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No. 77, March–June 2009

At the 119th session of the Committee of Ministers, held in Madrid, Ministers for Foreign Affairs and representatives of the 47 Council of Europe member states adopted Protocol No. 14 bis to the European Convention on Human Rights, which will increase the European Court of Human Rights' short-term capacity to process applications.

60 YEARS ANS 2009

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

No. 77, 1 March-30 June 2009

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Protocol No. 14bis to the European Convention on Human Rights

Preamble

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, opened for signature by the Committee of Ministers of the Council of Europe in Strasbourg on 13 May 2004;

Having regard to Opinion No. 271 (2009), adopted by the Parliamentary Assembly of the Council of Europe on 30 April 2009;

Considering the urgent need to introduce certain additional procedures to the Convention in order to maintain and improve the efficiency of its control system for the long term, in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

In relation to High Contracting Parties to the Convention which are bound by this Protocol, the Convention shall read as provided in Articles 2 to 4.

Article 2

1 The title of Article 25 of the Convention shall read as follows:

"Article 25 – Registry, legal secretaries and rapporteurs"

2 A new paragraph 2 shall be added at the end of Article 25 of the Convention, which shall read as follows:

"2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry."

Article 3

1 The title of Article 27 of the Convention shall read as follows

"Article 27 – Single-judge formation, committees, Chambers and Grand Chamber"

2 Paragraph 1 of Article 27 of the Convention shall read as follows:

"1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time."

3 A new paragraph 2 shall be inserted in Article 27 of the Convention, which shall read as follows:

"2 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected."

4 Paragraphs 2 and 3 of Article 27 of the Convention shall become paragraphs 3 and 4 respectively.

Article 4

Article 28 of the Convention shall read as follows:

"Article 28 – Competences of single judges and of committees

1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a

decision can be taken without further examination.

2 The decision shall be final.

3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

4 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

5 Decisions and judgments under paragraph 4 shall be final.

6 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 4.b."

Article 5

1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by :

a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 6

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 5.

2 In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by this Protocol, the Protocol shall enter into force for that High Contracting Party on the first day of the month following the expiration of a period of three months after the date of expression of its consent to be bound by the Protocol in accordance with the provisions of Article 5.

Article 7

Pending the entry into force of this Protocol according to the conditions set under Article 6, a High Contracting Party to the Convention having signed or ratified the Protocol may, at any moment, declare that the provisions of this Protocol shall apply to it on a provisional basis. Such a declaration shall take effect on the first day of the month following the date of its receipt by the Secretary General of the Council of Europe.

Article 8

1 From the date of the entry into force or application on a provisional basis of this Protocol, its provisions shall apply to all applications pending before the Court with respect to all High Contracting Parties for which it is in force or being applied on a provisional basis.

2 This Protocol shall not apply in respect of any individual application brought against two or more High Contracting Parties unless, in respect of all of them, either the Protocol is in force or applied on a provisional basis, or the relevant corresponding provisions of Protocol No. 14 are applied on a provisional basis.

Article 9

This Protocol shall cease to be in force or applied on a provisional basis from the date of entry into force of Protocol No. 14 to the Convention.

Article 10

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c the date of entry into force of this Protocol in accordance with Article 6;

d any declaration made under Article 7; and

e any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done in Strasbourg on 27 May 2009, in English and in French, both texts being equally authen-

tic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Explanatory Report to Protocol 14bis

Introduction

1. The urgent need to adjust the control mechanism of the 1950 European Convention on Human Rights (hereinafter referred to as "the Convention") was cited as a principal reason for the adoption of Protocol No. 14 to the Convention in 2004. The continuing non-entry into force of Protocol No. 14, however, has made the situation faced by the European Court of Human Rights (hereinafter "the Court") deteriorate yet further in the face of an ever-accelerating influx of new applications and a constantly growing backlog of cases. This unsustainable situation represents a grave threat to the effectiveness of the Court as the centrepiece of the European human rights protection system.

2. Pending the entry into force of Protocol No. 14, therefore, the High Contracting Parties have agreed to adopt a Protocol No. 14bis, limited to those procedural measures contained in Protocol No. 14 that would be most rapidly effective in increasing the Court's case-processing capacity, as a provisional interim measure.

I. The preparation of Protocol No. 14bis

3. At the 14 October 2008 meeting of the Committee of Ministers' Liaison Committee with the European Court of Human Rights (CL-CEDH), the President of the Court drew attention to the extremely serious situation facing the Court, and raised the issue of urgent implementation of certain procedural provisions of Protocol No. 14, particularly the single judge procedure and the three-judge committee for repetitive cases, which could increase the efficiency of the Court by 20-25%. The President noted that such an improvement, though not providing a definitive answer to the Court's problem, would be an extremely useful contribution.

4. Following this meeting, on 19 November 2008 the Ministers' Deputies requested the Steering Committee on Human Rights (CDDH) to give, before 1 December 2008, a preliminary opinion on the advisability and modalities of putting into practice certain procedures which are already envisaged to increase the Court's case-processing capacity, in particular the new single-judge and committee procedures. It also requested the Committee of Legal Advisers on Public International Law (CAHDI) to give, by 21 March 2009, an opinion on the public international law aspects of the matter. Finally, it requested the CDDH to give a final opinion by 31 March 2009.

5. The CDDH and the CAHDI subsequently issued the various opinions as requested.[1] Both committees concluded that the seriousness of the threat to the control mechanism of the Convention meant that significant steps had to be taken at the earliest opportunity to enable the Court to respond effectively to its caseload. They both also concluded that, whilst the best solution remained entry into force of Protocol No. 14, implementation of the two procedures by means of a Protocol No. 14bis, pending entry into force of Protocol No. 14, would be fully compatible with the principles of public international law.

6. The Committee of Ministers' Rapporteur Group on Human Rights (GR-H), having examined the issue on the basis of the CDDH and CAHDI opinions', elaborated the draft text of this Protocol in April 2009. On 16 April the Ministers' Deputies decided to transmit a working draft text of the protocol to the Parliamentary Assembly for opinion; this opinion was subsequently adopted on 30 April 2009.[2] On 6 May 2009, the Ministers' Deputies, having examined the Parliamentary Assembly's opinion, approved the text of draft protocol No. 14bis and agreed to transmit it, accompanied by an explanatory report, for adoption to the 119th Ministerial Session of the Committee of Ministers (Madrid, 12 May 2009). The Protocol was then formally adopted and it was decided to open it for signature on 27 May 2009.

II. Procedural measures introduced by Protocol No. 14bis into the control system of the European Convention on Human Rights

7. Intended only as a provisional, interim measure pending entry into force of Protocol No. 14, Protocol No. 14bis is deliberately limited to the introduction of two procedural elements taken from Protocol No. 14 that will have the greatest and most immediate effect on the Court's case-processing capacity: the introduc-

1. See documents CDDH(2008)014 Addendum I for the CDDH Preliminary Opinion, CM(2009)56 add for the CAHDI Opinion and CM(2009)51 add for the CDDH Final Opinion. The CDDH's Reflection Group (DH-S-GDR) also contributed to the analysis in the period between December 2008 and March 2009.
2. See Opinion No. 271 (2009).

tion of the single-judge formation and the extended competence of three-judge committees. Whilst during preparatory work there was some discussion of the possibility of including other measures, the conclusion was soon reached that this would risk delaying the adoption of Protocol No. 14bis.

8. The content of the following section is based on the explanatory report to Protocol No. 14, unless indicated otherwise. Further explanation of the background to Protocol No. 14 can be found in its explanatory report.

Comments on the provisions of the Protocol

Article 1 of the Protocol

9. The text of this article is based on that of Article 1 of Protocol No. 9 to the Convention. As the explanatory report on Article 1 of Protocol No. 9 explains, this provision, although not strictly speaking necessary, serves to underline the distinction between this new optional Protocol and other earlier protocols introducing changes of a procedural nature, the entry into force of which has been subject to ratification by all Parties to the Convention.

Article 2 of the Protocol

Article 25 – Registry, legal secretaries and rapporteurs

10. A new paragraph 2 is added to Article 25 so as to introduce the function of rapporteur as a means of assisting the new single-judge formation provided for in Article 27. While it is not strictly necessary from a legal point of view to mention rapporteurs in the Convention text, it was nonetheless considered important to do so because of the novelty of rapporteur work being carried out by persons other than judges and because it will be indispensable to create these rapporteur functions in order to achieve the significant potential increase in filtering capacity which the institution of single-judge formations aims at. The members of the registry exercising rapporteur functions will assist the new single-judge formations. In principle, the single judge should be assisted by a rapporteur with knowledge of the language and the legal system of the respondent Party. The function of rapporteur will never be carried out by a judge in this context.

11. It will be for the Court to implement the new paragraph 2 by deciding, in particular, the number of rapporteurs needed and the manner and duration of appointment. On this point, it should be stressed that it would be advisable to diversify the recruitment channels for registry lawyers and rapporteurs. Without prejudice to the possibility to entrust existing registry lawyers with the rapporteur function, it would be desirable to reinforce the registry, for fixed periods, with lawyers having an appropriate practical experience in the functioning of their respective domestic legal systems. Since rapporteurs will form part of the Court's registry, the usual appointment procedures and relevant staff regulations will apply. This would make it possible to increase the work capacity of the registry while allowing it to benefit from the domestic experience of the lawyers. Moreover, it is understood that the new function of rapporteur should be conferred on persons with a solid legal experience, expertise in the Convention and its case-law and a very good knowledge of at least one of the two official languages of the Council of Europe and who, like the other staff of the registry, meet the requirements of independence and impartiality.

Article 3 of the Protocol

Article 27 – Single-judge formation, committees, Chambers and Grand Chamber

12. The text of Article 27 has been amended in several respects. Firstly, a single-judge formation is introduced in paragraph 1 in the list of judicial formations of the Court and a new rule is inserted in a new paragraph 2 to the effect that a judge shall not sit as a single judge in cases concerning the High Contracting Party in respect of which he or she has been elected. The competence of single judges is defined in the amended Article 28. In the latter respect, reference is made to the explanations in paragraph 15 below.

13. Adequate assistance to single judges requires additional resources. The establishment of this system will thus lead to a significant increase in the Court's filtering capacity, on the one hand, on account of the reduction, compared to the old committee practice, of the number of actors involved in the preparation and adoption of decisions (one judge instead of three; new rapporteurs who could combine the functions of case-lawyer and rapporteur), and, on the other hand, because judges will be relieved of their rapporteur role when sitting in a single-judge formation and, lastly, as a result of the multiplication of filtering formations operating simultaneously.

Article 4 of the Protocol

Article 28 – Competence of single judges and of committees

14. Article 28 contains new provisions defining the competence of the new single-judge forma-

tion and extending the powers of three-judge committees.

15. Paragraphs 1-3 of the amended Article 28 set out the competence of the single-judge formations created by the amended Article 27, paragraph 1. It is specified that the competence of the single judge is limited to taking decisions of inadmissibility or decisions to strike the case out of the list "where such a decision can be taken without further examination". This means that the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset. Besides, it is recalled that, as was explained in paragraph 10 above, single-judge formations will be assisted by rapporteurs. The decision itself remains the sole responsibility of the judge. In case of doubt as to the admissibility, the judge will refer the application to a committee or a Chamber.

16. Paragraphs 4 and 5 of the amended Article 28 extend the powers of three-judge committees. Hitherto, these committees could, unanimously, declare applications inadmissible. Under the new paragraph 4.b of Article 28, they may now also, in a joint decision, declare individual applications admissible and decide on their merits, when the questions they raise concerning the interpretation or application of the Convention are covered by well-established case-law of the Court. "Well-established case-law" normally means case-law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute "well-established case-law", particularly when the Grand Chamber has rendered it. This applies, in particular, to repetitive cases, which account for a significant proportion of the Court's judgments (in 2008, over 70% of the Court's judgments were identified as having a low importance level; these are essentially repetitive cases). Parties may, of course, contest the "well-established" character of case-law before the committee.

17. The new procedure is both simplified and accelerated, although it preserves the adversarial character of proceedings and the principle of judicial and collegiate decision-making on the merits. Compared to the ordinary adversarial proceedings before a Chamber, it will be a simplified and accelerated procedure in that the Court will simply bring the case (possibly a group of similar cases) to the respondent Party's attention, pointing out that it concerns an issue which is already the subject of well-established case-law. Should the respondent Party agree with the Court's position, the latter will be able to give its judgment very rapidly. The respondent Party may contest the application of Article 28, paragraph 4.b, for example, if it considers that domestic remedies have not been exhausted or that the case at issue differs from the applications which have resulted in the well-established case-law. However, it may never veto the use of this procedure which lies within the committee's sole competence. The committee rules on all aspects of the case (admissibility, merits, just satisfaction) in a single judgment or decision. This procedure requires unanimity on each aspect. Failure to reach a unanimous decision counts as no decision, in which event the Chamber procedure applies (Article 29). It will then fall to the Chamber to decide whether all aspects of the case should be covered in a single judgment. Even when the committee initially intends to apply the procedure provided for in Article 28, paragraph 4.b, it may declare an application inadmissible under Article 28, paragraph 4.a. This may happen, for example, if the respondent Party has persuaded the committee that domestic remedies have not been exhausted.

18. The implementation of the new procedure will increase substantially the Court's decision-making capacity and effectiveness, since many cases can be decided by three judges, instead of the seven currently required when judgments or decisions are given by a Chamber.

19. Even when a three-judge committee gives a judgment on the merits, the judge elected in respect of the High Contracting Party concerned will not be an *ex officio* member of the decision-making body, in contrast with the situation with regard to judgments on the merits under the Convention as it stands. The presence of this judge would not appear necessary, since committees will deal with cases on which well-established case-law exists. However, a committee may invite the judge elected in respect of the High Contracting Party concerned to replace one of its members as, in some cases, the presence of this judge may prove useful. For example, it may be felt that this judge, who is familiar with the legal system of the respondent Party, should join in taking the decision, particularly when such questions as exhaustion of domestic remedies need to be clarified. One of the factors which a committee may consider, in deciding whether to invite the judge elected in respect of the respondent Party to join it, is whether that Party has contested the applicability of paragraph 4.b. The reason why this factor has been explicitly men-

tioned in paragraph 6 is that it was considered important to have at least some reference in the Convention itself to the possibility for respondent Parties to contest the application of the simplified procedure (see paragraph 17 above). For example, a respondent Party may contest the new procedure on the basis that the case in question differs in some material respect from the established case-law cited. It is likely that the expertise of the "national judge" in domestic law and practice will be relevant to this issue and therefore helpful to the committee. Should this judge be absent or unable to sit, the procedure provided for in Article 27, paragraph 2 *in fine* applies.

20. It is for the Court, in its rules, to settle practical questions relating to the composition of three-judge committees and, more generally, to plan its working methods in a way that optimises the new procedure's effectiveness.

Final and transitional provisions

Article 5 of the Protocol

21. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. This protocol does not contain any provisions on reservations. Like Protocol No. 14, this protocol excludes the making of reservations.

Article 6 of the Protocol

22. The text of this article is taken from Article 7 of Protocol No. 9 to the Convention. It is based on the model final clauses approved by the Committee of Ministers and contains the provisions under which a member state of the Council of Europe may become bound by the Protocol. The number of states whose expression of consent to be bound is required for the protocol to enter into force was set very low (at three), in order to allow the protocol to enter into force as quickly as possible.

Article 7 of the Protocol

23. Article 7 of the protocol provides for a mechanism whereby a High Contracting Party may "opt in" to its provisional application pending its entry into force in respect of that High Contracting Party. It is intended to facilitate the earliest possible application of the protocol with respect to the largest possible number of High Contracting Parties, since domestic procedures prior to expression of consent to be bound may be lengthy.

Article 8 of the Protocol

24. The first paragraph of this provision confirms that, upon entry into force or provisional application of this protocol, its provisions can be applied immediately to all applications pending with respect to High Contracting Parties for which it is in force or being applied on a provisional basis. This is so as not to delay the impact of the system's increased effectiveness which will result from the protocol.

25. The second paragraph is intended to cover the situation in which an application is brought against two or more High Contracting Parties, in respect of one or more of which the protocol is not in force or being provisionally applied, or in respect of which the relevant corresponding provisions of Protocol No. 14 are not being applied provisionally. Since such an application could not be dealt with under two sets of procedures simultaneously, it was decided that it should be treated under the existing procedures (i.e. excluding the possibility of the single judge procedure or the new competence for three-judge committees).

Article 9 of the Protocol

26. This article reflects the fact that the protocol is intended only as a provisional, interim measure pending the entry into force of Protocol No. 14. Since the two procedures introduced by the protocol are taken from Protocol No. 14, entry into force of the latter will in practice make no difference as regards the treatment of applications brought against states in respect of which Protocol No. 14bis had been in force or provisionally applied.

Article 10 of the Protocol

27. This article is one of the usual final clauses included in treaties prepared within the Council of Europe. Its paragraph d. refers to the procedure established under Article 7 of the protocol for "opting in" to its provisional application (see paragraph 23 above).

Signatures and Ratifications

European Convention on Human Rights

- *Protocol No. 13 to the European Convention on Human Rights*

Protocol No. 13 concerning the abolition of the death penalty in all circumstances was ratified by Italy on 3 March 2009.

- *Protocol No. 14bis to the European Convention on Human Rights*

On 12 May 2009, the Committee of Ministers adopted the new protocol. It was signed by Denmark, France, Georgia, Irelande, Luxembourg, Norway, San Marino and Slovenia. It was ratified by Denmark, Ireland and Norway.

European Social Charter

- *European Social Charter (revised)*

The European Social Charter (revised) was ratified by Hungary on 20 April 2009 and by Slovakia on 23 April 2009 and signed by "the former Yugoslav Republic of Macedonia".

- *Protocol Amending the Social Charter*

Furthermore, Turkey ratified the 1991 Protocol Amending the Social Charter on 10 June 2009.

Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was signed by Turkey on 19 March 2009 and ratified by Spain on 2 April 2009, Luxembourg on 9 April 2009, Serbia on 14 April 2009 and Belgium on 27 April 2009.

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was signed by Spain and Georgia on 12 March 2009 and ratified by Greece on 10 March 2009 and Albania on 14 April 2009.

European Convention on the Adoption of Children (revised)

The European Convention on the Adoption of Children (revised) was signed by Romania on 4 March 2009 and by Ukraine on 28 April 2009.

Council of Europe Convention on the avoidance of statelessness in relation to State succession

The Council of Europe Convention on the avoidance of statelessness in relation to State succession entered into force on 1 May 2009.

European Convention on Nationality

The European Convention on Nationality (ETS 166) was ratified by Norway on 4 June 2009, with entry into force on 1 October 2009 for Norway.

Internet: http://conventions.coe.int/

European Court of Human Rights

The judgments summarised below constitute a small selection of those delivered by the Court. More extensive information can be found in the HUDOC database of the case-law of the European Convention on Human Rights.

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) between 1 March and 30 June 2009:

- 508 (690) judgments delivered
- 515 (667) applications declared admissible, of which 505 (656) in a judgment on the merits and (11) in a separate decision
- 11 169 (11 170) applications declared inadmissible
- 596 (702) applications struck off the list .

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

Internet: 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 a 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.

Paladi v. Moldova

Articles 3, 5 §1 and 34 (violations)

Judgment of 10 March 2009. Concerns: unlawfulness of detention pending trial and lack of appropriate medical care. Authorities failed to comply swiftly with the Court's interim measures ordered under Rule 39 of the Rules of Court.

Facts and complaints

Ion Paladi, is a Moldovan national who was born in 1953 and lives in Chişinău. He was Deputy Mayor of Chişinău and a university lecturer. In 2006 he was registered as having a second-degree disability.

Mr Paladi complained, in particular, that, despite doctors' recommendations, he was not given appropriate medical care while in detention pending trial.

On 24 September 2004 Mr Paladi was taken into custody on a 30-day detention order and placed in the Centre for Fighting Economic Crime and Corruption (the CFECC) on suspicion of abuse of position and power. He stayed there until 25 February 2005 when he was transferred to Remand Centre No. 3 of the Ministry of Justice in Chişinău.

Mr Paladi suffers from a number of serious illnesses (diabetes, angina, heart disease, hypertension, chronic bronchitis, pancreatitis and hepatitis) and, while in detention, was examined by various doctors who all recommended medical supervision. Certain doctors also considered that the applicant should undergo operations, which could only be carried out in specialised units.

According to Mr Paladi, the CFECC had no medical staff until late February 2005. He also claimed that he, his wife and lawyer had complained to the authorities about his insufficient medical treatment, but had only been able to obtain sporadic

medical visits and assistance in emergencies.

As a result of a medical report drawn up in March 2005, Mr Paladi was transferred to a prison hospital where, on 20 May 2005, a neurologist from the Republican Neurology Centre of the Ministry of Health (the RNC) recommended hyperbaric oxygen (HBO) therapy. The director of the hospital informed the domestic courts a total of seven times between May and September 2005 that the HBO therapy had not been carried out because his hospital did not have the necessary equipment for such specialised neurological treatment.

In September 2005 a medical board of the Ministry of Health examined Mr Paladi and, at their recommendation, Centru District Court ordered his transfer to the RNC. Mr Paladi received HBO therapy, which produced positive results, at the Republican Clinical Hospital and that hospital prescribed a continuation of the therapy until 28 November. In the meantime, however, the RNC had written a letter on 9 November stating that Mr Paladi's condition had stabilised and recommending his release from hospital. No reference having been made to HBO therapy in that letter, on 10 November the district court ordered the applicant's transfer back to the prison hospital.

On the evening of 10 November the European Court of Human Rights indicated by facsimile to the Moldovan Government an interim measure under Rule 39 of the Rules of Court, stating that the applicant should not be transferred from the RNC until the Court had had the opportunity to examine the case. On 11 November 2005 a Deputy Section Registrar of the Court tried to contact the government agent's office in Moldova by telephone, without success. The same day Mr Paladi was transferred to the prison hospital. Finally, following requests by the applicant's lawyer and the government agent, the district court ordered the applicant to be transferred back to the RNC on 14 November. The applicant alleged, corroborated by a television news report, that he was made to wait six hours before being admitted to the RNC. According to the doctors, that delay was due to the fact that Mr Paladi had arrived at the RNC without a medical file.

Between 5 October 2004 and 11 October 2005 Mr Paladi made a total of 10 requests to be released, which were all refused, notably because the courts considered that he might reoffend or abscond, tamper with evidence or intimidate witnesses. On 1 June 2005, the examination of his case was suspended because he was considered as being unfit to attend hearings. Ultimately, on 15 December 2005, Mr Paladi's detention pending trial was replaced with an obligation not to leave the country.

Decision of the Court

Article 3

Reiterating the Chamber's reasoning as set out in the judgment of 10 July 2007, the Court noted that during his detention Mr Paladi had not been provided with the level of medical assistance required by his condition, which was considered serious by several medical specialists. In consequence, it held that he had been subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

Article 5 §1

The Court reiterated that Mr Paladi's continued pre-trial detention after 22 October 2004, without a judge being required to rule on the appropriateness of such a decision, reflected a common practice that the Court had already held to be contrary to the Convention in a series of cases against Moldova. Confirming the Chamber judgment, which had been adopted unanimously and to which the parties had raised no objections, the Court concluded that there had been a violation of Article 5 § 1.

Articles 5 §§ 3 and 4

The Court held unanimously that it was not necessary to examine separately the applicant's complaints under Article 5 §§ 3 and 4, given that there had been no legal basis for the applicant's detention.

Article 34

The Court reiterated that interim measures that it might have cause to adopt under Rule 39 of its Rules of Court served to ensure the effectiveness of the right of individual petition established by Article 34 of the Convention. There would be a breach of Article 34 if the authorities of a contracting state failed to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court. In addition, it was not open to a contracting state to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated or in deciding on the time-limits for complying with such a measure.

In this particular case, the interim measure issued by the Court on 10 November 2005, required the Moldovan authorities to refrain from transferring the applicant from the RNC to another establishment. The Court noted that it was not disputed between the parties that on 11 November 2005 Mr Paladi was no longer at the neurological centre, but in the prison hospital. It also noted that there was nothing to support the government's submission that the applicant had been transferred to the prison hospital before the government had found out about the interim measure. The Court therefore concluded that the interim measure had not been complied with.

As to whether the failure to comply with the interim measure could be explained by the existence of objective impediments, the Court noted that the Moldovan authorities had shown negligence and passivity that were incompatible with their obligations under Article 34. This was the case both at the level of the government agent, responsible for transferring the interim measure immediately to the relevant judicial authorities, and at the level of the judicial authorities, which had been responsible for adopting a decision to prevent the transfer.

Finally, the Court held that the fact that the risk to the applicant's health which had led it to indicate the interim measure had not ultimately materialised did not alter the fact that the authorities had failed in their obligations. Consequently, there had been a violation of Article 34 of the Convention.

Bykov v. Russia

Articles 5 §3 and 8 (violations)
Article 6 (no violation)

Judgment of 10 March 2009. Concerns: the applicant alleged that his pre-trial detention had been excessively long and that it had been successively extended without any indication of relevant and sufficient reasons. He complained that the proceedings against him had been unfair, as the police had set a trap to trick him into incriminating himself in his conversation with V. and the court had admitted the recording of the conversation in evidence at the trial. The applicant also complained that the covert operation by the police had involved an unlawful intrusion into his home and that the interception and recording of his conversation with Mr V. amounted to interference with his private life and his correspondence.

Facts and complaints

The applicant, Anatoliy Petrovich Bykov, is a Russian national who was born in 1960 and lives in Krasnoyarsk (Russia). He was chairman of the board of the Krasnoyarsk Aluminium Plant from 1997 to 1999. At the time of his arrest in October 2000 he was a major shareholder and an executive of a corporation called OAO Krasenergomash-Holding. He was also a member of the Krasnoyarsk Regional Parliamentary Assembly.

The applicant complained, in particular, about a covert recording used as evidence in the criminal proceedings against him and about the length of his pre-trial detention.

In September 2000 Mr Bykov allegedly ordered V., a member of his entourage, to kill Mr S., a former business associate. V. did not comply with the order, but on 18 September 2000 he reported the applicant to the Federal Security Service ("the FSB").

The FSB and the police decided to conduct a covert operation to obtain evidence of the applicant's intention to murder S. On 29 September 2000 the police staged the discovery of two dead bodies at S.'s home. They officially announced in the media that one of those killed had been identified as S. The other man was his business partner, Mr I.

On 3 October 2000 V. went to see the applicant at his home. He carried a hidden radio-transmitting device while a police officer outside received and recorded the transmission. Following the instructions he had been given, V. engaged the applicant in conversation, telling him that he had carried out the murder. As proof he handed the applicant several objects borrowed from S. and I. The police obtained a 16-minute recording of the conversation between V. and the applicant.

On 4 October 2000 the applicant's house was searched. The objects V. had given him were seized. The applicant was arrested and remanded in custody. He was charged with conspiracy to commit murder and conspiracy to acquire, possess and handle firearms.

The applicant's pre-trial detention was extended several times and his numerous appeals and requests for release were rejected because of the gravity of the charges against him and the risk that he might abscond and bring pressure to bear on the witnesses.

Two voice experts were appointed to examine the recording of the applicant's conversation with V. They found that V. had shown subordination to the applicant, that the applicant had shown no sign of mistrusting V.'s confession to the murder and that he had insistently questioned V. on the technical details of its execution. They established that V. and the applicant had a close relationship and that the applicant had played an instructive role in the conversation.

On 19 June 2002 the applicant was found guilty on both counts and sentenced to 6.5 years' imprisonment. He was conditionally released on 5 years' probation. The sentence was upheld on appeal on 1 October 2002.

On 22 June 2004 the Supreme Court of the Russian Federation examined the case in supervisory proceedings. It found the applicant guilty of "incitement to commit a crime involving a murder", and not "conspiracy to murder". The rest of the judgment, including the sentence, remained unchanged.

Decision of the Court

Article 5 §3

The Court reiterated that continued pre-trial detention could be justified only if there were specific indications of a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention. It noted that in the present case the applicant had been kept in pre-trial detention for 1 year, 8 months and 15 days and that all his applications for release had been refused on the grounds of the gravity of the charges and the likelihood of his fleeing, obstructing the course of justice or exerting pressure on witnesses. The Court found, however, that those grounds had not been at all substantiated by the courts concerned, particularly during the initial stages of the proceedings, and that there had therefore been a violation of Article 5 §3.

Article 6 §1

The Court reiterated that Article 6 guaranteed the right to a fair trial as a whole, and did not lay down any rules on the admissibility of evidence as such, even evidence obtained unlawfully in terms of domestic law. In that respect it observed that the applicant had been able to challenge the methods employed by the police, in the adversarial procedure at first instance and on appeal. He had thus been able to argue that the evidence adduced against him had been obtained unlawfully and that the disputed recording had been misinterpreted. The domestic courts had addressed all these arguments in detail and had dismissed each of them in reasoned decisions. The Court further noted that the statements by the applicant that had been secretly recorded had not been made under any form of duress; had not been directly taken into account by the domestic courts, which had relied more on the expert report drawn up on the recording; and had been corroborated by a body of physical evidence. The Court thus concluded that the applicant's defence rights and his right not to incriminate himself had been respected and that, accordingly, there had been no violation of Article 6 §1.

Article 8

The Court observed that it was not disputed that the measures carried out by the police had amounted to interference with the applicant's right to respect for his private life. It pointed out that for such interference to be compatible with the Convention, it had to be in accordance with the law and necessary in a democratic society for one of the purposes listed in paragraph 2 of Article 8.

The Court noted that the Russian Operational-Search Activities Act was expressly intended to protect individual privacy by requiring judicial authorisation for any operational activities that might interfere with the privacy of the home or the privacy of communications by wire or mail services. In Mr Bykov's case, the domestic courts had held that since V. had been invited to the applicant's home and no wire or mail services had been involved (as the conversation had been recorded by a remote radio-transmitting device), the police operation had not breached the regulations in force.

In that connection the Court reiterated that in order for the lawfulness requirement in Article 8 to be satisfied with regard to the interception of communications for the purpose of a police investigation, the law had to give a sufficiently clear indication as to the circumstances in which and the conditions on which the police authorities were empowered to resort to such measures. In the present case it considered that the use of a remote radio-transmitting device to record the conversation between V. and the applicant was virtually identical to telephone tapping, in terms of the nature and degree of the intrusion into the privacy of the individual concerned. It noted in that regard that since the law regulated only the interception of communications by wire and mail services, the legal discretion enjoyed by the police authorities had been too broad and had not been accompanied by adequate safeguards against various possible abuses. As this risk of arbitrariness was inconsistent with the requirement of lawfulness, there had been a violation of Article 8.

Gorou v. Greece (No. 2)

Judgment of 20 March 2009. Concerns: the applicant alleged, first, that the public prosecutor's decision dismissing her request for an appeal on points of law had not been sufficiently reasoned and, second, that the length of the proceedings had been excessive, contrary to the "reasonable time" requirement.

Article 6 §1 (no violation as regards the alleged unfairness of the criminal proceedings)
Article 6 §1 (violation in respect of the excessive length of the proceedings)

Facts and complaints

The applicant, Anthi Gorou, is a Greek national who was born in 1957 and lives in Brussels. She is a civil servant at the Greek Ministry of National Education and at the relevant time was working in Stuttgart on secondment to the bureau for the primary education of Greek children abroad. On 2 June 1998 she filed a criminal complaint for perjury and defamation against her immediate superior, with an application to join the proceedings as a civil party. She accused her superior of stating, in connection with an administrative investigation opened against her, that she did not observe working hours and did not get on well with her colleagues. On 26 September 2001, after hearing representations from the applicant in open court, the Athens Criminal Court acquitted her former superior, finding that the offending remarks had been truthful and that it had not been the defendant's intention to defame or insult her. The judgment was finalised and entered in the court's register on 5 August 2002. On 24 September of that year the applicant requested the public prosecutor at the Court of Cassation to lodge an appeal on points of law against the judgment, alleging that it had not contained sufficient reasoning. By means of a somewhat terse note, the public prosecutor dismissed the request as unfounded.

Decision of the Court

The government had contested the applicability of Article 6 §1, arguing that there had been no dispute ("contestation") over a civil right, within the meaning of that provision. The Court dismissed that argument. First, it took the view that, although the Convention did not confer any right to have third parties prosecuted or sentenced for a criminal offence, the proceedings in which Mrs Gorou had been a civil party had not only involved the right to a good reputation but had also had an economic aspect, on account of the sum – however symbolic – which the applicant had claimed by way of damages. Secondly, the Court observed that it would be more faithful to the reality of the domestic legal order to take into consideration the well-established judicial practice whereby the civil party could request the public prosecutor to appeal on points of law. The Court found that the applicant's request to the public prosecutor at the Court of Cassation had been a logical part of a challenge to the judgment in which her claim for compensation as a civil party had been rejected and that there had thus still been a dispute for the purposes of Article 6 §1.

On the merits, the Court reiterated its case-law to the effect that an appellate court is not necessarily required to give very detailed reasoning when it decides on the admissibility of an appeal on points of law. In the applicant's case, it took the view that the public prosecutor did not have a duty to justify his decision, which would have placed on him an additional burden that was not imposed by the nature of the request, but only to give a response to the civil party. Accordingly, the Court found that there had been no violation of Article 6 §1 of the Convention in respect of the complaint that the decision lacked reasoning. However, the Court confirmed the Chamber's finding of a violation in respect of the excessive length of the proceedings.

Leger v. France

Struck out of list of cases

Judgment of 30 March 2009. Concerns: the applicant complained that his continued detention had become arbitrary, particularly after the refusal of his 2001 application for release on licence. He also submitted that in practice it was tantamount to a whole-life sentence and therefore constituted inhuman and degrading treatment.

Facts and complaints

Lucien Léger, now deceased, was a French national who was born in 1937 and lived in Laon (France).

In July 1964 he was arrested and charged with the abduction and murder of Luc Taron, an

11 year-old boy. He made a confession while in police custody but retracted it several months later. He protested his innocence until his death in July 2008.

In a judgment of 7 May 1966, Seine-et-Oise Assize Court found the applicant guilty of the offences charged and sentenced him to life imprisonment. He made unsuccessful applications in 1971 and 1974 for a retrial.

Mr Léger became eligible for parole on 5 July 1979 after 15 years in prison. Between 1985 and 1998 he made numerous applications for release, all of which were refused. In addition, he made several unsuccessful applications for a presidential pardon.

In 1999 he again requested his release on licence. Despite a favourable opinion by the Sentence Enforcement Board, his request was turned down by the Minister of Justice as, under a new law introduced in June 2000, the case was referred to newly established courts responsible for the reform of the post-sentencing system.

In January 2001 the applicant made a further application for release under the new judicial procedure. He submitted that friends had offered to accommodate him on his release in an outbuilding at their home and to give him work in their bakery. The Sentence Enforcement Board issued a unanimous opinion in favour of his release on licence and the applicant's probation and rehabilitation officer also strongly recommended that he be released.

Despite that, Douai Regional Parole Court rejected the request on 6 July 2001 on the grounds that the applicant continued to deny that he had committed the offence of which he had been convicted, that the experts could not exclude the possibility that he was still dangerous and might re-offend and would not be able to do so unless he underwent a course of psychiatric treatment, and that, as the applicant had no intention of following such a programme, it was not clear that he was making "serious efforts to ensure his social rehabilitation". That decision was upheld on appeal on 23 November 2001 by the National Parole Court on the grounds that the applicant's planned rehabilitation had been put in doubt by the intervening bankruptcy of the person who had offered to put him up and give him work and that he was unwilling to seek counselling even though he presented paranoid tendencies.

In January 2005 the applicant again submitted a request for his release on licence, which the prison authorities supported but which was opposed by the public prosecutor, who pleaded in particular the risk that he might re-offend. The court responsible for the execution of sentence ruled that his conduct no longer stood in the way of his release and that the risk of his re-offending had dwindled almost to nothing. It accordingly granted him release on licence.

Consequently, Mr Léger was released on licence on 3 October 2005, after spending more than 41 years in prison.

Decision of the Court

Article 37 §1

The Court noted that Mr Léger had been found dead in his home on 18 July 2008 and that the ensuing request to pursue the proceedings in his place had been submitted by someone who had provided no evidence either of her status as an heir or a close relative of the applicant, or of any legitimate interest. Nor did the Court consider that respect for human rights required the examination of the case to be continued, given that the relevant domestic law had in the meantime changed and that similar issues in other cases before it had been resolved.

The Court therefore considered that it was no longer justified to continue the examination of the application and, under Article 37 §1, struck the case out of its list of cases.

Šilih v. Slovenia

Article 2 (violation)

Judgment of 9 April 2009. Concerns: The applicants complained about the inefficiency of the Slovenian judicial system in establishing liability for their son's death. They also alleged that the legal proceedings were excessively lengthy and that the criminal proceedings were unfair.

Facts and complaints

Franja and Ivan Šilih are Slovenian nationals who were born in 1949 and 1940 respectively and live in Slovenj Gradec (Slovenia).

The applicants' son, Gregor Šilih, aged 20, died in hospital on 19 May 1993 after suffering anaphylactic shock, probably as a result of an allergic reaction to one of the drugs administered to him by a duty doctor in an attempt to treat his urticaria.

On 13 May 1993 the applicants lodged a criminal complaint against the duty doctor for medical negligence, which was subsequently dismissed for lack of sufficient evidence.

On 1 August 1994, following the entry into force of the European Convention on Human Rights in respect of Slovenia, the applicants used their right under the Slovenian Criminal Procedure Act as an aggrieved party to act as prosecutors and lodged a request to launch a criminal investigation. The investigation was reopened on 26 April

1996 and an indictment lodged on 28 February 1997; the case was twice remitted for further investigation before the criminal proceedings were discontinued on 18 October 2000 on the grounds, once again, of insufficient evidence. The applicants appealed unsuccessfully.

In the meantime, on 6 July 1995 the applicants also brought civil proceedings against the hospital and the doctor concerned. The first-instance proceedings, stayed between October 1997 and May 2001, were terminated with the claim being dismissed on 25 August 2006, more than 11 years after the proceedings were first instituted. During that period, the case was dealt with by at least six different judges. Subsequently, the applicants lodged an appeal and an appeal on points of law, both of which were unsuccessful.

The case is currently still pending before the Constitutional Court.

Decision of the Court

Article 2

The Court noted that the parties did not dispute the fact that Gregor Šilih's condition had started to significantly deteriorate in hospital and that his death had possibly been related to his medical treatment there. The applicants having alleged that their son had died as a result of medical negligence, the state, in order to comply with its obligations under Article 2, was required to set up an effective and independent judicial system to determine the cause of death and bring those responsible to account.

The applicants used two legal remedies, criminal and civil, with a view to establishing the circumstances of and liability for their son's death.

The Court considered that the excessive length of the criminal proceedings, and in particular the investigation, could not be justified by either the conduct of the applicants or the complexity of the case.

The civil proceedings, instituted on 6 July 1995, are, more than 13 years later, still pending before the Constitutional Court. Notably, although those proceedings had been stayed for 3 years and 7 months pending the outcome of the criminal proceedings, they had in fact already been at a standstill for 2 years before that. Indeed, even after the criminal proceedings had been discontinued in October 2000, it took the domestic courts a further 5 years and 8 months to rule on the applicants' civil claim.

The applicants' requests for a change of venue and for certain judges to stand down had admittedly delayed the proceedings to a degree; however, the delays that had occurred after the stay had been lifted had often not been reasonable. Certain hearings for example had been delayed by up to 9 or 10 months simply due to a change of venue or as a result of the case having been taken over by yet another judge. It was worth noting that the sixth and final judge had concluded the first-instance proceedings in less than 3 months.

Lastly, it was unsatisfactory for the applicants' case to have been dealt with by at least six different judges in a single set of first-instance proceedings. While the domestic courts were better placed to assess whether an individual judge was able to sit in a particular case, a frequent change of the sitting judge had to have impeded effective processing.

The Court therefore concluded that the domestic authorities had failed to deal with the applicants' claim concerning their son's death with the level of diligence required by Article 2. Consequently, there had been a violation of Article 2 on account of the inefficiency of the Slovenian judicial system in establishing the cause of and liability for the death of the applicant's son.

Article 6 and 13

Given the reasoning which led the Court to finding a violation of Article 2, it held that there was no need to examine separately the case under Articles 6 and 13.

Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland

Judgment of 30 June 2009. Concerns: applicant association alleged that the continued prohibition on the broadcasting of its television commercial constituted a fresh violation of Article 10 of the Convention.

Article 10 (violation)

Facts and complaints

Verein gegen Tierfabriken Schweiz (VgT) is a Swiss-registered animal-protection association which campaigns in particular against animal experiments and battery farming.

In response to various advertisements produced by the meat industry, VgT made a television commercial which included a scene showing a noisy hall with pigs in small pens.

Permission to broadcast the commercial was refused on 24 January 1994 by the Commercial Television Company (AG für das Werbefernsehen – now Publisuisse SA) and at final instance by the Federal Court, which dismissed an administrative-law appeal by the applicant association on 20 August 1997.

The applicant association lodged an initial application (no. 24699/94) with the European Court of Human Rights, which in a judgment of 28 June 2001 held that the Swiss authorities' refusal to broadcast the commercial in question was in breach of freedom of expression. It found a violation of Article 10 of the Convention and awarded the applicant association 20 000 Swiss francs (approximately 12 000 euros) for costs and expenses.

On 1 December 2001, on the basis of the Court's judgment, the applicant association applied to the Federal Court for a review of the final domestic judgment prohibiting the commercial from being broadcast. In a judgment of 29 April 2002, the Federal Court dismissed the application, holding among other things that the applicant association had not demonstrated that there was still any purpose in broadcasting the commercial.

The Committee of Ministers of the Council of Europe, which is responsible for supervising the execution of the Court's judgments, had not been informed that the Federal Court had dismissed the application for a review, and thus concluded its examination of the applicant association's initial application (no. 24699/94) by adopting a final resolution in July 2003. However, the resolution noted the possibility of applying to the Federal Court to reopen the proceedings.

In July 2002, the applicant association lodged its application with the Court in the present case, concerning the Federal Court's refusal of its

application to reopen the proceedings and the continued prohibition on broadcasting its television commercial.

Decision of the Court

Admissibility

The Swiss Government argued that the application was inadmissible, firstly because the applicant association had not exhausted domestic remedies as required by Article 35 §1 of the Convention, and secondly because it concerned a subject – execution of the Court's judgments – which, by virtue of Article 46, fell within the exclusive jurisdiction of the Committee of Ministers of the Council of Europe.

As regards the first issue, the Court, confirming the findings of the Chamber judgment, held that domestic remedies had indeed been exhausted since in its judgment of 29 April 2002 dismissing the applicant association's application to reopen the proceedings, the Federal Court had ruled, albeit briefly, on the merits of the case.

As regards the second issue, the Court reiterated that its findings of a violation were essentially declaratory and that it was the Committee of Ministers' task to supervise execution. The Committee of Ministers' role in that sphere did not mean, however, that measures taken by a respondent State to remedy a violation found by the Court could not raise a new issue and thus form the subject of a new application. In the present case, the Federal Court's judgment of 29 April 2002 refusing the applicant association's application to reopen the proceedings had been based on new grounds and therefore constituted new information of which the Committee of Ministers had not been informed and which would escape all scrutiny under the Convention if the Court were unable to examine it. Accordingly, the government's preliminary objection on that account was likewise dismissed.

Merits

The Court reiterated that freedom of expression was one of the preconditions for a functioning democracy and that genuine, effective exercise of this freedom did not depend merely on the state's duty not to interfere but could also require positive measures. In the present case, in view of the importance in the Convention system of the effective execution of the Court's judgments, Switzerland had been under an obligation to execute the 2001 judgment in good faith, abiding by both its conclusions and its spirit. In that connection, the reopening of domestic proceedings had admittedly been a significant means of ensuring the execution of the judgment but could certainly not be seen as an end in itself. In the absence of any new grounds that could justify continuing the prohibition from the standpoint of Article 10, the Swiss authorities had been under an obligation to authorise the broadcasting of the commercial, without taking the place of the applicant association in judging whether the debate in question was still a matter of public interest. The Court therefore held that there had been a fresh violation of Article 10.

Selected Chamber judgments

Temel and others v. Turkey

Article 2 of Protocol No. 1 (violation)

Judgment of 3 March 2009. Concerns: imposition of a disciplinary sanction having infringed the applicants' freedom of thought and expression; applicants complained they had been denied their right to education.

Facts and complaints

The applicants are eighteen Turkish nationals who, at the time of the events, were students at various faculties attached to Afyon Kocatepe University in Afyon (Turkey).

On various dates between 27 December 2001 and 4 January 2002 the applicants petitioned the university requesting that optional Kurdish language classes be introduced. As a reaction to their petition, in January 2002 they were suspended from the university for a period of two terms starting from the spring, except for one of them, who, having shown remorse, was suspended for one term. The applicants requested the domestic courts to first stop the execution of the suspension decisions and then to annul them altogether. Their suspension requests were dismissed. Their requests for annulment were also initially rejected by the courts, the main arguments being that the petitions were likely to give rise to polarisation on the basis of language, race, religion or denomination, and that they represented part of the PKK's[1] new strategy of action of civil disobedience.

In December 2003, however, the Supreme Administrative Court quashed the lower courts' decisions and sent the cases for re-examination to the first instance court. In May 2004, the competent court annulled the disciplinary sanctions against the applicants, finding that their petitions to the authorities for optional Kurdish language classes were fully in line with the general aim of Turkish higher education, which was to train students in becoming objective, broad-minded citizens and respectful of human rights.

In the meantime, the applicants were acquitted on charges of aiding and abetting an illegal armed organisation.

1. The Kurdistan Workers' Party, an illegal armed organisation.

Decision of the Court

Article 2 of Protocol No. 1

The Court first observed that the applicants had been sanctioned disciplinarily for merely submitting petitions which expressed their views on the need for Kurdish language education, and requesting that Kurdish language classes be introduced as an optional module. The Court further noted that they had not committed any reprehensible act, nor had they resorted to violence or breach, or attempt to breach the peace or order in the university.

For the Court, neither the views expressed in the applicants' petitions, nor the form in which they had been conveyed, could be construed as an activity which would lead to polarisation of the university population on the basis of language, race,

religion or denomination. The Court consequently found that the imposition of such a disciplinary sanction could not be considered as reasonable or proportionate. Although these sanctions had been subsequently annulled by the administrative courts on grounds of unlawfulness, the Court found it regrettable that by that time the applicants had already missed one or two terms of their studies. The Court therefore held that there had been a violation of Article 2 of Protocol No. 1 to the Convention.

Janković v. Croatia

Judgment of 5 March 2009. Concerns: failure of the authorities to provide adequate protection for the applicant and excessive length of civil and enforcement proceedings.

Articles 8, 6 §1 (violations)

Facts and complaints

The applicant, Sandra Janković, is a Croatian national who was born in 1964 and lives in Split (Croatia). In October 1996, she rented a room in a flat shared with other tenants. In August 1999, she found the lock of that apartment changed and her belongings removed from the flat. She complained before the civil court which ruled in her favour in May 2002 ordering that she regain occupation of her room in the apartment. The court's decision was implemented about 10 months later on the basis of an enforcement order.

Ms Janković's access to the apartment, however, only lasted one day. The day after the court's decision was implemented, she was assaulted by two women and a man, and thrown out of the flat. The attackers were initially found guilty of insulting Ms Janković and sentenced to pay a fine in minor-offence proceedings brought against them by the police. However, those proceedings were ultimately terminated as the offences with which they were charged became time-barred while Ms Janković appealed unsuccessfully.

In the meantime, Ms Janković asked the court to resume the enforcement proceedings in order for her to regain access to her room in the flat. Her request was dismissed on 8 January 2008 as inadmissible.

In October 2003, Ms Janković brought a criminal complaint against seven individuals, alleging that she was physically attacked, abused and threatened by them, including with the threat of death. The authorities decided not to open an official investigation into the matter as they found that the acts complained of represented an offence for which prosecution had to be brought privately by the victim. Ms Janković brought her private complaint, which was ignored and her request for investigation was dismissed by the domestic courts as inadmissible. She complained to the Constitutional Court of the excessive length of these criminal proceedings; her complaint is still pending.

