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COUNCIL OF EUROPE CONSEIL DE L'EUROPE


# Human rights information bulletin

Participants in the Conference on the future of the European Court of Human Rights, organised in Interlaken on 18 and 19 February 2010 by the Swiss chairmanship of the Committee of Ministers

No. 79, November 2009 -February 2010

# Human rights information bulletin

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# Treaties and conventions

## Signatures and ratifications

On 18 February 2010, the Minister of Justice of the Russian Federation, Alexander Konovalov, presented the instruments of ratification of Protocol No. 14 to the Secretary General on the occasion of the Conference on the future of the European Court of Human Rights which took place in Interlaken, Switzerland, on 18 and 19 February. Russia is thus joining the other 46 member states which have already ratified the Protocol, thereby enabling the latter to come into force on 1 June next.

### European Convention on Human Rights as amended by Protocols Nos. 11 and 14

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this declaration aims at securing the universal and effective recognition and observance of the rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

**Article 1 – Obligation to respect human rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

**Section I – Rights and freedoms**

**Article 2 – Right to life**

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

*a* in defence of any person from unlawful violence;

*b* in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

*c* in action lawfully taken for the purpose of quelling a riot or insurrection.

**Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article 4 – Prohibition of slavery and forced labour**

1 No one shall be held in slavery or servitude.

2 No one shall be required to perform forced or compulsory labour.

3 For the purpose of this article the term "forced or compulsory labour" shall not include:

*a* any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

*b* any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

*c* any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

*d* any work or service which forms part of normal civic obligations.

**Article 5 – Right to liberty and security**

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

*a* the lawful detention of a person after conviction by a competent court;

*b* the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

*c* the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

*d* the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

*e* the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

*f* the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

**Article 6 – Right to a fair trial**

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

*a* to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

*b* to have adequate time and facilities for the preparation of his defence;

*c* to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

*d* to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

*e* to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

**Article 7 – No punishment without law**

1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

**Article 8 – Right to respect for private and family life**

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Article 9 – Freedom of thought, conscience and religion**

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

**Article 10 – Freedom of expression**

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

**Article 11 – Freedom of assembly and association**

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests 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 freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

**Article 12 – Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according

to the national laws governing the exercise of this right.

**Article 13 – Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

**Article 14 – Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Article 15 – Derogation in time of emergency**

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

**Article 16 – Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

**Article 17 – Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**Section II – European Court of Human Rights**

**Article 19 – Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

**Article 20 – Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

**Article 22 – Election of judges**

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

**Article 23 – Terms of office and dismissal**

1 The judges shall be elected for a period of nine years. They may not be re-elected.

2 The terms of office of judges shall expire when they reach the age of 70.

3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

**Article 24 – Registry and rapporteurs**

1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.

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

**Article 25 – Plenary Court**

The plenary Court shall

*a* elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

*b* set up Chambers, constituted for a fixed period of time;

*c* elect the Presidents of the Chambers of the Court; they may be re-elected;

*d* adopt the rules of the Court;

*e* elect the Registrar and one or more Deputy Registrars;

*f* make any request under Article 26, paragraph 2.

**Article 26 – Single-judge formation, committees, Chambers and Grand Chamber**

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

2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

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

4 There shall sit as an ex-officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

**Article 27 – Competence of single judges**

1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2 The decision shall be final.

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

**Article 28 – Competence of committees**

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

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

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

2 Decisions and judgments under paragraph 1 shall be final.

3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that party has contested the application of the procedure under paragraph 1.b.

### Article 29 – Decisions by Chambers on admissibility and merits

1 If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2 A Chamber shall decide on the admissibility and merits of inter-state applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

### Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

### Article 31 – Powers of the Grand Chamber

The Grand Chamber shall

*a* determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

*b* decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

*c* consider requests for advisory opinions submitted under Article 47.

### Article 32 – Jurisdiction of the Court

1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

### Article 33 – Inter-state cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

### Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

### Article 35 – Admissibility criteria

1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2 The Court shall not deal with any application submitted under Article 34 that

*a* is anonymous; or

*b* is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

*a* the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

*b* the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4 The Court shall reject any application which it considers inadmissible under this article. It may do so at any stage of the proceedings.

### Article 36 – Third party intervention

1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have

the right to submit written comments and to take part in hearings.

