the threat which anti-Semitism represents for the fundamental values which it is the Council of Europe's role to defend.

The Assembly regrets that the Middle East conflict has had an impact on the growth of anti-Semitism in Europe.

It calls on the governments of the Council of Europe member states to:

– robustly and consistently enforce legislation criminalising anti-Semitic and other hate speech, in particular any incitement of violence;

– prosecute any political party which puts forward anti-Semitic arguments in its activities, manifestos or publications;

– make a criminal offence the public denial, trivialisation or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes in accordance with ECRI general policy recommendation No. 7;

– sign and ratify Protocol No. 12 to the European Convention on Human Rights;

– promote intercultural and inter-faith dialogue between different communities;

– acquire the means of punishing anti-Semitic statements on the Internet and therefore sign and ratify the Additional Protocol to the Convention on Cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems;

– encourage the media to exercise self-discipline, to promote tolerance and mutual respect and to counter anti-Semitic stereotypes and prejudices which have entered everyday speech;

– support the activities of ECRI, whose role is to combat racism, xenophobia, anti-Semitism and intolerance throughout Europe and to ensure that member states give practical follow-up to its recommendations;

– actively and vigorously condemn all states sponsoring anti-Semitism, Holocaust denial and incitement to genocide.

Resolution 1564 (2007 and Recommendation 1803 (2007) adopted on 28 June 2007 [see document 11281 of the Assembly]

Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)

More than ten years have elapsed since the conflicts in the territory of the former Yugoslavia; however all those responsible for war crimes have not yet been brought to justice.

The Assembly stresses the importance of the International Criminal Tribunal for the former Yugoslavia ("the ICTY") which, in seeking justice, plays a fundamental, pioneering role in the development of international criminal law.

It is aware that the Tribunal's mandate will soon expire and that it has devised a strategy for completing its activities, the success of which depends on the support and commitment of the states in putting an end to impunity. The Assembly is concerned by the fact that some fugitives might still be at large when the Tribunal finally closes its doors.

The Assembly is particularly concerned to note that the national legislation of the states in question has proven to be a real obstacle to the effective prosecution in their own courts of war crimes suspects, thereby providing a basis for impunity, which can no longer be tolerated.

It is obvious that the ban on the extradition of nationals in all the countries concerned constitutes a serious obstacle to the course of justice. The Assembly believes that the non-extradition of nationals should not extend to persons charged with war crimes, once there are guarantees that the accused will receive a fair trial. The Assembly firmly believes that, in the interests of justice, the states concerned must redress this situation.

The Assembly therefore calls on the relevant authorities of the states concerned to:

– immediately lift the ban on the extradition of nationals charged with committing war crimes;

– remove the restrictive rule which prevents prosecution files being transferred to another country when the legally enforceable term of imprisonment exceeds ten years;

– improve co-operation and the transfer of information between the police services of their countries in investigations concerning war criminals by means of effective bilateral agreements;

– improve the protection of witnesses at the national level and co-ordination at the regional level and clarify the legal safeguards;

The authorities of Bosnia and Herzegovina should ensure the harmonisation of case-law, consider setting up a national supreme court, or grant the powers of a supreme court to an existing court so as to secure legal certainty; and encourage the signing of agreements between the Bosnia and Herzegovina public prose-

cutor's office and its counterparts in the region, along the lines of those signed by the public prosecutors' offices of Croatia, of Serbia and of Montenegro.

Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia

State, religion, secularity and human rights

Organised religions as such are part and parcel of society and must be considered as institutions set up by and involving citizens who have the right to freedom of religion but also as organisations that are part of civil society, with all its potential for providing guidance on ethical and civic issues, which have a role to play in the national community, be it religious or secular.

The Assembly reaffirms that one of Europe's shared values, transcending national differences, is the separation of church and state.

Governance and religion should not mix. Religion and democracy are not incompatible, however, and sometimes religions play a highly beneficial social role. By addressing the problems facing society, the civil authorities can, with the support of religions, eliminate much of what breeds religious extremism.

Freedom of religion is protected by Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration on Human Rights. Such freedom is not unlimited, however: a religion whose doctrine or practice ran counter to other fundamental rights would be unacceptable.

Recommendation 1804 (2007) adopted on 29 June 2007 [see document 11298 of the Assembly]

The Assembly therefore recommends that the Committee of Ministers:

– ensure that religious communities may exercise the fundamental right of freedom of religion without hindrance in all Council of Europe member states in accordance with the provisions of Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration of Human Rights;

– rule out any interference in religious affairs, but consider religious organisations as part of civil society and call on them to play an active role in pursuit of peace, co-operation, tolerance, solidarity, intercultural dialogue and the dissemination of the Council of Europe's values;

– reaffirm the principle of the independence of politics and law from religion;

– consider setting up an institute to devise syllabuses, teaching methods and educational material for the study of the religious heritage of the Council of Europe member states.

The Assembly further recommends that the Committee of Ministers encourage the member states to promote initial and in-service training for teachers with a view to the objective, balanced teaching of religions as they are today and religions in history, and to require human rights training for all religious leaders, in particular those with an educational role who are in contact with young people.

Blasphemy, religious insults and hate speech against persons on grounds of their religion

With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case-law of the European Court of Human Rights. In this connection, the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence. Even though today prosecutions in this

Recommendation 1805 (2007) adopted on 29 June 2007 [see document 11296, 11319 and 11322 of the Assembly]

respect are rare in member states, they are legion in other countries of the world.

The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law in accordance with the General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance. For speech to qualify as hate speech in this sense, it is necessary that it is directed against a person or a specific group of persons.

The Assembly considers that, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2 of the European Convention on Human Rights, national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.

The Assembly recommends that the Committee of Ministers ensure that national law and practice:

– penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds;

– prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters;

– are reviewed in order to decriminalise blasphemy as an insult to a religion;

– invite member states to take more initiatives to promote tolerance, in co-operation with the European Commission against Racism and Intolerance.

Situation in member states

Resolution 1545 (2007) adopted on 16 April 2007 [See document 11226 of the Assembly]

Honouring of obligations and commitments by Azerbaijan

The Assembly notes that, since accession to the Council of Europe, much remains to be done to strengthen parliamentary control over the executive and improve the checks and balances in Azerbaijan. Therefore, the Assembly invites the authorities of this country to consider in due course the possibility of revising the constitution to improve the balance of power and strengthen the role of the parliament, with the assistance of the European Commission for Democracy through Law (Venice Commission).

The Assembly attaches particular importance to the forthcoming presidential elections in 2008 and expects the public broadcasting service to ensure equal and unbiased coverage of the campaign for all presidential candidates.

It reiterates that, for the next presidential elections to comply fully with European standards in terms of democratic elections, it is essential that, beyond purely technical improvements, the Electoral Code be amended at the latest by the beginning of 2008.

With regard to commitments and obligations in the field of human rights:

Regrettably, instead of improving, the general environment for the independent media in Azerbaijan has since deteriorated. The Assembly urges the Azerbaijani authorities to consider a legal reform aimed at the decriminalisation of defamation; relevant civil law provisions should also be revised to ensure respect of the principle of proportionality. It also encourages efforts aimed at improving the professional standards and ethics of journalists in Azerbaijan and notes that Council of Europe assistance could be sought for this purpose.

The Assembly urges the authorities to ensure a case-by-case review of life sentences which were the result of the abolition of the death penalty.

With regard to persistent allegations of torture or ill-treatment, carried out mostly by law-enforcement agents during police custody or pre-trial investigation, the Assembly urges the Azerbaijani authorities to act energetically to prove that they do not tolerate torture or ill-treatment within public institutions and the army and thus put an end to the strong perception of impunity.

With regard to the Nagorno-Karabakh conflict:

The Assembly invites the Azerbaijani authorities to prepare the population to accept the measures currently being negotiated. In this context it welcomes and further encourages contacts which have recently been established between Azerbaijani and Armenian civil society groups.

The Assembly resolves to pursue its monitoring on the honouring of obligations and commitments by Azerbaijan.

Functioning of democratic institutions in Ukraine

Resolution 1549 (2007) adopted on 19 April 2007 [see document 11255 of the Assembly]

The Parliamentary Assembly is concerned by the political events in Ukraine which have evolved in recent months.

The Assembly recommends that the Ukrainian authorities urgently adopt the following concrete measures to address the causes of the crisis and prevent further dysfunctioning of democratic institutions in Ukraine:

– to re-launch the constitutional reform project, in close co-operation with the Venice Commission, in order to improve the Constitution of Ukraine and bring it in line with European standards, in particular as regards the provisions on the separation of powers, the imperative mandate, the judiciary and the Prokuratura;

– to adopt and enact without further delay basic constitutional laws;

– to amend the Law on the Elections of People's Deputies in order to set up proper procedures for the organisation of pre-term elections in case of dissolution of the parliament;

– to carry out the reform of the judiciary on the basis of the Judicial Reform Concept adopted by the President of Ukraine in May 2006, with the aim of establishing an independent and effective judiciary;

– to launch the reform of the criminal justice system and law-enforcement agencies and to take legislative and practical measures to tackle all forms of corruption, including political corruption.

The Assembly calls upon the Secretary General of the Council of Europe, as a matter of priority, to take all appropriate measures within his competence to contribute to the process of settlement of the crisis in Ukraine.

The Assembly confirms its readiness to help Ukraine overcome its current deadlock either through its assistance mechanisms or other specific arrangements. Nevertheless, it is up to the Ukrainian political leaders to work out the most appropriate solution for its internal problems.