Ms Janković complained to the Constitutional Court in 2002 and to the general jurisdiction court in 2007 of the excessive length of the enforcement proceedings she had brought. While the Constitutional Court dismissed her complaint, the general jurisdiction court ruled – in March 2008 - in her favour awarding her 5 000 Croatian kunas (approximately 678 euros) in compensation.

Decision of the Court

Article 8

The Court first took note of the allegations of Ms Janković that three individuals had shouted obscenities at her in front of her apartment, that one of them had kicked her several times, pulled her by her clothes and hair and thrown her down the stairs, as well as the medical documentation showing that she had sustained blows to her elbow and tailbone. The Court attached particular importance to the fact that the attack occurred in connection with the Ms Janković's attempt to enter a flat which she had obtained a court decision allowing her to occupy.

The Court then observed that the relevant state authorities had decided not to prosecute the alleged attackers and had not allowed Ms Janković's attempts to prosecute privately. In addition, the minor offences proceedings had been terminated as time-barred without any final decision on the attackers' guilt. The Court concluded that the national authorities had not provided adequate protection for Ms Janković against an attack on her physical integrity and that the manner in which the criminal-law mechanisms had been implemented constituted a violation of Article 8 of the Convention.

Article 6 §1

The Court noted that the civil and enforcement proceedings had to be regarded as a whole because the enforcement of the court decision in Ms Janković's favour constituted an integral part of her trial. Both sets of proceedings having lasted in total 8 years, 5 months and 6 days, the Court held that this had been an excessively long period, in violation of Article 6 §1 of the Convention.

Article 3

In view of its finding under Article 8, the Court considered that no separate issue remained to be examined under Article 3.

Barraco v. France

Judgment of 5 March 2009. Concerns: incompatibility of the applicant's conviction with the freedom of assembly and association.

Article 11 (no violation)

Facts and complaints

The applicant, Alain Barraco, is a French national who was born in 1957 and lives in Montchal (France).

Mr Barraco, a lorry driver, was one of 17 motorists who participated on 25 November 2002 in a traffic-slowing operation organised as part of a national day of protest by a joint trade union committee representing hauliers.

Starting at 6 a.m. they drove at about 10 k.p.h. along the A46 motorway, forming a rolling barricade across several lanes to slow down

the traffic behind. Later that morning the police arrested Mr Barraco and two other drivers for completely obstructing the public highway by stopping their cars.

In November 2003, the Lyons Court of First Instance held that the defendants bore no criminal responsibility, finding that the traffic had not been blocked but impeded in a manner that remained acceptable and did not call into question the principle of free movement on the public highway.

In May 2004, the Lyons Court of Appeal set aside that judgment, finding that the drivers had committed the offence of obstructing traffic on the public highway by deliberately placing their cars across the motorway for that purpose. It decided that the offence in question could not be justified by the right to strike or to demonstrate. The Court of Appeal sentenced each of the accused to a suspended term of three months' imprisonment together with a fine of 1 500 euros.

In a judgment of 8 March 2005, the Court of Cassation dismissed an appeal on points of law lodged by the applicant and one of his co-accused.

Decision of the Court

Article 11

The Court observed that the public authorities' interference with Mr Barraco's right to freedom of peaceful assembly, which included freedom to demonstrate, pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others.

The Court acknowledged that any demonstration in a public place could cause some disruption and considered that a certain tolerance was required of the authorities in such circumstances. It moreover reiterated the finding that a person could not be penalised for taking part in a demonstration that had not been prohibited so long as that person had not committed any reprehensible act.

The Court noted that, even though there had been no formal declaration of the demonstration beforehand, the authorities had been aware of it and had not stopped it going ahead; they had also had the opportunity to take measures for the protection of safety and public order.

Nevertheless, the Court observed that the complete blockage of motorway traffic, several times, had gone beyond the disruption inherent in any demonstration and that the three demonstrators had been arrested only after a number of warnings about stopping vehicles on the motorway. The Court considered that Mr Barraco had thus been able, for several hours, to exercise his right to freedom of peaceful assembly and that the authorities had displayed the requisite tolerance.

The Court accordingly held that there had been no violation of Article 11; Mr Barraco's conviction and sentence had not been disproportionate considering the balance to be struck between the prevention of disorder and the demonstrators' interest in choosing that form of action.

Hachette Filipacchi Presse Automobile and Dupuy v. France Société de Conception de Presse et d'Edition and Ponson v. France

Articles 10 and 14 (no violations)

Judgments of 5 March 2009. Concerns: the applicants' conviction and sentence for tobacco advertising.

Facts and complaints

The applicants are two companies incorporated under French law, Hachette Filipacchi Presse Automobile and Société de Conception de Presse et d'Edition, whose registered offices are in Levallois-Perret (France), and two French nationals, Paul Dupuy and Gérard Ponson, who were born in 1938 and 1964 respectively and live in Paris. The company Hachette Filipacchi Presse Automobile, which in 2005 became Hachette Filipacchi Associés, publishes a monthly magazine entitled *Action Auto Moto* of which Paul Dupuy was, at the relevant time, the publication director and manager. The Société de Conception de Presse et d'Edition published *Entrevue* magazine, of which Gérard Ponson was the publication director.

The cases mainly concern the applicants' conviction and sentence for advertising cigarettes by publishing photographs of the Formula 1 driver Michael Schumacher sporting logos of the M. brand of cigarette in 2002. The French courts pointed out, among other things, the danger of displaying cigarette brands in a sports-related environment that attracted the attention of the general public and young people in particular.

In the case of Hachette Filipacchi Presse Automobile and Dupuy, the applicants were fined 30 000 euros and ordered to pay 10 000 euros in damages to the C.N.C.T. (national anti-tobacco committee) for indirect advertising of tobacco products by publishing in *Action Auto Moto* a photograph of Michael Schumacher celebrating his victory on the podium at the Australian Grand Prix. The lettering of the cigarette brand M., his team's sponsor, could be seen on the sleeve of his overalls. The right sleeve of another driver sported the W. brand of cigarette. In 2004 the judgment was upheld on appeal and the Court of Cassation dismissed an appeal on points of law lodged by the applicants.

In the case of Société de Conception de Presse et d'Edition and Ponson the applicants were fined 20 000 euros and ordered to pay 10 000 euros in damages to the C.N.C.T. for illegal advertising of tobacco products by publishing in Entrevue photographs of Michael Schumacher sporting logos of the M. brand and a satirical photomontage showing packets of that brand of cigarette. In 2004 the judgment was upheld on appeal and in 2005 the Court of Cassation dismissed an appeal on points of law lodged by the applicants.

Decision of the Court

Article 10

The Court noted that in both cases the aim of the interference had been the protection of public health as provided for by the Evin Act of 10 January 1991. It agreed with the French Government that the restriction of cigarette and tobacco-related advertising was an essential part of a broader strategy in the fight against the social vice of smoking. Fundamental considerations of public health, on which legislation had been enacted in France and the European Union, could prevail over economic imperatives and even over certain fundamental rights such as freedom of expres-

sion. The Court pointed out that there was a European consensus as to the need for strict regulation of tobacco advertising and added that a general trend towards such regulation could now be seen worldwide.

The Court did not have to take into account the actual impact of an advertising ban for tobacco consumption. The fact that the offending publications were regarded as capable of inciting people to consume such products was, for the Court, a "relevant" and "sufficient" reason to justify the interference. In addition, as the French courts had observed, the magazines in question were aimed at the general public, and in particular young people, who were more vulnerable. It was necessary to take into account the impact of the logos on those readers, who were particularly attentive to success in sports or finance.

As regards the penalties imposed on the applicants, the Court found that the amounts were certainly not negligible, but that in assessing whether they were harsh they had to be compared with the revenue of high-circulation magazines such as *Action Auto Moto* and *Entrevue*.

The Court concluded that in both cases the interference in question could be regarded as "necessary in a democratic society". Accordingly, there had been no violation of Article 10.

Article 14

The Court noted that in this complaint the applicants were challenging Article L. 3511-5 of the Public Health Code, which authorised the audiovisual media to broadcast motorsports competitions in France – without concealing the cigarette brands displayed on vehicles, overalls or tracks – when the events took place in countries where tobacco advertising was authorised.

As the French courts had found, it was not yet feasible, by technical means, to hide lettering, logos or advertisements on footage used by broadcasters. However, it was possible to refrain from taking photographs of such signs, or to conceal or blur them, on the pages of magazines. The Court thus took the view that the print media had the necessary time and technical facilities to modify their pictures and blur any logos suggestive of tobacco products.

The Court further noted that, in connection with a dispute concerning footage of sports events shown several hours or days after it was recorded, the Court of Cassation had confirmed that the live broadcasting of a race constituted the sole exception to the ban on the indirect advertising of tobacco products.

The Court thus took the view that the audiovisual media and the print media were not placed in similar or comparable situations and held, in both cases, that there had been no violation of Article 14 in conjunction with Article 10.

Times Newspapers Ltd (Nos. 1 and 2) v. the United Kingdom

Judgment of 10 March 2009. Concerns: the Internet publication rule breached the applicant's freedom of expression by exposing it to ceaseless liability for libel action.

Article 10 (no violation)

Facts and complaints

The applicant, Times Newspapers Ltd, is the owner and publisher of *The Times* newspaper, registered in England. It published two articles, in September and October 1999 respectively, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss, G.L., whose name was set out in full in the original article. Both articles were uploaded onto *The Times* website on the same day as they were published in the paper version of the newspaper.

In December 1999, G.L. brought proceedings for libel against the Times Newspapers Ltd, its editor and the two journalists who signed the two articles printed in the newspaper. The defendants did not dispute that the articles were potentially defamatory but contended that the allegations were of such a kind and seriousness that they had a duty to publish the information and the public had a corresponding right to know.

While the first libel action was underway, the articles remained on *The Times* website, where they were accessible to Internet users as part of the newspaper's archive of past issues. In December 2000, G.L. brought a second action for libel in relation to the continuing Internet publication of the articles. Following this the defendants added a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to Times Newspapers legal department.

The defendants subsequently argued that only the first publication of an article posted on the Internet should give rise to a cause of action in defamation and not any subsequent downloads by Internet readers. Hence, the second action had been commenced after the limitation period for bringing libel proceedings had expired. The court disagreed, holding that, in the context of the Internet, the common law rule according to which each publication of a defamatory statement gave rise to a separate cause of action meant that a new cause of action accrued every time the defamatory material was accessed ("the Internet publication rule").

The defendant appealed, arguing that the application of the common law rule to Internet publications gave rise to ceaseless liability of newspapers and could ultimately have a chilling effect on their readiness to provide Internet archives and thus limit their freedom of expression. The court, dismissing the appeal, stated that the maintenance of archives was a relatively small aspect of the freedom of expression, and that it need not be inhibited by the law of defamation as the publication of a notice warning readers against treating potentially defamatory material as truth would normally remove any sting form the material.

Decision of the Court

Article 10

The Court noted that while Internet archives were an important source for education and historical research, the press had a duty to act in accordance with the principles of responsible journalism, including by ensuring the accuracy of historical information. Further, the Court observed that limitation periods in libel proceedings were intended to ensure that those defending actions were able to defend themselves effectively and that it was, in principle, for contracting States to set appropriate limitation periods.

The Court considered it significant that although libel proceedings had been commenced in respect of the two articles in question in December 1999, no qualification was added to the archived copies of the articles on the Internet until December 2000. The Court noted that the archive was managed by the applicant itself and that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression. There was accordingly no violation of Article 10.

Having regard to this conclusion, the Court did not consider it necessary to consider the broader chilling effect allegedly created by the Internet publication rule. It nonetheless observed that, in the present case, the two libel actions related to the same articles and both had been commenced within 15 months of the initial publication of the articles. The applicant's ability to defend itself effectively was therefore not hindered by the passage of time. Accordingly, the problems linked to ceaseless liability did not arise. However, the Court emphasised that while individuals who are defamed must have a real opportunity to defend their reputations, libel proceedings brought against a newspaper after too long a period might well give rise to a disproportionate interference with the freedom of the press under Article 10 of the Convention.

Anakomba Yula v. Belgium

Article 6 §1 (taken together with Article 14) (violation)

Judgment of 10 March 2009. Concerns: a decision to refuse legal aid for the applicant's action to contest the paternity of her child.

Facts and complaints

The applicant, Cecile Anakomba Yula, is a Congolese national who was born in 1972 and lives in Koekelberg (Belgium). Given that she was unlawfully resident in Belgium, she applied in June 2006 to regularise her residence status.

Her estranged husband, M.L., who is also a Congolese national, was lawfully resident in the country, as were her children.

In order for the biological father of her youngest child to be able to recognise the latter's paternity, Ms Anakomba Yula was required to bring an action against M.L. to contest his paternity of the child. She submitted a request for legal aid, seeking exemption from payment of the costs related to those proceedings.

Her request was dismissed on the ground that she was unlawfully resident in Belgium and that her action was not aimed at regularising her situation. In June 2007 the appeal court upheld that decision, emphasising that the "discrimination" referred to by the applicant was a reasonable difference in treatment, and was based on the objective criterion of lawful residence, indicating a minimal tangible connection with Belgium.

With regard to the action to contest paternity, the first instance court found that Ms Anakomba Yula had provided the evidence on non-paternity required under Congolese law. However, it ordered the applicant to pay the fees.

Decision of the Court

Article 6 §1, taken together with Article 14

Although the Court reiterated that the right of access to a court was not absolute and that the state had a free choice of the means to be used towards this end, it emphasised that a limitation on access to a court must not impair the very essence of that right.

The Court noted that this case concerned serious issues related to family law that were decisive for Ms Anakomba Yula and other individuals. In such circumstances, there ought to have been particularly compelling reasons to justify the difference in treatment between individuals with a residence permit and those without one, the explanation put forward by the Belgian courts to justify their refusal to grant the applicant legal aid.

The Court also noted that Ms Anakomba Yula had taken steps to regularise her situation prior to the expiry of her residence permit, in the context of her life with her daughter's father, a Belgian national.

The Court further noted that it had been essential to act quickly, since actions to contest paternity had to be lodged before the child's first birthday.

Accordingly, the Court considered that the Belgian State had failed in its obligation to regulate the right of access to a court in a manner that was compatible with the requirements of Article 6 §1, taken together with Article 14.

Mojsiejew v. Poland

Article 2 (violation)

Judgment of 24 March 2009. Concerns: applicant's complaint about the alleged responsibility of the state for the death of her son, and lack of an effective investigation into the circumstances.

Facts and complaints

The applicant, Władysława Mojsiejew, is a Polish national who was born in 1951 and lives in Bojszowy (Poland).

The case concerned Ms Mojsiejew's allegation that staff at a sobering-up centre were responsible for the death of her 25-year-old son, Hubert Mojsiejew, on 28 August 1999 as a result of the steps taken to immobilise him and the lack of ensuing supervision of his state of health.

On 28 August 1999 Hubert Mojsiejew was taken to a sobering-up centre, where he was taken to an isolation cell, immobilised with belts and left. He was found dead by staff a few hours later.

On 30 August 1999, an autopsy was carried out which established that a possible cause of death was asphyxiation as a result of pressure having been applied to his neck. The same day the prosecution launched an inquiry and a number of investiga-

tive steps were carried out. The exact time of Hubert's death was never, however, established as the body was not examined at the place where it had been found. Several medical opinions were also prepared. Although they agreed that he had died from asphyxiation, they differed in respect of what had been its cause: some medical reports found that Hubert had been inadequately immobilised with belts on the chest and had suffocated; others that he had died as a result of pressure being applied to his neck, most probably when a member of the centre's staff had put him in a headlock.

In the domestic court proceedings, several employees of the sobering-up centre were found guilty for Hubert's death and were sentenced to two years in prison and suspended for a probationary period of three years. Following an appeal both by Ms Mojsiejew and the sentenced individuals, the judgment was annulled and the case sent for a new examination. The case was still pending in May 2008.

Decision of the Court

Article 2 (investigation)

The Court noted that, although the investigation had been concluded in little over a year, the trial in the case had started more than two years after charges had been brought against the accused. Moreover, Hubert Mojsiejew's body had not been examined at the place where it had been found, which had made it impossible to establish the time of his death and thus determine the personal responsibility of each of the accused. Indeed, Władysława Mojsiejew had only been heard by the court for the first time almost five years after the death of her son, and, in addition to a number of other delays which had occurred during the domestic court proceedings, the case was still pending on May 2008. The Court therefore concluded that the Polish authorities had failed to carry out a prompt and effective investigation into the death of Hurbert Mojsiejew, in violation of Article 2.

Article 2 (death of Hubert Mojsiejew)

The Court first held that, although the proceedings were still pending before the domestic authorities, it was not prevented from examining whether the state was responsible for the investigation carried out into Hubert's death. Having noted that Hubert had been taken to the sobering-up centre in good health and without pre-existing injuries or obvious illnesses, and that the government had failed to provide a satisfactory and convincing explanation for his death, the Court held that the state was responsible, and that there had therefore been a violation of Article 2.

Wiktorko v. Poland

Judgment of 31 March 2009. Concerns: applicant's complaint about degrading treatment and inadequate investigation into the incident by the authorities.

Article 3 (violation)

Facts and complaints

The applicant, Anna Wiktorko, is a Polish national who was born in 1957 and lives in Olsztyn (Poland).

On 27 December 1999 Ms Wiktorko, on her way home by taxi after having a drink with a friend, refused to pay the excessive bill unless she was given a proper receipt; instead of taking her home, the taxi driver drove her to a sobering-up centre.

She alleges that, on arrival at the sobering-up centre, she was insulted, stripped naked by a woman and two men, beaten and put in restraining belts for the night. She was released the following morning.

Examined by a doctor the next day, the medical certificate noted that she had a bruise on her hip, a scratched wrist, a painful shoulder and a swollen jaw.

Shortly afterwards she filed a complaint against the staff of the centre with the Olsztyn district police, submitting that their conduct had been humiliating and degrading.

The ensuing investigation found that the applicant, inebriated, had refused to pay her taxi fare and had been abusive towards the police, the centre's staff and the doctor who had tried to examine her. Given her resistance and refusal to undress, the staff had been obliged to use force against her and place her in restraining belts.

The investigation, discontinued in january and April 2000, was on both occasions subsequently reopened; ultimately, in August 2000 the proceedings were discontinued on the ground that no criminal offence had been committed.

Decision of the Court

Article 3 (treatment)

The applicant had been stripped naked by three of the centre's employees, one woman and two men. The Court took the view, as it had done in other cases before it, that to be stripped naked in the presence of a member of the opposite sex lacked respect and human dignity for the person concerned. Similarly, the applicant had to have been left with feelings of anguish and inferiority capable of humiliating and degrading her, and all the more so given that the two male members of staff had forcibly undressed her.

Even more worryingly, no explanation had been given for the necessity of putting the applicant in restraining belts for such an excessive period of time as 10 hours. Such prolonged immobilisation had to have caused her great distress and physical discomfort, which could not be considered compatible with Article 3 standards.

The Court therefore concluded that the authorities' conduct had amounted to degrading treatment, in violation of Article 3.

Article 3 (investigation)

The Court noted that the investigation of the applicant's complaint had lasted 7 months, the investigation having been reopened on two occasions due to significant procedural shortcomings. It further noted that the investigation had focused on justifying why the applicant had been detained and force used against her without addressing the question of why that use of force had infringed her right to respect for human dignity. The authorities had therefore failed to assess the proportionality of the force used, namely they had not justified the forced removal of the applicant's clothing by two male employees or the use of restraining belts to immobilise her until the next day.

In conclusion, the Court found that the manner in which the case had been examined had been inadequate, in violation of Article 3.

Brânduşe v. Romania

Articles 3 and 8 (violations)

Judgment of 7 April 2009. Concerns: conditions of detention.

Facts and complaints

The applicant, Ioan Brânduşe, is a Romanian national who was born in 1951. He was sentenced to 10 years' imprisonment for fraud and is currently imprisoned in Arad (Romania).

While in pre-trial detention Mr Brânduşe was at first held at Arad police headquarters. He was then transferred to prisons in Timişoara (Romania) and Arad, where he has spent most of his detention to date. He complained in particular of overcrowding, poor quality food and unhygienic conditions.

The applicant brought judicial proceedings to complain of his conditions of detention and the fact that in Arad prison he had to put up with stale air and the nauseous stench from a site about 20 metres away from the prison formerly used for the disposal of household waste. This former refuse tip, managed by company S., which is itself run by Arad City Council, was in use from 1998 to 2003. Mr Brânduşe's applications were rejected by the domestic courts.

Decision of the Court

Article 3

The Court noted that Article 3 required in particular that the state ensure that every prisoner was held in conditions compatible with respect for human dignity. With reference to the allegations of overcrowding, it noted that in Arad prison the applicant for several years had had a living space of 2.5 square metres, which was reduced still further by the furniture in the cell. In Timişoara prison, before 2007, he had had a living space of between 1.5 and 2 square metres. In addition, according to the information supplied by the Romanian Government, Mr Brânduşe had been entitled to 1 hour of exercise per day in the open air before the entry into force of Law No. 275/2006.

The Court reiterated that it had already found breaches of Article 3 in numerous cases on account of inadequate individual living space. It accepted that in the present case there was nothing to indicate that there had been a real intention to humiliate or degrade the applicant, but considered nevertheless that he had been subjected for several years to an ordeal of an intensity which went beyond the level of suffering inevitably inherent in detention. There had accordingly been a violation of Article 3.

Article 8

While noting that Mr Brânduşe's health had not deteriorated through proximity to the former refuse tip, the Court considered that, in the light of the conclusions of the environmental studies and the length of time for which the applicant had to suffer the nuisances concerned, the applicant's quality of life and well-being were affected to the detriment of his private life in a way which was not merely the consequence of his deprivation of liberty. Indeed, the applicant's complaint related to aspects which went beyond the context of his conditions of detention as such and which, moreover, concerned the only "living space" the applicant had had available to him for a number of years. It therefore considered that Article 8 was applicable in the case.

The Court observed that the Romanian authorities were responsible for the offensive smells, as company S. was run by Arad City Council. In addition, responsibility had been transferred from the council to S. only in February 2006, and even after that date the environmental authorities had made the council directly responsible for closing the site.

Moreover, the file showed that the tip was in operation effectively from 1998 until 2003, and that the growing volume of waste accumulated proved that it had even been used thereafter by private individuals, as the authorities had not taken measures to ensure the effective closure of the site. However, throughout that period the tip had no proper authorisation either for its operation or its closure. Whereas the applicable provisions imposed the requirement of a permit and compliance with a number of other conditions before the tip could be opened, the local authorities had not followed the procedure laid down and as a result had failed to comply with some of their obligations.

Furthermore, although it was incumbent on the authorities to carry out preliminary studies to measure the effects of pollution, it was only after the event, in 2003 and after a fierce fire on the site in 2006, that they did so. The studies concluded that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the standards established in 1987 and that persons living nearby had to put up with significant levels of nuisance caused by offensive smells.

The competent authorities had explicitly penalised Arad City Council for the absence from the site of any means of informing the public about risks for the environment and the health of the population as a result of the existence of the refuse tip. Nor had the Romanian Government been able to indicate what measures had been taken to ensure that the inmates of Arad prison, including in particular the applicant, could have effective access to the conclusions of the studies mentioned and to information whereby they could assess the risks to their health.

Lastly, the proceedings relating to the work to effect the closure of the former tip were still pending and the government had not supplied any information about the progress – or even the start – of the work to cover over and rehabilitate the site, which was supposed to be completed in 2009. There had accordingly been a violation of Article 8.

Társaság a Szabadságjogokért v. Hungary

Judgment of 14 April 2009. Concerns: NGO denied access to information on a pending constitutional case.

Article 10 (violation)

Facts and complaints

The applicant, Társaság a Szabadságjogokért (the Hungarian Civil Liberties Union), is an association founded in 1994 and registered in Hungary with its seat in Budapest. It is a non-governmental organisation which aims to promote fundamental rights as well as to strengthen civil society and the rule of law in Hungary; it is active in the field of drug policy.

In March 2004 a member of parliament (MP) and other individuals lodged a complaint for review of the constitutionality of amendments to the Criminal Code concerning drug-related offences. Several months later the applicant requested access to the pending complaint. Without consulting the MP, the Constitutional Court refused the applicant's request explaining that complaints before it could be made available to outsiders only with the approval of the complainant. Subsequently, the applicant brought an action in the regional court for an order requiring the Constitutional Court to give it access to the file, in accordance with the relevant provisions of the 1992 Data Act. In a decision that was upheld by the Court of Appeal, the regional courts dismissed the applicant's action after finding that the requested data was "personal" and could therefore not be accessed without the complainant's approval. The protection of such data could not, in the courts' view, be overridden by other lawful interests, including the accessibility of public information. Meanwhile, the Constitutional Court decided the constitutionality question and published a summary of the complaint in its decision.

Decision of the Court

In relation to freedom of the press, the Court had consistently held that the public had the right to receive information of general interest. Given the nature of the applicant's activities involving human-rights litigation, *inter alia*, in the field of protection of freedom of information, the Court characterised the applicant as a social "watchdog", whose activities warranted similar Convention protection to that afforded to the press. The Court further observed that an application for abstract review of constitutionality, particularly when made by a member of parliament, undoubtedly constituted a matter of public interest. In creating an administrative obstacle and refusing to grant access to the content of such application to the applicant, which was involved in the legitimate gathering of information on matters of public importance, the authorities had interfered in the preparatory stage of that process. Moreover, the Constitutional Court's monopoly of information in such cases amounted to a form of censorship. As to the merits, the Court reiterated that the right to freedom to receive information under Article 10 in the first place prohibited governments from restricting the receipt of information that others wished or might be willing to impart. However, the applicant's case primarily concerned the exercise of the functions of a social watchdog rather than a denial of a general right of access to official documents. The information sought by the applicant was ready and available and did not require any collection of any data by the government. In such circumstances, the states had an obligation not to impede the flow of information sought by the applicant. Further, no reference to the private life of the MP in question could be discerned in his complaint. It would be fatal for freedom of expression in the sphere of politics if public figures were able to censor the press and public debate in the name of their personality rights. Finally, the Court considered that obstacles designed to hinder access to information of public interest might discourage those working in the media or related fields from performing their vital role of "public watchdog" and thus affect their ability to provide accurate and reliable information.

Savino and others (application Nos. 17214/05, 20329/05 and 42113/04) v. Italy

Judgment of 28 April 2009. Concerns: applicants' lack of access to a tribunal for the adjudication of their claims.

Article 6 §1 (violation)

Facts and complaints

Application Nos. 17214/05 and 20329/05

The applicants, Pericle Savino and Attilio Persichetti, are Italian nationals who were born in 1955 and 1948 respectively and live in Civitella San Paolo and Rome.

The applicants, a surveyor and an architect, are employees of the Italian Chamber of Deputies. They applied to their administration for a special project allowance and the first applicant also requested the reimbursement of insurance contributions. The case was brought before the Judicial Committee for officials of the Chamber of Deputies. In decisions of February 2004 the committee partly upheld the applicants' claims and granted the first applicant's specific request. The administration appealed to the Judicial Section of the Bureau of the Chamber of Deputies and requested a stay of execution of the decisions. In decisions of October 2004, the Judicial Section of the Bureau of the Chamber of Deputies, while finding inadmissible the requests for a stay of execution as they were out of time, upheld the administration's appeals on the merits and set aside the committee's decisions.

Application no. 42113/04

The applicants, Andrea Borgo, Davide Carbonara, Andrea Fantoni, Domenico Giordani and Daniela Colasanti, are Italian nationals who were born in 1966, 1976, 1976, 1971 and 1974 respectively and live in Rome.

They were selected and invited to sit a written examination organised by the Chamber of Deputies, but were not included on the shortlist of candidates who passed the written examination. They appealed to the Judicial Committee for officials of the Chamber of Deputies. They complained about the organisation

of the examination and the criteria adopted for the assessment of the papers. They sought the annulment of the administration's decision not to include them on the shortlist of candidates invited to the oral examination and, at the same time, a stay of execution of that decision. In decisions of May 2002, the Committee upheld the applicants' appeals. The administration of the Chamber of Deputies appealed to the Judicial Section of the Bureau of the Chamber of Deputies and also requested a stay of execution of the committee's decisions. The section upheld the administration's appeals. The applicants appealed to the Court of Cassation, which declared their appeal against the decisions of the Chamber of Deputies' internal judicial bodies inadmissible.

Decision of the Court

Admissibility

The Court observed that the applicants' claims had indeed concerned "rights" within the meaning of Article 6 §1. It noted that the judicial bodies to which the applicants had appealed had considered their cases on the merits and had not deemed it necessary to dismiss them as ill-founded. Furthermore, domestic law afforded judicial protection to the applicants, since the Judicial Committee and the Judicial Section of the Chamber of Deputies were competent to determine any dispute against the Chamber's administration and, in the Court's opinion, performed a judicial function. Nor was there any special bond of trust between the state and the applicants such as to justify excluding them from the rights safeguarded by the Convention. The applications were therefore admissible.

Merits: tribunal established by law

The Court considered that the Judicial Committee and Judicial Section of the Chamber of Deputies satisfied the requirement of having a legal basis in domestic law, since the Chamber's secondary regulations establishing those bodies derived from its rule-making powers under the Constitution and were designed to preserve the legislature from any outside interference, including by the executive.

Merits: independent and impartial

The Court observed that the Judicial Section (an appellate body whose decisions were final) was entirely made up of members of the Bureau (the Chamber's competent body for ruling on its main administrative matters). In the present case the administrative decisions complained of had been adopted by the Bureau in accordance with its rule-making powers. That factual situation was sufficient to give rise to doubts as to the objective impartiality of the appellate body. The Court further noted the close connection between the subject of the judicial proceedings before the Section and the decisions taken by the Bureau. There had therefore been a violation of Article 6 §1 on that account.

Karakó v. Hungary

Article 8 (no violation)

Judgment of 28 April. Concerns: failure of the Hungarian authorities to protect the applicant's right to a private life.

Facts and complaints

The applicant, László Karakó, a member of parliament, is a Hungarian national who was born in 1955 and lives in Gávavencsellő (Hungary). He was a candidate in the 2002 parliamentary elections.

On 19 April 2002, prior to the second ballot round, a flyer was distributed in his electoral district, signed by another politician, who was the chairman of the Regional General Assembly in the same electoral district. The flyer stated that Mr Karakó regularly voted against the interests of his district.

In May 2002, Mr Karakó filed a criminal complaint against the politician whose signature appeared on the flyer, accusing him of having damaged his reputation. An investigation was opened into the allegations, but was discontinued in May 2004 as the prosecutor considered no crime prosecutable by the state had been committed.

In January 2005, Mr Karakó brought proceedings as a private prosecutor, but in May 2005 his claim was dismissed by the court, which held that the statement on the flyer in question was a value judgment with regard to which the limits of acceptable criticism were wider for a politician who had to display a greater degree of tolerance.

Decision of the Court

The Court noted that an effective legal system for the protection of the rights falling under the notion of "private life" had existed in Hungary at the time. Given that the act complained of had represented a statement, and thus an expression, by another politician, the Court recalled that the obligation of the state to protect Article 8 rights had to go in parallel with protecting the rights and freedoms under Article 10. The domestic courts had concluded that the statement in the flyer had been a value judgment, and as such, an expression protected under Hungarian law. In reaching this conclusion, the authorities had taken into account that Mr Karakó had been an active politician and the statement in the flyer had been made during an election campaign in which he had been a candidate, and had constituted a negative opinion about his public activities. On these grounds, the statement in question had been found to have been constitutionally protected. The Court was satisfied that this analysis had been compatible with the Convention. Had the domestic courts sanctioned the politician for his statement in the flyer in question, they would have limited his freedom of expression unduly, and thus violated his Article 10 rights.

Accordingly, there had been no violation of Article 8 of the Convention.

Glor v. Switzerland

Judgment of 30 April 2009. Concerns: applicant's obligation to pay exemption tax having been found unfit for military service.

Article 14 (taken in conjunction with Article 8) (violation)

Facts and complaints

The applicant, Sven Glor, is a national of the Swiss Confederation who was born in 1978 and lives in Dällikon (canton of Zurich). He is a lorry driver.

On 14 March 1997 he was declared unfit for military service as he was suffering from diabetes (diabetes mellitus type 1). He was subsequently discharged from the Civil Protection Service in 1999.

On 9 August 2001 the applicant received an order to pay the military-service exemption tax (477 euros), which he challenged.

On 20 September 2001 the Federal Tax Administration recommended that additional examinations be carried out to ascertain whether the applicant was at least 40% disabled, the threshold for a "major disability" as defined in the Federal Court's case-law and for non-liability to the exemption tax.

On 15 July 2003 the authorities in charge of the exemption tax found on the basis of two expert reports – one by a university hospital and one by an army doctor – that the applicant could not be exempt from the tax as his degree of disability was lower than 40%.

On 9 March 2004 the Federal Court dismissed an appeal by the applicant, who again alleged that he had been subjected to discriminatory treatment by being required to pay the exemption tax, and that he had been prevented from performing his military service despite having always stated his willingness to do so.

The Federal Court noted that, although the applicant's type of diabetes could not prevent him from carrying on a normal professional activity, the particular demands of military service meant that he had to be declared unfit for that purpose. It held that the authorities had simply applied the provisions in force as appropriate, with the aim of ensuring equality between those who performed their military service and those who were exempt.

Decision of the Court

Article 14 taken in conjunction with Article 8

The Court observed that the notion of private life within the meaning of Article 8 included a person's physical integrity and that a state tax based on unfitness to serve in the armed forces for medical reasons indisputably fell within the ambit of that Article.

The Court considered that the Swiss authorities had treated persons in similar situations differently in two respects: firstly, the applicant was liable to the exemption tax, unlike persons with more severe disabilities, and secondly, he was unable to perform alternative civilian service, which by Swiss law was reserved for conscientious objectors.

The first difference in treatment, according to the Swiss Government, was designed to restore equality between those who performed their military service and those who were exempted, as the tax was a substitute for the efforts of those who performed their service.

The Court was not satisfied that it was in the interests of the community to require the applicant to pay an exemption tax to substitute for the efforts of military service, which he had been prevented from performing on medical grounds, a factual situation outside his control. The Court also pointed out that the deterrent role of the tax was only slight, seeing that the Swiss armed forces had a sufficient number of people available who were fit for military service, and noted that the financial revenues from it were probably not insignificant. It further observed that a tax of this kind did not exist in most other countries.

From the applicant's point of view, the sum of 477 euros he was required to pay in respect of the tax in question could not be described as insignificant, particularly as his income was modest and the tax was levied annually throughout the period of compulsory service, amounting to at least 8 years.

With regard to the assessment of the applicant's degree of disability, the Court considered that the Swiss authorities had not taken sufficient account of his personal circumstances. They had relied on the case-law of the Federal Court and on a precedent that scarcely bore comparison – the case of an amputee – in finding that the applicant was less than 40% disabled. The Court further noted that the legislation did not provide for any exemption from the tax in question for those who were below the 40% disability threshold and who had only a modest income.

The Court suggested that people in the applicant's case might be offered the possibility of alternative forms of service in the armed forces that entailed less physical effort and were compatible with the constraints of a partial disability – in his case, insulin injections four times a day – or of civilian service, without that option being reserved for conscientious objectors alone.

The Court concluded that there had been a violation of Article 14 taken in conjunction with Article 8, finding that the applicant had been the victim of discriminatory treatment as there had been no reasonable justification for the distinction made by the Swiss authorities between, in particular, persons who were unfit for service and exempt from the tax in question and those who were unfit for service but were nevertheless obliged to pay the tax.

Korelc v. Slovenia

Judgment of 12 May 2009. Concerns: applicant denied the right to take over the tenancy of a flat; excessive length of proceedings.

Articles 6 and 13 (violations); Articles 8 and 14 (inadmissible)

Facts and complaints

The applicant, Janez Korelc, is a Slovenian national who was born in 1946 and lives in Ljubljana.

In 1990, having divorced his wife a few years earlier, Mr Korelc moved in with an 86-year-old man, A. Z., who was renting a one-room flat from Ljubljana Municipality. In 1992, Mr Korelc registered his permanent residence at A.Z.'s address;

A.Z. concluded a new lease contract with the municipality which described Mr Korelc as a person who could use the flat and who was providing him with daily care.

In April 1993 A.Z. died. In February 1995, Ljubljana Municipality informed Mr Korelc that he was not entitled to take over the flat's tenancy and was required to vacate it within three months. Later that month Mr Korelc brought proceedings against the municipality seeking the right to succeed to the tenancy following A.Z.'s death. While the proceedings were ongoing, Mr Korelc continued to live in the flat, paid monthly rent and, in 1999, had the flat refurbished.

In July 2000 and September 2001, the domestic courts dismissed Mr Korelc's claim finding that he was neither A.Z.'s spouse, nor a close relative or a person in a long-term relationship with him as required by domestic law (the 1991 Housing Act) for tenancy to be transferred following a death. The courts referred to unmarried couples as being in a "long-term relationship", a situation Mr Korelc had not claimed existed between him and A.Z.. Consequently, the two men had co-habitated in an "economic community", which did not allow a tenancy transfer.

Mr Korelc requested the public prosecutor bring proceedings for legality; his request was rejected, and so was his subsequent complaint before the Constitutional Court. The Constitutional Court stated expressly that the sex of the two partners was irrelevant in the situation at stake, and it was the type of their relationship that could not allow for the tenancy transfer.

In March 2004, the Ljubljana Municipality started enforcement proceedings aiming to evict Mr Korelc from the flat. In June 2005, he requested that the execution of the eviction order be postponed until such time as the European Court of Human Rights had delivered its judgment in his case; in March 2006 the municipality made the same request, which was granted by the domestic court in April 2008.

Decision of the Court

Articles 8 and 14

The Court noted that, since 2005, the registration of the Same Sex Civil Partnership Act gave the right to succeed to a tenancy to a same-sex partner of a deceased tenant. Mr Korelc, however, had not submitted that his relationship had been of a homosexual nature. Nor had he asserted that he had been discriminated against on the ground of his sexual orientation. While he maintained that he had been unable to succeed to the tenancy because he and A.Z. had been of the same sex, the Court found that Mr Korelc's claim had been ultimately dismissed by the domestic courts because his relationship with A.Z. had represented a relationship of economic dependency rather than a long-term relationship, and not because he and A.Z. had been of the same sex. In addition, the Slovenian Constitutional Court had said that rejecting Mr Korelc's request on the sole ground that the two men were of the same sex would have been contrary to the Slovenian Constitution; it had also stated expressly that a relationship of economic dependency could not be equated with a long-term relationship irrespective of whether it had been constituted of persons of the same or of the opposite sex. Gender had therefore not been a decisive element in the rejection of his tenancy claim. Consequently, he had not been discriminated against on the grounds of either his sexual orientation or his gender.

The Court found that Mr Korelc's situation had not been comparable to that of a married or unmarried couple, a homosexual civil partnership or close family members, all of which enjoyed the right to take over a tenancy after the death of its holder. The Court thus held that the difference in treatment to which Mr Korelc had been subjected had not been discriminatory and consequently his complaint under Article 8 and 14 had to be rejected as inadmissible.

Article 6 §1

The Court found that the proceedings, before the courts and those related to the enforcement of the judgment, which had lasted approximately 9 years in all, had been excessively long, in violation of Article 6 §1.

Article 13

The Court, in line with its earlier case-law on the matter, held that domestic law did not provide for a remedy to effectively excessively long court and execution proceedings, and therefore held that there had been a violation of that article.

Bigaeva v. Greece

Article 8 (violation); Article 8 in conjunction with Article 14 (non-violation)

Judgment of 28 May 2009. Concerns: discrimination following alleged unlawful interference with the applicant's right to respect for a professional life.

Facts and complaints

The applicant, Violetta Bigaeva is a Russian national who was born in 1970 and lives in Athens. In 1993 she settled in Greece, obtained a work permit and was admitted in 1995 to the Athens Law Faculty. In August 1996 she obtained a residence permit on the basis of her student status. In 2000 she obtained a Master's degree, then in 2002 a postgraduate qualification, and decided to continue with her doctorate.

In the meantime, in 2000, the applicant had been admitted to pupillage by the Athens Bar Council (the "Council"). Under the Legal Practice Code, an 18 month pupillage is a prerequisite for admission to the Bar. According to a certificate issued in 2007 by the Council, the applicant had been admitted to pupillage by mistake; it had been assumed that she was a Greek citizen as she had a Master's degree from a Greek university.

After she had completed her pupillage, in 2002, the Council refused to allow Mrs Bigaeva to sit the Bar examinations on the grounds that she was not a Greek national, as required by Article 3 of the Legal Practice Code. The applicant then lodged with the Supreme Administrative Court an application to have that refusal set aside, together with a request for the stay of execution of the decision in question.

In September 2002, the Supreme Administrative Court granted Mrs Bigaeva's request for a stay of execution so that she could sit for the examinations. After passing them, she applied to the Ministry of Justice to be admitted to the Athens Bar Council's roll. As the Ministry failed to reply, the applicant again appealed to the Supreme Administrative Court, this time against the Ministry's tacit refusal to admit her

to the Council's roll. The Supreme Administrative Court dismissed Mrs Bigaeva's two appeals in 2005, taking the view that given the important role of lawyers in the administration of justice, the state enjoyed wide discretion in regulating the conditions of access to the profession. Accordingly, the Supreme Administrative Court found that the rejection of the applicant's request to sit the Bar examinations had been legal and had not infringed her right to the free development of her personality and, accordingly, that the Ministry of Justice had justifiably denied her request for admission to the Bar Council's roll.

Decision of the Court

Article 8

The Court observed that restrictions imposed on professional life might fall within the ambit of Article 8 when they affected the way an individual built his social identity by developing relationships with other human beings.

In the present case, the prospect of sitting for the examinations after her pupillage was the climax of a long personal and academic endeavour for Mrs Bigaeva, reflecting her desire to become integrated into Greek society.

The authorities, who did not raise the issue of nationality until the end of the process, allowed her to carry out her pupillage and left her with hope, even though she was clearly not going to be entitled to sit the subsequent examinations.

The Court held that there had been a violation of Article 8, as the authorities had shown a lack of coherence and respect towards Mrs Bigaeva and her professional life.

Article 8 in conjunction with Article 14

Mrs Bigaeva accused the state of excluding non-EU foreign nationals from access to the legal profession, in an arbitrary and discriminatory manner.

The Court reiterated that the Convention did not guarantee the right to freedom of profession and that the legal profession was somewhat special because of its public-service aspects.

It was therefore for the Greek authorities to decide on the conditions of nationality for admission to legal practice. The Court could not call into question the decision they had taken not to allow Mrs Bigaeva to sit the examinations organised by the Council on an objective and reasonable basis, namely Article 3 of the Legal Practice Code.

The Court accordingly held that there had been no violation of Article 8 taken together with Article 14 of the Convention.

Varnima Corporation International S.A. v. Greece

Judgment of 28 May 2009. Concerns: preferential treatment of state with respect to limitation period in private-law proceedings against a private entity.

Article 6 (violation)

Facts and complaints

The applicant company entered into a contract with the state for the importation of petroleum products on its behalf. The state brought a claim against it for damages before the court of first instance, alleging that the company had failed to fulfil its contractual obligations. The company then lodged a counterclaim for damages on the grounds that the state had not fully performed the contract. The court of first instance joined the two actions. It subsequently rejected the applicant company's action as time-barred. Among other things, the court observed that, by law, an action concerning a contract for the transfer of goods was to be regarded as time-barred, where the proceedings were already pending, if the difference in time between two successive procedural acts, initiated either by the parties or by the court, exceeded 1 year. The same court further considered that, as regards the action brought by the state against the applicant company, the 1-year limitation period was not applicable. It declared applicable the law governing the limitation period for claims of the state against private individuals. Under that law, claims of the state arising from non-performance of a contract had a limitation period of 20 years. The court upheld the state's claim and awarded it the sums requested. The applicant company appealed but the Court of Appeal partly upheld the decision. In particular, it accepted that the reasons for preferential treatment of the state in relation to the limitation period did not cease to exist when the state was acting *jure gestionis*, that is to say not in the exercise of its sovereign power but in the context of the private management of its resources. The Court of Appeal added that the importing of petroleum products served the general interest and satisfied the fundamental needs of society. It lastly found that the application of two different limitation periods for the two parties did not contravene the provision of the Constitution enshrining the principle of equality, nor was it in breach of Article 6 §1 of the Convention. An appeal on points of law by the applicant company was dismissed.

Decision of the Court

The domestic courts, in the same case, had applied two different limitation periods in relation to the respective claims of each party. The applicant company's claim against the state had thus been regarded as time-barred after 1 year and, as regards the state's claim against the applicant company, the rule setting a 20-year limitation period for claims of the state had been declared applicable. In addition to the substantial disadvantage *per se* of one party in relation to the other, as regards the possibility of bringing a claim, the Court also took into account the equivalent status and role of the parties to the proceedings in deciding whether or not there had been a breach of the principle of the equality of arms. In the present case, the application of different limitation periods had unquestionably placed the applicant company in a position of substantial disadvantage compared to the state for the submission of its claim. As a result of the imposition on the applicant of a limitation period 20 times shorter than that granted to the opposite party, its claims had been dismissed by the domestic courts.

It was therefore also appropriate to ascertain whether the two parties enjoyed an equivalent status in the proceedings in question, as that would confirm the breach of the principle of the equality of arms.

The dispute in question concerned a private commercial transaction governed by private law rather than a sovereign act of authority by the state. The state had not entered into the contract *jure imperii*, in the exercise of its sovereign power, but *jure gestionis*, that it to say in a private management context, acting as a private person. In the context of private-law procedures the authorities could be pursuing public-law missions, for which the requisite privileges and immunities might possibly be granted to it. However, the mere fact of belonging to the structure of the state did not suffice in itself to render legitimate, in all circumstances, the application of state privileges, which had to be necessary for the proper exercise of public authority. The application to the state in the present case of a 20-year limitation period for its claims did not appear to be justified by a need to ensure the efficient management of public finance or the fulfilment of the state's budgetary objectives. The mere interest of the public treasury could not by itself be deemed a public or general interest that might justify in a given case a breach of the principle of the equality of arms. Accordingly, the application of a 20-year limitation period for the state's claims against the applicant company was not sufficiently justified by the general interest. The Court therefore took the view that the application, to the detriment of the applicant company's claims against the State, of different periods of limitation to the opposing parties, entailing a considerable discrepancy between them, contravened the principle of the equality of arms. Accordingly, the Court dismissed the government's preliminary objection to the effect that the applicant company's complaint was inadmissible *ratione materiae*.

Codarcea v. Romania

Articles 6 and 8 (violations)

Judgment of 2 June 2009. Concerns: excessive length and ineffectiveness of proceedings.

Facts and complaints

Elvira Codarcea, a Romanian national, was born in 1933 and lives in Târgu Mureş. She is a lawyer. On 4 June 1996 she was admitted to Târgu Mureş Hospital for the removal of an acrochordon on her lower jaw and a post-operative healing problem affecting her right thigh. Doctor B. recommended plastic surgery and performed a blepharoplasty (eyelid surgery). Mrs Codarcea had to be taken into hospital and operated on again, from 8 to 9 August 1996, because – following the blepharoplasty – her eyelids would not close. She was taken into hospital again from 20 to 21 August the same year and this time Dr B. performed a third blepharoplastry as well as more plastic surgery. These operations resulted in paralysis of the right side of her face and other adverse consequences, including neurasthenic depression, requiring specialist medical treatment. Several further operations had to be performed. On 5 June 1998 Mrs Codarcea instituted criminal proceedings as a civil party against Dr B. but the proceedings produced no result and were definitively closed by a decision of the Mureş County Court of 25 June 2004 ruling that the doctor's criminal responsibility was now time- barred. On 18 October 2004, the applicant therefore brought civil proceedings against Dr B. and on 5 May 2005 also sued the hospital where she had been operated on. On 1 July 2005 the civil court held that Mrs Codarcea had been the victim of medical negligence and ordered the doctor to pay pecuniary and non-pecuniary damages. It dismissed the applicant's action against the hospital, however, on the ground that the hospital could not be held liable for the actions of the doctor. After the case had gone right up to the High Court of Cassation, the proceedings were definitively disposed of on 18 April 2008, when the Târgu Mureş Court of Appeal upheld the applicant's right to compensation. In the meantime, on 17 July 2006, enforcement proceedings had been issued against Dr B. by the Târgu Mureş Court of First Instance but had remained unsuccessful because the doctor had become insolvent on account of outstanding maintenance payments and a voluntary act of partition of real property he had concluded after judgment had been found against him.

