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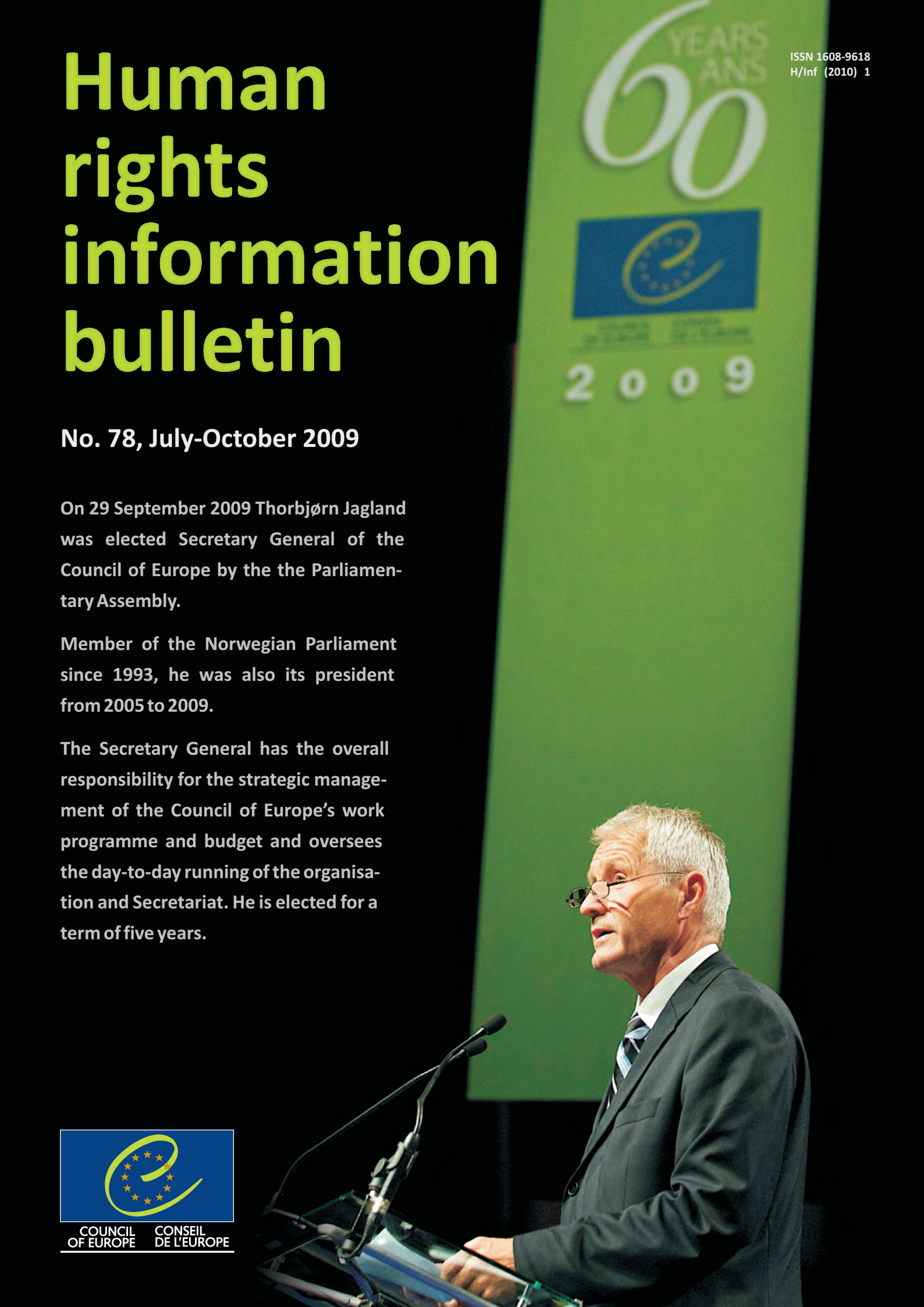
Human rights information bulletin

No. 78, July-October 2009

On 29 September 2009 Thorbjørn Jagland was elected Secretary General of the Council of Europe by the the Parliamentary Assembly.

Member of the Norwegian Parliament since 1993, he was also its president from 2005 to 2009.

The Secretary General has the overall responsibility for the strategic management of the Council of Europe's work programme and budget and oversees the day-to-day running of the organisation and Secretariat. He is elected for a term of five years.



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

No. 78, 1 July-31 October 2009

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European Convention on Human Rights

Protocol No. 4 to the European Convention on Human Rights securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto was ratified by Spain on 16 September 2009.

Protocol No. 7 to the European Convention on Human Rights was ratified by Spain on 16 September 2009.

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

The Protocol No. 14 bis was signed by:

- Austria (1 July 2009);
- Iceland without reservation (7 July 2009);
- "the Former Yugoslav Republic of Macedonia" (3 September 2009);
- Romania (15 September 2009);
- Poland (1 October 2009);
- Slovakia (7 October 2009) and
- Sweden (19 October 2009).

It was ratified by:

- Monaco and Slovenia (1 July 2009); and
- Georgia (1 September 2009).

The provisional application in its respect of certain provisions of Protocol No. 14 amending the control system of the Convention was accepted by:

- Belgium (29 July 2009);
- Estonia (30 July 2009);
- Liechtenstein (24 août 2009);
- Albania (16 Sepember 2009); and
- Spain (22 October 2009).

Protocol No. 14 bis entered into force on 1 October 2009.

European Social Charter

- *European Social Charter (revised)*

The European Social Charter (revised) was ratified by Serbia on 14 September 2009 and by Russia on 16 October 2009.

Council of Europe Convention on Access to Official Documents

The Council of Europe Convention on Access to Official Documents, adopted by the Committee of Ministers on 27 November 2008, was opened for signature and ratification by member states during the 29th Conference of the Council of Europe Ministers of Justice (Tromsø, Norway, 17-19 June 2009). On 18 June, 12 member states signed it and it will enter into force when it has been ratified by 10 states.

It was approved by Norway on 11 September 2009.

Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was ratified by Slovenia on 3 Sepember 2009.

Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

The Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems was ratified by Romania on 16 July 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 Luxembourg on 7 July 2009 and Slovakia on 9 September 2009.

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 July and 31 October 2009:

- 533 (738) judgments delivered
- 408 (567) applications declared admissible, of which 402 (561) in a judgment on the merits and 6 (6) in a separate decision
- 9 931 (10,003) applications declared inadmissible
- 398 (461) 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.

Mooren v. Germany

Judgment of 9 July 2009. Concerns: the applicant complained that the Court of Appeal had not set aside the order for his detention initially made by the District Court on 25 July 2002 or ordered his release even though it had found the order illegal. He further alleged that by remitting the case to the District Court, the Court of Appeal had unduly delayed the proceedings for judicial review of the legality of the detention order, with the result that they were not terminated within a reasonable time. He further complained that during the proceedings on the application for judicial review of the legality of his detention his lawyer was refused access to the file, which had made it impossible to mount an effective defence. He relied on Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the Convention. In its judgment of 13 December 2007, the Chamber held that the application should be examined solely under Article 5. The parties did not dispute that decision in the proceedings before the Grand Chamber.

Facts and complaints

Burghard Theodor Mooren is a German national who was born in 1963 and was living in Mönchengladbach (Germany) when his application was lodged with the European Court of Human Rights.

On 25 July 2002 he was arrested and remanded in custody on suspicion of tax evasion. On 16 August 2002 the Mönchengladbach District Court upheld the detention order. An appeal by the applicant to the Regional Court was dismissed on 9 September 2002. The applicant's lawyer, who unsuccessfully requested access to the case file, refused to accept an offer by the public prosecutor's office to explain its contents to him orally.

On 14 October 2002 the Düsseldorf Court of Appeal, on an appeal by the applicant, set aside the decisions of August and September 2002 upholding the order for the applicant's detention and remitted the case to the District Court. The Court of Appeal declined to give its own decision on the applicant's detention or to quash the detention order of 25 July 2002, which it held to be defective in law (*rechtsfehlerhaft*), but not void (*unwirksam*). The applicant remained in custody.

In October 2002 the Mönchengladbach District Court again ordered the applicant's detention. The Regional Court dismissed an appeal by the applicant against that order but suspended its execution subject to certain conditions. The applicant was released on 7 November 2002 and on 18 November his lawyer was authorised to consult the case file. The applicant referred his case to the Federal Constitutional Court, but without success.

On 9 March 2005 the Mönchengladbach District Court found the applicant guilty of tax evasion and sentenced him to a total of one year and eight months' imprisonment suspended on probation.

Decision of the Court

Article 5 § 1

The Court noted at the outset that, as the Düsseldorf Court of Appeal had found in its judgment of 14 October 2002, the detention order failed to comply with the formal requirements of domestic law as it did not describe in sufficient detail the facts and evidence forming the basis for the suspicion against the applicant. The Court reiterated that defects in a detention order did not necessarily render the underlying detention "unlawful" for the purposes of Article 5 § 1, unless they amounted to "a gross and obvious irregularity". In that connection, it found that the detention order did not suffer from a gross and obvious irregularity such as to render it null and void and that the substantive conditions to which it was subject under German law were met. In particular, the Mönchengladbach District Court had heard representations from the applicant at a hearing before issuing the order, the suspicion that the applicant was guilty of tax evasion were based on business records seized at his home, and there was a danger of collusion or of the applicant absconding if released.

The Court further notes that the Court of Appeal's decision was sufficiently foreseeable and had not, therefore, violated the general principle of legal certainty, as the applicant had argued. Firstly, the distinction between orders that were merely "defective" and those that were "void" was very clear in German law. Secondly, even though the Court of Appeal's decision to remit the case to the court of first instance ran counter to the wording of the Code of Criminal Procedure, which required the appeal court to take the decision on the merits, it was based on a well-established jurisprudential exception to that rule.

Lastly, the Court considered that remitting the case to a lower Court was a recognised technique for establishing in detail the facts and for assessing the relevant evidence and that the benefits of remitting the case could outweigh the inconvenience caused by any delay. It further considered that the decision to remit had not been arbitrary in the applicant's case.

The Court therefore found that the applicant's detention was lawful and in accordance with a procedure prescribed by law for the purposes of Article 5 § 1.

Article 5 § 4

As regards the speed with which the review was conducted, the Court reiterated that in guaranteeing a right of challenge to detainees, Article 5 § 4 also proclaimed the right to persons unlawfully detained to a speedy judicial decision ordering their release. Endorsing the Chamber's reasoning, the Court found that the Düsseldorf Court of Appeal's decision of 14 October 2002 to remit the case to the court of first instance had unjustifiably delayed the process of judicial review, in violation of Article 5 § 4.

As regards the inability of the applicant's lawyer to gain access to the sections of the case file submitted by the prosecution, the Court reiterated that appeals against detention must be adversarial and ensure equality of arms between the prosecution and the defence. Under the Court's settled case-law, equality of arms was not ensured if the defence was denied access to documents in the case file which were essential in order effectively to challenge the lawfulness of the detention. There had therefore been a violation of Article 5 § 4 on that account also.

Judges Rozakis, Tulkens, Casadevall, Gyulumyan, Hajiyev, Spielmann, Berro-Lefèvre and Bianku expressed a joint partly dissenting opinion.

– Article 5 § 1 (no violation)
– Article 5 § 4 (violation)

Scoppola v. Italy

Judgment of 17 September 2009. Concerns: the applicant's complaints related to the alleged retrospective application of criminal law in violation of Article 7 and also to the compatibility with Article 6 § 1 of the provisions introduced by Legislative Decree no. 341.

Articles 7 and 6 (violation)

Facts and complaints

Franco Scoppola is an Italian national who was born in 1940. He is currently in Parma Prison.

On 2 September 1999, after a fight with his children, the applicant killed his wife and injured one of the children. He was arrested on 3 September. At the end of the preliminary investigation the Rome prosecution office asked for the applicant to be committed to stand

trial for murder, attempted murder, ill-treatment of his family and unauthorised possession of a firearm. At a hearing in February 2000, before the Rome preliminary hearings judge ("the GUP"), the applicant asked to be tried under the summary procedure, a simplified process which entailed a reduction of sentence in the event of conviction. The judge agreed to his request.

In the version in force at that time, Article 442 of the Code of Criminal Procedure ("the CCP") provided that, if the judge considered that the penalty to be imposed was life imprisonment, such penalty should be converted into 30 years. On 24 November 2000 the GUP found the applicant guilty and noted that he was liable to a sentence of life imprisonment; however, as the trial had been conducted under the summary procedure, the judge sentenced the applicant to a term of 30 years.

However, Legislative Decree no. 341, which had entered into force that very day, had just amended Article 442 of the CCP. The latter now provided that in the event of trial under the summary procedure, life imprisonment was to be substituted for life imprisonment with daytime isolation if there were cumulative offences or a continuous offence.

The public prosecutor's office at the Rome Court of Appeal considered that, in view of the entry into force of the new version, the applicant's sentence should have been life imprisonment rather than 30 years. Accordingly, it appealed against the GUP's decision.

On 10 January 2002 the Rome Assize Court of Appeal sentenced Franco Scoppola to life imprisonment. Noting that Legislative Decree no. 341 of 2000 had entered into force on the very day of the GUP's decision, it considered that, since its provisions were classed as procedural rules, they were applicable to all pending proceedings. The Assize Court of Appeal further observed that under the terms of Legislative Decree no. 341 the applicant could have withdrawn his request to be tried under the summary procedure and have stood trial under the ordinary procedure. As he had not done so, the first-instance decision ought to have taken account of the change in the rules introduced by the legislative decree.

After his appeal on points of law was dismissed, the applicant lodged an extraordinary appeal with the Court of Cassation on the ground of a factual error. He argued that he had been convicted in breach of the fair-trial principles guaranteed by Article 6 of the European Convention on Human Rights and on the basis of retrospective application of the criminal law – in the form of Legislative Decree no. 341 – in breach of Article 7 of the Convention. That appeal too was dismissed.

Decision of the Court

Article 7

The Court reiterated that the prohibition of the retrospective application of criminal law to the detriment of an accused, provided in Article 7 of the Convention, was an essential element of the rule of law and occupied a prominent place in the Convention system. Nevertheless, as the Court had consistently ruled since a 1978 decision of the European Commission of Human Rights, Article 7 did not guarantee the right of the accused to a more lenient penalty provided for in a law subsequent to the offence.

However, since the Convention was first and foremost a system for the protection of human rights, the Court had to consider the changing conditions in the responding state and in the contracting states in general and respond to emerging consensus as to the standards to be achieved. It acknowledged that there had been important developments internationally. In particular, the principle of the applicability of the more lenient criminal law was enshrined in the American Convention on Human Rights, the European Union's Charter of Fundamental Rights and the statute of the International Criminal Court. Moreover, the Luxembourg-based Court of Justice of the European Communities, whose decision was also endorsed by the French Court of Cassation, held that this principle formed part of the constitutional traditions common to the member States of the European Union.

The Court considered that since 1978 a consensus had gradually emerged in Europe and internationally around the view that application of a criminal law providing for a more lenient penalty, even one enacted after the commission of the offence, had become a fundamental principle of criminal law. In the light of such a consensus, the Court therefore decided to depart from its previous case-law and affirm that Article 7 § 1 guaranteed not only the principle of non-retroactivity of more stringent criminal laws but also, and implicitly, the principle of retroactivity of the more lenient law. That principle was embodied in the rule that where there were differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before adoption of a final judgment, the courts had to apply the law whose provisions were most favourable to the defendant.

In the applicant's case, the Court considered that the relevant paragraph of Article 442 of the CPP was a provision of substantive criminal law given that it had set the length of the sentence to be imposed in the context of summary procedures. By virtue of the principle of retroactivity of the more lenient criminal law, of all the versions of such provisions which had been in force during the period between the commission of the offence and the adoption of the final judgment, the Italian courts should have applied the one more favourable to Mr Scoppola.

The Court therefore concluded, by eleven votes to six, that by failing to do so, the Italian courts had acted in violation of Article 7.

Article 6 § 1

The Court observed that the Italian summary procedure entailed undoubted advantages for the defendant but also a diminution of some of the procedural safeguards inherent in the concept of a fair trial. By requesting the summary procedure, Mr Scoppola, in exchange for a 30-year sentence instead of a life sentence, unequivocally waived his right to a public hearing, to have witnesses called, to have new evidence produced and to examine prosecution witnesses.

The Court considered that, although contracting states were not required to adopt simplified procedures, where such procedures did exist it was contrary to the principle of legal certainty and the protection of the legitimate trust of persons engaged in judicial proceedings for a state to be able to reduce unilaterally the advantages attached to waiving fair trial safeguards. It therefore concluded, unanimously, that there had been a violation of Article 6 in this respect.

Judge Malinverni expressed a concurring opinion joined by judges Cabral Barreto and Šikuta. Judge Nicolaou expressed a partly dissenting opinion joined by Judges Bratza, Lorenzen, Jočiené, Villiger and Sajó.

Enea v. Italy

– Article 3 (no violation)
– Article 6 § 1 (violation)
– Article 6 § 1 (no violation)
– Article 8 (violation)

Judgment of 17 September 2009. Concerns: the applicant alleged that his continued detention had been contrary to the European Convention on Human Rights, in particular in view of his state of health. He further contended that he had been subject to substantial restrictions in the exercise of his right to a court in connection with the ministerial decrees making him subject to the section 41 bis regime and the prison authorities' decision to place him in the E.I.V. unit. The applicant also complained of the restrictions placed on contact with his family and of the monitoring of his correspondence. Finally, he complained that he had been unable to practise his religion, in particular by attending the funerals of his brother and girlfriend.

Facts and complaints

The applicant, Salvatore Enea, is an Italian national who was born in 1938. He was sentenced to 30 years' imprisonment for, among other offences, membership of a Mafia-type criminal organisation, and has been in detention since 23 December 1993.

On 10 August 1994, in view of the danger posed by the applicant, the Minister of Justice issued a decree ordering that he be subject for one year to the special prison regime provided for in the second paragraph of section 41 bis of the Prison Administration Act. This provision allows application of the ordinary prison regime to be suspended in whole or in part for reasons of public order and safety. The decree imposed restrictions on, among other things, family visits (one hour-long visit per month) and the number of parcels received; the applicant was also prohibited from seeing non-family members, using the telephone and organising and taking part in certain activities. In addition, his correspondence was monitored. Application of the special regime was extended until late 2005 by means of 19 decrees, each valid for a limited period.

Mr Enea lodged several appeals with the Naples court responsible for the execution of sentences, which on three occasions decided to ease some of the restrictions imposed on him. He did not lodge an appeal on points of law, maintaining that the Court of Cassation would have dismissed any such appeals as being devoid of purpose since the validity of the ministerial decrees in question had already expired when the court responsible for the execution of sentences gave its rulings. In late February 2005 the court allowed the applicant's appeal against Decree no. 19 and ordered application of the special regime to be discontinued.

On 1 March 2005 the prison authorities placed the applicant in a high-supervision (*Elevato Indice di Vigilanza* – E.I.V.) unit, where certain very dangerous prisoners are held separately from other inmates.

Salvatore Enea has a number of health problems and was thus obliged to use a wheelchair. Between June 2000 and February 2005 he served his sentence in the part of the hospital wing of Naples prison reserved for prisoners detained under the section 41 bis regime. In October 2008 the Naples court responsible for the execution of sentences ordered a stay of execution of the applicant's sentence, as his state of health had become incompatible with detention in prison. Mr Enea has since been subject to house arrest.

Decision of the Court

Article 3

The Court noted that the restrictions imposed on the applicant under the special prison regime had been necessary in order to prevent him from maintaining contacts with the criminal organisation to which he belonged. It also noted that the courts responsible for the execution of sentences had lifted or eased certain of those restrictions and that Mr Enea had received treatment appropriate to his state of health, either in prison or in a hospital outside prison. Accordingly, it considered that the treatment to which the applicant had been subjected did not exceed the unavoidable level of suffering inherent in detention and concluded, by 15 votes to 2, that there had not been a violation of Article 3.

Article 6 § 1

With regard to the imposition of the special prison regime provided for in section 41 bis, the Court noted that prisoners subjected to that regime have ten days from the date on which the ministerial decree is served in which to lodge an appeal, which does not have suspensive effect, with the court responsible for the execution of sentences; the latter in its turn must give a ruling within ten days. The Court noted that for one of the 19 decrees issued against the applicant – Decree no. 12 – the court responsible for the execution of sentences had given its ruling well after the 10-day deadline laid down in the legislation, and dismissed the appeal on the ground that the validity of the impugned decree had expired and that the applicant was consequently no longer subject to it. The Court considered that, since it had not resulted in a decision on the merits of the application of the special regime, the courts' review of Decree no. 12 had been deprived of its substance. It concluded, unanimously, that there had been a violation of Article 6.

As to the restrictions on the right to a court during the period of detention in the E.I.V. unit, the Italian Government submitted that, unlike the special prison regime under section 41 bis, this type of measure did not fall within the scope of the criminal limb of Article 6 § 1. They also argued that the interest of a prisoner in not being assigned to a particular unit of the prison in which he was serving his sentence could not be characterised as a "civil right" giving access to a court within the meaning of Article 6. Mr Enea's application was therefore inadmissible. This point of view was shared by the Slovakian Government as a third-party intervener.

Like the Italian Government, the Court considered that Article 6 § 1 was not applicable under its criminal head to placement in the E.I.V. unit. On the other hand, it noted that most of the restrictions to which the applicant had allegedly been subjected on account of this placement related to a set of prisoners' rights which the Council of Europe had recognised by means of the European Prison Rules, adopted by the Committee of Ministers in 1987 and elaborated on in a Recommendation of 11 January 2006. The

Court acknowledged that although this recommendation was not legally binding on the member States, the great majority of them recognised that prisoners enjoyed most of the rights to which it referred and provided for avenues of appeal against measures restricting those rights. The Court therefore considered that in this case, to use the wording of Article 6 § 1, a "dispute (*contestation*) over a right" could reasonably be said to have existed. In addition, there was no doubt that some of the restrictions alleged by the applicant – such as those restricting his contact with his family and those affecting his pecuniary rights – clearly fell within the sphere of personal rights and were therefore civil in nature. Accordingly, the Court found, by 16 votes to 1, that this part of the application was admissible.

On the merits, the Court noted that, while it was true that a prisoner could not challenge *per se* the merits of a decision to place him or her in an E.I.V. unit, an appeal lay to the courts responsible for the execution of sentences against any restriction of a "civil" right (affecting, for instance, a prisoner's family visits). In the present case, not only was the applicant not subjected to any such restriction but, if he had been, he would have had access to a court. Accordingly, the Court concluded unanimously that there had not been a violation of Article 6 § 1 in this respect.

Article 8

Following its well-established case-law, the Court noted that the monitoring of the applicant's correspondence had been in breach of Article 8, as it had not been in accordance with the law, in so far as section 18 of the Prison Administration Act – on the basis of which the measure had been imposed – did not regulate either the duration of the measure or the reasons capable of justifying it, and did not indicate with sufficient clarity the scope and manner of exercise of the discretion exercised by the competent authorities. The Court concluded unanimously that there had been a violation of Article 8 for the period running from 10 August 1994 to 7 July 2004, the applicant having failed to submit evidence enabling it to ascertain whether his correspondence had been monitored after that date.

Articles 13 and 9

The Court held unanimously that there was no need to examine separately the complaint under Article 13, and declared inadmissible the complaint under Article 9.

Judges Kovler and Gyulumyan expressed a partly dissenting opinion.

Varnava and Others v. Turkey

– Article 2 (continuing violation)
– Article 3 (continuing violation)
– Article 5 in respect of Eleftherios Thoma and Savvas Hadjipanteli (continuing violation)
– Article 5 in respect of the other seven missing men (no violation)

Judgment of 18 September 2009. Concerns: the applicants alleged that their relatives had disappeared after being detained by Turkish military forces in 1974 and that the Turkish authorities had not accounted for them since.

Facts and complaints

The applications were introduced before the Court in the name and on behalf of 18 Cypriot nationals, nine of whom had disappeared during military operations carried out by the Turkish Army in northern Cyprus in July and August 1974. The nine other applicants are or were relatives of the men who disappeared.

Among the nine people who disappeared, eight were members of the Greek-Cypriot forces that had attempted to oppose the advance of the Turkish army. According to a number of witness statements, they had been among prisoners of war captured by the Turkish military. The ninth person, Mr Hadjipanteli, a bank employee, was taken for questioning by Turkish soldiers on 18 August 1974. His body, which bore several bullet marks, was found in 2007 in the course of a mission carried out by the United Nations Committee of Missing Persons (CMP).

The Turkish Government disputed that these men had been taken into captivity by the Turkish Army. They submitted that the first eight were military personnel who had died in action and that the name of the ninth one did not appear on the list of Greek-Cypriot prisoners held at the stated place of detention, inspected by the International Red Cross. The Cypriot Government stated, however, that the nine men had gone missing in areas under the control of the Turkish forces.

Decision of the Court

Preliminary objections by the Government

Legal interest

The Court first noted that for an application to be substantially the same as another which it had already examined it had to concern substantially not only the same facts and complaints but be introduced by the same persons. While the fourth inter-state case had indeed found a violation in respect of all missing persons, the individual applications allowed the Court to grant just satisfaction awards for pecuniary and non-pecuniary damage suffered by individual applicants, and to indicate any general or individual measures that might be taken. Satisfied that a legal interest remained in pursuing the examination of these applications, the Court rejected the Government's objection.

Temporal jurisdiction

The Court noted that the applicants had specified that their claims related only to the situation pertaining after 28 January 1987 (namely the date of Turkey's acceptance of the right of individual petition). The Court held that obligation to account for the fate of the missing men by conducting an effective investigation was of a continuing nature and even though the men had been missing for over 34 years without any news, this obligation could persist for as long as the fate of the missing persons was unaccounted for. Accordingly, the Court dismissed the government's objection on this count.

Late submission to the Court

The Court noted that the applicants had introduced their applications some 15 years after their relatives went missing in 1974 and that it had not been possible for them to do so before 1987. Having regard to the exceptional situation brought about by the international conflict, the Court was satisfied that the applicants had acted with reasonable expedition, even though they had brought their complaints about three years after Turkey had accepted the right to individual peti-

tion. The Court therefore rejected this objection too.

Article 2

The Court noted that the Turkish Government had not put forward any concrete information to show that any of the missing men had been found dead or had been killed in the conflict zone under their control. Nor had there been any other convincing explanation as to what might have happened to them that could counter the applicants' claims that the men had disappeared in areas under the Turkish Government's exclusive control. In light of the findings in the fourth inter-state case, which had not been refuted, these disappearances had occurred in life-threatening circumstances where the conduct of military operations had been accompanied by widespread arrests and killings.

The Court fully acknowledged the importance of the CMP's ongoing exhumations and identifications of remains and gave full credit to the work being done in providing information and returning remains to relatives. It noted, however, that while its work was an important first step in the investigative process, it was not sufficient to meet the government's obligation under Article 2 to carry out effective investigations. In particular, the CMP was not determining the facts surrounding the deaths of the missing persons who had been identified, nor was it collecting or assessing evidence with a view to holding any perpetrators of unlawful violence to account in a criminal prosecution. No other body or authority had taken on that role either. The Court did not doubt that many years after the events there would be considerable difficulty in assembling eyewitness evidence or in identifying and mounting a case against any alleged perpetrators. However, recalling its established case-law on the clear obligation of states to investigate effectively, the Court found that the Turkish Government had to make the necessary efforts in that direction. The Court concluded therefore that there had been a continuing violation of Article 2 on account of Turkey's failure to effectively investigate the fate of the nine men who disappeared in 1974.

Article 3

The Court recalled its finding in the fourth inter-state case that in the context of the disappearances in 1974, where the military operation had resulted in considerable loss of life and large-scale detentions, the relatives of the missing men had suffered the agony of not knowing whether their family members had been killed or taken into detention. Furthermore, due to the continuing division of Cyprus, the relatives had been faced with very serious obstacles in their search for information. The Turkish authorities' silence in the face of those real concerns could only be categorised as inhuman treatment.

The Court found no reason to differ from the above finding. The length of time over which the ordeal of the relatives had been dragged out and the attitude of official indifference in the face of their acute anxiety to know the fate of their close family members had resulted in a breach of Article 3 in respect of the applicants.

Article 5

The Court found that there was an arguable case that two of the missing men, Eleftherios Thoma and Savvas Hadjipanteli, both of whom had been included on ICRC lists as detainees, had been seen last in circumstances falling within the control of the Turkish or Turkish Cypriot forces. However, the Turkish authorities had not acknowledged their detention, nor had they provided any documentary evidence giving official trace of their movements. While there had been no evidence that any of the missing persons had been in detention in the period under the Court's consideration, the Turkish Government had to show that they had carried out an effective investigation into the arguable claim that the two missing men had been taken into custody and not seen subsequently. The Court's findings above in relation to Article 2 left no doubt that the authorities had also failed to conduct the necessary investigation in that regard. There had therefore been a continuing violation of Article 5 in respect of Eleftherios Thoma and Savvas Hadjipanteli.

Given that there had been no sufficient evidence showing that the other seven men had been last seen under Turkish control, there had been no violation of Article 5 in respect of them.

Other articles

Having had regard to the facts of the case, the submissions of the parties and its findings under Articles 2, 3 and 5 of the Convention, the Court concluded that it had examined the main legal questions raised in the present application and that it was not necessary to give a separate ruling on the applicants' remaining complaints.

Judges Kalaydjieva, Power, Spielmann, Villiger and Ziemele expressed concurring opinions, and Judge Erönen expressed a dissenting opinion.

Micallef v. Malta

Article 6 § 1 (violation)

Judgment of 15 October 2009. Concerns: relying on Article 6 § 1 of the Convention, Mr Micallef complained of the Court of Appeal's lack of impartiality on account of the family ties between the presiding judge and the lawyer for the other party. He added that this had given rise to an infringement of the principle of equality of arms.

Facts and complaints

The applicant, Joseph Micallef, is a Maltese national who lives in Vittoriosa (Malta).

In 1985 his sister, Mrs M., who has since died, was sued in the civil courts by her neighbour in connection with a dispute between them. The presiding judge of the court hearing the case granted the neighbour an injunction in the absence of Mrs M., who had not been informed of the date of the hearing. In 1992 the court found against Mrs M. on the merits.

In the meantime Mrs M. had brought proceedings in the Civil Court, sitting in its ordinary jurisdiction, alleging that the injunction had been granted in her absence and without giving her the opportunity to testify. In October 1990 the Civil Court found that the injunction had been issued in violation of the adversarial principle and declared it null and void.

In February 1993 the Court of Appeal upheld an appeal lodged by the neighbour and set aside the judgment of the civil court in favour of Mrs M. The Court of Appeal was presided over by the Chief Justice, sitting with two other judges.
Mrs M. then lodged a constitutional appeal with the civil court, in its constitutional jurisdiction, alleging that the Chief Justice had not been impartial given his family ties with the lawyers representing the other party. She pointed out that he was the brother and uncle, respectively, of the lawyers who had represented her neighbour.

The constitutional appeal, which was taken over by the applicant after his sister's death, was dismissed in January 2004. In October 2005 a further appeal lodged with the Constitutional Court was also dismissed.

Decision of the Court

Admissibility

The Maltese Government and the Third Party Government argued that Mr Micallef did not have victim status allowing him to lodge an application with the Court. In their submission, he might have had the right to pursue an application lodged with the Court by his sister but not to lodge one on his own behalf after his sister had died while the proceedings were still going on at domestic level. The Court found that the applicant did have victim status, firstly because he had been made to bear the costs of the case instituted by his sister and could thus be considered to have a patrimonial interest in the case and, secondly, because the case raised issues concerning the fair administration of justice and thus an important question relating to the general interest.

The government also submitted that the applicant had not exhausted all domestic remedies as required by Article 35 § 1 of the Convention. The Court pointed out in that connection that at the material time there had been no provision under Maltese law for challenging a judge on the basis of an uncle-nephew relationship with a lawyer representing the other side in a trial. Accordingly, the possibilities available to the applicant to challenge the judge could not be regarded as effective and nothing obliged him to use them before applying to the Court. Moreover, the Court found that, in complaining of a violation of his right to a fair trial before the domestic constitutional courts, which had dismissed the government's objection of non-exhaustion of ordinary remedies and examined the substance of the complaint, the applicant had made normal use of the remedies which were accessible to him and which related, in substance, to the facts complained of before the Court.

Lastly, the Maltese Government and the Third Party Government submitted that the guarantees provided by Article 6 § 1 did not apply to proceedings such as these, which concerned interim or provisional measures. In their view, the application was therefore inadmissible on that ground as well.

The Court reiterated that preliminary proceedings, like those concerned with the grant of an interim measure such as an injunction, did not normally fall within the protection of Article 6. The Court observed that there was now a widespread consensus amongst Council of Europe member states regarding the applicability of Article 6 to interim measures, including injunction proceedings. This was also the position adopted in the case-law of the Court of Justice of the European Communities. The Court observed that a judge's decision on an injunction would often be tantamount to a decision on the merits of the claim for a substantial period of time, or even permanently in exceptional cases. It followed that, frequently, interim and main proceedings decided the same "civil rights or obligations", within the meaning of Article 6, and produced the same effects. In the circumstances the Court no longer found it justified to automatically characterise injunction proceedings as not determinative of civil rights or obligations. Nor was it convinced that a defect in such proceedings would necessarily be remedied in proceedings on the merits since any prejudice suffered in the meantime might by then have become irreversible.

The Court therefore considered that a change in the case-law was necessary. Article 6 would be applicable if the right at stake in both the main and the injunction proceedings was "civil" within the meaning of Article 6 and the interim measure determined the "civil" right at stake. However, the Court accepted that in exceptional cases it might not be possible to comply with all of the requirements of Article 6, though the independence and impartiality of the tribunal or the judge remained an inalienable safeguard of course.

In the present case the substance of the right at stake in the main proceedings concerned the use by neighbours of property rights in accordance with Maltese law, and therefore a right of a "civil" character according to both domestic law and the Court's case-law. The purpose of the injunction was to determine the same right as the one being contested in the main proceedings and was immediately enforceable. Article 6 was therefore applicable.

Merits

The Court reiterated that it assessed the impartiality of a court or judge according to a subjective test, which took account of a judge's conduct, and according to an objective test which, quite apart from the judge's conduct, sought to determine whether there were ascertainable facts, such as hierarchical or other links between the judge and other actors in the proceedings which might raise doubts as to his impartiality. The Court pointed out that even appearances might be of a certain importance in that regard.

The Court observed that under Maltese law, as it stood at the relevant time, there was no automatic obligation on a judge to withdraw in cases where impartiality could be an issue. Nor could a party to a trial challenge a judge on grounds of a sibling relationship – let alone an uncle-nephew relationship – between the judge and the lawyer representing the other party. Since then Maltese law had been amended and now included sibling relationships as a ground for withdrawal of a judge. In the dispute at issue here the Court took the view that the close family ties between the opposing party's lawyer and the Chief Justice sufficed to objectively justify fears that the panel of judges lacked impartiality. Accordingly, it concluded, by 11 votes to six, that there had been a violation of Article 6 § 1 of the Convention.

Judges Costa, Jungwiert, Kovler and Fura expressed a joint dissenting opinion. Judges Björgvinsson and Malinverni expressed a partly dissenting opinion and Judges Rozakis, Tulkens and Kalaydjieva expressed a joint concurring opinion.

Selected Chamber judgments

Khider v. France

Article 3 (violation)
Article 13 (violation)

Judgment of 9 July 2009. Concerns: Mr Khider complained of his conditions of detention and the security measures imposed on him as a "prisoner requiring special supervision", in particular repeated transfers from one prison to another, prolonged periods in solitary confinement and systematic body searches.

Facts and complaints

The applicant, Cyril Khider, is a French national who was born in 1973 and is currently detained in Liancourt Prison (France) in the context of proceedings against him for armed robbery carried out as part of a gang, false imprisonment with voluntary release before the seventh day, attempted murder of a prison officer, criminal conspiracy and participation in an attempted escape. Relying in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), Mr Khider complained of his conditions of detention and the security measures imposed on him as a "prisoner requiring special supervision", in particular repeated transfers from one prison to another, prolonged periods in solitary confinement and systematic body searches.

Decision of the Court

The Court held unanimously that there had been a violation of Article 3. It further found that there had been a violation of Article 13 on account of the lack of an effective remedy by which he could have filed such a complaint.

Féret v. Belgium

Article 10 (no violation)

Judgment of 16 July 2009. Concerns: relying on Article 10 (freedom of expression), the applicant alleged that his conviction for the content of his political party's leaflets represented an excessive restriction on his right to freedom of expression.

Facts

The applicant, Mr Daniel Féret, is a Belgian national who was born in 1944 and lives in Brussels. As chairman of the political party "Front National-Nationaal Front" (the "National Front") he is the editor-in-chief of the party's publications and owner of its website. He was a member of the Belgian House of Representatives at the relevant time.

Between July 1999 and October 2001 the distribution of leaflets and posters by his party, in connection with the election campaigns of the National Front, led to complaints by individuals and associations for incitation of hatred, discrimination and violence, filed under a law of 30 July 1981 which penalised certain acts inspired by racism or xenophobia.

On 19 February 2002 Mr Féret was interviewed by the police in connection with those complaints.

The applicant's parliamentary immunity was waived on the request of the Principal Public Prosecutor at the Brussels Court of Appeal. In November 2002, criminal proceedings were brought against him as author and editor-in-chief of the offending leaflets and owner of the website.

On 4 June 2003, in order to be able to rule on the merits, the Brussels Criminal Court re-opened the proceedings. An appeal by Mr Féret concerning the jurisdiction of that first-instance court was declared inadmissible in June 2003 and in March 2004 the Court of Cassation dismissed his appeal on points of law against the Court of Appeal's decision.

On 13 June 2004 the applicant was elected to the Bruxelles-Capitale Regional Council and to the Parliament of the French Community, both positions affording him new parliamentary immunity.

The public prosecutor reactivated the proceedings on 23 June 2004. On 20 February 2006 the Brussels Court of Appeal held a complete trial and on 18 April 2006 sentenced Mr Féret to 250 hours of community service related to the integration of immigrants, together with a 10-month suspended prison sentence. It declared him ineligible for 10 years. Lastly, it ordered him to pay one euro to each of the civil parties.

The court found that the offending conduct on the part of Mr Féret had not fallen within his parliamentary activity and that the leaflets contained passages that represented a clear and deliberate incitation of discrimination, segregation or hatred, and even violence, for reasons of race, colour or national or ethnic origin.

An appeal on points of law by Mr Féret was dismissed on 4 October 2006.

Decision of the Court

The interference with Mr Féret's right to freedom of expression had been provided for by law (Law of 30 July 1981 on Racism and Xenophobia) and had the legitimate aims of preventing disorder and of protecting the rights of others.

The Court observed that the leaflets presented the communities in question as criminally-minded and keen to exploit the benefits they derived from living in Belgium, and that they also sought to make fun of the immigrants concerned, with the inevitable risk of arousing, particularly among less knowledgeable members of the public, feelings of distrust, rejection or even hatred towards foreigners.

While freedom of expression was important for everybody, it was especially so for an elected representative of the people: he or she represented the electorate and defended their interests. However, the Court reiterated that it was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance.

The impact of racist and xenophobic discourse was magnified in an electoral context, in which argu-

ments naturally became more forceful. To recommend solutions to immigration-related problems by advocating racial discrimination was likely to cause social tension and undermine trust in democratic institutions. In the present case there had been a compelling social need to protect the rights of the immigrant community, as the Belgian courts had done.

With regard to the penalty imposed on Mr Féret, the Court noted that the authorities had preferred a 10-year period of ineligibility rather than a penal option, in accordance with the Court's principle of restraint in criminal proceedings.

The Court thus found that there had been no violation of Article 10.

The Court added that the remainder of the application was inadmissible.

Judges Sajó, Zagrebelsky and Tsotsoria expressed a joint dissenting opinion.

Zehentner v. Austria

Article 8 (violation)
Article 1 of Protocol No. 1 (violation)

Judgment of 16 July 2009. Concerns: relying on Article 1 of Protocol No 1 the applicant complained of the judicial sale of her apartment having deprived her of her possessions. The Court considered it appropriate, in addition to Article 1 of Protocol No. 1, to examine the applicant's complaint in addition under Article 8.

Facts

The applicant, Bernardina Zehentner, was born in 1944 and lives in Vienna. In August 1998 a district court ordered her to pay approximately 7 440 euros to G. for the cost of plumbing work carried out in her apartment; in June 1999 she was ordered to pay money to another creditor, W. In May 1999 the court granted G.'s request for the enforcement of the payment plus the costs of the proceedings (approximately 2 150 euros) by judicial sale of the applicant's apartment. In October 1999 Ms Zehentner was informed of the date of the judicial sale by registered letter and on 17 November 1999 the judicial sale took place, however, in her absence. The court sold her apartment for approximately 59 000 euros to a limited liability company; the decision for the sale was served on her on 24 November 1999 by deposition in the post office. In January 2000, part of the proceeds of the sale were allocated to Ms Zehentner's creditors and in February 2000 she was evicted from the apartment.

In March 2000 the applicant had a nervous breakdown and spent more than a month in a psychiatric hospital. The court instituted guardianship proceedings and obtained a medical expert's opinion according to which she was suffering from paranoid psychosis since 1994 and since then had not been able to make rational decisions. The court appointed her a provisional guardian in March 2000.

In April 2000 the court served the decision of 17 November 1999 concerning the judicial sale of Ms Zehentner's apartment on her guardian. As of 17 April 2000 she represented by her guardian, appealed numerous times before the domestic courts of different level against this decision asking that it be annulled and the enforcement proceedings suspended.

In response to her appeals the courts found that the payment orders of August 1998 and June 1999 were not enforceable as she had not been capable of participating in the proceedings. However, the appeals against the enforcement of the orders were ultimately dismissed as the courts held that reversing the enforcement was no longer possible given that the decision allocating the proceeds of the sale to the creditors had become final and the creditors had been paid.

Decision of the Court

Admissibility

Ms Zehentner had filed an individual application with the Court on 3 May 2002, setting out in a sufficiently substantiated manner the subject matter of her complaint. Nonetheless, Ms Zehentner's guardian had informed the Court in April 2006 that she had not approved the institution of the proceedings before the Court and did not wish to pursue the application; however, in March 2006, the applicant herself had requested the Court to proceed with the examination of her case stating that she did not wish her guardian to represent her before the Court but was unable to appoint another representative. The Court found that the applicant was in a position to pursue her complaint and declared it admissible.

Article 8 (protection of family life and home)

The Court found that Ms Zehentner had lacked legal capacity for years by the time the judicial sale of the apartment and her eviction had taken place, so she had not been able either to object or to resort to the remedies available in the legislation. In addition, she had been left without any means of obtaining a review of her case as a result of the absolute nature of the time-limit for appealing against a judicial sale provided for in domestic legislation. Given that persons who lacked legal capacity were particularly vulnerable, the Court found that specific justification had to be required where a person lacking legal capacity was concerned. The Austrian Supreme Court had not given any such justification and had not carried out any weighing of the conflicting interests of the purchaser in good faith and the debtor lacking legal capacity. As regards whether the absolute time-limit had served the general interest of preserving legal certainty, the Court recalled its case-law in which it had held that legal certainty would not be violated in circumstances of compelling character. Accordingly, the arguments relied upon by the government were not sufficient to outweigh the consideration that the applicant had been deprived of her home without having been able to participate effectively in the proceedings, in violation of Article 8.