Situation of longstanding refugees and displaced persons in South East Europe

Recommendation 1802 (2007) adopted on 27 June 2007 [see document 11289 of the Assembly]

The Assembly insists that providing an adequate response to the needs of refugees, returnees and internally displaced persons (IDPs) and enacting a government strategy to find durable solutions for their voluntary and sustainable return or local integration should be much higher on the political agenda in all countries of the region. In order to achieve these goals, the governments should set out clear legal and institutional frameworks and necessary financial resources. The criteria for priority assistance should be based on vulnerability.

It is of concern that some returnees and IDPs still fail to regularise their status due to the lack of valid documents. The lack of status precludes them from access to their socio-economic rights.

The Parliamentary Assembly therefore recommends that the Committee of Ministers urge the governments of Croatia, Bosnia and Herzegovina, Serbia, UNMIK and the Provisional Institutions of Self-Government (PISG) in Kosovo, the governments of Montenegro and "the former Yugoslav Republic of Macedonia" to:

– enact the national action plans for lasting solutions for refugees, returnees and internally displaced persons, by setting out a clear legal and institutional framework and by providing the necessary financial resources;

– simplify and speed up the process of status determination, with a view to facilitate local integration;

– facilitate access of refugees, IDPs and returnees to information on their rights under domestic law and to fully support, including financially, free legal aid and assistance provided by Ombudspersons and local ONG;

– fully implement the provisions of the Council of Europe Framework Convention for the Protection of National Minorities;

With a view to strengthening political and economic stability in the region, it urges the member states of the Council of Europe to continue to support the process of voluntary return and local integration with financial assistance and expertise; and to make voluntary contributions to the specific programmes of the Council of Europe which aim to strengthen the protection of human rights, the rule of law and democracy in the region.

It urges also the European Union to continue to support the process of voluntary return, including by establishing clear criteria and benchmarks to safeguard the rights and interests of returnees, and to support local integration with financial assistance and expertise; and to financially support the specific programmes of the Council of Europe which aim to strengthen the protection of human rights, the rule of law and democracy in the region.

The Assembly calls on UNHCR and OSCE to maintain their regional and field presence in order to fulfil their advocacy and monitoring role, further assist building local capacities.

The Assembly's Internet site: http://assembly.coe.int/

Commissioner for Human Rights

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

Terms of reference

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.

Functions of the Commissioner for Human Rights

Country visits

Official visits

Austria, 21-25 May 2007

During his visit, the Commissioner met with members of the federal and Länder governments, ombudspersons and civil society representatives. Seven institutions or sites with human rights relevance were visited. The issues discussed included constitutional reform, the length of asylum procedures, freedom of expression and police complaints mechanisms.

According to Thomas Hammarberg, the length of asylum procedures should be cut down, and the use of pre-deportation detention should be reduced. In relation to the Government's policy on immigration, the Commissioner said that the quotas for family reunification should be reviewed.

Mr Hammarberg also pointed out that the Government should prevent the occurrence of ill-treatment by the police through increased human rights training and the use of a more representative recruitment system.

Bosnia and Herzegovina 4-8 June 2007

During his visit, the Commissioner focused on the situation of internally displaced people and returnees, the rights of the Roma Community and other minorities, the rights of women, children and youth, as well as education. The complicated administrative structure of the country and possible constitutional reform were also discussed during the visit. The Commissioner met with members of the state and entity-level governments, other state and local authorities, the Ombudsman and representatives of civil society. He visited a refugee reception centre and met with groups of IDPs and refugees.

Contact visits

Cyprus, 3-4 May 2007

Thomas Hammarberg visited Cyprus to engage in a dialogue with government ministers, national human rights structures, international representatives and NGOs working for reconciliation and human rights on the divided island.

In talks with the Cypriot authorities, the Commissioner stressed the need for Cyprus to ratify the Council of Europe Convention on Action against Trafficking in Human Beings, and the Optional Protocol to the UN Conven-

tion against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Difficult human rights issues stemming from the conflict, affecting both communities, and the division of the island were covered in discussions with all interlocutors.

Moldova, 8-9 May 2007

The Commissioner made a contact mission to Moldova to discuss the human rights situation in the country with the state authorities; he also held meetings with representatives of civil society and Ombudspersons ("parliamentary advocates"). Penitentiary Institution n° 4 in Cricova and a pre-trial detention centre in Chisinau were also inspected. The visit focused on the human rights situation, with a view to evaluating both positive developments and recent shortcomings.

Other visits

Bosnia and Herzegovina, 20-21 April 2007

After consultations in New York with Security Council members, the Commissioner visited Sarajevo to conduct further discussions on solutions to the issue of the Bosnian police officers who had been decertified by the UN International Police Task Force.

Poland, 28-29 June 2007

The Commissioner for Human Rights visited Poland to hold high-level meetings following his recent Memorandum on the Polish human rights situation. He met with Polish Prime Minister, the Justice Minister, and the Ombudsman. He also discussed the Memorandum's conclusions with representatives of civil society and human rights experts.

The discussion with the Prime Minister, Mr Kaczynski, focused on overcrowding in prisons, the rights of the Lesbian, Gay, Bisexual and Transgender (LGBT) community, as well as homophobia in Poland. Mr Hammarberg also stressed the importance of the revised European Social Charter and appealed for a Polish ratification. The Prime Minister welcomed the Commissioner's Memorandum and agreed to continuing dialogue on human rights.

Events organised by the Office of the Commissioner

10th Round Table of national Ombudsmen of Council of Europe member states Athens, 12-13 April 2007

The meeting, organised by the office of the Commissioner for Human Rights together with the Ombudsman of Greece, was also attended by heads of National Human Rights Institutions (NHRIs) and a number of selected international experts. LINKS

The meeting launched a new phase of co-operation to help implement European human rights standards across member states in line with recommendations made by the Group of Wise Persons in November 2006. Ombudsmen and National Human Rights Institutions agreed to nominate focal points for co-operation with the Office of the Commissioner for Human Rights, and several countries pledged to participate in pilot projects on specific cases, including the representatives of Austria, Belgium, Hungary and France.

Round Table on human rights Strasbourg, 17 April 2007

The Commissioner organised this round table as a side event of the PACE debate in order to discuss the challenges and perspectives for ensuring better protection and promotion of human rights in Europe. Leading representatives of the UN, OSCE and EU as well as key non-governmental human organisations took part.

The objective of this informal but high level gathering was to bring together the representatives of key institutions, inter-

governmental as well as non-governmental, and to engage in a genuine debate concerning the implementation of human rights standards in Europe. The debate was centered around two main questions: the obstacles hindering the effective implementation of agreed standards and the existing institutional structure to ensure better protection of human rights.

Workshop "Human Rights challenges in the fight against terrorism: protecting the right to privacy"
Strasbourg, 1 June 2007

This workshop brought together a select number of data protection and human rights experts from a variety of backgrounds, including data protection ombudsmen, government experts, representatives from international organisations and privacy NGOs. The experts discussed, among other themes, the legal framework of privacy rights in Europe, governmental justifications for interference, personal data collection and processing, passenger name screening, as well as surveillance and terrorist profiling methods.

Reports

The Commissioner's annual report 2006 was presented to the Council of Europe Ministers' Deputies on 11 April 2007.

On 16 May 2007, the Commissioner presented memoranda on the state of human rights in Latvia, Lithuania and Sweden, to the Council of Europe Ministers' Deputies. Prepared after a visit by members of his office, the memoranda contain an assessment of progress in implementing the previous Commissioner's recommendations. On the basis of the delegations' findings, Mr Hammarberg had initiated an exchange with the respective governments and is now submitting updated recommendations. The Commissioner said he would welcome a further dialogue with all three governments

On 20 June 2007, the Commissioner for Human Rights presented a Memorandum on Poland's human rights record to the Council of Europe's Committee of Ministers. The document looks at whether the problems identified in a report by the previous Commissioner have been addressed by the government. It also lists a number of new recommendations.

Other events

Colloquy on the future role of the European Court of Human Rights
San Marino,
22-23 March 2007

At this colloquy organised by the Council of Europe's San Marino Chairmanship, Commissioner Hammarberg presented a series of proposals on strengthening co-operation with ombudsmen and National Human Rights Institutions in order to safeguard the long-term effectiveness of the European Convention on Human Rights. The Commissioner described the measures as part of an effort to further develop a "human rights conscience" in member states, at all levels of society.

The colloquy provided an opportunity for an open exchange of views on the reform measures recommended by the Group of Wise Persons in November 2006.

Plenary session of the Parliamentary Assembly of the Council of Europe
Strasbourg, 18 April 2007

The Commissioner participated in the plenary debate of the Parliamentary Assembly on the state of human rights in Europe. With reference to the PACE report on the state of human rights and democracy in Europe, Thomas Hammarberg underlined the implementation deficit of human rights. While outlining the major human rights concerns in Europe, he pointed out that national action plans could be used to improve the implementation of human rights at the national level.

Conference on "The Religious Dimension of Intercultural Dialogue" San Marino, 23 April 2007

During this Conference, organised under the San Marino chairmanship of the Council of Europe Committee of Ministers, the Commissioner underlined the connections between human rights work and religious practices particularly in terms of core ethical values of religions.

International Conference "Why terrorism?" Strasbourg, 26 April 2007

Commissioner Thomas Hammarberg addressed a Council of Europe international conference on the fight against terrorism. An initiative of the Council of Europe Committee of Experts on Terrorism (CODEXTER), the conference brought together experts from member and observer states as well as representatives of NGOs, academia and international organisations.