Decision of the Court

Article 6

The Court pointed out first of all that as the case concerned an action for damages in respect of personal injury sustained by a person who – at the beginning of the proceedings – was aged 65, the judicial authorities should have exercised special diligence. While acknowledging the complexity of the medical issues with which the domestic courts were faced, the Court considered that the period of 9 years, six months and 23 days which had elapsed between 5 June 1998, when Mrs Codarcea instituted proceedings as a civil party seeking damages, and 18 April 2008, when the Târgu Mureş Court of Appeal gave the final decision in the case, was excessively long and had therefore resulted in a breach of Article 6.

Article 8

The Court reiterated that issues relating to a person's physical and psychological integrity and their agreement to undergo medical treatment fell within the scope of Article 8. It pointed out that State parties to the Convention were under an obligation to introduce regulations compelling both public and private hospitals to adopt appropriate measures for the physical integrity of their patients. It also stressed that any patient should be informed of the consequences of a medical operation and be able to give or withhold their consent in full knowledge thereof. Where a patient had not been so informed, and the operation was performed in a public hospital, the state concerned could be held directly liable. In the present case, the Court noted that Mrs Codarcea had had formal access to a procedure by which she was able to secure a finding of liability against the doctor who had operated on her and an order to pay her damages. However, it had not been possible to recover the amount awarded by the domestic courts because the doctor was insolvent and at the time there was no medical-negligence insurance scheme under Romanian law (the position has since changed).

The Court observed, lastly, that the Romanian courts had refused to recognise the liability of Târgu Mureş Hospital for the acts of its employee despite the fact that there was some authority in the case-law and legal doctrine to support a finding of liability. There had therefore been a violation of Article 8 on account of the applicant's inability

to obtain the compensation awarded her by a court decision for the consequences of the medical negligence of which she had been a victim.

Szuluk v. United Kingdom

Judgment of 2 June 2009. Concerns: monitoring by prison authorities of the applicant's medical correspondence.

Article 8 (violation)

Facts and complaints

The applicant, Edward Szuluk, is a British national who was born in 1955 and is currently in prison in Staffordshire (United Kingdom).

Mr Szuluk was sentenced in November 2001 to 14 years' imprisonment for drugs offences. In April 2001, while on bail pending trial, the applicant suffered a brain haemorrhage for which he had two operations. Following his discharge back to prison, he was required to go to hospital every 6 months for a specialist check-up.

The applicant complained, unsuccessfully, before the local courts that his correspondence with the neuroradiology specialist who was supervising his hospital treatment had been monitored by a prison medical officer.

Decision of the Court

Article 8

The Court noted that it was clear and not contested that there had been an "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence. It further observed that it was accepted by the parties that the reading of the applicant's correspondence had been governed by law and that it had been aimed at the prevention of crime and the protection of the rights and freedoms of others.

Mr Szuluk submitted that the monitoring of his correspondence with his medical specialist inhibited their communication and prejudiced reassurance that he was receiving adequate medical treatment while in prison. Given the severity of his medical condition, the Court found the applicant's concerns to be understandable. Moreover, there had not been any grounds to suggest that Mr Szuluk had ever abused the confidentiality given to his medical correspondence in the past or that he had any intention of doing so in the future. Furthermore, although he had been detained in a high security prison which also held Category A (high risk prisoners), he had himself always been defined as Category B (prisoners for whom the highest security conditions were not considered necessary).

Nor did the Court share the Court of Appeal's view that the applicant's medical specialist, whose bona fides had never been challenged, could be "intimidated or tricked" into transmitting illicit messages or that that risk had been sufficient to justify the interference with the applicant's rights. This was particularly so since the Court of Appeal had further acknowledged that the importance of unimpeded correspondence with secretarial staff of MPs (Members of Parliament), although subject to the same kind of risks, outweighed any risk of abuse.

Indeed, uninhibited correspondence with a medical specialist in the context of a prisoner suffering from a life-threatening condition should be given no less protection than the correspondence between a prisoner and an MP. Moreover, the Court of Appeal had conceded that it could, in some cases, be disproportionate to refuse confidentiality to a prisoner's medical correspondence and changes had since been enacted to the relevant domestic law to that effect. The Court also found that the Government had failed to provide sufficient reasons to explain why the risk of abuse involved in correspondence with named doctors whose exact address, qualifications and bona fides were not in question should be perceived as greater than the risk involved in correspondence with lawyers.

The Court therefore concluded that the monitoring of Mr Szuluk's medical correspondence had not struck a fair balance with his right to respect for his correspondence. Accordingly, there had been a violation of Article 8.

Opuz v. Turkey

Judgment of 9 June 2009. Concerns: failure of the Turkish authorities to protect the applicant and her mother from domestic violence.

Articles 2, 3 and 14 (violations)

Facts and complaints

The applicant, Nahide Opuz, is a Turkish national who was born in 1972 and lives in Diyarbakır (Turkey). In 1990 Ms Opuz started living with H.O., the son of her mother's husband. Ms Opuz and H.O. got married in November 1995 and had three children in 1993, 1994 and 1996. They had serious arguments from the beginning of their relationship and are now divorced.

Between April 1995 and March 1998 there were four incidents of H.O.'s violent and threatening behaviour which came to the notice of the authorities. Those incidents involved several beatings, a fight during which H.O. pulled out a knife and H.O. running the two women down with his car. Following those assaults the women were examined by doctors who testified in their reports to various injuries, including bleeding, bruising, bumps, grazes and scratches. Both women were medically certified as having sustained life-threatening injuries: the applicant as a result of one particularly violent beating; and her mother following the assault with the car.

Criminal proceedings were brought against H.O. on three of those occasions for death threats, actual, aggravated and grievous bodily harm and attempted murder. As regards the knife incident, it was decided not to prosecute for lack of evidence. H.O. was twice remanded in custody and released pending trial.

However, as the applicant and her mother withdrew their complaints during each of those proceedings, the domestic courts discontinued

the cases, their complaints being required under Article 456 §4 of the Criminal Code to pursue any further. The proceedings concerning the car incident were nevertheless continued in respect of the applicant's mother, given the seriousness of her injuries, and H.O. was convicted to 3 months' imprisonment, later commuted to a fine.

On 29 October 2001 the applicant was stabbed seven times by H.O. and taken to hospital. H.O. was charged with knife assault and given another fine of almost 840 000 Turkish lira (the equivalent of approximately 385 euros) which he could pay in eight instalments. In his statement to the police he claimed that he and his wife, who frequently argued about her mother interfering in their marriage, had had an argument which had got out of hand.

Following that incident, the applicant's mother requested that H.O. be detained on remand, maintaining that on previous occasions her and her daughter had had to withdraw their complaints against him due to his persistent pressure and death threats.

In April 1998, October and November 2001 and February 2002 the applicant and her mother filed complaints with the prosecution authorities about H.O.'s threats and harassment, claiming that their lives were in immediate danger and requesting that the authorities take immediate action such as H.O.'s detention. In response to those requests for protection, H.O. was questioned and his statements taken down; he was then released.

Finally, on 11 March 2002, the applicant's mother, having decided to move to Izmir with her daughter, was travelling in the removal van when H.O. forced the van to pull over, opened the passenger door and shot her. The applicant's mother died instantly.

In March 2008 H.O. was convicted of murder and illegal possession of a firearm and sentenced to life imprisonment. Released pending the appeal proceedings, he claims that he killed the applicant's mother because his honour had been at stake as she had taken his wife and children away from him and had led his wife into an immoral way of life.

In April 2008, the applicant filed another criminal complaint with the prosecution authorities in which she requested the authorities to take measures to protect her as, since his release, her ex-husband had started threatening her again, via her new boyfriend. In May and November 2008 the applicant's representative informed the European Court of Human Rights that no such measures had been taken and the Court requested an explanation. The authorities have since taken specific measures to protect the applicant, notably by distributing her ex-husband's photograph and fingerprints to police stations with the order to arrest him if he was spotted near the applicant's place of residence.

In the meantime, in January 1998, Law No. 4320 of the Family Protection Act entered into force in Turkey which provides for specific measures for protection against domestic violence.

Decision of the Court

Article 2

The Court considered that, in the applicant's case, further violence, indeed a lethal attack, had not only been possible but even foreseeable, given the history of H.O.'s violent behaviour and criminal record in respect of his wife and her mother and his continuing threat to their health and safety. Both the applicant and her mother had suffered physical injuries on many occasions and been subjected to psychological pressure and constant death threats, resulting in anguish and fear. The violence had escalated to such a degree that H.O. had used lethal weapons, such as a knife or a shotgun. The applicant's mother had become a target of the violence as a result of her perceived involvement in the couple's relationship; the couple's children could also be considered as victims on account of the psychological effects of the ongoing violence in the family home. As concerned the killing of the applicant's mother, H.O. had planned the attack, since he had been carrying a knife and a gun and had been wandering around the victim's house prior to the attack.

According to common practice in the member states, the more serious the offence or the greater the risk of further offences, the more likely it should be that the prosecution continue in the public interest, even if victims withdraw their complaints. However, when repeatedly deciding to discontinue the criminal proceedings against H.O., the authorities referred exclusively to the need to refrain from interfering in what they perceived to be a "family matter". The authorities had not apparently considered the motives behind the withdrawal of the complaints, despite the applicant's mother's statements to the prosecution authorities that she and her daughter had felt obliged to do so because of H.O.'s death threats and pressure. It was also striking that the victims had withdrawn their complaints when H.O. had been at liberty or following his release from custody.

Despite the withdrawal of the victims' complaints, the legislative framework should have enabled the prosecuting authorities to pursue the criminal investigations against H.O. on the basis that his violent behaviour had been sufficiently serious to warrant prosecution and that there had been a constant threat to the applicant's physical integrity. Turkey had therefore failed to establish and apply effectively a system by which all forms of domestic violence could be punished and sufficient safeguards for the victims be provided.

Indeed, the local authorities could have ordered protective measures under Law No. 4320 or issued an injunction banning H.O. from contacting, communicating with or approaching the applicant's mother or entering defined areas. On the contrary, in response to the applicant's mother's repeated requests for protection, notably at the end of February 2002, the authorities, apart from taking down H.O.'s statements and then releasing him, had remained passive; two weeks later H.O. shot dead the applicant's mother.

The Court therefore concluded that the national authorities had not shown due diligence in preventing violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O.. Nor could the investigation into the killing, to which there had been a confession, be described as effective, it having lasted so far more than 6 years. Moreover, the criminal law system had had no deterrent effect in the present case. Nor could the authorities rely on the victims' attitude for the failure to take adequate measures. The Turkish authorities had therefore failed to protect the right to life of the applicant's mother, in violation of Article 2.

Article 3

The Court considered that the response to H.O.'s conduct had been manifestly inadequate in the face of the gravity of his offences. The judi-

cial decisions, which had had no noticeable preventive or deterrent effect on H.O., had been ineffective and even disclosed a certain degree of tolerance towards his acts. Notably, after the car incident, H.O. had spent just 25 days in prison and only received a fine for the serious injuries he had inflicted on the applicant's mother. Even more striking, as punishment for stabbing the applicant seven times, he was merely imposed with a small fine, which could be paid in instalments.

Nor had Turkish law provided for specific administrative and policing measures to protect vulnerable persons against domestic violence before January 1998, when Law No. 4320 came into force. Even after that date, the domestic authorities had not effectively applied those measures and sanctions in order to protect the applicant.

Finally, the Court noted with grave concern that the violence suffered by the applicant had not in fact ended and that the authorities continued to display inaction. Despite the applicant's request in April 2008, nothing was done until after the Court requested the government to provide information about the protection measures it had taken.

The Court therefore concluded that there had been a violation of Article 3 as a result of the authorities' failure to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her ex-husband.

Article 14

The Court first looked at the provisions related to discrimination against women and violence according to some specialised international human rights instruments, in particular the Convention for the Elimination of Discrimination Against Women and the Belem do Para Convention, as well as at the relevant documents and decisions of international legal bodies, such as the United Nations Commission on Human Rights and the Inter-American Commission. It transpired from the international-law rules and principles, accepted by the vast majority of states, that the state's failure – even if unintentional - to protect women against domestic violence breached women's right to equal protection of the law.

According to reports submitted by the applicant drawn up by two leading non-governmental organisations, the Diyarbakır Bar Association and Amnesty International, and uncontested by the government, the highest number of reported victims of domestic violence was in Diyarbakır, where the applicant had lived at the relevant time. All those victims were women, the great majority of whom were of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income.

Indeed, the reports suggested that domestic violence was tolerated by the authorities and that the remedies indicated by the government did not function effectively. Research showed that, despite Law No. 4320, when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims to return home and drop their complaint. Delays were frequent when issuing and serving injunctions under Law No. 4320, given the negative attitude of the police officers and that the courts treated the injunctions as a form of divorce action. Moreover, the perpetrators of domestic violence did not receive dissuasive punishments; courts mitigated sentences on the grounds of custom, tradition or honour.

The Court therefore considered that the applicant had been able to show that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence. Bearing that in mind, the violence suffered by the applicant and her mother could be regarded as gender-based, which constituted a form of discrimination against women. Despite the reforms carried out by the government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the applicant's case, indicated that there was insufficient commitment to take appropriate action to address domestic violence. The Court therefore concluded that there had been a violation of Article 14, in conjunction with Articles 2 and 3.

Other articles

Given the above findings, the Court did not find it necessary to examine the same facts in the context of Articles 6 and 13.

Petkov and others v. Bulgaria

Judgment of 11 June 2009. Concerns: applicants complained that they had been prevented from running in the 2001 parliamentary elections; lack of effective remedies.

Article 3 of Protocol No. 1 and Article 13 (violations)

Facts and complaints

The applicants are three Bulgarian nationals living in different towns in Bulgaria: Mr Naum Ivanov Petkov was born in 1941 and lives in Vratsa; Mr Boris Radkov Georgiev was born in 1944 and lives in Montana; and Mr Ventseslav Asenov Dimitrov was born in 1945 and lives in Sofia.

In 1997, a law was adopted, the so-called "Dossiers Act", which provided for the disclosure of the names of individuals who had collaborated with the state security agencies in the communist past.

The task of disclosure was entrusted to a special body, "the Dossiers Commission", which had to publish reports containing the names of such individuals.

In the context of the parliamentary elections on 17 June 2001, the Election of Members of Parliament Act ("the electoral law"), which was adopted on 9 April 2001, allowed political parties to withdraw nominations of candidates if there was information which indicated that they had collaborated with the former state security agencies.

On 5 June 2001, the Central Electoral Commission decided that the relevant information could be provided by the Dossiers Commission either through the reports it was supposed to prepare or through certificates issued by it. The Central Electoral Commission's decision specified that on the basis of these documents, and of a request by the political party concerned, the relevant regional electoral commission could annul the candidate's registration. On 13 June 2001 this decision was declared null and void by the Supreme Administrative Court,

which held that the only lawful means for establishing collaboration with the former state security agencies were the reports to be drawn up by the Dossiers Commission, not certificates issued by it.

In the parliamentary elections held on 17 June 2001 all three applicants ran as candidates for the National Movement Simeon II. Prior to these elections, the applicants were struck off the lists of candidates by the relevant regional electoral commissions on account of allegations – based on certificates issued by the Dossiers Commission – that they had collaborated with the former state security agencies. The decisions to strike them off the lists were subsequently declared null and void by the Supreme Administrative Court, in line with its judgment of 13 June 2001. However, the electoral authorities did not restore the applicants' names to the lists. As a result, they could not run for parliament.

Subsequently, Mr Dimitrov's case was reviewed by the Constitutional Court, which acted upon the request of 57 members of parliament and the plenary meeting of the Supreme Administrative Court. The Constitutional Court found against Mr Dimitrov, stating that while the electoral authorities' failure to give effect to the final judgment in his favour was problematic, it could not render the election of the person who had replaced him on the ballot illegal, but only lead to an award of damages. Accordingly, in October 2004, Mr Dimitrov brought an action for damages under the 1988 State Responsibility for Damage Act. In February 2008, these proceedings were still pending before the first instance court.

Decision of the Court

Article 3 of Protocol No. 1

The Court first pointed out that the right to stand for parliament was an individual right protected by Protocol No. 1 to the Convention. In order to determine whether it had been breached in this case, it examined whether the electoral authorities' failure to give effect to the final and binding judgments of the Supreme Administrative Court had prevented the applicants from standing in the parliamentary elections on 17 June 2001. It pointed out that it was not its task to determine whether these judgments had been correct, nor to resolve the issues of which they had disposed.

The Court observed that, while the reason for this failure had apparently been the electoral authorities' belief that the judgments had been erroneous and outside the jurisdiction of the Supreme Administrative Court, in a democratic society abiding by the rule of law the authorities could not cite their disapproval of the findings made in a final judgment to justify their refusal to comply with it.

The Court took account of the difficulties facing the electoral authorities due to the fact that two of the Supreme Administrative Court's judgments had been delivered just a couple of days before the elections, and one even afterwards. However, the Court found that these difficulties had been of the authorities' own making: notably, the electoral law had been adopted just over two months before the elections, at odds with the Council of Europe's recommendations on the stability of electoral law; instead of requiring political parties to verify links with former state security agencies before nominating candidates, parties had been allowed to do so after the nomination; and the practical arrangements for the application of the rule concerning withdrawal of candidates had been clarified by the Central Electoral Commission only 12 days before the elections actually took place. All this had resulted in serious practical difficulties and had led to legal challenges that had to be adjudicated and acted upon under extreme time constraints.

Accordingly, the electoral authorities' failure to reinstate the applicants on the lists despite the final domestic judgments in their favour had been in violation of Article 3 of Protocol No. 1.

Article 13

The Court found that the remedy relied on by the government – a claim under the 1988 State Responsibility for Damage Act – could not by itself be considered effective. Even if ultimately successful, it would not have been sufficient, as it could have only led to an award of compensation. The Court pointed out that in the electoral context only remedies capable of ensuring the proper unfolding of the democratic process could be considered effective.

The Court examined the availability of such remedies in Bulgaria and found that the Constitutional Court could hear challenges to the lawfulness of parliamentary elections and review the lawfulness of the election of individual members of parliament. However, the Court was not persuaded that this remedy was effective, because it was not clear whether the scope of the Constitutional Court's review allowed it to address satisfactorily the essence of the applicants' grievances and whether it would have been able to provide the applicants with sufficient redress, by for instance ordering repeat elections. This uncertainty was apparently due to the lack of clear and unambiguous provisions in this domain and to the scarcity of rulings on such matters. The latter, in turn, stemmed from the limitation on the persons and bodies who could bring a case to the Constitutional Court. Under Bulgarian law, only a limited category of persons or bodies were entitled to refer a matter to that court. This meant that the participants in the electoral process could not directly compel the institution of proceedings before it, whereas under the Court's settled case-law, a remedy could only be considered effective if the applicant were able to initiate the procedure directly.

There had therefore been a violation of Article 13 in respect of the applicants' complaint under Article 3 of Protocol No. 1.

Herri Batasuna and Batasuna v. Spain, Etxeberría and v. Spain, Herritarren Zerrenda v. Spain

Judgments of 30 June 2009. Concerns: The first cases concern the dissolution of the political parties Herri Batasuna and Batasuna. The second and third cases concern the disqualification from standing for election imposed on the applicants on account of their activities within the political parties that had been declared illegal and dissolved.

Articles 11, 10 and 13 (no violations); Article 3 of Protocol No. 1 (no violation)

Facts and complaints

Herri Batasuna and Batasuna

The political organisation Herri Batasuna was established as an electoral coalition and took part in the general elections of 1 March 1979. On 5 June 1986 Herri Batasuna was entered in the register of political parties at the Ministry of the Interior. On 3 May 2001, the applicant Batasuna filed documents with the register of political parties seeking registration as a political party.

On 27 June 2002 the Spanish Parliament enacted Organic Law 6/2002 on Political Parties ("the LOPP"). The main innovations introduced by the new law appeared in chapter II, on the organisation, functioning and activities of political parties, and in chapter III, on their dissolution or judicial suspension. The LOPP was published in the *Official Journal of the State* on 28 June 2002 and entered into force on the following day.

By a decision of 26 August 2002,the central investigating judge no. 5 at the *Audiencia Nacional* suspended the activities of Batasuna and ordered the closure, for 3 years, of any offices and premises that Herri Batasuna and Batasuna might use.

On 2 September 2002, State Counsel, acting on behalf of the Spanish Government and further to the agreement adopted by the Council of Ministers on 30 August 2002, brought proceedings before the Supreme Court seeking the dissolution of the applicant parties, on the ground that they had breached the new LOPP by a series of activities that irrefutably amounted to conduct that was incompatible with democracy, prejudicial to constitutional values, democracy and human rights and contrary to the principles laid down in the explanatory memorandum to the LOPP.

On the same day, the Public Prosecutor's Office also brought proceedings before the Supreme Court seeking the dissolution of the parties in question, in accordance with section 10 *et seq.* of the LOPP.

On 10 March 2003 Batasuna requested that a preliminary question on the constitutionality of the LOPP be submitted to the Constitutional Court, since it considered that certain sections of the LOPP violated the rights to freedom of association, freedom of expression, freedom of thought, and the principles of lawfulness, judicial certainty, the non-retrospective nature of less favourable criminal laws, proportionality and *non bis in idem*, and also the right to participate in public affairs.

By a unanimous judgment of 27 March 2003, the Supreme Court dismissed their request, noting that the objections raised concerning the constitutionality of the LOPP had already been examined and dismissed in a judgment delivered by the Constitutional Court on 12 March 2003. The Supreme Court declared the parties Herri Batasuna, EH and Batasuna illegal, ordered their dissolution and liquidated their assets.

By two unanimous judgments of 16 January 2004, the Constitutional Court dismissed the *amparo* appeals lodged by the applicants.

Etxeberría and others

The applicants are Spanish nationals and electoral groupings which were active within the political parties that were declared illegal and dissolved (in particular, Herri Batasuna and Batasuna) on the basis of the LOPP.

On 28 April 2003 the electoral commissions of the Basque Country and Navarre registered the candidacies of the groupings in the municipal, regional and autonomous community elections scheduled to take place in the Basque Country and Navarre on 25 May 2003.

On 1 May 2003, the State Counsel and the Public Prosecutor's Office submitted requests for judicial review of an electoral matter, seeking to have approximately 300 candidacies, including those of the electoral groupings in question, struck off the lists; those requests were submitted to the special division of the Supreme Court, constituted in compliance with section 61 of the Organic Law on Judicial Power (hereafter "the LOPJ"). They accused the groupings of pursuing the activities of the political parties Batasuna and Herri Batasuna, which had been declared illegal and dissolved in March 2003.

On 3 May 2003, the Supreme Court granted the appeals submitted by the State Counsel and the Public Prosecutor's Office in the part concerning the electoral groupings which have now applied to the Court, and barred the groupings from standing on the ground that their aim had been to carry on the activities of the three parties that had been declared illegal and dissolved. It based its findings on section 44 §4 of the Organic Law on the General Electoral System, as amended by the LOPP. The electoral groupings concerned then lodged an amparo appeal with the Constitutional Court.

By a judgment of 8 May 2003, the Constitutional Court dismissed the appeals, *inter alia*, of the four electoral groupings in the present application. Sixteen of the electoral groupings involved in the domestic proceedings had their amparo appeals allowed. As to the four electoral groupings in the present application, the Constitutional Court referred to its own case-law with regard to the constitutionality of the electoral disputes procedure as set out in section 49 of the Organic Law on the General Electoral System. While reiterating that it did not have jurisdiction to review the findings of the Supreme Court, it also referred to the Supreme Court judgments in question and held that they were reasonable and sufficiently well-motivated to attest to the existence of a joint strategy, drawn up by the terrorist organisation ETA and the dissolved party Batasuna, aimed at helping to rebuild the party and to present candidates in the forthcoming municipal, regional or autonomous community elections.

Herritarren Zerrenda

By an agreement of 17 May 2004, the central electoral commission (Junta Electoral Central) registered the candidacy of Herritarren Zerrenda

for the elections to the European Parliament on 13 June 2004, which had been called by Royal Decree No. 561/2004 of 19 April 2004.

On 19 May 2004, the State Counsel, representing the Spanish Government, submitted a request to the special division of the Supreme Court, under section 61 of the Organic Law on Judicial Power, for judicial review in an electoral matter, and seeking to have this candidacy barred. On 18 May 2004, the Public Prosecutor's Office (the public prosecutor) also submitted a request to the special division of the Supreme Court, seeking to have the applicant's candidacy barred.

By two judgments of 21 May 2004, the Supreme Court granted the appeals submitted by the State Counsel and the Public Prosecutor's Office and barred the applicant for standing for election on the ground that his purpose was to continue the activities of the three parties that had been declared illegal and dissolved. It based its decisions on section 44 §4 of the Organic Law on the General Electoral System, as amended by the LOPP.

The applicant then lodged an amparo appeal with the Constitutional Court.

By a judgment of 27 May 2004, the Constitutional Court dismissed the appeal.

On 13 June 2004 elections to the European Parliament were held. As the applicant had called on the electorate to vote for him in spite of his barred candidacy, he obtained 113 000 votes in Spain. Those votes were considered null and void.

Decision of the Court

Herri Batasuna and Batasuna

Article 11

The Court considered that the dissolution of the applicant parties amounted to an interference in the exercise of their right to freedom of association, that it was "prescribed by law" and pursued "a legitimate aim" within the meaning of Article 11 of the Convention.

As to the necessity in a democratic society and the proportionality of the measure, the Court, after reviewing its case-law at some length, considered that the dissolution corresponded to a "pressing social need". It considered that, in the present case, the national courts had arrived at reasonable conclusions after a detailed study of the evidence before them, which had allowed them to conclude that there was a link between the applicant parties and ETA. In view of the situation that had existed in Spain for many years with regard to terrorist attacks, those links could objectively be considered as a threat for democracy. In the Court's opinion, the Supreme Court's findings had to be placed in the context of an international wish to condemn the public defence of terrorism. In consequence, the Court considered that the acts and speeches imputable to the applicant political parties, taken together, created a clear image of the social model that was envisaged and advocated by the parties, which was in contradiction with the concept of a "democratic society".

With regard to the proportionality of the dissolution measure, the fact that the applicants' projects were in contradiction with the concept of "a democratic society" and entailed a considerable threat to Spanish democracy led the Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued, within the meaning of Article 11 §2 of the Convention.

The Court concluded unanimously that there had been no violation of Article 11 of the Convention.

Article 10

As the questions raised by the applicants under Article 10 concerned the same facts as those examined under Article 11 of the Convention, the Court considered that it was not necessary to examine them separately.

Etxeberría and others

Article 3 of Protocol No. 1

In the Court's opinion, Spanish legislation provided for the disputed measure and the applicants could reasonably have expected that the provision in question, which was sufficiently foreseeable and accessible, would be applied in their case.

As to the aims of the measure, the Court considered that the dissolution of the political parties Batasuna and Herri Batasuna would have been pointless if they had been able to continue de facto their activities through the electoral groupings in this application. Accordingly, it held that the impugned restriction pursued aims that were compatible with the principle of the rule of law and the general objectives of the Convention.

With regard to the proportionality of the measure, the Court took the view that the national authorities had available considerable evidence and the time necessary to conclude that the electoral groupings in question wished to continue the activities of the political parties that had previously been declared illegal. The Supreme Court had based its reasoning on elements external to the manifestos of the disputed groupings and, in addition, the authorities had taken decisions to bar individual candidacies after an examination in adversarial proceedings, during which the groupings had been able to submit observations, and the domestic courts had found an unequivocal link with the political parties that had been declared illegal.

Accordingly, the Court considered that the impugned restriction was proportionate to the legitimate aim pursued and, in the absence of any element of arbitrariness, that it had not infringed the free expression of the opinion of the people.

The Court concluded unanimously that there had been no violation of Article 3 of Protocol No. 1.

Article 10

The Court concluded that Article 10 of the Convention was applicable in this case, as freedom of expression had to be interpreted as encompassing also the right to communicate information and ideas to third parties in a political context.

With regard to application Nos. 35613/03 and 35626/03, the Court referred to its conclusions under Article 3 of Protocol No. 1 and declared that no separate issue arose under Article 10 of the Convention.

With regard to applications Nos. 35579/03 and 35634/03, taking into account the close relationship between the right to freedom of expression and the criteria arising from the case-law concerning Article 3 of Protocol No. 1, the Court considered that the State was entitled to enjoy a margin of appreciation for Article 10 comparable to that accepted in the context of Article 3 of Protocol No. 1, and that in the present case the state had not exceeded that margin of appreciation. It also dismissed the complaint concerning the allegation that the organic law on the general electoral system had been applied with retrospective effect.

The Court concluded unanimously that there had been no violation of Article 10 of the Convention.

Article 13

The Court considered that the applicants had not shown that the time-limits imposed had prevented the representatives of the groupings in question from submitting their appeals to the Supreme Court or the Constitutional Court, from filing

observations and defending their interests appropriately.
The Court concluded unanimously that there had been no violation of Article 13 of the Convention.

Herritarren Zerrenda

The Court reached the same conclusions as in the case of *Etxeberría and others* and concluded that there had been no violation of Article 13 of the Convention and Article 3 of Protocol No. 1, and that no separate question arose under Article 10 of the Convention.

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

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 (Article 46, paragraph 2) entrusts the Committee of Ministers (CM) with the supervision of the execution of the European Court of Human Rights' (the Court) judgments. 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 include the effective payment of any just satisfaction awarded by the Court (including interest in case of late payment). Where such just satisfaction is not sufficient to redress the violation found, the CM ensures, in addition, that specific measures are taken in favour of the applicant. These measures may, for example, consist of the granting of a residence permit, the reopening of criminal proceedings and/or the striking out of convictions from criminal records.

The prevention of new violations

The obligation to abide by the judgments of the Court also includes 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 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 CM, only a thematic selection of those appearing on the agendas of the 1051st and 1059th Human Rights (HR) meetings[1] (17-19 March 2009 and 2-5 June 2009) is presented here. Further information on the below mentioned cases as well as on all the others is available from the Directorate General of Human Rights and Legal Affairs, as well as on the on the website of the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) at the following address: www.coe.int/execution.

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published some 10 days after each HR meeting, in the document called "annotated agenda and order of business" available on the CM website: www.coe.int/CM (see Article 14 of the new Rules for the application of Article 46 §2 of the Convention, adopted in 2006[2]).

Interim and final resolutions are accessible through www.echr.coe.int on the Hudoc 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 brackets, the year followed by NEAR and the number of the resolution. Example: (2007 NEAR 75)

- Website of the Department for the Execution of Judgments: http://www.coe.int/execution/
- Website of the Committee of Ministers: http://www.coe.int/cm/ (select "Human Rights meetings" in the left hand column)

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

1051st and 1059th human rights meetings – general information

During the 1051st (17-19 March 2009) and 1059th meetings (2-5 June 2009), the CM supervised payment of just satisfaction respectively in some 1 038 and 1 157 cases. It also monitored, in some 265 (1051st meeting) and 305 (1059th meeting) cases the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, reopening domestic judicial proceedings, etc.) and, in some 4 260 and 3 117 cases respectively (sometimes grouped together), the adoption of general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The CM also started examining 413 (1051st meeting) and 476 (1059th meeting) new Court judgments and considered draft final resolutions concluding, in 31 and 22 cases respectively, that states had complied with the Court's judgments.

Main texts adopted at the 1051st and 1059th meetings

After examination of the cases on the agenda of the 1051st and 1059th meetings, the Deputies have notably adopted the following texts.

Information documents opened to public access

During the period concerned, the Committee of Ministers decided to render the following information documents public. They are available on the website of the Department for the Execution of Judgments (http://www.coe.int/execution/) and on the website of the Committee of Ministers (http://www.coe.int/cm/).

- *Memorandum CM/Inf/DH(2009)16revE / 17 March 2009*: Cases concerning the action of police forces in Greece – Individual measures – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) [1051st meeting]
- *Memorandum CM/Inf/DH(2009)31E / 28 May 2009*: Moldovan and others (No. 1 and No. 2) and other similar cases against Romania – Examination of the state of execution of general measures - Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights in the light of the information provided by the Romanian authorities up to 15 March 2009 [1059th meeting]
- *Memorandum CM/Inf/DH(2009)29revE / 03 June 2009:* Action Plans – Action Reports - Definitions and objectives – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights [1059th meeting]

Selection of decisions adopted (extracts)

During the 1051st and 1059th meetings, the CM respectively examined 6 010 and 4 958 cases and adopted for each of them a decision, available on the CM website (http://www.coe.int/cm/). Whenever the CM concluded that the execution obligations had not been entirely fulfilled yet, it decided to resume consideration of the case(s) 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, according to the (English) alphabetical order of the member state concerned.

– Beshiri and others against Albania
– Driza against Albania
– Ramadhi and 5 others against Albania

Violation of the right to a fair trial and the right to protection of property due to the non-enforcement of final judicial decisions granting in some cases restitution of plots of nationalised lands and in others compensation for their value (violation of Article 6 §1 and Article 1, Protocol No. 1); lack of an effective remedy to obtain the enforcement of such decisions (violation of Article 13 in conjunction with Article 6 §1 in the Ramadhi case).

– 7352/03, judgment of 22 August 2006, final on 12 February 2007
– 33771/02, judgment of 13 November 2007, final on 2 June 2008
– 38222/02, judgment of 13 November 2007, final on 2 June2008

The Deputies,

1. recalled the systemic nature of the non-enforcement of domestic judgments and administrative decisions concerning restitution and/or compensation to former owners in Albania;

2. welcomed the general measures taken so far, in particular the establishment of the private bailiff service, the adoption of maps for

property evaluation, the establishment of a central compensation fund and a fund for compensation in kind of former owners;

3. invited in this context the authorities to ensure to the extent possible the allocation of adequate resources to the central compensation fund;

4. encouraged the authorities to continue their efforts, in consultation with the Secretariat, to resolve the remaining problems and in particular those related to the right to compensation (e.g. the right to default interest) in case of absence of execution or delayed execution and to the effectiveness of domestic remedies;

5. invited the authorities to take the further necessary measures to remedy the lack of legal certainty resulting from contradictory decisions in parallel proceedings and the lack of impartiality of the Supreme Court in the circumstances of the Driza case;

6. concerning the individual measures, invited the authorities to take the necessary measures to refund to all applicants, without further delay, the tax of 10% levied on the sums awarded in respect of just satisfaction and to finalise the negotiations with the applicants in the Ramadhi case [...].

36549/03, judgment of 28 June 2007, final on 28 September 2007

Harutyunyan against Armenia

Breach of the right to fair trial on account of the use of statements which had been obtained under duress when convicting the applicant, serviceman in the army, in 1999 for murder of another serviceman in the army (violation of Article 6 §1).

The Deputies,

1. noted with satisfaction that Armenian law provides for the reopening of criminal proceedings;

2. took note with satisfaction that domestic courts are currently reviewing the case of the applicant and, in the light of the European Court of Human Rights' conclusion that "the applicant's trial was unfair as a whole", stressed the need for a new trial respecting the requirements of Article 6 of the Convention; invited the Armenian authorities to keep the Committee of Ministers informed of the development of the proceedings;

3. recalled that general measures are also awaited in this case [...].

12643/02, judgment of 21 September 2006, final on 21 December 2006

Moser against Austria

Violation by a domestic court of the right to respect for family life of a mother and her son (both Serbian nationals) as the child was placed with foster parents 8 days after his birth in 2000 and custody transferred to the Youth Welfare Office without alternative solutions having been explored (violation of Article 8);

violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Article 6 §1).

The Deputies took note of the information provided by the Austrian authorities and welcomed the general measures taken by Austria [...].

– 59489/00, judgment of 20 October 2005, final on 20 January 2006
– 59491/00, judgment of 19 January 2006, final on 19 March 2006
CM/Inf/DH(2007)8

– United Macedonian Organisation Ilinden – PIRIN and others against Bulgaria
– United Macedonian Organisation Ilinden and others against Bulgaria

Infringement of the freedom of association of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – 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 Article 11 and 13).

The Deputies,

As regards the case of United Macedonian Organisation Ilinden – PIRIN and others

1. recalled in respect of individual measures that the obligation of the respondent state in accordance with Article 46 of the Convention implies allowing the applicant to seek a new registration of their political party in proceedings which are in conformity with the requirements of the Convention and in particular with Article 11;

2. noted that the applicants' third request for registration was rejected by final decision of the Supreme Court of Cassation of 19 May 2009 on grounds of non-conformity with the registration requirements and that in this situation the courts found that they could not examine all the consequences of the European Court's judgment;

3. noted with interest that the decisions relating to this third request for registration do not rely on grounds incriminated by the European Court;

4. took note with satisfaction of the declaration of the Bulgarian authorities according to which the government "sees no obstacle to the applicants' obtaining the registration of their organisation as a political party on the condition that the requirements of the Constitution of the State and the formal requirements of the Political Parties Act are met, without any grounds

such as those incriminated by the European Court being opposed to the applicants";

5. underlined in this context that the Political Party Act, as modified last January, decreased the number of members required to form a political party from 5 000 to 2 500;

6. noted with interest regarding general measures the efforts already made by the Bulgarian authorities through organising awareness-raising and training activities for judges and prosecutors on the requirements of Article 11 in co-operation with the Council of Europe, and their intention to pursue these activities;

7. decided to resume consideration of this item at their 1065th meeting (September 2009) (DH) with a view to closing its examination;

Concerning the case of the United Macedonian Organisation Ilinden and others

8. decided to resume consideration of this item at the latest at their 1072nd meeting (December 2009) (DH) for examination of general measures.

D.H. and others against the Czech Republic

Discrimination in the enjoyment of the right to education due to the applicants' assignment to special schools between 1996 and 1999 on account of their Roma origin (Violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

The Deputies,

1. took note with interest of the action plan provided by the Czech authorities concerning the general measures aimed at inclusion of Roma children in the education system, in a non-discriminatory way;

2. invited the Czech authorities to provide in due time further reports on the implementation of the action plan, and to keep the Committee of Ministers informed of progress in taking the measures envisaged [...].

57325/00, judgment of 13 November 2007 - Grand Chamber

– Havelka and others against Czech Republic
– Wallovà and Walla against Czech Republic

Violation of the applicants' right to respect for their private and family life on account of the fact that their children had been taken into public care on the sole ground that the families' economic and social conditions were not satisfactory: the fundamental problem was their housing; neither the applicants' capacity to bring up their children ,nor the affection they bore them had ever been called into question (violation of Article 8).

The Deputies,

1. recalled that in these cases the European Court found that the placement of children in public care motivated only by material and economic grounds constituted a disproportionate measure with respect to Article 8 of the Convention;

2. noted that in the case of Wallovà and Walla, the applicants had renounced further proceedings to obtain visiting rights in relation to their two children placed with a foster-family, as well as the authorities' commitment to support the applicants in case they change their minds, and considered that, in these circumstances, no further individual measure appears necessary;

3. noted with concern that in the Havelka case the first applicant has not yet found suitable housing, and that consequently his three children are still in public care; and encouraged the Czech authorities to undertake concrete steps to help the applicant to find a solution to his situation;

4. invited the Czech authorities to provide further information on general measures, in particular the developments as regards the announced national action plan addressing *inter alia* the systemic problem of placement of children in public institutions on economic grounds, and on the follow-up mechanism applicable after the placement of a child, to reassess periodically whether the measure is still well founded [...].

– 23499/06, judgment of 21 June 2007, final on 21 September 2007
– 23848/04, judgment of 26 October 2006, final on 26 March 2007

Kangasluoma and 19 other cases against Finland

Excessive length of civil and criminal proceedings (violations of Article 6 §1) and, in several cases, lack of effective domestic remedy (violation of Article 13).

The Deputies,

1. took note with interest of the information concerning the adoption of the law introducing a remedy aimed at accelerating proceedings and allowing compensation in case of excessive length of proceedings, as well as the other ongoing measures aimed at reducing the length of proceedings;

2. encouraged the Finnish authorities to pursue their commitment to reducing the length of domestic judicial proceedings;

3. invited the Finnish authorities to submit to the Committee of Ministers more detailed information on the general measures envisaged with a view to reducing the length of proceedings and on the scope of the new remedy [...].

48339/99, judgment of 20 January 2004, final on 14 June 2004

— 28537/02, judgment of 27 September 2005, final on 27 December 2005
— 2507/03, judgment of 27 September 2005, final on 15 February 2006
CM/Inf/DH(2009)28

– "Iza" Ltd and Makrakhidze against Georgia
– "Amat-G" Ltd and Mebaghishvili against Georgia

Impossibility to obtain execution of final domestic judgments ordering payment of state debts (violation of Article 6 §1, 13 and Article 1, Protocol No. 1).

The Deputies,

1. took note with satisfaction that budgetary resources have been allocated to the enforcement of domestic judgments ordering payment of state debts, and that a reform of the system of execution is under way with a view to preventing similar violations of the Convention;

2. invited the Georgian authorities to keep the Committee of Ministers informed of the development of the reform and other relevant measures;

3. recalled that detailed information is in particular awaited on the compulsory enforcement procedure against the state authorities and the possible means of obtaining compensation as well as more generally on measures aimed at ensuring the effectiveness of domestic remedies [...].

73241/01, judgment of 27 July 2006, final on 27 October 2006

Davtyan against Georgia and two other cases

Lack of effective investigations, including a refusal of medical examination by an independent expert, into the applicants' complaints concerning torture and ill-treatment allegedly suffered during police detention (violation of Article 3 and 13)

The Deputies,

1. took note of the information provided during the meeting by the Georgian authorities on the general measures taken and envisaged in these cases;

2. invited the Secretariat and the Georgian authorities to carry out bilateral consultations in order to clarify outstanding general and individual measures to be taken in these cases [...].

50385/99, judgment of 20 December 2004 - Grand Chamber

Makaratzis against Greece and 6 other similar cases

Use of potentially lethal force by the police during a car pursuit in the absence of an adequate legislative and administrative framework governing the use of firearms (violation of positive obligation pursuant to Article 2 to protect life); ill-treatment of victims while under police responsibility (violation of Article 3); absence of effective investigation (procedural violations of Articles 2 and 3); failure to investigate whether or not racist motives on the side of the police may have played a role in some cases (violation of Article 14 combined with Article 3).

The Deputies,

1. took note of the detailed information provided by the Greek authorities concerning the individual measures in these cases and decided to declassify the information document CM/Inf/DH(2009)16 revised resuming this information;

2. noted in addition the information provided at the meeting relating in particular to the reopening of criminal investigations in two of these cases, as well as on the elaboration of a draft law aimed at creating an independent committee which will be competent in the future to evaluate the advisability of opening new administrative investigations following a judgment of the European Court;

3. noted with interest the considerable number of measures adopted by the Greek authorities, including recent measures, to avoid other similar violations [...].

46372/99, judgments of 10 April 03, final on 10 July 03 and of 18 November 04, final on 18 February 05
66742/01, judgment of 8 July 2004, final on 8 October 2004 and of 24 November 2005, final on 24 February 2006
Interim Resolution ResDH(2006)27

Papastavrou and others against Greece Katsoulis and others against Greece

Reafforestation by state of land possessed in good faith by applicants and violation of their property rights; excessive length of proceedings before the Council of State (violation of Article 1, Protocol No. 1 and 6 §1)

The Deputies,

1. recalled Interim Resolution ResDH(2006)27 adopted in these cases by the Committee, on 7 June 2006;

2. took note with interest of the information provided by the Greek authorities on progress of the setting up of a land and forest register in Greece and invited them to keep the Committee informed on this subject;

3. in addition, took note with interest of the information provided at the meeting on the existing means of protection under the national law as well as on the development of domestic courts' case-law relating to the possibility of providing compensation for persons who, like the applicants, are affected by decisions to reafforest plots of land owned by them;

4. considered that the information provided at the meeting needs to be assessed [...].

Luordo against Italy and 2 197 other similar cases

Excessive length of proceedings before administrative, civil, and criminal courts (violations of Article 6, paragraph 1) as well as disproportionate restrictions of the applicants' rights due to excessively long bankruptcy proceedings: violations of the right to property (violation of Article 1, Protocol No. 1); the right of access to a court (violation of Article 6 §1); the freedom of movement (violation of Article 2, Protocol No. 4); the right to respect for correspondence (violation of Article 8); the right to an effective remedy (violation of Article 13).

The Deputies adopted Interim Resolution CM/ResDH(2009)42 concerning the execution of the judgments of the European Court on the problem of excessive length of judicial proceedings in Italy[…].

32190/96, judgment of 17 July 2003, final on 17 October 2003 (see also, for more detailed information, CM/Inf/DH(2005)31 and Addenda 1 and 2, CM/Inf/DH(2005)33, CM/Inf(2005)39, CM/Inf/DH(2008)42; Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135 and CM/ResDH(2007)2)

– Metropolitan Church of Bessarabia and others against Moldova
– Biserica Adevărat Ortodoxă din Moldova and others against Moldova

Failure of the government to recognise the applicant church with the consequence that it could not defend its interests, including property claims, and that its religious activities were illegal; also absence of effective domestic remedies (violation of Article 9 and 13).

The Deputies,

1. recalled that the memorandum (CM/Inf/DH(2008)47 revised) highlighted the fact that an important number of measures have already been taken by the Moldovan authorities with a view to remedying the violations found by the Court in the above cases and that additional information and clarifications were still awaited on certain issues;

2. noted with satisfaction the additional clarifications recently provided by the Moldovan authorities and in particular the publication of the guidelines on registration procedure, as well as the assurance given with respect to the existence of effective remedies;

3. welcomed in particular the examination carried out by the government on possible needs to harmonise the existing administrative practices and the relevant legislation with the new law on religious denominations and with the Convention;

4. supported the initiatives of the Ministry of Justice and of the Ministry of the Interior to suspend the application of the sanction of expulsion of foreigners that have manifested in public their religious convictions, without having first informed the relevant local authorities;

5. noted moreover the training seminars for judges and prosecutors organised by the National Institute of Justice;

6. noted finally that the preliminary evaluation of this information appears to confirm that the pending questions have been resolved […].

– 45701/99, judgment of 13 December 2001, final on 27 March 2002 - Interim Resolution ResDH(2006)12
– 952/03, judgment of 27 February 2007, final on 27 May 2007- CM/Inf/DH(2008)47 revised

Sarban against Moldova and 9 other similar cases

Violations related to pre-trial investigations in 2002-2006: arrest not based on reasonable suspicion that the applicants had committed an offence and unlawful detention on remand (violation of Articles 5 §1 and 5 §1c); detention on remand or its extension without sufficient and relevant grounds, violation of the right to be released pending trial (violation of Article 5 §3); lack of prompt examination of request for release (violation of Article 5 §4); breach of principle of the equality of arms (violation of Article 5 §4).
Other violations: poor detention conditions, lack of medical assistance during detention and lack of effective investigation into allegations of intimidation whilst on remand (violation of Article 3).

The Deputies,

1. recalled the systemic character of violations found by the Court, in particular regarding the lack of sufficient and relevant reasons for judicial decisions concerning detention on remand and its extension;

2. took note of the declared willingness of the Moldovan authorities to remedy the violations revealed by the European Court's judgments finding violations of Article 5 of the Convention;

3. took note of the information provided by the Moldovan authorities concerning the adoption and implementation of certain general measures to comply with the European Court's judgments;

4. considered that this information remains to be assessed;

5. invited the Moldovan authorities to continue to keep the Committee of Ministers informed of the progress made in the adoption and implementation of the general measures required […].