2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

**Article 37 – Striking out applications**

1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

*a* the applicant does not intend to pursue his application; or

*b* the matter has been resolved; or

*c* for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

**Article 38 – Examination of the case**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

**Article 39 – Friendly settlements**

1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2 Proceedings conducted under paragraph 1 shall be confidential.

3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

**Article 40 – Public hearings and access to documents**

1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

**Article 41 – Just satisfaction**

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

**Article 42 – Judgments of Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

**Article 43 – Referral to the Grand Chamber**

1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.

3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

**Article 44 – Final judgments**

1 The judgment of the Grand Chamber shall be final.

2 The judgment of a Chamber shall become final

*a* when the parties declare that they will not request that the case be referred to the Grand Chamber; or

*b* three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

*c* when the panel of the Grand Chamber rejects the request to refer under Article 43.

3 The final judgment shall be published.

**Article 45 – Reasons for judgments and decisions**

1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 46 – Binding force and execution of judgments**

1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that party has failed to fulfil its obligation under paragraph1.

5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

**Article 47 – Advisory opinions**

1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

**Article 48 – Advisory jurisdiction of the Court**

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

**Article 49 – Reasons for advisory opinions**

1 Reasons shall be given for advisory opinions of the Court.

2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

**Article 50 – Expenditure on the Court**

The expenditure on the Court shall be borne by the Council of Europe.

**Article 51 – Privileges and immunities of judges**

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

**Section III – Miscellaneous provisions**

**Article 52 – Inquiries by the Secretary General**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

**Article 53 – Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

**Article 54 – Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

**Article 55 – Exclusion of other means of dispute settlement**

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

**Article 56 – Territorial application**

1 Any state may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this article, extend to all or any of the territories for whose international relations it is responsible.

2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4 Any state which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

**Article 57 – Reservations**

1 Any state may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2 Any reservation made under this article shall contain a brief statement of the law concerned.

**Article 58 – Denunciation**

1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a party to this Convention under the same conditions.

4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

**Article 59 – Signature and ratification**

1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2 The European Union may accede to this Convention.

3 The present Convention shall come into force after the deposit of ten instruments of ratification.

4 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it,

and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

## Others signatures and ratifications

### Protocol No. 14*bis* to the Convention for the Protection of Human Rights and Fundamental Freedoms

Protocol No. 14*bis* was signed by Lithuania (5 February 2010); Cyprus (16 December 2009); Ukraine (27 November 2009); Hungary (10 November 2009); Moldova (17 November 2009). It was ratified Sweden (23 December 2009); San Marino (2 December 2009).

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

Protocol No. 13 was ratified by Spain on 16 December 2009.

### European Social Charter (revised)

The Revised European Social Charter was signed by Croatia on 6 November 2009.

### Council of Europe Convention on Action against Trafficking in Human Beings

This Convention was signed by Azerbaijan on 25 February 2010 and Estonia on 3 February 2010.

### Council of Europe Convention on the Prevention of Terrorism

The Conventin was ratified by Norway (1 February 2010), Slovenia (18 December 2009) and Austria (15 December 2009).

### Council of Europe Convention on Access to Official Documents

Hungary ratified this Convention on 5 January 2010.

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

The Convention was ratified by Denmark on 18 November 2009.

### European Convention on the Adoption of Children (Revised)

The European Convention on the Adoption of Children (Revised) was signed by Portugal on 14 December 2009; Spain and the Netherlandson 30 November 2009.

### Criminal Law Convention on Corruption

The Criminal Law Convention on Corruption was ratified by Ukraine on 27 November 2009 and was signed by Liechtenstein on 17 November 2009.

### Additional Protocol to the Criminal Law Convention on Corruption

The Additional Protocol to the Criminal Law Convention on Corruption was ratified by Ukraine on 27 November 2009 and was signed by Liechtenstein on 17 November 2009.

### Civil Law Convention on Corruption

Spain ratified this Convention on 16 December 2009.

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

The Council of Europe Convention on the avoidance of statelessness in relation to state succession was signed by Germany on 16 December 2009.