"Nothing can justify or excuse acts of terrorism. These crimes shall never be trivialised or explained away, they have to be condemned strongly," the Commissioner said in his introduction. "Unfortunately, the protection of human rights has been presented as an obstacle to an effective work against terrorism. This has been a gigantic mistake, the damage of which is still hurting on a global level. […] Marginalization, misery and other human rights deficits seem to breed an atmosphere in which extremist leaders can recruit young people for violent actions," the Commissioner said.

Council of Europe Forum 2007 for the Future of Democracy Stockholm, 13 June 2007

The Forum brought together representatives of public authorities and civil society from 47 Council of Europe Member States, as well as Observer States. It was organised by the Swedish Government, the Swedish Parliament and the Swedish Association of Local Authorities and Regions.

In his opening address, Thomas Hammarberg pointed out that respect for all human rights is a necessary condition for a flourishing democracy where everyone is empowered. During the Forum, the Commissioner also made a presentation on systematic work for human rights and the usefulness of national action plans in co-ordination such work.

Information work

Viewpoints

Fortnightly viewpoints have been published on the discrimination of Roma job seekers, lessons of the military take-over in Greece 40 years ago, independence of judges, homophobia, profiling in the fight against terrorism, freedom of expression and the respect for religions, as well as the democratic control of security agencies.

The earlier viewpoints are now available as a single publication - Human rights in Europe: Mission Unaccomplished.

All these texts are available on the Commissioner's website: http://commissioner.coe.int

Appeals, statements, speeches

On 7 March 2007, on the eve of International Women's Day, Council of Europe Parliamentary Assembly President René van der Linden and Human Rights Commissioner Thomas Hammarberg stressed that domestic violence is one of the most widespread violations of human dignity. They invited the member states to step up their efforts to implement the programme of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence (2006-2008).

On 3 May 2007, on the World Press Freedom Day, the Commissioner replied to online questions on media professionals in times of crisis.

Thomas Hammarberg made public statements on the decertification of police officers in Bosnia-Herzegovina and on the tragedies experienced by migrants on the Mediterranean sea.

Co-operation with international organisations

European Union

The Commissioner for Human Rights attended a meeting of the EU Council Working Group on the OSCE and Council of Europe discussing co-operation between the European Union, ODIHR and the Council of Europe on human rights.

Brussels, 27 April 2007

The Commissioner for Human Rights met with the EU Commissioner for External Relations Benita Ferrero-Waldner to discuss the results of his recent visits and the intensification of co-operation with the European Parliament, the European Commission, and the Fundamental Rights Agency.

Strasbourg, 19 June 2007

United Nations

The Commissioner visited the UN High Commissioner for Human Rights Louise Arbour and the Office of the Commissioner for Refugees. The discussions focused on specific country situations, in particular those recently visited by the Commissioner, and the offices' thematic priorities and modalities for closer co-operation.

Geneva, 3-4 April 2007

The Commissioner met with the UN High Commissioner for Refugees, António Guterres; the themes of discussion included rescue at sea and the need for burden-sharing, the increased use of tolerated stay for those seeking asylum, internal displacement in Chechnya and the issue of statelessness.

Strasbourg, 27 June 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.

New President for CPT

The CPT has elected Mauro Palma, an Italian specialist on prison issues, as its new President on 9 March 2007. He succeeded to Silvia Casale, who has stepped down from the Presidency, following her election as the Chairperson of the new United Nations Subcommittee on Prevention of Torture.

Upon election, Mr Palma stated: "My election at the time of International Women's Day gives me the opportunity to underline the CPT's commitment to the Council of Europe campaign to combat violence against women. The Committee I have the honour to chair contributes to the campaign's goal by paying close attention to the treatment and conditions of detention of women deprived of their liberty. Women in detention constitute a particularly vulnerable category of prisoner. Consequently, they should benefit from specific safeguards in order to reduce to a minimum the suffering inherent in their deprivation of liberty".

CPT's public statement

On 13 March 2007, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment issued a public statement concerning the Chechen Republic of the Russian Federation.

This public statement was made under Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which provides that: *if a Party to the Convention "fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."*

This was the third time the CPT has made a public statement concerning the Chechen Republic. The previous statements were made in July 2001 and July 2003.

Text of the Statement

Public statement concerning the Chechen Republic of the Russian Federation (made on 13 March 2007)

Since February 2000, the CPT has carried out numerous visits to the Chechen Republic. On the basis of its visit reports, the Committee has sought to maintain a constructive dialogue with the Russian authorities. On two occasions, in July 2001 and July 2003, the CPT felt obliged to have resort to its power to make a public statement, in view of the failure to improve the situation in the light of the Committee's recommendations. Almost four years later, that stage has regrettably been reached once again.

The most recent CPT visits to the Chechen Republic were organised in April/May and September 2006. The Committee found that in some respects – notably as regards material conditions of detention - there had been definite progress. Moreover, no allegations were received of ill-treatment of prisoners by staff of the penitentiary establishments visited.

However, the CPT remains deeply concerned by the situation in key areas covered by its mandate. Resort to torture and other forms of ill-treatment by members of law enforcement agencies and security forces continues, as does the related practice of unlawful detentions. Further, from the information gathered, it is clear that investigations into cases involving allegations of ill-treatment or unlawful detention are still rarely carried out in an effective manner; this can only contribute to a climate of impunity.

After each of the visits in 2006, the CPT's delegation immediately made detailed written observations. The reactions of the Federal authorities were not commensurate with the gravity of the Committee's findings, and the same is true of the comments which they have recently made in response to the report on the two visits adopted in November 2006. Although displaying an open attitude on subsidiary matters related to conditions of detention, the Russian authorities consistently refuse to engage in a meaningful manner with the CPT on core issues. This can only be qualified as a failure to co-operate.

The public statement procedure set in motion by the CPT in October 2006 covered in particular the issues of ill-treatment by staff of ORB-2 (Operational/ Search Bureau of the Main Department of the Ministry of Internal Affairs of Russia responsible for the Southern Federal Region), unlawful detentions and the effectiveness of investigations into cases involving allegations of ill-treatment. Detailed recommendations have been made by the CPT on each of these subjects; to date, they have received at most a token response and in many respects have quite simply been ignored. Instead of reformulating in this statement the issues concerned, the CPT has chosen to make public the relevant extracts of its visit report and of the Russian authorities' comments; the Committee believes that this material speaks for itself.

The CPT remains committed to continuing its dialogue with the competent authorities, at both Federal and Republican level, in relation to the Chechen Republic and is prepared to organise further visits to that part of the Russian Federation. However, for such activities to be worthwhile, all sides must be willing to play their part fully in the light of the values to which the Russian Federation has subscribed.

Periodic visits

Greece
20-27/2/2007

The main objective of the visit 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 health-care service.

Bosnia and Herzegovina
19/3/2007

The second visit to Bosnia and Herzegovina provided an opportunity to assess the progress made since the first periodic visit in April/May 2003 and the ad hoc visit in December 2004. The CPT's delegation examined in detail various issues related to prisons, including the regime and treatment of remand prisoners and of those prisoners placed in administrative and disciplinary isolation. The delegation also focused its attention on the situation of forensic psychiatric patients and looked into the treatment of patients at a psychiatric hospital, and of residents in two social care homes. Particular attention was also paid to the treatment of persons detained by the police and to the practical operation of the safeguards in place.

Kosovo
21-29/3/2007

The first visit to Kosovo of the CPT was carried out on the basis of an agreement signed in August 2004 between the Council of Europe and the United Nations Interim Administration in Kosovo (UNMIK) and an exchange of letters concluded in 2006 between the Secretaries General of the Council of Europe and the North Atlantic Treaty Organisation (NATO).

The delegation examined the treatment of detained persons and the conditions of detention in a variety of establishments throughout Kosovo, including police stations, penitentiary establishments and psychiatric/social welfare institutions. It also visited the detention facilities at the United States military base Camp Bondsteel where persons may be detained under the authority of KFOR.

In the course of the visit, the delegation held consultations with Mr Joachim Rücker, Special Representative of the Secretary-General of the United Nations in Kosovo (SRSG), Mr Steven P. Schook, Principal Deputy SRSG, and representatives of the Provisional Institutions of Self-Government, including the Minister of Health, the Minister of Labour and Social Welfare, the Minister of Justice, and the Minister of Internal Affairs, as well as senior officials of UNMIK and the Provisional Institutions of Self-Government. It also met the Acting Ombudsman of Kosovo, and representatives of various International Organisations and NGOs.

In the context of its visit to Camp Bondsteel, the delegation met Brigadier General Albert Bryant, Chief of Staff of KFOR.

At the end of the visit, the delegation provided the relevant authorities with its preliminary observations. The full visit reports will be transmitted respectively to UNMIK and NATO in due course.

Georgia
21/3/2007

The CPT did its third visit to Georgia. The delegation assessed progress made as regards the treatment of persons detained by the police and the practical operation of the safeguards in place. In the area of prisons, the visits to two recently opened establishments provided an opportunity to examine the effect of the on-going reform of the penitentiary system. At the same time, particular attention was paid to the treatment of remand prisoners in Tbilisi and Zugdidi. 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 new Law on Psychiatric Care. Further, the delegation visited for the first time in Georgia a special school for juvenile delinquents.

Croatia 4/5/2007

This third periodic visit provided an opportunity to review the action taken by the Croatian authorities to improve the treatment of persons detained by the police and the practical operation of the safeguards in place. In the area of prisons, particular attention was paid to the treatment and regime of prisoners serving very long terms and of remand prisoners. Further, the delegation visited for the first time the only re-education institution for girls and young women in Požega. The delegation also examined the situation of adults with psychiatric disorders or intellectual disabilities in a social care home in Pula and paid a follow-up visit to Vrapce Psychiatric Hospital.