3456/05, judgment of 4 October 2005, final on 4 January 2006

35014/97, judgment of 19 June 2006 - Grand Chamber; (Article 41) judgment of 28 April 2008 - Grand Chamber – Friendly settlement

Hutten-Czapska against Poland

Violation of the applicant's right of property due to limitations on use of property by landlords, and in particular the rent control scheme (violation of Article 1, Protocol No. 1).

The Deputies,

1. recalled that in its judgment the European Court concluded that the violation of the applicant's right to her property was the result of a structural problem linked to a malfunction of national legislation imposing restrictions on landlords' rights and noted that several applications concerning the operation of the rent control scheme in Poland are pending before the European Court;

2. welcomed the general measures taken so far by the Polish authorities to solve this structural problem, and in particular the recent adoption of the Law on Assistance for Thermal Insulation and Renovation, which provides for a system of compensation for owners carrying out work in properties which had been subject to the rent control scheme [...].

30210/96, judgment of 26 October 2000 - Grand Chamber Interim Resolution CM/ResDH(2007)28

Kudła against Poland and 232 similar cases

Excessive length of proceedings before civil and labour courts (Podbielski group of cases) or before the criminal courts (Kudla group of cases) (violations of Article 6 §1) and lack of effective remedy (violations of Article 13)

The Deputies,

1. noted with interest the amendment to the Act of 17 June 2004 on complaints against excessive length of judicial proceedings so as to allow, among other things, the possibility to complain of the excessive length of criminal investigations;

2. recalled nevertheless that the problem of excessive length of judicial proceedings in Poland is of a systemic nature and noted with concern that the domestic judicial backlog has not decreased;

3. invited the Polish authorities to carry out a more thorough reflection on a solution to this structural problem and to take all necessary measures to reduce the judicial backlog and accelerate judicial proceedings;

4. encouraged the Polish authorities and the Secretariat to co-operate in the framework of the Committee of Experts on effective remedies for the excessive length of proceedings (DH-RE), with a view to drafting a recommendation on existing effective domestic remedies concerning excessive length of proceedings [...].

12825/02, judgment of 27 June 2006, final on 27 September 2006

Tabor against Poland and 3 other similar cases

Lack of access to a court to challenge refusals to grant legal aid (violations of Article 6 §1).

The Deputies,

1. noted with satisfaction the Polish Supreme Court's decision of 17 April 2007 in the case of Tabor, which interpreted the provisions of the Code of Civil Procedure in such a way as to allow the reopening of civil proceedings after a judgment of the European Court finding a violation of Article 6 §1 of the Convention;

2. welcomed the fact that, as a result of this decision, the domestic proceedings were reopened and the applicant's cassation appeal was examined by the Supreme Court; noted that in the three other cases the applicants had not requested the reopening of domestic proceedings and invited the authorities to provide clarification as to whether they could have done so, referring to the Supreme Court's judgment in the case of Tabor, and under which conditions;

3. concerning general measures, noted that the problem of lack of access to a court to challenge a second-instance court's refusal to grant legal aid results from the provisions of the Code of Civil Procedure currently in force, and that the number of pending cases and new applications lodged before the European Court concerning this problem does not really seem to be decreasing;

4. noted with interest the bill amending the Code of Civil Procedure and the awareness raising measures taken with a view to implementing the action plan announced to the Committee in March 2007 [...].

25792/94, judgment of 11 July 2000 Interim Resolution CM/ResDH(2007)75

Trzaska against Poland and 109 other similar cases

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

The Deputies,

1. recalled that the problem of excessive length of detention on remand is of a systemic nature due to a practice of domestic courts which is incompatible with the Convention;

2. welcomed the general measures taken and envisaged following the adoption of Interim Resolution CM/ResDH(2007)75 of 6 June 2007, in particular the recent amendment to the Code of Criminal Procedure providing a strict definition of the conditions in which detention on remand may be prolonged;

3. noted with interest a downward trend in 2008 in the number of detentions on remand ordered by domestic courts and in the number of detentions on remand lasting over a year;

4. encouraged the authorities to continue their efforts to reduce the excessive length of detention on remand [...].

Martins Castro and Alves Correia de Castro against Portugal

33729/06, judgment of 10 June 2008, final on 10 September 2008

Excessive length of civil proceedings (violation of Article 6 §1) and non-effectiveness of a compensatory remedy available to victims of excessively lengthy proceedings (violation of Article 13).

The Deputies,

1. noted that the European Court's judgment in the present case recommended "the Supreme Administrative Court to put an end to the uncertainty [in domestic case-law] and recalled in this respect that Article 152 of the Procedural Code of Administrative Courts provides the public prosecutor with the power to ask for a harmonisation of jurisprudence" (§55 of the judgment);

2. accordingly encouraged the Portuguese authorities to pursue their efforts to introduce such a remedy for harmonisation of jurisprudence as soon as possible;

3. took note, in addition, of the information provided by the authorities on the publication and dissemination of the judgment of the European Court, in particular to domestic courts;

4. considered that, while waiting for the introduction of such a remedy, these measures are appropriate to the extent that they may encourage the direct application of the European Court's case-law by domestic courts; possible complementary information on the current practice of courts and its evolution would thus be useful [...].

Oliveira Modesto and others against Portugal and 24 other similar cases

34422/97, judgment of 8 June 2000, final on 8 September 2000 Interim Resolution CM/Res/DH(2007)108

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

1051st meeting

The Deputies, recalling Interim Resolution CM/ResDH(2007)108 adopted by the Committee in this group of cases in October 2007,

1. noted with interest the recent information provided by the Portuguese authorities on the situation concerning excessive length of civil, criminal and administrative proceedings;

2. invited the Portuguese authorities as far as possible to accelerate the last pending domestic proceedings so as to bring them to an end as soon as possible;

1059th meeting

The Deputies, recalling Interim Resolution CM/ResDH(2007)108 adopted by the Committee as regards this group of cases in October 2007,

1. noted with interest the information recently provided by the Portuguese authorities concerning the backlog and the excessive length of judicial proceedings, including statistics, as well as the re-organisation of the judiciary, the plans for reducing court congestion, and the application of information technology in courts;

2. observed that, whereas progress is visible as far as proceedings before criminal courts, as well as before higher civil and administrative courts are concerned, the situation seems less satisfactory before first-instance civil and administrative courts, as well as regards civil enforcement proceedings;

3. encouraged the authorities to continue their efforts to ensure a solution to the problem of excessive length of judicial proceedings in Portugal by adopting any other measures they consider appropriate for improving the efficiency of justice, if necessary;

4. noted that, as far as individual measures are concerned, the proceedings pending before domestic courts had been closed with the exception of the proceedings in the Oliveira Modesto case and invited the Portuguese authorities to accelerate them to the extent possible [...].

Reigado Ramos against Portugal

73229/01, judgment of 22 November 2005, final on 22 February 2006

Authorities' failure, since 1997, to take adequate and sufficient action to enforce the applicant's right of access to his daughter, born in 1995 (violation of Article 8).

The Deputies,

1. noted the information provided by the authorities on the recent steps undertaken to implement the psychological support ordered by the judge in July 2008;

2. encouraged the authorities to continue their efforts to ensure the re-establishment of contacts between the applicant and his daughter within a reasonable time, and, if appropriate, the applicants' visiting rights, as required by the judgment of the European Court, and to keep the Committee informed in this respect;

3. concerning the general measures, welcomed the changes introduced in the legislation by Law No. 61/2008 on divorce, and invited the authorities to provide information on the implementation of the training measures envisaged by the Institute for Social Security to the extent that they will help to ensure enforcement of judicial decisions on the modalities of exercising parental authority [...].

41138/98+, judgment No.1 of 5 July 2005 - Friendly settlement CM/Inf/DH(2009)31

Moldovan and others against Romania and 3 other similar cases

Cases concerning the consequences of racially motivated violence against Roma, between 1990 and 1993: improper living conditions following the destruction of the applicants' houses, failure to protect the applicants' rights and degrading treatment by the authorities (violation of Artcile 3 and 8); excessive length of judicial proceedings (violation of Article 6 §1); discrimination based on the applicants' Roma ethnicity (violation of Article 14, 3, 6 and 8).

The Deputies, having noted the information submitted by the Romanian authorities on the state of the execution of this group of cases and the outstanding issues, as presented in a memorandum prepared by the Secretariat,

1. noted the measures adopted in the framework of the action plan adopted by the Romanian authorities for the Hădăreni village and invited the authorities to provide clarifications and further information, in particular concerning their assessment of the results achieved and, if necessary, further necessary measures;

2. noted that similar programmes have been also adopted for the localities Plăieşii de Sus and Caşinul Nou; observed however the delay in implementing the committments given by the authorities and encouraged them to intensify their efforts in this respect;

3. welcomed in this context the bilateral consultations planned shortly between the authorities directly involved in the execution of these judgments and the Secretariat;

4. decided to declassify the memorandum [...].

28341/95, judgment of 4 May 2000 - Grand Chamber, Interim Resolution ResDH(2005)57

Rotaru against 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 one of the applicant's complaints (violation of Article 6§1).

The Deputies,

1. recalled Interim Resolution ResDH(2005)57 adopted by the Committee of Ministers in this case in July 2005;

2. also recalled that, while noting the measures already adopted and the wide-ranging legislative reform already under way for several years, relating, among other things, to the activities of the Romanian Intelligence Service, the Committee of Ministers had already on several occasions insisted on the necessity of adopting rapidly the remaining measures in order to avoid new, similar violations;

3. noted in this context the information presented by the Romanian authorities, concerning in particular the Government Emergency Ordinance No. 24 adopted on 5 March 2008 concerning in particular access to personal files; considered however that this relevant information still needs in-depth assessment [...].

57001/00, judgment of 21 July 2005, final on 30 November 2005

Străin and others against Romania and 88 other similar cases

Non-restitution of properties nationalised by the earlier communist regime to their owners as a result of the sale of the properties by the state to third persons; absence of any clear domestic rules on compensation to the owners in such situations (violation of Article 1, Protocol No. 1).

The Deputies,

1. recalled that the questions raised in these cases concern an important systemic problem, related particularly to the failure to restore or compensate nationalised property sold subsequently by the state to third parties, which it is important to remedy as soon as possible inorder to avoid a large number of new, similar violations;

2. noted, that the European Court, in a number of judgments which have recently become final, considered among other things that the Romanian authorities should take the necessary legislative measures to prevent situations in which two titles to the same property coexist and should also amend the administrative mechanism set up by the laws on compensation to ensure that it becomes genuinely coherent, accessible, rapid and foreseeable;

3. invited the Romanian authorities to submit an action plan on measures taken or envisaged to improve the current restitution mechanism; in this context they also noted with interest that bilateral consultations are envisaged between the authorities involved in the restitution process and the Secretariat [...].

Khashiyev and Akayeva against the Russian Federation and other similar cases

Violations resulting from the action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2001: state responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the applicants' relatives due to the attitude of the investigating authorities (violation of Articles 2, 3, 5, 8, 13 and of Article 1 Protocol No. 1). Non-compliance with the obligation to co-operate with the organs of the European Convention on Human Rights contrary to Article 38 of the Convention in several cases.

1051st meeting

[…]1. welcomed the authorities' constructive and open approach in addressing the issues raised in Memorandum CM/Inf/DH(2008)33 and its addendum and their commitment to abide by the judgments of the European Court in these cases;

2. noted with satisfaction the setting up of a special group within the Investigating Committee for the purpose of investigating incidents related to anti-terrorist operations in the Chechen Republic as well as the reinforcement of prosecutors' supervision to ensure that all shortcomings identified by the European Court are effectively remedied at domestic level;

3. invited the authorities to keep the Committee regularly informed of the progress made in these investigations and in particular to provide information on the concrete results achieved by this special group of investigators;

4. noted with particular interest the recent reform of the Prokuratura separating the authorities responsible for investigation from the authorities responsible for supervision of the lawfulness of investigations and encouraged the Russian competent authorities to further enhance their control of investigations' compliance with the requirements of the Convention […].

1059th meeting

[…] 1. welcomed the measures taken by the Investigating Committee with the Prokuratura of the Russian Federation, in particular the setting up of the Special Investigative Unit (first created as a special group of investigators), with a view to adopting the individual measures required by these judgments;

2. noted with interest the measures aimed at increasing the effectiveness of the prosecutors' control and at improving the efficiency of judicial review;

3. highlighted however that the efficiency of those measures would very much depend on the progress achieved by the Special Investigative Unit in dealing with concrete cases and consequently invited the authorities to regularly provide the Committee with reports on the progress made by this unit;

4. noted with satisfaction the circular letter issued by the Deputy Prosecutor General requiring all prosecutors to give direct effect to the Convention's requirements when supervising the lawfulness of domestic investigations and encouraged them to continue their efforts in this direction;

5. noted that Russian criminal law as interpreted by the Constitutional Court's decisions provides for a number of victims' rights, in particular the right to receive information pending investigation, and that effective implementation of this criminal legislation in practice remains to be demonstrated, in particular in the cases here at issue;

6. noted in this respect the existence at domestic level of a remedy (Article 125 of the Code of Criminal Procedure) available notably to victims whose rights would have been infringed during the investigation as well as the recent measures taken by the federal Supreme Court to ensure its effective application by all courts;

7. noted however that the effectiveness of this remedy in practice remains to be assessed and consequently invited the authorities to provide further examples of and additional clarification on its application;

8. encouraged the Russian authorities to continue bilateral consultations with the Secretariat […].

57942/00+, judgment of 24 February 2005, final on 6 July 2005, rectified on 1 September 09/2005 CM/Inf/DH(2006)32 revised 2, CM/Inf/DH(2008)33, CM/Inf/DH(2008)33 Addendum CM/Inf/DH(2009)32

Timofeyev against Russian Federation and other similar cases

Violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Article 6 §1 and of Article 1, Protocol No. 1).

The Deputies,

1. took note of the information provided on the measures taken following the adoption of Interim Resolution CM/ResDH(2009)43 and in particular those aimed at setting up a domestic remedy in cases of non-execution or delayed execution of domestic judicial decisions;

2. invited the Russian authorities to give priority to these measures in order to ensure

58263/00, judgment of 23 October 2003, final on 23 January 2004 CM/Inf/DH(2006)19 revised 2 and CM/Inf/DH(2006)45; CM/Inf/DH(2006)19 revised 3; Interim Resolution CM/ResDH(2009)43

timely compliance with the pilot judgment recently delivered by the Court in the case of Burdov No. 2 (judgment of 15 January 2009, final on 4 May 2009) […].

25781/94, judgment of 10 May 2001 – Grand Chamber
CM/Inf/DH(2008)6, CM/Inf/DH(2007)10/1rev, CM/Inf/DH(2007)10/3rev, CM/Inf/DH(2007)10/6, CM/Inf/DH(2008)6/5 Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25

Cyprus against 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 (violation of Articles 2, 5, 3);

– Home and property of displaced persons (violation of Article 8, 1st Article of Protocol No. 1, and Article 13);

– Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Articles 9, 10, 1st and 2nd Articles of Protocol No. 1, and Articles 3, 8, 13);

– Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Article 6).

1051st meeting

The Deputies,

Concerning the question of missing persons

1. noted with great interest the exchange of views with the members of the Committee of Missing Persons (CMP), which brought great clarity to different issues relating to the execution of their mandate; noted that the information provided in this context merits further, detailed consideration;

2. considered that it is crucial that the current work of the CMP to be carried out under the best possible conditions and without delay;

3. in consequence, while reaffirming that the execution of the judgment requires effective investigations, noted that these should not jeopardise the CMP's mission;

4. considered that the sequence of the measures to be taken within the framework of the effective investigations and the carrying out of the work of the CMP should take into consideration these two essential aims;

5. underlined in any event, the urgent need for the Turkish authorities to take concrete measures having regard for the effective investigations required by the judgment, in particular relating to the CMP's access to all relevant information and places;

6. in this context, highlighted, moreover the importance of preserving all the information obtained during the Programme of Exhumation and Identification carried out by the CMP […].

Concerning the property rights of enclaved persons

8. recalled that the examination of this question will be taken up again at their 1059th meeting (2-4 June 2009) (DH) in the light of an updated information document on this question to be prepared by the Secretariat;

Concerning the property rights of displaced persons

9. noted with interest the information recently provided by the Turkish authorities, including at the meeting, on the function of the "Immovable Property Commission" established in the northern part of Cyprus and invited the authorities to provide this information in writing along with certain clarifications requested by delegations;

10. deplored, however, that no information had been provided on the questions relevant to the execution of the Court's judgment as detailed and clarified in the information document CM/Inf/DH(2008)6/5 and firmly insisted that the Turkish authorities respond to those questions without further delay;

11. noted that the regulation of demolition of constructions belonging to displaced persons in the Karpas region requires further clarification particularly in relation to remedies available to property owners; invited the Turkish authorities to provide any relevant information in this respect […].

1059th meeting

The Deputies,

Concerning the question of missing persons

1. noted with interest the information provided by the Turkish authorities on progress of the work of the CMP and reaffirmed the importance of this work;

2. recalled the decision adopted by the Committee at their last examination of the case, according to which the sequence of measures to be taken in the framework of the effective investigations required by the judgment and the continuing work of the CMP should take into consideration both the obligation of the respondent state to conduct such investigations and the necessity for the CMP to carry out its work under the best conditions and as promptly as possible;

3. reiterated in this context the urgency for the Turkish authorities to take concrete measures, having regard for the effective investigations required by the judgment, in particular regarding the CMP's access to all relevant information and places;

4. noted with interest in this regard the declaration of the Turkish authorities that they are ready to consider all requests from the CMP relating to access to information and places relevant to its work;

5. in the same context, reiterated the importance of preserving all the information obtained during the Programme of Exhumation and Identification carried out by the CMP;

6. invited the Turkish authorities to keep the Committee informed of any developments on this issue and decided to resume consideration of this issue at their 1072nd meeting (December 2009) (DH);

Concerning the property rights of enclaved persons

7. recalled that at their last examination of this question, the Committee noted with satisfaction the explanations of the Turkish authorities that the limitations on these property rights had been restricted but considered that the relevant regulation and practice still required further clarification;

8. recalled in this regard that additional information was recently provided on this question by the Turkish authorities and by the Cypriot authorities and that further clarification was also provided during the meeting;

9. decided to resume the consideration of this question at their 1065th meeting (September 2009) (DH) in light of an information document to be updated by the Secretariat;

Concerning the property rights of displaced persons

10. noted with interest the information provided by the Turkish authorities during the meeting on the operation of the Immovable Property Commission established in the northern part of Cyprus and invited the authorities to provide this information in writing;

11. highlighted that the European Court is currently dealing with the issue of the effectiveness of the mechanism of restitution, exchange and compensation established in the northern part of Cyprus and considered that the Court's conclusions on this point might be decisive for the examination of this question; decided in consequence to resume examination of this issue once the Court has pronounced on the matter;

12. considered that in the meantime it is important that all possibile means of settlement offered by the mechanism, notably on restitution of property, are preserved (protective measures);

13. noted, in this context, the explanations provided by the Turkish authorities during the meeting that the mechanism foresees the guarantees necessary to preserve all the possibilities mentioned above; considered therefore that this question merits in depth consideration and invited the Turkish authorities to provide detailed written information on this subject in the context of the relevance and the importance of the questions raised in document CM/Inf/DH(2008)6/5 which will be further addressed at the September meeting;

14. noted, finally, that the regulation which applies to the demolition of constructions situated in the Karpas region belonging to displaced persons requires clarification, in particular on any remedy available to property owners; invited the Turkish authorities to provide all relevant information in this respect;

15. decided to resume consideration of the issues of protective measures and of demolition of buildings situated in the Karpas region at their 1065th meeting (September 2009) (DH).

Demades against Turkey

16219/90, judgment of 31 July 2003, final on 31 July 2003 and of 22 April 2008, final on 1 December 2008

Violation of the right to respect for the applicant's home (violation of Article 8) due to continuous denial of access to his property in the northern part of Cyprus and consequent loss of control thereof (violation of Article 1, §1).

The Deputies invited the Turkish authorities to provide information on the measures they envisage to remedy the consequences of the continued violation of the right to property and right to respect for the applicant's home [...].

Kakoulli against Turkey and other similar cases

38595/97, judgment of 22 November 2005, final on 22 February 2006

Killing in 1996 of the applicants' husband and father by soldiers on guard duty along the cease-fire line in Cyprus and lack of an effective and impartial investigation into this killing (violation of Article 2).

1051st meeting - Next examination: 1059th (individual and general measures)

The Deputies,

1. as regards the individual measures, noted with interest the information provided by the Cypriot authorities concerning a possible further forensic investigation of Mr Kakoulli's body;

2. also noted with interest the ongoing consideration of possible further general measures [...].

1059th meeting - Next examination: 1072nd at the latest (individual and general measures)

The Deputies,

1. noted with interest the information presented during the debate by the Turkish authorities and the Cypriot authorities concerning the individual measures in the case

of Kakoulli and considered that this information needs to be assessed;

2. invited the Turkish authorities also to provide information on any individual measures taken or envisaged in the cases of Isaak and Solomou;

3. noted furthermore with interest the information provided by the Turkish authorities on the general measures, in particular on the legislative provisions on the use of firearms and use of force and invited the Turkish authorities to provide this information in writing in order that it may be assessed;

4. recalled that information is also awaited in relation to the cases of Isaak and Solomou in particular on the regulatory framework governing the peaceful, parallel conduct of demonstrations and counter-demonstrations and measures to ensure the effective investigation of killings of civilians in the northern part of Cyprus [...].

15318/89, judgment of 18 December 1996 (merits), Interim Resolutions DH(99)680, DH(2000)105, ResDH(2001)80

Loizidou against Turkey

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

The Deputies,

1. recalled that the Committee of Ministers invited the Turkish authorities to make an offer to the applicant to comply with their obligation to put an end to the violation found and remedy its consequences, and that in response, the Turkish authorities made an offer based on Law No. 67/2005 on Compensation, Exchange or Restitution of Immovable Property;

2. recalled that following the judgment of the European Court of 22 December 2005 in the case Xenides-Arestis, this law established a compensation, exchange and restitution mechanism in the northern part of Cyprus;

3. highlighted that the European Court is currently dealing with the issue of the effectiveness of this mechanism and considered that the Court's conclusions on this point might be decisive for the execution of this judgment [...].

39437/98, judgment of 24 January 2006, final on 24 April 2006 Interim Resolution CM/ResDH(2007)109 and CM/Res/DH(2009)45

Ülke against Turkey

Degrading treatment as a result of the applicant's repetitive convictions between 1996 and 1999 and imprisonment for having refused to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (substantial violation of Article 3).

1051st meeting - Next examination: 1059th

The Deputies,

1. deeply deplored the fact that the Turkish authorities had provided no information to the Committee on the measures required in this case;

2. strongly encouraged the Turkish authorities to carry out bilateral contacts with the Secretariat aiming to bring to an end the continuing effects of the violation for the applicant;

3. adopted Interim Resolution CM/ResDH(2009)45 as it appears in the Volume of Resolutions;

4. decided to continue examining the implementation of the present judgment at each human rights meeting until the necessary urgent measures were adopted and to consider further action should Turkey fail to provide tangible information to the Committee before their 1059th meeting (2-4 June 2009) (DH) in response to the above interim resolution.

1059th meeting - Next examination: 1065th

The Deputies,

1. reiterated their grave concern that, despite the Committee's repeated calls on Turkey and two interim resolutions already adopted, no tangible information has been provided by the Turkish authorities on the urgent measures required in this case;

2. deeply deplored that, despite the Committee's invitation, the Turkish authorities have not had bilateral contact with the Secretariat to bring to an end the continuing effects of the violation for the applicant;

3. decided to invite the Chair of the Committee of Ministers to convey the preoccupation of the Committee by means of a letter to be addressed to his Turkish counterpart unless the Turkish authorities provide tangible information to the Committee before their 1065th meeting (September 2009);

4. decided to continue examining the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

46347/99, judgments of 22 December 2005, final on 22 March 2006 and of 7 December 2006, final on 23 May 2007 CM/Inf/DH(2007)19; Interim Resolution CM/ResDH(2008)99

Xenides-Arestis against Turkey

Violation of the right to respect for applicant's home (violation of Article 8) due to continuous denial of access to her property in the northern part of Cyprus since 1974 and consequent loss of control thereof (violation of Article 1, Protocol No. 1).

1051st meeting - Next examination: 1059th

The Deputies,

1.noted with regret that the Turkish authorities have not responded to Interim Resolution CM/

ResDH(2008)99 concerning the payment of the sums awarded for just satisfaction by the judgment of the European Court of 7th December 2006;

2.urged again the Turkish authorities to comply with their obligation to pay the sums awarded without further delay, including the default interest due;

3.invited the Turkish authorities to provide information on the measures they envisage in addition to the payment of the just satisfaction to remedy the consequences of the continuing violation of the applicant's property rights and right to respect for her home [...].

1059th meeting - Next examination: 1065th

The Deputies,

1. deplored that their Interim Resolution CM/ResDH(2008)99 concerning the payment of the sums awarded for just satisfaction by the judgment of the European Court of 7th December 2006 remains unanswered;

2. strongly insisted the Turkish authorities comply with their obligation to pay these sums without further delay, including the default interest due [...].

Gongadze against Ukraine

34056/02, judgment of 8 November 2005, final on 8 February 2006 Interim Resolution CM/ResDH(2008)35

Authorities' failure in 2000 to meet their obligation to take adequate measures to protect the life of a journalist threatened by unknown persons, possibly including police officers; inefficient investigation into the journalist's subsequent death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy to challenge the inefficient investigation and to obtain compensation (violation of Articles 2, 3 and 13).

The Deputies,

1. took note of the information provided by the Ukrainian authorities whereby the recordings and the recording devices had been handed over by Mr Melnychenko to the Ukrainian investigators and foreign specialists in forensic audio analysis;

2. noted with interest the detailed information concerning the investigative steps envisaged in the framework of the phonoscopic expert examination of the tape recordings and the time-frame set for it;

3. recalled the Ukrainian authorities' position that the results of a phonoscopic expert examination could be decisive and may give the investigation a new direction;

4. noted the information provided by the Ukrainian authorities according to which, pending the results of the expert examination, other investigative steps are being taken in order to establish all circumstances surrounding the abduction and murder of the applicant's husband;

5. invited the Ukrainian authorities to inform the Committee of Ministers regularly of the progress of the investigation [...].

Zhovner against Ukraine and other similar cases

56848/00, judgment of 29 June 2004, final on 29 September 2004 CM/Inf/DH(2007)30 (revised in English only) and CM/Inf/DH(2007)33 Interim Resolution CM/ResDH(2008)1

Failure or serious delay by the Administration or state companies in abiding by final domestic judgments; absence of effective remedies to secure compliance; violation of applicants' right to protection of their property (violations of Articles 6§1, 13 and 1, Protocol No. 1).

The Deputies,

1. recalled that, as acknowledged by the Committee of Ministers in its Interim Resolution CM/ResDH(2008)1, the non-enforcement of domestic judicial decisions constitutes a structural problem in Ukraine;

2. noted that there are still a number of cases in which domestic court decisions remain unenforced despite the judgments of the European Court;

3. noted with concern that, notwithstanding the efforts made by the Ukrainian authorities in adopting interim measures, the structural problem underlying the violations has not been solved;

4. observed that failure to adopt all necessary measures, including previously announced legislative measures, has resulted in a steady increase in the number of new applications lodged with the European Court concerning non-enforcement of domestic judicial decisions;

5. noted with concern in this context that priority has not been given to setting up a domestic remedy in case of non-enforcement or delayed enforcement of domestic judicial decisions, despite the Committee's repeated calls to this effect;

6. called upon the Ukrainian authorities once again to take rapidly the necessary action to ensure Ukraine's compliance with its obligations under the Convention, and in particular to reconsider the various proposal for reforms made during the examination of these cases (see, in particular, CM/Inf/DH(2007)30 revised and CM/Inf/DH(2007)33) [...].

25599/94 judgment of 23 September 1998 Interim Resolution ResDH(2004)39; CM/Inf/DH(2005)8, CM/Inf/DH(2006)29 and CM/Inf/DH(2008)34

A. against the United Kingdom

Failure of the state to protect the applicant, a 9 year-old child, from treatment or punishment contrary to Article 3 by his stepfather, who was acquitted in 1994 of criminal charges brought against him after he raised the defence of reasonable chastisement (violation of Article 3).

[...]

74025/01, judgment of 6 October 2005 - Grand Chamber

Hirst No. 2 against United Kingdom

General exclusion from vote for convicted prisoners irrespective of specific circumstances (violation of Article 3, Protocol No. 1).

The Deputies,

1. noted the action plan of the United Kingdom authorities and the recently published second-stage public consultation which will be followed by draft legislation;

2. expressed concern about the significant delay in implementing the action plan and recognised the pressing need to take concrete steps to implement the judgment particularly in light of upcoming United Kingdom elections which must take place by June 2010 at the latest;

3. noted that the second stage of the consultation will close in September 2009 and stressed the need to take the procedural steps following the consultation without delay in order to adopt the measures necessary to implement the judgment [...].

28883/95, judgment of 4 May 2001, final on 4 August 2001 Interim Resolutions ResDH(2005)20 and CM/ResDH(2007)73 CM/Inf/DH(2006)4 revised 2, CM/Inf/DH(2006)4 Addendum revised 3 and CM/Inf/DH(2008)2 revised

McKerr against the United Kingdom and 5 other similar cases

Action of security forces in Northern Ireland in the 1980s and 1990s: 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 (procedural violations of Article 2).

The Deputies,

1. adopted Interim Resolution CM/ResDH(2009)44 as it appears in the Volume of Resolutions;

2. decided to resume consideration of the cases of Jordan, Kelly and Others, McKerr and Shanaghan, as regards outstanding individual measures at each of their human rights meetings and of all these cases, as regards general measures at intervals not longer than six months.

Interim Resolutions (extracts)

During the period concerned, the Committee of Ministers encouraged, by different means, the adoption of many reforms and also adopted four interim resolutions. Such 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 the adequacy of measures undertaken or the 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.

Extracts from these interim resolutions adopted are presented below. The full text of the 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.

Interim resolutions adopted at the 1051st meeting

39437/98, judgment of 24 January 2006, final on 24 April 2006 Interim Resolution CM/ResDH(2007)109

Interim Resolution CM/ResDH(2009)45 Ülke against Turkey

Degrading treatment as a result of the applicant's repetitive convictions between 1996 and 1999 and imprisonment for having refused to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (substantial violation of Article 3).

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

Firmly recalled the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their

effects for the applicant, as well as general measures to prevent similar violations;

Strongly urged the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to make the legislative changes necessary to prevent similar violations of the Convention;

Decided to continue examining the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

Interim Resolution CM/ResDH(2009)44 Action of the Security Forces in Northern Ireland(Case of McKerr against the United Kingdom and 5 similar cases)

28883/95, judgment of 4 May 2001, final on 4 August 2001

Action of security forces in Northern Ireland in the 1980s and 1990s: 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 (procedural violations of Article 2).

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

General measures

[...]

The police ombudsman's report of the five-yearly review of his powers and the response of the authorities to its content

[...]

Invited the government of the respondent state to provide information to the Committee on their reaction to the report of the five year review, in particular to Recommendation 13, which gives power to the ombudsman to compel retired police officers to appear as witnesses;

Concrete results obtained in the investigation of historical cases by the Historical Enquiries Team (HET) and the police ombudsman of Northern Ireland

[...]

Decided to close its examination of this issue as the HET has the structure and capacities to allow it to finalise its work;

Failure by the respondent state to comply with its obligation under Article 34 of the Convention

[...]

Decided to close its examination of this issue in the light of the assurances given by the United Kingdom authorities to prevent interference with the right of individual petition;

Individual measures

[...]

In the cases of Jordan, Kelly and Others, McKerr and Shanaghan

[...]

Strongly urged the authorities of the respondent state to take all necessary measures with a view to bringing to an end, without further delay, the ongoing investigations while bearing in mind the findings of the Court in these cases;

In the case of McShane

[...]

Decided to close the examination of this case with respect to individual measures;

In the case of Finucane

[...]

Decided to close the examination of this case with respect to individual measures;

Conclusion

Decided to pursue the supervision of the execution of the present judgments until the Committee has satisfied itself that the outstanding general measure as well as all necessary individual measures in the cases of Jordan, Kelly and Others, McKerr and Shanaghan have been taken;

Decided to resume consideration of the above-mentioned four cases, as regards outstanding individual measures at each of its meetings dedicated to the supervision of the execution of the judgments of the Court and of all these cases, as regards general measures at intervals not longer than six months.

Interim Resolution CM/ResDH(2009)43 145 cases against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy

58263/00 Timofeyev, judgment of 23 October 2003, final on 23 January 2004
CM/Inf/DH(2006)19 revised 2 and CM/Inf/DH(2006)45, CM/Inf/DH(2006)19 revised 3

Violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Article 6 §1 and of Article 1, Protocol No. 1).

In this interim resolution the Committee of Ministers notably [...]:

Called upon the Russian authorities to rapidly translate into concrete actions the will expressed at the highest political level to combat the non-enforcement and delayed enforcement of domestic judicial decisions and to set up, to that end, effective domestic remedies either through the rapid adoption of the constitutional law mentioned above or through an amendment of the existing legisla-

tion in line with the Convention's requirements;

Urged the Russian authorities to give priority to resolving outstanding non-enforcement issues in the problem areas identified above so as to rapidly achieve concrete and visible results, thus limiting the risk of new violations of the Convention and of further applications before the Court;

Encouraged the Russian authorities to continue their efforts in the implementation of the initiated reforms so as to ensure full and timely execution of domestic courts decisions, in particular through:

– ensuring better co-ordination between different authorities responsible for the execution of domestic judicial decisions so as to avoid the risk that claimants are caught in a vicious circle in which different authorities send them back and forth;

– further improving the rules governing all execution procedures, including appropriate role for bailiffs and judicial review;

– ensuring the existence of appropriate general regulations and procedures at federal and local level for the implementation of the authorities' financial obligations;

– further developing recourse to different remedies already provided by Russian legislation so as to ensure their implementation in the case of non-enforcement or belated enforcement of judicial decisions with sufficient certainty as required by the Convention;

– strengthening state liability for non-execution as well as the individual responsibility (disciplinary, administrative and criminal where appropriate) of civil servants;

Decided to resume consideration of these issues in the context of the Court's judgments concerned at their 1059th human rights meeting (2-4 June 2009), in particular in the light of the information to be provided by the respondent state on the progress in the provision of a domestic remedy.

32190/96, judgment of 17 July 2003, final on 17 October 2003
Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135, ResDH(2005)114, and CM/ResDH(2007)2), and the cases concerning bankruptcy proceedings (Articles 1of Protocol No. 1 and 6 §1) - Follow-up to Interim Resolution CM/ResDH(2007)27

Interim Resolution CM/ResDH(2009)42 Excessive length of judicial proceedings in Italy: Progress achieved and outstanding issues in the context of general measures to ensure compliance with the judgments of the European Court of Human Rights in Luordo against Italy and 2 182 cases concerning the excessive length of judicial proceedings

Excessive length of proceedings before administrative, civil, and criminal courts (violations of Article 6, paragraph 1) as well as disproportionate restrictions of the applicants' rights due to excessively long bankruptcy proceedings: violations of the right to property (violation of Article 1, Protocol No. 1); the right of access to a court (violation of Article 6 §1); the freedom of movement (violation of Article 2, Protocol No. 4); the right to respect for correspondence (violation of Article 8); the right to an effective remedy (violation of Article 13).

In this interim resolution, the Committee of Ministers notably:

Civil and criminal proceedings

Called upon the Italian authorities to pursue actively their efforts to ensure the swift adoption of the measures already envisaged for civil proceedings; to envisage and adopt urgently ad hoc measures to reduce the civil and criminal backlog by giving priority to the oldest cases and to cases requiring particular diligence; to provide the resources needed to guarantee the implementation of all the reforms; and to pursue the consideration of any other measure to improve the efficiency of justice;

Encouraged the authorities to continue implementing awareness-raising activities among judges to accompany the implementation of the reforms;

Invited the authorities to draw up a timetable for anticipated medium-term results with a view to assessing them as the reforms proceed, and to adopt a method for analysing these results in order to make any necessary adjustments, if need be;

Strongly encouraged the authorities to consider amending Act No. 89/2001 (the Pinto Law) with a view to setting up a financial system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure and to extend the scope of the remedy to include injunctions to expedite proceedings.

Administrative proceedings

[...]

Encouraged the Italian authorities to continue with their undertakings:

– to measure precisely the backlog in administrative proceedings;

– to adopt any measures envisaged to further reduce the backlog;

– and to assess the impact of any measures taken on the backlog.

Bankruptcy proceedings

[...]

Called upon the Italian authorities to continue their efforts to ensure the Bankruptcy Proceedings Reform fully contributes to the acceleration of bankruptcy proceedings, to assess the

effects of the reform as it proceeds with a view to adopting any further measures necessary to ensure its effectiveness, and to take also any measures necessary to expedite pending proceedings to which the reform does not apply.

Measures for improving the efficiency of the judiciary

[...]

Invited the authorities to ensure the dissemination of these best practices to other courts, to implement any organisational measures taken, including the widespread use of information technologies to all jurisdictions, and to adopt any additional measures to enhance more responsible and efficient behaviour from all players in the judicial system.

In view of the above, the Committee of Ministers,

Decided to resume consideration of the progress achieved at the latest:

– by the end of 2009 for administrative proceedings, with a view to considering the possibility of closing the examination of the cases concerned;

– by mid-2010 for civil, criminal, and bankruptcy proceedings;

Invited the Italian authorities to keep the Committee of Ministers informed of all developments in order to ensure a continued monitoring of the progress, if need be, through bilateral meetings between the authorities and the Secretariat.

Selection of Final Resolutions (extracts)

Once the CM 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 1051st and 1059th meetings, the CM adopted respectively 19 and 9 final resolutions (closing respectively the examination of 31 and 22 cases). Examples of extracts or summaries from the resolutions adopted follow, in chronological order (for their full text, see the website of the Department for the Execution of Judgments of the European Court, the Committee of Ministers' website or the HUDOC database).

Final resolutions adopted at the 1051st meeting

Resolution CM/ResDH(2009)46 – Linkov against the Czech Republic

10504/03, judgment of 7 December 2006, final on 7 March 2007

Unjustified refusal in 2001 to register a political party due to the fact that its programme, which aimed at "breaking the legal continuity with totalitarian regimes", was considered unconstitutional, while nothing indicated that the party sought to pursue this aim by unlawful and non-democratic means (violation of Article 11).

Individual measures

In May 2007 the applicant was informed by the Czech authorities that he may re-apply for the registration of his political party, that a new application for registration would be examined in accordance with the requirements resulting from Article 11 of the Convention and that thus this registration would no longer be refused on the grounds upon which the previous application had been rejected. To date, the applicant has made no new application in this respect.

General measures

The judgment of the European Court has been translated and published on the website of the Ministry of Justice (www.justice.cz). It has been sent out to the authorities concerned, namely the Ministry of Internal Affairs, the Supreme Administrative Court and the Constitutional Court.

Resolution CM/ResDH(2009)47 – Labergère against France

16846/02, judgment of 26 September 2006, final on 26 December 2006

Violation of the applicant's right of access to a court on account of the Cour of Cassation's dismissal of his appeal in 2001 as time-barred without taking sufficiently into account the specific circumstances of the case (violation of Article 6 §1).

Individual measures

The applicant could have requested the reopening of his case pursuant to Articles L 626-1 ff. of the Code of Criminal Procedure. According to the information available, the applicant did not use this option.

He made no request for a just satisfaction before the European Court.

General measures

The violation was due to the manner in which the law was implemented by the *Cour de cassation*, in the specific circumstances of this case (the European Court noted that the circumstances in which the violation occurred were "not ordinary", see paragraph 23).

In order to ensure that in future the law is implemented in accordance with the Convention as interpreted in the present judgment, the French authorities sent the judgment out to the First President of the *Cour de cassation*, and to the Prosecutor General of the *Cour de cassation* (as well as to the Prosecutor General of the Bourges Court of Appeal), who apply the Convention directly. A summary of the judgment has also been published in the *Cour de cassation Information Bulletin* No. 648 of 15 October 2006, as well as in "*La Cour européenne des droits de l'Homme – 2006 - Arrêts concernant la France et leurs commentaires*" - a publication of the European Law Observatory (*Observatoire de Droit Européen*) available on the website of the *Cour de cassation*).

Furthermore, it is recalled that on a related question (admissibility of an appeal on points of law to the *Cour de cassation*, lodged after the deadline, also in very particular circumstances; see the Tricard case, Resolution CM/ResDH(2007)52 adopted at the 992nd meeting, April 2007), the French authorities indicated that the criminal chamber of the *Cour de cassation* now admits that the time for appealing can be extended if, "due to a case of *force majeure* or to an insuperable obstacle beyond his/her control, the complainant was unable to conform to the time-limit".

71665/01, judgment of 11 January 2007, final on 11 April 2007

Resolution CM/ResDH(2009)48 – Augusto against France

Unfair civil trial (violation of Article 6 §1) on account of the failure to communicate to the applicant the report by the doctor appointed by the CNITAAT (national tribunal for incapacity and the establishment of insurance for industrial accidents) in proceedings seeking in 1996 to obtain a retirement pension on the basis of her incapacity to work.

Individual measures

Before the European Court, the applicant alleged that she had sustained pecuniary damage equal to the pensions she should have received since 1996.

In this respect, the European Court held that it could not speculate as to the outcome of the proceedings had they been conducted in conformity with the Convention.

The applicant may request re-examination of her situation at national level. She may lodge a new request for a pension. If need be, she might challenge the decision, without the risk of a new, similar violation (see the general measures below).

Concerning possible consequences of the violation for the past, on which neither the Court, nor the Committee of Ministers can speculate, the applicant could refer her claims to the competent administrative authority for compensation for the period at issue. In these circumstances, the administrative authorities would have to assess once again the applicant's situation and would adopt a new decision which would be subject to appeal before the administrative courts. As these courts apply the Convention directly there is no reason to doubt that, if need be, they would take this judgment into account in order to erase, as far as possible, the negative consequences of the violation of the Convention.

In any case, the applicant made no request to the Committee of Ministers in respect of individual measures at the execution stage.

General measures

After the facts of this case, Law No. 2002-73 of 17 January 2002 and a Decree of 3 June 2003 modified procedures before the CNITAAT. Now, the president in charge of the case may appoint one or several medical experts and copies of their reports must be sent to the parties (see §30 of the judgment).

Furthermore, the judgment was sent out to the First President of the *Cour de cassation*, to the Prosecutor General before the *Cour de cassation* and to the Directorate of Criminal Affairs and Pardons of the Ministry of Justice.

35109/02, judgment of 26 July 2007, final on 31 March 2008

Resolution CM/ResDH(2009)49 – Schmidt against France

Ineffectiveness of an appeal on points of law before the Court of Cassation on account of the fact that by the time it rendered its judgment in 2002, 3 years after the application, the applicants' rights over their child had been restored, thus making the appeal groundless (combined violation of Articles 6 §1, and 13). Unfairness of trial before the Court of Cassation on account of the failure to communicate the reporting judge's report to the parties (violation of Article 6 §1).

Individual measures

The proceedings at issue are no longer relevant as the applicants have been awarded care of their child.

The European Court also considered that the non-pecuniary damages were sufficiently redressed by the finding of violations.

General measures

1) Effectiveness of the appeal to the Court of cassation

The European Court recalled that "proceedings relating to the award of parental responsibility required urgent handling as the passage of time

could have irremediable consequences for relations between children and the parent who does not live with them".

A number of measures (recruitment, budgetary and procedural measures, etc) have already been taken to avoid the excessive length of proceedings in civil cases (see Final Resolution CM/ResDH(2008)39 in case C.R. and 9 other similar cases).

Furthermore, given the specific nature of the violation in this case, it seemed important that the *Cour de cassation* should have knowledge of the judgment in order to be able to take it into account in its practice. This is why, in line with the French authorities' practice of systematically disseminating judgments of the European Court to the courts and to the sections of the Ministry of Justice concerned, this judgment was circulated to the *Cour de cassation*.

2) Fairness of the proceedings

The case presents similarities to that of Slimane-Kaid (Application No. 29507/95) and other similar cases closed by Final Resolution CM/ResDH(2008)13. Reports of the reporting judge are now communicated both to the public prosecutor and to the parties.

Resolution CM/ResDH(2009)50 – Quadrelli against Italy

28168/95, judgment of 11 January 2000, final on 20 March 2000

Unfairness of civil proceedings before the Italian Court of Cassation, which failed to take into account the applicant's pleadings when declaring his appeal inadmissible in 1994, the government having been unable to prove that the abovementioned pleadings had not been filed (violation of Article 6 §1). The civil proceedings at issue related to the applicant's dismissal from his job in 1980 in Spain where he had been working for the Italian Chamber of Commerce.

Individual measures

The applicant, who had been awarded unemployment benefits in the framework of a friendly settlement before the Spanish courts, raised no further issue regarding individual measures before the Committee of Ministers.

Accordingly, the government considers that the present case does not call for the adoption of specific individual measures.

General measures

At the time of the facts at the origin of this case, the registry of the Italian Court of Cassation did not deliver receipts when pleadings were filed: such filing was merely registered in internal records of the registry, and it was not possible to obtain a copy.

This practice was subsequently amended and now all documents filed in the registry of the Court of Cassation are officially registered, which provides an effective remedy in case the procedural rules are not respected.

Furthermore, in order to inform the competent Italian authorities, an extract from the European Court's judgment was inserted in the archives of the electronic database of the Italian Court of Cassation.

Resolution CM/ResDH(2009)51 – Sen against the Netherlands

31465/96, judgment of 21 December 2001, final on 21 March 2002

Infringement of the right to respect for private and family life of the applicants, a family of Turkish nationals: the Dutch authorities refused to grant a residence permit to the third applicant to enable her to join her parents, the first two applicants, who were legally residing in the Netherlands (violation of Article 8).

Individual measures

The applicants did not submit any request for just satisfaction. Therefore the Court ruled that there was no ground to award them any sum in this respect.

The authorities indicated that a residence permit would be delivered to the third applicant, Ms Sinem Sen, as soon as she applied for it but she never requested such a residence permit.

General measures

The Court's judgment was circulated to the authorities concerned; it was also published in the Ministry of Justice journal, in the *Nederlands Juristenblad*, the *NJCM-Bulletin*, and in the *European Human Rights Cases*. A summary was furthermore included in the yearly report from the Minister of Foreign Affairs to parliament on the Court's judgments in cases against the Netherlands.

As the European Convention on Human Rights and the European Court case-law is taken into account by the Dutch public administration (see judgment paragraphs 16 and 25) and because of the direct effect given to them by courts, this measure will prevent new similar violations.

Resolution CM/ResDH(2009)52 – Gregorio de Andrade against Portugal

41537/02, judgment of 14 November 2006, final on 26 March 2007

Lack of access to a court in 2002 due to the public prosecutor's failure to notify on time the applicant of a judgment, concerning the accumulation of his pension rights. As the judgment was notified when it had already become final, the applicant could not lodge an

appeal for harmonisation of jurisprudence before the plenary chamber of the Supreme Administrative Court (violation of Article 6 §1)

Individual measures

The applicant died in 2004. Subsequently to the facts of the present case, the subject matter of the applicant's proceedings before the national courts has been clarified. On an appeal for harmonisation of jurisprudence, the plenary chamber of the Supreme Administrative Court gave, in 2005, an authoritative decision on the question of the accumulation of pension rights, thereby settling the subject-matter of the dispute. In these circumstances, no further individual measure is necessary.