Article 1 of Protocol No. 1

The Court noted that the proceedings in this case had been between private parties, however it considered that even in such a case the State was under an obligation to afford both parties the necessary procedural guarantees. It found the suggested procedural mechanism by the government an unfeasible scenario for the applicant, a person lacking legal capacity, to be able to recover her possessions of which she was deprived without adequate guarantees. In addition, in view of its findings in respect of the viola-

tion of Article 8, the Court held that there had also been a violation of Article 1 of Protocol 1.

Judge Malinverni and judge Kovler expressed a joint partly dissenting opinion.

Danilenkov and Others v. Russia

Article 14 taken together with Article 11 (violation)

Judgment of 30 July 2009. Concerns: relying on Articles 11 and 14, the applicants complained in particular of the Government having tolerated the discriminatory policies of their employer and having refused to examine their discrimination complaint.

Facts

The applicants are Russian nationals and members of the Kaliningrad branch of the Dockers' Union of Russia (DUR).

On 14 October 1997, the DUR began a two-week strike over pay, better working conditions, and health and life insurance. The strike failed to achieve its goals and was discontinued on 28 October 1997. In the period following, DUR members found themselves reassigned to special work teams, transferred to part-time positions, and ultimately declared redundant and dismissed as a result of a structural reorganisation of the seaport company.

The applicants responded to these and other actions by bringing a number of cases to the local courts in which they complained of being the object of unlawful and discriminatory treatment based on their union membership. In each instance, the civil courts ruled in favour of the applicants, reversing the seaport's decisions and ordering payment of compensation for lost wages. The charges of discrimination were repeatedly dismissed, however, on the grounds that the existence of discrimination could only be established in the framework of criminal proceedings. The civil courts, therefore, lacked the jurisdiction to examine the discrimination complaint. The applicants were unable to launch a criminal case, because legal entities such as the seaport company could not be held liable and the prosecutor's office declined to open a criminal investigation against the managing director of the seaport company, as a preliminary inquiry failed to establish direct intent by the director to discriminate against the applicants.

In addition to going to the courts, the DUR complained to the International Transport Workers' Federation (ITF) and the Kaliningrad Regional Duma. Both the ITF and the Duma recognised the existence of discrimination based on trade union membership and called for the DUR members' rights to be respected. Despite these warnings and the courts' repeated rulings overturning the seaport's anti-DUR policies, DUR membership decreased from 290 in 1999 to only 24 in 2001.

Decision of the Court

The Court first recalled the scope of the State's obligations to provide protection against discrimination related to freedom of association; it stressed in particular that any employee or worker should be free to join, or not, a trade union without being sanctioned. It then found crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and to have the right to take legal action capable of ensuring real and effective relief.

The Court observed that the Kaliningrad seaport company had used various techniques to encourage employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals subsequently found unlawful by the courts, decrease of earnings, disciplinary sanctions, etc. In addition, despite the existence in domestic civil law at the time of a blanket prohibition against discrimination on the ground of trade-union membership or non-membership, the judicial authorities had refused to examine the applicants' discrimination complaints having held that discrimination could only be established in criminal proceedings.

As regards the criminal remedy, the Court found that its main deficiency was that, being based on the principle of personal liability, it required proof "beyond reasonable doubt" of direct intent by the company's key managers to discriminate against the trade-union members; failure to establish such intent led to decisions not to institute criminal proceedings. The Court therefore was not persuaded that a criminal prosecution could have provided adequate and practicable redress in respect of the alleged anti-union discrimination.

Accordingly, the Court held that the state had failed to provide effective and clear judicial protection against discrimination on the grounds of trade union membership, in violation of Article 14 of the Convention taken together with Article 11.

Manole and Others v. Moldova

Article 10 (violation)

Judgment of 15 September 2009. Concerns: relying on Article 10, the applicants complained that they were subjected to a censorship regime imposed by the State authorities through TRM's senior management.

Facts and complaints

The applicants, Larisa Manole, Corina Fusu, Mircea Surdu, Dinu Rusnac, Viorica Cucereanu-Bogatu, Angela Arama-Leahu, Ludmila Vasilache, Leonid Melnic and Diana Donica are Moldovan nationals living in Chisinau. They are or were all employed by Teleradio-Moldova (TRM), which was, at the time of the events in question, the only national television and radio station in Moldova.

According to the applicants, throughout its existence, TRM was subjected to political control which they claimed worsened after February 2001 when the Communist Party won a large majority in parliament. In particular, senior TRM manage-

ment was replaced by those who were loyal to the government. Only a trusted group of journalists were used for reports of a political nature which were edited to present the ruling party in a favourable light. Journalists were reprimanded for using expressions which reflected negatively on the Soviet period or suggested cultural and linguistic links with Romania. Interviews were cut and programmes were taken off the air for similar reasons. The opposition parties were allowed only very limited opportunity to express their views. In the first half of 2002, following a strike by TRM staff demanding end of censorship, two TRM journalists were subjected to disciplinary sanctions; they appealed in court which decided in their favour. A number of reports by international organisations and non-governmental groups affirmed that domestic law did not sufficiently guarantee the independence of editorial policy at TRM, and that the opposition was not adequately represented on the air.

In April 2002, the Moldovan Audiovisual Coordinating Council published its conclusions on the question of alleged TRM censorship. It found that certain words and topics were indeed prohibited in TRM's reports. However, it dismissed other allegations of censorship as excuses used by the journalists to cover their lack of professionalism.

The government did not deny the specific incidents alleged by the applicants and accepted the Audiovisual Council's conclusions. It did, however, submit that opposition politicians had access to national television for ten minutes a week and, during the 2005 electoral campaign, for an hour every day.

In July 2002 parliament adopted a law on TRM transforming the company from state to public. As a result, all applicants had to sit examinations to be confirmed in their posts. A large number of the journalists who were on strike earlier that year were not retained in post and 19 of them were banned from entering the TRM premises. The applicants claimed they were dismissed for political reasons and appealed in court, however, unsuccessfully.

Decision of the Court

The Court first noted that the government did not deny the specific examples cited by the applicants of TV or radio programmes that had been banned from air because of the language used or their subject-matter. Further, having accepted that TRM maintained a list of prohibited words and phrases, the government had not provided any justification for it. In addition, given that the authorities had not monitored TRM's compliance with their legal obligation to give balanced air-time to ruling and opposition parties alike, the Court found the relevant data provided by non-governmental organisations significant. The Court thus concluded that in the relevant period TRM's programming had substantially favoured the president and ruling government and had provided scarce access to the air to the opposition.

The Court further found that during most of the period in question TRM had enjoyed a virtual monopoly over audiovisual broadcasting in Moldova. Consequently, it had been of vital importance for the functioning of democracy in the country for TRM to transmit accurate and balanced information reflecting the full range of political opinion and debate. The state authorities were under a duty to ensure a pluralistic audiovisual service by adopting laws ensuring TRM's independence from political interference and control. However, during the period considered by the Court, from February 2001-September 2006, when one political party controlled the parliament, presidency and government, domestic law did not provide a sufficient guarantee of political balance in the composition of TRM's senior management and supervisory body nor any safeguard against interference from the ruling political party in these bodies' decision-making and functioning. The Court therefore concluded that there had been a violation of Article 10.

Dayanan v. Turkey

Article 6 § 3 c taken together with Article 6 § 1 (violation)
Article 6 § 1 (violation)

Judgment of 13 October 2009. Concerns: relying on Article 6 §§ 1 and 3 (c), the applicant complained that he had had no legal assistance while he was in police custody and that he had not been sent a copy of the opinion of the Principal Public Prosecutor at the Court of Cassation.

Facts

The applicant, Mr Seyfettin Dayanan, is a Turkish national who was born in 1975. In January 2001 he was arrested and taken into police custody during operations against Hizbullah, an illegal armed organisation. He was informed of his right to remain silent and to see a lawyer at the end of the police custody period. The police officers put questions to him and Mr Dayanan remained silent.

In February 2001 he was charged with belonging to Hizbullah. On 4 December 2001, following a series of hearings during which Mr Dayanan and his lawyer denied the charges, the State Security Court sentenced him to 12 years and six months' imprisonment.

Mr Dayanan appealed on points of law. On 18 March 2002 the Principal Public Prosecutor at the Court of Cassation submitted his written observations on the merits of the appeal but they were not sent to the applicant or his lawyer. In a decision of 29 May 2002, in the absence of Mr Dayanan and his lawyer, the Court of Cassation upheld the judgment in question.

Decision of the Court

The fairness of proceedings against an accused person in custody required that he be able to obtain the whole range of services specifically associated with legal assistance: discussion of the case, organisation of the defence, collection of evidence, preparation for questioning, support to an accused in distress, and checking of the conditions of detention. Mr Dayanan, under the law then in force, had not had legal assistance while in police custody. That systematic restriction, on the basis of the relevant statutory provisions, was sufficient for a violation of Article 6 to be found even though Mr Dayanan had remained silent when questioned in police custody. The Court therefore held unanimously that there had been a violation of Article 6 § 3 (c) taken together with Article 6 § 1.

Moreover, parties to adversarial proceedings were entitled to receive

and discuss any document or observation submitted to the court. In view of the nature of the prosecutor's observations and the inability of the party in question to respond to them in writing, the Court took the view that in the present case the failure to send Mr Dayanan a copy of the opinion of the Principal Public Prosecutor at the Court of Cassation had breached his right to adversarial proceedings. It accordingly held unanimously that there had been a violation of Article 6 § 1.

Lombardi Vallauri v. Italy

Article 6 § 1 (violation)
Article 10 (violation)

Jugdment of 20 October 2009. Concerns: relying on Article 10 of the Convention, Mr Lombardi Vallauri complained that the decision of the Università Cattolica del Sacro Cuore, for which no reasons had been given and which had been taken without any genuine adversarial debate, had breached his right to freedom of expression.

Relying also on Article 6 § 1 of the Convention with regard to the fairness of the proceedings and his right of access to a court, the applicant complained of the domestic courts' failure to rule on the lack of reasons for the Faculty Board's decision, thereby restricting his ability to appeal against that decision and to instigate an adversarial debate. Mr Lombardo Vallauri also complained of the fact that the Faculty Board had confined itself to taking note of the Congregation's decision, which had also been taken without any adversarial debate.

Facts and complaints

The applicant, Mr Luigi Lombardi Vallauri, is an Italian national who was born in 1936. In 1976 he began teaching legal philosophy at the Faculty of Law of the Università Cattolica del Sacro Cuore (Catholic University of the Sacred Heart) in Milan, on the basis of contracts renewed on an annual basis.

When a competition for the post was advertised for the 1998/99 academic year, Mr Lombardi Vallauri applied.

By a letter of 26 October 1998 the Congregation for Catholic Education, an institution of the Holy See, informed the President of the University that some of the applicant's views were "in clear opposition to Catholic doctrine" and that "in the interests of truth and of the well-being of students and the University" the applicant should no longer teach there.

On 28 October 1998 the University President wrote to the Dean of the Faculty of Law, informing him of the Congregation's position. On 4 November 1998 the faculty Board took note of the Holy See's position and decided not to examine the applicant's application, since one of the conditions for admission to the competition, namely the approval of the Congregation for Catholic Education, had not been met.

One of the applicant's colleagues, Professor D.M., proposed that the faculty should request the President of the University to ask the Congregation to give reasons for the measure taken in respect of the applicant. In Professor D.M.'s opinion, this was justified in view of the interest of the faculty's teaching staff in being informed as to which aspects of the applicant's studies and teaching had been deemed incompatible with the faculty's Catholic outlook. The proposal was rejected following a vote.

On 25 January 1999 the applicant applied to the Lombardy Regional Administrative Court to have the decisions of the Faculty Board and the ecclesiastical authority set aside. The applicant argued that the decisions in question were unconstitutional because they breached his right to equality, freedom of instruction and freedom of religion.

In a judgment of 26 October 2001 the Regional Administrative Court rejected the application on the grounds, *inter alia*, that adequate reasons had been given for the faculty Board's refusal to consider the applicant's candidacy, and that the revised Concordat between the Holy See and the Italian Republic did not lay down any requirement to state the religious grounds for refusing approval. The court further held that neither the Faculty Board nor the court itself had jurisdiction to examine the legitimacy of the Holy See's decision, which had emanated from a foreign state. The court also pointed out that teaching staff were free to choose whether or not to adhere to the principles of the Catholic faith.

On 9 December 2002 the applicant appealed to the *Consiglio di Stato* reiterating the lack of reasons given for the Faculty Board's decision and contesting the lack of jurisdiction of the administrative court.

In a judgment of 18 June 2005 the *Consiglio di Stato* dismissed the appeal. It stated that the Italian administrative and judicial authorities could not depart from Constitutional Court judgment no. 195 of 14 December 1972, according to which the fact that teaching appointments at the Catholic University were subject to the approval of the Holy See was compatible with Articles 33 and 19 of the Constitution, which guaranteed freedom of instruction and freedom of religion respectively. The *Consiglio di Stato* further observed that "no authority in the Republic may rule on the findings of the ecclesiastical authority".

Decision of the Court

Article 10

In cases concerning Article 10 of the Convention, the Court first had to consider whether the measures in question amounted to interference with the applicant's right to freedom of expression. It then had to ascertain whether that interference was prescribed by law, pursued a legitimate aim and was "necessary in a democratic society".

In the instant case, the Court observed that, while Mr Lombardo Vallauri had been habitually employed on the basis of temporary contracts, the fact that they had been renewed for over 20 years and that his academic qualities were recognised by his colleagues testified to the stability of his professional situation. The decision of the Faculty Board not to consider his application had therefore

amounted to interference with his right to freedom of expression.

The Court noted that the interference had been prescribed by Italian law and could be said to have had the legitimate aim of protecting the "rights of others", manifested in the University's interest in basing its teaching on Catholic doctrine.

However, the Court considered that, in omitting to explain how the applicant's views which supposedly ran counter to Catholic doctrine were liable to affect the University's interests, the Faculty Board had not given adequate reasons for its decision.

The Court went on to observe that, although it was not for the domestic authorities to examine the substance of the Congregation's doctrinal stance, the administrative courts, in the interests of the principle of adversarial debate, should have addressed the lack of reasons for the Faculty Board's decision.

In conclusion, the Court considered that the University's interest in dispensing teaching based on Catholic doctrine could not extend to impairing the very substance of the procedural guarantees afforded to the applicant by Article 10 of the Convention. Accordingly, in the particular circumstances of the case, the interference with Mr Lombardi Vallauri's freedom of expression had not been "necessary in a democratic society". The Court therefore held, by six votes to one, that there had been a violation of Article 10 of the Convention in its procedural aspect.

For the same reasons the Court held that the applicant had not had effective access to a court, and found a violation of Article 6 § 1 by six votes to one.

The Court considered that there was no need to examine separately the applicant's complaints under Articles 9, 13 and 14.

Judge Cabral Barreto issued a dissenting opinion.

Bayatyan v. Armenia

Article 9 (no violation)

Judgment 0 27 October 2009. Concerns: the applicant complained that his conviction for refusal to serve in the army had violated his right to freedom of thought, conscience and religion as guaranteed by Article 9 of the Convention. He also submitted that the Article should be interpreted in the light of present-day conditions, namely the fact that the majority of Council of Europe member states had recognised the right of conscientious objection and that Armenia in 2000, before becoming a member, had committed to "pardon all conscientious objectors sentenced to prison terms".

Facts

The applicant is an Armenian national, born in 1983. He is a Jehovah's Witness.

Declared fit for military service, the applicant became eligible for the spring draft of 2001. In letters sent, among others, to the General Prosecutor and the Military Commissioner he declared that he refused to perform military service for conscientious reasons but that he was prepared to do alternative civil service. He did not appear for military service in mid-May 2001, as ordered by a summons, and temporarily moved away from home so that he would not be drafted by force. Two weeks later, the Parliamentary Commission for State and Legal Affairs informed the applicant that since there was no law in Armenia on alternative service, he was obliged to serve in the Armenian army.

In October 2001 the applicant was charged with draft evasion. Placed in detention, the district court convicted him as charged in October 2002 and sentenced him to one year and six months in prison, later increased by the Court of Appeal to two and a half years. That court stated essentially that the applicant did not accept his guilt and that he had hidden from preliminary investigation. The judgment was upheld by the Court of Cassation in January 2003. In July of that year the applicant was released on parole after having served 10.5 months of his sentence.

Decision of the Court

The Court first noted that it was legitimate to take account of the fact that a majority of the Council of Europe Member States had adopted laws providing for alternative service for conscientious objectors.

However, Article 9 had to be read together with Article 4 § 3 (b), which excluded from the definition of forced labour, as prohibited by the Convention, "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service". It followed that the choice whether or not to recognise conscientious objectors was left to each contracting party. At the time of the applicant's refusal to perform military service, the right to conscientious objection was not recognised in Armenia. His conviction had therefore not been in breach of his Convention rights, even though he could have had a legitimate expectation to be allowed to perform alternative service, given the Armenian Government's declaration to pardon conscientious objectors.

The Court further noted that a law on alternative service had been adopted in Armenia in the meantime, but considered that its substance and manner of application fell beyond the scope of this application.

The Court therefore held by six votes to one that there had been no violation of Article 9.

Judge Power expressed a dissenting opinion.

Mirolubovs and Others v. Latvia

Article 9 (violation)

Judgment of 15 September 2009. Concerns: the applicants alleged that the manner in which the domestic authorities had intervened in an internal dispute within their religious community had infringed their right to freedom of religion under Article 9. They also relied on Articles 8 (right to respect for private life) and 11 (freedom of assembly and association).

Facts

The applicants are Father Ivans (Ioanns) Mirolubovs, a Latvian national, Sergejs Picugins, a "permanent resident non-citizen" of Latvia and Albina Zaikina, also a Latvian national. At the relevant time Father Mirolubovs was an Old Orthodox "spiritual master" and the other two applicants were members of the Riga Grebenščikova Old Orthodox parish (*Rigas Grebenščikova vecticibnieku draudze* – "the RGVD").

The Old Orthodox faith originated from the great schism of the Russian Orthodox Church in the mid-17th century. The main difference with the Orthodox Church concerns acts of worship. The RGVD is the largest of Latvia's 69 Old Orthodox communities.

In 1995 Father Mirolubovs was appointed chief spiritual master of the RGVD. The same year, the adoption by the community of new statutes – found by the Ministry of Justice to be lawful – led to a split between the parishioners and to violent incidents.

In 2001 a new registration certificate was issued to the RGVD by the Religious Affairs Directorate ("the Directorate"), which in May 2002 also approved the new statutes adopted by the RGVD in which the latter stressed its complete independence from other religious organisations.

On 14 July 2002 an extraordinary general meeting of the RGVD took place. In parallel with that meeting, which was held in the temple in Riga and in which the applicants participated, another meeting gathered outside attended by, among others, Old Orthodox spiritual masters. The two rival groups each claimed to constitute the legitimate general meeting.

The outside meeting decided to elect new members and change the RGVD's statutes on the ground that Father Mirolubovs and his followers, by inviting a Russian Orthodox priest to celebrate the liturgy in the RGVD church, had renounced their Old-Rite beliefs and had effectively converted to the Orthodox Church, thereby forfeiting all their rights within the community.

Both factions requested formal approval from the directorate. The latter, in a decision of 23 August 2002, recognised the outside meeting as legitimate, formally approved it and registered it as the new RGVD parish council on 10 September 2002. The applicants and their fellow worshippers were expelled by force from the temple and no longer admitted. From that point on they operated informally under the name of "the RGVD in exile".

On 10 January 2003, on a request by the applicants, the Court of First Instance set aside the directorate's decisions of 23 August and 10 September 2002. The directorate appealed against that judgment and the Regional Court found in its favour. On 14 January 2004 an appeal by the applicants on points of law was dismissed by the Senate of the Supreme Court.

Decision of the Court

On the objection as to inadmissibility raised by the Latvian Government

In a letter of 3 December 2008 the government informed the Court that documents relating to the negotiations with a view to a friendly settlement had been sent to the Latvian Prime Minister via a third party. The government concluded that the application should be declared inadmissible on the ground of an abuse of the right of petition as there had been a breach of the confidentiality requirement under the friendly-settlement procedure.

The Court stressed that the confidentiality requirement was designed to facilitate friendly settlements by protecting the parties and the Court against possible pressure, and that an intentional breach of confidentiality by an applicant could indeed amount to abuse of the right of petition and result in the application being rejected.

However, the Court noted the difficulty of monitoring compliance with this requirement and the threat to the applicant's defence rights if it were imposed as an absolute rule. What the parties were prohibited from doing was publicising the information in question, for instance in the media or in correspondence liable to be read by a large number of people. In the instant case, as the Latvian Government had not adduced evidence that all the applicants had consented to the disclosure of the confidential documents, the Court was unable to find that the applicants had abused the right of individual petition.

Article 9

The intervention of the Latvian authorities in the dispute between the two groups of parishioners of the RGVD had pursued the legitimate aim of preventing disorder and protecting the rights and freedoms of others.

The autonomy of religious communities was an essential component of pluralism in a democratic society, where several religions or denominations of the same religion co-existed. While some regulation by the authorities was necessary in order to protect individuals' interests and beliefs, the state had a duty of neutrality and impartiality which barred it from pronouncing itself on the legitimacy of beliefs and their means of expression.

The authorities had failed to fulfil that duty as they had not adduced evidence of sufficiently serious reasons warranting withdrawal of the recognition granted to the RGVD bodies in 1995 and May 2002, and had implicitly determined the applicants' status as members of the Orthodox Church. The directorate's decision had not given sufficient reasons; in particular, it had been issued in spite of the opinion expressed by the Holy Synod of the Russian Orthodox Church that the applicants had not converted to that faith.

Furthermore, the directorate ought to have taken account in this sensitive case of the specific characteristics of the Old Orthodox faith, namely its very heterogeneous structure.

Lastly, the Court stressed that the Latvian courts had not examined the case on the merits or afforded

redress for the damage sustained by the applicants.

The Court therefore held that there had been a violation of Article 9 and that no separate issue arose under Articles 8 and 11.

Judge Myjer expressed a dissenting opinion.

Gsell v. Switzerland

Article 10 (violation)

Judgment of 8 October 2009. Concerns: relying on Article 10 (freedom of expression), Mr Gsell complained of having been prohibited from entering Davos. On the basis of Article 6 § 1 (right to a fair trial) he complained, firstly, that his case had not been examined by a "tribunal" within the meaning of Article 6 § 1 and, secondly, that the proceedings before the Swiss authorities had been excessively long.

Facts

The applicant, Mario Gsell, is a Swiss national who was born in 1958 and lives in Kaltbach (Switzerland). He is a journalist with Gastro-News, a food magazine. For the World Economic Forum (WEF) in Davos in 2001, he was asked to write an article about the impact of the demonstrations on local restaurants and hotels.

On 27 January 2001, when Mr Gsell was on his way to the WEF, and more specifically to the Public Eye on Davos event being staged by anti-globalisation organisations, the police subjected the passengers of the bus in which he was travelling to an identity check. Despite showing his press card, Mr Gsell was prohibited from entering Davos by the police, who had put in place numerous security measures in anticipation of an unauthorised demonstration and of disturbances.

In February 2001 the applicant lodged a complaint, which was declared inadmissible by the Graubünden cantonal government in April 2002 on the ground that it had been submitted out of time. The cantonal government nevertheless held, as to the merits, that the application of the so-called general police clause enshrined in the Federal Constitution, which could be invoked by the authorities to deal with "emergency situations" in the absence of other legal means of averting a "clear and present danger", had not been disproportionate, given that public safety had been at stake and it had been impossible to distinguish between potentially violent individuals and other members of the public.

On 7 July 2004 the Federal Court dismissed two public-law appeals by the applicant. With regard to Article 6 of the Convention, on which Mr Gsell relied, it held that neither the exercise of his profession nor his professional reputation had been adversely affected as a result of his being barred from the WEF. In relation to Article 10, the court found that the Graubünden cantonal government had been entitled to invoke the general police clause, as past anti-globalisation events had given grounds for regarding the staging of Public Eye on Davos as an emergency situation which presented a real threat and was not clearly identifiable or foreseeable.

Decision of the Court

Article 10

The measure at issue had amounted to interference with Mr Gsell's right to freedom of expression as he had been travelling to Davos with the intention of writing an article.

The authorities had made use of the general police clause under the Federal Constitution because there had been no explicit legal basis for barring Mr Gsell.

According to the case-law of the Federal Court, however, the general police clause could not be used by the authorities in foreseeable and recurring situations, but only in "emergency situations" in order to avert a "clear and present danger". While, in the instant case, the Court acknowledged the difficulty for the authorities of making a precise assessment of the risks inherent in the WEF, it did not consider that the scale of the demonstrations had been unforeseeable, in view of past experience and the findings of the Arbenz report on security at the WEF. The circumstances of the 2001 WEF had therefore been foreseeable and recurring. Furthermore, again according to the Federal Court's case-law, measures to restrict freedom of assembly were to be taken solely in respect of those persons who were creating a disturbance, which had not been the case with Mr Gsell.

Accordingly, the authorities had not been entitled to make use of the general police clause in order to prohibit the applicant from entering Davos. The interference by the authorities with his freedom of expression had not been prescribed by law and had therefore been in breach of Article 10.

Article 6 § 1

As to the applicant's complaint concerning the right of access to a court, the Court stressed the very detailed reasons given in particular by the Federal Court in its judgment of 7 July 2004, following adversarial proceedings in which the principle of equality of arms between the parties had been observed. Noting, in addition, that the facts had not been the subject of real dispute between the parties, it did not consider that the Federal Court's limited power to assess the facts in dealing with the public-law appeal had infringed Mr Gsell's right of access to a court. It therefore held that the complaint was manifestly ill-founded and should be dismissed.

The part of Mr Gsell's application concerning the length of the proceedings failed to satisfy the requirement to exhaust domestic remedies, as the applicant had made no complaint in that regard in his various applications to the authorities. This complaint was therefore dismissed as being manifestly ill-founded. The Court further noted that, in view of the circumstances of the case, the overall length of the proceedings – approximately three and a half years for four levels of jurisdiction – had not been excessive for the purposes of Article 6 § 1.

Moskal v. Poland

Article 1 of Protocol No. 1 (violation)

Judgment of 15 September 2009. Concerns: relying on Articles 6 and 8, and on Article 1 of Protocol No 1, Ms Moskal complained that the authorities had deprived her of her property in unfair proceedings.

Facts

The applicant, Maria Moskal, is a Polish national born in 1955 who lives in Glinik Chorzewski (Poland). She is the mother of a child born in 1994 who suffers from asthma, various allergies and recurring infections. This is the first of about 120 similar applications which have been lodged with the Court, all from the same region of Poland, concerning the revocation of erroneously awarded early-retirement pensions awarded to parents with children requiring permanent health care.

In August 2001 Ms Moskal asked the Social Security Board for an early retirement pension in order to care for her child who, she claimed, needed constant care because of his medical condition. Her request was granted from 1 September 2001 after which she gave up her job of 30 years. Subsequently she was issued a pensioner's identity card marked "valid indefinitely" and for the following 10 months she received her early retirement pension without interruption.

In June 2002 the Social Security Board decided to discontinue the payment of Ms Moskal's pension from 1 July 2002. The Board found in particular that the medical documentation in support of the applicant's request submitted the previous year had been insufficient.

Ms Moskal appealed unsuccessfully in court against the discontinuation of her pension. The final domestic judicial instance – the Supreme Court – found that reopening was justified because the authorities had only found out that crucial evidence had been lacking from the file after the decision granting the pension had been taken. Ms Moskal was not asked to return her early retirement payments she had received till that date.

Between 1 July 2002 and 25 October 2005 Ms Moskal did not receive any social benefits and claimed she had no other income. Following separate social security proceedings, on 25 October 2005, the District Labour Office granted her a pre-retirement benefit amounting to approximately 50% of her discontinued early retirement pension; this benefit was granted with a retroactive effect starting from 25 October 2002, however, without interest.

Decision of the Court

The Court first noted that Ms Moskal had acquired a property right as a result of the 2001 Social Board's decision granting her an early retirement pension. That decision had been in force for 10 months before the authorities had become aware of their error. Although Ms Moskal had challenged her pension withdrawal in court, a judicial decision had only been taken two years later and in the meantime she had not received any social security benefits.

The Court emphasised that the authorities had to act with the utmost scrupulousness when dealing with matters of vital importance for individuals, such as welfare benefits. Thus, while public authorities had to be able to correct their mistakes, they had to take particular care to avoid that individuals bear excessive hardship as a result of their errors.

Following the authorities' 2002 decision to stop Ms Moskal's pension, found to have been granted wrongly, she had suddenly lost her only source of income. As she had only been granted the new pre-retirement benefit in October 2005, to half of the amount of the revoked pension and without any interest, it followed that the authorities' mistake had left her with 50% of her expected income, and that after three years of proceedings. Consequently, there had been a violation of Article 1 of Protocol No 1. It was not necessary to examine separately the applicant's complaints under Article 6 and Article 8.

Judges Bratza, Hirvelä and Bianku expressed a joint partly dissenting opinion.

Apostolakis v. Greece

Article 1 of Protocol No. 1 (violation)

Judgment of 22 October 2009. Concerns: Mr Apostolakis contended that the full withdrawal of his pension as a result of his criminal conviction had infringed his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 (protection of property). The application was lodged with the European Court of Human Rights on 10 August 2007.

Facts

The applicant, Michail Apostolakis, is a Greek national who was born in 1938 and lives in Neo Iraklio (Greece). Since the age of 18 he had worked for the Greek Artisan and Tradesmen's Insurance Fund ("the TEVE") of which he became pensions director. In the end he was forced to resign on account of criminal proceedings against him for falsifying paybooks belonging to members of the TEVE. On 13 March 1998, the Athens Court of Appeal convicted him of aiding and abetting the falsification of savings books to the detriment of the TEVE and sentenced him to 11 years' imprisonment. He was released in December 1998, the period of pre-trial detention having been deducted from his sentence. Prior to that, in 1988, a right to a retirement pension had been conferred on Mr Apostolakis after more than 30 years' service.

After his release, in December 1999, the Social Security Fund ("IKA") revoked the decision of 1988 to award him a pension and transferred part of the pension to his wife and daughter, on the basis of the criminal conviction and in accordance with the Pensions Code. The withdrawal of Mr Apostolakis's pension also caused him to lose his personal social-security rights.

After the tacit dismissal of an objection by Mr Apostolakis and an initial judgment of the Audit Court, delivered on 12 October 2005, the Court of Audit, sitting as a full

court, held that the provisions according to which social rights could be withdrawn, which were designed to deter civil servants from committing offences and to ensure the proper functioning and the credibility of the administration, were compatible with the constitutional principle of proportionality. Subsequently, on 15 February 2007, the Audit Court held that the penalty imposed on the applicant was proportionate to the aims pursued. In March 2008 it ruled that the applicant should pay the TEVE more than 2 000 000 euros for the losses sustained.

Decision of the Court

The withdrawal of Mr Apostolakis's pension constituted an infringement of his right of property (a right to a pension constitutes a right of property where special contributions have been paid or where an employer has given an undertaking to pay a pension on terms provided for in the employment contract).

Contrary to the Greek courts' ruling, that infringement had caused the applicant to bear a disproportionate and excessive burden, which could not be justified by the need to deter civil servants from committing offences and ensure the proper functioning of the administration and the credibility of the public service. In that connection the Court observed in particular that, following his conviction, Mr Apostolakis had been automatically deprived of his pension for the rest of his life despite the fact that the offence he had committed had had no causal link with his retirement rights as a socially insured person. The fact that the pension – of a reduced amount – had been transferred to the applicant's family did not suffice to offset that loss because the applicant could in future lose all means of subsistence and all social cover, for example, if he became a widower or got divorced.

The Court held that States could make provision in their legislation for the imposition of fines as a result of a criminal conviction. However, penalties of that kind, which would involve the total forfeiture of any right to a pension and social cover, including health insurance, amounted not only to a double punishment but also had the effect of extinguishing the principal means of subsistence of a person, such as Mr Apostolakis, who had reached retirement age. Such an effect was compatible neither with the principle of social rehabilitation governing the criminal law of the States party to the Convention system, nor with the spirit of the Convention.

The Court held, unanimously, that there had been a violation of Article 1 of Protocol No. 1.

Wojtas-Kaleta v. Poland

Article 10 (violation)

Judgment of 16 July 2009. Concerns: relying on Article 10, the applicant complained that the courts had restricted unduly her freedom of expression by having referred merely to her obligations as an employee while disregarding her professional obligations as a journalist.

Facts

The applicant, Helena Wojtas-Kaleta, is a Polish national who was born in 1943 and lives in Wroclaw. She was a journalist employed by a Polish public television company (TVP).

At the beginning of April 1999 the national newspaper *Gazeta Wyborcza* published an article reporting that two classical music programmes had been taken off the air. The article quoted an opinion expressed by the applicant in her capacity of the president of the Polish Public Television Journalists' Union in which she stated that although the TVP director had suggested this step would create new opportunities for classical music to be aired, she herself saw no steps taken in that direction.

In addition, Ms Wojtas-Kaleta signed an open letter in protest against the above measure. The letter was addressed to the Board of TVP and stated among other things that while classical music was the heritage of the nation, its continuous dissemination was seriously jeopardised by diminishing its time on the air and polluting air time instead with violence and pseudo-musical kitsch.

Later in the month of April 1999, the applicant was reprimanded in writing by her employer for failing to observe the company's regulations which required her to protect her employer's good name. Following an unsuccessful objection to the reprimand, the applicant brought a claim against TVP before the district court requesting that the reprimand be withdrawn. The court dismissed her claim in a judgment of January 2001 in which it found that Ms Wojtas-Kaleta was guilty of having behaved in an unlawful manner and that this was a necessary and sufficient prerequisite for the disciplinary measure imposed on her. On appeal, in April 2001, the higher regional court upheld the contested judgment concluding that the applicant had acted to the detriment of her employer by breaching her obligation of loyalty and, consequently, the employer had been entitled to impose the reprimand on her.

Decision of the Court

The Court first observed that the case raised a problem of how the limits of loyalty of journalists working for public television companies should be delineated and, in consequence, what restrictions could be imposed on journalists in public debate.

The Court then considered that where a state had decided to create a public broadcasting system, the domestic law and practice had to guarantee that the system provided a pluralistic audiovisual service. Under the applicable legislation in this case the public television company had been entrusted with a special mission including, among other things, assisting the development of culture with emphasis on the national intellectual and artistic achievements.

The Court further noted that the applicant had to enjoy freedom of expression in all her capacities: as an employee of a public television, as a journalist or as a trade-union leader. Further it considered that, given the responsibility of journalists to contribute to and encourage public debate, the obligation of discretion and constraint did not apply with equal force to them as it was in the nature of their functions to impart information and ideas.

In her comments and open letter the applicant had referred to widely shared concerns about the declining quality of music programmes, something which had been a matter of public interest. In addition, the

applicant's statements had relied on a sufficient factual basis and had at the same time amounted to value judgments which were not susceptible of proof. Neither had her comments been a gratuitous attack on another person aiming to offend them, as their tone had been measured and there had been no personal accusations. Finally, the applicant's good faith had never been challenged neither by her employer nor by the domestic authorities involved in the proceedings.

Accordingly, having balanced the different interests involved in the present case, the Court held that there had been a violation of Article 10.

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 1065th Human Rights (HR) meeting[1] (15-16 September 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 approximately 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 via 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 quotation marks, the year in brackets followed by the number of the resolution. Example: "(2007) 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. Meeting specially devoted to the supervision of the execution of judgments.
2. Replacing the Rules adopted in 2001.

1065th Human Rights meeting – general information

During the 1065th meeting (15-16 September 2009), the CM supervised payment of just satisfaction in some 1 113 cases. It also monitored, in some 24 cases the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, re-opening domestic judicial proceedings, etc.) and, in some 868 cases (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 363 new Court judgments and considered draft final resolutions concluding, in 100 cases , that states had complied with the Court's judgments.

Main texts adopted at the 1065th meeting

After examination of the cases on the agenda of the 1065th meeting, the Deputies have notably adopted the following texts.

Selection of decisions adopted (extracts)

During the 1065th meeting, the CM examined 3 171 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.

Meltex Ltd and Mesrop Movsesyan against Armenia

32283/04, judgment of 17 June 2008, final on 17 September 2008

Breach of the applicant's right to freedom of expression on account of the unlawful refusal, by the National Television and Radio Commission (NTRC), on several occasions in 2002 and 2003, to deliver to the applicant, an independent broadcasting company, a broadcasting license (violation of Article 10).

The Deputies,

1. as regards general measures, took note of the information provided by the Armenian authorities concerning the adoption on 28 April 2009 of the amendments to the Law on Television and Radio, Article 31.3 of which provides that the National Television and Radio Commission shall give full reasons for its decisions to award, reject or revoke a broadcasting licence and ensure the transparency and accessibility of its decisions;

2. as regards the individual measures that have to be taken by the domestic authorities to erase as far as possible the consequences of the violation, noted the information according to which a new call for tenders, in which the applicant will be given the possibility to participate, is scheduled to take place in July 2010 and invited the respondent state to keep the Committee informed of all progress made in preparing the call for tenders as well as of any interim measures that they may envisage;

3. further invited, in this respect, the Armenian authorities to provide full information on the remedies pursued by the applicant before the competent national judicial authorities;

4. decided to resume consideration of this item at their 1072nd meeting (December 2009) (DH), in the light of further information to be provided by the authorities.

Poghossian against Georgia Ghavtadze against Georgia

9870/07, judgment of 24 February 2009, final on 24 May 2009

Degrading treatment of the detained applicants resulting from the authorities' failure in their obligation to provide them an appropriate medical treatment for hepatitis C (in both cases) and for tubercular pleurisy (in the Ghavtadze case): systemic problem of lack of adequate medical care to prisoners infected, inter alia, with viral hepatitis C. (violations of Article 3).

1. recalled the general obligation on respondent states to take, in all cases, under the Committee of Ministers' supervision, the individual and/or general measures needed to erase, as far as possible, the consequences of the violations for the applicants and avoid other similar violations;

2. noted, in relation to individual measures, that in the Ghavtadze case in which the applicant remains in prison, the Court specified the necessary measures that had to be taken in

ordering the respondent state "to guarantee, at the earliest possible date, the applicant's admission to a hospital able to provide him with appropriate medical care for his viral hepatitis C in conjunction with the tubercular pleurisy from which he also suffers";

3. noted in this respect that the Georgian authorities provided information on the developments in the applicant's state of health, and on the improvements of the infrastructure of the penitentiary hospital and invited the Georgian authorities to specify to what extent these developments ensure the requirements of individual measures as stated above;

4. noted that no questions relating to individual measures need to be raised by the Committee of Ministers in the Poghossian case, especially in view of the fact that the applicant was released in December 2008 and did not submit a claim for just satisfaction before the Court;

5. recalling, in relation to the general measures, that the Court, on the basis of the Committee of Ministers' Resolution of 12 May 2004 (Res(2004)3) on judgments revealing an underlying systemic problem, indicated in these two cases the existence of such problems in relation to medical treatment in detention in Georgia, and in particular, in relation to the proper medical treatment of detainees suffering from hepatitis C and other contagious illnesses;

6. noted with the Court that general measures, legislative and administrative, must be adopted rapidly to prevent the transmission of contagious illnesses in the Georgian penitentiary system, to set up a screening system on admission of detainees to prison and to guarantee the treatment of these illnesses in a speedy and effective way and in appropriate conditions;

7. noted in this respect the information provided by the Georgian authorities on the strategy for medical treatment of prisoners infected with hepatitis C, adopted on 25 June 2009 by the Ministry of Corrections, Probation and Legal Assistance and the Ministry of Health and Social protection;

8. invited the authorities to present promptly a detailed action plan on the general measures taken and envisaged to address the structural problem identified regarding the quality of medical treatment in detention and to ensure that detainees placed in hospital cannot be removed without the express authorisation of the doctor in charge; and reiterated in this context the importance of guaranteeing an effective remedy within the meaning of the Convention;

9. invited the authorities, when drafting this action plan, to take especially into account the European rules drawn up on this subject and of all the relevant recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

10. decided to resume consideration of this item at their 1072nd meeting (December 2009) (DH), in the light of updated information on the applicant's situation in the Ghavtadze case and the action plan awaited from the Georgian authorities in relation to the general measures.

246/07, judgment of 24 February 2009, final on 6 July 2009

Ben Khemais against Italy

Hindrance to the effective exercise of the right to individual application on account of the deportation of the applicant on 3 June 2008 to Tunisia, where he faces the risk of ill-treatment, notwithstanding the fact that on 29 March 2007 the European Court had requested the Italian Government, by virtue of Rule 39 (Interim measures) of the Court's Rules, not to deport the applicant until the Court had had an opportunity to examine the application further (violation of Articles 3 and 34).

The Deputies,

1. stressed the fundamental importance of complying with interim measures indicated by the Court under Rule 39 of the Rules of Court;

2. took note of the information given by the Italian authorities and invited them to provide to the Committee, in the form of an action plan, updated and tangible information on measures taken or envisaged with the aim of preventing similar violations, as well as on any measures envisaged with respect to the applicant;

3. decided to resume consideration of this item at the latest at their DH meeting in March 2010, in the light of information to be provided on general and individual measures.

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

Sarban and 9 other similar cases against Moldova

Violations related to detention on remand in 2002-2006: arrest not based on reasonable suspicion that the applicants had committed an offence and unlawful detention on remand (violations of Article 5 § 1-c); general practice of detaining accused persons without any judicial decision to this effect, solely on the ground that their case had been submitted to the trial court (violation of Article 5 § 1); detention on remand or its extension without sufficient and relevant grounds, exclusion by the Code of Criminal Procedure of a particular category of accused from the right to release pending trial; (violations of Article 5 § 3); failure to examine speedily the lawfulness of the applicant's detention, failure to comply with the principle

of equality of arms (violations 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 (violations of Article 3)

The Deputies,

1. took note of the information provided by the Moldovan authorities as summarised in the Memorandum CM/Inf/DH(2009)42;

2. encouraged the authorities to continue their efforts with a view to ensuring full compliance with the requirements of the Convention regarding the reasoning of judicial decisions ordering detention on remand or its prolongation;

3. invited the Moldovan authorities to intensify their efforts in organising in-service training activities for judges and prosecutors focused in particular on the reasoning of requests and decisions concerning the detention on remand;

4. decided to resume consideration of these cases at their 1072nd meeting (December 2009) (DH), to examine the outstanding issues on the basis of an updated and completed version of the Memorandum to be prepared by the Secretariat.

Kaprykowski against Poland
Musiał Sławomir against Poland
Wenerski against Poland

- 23052/05, judgment of 3 February 2009, final on 3 May 2009
- 28300/06, judgment of 20 January 2009, final on 5 June 2009
- 44369/02, judgment of 20 January 2009, final on 20 April 2009

Inhuman and degrading treatment of the applicants on account of their detention conditions, between 2001 and 2007, which were not adequate to their serious health or psychiatric problems (violations of Article 3 in all cases); violation of the applicant's right to respect for his correspondence in that a letter sent to him by the European Court in 2003 had been opened and marked "censored" (violation of Article 8 in the Wenerski case).

The Deputies,

1. recalled the structural character of the lack of appropriate detention conditions and medical treatment for detainees requiring special care due to their state of health;

2. noted with interest the information provided at the meeting by the Polish authorities on general measures taken and envisaged in the light of this situation, encouraged them to continue their efforts in this direction and to provide the Committee with a detailed stock-taking of measures already taken and an action plan concerning additional measures under way;

3. noted that Mr Kaprykovski and Mr Musiał were no longer in detention and accordingly considered that no individual measure is required in their cases; but noted in addition the information provided concerning the present situation of Mr Wenerski and invited the authorities to take all measures called for by his state of health;

4. decided to resume consideration of these items at the latest at the DH meeting in March 2010 in the light of further information requested concerning Mr Wenerski's circumstances and of an action plan/action report to be provided by the authorities.