Estonia 9-18/5/2007

The visit, the fourth to this country, provided an opportunity to review the progress made since the previous visit in 2003. Particular attention was paid to the treatment of persons detained by the police (including during the disturbances that took place in Tallinn at the end of April 2007), as well as to the conditions of detention in police arrest houses and prisons. The situation of life-sentenced and juvenile prisoners was explored in depth. The delegation also examined the treatment and living conditions of patients/residents in a psychiatric hospital and a social care home.

Turkey 20-22/5/2007

A delegation of the CPT visited Imrali Closed Prison, where it examined the treatment of that establishment's sole inmate, Abdullah Öcalan. Aspects of this prisoner's situation considered by the delegation included his conditions of detention, the application in practice of his right to receive visits from his relatives and lawyers, and his state of health.

The delegation met the Minister of Justice, Mr Fahri Kasirga, and provided him with its preliminary observations.

Netherlands 4-14/6/2007

The CPT carried out its fourth periodic visit to the Kingdom of the Netherlands, and it included visits to establishments in the Kingdom in Europe as well as in Aruba and in the Netherlands Antilles.

The visit to the Kingdom in Europe:

The CPT's visit to the Kingdom in Europe provided an opportunity to examine recently opened detention facilities, such as the Terrorist departments in 'De Schie' and 'Vught' Prisons, and immigration detention centres in Rotterdam and Dordrecht. The delegation also reviewed the treatment of juveniles in an establishment for youth detention.

The visits to Aruba and the Netherlands Antilles:

In the course of the visit to Aruba, the delegation the delegation examined the measures taken by the authorities of Aruba in response to the recommendations made by the Committee following its visit in 1994. It visited the Correctional Institution of Aruba (KIA) and the police stations of Noord, Oranjestad, and San Nicolaas. The delegation also visited the 'Centro di Deportacion' for immigration detainees.

The delegation examined the measures taken by the authorities of the Netherlands Antilles in response to the recommendations made by the Committee following its visit in 2002 to Bon Futuro Prison, including the Police Detention Unit (Block No. 1). It also visited three other police establishments in Curaçao: Barber, Punda, and Rio Canario police stations, as well as the 'Illegalen Barakken' for immigration detainees.

The CPT's delegation also visited, for the first time, the island of Bonaire, in particular the Remand Prison and Kralendijk and Rincon police stations.

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.

Croatia

Report on the 2nd periodic visit (2003), together with the authorities' response

In the course of the 2003 visit, the CPT found that, although the number of allegations of ill-treatment of persons in police custody was lower than during the first periodic visit in 1998, police ill-treatment continued to represent a problem. In its report, the Committee recommended that a high priority be given to police training and that the fundamental safeguards against ill-treatment (in particular, the rights of notification of custody, access to a lawyer and access to a doctor) be considerably strengthened.

The allegations received during the 2003 visit of physical ill-treatment of prisoners by staff at Osijek and Split County Prisons and Lepoglava State Prison represented a disturbing departure from the generally favourable situation found in 1998. The CPT recommended that the authorities deliver the clear message to prison officers throughout the country that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions.

The report also contains recommendations aimed at combating prison overcrowding, enhancing the provision of activities to inmates, improving the health care provision and increasing prison staffing levels.

Hardly any allegations of ill-treatment of patients by staff were received at Vrapce Psychiatric Hospital, and none at Nuštar Social Care Home. Material conditions at these establishments were generally satisfactory, with the exception of the forensic psychiatric and male chronic units at Vrapce Psychiatric Hospital. As regards treatment, the CPT recommended an increase in the range of therapeutic, rehabilitative and recreational activities; this will require more qualified staff.

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

Germany

Report on the fifth periodic visit (November/December 2005) together with the authorities' response

The CPT received no allegations of recent physical ill-treatment of persons during their period of custody in police establishments. However, a number of allegations of excessive use of force by police officers at the time of apprehension were heard.

Particular attention was once again paid to the conditions under which immigration detainees were detained pending their removal. In this connection, the CPT welcomes the significant improvements made at the Eisenhüttenstadt Detention Centre, following its first visit to the establishment in 2000. However, the Committee severely criticises the conditions under which immigration detainees were held at Hamburg Remand Prison.

The CPT examined in detail the conditions of detention of juveniles (at Hameln and Weimar) and remand prisoners (at Halle), while, at Berlin-Tegel, it focused on the Special Security Unit (Besondere Sicherungsstation) and the Unit for Secure Placement (Sicherungsverwahrung). The Committee expressed serious concern about the level of inter-prisoner violence and intimidation observed at Halle and the two juvenile prisons visited.

The CPT also visited two psychiatric establishments, the Nordbaden Psychiatric Centre in Wiesloch and Neustadt Psychiatric Centre (psychatrium GRUPPE). At Wiesloch, the Committee noted striking improvements since its first visit to the Centre in 2000. However, at both centres visited, the frequency and seriousness of allegations of inter-patient violence and harassment in certain forensic units gave rise to particular concern.

Finally, in various establishments visited, shortcomings were found regarding the modalities of Fixierung (the physical fixing to a bed/mattress) of agitated inmates/patients. A number of specific recommendations have been made by the Committee on this subject.

In their response, the German authorities provide detailed information on the measures taken to implement the recommendations made by the CPT in the visit report.

Monaco

Report on first visit (March 2006), together with the response of the Government

The report contains, in particular, recommendations to strengthen fundamental safeguards against ill-treatment of persons deprived of their liberty by the police, and to improve the conditions of detention in Monaco remand prison, the only prison establishment in the Principality. The situation of involuntary psychiatric patients is also examined. The response of the Government of Monaco describes the measures taken to implement the Committee's recommendations.

Ukraine

Report on the 2005 visit, together with the response of the Ukrainian Government

The 2005 visit revealed a slight reduction as regards the scale of the phenomenon of ill-treatment. Nevertheless, the report concludes that persons detained by the police continue to run a significant risk of being subject to ill-treatment, in particular during the phase of initial questioning by operational officers. The CPT has recommended that a clear message of "zero tolerance" of torture and other forms of ill-treatment be delivered from the highest level and at regular intervals to all Internal Affairs staff. Other recommendations made in the report aim at strengthening the fundamental safeguards against ill-treatment (in particular, the rights of notification of custody, access to a lawyer and access to a doctor). The CPT has also called upon the Ukrainian authorities to put an end to the practice of holding persons in district police stations for periods exceeding a few hours.

Particular attention was paid during the visit to the situation of foreign nationals detained under aliens legislation. A significant number of them complained about ill-treatment by Border Guard staff. Conditions at the Pavshino Temporary Holding Centre for men were so inadequate that the CPT's delegation had requested its closure and the setting up of new facilities. In their response, the Ukrainian authorities indicate that two new holding centres for foreign nationals are being built in the Volyn and Chernigiv regions; in the meantime, steps are being taken to improve conditions of detention at the Pavshino Centre.

No allegations of recent physical ill-treatment of prisoners by staff were heard, except at Colony No.100 for men in Temnivka (Kharkiv region), where a number of inmates alleged having been beaten when transferred to the disciplinary and isolation section. Material conditions of detention in Colony No. 65 for women in Bozhkivske (Poltava region) and Colony No. 100 were the best ever seen by a CPT delegation in Ukraine. However, at Colony No. 65, the delegation observed a general state of physical and mental exhaustion among the women, as a result of the work-rate imposed upon them.

During the 2005 visit, close attention was also given to the situation of prisoners sentenced to life imprisonment. No improvements were observed as regards the treatment of life-sentenced men, despite previous recommendations by the CPT. The Committee has called upon the Ukrainian authorities to take a number of steps in this area, including to stop the systematic handcuffing of such prisoners when taken out of the cells and to increase substantially their entitlement to visits.

Hungary

Report on the *ad hoc* visit (January/February 2007), together with the authorities' response

The 2007 visit focused on the situation at Szeged Prison's Special Regime Unit for prisoners serving lengthy sentences (HSR Unit), a unique facility within the Hungarian prison system for inmates serving very long terms and requiring closer attention and support. The CPT's report assesses how this Unit has functioned in practice since its setting-up following the Committee's last periodic visit in 2005.

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 11 May 2007, the Republic of Montenegro became 47th Council of Europe member state. It declared that it considers itself signatory to the Revised Charter in respect of the signature of this instrument by the State Union of Serbia and Montenegro on 22 March 2005.

Latvia and Germany signed the Revised Social Charter respectively on 29 May 2007 and 29 June 2007.

To date 43 member states of the Council of Europe have signed the Revised Charter. The remaining 4 member states have signed the 1961 Charter. 39 states have ratified either of the two instruments (16 the 1961 Charter and 23 the Revised Charter).

See Appendix: Simplified chart of ratifications of European human rights treaties, page 121.

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.

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)

At its 223rd session (25-29 June 2007) the ECSR adopted Conclusions XVIII-2, which have been published on the Charter's Web site.

Starting with its 224th session, in September 2007, and in keeping with the new system, the ECSR will examine reports which relate to the first of the four themes: employment, training and equal opportunities (Articles 1, 9, 10, 15, 18, 20, 24 and 25).

Significant meetings

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

The meetings which took place in Madrid and Budapest were organised in the framework of the implementation of the project "Guaranteeing social rights for all through wider application of the European Social Charter".

Madrid (Spain), 26-28 March 2007

The Seminar provided Spanish authorities with complete information with the aim to a wider application of the European Social Charter, in order to ensure effective fundamental social rights in Spain and to encourage these authorities to ratify the Revised European Social Charter and the Protocol of collective complaints.