General measures

The prosecutor general issued an order to public prosecutors containing instructions on notification of all court decisions. Under Article 12 §2(b) of Act No. 60/98 the prosecutor general is competent to issue directives, orders and instructions which are compulsory for public prosecutors and breach of which carries disciplinary sanctions. The order in question made it clear that, when public prosecutors intervene in proceedings, on behalf of an applicant or in the exercise of their duties, they must inform the applicants in good time of any decision concerning them of which the prosecutors were notified. Where they decide not to pursue the proceedings in a given case, they must draw the applicants' attention to the court decision delivered, to allow them, if appropriate, to pursue the case within the statutory time-limits.

The European Court's judgment has been translated and published on the website of the Cabinet of Documentation and Comparative Law (http://www.gddc.pt), which comes under the Prosecutor General of the Republic.

15996/02, judgment of 20 December 2005, final on 20 March 2006

Resolution CM/ResDH(2009)53 – Magalhães Pereira No. 2 against Portugal

Failure promptly to review the lawfulness of the applicant's detention in a psychiatric clinic (violation of Article 5 §4).

Individual measures

The applicant was released on 24 May 2002. The damage he suffered on account of the late review of the lawfulness of his detention in the prison psychiatric clinic was compensated by the just satisfaction awarded by the European Court. No other individual measure appears necessary.

General measures

The European Court's judgment raised two main questions: the shortage of staff at the prison psychiatric clinic, and the legal "ceilings" applying with respect to the number of examinations which may be carried out per year by one expert (6 per expert). These ceilings prevented the Institute for Forensic Medicine (IFM) from carrying out the examinations needed. The applicant's medical examination in the present case was finally done by the psychiatric hospital of Oporto.

As far as the shortage of staff at prison psychiatric clinics is concerned, Law No. 45/2004 on the legal system of forensic judicial examinations provides that courts may request examinations and legal-psychiatric evidence from the IFM branch in the court district (Article 24). When the local branch does not have enough psychiatrists to respond to all requests, it can ask the specialised services of the National Health Service to carry them out. The capacity of several regional offices of the IFM has been recently increased to limit the requests to the hospitals of the National Health Service. The renovation of the Lisbon office has allowed for the creation of a Department for Forensic Psychiatry; additional psychiatrists have been recruited for the office in Coimbra; and the establishment of a Department for Forensic Psychiatry Oporto is expected.

Moreover, the government recalled that the Directorate General of Custodial Services has at its disposal psychiatrists who can intervene in other prison clinics than those where they practice, so that they are not affected by the incompatibilities applying to the psychiatrists of the prison clinic where the detainee is located. The lists of these psychiatrists have been transmitted to the IFM so that it may rather assign examinations to these doctors than to the hospitals of the National Health Service.

As regards the legal "ceilings" for the number of examinations which may be conducted per expert per year, Decree-Law No. 50/2007 modified the legislation in force (Decree-Law No. 326/86), abolishing the ceiling of 6 examinations per expert and giving priority to the examination of persons detained in consequence of security measures or other measures depriving them of their liberty (Article 3 §2).

Moreover, Law No. 45/2004 provides the possibility to pay doctors or experts who conduct the forensic medical examination directly. Until then, they received no remuneration for the examinations they conducted, which is probably why they often refused to do so, especially if they had already reached their annual "ceiling" when this was still in force.

The European Court's judgment has been translated and made available on the website of the Cabinet of Documentation and Compara-

tive Law (http://www.gddc.pt), which is under the competence of the Prosecutor General of the Republic.

Resolution CM/ResDH(2009)54 – Radio Twist, A.S. against the Slovak Republic

62202/00, judgment of 19 December 2006, final on 19 March 2007

Violation of the right of freedom of expression of the applicant company, a radio station, on account of sanctions imposed upon it as a result of civil defamation proceedings in 2000 (violation of Article 10).

Individual measures

The applicant company submitted no claim for just satisfaction before the European Court or submitted any request regarding individual measures to the Committee of Ministers.

Under section 228 §1 (d) and section 230§1 of the Civil Procedure Code the applicant company had the opportunity to file a petition for the reopening of the defamation proceedings until 19 June 2007, i.e. within three months from the day when the judgment of the European Court of Human Rights became final.

General measures

The European Court's judgment was published in the Judicial Revue (*Justična Revue)* No. 2/2007. On 28 September 2007 it was also distributed to all regional courts and the Supreme Court by a circular letter of the Minister of Justice. The presidents of the regional courts and the president of the civil division of the Supreme Court have been requested to notify all judges of civil regional and district courts and all judges of the Supreme Court dealing with civil cases of the judgment, in order to avoid similar violations.

Resolution CM/ResDH(2009)55 –Sarl du Parc d'Activités de Blotzheim against France –Poulain de Saint Père against France –Malquarti against France

– 72377/01, judgment of 11 July 2006, final on 11 October 2006
– 38718/02, judgment of 28 November 2006, final on 28 February 2007
– 39269/02, judgment of 20 June 2006, final on 20 September 2006

Lack of a fair trial due to the presence of the Government Commissioner in the deliberations of the Conseil d'Etat (violations of Article 6 §1). Excessive length of proceedings before administrative courts (violations of Article 6 §1 in the cases of Sarl du Parc d'Activités de Blotzheim and Malquarti).

Individual measures

All the applicants alleged that they had suffered pecuniary damages in the context of the domestic proceedings that were not fair, or excessively long (even if the applicant Mr Poulain de Saint Père did not quantify his request). The Court rejected their requests, in the absence of any causal link between the violations found and any possible pecuniary damage (Sarl du Parc d'Activités de Blotzheim, Poulain de Saint Père), or holding that the finding of a violation constituted in itself sufficient violation (Malquarti). However, the Court awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicant in the cases of which the proceedings were excessively long.

In consequence, no other measure appeared necessary.

General measures

1) The presence of the Government Commissioner in the deliberations of the Conseil d'Etat

With regard to this violation, these cases present similarities to the case of Kress and other similar cases, the examination of which was closed in view of the general measures adopted – after the material time in the present cases. The measures adopted appear in Final Resolution CM/ResDH(2007)44 (it is now open to parties to request that the Commissioner is not present in deliberations; the parties are informed of this right in the summons).

2) Excessive length of proceedings before administrative courts

With regard to this violation, the cases of Sarl du Parc d'Activités de Blotzheim and Malquarti present similarities to other cases of length of proceedings before administrative courts, the examination of which has been closed in view of the general measures adopted – after the material time in the present cases (among others recruitment of staff, procedural measures, etc.). The measures adopted appear in Final Resolution CM/ResDH(2008)12 in the case of Raffi against France and 30 other cases. This resolution also presents the effective remedy created to complain about the excessive length of such procedures.

–66701/01, judgment of 28 February 2006, final on 28 May 2006
–71445/01, judgment of 30 November 2004, final on 28 February 2005
–38615/02, judgment of 6 December 2007, final on 6 March 2008
–24252/04, judgment of 22 May 2008, final on 22 August 2008

Resolution CM/ResDH(2009)56 –Deshayes No. 1 against France –Fenech against France –Ledru against France –Beloff against France

Breach to the right to a fair trial before criminal, civil or social chambers of the Cour de cassation due to failure to communicate, in whole or in part, the report of the reporting judge (conseiller rapporteur) to parties (the applicants themselves and/or their lawyers) (violations of Article 6 §1) as well as on account of the presence of the advocate-general at the deliberations of the Cour de cassation (violations of Article 6 §1 in the cases of Deshayes (No.1) and Fenech).

Individual measures

Cases concerning proceedings before the criminal chamber of the Cour de cassation in which the applicants had lodged a civil action (Deshayes (No.1) and Fenech)

In both cases, the charges were dropped or the accused person was discharged.

In the Deshayes (No.1) case, the applicant requested before the European Court just satisfaction only in respect of non-pecuniary damage sustained but the Court held that the finding of a violation constituted in itself sufficient just satisfaction in this respect.

In the Fenech case, the applicant requested before the European Court just satisfaction only in respect of non-pecuniary damage sustained; the Court held that the finding of a violation constituted in itself sufficient just satisfaction in this respect. The applicant also requested just satisfaction for pecuniary damage (according to her, the violation caused her depression, amounting to a loss of the possibility of keeping her job); the Court rejected this request, as it could not speculate as to what the outcome of the proceedings would have been in the absence of a violation of Article 6, paragraph 1. In view of the circumstances of the case, no other individual measure appeared necessary.

Cases concerning civil proceedings before civil or social chambers of the Cour de cassation (Ledru and Beloff)

In both cases, the European Court found that there was no causal link between the violations found and the pecuniary damages allegedly sustained by the applicants; so it rejected these requests. Concerning the non-pecuniary damage, the Court held that it was sufficiently redressed by the finding of violations.

Thus no individual measures appeared necessary in these cases.

General measures

The *Cour de cassation* has changed the way in which it investigates and determines matters submitted to it. In particular, advisory reports drafted by the judge rapporteur (*conseiller rapporteur*) are communicated with the file to both the prosecution and the parties, and advocates-general no longer take part in preparatory conferences or in the deliberations of the Bench (see Final Resolution CM/ResDH(2008)13 in the case of Slimane Kaïd against France and 5 other cases regarding the right to a fair trial before the Cour de cassation).

Moreover, specific measures have been adopted so that parties not represented by counsel may have access to the same information as they would have if they had counsel, irrespective of their place of residence (see Final Resolution CM/ResDH(2008)71 in the case of Meftah and others and 25 other cases against France regarding the right to a fair trial before the Cour de cassation).

57547/00, 68591/01, judgment of 31 May 2005, final on 31 August 2005

Resolution CM/ResDH(2009)57 – Dumont-Maliverg against France

Excessive length of the applicant's detention on remand (violation of Article 5 §3).

Individual measures

The applicant is no longer detained on remand: he was convicted in 2002 by a final judgment.

As to the non-pecuniary damage sustained by the applicant, the Court considered it sufficiently redressed by the finding of a violation of the Convention.

General measures

This case presents similarities to that of Muller (final Resolution ResDH(2003)50), closed following the adoption of legislative measures, in particular those limiting the conditions and the length of detention on remand, the exceptional character of which has been reaffirmed (Law No. 2000-516 of 15 June 2000 "reinforcing the protection of the presumption of innocence and the rights of victims").

In addition, in view of the fact that the competent authorities apply the Convention directly, measures have been taken to draw their attention to this case, so as to ensure that they will take it into account in practice. A summary of the judgment was published in the *Cour de cassation Information Bulletin* No. 623 of 15 July 2005 (disseminated *inter alia* to the judicial investigating authorities), as well as in *La Cour européenne des droits de l'Homme – 2006 - Arrêts concernant la France et leurs commentaires* - a publication of the European Law Observatory (*Observatoire de Droit Européen*) available on the website of the *Cour de cassation*. Finally, the judgment was sent to the prosecutor general of the Besançon Court of

Appeal, which was the court concerned by the proceedings at issue.

Resolution CM/ResDH(2009)58 – Simon and Nicolas against France

66053/01, judgment of 8 June 2004, final on 8 September 2004
2021/03, judgment of 27 June 2006, final on 11 December 2006

Excessive length of certain proceedings concerning civil rights and obligations before administrative courts (violations of Article 6 §1).

Individual measures

In the Simon case, the proceedings were closed in 2000. It may be noted that the applicant did not request any just satisfaction before the European Court.

In order to remedy, as far as possible, the consequences of the violation for the applicant (*restitutio in integrum*) in the Nicolas case, where proceedings were still pending when the Court delivered its judgments, the Committee asked for the proceedings at issue to be accelerated. All proceedings are now closed. The *Conseil d'Etat* delivered judgments on the applicant's six appeals on 17 March 2008.

General measures

These cases present similarities to other cases of length of proceedings before administrative courts, the examination of which has been closed in view of the general measures adopted (among others recruitement of staff – in particular judges, procedural measures, etc.). The measures adopted appear in Final Resolution CM/ResDH(2008)12 in the case of Raffi against France and 30 other cases. This resolution also presents in details the effective remedy set up whereby complaints may be made about the excessive length of such proceedings.

Furthermore, taking into account the specificity of these cases ("particular promptness" required in situations similar to the applicants'), and in view of the fact that the competent authorities apply the Convention directly, measures have been taken to draw their attention to these cases, so that they take it into account in practice.

These judgments have been published by the *Conseil d'Etat* documentation centre, on the *Conseil d'Etat* intranet site, and on the Administrative Tribunals' and Administrative Courts of Appeal's intranet site. Thus they have been brought to the attention of administrative judges, legal assistants and registry staff members of these courts. They have also been published in the "legal watch" section of these intranet sites where they are highlighted as "particularly important judgments" for the readers.

Resolution CM/ResDH(2009)59
– Laidin No. 2 against France
– Louerat against France
– SIES against France
– Storck against France
– Varelas against France
– Société au service du développement against France
– Aiouaz against France

– 39282/98, judgment of 7 January 2003, final on 7 April 2003
– 44964/98, judgment of 13 February 2003, final on 13 May 2003
– 56198/00, judgment of 19 March 2002, final on 19 June 2002
– 73804/01, judgment of 14 September 2004, final on 14 December 2004
– 16616/02, judgment of 27 July 2006, final on 27 October 2006
– 40391/02, judgment of 11 April 2006, final on 11 July 2006
– 23101/03, judgment of 28 June 2007, final on 28 September 2007

Excessive length of certain proceedings concerning civil rights and obligations or the determination of "criminal" charges before the administrative courts, and/or the lack of an effective remedy in this respect (violations of Artcile 6 §1, and/or Article 13). Excessive length of criminal proceedings (violation of Article 6 §1 in the Louerat case). Excessive length of proceedings concerning civil rights and obligations before civil courts (appeal for damages) and lack of an effective remedy in this respect (violation of Articles 6 §1 and 13 in the Laidin No 2 case).

Individual measures

Concerning the two cases in which the proceedings were still pending at the time of the Court's judgments were delivered (Louerat and SIES), the judgments of the European Court were sent to the authorities concerned and in order to remedy, as far as possible, the consequences of the violations for the applicants (*restitutio in integrum*), the acceleration of the proceedings was requested. They are now closed. The proceedings in the Louerat case ended with a *Conseil d'Etat* judgment of 4 August 2006. The proceedings in the SIES case ended with a judgment of the Paris Administrative Court of appeal of 25 March 2003 (no appeal was made against this judgment).

The European Court also granted the applicants just satisfaction in respect of the non-pecuniary damage sustained because of the violations.

General measures

These cases present similarities to other cases concerning the length of proceedings before administrative courts, the examination of which has been closed in view of the general measures adopted – after the material time in the present 6 cases (including, the recruitment of staff – in particular judges, procedural measures, etc.). The measures adopted appear in Final Resolution CM/ResDH(2008)12 in the case of Raffi against France and 30 other cases. This resolution also presents the effective remedy set up whereby complaints may be

made about the excessive length of proceedings.

The Louerat case, which also concerns the excessive length of criminal proceedings, presents similarities to another group of cases, the examination of which has been closed in view of the general measures adopted – after the material time in Louerat (including, the recruitment of staff – in particular judges, procedural measures, increasing budgets, etc.). The measures adopted appear in Final Resolution CM/ResDH(2007)39 in the case of Etcheveste and Bidart against France and 9 similar cases. This resolution also presents the effective remedy created whereby complaints may be made about the excessive length of such proceedings.

The Laidin No. 2 case, which also concerns the excessive length of proceedings before civil courts, presents similarities to another group of cases, the examination of which has been closed in view of the general measures adopted – after the material time (including, recruitment of staff – in particular judges, procedural measures, etc.). The measures adopted appear in Final Resolution CM/ResDH(2008)39 in the case of C.R. against France and nine similar cases. This resolution also presents the effective remedy created whereby complaints may be made about the excessive length of such proceedings.

Finally, it is recalled that the French authorities set up the practice of systematically disseminating the European Court's judgments to the authorities concerned so that these authorities, which apply the Convention directly, can take them into account in practice.

32510/96 - Interim Resolution DH(99)132

Final Resolution CM/ResDH(2009)60 – Peter against France

Excessive length of certain proceedings concerning civil rights and obligations before the administrative courts and particularly before the Conseil d'Etat (violation of Article 6 §1).

Individual measures

The proceedings at issue ended on 26 June 1997, by judgment of the Nancy Administrative Court of Appeal.

The applicants have been granted a just satisfaction for the non-pecuniary damage sustained due to the violation.

General measures

The general measures adopted by the French authorities before the Ministers Deputies' decision to close this case (decision of 24 February 2004) were presented in Final Resolution CM/ResDH(2005)63 concerning the case of S.A.P.L. and 57 other cases against France, on the excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before the administrative courts. Among others, Law No. 2002-1138 was passed on 9 September 2002 providing in particular for the recruitment of staff, the creation of new courts, financial resources and the adoption of procedural measures.

Supplementary general measures were subsequently adopted by the French authorities, and presented in Final Resolution CM/ResDH(2008)12 concerning the case of Raffi and 30 other cases.

Both resolutions also present the effective remedy that has been set up to complain about the excessive length of such proceedings.

27678/02, judgment of 26 September 2006, final on 26 December 2006

Resolution CM/ResDH(2009)61 – Gérard Bernard against France

Excessive length of the applicant's detention on remand (violation of Article 5 §3).

Individual measures

The applicant is no longer detained on remand.

General measures

First, it may be noted that this case presents similarities to that of Muller (Final Resolution ResDH(2003)50), closed following the adoption of legislative measures, in particular limiting the conditions and the length of detention on remand, the exceptional character of which has been reaffirmed (Law No. 2000-516 of 15 June 2000 "reinforcing the protection of the presumption of innocence and the rights of victims").

Furthermore, specific measures have been taken to put the competent authorities, in particular judges, who apply the Convention directly, in a position to draw the consequences of the Gérard Bernard judgment when applying the relevant national provisions.

Thus the judgment was sent to the First President of the *Cour de cassation*, to the Prosecutor General of the Cour de Cassation, to the Prosecutor General of the Paris Court of Appeal, as well as to the office of the Ministry of Justice in charge of criminal cases and pardons. A presentation of this judgment has also been published in the *Bulletin d'information de la Cour de cassation* No. 648 of 15 October 2006, and in *La Cour européenne des droits de l'Homme - 2006 - Arrêts concernant la France et leurs commentaires* - a publication of the European Law Observatory (*Observatoire de Droit Européen*) available on the website of the *Cour de cassation*).

Resolution CM/ResDH(2009)62 – Lotter and Lotter against Bulgaria

39015/97, judgment of 19 May 2004 - Friendly settlement

Discriminatory treatment of the applicants – Jehova's Witnesses - and violation of their freedom of religion (complaints under Articles 9 and 14) on account the Bulgarian authorities' decisions to withdraw their residence permits and order them to leave the country in December 1995 based on an alleged threat to national security.

Individual measures

Order Nos. 1759 and 1761 of 1 December 1995 withdrawing the applicants' residence permits have been annulled by decision of the Director of the Regional Directorate of the Ministry of Interior in Plovdiv of 16 August 2004.

General measures

In January 2005 the Bulgarian authorities provided information concerning some of the most important provisions of the new Religious Denominations Act of 2002 and the present legal status of Jehovah's Witnesses. According to this information, Jehovah's Witnesses were officially recognised and registered as a religious denomination by order of the Deputy Prime Minister No.P-51/1998. In 2003, pursuant to paragraph 3 of the Religious Denominations Act, the Sofia City Court registered *ex officio* the Jehovah's Witnesses as a legal entity (file No. 1665/2003). The authorities indicated that the organisation has more than 30 regional sections, registered by the mayors according to Article 19 of the Religious Denominations Act.

Final resolutions adopted at the 1059th Meeting

Resolution CM/ResDH(2009)65 – Göktepe against Belgium

50372/99, judgment of 2 June 2005, final on 2 September 2005

Unfairness of criminal proceedings against the applicant and 2 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).

Individual measures

1) Possibility of reopening the criminal proceedings

- *a) Adoption of the Law of 1 April 2007*

Given the gravity of the applicant's conviction following proceedings found unfair by the European Court, the reopening of proceedings seemed to be the best measure to remedy the violation and to erase its consequences. Nevertheless, at the time when the European Court's judgment was transmitted to the Committee of Ministers, Belgian law did not provide the possibility of reopening criminal proceedings following a judgment of the European Court. Thus the adoption of individual measures in this case required a legislative change.

Consequently, the Law of 1 April 2007 amending the Criminal Investigation Code so as to permit the reopening of criminal proceedings was adopted on 1 April 2007 and entered into force on 1 December 2007. On the basis of this law, provisions enabling the reopening of criminal proceedings following a judgment of the European Court have been introduced in the Criminal Investigation Code.

- *b) Relevant provisions of the Law*

Following a violation of the Convention, an application may be made to reopen proceedings in cases resulting in the conviction of the applicant or of another person for the same offence and on the basis of the same evidence (new Article 442 *bis*). Such applications may be made by the person convicted or his or her beneficiaries, or by the prosecutor general before the *Cour de cassation* either of their own motion or at the request of the Minister of Justice (Article 442 *ter*). Requests to reopen proceedings must be lodged within the 6 months following the date upon which the European Court's judgment becomes final, and are examined by the *Cour de cassation* (Article 442 *quater*), which orders the reopening of proceedings if it considers that the applicant or his or her beneficiaries continue to suffer from very serious negative consequences and the decision at issue on its merits is contrary to the Convention, or if the violation found arose from mistakes or procedural shortcomings so serious as to raise significant doubt regarding the outcome of the proceedings at issue (Article 442 *quinquies*).

- *c) Transitional measures provided by the Law and applicable to the present case*

Article 13 provides that, if the execution of a judgment of the European Court is still pending before the Committee of Ministers, the application for the reopening of proceedings must be lodged within 6 months of the entry into force of the law.

By letter of 9 May 2007, the Federal Justice Service informed the applicant's counsel of the possibility for the applicant to lodge a request to have the proceedings reopened on the basis of this article.

2) Applicant's release on parole

By a decision of 3 May 2007 the Ghent Court of First Instance ordered the applicant's release on parole.

General measures

The European Court's judgment has been examined by a group of judges in the frame-

work of an expert group on criminal procedure within the Collegium of Prosecutors General. The judgment has been notified to the Collegium of Prosecutors General to be sent out to the country's appeal courts, to the Federal Prosecutor and to the Prosecutor at the *Cour de cassation*.

Since the broad dissemination of this judgment to courts, Assize Court's presidents formulate individual questions to juries regarding objective aggravating circumstances.

23618/94, judgment of 24 August 1998
57752/00, judgment of 29 March 2005, final on 29 June 2005

Resolution CM/ResDH(2009)66 – Lambert and Matheron against France

Ineffective protection against interception of telephone conversations (violations of Article 8) on account of the Court of Cassation's refusing the applicants locus standi *to complain of such interception, on the ground that it was a third party's line that had been tapped (Lambert case) or that the tapping had been carried out in proceedings to which the applicant was not party (Matheron case)*

Individual measures

The possibility to request the reopening of their cases was available to the applicants under section L626-1 of the Code of Criminal Procedure.

General measures

The European Court did not call into question the legal grounds for telephone tapping, found to conform with the requirements of Article 8 of the Convention.

In view of the direct effect given to the Convention by French courts, and in order to encourage courts to take due account of these judgments, they have been published and sent out to the relevant authorities. In addition they have been the subject of commentaries in various specialist journals, in particular *CREDHO* No. 5/1999 (Lambert) and the *Quarterly Human Rights Review* No. 66 of 1 April 2006.

Following the judgment in Lambert, the *Cour de cassation* has progressively adapted is case-law.

Initially, in a judgment of 15 January 2003 (Cass. Crim., 15 January 2003, Appeal No. 02-87.341) the Criminal Chamber established that any person charged with an offence has the right to contest telephone intercepts resulting from the tapping of other people's lines. However, it rejected the idea of examining the legality of intercepts carried out in a different investigation.

Subsequently, in order to take account of the European Court's judgment in the Matheron case, the *Cour de cassation*, in a dismissal judgment dated 7 December 2005, (Cass. Crim., 7 December 2005, Appeal No. 05-85.876) accepted that the investigating chamber might examine the lawfulness of telephone intercepts carried out in separate proceedings but attached to the file of the case under examination. In this context the investigating chamber must check in particular: the aim of the intercept ordered, whether it is in accordance with the rules, whether it is necessary and whether the interference in the subject's privacy is proportionate in view of the severity of the alleged offence. The case-law of the *Cour de cassation* has remained constant since this judgment.

The *Cour de cassation* reported widely on its new case-law: the judgment of 7 December 2005 was the subject of a commentary in its annual report for that year, and the development of the case-law was traced in the annual report for 2006.

39922/03, judgment of 1 June 2006, final on 1 September 2006

Resolution CM/ResDH(2009)67 – Taïs against France

Violation of positive obligation to protect the lives of persons in police custody: absence of a plausible explanation as to the cause of the serious injuries suffered by the applicants' son in 1993 while he was detained and absence of any effective police and medical supervision of the applicants' son despite his critical state (substantive violation of Article 2); lack of a quick and effective investigation into the circumstances surrounding the death (procedural violation of Article 2).

Individual measures

In its judgment the Court itself "noted that it is impossible for the applicants to obtain an effective enquiry or adequate compensation" and granted them 50 000 euros as just satisfaction in respect of the non-pecuniary damage sustained.

Following this judgment, the public prosecutor, in accordance with his competence under Article 190 of the Code of Criminal Procedure, examined and on 12 January 2007 rejected the applicants' request for a new investigation. The public prosecutor held that he did not have sufficient new grounds to call into quesiton the initial conclusion of the investigation, namely that there were no sufficient charges against anyone.

Moreover, the government highlighted that several other elements make it objectively impossible to rectify the shortcomings of the

original investigation. By definition, it is not possible to change the fact that the investigation has been too long, nor that the investigating judge went to the scene too late to examine it (although he attended the scene, even at that time, it did not help in clarifying the reasons for the victim's death), nor finally that the post-mortem psychological inquiry had been carried out. Furthermore, a reconstitution of the events would be objectively impossible, as the cell in which the events occurred no longer exists as it was at the material time, works having been carried out between 1997 and 1998, (i.e. since the material time). In addition, Mr Pascal Taïs' girlfriend has no known address.

In this context, the ombudsman ("*Médiateur de la République*", an independent authority which does not accept instructions from any other authority according to Law 73-6 of 3 January 1973) and the National Human Rights Advisory Board ("*Commission nationale consultative des droits de l'Homme*", another independent authority, giving advice and making proposals to the government, in particular in the field of human rights) made a joint communication to the Committee of Ministers under Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments of the terms of friendly settlements.

On 20 May 2009, Mr Taïs informed the Committee of Ministers that following the decision of the prosecutor, he ordered a private investigation (recorded in a report of 10 January 2009), which could according to him "facilitate a new judicial investigation". In this respect, the government highlights that if he so wishes, the applicant could bring the results of such an investigation to the attention of the competent magistrates. In that case, they would have to reach a decision once again. If new charges appear, it would still be possible to reopen the investigation, until the facts at issue are time-barred.

General measures

Measures have been taken to make the European Court's findings public so as to avoid new, similar violations.

The judgment has been brought to the attention of competent judges. It was sent to the First President of the Court of Cassation and to the public prosecutor before the same Court (as well as to the public prosecutor before the Court of Appeal of Bordeaux, which was involved in this case). A summary was also included in the *Bulletin d'information de la cour de cassation* (BICC) No. 643 of 1 July 2006 and in *La Cour européenne des Droits de l'Homme – 2006 – Arrêts concernant la France et leurs commentaires*, a publication of the *Observatoire du droit européen* (*Cour de cassation*, July 2007). Finally, several articles have been published on this judgment in widely distributed law journals.

The attention of the police has also been drawn to this judgment, which is commented upon during police officers' training, to draw the consequences of this judgment in their work and to avoid new, similar violations. The judgment was also published and commented on in the September/October 2006 issue of the *Legal Bulletin of the Ministry of Interior*. This bulletin is available on the intranet site of the ministry, to which all the ministry (including police) and *Préfecture* officials have access.

More generally speaking, the French government recalled first, that it has maintained considerable efforts for several years, taking into account the recommendations of the European Committee for the Prevention of Torture (CPT) to improve conditions of detention on remand. For example, a circular which was issued on 11 March 2003 sets out measures to "modernise professional practice and the means devoted to detention on remand (...) in order to guarantee respect for the dignity of detainees". Second, the government recalls that Law 2000-494 of 6 June 2000 created the National Commission for Policing Ethics (*Commission Nationale de Déontologie de la Sécurité*, www.cnds.fr), an independent authority entrusted with the mission of supervising respect of ethics by all those working in the field of security within the French republic, including the police.

Finally, it may be noted that the Director General of the Police requested the National Police General Inspectorate (*Inspection Générale de la Police Nationale*) in December 2006, together with the ministries concerned and the medical doctors' professional body, to carry out a study on the placement in cells used for sobering up. It was requested that this study "evaluate how the police take account of the rules on handling persons in a state of inebriation, to analyse the shortcomings and the difficulties encountered and to make proposals for reform".

– 20627/04, judgment of 24 May 2006, final on 23 October 2006
– 36998/02, judgment of 27 July 2006, final on 11 December 2006
– 1131/05, judgment of 5 July 2007, final on 5 October 2007,
– 77574/01, judgment of 14 December 2006, final on 14 March 2007
– 2602/06, judgment of 21 February 2008, final on 21 May 2008)

Resolution CM/ResDH(2009)68 –Liakopoulou, Efstathiou and others –Lionarakis, Zouboulidis and Koskina and others against Greece

Disproportionate hindrance to the applicants' right of access to a court in different "civil" cases, due to dismissal of their appeals by the Court of Cassation between 2001 and 2004, in accordance with an excessively formalistic practice requiring the cassation request to contain a summary of the facts at the basis of the appeal court's rejection of the appeal (violation of Article 6 §1); breach of the applicant's right to freedom of expression as a result of him being ordered to pay damages in civil defamation proceedings (in the Lionarakis case only), without the courts making the necessary distinction between facts and value judgments (violation of Article 10).

Individual measures

In the Lionarakis case, the European Court awarded to the applicant just satisfaction in respect of pecuniary damages suffered. The amount covered the sum of damages the applicant was ordered to pay in the defamation proceedings at issue as well as the legal fees for the proceedings before the Court of Cassation.

In the other cases, the European Court awarded the applicants just satisfaction in respect of non-pecuniary damage. Considering the nature of the violations, the absence of any very serious consequences for the applicants and the fact that their cases had been considered on the merits at both first instance and appeal, the reopening of the proceedings at issue does not appear an appropriate means of achieving the effective implementation of these judgments. In these cases, the aim of fully erasing the consequences of the violations found does not seem to prevail over the principle of legal certainty and of protection of the rights of third parties' of good faith. Furthermore, it should be noted that as regards the case of Efstathiou and others, the applicants had passed the maximum retirement age (65), since at the time of delivery of the European Court's judgment and consequently, the domestic courts could no longer reinstate them in their employment, had the applicants been successful before the Court of Cassation.

General measures

1) Violations of Article 6 §1

In these cases the violations emanated from an application by the Court of Cassation of a principle enshrined in its case-law concerning the vague nature of the grounds of appeal. In light of the direct effect the European Court's case-law enjoys in Greek law (e.g. appendix to Final Resolution ResDH(2004)2 on Agoudimos and Cefallonian Sky Shipping Co.), the publication and dissemination of the judgments appear to be sufficient execution measures. The judgments in all these cases have been widely disseminated to all judicial authorities and the translations into Greek of the texts of the judgments have been placed on the website of the state's legal office (www.nsk.gr).

2) Violation of Article 10

It is noted that the direct effect of Article 10 in the field of freedom of the press has been expressly recognised in recent Greek case-law (see Council of State judgment 253/2005).

44925/98, judgment of 1 June 2004, final on 1 September 2004 and judgment of 15 February 2005 – Friendly settlement, Article 41

Resolution CM/ResDH(2009)69 – Valovà, Slezàk and Slezàk against Slovak Republic

Violation of the applicants' right to a peaceful enjoyment of their possessions in that a decision of June 1994 by the administrative authorities to reopen proceedings which had led to the recognition of the applicants' right of property was not in conformity with the "conditions provided for by law" (violation of Article 1 of Protocol No. 1).

Individual measures

Under the friendly settlement concluded on 21 October 2004 on the application of Article 41, the parties agreed that the payment of a global sum of 20 000 euros, taken together with the agreement on the restitution of the property in question, would constitute a final resolution of the case. The sum agreed was paid on 15 May 2005, within the time-limit agreed under the terms of the friendly settlement. The authorities confirmed that the property was restored in 2004.

General measures

Since it was the national authorities' application of the relevant provisions of domestic law which was challenged in this case, and taking into account the development of the direct effect of the Convention and of the case-law of the European Court at national level (see decisions of the Supreme Court Nos. Ntv I - 19/02 and Ntv I - 20/02 of 10 January 2003), the dissemination of the judgment of the European Court to the competent authorities seems to be a relevant and sufficient measure for the prevention of new, similar violations. The judgment was published in *Justičná Revue*, issue No. 6-7/2004. It was sent out to the competent administrative authorities (regional land offices), together with a circular letter from the Minister of Justice. In addition, the presidents of the regional land offices were

invited to send the judgment to district land offices for information purposes.

Resolution CM/ResDH(2009)70 – Klemeco Nord AB and Rey and others against Sweden

Excessive length of civil proceedings (violations of Article 6 §1).

Individual measures

No individual measure is necessary since the proceedings in question are closed and the European Court has awarded just satisfaction in respect of non-pecuniary damage suffered by the applicants on account of the excessive length of the proceedings.

General measures

1) The excessive length of proceedings

The judgments have been published together with a summary in Swedish on the government's website (www.manskligarattigheter.gov.se) and on the website of the National Courts Administration (www.domstol.se). They have been sent out to the Swedish Supreme Court, the courts of appeal, the two district courts concerned, the parliamentary ombudsmen and the Chancellor of Justice. The length of civil proceedings does not appear to be a systematic problem in Sweden. Therefore, publication and dissemination to relevant authorities together with the direct effect given to the Convention are sufficient measures for the execution and for the prevention of other similar violations.

2) Effective remedies available to challenge the length of proceedings

The following remedies exist to challenge excessive length of proceedings:

a) criminal and family law cases are tried, in practice, with particular promptness given that the stake for the parties in such proceedings is high;

b) parties in civil proceedings may appeal against decisions of district courts they consider to be the cause of an excessive length in the proceedings and obtain the quashing of the incriminated decision by the court of appeal (chapter 49, section 7 of the Code of Judicial Procedure);

c) the excessive length of criminal proceedings is taken into account at the time of the determination of the sanction and may justify the imposition of a more lenient punishment (chapter 29, section 5 and chapter 30, section 4 of the Criminal Code);

d) the parliamentary ombudsmen and the Chancellor of Justice exercise control over the conduct of proceedings before the public authorities, including the courts;

e) individuals are entitled to compensation for any loss or damages caused by the excessive length of proceedings, pursuant to the 1972 Tort Liability Act. The authorities referred to several decisions of the Supreme Court and to one decision of the Chancellor of Justice, delivered between 2005 and 2007, as an illustration that compensation has been awarded to individuals to redress the damage they had suffered due to the excessively lengthy court proceedings, including civil proceedings.

– 73841/01, judgment of 19 December 2006, final on 19 March 2007
– 17350/03, judgment of 20 December 2007, final on 20 March 2008

Resolution CM/ResDH(2009)71 – Ospina Vargas, Leo Zappia, Bastone, Campisi, Di Giacomo, and Cavallo against Italy

Violation of the applicants' right to respect for their private life resulting from the arbitrary monitoring of their correspondence during their detention (violation of Article 8 in all cases) and to the prison authorities' decision to intercept and retain a book addressed to the applicant (violation of Article 8 in Ospina Vargas case). Lack of an effective remedy against the decisions ordering monitoring of prisoners' correspondence (violation of Article 13 in Di Giacomo case).

Individual measures

No individual measures were required, in view of the new legislation adopted in Italy (see general measures).

General measures

Law No. 95/2004, which entered into force as from 15 April 2004, amended the Prison Administration Act No. 354/1975 which was at the origin of the violations found by the Court. The current legislation provides clear grounds for imposing monitoring or restriction of prisoners' correspondence and time-limits for such measures. It also provides that correspondence with the Convention organs is exempt from monitoring and extends judicial review to cover the monitoring or restriction of prisoners' correspondence. It is now possible to lodge a complaint before a sentence execution court against a decision concerning monitoring or restriction of correspondence (see resolution ResDH(2005)55 adopted on 5 July 2007 ending the examination of certain cases similar to the present cases, in particular the Calogero Diana case). Italian authorities also adopted administrative measures to ensure effective implementation of the new legislative provisions.

– 40750/98, judgment of 14 October 2004, final on 14 January 2005
– 77744/01, judgment of 29 September 2005, final on 29 December 2005,
– 59638/00, judgment of 11 July 2006, final on 11 October 2006
– 24358/02, judgment of 11 July 2006, final on 11 October 2006,
– 25522/03, judgment of 24 January 2008, final on 24 April 2008
– 9786/03, judgment of 4 March 2008, final on 4 June 2008

– 42053/02, judgment of 8 June 2006, final on 8 September 2006
– 51703/99, judgment of 20 April 2004, final on 20 July 2004

Resolution CM/ResDH(2009)72 – Matteoni and Vadalà against Italy

Disproportionate restrictions of the applicants' rights due to excessively long bankruptcy proceedings: violations of their freedom of movement (violation of Article 2, Protocol No. 4) and of their right to respect for correspondence (violation of Article 8)

Individual measures

The restrictions imposed on the applicants have been lifted by Legislative Decree No. 5/2006 (see below).

General measures

Legislative Decree No. 5/2006, adopted in January 2006, resolved the questions raised in the European Court's judgments in these cases. The decree brought about a number of changes to remedy the violations found, in particular:

- Respect for correspondence (Article 48 of the Decree): The bankrupt now receives all his correspondence and is obliged to transmit to the liquidator only communications concerning the bankruptcy proceedings, whereas prior to the reform all letters were diverted directly to the liquidator;

- Freedom of movement (Article 49): The only obligation remaining for the bankrupt is to inform the competent authorities of any change of residence, whereas formerly he could not leave his area of residence without authorisation from the authorities;

For further details see Interim Resolution CM/ResDH(2007)27 "Bankruptcy proceedings in Italy: progress achieved and problems remaining in the execution of the judgments of the European Court of Human Rights", adopted by the Committee of Ministers on 4 April 2007.

– 46844/99, judgment of 8 November 2005, final on 15 February 2006
– 60231/00, judgment of 17 June 2003, final on 17 September 2003

Resolution CM/ResDH(2009)73 – Bíro and Klimek against Slovak Republic

Excessive length of civil proceedings (violations of Article 6 §1).

Individual measures

The domestic proceedings whose excessive length was impugned by the European Court in these cases came to an end between 1998 and 2008.

General measures

General measures have already been adopted to improve the efficiency of the judicial system and avoid new violations, particularly in the context of the examination of the Jóri case (judgment of 9 November 2000) closed by Resolution ResDH(2005)67 (cf. in particular the amendment to the Constitution brought about in 2001 which introduces a constitutional petition for complaints of violations of human rights protected by international treaties; the adoption of Act No. 501/2001 which reduces the number of cases in which second instance courts are competent at first instance and aims to accelerate the gathering of evidence; the adoption of Act No. 385/2000 which regulates the civil and disciplinary liability of judges for unjustified delays in their cases).
The Committee of Ministers is at present supervising the execution of several judgments of the Court (in particular the judgment of Jakub 28 February 2006), finding in particular a violation of Article 6, paragraph 1 of the Convention on account of the excessive length of civil proceedings. Within the framework of these cases, the Committee supervises the adoption of the outstanding general measures. In this context, the Slovak authorities have informed the Committee of Ministers of the new measures that they have taken or were envisaging (in particular measures aimed at improving the structural organisation of the judiciary and legislative measures, as well as measures aimed at enhancing the efficiency of the constitutional petition against the excessive length of judicial proceedings) in order to put to an end the problem of excessive length of proceedings, so as to prevent other violations similar to those already found.

Internet:
– Website of the Department for the Execution of Judgments: http://www.coe.int/Human_Rights/execution/
– Website of the Committee of Ministers: http://www.coe.int/cm/

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.

119th Session of the Committee of Ministers, Madrid, 12 May 2009

During the 119th Session of the Committee of Ministers, Ministers for Foreign Affairs and representatives of the 47 Council of Europe member states today adopted Protocol No. 14bis to the European Convention on Human Rights, which will increase the European Court of Human Rights' short-term capacity to process applications. This new protocol will allow, pending entry into force of Protocol No. 14, the immediate and provisional application of two procedural elements of Protocol No. 14 with respect to those states that express their consent:

– a single judge will be able to reject plainly inadmissible applications, whereas now this requires a decision by a committee of three judges.
– the competence of three-judge committees will be extended to declare applications admissible and decide on their merits in well-founded and repetitive cases, where there already is a well-established case-law of the Court. Currently, these cases are handled by chambers of seven judges.

The application of Protocol 14bis, though not providing a definitive answer to the Court´s problems, is estimated to increase the efficiency of the Court by 20-25%.

In the margins of the Ministerial Session, a Conference of the High Contracting Parties to the Convention adopted an agreement by consensus by virtue of which states may individually consent, on a provisional basis, to the direct application of the two mentioned procedural elements of Protocol 14 to the complaints filed against them. This agreement is complementary to Protocol No. 14bis since it opens a second legal avenue towards achieving the same result.

The Ministers decided to transmit to the Parliamentary Assembly for appointment to the post of Secretary General, with effect 1 September 2009, the candidatures of Wlodzimierz Cimoszewicz and Thorbjørn Jagland, respectively sponsored by the governments of Poland and Norway.

The Committee also adopted:

- a declaration to mark the 60th anniversary of the Council of Europe;
- a declaration on making gender equality a reality;
- a statement on the Conference of the High Contracting Parties to the European Convention on Human Rights.

The Ministers also discussed the state of democracy in Belarus, the only European state that is not a Council of Europe member, and the conflict in Georgia.

Slovenian Chairmanship of the Committee of Ministers (May-November 2009)

The Ministers for Foreign Affairs of Council of Europe member states hold the Chairmanship of the Committee of Ministers, the executive body of the Council of Europe, on a rotating basis in alphabetical order, for a six-month term.

Slovenia took over the Chairmanship of the Committee of Ministers (CM) from Spain. Its term of office will end on November 2009.

The new Chairman-in-Office, Slovene Foreign Minister Samuel Žbogar, presented the priorities of the Chairmanship which are based around four broad themes, such as:

- promoting the common values of the Council of Europe;
- strengthening the security of European citizens;
- building a more humane and inclusive Europe; and
- fostering co-operation with other international and European organisations and institutions.

The Slovenian Chairmanship will promote the continuation of the reform process of the European Court of Human Rights and strive for the promotion of rule of law at national and international levels.

The programme will also place special emphasis on children and education on children's rights, Roma, bioethics and biomedicine, and the promotion of democracy, the rule of law and human rights in South-East Europe, the Caucasus and Belarus.

The integral text of the priorities of the Slovenian chairmanship and a calendar of major events can be consulted at the website of the Committee of Ministers.

Declarations by the Committee of Ministers

Declaration to mark the 60th anniversary of the Council of Europe

Adopted in Madrid on 12 May 2009 at the 119th Session of the Committee of Ministers

[...] [W]e, the Ministers of Foreign Affairs of the member states of the Council of Europe, meeting in Madrid on 12 May 2009, reaffirm our commitment to the Organisation. We are determined to take its role forward, as defined in the Statute and developed further in Warsaw by our Heads of State and Government in 2005, on the basis of the following principles and guidelines:

1) The core objective of the Council of Europe is to preserve and promote human rights, democracy and the rule of law in Europe. All its activities should contribute to this objective.
2) Human rights are universal and indivisible. They are the inalienable rights of each and every individual. Ensuring that everyone Europe-wide can fully exercise his or her rights in practice and without discrimination constitutes the priority task of our Organisation. It has many achievements to its credit, including the abolition of the death penalty. It will continue its action to promote human rights in order to respond to the challenges of these changing times.
3) The European Court of Human Rights ensures the observance of the engagements undertaken by member states under the European Convention on Human Rights (ECHR) and represents the judicial dimension of this action. The Court has for 50 years been securing the protection in practice of the rights of individuals. We shall ensure that this continues to be the case by guaranteeing the long-term effectiveness of the irreplaceable mechanism of the Convention. We reaffirm the importance of the rapid implementation of the measures

aimed at improving the ECHR system, and in particular those contained in Protocol No. 14 to the European Convention on Human Rights. In view of the urgency, it has been decided to allow provisional application of certain procedural reforms foreseen in Protocol No. 14. We shall also step up our efforts to improve implementation of the Convention at national level, including through the full and complete execution of the judgments delivered by the Court. We welcome the initiative of organising at the beginning of 2010 a conference on the future functioning of the European Court of Human Rights.

4) The Council of Europe's Commissioner for Human Rights carries out his mandate in an outstanding way through action in the field and sustained dialogue with member states. The Commissioner's activity has become fundamental, including in times of crisis. We shall continue to lend him our active support, as well as to the Council of Europe independent monitoring mechanisms.

5) A commitment to promoting our values, which must guide all the activities of our Organisation, is also essential in the difficult field of the fight against terrorism. Meeting here today in Madrid, a city which has suffered deadly terrorist attacks, we resolutely reaffirm our determination to combat terrorism, paying due attention and support to victims, with strict respect for human rights and the rule of law. We are convinced that this fight will achieve success in the long term precisely because of our adherence to these values. This is where we see the Council of Europe making a contribution. We welcome the meeting today, also in Madrid, of the First Consultation of the Parties to the Council of Europe Convention on the Prevention of Terrorism, with a view to strengthening our efforts against this scourge which seriously jeopardises human rights and threatens democracy.

6) We are committed to strengthening the rule of law throughout the continent, building on the standard-setting of the Council of Europe and its contribution to the development of European and international law. This invaluable work, carried out through legally binding conventions and other instruments, will be continued, in particular to respond to the serious threats represented by corruption and money laundering, organised crime and cybercrime. In addition, counterfeit medicines and the unregulated use of biotechnology require a concerted response at European level. At the same time, the Council of Europe will forge ahead with its efforts to make the most of the potential of the new technologies for the protection of human rights and the promotion of democracy.

7) The Council of Europe will also step up its action to make gender equality a reality and to promote the rights of children and persons with disabilities. It will pursue its efforts to fight human trafficking as well as to prevent and combat violence against women and children, including domestic violence.

8) In the context of the economic crisis and in response to the challenges posed by globalisation, the democratic stability of our societies is paramount. To this end, there must be strong social cohesion and the active exercise of democratic citizenship, involving in particular young people. To avert the risk of social exclusion, it is more essential than ever to protect the rights of the most vulnerable individuals and groups. There is a need for vigorous action to combat all forms of intolerance, in particular by means of education, prevention and standard-setting. The Organisation will pursue its action in all these fields, including the promotion of cultural heritage and of intercultural dialogue based on respect for human rights, democracy and the rule of law, as advocated by the Council of Europe's White Paper. The co-operation initiated with the Alliance of Civilisations will contribute to this effort.

9) The extent of the tasks to be fulfilled is such that our Organisation must operate efficiently to promote the values it upholds. We shall therefore further strengthen co-operation between the Committee of Ministers and the other organs and bodies of the Council of Europe, in particular the Parliamentary Assembly and the Congress of Local and Regional Authorities of Council of Europe. Developing – with the help of the Conference of the International Non-Governmental Organisations (INGO) – interaction with civil society, whose action on the ground we applaud, will also remain one of our priorities.

10) Our Organisation, determined to contribute to the European architecture and to the continent's stability and security, will intensify its co-operation with other interna-

tional organisations accordingly. We welcome the progress already made to this end since the Warsaw Summit, particularly with respect to the European Union. The Memorandum of Understanding between the two organisations gave new impetus to the partnership and political dialogue with the European Union, and its implementation must be pursued. This search for synergies with other international actors has also led to closer co-operation with the OSCE and the United Nations. We can only encourage these efforts.

11) The difficult economic context and serious budgetary constraints call more than ever for the efficient use of resources. Reforms to this end must be pursued, focusing on the Organisation's core objectives.