– Burdov No. 2 against the Russian Federation
– Timofeyev and 199 other similar cases against the Russian Federation

- 33509/04, judgment of 15 January 2009, final on 4 May 2009
Interim Resolution CM/ResDH(2009)43
- 58263/00, judgment of 23 October 2003, final on 23 January 2004
CM/Inf/DH(2006)19rev2, CM/Inf/DH(2006)19rev3, CM/Inf/DH(2006)45

Violations of the applicants' right to effective judicial protection due to the administration's failure over several years to comply with final judicial decisions in the applicants' favour ordering, in particular, the payment of compensation and allowances for health damage sustained during emergency and rescue operations at the Chernobyl nuclear plant, the payment of damages for the delayed enforcement of these decisions (Burdov No. 2 case) as well as welfare payments, pension or disability allowance increases, etc. (Timofeyev and others cases), (violations of Article 6 § 1 and of Article 1 of Protocol No. 1); lack of an effective remedy in respect of the applicants' arguable claim for compensation for the late enforcement of the domestic judgments in their favour (violations of Article 13).

The Deputies,

1. took note of the information provided by the Russian authorities on the measures which are being taken in response to the pilot judgment delivered by the European Court in the case Burdov No. 2;

2. noted with interest the draft laws introducing a new remedy to ensure effective compensation for damages caused by non-execution or delayed execution of judicial decisions, as well as the ongoing settlement of some 500 cases involving 1 100 applicants whose applications predate the delivery of the pilot judgment;

3. called upon all authorities of the Russian Federation to give priority to the adoption of the aforementioned drafts laws in order to make the new remedy available within the time-limits set by the Court;

4. decided to resume consideration of these cases at their 1072nd meeting (December 2009) (DH), to assess the progress achieved in the implementation of the above measures on the

basis of a draft Interim Resolution to be prepared by the Secretariat;

5. decided to examine the adoption of other general measures necessary to prevent violations due to non-execution or delayed execution of domestic judicial decisions at the latest at their DH meeting in March 2010, in the light of further information to be provided by the Russian authorities.

32772/02, judgment of 30 June 2009 – Grand Chamber

Verein gegen Tierfabriken Schweiz (VgT) No. 2 case against Switzerland

Failure of the Swiss authorities to comply with their positive obligation to take the necessary measures to allow the applicant, an animal protection association, to broadcast a television commercial, after the European Court's had already found, in 2001, (Verein gegen Tierfabriken (VgT) No. 24699/94, judgment of 28 June 2001) that the ban imposed on the applicant's commercial had violated its freedom of expression (violation of Article 10).

The Deputies,

1. noted with interest the information provided by the Swiss authorities concerning in particular the applicant association's new request for review and the publication and dissemination of the European Court's judgment;

2. invited the Swiss authorities to inform the Committee of Ministers of the developments in the new review procedure, as well as any other measure taken or envisaged to execute the judgment;

3. decided to resume consideration of this item at the latest at their DH meeting in March 2010, in the light of an action plan/action report to be provided by the authorities

21987/93, judgment of 18 December 1996, final on 18 December 1996

Aksoy against Turkey and 264 other similar cases

Violations resulting from actions of the security forces, in particular in the south-east of Turkey, mainly in the 1990s (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces); subsequent lack of effective investigations into the alleged abuses (violations of Articles 2, 3, 5, 8 and 13 and of Article 1 of Protocol No. 1). In several cases, failure to co-operate with the Convention organs as required under Article 38 of the Convention.

The Deputies,

1. observed that the Turkish authorities informed the Committee of the measures taken with regard to the outstanding issues identified in the Committee's Interim Resolution CM/ResDH(2008)69 adopted at the 1035th meeting (September 2008);

2. instructed the Secretariat to make an assessment of the information provided by the Turkish authorities during the Committee's current meeting;

3. decided to resume consideration of these cases at the latest at their DH meeting in March 2010, in the light of the assessment to be made by the Secretariat.

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(2008)6/5, CM/Inf/DH(2009)39
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, 1 Protocol Nos. 1, 13), Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Article 9, 10, 1 Protocol Nos. 1, 2 Protocol Nos. 1, 3, 8, 13); Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Article 6).

The Deputies,

Concerning the property rights of enclaved persons

1. took note of information document CM/Inf/DH(2009)39 prepared by the Secretariat;

2. noted in this respect that a certain number of questions still need to be examined in depth; to this effect, invited the Turkish authorities to provide before 15 December 2009 a copy of the entirety of the legislation as amended and related decisions relevant for the examination of this issue, in particular the entire text of Law No. 41/77;

3. decided to resume the examination of this issue at their DH meeting of March 2010;

Concerning the property rights of displaced persons

4. recalled that the European Court is currently seised of the question 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;

5. recalled that in the meantime it is important that all possibilities of settlement offered by the mechanism, in particular on restitution of property, are preserved (protective measures);

6. recalled in this context the decision adopted at their 1059th meeting (June 2009);

7. noted in this respect the information provided by the Turkish authorities at the meeting and invited them to transmit this information to the Committee in writing, highlighting in particular all legal and practical consequences of the introduction of an application before the "Immovable Property Commission" concerning restitution of property,

8. decided to resume consideration of this issue at their 1072nd meeting (December 2009) (DH), in the light of the information provided.

Ülke against Turkey

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

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).

The Deputies,

1. observed with grave concern that, despite the Committee's repeated calls on Turkey and two interim resolutions already adopted, tangible information has still not been provided by the Turkish authorities on the urgent measures required in this case;

2. invited the Chair of the Committee of Ministers to convey the preoccupation of the Committee through a letter to be addressed to his Turkish counterpart;

3. decided to resume consideration of this item at their 1072nd meeting (December 2009) (DH), in light of the reply by the Turkish Minister of Foreign Affairs to the letter of the Chair of the Committee.

Xenides-Arestis against Turkey

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

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).

The Deputies,

1. invited the Chairman of the Committee of Ministers to send a letter to his Turkish counterpart in order to convey the Committee's continuing concern relating to the lack of information on the payment of the sums awarded for just satisfaction by the judgment of the European Court of 7th December 2006, underlying the Turkish authorities' obligation to pay these sums without further delay, including the default interest due;

2. decided to continue to supervise the execution of the Court's judgment at each of their "Human Rights" meetings until full compliance with this judgment is secured.

Hulki Güneş against Turkey and three other similar cases

28490/95, judgment of 19 June 2003, final on 19 September 2003
Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150
CM/INF/DH(2009)5 revised 12

Unfair criminal proceedings (judgments final between 1994 and 1999), because of convictions to lengthy prison sentences (on the basis of statements made by gendarmes or other persons who never appeared before the court, or on the basis of statements obtained under duress and in the absence of a lawyer); ill-treatment of the applicants while in police custody; lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Article 6 §§ 1 and 3, 3 and 13).

The Deputies decided to resume consideration of the measures to be taken to execute the Courts' judgments at their 1066th meeting (23 September 2009).[3]

3. The Committee decided, at its 1043rd meeting, in December 2008, to examine these cases at each regular meeting of the Committee, as from the first meeting in January 2009 until the Turkish authorities provide tangible information on the measures they envisage taking.

Interim Resolutions (extract)

During the period concerned, the Committee of Ministers encouraged, by different means, the adoption of many reforms and also adopted one interim resolution. This kind of resolution 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.

An extract from the interim resolution adopted is presented below. The full text of the resolutions is available on the website of the Depart-

ment 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 resolution adopted at the 1065th meeting

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

Interim Resolution CM/ResDH(2009)74 Gongadze against Ukraine

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 in respect of the inefficient investigation and in order to obtain compensation (violation of Articles 2, 3 and 13).

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

Strongly encouraged the Ukrainian authorities, in the light of the recent developments, to enhance their efforts with a view to bringing to an end the ongoing investigation while bearing in mind the findings of the Court in this case;

Invited the respondent state to continue keeping the Committee regularly informed of the measures taken, and the results achieved, to ensure full execution of the judgment;

Decided to resume consideration of this case, at the latest, at its first Human Rights meeting in 2010.

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 1065th meeting, the CM adopted 42 final resolutions (closing the examination of 100 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 1065th meeting

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

Resolution CM/ResDH(2009)75 – A. against United Kingdom

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

Individual measures

The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. No further measures are required as the applicant reached the age of majority in 2002.

General measures

1) Legislative change: the United Kingdom chose to implement the judgment by amending the relevant legislation in all its jurisdictions.

a) England and Wales: through section 58 of the Children Act 2004, the defence of "reasonable chastisement" has been removed and replaced with one of "reasonable punishment". This defence has been limited to cases charged as "common assault", i.e. cases where the injury suffered is transient or trifling. The defence may no longer be invoked in cases where the physical punishment amounts to assault occasioning actual bodily harm to children, cruelty or more serious assault offences.

Where there is an aggravating factor, the charge should not be "common assault" but "actual bodily harm". An assault on a child by an adult is a serious aggravating factor. Therefore, where an adult assaults a child in such a way as to amount to a breach of Article 3, the reasonable punishment defence is not available.

The United Kingdom authorities indicated that on 22 April 2009, in circumstances comparable to this case, a father was convicted at Cardiff Crown Court of child cruelty and later sentenced. The defence of reasonable punishment was not available to him.

b) Northern Ireland: legislative provisions mirroring those of England and Wales were introduced in Northern Ireland by the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, which came into force in September 2006.

Proceedings were brought by the Northern Ireland Commissioner for Children and Young People challenging the compatibility of the new legislative provisions with the Convention. On 20 December 2007 the High Court in Northern Ireland ruled that the Commissioner was not a "victim". The High Court did however, go on to consider the substantive points raised by the Commissioner and rejected all of those points. The Commissioner appealed to the Northern Ireland Court of Appeal. In its judgment of 20 February 2009, the Court of Appeal dismissed the claim on the ground that the Commissioner was not a "victim" and therefore had no standing to bring the proceedings. The Court of Appeal did not consider any of the substantive arguments put forward by the Commissioner. In a press release dated 21 April 2009, the Commissioner stated that she will not pursue further legal action.

c) Scotland: the Criminal Justice (Scotland) Act 2003, Section 51 provides for a defence to a charge of assault against a child where certain conditions are satisfied (referred to as "justifiable assault").

Section 51 § 1 and 51 § 2 list the factors which the court must take into consideration when determining whether the punishment can be considered a "justifiable assault", namely: the nature of what was done, the reason and the circumstances in which it took place; its duration and frequency; any effect (whether physical or mental) which it has been shown to have had on the child; the child's age; the child's personal characteristics (including sex and state of health) at the time; and such other factors as it considers appropriate in the circumstances of the case. Those criteria – for example the nature of what was done, the circumstances in which it took place, any effect (whether physical or mental) – reflect the criteria that the European Court has set out in its case-law to assess whether ill-treatment falls within the scope of Article 3.

The law is different from that in England, Wales and Northern Ireland due to the fact that Scotland has its own legal system. However, the reflects the same approach and has the same structure as that in the other parts of the United Kingdom. It has a similar effect in practice.

A detailed presentation of the legislative changes adopted in response to the judgment as well as other information provided by the United Kingdom authorities and a summary of various communications submitted to the Committee of Ministers by NGOs and the national commissioners for children's rights may be found in Information Document CM/Inf/DH(2008)34.

2) Awareness raising measures: the United Kingdom has also taken significant awareness raising measures to clarify the law for non-lawyers, parents and childcare professionals, given the vulnerable status of those potentially affected by the legislation. These measures are summarised in Information Document CM/Inf/DH(2008)34 (§20-21, § 48, § 56-57). Additional resources have also been allocated in the United Kingdom for parenting support, as set out in the memorandum (§ 70); awareness-raising and funding will continue at the national level.

The UK authorities have pointed out that should the European Court take a different view of the minimum level of gravity to be taken into account with regard to treatment of children in future, the United Kingdom domestic courts will be obliged to take this into account under the Human Rights Act 1998.

Resolution CM/ResDH(2009)76 – Mihailov against Bulgaria

52367/99, judgment of 21 July 2005, final on 21 October 2005

Lack of judicial review of decisions, concerning the applicant's disability status, taken in 1998 by two medical commissions that did not satisfy the guarantees required for a tribunal (violation of Article 6 § 1).

Individual measures

The applicant died in 2001. His son and daughter continued the proceedings before the European Court. They had the possibility to ask for the re-opening of the domestic proceedings concerning their father's disability status following the judgment of the European Court, on basis of Article 231 § 1, letter "z" of the Code of Civil Procedure of 1952.

General measures

According to Article 112 § 1(4) of the new Health Act of 2004, decisions of the National Expert Medical Commission (the successor body of the Central Labour Expert Medical Commission) may be reviewed by the Sofia City Court (see §25 of the judgment of the European Court).

Resolution CM/ResDH(2009)78 – Narinen against Finland

45027/98, judgment of 1 June 2004, final on 1 September 2004

Violation of the applicant's right to respect for his correspondence due to the fact that a letter to his address was unlawfully opened by an official receiver appointed to his estate in bankruptcy proceeding, in the absence of specific, legally binding rules on the matter (violation of Article 8).

Individual measures

The European Court considered that the finding of a violation in this case constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

General measures

The bankruptcy legislation at the origin of the violation has been repealed and a new Bankruptcy Act (120/2004) entered into force on 1 September 2004. According to this new legislation (Chapter 4, section 4 § 1), the bankruptcy trustee shall have a right, without the debtor's consent, to receive and open mail and other messages, as well as parcels, addressed to the debtor which pertain to his or her economic activities. According to the preparatory work, the provision concerns only mail and messages relating to debtor's economic activities and cannot be applied to any personal mail.

The judgment of the European Court has, in addition, been published on the Finlex database. A summary of the judgment in Finnish was published on the same database. The judgment has been sent out to the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, the Ministry of Justice, the Espoo District Court and the Helsinki Appeal Court, on 2 June 2004.

6253/03, judgment of 24 October 2006, final on 26 March 2007

Resolution CM/ResDH(2009)79 – Vincent against France

Degrading treatment of the applicant, who is paraplegic, on account of his detention from 17 February to 11 June 2003 at Fresnes Prison where he could not move around independently (violation of Article 3).

Individual measures

Since 2 October 2006 (except for temporary stays in other prisons between 5 August and 9 September 2008), the applicant has been detained in Liancourt prison which, although old, has individual cells on the ground floor, where the medical department is situated and detainees' activities are held. The information given to the Committee of Ministers shows that, unlike the conditions existing from February to June 2003 in Fresnes Prison, criticised by the European Court (no violation having been found in respect of the conditions of detention in other prisons), the applicant may now move about and, in particular, leave his cell unaided.

This was ascertained, in the first place, by the administrative judge (President of the Administrative Tribunal of Amiens), whom the applicant seised with a complaint about his detention conditions at the Liancourt Prison, which he considered inappropriate in view of his disability. The applicant lodged an appeal against this decision. It is up to the national courts who have been seised of his complaints and who apply the Convention directly, to ensure, in particular following the European Court's judgment, that the applicant's conditions of detention comply with the Convention's requirements.

The findings relating to the applicant's present detention conditions were also confirmed by the French Ombudsman (Médiateur de la République), an independent authority. Following a written request from the applicant, the Ombudsman sent two of his colleagues to inspect Mr Vincent's conditions of detention. He concluded in particular that Mr Vincent has "sufficient possibilities of moving unaided" (in his wheelchair, he can go through the building's doors, negotiate the slopes alone, has an individual cell, can use a shower equipped with a seat, etc.).

The applicant's detention (which, according to the present situation, should end on 11 March 2010) seems to offer sufficient guarantees.

General measures

The Court found (§ 101) "that applicant and government agreed on the fact that the short-stay prison of Fresnes, a very old building, is particularly inappropriate for the detention of physically disabled persons".

It is possible to avoid new, similar violations by ensuring, on a case-by-case basis, that disabled persons are detained in a prison on the French territory, on the basis of their specific facilities (see below) so as to ensure that the available equipment fulfils the needs of the persons concerned.

The Directorate of Prison Administration, directly responsible to the Ministry of Justice, is the competent authority in this respect. Its attention has been drawn to the findings of this judgment. The judgment has been communicated to the courts concerned and also presented in a table published on the Ministry of Justice intranet site (table listing all the judgments and decisions delivered by the Court during the year, indicating in particular the complaints in respect of which the Court found a violation or a non-violation, as well as complaints declared inadmissible). Furthermore, this judgment, as all judgments against France, has been sent out to the courts and to the directorates of the Ministry of Justice concerned. It was also presented in detail in the *Bulletin d'information de la Cour de cassation* No. 651 of 1 December 2006. Various specialist articles have also been published in widely read legal journals.

Concerning the phases of work planned in relation to prison facilities, the following details may be noted:

At present, the Prison Administration has 118 cells at its disposal for motor-disabled detainees. These cells are predominantly situated in short-stay prisons. To optimise the existing system, the Directorate of Prison Administration has recently introduced a system to manage the cells for disabled persons. A map of existing places and of the specific requests is kept up to date in order to best reconcile the penal, penitentiary and health requirements in each given case. This system also makes it possible to anticipate situations. In old prisons which are to remain open, successive phases of works are scheduled each year. Whenever technically possible, cells for disabled persons will be set up. At the Liancourt Detention Centre, where Mr Vincent is currently detained, there will be a new building of 80 places, with 20 cells specially designed for disabled persons. In the reorganisation of Fleury-Merogis, Marseille and Nantes prisons the provision of 26, 6 and 3 cells for disabled persons respectively is planned before 2014. A construction program of 13 200 extra places in the French penitentiary system has begun. These places will include 1% of cells adapted for disabled persons. Movement and access to all activities and facilities have been examined, bearing in mind the presence of disabled persons, be they detainees, visitors, voluntary workers or staff. Finally, under the 11 February 2005 Act, all forms of disability must be taken into account in public buildings which receive the public within 10 years. Disability provision in prisons will be specifically handled in a joint decree of the Ministries of Equipment and of Justice which will fix accessibility rules for future constructions and for existing prisons. The situation is evolving towards adjusting all French prisons to the presence of disabled persons from 2015 onwards.

The efforts of the French authorities to improve the way in which prisoners are treated will continue, not least in the framework of their co-operation with the CPT. In this respect, the French authorities recall that in its answer to the CPT's report on its visits to French prisons in 2006 (document CPT/Inf(2007)45 of 10 December 2007), the government expresses its belief that the CPT's visits, combined with other similar mechanisms, contribute to the improvement of the treatment of prisoners and to the respect for their fundamental rights. The adoption by the French Parliament of Law No. 2007-1545 of 30 October 2007, setting-up the post of General Controller of Places of Detention, apart from implementing the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment, also shows the will of the French authorities to work towards better respect of fundamental rights of prisoners.

Resolution CM/ResDH(2009)80 – E.B against France

43546/02, judgment of 22 January 2008, Grand Chamber

Discriminatory treatment suffered by the applicant on account of her sexual orientation, in violation of her right to respect for her private life, in the context of an application for authorisation to adopt a child in 1999 (violation of Article 14, combined with Article 8).

Individual measures

Without the authorisation which was not granted to the applicant in the proceedings at issue, adoption is legally impossible. The European Court granted the applicant just satisfaction in respect of non-pecuniary damage.

In view of the nature of the violation found by the Court, the execution of the judgment of 22 January 2008 does not imply that the applicant must receive the requested authorisation. It is her own choice to make use of the possibility of making a new application for authorisation to the competent *Conseil Général* (see General measures), and if she does so her application must be examined without any discrimination.

The applicant informed the Committee of Ministers that following the European Court's judgment, she lodged a new application for authorisation to adopt a child and that the authorisation has been once again refused, by decision of 26 January 2009. This refusal does not rely on the applicant's sexual orientation, which is acknowledged by the lawyer who is assisting her in the procedure. However, the applicant maintains that the grounds of rejection are fallacious and aimed at hiding the true reason of that rejection, namely her sexual orientation. She indicated that she had contested that decision before the administrative courts and that she lodged a complaint before the French High Authority against Discrimination and for Equality (*Haute Autorité de Lutte contre les Discriminations et pour l'Egalité*).

In this respect, the authorities underline, besides the fact that the new refusal to issue an authorisation is in any case not manifestly based on Ms E.B.'s sexual orientation, that the applicant may contest this decision before the national administrative courts – which indeed she has done (the proceedings are pending). The administrative judges who apply the Convention directly, are well aware of the

European Court's judgment of 22 January 2008, at all degrees of jurisdiction. The authorities conclude that the principles laid down by the Court in this judgment thus cannot be misjudged by the administrative courts in the examination of the complaints lodged by Ms E.B.

General measures

Article 343-1 of the Civil Code provides that any single person over 28 may apply to adopt. French law therefore allows adoption by single persons, without taking their sexual orientation into account. Thus the law itself is not in question. It is important that applications for authorisation to adopt are treated by the competent authorities, under the control of the national judges, without any distinction based on the sexual orientation of the applicant, a distinction which is not authorised under the Convention.

Consequently, the judgment has been sent out to all the authorities competent in this field. Applying the Court's judgment directly, they will avoid similar violations.

First, the judgment has been sent out to the authorities competent to deliver authorisations to adopt a child. The European Court's judgment has been published on the Ministry of Interior's intranet site, in the Local Authorities' Legal Information Bulletin (*Lettre d'information du droit des collectivités locales*), in March 2008. In this way, all *préfectures* have been informed of the judgment and they will ensure that it is duly taken into account by the *Conseils Généraux* (the *préfectures* supervise the legality of local authorities' decisions and also give legal advice). Several specialised journals at the disposal of Conseils Généraux also published commentaries on the judgment, such as L'Actualité Sociale Hebdomadaire (ASH). Thus, the Conseils Généraux legal departments, implementing their duty of legal supervision, can ensure that the field agents and in particular those responsible for dealing with applications for authorisation to adopt a child are fully informed of the latest developments.

Furthermore, the report on adoption in France requested by the French President in October 2007 and delivered on 19 March 2008 by Jean-Marie Colombani, refers to the judgment (page 191 of the report) and explains its content in details. This ensured wide publicity for the attention of the departments in charge of adoption matters in the Conseils Généraux. Finally, the Directorate General of Social Action - Ministry of Health, confirmed that it transpires from the regular contacts held with the Conseils Généraux that the E.B. judgment is now well known by the departments in charge of adoption matters.

Secondly, the judgment was sent out to courts competent to rule on the legality of refusals to deliver authorisation. The European Court's judgment has been brought to the attention of the Conseil d'Etat and of administrative tribunals and courts of appeal via their intranet sites, with a view to ensuring the broadest possible dissemination of the judgment amongst administrative judges.

70148/01, judgment of 1 June 2006, final on 23 October 2006

Resolution CM/ResDH(2009)81 – Fodale against Italy

Unfairness of proceedings before the Court of Cassation for a review of the applicant's detention pending trial, in that neither the applicant nor his counsel had been informed of the hearing held in February 2000 by the Court of Cassation, at which the representative of the prosecution was nonetheless present (violation of Article 5 § 4).

Individual measures

The applicant's detention pending trial is over. In addition, since the applicant was acquitted in the main criminal proceedings, he was entitled to seek compensation for "unjust" detention under Article 314 of the Code of Criminal Proceedings. The European Court considered that the finding of the violation constituted in itself sufficient just satisfaction of any non-pecuniary damage sustained.

General measures

The violation of the Convention arose from an erroneous application of the rules of procedure: Article 127 of the Code of Criminal Procedure provides the obligation to communicate the date of the hearing to both parties without distinction.

In order to prevent other similar violations, the Ministry of Justice translated the judgment of the European Court into Italian and sent it out to the competent courts with a note recalling the principles of the judgment, and asking for its dissemination to all judges. The judgment has also been published in the database of the Court of Cassation on the case-law of the European Court (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike.

Resolution CM/ResDH(2009)83 – Labita and Indelicato against Italy

26772/95, judgment of 6 April 2000, Grand Chamber
31143/96, judgment of 18 October 2001, final 18 January 2001

Absence of effective investigations into allegations of ill-treatment in 1992 while the applicants were detained on remand (violation of Article 3). The Labita case, where the applicant was accused of mafia membership, also concerns the excessive length of detention as the initial grounds became, with the passage of time and the development of investigations, insufficient to justify its prolongation (violation of Article 5 § 3); unlawful detention for 12 hours after acquittal in 1994 due to the absence of the competent officer (violation of Article 5 § 1); unlawful monitoring of correspondence during the detention (violation of Article 8); violation of rights to freedom of movement and to free elections as the courts refused, after the acquittal, to revoke an order for special police supervision, involving the automatic disenfranchisement of the applicant, notwithstanding the absence of any new evidence of mafia membership justifying such measures (violation of Article 2 of Protocol No. 4 and of Article 3 of Protocol No. 1).

Individual measures

1) Labita case: the applicant was acquitted by a judgment of 12 November 1994 and released the following day. In 2000, the proceedings brought against prison authorities by the applicant were discontinued owing to prescription of the alleged offences. The preventive measures against the applicant (special police supervision), applied after his acquittal, ceased to apply in November 1997. On 11 December 1997 the applicant was reinstated on the electoral register. In 1998 he was compensated for illegal detention. The European Court awarded him just satisfaction for non-pecuniary damage sustained.

2) Indelicato case: the European Court awarded just satisfaction in respect of non-pecuniary damage sustained by the applicant. In 2001, proceedings brought against prison authorities by the applicant were discontinued due to prescription of the alleged offences.

General measures

1) Violations of Article 3: the effectiveness of procedures relating to the follow-up given to complaints of ill-treatment in prison was improved in 1998 through the modification of the register of medical comments and the issue of circulars and guidelines. Information is also available in the report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (Document CPT/Inf(2003)16).

2) Violation of Article 5 § 3: Articles 274 and 292 of the Code of Criminal Procedure were amended in 1995. According to the amended law, detention pending trial is revoked *ex officio* if there are no longer sufficient grounds to justify it. It also lays down that time already served in detention pending trial is to be taken into account in determining the sentence. In addition, Article 303 of the Code of Criminal Procedure provides the maximum length of detention pending trial according to specific circumstances (see Resolution ResDH(2005)90 adopted in the Vaccaro case for further details).

3) Violation of Article 8: in 2004, new legislation (Law No. 95/2004 on Prison Administration) set limits to the monitoring and restriction of prisoners' correspondence. In particular, correspondence with lawyers and organs of the European Convention is excluded from monitoring (see Final Resolution ResDH(2005)55 adopted in the Calogero Diana case).

4) Violation of Articles 2 of Protocol No. 4 and 3 of Protocol No. 1: in order to avoid further unjustified application of this kind of measures (special police supervision and automatic disenfranchisement), the judgment in the Labita case has been sent out to the judicial authorities concerned. Furthermore, a seminar was organised by the Supreme Judicial Council in February 2005 in this issue.

5) Violation of Article 5 § 1: by circular No. 3498/5948 of 19 April 1999, the Ministry of Justice drew prison authorities' attention to their duty to ensure permanent attendance of officials responsible for freeing detainees (see Final Resolution ResDH(2003)151 adopted in the Santandrea case).

The judgments have been translated and published on the database of the Court of Cassation on the case-law of the European Court of Human Rights (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike. The Labita judgment was also published in several legal journals including *Documenti Giustizia*, 2000, No. 1/2, and transmitted to the Supreme Judicial Council which is competent for training magistrates. The Indelicato judgment has been transmitted to the Public Prosecutor of Livorno and to the Office of the Public Prosecutor's Office before the Court of Cassation.

Resolution CM/ResDH(2009)84 – Kaufmann against Italy

14021/02, judgment of 19 May 2005, final on 12 October 2005

Violation of the applicant's right of access to a court, on account of the dismissal by the Italian Court of Cassation in 2000 of the applicant's appeal on points of law on the

ground that it was out of time, whereas he had complied within the time-limits and was not responsible for the delay in serving the notice to his appeal on the parties to the proceedings who were living abroad (violation of Article 6 § 1).

Individual measures

In its examination of the just satisfaction to be granted to the applicant, the European Court considered that no direct causal link existed between the violation found in this judgment and the pecuniary damage alleged by the applicant on account of the loss of his property rights, which were the subject of the proceedings before the Court of Cassation. In fact, the European Court indicated that it could not speculate on the outcome of the contested civil proceedings if the violation of the Convention had not taken place and compensated the applicant for the loss of opportunities and the non-pecuniary damage suffered. The applicant has not expressed a wish to have the civil proceedings reopened.

General measures

In decisions adopted prior to the facts of this case, in 1994, the Constitutional Court had already found that the individual should not be penalised by the late compliance of foreign authorities. In a decision of 2002, i.e. after the facts of this case, the Constitutional Court further specified that the dies *ad quem* for notification should be fixed at the moment when the party to the proceeding files the act to be notified with the judicial authorities, as any further activity of the judicial authorities does not fall under the control of the individual. In the light of this development of the case-law, new violations similar to that found in this case should not occur again.

23969/94, judgment of 25 July 2000

Resolution CM/ResDH(2009)85 - Mattoccia against Italy

Violation of the applicant's right to fair trial, in that in 1990 he was convicted and sentenced to 3 years' imprisonment for rape without having being informed exactly about the time and place of the crime he was accused of and, thus, without having the possibility to defend himself effectively; in addition, the applicant was not allowed to adduce new evidence on appeal (violation of Article 6 §§ 1 and 3a and b); excessive length of the proceedings, namely seven years and five months from 1986 to 1993 (violation of Article 6 § 1).

Individual measures

The applicant finished serving his sentence in 1994, his execution file ("fascicolo dell'esecuzione") was annotated in order to mention the European Court's judgment and he did not put forward any further request before the Committee of Ministers. No further measure was therefore considered to be needed (see, mutatis mutandis, ResDH(2005)86 in the case *Lucà v. Italy*).

General measures

Posterior to the facts at the origin of the case, the legislation was modified and henceforth explicitly provides for the right of everyone charged with a criminal offence to be informed in detail of the nature and cause of the accusation against him (see sections 369 and 375 of the New Code of Criminal Procedure and new Article 111 of the Constitution).

The judgment of the European Court was translated, published in the Italian Ministry of Justice's Official Newsletter, No. 24 of 31 December 2003 and transmitted to the judicial authorities in charge of criminal cases, drawing their attention to the public prosecutor's obligation to inform in a rapid and detailed manner the accused person of the charges against him.

As regards the structural problem of excessive length of proceedings in Italy, the Committee of Ministers continues to be seised of the supervision of execution of a great number of judgments of the Court and Committee of Ministers' decisions (under former Article 32 of the Convention) finding violations of Article 6, paragraph 1, of the Convention on account of the excessive length of proceedings, including before the criminal courts. Within the framework of these cases, the Committee supervises the adoption of the outstanding general measures. To this effect, the Committee of Ministers adopted Interim Resolution CM/ResDH(2009)42, in which it noted with interest the measures taken in order to accelerate and rationalise criminal-law proceedings (Law Decree No. 92 of 23 May 2008, converted into Act No. 125 of 24 July 2008, which amended the Code of Criminal Procedure) and called upon the Italian authorities to pursue actively their efforts; 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. Furthermore, in this Resolution, the Committee, *inter alia*, 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.

Resolution CM/ResDH(2009)86 – Antonetto against Italy

15918/89, judgment of 20 July 2000, final on 20 October 2000

Failure by the Italian administrative authorities to enforce a Council of State's final judgment of 1967 ordering the demolition of a block of residential flats built unlawfully next to the applicant's house (violation of Article 6 § 1); breach of the applicant's right to the peaceful enjoyment of her possessions insofar as the the value of her house decreased as a consequence of the building at issue, while such interference had no legal basis (violation of Article 1, Protocol No. 1).

Individual measures

The European Court awarded just satisfaction for pecuniary and non-pecuniary damage to the *Associazione Culturale Italiana* (A.C.I.), heir of the applicant who had died in 1993.

General measures

1) Compensation: Italian case-law, applied in accordance with the general rules of the Civil Code (Article 2043), has progressively affirmed that reparation by means of compensation is the basic guarantee in situations where the damage sustained involves an interest protected under the Constitution. A case in point is the enforcement of court orders (Article 24 of the Constitution), the possibility of litigation extending to the implementation of court decisions in conformity with the case-law of the European Court. Since 1999, the Court of Cassation has explicitly recognised the right to compensation in cases of illegal administrative acts (Court of Cassation judgment 500/99). In 2000, Law No. 205 codified this principle which is applicable in cases of unreasonable delay in enforcing judicial decisions.

2) Public officials' liability: the above case-law development on state liability strengthens the provisions already in force at the material time concerning the liability of civil servants. Under the terms of Article 328 of the Italian Criminal Code, responsible officials may be prosecuted if they refuse to accomplish the official acts they are in charge of enforcing.

3) Publication: the judgment has been published in the database of the Court of Cassation on the case-law of the European Court of Human Rights (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike. The judgment has also been dealt with in seminars.

Resolution CM/ResDH(2009)87 – Drassich against Italy

25575/04, judgment of 11 December 2007, final on 11 March 2008

Unfairness of criminal proccedings against the applicant, insofar as the Court of Cassation, in 2004, reclassified the acts he had allegedly committed without giving him the possibility to contest the new accusation by adversarial argument (violation of Article 6 § 3 (a) and (b), together with Article 6 § 1).

Individual measures

The applicant was sentenced to three years and eight months' imprisonment, of which he served seven months and one day. Subsequently, as from 6 September 2004, the applicant's prison sentence was commuted to probation under the supervision of a social service (*affidamento in prova al servizio sociale*), the remaining sentence to be served being less than two years.

The European Court considered that a retrial or a reopening of the case, if requested, represented in principle an appropriate way of redressing the violation (§ 46 of the judgment).

Following the European Court's judgment, the applicant asked the Venice Court of Appeal to declare its judgment of 12 June 2002 non-enforceable under Article 670 of the Code of Criminal Procedure. By applying the case-law of the Court of Cassation (judgments Nos. 3600, Dorigo and 2432, Somogyi), the Court of Appeal recognised its judgment as non-enforceable as far as the part relating to corruption was concerned and sent the applicant's original appeal against its judgment to the Court of Cassation so that it might give effect to the European Court's judgment.

In its judgment of 11 December 2008, the Court of Cassation considered that, in the present case, the restitutio in integrum had to be confined to setting aside the part of its judgment which did not respect the principle of adversarial argument, that is the part in which the court itself decided to reclassify the acts the applicant allegedly committed from "simple corruption" to "corruption in judicial acts". The Court of Cassation considered Article 625 bis of the Code of Criminal Procedure to be the most appropriate instrument for achieving this result. This Article, which provides a special appeal to remedy factual errors in judgments of the Court of Cassation, may also be applied *analogia legis* to breaches of the right to defence before this Court, thereby allowing removal of the part of the judgment called into question.

Therefore, the Court of Cassation annulled its own judgment of 4 February 2004 solely as far as the offence of corruption defined as corruption in judicial acts was concerned and ordered a new examination of the applicant's appeal before the Court of Cassation against the judgment of 12 June 2002 of the Venice Court of Appeal. In the new proceedings, the Court of

Cassation will not fail to take into account the Convention's requirements on fairness of proceedings.

General measures

1) Reclassification of offences without applying the principle of adversarial argument: according to the Italian Government, no legislative change was necessary since the violation stems from the Court of Cassation's jurisprudential interpretation of the general principles on the matter. The recent case-law of the Court of Cassation has provided a new interpretation in compliance with the European Court's case law. In its judgment of 11 December 2008, the Court of Cassation acknowledged that the decision of the European Court had the effect of enlarging the scope of application of the principle of adversarial argument in the national legal order. The Court of Cassation observed that the European Court's judgment implies that from now on this principle applies to every stage of proceedings, including when the Court of Cassation is checking the compliance of a judgment with the law where a modification *ex officio* of the accusation has had an effect on the determination of the applicant's sentence.

2) Reopening of proceedings following a finding of violation: in its judgment of 11 December 2008, the Court of Cassation considered that in cases like the present one, the judgment of the European Court did not call into question the decision on the merits, but merely the Court of Cassation's judgment which was unfair on account of a lacuna in the legal system (failure to apply the adversarial principle). Therefore the revision of the decision on the merits is not necessary and the application analogia legis of Article 625 bis of the Code of Criminal Procedure is sufficient to fill the legal lacuna in similar cases.

3) Publication and dissemination: the judgment of the European Court has been sent out to the competent authorities and published on the internet sites of the Ministry of Justice (www.giustizia.it) and of the Court of Cassation (www.cortedicassazione.it), as well as on the database of the Court of Cassation on the case-law of the European Court of Human Rights (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike.

Application No. 18885/04, judgment of 9 November 2006, final on 9 February 2007

Resolution CM/ResDH(2009)88 – Kaste and Mathisen against Norway

Unfairness of criminal proceedings against the applicants in that they were convicted in 2003 on the basis of depositions made to the police by a co-accused, whom they could not cross-question directly as he had invoked the right to remain silent (violation of Articles 6 §§ 1 and 3(d)).

Individual measures

In December 2006 and January 2007, the Criminal Cases Review Commission accepted both applicants' requests for the re-opening of the proceedings. The new proceedings against Mr Mathisen ended with a judgment from the Norwegian Supreme Court on 3 December 2008. The new proceedings against Mr Kaste are not finished yet. In both proceedings, the co-accused, who had invoked the right to remain silent in the sanctioned proceedings, was present in person and answered all questions from the prosecuting authority and the accused.

General measures

1) Legal context: the relevant provisions relating to the reading out at a trial hearing of the depositions made to the police are contained in Articles 290 and 291 of the Criminal Procedure Act. These provisions have been further interpreted by the Supreme Court in the light of the Convention case-law (Decision of 19 December 2003, reported in Norsk Retstidende 2003, p.1808). Upon examination, the Royal Ministry of Justice and the police considered it was not necessary to amend them. The judgment is by now considered as being known among legal practitioners in Norway and is taken into account by national courts when applying the Criminal Procedure Act.

2) Publication and dissemination: the European Court's judgment has been published with comments on the websites of the police and the prosecuting authority, on the website of the courts and also in Norwegian version in the judicial database http://www.lovdata.no/avg/emdn/emdn-2004-018885-norge.html). A letter containing more extensive comments on the judgment has been sent to all offices of the prosecuting authority and to all police districts, and it has also been published on their websites. The judgment has been mentioned in several meetings and seminars and its implications have been described in several articles.

Final Resolution CM/ResDH(2009)89 Broniowski against Poland

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

31443/96, judgment of 22 June 2004 – Grand Chamber and of 28 September 2005 – Friendly settlement (Article 41) - Interim Resolution (2005)58

Individual measures

The parties concluded a friendly settlement whereby a lump sum of 237,000 PLN (approximately 60 000 euros) would constitute the final settlement of the case. This sum has been paid. Thus, no additional measures appear necessary.

General measures

1) Measures indicated by the Court under the "pilot judgment procedure"

In this case, for the first time, having regard to the resolution of the Committee of Ministers on judgments that reveal an underlying structural problem (Res(2004)3) and its Recommendation on the improvement of domestic remedies (Rec(2004)6), the Court ruled in the operative provisions of the judgment on the general measures required of a respondent state in order to remedy in systemic failing at the root of the violation found. In so doing, the Court decided to indicate to the Polish state the type of measures to adopt, under the supervision of the Committee of Ministers and in accordance with the principle of subsidiarity, in order to prevent a large number of similar cases from being brought before it.

Accordingly, the Court recalled that the violation of Article 1 of Protocol No. 1 originated in a widespread problem affecting a large number of persons (almost 80 000) and which might give rise to numerous subsequent well-founded applications in the future. In the operative provisions of the judgment, the Court pointed out that:

– the violation found resulted from a systemic problem related to the defective operation of domestic law and practice, caused by the failure to set up an effective mechanism to implement the property rights recognised in respect of the Bug River claimants;

– the respondent state must, through appropriate legislative measures and administrative practices, secure the implementation of the property rights in question for the remaining Bug River claimants, or provide them with equivalent redress in lieu, in accordance with the principles of protection of the property rights set out in Article 1 of Protocol No. 1;

The Court further decided to postpone the examination of all similar applications (some 270 applications as of 1 December 2007) pending the outcome of the pilot judgment procedure and the adoption of the required measures at national level.

2) Measures adopted by the Polish authorities:
a) Setting up of a new compensation mechanism
Constitutional Court decision of 15 December 2004

On 15 December 2004 the Constitutional Court declared unconstitutional several provisions of the December 2003 Law (on offsetting the value of property abandoned beyond the present borders of the Polish state, in consequence of the war that broke out in 1939, against the purchase price of state property or the fee for the right of perpetual use thereof) which had been challenged in the Grand Chamber's judgment.

The Constitutional Court's decision concerned in particular Article 2, paragraph 4 of the Law, according to which claimants in the applicant's position who had already been awarded partial compensation lost their entitlement to further compensation. The provision limiting the right of claimants to receive compensation above the limit of 50 000 zlotys was also declared contrary to the Constitution (Article 3, paragraph 2).

In accordance with national law, the statutory provisions invalidated by the Constitutional Court's judgment lost their binding force on the date of the publication of this judgment (27 December 2004), except for Article 3, paragraph 2 which, by virtue of the Constitutional Court's judgment, remained applicable until 30 April 2005.

Consequently, as from December 2004 claimants in the applicant's position no longer faced any legal obstacles to securing their entitlement to compensation equal to that prescribed for claimants who had not previously received compensation.

Activities of the Agricultural Property Agency in pursuance of the Law of December 2003

Between January and October 2004, the Agency held 30 000 auctions and offered for sale 60 000 hectares of land. During this period, persons entitled to receive property in compensation under the law of December 2003 participated in 60 auctions and concluded 33 purchase contracts with the Agency.

Legislative reform

In early July 2005 the Committee adopted Interim Resolution ResDH(2005) 58, taking stock of the measures adopted at that time and indicating the outstanding questions, particularly with regard to the finalisation of the ongoing legislative reform. Shortly afterwards, Parliament passed the July 2005 Act mentioned above on realisation of the right to compensation for property abandoned beyond the present boarders of the Republic of Poland, which entered into force on 7 October 2005. Pursuant to its Section 13, the compensation for

the Bug River property may be secured through two different channels, depending on the claimant's choice: either, offsetting the indexed value of the original property against the sale price of the state property acquired through an auction procedure, or by receiving a pecuniary benefit, i.e. cash payment secured by the Compensation Fund.

Entitled claimants could lodge requests for compensation until the end of 2008. The legal ceiling for compensation in respect of property abandoned beyond the Bug River was set at 20% of its original value.

Friendly settlement concluded in the framework of the pilot judgment procedure

In the friendly settlement of 28 September 2005 reached between the parties, the Court addressed not only the applicant's individual situation but also the general measures adopted for the implementation of the principal judgment. According to the friendly settlement, the government undertook to adopt additional general measures, aimed especially at improving the operation of the new compensation mechanism set up by the legislative reform of 2005. It also acknowledged its obligation to make available to the Bug River claimants a form of compensation for any pecuniary or non-pecuniary damage sustained by them on account of the defective operation of the applicable legislative system prior to the introduction of the new compensation mechanism. The Court observed that the measures adopted at that stage by the government demonstrated the authorities' tangible commitment to taking measures intended to remedy the systemic defects found.