Budapest (Hungary), 9-10 May 2007

TheSeminar laid emphasis on the evolution of social rights in Eastern European countries, especially in the new member States of the European Union, since the 1990s.

The Hungarian authorities are in the process of preparing the ratification of the Revised Charter.

Joint Programme Council of Europe/European Union

Baku (Azerbaijan), 20-21 June 2007

Representatives of several ministries competent in the matters covered by the Charter, of the Office of the President of the Republic, of the Parliament, of the Office of the Ombudsman, as well as social partners and members of competent NGOs were present at this training Seminar.

Contributions followed by debates, in particular on the system for the presentation of reports and the interpretation of the Charter by the ECSR, resulted in the Azeri authorities revising the first draft report on the application of the Charter.

Others

Parliamentary Assembly

On 24 May 2007 the Standing Committee, on behalf of the Parliamentary Assembly, adopted the Recommendation 1795 on "monitoring of commitments concerning social rights" in which it recommends in particular that the Committee of Ministers and the Governmental Committee take necessary measures to strengthen the follow up of the monitoring of the application of social rights.

Furthermore, following the debate which took place on 26 June 2007 on the report entitled "Europe's social dimension: full implementation of the revised European Social Charter and evaluation of new labour regulations and minimum wages", the Parliamentary Assembly adopted a Resolution (No. 1559 (2007)) proposing "that regular social policy debates be held in support of the member States' efforts to give the Charter a bigger role when social policy instruments are being prepared in an enlarged Europe". It was also proposed "that the Sub-Committee on the Charter and The European Committee of Social Rights work together on guidelines to supplement the text, embodying minimum standards to govern opening of the labour, service and location markets".

Collective complaints: latest developments

Decisions on the merits

Four decisions on the merits have been published:

1.In the complaint (No. 30/2005) lodged against **Greece** by Marangopoulos Foundation for Human Rights, it was

alleged that in the main areas where lignite is mined, the state has not adequately prevented the impact for the environment nor developed an appropriate strategy in order to prevent and respond to the health hazards for the population. It was also alleged that there was no legal framework guaranteeing security and safety of persons working in lignite mines and that the latter do not benefit from reduced working hours or additional holidays.

The European Committee of Social Rights (ECSR) concluded that there was a violation:

- of Article 2§4: right to reduced working hours or additional holidays for workers in dangerous or unhealthy occupations,
- of Article 3§2: provision for the enforcement of safety and health regulations by measures of supervision,
- of Article 11§§1-3: right to protection to health, appropriate measures designed to remove as far as possible the causes of ill-health and to provide advisory and educational facilities for the promotion of health and prevention of diseases
- and that there was no violation of Article 3§1: issue of safety and health regulations.

2.In the complaint (No. 31/2005) lodged against **Bulgaria** by European Roman Rights Center it was alleged that the situation of Roma in Bulgaria amounted to a violation of the right to adequate housing.

The ECSR concluded that there was a violation of Article 16 of the Revised Charter (right to social, economic, and legal protection) taken together with Article E (non-discrimination).

3.In the complaint (No. 32/2005) lodged against **Bulgaria** by European Trade Union Confederation, Confederation of Independent Trade Unions in Bulgaria, and Confederation of Labour "Podkrepa" it was alleged that Bulgarian legislation restricted the right to strike in the health, energy and communications sectors as well as for civil servants and railway workers, in a way that is not in conformity with the Revised Charter.

The ECSR concluded to the violation of Article 6§4 of the Charter (right to strike).

4.In the complaint (No. 34/2006) lodged against **Portugal** by the World Organisation against Torture it was alleged that domestic law did not explicitly nor effectively prohibit all corporal punishment of children.

The ECSR concluded to the violation of Article 17 (right of children and young persons to social, legal and economic protection) of the Revised Charter.

Decisions on admissibility

Four complaints have been declared admissible.

European Council of Police Trade Unions v. France (No. 38/2006)

It is alleged that the 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, which means that the situation is not in conformity with Article 4§2.

European Federation of National Organisations Working with the Homeless v. France (No. 39/2006)

It is alleged that the manner in which legislation related to housing is implemented in France results in a situation of non conformity with Article 31.

European Council of Police Trade Unions v. Portugal (No. 40/2007)

It is alleged that in Portugal police officers do not enjoy the right of collective bargaining, the right to information and consultation, and the right to take part in the determination and improvement of working conditions and working environment.

Mental Disability Advocacy Centre v. Bulgaria (No. 41/2007)

It is alleged that Bulgaria does not respect Article 17§2 taken alone and in conjunction with Article 4 (non-discrimination) of the Revised Charter, because children living in homes for mentally disabled children receive no education.

New collective complaints

One new complaint (No. 43/2007) was registered on 17 April 2007: *Sindicato dos Magistrados do Ministerio Publico (SMMP) v. Portugal* .

It is alleged that staff of the Public Prosecutor's Office in Portugal are excluded from the Social Welfare Service of the Ministry of Justice (Legislative Decree No. 212/2005 of 9 December 2005).

Publications

The European Social Charter (revised) has been published in Armenian and Azeri (exists also in English, French, Bosnian, Croatian, Dutch, German, Italian, Norwegian, Polish, Portuguese, Romanian, Russian, Slovenian and Spanish).

The Social Charter at a glance has been published in Azeri (exists also in English, French, Albanian, Croatian, Dutch, Georgian, German, Italian, Polish, Romanian, Russian, Slovenian Spanish 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

The Advisory Committee for the Protection of National Minorities adopted second Opinions on the United Kingdom, Cyprus and Austria.

The Advisory Committee's second Opinion on the Russian Federation, adopted on 11 May 2006, was made public on 2 May 2007.

Extracts from the Opinion:

Advisory Committee's Opinion on Norway

"Since the adoption of the Advisory Committee's first Opinion in September 2002, the Russian Federation has continued to pay attention to the protection of national minorities, and certain subjects of the Federation have taken steps to consolidate existing federal norms pertaining to minority protection in their respective laws and regulations. A number of programmes have been introduced aimed at promoting a spirit of tolerance and inter-cultural dialogue. In most subjects of the federation there is a lively minority language print media. Positive initiatives in the field of minority education should be developed further.

The situation of persons belonging to national minorities has nevertheless experienced a number of set-backs since the adoption of the first Opinion. There has been an alarming increase in the number of racially motivated crimes in recent years and hate speech has become more prevalent in the media. Incidents of discrimination, including in access to residency registration, remain high.

Negative trends have been noted as regards access for numerically small indigenous peoples to land and other natural resources. The situation of persons belonging to national minorities in the Northern Caucasus is particularly disturbing, with incidents of violence and intolerance reported in a number of regions.

Efforts are needed to ensure the effective participation of persons belonging to national minorities in both elected bodies and consultative organs at the federal level and in the subjects of the Federation."

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.

Resolutions of the Committee of Ministers were also adopted in respect of Romania (23 May 2007), Ireland (21 June 2007) and Norway (20 June 2007).

A **follow-up meeting** on the implementation of the Framework Convention for the Protection of National Minorities was organised in Finland. Meetings also took place in Kosovo.

Intergovernmental activities

During the Committee of Experts on Issues relating to the Protection of National Minorities' last meeting, discussions centered about five Parliamentary Assembly Recommendations pertaining to the situation of national

minorities, about which the Committee adopted comments: Recommendation 1772 (2006) on the rights of national minorities in Latvia, Recommendation 1775 (2006) on the situation of Finno-Ugric and Samoyed Peoples, Recommendation 1735 (2006) on the concept of nation, on Recommendation 1773 (2006) on 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 and Recommendation 1740 (2006) on the place of mother tongue in school education.

The Committee agreed to pursue further its work on access of national minorities to new media. Itsent its members a questionnaire on the matter.

In respect of the proposal to address the promotion of use of native languages in minority communities, the Committee decided to invite States to introduce at its next meeting case-studies of good practices and to invite the President of the Committee of Experts of the European Charter for Regional or Minority Languages to provide information on its work in this field.

NGO Training

The Secretariat of the Framework Convention for the Protection of National Minorities and Minority Rights Group International organised, in June 2007, a training session for NGOs on the use of the Framework Convention for the Protection of National Minorities as an advocacy tool.

The object of the training session was to support and strengthen NGO participation in the Framework Convention monitoring process and to ensure its effective implementation in the field.

The training session provided an overview of international instruments and mechanisms for minority protection with an in-depth focus on the Framework Convention, its monitoring mechanisms and opportunities for civil society to contribute to strengthening the implementation of the Framework Convention in this field.

The NGO training sessions have traditionally focused on countries which are currently the subject of monitoring. this year: Albania, Azerbaijan, Georgia, the Netherlands, Poland and Ukraine).

Other activities

A Round table was held in the Republic of Servia, in May 2007, entitled “Presentation of Expert opinion on Draft law on Elections for and Powers of National Councils of National Minorities”.

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

European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance is an independent human rights body monitoring issues related to racism and racial discrimination in the 47 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

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.

Four new reports: Azerbaijan, Finland, Ireland and Monaco

On 24 May 2007, ECRI published four new reports on Azerbaijan, Finland, Ireland and Monaco.

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

Azerbaijan

Access to public school for children of non-citizens without legal status has been improved. But there are still cases of racist and inflammatory speech or the promotion of religious intolerance by some media, members of the general public and politicians. In general, there is a lack of awareness on the part of the Azerbaijani population on the problem of racism and intolerance in Azerbaijan and of the relevant existing criminal, civil and administrative law provision aimed at combating such phenomena.