12) We remain concerned by confrontations and unresolved conflicts that affect certain parts of the continent. They put at risk the security, unity and democratic stability of member states and threaten the populations concerned. We reaffirm our support for the respect for the principles of international law set out in the United Nations Charter, the CSCE Helsinki Final Act and other relevant texts. These matters were discussed during this Session to address all the issues which fall into the remit of the Council of Europe. We shall work together for reconciliation and political solutions in conformity with the norms and principles of international law.

Declaration on making gender equality a reality

Adopted in Madrid on 12 May 2009 at the 119th Session of the Committee of Ministers

The Committee of Ministers of the Council of Europe, [...]

Urge member states to commit themselves fully to bridging the gap between equality in fact and in law and to act to:

I. Eliminate the structural causes of power imbalances between women and men, including in political, public and economic decision-making process at all levels;

II. Ensure economic independence and empowerment of women by guaranteeing that equality is respected in the labour market and economic life. This will be possible by eliminating discrimination generally, and in particular that emanating from gender stereotypes, and by guaranteeing an equal pay for equal work or work of equal value;

III. Address the need to eliminate established stereotypes by investing further in gender mainstreaming in education and research including gender focused research to ensure that both women and men achieve their full economic and social potential;

IV. Eradicate violations of the dignity and human rights of women through increased and effective action to prevent and combat gender-based violence against women, provide the necessary assistance and support for all victims and prosecute the perpetrators;

V. Integrate a gender equality perspective in governance by ensuring openness, transparency, participation of all relevant stakeholders as well as real accountability in the process of achieving full gender equality;

And to this end:

1. Take the following steps which are of major importance for abolishing obstacles to the achievement of gender equality in fact [...];

2. To accelerate the achievement of these aims, guarantee a visible political commitment by setting up the necessary legislative and policy framework and implement parallel strategies and innovative and effective tools so that gender equality is recognised as a challenge by the whole of society in all its sectors and place it at the heart of the different decision-making and policy-setting processes [...];

3. Renew their commitment to achieving equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources;

4. Invite the Secretary General of the Council of Europe to monitor and evaluate progress every three years in the implementation of gender equality policy in the Council of Europe member states.

Statement on the Conference of the High Contracting Parties to the European Convention on Human Rights

Adopted in Madrid on 12 May 2009 at the 119th Session of the Committee of Ministers

The Ministers noted that in spite of the efforts undertaken by all member states as collective guarantors of the Convention, the conditions for the entry into force of Protocol No. 14 have still not been met. The Ministers recalled their position on this issue expressed at their 118th Session in May 2008, stressing in particular that the entry into force of Protocol No. 14 should remain the first priority of the States Parties to the European Convention on Human Rights. If need be, interpretative declarations or reservations could be formulated in conformity with the principles of the international law of treaties and relevant provisions of the Convention.

The Ministers noted that the Conference of the High Contracting Parties to the European Convention on Human Rights, meeting in the margins of the 119th Ministerial Session, agreed by consensus, subject to the absence of opposition by 31 May 2009 by High Contracting Parties not represented at the Conference, that the provisions regarding the new single-judge formation and the new competence of the Committees of three judges contained in Protocol No. 14 are to be applied on a provisional basis with respect to those states that express their consent, according to the modalities set out in document CM(2009)71 rev2. The Ministers also adopted Protocol No. 14bis, offering member states another legal avenue to accept the provisional application of the same provisions.

Declaration by the Chairman of the Committee of Ministers

Concern over Moscow Pride Parade

Declaration by Samuel Žbogar, Chairman of the Committee of Ministers, 17 May 2009

The Chairman of the Committee of Ministers of the Council of Europe, Samuel Žbogar, Minister for Foreign Affairs of Slovenia, expressed his concern about the action taken against the organisers of the Moscow Pride Parade.

People belonging to sexual minorities enjoy the same right to freedom of expression and to freedom of assembly as any other individual within the jurisdiction of a member state of the Council of Europe.

According to the established case-law of the European Court of Human Rights, peaceful demonstrations cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate.

The fact that this is not the first year such a situation has developed is of concern to the Chairman of the Committee of Ministers of the Council of Europe.

Samuel Žbogar, Minister for Foreign Affairs of Slovenia

Situation in Moldova

Statement by Council of Europe Committee of Ministers' Chairman Miguel Angel Moratinos, 23 April 2009

"I am much concerned about the situation in Moldova following the violent events of 7 April, especially in view of the reports of ill-treatment of those detained by the authorities and restrictions on freedom of the media and on access to information.

Taking into consideration the information provided by the delegation of the Council of Europe that recently visited Moldova there are many elements for concern.

I urge the Moldovan Government to act in accordance with its commitments towards the Council of Europe when dealing with the consequences of the events of 7 April. The Moldovan authorities should guarantee the full respect for the rule of law, fundamental freedoms and human rights, including the rights of peaceful assembly, access to information and expression. Allegations of ill-treatment should be properly investigated.

At the same time, all concerns regarding the 5 April elections should be addressed in a transparent manner. I call on all political forces in Moldova to engage in political dialogue with a view to restoring the proper functioning of

democratic institutions and to pursuing Moldova's European path."

International Women's Day

Statement by Spain's Minister for Foreign Affairs and Co-operation, Miguel Ángel Moratinos, Chairman-in-Office of the Committee of Ministers

"Gender discrimination is a serious violation of human rights. We strive to achieve that every day of the Spanish Chairmanship of the Committee of Ministers becomes an 'International Women's Day' by pushing for real progress on gender issues on a daily basis. The status of women, *de facto* equality, empowerment, gender violence, women and disability, are but some of the aspects on which activities have been or are being organised by the Council of Europe, in order to improve the legal framework for gender equality and to ensure its implementation. I would like to call on member states' governments and on the international community to join our efforts in further promoting women's rights."

Recommendations adopted by the Committee of Ministers

Recommendation on monitoring the protection of human rights and dignity of persons with mental disorder

Recommendation CM/Rec(2009)3 adopted on 20 May 2009 at the 1057th meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

[…]

Recommends that the governments of member states use the checklist that forms the appendix to this recommendation as the basis for the development of monitoring tools to assist in determining their level of compliance with Recommendation Rec(2004)10 of the Committee of Ministers to member states in order to protect the dignity and human rights of persons with mental health disorders and ensure appropriate care for them.

Appendix to Recommendation CM/Rec(2009)3

Principle 1 – Non-discrimination

Primary derivation: Article 3 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 39-45.

Meaning: Non-discrimination in this context means the avoidance of unfair discrimination against people with a history of mental disorder, a current mental disorder, or who have undergone psychiatric treatment or received a diagnosis of mental disorder. This discrimination can occur in many domains of life, such as health care, social care, housing or employment. It can be both direct and sanctioned officially or indirect, the latter being more difficult to tackle. Non-discrimination may include positive action or "reasonable adjustments" to help people to participate in society as full citizens.

Principle 2 – Civil and political rights

Primary derivation: Articles 4 and 13 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 46-49.

Meaning: This principle goes hand-in-hand with the principle of non-discrimination. People with mental health disorders must be allowed, wherever possible and practicable, to exercise their civil and political rights. Examples of such rights might include the right to be free from inhuman and degrading treatment, the right to respect for private and family life, the right to vote and the right to hold a public office, if capable. Confidentiality of medical records is a key part of private life in such circumstances.

Principle 3 – The promotion of physical and mental health

Primary derivation: Article 5 and 10 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 50 and 69-79.

Meaning: There are two separate but related aspects to the principle of health promotion:

i. aiming to promote the mental health of the whole population and of whole communities within it (namely, public mental health), including people who are in good mental health, those who are vulnerable and those with mental disorder; this is supported by general public health principles;
ii. attending to the needs of people with mental disorder regarding care for their general physical and mental health, as this is often compromised by poor access to health care, diagnostic "overshadowing", discrimination and systemic inequalities.

Principle 4 – The protection of vulnerable persons

Primary derivation: Articles 7 and 14 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 55-57.

Meaning: People with mental health disorders may be vulnerable to physical or sexual abuse, neglect or economic abuse for a variety of reasons, whether due to cognitive impairment or other reasons detailed in the explanatory memorandum to Recommendation Rec(2004)10. Policy measures and staff awareness are both necessary to protect vulnerable individuals from abuse or neglect.

Principle 5 – The quality of living conditions, services and treatment

Primary derivation: Articles 9-12, 27, 28, 36, 37 are of general relevance to service provision of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 63-98.

Meaning: Quality in this context refers to a range of issues covering:

i. basic standards of accommodation, treatment and staff behaviour that guarantee the basic right to human dignity;

ii. whether accommodation is appropriate, services and treatment are therapeutic;

iii. whether they conform with accepted international standards;

iv. whether they are satisfactory, first of all to the person concerned, and to those close to the person, staff and advocates, taking into account any relevant international and national norms for health care, housing etc.;

v. whether services or treatment are evidence-based and take account of various types of evidence and various relevant disciplines (for example, medicine, social science, management science, psychology).

These are complex issues that will vary from one state to another according to the location and nature of the care system. In some ways it is harder to monitor the quality of care for patients in the community than in institutions. However, certain general principles can be applied.

In order to achieve high quality it is essential that services, however they are organised, have well-defined governance administrative arrangements so that it is clear who holds ultimate responsibility for quality, and for dealing with complaints or incidents.

Principle 6 – Least restrictive alternative

Primary derivation: Articles 3 and 8 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 39-45 and 58-62.

Meaning: Persons with a mental health disorder should be cared for in the way and in the setting that least restricts their liberty and ability to live a normal life and to participate in the life of the community. This principle must be continuously balanced against the need to provide appropriate treatment (subject to consent provisions) and the protection of their health and safety and the safety of others.

Principle 7 – The quality of the legal framework for mental health and its implementation and monitoring

Primary derivation: Chapter III of the Recommendation Rec(2004)10, and its explanatory memorandum, paragraphs 119-224.

Meaning: Good quality legislation and monitoring methods are indispensable in order to ensure that people's rights are protected when they are involuntarily placed in relevant institutions and/or involuntarily treated because of their mental disorder. This is dealt with in great detail in Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with a mental health disorder.

Principle 8 – Taking account of the rights and needs of those close to people with a mental disorder

Primary derivation: Article 15 of the Recommendation Rec(2004)10 and its explanatory memorandum, paragraphs 95, 103 and 112-114.

Meaning: In Europe, persons with a mental health disorder are mainly taken care of by their families and people close to them. Yet the physical and mental health of these informal carers can be under threat as a result of a mental disorder within the family. Some mental disorders should be seen in the context of the family (biological, psychological and social). There is a need to pay attention to the rights and needs of non-professional carers and those who are dependent on persons with mental disorder, particularly children.

Replies from the Committee of Ministers to Parliamentary Assembly Recommendations

Parliamentary Assembly Recommendation 1838 (2008)
Reply adopted on 11 March 2009 at the 1050th meeting of the Ministers' Deputies

"Empowering women in a modern, multicultural society"

[...]The Committee of Ministers shares the Assembly's concerns about ongoing discrimination against women, as it indicated in its reply to Recommendation 1798 (2007), adopted at its 1030th meeting (18 June 2008). It reasserts its position as reflected in paragraphs 3-6 of the said reply regarding the proposal to draft a new protocol to the European Convention on Human Rights.

As regards the proposal, in paragraph 4, to appoint a Council of Europe Special Rapporteur on Women's Rights including on action against violence against women, the Committee of Ministers reiterates that equality between women and men should be enshrined in the heart of Council of Europe policy, in accordance with the values of the Organisation. An essential aspect of the CDEG's terms of reference is to promote co-operation between member states with a view to achieving de facto gender equality as an integral part of human rights, a sine qua non of genuine democracy and a factor of economic development and progress. [...]

In addition, the Committee of Ministers draws the Assembly's attention to the creation of an ad hoc committee instructed to prepare one or more legally binding instrument(s) as appropriate, to prevent and combat:

- domestic violence including specific forms of violence against women;
- other forms of violence against women;
- to protect and support the victims of such violence and prosecute the perpetrators.

In paragraph 5, the Parliamentary Assembly invites the Committee of Ministers to promote the holding of a United Nations 5th World Conference on Women with the aim of empowering women in a modern, multicultural society, in particular through intercultural and inter-religious dialogue. In this connection, the Committee of Ministers draws the Assembly's attention to the work done by the CDEG, which has dealt with most of the objectives set by the United Nations 4th World Conference on Women. These include gender mainstreaming, particularly in the education and health fields, integrating a gender perspective into budgetary processes - this will be the theme of a conference to be held in Athens on 5 and 6 May 2009 - protecting women against violence, combating trafficking of human beings and examining the role of women and men in preventing and solving conflicts and building peace. All these activities aim to empower women and are based on the principle that no cultural tradition, religion or social custom can justify denying the enjoyment by women and girls of their human rights nor can be used as an excuse for turning a blind eye to the violation of these rights. [...]

All these activities require appropriate follow-up, and the Committee of Ministers considers that the priority is to make further headway in the fields that have already been explored in order to issue fresh proposals and secure solid innovative bases for achieving effective equality between women and men before organising a 5th World Conference on Women.

Concerning the area of "intercultural and inter-religious dialogue" and integration of a gender perspective in the activities carried out in this field, the Committee of Ministers invites the Assembly to refer to the "Report on the role of women and men in intercultural and inter-religious dialogue for conflict prevention and resolution, for peace building and for democratisation", prepared by the CDEG in 2004. This report contains a number of good practices for encouraging women's participation in intercultural dialogue, including its religious dimension, as well as measures for improving women's participation. [...]

Parliamentary Assembly Recommendation 1797 (2007)
Reply adopted on 6 May 2009 at the 1056th meeting of the Ministers' Deputies

"Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions"

[...]The Committee of Ministers recalls the obligation of states to observe and respect and ensure respect for the rules of international humanitarian law, *inter alia*, as set out in the Geneva Conventions of 12 August 1949 and, where applicable, in the Additional Protocols thereto of 1977.

As underlined in the 17th general report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the CPT's mandate extends to all forms of deprivation of liberty by a public authority that occur within the jurisdiction of a State Party to the Convention for the Prevention of Torture, irrespective of

whether the deprivation of liberty is lawful or not and regardless of the identity of the public authority involved. In this respect, the Committee of Ministers believes that the authorities of the respective countries will further facilitate possible action by the CPT which could be useful upon any concrete and credible information which it receives about possible unlawful detentions and will take all appropriate measures to solve the problem of missing persons.

With regard to the initiatives which the Assembly recommends that the Steering Committee for Human Rights (CDDH) be asked to take, the Committee of Ministers notes that conferences on the issue of missing persons have already been held in the past. It cannot be said with certainty that a fresh conference would offer significant added value for solving the problem. With regard to the proposal that a resolution or guidelines be drawn up on the steps to be taken by member states to protect the rights of missing persons and members of their families during and after conflicts, the Committee of Ministers will consult the CDDH as to whether such action is appropriate. It will keep the Assembly duly informed of the outcome.

At its 1048th meeting held on 11-12 February 2009, the Committee invited the Secretary General to report on a regular basis on the human rights situation in the areas affected by the conflict in Georgia, in close co-operation with the Commissioner for Human Rights. The decision also requests the Secretary General to provide as soon as possible an update of the report on the initiatives carried out, under way or planned within the Council of Europe to address the consequences of the conflict, including information on the findings of the various monitoring mechanisms of the Council of Europe. The Committee will thus provide the Assembly with the updated situation, *inter alia*, concerning the missing persons.

Replies from the Committee of Ministers to Parliamentary Assembly written questions

Written Question No. 559 by Mrs Acketoft: "Equal rights for homosexual partnerships"

Reply adopted on 17 June 2009 at the 1061st meeting of the Ministers' Deputies

Question:

The principles of the equal value of all human beings is fundamental to liberals, and to the Council of Europe. Though progress has been made in many countries in many aspects of the question of human rights, there is still a lot to be done before we can guarantee each and everybody the same rights and possibilities to live free lives in Europe.

Among our member states, positions on the question of sexual orientation vary. In many aspects homosexuality is still considered by many as a "strange and unwanted phenomenon" rather than a part of a person's nature – and correspondingly our different legal frameworks discriminate against anything different from the heterosexual norm. One example of this is the fact that homosexual families in many countries are treated differently from heterosexual families in e.g. migration and asylum questions. The UNHCR consistently refers to "the family" as the natural and fundamental group unit in society and that state parties should take measures to facilitate its reunification – however this does not apply to homosexual families in an exceedingly larger number of our member countries, with the effect that families are being torn apart with no legal means of reunification.

The European Court of Human Rights has played an important role in the decriminalisation of homosexual conduct, and article 14 of the European Convention of Human Rights together with Protocol 12 form a solid basis for protecting the access of all persons to fundamental rights, without discrimination. In 2000 the Parliamentary Assembly adopted Recommendation 1474 (2000) on the Situation of lesbians and gays in the Council of Europe member states.

The Council of Europe should also provide expertise and advice for reform, support for civil society, as well as serving as a forum for reflection and debate. If we accept the fact that our member states are not recognising and allowing the same rights to homosexual partnerships – the result is discrimination.

What plans does the Committee of Ministers have to take concrete steps with the aim to guaranteeing equal rights for homosexual partnerships in the Council of Europe member states?

Reply:

1. The Committee of Ministers recalls the message that it adopted at its 1031st meeting

(2 July 2008),[1] in which it underlines its strong attachment to the principle of equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender (LGBT) persons, and deplores widespread instances of discrimination, homophobia and intolerance towards LGBT persons in Council of Europe member states. In this message, the Committee of Ministers furthermore invites all committees involved in intergovernmental co-operation, within their terms of reference, to make proposals for specific activities to strengthen, in law and in practice, the equal rights and dignity of LGBT persons and combat discrimination towards them (see appendix).

2. Regarding the question specifically raised by the Honourable Parliamentarian, the Committee of Ministers would like to recall that, on 2 July 2008, it also instructed the European Committee on Legal Co-operation (CDCJ) to examine the topic of various forms of marital and non-marital partnerships and cohabitation with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity and to report back.[2]

3. Further to this decision, the CDCJ commissioned a comparative study on this topic. The study, which was completed on 2 March 2009, takes into account the relevant work of the EU Fundamental Rights Agency[3] and addresses issues of partnership, family life, health, housing, and property rights. At its 84th meeting (Strasbourg, 12-13 March 2009), the Bureau of the CDCJ decided to forward this study to the Committee of Experts on family law (CJ-FA), the Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT), the Committee for Human Rights and Legal Affairs of the Parliamentary Assembly, as well as to the Office of the Commissioner for Human Rights for information and possible comments by 15 April 2009. In the light of the study and possible comments, the CDCJ will prepare an opinion for the attention of the Committee of Ministers.

Appendix to the reply: Message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of lesbian, gay, bisexual and transgender persons (adopted by the Committee of Ministers on 2 July 2008, at the 1031st meeting of the Ministers' Deputies)

The Committee of Ministers recalls that it is strongly attached to the principle of equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons.[4] The Council of Europe's message of tolerance and non-discrimination applies to all European societies, and discrimination on grounds of sexual orientation or gender identity is not compatible with this message.

It notes that instances of discrimination on grounds of sexual orientation or gender identity as well as homophobia and intolerance towards transgender persons are regrettably still widespread in Europe.

Therefore, it invites all steering committees and other committees involved in intergovernmental co-operation at the Council of Europe to give, within their respective terms of reference, due attention in their current and future activities to the need for member states to avoid and remedy any discrimination on grounds of sexual orientation or gender identity and to make proposals for specific intergovernmental and other activities designed to strengthen, in law and in practice, the equal rights and dignity of lesbian, gay, bisexual and

1. Decision adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, item 4.3b.
2. Decision adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, item 4.3c.
3. EU Fundamental Rights Agency report on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States – Part 1 Legal Analysis".
4. See replies adopted by the Committee of Ministers regarding the rights of lesbian, gay, bisexual and transgender (LGBT) persons: reply to Written Question No. 524 by Mrs Acketoft: "Ban on a Chişinau demonstration by homosexuals" (adopted on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), reply to Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgender persons" (adopted on 16 January 2008 at the 1015th meeting of the Ministers' Deputies), reply to Written Question No. 527 by Mr Huss: "Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007" (adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies), reply to Written Question No. 540 by Mr Huss: "Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania" (adopted on 2 April 2008 at the 1023rd meeting of the Ministers' Deputies), and reply to Written Question No. 539 by Mr Hancock: "Laws discriminating against gay men in Gibraltar" (adopted on 23 April 2008 at the 1024th meeting of the Ministers' Deputies).

transgender persons and to combat discriminatory attitudes against them in society.

Written Question No. 558 by Mr Huss: "Systematic banning of demonstrations in support of LGBT rights in Russia"

Reply adopted on 17 June 2009 at the 1061st meeting of the Ministers' Deputies

Question:

In some Council of Europe member states, lesbian, gay, bisexual and transgender persons (LGBT) are regularly subjected to acts of intolerance, discrimination or violence on the grounds of their sexual orientation. Several written questions on this subject have been presented by members of the Parliamentary Assembly (Questions Nos 497, 524 and 527). In its replies the Committee of Ministers has confirmed the worrying situation in these countries and called on member states to respect human rights. However, discrimination against people on the grounds of their sexual orientation remains widespread. For example, the situation of the LGBT community in Moscow, which has been the subject of a number of written questions, has not improved in the last few years. On the contrary, its members are still deprived of all their rights of freedom of association and expression. Wishing to take more concrete measures in future in relation to these problems in the member states, the Committee of Ministers announced in its replies to previous written questions that the Secretariat was going to consider ways of stepping up Council of Europe action.

To date, the local authorities in Moscow have not authorised any demonstration in support of LGBT rights, and the repeated homophobic remarks by the Mayor of Moscow are inconsistent with Article 11 of the European Convention on Human Rights.

Mr Huss,

To ask the Committee of Ministers,

Has the Committee of Ministers monitored the discrimination towards sexual minorities in the Russian Federation and does it know on what grounds the Russian courts have upheld the bans on all LGBT demonstrations since 2006 (65 in all)?

In its reply in January 2007 to Written Question No 497 on the banning of the gay pride march in Moscow in 2006, the Committee of Ministers stated that "the Russian authorities agree that there is a need for authorities at all levels to respond strongly to any individual acts of violence and actively promote tolerance and respect in their communities. Solutions should be found which guarantee both security and freedom of assembly". Will the Committee of Ministers ask the Russian Federation to find a solution to guarantee LGBT persons in Russia their freedom of expression and their freedom to demonstrate?

Regarding the proposals to be drawn up by the Secretariat in order to step up Council of Europe action in this field, has the Committee of Ministers already drawn conclusions from these proposals and has it already taken concrete measures?

Reply:

1. In reply to the Honourable Parliamentarian's question, the Committee of Ministers recalls that it is strongly attached to the principle of equal rights of all human beings. The Council of Europe's message of tolerance and non-discrimination applies to all European societies, and discrimination on grounds of sexual orientation or gender identity is not compatible with this message.
2. The Committee of Ministers recalls its position regarding the enjoyment of freedom of assembly, as expressed in its reply to Written Question No. 527:[5]

   "The Committee of Ministers recalls in particular that the rights to freedom of expression and freedom of assembly must be enjoyed by all without discrimination. While the Convention allows for restrictions on the exercise of the rights to freedom of expression and freedom of assembly, such restrictions must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. According to the established case law of the European Court of Human Rights, peaceful demonstrations, be they in favour of the rights of lesbian, gay, bisexual and transgender (LGBT) persons or others, cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate. On the contrary, the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed

5. Adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

peacefully. In a series of judgments, the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.[6] All member states must observe the Convention when they apply national law, notably in the light of the case-law of the Court."

3. The Committee of Ministers also draws attention to the decisions it took at its 1031st meeting (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons. All committees involved in intergovernmental co-operation have been invited, within their terms of reference, to make proposals for specific activities to strengthen, in law and in practice, the equal rights and dignity of LGBT persons and combat discrimination towards them. The Steering Committee for Human Rights (CDDH) has also been asked to prepare a recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them. It is believed that, in the light of the Court's case-law, freedom of expression and assembly will be one of the relevant areas covered by the recommendation.
4. Like all member states, the Russian Federation has ratified the European Convention on Human Rights and is committed to guarantee respect for all Convention rights to all individuals within its jurisdiction without any discrimination.

6. See among others: *Salgueiro da Silva Mouta v. Portugal*, judgment 21 December 2001; *L. and V. v. Austria*, judgment of 9 January 2003; *Karner v. Austria*, judgment of 24 July 2003; *B.B. v. United Kingdom*, judgment of 10 February 2004.

Reply adopted on 20 May 2009 at the 1057th meeting of the Ministers' Deputies

Written Question No. 555 by Mr Elzinga: "Discrimination against sexual orientation"

Question:

Which measures does the Committee of Ministers intend to take to fight against discrimination based on sexual orientation, still too present in our countries;

How does it assess the words of the Minister of state of Monaco pronounced during the public session of the national Council on 28 April 2008 during the debate on the draft law no. 190 regarding the fight against domestic violence;

Which measures will the Committee of Ministers take so that the legislation of Monaco be put in conformity with the European Convention on Human Rights and the case-law of the European Court of Human Rights, in particular regarding discrimination based on sexual orientation?

Reply:

1. In reply to the question from the Honourable Parliamentarian, the Committee of Ministers would point out that it remains resolutely attached to the principle of equal rights for all human beings. It considers any contemptuous or intolerant attitude towards homosexuals to be incompatible with the message of tolerance and non-discrimination promoted by the Council of Europe.
2. It would also point out that all member states must respect the European Convention on Human Rights when drafting and implementing their national legislation in the light, in particular, of the case-law of the Court. The European Court of Human Rights has stressed on several occasions that any discrimination on grounds of sexual orientation is contrary to the Convention.[7] Furthermore, Protocol No. 12 to the Convention prohibits all discrimination based on sexual orientation (as specified in the explanatory report).
3. Monaco has informed the Committee of Ministers that the Monegasque authorities are aware of the importance of complying with the Convention and, in particular, with the principle of non-discrimination. The Committee of Ministers is therefore confident that the law currently being drafted to combat domestic violence will be fully in keeping with the case-law of the European Court of Human Rights.
4. The Committee of Ministers would also draw attention to the decisions it took at its 1031st meeting (2 July 2008) to strengthen Council of Europe action to protect the rights of LGBT persons.[8] The Steering Committee for Human Rights (CDDH) has, in particular, been instructed to prepare a recommendation on measures to combat discrimination based on sexual orientation or

7. See, for example, the *Karner v. Austria*, judgment of 24 July 2003, the *B.B. v. the United Kingdom*, judgment of 10 February 2004 and the *Baczkowski and others v. Poland*, judgment of 3 May 2007.
8. Decisions adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, items 4.3 a, b and c, CM/Del/Dec(2008)1031, 4 July 2008.

gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them.

Written Questions No. 554 by Mr Jensen: "The situation for the homosexuals in Bosnia and Herzegovina" and No. 556 by Mr Jensen: "The situation for the homosexuals in Serbia"

Reply adopted on 25 March 2009 at the 1052nd meeting of the Ministers' Deputies

Question No. 554:

In connection with a festival for homosexuals in Sarajevo on 25 September 2008 some of the participants were exposed to violent attacks by demonstrators. The festival was the first of its kind in Bosnia and Herzegovina, but the organisers decided after day one to close the festival according to the many violent attacks.

It seems as if many Bosnians this very day consider homosexuality as a disease. It also includes members of different political parties in Bosnia and Herzegovina.

I note that the Government of Bosnia and Herzegovina has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 12 to the Convention, in which Article 1 reads as follows:

"The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In the light of these facts, it would be of a great interest to know if the Government of Bosnia and Herzegovina intends to take any measure to:

1. avoid similar episodes of attacks on homosexuals in Bosnia and Herzegovina?
2. secure equal rights of homosexuals in society?
3. protect homosexuals against discrimination?
4. inform the population of Bosnia and Herzegovina about the rights of homosexuals?

Therefore, I ask the Committee of Ministers to request the relevant information on those matters from the Government of Bosnia and Herzegovina and to inform me about it.

Question No. 556:

In connection with a festival for homosexuals in Belgrade on 19 September 2008 a group of participants were exposed to violent attacks by Fascist demonstrators. The festival was the fifth of its kind in Serbia with participants coming from "the former Yugoslav Republic of Macedonia", Russia, Netherlands, Germany, Italy, United Kingdom, Greece and Slovenia.

I note that the Government of Serbia has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 12 to the Convention, in which Article 1 reads as follows:

"The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In the light of these facts, it would be of a great interest to know if the Government of Serbia intends to take any measure to:

1. avoid similar episodes of attacks on homosexuals in Serbia?
2. secure equal rights of homosexuals in society?
3. protect homosexuals against discrimination?
4. inform the population of Serbia about the rights of homosexuals?

Therefore, I ask the Committee of Ministers to request the relevant information on those matters from the Government of Serbia and to inform me about it.

Reply:

1. The Committee of Ministers deplores the acts of violence against homosexuals reported in the questions asked by the honourable member. It trusts that the persons responsible for those acts will be prosecuted and, if appropriate, convicted in compliance with the domestic legislation of the states concerned.
2. The Committee of Ministers draws attention to the fact that discrimination on the grounds of sexual orientation is not compatible with the values of tolerance and the principle of equality which the Council of Europe member states have a duty to uphold, and that it remains firmly attached to the principle of equal rights and equal dignity of all human beings, including lesbians, gays, bisexuals and transgendered persons (LGBT). It also refers to its previous replies on LGBT persons' rights to freedom of expression and freedom of assembly.[9] It considers that these replies and the reply to the present question are a useful reminder

of the relevant human rights principles which must be observed in this matter. The Committee of Ministers notes in particular that LGBT persons must enjoy the rights to freedom of expression and freedom of assembly provided for in Article 11 of the European Convention on Human Rights (the "Convention"), like all other individuals within the jurisdiction of a member state. This protection stems in particular from Article 14 of the Convention, which prohibits all forms of discrimination in the exercise of the rights and freedoms safeguarded by the Convention. In a long line of decisions, the European Court of Human Rights (the "Court") has also emphasised that the state has a duty to take reasonable and appropriate measures to ensure the peaceful conduct of lawful demonstrations. Furthermore, the Court has stressed on several occasions that any discrimination on the grounds of sexual orientation – including in connection with freedom of assembly – is contrary to the Convention.[10] As indicated in the above-mentioned written questions, Protocol No. 12 to the Convention prohibits all forms of discrimination on the grounds of sexual orientation (as specified by its explanatory report).

3. The Committee of Ministers also wishes to draw attention to the decisions it took at its 1031st meeting (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons.[11] The Steering Committee for Human Rights (CDDH) has been asked to prepare a recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them."

4. Bosnia and Herzegovina and Serbia have undertaken to guarantee respect for all the rights enshrined in the Convention to all persons within their jurisdiction, and therefore to ensure that LGBT persons enjoy the same rights to freedom of expression and freedom of assembly as all other individuals within their jurisdiction."

5. Freedom of peaceful assembly, including for LGBT persons, is guaranteed by the laws and constitutions of those two countries. In Serbia a "Law on prohibiting discrimination" has recently been tabled in Parliament for enactment. In Bosnia and Herzegovina, a procedure for the adoption of a law banning discrimination is currently underway."

6. Bosnia and Herzegovina and Serbia, aware of their international obligations and determined to ensure respect for human rights on their territory, have informed the Committee of Ministers of their intention to pursue their efforts to combat all forms of discrimination on the grounds of sexual orientation.

9. Reply to Written Question No. 524 by Ms Acketoft: "Ban on a Chişinau demonstration by homosexuals" (adopted on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), reply to Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of expression and assembly for lesbians, gays, bisexuals and transgendered persons" (adopted on 16 January 2008 at the 1015th meeting of the Ministers' Deputies) and reply to Written Question No. 527 by Mr Huss: "Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007" (adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies), reply to Written Question No. 540 by Mr Huss: "Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania" (adopted on 2 April 2008 at the 1023rd meeting of the Ministers' Deputies).

10. See for example Karner v. Austria, judgment of 24 July 2003; B.B. v. United Kingdom, judgment of 10 February 2004, and Baczkowski and others v. Poland, judgment of 3 May 2007.

11. Decisions adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, items 4.3 a, b and c, CM/Del/Dec(2008)1031 of 4 July 2008.

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

Parliamentary Assembly

"Our organisation cannot afford to remain a mere reflection of Europe's past. The future of Europe must also be our future."

Lluís Maria de Puig, President of the Parliamentary Assembly (PACE)

Award ceremony for the Parliamentary Assembly's Human Rights Prize 2009

British Irish Rights Watch, the winner of the Assembly's first Human Rights Prize

During the special debate on "the state of human rights in Europe: the need to eradicate impunity" the Assembly decided to award its Human Rights Prize to British Irish Rights Watch, a non-governmental organisation which since 1990 has been monitoring the human rights dimension of the Northern Ireland conflict and, more recently, the peace process.

Helen Shaw, British Irish Rights Watch and Lluis Maria de Puig, President of the Parliamentary Assembly

In March, a panel including leading figures from the world of human rights chose British Irish Rights Watch from among 14 individuals and NGOs nominated for the prize and praised its "courageous and outstanding work in monitoring and bringing to light human rights abuses, and its fight against impunity in Northern Ireland". It also commended the NGO's "vigilance" in ensuring that measures taken to combat terrorism were compatible with international human rights standards.

The Assembly's annual Human Rights Prize, which honours "outstanding civil society action in the defence of human rights in Europe", consists of 10 000 euros, a medal and a diploma.

Evolution of human rights

The Assembly calls for prohibition and penalisation of gender-based human rights violations

Resolution 1662 and Recommendation 1868, adopted on 28 April 2009 (Doc. 11784)

Antigoni Papadopoulos

The Assembly invited the member states to adapt their national legislation in order to prohibit and penalise forced marriages, female genital mutilation and any other gender-based violations of human rights, encouraging them to prosecute abductions, illegal confinements and forced returns of women or girls to their countries of origin. According to the parliamentarians, cultural or religious relativism cannot be invoked to justify these acts.

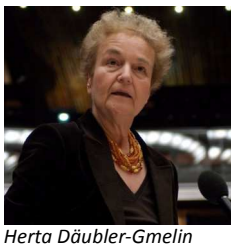
"It is a matter of the member states' responsibility that they should do their utmost to guard against and combat these anachronistic, inhuman practices both nationally and internationally," said Antigoni Papadopoulos (Cyprus, ALDE), rapporteur for the Committee on Equal Opportunities for Women and Men. "British legislation on forced marriages is exemplary in this respect, in that it provides a means of stopping potential victims from being taken out of the country against their will and of compelling the family to disclose the whereabouts of a member considered to be in danger," she added, commending the courage of a victim of Bangladeshi origin who gave her personal testimony on the sidelines of the session.

The Assembly also called upon the member states to develop co-operation procedures at the international level with the authorities in the countries of origin, encouraging them to intercede with the families concerned and to strengthen women's rights. The parliamentarians also advocated raising the awareness of consular staff as regards the serious risks facing women and girls forcibly returned to their countries of origin, and as regards the applicable legal framework.

In a recommendation to the Committee of Ministers, the Assembly reiterated its request for the Council of Europe to draft a convention to combat the most serious and widespread forms of violence against women, including forced marriages.

Fight against impunity: a priority for the Assembly

Recommandation 1876 (2009) and Resolution 1675 (2009) adopted on 24 June 2009 (Doc. 11964)



Herta Däubler-Gmelin

In its biannual debate on the state of human rights in Europe, the Assembly urged member states to make the fight against impunity a priority by clearly stating at the highest political level that serious human rights violations committed or aided by state agents cannot be tolerated in any circumstances. In this connection, the members of the Assembly believe that full and speedy execution of the judgments of the European Court of Human Rights in cases of impunity is the key to fighting this scourge in the member states.

The Assembly also called on the Committee of Ministers to provide guidelines on the fight against impunity, drawing on the case-law of the Court, its own work on the execution of judgments, pertinent Assembly resolutions and recommendations and the work of the European Committee for the Prevention of Torture, the UN and NGOs active in this field. It also called on the Committee of Ministers to consider the possibility of setting up an independent commission of inquiry to tackle the worst violations.

In her report in plenary, Herta Däubler-Gmelin (Germany, SOC) listed the different categories of impunity which demand adapted strategies for their eradication. The many concrete examples given by the rapporteur testify to the continued existence of this phenomenon in most member states in different forms, including wide-spread abuses in conflict situations, murders of journalists and human rights activists, negligent killing by police officers or ill-treatment of detainees, and hate crimes whose perpetrators profit from lax law enforcement.

The Assembly reminds European governments of their obligation to protect human rights defenders

The Assembly reminded European governments of their "obligation and responsibility" to protect human rights defenders and their work "by providing an enabling environment" and, if necessary, "protection mechanisms to ensure the physical integrity" of those who face specific threats.

The parliamentarians expressed concern about the situation of human rights defenders who are most exposed to attacks and abuses: those fighting against impunity for serious crimes and against corruption, as well as those working on economic, social and cultural rights, on the rights of lesbian, gay, bisexual and transgender persons, as well as for the rights of migrants, national or ethnic minorities.

"Women defenders also face distinct risks and obstacles. In particular, the situation of human rights defenders in the Caucasus region, where some of them face the most violent repression, including killing, abduction, arbitrary arrests and detention, is critical," they said.

Following the proposals by the rapporteur Holger Haibach (Germany, EP/CD), the Assembly urged Council of Europe member states to "publicly and firmly support" the activities of human rights defenders and to "guarantee in all circumstances their physical and psychological integrity". Governments, they said, should establish "humanitarian visa schemes" for those facing imminent danger. Quoting from a recent speech of German Chancellor Angela Merkel before the Assembly, Mr Haibach said that we have not only a right, but a duty to intervene to protect human rights defenders.

The adopted text welcomes the declaration recently adopted by the Council of Europe Committee of Ministers, which mandates the Commissioner for Human Rights to strengthen the role and capacity of his office in order to provide strong and effective protection for human rights defenders and to intervene in threatening situations.

Resolution 1660 et Recommendation 1866, adopted on 28 April 2009 (Doc. 11841)

Holger Haibach

Keeping politics out of the law: an Assembly committee wants greater independence for judges

A report approved by the Legal Affairs Committee of the Parliamentary Assembly has recommended a series of steps to boost the independence of judges across Europe to end what it calls "politically-motivated interference" in individual cases.

The report, prepared by Sabine Leutheusser-Schnarrenberger (Germany, ALDE), exposes ways that politicians can meddle with the law in four countries representing the principal criminal justice systems in Europe, analysing high-profile cases such as the dropping of the BAE fraud investigation and "cash for honours" scandal in the United Kingdom, or the second Khodorkovsky trial, the HSBC/Hermitage Capital case and the Politkovskaya investigation in Russia.

Among other things, the parliamentarians call for:

- in the **United Kingdom**, urgent reform of the Attorney General's role to strengthen his or her accountability to Parliament, and reverse the erosion of legal aid funding to avoid "two-tier" justice;
- in **France**, reconsidering the proposed abolition of the *juge d'instruction* or – if the abolition is to go ahead – strengthening the independence of prosecutors who will take over this role, and increasing judges' and prosecutors' salaries;
- in **Germany**, the setting-up of judicial councils – as in the vast majority of other European countries – so that judges govern themselves, and banning the Minister of Justice from giving the prosecution instructions in individual cases;
- in **Russia**, a series of reforms to reduce the political pressures on judges and end the harassment of defence lawyers in order to combat "legal nihilism" in Russia.

The Parliamentary Assembly is due to debate the report at its autumn session (28 September-2 October 2009) in Strasbourg.

This report is available in PDF format at the following address: *http://assembly.coe.int/CommitteeDocs/2009/20090623_abusesJUR_E.pdf*

Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states – Report approved on 23 June 2009 by the Legal Affairs Committee of the Parliamentary Assembly (PACE)

Sabine Leutheusser-Schnarrenberger

So-called "honour crimes" must be punished in accordance with the gravity of the offence

Resolution 1691 (2009) and Recommendation 1881 (2009) adopted on 26 June 2009 (Doc. 11943)

John Austin

Following a debate on so-called "honour crimes", the Assembly has called on member states to draw up and put into effect national action plans to combat violence against women, including violence committed in the so-called name of "honour". The Assembly has also asked national parliaments to pass legislation, if they have not yet done so, to make such acts offences, providing for a penalty commensurate with the gravity of the acts committed both for their perpetrators and for any accomplices.

"There is no honour in so-called 'honour crimes'. No tradition or culture can invoke any kind of honour to violate women's fundamental rights," said John Austin (United Kingdom, SOC), the Assembly rapporteur on this subject. Members also called for dialogue with religious authorities who should contribute to prevention by stressing the need for respect for the life and freedom of every person and women's fundamental rights, and by making it clear that so-called "honour crimes" have no religious basis.

"Avoid duplication of monitoring mechanisms on trafficking in human beings" – Gisela Wurm

Gisela Wurm

"I welcome the preparations made by the GRETA (Group of Experts on Action against Trafficking in Human Beings) for monitoring the States Parties to the Council of Europe Convention on 'Action against Trafficking in Human Beings'. However, parliamentarians need to pay special attention to the six countries which have neither signed nor ratified the convention so far," said Gisela Wurm (Austria, SOC), Assembly rapporteur on the subject, during an exchange of views, organised by the Committee on Equal Opportunities for Women and Men in the scope of the Assembly's summer session. "The problem of possible duplication of monitoring work with other organisations, in particular the EU, constitutes another concern," Ms Wurm added, emphasising the importance of co-operation with all actors in the field.

Human rights situation in Europe

Belarus: Assembly ready to restore Special Guest status if a moratorium on death penalty is decreed

Resolution 1671 (2009) and Recommendation 1874 (2009) adopted on 23 June 2009 (Doc. 11939 and 11960)

Andrea Rigoni

On 23 June 2009, the Assembly voted in favour of restoring the Special Guest status of the Belarusian Parliament, which has been suspended since 1997, with a view to "engaging in political dialogue with the authorities" while supporting "the strengthening of democratic forces and civil society". This status, however, could only be granted "after a moratorium on the execution of the death penalty is decreed".

The Assembly said that the country's authorities had recently undertaken measures that were important steps in the right direction, in particular, the release of opposition figures considered as political prisoners, the registration of the opposition movement "For Freedom", the inclusion of three independent media outlets in the state distribution network, and the appointment of consultative councils which involve civil society.

Nevertheless, according to the parliamentarians, there is cause for concern, particularly with regard to the electoral process, respect for political freedom and media pluralism. They expressed regret that it is still possible to carry out death sentences in Belarus. The rapporteur, Andrea Rigoni (Italy, ALDE), recalled that no executions have been carried out since October 2008, according to official statements.

In the light of these elements, the Assembly considers that the lifting of the suspension should be accompanied by the monitoring of the situation to assess whether the country is making "substantive and irreversible" progress towards Council of Europe standards.

In the context of the restoration of the Special Guest status, the parliamentarians said that a delegation of the Belarusian extra-parliamentary opposition should be invited to participate in the work of the Assembly and its committees.

Note

The Assembly granted the Belarusian Parliament Special Guest status in 1992. In the absence of progress in the areas of democracy, human rights and the rule of law, this status was suspended in 1997 and Belarus' application to join Council of Europe was shelved the following year.

Georgia-Russia: "Dialogue is the only way forward"

The Assembly reviewed this morning the action taken by Georgia and Russia on Resolution 1647 (2009) adopted by the PACE in January 2009. The information report submitted by the co-rapporteurs of the Monitoring Committee (Luc Van den Brande (Belgium, EPP/CD) and Mátyás Eörsi (Hungary, ALDE)) concluded that Georgia has not yet fully complied with all of the Assembly's demands. Russia, for its part, has failed to comply with most of the demands and might even be seen as moving further away from the minimum conditions for meaningful dialogue.

The report re-affirms that both countries must fully comply with the Assembly's demands set out in Resolutions 1633 (2008) and 1647 (2009). In addition, it calls on both countries to implement without delay a series of steps to avoid a deterioration of the security situation and stability of the region, as well as to ensure that the minimum conditions for a meaningful dialogue between Russia and Georgia are met. The rapporteurs "continue to be convinced that the establishment of a genuine dialogue is the only way forward for the resolution of this conflict and long-term stability in the region".

Resolution 1664 and Recommendation 1869, adopted on 29 April 2009 (Doc. 11859)

Luc Van den Brande

Mátyás Eörsi

Moldova must investigate post-electoral violence and improve functioning of democratic institutions

In an urgent debate based on the report of Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), the Assembly deplored the violent attack by demonstrators and the devastation of public buildings during the events of 7 April. It also expressed strong concern about acts of violence committed by the police in the period following the Moldovan parliamentary elections, including certain alleged cases of "beating and ill-treatment", violations of the right to a fair trial and disproportionate restrictions on the freedom of the media. According to the information available, more than 300 people were arrested, and nine are still held in detention.

The Assembly therefore urged that "an independent and thorough investigation of all these allegations of violence be started immediately, and that those responsible for these violations be brought to trial", in full co-operation with the Council of Europe's Commissioner for Human Rights and its Committee for the Prevention of Torture. It also recommended the immediate undertaking of "an independent, transparent and credible inquiry into the post-electoral events".

With a view to improving confidence in the country's democratic institutions, the Assembly again urged the Moldovan authorities to implement the recommendations contained in its Resolution 1572 (2007) and continue its reforms of the electoral legislation, the media and the police. It also called for a more effective court system and a major improvement to detention conditions to bring them into line with European standards.

At its next meeting on 5 June 2009, the Monitoring Committee will examine the progress achieved by the Moldovan authorities and the opposition with regard to the implementation of this and previous resolutions, and will propose any further action to be taken as required by the situation to the Assembly.

Resolution 1666, adopted on 30 April 2009 (Doc. 11878)

Josette Durrieu

Egidijus Vareikis

Armenia: with the amnesty on 19 June, the authorities indicate their willingness to overcome the political crisis

Resolution 1677 (2009) adopted on 24 June 2009 (Doc. 11962)

Georges Colombier

John Prescott

In a resolution on the functioning of democratic institutions in Armenia, the Assembly welcomed the general amnesty adopted on 19 June, under which most, if not all, of the persons deprived of their liberty in relation to the events of 1 and 2 March 2008 will be released. With this measure, the authorities have complied with a crucial demand of the Assembly in its Resolution 1643 (2009), and have given a clear indication of their willingness to overcome the political crisis that ensued after the Presidential election of February 2008. The Assembly will, however, follow the developments with regard to the remaining cases.

The Assembly regrets, however, the breakdown of the work of the independent expert group to establish the facts in relation to the events of 1 and 2 March 2008 as a result of tensions between its members and the politicising of its work. The Assembly considers that an independent, impartial and credible investigation into these events is still necessary, and therefore reaffirms its demand that such an investigation be conducted in line with the criteria outlined by the Assembly, notwithstanding the breakdown of the fact-finding group.

Furthermore, noting that undue restrictions are still placed on the organisation of rallies, the Assembly reiterated its call for the authorities to respect the principle of freedom of assembly in practice, and monitor the implementation of the amended law on rallies and demonstrations.

Given the numerous allegations of widespread fraud during the election of the Yerevan City Council on 31 May 2009, and the fact that public trust in the electoral process is still very low in Armenia, the Assembly also stressed that electoral reform should be a priority for the authorities.

During the parliamentary debate, the Assembly co-rapporteurs on the monitoring of Armenia, Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), reported on the progress made by the Armenian authorities towards compliance with the demands of the Assembly, in particular important changes to the provisions of the Criminal Code and the initiation of several reforms, culminating in an amnesty. While Armenia has taken a decisive step towards the normalisation of political life, these achievements should not be seen as the end of the process. The Assembly therefore invited its Monitoring Committee to provide full support for democratic consolidation in Armenia in the framework of its regular monitoring procedure.

Thomas Hammarberg: "Time to honour our pledges"

"Although human rights are ingrained in our European experience, there is still a gap between political rhetoric and reality when it comes to their implementation" said Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, presenting his 2008 activity report and the *Viewpoint* publication.