Measures aimed at ensuring the implementation of the new compensation mechanism

Regulations on the management of the special Compensation Fund were adopted in December 2005 by the Treasury Ministry. In April 2006 an agreement was concluded between that ministry and the Bank of National Property on the conditions of payment of compensation. At the beginning of July 2007, the Compensation Fund had 126 650,000 euros at its disposal. Furthermore, early in 2008 the data processing system for transfer of information on individual claims from the local registers to the central register kept by the Treasury Ministry to the Bank of National Property paying the compensation, became fully operational.

In August 2007 the Treasury Ministry created a special website to disseminate information on the implementation of the July 2005 Act. According to the information published on this site, up to the end of July 2009 the Bank of National Property had made 19 444 compensation payments to Bug River claimants, corresponding to 825 643 018 PLN (approximately 206 500 000 euros). Overall, more than 19 000 of the claimants were able to benefit from the new compensation scheme, their total number being estimated by the authorities at 100 000.

Further, following the entry into force of the July 2005 Act, the possibilities for compensation through the auctioning of state-owned land were improved. The stock of land set aside for auctioning was considerably increased, enabling claimants to finalise 1 635 auction sales over the period 2004-2006. The total value of the claims met during that period amounted to 1 600 000 euros.

b) Specific remedies to obtain compensation

The Polish authorities confirmed, in the Broniowski friendly settlement judgment, the existence of specific civil-law remedies enabling Bug River claimants to seek redress before Polish courts for any pecuniary and/or non-pecuniary damage suffered due to the defective operation of the domestic legislation prior to the introduction of the new compensation mechanism.

The existing case-law of the domestic courts further confirmed the availability of a civil action brought under Article 417 or Article 4171 of the Civil Code by the Bug River claimants in respect of material damage. In its two judgments delivered in 2004, the Supreme Court found the Polish state authorities to be liable under Article 417 of the Civil Code for pecuniary damage resulting from the non-enforcement of the "right to credit" (*prawo zaliczania*) on account of the defective operation of the Bug River legislation (judgment of 30 June 2004, no. IV CK 491/03 and judgment of 6 October 2004, no. I CK 447/2003).

The Polish authorities further consider that, if Bug River claimants so desire, they may lodge a complaint of non-pecuniary damage before the Polish courts, relying on Article 448 in conjunction with Article 23 of the Civil Code. The authorities have undertaken not to challenge the fact that these provisions constitute an adequate legal basis for bringing such a complaint.

3) The Court's assessment of the measures adopted in the framework of the pilot judgment procedure

The Polish authorities selected a group of priority cases from among those pending before the Court with a view to testing the new compensation mechanism. In its decisions of 4 December 2007 in two similar cases, the Court found that the maximum level of compensation prescribed by the new law of 2005 met the requirements of the Convention, and that the compensation procedures available to the claimants under that law functioned effectively (decisions in the cases of *Wolkenberg and Others v. Poland*, application No. 50003/99, and

of Witkowska-Tobola v. Poland, Application No. 11208/02). The Court also took note of the specific civil-law remedies enabling Bug River claimants to seek redress before Polish courts for any pecuniary and/or non-pecuniary damage sustained by them due to the structural failings deemed contrary to Article 1 of Protocol No. 1 in the principal judgment. On the basis of these findings, the Court initiated the process of striking identical cases out of its list. It struck out 112 applications between December 2007 and September 2008, and 176 other applications in September 2008. On 23 September 2008 the Court decided to conclude the pilot judgment procedure applied to the "Bug River" cases (cf. decision in the case of *E.G. v. Poland* of 23 September 2008).

The Court pointed out that these were without prejudice to any decision it might take to restore the struck-out applications to the list of cases or to deal substantively with subsequent similar applications in the case when the future functioning of the compensation mechanism introduced by the July 2005 Act so justify (cf. § 77 in fine of the aforementioned decision in the case of *Wolkenberg and Others v. Poland*, and § 29 in fine of the aforementioned decision *E.G. v. Poland*).

Resolution CM/ResDH(2009)90 – Cruz de Carvalho against Portugal

18223/04, judgment of 10 July 2007, final on 30 January 2008

Unfairness of civil special proceedings for payment injunction of pecuniary obligations, as the applicant was prevented from pleading his cause and questioning his witnesses, in 2003, because he was not represented by a counsel, whereas representation by a counsel was not obligatory, according to the law in force (violation of Article 6 § 1).

Individual measures

As a result of the proceedings challenged by the European Court, the applicant was sentenced to pay 138,98 euros to an insurance company.

In this case, any suggestion of reopening the domestic proceedings would seem to run up against the principle of legal certainty to which the other party to the civil proceedings is entitled. Furthermore, the circumstances of the case did not indicate that the applicant continues to suffer very serious negative consequences because of the violation of his right to a fair trial. In addition, before the European Court, the applicant only sought compensation for the non-pecuniary damages suffered. The European Court awarded him the full amount claimed (500 euros). This being the case, it is unnecessary to pursue the question of individual measures.

General measures

Prior to the facts at the origin of this case, by its decision No. 245/97 of 18 March 1997, the Constitutional Court had interpreted Articles 32 and 34 of the Code of Civil Procedure as allowing parties who decided, according to the legislation in force, not to be represented by a lawyer, to plead on both legal and factual issues. The violation of the Convention therefore arose from an erroneous application of the rules of procedure as interpreted by the Constitutional Court.

Given the direct effect of the European Convention in Portugal, publication and dissemination of the European Court's judgment to all competent courts should be sufficient to avoid other, similar violations. In this context it should be noted that the European Court's judgment has been translated and transmitted to the Prosecutor General and the Superior Judicial Council for dissemination to all courts. It is also available on the Internet site of the Cabinet of Documentation and Comparative Law (www.gddc.pt), which comes under the Prosecutor General of the Republic.

Resolution CM/ResDH(2009)91 – Weber against Switzerland

3688/04, judgment of 26 July 2007, final on 26 October 2007

Lack of adequate legal basis (whether in law or in constant case-law) for ordering the applicant's detention between September 2003 and January 2004, after a judgment suspending his prison sentence in favour of out-patient medical and social treatment, the conditions of which had not been respected (violation of Article 5 § 1).

Individual measures

The detention at issue ended in January 2004. The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damages suffered.

General measures

At the time of the proceedings, the issue of the lawfulness of detention ordered in proceedings subsequent to the judgment had been dealt with only once, in a decision of the Federal Court of 25 June 2002 (ATF 128 I 184). In this case, concerning the Zürich Canton, the Federal Court considered that the provisions on detention on remand also allowed detention ordered in the framework of a procedural decision taken following the judgment. In the case at issue, detention was held to be lawful to the extent that the pending procedure would most probably end in privation of liberty and therefore at least one of the grounds explicitly mentioned by the Law on Detention on Remand applied.

The Federal Court further confirmed its case-law in two other judgments delivered on 4 July 2005 (reference 1P.359/2005) and 24 January 2006 (reference 1P.13/2006), concerning two other cantons, Bern and Basel-City. With respect to these judgments, the European Court noted (§ 42), that the authorities were right in saying that the Federal Court subsequently confirmed its case-law by two judgments of 2005 and 2006. However, as the detention at issue in those cases occurred between September 2003 and January 2004, the applicant could not have knowledge of these cases; thus, at the material time, they did not contribute to making the legal situation more foreseeable.

The case-law of the federal tribunal has not been changed since then. Furthermore, the European Court's judgment has been transmitted to the courts concerned – which apply the Convention directly, so that they may take it into account in their future case-law. The judgment was immediately communicated to the Federal Court, as well as to the Justice Directorate of the Vaud Canton, which sent it out to all Canton authorities concerned. Finally, to ensure publicity for this judgment, a summary was published in the Annual Report of the Federal Council on the activities of Switzerland in the Council of Europe in 2007. This report was published on the Internet site of the Ministry of Foreign Affairs (<http://www.eda.admin.ch/eda/de/home/recent/media.html>, 23 May 2008), then in the *Feuille fédérale* (official publication) No. 23 of 10 June 2008.

17073/04, judgment of 15 March 2007, final on 15 June 2007

Resolution CM/ResDH(2009)92 – Kaiser against Switzerland

Failure by the authorities to bring the applicant promptly before a judge following her arrest and placement into police custody, contrary to the applicable law (violation of Article 5 § 3).

Individual measures

The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. Moreover, the Court noted that the applicant had not exhausted domestic remedies to obtain compensation for her unlawful detention.

General measures

Domestic law provides that a judge must rule on the lawfulness of an individual's detention at the latest two days after his/her arrest. Nevertheless, the District Court of Zurich held that the applicant's five-day detention was regular. The Federal Court admitted that the applicant's detention was illegal but had to reject the applicant's appeal for reasons of domestic procedure.

Action was taken as soon as the judgment of the European Court was delivered to bring it to the attention of the authorities concerned (which apply the Convention directly) with a view to avoiding similar violations. The European Court's judgment was transmitted on 15 March 2007 to the Federal Court and to the Justice Department (Direction de la Justice) of the Canton of Zurich, which in turn sent it to the courts concerned (first-instance court, Court of Cppeal) and to the Zurich Canton public prosecutor's office. A summary of the judgment was also published in the *Annual Report of the Federal Council* on the activities of Switzerland in the Council of Europe in 2007. This report was published on the Internet site of the Ministry of Foreign Affairs (http://www.eda.admin.ch/eda/de/home/recent/media.html>, 23.05.2008), then in the Feuille fédérale (official publication of the Federal Chancellery) No. 23 of 10/06/2008.

17671/02, judgment of 13 July 2006, final on 13 October 2006
10577/04, judgment of 26 July 2007, final on 26 October 2007

Resolution CM/ResDH(2009)95 – Ressegatti and Kessler against Switzerland

Unfairness of civil (in the Ressegatti case) or criminal (in the Kessler case) proceedings in 2001 and 2003 on account of the failure to maintain equality of arms, as the applicants had no opportunity to have knowledge of or comment on the observations submitted by the opposing party (violation of Article 6 § 1).

Individual measures

1) Ressegatti case: the European Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants. As regards to the measures which could be taken at national level to erase the consequences of the violation found, it is worth noting that re-opening the civil proceedings at issue does not appear to be an appropriate measure in this case. These proceedings opposed the applicants to a third party of good faith and their possible re-opening could prejudice that third party's vested rights. Moreover, it does not seem that the violation found by the Court had a decisive impact on the outcome of the proceedings (§ 30 of the Court's judgment).

In these circumstances, taking into account in particular the principle of legal certainty, no individual measure appears to be required in this case.

2) Kessler case: the applicant did not ask for any pecuniary or non-pecuniary damages before the European Court. As far as the criminal proceedings at issue are concerned,

the applicant could ask for revision of the domestic judgment according to the Federal Law on the Federal Court of 17 June 2005, entered into force on 1 January 2007. This law permits revision of Federal Court judgments following a judgment of the European Court finding of a violation of the Convention. The applicant did not make use of this possibility. In these circumstances, no individual measure appears to be required in this case.

General measures

Certain measures to facilitate the direct application by Swiss courts of the principles affirmed by the European Court on fairness of proceedings and, in particular equality of arms, have been already adopted, particularly in the context of the Contardi case, judgment of 12 July 2005, and Spang, judgment of 11 October 2005, examination of which was closed by Resolution CM/ResDH(2007)132. Furthermore, in two judgments of 2 March 2004 (judgments 5P.446/2003/rov and 5P.18/2004/rov), the Federal Court explicitly acknowledged the breach of the right to be fairly heard in the meaning of Article 6 § 1 of the Convention in situations in which, as in the cases at issue, a court failed to communicate in good time the observations submitted by the opposing party.

The European Court's judgments have been transmitted to the competent courts – which give direct effect to the Convention, so that they may take it into account in their future case-law. The Kessler judgment has been summarised and published in the *Annual Report of the Federal Council* on the activities of Switzerland in the Council of Europe in 2007. This report was published on the Internet site of the Ministry of Foreign Affairs (http://www.eda.admin.ch/eda/de/home/recent/media.html), on 23 May 2008, then in the *Feuille fédérale* (official publication of the Federal Chancellery) No. 23 of 10 June 2008.

Resolution CM/ResDH(2009)108 – Kızılyaprak against Turkey

9844/02, judgment of 4 March 2008, final on 4 June 2000

Unfairness of certain criminal proceedings before a state security court, in 2000, in that the applicant was never summonsed to attend the court which convicted him (violation of Article 6 § 1).

Individual measures

The prison sentence pronounced by the state security court was impossible to impose, as the applicant decamped. Following the repeal of the Article 8 of Law No. 3713 on the Fight against Terrorism, applied by the state security court in this case, the trial was reopened, *ex officio*. On 7 October 2003, the state security court acquitted him and decided to lift execution of the sentence and all legal consequences of his conviction. As a consequence, the applicant's criminal record was erased.

General measures

Under the terms of Article 193 of the new Code of Criminal Procedure which entered into force on 17 December 2004, part from cases explicitly provided by law, no court may hold a hearing in the absence of the accused. If the accused decides not to appear without a valid reason, the court may decide to issue a summons. The second paragraph of the Article (modified on 25 May 2005) provides that a court may not close criminal proceedings before it in the absence of the accused unless the judgment rendered is other than a conviction.

Moreover on 7 May 2004, parliament adopted a constitutional amendment abolish state security courts (see Resolution DH(99)555).

Resolution CM/ResDH(2009)109 – A. and E. RiiS (No. 2) against Norway

16468/05, judgment of 17 January 2008, final on 17 April 2008

Excessive length of civil proceedings, which lasted 16 years and three months for two levels of jurisdiction, from June 1990 to September 2006 (violation of Article 6 § 1).

Individual measures

The proceedings at issue came to an end in September 2006. The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage suffered.

General measures

1) Length of the proceedings: the Norwegian authorities consider that this case does not reveal a structural problem and should therefore be considered as an isolated case which does not require adoption of any specific general measure. However, it must be noted that the Norwegian Government has adopted preventive measures to guarantee the right to a fair trial within a reasonable time.

As regards criminal proceedings, the preventive measures introduced following the modification in 2002 of the Criminal Procedure Act include: time-limits for trial hearing (section 275); the appointment by the court of another counsel if the counsel chosen by the defendant is responsible for significant delay (section 102); the shortening of the time spent in investigating and adjudicating.

As regards civil proceedings, preventive measures introduced following the adoption of the Civil Procedure Act in 2005 include: judges' explicit responsibility for dealing with cases in an expeditions manner; the responsibility of the head of the court to supervise the overall

length of proceedings; the introduction of imperative time-limits (six months from the filing of the case for the main hearing, unless there are special circumstances); new rules of evidence.

2) Effective remedies against excessive length of the proceedings: the excessive length of criminal proceedings is taken into consideration when fixing sentence and can justify the imposition of a more lenient sentence or the award of compensation for pecuniary damages (section 445 of the Criminal Procedure Act) and, exceptionally, non-pecuniary damages (section 447). As regards civil proceedings, compensation claims could be based on the regular compensation regime interpreted in the light of Article 13 of the European Convention.

3) Publication and dissemination: given the direct effect of the European Convention in Norway, publication and dissemination of the European Court's judgment to all competent courts should be sufficient to avoid other similar violations. A summary of the judgment in Norwegian, with a link to the original text, was published on the Internet site Lovdata (www.lovdata.no/avg/emdn/emdn-2005-016468-norge.htlm). The Lovdata database is widely used by those who practice law in Norway: lawyers, civil servants, prosecutors and judges alike. The Norwegian Centre for Human Rights (an independent national human rights institution) prepares summaries of the European Court's judgments for the database.

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.

Signing of protocols between the Republic of Turkey and the Republic of Armenia

10 October, Zurich

Minister Žbogar, in his capacity as Chairman of the Committee of Ministers of the Council of Europe, attended in Zurich on 10 October 2009 the signing of protocols between the Republic of Turkey and the Republic of Armenia.

In the presence of the High Representative of the European Union, Javier Solana, and the foreign ministers of the United States, the Russian Federation, France, Switzerland and Slovenia, a Protocol on the Establishment of Diplomatic Relations and a Protocol on the Development of Bilateral Relations were signed by the foreign ministers of Armenia and Turkey, Edward Nalbandian and Ahmet Davutoglu.

Minister Žbogar welcomed the signing of the protocols and stressed that this was a historic event since Turkey and Armenia had decided to put any distrust behind them, and overcome their painful history. The Minister welcomed the decision of the two countries to create a better future for both nations, and emphasised that the protocols would also helpto improve security, stability and prosperity in the entire region.

Minister Žbogar expressed appreciation to the Swiss Foreign Minister, Micheline Calmy-Rey, for the role of the mediator that Switzerland had played in this process. He also stressed that the Armenian and Turkish authorities can count on the Council of Europe's assistance if they wish to draw on its expertise, as well as on Slovenia, which continues to pay an intensive interest in finding solutions to the problems in Southern Caucasus.

European Charter on Freedom of the Press

26 October, Luxembourg

Samuel Žbogar, the Chairman of the Committee of Ministers of the Council of Europe, participated in a parliamentary discussion on the freedom of the press and the protection of journalists' sources at the Chamber of Deputies of Luxembourg. The discussion was organised by the Sub-Committee on the Media of the Council of Europe Parliamentary Assembly. At the meeting, journalist Hans-Martin Tillack presented Minister Žbogar with a copy of the European Charter on Freedom of the Press, which was signed in May 2009 by 48 editors-in-chief and leading journalists from 19 Council of Europe member states.

When Minister Žbogar received the Charter, he stated in a short speech that, during economic crises and global challenges, we need freedom of expression and journalists who can report freely and independently. Media legislation is traditionally a national issue and media autonomy is also defined by international standards; according to Minister Žbogar, the European

Charter on Freedom of the Press can connect both levels, national and international.

"Independent journalism is a great media challenge also in Europe. I believe that the European Charter on Freedom of the Press can be an important step towards increased protection for journalists throughout Europe," stated Minister Žbogar on receiving the Charter.

Quadripartite meeting between the EU and the Council of Europe

27 October, Luxembourg

As Chairman of the Committee of Ministers, the Slovenian Foreign Minister, Samuel Žbogar, participated in Luxembourg in a quadripartite meeting between the European Union and the Council of Europe. The agenda for the meeting, which took place in the context of the EU General Affairs and External Relations Council (GAERC), included three items: Georgia, Moldova, and Belarus.

The European Union was represented by the Swedish EU Council Presidency and the European Commission, and the Council of Europe by Minister Žbogar and the new Secretary General, Thorbjørn Jagland. The two delegations discussed co-operation and the complementarity of the two organisations in relation to the three countries. As regards Belarus, Mr Žbogar emphasised that the country needs to draw closer to Europe via both the Council of Europe and the EU. The two sides also agreed that it is necessary to help the new Moldovan authorities to establish democracy and rule of law.

Co-operation between the European Union and the Council of Europe is good, said Mr Žbogar, noting that the latter organisation is also looking forward to the implementation of the Lisbon Treaty whereby the European Union will be able to accede to the European Convention on Human Rights.

Declarations by the Committee of Ministers

Declaration on human rights in culturally diverse societies

Adopted on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies

The Committee of Ministers of the Council of Europe,

Noting the existence of culturally diverse societies in Europe and underlining that diversity is a source of enrichment;

Recalling the principle of equal dignity of all human beings from which derives the principle of equal enjoyment of human rights by all members of society;

Reaffirming that all human rights are universal, indivisible, interdependent and interrelated;

Being convinced that the existing international human rights standards provide a solid common basis for social cohesion and the peaceful and harmonious development of societies;

Recalling that pluralism and social cohesion are essential elements for our democratic societies; they are built on the genuine recognition of and respect for diversity and fair treatment for everybody;

Recalling that diversity calls for tolerance and non-discrimination, and that it cannot be invoked to justify human rights infringements;

Recognising the importance of intercultural dialogue and taking into account the Council of Europe's White Paper on Intercultural Dialogue (May 2008);

Underlining that human rights are an essential basis for policies and action of public authorities as well as a common value basis for relations between individuals and between groups in socially inclusive societies;

Underlining that living in a democratic society entails rights and duties for all its members;

Stresses the obligation for member states, as the ultimate guarantors of the principle of pluralism, to secure everyone's effective enjoyment of human rights, especially those enshrined in the European Convention on Human Rights, and that the respect of this obligation is of particular importance towards those who are more vulnerable to discrimination;

Emphasises that, in order to reconcile respect for different identities with social cohesion and avoid isolation and alienation of certain groups, it is indispensable to regard respect for human rights and fundamental freedoms as a common basis for all: no cultural, religious or other practices or traditions can be invoked to prevent any individual from exercising his or her basic rights or from participating actively in society, nor shall anyone's rights be unduly

restricted on account of their religious or cultural practices;

Calls on opinion leaders, including political leaders, to speak and act resolutely in such a way as to foster a climate of respect through dialogue based on a common understanding of universally recognised human rights, and calls on member states to adopt practical measures to that effect, such as promoting education as a key to dialogue and mutual understanding, and supporting social inclusion, notably with respect to participation in the decision-making process;

Emphasises that the preservation and promotion of a democratic society based on respect for diversity requires resolute action against all forms of discrimination. Racial and xenophobic violence is a particular affront to human dignity, and requires special vigilance and a vigorous reaction from public authorities;

Recalls that the prohibition of discrimination may be accompanied by appropriate measures, such as through action plans, support programmes or any other government action, to ensure the realisation of the human rights of all;

Recalls that freedom of expression, freedom of assembly and association, and freedom of thought, conscience and religion are among the foundations of democratic societies and are instrumental for the pluralism which characterises them. These rights are closely interrelated and equally fundamental in a democratic society;

Draws particular attention to the fact that freedom of expression constitutes one of the essential conditions for the progress of society and for the development of every human being, including in the context of culturally diverse societies. Freedom of expression applies not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. At the same time, the exercise of freedom of expression is not without any duties and responsibilities, and if it involves in particular incitement to hatred and violence, it will not be protected;

Underlines that when freedom of expression, freedom of assembly and association, and freedom of thought, conscience and religion are at stake, states must strive to strike a fair balance between them, while ensuring that any restriction be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim.

Declarations by the Chairman of the Committee of Ministers

European Day against the death penalty

Declaration by Samuel Žbogar, Chairman of the Committee of Ministers, 7 October

"Slovenia, which has not carried an execution on its territory for more than 50 years, and which has abolished the death penalty in law by its first constitution as an independent State in 1991, is fully committed to the effort of the Council of Europe to abolish the death penalty throughout Europe, and beyond.

Encouraged by positive developments in the past year, the Slovenian Chairmanship of the Committee of Ministers firmly believes that action must be pursued in order to achieve further progress towards the abolition of the death penalty in Europe and in other parts of the world, including:

- with regard to Council of Europe member states, efforts to encourage the ratification of Protocols No. 6 and 13 to the European Convention on Human Rights by all member states of the Council of Europe which have not yet done so;
- with regard to Belarus, action to reinforce the prospects for a moratorium and the abolition of the death penalty in Belarus, through dialogue and co-operation with the authorities and civil society, and with the full use of opportunities provided by the Council of Europe Infopoint;
- with regard to Council of Europe observer states which retain the death penalty, to pursue a dialogue on this important issue;
- with regard to the prospects for a worldwide moratorium and abolition of the death penalty, increased contacts and co-ordination with abolitionist countries in other parts of the world, especially in the context of the preparation for the next UN General Assembly debate on this issue in the second half of 2010,
- with regard to the public opinion in Europe, the use of every opportunity to explain that decisions where fundamental values such as

human dignity and the right to life are at stake should not, and need not, be guided by opinion polls, that what is needed to protect people from serious crime is not the death penalty but an effective criminal justice system and that the best way to deter crime is to ensure that people committing crime will not escape justice. In this respect, the Council of Europe should continue to give priority to effective criminal justice. This includes measures to better fight crimes such as sexual abuse, exploitation of children and trafficking in human beings, to protect the rights of victims and to improve international co-operation between criminal justice systems. The Council of Europe should spare no efforts to promote effective, just and humane criminal justice systems in Europe."

Council of Europe concerned about a new death penalty case in Belarus

Joint statement by Samuel Zbogar, Chairman of the Committee of Ministers and Thorbjørn Jagland, Secretary General of the Council of Europe, 30 October

"We are deeply disturbed by the news that the Belarus Supreme Court has once again rejected an appeal against the death penalty handed down to a Belarusian citizen, and that Andrei Zhuk, condemned to death by a Minsk regional court on 22 July, may face imminent execution.

We call on President Alyaksandr Lukashenka to grant clemency to Mr Zhuk, to declare forthwith a moratorium on the use of the death penalty in Belarus, and to commute the sentences of all prisoners sentenced to death to terms of imprisonment.

An act of clemency by the President of Belarus would be an unequivocal signal of Belarus's intentions to align itself with the 47 member states of the Council of Europe, all of which have suspended or abolished the death penalty."

Replies from the Committee of Ministers to Parliamentary Assembly recommendations

Parliamentary Assembly Recommendation 1856 (2009)
Reply adopted on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies

"Investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine: the Gongadze case as an emblematic example"

The Committee of Ministers reminds the Parliamentary Assembly that it has been closely supervising the execution of the judgment of the European Court of Human Rights in the Gongadze case since it has become final and refers notably to its Interim Resolution CM/ResDH(2008)35 adopted on 5 June 2008.

The Committee of Ministers would like to draw the Parliamentary Assembly's attention to its most recent decision adopted at the 1051st meeting (DH) of the Ministers' Deputies (March 2009) which reads as follows:

"The Deputies

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;

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;

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

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;

invited the Ukrainian authorities to inform the Committee of Ministers regularly of the progress of the investigation;

6. decided to resume consideration of this item at the latest at the 1065th meeting (15-16 September 2009) (DH), in the light of information to be provided by the Ukrainian authorities on the progress of the investigation, in particular given the results of the phonoscopic examination, and possibly on the basis of a draft interim resolution."

The Committee of Ministers assures the Parliamentary Assembly that it will continue to follow the case with the greatest attention and confirms its resolve, as with all judgments transmitted to it under Article 46, paragraph 2, of the Convention, to ensure the execution of this judgment by Ukraine.

"Involving men in achieving gender equality"

Parliamentary Assembly Recommendation 1853 (2008)
Reply adopted on 23 September 2009 at the 1066th meeting of the Ministers' Deputies

The Committee of Ministers has taken note of Parliamentary Assembly Recommendation 1853 (2008) on "Involving men in achieving gender equality" and has brought it to the attention of member states' governments. It has also transmitted the recommendation to the Steering Committee for Equality between Women and Men (CDEG).

The Council of Europe has played a pioneer role in the field of equality between women and men, the main principles of which were established as early as November 1988 in the Committee of Ministers' Declaration on Equality between Women and Men. As the Council of Europe is celebrating its 60th anniversary, the Committee of Ministers has strongly reaffirmed these principles by adopting the Declaration "Making gender equality a reality", at its 119th Session held on 12 May 2009 in Madrid.

The Committee of Ministers is therefore aware of the responsibility of the Council of Europe to develop a policy of equal opportunities in its Secretariat and to ensure a balanced representation of both sexes (not less than 40% according to Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making) in its steering committees and other bodies. It considers the involvement of men in equality between women and men as an essential element of the success of this policy.

In this context, the Committee of Ministers recognises the importance of the implementation of its Recommendation Rec(2003)3 as well as Recommendation Rec (81) 6 which already concerned the fair proportion of participation by women and men in committees and other organs established in the framework of the Council of Europe. The Committee of Ministers recalled these principles on the occasion of the thematic exchange of views on the action of the Council of Europe to promote equality between women and men in November 2008 (CM/Del/Dec(2008)1040/1.5), and encouraged member states to strive to establish more balanced lists of applicants between women and men at the time of the selection process for the various organs, bodies and committees of the Council of Europe. For further information about all of the decisions taken on this occasion, the Committee of Ministers invites the Assembly to refer to its reply to Recommendation 1819 (2007).[1]

The Committee of Ministers also recalls its request to the Secretary General to draw up a report on the state of equality between women and men at the Council of Europe. This report will be an excellent indicator of the situation and allow consideration of ad hoc measures to be taken as necessary.

1. https://wcd.coe.int/ViewDoc.jsp?id=1367317&Site=CM

"Indicators for media in a democracy"

Parliamentary Assembly Recommendation 1848 (2008)
Reply adopted on 7 October 2009 at the 1067th meeting of the Ministers' Deputies

The Committee of Ministers has taken note of Parliamentary Assembly Recommendation 1848 (2008) on "Indicators for media in a democracy" and Resolution 1636 (2008) on the same subject, and agreed to bring the recommendation to the attention of the governments of the member states.

In line with Article 10 of the European Convention on Human Rights, the Committee of Ministers has on numerous occasions stressed the fundamental importance of freedom of the media in a democratic society, in particular for informing the public and for the free formation and expression of opinions and ideas. In the Third Summit Action Plan, the Heads of State and Government of Council of Europe member states also reiterated their "commitment to guarantee and promote freedom of expression and information and freedom of the media as a core element of our democracies".

The Committee of Ministers welcomes the Parliamentary Assembly's identification of a set of principles that can serve as indicators for assessing the situation of the media in the member states. It believes that if these principles are interpreted in line with the relevant Council of Europe instruments in the media field and, in particular, in the light of the case law of the European Court of Human Rights, the bodies and individuals working in the media sector could usefully refer to them for the purpose of analysing the situation of the media.

The Committee of Ministers has always paid very close attention to the situation in member states regarding respect for freedom of expression and information. In future, the Committee of Ministers could, where necessary, also refer to the basic principles identified by the Parliamentary Assembly.

The Committee of Ministers has asked its Steering Committee on the Media and New Communication Services (CDMC) to take account of Recommendation 1848 (2008) and Resolution 1636 (2008) in its future work.

Parliamentary Assembly Recommendation 1843(2008) Reply adopted on 21 October 2009 at the 1068th meeting of the Ministers' Deputies

"Honouring of obligations and commitments by Bosnia and Herzegovina"

The Committee of Ministers has taken note of Recommendation 1843 (2008) on the "Honouring of obligations and commitments by Bosnia and Herzegovina". Both Recommendation 1843 (2008) and Resolution 1626 (2008) concur with the conclusions of the Committee of Ministers under its own monitoring procedure.

Concerning the expressed need to further develop the existing co-operation programmes (points 2.2 and 2.3 of the recommendation), the Committee of Ministers is determined to reinforce its assistance activities in the key areas of the Council of Europe's expertise.

In this respect, the Committee of Ministers would like to refer to a co-operation programming document which it has recently approved and which lists the existing and proposed action of the Council of Europe in Bosnia and Herzegovina for 2009-2011. The package of priority action covered by the document includes areas of constitutional reform, human rights (including strengthening the application of the European Convention of Human Rights, the fight against ill-treatment and freedom of expression), rule of law activities (such as prison reform, fight against corruption and organised crime) and democracy and good governance (including activities on electoral legislation and civic participation). The document also includes action on education reform and promoting social cohesion in the country.

The implementation of the above activities should contribute to Bosnia and Herzegovina's fulfilment of commitment and obligations undertaken by the country upon accession to the Council of Europe. The Committee of Ministers considers it important that Bosnia and Herzegovina makes better use of its membership in the Council of Europe, notably by participating in the work of its specialised committees and by submitting relevant legislative drafts to the Council of Europe for review.

The Committee of Ministers concurs with the Assembly on the need to make full use of the new funding opportunities, including within the framework of the European Union's Instrument for Pre-accession Assistance. In this context, the Council of Europe office in Sarajevo has close co-operation with the European Commission. This co-operation should be reinforced with the development of several new projects, including a proposal for a large anti-corruption initiative, which is currently being discussed with the authorities. The Committee of Ministers would like to underline that a considerable amount of additional funding for the proposed programmes is still required and would therefore appreciate any support by member states and national delegations of the Parliamentary Assembly to identify complementary funding options.

Replies from the Committee of Ministers to Parliamentary Assembly written questions

Reply adopted on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies

Written Question No. 557 by Mr Hancock: "End violence and discrimination on the basis of sexual orientation and gender identity in Turkey"[1]

Question:

The decision of Turkey's Supreme Court of Appeals, announced on 27 November 2008, to overturn the decision of a lower court ordering the closure of Lambda Istanbul, a group advocating for lesbian, gay, bisexual and transgender (LGBT) people's human rights, is very much to be welcomed.

However, a recent report by Human Rights Watch, "We Need a Law for Liberation" – Gender, Sexuality, and Human Rights in a changing Turkey, makes it clear that the human rights challenges faced by LGBT people in Turkey are not limited to freedom of association. The report documents, *inter alia*:

– disturbing evidence of endemic homophobic violence;

– detailed accounts of police malpractice and violence;

– vague laws on, for example, "offences against public morality", which are used to harass LGBT people;

– the violence and harassment faced by some lesbians and bisexual women, particularly in the context of family "honour";

– the extreme prejudice and social exclusion faced by many transgender persons;

– Turkey's treatment of gay men and transgender persons in the armed forces, which is in vi-

1. This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

olation of judgments of the European Court of Human Rights.

Recalling the European Convention for the protection of Human Rights and Fundamental Freedoms to which Turkey is a signatory,

Mr Hancock,

To ask the Committee of Ministers,

what action the Committee of Ministers is to undertake to request Council of Europe member state Turkey to outline what plans Turkey has to implement the recommendations in the Human Rights Watch Report in order to end violence and discrimination on the basis of sexual orientation and gender identity namely with regard to:

– the enactment of a comprehensive non-discrimination law containing specific protections against unequal treatment based on sexual orientation and gender identity in all areas of life;

– the elimination of vague laws used to harass LGBT people;

– the amendment of military policy to eliminate sexual-orientation and gender-identity based exclusion from the armed forces;

– measures to ensure full respect and legal recognition for each person's profound self-esteem;

– the training of all criminal justice system officials on principles of human rights and non-discrimination as they relate to LGBT people;

– the adequate investigation and prosecution of crimes of violence and rape against LGBT people;

– ensuring that measures to address domestic violence are applied without discrimination and in a manner sensitive to issues of sexual orientation or gender identity;

– ensuring that LGBT organisations are able to enjoy freedom of association without hindrance.

Reply:

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.

In a series of judgments, the European Court of Human Rights (the Court) has emphasised that any discrimination based on sexual orientation is contrary to the Convention.[1] The Court has also recognised that state parties have a positive obligation to lead effective investigations into any suspicious death or serious allegations of ill-treatment capable of leading to the identification and punishment of those responsible.[2] This positive obligation is irrespective of the personal characteristics of the victim, and applies not only to instances where state agents are deemed responsible but also to any serious cases brought to the authorities' attention. The Committee of Ministers recalls that all member states must observe the Convention when they draw up and apply national law, notably in the light of the case law of the Court.

The Committee of Ministers also draws attention to the decisions it took at the 1031st meeting of the Ministers' Deputies (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. The Committee of Ministers also underlines that a recommendation is currently being prepared within the framework of the CDDH on human rights of members of the armed forces which will, *inter alia*, reflect the Court's established case-law prohibiting the ban on homosexuals' access to the military.[3]

Like all member states, Turkey has ratified the European Convention on Human Rights (the Convention) and is committed to guarantee respect for all Convention rights, including freedom of association, to all individuals within its jurisdiction without any discrimination.

1. Among other authorities, *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.
2. See for instance, *M.C. v. Bulgaria*, judgment of 4 December 2003 (paragraph 151) on Article 3 and *Yasa v. Turkey,* 2 September 1998, (paragraph 100).
3. See for instance, *Lustig-Prean and Beckett v. United Kingdom*, judgment of 27 September 1999.

Reply adopted on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies

Written Question No. 565 by Mr Lindblad: "The situation for a political prisoner in Azerbaijan"[1]

Question:

The Parliamentary Assembly of the Council of Europe resolved in June 2008 to pursue its monitoring on the honouring of obligations and commitments by Azerbaijan. The reasons for the continued monitoring are presented in the resolution. When joining the Council of Europe in 2001, Azerbaijan clearly opted for European standards with respect to democracy, the rule of law and human rights. In the 2008 monitoring report the Assembly found reason to express great concern about the deteriorating human rights situation in Azerbaijan, the lack of independence of the judiciary, and other things (resolution 1614/2008). As to the success of the reforms accomplished by Azerbaijan the Assembly says that it is less a matter of the letter of the law that a matter of implementation.

The intention of my question to the Committee of Ministers is to draw the attention to the case of Mr Farhad Aliyev, Azerbaijan's former Minister of Economic Development, and his brother Mr Rafiq Aliyev, imprisoned for an alleged coup attempt in 2005. The circumstances under which the arrest and trial occurred are inconsistent with the standards set by the Council of Europe. The proceeding, according to Mr Aliyev's attorney, has violated the defendants' right to fair pre-trial investigations, the presumption of innocence until proven guilty, and the right to defence.

In its resolution 1545 (2007) the Assembly stated that it expected the trial of Mr Farhad Aliyev – who had been kept in pre-trial detention since October 2005 – to start without further delay. Two years later the trial has indeed taken place. However, the court's decision to sentence him to ten and his brother to nine years of imprisonment cannot be justified since it is based on a fabricated accusation and false testimonials and evidence. Furthermore all attempts to appeal the case were rejected or not taken into consideration.

Recently it has also been reported that Mr Farhad Aliyev's health has deteriorated. He suffers from a heart disease and needs appropriate medical care. He has been denied access to his own medical records and is prohibited from selecting doctors to examine and treat him.

What means does the Committee of Ministers have to ensure that Mr Farhad Aliyev and his brother receive a fair trial? How can appropriate medical treatment for his heart disease be guaranteed?

Reply:

In reply to the question from the Honourable Parliamentarian, the Committee of Ministers recalls that its Monitoring Group (GT-SUIVI.AGO) has been following the situation of Mr Farhad Aliyev and his brother, Mr Rafik Aliyev, since their arrest.

The Committee has been informed that judicial proceedings concerning Messrs Farhad Aliyev and Rafik Aliyev are pending before the Azerbaijani's domestic court as well as before the European Court of Human Rights. The outcome of these proceedings is awaited. The Committee of Ministers would like to emphasise that it is primarily for national judicial authorities and ultimately for the European Court of Human Rights, to determine whether national measures and decisions comply with the European Convention on Human Rights.

With respect to medical assistance, the Committee recalls that the European Convention on Human Rights imposes on member states the obligation to protect the physical well-being of persons deprived of their liberty within their jurisdiction. It also refers to its Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison.

The Committee of Ministers has taken note of the information provided to it by the authorities of Azerbaijan according to which Mr Farhad Aliyev's right to health is being ensured.

1. This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

Reply adopted on 23 September 2009 at the 1066th meeting of the Ministers' Deputies

Written Question No. 567 by Mr Mogens Jensen: "Homosexual rights in Russia"[2]

Question:

Referring to the events at the Lomonosov University in Moscow on 17 May 2009 where Russian authorities banned a demonstration on anti-discrimination and tolerance organised by homosexuals;

Considering the same events in Moscow on 17 May 2009 where Omon special police forces brutally dissolved the above-mentioned dem-

2. This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

onstration by beating up demonstrators and arresting 40 people;

Concerned by the fact that the mayor of Moscow, Mr. Jurij Lusjkov, has stated that the police acted appropriately for the situation and within the framework of the law, and that, on a previous occasion, he has characterised homo parades as the "work of Satan" and declared that "homosexuals are like weapons of mass destruction";

Mr Jensen,

To ask the Committee of Ministers,

Whether the Committee intends to address the Russian government in order to condemn the violation of the European Convention on Human Rights committed by Russian authorities, to ask the Russian government whether it agrees on the statement made by Mr. Lusjkov, and to ask the Russian government how it intends to ensure that the European Convention on Human Rights is respected in Russia and that homosexuals are not discriminated by bans and violence.

Reply:

In reply to the question put forward by the Honourable Parliamentarian, the Committee of Ministers recalls that, on 18 May 2009, its Chairman already publicly expressed concern about the action taken on the previous day against the organisers of the Parade. He also stated that the fact that this is not the first year such a situation has developed was of concern to him.

The Committee also recalls its position regarding the enjoyment of freedom of assembly and freedom of expression for LGBT persons in the Russian Federation as expressed in its replies to Written Questions No. 527 and No. 558, which are useful reminders of the relevant human rights principles which must be observed in this matter:

"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 peacefully. In a series of judgments, the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.[1] All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court."

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, notably in the light of the case-law of the Court, to all individuals without discrimination.

The Committee of Ministers also invites all member states to implement its Recommendation No. R (97) 20 on "hate speech" which asserts, in Principle 1 appended to the recommendation, that public authorities and institutions at national, regional and local levels have a "special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur".

The Committee of Ministers further recalls the message that was adopted at the 1031st meeting of the Ministers' Deputies (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons. The Steering Committee for Human Rights (CDDH), notably, has been asked to prepare a recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them. In the light of the Court's case-law, freedom of expression and peaceful assembly will be among the topics covered by the recommendation.

1. 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 23 September 2009 at the 1066th meeting of the Ministers' Deputies

Written Question No. 568 by Mr Mogens Jensen: "Homosexual rights in Latvia"[1]

Question:

Referring to the resolution adopted by the City Council of Riga on 14 May 2009 in order to ban the "Baltic Pride Parade" to be held in Riga on 17 May 2009.

To ask the Committee of Ministers,

Whether the Committee intends to address the Latvian government in order to condemn the violation of the European Convention on Human Rights committed by the local authorities of Riga, to ask the Latvian government if it agrees to the above-mentioned resolution, and to ask how it intends to ensure that the European Convention on Human Rights is respected in Latvia, including the right of homosexuals to freedom of expression and to demonstrate.

Reply:

The Committee of Ministers has been informed that the resolution of the City Council of Riga referred to by the Honourable Parliamentarian has been overruled by the competent domestic court. As a result, the "Baltic Pride Parade" took place on 16 May as initially planned, and it proceeded without incidents.

The Committee of Ministers welcomes this decision of the Latvian judicial authorities, which on several occasions have overruled decisions of local authorities banning LGBT events. From the perspective of the European Convention on Human Rights, national courts have indeed an essential role and responsibility in providing effective protection of the rights set out in the Convention. The Committee of Ministers recalls that all member states are committed to guarantee respect for all rights set out in the Convention, including the rights to freedom of expression and freedom of assembly, to all individuals without any discrimination when they apply national law, notably in the light of the case law of the European Court of Human Rights. While the Convention allows for restrictions on the exercise of these rights, according to the established case law of the Court, peaceful demonstrations, be they in favour of the rights of 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 peacefully.

The Committee of Ministers further recalls the message that it adopted at the 1031st meeting of the Ministers' Deputies (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons. The Steering Committee for Human Rights (CDDH), notably, has been asked to prepare a recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them. In the light of the Court's case law, freedom of expression and peaceful assembly will be among the topics covered by the recommendation.

1. This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

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)

Gender Equality Prize 2009 of the Parliamentary Assembly

Lluís Maria de Puig, President of the Parliamentary Assembly presented the Assembly's 2009 Equality Prize in Strasbourg on Wednesday 30 September 2009 to the winner, the Portuguese Socialist Party (*Partido Socialista*). According to the jury, the Portuguese Socialist Party has stood out in this area by adopting internal quotas as far back as 1995 and then passing a parity law requiring a minimum of 33% of candidates from the under-represented sex on party lists for European, parliamentary and municipal elections. The second and third prize-winners, respectively the UK Labour Party and the Swedish Left Party, each received a diploma.

"I hope the prize will encourage other political parties to take practical steps in order significantly to improve women's participation in politics," said Mr de Puig in conclusion.

The three winners were designated on 8 September by the Equality Committee to reward the steps they had taken to significantly improve women's participation in their parties or in the elected assemblies of their respective countries.