### European Agreement on the Abolition of Visas for Refugees

The Agreement was ratified by Hungary on 6 November 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 expedites the processing of applications, as one procedural step is done away with.**

Court's case-load statistics (provisional) between 1 November 2009 and 1 February 2010:

- 926 (552) judgments delivered
- 890 (534) applications declared admissible, of which 882 (526) in a judgment on the merits and 8 (8) in a separate decision
- 10 881 (10 799) applications declared inadmissible
- 659 (608) 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.**

### Kart v. Turkey

*Judgment of 3 December 2009. Concerns: Relying on Article 6 § 1 of the Convention, Mr Kart complained that he had been deprived of his right to a fair trial, with the resulting restrictions on the rights of the defence, in that he had been deprived of the opportunity to clear his name.*

**Suspension of criminal proceedings because of parliamentary immunity did not violate applicant's right of access to a Court No violation of Article 6 § 1 (right to a fair trial)**

#### Principal facts

Atilla Kart is a Turkish national who was born in 1954 and lives in Ankara.

In the parliamentary elections of 3 November 2002, Mr Kart, who was a member of the CHP (the People's Republican Party), was elected to the Turkish Parliament.

Prior to his election he practised as a lawyer and in the course of his professional activities two sets of criminal proceedings were brought against him, one for insulting a lawyer and the other for insulting a public official.

As an MP he enjoyed parliamentary immunity, and the criminal proceedings against him were suspended under Article 83 of the Turkish Constitution, which stipulates that an MP who is alleged to have committed an offence before or after election shall not be arrested, questioned, detained or tried unless the National Assembly decides to lift his immunity.

Two requests for the applicant's immunity to be lifted were transmitted via the Prime Minister's office to the competent parliamentary authorities, who nevertheless decided to suspend the criminal proceedings for the duration of the applicant's term of parliamentary office.

Mr Kart challenged that decision before the plenary Assembly of the Turkish Parliament, relying on his

right to be judged in a fair trial. The files concerning the applicant's requests to have his immunity lifted remained on the plenary Assembly's agenda for over two years, until the next parliamentary elections, without ever being examined.

Mr Kart was re-elected in the 22 July 2007 general elections. In January 2008 the Speaker of the National Assembly informed him that the files concerning the lifting of his immunity were still pending.

## Decision of the Court

### *Preliminary remarks*

It was not for the Court to rule in an abstract manner on the scope of the protection states accorded their MPs, but to ascertain in this particular case how Mr Kart's parliamentary immunity had affected his right to a court.

This was the first time the Court had examined a case where it was the beneficiary of parliamentary immunity who complained that his immunity was preventing him from being tried.

### *Article 6 § 1*

Parliamentary immunity pursued the legitimate aim of guaranteeing the smooth functioning of Parliament and protecting its integrity and independence. The Court noted that although the immunity enjoyed by Turkish MPs appeared to be broader than in other states, the scope of the protection afforded had limits and could not be deemed excessive per se.

The procedure for examining requests to lift parliamentary immunity in Turkey was regulated by the Constitution and the Rules of Procedure of the National Assembly. Mr Kart complained that the decision-making procedure in question lacked clarity; the Court pointed out that decisions concerning the implementation of parliamentary liability were political decisions by nature, so they could not be expected to satisfy the same criteria of clarity as court decisions.

As to the decisions taken in Mr Kart's case, the Court noted that the applicant had had the possibility of filing an objection to the decisions to suspend the criminal proceedings against him. Furthermore, the refusal to lift his parliamentary immunity could not be considered discriminatory or arbitrary as similar requests, both from members of the parliamentary majority and from opposition members, had also been refused.

Criminal proceedings were still pending against Mr Kart and there was no denying that the uncertainty inherent in any criminal proceedings had been accentuated in this case by the impugned parliamentary procedure, as the delays it had caused had resulted in equivalent delays in the determination of the criminal proceedings against him. However, in standing for election in two successive parliamentary elections the applicant, who was a lawyer, had been aware that he was aspiring to a status that could well delay those proceedings. The Court stressed that the effect of the parliamentary decisions concerning Mr Kart's immunity had merely been to suspend the course of justice, without influencing it or taking part in it.

The damage Mr Kart complained that the criminal proceedings against him had done to his reputation was inherent in any official accusation, but there was no doubt in the Court's mind that the applicant's honour had been protected by respect for the presumption of innocence.

The failure to lift Mr Kart's immunity had merely constituted a temporary procedural obstacle to the determination of the criminal proceedings, but had not deprived him of the possibility of having his case tried on the merits. It had not been disproportionate to the legitimate aim pursued by the authorities, which was to protect the parliamentary institution.

The Court held by thirteen votes to four that there had been no violation of Article 6 § 1.

Judge Malinverni expressed a concurring opinion, Judge Bonello, joined by Judges Zupančič and Gyulumyan, expressed a dissenting opinion, and Judge Power expressed a dissenting opinion. These opinions are annexed to the judgment.