Analysing the human rights situation in Europe, the Commissioner stated that no country is free from discrimination. "Anti-gypsyism, xenophobia and homophobia are still widespread phenomena. There are also unacceptable tendencies of anti-Semitism as well as Islamophobia. Persons with disabilities are denied access to possibilities which are seen as basic rights by others. Women are discriminated in the job market and under-represented in political bodies. Domestic violence is a sad reality in too many homes. Child abuse is reported in every country."

Furthermore, Thomas Hammarberg stressed that all too often the different components of the standard system of justice – including the police, the judiciary and the penitentiary – do not properly guarantee individuals' rights and that there are regular reports of corruption, incompetence and abuse of power. He also recalled that some ill-advised reactions to terrorism have led to a serious degradation of human rights protection.

Drawing attention to the negative consequences of the financial crisis on human rights, the Commissioner stated that "we must now live up to people's expectations and urgently develop viable programmes which promote social cohesion and prevent any watering down of the already agreed human rights standards, including social and economic rights. Any policy must be sustainable and far-reaching and should ensure that the burden of recovery is not placed on those who have the least resources to cope with any further pain."

Human rights in Europe: the Assembly sees a mixed picture

Resolution 1676 adopted on 24 June 2009 (Doc. 11941)

Painting a general picture of the human rights situation in 14 member states, (those subject to the monitoring procedure or to post-monitoring dialogue), the Assembly noted that most have honoured their commitments to ratify human rights conventions, the notoble exception being Russia's failure to ratify Protocol Nos. 6 and 14 to the European Convention on Human Rights. Other problems include a lack of independence of the courts, slow court proceedings, overcrowded prisons and ill-treatment by police.

Internet: http://assembly.coe.int/

Commissioner for Human Rights

The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation. To discharge the functions set out in the mandate, the Commissioner works along three main interconnected lines:

– a system of country visits and dialogue with the governments and civil society;

– thematic work and awareness-raising activities;

– co-operation with Council of Europe and other international human rights bodies.

Country monitoring

The Commissioner carries out visits to all member states for a comprehensive evaluation and constant monitoring of the human-rights situation. During the visits, he meets with the highest representatives of government, parliament, the judiciary, as well as leading members of human rights protection institutions and the civil society. He also visits relevant places, including prisons, psychiatric hospitals, asylum-seekers centres. After the visits, a report is released containing both an analysis of human rights practices and detailed recommendations about areas for improvement and possible ways to do so.

Visits

The complete programme of official visits ended with the visit to Belgium in December 2008. For the second half of his term of office the Commissioner has adopted a new, more flexible, approach, comprising contact visits to maintain a continuing dialogue with national authorities and civil society and special, more closely targeted visits to identify pressing problems and draw up more detailed recommendations.

Kosovo, 23-27 March 2009

On his visit to Kosovo[1] from 23 to 27 March 2009, the Commissioner said that human rights must not be held hostage to current political tensions. During the visit he examined the arrangements for protecting the human rights of ordinary citizens in both majority and minority populations. The Commissioner stressed the importance of a democracy based on the rule of law and a properly functioning judicial system, and said that an independent and competent ombudsman with adequate resources was absolutely essential for human rights protection. There was also a requirement for credible appeals procedures to ensure that the international and intergovernmental bodies operating in Kosovo continued to be accountable for their actions.

Mr Hammarberg described the lead poisoning of Roma camps in northern Mitrovica as a major humanitarian disaster and urged all the authorities concerned to make sure that the affected families were immediately relocated to a

1. "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

safe environment and that appropriate medical care was available to all contaminated persons. The Commissioner also looked at minority rights and drew attention to other fundamental issues that must not be ignored, such as the problem of domestic violence and the rights of disabled persons. More also needed to be done to establish the fate of nearly two thousand persons who had disappeared since the 1999 conflict.

Finally, the Commissioner called on European governments not to forcibly return refugees from Kosovo.

Moldova, 25-28 April 2009

Following the post-election demonstrations in Moldova, the Commissioner visited the country from 25 to 28 April. He found that more than 300 persons had been arrested in Chisinau, and many of them had suffered sometimes serious ill-treatment at the hands of the police. The Commissioner called for independent inquiries and said that firm measures should be taken to ensure that those responsible for ill-treatment were held to account. There should also be better safeguards for persons arrested and detained in police custody, more resources and assistance for the ombudsman and national mechanism for preventing torture, with unrestricted access for those concerned to all places of detention.

Turkey, 28 June-3 July

The visit to Turkey from 2 June to 3 July 2009 concentrated particularly on the situation of asylum seekers and minorities. The Commissioner met the Turkish President, the ministers of justice and European affairs, other national and local authority representatives, religious leaders and representatives of international bodies and non-governmental organisations.

Mr Hammarberg welcomed the reforms on freedom of association, the functioning of political parties and freedom of expression for minorities and the harmonisation of laws and practices with the case-law of the European Court of Human Rights. He also applauded the Turkish authorities' willingness to adopt new measures to protect and enforce minorities' freedom of religion.

The Commissioner raised various issues relating to the human rights of the Roma community in Sulukule and expressed concern about the process of dispersing them. He also visited accommodation centres for persons being expelled from the country and orphanages in Istanbul and Izmir for unaccompanied foreign minors, where he noted an improvement in living conditions. He nevertheless stressed the need for foreign nationals to be properly informed, in writing and in a language they could understand, of their legal situation and of NGOs or international organisations that could offer them any legal or social assistance they might require.

Finally, the authorities should pay particular attention to foreign nationals from conflict zones, who might need international protection.

United States, 1-2 June 2009

The Commissioner visited the United States on 1 and 2 June to meet various representatives of the federal authorities in Washington, particularly the State Department official responsible for closing the camp at Guantánamo, on the fate of prisoners released from the camp. Following the visit, the Commissioner wrote to all the Council of Europe member states on 5 June asking them to take in former Guantanamo prisoners freed by the courts who required international protection.

Reports

Annual report

In April the Commissioner presented his 2008 annual report to the Committee of Ministers and the Parliamentary Assembly, in which he stated that "there is still a gap between political rhetoric and reality when it comes to implementing human rights standards". He

pinpointed the discrimination that was still widespread in all the member states, the all-too-frequent shortcomings in judicial systems – police, courts and prisons – and the deterioration in human rights protection as a result of ill-considered reactions to terrorism. The financial crisis was having a negative impact on human rights and he urged member states to strive to promote social cohesion and avoid any weakening of existing human rights standards, including those pertaining to economic and social rights.

Reports of visits

Monaco, October 2008 visit

In March 2009 the Commissioner published his report on his October 2008 visit to Monaco. The Principality had made considerable progress towards strengthening human rights protection. He called on it to end discrimination and improve the protection of privacy and made recommendations on the shortcomings he had identified, particularly in the fields of justice, domestic violence, children's rights, discrimination, respect for privacy and detention conditions.

Netherlands, September 2008 visit

March also saw the publication of his report on his visit to the European part of the Kingdom of the Netherlands in September 2008. He noted the progress that had been made, but there was still a need to revise policies on immigrants and asylum seekers. The report also considered the rights of children, whose age of criminal responsibility was only 12, integration policies, measures to combat discrimination and intolerance, and the fight against terrorism, where he recommended the Netherlands to come into line with international human rights standards.

Serbia, October 2008 visit

In his report in March on his October 2008 visit to Serbia, Mr Hammarberg noted that "despite steps in the right direction, a number of obstacles remain to the effective implementation of human rights standards". The report made a number of practical recommendations concerning the judicial system, discrimination, human rights activists, who were often the victims of intolerance, hate speeches and threats sometimes amounting to physical violence, police conduct and detention conditions.

Italy, January 2009 visit

In April the Commissioner reported on his January 2009 visit to Italy, where he expressed concern about the situation of Roma, immigration policies and practices and failure to comply with the binding interim measures ordered by the European Court of Human Rights, recommending in particular the establishment of an independent national body to strengthen human rights protection.

South Ossetia, August 2008 visit

In May, the Commissioner published a report on his fourth visit to the areas affected by the South Ossetia conflict in August 2008. He emphasised the need to maintain the international presence and to do more for human rights in these areas.

Belgium, June 2009

Finally, in June 2009 the Commissioner presented a report on Belgium in which he said that, despite a good system for protecting human rights, additional efforts were needed in certain areas, in particular detention conditions, juvenile justice, asylum procedures and the rights of migrants.

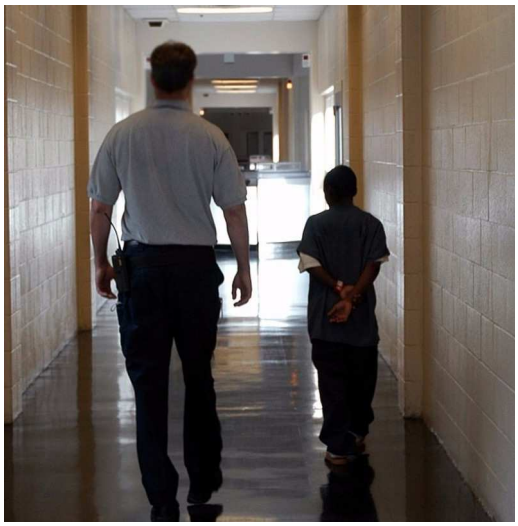
Thematic work and awareness-raising

To provide advice and information on the protection of human rights and the prevention of violations, the Commissioner may issue recommendations regarding a specific human rights issue in a

single, or several member states. Either on the request of national bodies or motu proprio in accordance with article 3 (e) of the mandate, the Commissioner may also offer opinions on draft laws and specific practices. The Commissioner also promotes awareness of human rights in Council of Europe member state by organising and taking part in seminars and events on various human rights themes. Commissioner Hammarberg publishes fortnightly Viewpoints aimed at stimulating discussions on specific human-rights concerns.

The main topics considered were combating discrimination and racism, protecting migrants, refugees and asylum seekers, juvenile justice, protecting children's rights, the rights of lesbian, gay, bisexual and transgender persons and human-rights education.

On 12 March the Commissioner issued an opinion on the independent and effective determination of complaints against the police, underlining the importance of such a mechanism for the operation of a democratic and accountable police service, for an increased public confidence as well as to ensure that there is no impunity for misconduct or ill-treatment.



On 19 June he published an issue paper on juvenile justice, which said that repression was not the only response and that more use should be made of prevention, rehabilitation and social reintegration that took account of the needs and interests of children in difficulty.

On 30 June he published a recommendation on the implementation of the right to housing. This major problem, which has been aggravated by the current crisis, particularly affected the least well-off members of the community. Mr Hammarberg said that due consideration should be paid in domestic legislation to international obligations concerning the right to housing, in accordance with the non-discrimination principle.

The Commissioner also attended a number of conferences and other events, including:

- 30 March, 15th meeting of the Education for Democratic Citizenship and Human Rights (EDC/HRE) coordinators on the theme "Living and Learning Democracy for All" at the European Youth Centre, Strasbourg;
- 8 April, International Roma Day, for which he published a joint study on recent Roma migration in Europe, and the discrimination that Roma migrants still face;
- 24 April, conference at the Moscow State University under the auspices of UNICEF on protecting children's rights, where the Commissioner spoke of the serious problem of child poverty in large parts of Europe and his fears that the situation would get worse;
- 18 June, 29th Council of Europe Conference of Ministers of Justice of the Council of Europe in Tromsø, Norway, on "Breaking the silence – united against domestic violence".

The Commissioner has continued to publish his Viewpoints every two weeks, which look at current human rights issues.

In connection with the application of human rights standards, the Viewpoint for 2 March ("Think globally, act locally – for human rights") invited local politicians and officials to apply European and international human rights standards when formulating their policies.

In the next edition ("After the human rights breakdown during the 'war on terror', the damage must be assessed and corrective action taken"), the Commissioner called for an end to human rights abuses in the intelligence field and for intelligence agencies to be governed by international human rights law.

The following issue ("Foreign policy should be based on a principled approach to human rights") encouraged European governments to enter into constructive and genuine dialogue to find effective means of implementing such a policy.

Discrimination was the subject of the viewpoints of 14 April ("Racism: Europeans ought to be more self-critical") and 27 April ("Anti-gyp-

syism continues to be a major human rights problem in Europe").

The economic crisis was the focus of two viewpoints: 11 May ("The response to the crisis must include a shift towards more equality") and 25 May ("Governments should welcome complaints about social rights"). The latter referred specifically to the revised European Social Charter.

The final Viewpoints for this quarter dealt with international organisations: "International organisations should be accountable when they act as quasi governments" and "European countries should defend the International Criminal Court and request the US authorities to withdraw the idea of impunity for US nationals".

International Co-operation

The Commissioner's status as an independent institution within the Council of Europe endows him with a unique flexibility to work with other institutions, including human rights monitoring mechanisms and intergovernmental and parliamentary committees.

The Commissioner has continued to co-operate with other Council of Europe bodies: the European Court of Human Rights, particularly in connection with the pilot-judgment procedure, which was discussed at a seminar in Warsaw on 14 and 15 May, the Parliamentary Assembly, particularly its Committee on Legal Affairs and Human Rights, the European Committee for the Prevention of Torture, the Congress of Local and Regional Authorities, the European Committee of Social Rights, the European Commission against Racism and Intolerance, the Framework Convention for the Protection of National Minorities, the Committee of Experts on Discrimination on grounds of Sexual Orientation and Gender Identity (DH-LGBT) and the European Charter for Regional or Minority Languages.

He has also had numerous contacts with international institutions such as the UN and its specialised agencies. Mr Hammarberg's contacts with the European Union included meetings with the European Commissioner Jacques Barrot, with whom he discussed immigration and asylum rights in Europe, and Mr de Kerchove, the EU's counter-terrorism co-ordinator, to discuss the closure of the Guantanamo camp and data protection in the context of the fight against terrorism. Finally he continued the dialogue with the Organisation for Security and Co-operation in Europe, particularly on the human rights situation in Moldova and the conflict zones in Georgia.

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

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 and the revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.

Signatures and ratifications

Two States ratified the Revised Social Charter: Hungary and Slovakia respectively on 20 April and 23 April 2009.

"The former Yugoslav Republic of Macedonia" signed the Revised Social Charter on 27 May 2009.

To date 44 member states of the Council of Europe have signed the Revised European Social Charter. The remaining 3 member states have signed the 1961 Charter. 40 states have ratified either of the two instruments (27 for the Revised Charter and 13 for the 1961 Charter).

Two states will deposit their ratification instrument of the Revised Social Charter in due course:

- Russian Federation, the Duma having ratified the Revised Charter last May;
- Serbia, where the Parliament also ratified the Revised Charter in June.

Furthermore, Turkey ratified the 1991 Protocol Amending the Social Charter (ETS No. 142) on 10 June 2009.

Four ratifications are still necessary for the entry into force of the 1991 Amending Protocol: Denmark, Germany, Luxembourg and the United Kingdom.

About the Charter

Guaranteed rights

The European Social Charter guarantees rights in a variety of areas, such as housing, health, education, employment, legal and social protection, 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 – comprising 15 members elected by the Council of Europe's Committee of Ministers – decides, in "conclusions", whether or not the states have complied with their obligations. If a state is found not to have complied, and if it 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 which opened for signature in 1995 and 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 in which it may recommend that the state concerned takes specific measures to bring the situation into line with the charter.

European Committee of Social Rights (ECSR)

Exchange of views

At its 237th session, 29 June-3 July 2009, the ECSR held an exchange of views with Mr Olivier Beer, United Nations High Commissioner for Refugees (UNHCR) Representative to the European Institutions in Strasbourg.

Mr O. Beer presented to the ECSR the activities of the UNHCR Representation which aims to strengthen international protection of refugees in co-operation with the bodies of the Council of Europe responsible for setting new standards and for monitoring the respect of commitments made by the states in the field of protection and promotion of the rights of refugees, asylum-seekers and internally displaced persons. (See *Human rights information bulletin No. 76*)

The UNHCR Representative then proposed to contribute to the ECSR activities by:

- improving invisibility of the Social Charter and the Committee;
- making the states aware of the necessity of ratifying the Revised Social Charter;
- encouraging the states to accept the collective complaints mechanism and recognizing the right of national NGOs to submit such complaints;
- carrying out training for UNHCR staff in Europe on the rights set out in the Charter and on the collective complaints mechanism;
- participating, as a third party, in collective complaints, which are relevant for UNHCR, as soon as the Rules of the Committee are amended in order to formally authorize participation;
- organising with the ECSR the fourth colloquy on the European Convention on Human Rights, the European Social Charter and the protection of refugees and asylum-seekers.

Significant events

Meetings on non-accepted provisions of the Social Charter

Bucarest (Romania), 6 May 2009
Bakou (Azerbaijan), 23-24 June 2009

These two meetings were an opportunity to exchange views and information on the implementation of the Revised Charter in Romania and in Azerbaijan.

As far as Romania is concerned, the presentation of the ECSR case-law on the provisions which have not been accepted by this state, as well as the analysis on the situation relating to these provisions led to the conclusion that the following provisions could now be accepted:

- Article 2 §3 (right to public holiday with pay);
- Article 3 §4 (right to health services at work);
- Article 10 §1, §3, §4 and §5 (rights in the field of vocational training);
- Article 15 §3 (right of persons with disabilities to integration and participation in the life of the community);
- Article 19 §1, §2, §3 and §9 (rights of migrant workers),
- Article 22 (right of workers to take part in the determination and improvement of working conditions),
- Article 27 §3 (right of workers with family responsibilities to equal opportunities and equal treatment (prohibition of dismissal)).

The same exercise in Azerbaijan, led to the conclusion that the following provisions could now be accepted:

- Article 2 (right to fair working conditions),
- Article 19 (right of migrant workers and their families to protection and assistance),

and possibly:

- Article 3 (right to safety and security at work),
- Article 30 (right to protection against poverty and social exclusion).

International Conference

Valencia (Spain), 27-28 April 2009

International seminar on Recent Developments of Social Rights in Europe

This seminar, organised by the University of Valencia, gathered academics, judges, students, representatives of political groups in the regional parliament, as well as many representatives of NGOs.

Speeches by university teachers, ECSR members and officials of the Department of the European Social Charter increased knowledge of the Revised Social Charter and the Protocol providing for a system of collective complaints which have not yet been ratified by Spain.

On this occasion, a meeting between the Parliament of Valencia and an ECSR delegation was held. Another meeting with several NGOs was also organised.

Other activities

Switzerland and social rights – from legal guarantees to social reality

Bern (Switzerland), 3 April 2009

This seminar was organised by the Swiss section of the International Commission of Jurists.

The Swiss Judge at the European Court of Human Rights, political personalities and teachers coming from various swiss universities including Professor Kurt Pärli, co-author of a survey on the compatibility between Swiss law and the Social Charter, held debates on Swiss legislation in the field of social rights and highlighted the possibility of ratification of the Charter by Switzerland which will chair the Committee of Ministers from November 2009 and which is one of the last states which has not ratified the Charter (along with Liechtenstein, San Marino, Monaco and Montenegro).

Collective complaints: latest developments

Decisions on admissibility

One collective complaint was declared admissible by the ECSR on 30 March 2009:

Confédération Générale du Travail (CGT) v. France (No. 55/2009)

The CGT claims that the new regulations on working time introduced in France on 20 August 2008 (Act No. 2008-789) violates Article 2 (right to just conditions of work) and Article 4 (right to a fair remuneration) of the Revised Social Charter.

New collective complaints

Confédération française de l'Encadrement (CFE-CGC) v. France (No. 56/2009)

Complaint registered on 4 May 2009

The complaining organisation claims that the new regulations on working time introduced in France on 20 August 2008 (Act No. 2008-789) violate the following articles, read alone or in conjunction with Article E of the Revised Charter:

- Article 1 (right to work),
- Article 2 (right to just conditions of work),
- Article 3 (right to safe and healthy working conditions),
- Article 4 (right to a fair remuneration),
- Article 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex),
- Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment).

European Council of Police Trade Unions (CESP) v. France (No. 57/2009)

Complaint registered on 7 May 2009

The CESP claims that the new regulations introduced by the French Government on 27 February 2008 (Decree No. 2008-199 modifying Article 3 of Decree No. 2000-194 of 3 March 2000), laying down the conditions for the granting of a payment for extra services to operational members of the national police force, are in breach with Article 4 §2 (right to a fair remuneration) of the Revised Charter, because it establishes – regardless of the grade and step – a fixed compensation system.

Centre on Housing rights and Evictions (COHRE) v. Italy (No. 58/2009)

Complaint registered on 29 May 2009

The complaining organisation alleges that the recent so-called emergency security measures and racist and xenophobic discourse have re-

sulted in unlawful campaigns and evictions leading to homelessness and expulsions, disproportionately targeting Roma and Sinti. Therefore it pleads a violation of the following articles, read alone or in conjunction with Article E of the Revised Charter:

- Article 16 (right of the family to social, legal and economic protection),
- Article 19 (right of migrant workers and their families to protection and assistance),
- Article 30 (right to protection against poverty and social exclusion),
- Article 31 (right to housing).

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

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 national authorities is at the heart of the convention, given that its 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 and Legal Affairs. 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 a public authority. Apart from periodic visits, the committee also organises visits which it considers necessary (ad hoc visits). The number of ad hoc visits is constantly increasing and now exceeds that of periodic visits.
The CPT may formulate recommendations to strengthen, if necessary, the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

Periodic visits

Austria, 15-25 February 2009

This was the CPT's fifth visit to Austria.

In the course of the visit, the CPT's delegation reviewed the measures taken by the Austrian authorities in response to various recommendations made by the committee after its previous visits. In this respect, particular attention was paid to the treatment of persons detained by the police and to the conditions of detention under which foreign nationals are held in police detention centres. The delegation also examined in detail various issues related to prisons, including the situation of juvenile prisoners. In addition, the delegation visited a civil psychiatric hospital and – for the first time in Austria – a social welfare institution.

The delegation had fruitful consultations with Ms Maria Fekter, Federal Minister of the Interior, Ms Claudia Bandion-Ortner, Federal Minister of Justice, and Mr Alois Stöger, Federal Minister of Health, as well as with senior officials from the above-mentioned ministries, the Federal Ministry of European and International Affairs, and the Federal Chancellery. Discussions were also held with the Chairman of the Human Rights Advisory Board, Professor Gerhart Klaus Wielinger, and representatives of the Austrian Bar Association and various NGOs active in areas of concern to the CPT.
At the end of the visit, the delegation presented its preliminary observations to the Austrian authorities.

Slovak Republic, 24 March-2 April 2009

This was the committee's fourth visit to the Slovak Republic.

The CPT's delegation reviewed the measures taken by the Slovak authorities in response to recommendations made by the committee

after its previous visits. In this respect, particular attention was paid to the situation of remand prisoners (including juveniles) and persons serving life-sentences. The treatment of persons apprehended by the police and the conditions of detention of foreign nationals held in immigration centres were also examined.

The delegation held consultations with Štefan Harabin, Deputy Prime Minister and Minister of Justice, Vladimír Čečot, State Secretary for the Interior, Daniel Klačko, State Secretary for Health, Dobroslav Trnka, Prosecutor General, and María Kreslová, Director-General of the Corps of Prison and Court Guards. Discussions were also held with Pavel Kandráč, Public Defender of Rights, and members of civil society active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Slovak authorities.

Hungary, 24 March-2 April 2009

This was the CPT's fourth periodic visit to this country.

The CPT's delegation reviewed the measures taken by the Hungarian authorities to implement the recommendations made by the committee after previous visits. In particular, the delegation followed up on the safeguards offered to persons detained by the police, the holding of remand prisoners on police premises and the treatment of foreign nationals held under aliens legislation. The delegation also examined in detail various issues related to prisons, including the situation of prisoners held in a maximum security unit (KBK) and other inmates considered to require high security arrangements (Grade 4 prisoners). For the first time in Hungary, it visited a prison establishment in which private contractors are involved in Tizsalök. In addition, the delegation visited civil psychiatric establishments/units and reviewed the situation of people undergoing forensic psychiatric assessment and prisoners receiving treatment or under observation in the Judicial and Observation Psychiatric Institute (IMEI).

During the visit, the CPT's delegation held consultations with Tibor Draskovics, Minister of Justice and Law Enforcement, Tamás Székely, Minister of Health, Erika Szücs,Minister of Labour and Social Care, and Tamás Kovács, Prosecutor General, as well as with senior officials of the ministries and services concerned. It also met Máté Szabo, Parliamentary Commissioner for Civil Rights. Further, it had meetings with representatives of international and non-governmental organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Hungarian authorities.

North Caucasian region of the Russian Federation, 16-24 April 2009

This was the CPT's eleventh visit to this part of the Federation since the year 2000.

The visit focused on the Republic of Ingushetia and the Chechen Republic, where the delegation reviewed the treatment of persons detained by structures of the Ministry of Internal Affairs, Federal agencies and the penitentiary service, and examined the action taken by the competent authorities in respect of complaints and other indications of ill-treatment. The delegation also visited the SIZO (pre-trial establishment) in Pyatigorsk, Stavropol Kraï, to which remand prisoners from Ingushetia are being sent due to the continuing absence of a SIZO in that republic.

In the course of the visit, the CPT's delegation held discussions with the President of the Chechen Republic, Mr Ramzan Kadyrov, and the President of the Republic of Ingushetia, Mr Yunus-Bek Evkurov, as well as with numerous senior officials at the republican level.

The delegation also held meetings with the First Deputy Prosecutor of the Chechen Republic, Sharpuddi Abdul-Kadyrov, the Prosecutor of Ingushetia, Yuri Turygin, and with senior representatives of the Prosecutor's Offices and the Investigation Committees in both republics. Further, the delegation visited the Republican Forensic Medical Bureaux in Grozny and Nazran.

In addition, the delegation had consultations with representatives of the NGO "Memorial" in Grozny and Nazran, as well as with members of the Bar Association of the Chechen Republic and with defence lawyers.

In Moscow, the delegation met the Human Rights Commissioner of the Russian Federation, Vladimir Lukin, and members of his office.

On 24 April 2009, during a meeting in Moscow chaired by the Deputy Minister of Justice, Vladimir Demidov, the CPT's delegation provided the Russian authorities with its preliminary observations.

Luxembourg, 22-27 April 2009

This was the CPT 's fourth visit to Luxembourg.

The delegation reviewed the measures taken by the Luxembourg authorities to implement the recommendations made by the committee after its previous visits. It focused in particular on the safeguards afforded to persons deprived of their liberty by the police, and conditions at Luxembourg Prison and the State Socio-Educational Centre at Dreiborn. In addition, the delegation visited the neuro-psychiatric hospital at Ettelbruck, where it paid special attention to the living conditions and treatment of patients placed in closed units for minors and adults. The legal safeguards for the procedure of involuntary placement of mentally ill persons were also examined.

In the course of the visit, the delegation held consultations with Luc Frieden, Minister of Justice, Mars Di Bartolomeo, Minister of Health, and Marie-Josée Jacobs, Minister of Family and Integration, as well as with members of the Human Rights Advisory Commission and senior officials from the ministries and services concerned. The delegation also met Marie Anne Rodesch-Hengesch, President of the Committee for the Rights of the Child.

At the end of the visit, the delegation presented its preliminary observations to the Luxembourg authorities.

Abkhazia[1], Georgia, 27 April-4 May 2009

The visit began in Sukhumi on 27 April 2009.

The *de facto* authorities in Abkhazia cooperated fully with the CPT's delegation. In particular, the delegation was granted access to all places of deprivation of liberty which it wished to visit and was able to interview in private persons deprived of their liberty.

At the beginning and end of its visit to Abkhazia, the delegation held discussions in Sukhumi with the *de facto* authorities. Subsequently, on 4 May 2009, the delegation met the Georgian authorities in Tbilisi.

During its visit, the delegation also met representatives of the United Nations Observer Mission in Georgia (UNOMIG) and of the Mission of the International Committee of the Red Cross in Sukhumi.

Bosnia and Herzegovina, 11-15 May 2009

This was the CPT's fourth visit to Bosnia and Herzegovina.

The visit provided an opportunity to assess the progress made since the periodic visit in March/April 2007. The CPT's delegation examined in detail various issues related to Sarajevo and Zenica Prisons, including the regime and treatment of remand prisoners, and of those prisoners placed in administrative and disciplinary isolation and in the high-security unit. The delegation also focused its attention on the situation of forensic psychiatric patients held in Zenica Prison and at Sokolac Psychiatric Hospital, and reviewed progress towards the establishment of a new forensic psychiatric unit for the whole country. A brief visit was paid to the recently opened juvenile unit in East Sarajevo Prison.

In the course of the visit, the CPT's delegation held consultations, at State level, with Safet Halilovic, Minister of Human Rights and Refugees, and Srđjan Arnaut, Deputy Minister of Justice, as well as with senior officials from these ministries. At Entity level, the delegation met Nedžad Branković, Prime Minister, Safet Omerović, Minister of Health, and Feliks Vidović, Minister of Justice, from the Federation Government of Bosnia and Herzegovina, as well as senior officials from the Ministry of Health and Social Welfare of the Republika Srpska. Discussions were also held with the State Ombudsmen, Jasminka Dzumhur and Ljubomir Sandic, and the High Representative and European Union Special Representative, Valentin Inzko.

At the end of the visit, the delegation presented its preliminary observations to the authorities of Bosnia and Herzegovina.

Turkey, 4-17 June 2009

This was the CPT's fifth periodic visit to this country.

In the course of the visit, the CPT's delegation reviewed the measures taken by the Turkish authorities in response to recommendations made by the committee after previous visits. Particular attention was paid to the treatment of persons detained by law enforcement agencies and to the conditions under which immigration detainees are held in detention centres for foreigners. The delegation also examined in detail various issues related to prisons, including the activities offered to prisoners and health-care services.

The delegation met Mr Osman Güneş, Deputy Minister of the Interior, Mr Ahmet Kahraman,

1. This region has unilaterally declared itself an independent republic.

Deputy Minister of Justice, and Mr Turan Buzgan, Deputy Under-Secretary of State at the Ministry of Health. In addition, it had consultations with senior officials from the Ministries of Foreign Affairs, Health, the Interior, Justice and National Defence and the Turkish Armed Forces, as well as with the Director General for Social Services and Child Protection. Discussions were also held with representatives of the Ankara Office of the United Nations High Commissioner for Refugees (UNHCR) and two Turkish NGOs, the Human Rights Association and the Human Rights Foundation.

At the end of the visit, the delegation presented its preliminary observations to the Turkish authorities.

Sweden, 9-18 June 2009

This was the CPT's fourth periodic visit to this country.

The CPT's delegation reviewed measures taken by the Swedish authorities in response to recommendations made by the Committee after previous visits. Particular attention was paid to the safeguards offered to persons detained by the police, the restrictions imposed on remand prisoners, and the situation of sentenced prisoners held under conditions of isolation and in high-security units. The conditions of detention of foreign nationals held in immigration centres and in prisons were also examined.

During the visit, the CPT's delegation met Tobias Billström, Minister for Migration and Asylum Policy, Ragnwi Marcelind, State Secretary at the Ministry of Health and Social Affairs, Lars Nylén, Director General of the National Prison and Probation Service, and Erna Zelman, Director General of the National Board of Forensic Medicine. It also held consultations with senior officials from the Ministry of Justice, the Ministry of Health and Social Affairs, the Ministry of Foreign Affairs, the National Police Board, the National Board of Institutional Care, the National Board of Health and Welfare, and the Swedish Migration Board. The delegation also met parliamentary ombudsmen Mats Melin, Kerstin André and Cecilia Nordenfelt.

Further, discussions were held with the UNHCR Regional Office for the Baltic and Nordic countries in Stockholm and with members of non-governmental organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the Swedish authorities.

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 choose to allow the report to be published.

Spain, publication on 2 March 2009

Report on the January 2007 visit, together with the response of the Spanish Government

The purpose of the visit was to examine the modalities of care and custody of José Ignacio De Juana Chaos, a prisoner on hunger strike who, further to a judicial decision, was fed against his will while hospitalised.

The CPT does not believe that it is the committee's role to pronounce on the question whether it is right to force-feed a detained person on hunger strike. However, the committee sets out in paragraph 14 of its report certain standards which should be met in the event that a decision is taken to force-feed a prisoner. The CPT states that force-feeding a prisoner without meeting those standards could very well amount to inhuman or degrading treatment.

In the particular case examined during the visit, the CPT formed the view that the various actors responsible for implementing the decision to force-feed the prisoner in question took into careful consideration the elements identified by the committee.

Portugal, publication on 19 March 2009

Report on the fifth periodic visit in January 2008, together with the response of the Portuguese Government

During the 2008 visit, the CPT reviewed the measures taken by the Portuguese authorities to implement the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police. The CPT also examined in detail various issues concerning prisons, including the treatment of high security prisoners and

drug-related matters. In addition, the committee's delegation visited two psychiatric hospitals, where it focused on the living conditions as well as the legal safeguards afforded to patients in the context of the involuntary admission procedure and of consent to treatment.

In their response to the visit report, the Portuguese authorities provide information on the measures being taken to implement the CPT's recommendations.

Report on an ad hoc visit in December 2007, together with the Ukrainian authorities' response

Ukraine, publication on 19 May 2009

The main purpose of the 2007 visit was to examine the situation of foreign nationals detained under aliens legislation, and to review progress made in this area in the light of the recommendations contained in the CPT's report on its previous visit to Ukraine in 2005. Particular attention was paid to the temporary holding centre in Pavshino, an establishment about which the committee had expressed serious concerns in the past. In their response, the Ukrainian authorities refer to a decision to close down the Pavshino Centre by the end of 2008. This step has been made possible by the opening in 2008 of two new centres (in Chernigin and Volyn regions) designed for the detention of foreigners under aliens legislation.

The CPT's report also contains recommendations aimed at strengthening the safeguards for persons detained under aliens legislation and developing specialised training for staff working in detention facilities for foreign nationals.

The authorities' response provides information on various measures being taken to implement the committee's recommendations.

As part of its programme of periodic visits in 2009, the CPT has already indicated its intention to carry out a new visit to Ukraine.

Report on the November/December 2006 visit, together with the response of the Turkish Government

Turkey, publication on 28 May 2009

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

In their response to the visit report, the Turkish authorities provide information on the measures being taken to implement the CPT's recommendations.

Report on the April 2008 visit

Lithuania, publication on 25 June 2009

During the 2008 visit, the CPT reviewed the measures taken by the Lithuanian authorities to implement the recommendations made by the committee after previous visits. In this regard, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police holding facilities. The CPT's delegation also examined in detail various issues related to prisons, including the situation of juvenile and life-sentenced prisoners. Further, for the first time in Lithuania, the Committee's delegation visited a forensic psychiatric hospital and a social welfare institution.

Report on an ad hoc visit in September 2008, together with the response of the Greek Government

Greece, publication on 30 June 2009

In the course of this visit, the CPT reviewed the treatment of persons detained by law enforcement officials and examined the conditions of detention in police and border guard stations as well as in special facilities for illegal migrants, in order to evaluate progress made since the CPT's last visit to Greece in 2007.

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

Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities is the first ever legally binding multilateral instrument devoted to protecting national minorities. It clearly states that protecting national minorities forms an integral part of the international protection of human rights.

First monitoring cycle

The Netherlands

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its first opinion on the Netherlands on 25 June.

The opinion will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

The Opinions of the Advisory Committee are made public upon the adoption of the Committee of Ministers' resolution but can be made public at an earlier stage at the country's initiative.

Second monitoring cycle

Bosnia and Herzegovina

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Bosnia and Herzegovina was made public by the government. The Advisory Committee adopted this Opinion in October 2008 following a country visit in March 2008.

Summary of the Opinion:

"Bosnia and Herzegovina has taken a number of measures to advance the implementation of the Framework Convention. Legislation on the protection of persons belonging to national minorities was adopted by the Federation and Republika Srpska. Further steps should nonetheless be taken to ensure that the existing legislation is fully implemented.

Persons belonging to national minorities continue to be included in the category of "Others", do not enjoy the same political rights as those belonging to the three constituent peoples and remain on the sidelines of public affairs. They still have low visibility within the society since the institutional system is focused on the interests of the three constituent peoples.

Commendable action plans for Roma housing, health and employment were recently devised with a view to advancing the implementation of the 2005 National Strategy for Roma. It is crucial that they are implemented without further delay as many Roma continue to face serious difficulties in the field of education, employment, housing and access to health care. Moreover, their possibilities to participate in decision-making processes are very limited.

In the field of education, there is a most worrying trend towards increased segregation of pupils along ethnic lines.

Consultative bodies for national minorities were set up in Republika Srpska and at state level. It is important that these bodies be given adequate support so that they can effectively participate in the formulation of laws and policies."

The government comments on the Opinion have also been made public.

Serbia

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Serbia was made public by the Government on 25 June. The Advisory Committee adopted this Opinion in March following a country visit in November 2008.

Summary of the Opinion:

"Since the adoption of the Advisory Committee's first Opinion in November 2003, the Serbian authorities adopted a new Constitution in 2006 which includes a commendable chapter on national minority protection. A new criminal code was adopted with some important provisions in the field of non-discrimination. The state level ombudsman has started his work, with promising initiatives to be launched in the field of monitoring minority protection in all regions of Serbia. The commitment shown by the recently established Ministry of Human and Minority Rights in pursuing reform is encouraging.

Opportunities for persons belonging to national minorities to learn their language have been expanded in certain areas of Serbia and some further measures to display traditional names and topographical indications have been taken. The national minority councils established so far have started to play an active role in articulating minorities' interests, despite the legal vacuum regarding their role and activities.

The delay in adopting some pending legislation, including the law on the national minority councils over the last five years has caused legitimate concerns and, on the whole, the pace of reform in the area of minority protection, has slowed down. The changes introduced to the legislative framework with regard to minority media have been marked by a lack of consistency and, as a result, have created confusion.

In the field of education, the optional character of minority language teaching requires further discussion with representatives of national minorities. The problems encountered with regard to the recognition of diplomas from educational institutions from the region still complicate the access to education of certain persons belonging to national minorities.

It is crucial that the future National Strategy for Roma addresses vigorously the difficulties encountered by the Roma in accessing employment, education, housing and health care and that their lack of personal documentation is tackled as a matter of priority."

Advisory Committee opinions

Kosovo[1], visit of 27-30 April 2009

The Advisory Committee held meetings with minority communities, including the Ashkali, Bosniacs, Gorani, Egyptians, Montenegrins, Roma, Serbs and Turks as well as NGOs. It discussed the situation of these communities with representatives of international organisations and local authorities.

This second visit was carried out under the specific agreement concluded between the Council of Europe and UNMIK (United Nations Interim Administration Mission in Kosovo) in 2004. It follows the progress report submitted by UNMIK in July 2008.

Following the visit, the Advisory Committee will draw up an Opinion in which specific recommendations will be highlighted.

Third monitoring cycle

State reports

- Liechtenstein, received on 18 March
- Germany, received on 9 April
- San Marino, received on 22 April
- Cyprus, received on 30 April
- Ukraine, received on 7 May
- Hungary, received on 4 June

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Council Resolution 1244 and without prejudice to the status of Kosovo.

Advisory Committee visit

Moldova, 21-24 April 2009

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Chisinau, Moldova from 21-24 April in the context of the monitoring of the implementation of this convention in Moldova.

This was the third visit of the Advisory Committee to Moldova. The delegation had meetings with the representatives of all relevant ministries, public officials, as well as persons belonging to national minorities and human rights NGOs.

The delegation included Mr Gáspár Biro (member of the Advisory Committee elected in respect of Hungary), Ms Bohumila Feren-Cuhova (member of the Advisory Committee elected in respect of the Slovak Republic) and Mr Alan Phillips (member of the Advisory Committee elected in respect of the United Kingdom). They were accompanied by Ms Françoise Kempf from the secretariat.

Advisory Committee opinions

Adoption of the Opinions on Liechtenstein, Moldova and San Marino, 26 June 2009

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted three country-specific opinions under the third cycle of monitoring the implementation of this convention in States Parties.

The opinions on Liechtenstein, Moldova and San Marino were adopted on 26 June and are restricted for the time-being.

These opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

The Opinions of the Advisory Committee are made public upon the adoption of the Committee of Ministers' resolution but can be made public at an earlier stage at the country's initiative.

Other

Publication of the Advisory Committee Opinions to be accelerated

The Committee of Ministers of the Council of Europe adopted on 16 April a major amendment to the rules governing the publicity of the Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities: Opinions will now automatically become public four months after they have been communicated to the state concerned.

States are encouraged to publish the Advisory Committee's Opinions immediately upon receipt but if they don't do so at that stage, according to the newly adopted rules, the Opinions will automatically be made public after four months. This amendment foresees that exemption to this four-month rule is only permitted on the basis of reasoned objections by the state concerned.

This new rule will be applied to all subsequently adopted Opinions.

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

European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is an independent human rights monitoring body specialised in issues related to combating racism and racial discrimination in the 47 member states of the Council of Europe.

ECRI's statutory activities are:

– country-by-country monitoring work,

– work on general themes,

– relations with civil society.

Country-by-country monitoring

In the framework of this work, ECRI closely examines the situation concerning racism and intolerance in each of the member states of the Council of Europe. Following its analyses, 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.
ECRI's country-by-country approach concerns all Council of Europe member states on an equal footing and covers 9 to 10 countries per year. A contact visit takes place in each country prior to the preparation of the relevant country report.

At the beginning of 2008, ECRI started work on a new monitoring cycle. The fourth round country monitoring reports focus mainly on the implementation of the main recommendations addressed to governments in the third round reports. They examine whether, in what ways and how effectively, ECRI's recommendations have been put into practice by the authorities. They include an evaluation of policies as well as the analysis of new developments since the last report. The fourth monitoring cycle includes a new follow-up mechanism, whereby ECRI requests member States, two years after the publication of the report, to provide information on the implementation of specific recommendations for which priority action has been requested.

On 26 May 2009, ECRI published three reports of its fourth round of country monitoring, on Belgium, Germany and Slovakia. In these reports, ECRI underlines that positive developments have occurred in all three of these Council of Europe member states. At the same time, however, the reports detail continuing grounds for concern for ECRI:

- In Belgium, the Federal Action Plan to combat racism, anti-Semitism, xenophobia and related violence was adopted in 2004 and its implementation is underway. Steps have been taken to improve the content and application of legislation to combat racial discrimination and racism. However, cases of racial discrimination, particularly against non-citizens, persons of immigrant background, Muslims and Travellers, still occur in fields such as access to employment, education and housing. The persistent use of racist, anti-Semitic, islamophobic and xenophobic discourse by some politicians and on the Internet is worrying.

- In Germany, the adoption of the General Equal Treatment Act (AGG) has strengthened the legal and institutional framework against racism and discrimination; there are signs of improved dialogue with the Muslim community and the authorities have begun to develop a strong new focus on integration, aiming to help migrants participate fully in German society. However, violent racist, xenophobic and anti-Semitic attacks continue to be reported, and support for parties expressing racist, anti-Semitic or revisionist views has increased. At the same time, discrimination in daily life is reported by members of the Muslim, Turkish, black as well as Roma and Sinti communities.
- In Slovakia, a new criminal code containing several provisions on racially-motivated crimes was adopted in 2006 and the Anti-Discrimination Act, which prohibits discrimination based on, among others, race, religion, national or ethnic origin, colour and language, was passed in 2004. However, the situation of the Roma remains worrying in areas such as education, housing, employment and health and instances of police brutality against members of this minority still occur. A rise in racist political discourse by some politicians, targeting primarily Hungarians, as well as Roma and Jewish people, has been noted. The integration of refugees is still an issue that needs to be tackled, namely through the integration strategy devised by the Slovak authorities.

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 2009, ECRI carried out contact visits to Albania, Austria, Estonia, France and the United Kingdom, as part of the process of preparing the monitoring reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

Work on general themes

ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. In this framework, ECRI adopts General Policy Recommendations addressed to the governments of member states, intended to serve as guidelines for policy makers.

General Policy Recommendations

ECRI has adopted to date twelve General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing and combating racism and racial discrimination in the field of sport.

On 21 March 2009, on the International Day for the Elimination of Racial Discrimination, ECRI published its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport. This General Policy Recommendation proposes more than 50 concrete measures to member states for ensuring equal opportunities in access to sport for all; for combating racism and racial discrimination in sport; and for building a coalition against racism in sport. In this text, ECRI urges the governments of member states to ensure that adequate legal provisions are in place to combat racial discrimination and to penalise racist acts and to provide training to the police to enable them to identify, deal with and prevent racist

behaviour at sporting events. ECRI also emphasises the important role of local authorities, sports federations, sports clubs and schools in ensuring the participation of minority groups in sports, as well as the role of various other actors in combating racism in sports, such as athletes, coaches, referees, supporters' organisations, politicians, the media and sponsors. ECRI calls on all these actors to unite and build a coalition against racism in sport.

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 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.

ECRI's round table in Ukraine

On 7 May 2009, ECRI held a national round table in Kiev. The main themes of this round table were: 1) ECRI's Third Report on the Ukraine; 2) responding to racially motivated violence; 3) implementing anti-discrimination laws and racism, xenophobia, anti-Semitism; 4) intolerance in public discourse and the public sphere.

Publications

- ECRI Report on Belgium (fourth monitoring cycle), 26 May 2009
- ECRI Report on Germany (fourth monitoring cycle), 26 May 2009
- ECRI Report on Slovakia (fourth monitoring cycle), 26 May 2009
- Annual Report on ECRI's Activities covering the period from 1 January to 31 December 2008, May 2009

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

Law and Policy

Human rights in culturally diverse societies

In the light of the results of the conference entitled "Human Rights in culturally diverse societies: challenges and perspectives" which took place in The Hague on 12-13 November 2008, a group of experts within the Council of Europe was entrusted with the task of exploring various follow-up options and to make appropriate proposals in this context.

In the course of spring 2009, the group of experts prepared a declaration for the Committee of Ministers which was approved by the Steering Committee for Human Rights. On 1 July 2009, the Committee of Ministers adopted this declaration on human rights in culturally diverse societies.

With a view to disseminating as widely as possible the two manuals launched at the conference on "hate speech" and "the wearing of religious symbols", they have been translated and are now available in both English and French.

The proceedings of the conference will be published in due course.

Sexual orientation and gender identity

The Committee of Experts on Discrimination on grounds of Sexual Orientation and Gender Identity (DH-LGBT) held its second meeting on 3-5 June 2009. The committee continued its work and finalised the first draft of the recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity. The text of the draft recommendation will be transmitted for discussion and guidance to the Committee of Experts for the Development of Human Rights (DH-DEV) at its next meeting on 12-14 October 2009.

Human rights of members of the Armed Forces

The DH-DEV Group on Human Rights of Members of the Armed Forces (DH-DEV-FA) held its fifth meeting on 13-15 May 2009, after an extension of its terms of reference to the end of the year and finalised the drafting of the recommendation on human rights of members of the armed forces. The group will finalise its examination of the explanatory memorandum to the recommendation at its last meeting on 24-25 September 2009. The draft will then be presented to the Committee of Experts for the Development of Human Rights (DH-DEV) in October this year and then to the Steering Committee for Human Rights (CDDH) at its meeting in November.

Internet: http://www.coe.int/t/e/human_rights/cddh/

Human Rights Co-operation and Awareness

Bilateral and multilateral human rights co-operation and awareness programmes are being implemented by the Directorate General of Human Rights and Legal Affairs of the Council of Europe. They are intended to assist member states to fulfil their commitments in the human rights field.