Human Rights situation

The situation of human rights defenders in Northern Caucasus: "There can be no justice without truth" says Dick Marty

"In April 2009, the Russian Government announced the end of the operations in Chechnya. Now, however, the entire region is beset by violence," said Dick Marty at the start of the current affairs debate on the situation of human rights defenders and the increasing violence in the Northern Caucasus region of the Russian Federation. According to Mr Marty, it is above all the general climate of impunity at all levels which has prevailed in the region for many years that has generated an atmosphere conducive to the spread of violence. "There can be no justice without truth and no peace without justice," he added.

Ilyas Umakhanov underlined that, when speaking of terrorism, it is necessary to "analyse all its acts without excluding criminality", as some of them may be linked to an underground mafia seeking to destabilise the region. Although "the situation is under control," he said, it is difficult and needs to be monitored.

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stressed the need to remember the people who live in the region, as it is very important for victims' families not to feel that they have been left on their own..

Mr Dick Marty

Analysis shows marked setback in media freedom in Council of Europe area

The Council of Europe area has suffered a "marked setback" in the overall level of media freedom in the past three years, according to a background report by an independent expert presented today to PACE's Sub-Committee on the Media.

The country-by-country report, by the academic and former BBC senior correspondent William Horsley, was commissioned as a contribution to a PACE report on media freedom being prepared by the sub-committee's Chair Andrew McIntosh, and presented at a PACE hearing in Luxembourg. It gathers data from several NGOs monitoring journalists' freedom, who also contributed to the hearing.

"It is apparent from this survey of the last three years that the violations and abuses are more acute and pervasive than has been widely understood," according to the report.

At least 20 journalists have been killed on duty apparently because of their work since the start of 2007, the report points out – compared with 13 deaths in the preceding three years – while the scale of violent assaults remains unacceptably high. The great majority of targeted killings or serious assaults took place in Russia, Armenia, Azerbaijan, Moldova and Belarus, but cases were also recorded in Turkey, Croatia, Serbia, Greece and Spain.

The spread of freedom of information laws, as well as the decriminalisation of libel and abolition of blasphemy in some states, are positive developments, but "often the effect has been blunted by contrary trends towards more controls and interference in media independence," the report concludes.

Internet and online media services: PACE calls for increased protection for minors

In a recommendation adopted, the Assembly calls on the member states to increase protection for minors who use Internet and online media services, particularly through the use of parental filter systems. PACE also urges the member states to support the creation of secure, restricted-access networks which filter content harmful to minors and comply with codes of conduct, as recommended by József Kozma in his report.

In addition to technological solutions, the Assembly favours measures to raise public awareness, focusing on the risks and opportunities for minors using Internet and online media services. It also recommends that the Committee of Ministers work towards ensuring greater legal responsibility of Internet service providers for illegal content, and that it call on the member states which have not yet signed the Convention on Cybercrime and its Additional Protocol to do so without delay.

PACE rapporteur: 36 states failing to heed judgments of the Court

A Council of Europe PACE rapporteur has expressed his "serious concern" that 36 of the 47 Council of Europe member states are now failing to fully implement within a reasonable time judgments of the European Court of Human Rights, which are supposed to be binding.

Implementing judgments normally means that the state concerned pays the victim the compensation directed by the Court, and changes its laws or practices to avoid a repetition of the violation.

Christos Pourgourides, who regularly monitors this issue for the PACE, was presenting an updated list of outstanding judgments to the Assembly's Legal Affairs Committee in Paris. The list used two standard criteria: judgments which had not been fully implemented five years after the Court had delivered them, or which revealed major structural problems.

"Until a few years back, [we] had to deal with such cases in a dozen or so countries," Mr Pourgourides told the committee. "Now I am sad to say this situation has changed completely: there are today 36 member states who meet these criteria, which is a very bad trend and a matter of serious concern."

Presenting a progress report, Mr Pourgourides said that as a result of this rise, he was now obliged to monitor a more limited list of judgments involving only the most serious human rights issues, such as deaths or ill-treatment by state agents.

All states who have ratified the European Convention on Human Rights are obliged to fully abide by the Court's rulings. The Council of Europe's Committee of Ministers – made up of the 47 foreign ministers of its member states – has the duty of ensuring that the Court's judgments are fully implemented.

The independence of the judicial system is the principal line of defence against political interference in the law, according to PACE

In a resolution unanimously adopted, the PACE stressed that the independence of the judiciary is the principal line of defence against politically-motivated interference in the law. In order to ensure the success of any changes to the system, PACE advised maintaining the right balance between parties enjoying full independence (judges, defence lawyers) and the prosecution and the police.

Sabine Leutheusser-Schnarrenberger, PACE rapporteur on this subject, examined how politicians can interfere in criminal proceedings in four countries representing the principal types of criminal justice system in Europe – the United Kingdom, France, Germany and the Russian Federation – analysing high-profile cases such as the dropping of the British Aerospace fraud investigation and "cash for honours" scandal in the United Kingdom, or the second Khodorkovsky trial and HSBC/Hermitage Capital and Politkovskaya murder cases in the Russian Federation.

In its resolution, the Assembly therefore invited:

- the **United Kingdom** to complete the reform of the Attorney General's role without further delay, strengthening his/her accountability before Parliament, and to reverse the recent erosion of resources available for legal aid;
- **France** to reconsider the proposed abolition of the *juge d'instruction*; in the event of abolition and the transfer of this institution's competences to the prosecution, to strengthen the independence of prosecutors;
- **Germany** to set up a system of judicial self-administration, along the lines of the judicial councils existing in most European states, and to abolish the possibility for ministers of justice to give the prosecution instructions concerning individual cases;
- the **Russian Federation** to adopt a series of reforms to reduce the political and hierarchical pressures on judges and put an end to the harassment of defence lawyers in order to combat "legal nihilism" in the country.

The fight against rape needs to be stepped up, PACE says

While stressing that the fight against rape needs to be stepped up, the Assembly today called on member states to ensure that the legislation on rape and sexual violence reaches "the highest possible standard". The unanimously adopted text asks member states to develop a comprehensive strategy which should comprise measures to prevent rape in the first place, as well as to ensure (securely-funded) protection of and assistance to rape victims at every step of the proceedings, including, possibly, compensation for the victims.

PACE forum on early warning in conflict prevention

"We cannot take peace for granted, even on our continent," said PACE President Lluís Maria de Puig, closing a two-day PACE forum on early warning in conflict prevention held in Strasbourg on 24-25 September. "The Assembly owes it to itself to put peace, and maintaining peace, at the very heart of its work [...] We have a duty of vigilance."

Participants at the forum, which was created partly in response to the war between Georgia and Russia a year ago, recommended that parliamentarians focus on what political action they could take to head off conflicts, and said the Council should create a mechanism bringing together all those involved in different forms of "early warning" work.

The forum was only "a point of departure" which would lead to concrete steps in due course, the President added.

What future for human rights and democracy in Europe?

The PACE Political Affairs Committee and the Directorate General of Human Rights and Legal Affairs of the Council of Europe organised a conference at the French National Assembly in co-operation with academics and representatives of civil society and youth. The event focused on the major challenges facing the Council of Europe in the defence of human rights and democratic ideals. The conference was opened by Lluís Maria de Puig, President of PACE, Maud de Boer-Buquicchio, acting Secretary General of the Council of Europe, Jorge Fernando Branco de Sampaio, former President of Portugal and Jean-Claude Mignon, leader of the French delegation to PACE.

The war between Georgia and Russia: one year on

In a draft resolution adopted in Paris, PACE Monitoring Committee strongly urges the Russian authorities, before the end of the year, to give unrestricted access to EU monitors to South Ossetia and Abkhazia, grant freedom of movement for Georgian civilians and international and humanitarian organisations over the administrative boundaries, recognise the right of return of all IDPs of this conflict and to initiate a credible investigation into alleged ethnic cleansing in South Ossetia.

The Committee deplores that – one year after the war between Georgia and Russia – little tangible progress has been achieved in addressing the consequences of the war, and that in several areas the situation has actually regressed.

The report by Luc Van den Brande and Mátyás Eörsi is due to be debated by the plenary Assembly on Tuesday 29 September.

Gongadze case: PACE rapporteur welcomes the arrest of Oleksiy Pukach

Sabine Leutheusser-Schnarrenberger, former Parliamentary Assembly rapporteur on the Gongadze case and co-rapporteur on Ukraine, welcomed the arrest of former general and top Ukrainian Interior Ministry official Oleksiy Pukach, who had been in hiding since 2003. He was charged *in absentia* with having participated in the murder of journalist Giorgiy Gongadze, for which three policemen were sentenced to prison terms last year.

"The arrest of Oleksiy Pukach provides the Ukrainian law enforcement authorities with a unique opportunity of shedding light on who ordered the gruesome murder of journalist Giorgiy Gongadze," Mrs Leutheusser-Schnarrenberger said. "Recent events have shown once again that in order to effectively deter such crimes, not only the actual perpetrators, but also the organisers and instigators must be held to account, all the way up the chain of command," she added.

"It goes without saying that Mr Pukach's safety must be ensured in order to avoid a similar scenario as that of the violent death of his former superior, ex-Interior Minister Kravchenko, who was found dead, with two gunshot wounds in his head, in the morning of the day on which he was going to be interrogated by the prosecutor's office," Mrs Leutheusser-Schnarrenberger concluded.

Electoral process

Bosnia and Herzegovina: constitution-making should not be "abused" for electoral goals

The prospects of adopting a new constitution for Bosnia and Herzegovina before the next parliamentary elections, expected to be held in Autumn 2010, look "rather gloomy", say the monitoring co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) in their latest assessment.

"The positions of various stakeholders are extremely polarised and an agreement on a comprehensive package of constitutional amendments is almost impossible to reach," said Mevlüt Çavusoglu and Kimmo Sasi in an information note declassified by the Assembly's Monitoring Committee.

"Constitution-making is a serious exercise which requires building a broad consensus about the key features of the reform. It should not be abused to satisfy immediate goals relating to the electoral campaign," they concluded. Key stakeholders should launch, without delay, a meaningful dialogue about changes to the Constitution, drawing on help from the Council of Europe's Venice Commission, in order to make Bosnia and Herzegovina "a normal European state".

Depending on progress, the co-rapporteurs proposed a possible debate on this question at the Assembly's January 2010 part-session.

Bulgarian elections generally in line with standards, but more efforts needed

Parliamentary elections in Bulgaria were generally in accordance with international standards, but further efforts are necessary to ensure the integrity of the election process and increase public confidence, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly concluded in a joint statement.

The observers noted that the elections provided voters a broad choice in a visible and active election campaign demonstrating respect for fundamental freedoms. But late changes to the election system, concerns about the effectiveness of law enforcement and the judiciary, as well as pervasive and persistent allegations of vote-buying, negatively affected the election environment.

"These elections were competitive and generally well run. But concrete measures are now needed to ensure full public confidence in the process, and particularly to eliminate electoral malpractices and strengthen the legal system," said Ambassador Colin Munro, Head of the OSCE/ODIHR limited election observation mission.

"Despite grave imperfections linked to last minute changes in the electoral legislation and repeated allegations of vote buying that surrounded the 5 July elections, I am hopeful that Bulgaria will put the existing problems to rest and will fully justify its membership in the community of democratic values," said Tadeusz Iwinski, Head of the PACE delegation.

The observers said election day overall appeared to proceed in a calm and orderly manner, although there were reported cases of attempted fraud involving absentee voting.

The full statement of preliminary findings and conclusions is available on the OSCE website at www.osce.org/odihr and the PACE website at http://assembly.coe.int.

Co-operation with other international organisations

Pierre Lellouche: laying the foundations for true synergy with the EU

The French Secretary of State for European Affairs gave an assurance of France's attachment to the Council of Europe by stating before the Assembly on 1 October, "I know what great pride the Council can take in the work accomplished". He suggested identifying any overlaps with the European Union in order to focus on the areas where the action of the Council of Europe proves most apposite and effective.

"In the Europe of the 47, there should not be a two-track freedom or high and low pressure belts for democracy. In answer to those who may have lost sight of the goals of the Council of Europe, I would solemnly reassert France's determination to ensure the unity of the European continent, abiding by the core values to which we must remain committed," he concluded.

UN reform: PACE calls for a ban on the Security Council veto in the case of human rights violations

At the end of a debate on the reform of the United Nations, the Assembly today called on European governments to reach a common position as regards the prohibition of the recourse to the veto within the Security Council in the case of "actual or threatened serious and widespread human rights violations". Following the proposals of the rapporteur (Andreas Gross), the parliamentarians also voted in favour of a transitional reform of the Security Council, based on the establishment of a new category of non-permanent seats which could be held for a longer period of time than in the current system.

Internet: http://assembly.coe.int/

Election of the Secretary General of the Council of Europe

The Secretary General is elected by the Parliamentary Assembly of the Council of Europe for a period of five years. The Secretary General is entrusted with the responsibility of meeting the aim for which the Council of Europe was set up in London on 5 May 1949, namely to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. The Secretary General has the overall responsibility for the strategic management of the Council of Europe's work programme and budget and oversees the day-to-day running of the Organisation and Secretariat.

Thorbjørn Jagland elected Secretary General of the Council of Europe

The Parliamentary Assembly elected on 29 September 2009 Thorbjørn Jagland (Norway) Secretary General of the Organisation for a five-year term.

In the first round of the election, Thorbjørn Jagland obtained 165 votes (an absolute majority) and Wlodzimierz Cimoszewicz (Poland) 80 votes. There were 245 votes cast.

Mr Jagland has been President of the Norwegian Parliament (Storting) since 2005 and Member of Parliament for Buskerud County since 1993.

Thorbjørn Jagland was sworn in as Secretary General on 1 October 2009.

Biography

Mr Thorbjørn Jagland is Secretary General of the Council of Europe since 1 October 2009.

He was the President of the Storting (Norwegian Parliament) from 2005 to 2009.

He was recently elected Chairman of the Norwegian Nobel Committee, which awards the Nobel Peace Prize every year.

He has held two of the most influential governmental positions in Norway: Prime Minister (1996-97) and Minister of Foreign Affairs (2000-2001).

After serving as Foreign Minister, he was Chairman of the Standing Committee on Foreign Affairs and the enlarged Foreign Affairs Committee in the Storting for four years (2001-2005). He also served as Chairman of the EEA Consultative Committee during this period (2000-2005). In addition, he has held a number of other parliamentary positions, such as Head of the Storting's Delegation for Relations with the European Parliament for six years.

He was a member of the Storting for 15 years.

Mr Jagland was Leader of the Norwegian Labour Party for 10 years (1992-2002), and Party Secretary of the Labour Party for five years (1987-1992).

He is currently the Chairman of the Board of Directors at the Oslo Centre for Peace and Human Rights, and Member of the International Board of Governors at the Peres Center for Peace.

He served as Vice-President of the Socialist International 1999-2008, and Chair of the Social International Middle East Committee from 2000 to 2006. He was a member of the Sharm El-Sheikh Fact-finding Commission (The Mitchell Commission) from 2000 to 2001.

Over the last 20 years, Mr Jagland has published widely on a range of issues, in particular on European and international affairs. He has published four books in Norway: My European Dream (1990), Letters (1995), Our Vulnerable World (2001) and Ten Theses on the EU and Norway (2003).

He holds a degree in Economics from the University of Oslo (1975).

He was born on 5 November 1950 in Drammen, Norway. He is married to Hanne Grotjord. They have two children.

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

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

Russian Federation, 11-18 September 2009

On 11 September, the Commissioner completed a week-long visit to the **Russian Federation**, including the Chechen Republic and the Republic of Ingushetia. He called for better protection of human rights' defenders and highlighted the necessity of carrying out effective investigations into the recent killings of human rights' activists. He also stressed the need to employ counter-terrorism measures which take due account of human rights principles, as well as to clarify the fate of missing persons and fight against corruption. He also made a keynote address on social and economic rights to a round table of ombudsmen of the Russian Federation, organised by the Council of Europe in St. Petersburg from 3 to 4 September.

Slovenia, 6-7 September

From 6 to 7 October, Commissioner Hammarberg visited **Slovenia** to discuss children's rights, the situation of Roma and the so-called "erased". He met the prime minister and the ministers of the interior, labour, family and social affairs, foreign affairs and of education and sport, the latter being also Chairman of the Government Commission for the Protection of the Roma community. In addition, he took part in the International Conference on Children's Rights and Protection against Violence which was held at the Slovenian National Assembly as part of the Slovenian Chairmanship of the Council of Europe's Committee of Ministers. In his speech, he underlined that children must be actors of their rights and that governments should invest more in ensuring an equal opportunity to access good quality education for all, including children with disabilities and Roma children.

Hungary, 14 octobre

Concluding his visit to **Hungary** on 14 October, the Commissioner recommended further action to eradicate intolerance and discrimination. He held discussions with the prime minister, the ministers of foreign affairs and of justice and law enforcement and other representatives of national authorities, international and non-governmental organisations. The Commissioner expressed to the authorities his grave concern about the observed rise of extremism, intolerance and racism that have targeted, in particular, members of the Roma minority population. He also called on the authorities to proceed to the ratification by Hungary of Protocol No. 12 to the European Convention on Human Rights and to accept the collective complaints procedure under the European Social Charter.

Lithuania, 19-20 octobre

During his visit to **Lithuania** on 19-20 October, the Commissioner held high-level discussions with the authorities on minority rights, discrimination, the need to investigate the alleged existence in Lithuania of a secret detention centre for terrorist suspects and the deficiencies of the Law on the Protection of Minors against the Detrimental Effects of Public Information. He met, in particular, the President of Lithuania, the prime minister and the minister of foreign affairs as well as representatives of the parliament (Seimas) and the head of Department of National Minorities and Lithuanians Living Abroad.

Reports

Reports of visits

Kosovo, 2 July

Presenting his special mission report on **Kosovo**[1] on 2 July, Commissioner Hammarberg stressed that all people living there, regardless of their ethnicity, must benefit from European standards of human rights protection. Focusing on access to justice, policing, and minority rights, as well as the fate of refugees and internally displaced persons, he observed that Kosovo had an advanced legislative framework in place, but its implementation still needed to be ensured.

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."

Moldova, 17 July

A report on **Moldova** was published on 17 July, following a visit carried out on 25-28 April. The Commissioner stressed that the violations of the prohibition against ill-treatment, which surfaced so acutely after the post-electoral demonstrations of 6-7 April, had to be tackled head-on to restore a climate of confidence. He also recommended that decisive action had to be taken to enforce a firm attitude of "zero tolerance" of ill-treatment throughout the criminal justice system.

Turkey, 1 october

On 1 October, the Commissioner published two reports on **Turkey**, focusing on human rights of minorities and asylum-seekers. In the first report, the Commissioner recommended efforts to establish a genuine dialogue with all minority groups, promote awareness among the general public of the value of a multicultural society and take further action to fully incorporate the European Court of Human Rights' case-law in the relevant legislation and practice. The Commissioner also urged the authorities to accelerate and guarantee the effective reparation of the internally displaced persons and make further efforts to complete the clearance of the mined areas.

Furthermore, he expressed concerns about the marginalisation of Roma, their serious difficulties in effectively enjoying certain social and civil rights, and instances of violence by police and non-state actors. He further recommended the prompt establishment of an effective national human rights institution, the creation and implementation of comprehensive anti-discrimination legislation, the ratification of Protocol No. 12 to the European Convention on Human Rights and Turkey's accession to the Framework Convention for the Protection of National Minorities.

The second report focused on the human rights of asylum seekers and refugees in Turkey. While welcoming the plan to adopt new asylum legislation, he recommended that domestic definitions of asylum seekers and refugees be aligned with international standards and that steps be taken to better identify the asylum seekers in the flow of mixed migration. He further underlined the necessity to strengthen and enhance the authorities' co-op-

eration with the Office of the United Nations High Commissioner for Refugees (UNHCR) and called on the Turkish authorities to review the accelerated asylum procedure system in line with Council of Europe standards. Furthermore, he recommended that clear instructions be given to all border officials and their training be reinforced to ensure that potential asylum seekers, also in places of detention, were properly informed of their rights.

While welcoming measures to create regional reception centres, he urged the authorities to improve asylum seekers' and refugees' access to health care and the job market, as well as to secure dignified living conditions for those detained. The Commissioner also expressed his concerns about a reported increase in forced returns to Iraq and Iran in 2008 and an alleged lack of investigation into certain cases. He urged the Turkish authorities to effectively implement the principle of non-refoulement, in particular, at points of entry and to increase interaction with non-governmental organisations specialised in asylum seekers' protection.

Commending the special care unaccompanied asylum seeking children received in Turkey, the Commissioner recommended further efforts to guarantee the effective application of the principle of the best interest of the child in refugee law and policy. Finally, he recommended prompt ratification of the Council of Europe Convention on Action against Trafficking in Human Beings and the speedy adoption of the new draft action plan.

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.

40th session of the International Institute of Human Rights

The Commissioner gave an inaugural lecture on 6 July on "Detention and International Human Rights Law" at the 40th session of the International Institute of Human Rights which is held annually in Strasbourg. He outlined eight aspects which required reflection and action: respecting the principle of presumption of innocence, avoiding indefinite detention, putting an end to ill-treatment, improving prison conditions, finding alternatives to the detention regime, avoiding detaining minors, avoiding the tendency to detain migrants and asylum seekers and improving the conditions of persons in psychiatric institutions.

11th Annual EU-NGOs Forum on Human Rights

The Commissioner took part in the 11th Annual EU-NGOs Forum on Human Rights held in Stockholm on 7 July 2009 to focus on violence against children. He reiterated that states have a duty to protect children against any form of violence, including at home and that corporal punishment should be banned and awareness-raising campaigns promoted. The Commissioner also raised the issue of the consequences of conflicts on children.

Working seminar on Protecting freedom of movement and human rights of Roma

On 9 July, the Commissioner organised in Strasbourg a joint working seminar entitled "Protecting freedom of movement and human rights of Roma", in collaboration with the European Union Fundamental Rights Agency, the OSCE High Commissioner on National Minorities and the OSCE Office for Democratic Institutions and Human Rights. The objective of the seminar was to exchange views among experts and the preparation of an international, high-level conference on the same subject that would take place in Vienna in November.

Murder of Natalia Estemirova

On 15 July, reacting to the murder of Mrs Natalia Estemirova, the Commissioner affirmed that the killing was a reminder that much stronger actions were needed to protect activist members of human rights organisations. He expressed his deep condolences to the family and colleagues of Mrs Estemirova and urged the Russian authorities to carry out an immediate, thorough and impartial investigation with a view to ensuring the criminal accountability and punishment of the perpetrators.

Human rights and gender identity

An expert Issue Paper on "Human rights and gender identity" was released on 29 July during the Commissioner's participation in the World Outgames 2nd International Conference on LGBT Human Rights held in Copenhagen. He stressed that Council of Europe member states should do more to stop transphobia and discrimination against transgender people.

Round Table on Human Rights Activism

On 17-18 September, the Commissioner organised in Kyiv, in co-operation with the Council of Europe Conference of International Non-Governmental Organisations, a Round Table on Human Rights Activism. The event discussed the challenges and avenues towards enhancing and supporting human rights activism in Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation and Ukraine.

Annual meeting of the European Network of Ombudsmen for Children

On 23 September, the Commissioner delivered a video-message to the opening ceremony of the annual meeting of the European Network of Ombudsmen for children (ENOC). In his message, he focused on the necessity of better understanding the notion of a child's best interests and insisted that children's views should be more closely listened to and respected. Furthermore, he stressed that children's best interests should be reinforced in judicial procedures and underlined the need to develop and reinforce the mandate of existing specialised ombudspersons.

Expert workshop on human rights responses to criminalisation of migration in Europe

An expert workshop on "Human rights responses to criminalisation of migration in Europe" was organised in Paris on 24-25 September. The workshop served as a forum for exchanges of views regarding the best way of providing more assistance to Council of Europe member states in order to encourage them to reflect on and revisit their migration law and policy on the basis of the Council of Europe and international human rights standards. A Commissioner's issue paper on the subject matter is forthcoming.

70th anniversary of the CIMADE

On 26 September, the Commissioner participated in the celebration of the 70th anniversary of the CIMADE in Strasbourg. He suggested that access to asylum procedures be improved in many European countries and affirmed that the Dublin II regulation and the "return" directive could be improved to better respect migrants' human rights.

60th anniversary of the Council of Europe

On 1 October, Commissioner Hammarberg took part in the celebration of the 60th anniversary of the Council of Europe held at the Palais de la musique et des congrès in Strasbourg. He underlined that over the past 60 years, the Council of Europe has achieved a great deal in building a continent where disputes are resolved through dialogue and injustices are righted through agreed standards and procedures protecting the rights of the individual.

Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe

GRECO high-level conference

Speaking at the GRECO high-level conference organised in Strasbourg on 5 October, the Commissioner stated that no system of justice is effective if it is not trusted by the population. He further underlined that corruption threatens human rights and, in particular, the rights of the poor, and stressed the need for a comprehensive, high-priority programme to stamp out corruption at all levels and in all public institutions.

Committee of Experts on Impunity

The Commissioner also prepared a written contribution with a summary of his activities and recommendations for the first meeting of the Committee of Experts on Impunity set up by the Steering Committee for Human Rights in order to study the feasibility of guidelines against impunity for human rights violations.

Viewpoint articles

Finally, the following Viewpoint articles were published fortnightly:

- "Many Roma in Europe are stateless and live outside social protection" (6 July)
- "Stop and searches on ethnic or religious grounds are not effective" (20 July)
- "State budgets reveal whether the government is committed to human rights" (3 August)
- "Serious implementation of human rights standards requires that benchmarking indicators are defined" (17 August)
- "Flawed enforcement of court decisions undermines the trust in state justice" (31 August)
- "A neglected human rights crisis: persons with intellectual disabilities are still stigmatised and excluded" (14 September)
- "Persons with mental disabilities should be assisted but not deprived of their individual human rights" (21 September)
- "The death penalty is a fallacious idea of justice" (5 October)
- "Climate change is also a human rights concern" (19 October)

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 working relationships with ombudsmen and other national human rights structures continued to be developed and a partnership of trust has been established with many of these office holders allowing for an exchange of information and mutual advice. The Commissioner regularly met them during his country visits.

The Commissioner has also made efforts to develop closer contacts with parliamentarians within the Council of Europe, not least with the members of the Parliamentary Assembly of the Council of Europe (PACE). Constructive contacts with the US State Department have been developed and an interest has been expressed on the part of the latter in the work and experience of the Commissioner, not least in relation to the issue of human rights and the fights against terrorism.

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: Serbia and Russia on 14 September and 16 October 2009, respectively.

Croatia signed the Revised Social Charter on 6 November 2009.

To date 45 member states of the Council of Europe have signed the Revised European Social Charter. The remaining two member states (Liechtenstein and Switzerland) have signed the 1961 Charter. Forty-two states have ratified either one of the two instruments (29 the Revised Charter and 13 the 1961 Charter).

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

The rights guaranteed

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)

Adoption of conclusions

At its 239th session, 19-23 October 2009, the ECSR began to adopt Conclusions 2009 (for the states that have ratified the Revised Social Charter) and Conclusions XIX-2 (for the states bound by the 1961 Charter). These conclusions are related to the application by all parties to the Charter of the accepted provisions of the third thematic group, namely:

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 23);
- the right to protection against poverty and social exclusion (Article 30).

Significant events

Many conferences on the European Social Charter have been organised by European universities over the last few months.

21-22 September, Bucarest University (Romania)

"The role of European legislation in the development of social law in Romania"

In the presence of the Minister of Labour and Social Affairs, the Rector of Bucarest University, the Dean of the Law Faculty, as well as many academics and representatives of Romanian trade unions, the debates focused on the interaction between European law, especially the law of the Council of Europe, and national law. The proceedings of this conference will be published.

24-25 September, Seville University (Spain)

"Social rights and public policies in the Autonomous Statute of Andalusia"

The audience was composed of academics and students from different towns in Spain, as well as officials from local administration in Andalusia.

This conference enabled a better understanding, not only of the Social Charter, but also of the links with the European Union at this time of the imminent entry into force of the Lisbon Treaty.

6 October, National School of Administration (ENA) in Paris

Training session: "Protection of human rights"

The training session on the Social Charter, which was particularly lively and interactive, showed the great interest in social rights of students who came from various countries in Europe and Africa.

15-16 October, Marmara University, Istanbul (Turkey)

"Constitutional social rights and the European Social Charter"

The General Consul of France in Istanbul, the Chief Education Officer of Marmara University, the Director of Istanbul IFEA (French Institute of Anatolian Studies), as well as eminent professors from Turkish and French universities attended this Franco-Turk colloquy.

Debates were held on topics such as the right to housing in France and in Turkey. Speakers then gave comprehensive information on the case-law of the Constitutional Court in Turkey, the European Committee of Social Rights and the European Court of Human rights, as well as on the experience of other states such as Italy and Germany.

Furthermore, some ECSR members and some agents from the Department of the Social Charter participated in various international conferences, particularly in order to:

- present the case-law of the Committee on the right to housing of Roma, in Strasbourg on 9 July to NGOs and international officials participating in the working Seminar "Protection of free movement and rights of Roma". This seminar was organised to prepare the Conference on Roma migration and freedom of movement, by the Commissioner for Human Rights of the Council of Europe, the European Union's Fundamental Rights Agency and the Organisation for Security and Co-operation in Europe;
- explain to judges and lawyers from Georgia the monitoring procedures of the Social Charter at the Conference on Justiciability of Social Rights organised by the Constitutional Court of Georgia, the UNDP and the Council of Europe in Batumi (Georgia), 10-12 July;
- give information on the implementation of the Revised Social Charter in Russia ("Translating commitments into compliance") in St Petersburg, 3-4 September, at a round table of ombudsmen in the Russian Federation, jointly organised by the National Human Rights Structures Unit of the Council of Europe (DGHL) and the St Petersburg Center for Humanities and Political Studies Strategy, in the framework of a Joint Programme of the European Union and Council

of Europe entitled "Setting up an active network of independent non-judicial human rights structures";

- present the right of elderly persons to social protection guaranteed by Article 23 of the Revised Social Charter at a workshop held in Budapest on 15 and 16 September in the framework of the aforementioned Joint Programme;
- intervene in the debates on migration at the Expert Workshop which took place in Paris, on 24 and 25 September, on "Human Rights Responses to Criminalisation of Migration in Europe", at the behest of the Commissioner for Human Rights of the Council of Europe. The experts were composed of academics responsible for INGOs and NGOs as well as European officials;
- examine, with representatives of various ministries, courts of justice, NGOs and international organisations, how to improve the protection of children thanks to the legal instruments existing at an international level, including the European Social Charter – against violence, exploitation and sexual abuse, during two international conferences on this topic in Ljubljana on 6 October and in Warsaw on 28 and 29 October;
- train NGOs from the Balkans on "the European Social Charter – the protection of social human rights in Europe" on the occasion of the study tour organised in Brussels, 18- 21 October, in the framework of "the Civil Society Facility" (CSF), a strategy launched by the Directorate General for the Enlargement of the European Commission. The aim of this strategy is to strengthen the role of civil society in the fight against poverty in Europe.

Collective complaints: latest developments

Decisions on the merits

Two decisions on the merits became public in August 2009.

European Roma Rights Centre (ERRC) v. Bulgaria

Complaint No. 48/2008

In a decision which became public on 1 August, the European Committee of Social Rights found that, following amendments introduced in 2006 and 2008, the Bulgarian Social Assistance Act does not respect the right to social assistance of unemployed persons with insufficient resources within the meaning of Article 13 § 1 of the Revised Charter.

Whilst the Committee acknowledges that the Bulgarian Government has taken measures to improve the education and training of unemployed persons, as well as measures to encourage the reintegration into the labour market of persons who will be losing social assistance as a result of the contested legislative amendments, it also considers probable that only a limited number of persons affected by the social assistance cuts will actually obtain employment.

The serious risk that persons affected by the denial of continued social assistance will be deprived of adequate resources therefore constitutes a breach of Article 13 § 1. Although many Roma will be affected by the changes to the Act, the Committee did not find it necessary to examine the allegations of indirect discrimination against Roma, as their situation could be subsumed into the overall breach of Article 13 § 1.

International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia

Complaint No. 45/2008

On 30 March 2009, the ECSR found a violation of Article 11 § 2 in light of the non-discrimination clause by Croatia on the ground that discriminatory statements are contained in educational material used in the ordinary school curriculum on the sexual and reproductive health education.

Just after this ECSR conclusion of violation, the Croatian authorities informed the Ministers' Deputies that the Croatian Ministry of Education had consequently withdrawn the textbook in question from the list of standard educational material, and from the school year 2009/2010 this textbook was no longer used in the ordinary curriculum. (See Resolution CM/ResChS (2009) 7 adopted by the Committee of Ministers on 21 October 2009.)

Decision on admissibility

One collective complaint was declared admissible by the ECSR on 7 September 2009.

European Council of Police Trade Unions (CESP) v. France (No. 57/2009)

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.

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

Italy, 27-31 July 2009

This was the Committee's eighth visit to Italy. During the visit, the delegation examined various issues pertaining to the government's new policy to intercept at sea irregular migrants approaching Italy's Southern Mediterranean border and send them back to Libya. In particular, the delegation focused its attention on the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment.

In the course of the visit, the delegation held consultations with high officials of the Ministry of Interior, Ministry of Justice, and Ministry of Defence as well as with representatives of the Carabinieri, Guardia di Finanza, Guardia Costiera and Marina Militare. Further, it met representatives 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 Italian authorities.

Moldova, 27-31 July 2009

The CPT carried out an ad hoc visit to Moldova. The main purpose of the visit was to assess the manner in which investigations were and are being carried out into cases possibly involving ill-treatment by members of police forces in the context of the post-election events in April 2009 in Chişinău. The visit also provided an opportunity to review the treatment of persons detained by the police.

The CPT's delegation visited the temporary detention facility of the General Police Directorate and Centru and Ciocana district police stations in Chişinău. It also had a series of interviews in private, including at Penitentiary

establishment No. 13, with alleged victims and witnesses of police ill-treatment at the time of the April events and examined in detail a number of relevant investigation files. It also spoke to several members of police forces involved during the events, including the "Fulger" special police force.

In the course of the visit, the delegation held discussions with Vitalie Pîrlog, Minister of Justice, Valentin Zubic and Ghenadie Cosovan, Deputy Ministers of Internal Affairs, Vasile Pascari, First Deputy Prosecutor General and Anatolie Munteanu, Parliamentary Advocate. The delegation also met with representatives of international and non-governmental organisations, members of the Moldovan Bar Association and defence lawyers.

At the end of the visit, the delegation presented its preliminary observations to the Moldovan authorities.

Ukraine, 9-23 September 2009

This was the CPT's fifth periodic visit to the Ukraine. The CPT's delegation assessed progress made since the previous periodic visit in 2005 and the extent to which the Committee's recommendations have been implemented, in particular in the areas of initial detention by internal affairs bodies, imprisonment, detention of foreign nationals under aliens legislation, and psychiatry.

During the visit, the delegation met Mr Oleksandr Galinskyi, Head of the State Department on Enforcement of Sentences, and held consultations with senior officials from that Department as well as from the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Health, the State Border Service, the Prosecutor General's Office and the Office of the Parliamentary Commissioner for Human Rights. Meetings were also held with representatives of the UNHCR Regional Representation in Kyiv, the Delegation of the Commission of the European Union to Ukraine, the Office of the OSCE Project Co-Ordinator, the Mission of the International Organisation for Migration, and members of several non-governmental organisations.

At the end of the visit, the delegation presented its preliminary observations to the Ukrainian authorities.

Greece, 17-29 September 2009

This was the Committee's fifth periodic visit to Greece. The visit provided the opportunity to assess progress made since the previous periodic visit in September 2005 and the ad hoc visits of February 2007 and September 2008. In the course of the visit, the CPT's delegation examined the treatment and conditions of detention of persons held in a number of prisons and in aliens' detention centres, including in the eastern Aegean and the Evros region.

The delegation also visited police and border guard establishments with a view to examining the conditions of detention and the safeguards in place, both in relation to persons suspected of a criminal offence and those held under aliens legislation.

In the course of the visit, the delegation met the Secretary General of the Ministry of Justice, Athanasios Andreoulakos, Head of Penitentiary Policy, Christina Petrou, and the Chief Prosecutor of the Court of Cassation, Ioannis Tentes, as well as senior officials from the Greek Police Force and representatives from the Ministries of Foreign Affairs, Health, Interior and Justice. The delegation also met the Ombudsman and Deputy Ombudsman, representatives of the United Nations High Commissioner for Refugees (UNHCR) and the Greek National Commission for Human Rights, and several members of non-governmental organisations.

Romania, 28 September-2 October 2009

The CPT carried out an ad hoc visit to Romania. The main objective of the visit was to review the situation of residents and patients at Nucet Medico-Social Centre and at Oradea Hospital for Neurology and Psychiatry (Bihor county), in the light of the recommendations and comments made by the Committee concerning these two establishments in its report on the 2006 visit. At the end of the visit, the delegation held discussions with Aurel Nechita, Secretary of State in the Ministry of Health, and Ileana Botezat Antonescu, Director of the National Mental Health Centre, Ministry of Health.

Belgium, 28 September-7 October 2009

This was the CPT 's fifth visit to Belgium. The CPT's delegation reviewed the measures taken by the Belgian authorities to implement the recommendations made by the Committee after its previous visits. It focused in particular on the situation in prisons and on the safeguards afforded to persons in police custody. The delegation also visited for the first time the detention centre for irregular migrants in Vottem, the boarding school "'t Knipoogje" in Evergem and the "Fond' Roy" psychiatric clinic in Uccle.

In the course of the visit, the delegation held consultations with Stefaan De Clerck, Minister of Justice, Annemie Turtelboom, Minister of Internal Affairs, and Melchior Wathelet, Secretary of State for Migration and Asylum. The delegation also met with senior officials of the Ministry of Social Affairs and Public Health, as well as the Flemish Ministry for Youth, Education, Equal Opportunities and Brussels Affairs.

The delegation further met the College of Federal Mediators and representatives of the Centre for equal opportunities and the fight against racism, the Permanent Control Committee of the Police Forces ("Comité P") and the Inspectorate General of the Federal and Local Police Forces, as well as the General Delegate of the French Community for the Rights of the Child and representatives of the Children's Rights Commissioner at the Flemish Parliament.

At the end of the visit, the delegation presented its preliminary observations to the Belgian authorities.

Report to government following visit

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.

Bosnia and Herzegovina, publication on 14 October 2009

Report on the March 2007 visit, together with the responses of the authorities of Bosnia and Herzegovina

The visit provided an opportunity to assess the progress made since the CPT's first periodic visit in April/May 2003 and the ad hoc visit in December 2004. The Committee's delegation examined in detail various issues related to prisons, including the regime and treatment of remand prisoners and those prisoners placed in isolation. Particular concerns were expressed in the visit report about the unsafe nature of some of the prisons visited, notably those in Zenica and Doboj, where it appeared that prison staff were not in complete control.

The situation of forensic psychiatric patients was another focal point of the visit. The CPT recommended, *inter alia*, that the living conditions of patients at Sokolac Psychiatric Clinic be improved, and that measures be taken to reinforce the staffing levels and to introduce individual treatment plans for each patient. As regards Zenica Prison Forensic Psychiatric Annexe, the CPT called upon the authorities to take immediate steps to improve the conditions, treatment and staffing levels in the annexe. The CPT also encouraged the authorities to take a more multidisciplinary planning approach towards the establishment of a state-level forensic psychiatric hospital.

The situation of residents in two social care homes was examined for the first time, and the authorities were urged to improve the safeguards afforded to persons placed in such homes. The importance of developing a proper legal framework for social care homes in the Federation of Bosnia and Herzegovina was also stressed. Particular attention was also paid to the treatment of persons detained by the police and to the practical operation of safeguards against ill-treatment.

In their responses, the authorities make reference to various measures taken to improve the situation in the light of the recommendations made by the CPT. As regards law enforcement agencies, the responsible ministries state that they have reiterated the message to all police units that ill-treatment of detained persons is illegal, unprofessional and will be the subject of severe sanctions.

Information has been provided on the steps taken to make Doboj and Zenica Prisons safe for inmates, and on the measures to improve conditions in the prisons visited. Reference is also made to the appointment of a health-care co-ordinator for prisons in the Republika Srpska. Some improvements in the living conditions are reported in relation to Sokolac Psychiatric Clinic and Višegrad Institution for the Protection of Females.

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

Georgia

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Georgia was made public by the Government on 12 October. The Advisory Committee adopted this Opinion in March following a country visit in December 2008.

Summary of the Opinion:

"The Advisory Committee welcomes the fact that the ratification of the Framework Convention has triggered a debate in Georgia and that discussion is continuing in connection with the introduction of a more comprehensive legislative framework for the protection of national minorities. It hopes that, as a result of this debate, Georgia will be able to devise a legislative framework for the protection of national minorities and introduce an open, comprehensive, long-term policy making it possible to respond appropriately to existing and future needs, in accordance with the principles set out in the Framework Convention. It is important that persons belonging to national minorities are fully involved in this debate. The Advisory Committee notes with satisfaction that the government has stressed the need to promote tolerance and integration, and hopes the draft Concept on tolerance and civic integration will be swiftly adopted and effectively implemented.

The Advisory Committee encourages the Georgian authorities and all the parties concerned, to step up their efforts and to take an open and constructive approach in order to find as soon as possible a just and lasting solution to the conflict over South Ossetia and Abkhazia, as the conflict is adversely affecting the implementation of the Framework Convention throughout the entire Georgian territory. In doing so, the principles enshrined in the Framework Convention must be fully respected, in order to guarantee the rights of persons belonging to national minorities.

The Advisory Committee considers that the linguistic rights of persons belonging to national minorities are still a major challenge facing the authorities. Whilst they are making efforts to make it easier for those persons belonging to national minorities who are not familiar with the Georgian language to learn it, these efforts are far from adequate and do not constitute an appropriate response to existing needs. Improving facilities for learning Georgian should therefore be a priority for the authorities. They should also ensure that the policy of promoting the Georgian language is not pursued to the detriment of the linguistic rights of persons belonging to national minorities, the effective enforcement of which requires more resolute measures, both in the legislative framework and in its implementation.

In the field of education, the lack of resources invested in tuition provided in minority languages means that the pupils concerned are not on an equal footing with other pupils. Moreover, although it takes note with interest of the reforms undertaken in the Georgian education system, the Advisory Committee is concerned

about their potential implications for persons belonging to national minorities. In particular, it is essential to ensure equal access, with no unjustified obstacles, to higher education for pupils who have studied in minority language schools. More generally, the authorities should take all the measures needed to promote full and effective equality for persons belonging to minorities in the education system.

Participation of persons belonging to national minorities in the country's cultural, social and economic life and in public affairs remains limited, and many of them are isolated from Georgian society. Their inadequate command of the Georgian language is one of several factors accounting for their marginalisation. The authorities should take vigorous measures to remove legislative and practical obstacles to the participation of persons belonging to national minorities in elected bodies and in the executive, and allow minorities to be better represented in the public service. Consultation of representatives of national minorities by the authorities, particularly through the Council for Ethnic Minorities, should be more systematic, and the recommendations and proposals of this unique body representing minorities should be given all the necessary attention. Moreover, the Georgian authorities should take more resolute measures to promote the effective participation of persons belonging to national minorities in the socio-economic life of the country.

The Advisory Committee is concerned about increased religious tensions, which are particularly affecting persons belonging to national minorities. The authorities should make every effort to combat this phenomenon and, in general, all forms of intolerance based on ethnic or religious affiliation. It is also necessary to increase efforts to promote mutual understanding and intercultural dialogue between the majority population and persons belonging to national minorities, by means of a balanced policy that takes full account of the rights of persons belonging to minorities."