Finland

Finland has ratified Protocol No. 12 to the European Convention on Human Rights and strengthened its legal and institutional frameworks against racism and racial discrimination. But there is a need for a more consistent public commitment against racism and racial discrimination in all its forms in order to promote genuine ownership by society as a whole of the fight against these phenomena. The implementation of the existing institutional and legal frameworks against racism and racial discrimination still needs to be improved, including through evaluation measures.

Ireland

A National Action Plan Against Racism was launched in 2005, and a number of recommendations made by the Human Rights Audit on the police force regarding combating racism and racial discrimination are currently being implemented. But the criminal legislation has not been amended to include sufficiently strong provisions for combating racist acts which affect in particular visible minorities and Travellers. Further measures are necessary to raise members of minority groups' awareness of existing mechanisms for seeking

redress against racism and racial discrimination.

Monaco

The authorities have enacted a law on freedom of public expression, which punishes incitement to racial hated. But the Principality still needs to adopt anti-discrimination provisions in civil and administrative law as well as criminal law provisions for punishing racist acts. The racist motivation of a crime is not regarded as an aggravating circumstance at the time of sentencing. Procedural safeguards are needed with regard to persons subject to a turning back or deportation order.

The publication of ECRI's country-by-country reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member States with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

In Spring 2007, ECRI carried out contact visits to Andorra, Latvia, the Netherlands and Ukraine, as part of the process of preparing third round reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

Work on general themes

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 usually takes 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 eleven 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, Islamophobia in Europe, racism on the Internet, racism while fighting terrorism, anti-semitism, racism and racial discrimination in and through school education, racism and racial discrimination in policing.

Combating racism and racial discrimination in policing

ECRI adopted its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing on 29 June 2007. This Recommendation aims to help the police to promote security and human rights for all through adequate policing and covers racism and racial discrimination in the context of combating all crime, including terrorism. It stresses the importance of providing effective safeguards against racist acts committed by the police, to ensure respect for fundamental human rights and that all segments of society have confidence in the police, thereby enhancing overall security. This Recommendation focuses particularly on racial profiling, racial discrimination and racially motivated misconduct by the police, the role of the police in combating racist offences and monitoring racist incidents, and relations between the police and members of minority groups.

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.

Press Conference in Paris

On 24 May 2007 Ms Eva Smith Asmussen, ECRI's Chair, held a press conference in Paris. This event marked the publication of ECRI's annual report for 2006 and its country reports on Azerbaijan, Finland, Ireland and Monaco. ECRI's concerns regarding racism and intolerance in Europe were widely reported in the press following this event.

ECRI's Round Table in Italy

On 3 May 2007 ECRI held a Round Table in Rome. The main themes of this round table were: ECRI's Third Report on Italy (published on 16 May 2006); racism and xenophobia in public discourse and in the public sphere; the legislative and institutional framework for combating racism and racial discrimination and problems faced by the Roma community in Italy.

ECRI's Round Table in Georgia

On 12 June 2007 ECRI held a Round Table in Tbilisi. The main themes of this round table were: ECRI's Second Report on Georgia (published on 13 February 2007); challenges ahead for the development of comprehensive anti-discrimination legislation in Georgia; responding to racist incidents and building an integrated society in Georgia.

Publications

- Second Report on Azerbaijan, CRI (2007) 22, 24 May 2007
- Third Report on Finland, CRI (2007) 23, 24 May 2007
- Third Report on Ireland, CRI (2007) 24, 24 May 2007
- Report on Monaco, CRI (2007) 25, 24 May 2007

Annual Report on ECRI's Activities, covering the period from 1 January to 31 December 2006, CRI (2007) 21, May 2007

ECRI on the Internet: http://www.coe.int/ecri/

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.

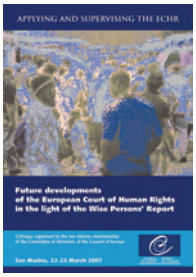
Colloquy "Future Developments of the European Court of Human Rights in the light of the Wise Persons' Report"

In the light of the Wise Persons' Report, presented in November 2006, a Colloquy was organised in San Marino, on 22 and 23 March 2007, on the "Future Developments of the European Court of Human Rights".

The Group of Wise Persons had been set up by the Committee of Ministers following the 3rd Summit of the Council of Europe (Warsaw, 16-17 May 2005). Its Report considered the long-term effectiveness of the ECHR control mechanism, including the initial effects of Protocol No. 14 and the other decisions taken in May 2004.

This event allowed an open high technical level exchange of views on the various measures recommended in the Wise Persons' Report. The Colloquy made some useful remarks and suggestions on what would be necessary at short, medium and long term to help the Court accomplish its tasks.

San Marino, 22-23 March 2007



The proceedings of the colloquy, published in May 2007, can be consulted on the Internet: http://www.coe.int/t/e/human_rights/San_Marino_Actes.pdf

Improvement of procedures for the protection of human rights

With a view to guarantee the long-term effectiveness of the European Convention on Human Rights control mechanism, the Steering Committee for Human Rights (CDDH) has undertaken, *inter alia*, important standard-setting work to prepare a draft Recommendation on efficient domestic capacity for the rapid execution of the Court's judgments. The draft should be submitted to the Committee of Ministers for adoption by 30 April 2008. This work includes also in depth reflections for establishing practical proposals for the supervision of execution of the Court's judgments in situations of slow or negligent execution.

Moreover, the in depth follow-up to the implementation at national level of several recommendations[1] of the Committee of Ministers to member states continues. This exercise involves not only member states'' governments but civil society actors as well (NGOs and national human rights protection institutions).

1. 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.

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

Launched during a high-level conference held in the Senate in Madrid on 27 November 2006, the Campaign has gained momentum over the course of 2007.

Many activities have been implemented under all three Campaign dimensions: governmental, parliamentary and local and regional. Due to this three-tier approach of the Campaign, activities reach out to decision-makers at various levels of society and involve many actors.

To support implementation of the Campaign at national level, national governments and national parliaments have been invited to nominate national focal points, high-level officials and contact parliamentarians. To date, 42 national parliaments and 41 governments have appointed committed individuals to liaise with the Council of Europe on issues related to the Campaign and to spearhead and initiate action at national level.

While many national focal points and high-level officials are reviewing their government's response to combating violence against women and are initiating national campaigns or other activities, contact parliamentarians – supported by the Parliamentary Assembly of the Council of Europe - of many national parliaments have displayed a great deal of vigour in raising awareness and rallying support for parliamentary action on this matter.

To take stock of their initiatives and to forge synergies between the two groups of Campaign contacts, the Council of Europe invited national focal points and contact parliamentarians to network and present their activities during a conference in Strasbourg on 4 and 5 June 2007. Meeting separately during the first day to present their respective initiatives, participants were able, during the second day, to come together and define future avenues of co-operation.

National focal points and contact parliamentarians of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence

As local and regional authorities are at the forefront of the fight against domestic violence, many towns and regions across Council of Europe member states have organised awareness raising weeks with the support of the Congress of Local and Regional Authorities of the Council of Europe. These outreach activities included offering advertisement space to display the Campaign poster in national languages and organising public debates on local initiatives to combat violence against women.

To reach the general public, a public service announcement featuring the Campaign slogan is being aired by national and international television stations – exposing a glimpse of the reality of the lives of women suffering domestic violence.

To further the knowledge base on current developments and good practices in preventing and combating violence against women, *five intergovernmental regional seminars* are organised along the core objectives and messages of the

Campaign as laid out in the Campaign Blueprint: legal and policy measures, support and protection of victims, data collection and awareness raising.

Following the first such regional seminar held in The Hague, Netherlands in February 2007, the second regional seminar on 9 and 10 May 2007 in Zagreb, Croatia, covered the issue of men's active participation in combating domestic violence. Highlighting one of the main messages of the Campaign, it focused on men not only as perpetrators of violence, but as active agents of change in both preventing violence in the family and protecting the victims. Government and NGO representatives from nine countries, including Austria, Croatia, Ireland, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom, participated in the seminar.

Exploring another vital cornerstone of combating violence against women, the third regional seminar was devoted to the issue of data collection as a prerequisite for effective policies to combat violence against women, including domestic violence. Held on 5 July 2007 in Lisbon, Portugal, it gathered 170 participants from ten countries (Austria, Armenia, Cyprus, Georgia, Italy, Malta, Portugal, San Marino, Slovakia and Ukraine) to discuss the role of data in informing and shaping effective policies to combat violence against women. Keynote speakers explained the type of data that can be collected: surveys on violence against women as population-based data or administrative data from organisations and institutions which provide services for victims of such violence. How to go about collecting such data and how to use it was explored as much as international developments in harmonising the collection of data.

Proceedings from all seminars will soon be available at http://www.coe.int/stopviolence/intergov/.

Outlook

Two additional regional seminars exploring the role and scope of support and protection services for victims of violence will be organised by the Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs before the end of the year.

The Parliamentary Assembly will organise parliamentary regional seminars for contact parliamentarians to evaluate the level of implementation of the parliamentary dimension of the Campaign according to set criteria and to enhance its effectiveness.

Moreover, the Council of Europe will explore the issue of establishing guidelines on collecting administrative-based data on violence against women to set up administrative data systems that go beyond the internal recording needs of statutory agencies such as the police, the judiciary, public health and social welfare services.

The Council of Europe will also study the question of setting up qualitative and quantitative standards on services for victims of particular forms of violence such as domestic violence and sexual assault/rape, which will be presented during a conference on shelters to be held in December 2007.

An overview of planned Campaign activities and much more information on the Campaign can be found at www.coe.int/stopviolence.

The Campaign will come to an end with a closing conference in June 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. As the final Campaign outcome, it will show the way forward to eliminating violence against women.