## Sejdić and Finci v. Bosnia and Herzegovina

*Judgment of 22 December 2009. Concerns: The applicants complained that, despite possessing experience comparable to that of the highest elected officials, they were prevented by the Constitution of Bosnia and Herzegovina, and the corresponding provisions of the Election Act 2001, from being candidates for the Presidency and the House of Peoples of the Parliamentary Assembly solely on the ground of their ethnic origins. They relied on Articles 3 (prohibition of inhuman and degrading treatment), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights, Article 3 of Protocol No. 1 (right to free elections) and Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention.*

**Prohibiting a Rom and a Jew from standing for election to the house of peoples of the Parliamentary Assembly and for the state presidency amounts to discrimination and breaches their electoral rights**
**Violation of Article 14 (prohibition of discrimination) taken together with Article 3 of Protocol No. 1 (right to free elections), and Violation of Article 1 of Protocol No. 12 (general prohibition of discrimination)**

### Principal facts

The applicants, Dervo Sejdić and Jakob Finci, are citizens of Bosnia and Herzegovina. They were born in 1956 and 1943 respectively and live in Sarajevo. The former is of Roma origin and the latter is a Jew. They are both prominent public figures. The Bosnian Constitution, in its Preamble, makes a distinction between two categories of citizens: the so-called "constituent peoples" (Bosniacs, Croats and Serbs) and "others" (Jews, Roma and other national minorities together with those who do not declare affiliation with any ethnic group). The House of Peoples of the Parliamentary Assembly (the second chamber) and the Presidency are composed only of persons belonging to the three constituent peoples. Mr Jakob Finci enquired with the Central Election Commission about his intentions to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly. On 3 January 2007 he received a written confirmation from the Central Election Commission that he was ineligible to stand to such elections because of his Jewish origin.

### Decision of the Court

#### *Admissibility*

In the first place, the Court considered that, given the applicants' active participation in public life, it was entirely coherent that they would have considered running for the House of Peoples or the Presidency. The applicants could therefore claim to be victims of the alleged discrimination. The fact that the present case raised the question of the compatibility of the national Constitution with the Convention was irrelevant in this regard.

The Court also noted that the Constitution of Bosnia and Herzegovina was an annex to the Dayton Peace Agreement, itself an international treaty. The power to amend it was, however, vested in the Parliamentary Assembly of Bosnia and Herzegovina, which was clearly a domestic body. In addition, the powers of the international administrator for Bosnia and Herzegovina (the High Representative) did not extend to the State Constitution. Accordingly, the contested provisions came under the responsibility of the respondent state.

#### *Merits*

##### House of Peoples of the Parliamentary Assembly

The Court noted that although the House of Peoples of the Parliamentary Assembly was composed of indirectly elected members, it enjoyed very wide legislative powers. Article 14 taken in conjunction with Article 3 of Protocol No. 1 was therefore applicable.

The Court reiterated that discrimination occurred every time that persons in similar situations were treated differently, without an objective and reasonable justification. Where a difference in treatment was based on race or ethnicity, the notion of objective and reasonable justification had to be interpreted as strictly as possible. The Court had already held in its case-law that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

In the present case, in order to be eligible to stand for election to the House of Peoples of Bosnia and Herzegovina, one had to declare affiliation with one of the "constituent peoples" of Bosnia and Herzegovina, which the applicants had not wished to do on account of their Roma and Jewish origins respectively.

Under the Constitution, Bosnia and Herzegovina is composed of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The rule limiting the applicants' eligibility rights was based on power-sharing mechanisms that made it impossible to adopt decisions against the will of the representatives of one of the "constituent peoples" of Bosnia and Herzegovina. Thus, relevant provisions included a "vital interest veto", a "veto of the Entities", a two-Chamber system (with a House of Peoples made up of five Bosniacs and five Croats from the Federation of Bosnia and Herzegovina and five Serbs from Republika Srpska) and a collective Presidency of three members, composed of a Bosniac and a Croat from the Federation of Bosnia and Herzegovina and a Serb from Republika Srpska.

The Court acknowledged that this system, put in place at a time when a fragile ceasefire had been accepted by all the parties to the inter-ethnic conflict that had deeply affected the country, pursued the legitimate aim of restoring peace. It noted, however, that the situation in Bosnia and Herzegovina had improved considerably since the Dayton Peace Agreement and the adoption of the Constitution, as borne out by the fact that closure of the international administration of the country was now being envisaged.