The government comments on the Opinion have also been made public.

Second Monitoring Cycle

Albania

The Committee of Ministers adopted a resolution on the protection of national minorities in Albania on 8 July. The resolution contains conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

Extract from the resolution:

In addition to the measures to be taken to implement the detailed recommendations contained in sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- "In addition to the measures to be taken in response to the detailed recommendations set out in sections I and II of the Advisory Committee's opinion, the authorities are invited to take the following measures with a view to further improving the implementation of the Framework Convention:
  address the current lack of data on ethnic belonging notably by including a question on ethnic affiliation in the next census while respecting the international standards on personal data protection, including the principle of free self-identification and ensuring that this principle is also respected when issuing birth certificates;
- ensure that persons belonging to the "ethno-linguistic" minorities do not face undue obstacles in enjoying the protection of the Framework Convention;
- review the rigid territorial limitations to the application of the Framework Convention and ensure that persons belonging to national minorities can enjoy their rights without undue limitations;
- complete the Albanian legislative framework in order to address shortcomings concerning the prohibition of discrimination, the use of minority language in relations with administrative authorities, the display of topographical indications and the broadcasting for minorities;
- review the institutional bodies responsible for minority issues with a view to establishing regular dialogue between a government body with decision-making power and organisations representing the various minorities and ensure effective participation of persons belonging to minorities in decision-making processes;

- address the existing shortcomings in the field of minority language education, textbooks and teacher training; ensure the effective consultation of representatives of national minorities in those fields;
- take urgent action to remedy the absence of civil registration of many Roma, including by introducing a simplified administrative procedure and by developing awareness-raising measures on the importance of such registration;
- step up efforts to implement fully the National Strategy on Roma by involving local authorities, allocating adequate funding and resources and evaluate the progress made regularly;
- develop a policy to support national minority cultures in consultation with representatives of minorities;
- encourage training on minority issues for journalists, promote increased participation of minorities in media management bodies and extend the geographical coverage of minority language broadcasting;
- step up efforts to encourage the recruitment of persons belonging to minorities in public administration."

Bulgaria

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Sofia and Plovidv, from 28 September – 2 October in the context of the monitoring of the implementation of this convention in Bulgaria.

This was the second visit of the Advisory Committee to Bulgaria. The delegation had meetings with the representatives of all relevant ministries, public officials, the ombudsman, as well as persons belonging to national minorities and human rights NGOs.

The delegation included Mr Alan Phillips (President of the Advisory Committee and member elected in respect of the United Kingdom), Mr Gáspár Biro (member of the Advisory Committee elected in respect of Hungary) and Mr Ferenc Hajós (member of the Advisory Committee elected in respect of Slovenia). They were accompanied by Ms Michèle Akip, Head of the Secretariat on the Framework Convention for the Protection of National Minorities and Mr Krzysztof Zyman, Administrator in the Secretariat on the Framework Convention for the Protection of National Minorities.

Note:
Bulgaria submitted its second State Report in November 2007. Following its visit, the Advisory Committee will adopt its own report (called Opinion), which will be sent to the Bulgarian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Bulgaria.

Portugal
Serbia
Kosovo[1]

On 5 November, the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted an opinion on **Portugal** which is restricted for the time-being. This opinion will now be submitted to the Portuguese authorities and the Committee of Ministers, which is to adopt conclusions and recommendations.

The Comments of the authorities of **Serbia** on the Advisory Committee's 2nd cycle opinion were received on 30 September and made public on 26 October.

On 5 November, the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted an opinion on **Kosovo** which is restricted for the time-being. his opinion will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

Third Monitoring Cycle

Croatia

The State Report in respect of **Croatia** was received in October.

Cyprus

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Nicosia, from 12-15 October in the context of the monitoring of the implementation of this convention in **Cyprus**.

This was the third visit of the Advisory Committee to Cyprus. The delegation had meetings with the representatives of all relevant ministries, public officials, the ombudsman, as well as persons belonging to national minorities.

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.

The delegation included Ms Ilze Brands-Kehris (First Vice-President of the Advisory Committee and member elected in respect of Latvia), Ms Iulia Motoc (member of the Advisory Committee elected in respect of Romania) and Mr Dalibor Jilek (member elected in respect of the Czech Republic). They were accompanied by Ms Artemiza-Tatiana Chisca of the Secretariat on the Framework Convention for the Protection of National Minorities.

Note:
Cyprus submitted its third State Report under the Framework Convention in April 2009. Following its visit, the Advisory Committee will adopt its own report (called Opinion), which will be sent to the Cypriot Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Cyprus.

Slovak Republic

The Slovak Republic submitted its third state report in English and Slovak on 22 July, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

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

ECRI closely examines the state of affairs concerning racism and intolerance in each of the member states of the Council of Europe. On the basis of its analysis of the situation, ECRI makes suggestions and proposals 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 or 10 countries each 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, under which 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 15 September 2009 ECRI published three reports of its fourth round of country monitoring, on the Czech Republic, Greece and Switzerland. The reports note positive developments in all three of these Council of Europe member states, but also detail continuing grounds for concern.

Czech Republic

In the Czech Republic a new criminal code was adopted in 2008, containing more extensive provisions against racism. In recent years the ombudsman has carried out detailed investigations into cases of possible discrimination against the Roma. Steps have been taken to adjust the education system so as better to meet the needs of socially disadvantaged children.

At the same time, however, there has been a disturbing intensification in the activities of extreme right-wing groups. Most victims of racially motivated offences are reported to be Roma. Little progress has been made towards improving the situation of the Roma, who face segregation in schools and housing and discrimination in employment. The issue of forced sterilisations of Roma women has not been adequately addressed yet.

Greece

In Greece, the legislative framework on non-discrimination has been consolidated, with the adoption of the 2005 Equal Treatment Act and the 2008 amendment of the Criminal Code, making the racist motivation of an offence an aggravating circumstance. In an encouraging development, there have been successful prosecutions in recent years against anti-Semitic and anti-Roma publications.

However, on the whole, the legislation prohibiting incitement to racial hatred is still seldom applied and so far few racial discrimination complaints have been filed owing to insufficient legal assistance and information on available remedies. Roma continue to face problems in the fields of employment, housing and justice and the existing Integrated Action Plan should be better implemented. Issues relating to the freedom of association of persons belonging to some ethnic groups have not yet been solved. Significant improvements are called for in the treatment of refugees, asylum seekers and immigrants.

Switzerland

In Switzerland, measures have been taken to foster the integration of immigrants in areas such as employment, housing and health. The federal bodies in charge of racism and migration have continued to raise awareness of racism and racial discrimination. Steps have been taken to combat right-wing extremism.

However, there has been a dangerous growth of racist political discourse against non-citizens, Muslims, black people and other minorities. Legislation is insufficiently developed to deal with direct racial discrimination, which targets in particular Muslims and persons from the Balkans, Turkey and Africa. Travellers and Yenish communities with an itinerant lifestyle are still faced with a shortage of stopping sites and prejudice leading to instances of discrimination. Legislation governing asylum seekers has been tightened and hostility towards them has increased.

Working methods and publication of results

The reports form part of ECRI's 4th monitoring cycle, which focuses on the implementation of its previous recommendations and the evaluation of policies and new developments since its last report. In two years' time ECRI will carry out a follow-up assessment.

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 autumn 2009, ECRI carried out contact visits to Georgia, Poland, Turkey and "the former Yugoslav Republic of Macedonia", 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 12 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 30 October 2009, ECRI's Working Group on Combating Racism and Racial Discrimination in Employment met for the first time, as part of its work to prepare ECRI's next General Policy Recommendation (No. 13). The working group discussed in particular the content of the future recommendation and which actors should be consulted on which issues.

On 18 September 2009, ECRI's working group on anti-Gypsyism met for the second time. This working group was set up at ECRI's 47th plenary meeting (16-19 December 2008) and mandated to examine the analyses and recommendations contained in the country reports of ECRI's third monitoring cycle that concern the situation of Roma, with a view to evaluating the implementation of its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies. The group is currently in the process of drawing up initial conclusions to present to ECRI at its December 2009 plenary, based on an in-depth analysis of the causes of anti-Gypsyism and an examination of levers of change such as education and employment.

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 the 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.

Publications

- ECRI Report on the Czech Republic (fourth monitoring cycle), 15 September 2009
- ECRI Report on Greece (fourth monitoring cycle), 15 September 2009
- ECRI Report on Switzerland (fourth monitoring cycle), 15 September 2009

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

Law and policy

Intergovernmental co-operation in the human rights field

One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee for Human Rights (CDDH) plays an important role. The CDDH is the principal intergovernmental organ answerable to the Committee of Ministers in this area, and to its different committees.

The work of the CDDH and other expert committees

Combating impunity

DH-I: Committee of Experts on Impunity

The Committee of Experts on Impunity (DH-I) held its first meeting from 9to 11 September, with a view to discussing the feasibility of Council of Europe guidelines against impunity for human rights violations. Not only did the DH-I decide that such an instrument was indeed feasible, but it also gave certain indications as to the possible content and form of the guidelines and held a preliminary exchange of views on their scope and purpose. The Committee now awaits instructions from the CDDH to begin drafting the guidelines.

Effective remedies for excessive length of proceedings

DH-RE: Committee of Experts on Effective Remedies for Excessive Length of Proceedings

The Committee of Experts on Effective Remedies for Excessive Length of Proceedings (DH-RE) held its first meeting from 16 to 18 September and elaborated a draft Recommendation on effective remedies for excessive length of proceedings. Its second meeting, from 2 to 4 November, was then devoted to the drafting of a *Guide of Good Practice* annexed to the Recommendation. The work of this Committee was carried out in close co-operation with other bodies of the Council of Europe, particularly the Parliamentary Assembly, the Court, the Commissioner for Human Rights, the European Commission for Democracy Through Law ("Venice Commission"), the European Commission for the Efficiency of Justice (CEPEJ) and the Department for the Execution of Judgments. The draft recommendation and its *Guide to Good Practice* will be presented to the CDDH at its meeting in November 2009 for adoption.

Human rights of members of the armed forces

DH-DEV: Committee of Experts for the Development of Human Rights

The DH-DEV Group on Human Rights of Members of the Armed Forces (DH-DEV-FA) held its 6th meeting and last meeting on 24 and 25 September. The Group finalised its examination of the explanatory memorandum to the draft recommendation on human rights of members of the armed forces and made a few final changes to the draft recommendation itself. The draft texts were presented in October to the Committee of Experts for the Development of Human Rights (DH-DEV), which made further amendments to the draft recommendation. The texts will be presented to the CDDH at its meeting in November 2009 for adoption.

Sexual orientation and gender identity

In October, the Committee of Experts for the Development of Human Rights (DH-DEV) held an exchange of views on the draft recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation and gender identity. The Committee of Experts on discrimination based on sexual orientation and gender identity (DH-

LGBT) will consider the comments of the DH-DEV and finalise the draft recommendation and the explanatory memorandum thereto at its next meeting, from 4 to 6 November. The texts will be presented to the CDDH at its meeting in November 2009 for adoption.

DH-GDR: Committee of Experts on the Reform of the European Court of Human Rights

Reform of the Court

The Committee of Experts on the Reform of the Court (DH-RE) held a meeting from 7 to 9 October 2009 to elaborate a draft opinion on the issues to be covered at the high-level conference on the future of the European Court of Human Rights which will take place at Interlaken (Switzerland) on 18 and 19 February 2010 in the framework of the Swiss Chairmanship of the Committee of Ministers. The draft opinion will be presented to the CDDH at its meeting in November 2009 for adoption.

Death penalty

Several initiatives took place for the third European Day Against Death Penalty (a joint initiative of the Council of Europe and the European Union since 2008). These included a joint declaration of the Swedish Presidency of the EU and of the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, a TV panel discussion with experts from Slovenia, Sweden and from the Secretariat, an interview with a journalist from Euronews, and a question-and-answer session hosted on the social networking site Twitter.

Human rights protection in the context of accelerated asylum procedures

The Guidelines are published under reference no. H/Inf (2009) 4.

The *Guidelines on human rights protection in the context of accelerated asylum procedures*, adopted by the CDDH in March, were adopted by the Committee of Ministers on 1 July 2009, at the 1062nd meeting of the Ministers' Deputies. The *Guidelines* reaffirm that asylum seekers enjoy the guarantees set out in the European Convention on Human Rights in the same way as any other person within the jurisdiction of the states bound by this instrument. The specific situation of these persons nevertheless makes them vulnerable, notably when their asylum application is examined through an accelerated procedure. Member states must ensure that these procedures are implemented with respect for fundamental rights. The explanatory report makes reference to the legal basis which underlines the *Guidelines*, notably relevant articles of the Convention and other binding instruments, judgments of the European Court of Human Rights, recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) and guidance provided by the Parliamentary Assembly of the Council of Europe.

Internet: http://www.coe.int/t/e/human_rights/cddh/

Human rights capacity building

The Legal and Human Rights Capacity Building Division (LHRCBD) is responsible for the human rights component of co-operation programmes (including the Joint Programmes with the European Union) and the "Police and Human Rights" programme. The programmes include: compatibility studies and legislative expertise; training and capacity building and general awareness raising; provision of documentation and translation of the case-law of the European Court of Human Rights.

Joint programmes

Armenia

A project to support access to justice in Armenia held its opening ceremony on 2 October 2009 in Yerevan. This three-year Council of Europe/European Commission project is implemented by the Council of Europe under the local co-ordination of the Ministry of Justice of Armenia. The ceremony was hosted by the Vice-Minister of Justice and the Council of Europe project co-ordinator. The European Commission was represented by the project manager from the European Commission Delegation in Yerevan. The key objectives of the project are:

- to support the reform of the justice sector through the improvement in the efficiency of the judiciary;
- to promote the rule of law and the protection of human rights in Armenia by improving the education of the judicial professions and advocates;
- to help ensure that the Armenian judiciary meets European standards;
- to strengthen the capacity of the judicial professions and advocates, including through the improvement of the efficiency of the Chamber of Advocates of Armenia;
- to provide practical and sustainable solutions for better accountability and personnel management within the justice system in Armenia;
- to improve access to justice for the population in general and ensure free/affordable access for vulnerable groups of the population.

Azerbaijan

A conference on the role of alternative sanctions and measures took place on 5-6 October 2009 in Baku, Azerbaijan. The aim of the conference was to raise awareness among Azerbaijani institutions of the important role of the enforcement of alternative sanctions and measures to reduce prison overcrowding and support offenders' rehabilitation into the society. Four Council of Europe experts shared their countries' experience with representatives of the Azerbaijani Ministry of Justice and its Penitentiary Service as well as with judges, prosecutors and lawyers. The conference focused on discussing ways of making better use of alternative sanctions and measures as defined in Azerbaijani legislation and on the necessary steps to be taken for the establishment of a mechanism which would supervise the enforcement of such sentences in the community, for example the Probation Service. The third cascade training session with staff working with life-sentenced and other long-term prisoners took place on 26 and 27 October in Baku. Its aim was to develop the trainers' capacities and skills to disseminate among prison staff the standards of the European Prison Rules and Committee of Ministers' Recommendation Rec (2003) 23 on the management by prison administrations of life-sentenced and other long-term prisoners.

Belarus

On 30 and 31 October 2009, the LHRCBD organised the first seminar to take place in Belarus itself since 2004. The topic of the seminar was "the European Convention on Human Rights and criminal justice" and its aim was to raise awareness among the Belarusian authorities and legal professionals of European human rights standards with regard to criminal justice and to examine the compatibility of Belarusian law and practice with these standards. Some 50 to 60 participants, including representatives of the Constitutional Court, the General Prosecutor's Office, the Ministry of Internal Affairs, the Ministry of Justice, judges, prosecutors, academics, lawyers and civil society representatives took part in the event. The fact that it took place was already a success. Initially conceived in co-operation with long-standing civil society partners, the seminar was co-organised by the Ministry of Justice and the Constitutional Court, at their request. Many civil society representatives expressed astonishment that the seminar took place, with participants representing official bodies and civil society in the same room. The atmosphere of the seminar was relaxed and respectful. The questions to the Belarusian speakers, which mainly emanated from civil society representatives, primarily addressed the discrepancy between Belarusian law and practice. Academics and civil society participants agreed that there were no obstacles to taking into account the case-law of the European Court of Human Rights in the decision-making of judges and prosecutors, since most of the rights contained in the European Convention on Human Rights were contained in the United Nations Covenant on Civil and Political Rights, ratified by Belarus. The only problem of compliance with the European Convention on Human Rights that came to light was the role of the prosecutor in deciding on the prolongation of pre-trial detention, but there were many areas where an approach in accordance with the European Convention on Human Rights seemed to be lacking, despite the potential for legislation to conform to it. It did seem, however, that there are no major problems regarding either the length of pre-trial detention or the length of proceedings, at least when compared with some Council of Europe member states.

Bosnia and Herzegovina

A number of activities were organised under the Council of Europe/European Commission joint programme entitled "Efficient prison management in Bosnia and Herzegovina".

From 24 to 28 August a study visit to Bruchsal, Germany, was organised for prison security supervisors, social workers, treatment officers and prison inspectors to exchange experiences with German counterparts on the treatment of vulnerable categories of prisoners (women, sex offenders, substance abusers and high-risk prisoners).

From 8 to 12 September a study visit to Falkirk, Scotland, United Kingdom, was organised for prison security supervisors, treatment officers, prison inspectors and representatives of the Ministry of Justice to exchange experiences with Scottish colleagues on the concepts behind independent inspection and monitoring in prisons.

On 24 September, the 3rd Steering Committee meeting was held in Sarajevo to provide a regular review of progress and planning under the objectives, co-ordinate with all partners, make any adjustments necessary to the work plan and working methods, and review the results.

From 30 September to 1 October the second in a series of working group meetings on mental health legislation was held in Sarajevo in order to further develop recommendations from the Analysis of the mental health regulations in Bosnia and Herzegovina.

From 26 to 30 October a study visit to Bulgaria was organised for representatives of the Ministries of Justice at all levels (prison inspectors), the Ministry for Civil Affairs (expert advisor for social policy issues) and entity Ministries of Social Welfare (expert advisors) to exchange experiences with Bulgarian colleagues on alternative sanctions and the probation service.

Georgia

The LHRCBD responded to the request of the European Union monitoring mission in Georgia (EUMM) for a follow-up to the extensive and successful training course on human rights standards and monitoring held in November and December 2008. In view of the regular turnover of staff within the EUMM, a training-of-trainers session was organised from 21 to 23 October 2009 in Tbilisi for the key staff of the EUMM, enabling them to organise cascade training seminars for newly arrived monitors. A total of 20 future trainers from all EUMM field offices across Georgia and the Tbilisi-based headquarters successfully completed the training, thus enabling them in turn to train their colleagues. The substantive part

of the training covered the right to life (including the use of force by law enforcement authorities), the prohibition of torture and inhuman treatment (including positive obligations to investigate allegations of ill-treatment), the right to liberty and security (including procedural requirements and detention conditions), the right to property, freedom of movement, the protection to be accorded to internally displaced persons and refugees, and non-discrimination. The sessions on monitoring methodology with role-play exercises focused on actual monitoring work and skills such as interviewing techniques, working with interpreters, effective reporting and follow-up. The main training material used during the training sessions was the *Handbook for the European Union Monitoring Mission in Georgia*, which was especially developed by the Council of Europe for use by EUMM Georgia monitors and distributed to them in August 2009. The *Handbook* provides monitors with a concise overview of core international laws applicable in Georgia, in particular the Council of Europe human rights standards relevant to the EUMM and an introduction to key elements of good monitoring practices.

As part of Denmark's Caucasus Programme 2008-09, the LHRCBD is implementing a project entitled "Enhancing good governance, human rights and the rule of law in Georgia". The project is aimed at improving the capacity of the judicial system, enhancing the capacity of the public defender and strengthening the state capacity on minority issues. It includes the following three components:

- improving the capacity of the judicial system of Georgia;
- enhancing the capacity of the Public Defender of Georgia;
- and strengthening the state capacity on minority issues.

Between 1 July and 31 October 2009 several activities were organised and considerable progress was made under each component, according to the preliminary feedback received after the activities implemented. Under Component I, several seminars were conducted on the substantive provisions of the European Convention on Human Rights and their domestic application in civil and criminal proceedings for acting judges, judges' legal assistants and students of the High School of Justice. Under Component II, a workshop on investigation and reporting technique, as well as a workshop on the rights of persons with disabilities were organised. Under Component III, several meetings and training seminars were implemented on issues related to minorities' concerns. In addition, a conference on the implementation of the Framework Convention of National Minorities took place.

Kosovo[1]

On 28 and 29 October 2009, the LHRCBD provided training for EULEX judges, prosecutors and legal officers at the request of the Eulex Mission in Kosovo. The event was attended by 35 participants. The first day of the training was devoted to the "Independence of international judges and autonomy of international prosecutors – best European practices in the Kosovo/specific mission context". The Council of Europe expert led a discussion on the important aspects of independence, including independence as a tool for guaranteeing the impartiality of the judiciary; the accountability of international judges; the independence of international judges and prosecutors working in a specific mission context. The discussion emphasised the difficulties for international judges and prosecutors to operate in a mission context, where the structural and legal framework and the aims and agendas of the mission differ from the ones of the territories in which they are used to operating. At the end of the debate, participants agreed to ask the CCJE to dedicate an opinion to the independence of international judges to ensure full protection for them. The second day was dedicated to a well-illustrated analysis of Articles 5 and 6 of the European Convention on Human Rights. On both days the level of participation was excellent. The evaluation questionnaires filled in by participants demonstrated that the training had been highly appreciated and that it had constituted a good start to the co-operation between the Council of Europe and the European Union in Kosovo.

Moldova

In Moldova, a comprehensive capacity-building programme entitled "Increased independence, transparency and efficiency of the justice system of the Republic of Moldova" has been carried out since October 2006. The programme is funded by the European Commis-

1. All reference to Kosovo, whether 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.

sion and targets, *inter alia*, the National Institute of Justice, the Superior Council of Magistracy, the Moldovan Bar Association and the Public Prosecutor's Service. The programme includes an important component of legal review and compatibility with Council of Europe standards in the field of the judiciary. Among the activities implemented in the reference period, it is worth noting a training needs assessment (September 2009) for judges and prosecutors regarding the substantive contents of the training delivered to date and methodology used, the finalisation of the Training Curriculum for the Moldovan court clerks and the organisation of a training-of-trainers seminar (October 2009) on legal and teaching methodology. In addition, in September 2009 a *Guide to International Legal Co-operation* was prepared to facilitate and co-ordinate the work of the Ministry of Justice in that particular area. Furthermore, in October 2009 a training seminar for Moldovan lawyers was organised to assist the Moldovan Bar Association in establishing a system of vocational and continuous training of lawyers. The seminar was aimed at setting up a system for the assessment of training needs and at drawing up training programmes for lawyers.

Russian Federation

The Council of Europe/European Commission Joint Programme entitled "Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the European Convention on Human Rights" is one of many programmes being implemented by the LHRCBD. One of the main purposes of the programme is to train legal professionals on the European Convention on Human Rights and the mechanism of the European Court of Human Rights. Between July and October 2009, seven thematic seminars were held. Two seminars were organised for prosecutors in St Petersburg between 22 and 25 September 2009. Three seminars were held for lawyers from the Regions of Pyatigorsk, Krasnodar and Vladivostok on 18 and 19 June, 3 and 4 September and 12 and 13 October, respectively. Moreover, one seminar for a joint group of lawyers and prosecutors from the region of Murmansk was organised on 7 and 8 July. Finally, one seminar was organised for policemen of the Mariy-El Republic in Yoshkar-Ola on 28 and 29 July. During the programme's implementation, which started in December 2006, a number of results have been achieved: nearly 700 judges, 500 prosecutors, 550 lawyers, 300 NGO representatives, 25 police officers and 50 trainees from the Academy of the Ministry of the Interior were trained on the European Convention on Human Rights. Knowledge of the European Convention on Human Rights was particularly enhanced in remote regions of the Russian Federation where, in addition, a very high degree of motivation for such activities was observed. The training activities focused on presentations of the articles of the European Convention on Human Rights, on which the majority of Russian applications to the Court are based. The training consisted of case studies as well, which stimulated an intense discussion on the implementation of the standards of the European Convention on Human Rights in domestic legal proceedings in Russia.

Serbia

Following the expert opinion on the draft law on the Judicial Academy carried out by the Council of Europe at the request of the Serbian Ministry of Justice, a round table was organised in Belgrade on 24 September to present the Council of Europe's conclusions and recommendations to the working group entrusted with preparing the draft law. The objective of the round table was to ensure that the final draft takes on board all relevant Council of Europe standards. The independence of the judiciary and related topics, including the selection of future judges and their education/training, were the main issues raised. In the afternoon session, representatives of international organisations joined the discussion, which focused on the implementation of the future law. In particular, the United Nations Development Programme indicated that it would provide technical assistance to the Judiciary Academy while the OSCE will focus on the curricula of judges. The meeting provided a good opportunity to improve the method of drafting laws and for sharing information with the international organisations working in Serbia. It is foreseen that the parliament will adopt the law in November.

The conference, held on 25 September, closed a one-year project aimed at supporting the newly established Constitutional Court of Serbia and financed by a voluntary contribution from the Dutch Government. The project provided for five thematic seminars on the European Convention on Human Rights, a study visit to the Council of Europe, including the European Court of Human Rights, in Strasbourg and to the Federal Constitutional Court of Germany in Karlsruhe and for two publications on selected

judgments of the European Court of Human Rights. The conference was opened by the Serbian Minister of Justice. The Ambassador of the Royal Netherlands Embassy in Serbia and DGHL's Director of Co-operation took part in the event. The latter pointed out the crucial role played by the Constitutional Court in ensuring the protection of human rights at national level, while the Dutch Ambassador underlined the importance of improving human rights in a concrete manner. The conference gave rise to four study sessions. The first one was devoted to the role of the Constitutional Court as a protector of human rights. The second focused on the authority of the case-law of the European Court of Human Rights. During the third session, the Council of Europe expert presented burning issues before the European Court of Human Rights and the Court's case-law on length of proceedings. A fourth session was devoted to the analysis of the relationship between the Constitutional Court and ordinary courts. The seminar was well-attended, with judges from the Constitutional and Supreme Courts, legal assistants from the former court, some key officials, such as the prosecutor and the government agent and representatives of the Serbian Ombudsman office, OSCE, and the Belgrade Centre for Human Rights. The high participation in the conference confirmed the interest of Serbian judges in improving the implementation of Council of Europe standards in their country, even if sometimes the seminar was taken up with discussing the short-term problem of the relationship between the Constitutional Court and other courts and not enough on discussing how to address substantive issues that will come before the Court. The establishment of the Constitutional Court of Serbia represents a significant step forward for the Serbian reform of the judiciary. It will be important for the Council of Europe to continue to provide support towards the strengthening of the capacity of the judiciary in Serbia, in particular the Supreme Cassation Court yet to be established.

Turkey

The training of 33 Turkish trainers on the new codes and legislation and on the 2006 European Prison Rules (EPR), held in Antalya from 7 to 11 September 2009 under the Council of Europe/European Commission Joint Programme on the "Dissemination of model prison practices and promotion of prison reform in Turkey" marks significant progress towards achieving one of the most demanding objectives, which is to train 15 000 prison staff working in 90 medium and high security level prisons in Turkey. This activity resulted in 12 trainers out of 33 training 100 of their peers during an intermediate cascade training seminar held in Antalya from 19 to 23 October 2009. The 33 trainers are expected to train a total of 270 of their peers by mid-November. Furthermore, 134 staff members of the Directorate General of Prisons and Detention Houses of the Turkish Ministry of Justice took part in a seminar on the New Penal Enforcement System and Legislation, the EPR and the CPT Recommendations from 25 to 27 September 2009 in Afyonkarahisar, where they heard from Council of Europe experts about the recent developments in the European and Turkish penitentiary systems and had the chance to discuss future plans on how to bring the Turkish penitentiary system in line with European standards.

The LHRCBD is implementing an important two-year project on "Support to the Court Management System in Turkey" in five pilot courts, which will end in November 2009. Within the project, deficiencies, shortcomings and needs of the current court management system were identified. Drawing on European standards and best practices regarding court management systems, necessary amendments to the existing legislation were pointed out. Although the amendments to the law have not yet been realised, the project had a positive impact on developing and implementing a new court management system in the pilot courts, reducing backlog of cases, shortening the average trial duration, improving professional skills of the auxiliary personnel as well as improving and putting in place effective technological solutions and technology management systems in order to speed up the procedures.

The period of 1 July to 31 October 2009 was characterised by an intense project activity which in turn led to progress in a number of areas. Trained court managers and legal assistants have been officially appointed and have started practising their duties. Tangible signs of progress can also be noted in the field of communication management as a the first interviews, press releases and statements about pending cases were made in the local media by the judges trained as media spokespersons. A more effective orientation and information of the public was ensured thanks to, on one hand, the construction works in pilot courts which

established restricted zones, info-desk and front-office structures and, on the other hand, the appointment and training of info-desk and front-office staff. Considerable progress was made also regarding the information of citizens and court staff through the organisation of local information conferences for court staff and the realisation and distribution of the first guidebook to support the courts and prosecution office in their day-to-day duties. In addition, 12 brochures on each type of procedure were produced for the general public in order to improve the information about the judicial system among citizens.

Ukraine

Between 1 July and 31 October 2009, the activities under the Council of Europe/European Commission Joint Programme on "Transparency and efficiency of the judicial system of Ukraine" focused on the establishment of a secure Internet connection between courts. Based on the assessment of needs of the court system drawn by expert consultants, a list of equipment to be procured has been prepared. The procurement is expected to take place in the coming months. Once the secure Internet connection is completed, it will contribute to a better computerisation of courts and consequently will enhance the development of a modern court administration and case management. The court-related information made accessible to the public will strengthen the transparency of the judicial system. Other activities have been aiming at the establishment of criteria for measurement of the workload of judges, which are of a particular importance for timely and effective case handling. The draft law on the judiciary and the status of judges has been the subject of a legislative expertise which is an important step for establishing a fair and transparent judicial system with a sound legal framework for regulating selection, appointment and discipline of judges. The project continues to work closely with all relevant counterparts, in particular the Ukrainian Parliament, to ensure that all the recommendations made by Council of Europe experts are taken on board so that the legislation adopted is compatible with Council of Europe standards.

Multilateral

The Council of Europe/European Commission Joint Programme "Combating ill-treatment and impunity" was launched on 1 January 2009 and is expected to end on 31 December 2010. It covers Armenia, Azerbaijan, Georgia, Moldova and Ukraine. By mid-July 2009, international consultants had completed their missions to all beneficiary countries and the country reports are now in the process of finalisation.

A booklet has been prepared on *Effective investigation of ill-treatment: guidelines on European standards*, together with a brochure on the rights of detainees and obligations of law enforcement officials. Both the *Guidelines* and the brochure will be published in English and French, as well as in all five languages in the beneficiary countries. Thematic training and awareness activities have been planned for 2010 which will be based on the findings of the country reports, the guidelines and the brochure. In addition, national experts are also being involved in research and standard-setting work as regards the structures and processes to be put in place in the beneficiary countries to ensure that allegations of ill-treatment committed by law enforcement bodies are effectively investigated and followed up.

Human Rights Trust Fund

In the context of the Human Rights Trust Fund[2] set up by the Secretary General on 28 March 2008, the LHRCBD and the Department for the Execution of Judgments of the European Court of Human Rights are currently implementing two major projects.

Implementation of domestic court judgments

The project "Removing the obstacles to the non-enforcement of domestic court judgments/Ensuring an effective implementation of domestic court judgments" aims at improving the execution of the judgments of the European Court of Human Rights in six beneficiary countries (Albania, Azerbaijan, Bosnia and Herzegovina, Moldova, Serbia and Ukraine) by assisting these states in putting in place effective norms and procedures for a better enforcement of national court decisions. Understood as an essential element in the functioning of a state-based rule of law, the enforcement of domestic court judgments is at the heart of this project. Non-compliance constitutes the second reason for violations of the European Convention on Human Rights. In its first implementation phase, the project is targeted towards the identification of obstacles of a legislative and practical nature which may hamper the execution of domestic court decisions.

"Chechen judgments"

The project "Assistance towards the implementation of the 'Chechen judgments'" attempts to establish measures to enhance the effective prevention and investigation of human rights violations at national level, with a view to achieving the full and timely execution of the "Chechen judgments". The problems raised in these cases are related to the events which took place in the context of the fight against terrorism in 1999-2001 in the Chechen Republic of the Russian Federation. According to the Committee of Ministers' long-standing position, while every state has a duty to fight terrorism, the means used must conform with its obligations under the European Convention on Human Rights. Thus, compliance by security forces with Convention requirements contributes towards strengthening the state's authority and legitimacy and, consequently, towards its long-term effectiveness in the fight against terrorism. Some progress has already been made towards improving procedures for the effective investigation into and the prevention of human rights violations.

National Human Rights Structures (NHRSs)

Nurturing an active network of NHRSs to strengthen their human rights activities

The LHRCBD continued promoting active co-operation between the National Human Rights Structures of the member states and the Council of Europe in the "Peer-to-Peer Network" established in the beginning of 2008 "P2P Project"). The network comprises virtually all the ombudsman institutions and national human rights commissions or institutions with a general human rights mandate (as opposed to those with a specific thematic mandate) in the member states: at present, 50 structures plus representatives of the International Ombudsman Institute (IOI). In addition, specific co-operation is taking place with the (currently 47) regional ombudsmen in the Russian Federation and their elected co-ordinator. Responsibility for co-operation with all these partners was transferred from the Office of the Commissioner for Human Rights to the LHRCBD on 1 April 2009.

Under the P2P Project, the NHRS Unit organised in September a thematic workshop at the European Youth Centre in Budapest on "The protection and promotion by NHRSs of the rights of the elderly". The discussions were structured following the three parts of

Hungary

2. The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined as contributors.

Article 23 of the Revised European Social Charter, and the topics included: the right to remain a full member of society as long as possible: the right to adequate resources and to information; the right to choose one's lifestyle freely and to lead an independent life in familiar surroundings for as long as one wishes and is able to; the rights of an elderly person living in an institution. Some 35 participants from the national structures as well as experts from the European Social Charter, the CPT and specialised NGOs exchanged experiences on how their institutions could enhance the protection in this field where hard legal norms are rare.

Italy

The last of the 10 thematic workshops organised in 2008 and 2009 under the P2P Project was held in Padua (Italy) in October on "The protection of separated/unaccompanied minors by NHRSs, including the Children's Ombudsmen". Some 30 specialised staff of NHRSs together with the children's ombudsmen from Croatia and Ireland, academics, representatives of Save the Children and the International Save the Children Alliance and of the Belgian and Italian authorities in charge of the reception of UAMs compared their ways of ensuring the rights of unaccompanied minors not to be detained and to be provided with a legal guardian, especially the right to education, health care and housing and the idea of a "life project", put forward by the Council of Europe, which ends theoretically when the child turns 18. Both workshops were co-organised with the Interdepartmental Centre on Human Rights and Peoples' Rights of the University of Padua (the project manager in Italy of the P2P Project). The discussions were held in English, Russian and Serbo-Croat and debriefing papers in English and Russian are under preparation.

Russian Federation

The annual round table with the regional ombudsmen of the Russian Federation took place in Pushkin, near St Petersburg, in the beginning of September. It was co-organised with the "Strategy Centre" of St Petersburg, the implementing partner of the P2P Project in Russia and focused on "The role of the ombudsman in the defence of social rights in times of economic crisis". With the participation of the Council of Europe Commissioner for Human Rights and the Executive Secretary of the European Social Charter as well as a member of the Registry of the European Court of Human Rights, the impact on the work of the ombudsmen of the then imminent ratification of the Revised European Social Charter was intensely debated. One part of the meeting was dedicated to the ways the regional ombudsmen of the Russian Federation could enhance the organisation and representation of their own network when dealing with the federal authorities and international partners.

National Preventive Mechanisms against Torture (NPMs)

Exchange of know-how between the international, regional and national mechanisms

In response to a specific request made by heads of the national structures at a conference in January 2008 and, later on, by their specialised staff at a P2P workshop in Italy, a pilot project was rolled out to fathom possibilities for engaging in an additional branch of P2P co-operation specialising in torture prevention (the so-called "European NPM Pilot Project"); the pilot project has been funded by repeated voluntary contributions from the Governments of Germany and Liechtenstein.

Estonia

At the end of September and beginning of October the NHRS Unit, the National Preventive Mechanism of Estonia (Office of the Chancellor of Justice of Estonia) and the APT co-organised a meeting in Tallinn entitled "Organising, carrying out and reporting on preventive visits to various types of places of deprivation of liberty: an exchange of experiences between the NPM of Estonia and the European Committee for the Prevention of Torture (CPT), the UN Sub-Committee on Prevention of Torture (SPT) and Association for the Prevention of Torture (APT)". The objective was two-fold: to ensure that the standards applied and methods used by the NPM of Estonia for the prevention of ill-treatment in places of deprivation of liberty are comparable to those of the international and regional bodies (SPT and CPT); and to serve as a pilot activity for a type of training foreseen under the European NPM Project. The meeting brought together for four extremely intensive days the entire expert team of the Estonian

NPM and the international experts and included joint preventive visits to different types of places of deprivation of liberty. In a common assessment at the end of the meeting such a trustful, frank and highly professional exchange of working methods and norms applied was judged very useful by the participants and the multiplication of such sorts of mutual training sessions was deemed desirable.

In the light of the encouraging results of the pilot project the NHRS Unit has sought funding for a full project under a joint European Commission/Council of Europe project and from the Human Rights Trust Fund.[3] Positive responses were received in both cases for a European NPM Project to be implemented in 2010 and 2011. A first meeting with the heads of the European NPM was scheduled for November to explain the full project to them and sound their interest in its different components.

3. See footnote 2, page 92.

Internet: http://www.coe.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 European Convention on Human Rights. 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.

For many years, the Council of Europe has developed standards to defend, promote and maintain freedom of expression and freedom of the media, which are regularly reviewed and up-dated. However, the ways in which information is sought, created and shared are changing together with technologies, as is the users' relationship to media, whether traditional or of a newer form, to the extend that the notion of media itself needs to be reviewed. While the existing standards, which were developed for traditional media, may still apply to new media, additional tailored guidance may be necessary for states. This may also apply to suppliers of new services, who should be aware of their rights but also of their duties, notably as regards human rights. In this context, the Council of Europe carries on its reflexion on public service media, which are an essential component of the media landscape in democratic societies, to answer the major challenges posed by the strong concentration of the media and the new communication services. Internet is now an essential tool for the everyday life of a growing number of people and entails important issues; access to its service concerns the enjoyment of human rights and fundamental freedoms as well as democracy. In this respect, an ongoing cross-border flow of the Internet is crucial. This does not however preclude addressing the risks that the new media environment may contain, in particular for the most vulnerable.

The Council of Europe is actively engaged in these areas through innovative and participatory working methods

Texts and instruments

Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communication environment, adopted on 8 July 2009

For a few years, the Council of Europe has addressed the issues of dignity and safety as well as those of freedom of expression and information when children they use the many opportunities offered by the Internet. It now takes a step further by recommending to its member states measures to actively protect children but also to promote their participation in the new environment. Public-private partnerships are encouraged to create and facilitate confidence building environments for children on the internet; to create a human rights based pan-European trustmark for new and existing online content labelling systems and to improve children's Internet literacy through those actors which play a key role in children's lives.

Main events

EuroDIG, Geneva, 14-15 September 2009

After the success of a first edition in September 2008, the Council of Europe, together with the Swiss Federal Office for Communication (OFCOM) and the European Broadcasting Union (EBU) organised the 2nd European Dialogue on Internet Governance in Geneva. It brought together 200 representatives from business, governments, parliaments and civil society.

The protection of human rights, ensuring universal access to the Internet as a public service and promoting media literacy should be key priorities for Internet governance in Europe. These were some of the tacit conclusions of this second multi-stakeholder dialogue. Issues discussed included access to the Internet, online privacy, social networks, cybercrime, critical Internet resources, net neutrality, the quality and reliability of content and related issues concerning public service media and user-generated content. Media literacy also featured highly in the discussions.

Google "Breaking Borders" event, Berlin, 3 November 2009

"The Internet is a space of enormous opportunity and freedom, but also challenging the very exercise of this freedom," said the Secretary General in his speech at the Google event "Breaking borders". The event was organised to mark the 20th anniversary of the fall of the Berlin Wall.

In a world where our freedom of expression is moving rapidly online, the Council of Europe is acutely aware of the important roles and responsibilities of governments, together with the private sector, in ensuring respect for our rights and freedoms in this environment. The Secretary General asked for co-operation among states and non-states actors to ensure that going online would become a true tribute to democracy.

Publications

A series of reports issued by the former groups of specialists on media diversity (MC-S-MD) and public service media (MC-S-PSM).

Report on contribution of public service media in promoting social cohesion and integrating all communities and generations; implementation of the Committee of Ministers Recommendation Rec(97)21 on media and the promotion of a culture of tolerance

Promoting tolerance as a general attitude in our culture therefore is essential for the European societies. As such, PSM providers are in the position to make substantial contribution to promoting the culture of tolerance. The report provides a summary of key developments in the public service media across Council of Europe member states in the following areas: workforce development, including measures to improve the diversity of the workforce and to develop codes of conduct and statements of values; legal and other requirements imposed on public service media by governments, legislators and regulators; the content and services provided by public service media.

H/Inf (2009) 5. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)5_en.pdf)

Report on how member states ensure the legal, financial, technical and other appropriate conditions required to enable public service media to discharge their remit

Today one should be aware that the audience of traditional broadcasting is shrinking and that audiences, notably young people, tend to use more and more new media and interactive services. To face this crucial challenge, PSM should benefit from adequate conditions.

H/Inf (2009) 7. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)7_en.pdf)

Report on good practices of public service media as regards promoting a wider democratic participation of individuals

This report examines the general approach of public service media towards the promotion of a wider democratic participation, dealing with statutory requirements and internal policies regarding this goal, PSM strategies related to it, means that PSM use to interact with the citizens, as well as audience/reach of new PSM services.

H/Inf (2009) 6. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)6_en.pdf)

Report on methodology for the monitoring media concentration and media content diversity

Independent audiovisual production benefits from a very favourable legal and political environment at the national and European level, which contributes to cultural diversity.

H/Inf (2009) 8. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)8_en.pdf)

Report on the situation in member states regarding the democratic and social contribution of digital broadcasting

Development of digital technology, particularly in the field of digital terrestrial television (DVB-T), offers great opportunities for both broadcasters and the population but also presents risks regarding its possible adverse effects to public interest objectives and social inclusion in the digital environment, it is particularly important to create adequate legal and economic conditions for the development of digital broadcasting, the protection of media pluralism, minors and human dignity, the reaffirmation of the remit of public service broadcasting and the preparation of the public for the new digital environment.

H/Inf (2009) 10. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)10_en.pdf)

Report on the ways in which the public, in all its diversity, can be involved in consultative programming structures, by Salvatore Scifo

Drawing on academic studies and official reports on "consultative programming structures", this report studies the wide range of tools and possibilities that are available to the public to interact and to be consulted by media institutions on programming matters, with a focus of coregulation options.

H/Inf (2009) 11. Available as a PDF (www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2009)11_en.pdf)

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

Legal co-operation

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, including family law, access to justice, nationality and data protection. The achievements of the CDCJ are to be found, in particular, in the large number of conventions 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.