Campaign to combat trafficking in human beings

The Council of Europe Campaign to Combat Trafficking in Human Beings was launched in 2006. It aims to raise awareness among governments, parliamentarians, NGOs and civil society of the extent of the problem of trafficking in human beings in Europe today. The campaign also aims to promote the widest possible signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings in order that this instrument may enter into force rapidly.

At the core of the Campaign is a series of regional information and awareness raising seminars organised in co-operation with the Council of Europe member states. In 2006, five seminars were organised in: Bucharest, Riga, Rome, Oslo, Athens. In 2007 six more seminars are organised in: Nicosia, Berlin, Yerevan, Paris, Belgrade, and London.

The regional seminar which took place in Berlin on 19-20 April on measures to protect and promote the rights of victims of trafficking in human beings was organised in co-operation with the Konrad Adenauer Foundation and with the support of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Foreign Office of Germany, as well as Mr Holger Haibach, Member of the German Bundestag. It brought together 80 experts, including Council of Europe keynote speakers and national officials with expertise in human rights and with expertise in criminal and prosecution matters, as well as representatives of relevant national non-governmental organisations, from Austria, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, the Netherlands, Poland, Romania, Slovakia and Slovenia.

Also in the context of the Campaign, and during the period covered by this Bulletin, two other events were organised:

- A side-event on "Girl Child Victims of Trafficking" was organised in New York, on 1 March 2007, on the occasion of the 51st Session of the Commission on the Status of Women. This event was organised jointly by the Council of Europe and the Permanent Mission of the Republic of San Marino to the United Nations, on behalf of the San Marino Chairmanship of the Committee of Ministers of Council of Europe. It was devoted to the special measures contained in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) to reduce children's vulnerability to trafficking and to protect child victims of trafficking.

- A seminar on the Misuse of the Internet for the Recruitment of Victims of Trafficking in Human Beings, financed by a voluntary contribution from Monaco, was organised in Strasbourg on 7-8 June. The aim of the seminar was to discuss the different methods used for the recruitment of victims of trafficking in human beings on the internet and identify possible legal, administrative and technical measures to combat this misuse. Participants included representatives from Monaco and member states which have ratified the Council of Europe Convention on Action against Trafficking in Human Beings as well as experts from Eurojust, Europol, International Labour Organisation, national policies forces and non-governmental organisations. In addition to the seminar, a Council of Europe Study on the misuse of the internet for the recruitment of victims of trafficking in human beings is currently being prepared. The Study and the proceedings of the Seminar will be published in autumn 2007.

The Convention will enter into force when it has been ratified by ten states, eight of which must be Council of Europe member states. To date it has been ratified by 7 member states and signed by 29 others. In preparation for its entry imminent into force and to establish the monitoring mechanism, all Council of Europe member and observer States, and relevant international governmental and non-governmental organisations, will be invited to participate in a high-level Conference in Strasbourg on 8-9 November 2007.

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

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

Thematic seminars for lawyers in Ukraine

Kyiv, 17-18 April and 28-29 June 2007

Ukrainian lawyers were trained on selected articles of the European Convention on Human Rights (ECHR). The seminars were organised in co-operation with the Ukrainian Bar Association with a view to reinforcing awareness of the ECHR among lawyers in Ukraine and developing their knowledge and skills as regards the domestic application of substantive provisions of the ECHR. The seminars focused on Articles 5 and 6 as well as Article 1 of Protocol No. 1 to the ECHR and also provided an insight into standard-setting case-law of the European Court of Human Rights and the case-law concerning other in the Council of Europe member states. The participants exchanged experience on cases going through prosecutorial and judicial proceedings at present.

In-depth seminars for Ukrainian judges on procedures under the European Convention on Human Rights

Kyiv, 18-20 April 2007

Some Ukrainian judges were trained on criminal and civil procedure under the ECHR. The seminar was organised in co-operation with the Academy of Judges of Ukraine under the Council of Europe/ European Commission Joint Programme "Fostering a Culture of Human Rights". Two other seminars are planned. The three seminars focus on the domestic application of the ECHR as well as respective standard-setting case-law of the European Court of Human Rights and the case-law concerning other Council of Europe member states. The national trainers for judges will train their peers in the regions of Ukraine via cascade seminars in September 2007, after completion of the series of in-depth seminars.

Human Rights "Training-of-trainers" seminars for Azerbaijani prosecutors

Baku, 26-27 April 2007 and 12-15 June 2007

A human rights training programme for prosecutors in Azerbaijan funded by the Swedish Agency for International Development (SIDA) was launched in April 2007, with the participation *inter alia* of judges of the European Court of Human Rights. Participants, selected by the General Prosecutor's Office, included junior and senior prosecutors of Azerbaijan. Among them, 13 were selected as future trainers following a test and an interview. This was followed by the first of two planned "Training-of-Trainers" (ToT) sessions, which focused on substantive Articles of the ECHR relevant to the work of prosecutors (Articles 2, 3, 5, 6 and 8). A second session will focus on ECHR training methodology. The future trainers will also watch the transmission of a hearing of the European Court of Human Rights and be debriefed by experts. It is expected that the first cascade seminars will take place in the winter of 2007.

Training seminars on "Applying European human rights standards" for senior law enforcement officers of the Chechen Ministry of the Interior

Moscow, 17-18 May 2007

The training session was organised in co-operation with the Russian Human Rights Commissioner's Office within the framework of the Programme of co-operation between the Council of Europe and the Russian Federation for the Chechen Republic. A total of twenty senior law enforcement officers from the

Chechen Ministry of the Interior were trained on Articles 2 (in relation to effective investigation of crimes), 3 and 5 (in relation to treatment in custody and lawful arrest and detention). The participants learned also about the European Code of Police Ethics and the issue of police accountability.

Sudak (Crimea), 22-24 May 2007

Training seminar on the European Convention on Human Rights and tolerance in policing for law enforcement officials in Ukraine

The training seminar was organised in co-operation with the Ukrainian Police Academy and the Kharkiv Institute for Sociological Research.. The participants, twenty middle ranked law enforcement officials from all over Ukraine, were trained on the ECHR and on 'Tolerance in Policing'. After presenting the ECHR and its relevance to daily police work, the representatives of the Ukrainian Militia participated in working groups on the development of a 'Ukrainian Charter' on good standards for dealing with ethnic minorities. The basic document, which was to be adapted to the specificities of the country, was the Rotterdam Charter. This process should contribute to raising police awareness and tolerance in the field of ethnic minorities.

Belgrade, 23-24 May 2007: Seminar for advisors to judges of the Supreme Court of Serbia and 25-26 May 2007: Seminar for judges of the Supreme Court of Serbia.

Training seminars on selected Articles of the European Convention on Human Rights for the Supreme Court of Serbia

The training seminars for judges and advisers of the Supreme Court of Serbia focused on Articles 6, 8 and 10 of the ECHR. The aim was to support judges and their advisors in the education process regarding human rights issues and to discuss legal and practical aspects of the implementation of the ECHR standards in the national legal system and the role of the highest instance courts in human rights protection.

The seminars were co-organised with the Supreme Court of Serbia as a part of an ongoing Council of Europe programme to improve knowledge among Serbian legal professionals regarding the ECHR, its case law and the compatibility of the relevant national legislation.

Belgrade, 24-25 May 2007.

Training seminar on selected Articles of the European Convention on Human Rights for practicing lawyers who are active in human rights NGOs in Serbia

The aim of the seminar was to present recent developments of the case-law of the European Court of Human Rights in respect of Article 13 of the ECHR and its application in the domestic legal system, with a special view to criminal procedure issues and the requirements of Articles 5 and 6 of the ECHR. The other part of the seminar was devoted to execution of Court judgments and problems that an applicant might face, within the national legal system when seeking redress following the finding by a Court of a violation of his or her human rights.

Baku, 12-14 June 2007

"Training of trainers" on the ECHR and investigative interviewing for law enforcement officials in Azerbaijan

The first in a series of four training seminars for police in Azerbaijan was organised in the framework of the EC/CoE Joint Programme 'Fostering a Culture of Human Rights'. Some 25 law enforcement officials were trained as future trainers on key articles of the ECHR relevant for the police, as well as on investigative interviewing. The training series will be continued in Baku and in the regions. The outcome should be that a pool of investigators of the Azerbaijani police is qualified to conduct investigative interviews in accordance with ECHR requirements and to train other investigators of the Azerbaijani Police.

Zagreb, 12-15 June.

Human rights "training-of-trainers" seminars for prison staff in Croatia

Two human rights "training-of-trainers" seminars were organised for prison staff in management and operational positions. The objective was to train 20 future trainers among prison staff in Croatia on European human rights standards and on how to deliver training to their peers in subsequent cascade seminars. Apart from the training itself, participants also received training and

reference materials. These activities were organised in the framework of the EC/CoE Joint Programme "Development of a reliable and functioning prison system respecting fundamental rights and standards, and enhancing regional co-operation in the western Balkans".

The cascade seminars will take place in autumn 2007.

Similar "training-of-trainers" seminars for prison staff have been or will be organised in Albania, Bosnia and Herzegovina, Montenegro, Serbia including Kosovo and "the former Yugoslav Republic of Macedonia".

Seminar on juvenile justice, alternative punishments and clemency issues in Russia

Kaliningrad, 13-16 June 2007

Thirty-five members of regional clemency commissions in Russia enhanced their knowledge of European human rights standards regarding detention conditions during this seminar, which was organised in co-operation with the Russian Presidential Administration. Particular emphasis was placed on discussing the main problems in respect of detention as highlighted in the judgments of the European Court of Human Rights against the Russian Federation.