European Convention on Human Rights (ECHR) training and awareness-raising activities

Thematic seminars on the ECHR for judges

Nizhniy Novgorod, Russian Federation, 24-26 March, 7-9 April, 28-30 April, 19-21 May, 9-11 June

The purpose of these seminars was to inform the participants about the ECHR and the mechanism of the European Court of Human Rights. The Council of Europe and national consultants made presentations on ECHR issues. The seminars were divided into two groups: civil and criminal law judges. During both types of seminars, general issues of the ECHR system were discussed: the structure of the Court, the processing of an application, the execution of judgments of the Court and general principles on the interpretation of the ECHR. Seminars for civil law judges concentrated on Article 6 (fair trial guarantees), as well as on Articles 8 (respect of private and family life), 9 (freedom of religion), 10 (freedom of expression) and 11 (freedom of assembly) of the ECHR and Article 1 of Protocol No. 1 to the ECHR (right to property). Civil law aspects of cases related to Articles 2 (right to life) and 3 (prohibition of torture) of the ECHR were also covered. The seminars for criminal law judges focused on Articles 2 (right to life) and 3 (prohibition of torture), Articles 5 (protection of liberty and security) and 6 (fair trial guarantees) of the ECHR.

Training of trainers on teaching methods in co-operation with the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and the High School of Justice

Tbilisi, Georgia, 6-8 March

The seminar was jointly organised with the German organisation GTZ. The objective was to increase the knowledge of trainers of the High School of Justice on teaching techniques and training methodology based on the example of the teaching methodology of the Spanish Judicial School. Ten trainers participated who were all acting judges of Higher Instance Courts in Georgia.

Seminar on "Investigation of trafficking and specifics of its prosecution", in co-operation with the Prosecutor General's Office

Tbilisi, Georgia, 19-20 March

The objective of the seminar was to discuss investigation and prosecution techniques of trafficking-related crimes with two different groups of prosecutors and investigators. The following topics were discussed: legislation and organisational institutions; investigation and prosecution methods; and lastly, the scheme of the so-called "barrier model" (administration, housing, identity, labour, financial flows, to broaden the scope beyond the field of investigation and prosecution.

- Irkutsk, Russian Federation, 8 -10 April, - St Petersburg, Russian Federation, 1-5 June

Thematic seminars on the ECHR for prosecutors

The purpose of these seminars was to inform participants about the ECHR and the mechanism of the Court. The Council of Europe and national consultants made presentations on substantive issues of the ECHR, such as the structure of the Court, the processing of an application, the execution of judgments of the Court as well as general principles on the interpretation of the ECHR. Articles 2 (right to life), 3 (prohibition of torture), 5 (protection of liberty and security) and 6 (fair trial guarantees) were also covered.

Tbilisi, Georgia, 4-5 April, 11-12 April

Seminars on the ECHR for judges' assistants and for acting judges in Georgia

The objective of the activity was to brief judges' legal assistants on the ECHR and its underlying principles. The participants were 25 legal assistants coming from courts of Tbilisi and other cities. Bearing in mind the participants' background and interests, special focus was placed on the ECHR provisions concerning the right to liberty and security, the right to a fair trial and access to justice, in order to provide the participants with more in-depth knowledge of the Convention. Another training on selected ECHR articles was held for a new group of judges' legal assistants in May 2009. The objective of the activity was to brief judges on the ECHR and its underlying principles. The participants were 24 judges coming from the courts of Tbilisi, Kutaisi, Adugeni, Akhaltsikhe, Gori, Zestafoni, Terjola, Mtskheta, Tianeti, Rustavi, Sachkhere, Kareli and Khashuri. Bearing in mind the participants' background and interests, special focus was on the ECHR provisions concerning the right to a fair trial and the right to an effective remedy in order to provide them with a deeper knowledge of the Convention. Another training on ECHR's selected articles will take place for a new group of judges in June 2009.

Tbilisi, Georgia, 25-27 April

Training on "Prohibition of discrimination", in co-operation with the Prosecutor General's Office

The seminar was organised jointly by the Council of Europe and the EC in the context of the general programme with a view to enhancing the capacity of legal professionals and law enforcement officials in Georgia. The particular purpose of this seminar was to foster an understanding of the principles of non-discrimination under the Convention among prosecutors and investigators from various regions of Georgia.

Belgrade, Serbia, 8 May

Seminar on Articles 6 and 13 of the Convention within the framework of the project "Support to the Constitutional Court of Serbia to effectively implement the European human rights standards at the domestic level"

The seminar on Articles 6 and 13 (8 May 2009) was organised within the framework of the project "Support to the Constitutional Court to effectively implement the European human rights standards at the domestic level", financed by a voluntary contribution from the Government of the Netherlands. The seminar was held for judges and legal advisers of the Constitutional Court of Serbia. It included a theoretical part and a practical case study.

Strasbourg, France, 18-20 May

Study visit of judges of the Supreme Court of "the former Yugoslav Republic of Macedonia" and study visit of legal advisers of the Constitutional Court of Serbia

Fourteen judges of the Supreme Court of "the former Yugoslav Republic of Macedonia" and 11 legal advisers of the Constitutional Court of Serbia participated in an intense 3-day programme, which included lectures on the activities of the Council of Europe in the field of human rights and legal co-operation, lectures devoted to the activity of the Court and specific Convention issues, with a focus on problems relevant to the countries in question, a visit to the Court and attendance of the Grand Chamber's hearing of the case *Kononov v. Latvia*.

Vladimir, Russian Federation, 25-26 May

Awareness-raising seminar for lawyers, judges, prosecutors and representatives of the Federal service of the execution of judgments on Council of Europe human rights standards and on alternative sanctions

The Council of Europe and national consultants introduced ECHR general issues, as well as articles of particular interest to the Russian legal profession: Articles 3 (prohibition of torture), 5 (protection of liberty and security) and 6 (fair trial guarantees), 9 (freedom of religion), 10 (freedom of expression), 11 (freedom of assembly) of the ECHR.

In-depth seminar for prosecutors, who are national ECHR trainers, on how to conduct an effective investigation of allegations of ill-treatment in line with European standards.

The seminar was organised in co-operation with the Office of the Prosecutor General of Ukraine (http://www.gpu.gov.ua) and the Association of Prosecutors of Ukraine (http://www.uap.org.ua) under the Council of Europe/EC joint programme "Combating ill-treatment and impunity". The seminar highlighted the relevant standards developed in the jurisprudence of the Court and the findings of the European Committee for the Prevention of Torture (CPT) and the Council of Europe Commissioner for Human Rights. This seminar will be followed by a series of cascade seminars for prosecutors in the regions. This series is planned for autumn 2009 and will follow the same organisational and logistical format which was successfully implemented in the course of the previous Council of Europe/EC joint programme "Fostering a Culture of Human Rights".

Kyiv, Ukraine, 4-5 June

Special thematic session for lawyers on the 60th anniversary of the Council of Europe and Article 6 of the ECHR in the framework of the VI Annual Congress of the Ukrainian Bar Association held on 10-13 June

The training session focused on the 60th anniversary of the Council of Europe and its extensive training activities and Article 6 of the ECHR. It provided an insight into the relevant standard-setting case-law of the Court, as well as the case-law in Ukraine. The participants exchanged their past and ongoing experience in a variety of cases in the course of judicial proceedings.

Lviv, Ukraine, 11-12 June

Thematic seminar on the ECHR for lawyers

The purpose of these seminars was to inform the participants on the ECHR and the mechanism of the Court. Council of Europe and national consultants made presentations on ECHR issues. In particular, general issues of the ECHR system were discussed: the structure of the Court, the processing of an application, admissibility criteria and execution of judgments of the Court as well as general principles on the interpretation of the ECHR. Furthermore, Council of Europe and national consultants focused on Articles 5 (protection of liberty and security) and 6 (fair trial guarantees) of the ECHR. Additionally, relevant case-law against Russia under Articles 2 (right to life), 3 (prohibition of torture), 8 (respect to private and family life), 9 (freedom of religion), 10 (freedom of expression), 11 (freedom of assembly) of the ECHR and Article 1 of Protocol No. 1 to the ECHR (right to property) were discussed.

Pyatigorsk, Russian Federation, 18-19 June

Seminar on Articles 9 and 14 of the Convention and on Protocol 12 to the Convention within the framework of the project "Support to the Constitutional Court of Serbia to effectively implement the European human rights standards at the domestic level"

The seminar on Articles 9 and 14 and on Protocol No. 12 to the Convention were organised within the framework of the project "Support to the Constitutional Court to effectively implement the European human rights standards at the domestic level", financed by a voluntary contribution of the Government of the Netherlands. The seminar, covering Articles 9 and 14, was carried out by two Court lawyers and involved a theoretical part and a practical case study.

Belgrade, Serbia, 29 June

Two 1-day seminars on Article 9 of the Convention and the execution of judgments for judges, organised with the National Institute of Justice (NIJ) in Moldova

Two 1-day seminars on Article 9 of the Convention and the execution of judgements were organised for Moldovan judges of courts of first and second instance in co-operation with the NIJ of the Republic of Moldova. The Council of Europe's experts from the execution department explored the most urgent problems regarding Article 9 of the Convention and the problems in respect of the timely and full execution of judgments.

Chisinau, Moldova, 29-30 June

Two-day seminar on Articles 2 and 3 of the Convention for lawyers, organised with the Moldovan Bar Association in Moldova

The seminar was aimed at familiarising lawyers with the relevant provisions and the case-law of the Court and to provide guidelines on how to examine potential cases of violations of

Chisinau, Moldova, 29-30 June

Articles 2 and 3 and how to bring such cases before the Court.

Training and awareness-raising activities on human rights for civil society representatives

Tbilisi, Georgia, 13-14 March

Second workshop on rights of persons with disabilities for staff of the Public Defender's Office of Georgia (PDO)

The aim of the workshop was to train PDO staff on European human rights standards relating to the rights of persons with disabilities. As the second workshop of this type, its focus was on the main European and international conventions and documents that regulate the specific field of disability.

Bucharest, Romania, 16-20 March

Training workshop for the staff of the Moldovan Ministry of Justice in legal drafting techniques

The objective of this activity was to provide the Ministry of Justice staff with first-hand experience on legal drafting techniques and procedure, as applied in Romania. Five civil servants participated on behalf of the Moldovan Ministry of Justice, representing the Department for Legal Drafting, as well as the Head of the Department for Legal Approximation. The training programme included theoretical presentations and visits to different departments of the Romanian Ministry of Justice, the National Institute of Magistracy, and the Parliament.

Tbilisi, Georgia, 4-5 April

Thematic seminar for judges' legal assistants on the ECHR

The seminar was organised in co-operation with the High School of Justice of Georgia under the Council of Europe's Denmark's Caucasus Programme 2008-2009 "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia, Improving the Capacity of Judicial System of Georgia". The seminar was held on the premises of the High School of Justice of Georgia for a group of judges' legal assistants. The seminar highlighted the ECHR substantive provisions and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law of the ECHR.

Kyiv, Ukraine, 4-7 April

Training seminar on International and European Standards of Human Rights Protection for civil society representatives from Belarus

The activity brought together around 30 human rights activists from Belarus to discuss the fundamental principles of the ECHR, selected case-law and the functioning of the Court. The majority of the participants were learning for the first time about the Council of Europe, the ECHR and the Court and found the activity useful and instructive. Case studies developed on the basis of the Court were particularly challenging for the participants. Everyone expressed hope for the continuation of such training in the future.

Tbilisi, Georgia, 11-12 April

Thematic seminar for acting judges on the ECHR

The seminar was organised in co-operation with the High School of Justice of Georgia under the Council of Europe's Denmark's Caucasus Programme 2008-2009 "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia, Improving the Capacity of Judicial System of Georgia". The seminar was held on the premises of the High School of Justice of Georgia for a group of judges. The seminar highlighted the ECHR substantive provisions and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law of the ECHR.

Strasbourg, France, 23-24 April

Study visit of the representatives of the Office of the Government Agent of "the former Yugoslav Republic of Macedonia"

In addition to a series of meetings at the Court, the visitors were given an opportunity to obtain first-hand information on various Council of Europe instruments and to meet colleagues in the various Council of Europe departments, such as the secretariats of the European Committee for the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI), the Framework Convention for the Protection of National Minorities (FCNM), the European Social Charter (ESC), the Parlimentary Assembly (PACE). As a follow-up to this visit, a subject specific training seminar on selected substantive articles of the ECHR is planned in Skopje later in 2009.

Second workshop on investigation and reporting techniques involving people with disabilities for lawyers of the Public Defender's Office (PDO) of Georgia

The aim of the workshop was to train PDO staff on European human rights standards relating to the rights of persons with disabilities. As the second workshop of this type, its focus was on the main European and international conventions and documents that regulate the specific field of disability. The workshop on monitoring and reporting techniques involving people with disabilities was organised for the lawyers of the PDO of Georgia. The first day of theoretical training took place in Tbilisi, at the Public Defender's Office, the second and third days of the workshop were dedicated to the practical monitoring of two closed institutions – the Gldani psychiatric house in Tbilisi and the Bodbe childcare institution in Kakheti, East Georgia.

Tbilisi/ Kakheti, Georgia, 27-29 April

Study visit of the representatives of the Office of the Representative of the Russian Federation to the European Court of Human Rights

During the visit, a comprehensive overview of the essential legal instruments of the Council of Europe was provided to participants. Participants were given detailed information about the work of the secretariats of the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI), the Framework Convention for the Protection of National Minorities (FCNM), the European Social Charter (ESC), the Parlimentary Assembly (PACE). They were also able to hold substantive discussions with the Department for the Supervision of the Execution of the Court's Judgments. A follow-up to this visit is currently being discussed.

Strasbourg, France, 28-29 April

Thematic seminar for judges' legal assistants on ECHR

The seminar was organised in co-operation with the High School of Justice of Georgia under the Council of Europe's Denmark's Caucasus Programme 2008-2009 "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia, Improving the Capacity of Judicial System of Georgia". The seminar was held on the premises of the High School of Justice of Georgia for a group of judges' legal assistants. The seminar highlighted the ECHR substantive provisions and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law of the ECHR.

Tbilisi, Georgia, 16-17 May

Study visit for judges and prosecutors on judiciary-related matters to the Ministry of Justice and the Superior Council of the Magistracy of Italy

The study visit was organised in order to provide first-hand experience of another European jurisdiction on self-administration and independence of the judiciary, access to judicial posts, initial/continuous training, promotion and discipline of judges and prosecutors. The visit included a 1-day introductory seminar on the judicial organisation and administration in Italy; a 1-day visit to the Superior Council of the Magistracy of Italy and a half-day visit to the Ministry of Justice of Italy. The presentations on the first day included subjects such as the judiciary within the Italian legal order, the guarantees of the autonomy and independence of the judiciary in general and of the judges in particular, and an outline of the various bodies of the judiciary. The selection, initial and continuous training of judges, assessment and career prospects of judges, salary, extra-judicial activities were also covered.

Rome, Italy, 3-5 June

Thematic seminar for acting judges on ECHR

The seminar was organised in co-operation with the High School of Justice of Georgia under the Council of Europe's Denmark's Caucasus Programme 2008-2009 "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia, Improving the Capacity of Judicial System of Georgia". The seminar was held at the premises of the High School of Justice of Georgia for a group of judges. The seminar highlighted the substantive provisions of the ECHR and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law of the European Convention of Human Rights.

Tbilisi, Georgia, 6-7 June

Two training seminars for Moldovan judges and prosecutors on the ECHR and the execution of judgments of the Court

At the request of the Ministry of Justice and the National Institute of Justice, Council of Europe experts carried out an in-depth training for about 50 judges and prosecutors. The agenda of the training included: general overview of

Chisinau, Moldova, 29-30 June

Article 9 of the ECHR – principles, interpretation, protection of connected rights; application of Article 9 of the Convention – practical analysis of sample cases; execution of judgments of the Court – general overview; execution of judgments in respect of Article 9 of the ECHR. The training was of an interactive nature, presentations being followed by discussions between the experts and the participants and case studies.

Chisinau, Moldova, 29-30 June

Training seminars for Moldovan lawyers on Article 2 (the right to life) and Article 3 (prohibition of torture) of the ECHR

Bearing in mind the introduction of a new system of state-guaranteed legal aid, as well as alleged frequent human rights violations by law enforcement agencies, the Council of Europe/EC joint programme intended to focus on providing high-quality training on ECHR matters. The training agenda included: general overview of Articles 2 and 3 of the ECHR, and the importance of the provision in the Convention's systems; application of Articles 2 and 13 of the Convention; application of Articles 3 and 13 of the Convention. The training had was of an interactive nature, presentations being followed by case studies, discussions, questions and answers, practical information and opinions. After a thorough introduction into the doctrine and case-law, Council of Europe experts divided the 35 participants into smaller groups. Test cases were solved from the viewpoint of different parties (government, applicant). Participants were also informed of the formal criteria which have to be observed when filing a case before the Court.

Training and awareness-raising activities in the field of prisons and police

Moscow, Russian Federation, 21-22 April

Seminar for prison staff from the Chechen Republic on the specific requirements related to the treatment of long-term and life-sentenced prisoners

Participants from the Chechen prison administration and directors of prison facilities were familiarised with international prison standards, in particular, with the European prison rules. The topics discussed included the treatment of long-term and life-sentenced prisoners, specific rules concerning sentence planning, risk and needs assessment, security and safety of special categories of prisoners and rehabilitation, preparation for release and counteracting the damaging effects of long-term imprisonment.

Baku, Azerbaijan, 4-5 May

Third training session for trainers covering Articles 3, 5 and 8 of the ECHR

The session aimed at providing further training to the selected group of trainers on how to disseminate their knowledge of the ECHR and the European Committee for the Prevention of Torture (CPT) standards to other prison staff. During the session the trainers were familiarised with the procedural aspect of Article 3 of the ECHR, the role of the penitentiary administrations and the corresponding provisions of the CPT standards, the right to liberty and security (Article 5 of the ECHR) as well as the right to respect for private and family life (Article 8 of the ECHR).

Baku, Azerbaijan, 11-12 May

Training seminar on providing assistance to prisoners with drug-related problems

The seminar provided training to prison medical staff on how to organise health-care provision relating to drug use and addiction, establish therapeutic programmes for drug users, develop initial and in-service training for medical and prison personnel providing care to drug-using prisoners, organise health care and social programmes, the preparation of drug-using prisoners for release and follow-up therapy upon their reintegration into the community.

Moscow, Russian Federation, 19-20 May

Training seminar for prison staff from the Chechen Republic on the provision of psychiatric and psychological care for prisoners

Health-care staff from prisons in the Chechen Republic learned about the principles and standards of the Council of Europe and the European Committe for the Prevention of Torture (CPT) regarding medical ethics and the provision of mental health care in prison, correctional psychiatry (psychiatric symptoms, mental disturbance and major personality disorders), mental health promotion and suicide prevention in prison, how to manage hunger strikes, the treatment of vulnerable prisoner groups and about the professional training of

prison health care staff. The topics of the group discussions were medical confidentiality and equivalence of care, application of human rights and medical ethics in prison health care.

Round-table meeting to support the training centre for prison staff to improve the curricula for initial and in-service training

Yerevan, Armenia, 20-21 May

The aim of the meeting was to assist the staff of the training centre for prison staff in improving the curricula for initial and in-service training of prison staff and to develop necessary curricula for the training of probation staff. The standards contained in the recommendations of the Committee of Ministers of the Council of Europe, especially Rec(97)12 on staff concerned with the implementation of sanctions and measures, as well as the best European practice in terms of the recruitment and training of prison and probation staff, were examined during the meeting by the Council of Europe experts and the participants.

Training seminar on providing education on contagious diseases in prison

Baku, Azerbaijan, 25-26 May

The aim of the seminar was to elaborate on the organisational aspects of health care provision regarding contagious diseases in prisons based on the standards of the Council of Europe and the European Committee for the Prevention of Torture (CPT) in relation to the prevention and treatment of contagious diseases in prison, medical examination on admission, medical consultation and documentation, prevention of the spread of tuberculosis, HIV/Aids and hepatitis B/C in prison and education regarding contagious diseases.

Workshop on personality and risk assessment of the convicted sex offenders upon their admission to a penitentiary institution

Skopje, "the former Yugoslav Republic of Macedonia", 27-28 May

The aim was to train the target group on how to deal with this category of vulnerable prisoners and to present different national practices in the field, to study a specially designed programme on how to assess risks and needs of this category of prisoners. The participants had a strong understanding of the issues and practical knowledge of how to deal with sex offenders. The experts focused on studying practical situations from their own experience.

Opening conference of the Council of Europe/EC joint programme on "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey"

Ankara, Turkey, 5 June

An opening conference was held to mark the launch of the project, to inform the wider public and relevant stakeholders and to ensure the visibility of the project. The conference was held under the auspices of the Minister of Justice who was personally present at the conference. In his speech the Director General of the Directorate General of Prisons and Detention Houses (DGPDH) emphasised the full commitment of the Ministry of Justice and the DGPDH to the successful implementation of the project and highlighted the significance of the project for the sustainability of the results of the previous Judicial Modernisation and Penal Reform in Turkey project. The Central Finance and Contracts Unit of Turkey underlined its significant role as the contracting authority and reported that the procedures regarding the purchase of equipment for 90 prisons is scheduled to be completed by the end of the year. The Council of Europe briefly informed the participants of the projects it had implemented so far in Turkey and expressed the Council of Europe's appreciation for the remarkable progress observed in Turkey in the field of prison reform. The EC Delegation to Turkey expressed its satisfaction with the successful launch of this very important project and highlighted the potential contribution of the project's results in the context of Turkey's prospective EU membership. The Minister of Justice explained the measures taken by the government for the successful implementation and sustainability of the prison reform and underlined the political commitment of Turkey to meet EU membership criteria in the field of justice, freedom and security. The press and media observed the conference which contributed positively to the visibility of the project. News about the conference was featured on the same day on TV channels and the next day in various national newspapers and Internet websites and news portals.

Round table to support prison service staff in improving the curricula for initial and in-service training in Moldova

Chisinau, Moldova, 23-24 June

The objective of the meeting was to assess training programmes provided by the training centre in Moldova, improve their content in

line with European standards, for example the European prison rules, ECHR and relevant recommendations of the Committee of Ministers. The round table brought together specialists from the Moldovan training centre and the human resources department and enabled them to discuss existing training programmes. Recommendations on their improvement were provided by the experts. Special emphasis was put on programmes concerning human rights, the use of force and the rehabilitation of prisoners.

Chisinau, Moldova, 25-26 June

Training seminar on improving the health care system in prisons in Moldova

The aim of the training seminar was to assess the health care provision in prisons and to formulate recommendations to assist the Department of Penitentiary Institutions in Moldova to make necessary improvements in the organisation of health care in prison, in line with the relevant recommendations of the Committee of Ministers of the Council of Europe. Through their presentations, the experts addressed the needs of the medical service in the Moldovan prison system. Special emphasis was put on ethics and medical problems with drug users, HIV infected and mentally ill prisoners. The national tuberculosis treatment programme was discussed with the experts. Some legal issues related to health care were also discussed. The experts studied the Moldovan practice regarding needle exchange for drug addicts. Following the seminar, the experts provided their recommendations to the authorities in order to assist them in making the necessary improvements related to health care provision in prisons.

Baku, Azerbaijan, 29-30 June

First cascade training session for staff working with young offenders

The aim of the session was to develop the trainers' capacities and skills to disseminate to prison staff the standards of the European prison rules and the Committee of Ministers of the Council of Europe Recommendation (2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures. The presentations of the trainers covered the main issues related to juvenile offenders: deprivation of liberty, legal advice and assistance, complaints procedure, inspection and monitoring, training of specialist staff, work, education, exercise, recreation and release.

Yerevan, Armenia, 27-28 May

Refresher training sessions for the national trainers established under previous projects on the current development in human rights standards in prisons

The purpose of these sessions was to refresh the knowledge and training skills of national trainers, as well as to provide them with guidance on how to improve their presentations to colleagues using practical examples.

The training of trainers on the subject of human rights in prisons, as the second project objective, focused on the practical skills of the national training team. Their work was based on the revised Training Manual on Human Rights for prison staff prepared under the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) Regional Project, the joint programme funded by the EC and co-financed by the Council of Europe entitled "Development of a reliable and functioning prison system respecting fundamental rights and standards, and enhancing of regional co-operation in the Western Balkans". The short-term consultants engaged in this objective provided examples from the Court's jurisprudence and national practices. The trainers' work focused on further improving their presentation and training skills, based on the comments received from their peers during the practical training exercises.

Training and awareness-raising activities in the field of media

Kyiv, Ukraine, 2 March

Expert meeting on"Best practices in regard to the regulation of foreign channels on a country's cable network"

The meeting contributed to consensus building between the media regulator and professional associations of cable operators and broadcasters by familiarizing both parties with the European standards for transfrontier television broadcasting now coming into play in Ukraine, due to the recent ratification of the European Convention on Transfrontier Television (ECTT). The event resulted in a number of conclusions developed by the participants on the basis of the experts' input.

The independence, functions and responsibilities of the Observers Council of Teleradio Gagauzia

This workshop, the first of its kind, brought together members of the Observers Council and of the management of Teleradio Gagauzia (regional public-service broadcasting station), representatives of the regional authorities and of civil society, the Chairman of the National Broadcasting Co-ordinating Council of Moldova, the Governor of Gagauzia and his councillor as well as Teleradio Gagauzia journalists. The aim of the workshop was to promote the independence and the effective functioning of Teleradio Gagauzia's Observers Council in order to guarantee the diversity and pluralism of the regional public-service broadcasting system. The participants discussed the three main principles of public-service broadcasting - independence, transparency and accountability – and looked at possible legal and practical approaches to apply these principles to Teleradio Gagauzia. The workshop was followed on 4 and 5 March by a training session for journalists and managers from Teleradio Gagauzia on the responsibilities and performance of media professionals working in public-service broadcasting. Representatives of the regional authorities and members of the Observers Council also took part.

Comrat, Autonomous Territorial Administrative Unit Gagauzia, 3 March

Seminar on the implementation of the European Convention on Transfrontier Television in Ukraine (ECTT)

The seminar sought to identify the gaps in Ukrainian legislation that need to be bridged to meet the requirements of the Convention and to familiarise the Ukrainian stakeholders with the work of the ECTT. As a result of the discussion, the participating members of the Parliament agreed to take into account the information provided by the experts as regards the changes to Ukrainian legislation needed, to bring it in compliance with the requirements of the Convention.

Kyiv, Ukraine, 17 March

Workshop on a Georgian code of journalistic ethics
Assistance for the drafting of a Georgian charter of journalistic ethics
Seminar on the Georgian charter of journalistic ethics

The three events were part of the ongoing assistance provided by the Council of Europe to Georgian media professionals to draft and implement a code of journalistic ethics. In Paris, international experts and representatives of the Georgian NGO "Civic Development Institute" drafted a charter of journalistic ethics based on the International Federation of Journalists (IFJ) Declaration of Principles on the Conduct of Journalists and on the Declaration of the Rights and Duties of Journalists adopted in Munich in 1971. The draft will then be introduced to journalists in 12 cities throughout Georgia before being reviewed and discussed at a seminar to be held in Tbilisi in mid-June. The adoption of the final version of the charter is due to take place in September 2009.

- Paris, France, 22-23 April
- Georgia, 8-16 June
- Tbilisi, Georgia, 17-18 June

Conference on the regulation of online media

Public officials, media professionals and representatives of internet service providers and hosting companies discussed with Council of Europe experts the state of the online media sector in Azerbaijan and whether it needs to be regulated in a different manner than traditional media. Bringing together all major stakeholders, the conference opened up a public dialogue on how to apply established European standards concerning freedom of expression to the new media environment.

Baku, Azerbaijan, 4 June

Round table on broadcasting legislation

Members of parliament, of the National Television and Radio Council and managers of broadcasting companies attended the round-table. The debates focused on the role of broadcasting regulatory authorities in promoting the development of a diverse TV landscape. Recent amendments to the Law on Television and Radio Broadcasting of the Republic of Azerbaijan were also discussed as well as the future revised European Convention on Transfrontier Television. The participants supported the idea for further public debates on media-related legislation and on how the revised Convention would affect it should Azerbaijan decide to join.

Baku, Azerbaijan, 5 June

Expert seminar on principles for financial support during the period of transition from analogue to digital broadcasting

The participants discussed with international experts various options for financing the transition to from analogue to digital broadcasting. The seminar identified many of the changes to

Kyiv, Ukraine, 15 June

the broadcasters' practice that have to be done in order to successfully make the transition from analogue to digital broadcasting.

Paris, France, 24-25 June

Study visit to the French audiovisual regulatory body for members of the Moldovan Audiovisual Co-ordinating Council

Four members of the Moldovan Audiovisual Co-ordinating Council (CCA) exchanged views with their French counterparts on the mandate of the French audiovisual regulatory body (*Conseil supérieur de l'audiovisuel (CSA)*), the pluralism in news programmes, the transition from terrestrial to digital television and on-demand media services. In addition to the CSA, the delegation visited "France Télévisions", the French public service broadcaster. The members met with the person in charge of the internal monitoring of the news programmes and visited the various studios. The visit facilitated the exchange of views on the mandate of audiovisual regulatory bodies in general and on the French practices in particular, with a special focus on the promotion and respect of pluralism in the media within and outside pre-electoral campaigns.

Internet: http://www.Council of Europe.int/awareness/

Media and Information Society

For many years, the Council of Europe has consistently developed standards to defend, promote and maintain freedom of expression and freedom of the media, in accordance with Article 10 of the ECHR. The recent and ongoing developments in the information society are rapidly changing the media landscape. New issues arise partly resulting from the new technical and social environments, there are new actors and new opportunities, but also new threats. Attentive to its evolving context, the Council of Europe is engaged in an important work regarding new media, which is being performed through innovative working methods.

Texts and instruments

Main events

Workshop on evaluation and implementation of human rights guidelines for online games providers and Internet service providers

6 May 2009, Strasbourg

Organised by the Council of Europe, the European Internet Service Providers Association (EuroISPA) and the Interactive Software Federation of Europe (ISFE), the workshop brought together representatives from Internet service providers and online game providers to discuss the effectiveness of the guidelines to promote human rights in their work, particularly in the take-up by providers and their implementation. These guidelines, issued in 2008, were the result of an intense and fruitful co-operation between the Council of Europe and both professional organisations. Eight months on, the guidelines are by and large considered to be a source of reference or inspiration whenever needed in the process of content creation or distribution and a unique tool for awareness raising. They are deemed to be more effective than rules and regulations at providing a flexible and dynamic means upon which to establish co-operation and dialogue between different stakeholder groups including the private sector and governments. Suggestions were made for steps to further enhance their practical significance and implications for online games providers and ISPs, which could usefully include practical responses to a range of daily situations that EuroISPA and ISFE members face, as well as compiling best practices and developing training (capacity building) for trainers.

Forum on anti-terrorism legislation in Europe

27 May 2009, Reykjavik

The aim of the forum was to organise an exchange of views and information on the impact of anti-terrorism legislation and its impact on freedom of expression and information in Europe. Representatives from the media, civil society, national authorities and independent experts discussed the observance, in law and in practice, of Council of Europe standards on the rights to freedom of expression and information in the context of the fight against terrorism. Organised in co-operation with the Dutch Ministry of Education, Culture and Science and the Institute for Information Law of the University of Amsterdam and with the support of the Icelandic Ministry of Education, Science and Culture, the forum followed a conference organised in Amsterdam in November 2008 on anti-terrorism legislation in Europe since 2001 and its impact on freedom of expression and information .

28-29 May 2009, Reykjavik

1st Council of Europe Conference on media and new communication services

The texts adopted can be seen on the following website: http://www.coe.int/t/dghl/standard-setting/media/default_FR.asp

Facing technology developments and the media–related changes they trigger in society, the Council of Europe decided to address fundamental questions that will set the working direction for the coming years to meet the new challenges. Convinced that democracy does not exist without free, independent and diverse media but that the social, cultural and technological changes that are occurring today have a dramatic impact on the media, the Conference addressed several fundamental questions, such as: *What is media today? How can we approach digital, convergent media, but also media created by new actors or media-like activities performed by non-traditional media actors? How do media integrate and apply democratic values and principles related to the individuals and communities? Is there a need for new specific standards?*

Conference debates

The Conference gave Ministers and senior government officials the opportunity to exchange their views on the following themes: *New media – new regulations?; Trust the content – trust the media?; Relations of the media with the individual and with the community(ies)*. They were able to hear views expressed by internationally recognized experts and various actors of the new media sector but also representatives of youth and of civil society. Prior to the conference, representatives of youth organisations met for a two-day event and international non-governmental organisations held a forum in Paris on 5 May.

Given the very nature of the theme, it was important to include a wide range of stakeholders in the discussions. Panel discussions were therefore organised in parallel to the Ministerial Conference with representatives of the media, of the new media industry, of civil society and of youth, in order to apply a multi-stakeholder approach. The conclusions of the discussions were then reported to the conference, enabling government representatives to gain first-hand knowledge of the preoccupation of all those concerned, from the service providers to the end users. The themes of the panels were: *Trust the content – trust the Media?; Media and new communication services and the individual; New media and media-like services, an opportunity for freedom of expression or a challenge to privacy and other rights.*

Opening of the Conference

The main outcome of the conference was the adoption of a political declaration, of two resolutions (towards a new notion of media, Internet governance and critical Internet resources*)* as well as an action plan. These documents set out directions for Council of Europe work in that field for the next years.

Ministers and heads of delegations surrounding the Icelandic Minister of Education, Science and Culture, Katrin Jakobsdottir and the Director General of Human Rights and Legal Affairs of the Council of Europe, Philippe Boillat

A further resolution was adopted on Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information, in which members states "Resolve to review (...) national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case-law of the European Court of Human Rights".

Revision of the European Convention on Transfrontier Television

During its 44th meeting on 11 and 12 June, the Standing Committee on Transfrontier Television finalised work on the text of a second amending protocol to the European Convention on Transfrontier Television. The draft protocol, which would change the title of the Convention to "Council of Europe Convention on transfrontier audiovisual media services", aims, in particular, to extend the scope of the Convention to on-demand services and to harmonise its content with the Audiovisual Media Services Directive of the European Union. The draft protocol will be considered by the Committee of Ministers during one of its upcoming autumn sessions and opened for signature.

The Standing committee celebrates the revision

Publications

Living together

A reference tool on Council of Europe standards on the contribution of the media to harmonious living among different communities and groups in a democratic society. Faced with challenges of multiculturalism, technology and fast-paced modern communication, it is necessary to build bridges, crossroads and links among cultures, traditions and lifestyles. Edited by Yasha Lange.

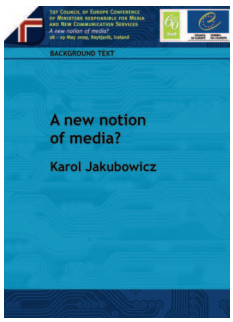
Available in print format (ref. 667-SVP) and online in pdf format(http://www.coe.int/t/dghl/standardsetting/media/Doc/Publications_en.asp)

A new notion of media? by Karol Jakubowicz

Social and cultural change, as well as technological change (including particularly digitisation and convergence) are fundamentally transforming the media. New communication services and new media are in an intermediate phase of development, where their features and uses, as well as the opportunities and potential dangers associated with them, have not yet been fully explored.

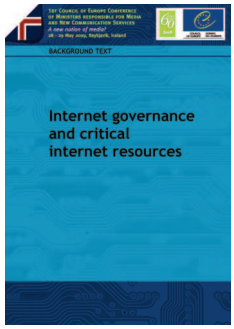
This report, prepared as a background document for the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, contributes to the discussion on the media today.

Available in print format (ref. 664-SVP) and online in pdf format (http://www.coe.int/t/dghl/standardsetting/media/Doc/Publications_en.asp)



Internet governance and critical Internet resources

Internet has the potential to improve our quality of life, in particular our economic, social and cultural development, and our democratic citizenship. The Internet's openness and accessibility have become preconditions for the enjoyment of fundamental rights. The potential for us all to develop and improve the quality of our lives will be limited unless we make the Internet sustainable, robust, secure and stable. The stability, security and ongoing functioning of the Internet depend on critical Internet resources and their management, including the root name servers, the backbone structures, the domain name system and Internet protocols. Critical Internet resources are managed by various entities, without any common governance approach. There are several issues related to critical Internet resources which often have transboundary implications and which need to be addressed in order to protect freedom of expression and information (Article 10, ECHR). The Council of Europe therefore has an important part to play in guaranteeing the protection of its values and standards on human rights, democracy and rule of law through Internet governance. Report prepared as a background document for the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services.



Available in print format (ref. 666-SVP) and online in pdf format (http://www.coe.int/t/dghl/standardsetting/media/Doc/Publications_en.asp)

Public service media governance: looking to the future

This report analyses the issues to be addressed by public service media in order to better fulfil their remit in an environment under thorough technological and socio-cultural transformation: public service remit and its possible adaptation to the new digital environment; strategies to be elaborated in order to facilitate solving problems that PSM currently face; and governance models in diverse public and private sectors, in order to foster reflections on possible alternative governance models for public service media.

Report prepared as a background document for the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services.

Available in print format (ref 665-SVP) and online in pdf format (http://www.coe.int/t/dghl/standardsetting/media/Doc/Publications_en.asp)

Perspectives for the future

New groups for the Steering Committee on Media and New Communication Services (CDMC)

The 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (28-29 May 2009) gave the Steering Committee on Media and New Communication Services (CDMC) a new action plan. In consequence, new CDMC subordinate bodies have been set up which will carry on work in light of the action plan and the other operative parts of the Reykjavik political texts. A group of specialists on new media (MC-NM) will work on the definition of new media and their practical consequences in terms of Council of Europe standard-setting. An ad hoc Advisory Group on Public Service Media Governance (MC-S-PG) will prepare an innovative policy document on new governance models to ensure the continued effectiveness and independence of public service media. An ad hoc Advisory Group on Cross-border Internet (MC-S-CI) will examine the feasibility of and, if appropriate, prepare the first international legal instruments designed to protect critical Internet resources and the cross-border flow of Internet traffic. An ad hoc Advisory Group on the protection of neighbouring rights of broadcasting organisations (MC-S-NR) will be tasked with establishing the first international legal instrument on this subject.

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

Legal Co-operation

European Committee on Crime Problems (CDPC)

Set up in 1958, the European Committee on Crime Problems (CDPC) was entrusted by the Committee of Ministers the responsibility for overseeing and co-ordinating the Council of Europe's activities in the field of crime prevention and crime control. The CDPC identifies priorities for intergovernmental legal co-operation, makes proposals to the Committee of Ministers on activities in the fields of criminal law and procedure, criminology and penology, and implements these activities. It elaborates conventions, agreements, recommendations and reports. It organises criminological research conferences and criminological colloquia, conferences of directors of prison administration.

Violence against women and domestic violence

The Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO) held its first meeting on 6-8 April and its second meeting on 25-27 May 2009.

At its second meeting, CAHVIO adopted an interim report in which the committee states that it is of the opinion that the focus of the future convention should be on the elimination of violence against women. Furthermore, the future convention should deal with domestic violence which affects women disproportionally. The convention should also allow for the application of its provisions to all victims of domestic violence.

The committee agreed that criminal offences are to be defined precisely and, in principle, presented in a gender-neutral manner.

It agreed that, as a matter of principle, one single convention should be drafted, but considered that in addition to that instrument, other possible legal instruments could be prepared at a later stage, if appropriate.

The committee is of the opinion that a strong and independent monitoring mechanism is of utmost importance to ensure that an adequate response to this problem is given in all State Parties to the Convention.

Finally, the committee favours a comprehensive convention which would cover the three "Ps" (Prevention, Protection of victims and Prosecution of perpetrators) and which would be framed in comprehensive, integrated and co-ordinated policies.

The committee will start its drafting work and will hold four further meetings in 2009-2010 to finalise the draft convention.

29th Council of Europe Conference of Ministers of Justice

The 29th Council of Europe Conference of Ministers of Justice took place in Tromsø, Norway, on 18-19 June. The theme was "Breaking the silence – united against domestic violence".

The Deputy Secretary General of the Council of Europe, Ms Maud de Boer-Buquicchio, opened the Conference. Opening speeches were made by the Minister of Justice of Norway, Mr Knut Storberget, the Deputy Secretary General of the Council of Europe, Ms Maud de Boer-Buquicchio, the Minister of Justice of Slovenia on behalf of the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, Mr Aleš Zalar, the Representative of the Parliamentary Assembly of the Council of Europe, Ms Carina Hägg, the Minister of Justice of the Czech Republic on behalf of the Czech

Presidency of the Council of the European Union, Ms Daniela Kovářová, and Deputy Secretary-General of the United Nations, Ms Asha-Rose Migiro.

At the invitation of the Minister of Justice of Norway, the Norwegian rap group "Tonna Brix" gave the Ministers an encouraging insight into the struggle of young adults to get back on their feet after having been victims of domestic violence. Their video clip and performance, presented in primary schools in Norway is an example of good practice on how to break the silence among children suffering from domestic violence and helping them to speak out. During the conference, video clips from member states on domestic violence where shown.

The ministers underlined that domestic violence has long been met with public and political silence, being barely visible in the legal system and seldom recognised as a serious crime and violation of fundamental human rights. Domestic violence takes place behind closed doors. It mostly involves close partners and former partners, and also takes place within same sex relationships. While men as well as children can be affected, most of the victims of domestic violence are women. In this context, the recent judgment of the European Court of Human Rights in the Opuz case (judgment of 9 June 2009) was highlighted as a landmark case. The Court found that the respondent state, by failing to protect the victims from domestic violence, violated Articles 2 (protection of life), 3 (prohibition of torture, inhuman or degrading treatment or punishment), and 14 (guarantee of non-discrimination) of the Convention. It underlined that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

The ministers examined measures on how best to combat domestic violence through legislation and other measures. They underlined the necessity to promote a common approach to breaking the silence, and supporting and empowering the victims. In this context, the ministers welcomed the ongoing work undertaken by CAHVIO and called for a speedy completion of the work on a new convention.

Three resolutions were adopted by the ministers:

- Resolution No. 1 on preventing and responding to domestic violence;
- Resolution No. 2 on mutual assistance in criminal matters;
- Resolution No. 3 on Council of Europe action to promote the rule of law.

European Committee on Legal Co-operation (CDCJ)

Set up under the direct authority of the Committee of Ministers, the European Committee on Legal Co-operation (CDCJ) has, since 1963, been responsible for many areas of the legal activities of the Council of Europe. The achievements of the CDCJ are to be found, in particular, in the large number of Treaties and Recommendations which it has prepared for the Committee of Ministers. The CDCJ meets at the headquarters of the Council of Europe in Strasbourg (France). The governments of all member states may appoint members, entitled to vote on various matters discussed by the CDCJ.

Work on family law

38th plenary meeting (Strasbourg, 17-20 March 2009)

The Committee of Experts on Family Law (CJ-FA), a subordinate committee of the European Committee for Legal Co-operation (CDCJ), held its 38th plenary meeting from 17-20 March 2009. It approved, with minor amendments, the draft recommendation on principles concerning continuing powers of attorney and advance directives for incapacity as well as the draft recommendation on principles concerning missing persons and the presumption of death. Both texts shall be submitted to the CDCJ for approval on 6-8 October 2009, before being sent to the Committee of Ministers.

The CJ-FA also discussed its possible future work on a legal instrument on the legal status of children brought up in various marital and non-marital partnerships.

7th European Family Law Conference (Strasbourg, 16 March 2009)

The Public and Private Law Division also organised the 7th European Family Law Conference on 16 March 2009 in Strasbourg.

The conference aimed to raise awareness of practices existing worldwide in respect of international family mediation. Various eminent experts were invited to bring another vision on family mediation by sheding light on other forms of mediation. A specific session at the conference dealt with the training of international family mediators which is fundamental to the success of mediation.

The conference presented an excellent opportunity to discuss possible synergies between various international organisations active in this field within their respective mandates.

Work on nationality

Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession

The Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200) entered into force on 1 May 2009.

This convention builds upon the European Convention on Nationality (ETS No. 166) by developing more detailed rules to be applied by states with a view to preventing, or at least reducing to the extent possible, cases of statelessness arising from state succession. While regulating the obligations of the successor and predecessor states, the Convention on the Avoidance of Statelessness in relation to State Succession also clarifies the rights and duties of states only indirectly concerned in the state succession process, through the presence on their territory of nationals of one of the states involved.

Publications

Non-criminal remedies for crime victims

Statistics show that up to 1 in 4 European citizens have been victims of crime, making victimisation a daily phenomenon in Europe. Moreover, the threat of terrorism, as well as other forms of crime, has increased the need to improve the assistance available to victims.

It is essential to put victims at the very heart of the justice system. Victims should and need to be treated with the respect and dignity they deserve when coming into contact with justice, in particular so that they are safe from secondary victimisation.

This document contains the final report on non-criminal remedies for crime victims prepared by the Group of Specialists on remedies for crime victims (CJ-S-VICT) and adopted by the European Committee on Legal Cooperation (CDCJ) during its 83rd meeting on 4-6 June 2008.

Access to justice for migrants and asylum seekers in Europe

Jeremy McBride

Further to the 28th Conference of European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007), the Council of Europe has continued working on access to justice for migrants and asylum seekers.

This publication contains an assessment of the situation faced by this vulnerable category of persons in accessing justice. It deals in particular with the identification of measures – both existing and new – for facilitating and ensuring such access for these people.

Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/

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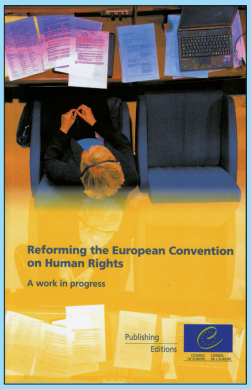
Reforming the European Convention on Human Rights:
A work in progress (2009)

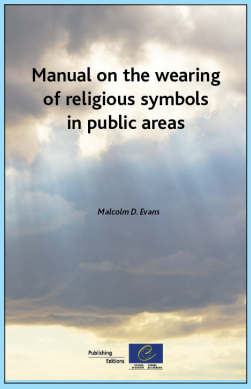
ISBN 978-92-871-6604-3, €69/US$138



This volume contains a record of the work to develop normative instruments following the European ministerial conference on human rights, meeting in Rome on the 50th anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms. High-level debates and round tables within working group and at seminars, organised mainly by the successive presidencies of the Committee of Ministers, have been instrumental to advancements, the most important of which has been the Protocol No. 14 to the Convention.

Manual on the wearing of religious symbols in public areas (2009)

ISBN 978-92-871-6616-6, €25/US$50

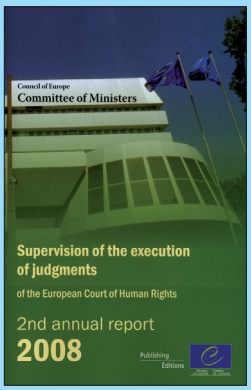


This manual explores how the European Convention on Human Rights relates to the freedom of thought, conscience and religion. For this purpose, the author first looks at a number of fundamental topics, including the 'visibility' of religions and beliefs in the public sphere, and the notion of 'wearing religious symbols'. The essential questions policy makers need to ask when addressing issues concerning the wearing of religious symbols are then listed. Finally, the manual seeks to apply these principles and approaches to a number of key areas such as state employment, schools and universities, the private sector and the criminal justice system.

Supervision of the execution of the judgments of the European Court of Human Rights - 2nd annual report 2008 (2009)

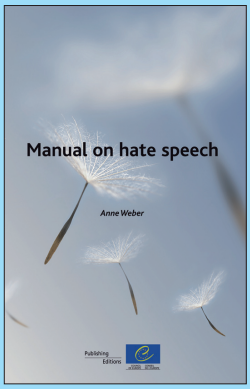
ISBN 978-92-871-6626-5, €39/US$78

This annual report presents the Committee of Ministers' activities in 2008 concerning the supervision of the execution of the judgments of the European Court of Human Rights. It underlines the very close links between good execution, the proper implementation of the European Convention on Human Rights in the Council of Europe's member states and the case-load of the European Court of Human Rights.



Manual on hate speech (2009)

ISBN 978-92-871-6614-2, €19/US$38



Identifying what constitutes "hate speech" is especially difficult because this type of speech does not necessarily involve the expression of hatred or feelings. On the basis of all the applicable texts on freedom of expression and the case-law of the European Court of Human Rights and other bodies, the author identifies certain parameters that make it possible to distinguish expressions which, although sometimes insulting, are fully protected by the right to freedom of expression from those which do not enjoy that protection.

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