84th plenary meeting (Strasbourg, 6-9 October 2009)

The CDCJ held its 84th plenary meeting from 6-9 October 2009. It approved a draft Recommendation on Principles concerning Continuing Powers of Attorney and Advance Directives for Incapacity, a draft recommendation on principles concerning missing persons and the presumption of death, as well as a draft recommendation on the nationality of children.

All three draft texts will be submitted to the Council of Europe's Committee of Ministers for adoption on 9 December 2009.

Work on nationality

Workshop on the changing concepts of nationality (Vienna, 14 and 15 September 2009)

The workshop aimed to form a bridge between the Council of Europe's work on nationality issues carried out in the past and the new challenges to be faced, in particular as regards the preparation of the 4th Council of Europe Conference on Nationality taking place in 2010.

The theme of this 4th conference will be "the changing concepts of nationality in today's and tomorrow's globalised world". Experts taking part in the workshop were invited to share experiences and views on several topics of current and future importance which could be addressed during the 4th conference, including questions of multiple nationality, statelessness, citizenship and migration and nationality, and new notions of nationality, as well as the consequences of European citizenship on nationality laws of the Council of Europe member states.

Work on tax matters

Revision of the joint COE/OECD Convention on Mutual Administrative Assistance in Tax Matters

The Council of Europe and the Organization for Economic Development (OECD) organised a joint meeting on 22 and 23 October 2009, in Paris, aimed to revise the joint Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127). It was felt that standards in this convention needed to be updated

through the adoption of a legal instrument, namely a new protocol.

The draft protocol amending the convention will be examined by the Committee of Ministers and Parliamentary Assembly of the Council of Europe in the coming months.

Data protection in Criminal Proceedings

Second Edition of Judicial Training on Data Protection in Criminal Proceedings (Strasbourg, 7-9 October 2009)

In the framework of the Criminal Justice Programme of the European Commission and in close co-operation with the Council of Europe, the University of Castilla-La Mancha launched the Second Edition of Judicial Training on Data Protection in Criminal Proceedings.

The first workshop took place from 7 to 9 October 2009 in Strasbourg.

The aim of the workshop was to give judges and prosecutors from EU member states and candidate countries an overview of the existing criminal data bases at European, transnational and domestic levels as well as key principles and guarantees of data protection in criminal matters.

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 were 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)

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At its plenary meeting on 12-16 October 2009, the CDPC approved two new draft conventions and a draft recommendation:

The draft Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health

It focuses on protecting public health by defining constitutive elements of criminal offences related to the counterfeiting of medical products and similar crimes involving threats to public health, such as tampering with and adulteration of medical products. It covers

medical products, including medicinal products and medical devices, for human and veterinary use. It puts a specific focus on the rights of victims of counterfeit medical products and similar crimes involving threats to public health, and it sets up a monitoring mechanism.

The future convention will be a significant contribution to the fight against counterfeiting and trafficking of counterfeit medical products, and could have a worldwide impact by enabling non-member states of the Council of Europe to become parties.

The draft third additional protocol to the European Convention on Extradition

It complements the Convention on Extradition of 1957 by simplifying extradition procedures where the person concerned consents to her/his extradition, a situation which occurs in a large number of extradition cases. It provides for a number of procedural guarantees in order to ensure that the consent is expressed voluntarily and in full awareness of its legal consequences. The protocol also establishes a series of time-limits, in accordance with the concern for efficiency and speed in the criminal justice field, reducing to a minimum the delays in criminal proceedings in extradition cases when the persons concerned do not intend to oppose their surrender.

The draft Recommendation on the Council of Europe Probation Rules

It guides the establishment and proper functioning of probation agencies. The rules cover the following areas: scope, application and basic principles; organisation and staff; accountability and relations with other agencies; probation work; process of supervision; complaint procedures, inspection and monitoring; research, evaluation, work with the media and the public.

The draft texts of these new legal instruments in the criminal law field will be sent to the Committee of Ministers for adoption in 2010.

15th Conference of Directors of prison administration

The Conference took place in Edinburgh on 9-11 September 2009 on the theme "Overcrowded Prisons: Looking for Solutions". One of the key messages of the conference was that one cannot consider any prison system in a vacuum or in isolation from other parts of the criminal justice system and that prison reform must be one part of a wider package of reforms involving all key players, such as the government, the legislative bodies and the judiciary. The conference affirmed that misuse and overuse of prison can weaken public safety rather than contributing to raising it. It also discussed pre-trial detention, life and other long-term sentences, foreign prisoners and reintegration/re-entry/resettlement.

Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/

Venice Commission

The European Commission for Democracy through Law, or Venice Commission, is the Council of Europe's advisory body on constitutional matters. Its work aims to uphold the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law – fundamental tenets of the Council of Europe.

The Albanian lustration law

Request for opinion

The amicus curiae Opinion on the "law on the cleanliness of the figure of high functionaries of the public administration and elected officials" of Albania (the law on lustration) adopted in December 2008, was requested by the Constitutional Court of Albania on 20 February 2009. Lustration refers to the disqualification from public office of those allegedly associated with the communist regime.

The Court has put five specific questions to the Venice Commission, which concern whether the lustration law, which was adopted by a simple majority, contradicts the constitution and the organic laws (adopted by a majority of 3/5) by allowing a newly created administrative body to terminate, for an indefinite period of time and through a specific procedure, the mandates of the president, the deputies, the ministers, the judges of the Constitutional Court and the judges of the High Court. If the lustration law were unconstitutional, then it would also be in breach of the principle of the rule of law.

In addition, the Venice Commission had to address the question of whether the constitutionality of the lustration law may be decided by the judges of the Constitutional Court, given that they are subject to the lustration law and potentially in conflict of interest.

The opinion was discussed and adopted by the Venice Commission at its plenary session on 9 October 2009.

Conclusions

In its opinion CDL-AD(2009)044, the Commission found that lustration may be legitimately effected by Albania, even almost 20 years after the end of the communist regime, on condition that the constitution and the principle of the rule of law are respected. The Commission has found that the lustration law does not comply with the Constitution of Albania and, as a consequence, with the principle of the rule of law.

The lustration law aims at the termination of the mandate of the holders of important state offices such as the president, members of parliament, judges of the Supreme Court and of the Constitutional Court and ministers. However, the mandate of these institutions is protected by the Constitution, which foresees a special procedure, more protective than the one foreseen in the lustration law. The lustration law, which is an ordinary and not an organic law, cannot change the Constitution. In addition, the termination of the mandate should only be the effect of an individualised exam of the actual co-operation of the person in question with the communist regime and should not be permanent. The lustration law therefore appeared to be flawed.

The question of the possible conflict of interest of the judges of the Constitutional Court arose, as they are directly concerned by the law on the one hand, and have to decide on its constitutionality, on the other hand. However, the Venice Commission observed that if the judges refrained from deciding, the constitutional court would be paralysed, which must not be

allowed to happen in a democratic society. The lustration law should have foreseen a mechanism of substitution of the abstaining judges: as it has not done so, the judges of the Constitutional Court must rule on the constitutionality of the lustration law.

Anti-discrimination draft law of Montenegro

Request for opinion

At the request of the then Minister for the Protection of Human and Minority Rights of Montenegro, Mr Fuad Nimani, dated 23 March 2009, the Venice Commission assessed the draft law on prohibition of discrimination.

According to the Commission, the intention of the Montenegrin authorities to adopt a single comprehensive anti-discrimination act is to be welcomed and encouraged. The act is likely to constitute a significant step in combating discrimination in the country.

The Venice Commission particularly welcomed the agreement given by the Montenegrin authorities to hold a follow-up meeting which took place on 12-14 October 2009 in Podgorica. This meeting enabled a member of the Venice Commission, Mr Huseynov (one of the rapporteurs), to meet again with the Montenegrin Working Group in order to assist in the implementation of the Commission's recommendations.

Conclusions

The draft law has a number of positive aspects. It prohibits both direct and indirect discrimination as well as a wide range of discriminatory actions. It introduces the concept of positive action. Human rights organisations and other relevant entities are allowed, although with certain limitations, to initiate proceedings on behalf or in support of victims of discrimination. The draft law provides for a shared burden of proof in discrimination cases.

However, in some aspects, the draft law does not comply with international and European standards. Nine key recommendations have been made, among them:

- to provide for the establishment of a specialised anti-discrimination body or the granting of enforcement powers to the ombudsman to ensure that: a) the ombudsman has full powers for the implementation of the law; and b) the ombudsman institution has the necessary human and financial resources to fulfil its new tasks;
- to provide for "effective, proportionate and dissuasive" sanctions for breaching the provisions of the law, and to regulate this issue in a more comprehensive and detailed way;
- to clearly define the scope of application of the law to the public and private spheres.

Legal framework of the presidential elections in Ukraine

Request for opinion

The Venice Commission's opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine had been requested by the Ministry of Foreign Affairs of Ukraine on 2 September 2009.

The law, adopted on 24 July 2009 by the Parliament of Ukraine, introduced a number of substantial changes to the Criminal Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine and the Law "On Elections of the President of Ukraine".

The intention of the opinion of the Venice Commission is to assist the authorities in their stated objective to improve the legal framework for democratic elections, and to bring the relevant legislation closely in line with OSCE commitments, Council of Europe and other international standards for the conduct of democratic elections.

Conclusions

The law in question raises significant concerns and some important aspects regulating the presidential elections can even be considered as a step backwards compared to previous leg-

islation. Some of these amendments are not in line with international standards and good practices, such as:

- the restrictive amendments that undermine the possibility to challenge election results;
- unreasonable restrictions on the right of candidacy;
- re-introduction of the possibility to add voters to the election lists on the election day; and
- limitation of the Central Election Commission's possibilities to correct mistakes of lower level election commissions.

Some other problematic areas of the legislation underscored by the OSCE/ODIHR and the Venice Commission in their previous opinions – such as the restrictive media provisions that can be applied to limit the full exchange of po litical views and delivery of campaign messages from candidates to voters, the mechanism for appointing members of electoral commissions and the finance provisions which are vague and potentially ineffective – also remain unaddressed.

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

European human rights institutes

Through their research and teaching activities, the institutes play an important part in the development of human rights awareness.

The following, non-exhaustive, list gives an outline of the resources of various human rights institutes and their activities in 2009. The information, provided by the institutes, is presented in the language in which it was drafted.

Austria/Autriche

European training and research centre for human rights and democracy (ETC)

Schubertstrasse 29, 8010 Graz
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Introducing the ETC

ETC's main aim is to conduct research and training programmes in the fields of human rights, democracy and the rule of law in close co-operation with the University of Graz. Special emphasis is put on training programmes for civil servants, the police, army, as well as for members of international organisations and NGOs in Austria and abroad. New innovative teaching methods are applied in "Train the Trainers" programmes. In addition, basic research is conducted which focuses mainly on fundamental rights, human rights education, human security and human rights at a local level.

Publications

- *Internet Governance and the Information Society*. Experts' discussion on global perspectives and European dimensions of Internet governance.
- *Occasional papers No. 23: thematic legal study on intersection with a focus on gender, age, handicap, migration, sexual orientation and social status. Good Practices-collection – recommendations*. Edited by Alexandra Stocker and Veronika Bauer. Available online at the ETC homepage.
- *Second human rights report of the city of Graz*. The ETC together with the human rights advisory board published the first human rights report of the city of Graz. The report contains highlights from 2008 with a special focus on social cohesion and solidarity in the city of Graz. Available online at the ETC homepage.
- *Human rights manual*. The second edition of the human rights manual in German is now available at the ETC homepage. It contains an introduction and 13 modules on different human rights as well as selected activities, additional references and teaching methodology. The manual is also available in print.
- *Occasional paper No. 24: human security in the Western Balkans (HUMSEC): the impact of Transnational Terrorism and Organized Crime on the Peace-Building Process*. Edited by Klaus Starl. Available online at the ETC homepage.

– *Science Education Unlimited*. In the context of the Promise project (2005-2007), the book focuses on approaches to equal opportunities in science education. It was published in 2009 and edited by Tanja Tajmel and Klaus Starl.

– *European Yearbook on Human Rights 2008*. The ETC contributed an article to the 2008 yearbok with the working title EU policies on Racism, Xenophobia and Islamophobia.

Professional training

Intercultural training

Interculturality is one of the ETC's subject areas, and training and seminars are held on this topic for health care providers (Muslims in hospitals), prison staff (Interculturality and gender), local administration (Strategies against racist speech), etc.

Police training

Every year the ETC holds seminars on the topic State and human rights for police officers from all over Austria. The focus of the training is the practice of human rights protection within the security forces.

Teacher training

The main subject areas of teacher training include the Internet, the right to food and an introduction to human rights education based on the manual.

Available to the general public

Human rights lectures

Every year the Institute for International Law and International Relations at the University of Graz and the ETC organise a series of lectures (with ECTS credits) on Understanding human rights which are open to students of all faculties and all other interested persons. The lectures are based on on the ETC's human rights manual.

Student workshops

The ETC holds workshops in schools on the topics of right-wing extremism and basic rules of democracy.

Diploma course

The diploma course, Introduction to Human Rights Education, based on the manual *Understanding Human Rights* (with ECTS credits) was held in February 2009. The focus was on the practical testing of activities and taught units. The university course is open to all students.

Public lectures, workshops and panel discussions

Topics such as freedom of opinion and children's rights will be covered in ETC-led lectures, workshops and discussions at the beginning of 2010.

Other activities

Library

The library is open to the public every day from 9 a.m. to 12 noon and contains over 2 000 publications on human rights, human rights education, human security, democracy and anti-discrimination.

Online game on discrimination

The ETC will publish the game Das Boot ist voll (working title) in 2010, which refers to economic and labour market processes. The game aims to raise players' awareness of the inequality of social conditions by enabling them to experience different starting conditions and discrimination. The online game will be available at a publicly accessible website.

Film project

In 2009 the ETC produced a short film about everyday racism based on a real case of discrimination. Pupils from a school in Graz are the main actors and actresses. The ETC also uses the spot for workshops and training aimed at an anti-racist human rights education for different target groups.

Austrian Human Rights Institute

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Publications

- *Newsletter Menschenrechte:* a German publication which is published six times a year, giving information about recent decisions of the European Court of Human Rights, the European Court of Justice, the UN Human Rights Committee and the Austrian Supreme Court as well as the Constitutional Court and the Administrative Court. The *Newsletter Menschenrechte* has a print run of 430 copies per issue.
- Karl, Wolfram/Czech, Philip, The European Court of Human Rights: Some Aspects of its Jurisprudence and Practice in 2008, essay for the *European Yearbook on Human Rights*, 1st volume (2009).
- Karl, Wolfram/Schöpfer, Eduard C., The jurisprudence of Austrian courts in respect of the European Convention on Human Rights in 2008, *Zeitschrift für Öffentliches Recht*, vol. 64/2009.

Events

On 10 December 2009 (Human Rights Day), the Institute commemorated the anniversary of the UN Declaration of Human Rights. International criminal law expert, Prof. emeritus Otto Triffterer held a public lecture on the topic "Staatsorgane vor Gericht! Internationale Strafgewalt zur Bekämpfung schwerster Menschenrechtsverletzungen" (State organs before the International Criminal Court! International penal power for sanctioning worst cases of human rights violations).

Projects

Since 2008 the Institute has participated in a project run on the initiative of the Austrian Association of Judges. Its aim is to improve and consolidate the knowledge of forthcoming judges on the rights guaranteed by the European Convention on Human Rights.

The Institute makes decisions of the European Court of Human Rights available to the public in the form of a comprehensive database (*Rechtsinformationssystem des Bundes – RIS*).

Documentation

The Institute's homepage provides visitors with a free accessible archive, comprising all the volumes of the *Newsletter Menschenrechte* as well as the titles from its library. Potential complainants have also access to useful information on how to bring complaints before the European Court of Human Rights. From 2010, actual decisions of the Supreme Court, the Constitutional Court and the Administrative Court, relating to special human rights aspects, will be published online. An overview of the human rights literature and legislation will also be available to the public via the internet.

Library

The collection of volumes in the field of human and fundamental rights comprises approximately 2 100 titles and 32 periodic journals.

Legal advice

The Institute is a ressource for anyone who seeks legal advice concerning alleged violations of his/her human rights, especially those guaranteed by the European Convention on Human Rights. The service is free of charge.

National correspondent for human rights

The Institute collects information on the development of human rights in Austria (jurisprudence, laws, bibliography) and makes it available on its homepage.

Traineeship

The Institute runs a traineeship programme, providing students of the faculty of law of the University of Salzburg with an insight into human rights and inviting them to do their own research work.

Belgium/Belgique

Institut Magna Carta

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L'Institut Magna Carta, basé à Bruxelles, est un réseau d'experts, de chercheurs et de praticiens et un institut de recherche indépendant et transdisciplinaire spécialisé en droit international des droits de l'homme sensu lato.

Recherche

Recherches récentes: sur le terrorisme international dans une perspective transatlantique (financé par la Commission européenne, en partenariat avec l'Université de New York, l'Université de Vienne, l'Université de Paris 1 Sorbonne et de United Nations Office on Drugs and Crime); sur le droit international humanitaire (7e programme-cadre financé par la Commission européenne, coordonné par l'Université Paris 1 Panthéon-Sorbonne); sur la théorie du droit international et l'histoire du droit international (financé par la Loterie Nationale et la Communauté française de Belgique).

Formation

Programmes de formation récents: formation de magistrats algériens et marocains sur "Juger le terrorisme dans l'Etat de droit" (sur l'initiative du COTER grâce au soutien du Ministère suédois des affaires étrangères, en partenariat avec ILAC et UNODC); formation de praticiens brésiliens au droit international des droits de l'homme (programme coordonné par l'Institut de développement et de droits humains, Brésil).

Expertise, conseils et consultance

L'Institut Magna Carta met à la disposition des administrations, des entités privées, des praticiens ou de toutes autres institutions, ses services d'expertise. Soucieuse d'assurer un service professionnel de qualité en droit international ou dans le domaine des droits de l'homme, l'Institut Magna Carta s'appuie sur ses chercheurs et son réseau d'experts universitaires.

Parallèlement aux activités d'expertise adressées essentiellement aux institutions, l'Institut Magna Carta offre également un service de conseils juridiques en matière de droit international et de droits de l'homme destiné aux praticiens, et plus précisément aux organisations non gouvernementales et aux cabinets d'avocats. Ce service doit permettre aux praticiens de sous-traiter la résolution de questions techniques liées au droit international ou aux droits de l'homme pour lesquelles ils n'ont ni les ressources ni l'expertise exigées.

Ressources principales

Programmes

L'Institut Magna Carta mène, seul ou en collaboration, des programmes de recherche et de formation relatifs au droit international, aux droits de l'homme ou à toute autre thématique connexe. En particulier, l'Institut s'est vu confier un projet de recherche international sur la lutte globale contre le terrorisme dans une perspective transatlantique (financé par l'Union Européenne, en partenariat avec la NYU, l'université de Vienne, Paris I et UNODC (United Nations Office on Drugs and Crime)), mène des recherches en droit international humanitaire (financé par le 7ème programme cadre de l'UE, en partenariat avec Paris I – Panthéon Sorbonne, le Collège de France, le British Institute of International and Comparative Law, etc.), sur la théorie du droit international public et l'histoire du droit international (financé par la Loterie Nationale et communauté française de Belgique), sur la promotion scientifique des droits de l'homme en Amérique latine, ou encore sur la responsabilité sociale des entreprises en Europe, mais aussi dans les pays BRIC (Brésil, Russie, Inde, Chine). D'autre part, l'Institut organise des programmes de formation à destination de praticiens, magistrats ou avocats, fonctionnaires ou entrepreneurs, sur divers thèmes comprenant entre autre la responsabilité sociale des entreprises, la lutte contre le terrorisme, la protection des droits de l'homme, le droit international et a notamment organisé des sessions de formation à destination de hauts magistrats algériens et marocains (en collaboration avec l'International Legal Assistance Consortium et UNODC).

Publications

Soucieux de promouvoir l'excellence scientifique en droit international et droit des droits de l'homme, l'Institut assure et encourage les publications scientifiques relatives à ces matières, que ce soit dans le cadre de programmes de formation ou de recherche. En 2009, l'Institut Magna Carta a créé une collection aux Editions Bruylant, Collection Magna Carta, visant à accueillir des études collectives ou des monographies sur le droit international des droits de l'homme ou sur le droit international.

Ouvrages récents dirigés ou rédigés, seuls ou en collaboration, par des membres de l'Institut :

- *Le particularisme interaméricain des droits de l'homme.* En l'honneur du 40e anniversaire de la Convention américaine des droits de l'homme. Editions Pedone, Paris, 2009, sous la direction de Ludovic Hennebel et Hélène Tigroudja ;
- *Exceptionnalisme américain et droits de l'homme.* Editions Dalloz, coll. « A droit ouvert », Paris, 2009, sous la direction de Ludovic Hennebel et Arnaud Van Waeyenberge ;
- *Penser la guerre juste d'hier à aujourd'hui* Editions Bruylant, coll. « Penser le droit » – no 11, Bruxelles, 2009, sous la direction de Thomas Berns et Gregory Lewkowicz ;
- *Juger le terrorisme dans l'Etat de droit* Editions Bruylant, coll. « Magna Carta » – n° 1, Bruxelles, 2009, sous la direction de Ludovic Hennebel et Damien Vandermeersch ;
- *Juger les droits de l'homme : Europe et Etats-Unis face à face*. Editions Bruylant, coll. « Penser le Droit » – n° 10, Bruxelles, 2008, de Ludovic Hennebel, Gregory Lewkowicz et al.

Finland/Finlande

Institute for Human Rights

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Recent publications

International Protection of Human Rights: A Textbook, by Catarina Krause and Martin Scheinin (eds.) (ISBN: 978–952–12–2285–6. 677 pp). This textbook presents the main universal and regional systems and standards for the international protection of human rights, also taking note of recent changes in procedure together with substantive developments in the field of human rights law. In addition to the United Nations at the universal level, it outlines existing regional protection systems in Europe, Africa and the Americas as well as bringing forth the discussion pertaining to human rights law in Asia and the Arab countries. Moreover, various means for domestic implementation of human rights law are covered, and attention is drawn to the role of non-governmental organisations in the protection of human rights. The volume is not limited to human rights law in the strict sense, but rather places human rights within a wider context of public international law as well as philosophy. The primary target group for this textbook are Master's level students at law schools and those studying Master's in international law or human rights law. The book may also appeal to more advanced human rights researchers and professors teaching human rights topics.

Main activities in 2009

- Master's Degree in International Human Rights Law: a two-year programme, open for applicants holding a law degree or another bachelor's degree with subjects relevant to the legal protection of human rights.
- Advanced course on the International Protection of Human Rights, 17–28 August 2009: an intensive course for post-graduate students and practitioners with a good knowledge of human rights law.
- Intensive course on Justiciability of Economic, Social and Cultural Rights – Theory and Practice, 9–13 November 2009: a course

for post-graduate students, practicioners and policy-makers. Organised in co-operation with the Chair in Human Rights Law, Department of Public Law, Stellenbosch University (South Africa) and the Norwegian Centre for Human Rights.

– Doctoral dissertation by Mr Viljam Engström who successfully defended his doctoral thesis "Understanding Powers of International Organizations: A Study of the Doctrines of Attributed Powers, Implied Powers and Constitutionalism — with a Special Focus on the Human Rights Committee", 15 May 2009.

France

Institut international des droits de l'homme (IIDH)

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Session générale d'enseignement

La session d'enseignement en droit international et en droit comparé des droits de l'homme se tient chaque année, au mois de juillet, à Strasbourg. Ce programme de quatre semaines est destiné à des étudiants, des enseignants, des chercheurs, des membres d'organisations non gouvernementales, et de manière générale à toutes les personnes qui, de par leur profession, sont confrontées à des questions relatives aux droits de l'homme. La 40e session d'enseignement qui s'est déroulée du 6 au 31 juillet 2009 a porté sur « La détention et le droit international des droits de l'homme ». Le thème retenu pour la session 2010 est celui de « L'interdiction internationale de la discrimination raciale ».

Programme du Centre international pour l'enseignement des droits de l'homme dans les universités (CiedhU)

Parallèlement à la session d'enseignement annuelle, se déroule le programme du Centre international pour l'enseignement des droits de l'homme dans les universités (CiedhU). L'objectif de ce programme, principalement destiné aux universitaires, est de transmettre des méthodes d'enseignement des droits de l'homme.

Cours d'été sur les réfugiés

Un cours d'été sur les réfugiés destiné aux professionnels et aux non professionnels des droits de l'homme est organisé au mois de juin en partenariat avec le Haut-Commissariat des Nations Unies pour les réfugiés et avec l'aide de l'Organisation internationale de la Francophonie. Cette session a pour objectif de promouvoir le droit et la protection des réfugiés.

Séminaires à l'étranger

La troisième session d'enseignement sur la protection des droits de l'homme au sein du Conseil de l'Europe organisée conjointement par l'Institut et la faculté de droit de l'Université « Alexandru Ioan Cuza » a eu lieu à Iasi en Roumanie, du 1er au 10 septembre 2008. Les enseignements ont été dispensés alternativement en français et en roumain.

En 2009, l'Institut a également organisé à la demande du ministère marocain de la Justice, des actions de formation au Maroc. Un premier séminaire d'initiation aux instruments internationaux des droits de l'homme s'est tenu à Rabat du 29 au 30 janvier 2009 et un colloque sur « Le juge national face au droit international des droits de l'homme » s'est tenu à Rabat du 26 au 27 février 2009.

Autres activités scientifiques

Une table ronde sur « Les mutations de l'activité du Comité des Ministres du Conseil de l'Europe au titre de la surveillance de l'exécution des arrêts de la Cour européenne des droits de l'homme » s'est tenue à l'Institut Cassin le 28 novembre 2008 à laquelle ont pris part des représentants venant de la Direction des droits de l'Homme et des affaires juridiques du Conseil de l'Europe, du Service de l'exécution, de l'Assemblée parlementaire, du bureau du Commissaire aux droits de l'homme, de la Cour, des représentations permanentes, du Barreau et de l'université.

L'Institut international des droits de l'homme et la Direction générale de la coopération et du développement du ministère des Affaires étrangères ont co-organisé les 8 et 9 décembre 2008 à la Cour européenne des droits de l'homme une rencontre des juges des Cours régionales des droits de l'homme. Cette conférence s'est ouverte par une séance plénière durant laquelle les représentants de la Commission africaine des droits de l'homme et des peuples, de la Cour interaméricaine des droits de l'homme et de la Cour européenne des droits de l'homme ont présenté les enjeux et examiné l'état des lieux et les perspectives des instances régionales de protection des droits de l'homme. Un séminaire portant sur « les pratiques juridictionnelles et les politiques jurisprudentielles » a ensuite clôturé cette manifestation.

Le 18 juillet 2009, l'Institut international des droits de l'homme a organisé à Strasbourg une journée d'études à l'occasion du 60e anniversaire de la première réunion de l'Assemblée parlementaire du Conseil de l'Europe (APCE) et du 40e anniversaire de l'Institut. Elle avait pour thème « La Convention européenne des droits de l'homme reflète-t-elle encore l'intention des pères fondateurs ? »

Le rapport final, fruit du travail d'un groupe de chercheurs, portant sur « l'indemnisation du dommage devant la Cour européenne des droits de l'homme et ses effets en droit français », a été transmis en octobre 2009, en réponse à l'appel d'offre intitulé « La réparation du dommage », au ministère français de la Justice dans le cadre de sa mission de recherche droit et justice. Comme le précise à juste titre ce rapport final, l'une des préoccupations majeures a été, au cours de cette recherche, la mise à jour de « critères et [l'élaboration de] grilles d'indemnisation de préjudices indemnisables, dans la mesure de leur faisabilité ».

Séminaire organisé à l'occasion du quarantième anniversaire de l'IIDH

Dans le cadre de son 40e anniversaire, l'Institut international des droits de l'homme organisera du 12 au 14 décembre 2009 à Strasbourg une manifestation scientifique qui s'articulera autour de deux tables rondes « Droit de la nationalité et droit international des droits de l'homme » et « Contentieux international des droits de l'homme et choix du forum », un séminaire des diplômés ainsi qu'une commémoration officielle sous la présidence de Madame Michèle Alliot-Marie, ministre d'Etat, Garde des Sceaux, ministre de la Justice et des Libertés.

Le prix de thèse René Cassin

Soucieux de développer et favoriser la publication de travaux de recherche sur les droits de l'homme, l'Institut international des droits de l'homme décerne chaque année le prix de thèse René Cassin, permettant la publication de l'étude couronnée aux éditions Bruylant, dans la collection des publications de l'Institut international des droits de l'homme. Cette année le jury, lors de sa réunion du 7 novembre 2009, a décerné le prix René Cassin à Peggy Ducoulombier pour sa thèse intitulée « Les conflits de droits fondamentaux dans la jurisprudence de la Cour européenne des droits de l'homme » et une mention spéciale à Sophie Grosbon pour sa thèse portant sur « Le droit à l'enseignement supérieur et la libéralisation du commerce des services ».

Publications

Les actes du colloque organisé par la Commission nationale consultative des droits de l'homme, en partenariat avec le Conseil d'Etat et l'Institut international des droits de l'homme, le 28 octobre 2008 au Palais Royal à Paris, intitulés *« De la France libre aux droits de l'homme – l'héritage de René Cassin »*, ont été publiés aux éditions la documentation française dans la collection les colloques de la CNDH.

L'année 2009 a vu la publication de plusieurs ouvrages par l'Institut, notamment :

- *« Textes internationaux relatifs à la protection internationale des droits de l'homme »*, vol. I – Droit international des droits de l'homme/ *Collection of instruments relating to the international protection of human rights,* vol. I – International Human Rights Law ;
- *« Textes internationaux relatifs à la protection internationale des droits de l'homme »,* vol. II – Détention et droit international des droits de l'homme/ *Collection of instruments relating to the international protection of human rights,* vol. II – Detention and International Human Rights Law ;
- *« 12e cours d'été sur les réfugiés – 15-26 juin 2009, Strasbourg »*, compilation réalisée par la Représentation du HCR pour la France;
- *« La soumission des organisations internationales aux normes internationales relatives aux droits de l'homme »* Actes de la journée

d'études organisée conjointement par la Société française pour le droit international (SFDI) et l'Institut international des droits de l'homme (IIDH) à Strasbourg, 11-12 avril 2008, Paris, Editions Pedone.

Parmi les autres publications récentes de l'Institut, il est possible de citer, dans la collection « *Publications de l'Institut international des droits de l'homme,* Institut René Cassin de Strasbourg », Bruylant :

– l'ouvrage « *la protection internationale des droits de l'homme et les droits des victimes – International Protection of Human Rights and Victims' Rights* » qui réunit les versions écrites des conférences thématiques prononcées au mois de juillet 2006 lors de la 37e session d'enseignement de l'IIDH ;
– la thèse de Virginie Natale, intitulée « *le droit des étrangers à l'égalité et le juge dans les systèmes de Common law* » ;

Centre de documentation

L'IIDH dispose d'une bibliothèque ouverte au public pour une consultation sur place. Elle contient plus de sept mille monographies sur les droits de l'homme, de la documentation issue d'organisation internationales et d'organisations non gouvernementales et de nombreuses revues spécialisées.

Institut de formation en droits de l'homme du barreau de Paris

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Conférences, colloques, formation et activités

– La Déclaration universelle des droits de l'homme : histoire et portée : Lieu : Maison du Barreau 3 février 2009,
– L'agence des droits fondamentaux : Lieu : Maison du Barreau. Le 24 mars 2009,
– L'Institut a assuré la formation des élèves avocats sur le thème de la Convention européenne des droits de l'homme à l'Ecole de formation professionnelle des Barreaux de la cour d'appel de Versailles, en 2009.
– L'Institut a organisé la remise du 14e prix international des droits de l'homme Ludovic Trarieux, au mois d'octobre 2009, avec l'Institut des droits des droits de l'homme des avocats européens. Ce prix remis à un avocat, a été décerné cette année à Me Béatrice Mtetwa, avocate au Zimbabwe. Il est décerné en concours avec l'Institut des droits de l'homme des avocats européens, avec l'Institut des droits de l'homme du barreau de Bordeaux, l'Unione Forense Per la Tutela Del Diritti dell'uomo (Rome), et de l'Institut des droits de l'homme du barreau de Bruxelles.
– En collaboration avec l'Institut des droits de l'homme des avocats européens, un colloque sur le thème droit, justice et histoire, à la maison du barreau de Paris a été organisé le 29 octobre 2009.
– L'Institut a organisé avec l'Institut des droits de l'homme des avocats européens une demi-journée de formation dans le cadre de la formation continue des avocats du barreau de Paris, à la Sorbonne, au mois de juillet 2009, sur la jurisprudence récente de la Cour européenne des droits de l'homme et les incidences de l'interprétation de la Convention sur les procédures civiles et pénales en France.

Activités avec l'université

L'Institut poursuit ses activités avec le groupe de réflexion et d'intervention « law clinic », créé avec le CRDH de l'Université Paris II et le CREDHO de l'Université Paris XI-Sceaux. Une tierce intervention a été présentée devant la Cour européenne dans l'affaire *Zolotukhin c. Russie*, n° 14939/03.

L'Institut participe à la formation du master II contentieux européen de l'Université Paris II, sur la Convention européenne des droits de l'homme, et le droit des étrangers.

Publications 2009

Aux éditions Bruylant, collection droit et justice, n° 84, en collaboration avec l'Université Panthéon-Assas Paris II, La tierce intervention devant la Cour européenne des droits de l'homme et en droit comparé.

Centre de recherches et d'études sur les droits de l'Homme et le droit humanitaire (CREDHO)

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Colloque annuel (La France et la CEDH)

La quatorzième session d'information du CREDHO (20-21 mars 2008) était placée sous la présidence du Président Jean-Paul Costa et a revêtu une importance particulière puisqu'elle a permis de faire le bilan de dix années d'application du Protocole n° 11 et de passer en revue également la jurisprudence en 2007. Les actes du colloque ont été publiés en 2009 chez Bruylant, collection du CREDHO n° 15 (voir *infra)*.

Colloque 2008 : P.Tavernier, Ch. Pettiti, J.-P. Costa, E.Decaux

La quinzième session s'est tenue le 20 mars 2009 (*La jurisprudence en 2008).* Elle était placée sous la présidence du juge Giorgio Malinverni. Les Actes sont sous presse (collection du CREDHO n° 16).

Colloque 2009 : P.Tavernier et M. Malinverni

Collaboration avec d'autres instituts des droits de l'homme

- Le CREDHO collabore avec le CRDH (Université de Paris II) et publie depuis plusieurs années, sous la direction de Paul Tavernier et Emmanuel Decaux, la *Chronique de jurisprudence de la Cour européenne des droits de l'homme au Journal du droit international* .
- Il coopère également depuis nombreuses années avec le Centre for Human Rights de Pretoria (Afrique du Sud) pour la publication des *Human Rights Law in Africa Series*. Il a préparé la version française publiée chez Bruylant en 2005 (2 vol. XXXI-2117 pages, collection du CREDHO n° 10).
- Le CREDHO collabore avec l'Institut de formation en droits de l'homme du barreau de Paris. Il participe notamment à une clinique juridique (Law clinic) avec l'Institut et le CRDH en vue de la préparation de mémoires d'*amici curiae* devant la Cour européenne des droits de l'homme (affaire Makaratzis – 2004 ; affaire Bosphorus – 2005 ; et dernièrement affaire Zoloutoukine).
- Le CREDHO a noué des relations étroites avec le nouvel Institut international des droits de l'homme et de la Paix de Caen.

Publications pendant l'année 2008-2009

- *Bulletin d'information du CREDHO n° 17/2007 et 18/2008*, contenant, notamment, une bibliographie des ouvrages, thèses et articles parus en français sur les droits de l'Homme, les libertés publiques et le droit international humanitaire (parution en décembre sur papier et sur le site du CREDHO).
- *Liste des thèses de doctorat sur les droits de l'Homme, les libertés publiques, les droits fondamentaux et le droit humanitaire* soutenues depuis 1984 dans les universités francophones (mise à jour en 2008 et disponible sur le site du CREDHO).
- *Bibliographie systématique des ouvrages et articles parus en français depuis sur les droits de l'homme, les libertés publiques, les droits fondamentaux et le droit humanitaire* depuis 1987 (mise à jour en 2008 et disponible sur le site du CREDHO).

- *Bibliographie thématique et critique sur Islam et droits de l'homme* (mise à jour en 2008 et disponible sur le site du CREDHO).
- Paul Tavernier et Jean-Marie Henckaerts (sous la direction de), *Droit international humanitaire coutumier : enjeux et défis contemporains,* (Bruxelles : Bruylant, 2008, IX-289 p., coll. du CREDHO n° 13).
- Farideh Shaygan, *La compatibilité des sanctions économiques du Conseil de sécurité avec les droits de l'homme et le droit international humanitaire,* (Bruxelles : Bruylant, 2008, XX-686 p., coll. du CREDHO n° 14).
- Paul Tavernier (sous la direction de), *Regards sur les droits de l'homme en Afrique*, Paris, L'Harmattan/Presses universitaires de Sceaux (PUS), 2008, 307 p.
- Paul Tavernier (sous la direction de), *La France et la Cour européenne des droits de l'homme 1998-2008 : une décennie d'application du Protocole XI. La jurisprudence en 2007* (Bruxelles : Bruylant, 2009, IX-404 p., coll. du CREDHO n° 15).
- Paul Tavernier et Emmanuel Decaux (sous la direction de), *Chronique de jurisprudence de la Cour européenne des droits de l'homme. Année 2007* (Journal du droit international (Clunet), n° 3, 2008, pp.771-844).
- Paul Tavernier et Emmanuel Decaux (sous la direction de), *Chronique de jurisprudence de la Cour européenne des droits de l'homme. Année 2008* (Journal du droit international (Clunet), n° 3, 2009, pp. 999-1077).

Institut de droit européen des droits de l'homme (IDEDH)

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Publications recentes

Ouvrages

- F. Sudre et C. Picheral (dir.), *La diffusion du modèle européen de procès équitable*, La Documentation française, Coll. « Perspectives sur la justice », 2003, 353 p.
- F. Sudre (dir.), R. Tinière, *Droit communautaire des droits fondamentaux. Recueil de décisions de la Cour de justice des Communautés européennes,* Némésis-Bruylant, coll. droit et justice, 2e éd. 2007, n°75, 337 p.

Colloques

- *Réalité et perspectives du droit communautaire des droits fondamentaux,* (dir. F. Sudre et H. Labayle), Némésis-Bruylant, collection droit et justice (n° 27), 2000, 530 pages.
- *Le droit au respect de la vie familiale au sens de la Convention européenne des droits de l'homme,* (dir. F. Sudre), Némésis-Bruylant, coll. droit et justice, n° 38, 2002, 410 pages.
- *Le ministère public et les exigences du procès équitable*, (dir. I. Pingel et F. Sudre), Némésis-Bruylant, coll. droit et justice n° 44, 2003, 267 p.
- *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme* (dir. F. Sudre), Némésis-Bruylant, coll. Droit et justice, n° 63, 2005, 336 p.
- *Laïcité, liberté de religion et Convention européenne des droits de l'homme* (dir. G. Gonzalez), Némésis-Bruylant, coll. droit et justice, n°67, 2006, 266 p.
- *Le droit à la non discrimination au sens de la Convention européenne des droits de l'homme* (dir. F. Sudre), Némésis-Bruylant, coll. droit et justice, n°81 2008, 474 p.
- *Réforme des procédures des juridictions financières et Convention européenne des droits de l'homme,* colloque 30-31 octobre 2008 (dir. E. Douat), *Rev. de finances publiques 2009.*

Les cahiers de l'IDEDH

- *Cahiers n° 8, Les garanties du procès équitable hors les juridictions ordinaires* (dir. F. Sudre et C. Picheral), 2001, 357 p.
- *Cahiers n° 9, Espace de liberté, sécurité, justice et Convention européenne des droits de l'homme,* (dir. C. Picheral), 2003, 369 p.
- *Cahiers n° 10 , Le renforcement du rôle de Cour suprême de la Cour de justice des communautés européennes et l'encadrement « substantiel » du juge national* (dir. C. Maubernard), 2006, 401 p.

– *Cahiers n° 11 , Le dialogue des juges* (dir. F. Sudre) et *Les sources internationales dans la jurisprudence de la Cour européenne des droits de l'homme* (dir. G. Gonzalez), 2007, 480 p.
– *Cahiers n°12, Les standards du droit communautaire des étrangers,* (dir. C. Picheral), 2008, 353 p

Chroniques

– Droit communautaire des droits fondamentaux. Chronique de la jurisprudence de la Cour de justice des Communautés européennes (dir. C. Picheral et H. Surrel), *Revue trimestrielle des droits de l'homme* (depuis 1998).
– Chronique de jurisprudence de la Cour européenne des droits de l'homme (dir. F. Sudre), *Revue de droit public* (depuis 1999).
– Chronique de jurisprudence de la Cour européenne des droits de l'homme, *Annuaire de droit européen*, Bruylant (depuis 2003).

Greece/Grèce

Marangopoulos Foundation for Human Rights (MFHR)

Consultative Status with the Council of Europe, the UN [ECOSOC (special), DPI] and UNESCO

Member of the FRA Human Rights Platform

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MFHR contribution on human rights issues at national level

In February 2009 the MFHR, jointly with the General Workers Union of Greece (GSEE in Greek) and the Supreme Administration of Greek Civil Servants Unions, initiated a campaign against the ratification by Greece of two protocols signed with the USA concerning extradition and mutual legal assistance matters because they violate human rights and fundamental freedoms.

In August 2009 the MFHR and the Greek Affiliate of International Physicians for the Prevention of Nuclear War submitted a request before the Greek Parliament to adopt a bill prohibiting the use of arms and ammunitions containing depleted uranium. In November 2009 the MFHR, jointly with the Athens Bar Association and the Society of Greek Judges and Prosecutors for Democracy and Civil Liberties, took the initiative and launched a petition on the same matter which received wide support by many leading organisations of civil society, such as GSEE, bar associations throughout Greece, medical associations of Athens, Thessalonica, etc.

MFHR contribution on human rights issues at international level

Through its network of representatives the MFHR participated and intervened in the following meetings:

– Human Rights Council, 10th session, 2-27 March 2009, Geneva, intervention on the protection of human rights and fundamental freedoms while countering terrorism.
– FRA Human Rights Platform, second meeting, 5-6 May 2009, Vienna, submission of proposals to several working groups.
– Human Rights Council, 12th session, 14 September 2009 - October 2009, Geneva, intervention on the death penalty carried out by inhumane means.
– UNESCO, General Conference, 35th session, 6-23 October 2009, Paris, intervention on human rights education and training.
– Global Forum on Migration and Development, 4-5 November 2009, Athens.
– United Nations Economic Commission for Europe, Beijing + 15 Regional Review Meeting, 2-3 November 2009, Geneva.

– United Nations Office on Drugs and Crime, Commission on Narcotic Drugs, reconvened 52nd session, 1-2 December 2009, Vienna.

Education

– The MFHR continues for the 18th year to sponsor the "Marangopoulos Chair" at the International Institute for Human Rights, in Strasbourg, and to grant two yearly scholarships for the Institute's annual teaching session. Every year we grant two prizes and two commendations to the best essays written by post-graduate students of all Greek Universities on two human rights subjects proposed by the MFHR.
– The MFHR organizes the annual United Nations Model in Athens, in which hundreds of high school students participate. In 2009 the event took place from 27-29 March.