Conference on the role of the Government Agent before the European Court of Human Rights in Serbia

Belgrade, 14-15 June 2007

The conference was organised in co-operation with the recently established Serbian Office of the State Agent before the European Court of Human Rights. The aim was to enhance the understanding of the position of the Government Agent in relation to other State institutions. The participants were representatives of the judiciary, the Ministry of Justice, the Ministry of the Interior, the Public Attorney, the Office of the Ombudsman and non-governmental organisations. Presentations were given, *inter alia*, by the Government Agent of Estonia and the Co-Agent of Hungary. During the discussion participants raised the issue of structural problems of Serbian courts, emphasised the need for continuing education of judges in the field of the ECHR's case-law and discussed possible ways of strengthening the position of the Government Agent.

Workshop on "The European Convention on Human Rights and NGOs" in Russia

St Petersburg, 18-19 June 2007

The workshop was organised within the bilateral co-operation activities of the Council of Europe in the field of human rights. The, civil society representatives participating, discussed the case law of the European Court of Human Rights in respect of freedom of expression and freedom of assembly and association. They also explored the state of domestic application of these freedoms in Russia. During practical group exercises the participants were acquainted with the different ways in which civil society could contribute to strengthening the domestic human rights protection.

Round table on "Non-enforcement of domestic courts' decisions in Member States: general measures to comply with the European Court of Human Right judgments"

Strasbourg, France, 21-22 June 2007

The participants were high-ranking representatives of the Council of Europe and the authorities of six member states (Bulgaria, Georgia, Moldova, Romania, the Russian Federation and Ukraine). The problem of non-enforcement of domestic courts' decisions has been addressed in numerous judgments of the European Court of Human Rights. The purpose of the round table was to discuss solutions to this problem with a view to avoiding future violations of the Convention. The participants exchanged their respective States' experience, in particular they discussed the issue of inadequate domestic remedies in cases of non-enforcement of domestic courts' decisions and identified various shortcomings of legal systems hampering *ex-officio* enforcement. It was acknowledged that non-enforcement of domestic judgements jeopardises citizens' confidence in the judicial system and that

effective measures were urgently needed.

Yerevan, 22-23 June 2007

Training-of-trainers seminar for lawyers in Armenia on the European Convention on Human Rights

The group of experienced Armenian lawyers was trained on selected articles of the ECHR. The seminar was organised in co-operation with the Chamber of Advocates of Armenia with a view to developing a national pool of qualified experts. The seminar focused on Articles 5 and 6 of the ECHR and also provided an overview of the ECHR substantive provisions, as well as standard-setting case-law of the European Court of Human Rights and the case-law concerning other Council of Europe member states. The national trainers for lawyers will train their peers in the regions of Armenia in of three cascade seminars in September 2007.

St. Petersburg, 23-25 May 2007 and Irkutsk, 27-29 June 2007

Seminars on "Human Rights and ethnic minorities" for the Russian Militia

The two seminars were organised in co-operation with the Russian Ministry of the Interior for fifty Russian law enforcement officers within the ongoing programme on this issue in the Russian Federation in 2007. The participants learned about the approach to diversity and cultural differences in the Netherlands and Belgium; they were also able to compare their knowledge and practical experience with ethnic minorities in Russia with those of the experts. Further presentations and discussions included the recruitment of minorities into the police service, police diversity training, changing police culture *vis-à-vis* ethnic minorities and legislation in this field.

Web site: http://www.coe.int/awareness/

Legal co-operation

European Commission for the Efficiency of Justice

The CEPEJ helps Council of Europe member states to deliver justice fairly and rapidly.

Studies

Time management of justice: a northern Europe study

The study synthetises studies, reports and reform proposals that have been carried out in Nordic countries during recent years. It focuses on strategies and proposals that might bear on most of the member states. It is also hoped that it could serve as a tool for exchanging ideas and practices among the target countries themselves.

The report makes an inventory of measures that may reduce delays in legal proceedings.

Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights

This study aimed to have a concrete knowledge of the cases addressed by the European Court to judge the conformity of timeframes of judicial proceedings with the requirements of the Convention.

Requests for these studies may be sent to cepej@coe.int. They are also available on line: http://www.coe.int/t/dg1/legalcooperation/cepej/series/default_EN.asp.

CEPEJ Newsletter

This electronic publication concerns the activities and priorities of the CEPEJ and the progress of the activity programmes in the field of efficiency of justice in the 47 member states.

In the first newsletter (May 2007), two articles are worthy of note:

The prerequisites for moving towards quality of justice in Croatia

The article, written by Mrs Bagić, State Secretary at the Ministry of Justice, reviews reforms adopted by Croatia to strengthen the rule of law and independence of the judicial system and to improve its efficiency.

The quality of justice: a two-sided issue

Jacques Halmade, President of the High Council of Justice of Belgium, develops the multitude of meanings of the concept of quality of justice and the essential means of guaranteeing this quality.

A subscription form for the CEPEJ Newsletter can be found at : http://www.coe.int/t/dg1/legalcooperation/cepej/newsletter/formulaire_en.asp.

European Commission for democracy through law (Venice Commission)

The Commission is the Council of Europe's advisory body on constitutional matters. Its work aims at upholding the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law – the cornerstones of the Council of Europe.

Studies and reports

Preliminary report on the national legislation in Europe concerning blasphemy, religious insults and inciting religious hatred

Document CDL-AD (2007), March 2007

In its Resolution 1510 (2006) on Freedom of expression and respect for religious beliefs , the Parliamentary Assembly of the Council of Europe addressed the question of whether and to what extent respect for religious beliefs should limit freedom of expression. It resolved to revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion, after taking stock of the different approaches in Europe. For this purpose, it asked the Venice Commission to prepare an overview on the question to what extent is the relevant domestic legislation adequate and effective for the purpose of bringing about the appropriate balance getween the right to freedom of expression and the right to respect for one's beliefs.

The Commission took a pragmatic approach in assessing possible advantages and disadvantages of a supplementary legislative intervention in this area. Given the limited time given, the Commission could only prepare preliminary conclusions.

– The examination of the existing legislation and practice lead the Commission to acknowledge that the Council of Europe member States have legislation which appears to have the potential for protecting both freedom of expression and the right to respect for one's religious beliefs. Accordingly, the Commission considers that in principle there is no need to enact new, specific legislation concerning blasphemy, religious insults and inciting religious hatred.

– The focus should rather be on the full, correct and non-discriminatory implementation of the existing legislation. As the European Court of Human Rights has pointed out, domestic courts are well placed to enforce rules of law in relation to these issues and to take into account the facts of each situation.

– The sensitivities of the religious groups must be taken into due account by the national authorities when they are to decide whether or not a restriction to the freedom of expression is to be imposed. Modern societies, however, must not become hostage to these sensitivities. Open discussion of controversial issues is a vital element of democracy. Public debates, dialogue and improved communication skills of both religious groups and the media should be used in order to lower the threshold of sensitivity when it exceeds reasonable levels. Education leading to better understanding of the convictions of others and to tolerance should also be seen as an essential tool in this respect. The ultimate goal is of course that everyone fully enjoys the right to freedom of expression and, on equal footing, the right to respect for one's religious beliefs, but always in full respect of the same rights of others.

Opinion on video surveillance in public places by public authorities and the protection of human rights

Document CDL-AD (2007) 014, March 2007

The Assembly requested the opinion of the Venice Commission on the question "The extent to which video surveillance is compatible with basic human rights". In particular, it raised the question of the moment at which normal normal observation of people in public places becomes a legal and political problem because of this observation cameras are used, sometimes in a network.

In the limited time of which it disposed, the Commission could only reach preliminary conclusions. It intends to develop further its reflection in order to lay down guidelines in this field.

Considering that video surveillance of public areas by public authorities or law enforcement agencies can constitute an undeniable threat to fundamental rights, the Commission recommended that specific regulations should be enacted at both international and national level taking into account the following elements:

– Video surveillance performed on grounds of security or safety requirements, or for the prevention and control of criminal offences, shall respect the requirements laid down by article 8 of the European Convention on Human Rights.

– With regard to the protection of individuals concerning the collection and processing of personal data, the regulations shall at least follow mutatis mutandis the requirements laid down by Directive 95/46/EC, especially its Articles 6 and 7 which are based on Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in its Article 5.

– People should be notified of their being surveyed in public places, unless the surveillance system is obvious.

– A specific independent authority should be set up, as it is done in several European states, in order to ensure compliance with the legal conditions under domestic law giving effect to the international principles and requirements with regard to the protection of individuals and of personal data.

Opinion on video surveillance by private operators in the public and private spheres and by public authorities in the private sphere and human rights protection

Document CDL-AD (2007) 027, June 2007

This Opinion was prepared in the same circumstances as those above-mentioned. Considering that an exclusive focus on the dangers of video surveillance activities performed by public authorities would miss the current development of video surveillance activities, the Commission decided to expand its study to video surveillance performed by private operators and surveillance at private places performed by public authorities. Indeed, on the private level people are more and more using video surveillance supplies to keep an eye inside and outside their homes. In addition, the Internet has enabled video surveillance to be instituted virtually anywhere.

In its conclusions, the Commission considered that critical analysis and concerted action to set certain limits on the activities of public or private surveyors was urgently needed.

It reiterated the recommendations made in its previous study.

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	**17.04.07**
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		
Montenegro	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	03.03.04	06.09.05			03.03.04	11.05.01	
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	**27.03.07**
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: 25.07.07
Ratifications between **01.03.07** and **30.06.07** are highlighted

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