Conferences

– Conference on *The Sixty Years of the Universal Declaration of Human Rights – Challenges for the Future*, organised in Athens, by the MFHR and the Hellenic Society of International Law and International Relations (24-25 February 2009). The proceedings are to be published in 2010.
– Event for solidarity and support to Cuba for lifting the economic embargo – release of five Cuban fighters imprisoned in USA, organized in Athens by the MFHR, the Cuban Embassy in Greece and others (26 May 2009).
– Conference on *The Prohibition of Arms and Ammunitions Containing Depleted Uranium*, organised in Athens by the MFHR, the Athens Bar Association and the Society of Greek Judges and Prosecutors for Democracy and Civil Liberties (6 November 2009). A declaration has been unanimously adopted for the prohibition and elimination of arms and ammunitions containing depleted uranium at international and national level.
– Conference on *Poverty: a Challenge to Human Rights*, organised in Athens (9 December 2009).

Publications

The MFHR published two books in 2009 (the total number of its publications is 63):

– A. Mantzoutsos, *Civil Rights and European Convention on Human Rights*, Ant. N. Sakkoulas Publications, Athens-Komotini, 2009, 198 p. [in Greek];
– *La pauvreté, un défi pour les droits de l'homme*, Direction E. Decaux and L.-A. Sicilianos, Série FMDH No 14, A. Pedone Publications, Paris, 2009, 281 p. [in French].

Legal Assistance

The MFHR offers pro bono legal assistance, judicial and extrajudicial, to several vulnerable persons, particularly refugees and asylum seekers, who cannot afford legal fees and expenses.

Library

The MFHR library has the largest catalogue of books and reviews in the field of human rights in Greece and is renowned throughout Europe. It is open to the public year-round and provides rich and updated resources to students, scholars, professors, etc.

Website

The MFHR's website provides updated information on the Foundation's activities (conferences, events, publications, etc.) and on national and international case-law. It also provides news on human rights issues at the international level.

Iceland/Islande

The Icelandic Human Rights Centre

Hafnarstræti 20, 2. hæð - 101 Reykjavík

Website: www.humanrights.is

The Icelandic Human Rights Centre was founded in 1994 by nine organisations and institutions working in various fields of human rights. Fourteen public institutions, NGOs and universities are currently partners. The purpose and aim of the centre is to promote human rights by collecting information on and raising awareness of human rights issues in

Iceland and abroad. The centre organises conferences, seminars and public awareness campaigns on human rights issues and provides human rights education. The centre promotes legal reform and human rights research and has established the only specialised human rights library in Iceland. In addition, the centre serves a monitoring role by means of commenting on bills of law and policy and by providing information to international monitoring bodies on the state of human rights in Iceland, most recently to the CEDAW and CAT Committees. The centre is the National Implementing Body for the EU Progress Programme in Iceland for 2009 and 2010 and leads the 16 Days Against Violence Against Women and the European Week against Racism. It is a member of the AHRI network and the Nordic School of Human Rights Research as well as UNITED.

Publications

- Human Rights Education Project (HREP): a project in co-operation with the UN University for Peace, Costa Rica. The project consists of human rights materials - three books and a CD-ROM: *The Human Rights Reference Handbook, Universal and Regional Human Rights Protection: Cases and Commentaries, Human Rights Instruments* and *Human Rights Ideas, Concepts and Fora*. A fourth edition of the Human Rights Reference Handbook was published in 2009, as well as an eight edition of the Human Rights Instruments. The materials have been distributed world-wide and have most recently been used for teaching at Utrecht University, The Netherlands. The Handbook's fifth edition is scheduled for publication in 2010.
- Anti-discrimination handbook and webpage on equality legislation, aimed at public officials and service providers, NGO staff and general public. September 2010.
- Academic publication on anti-discrimination legislation: a collection of articles resulting from the international conference in November and a research project, in co-operation with the University of Iceland. December 2010.
- UDHR: to mark the 60th anniversary of the Universal Declaration of Human Rights, the centre published a new and improved translation of the Declaration, in co-operation with the Ministry for Foreign Affairs. The book was illustrated by young Icelandic artists.
- Handbook on CEDAW: published in December 2009 to mark the 30th anniversary of Convention.
- Against all Odds: the centre co-ordinates the Icelandic translation of the computer game "Against All Odds" in co-operation with UNHCR and the Icelandic Red Cross. The game aims to educate youngsters about human rights and the plight of refugees.
- *Human rights reports series*: the most recent report addressing National Human Rights Institutions.
- *Nordic Journal of Human Rights*: the centre is party to the publication in co-operation with the Nordic Human Rights Institutes.

Campaigns

- Public awareness raising anti-discrimination campaign with the aim of making people question stereotypes and their discriminatory impact. Advertisements will be placed in national media, posters will be displayed in bus stops and postcards distributed. Spring of 2010.
- European Action Week against Racism in March.
- International Refugee Day, 20 June: An event will be organised in co-operation with UNHCR and the Icelandic Red Cross.
- 16 Day Campaign against Gender-based violence, coordination of campaign from 25 November until 10 December.

Training

- Training in relation to the Icelandic launch of Compass, January 2010.
- Training for legal practitioners on anti-discrimination legislation in Iceland, April 2010
- Anti-discrimination training for municipalities, in cooperation with the City of Reykjavik throughout 2009.
- Human rights training at high-schools, ongoing.

Conferences and seminars

- Nordic Research Training Course Should States Ratify Human Rights Conventions? in co-operation with the Norwegian Centre for Human Rights, September 2010.
- International Annual Association of Human Rights Institutions/COST-Conference, in co-operation with the Norwegian Centre for Human Rights, Reykjavik, 13-14 September 2010.
- International conference on anti-discrimination legislation and the proposed new EU equality directive, in co-operation with the University of Iceland, November 2010.

Ireland/Irlande

Irish Centre for Human Rights

National University of Ireland, Galway
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E-mail: humanrightsnuigalway.ie
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Conferences

The Irish Centre for Human Rights co-hosted with the Centre for Anatomy and Human Identification, University of Dundee, a conference on Human Rights and Forensic Science which took place at NUI Galway in late April 2009. The conference explored the current and potential future application of forensic science disciplines in the field of human rights. Issues of both a practical and theoretical nature were discussed and speakers from a wide variety of disciplines, including law,medicine and science came together to share their expertise in this two-day conference. **April 2009**

The Irish Centre for Human Rights held a round table over the summer in Roundstone, Co. Galway as an opportunity to explore the continued development and expansion of international human rights law and its relevance for the protection of the environment and cultural heritage. Particular attention was devoted to certain activities currently underway in Ireland that have given rise to environmental and cultural heritage concerns. Much discussion focused on the extent to which human rights law could assist campaigners or litigants with regards to these campaigns, particularly where such activities have had a direct impact on local residents. **June 2009**

The legal and human rights context of abortion was the focus of a conference co-hosted by The Irish Centre for Human Rights in conjunction with the Irish Family Planning Association.The conference offered both Irish and global perspectives into a complex issue, which has dominated legal and human rights discourse in Ireland for the last 25 years. **5 November 2009**

Staff presentation

Dr Noam Lubell presented at a conference co-organised by theLondon School of Economics, University College London, and the International Committee of the Red Cross, on the topic of the European Court of Human Rights and International Humanitarian Law. The aim of the event was to bring together legal scholars as well as practitioners and those working in the field to reflect on recent developments in the law involving the relationship between the human rights legal regime, as exemplified by the ECHR, and international humanitarian law. Dr. Lubell gave a presentation on "Extra-Territorial Human Rights Obligations". **24-25 September**

Ongoing events

The first seminar of its kind to take place under the new 1.5 million Euro contract awarded to the Irish Centre for Human Rights by the European Commission in January 2009 concluded successfully in Prague on May 13, 2009. The two-day event brought together a group of 65 **EU-China Human Rights Seminar, 13 May**

European and Chinese academics, practitioners, NGO representatives and officials to discuss a range of issues surrounding access to justice in both Europe and China as well as the rights of persons with disabilities. The goodwill and momentum generated by the event has allowed the Irish Centre for Human Rights to proceed immediately with organisation of the next seminar, due to take place towards the end of 2009.

Irish-American Exchange on Human Rights, 9-10 October 2009

The Irish Centre for Human Rights and the Notre Dame Law School collaborated on the inaugural "Irish-American Exchange on Human Rights". The event brought together faculty and students from two premier institutions of human rights education – the Center for Civil and Human Rights at Notre Dame Law School, and the Irish Centre for Human Rights, National University of Ireland-Galway. The meeting was a series of presentations and responses on various human rights issues. "We expect this exchange to become an annual and much-anticipated event" explained Assistant Director and Concurrent Assistant Professor of Law Sean O'Brien.

Italy/Italie

Interdepartmental Centre on Human Rights and the Rights of Peoples

(Centro interdipartimentale di ricerca e servizi sui diritti della persona e dei popoli)

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Academic programmes

The Centre is currently involved in the organisation and management of the following degree courses, among others, at the Faculty of Political Sciences, University of Padua:

Postgraduate Courses on Human Rights and the Rights of Peoples

The Interdepartmental Centre has offered over 20 annual postgraduate courses on human rights and the rights of people that have aimed to educate teachers, administrators of local and regional authorities, directors and staff of associations and voluntary groups, and postgraduate students. The twenty-first and most recent postgraduate course was offered during the 2008/2009 academic year and focused on economic, social, and cultural rights, and the protection of vulnerable groups.

High Education Courses (Corsi di Alta Formazione)

Between 2008 and 2010 the Centre is carrying out two special "High Education Courses" for secondary school and primary school teachers in order to create a group of experts in civic education, human rights, citizenship and constitutional culture.

Unesco Chair in Human Rights, Democracy and Peace

The Chair, established in 1999, works in close co-operation with the Interdepartmental Centre on Human Rights, and many activities are carried out as part of a joint venture by the two institutions. The Chair-holder is Antonio Papisca, Professor of International Relations and International Protection of Human Rights, and former director of both the European Master Degree in Human Rights and Democratisation and the Interdepartmental Centre. The Chair and the Centre co-operate actively with NGOs, movements connected with the "Tavola della Pace" (Peace Table), and the association "Italian Local Authorities for Peace and Human Rights", a network that gathers together 700 local government institutions to coordinate the historical Perugia-Assisi March for Peace and provide scientific advice for the bi-annual "UN People's Assembly." In 2008 the UNESCO Chair and the Jean Monnet Chair participated in the 1st Conference on City

Diplomacy (The Hague, 11-13 June 08) and in the "Ateliers" of the EU Committee of the Regions on multi-level governance (2009 White Book).

Jean Monnet Centre of Excellence and Jean Monnet Chairs

Aware of the Commission's broad political priorities to connect Europe with the citizens, increase the visibility of the European Union in the world and, in particular, pursue applied reflections on intercultural dialogue, the University of Padua – in particular the Faculty of Political Science and the Interdepartmental Centre on Human Rights and the Rights of Peoples – has further consolidated the European and international profile of its existing curriculum of teaching and research activities by setting up a Jean Monnet Centre of Excellence on Intercultural Dialogue, Human Rights and Multi-level Governance, focused on capacity building and curriculum development.

The Centre also hosts the Jean Monnet Chair ad honorem held by Professor Antonio Papisca, the Jean Monnet Chair on Globalisation and Inclusiveness in the European Union, held by Prof. Dr Léonce Bekemans, the Jean Monnet Chair on European Union Political System, held by Prof. Marco Mascia and the Jean Monnet Module on Sport and Human Rights in European Union Law held by Prof. Jacopo Tognon.

Research

In 2009/2010 academic year, the Centre is carrying on a research on the "Culture of Peace" in the Italian local authorities. It is seeking to map the norm, "peace human rights" in the statutes of Provinces, Regions, and Municipalities (with over 5,000 inhabitants).

Special agreements

Memorandum of Understanding with the NATO CiMiC Group

In 2009 the Interdepartmental Centre signed a Memorandum of Understanding with the NATO Multinational CiMiC Group (Civil-Military Co-operation). The purpose of the Memorandum is to develop necessary synergies aimed at promoting highly professional educational activities in the following sectors: international organisations of human rights and peace, monitoring of human rights, humanitarian aid, peacekeeping, peace building and human safety.

Agreement with the Council of Europe

In February 2009 the Centre signed an Administrative Arrangement with the Directorate General of Human Rights and Legal Affairs of the Council of Europe in the framework of a Joint European Union – Council of Europe Programme called "Peer-to-Peer Project". This Joint Programme consists of a work programme to be implemented by the Council of Europe in co-operation with the Human Rights Centre of the University of Padua, Italy and the St Petersburg Humanitarian and Political Science Strategy Centre in St. Petersburg, Russian Federation. The main tool of the programme is the organisation of workshops for specialised staff members of the National Human Rights Structures (NHRS), in order to convey select information on the legal norms governing priority areas of NHRS action and to proceed to a peer review of relevant practices used or envisaged throughout Europe. In 2009 seven training workshops for NHRS were realised, three of them were organised in Padua.

Conferences and seminars

- Joint European Union – Council of Europe Programme. "Setting up an active network of independent non-judicial human rights structures."
- 4th workshop for specialised staff of national human rights structures, Padua 24-26 March 2009. The role of national human rights structures in case of non execution of domestic judgments.
- 5th workshop for specialised staff of national human rights structures, Padua 9-11 June 2009. The role of national human rights structures as regards counter-terrorist measures.
- 6th workshop for specialised staff of national human rights structures, Padua 20-22 October 2009. The protection of separated / unaccompanied minors by national human rights structures (including children's ombudsmen.
- Three Religions Chair. Seminars on The Law of God and the Law of Men in the three great monotheist religions, Padua, May 2009.

Publications

- Quarterly "*Pace diritti umani/Peace human rights*". Edited by the Interdepartmental Centre on Human Rights and printed by Marsilio Editore, Venice (essays in Italian

and in English), it is mainly policy-oriented and addressed to university establishments, civil society organisations, national and local government institutions. Three issues have been published in 2009.

The most recent publications are:

- *Il Gruppo Europeo di Cooperazione Territoriale (The European territorial cooperation group)*, Papisca Antonio, Marsilio 2009
- 1979-2009. *Uso/abuso delle elezioni europee (1979-2009. Use/abuse of European elections)*, Papisca Antonio, Cleup 2009
- *Codice internazionale dei diritti umani (International Human Rights Bill)*, De Stefani Paolo (edited by), Cleup, 2009

Norway/Norwège

The Norwegian Centre for Human Rights

Postboks 6706, St. Olavs plass

0130 Oslo, Norge

The Norwegian Centre for Human Rights (NCHR) is both the Norwegian human rights commission and a university institute, as part of the University of Oslo. With a turnover exceeding NOK 80 million (approximately 10 million euros.) and more than 60 employees, its activities comprise research and teaching, activities as the Norwegian national institution for human rights, and international programmes.

- NCHR is internationally recognised as a leading research institution in the field of human rights with research staff including lawyers, political scientists, social anthropologists, social geography and philosophy.
- The research programme has four main themes: (1) human rights and power, (2) human rights and development, (3) human rights and diversity, and, (4) human rights and conflicts.
- The NCHR is responsible for editing the Nordic Journal of Human Rights/Nordisk Tidsskrift for Menneskerettigheter and heading the Association of Human Rights Institutes (AHRI).
- NCHR's two-year Master programme in "The Theory and Practice of Human Rights" is well-established and the second class graduated in the spring of 2008 while the number of students admitted since 2008 has nearly doubled. NCHR is also involved in the teaching of human rights and international humanitarian law for law students and other students at the University of Oslo.
- NCHR's activities as the Norwegian human rights commission are based on the United Nations Paris Principles. NCHR belongs to an international network under the UN High Commissioner for Human Rights. The Yearbook for Human Rights in Norway, published annually by NCHR, is a key publication for NCHR and provides an independent review of pressing human rights issues in Norway. Other key activities include research, study, monitoring, consultancy, education and information concerning the human rights situation in Norway. Monitoring includes extensive reporting and statements in relation to Norway's reporting to international human rights bodies. As a national institution, the centre collaborates with NGOs, other research institutions and various officials in Norwegian society. The national institution has an advisory board with representatives from ombudsmen, NGOs, the media, finance and labour organisations and other members of civil society. This board is an important point of reference in the current activities of the national institution.
- The NCHR library presents the largest and most updated collection of human rights literature available in Norway. The collection is open both for research purposes and the general public.
- NCHR's international programmes are funded through agreements with the Norwegian Ministry of Foreign Affairs and the Norwegian Agency for Development Cooperation (NORAD). The programmes include both research and administrative capacities and draw on internal and external expertise. Activities include applied research, analysis, education, workshops and conferences. Academic and educational institutions dominate as partner institutions.

Programmes

NORDEM

NORDEM, Norwegian Resource Bank for Democracy and Human Rights, established in 1993, provides highly qualified personnel to the EU, OSCE and the UN and their civil crises management operations within the field of human rights and democratisation. NORDEM is run by NCHR in co-operation with the Norwegian Refugee Council (NRC) with the support of the Norwegian Ministry of Foreign Affairs. NORDEM recruits, trains and deploys personnel to international operations. NORDEM offers generic mission preparedness training and more specialised training courses on human rights, rule of law and elections. NORDEM issues reports and analysis on best practices and lessons learned.

The ICC Legal Tools Programme

The centre signed a co-operation agreement with the International Criminal Court (ICC) in 2005 and has since become a leading partner in the development of the Courts' Legal Tools Project. The main objective is to provide users both inside and outside the ICC with equal access to legal information services required to construct legal arguments in cases containing charges of genocide, crimes against humanity and war crimes.

The China Programme

The programme helps to raise awareness of human rights in China. It has contributed to the development of human rights law education in China and has developed several research projects on human rights issues. Activities have included organisation of a large number of academic human rights training courses at different Chinese universities, the publication of the first Chinese textbook on international human rights law, translations, publications and support to guest researchers and students.

The Indonesia Programme

The programme is, together with the China and Vietnam programmes, conducted under the umbrella of Norway's bilateral human rights dialogues. The Indonesia programme seeks to strengthen human rights knowledge and competence in Indonesia with the aim of further improving Indonesia's human rights compliance by running projects addressing current human rights issues. The activities are conducted in co-operation with state institutions, academic institutions and non-governmental organisations.

The Vietnam Programme

The Vietnam Programme was established in March 2008 to compliment the human rights dialogue between Vietnam and Norway. The programme aims to strenghten knowledge and implementation of international human rights standards in Vietnam. The programme runs co-operative projects on human rights education, access to information legislation, and criminological research based on proposals from our Vietnamese partners in government, academia, and the non-governmental sector.

The Socio-Economic Rights Programme – SERP

Over the last two decades, economic, social and cultural rights have gained increased recognition. However, the global challenges of poverty and discrimination remain enormous and there is a continuous need to explore how these rights are best addressed. SERP was established in June 2009 with the aim of supporting research, policy-making, advocacy and education on these rights at the national and international levels. It seeks to build on and develop the centre's long tradition in research and promotion of economic, social and cultural rights.

The Oslo Coalition on Freedom of Religion or Belief

The NCHR serves as secretariat for the Coalition, which is an international network of representatives from religious and other life-stance communities, NGOs, international organisations and research institutes. The Oslo Coalition works to advance the freedom of religion or belief as a common benefit that is embraced by all religions and persuasions. The Oslo Coalition seeks to promote plurality through the building of networks and the facilitation of cooperative processes, projects and dialogues on the freedom of religion and belief.

Poland/Pologne

Poznań Human Rights Centre Institute of Legal Studies of the Polish Academy of Sciences

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Website: http://www.phrc.pl/

International co-operation

The Poznań Human Rights Centre has worked to establish contacts with a number of institutions in Poland and abroad, including the Human Rights Directorate of the Council of Europe in Strasbourg, the Office of United Nations High Commissioner for Human Rights in Geneva, the Institute of Human Rights in Abo Akademii University of Turku (Finland), the Netherlands Institute of Human Rights (SIM) in Utrecht, The Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund (Sweden).

Library

Poznań Human Rights Centre has established its own library and documentation centre. The library collection consists of 3 000 volumes, mainly from the fields of human rights and constitutional law, but also family law and children's rights. The library also has a selection of periodicals and a variety of in-house documents.

Publications

In 2009 researchers of Poznań Human Rights Centre published numerous articles in Polish and international periodicals. It also printed two books in Polish: a selection from the Human Rights Committee's case-law (*Komitet Praw Człowieka ONZ. Wybór orzecznictwa*, [ed.] R. Wieruszewski, A. Gliszczyńska, K. Sękowska-Kozłowska, Wolters Kluwer, Warszawa 2009) and the collection of conference papers concerning LGBT rights (*Orientacja seksualna i tożsamość płciowa - aspekty prawne i społeczne*, [ed.] R. Wieruszewski, M. Wyrzykowski, Instytut Wydawniczy Euro-Prawo, Warszawa 2009).

Events:

Course on International Protection of Human Rights – Protection of National Minorities

The eighteenth course on International Protection of Human Rights took place from 31 August to 9 September 2009. It was organised by Poznań Human Rights Centre and Adam Mickiewicz University, Faculty of Law and Administration in co-operation with Stiftung Convivenza - Internationales Zentrum für Minderheiten and Strasbourg University.

The main objective of the course was to enhance the participants' knowledge and understanding of the existing standards and institutional aspects of the protection of human rights at the international level. This year's course focused additionally on issues related to the rights of national minorities. The course was offered to NGO activists, young researches, lawyers and students from all over the world, in particular, from the former Soviet Union and former Yugoslavia area. The number of participants was limited to 30.

Course participants 2009

The course consisted of 60 hours of lectures and case studies given in English. The lectures were held by eminent professors and experts in the field of human rights and international law. The case studies involved discussions on decisions of the European Court of Human Rights.

The next course will take place in September 2010 and will be advertised on the centre's website.

Conference on Hate speech vs. Free speech – Legal and social aspects

The conference took place on 30 November 2009 and was organised by Poznań Human Rights Centre and Human Rights Chair, Faculty of Law and Administration of the Warsaw University. Its objective was to discuss whether, in the framework of a democratic society, the

freedom of speech of individuals publicly disseminating hateful, racist, anti-Semitic or totalitarian ideas and ideology should be subject to limitations (including criminalisation), or if freedom of speech should prevail and cover even the most shocking and hateful expressions. The problem was discussed within the framework of Polish law as well as international human rights law. The speakers were Polish scholars and NGO activists. A book containing conference papers was distributed prior to the conference.

Conference on Hate speech vs Free speech

Portugal

Bureau de documentation et de droit comparé de l'office du procureur général de la République

Gabinete de Documentação e Direito Comparado,
Procuradoria-Geral da República,
Rua do Vale do Pereiro, n.º 2, 1269-113 Lisboa
http://www.gddc.pt/
Tel. 00 351 21 382 03 52
Fax. 00 351 382 03 01

Le Bureau de documentation et de droit comparé de l'office du procureur général de la République poursuit ses activités d'appui juridique en droit international et en droit étranger à toute entité nationale ou étrangère qui le demande, ainsi que ses activités de défense des droits de l'homme. En ce qui concerne ces dernières activités, outre la coordination dans l'élaboration des rapports nationaux d'application des Conventions des Nations Unies au Portugal, la page internet du GDDC dispose maintenant des arrêts de la la Cour européenne des droits de l'homme pour lesquels le Portugal a été condamné. La page web contient également les traductions, en portugais, de ces arrêts. La traduction est très importante pour le Portugal, car les problème soulevés dans les arrêts sont systémiques, les violations particulièrement graves et les problèmes juridiques soulevés par la Cour d'une grande importance. La page des arrêts peut être consultée à partir du lien suivant : http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos-tedh.html

Romania/Roumanie

Romanian Institute for Human Rights

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Conferences, debates, roundtables

Dignity and justice for all of us

An international symposium organised by IRDO in partnership with the Patriarchate of the Romanian Orthodox Church and the Bucharest Archdiocese of the Roman Catholic Church, and with the participation of the Romanian Association for the United Nations(ANUROM), the Continuous Education Institute – Al. I. Cuza University, and the IDEF Committee to mark the 60th anniversary of the Universal Declaration of Human Rights. (Bucharest, 13 December 2008)

Professional deontology and respect for human rights and the fundamental freedoms

A series of debates on professional deontology and respect for human rights organised by IRDO in collaboration with the Baia Mare Police Department. (Baia Mare, 2-3 February 2009)

Applying the principle of equal opportunities for people with disabilities

Symposium organised in collaboration with ANUROM and the Victor Dan Zlătescu Club of the Cheia Association. (13-18 March 2009)

Human rights in a united Europe

A roundtable on the activity of the European Union Fundamental Rights Agency, organised in collaboration with the UNESCO Chair for Human Rights, Democracy, Peace and Tolerance. (Bucharest, 8 April 2009)

Council of Europe – promoter of democracy and human rights

A symposium organised by IRDO in collaboration with ANUROM, Family Forum, the Independent League for the Rights of Children and the IDEF Committee to mark the Council of Europe's 60th anniversary. (Bucharest, 5 May 2009)

Social rights, an integral part of the human rights system

Symposium on the importance and promotion of social rights organised in collaboration with the Victor Dan Zlătescu Club of the Cheia Association. On this occasion the *Social Rights - European treaties* volume was released, a volume published by the Institute. (Cheia, 10 June 2009)

Aspects of the education for democratic culture and citizenship

A roundtable organised by IRDO, in collaboration with ANUROM and the Victor Dan Zlătescu Club of the Cheia Association. (Bucharest, 15 June 2009)

Elaboration of normative acts and observance of human rights in justice

Roundtable organised by IRDO in collaboration with ANUROM to mark the International Justice Day. (Bucharest 17 July 2009)

Electoral rights – basic rights in a democratic society

A roundtable on electoral rights organized in collaboration with the Teacher Training Centre in Iași. (11-12 September 2009)
Human rights

Teaching

Human rights

Training course organised in collaboration with the Romanian Association of the Blind and the Bistrița Directorate for Social Assistance.

Training course organised in collaboration with the UNESCO Chair for Human Rights, Democracy, Peace and Tolerance.

Rights of the child

Training course addressed to teachers in preschool educational units in Mureș organised by the Ministry of Education, Research and Innovation in collaboration with IRDO and the Teacher Training Center, Mureș.

International Year of Human Rights Learning

A series of training courses and human rights education activities organised in collaboration with the Teacher Training Centre in Iași, Mureș, Oradea, Timișoara, Dâmbovița and Galați to mark the UN International Year of Human Rights Learning.

The 15th meeting of the International University of Human Rights

Organised in collaboration with the UNESCO Chair for Human Rights, Democracy, Peace and Tolerance and the Romanian Association for the United Nations and the Victor Dan Zlătescu Club of the Cheia Association.

Activities devoted to the citizen-administration relationship

Collaboration based on a partnership agreement with the National Institute of Administration continued a tradition of participation in the various courses with personnel from the local public authorities, organised in various regions of the country

Periodicals

– *Drepturile Omului* (Human rights), a quarterly bulletin
– *Info-IRDO*, a monthly information bulletin

Publications

- *Eficiența și echitatea justiției. Standarde europene* (Efficiency and equity of justice. European standards), co-ordinator Cristi Danileț
- *Drepturile omului – un sistem în evoluție* (Human rights – a system in evolution), 2nd edition, Dr. Irina Moroianu Zlătescu
- *Egalitate. Nediscriminare. Bună administrare* (Equality. Non-discrimination. Good administration) Dr. Irina Moroianu Zlătescu
- *Instituții europene și drepturile omului* (European institutions and human rights) Dr. Irina Moroianu Zlătescu
- *Drepturile sociale. Tratate europene* (Social Rights. European treaties)
- *Statul – Societatea – Libertățile religioase* (State – Society – Religious freedoms) Dr. Cristina Stuparu
- *Sistemul de sănătate din România și drepturile sociale* (The Romanian healthcare system and social rights) Dr. Octavian Popescu
- *Consiliul suprem de apărare a țării și controlul parlamentar asupra acestuia* (The Supreme Council of National Defense and Parliament's control of it), Dorel Bahrin

Spain/Espagne

Pedro Arrupe Human Rights Institute

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Activities

San Sebastian, Spain, March 16-17, 2010

- Sixth International Congress on Human Rights: "Human Rights and Multiculturality". This 6th international congress on human rights will be devoted to discussing new readings on human rights in multicultural societies. The goal is to reflect on the potentialities of human rights in plural societies as well as their need to be redefined in the light of the growing impact of cultural diversity. Religious, linguistic or ethnic diversity issues and questions will also be discussed from the perspective of an evolving human rights approach.

Bilbao, Spain, May 13-14, 2010

- Congress: "The policy of diversity. Autonomy and political participation of the indigenous people in Latin America".

Bilbao, Spain, January 22, 2010

- Seminar: "The European Court of Human Rights and cultural diversity in plural societies".

Teaching

- NOHA Master's Degree in International Humanitarian Action. (ww.noha.net)
- European Master's Degree in Human Rights and Democratisation. (www.eiuc.org)
- Training Programme for Indigenous Peoples.

Publications

- *Human Rights Work Papers*. A publication in Spanish and Basque which is published five times a year. These work papers suitable for wider circulation and in a reduced format, are intended to reach a relatively widespread public and to provide them with original, thought-provoking works on topical matters concerning human rights.
- *Yearbook on Humanitarian Action and Human Rights*. The yearbook aims to provide a space where the reflection on and exchange of the work, experiences and research in the sphere of humanitarian action and human rights is made possible.
- It is also relevant to highlight the release of several works in the publication line on monographies we carry out with Gipuzkoa's Provincial Government: *"Human Rights and Diversity. New challenges for plural societies"* by Eduardo J. Ruiz Vieytez.
- *Human Rights in the Basque Country*. A Public Assessment by the Institute of Human Rights. This document contains the

Institute's opinions and standing points on the fulfilment of human rights at the heart of Basque society.

Research

The Institute has two lines of research:

– Human rights and diversity, mostly focused on studying the new multicultural realities and the conflicts caused by collective identities from a multidisciplinary perspective.

Projects:

– World view referents and socio-political organisation in indigenous Latin American communities: Nasa people (Cauca, Colombia) and Tseltal people (Chiapas, Mexico)

– "Religious Diversity in the Basque Country: new social and cultural challenges for public policies"

– Human rights and humanitarian action, aimed at providing a space for thought and exchange between the academic world and the actors of the humanitarian action from the perspective of human rights defence and protection.

Project:

– "The role of international co-operation in the prevention of forced displacement and protection of the displaced population in Colombia".

In addition to its own projects, the Institute has been selected to become part of the Consolider-Ingenio 2010 programme with the project "Time for rights- HURI-AGE" financed by the R&D&I Plan of the Spanish Ministry of Science and Innovation comprised by twelve state-level groups of research. The HURI-AGE project's main goal is to strengthen the capability to investigate and provide training on human rights.

Team at the Pedro Arrupe Human Rights Institute

Regional Programme in Support of the Latin American Ombudsmen (PRADPI)

University of Alcalá

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The Regional Programme in Support of the Latin American Ombudsmen (PRADPI) is a project which, since 2000, has been managed by the Centre for Initiatives for Development Co-operation (CIC) at the University of Alcalá. It is funded by the Spanish Agency for International Development Co-operation (AECID) and the Ombudsman of Spain. Its main aim is to contribute to the institutional consolidation of Latin American Ombudsmen, to encourage the development of the rule of law and democracy in the region from a human rights perspective. The PRADPI has an agreement with the Iberian-American Federation of Ombudsman –FIO- (2002) and the Network of National Human Rights Institutions in America (2009) and is open to collaboration with any other institution, public or private, wishing to work in the field of protection and promotion of human rights in Latin America.

Education

The PRADPI's priority is the training of officials of the ombudsmen, but their courses also welcome the participation of professionals from other institutions. It specialises in online training in two main fields:

– Master of Human Rights, Rule of Law and Democracy in Latin America (University of Alcalá), a two-year course and 96 ECTS credits. Registration: until 22 January of each year.

– Sixteen courses lasting two months (10 ECTS credits each) on the following areas: international human rights system, American human rights system, international justice, transitional justice, promotion and human rights education, constitutional justice and human rights, human rights, globalisation and development, human rights and conflict resolution, ombudsmen in Latin America, children's rights, women's rights,

indigenous rights and cultural minorities, immigration and human rights, international humanitarian law, environmental rights and privation of liberty. Registration: in March and June of each year.

Courses and seminars

As part of the Iberian-American Programme of Specialised Technical Training of the AECID, two or three seminars take place every year in training centres as part of the Spanish Co-operation in Latin America (Cartagena de Indias, Antigua, Santa Cruz and Montevideo).

Promotion

Every four months, the PRADPI publishes a newsletter which summarises the major activities of the ombudsmen and the FIO. News is published daily at www.portalfio.org. It also supports the activities of the Communications Network of the FIO, as well as of the Defenders of the Women of the FIO. It has a social network on human rights, open to all those interested in contributing to the protection and promotion of human rights in Latin America.

Publications and resources

The PRADPI conducts research on human rights in general and, in particular, on the ombudsman (16 books published to date). Many publications, such as the Reports on Human Rights of the FIO (seven to date: Migration, Women's Rights, Children's Rights, Healthcare, Prisons, Education, and People with Disabilities) can be downloaded for free via the homepage. The remaining items can be ordered by post. The PRADPI also publishes a bi-annual magazine, Electronic Notebooks on Human Rights and Democracy (six issues published to date) and has a database of documents (over 2 000) on human rights, organised by subject. It is currently working on developing a Latin American dictionary of fundamental and human rights, which will be published in 2010.

Legal advice

The PRADPI provides legal assistance on human rights either through its permanent consultancy or through technical assistance in the areas for which the results can be exploited at a regional level or which receive additional funding. It is currently working on a report on the monitoring of human rights, which measures the level of compliance with the recommendations of the FIO's reports in each country. The report will be published in 2010.

The Human Rights Institute of Catalonia (IDHC)

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Education

Annual course in human rights

The 28th course will take place from 1-18 March 2010. The course offers a largely legal overview of the different aspects of human rights. The various systems of regional and universal protection are also studied from a historical viewpoint and through the process of codification and internationalisation of human rights. National, regional and local legislation are also covered alongside the main subject of international law.

For further information on education programs see: http://www.idhc.org/eng/14_formacio.asp

Scholarships

The IDHC awards several kinds of scholarshipor to the participants of the annual course on human rights (who write an essay on the protection of human rights):

- a three-month work placement in the Office of the United Nations High Commissioner of Human Rights, Geneva;
- a 15-day visit to the headquarters of the Council of Europe and the European Court of Human Rights, Strasbourg, for up to 5 students;
- a six-month work placement at the office of the Ombudsman of Catalonia, Barcelona.

The IDHC also awards scholarships to three residents of South America to allow them to

attend the annual human rights course, which is held for three weeks in Barcelona.

Masters programme

Since 2008 the IDHC has provided a Masters program in Human Rights and Democracy in collaboration with the Open University of Catalonia. The programme, which involves 1, 500 hours of study, is made up of four modules: Introduction to human rights and democracy; Legal protection of human rights; Human rights, democracy and globalisation; and Human rights, democracy and conflict. The programme is on-line and starts in March and October of every year.

Human rights training for aid workers

This course is organised twice a year and the next course will take place in May 2010. The main purpose of the course is to provide those who work in different areas of co-operation for development with the necessary tools to understand the international reality through the knowledge and study of the international human rights law, humanitarian law, and international criminal law.

Publications

- *The Universal Declaration of Emerging Human Rights*. A programmatic instrument of international civil society aimed at state actors and other institutional forums for the crystallisation of human rights in the new millennium.
- *Emerging human rights series. The impact of new technologies in human rights.* This serial contains the research of the IDHC in the field of new necessities and the resulting new or updated human rights formulations.
- *Forgotten conflicts series: Sri Lanka and Kosovo.* This serial contains research and reports about the conflicts and speeches from the participants of several round tables organised to analyse the conflicts from a human rights point of view.
- *Human Rights in the 21st century.* Didactic manual explaining the theory of human rights from internal and international perspectives and with practical exercises to allows students and teachers to tackle the study of human rights in an interactive manner.
- *The European Convention of Human Rights, the Strasbourg Court and its case-law.* The book consists of three parts - the first introduces the Council of Europe and the European Convention of Human Rights, the second is about the functioning of the European Court of Human Rights, while the third explains the Court's case-law.

For further information about IDHC Publications see www.idhc.org/eng/161_propies.asp.

Services

Bibliographical resources

The IDHC has a vast library of human rights publications in its head office, including over 1 000 monographs, collections of specialised magazines and publications from international organisations and other institutions.

On-line resources

On the IDHC's website, the on-line library contains a selection of sources on human rights and basic legislative documentation, and resources to analyse several conflicts in greater depth.

Scientific advice in the field of human rights

The IDHC provides scientific advice in the field of human rights to public institutions and private entities, mostly relating to the European Charter for Safeguarding Human Rights in Cities.

Sweden

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The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution. The Institute is named after Raoul Wallenberg, the Swedish diplomat, in honour of his work in human rights. The mission of the Institute is to promote universal respect for human rights and humanitarian law by means of research, academic education, dissemination of information and institutional development. The vision of the Institute is to be a centre of excellence meeting the highest international standards in all its fields of operation. Our core values are respect, integrity, inclusiveness and inspiration.

Technical Cooperation

With funding primarily from Sida, the Institute carries out a wide range of human rights capacity building programmes in Sweden and abroad. The programmes target government agencies, academic institutions and national human rights institutions in developing countries and countries in transition. These programmes are usually long-term commitments, both in terms of financial support and programme development. The Institute carries out programmes in Africa, the Middle East, Asia, Latin America and Europe. To assist in the co-ordination of activities abroad, the Institute maintains field offices in select partner countries. A major component of the technical assistance RWI provides is training for key persons and the transfer of knowledge and skills to target institutions. The training is either organised through multilateral programmes, with participants from several countries or on a bilateral basis.

Academic Education

Postgraduate studies in human rights

The Institute organises three Masters programmes in co-operation with the Faculty of Law at Lund University, one in International Human Rights Law and one in Human Rights and Intellectual Property Rights Law. The latter programme is co-sponsored by the WIPO Worldwide Academy in Geneva. The third Masters programme in co-operation with ILO on Human Rights and International Labour Standards commenced in autumn 2006. The Mastes programmes lead to a LL.M. degree and provide students with advanced knowledge of public international law, international organisations, human rights, intellectual property rights, refugee law, humanitarian law and other related subjects. The purpose of the programmes is to prepare candidates for professional careers and/or further academic studies in the human rights field.

Undergraduate studies in human rights

This is a two-year programme at undergraduate level. The courses within the programme were developed and are administered by the Centre for Theology and Religious Studies, the Department of Political Science, the Department of History and RWI, all within Lund University. The courses provide knowledge of human rights from an interdisciplinary perspective, including knowledge of international and regional treaties with particular reference to their historical and ideological contexts, applicability and implementation.

Publications

Every year the Raoul Wallenberg Institute, in co-operation with Brill and Martinus Nijhoff Publishers, publishes a number of books, yearbooks and journals. For more information and orders please see www.brill.nl and type "Raoul Wallenberg" in the "Search" tab at the top of the page. Recent publications include:

Books

- G. Alfredsson et al. (eds.), *International Human Rights Monitoring Mechanisms: Essays in Hounour of Jakob Th. Möller*, 2nd revised edition (Martinus Nijhoff, Leiden/Boston, 2009)
- R. Crawshaw, *Essential Texts on Human Rights and the Police: A Compilation of International Instruments*, 2nd revised edition (Martinus Nijhoff, Leiden/Boston, 2008)

Yearbooks

- *Baltic Yearbook of International Law*, Volume 8 (2008) (Martinus Nijhoff, Leiden/Boston, 2009)

Journals

- *Nordic Journal of International Law*, four issues per year (Martinus Nijhoff, Leiden/Boston)
- *International Journal on Minority and Group Rights*, four issues per year (Martinus Nijhoff, Leiden/Boston)

Anna Lindh Lecture

Since 2005 the Raoul Wallenberg Institute has arranged the Anna Lindh lecture, in honor of Sweden's former minister of foreign affairs, Anna Lindh who was killed in 2004. In 2009 the lecture was held by Dr Shirin Ebadi. As a prominent human rights defender, Shirin Ebadi was awarded the Nobel Prize for Peace in 2003. The Norwegian Nobel Committee wrote that Dr Ebadi was awarded the Prize "for her efforts for democracy and human rights. She has focused especially on the struggle for the rights of women and children". For more information about the Anna Lindh lecture please visit: www.rwi.lu.se/publicseminars/anna-lindh/allecture.shtml

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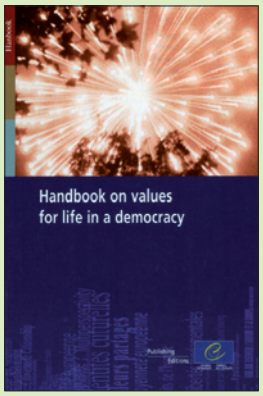


Handbook on values for life in a democracy (2009)

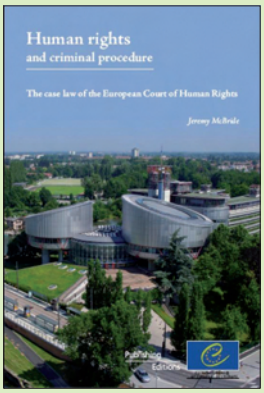
ISBN 978-92-871-6554-1, €23/US$46

Awareness and appreciation of Europe's rich diversity of cultures and heritages and how they have interacted with each other over time are essential preconditions for mutual respect, peaceful coexistence, intercultural dialogue, a shared attachment to common values and an emerging European cultural citizenship. These core «procedural» values need to be practised and upheld not only in the law courts but in our everyday dealings with each other. Otherwise they become meaningless and we will cease to have any real sense of commitment to them. Just as we learn skills by practising them, so we acquire these values by practising them.

This handbook is structured around a series of key questions to promote discussion among young people about universal human rights and the implementation of core European values..

Human rights and criminal procedure - The case law of the European Court of Human Rights (2009)

ISBN 978-92-871-6689-0, €53/US$106

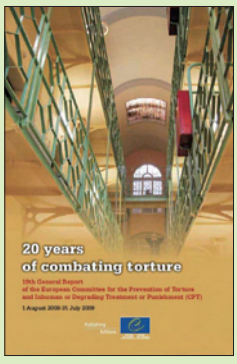


This handbook is intended to assist judges, lawyers and prosecutors to take account of the many requirements of the European Convention on Human Rights – both explicit and implicit – for the criminal process when interpreting and applying Codes of Criminal Procedure and comparable or related legislation.

It does so through significant extracts from key rulings of the European Court of Human Rights and the former European Commission of Human Rights dealing with complaints about violations of Convention rights and freedoms in the course of the investigation, prosecution and trial of alleged offences, as well as in the course of appellate and various other proceedings linked to the criminal process.

20 years of combating torture - 19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2009)

ISBN 978-92-871-6731-6, €19/US$38



In this General Report, the CPT looks back over two decades of combating torture and ill-treatment in Europe. It discusses the achievements to date – the concrete improvements brought about and the standards developed – as well as the challenges which lie ahead. The report gives a detailed snapshot of the CPT's activities over the last twelve months. Highlights from recently published visit reports and government responses are also provided; they offer an insight into some of the major issues with which the Committee is confronted during its work and the approaches of States to address them. A specific section describes the safeguards that should be offered to irregular migrants deprived of their liberty, with a special emphasis on the situation of children.

The report will be of interest to all those who are concerned by the treatment of persons deprived of their liberty, whether in prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social welfare institutions or any other institution

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