The Court recognised the recent progress following the Dayton Peace Agreements and noted that, for the first time, Bosnia and Herzegovina had amended its Constitution in 2009 and that it had recently been elected a member of the United Nations Security Council for a two-year term. Nonetheless, the Court agreed with the Government that the time was perhaps still not ripe for a political system which abandoned the power-sharing mechanism in place and would be a simple reflection of majority rule. As the Venice Commission had clearly demonstrated in its Opinion of 11 March 2005, however, there

existed mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of the communities which did not belong to the "constituent peoples". Furthermore, when it joined the Council of Europe in 2002, Bosnia and Herzegovina undertook to review the electoral legislation within one year, and it had ratified the Convention and the Protocols thereto without reservations. By ratifying a Stabilisation and Association Agreement with the European Union in 2008, it had committed itself to amending electoral legislation regarding members of the Bosnia and Herzegovina Presidency and House of Peoples delegates to ensure full compliance with the European Convention on Human Rights and the Council of Europe post-accession commitments within one to two years.

As a consequence, the Court concluded by 14 votes to three that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and had therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.

### Presidency of Bosnia and Herzegovina

With regard to the eligibility to stand for the Presidency of Bosnia and Herzegovina, the applicants relied only on Article 1 of Protocol No. 12. The Court noted that whereas Article 14 of the Convention prohibited discrimination in the enjoyment of "the rights and freedoms set forth in ... the Convention", Article 1 of Protocol No. 12 extended the scope of protection to "any right set forth by law". It thus introduced a general prohibition of discrimination. The applicants contested the constitutional provisions rendering them ineligible to stand for election to the Presidency of Bosnia and Herzegovina. Consequently, whether or not elections to the Presidency fell within the scope of Article 3 of Protocol No. 1, their complaint concerned a "right set forth by law", which made Article 1 of Protocol No. 12 applicable.

The Court reiterated that the concept of discrimination was to be interpreted in the same manner with regard to Article 14 and in the context of Article 1 of Protocol No. 12, although the latter provision had a different scope. It followed that, for the reasons put forward with regard to the elections to the House of Peoples, the constitutional provisions under which the applicants were ineligible for election to the Presidency had also to be considered discriminatory. Accordingly, the Court concluded by 16 votes to one that there had been a violation of Article 1 of Protocol No. 12.

The Court also considered, unanimously, that it was not necessary to examine the case under Article 3 of Protocol No. 1 taken alone or in conjunction with Article 1 of Protocol No. 12.

Finally, it considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants and ordered the respondent state to pay 1 000 euros to the first applicant and 20 000 euros to the second applicant for costs and expenses.

Judge Mijović, joined by Judge Hajiyev, expressed a partly concurring and partly dissenting opinion. Judge Bonello expressed a dissenting opinion. The texts of these opinions are annexed to the judgment.

## Guiso-Gallisay v. Italy

*Judgment of 22 December 2009. Concerns: The applicants alleged that the occupation of their land had infringed their right to the peaceful enjoyment of their possessions, guaranteed by Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. The application was lodged with the European Court of Human Rights on 7 April 2000 and declared admissible on 2 September 2004.*

### Principal facts

The applicants are three Italian nationals: Stefano Guiso-Gallisay, Gian Francesco Guiso-Gallisay and Antonella Guiso-Gallisay who were born in 1959, 1948 and 1952 respectively.

In 1977 the Italian Administration occupied the land that the applicants owned in Nuoro (Sardinia) with a view to its expropriation and began to develop it. In the absence of any formal expropriation accompanied by compensation, the applicants brought proceedings seeking damages for the unlawful occupation of their land.

In a judgment of 8 December 2005, the Court held that the interference with the applicants' right to the peaceful enjoyment of their possessions through the constructive expropriation of their land was incompatible with the principle of legality and that there had accordingly been a violation of Article 1 of Protocol No. 1 to the Convention. It also held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision.

The judgment on just satisfaction was delivered on 21 October 2008 when the Court decided to vary its case-law on application of Article 41 in the case of indirect expropriation. The method used hitherto was to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of loss of earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the state then adding the value of the land in today's prices. However, the Court considered that this method of compensation was not justified and could lead to unequal treatment between applicants depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. In order to assess the loss sustained by the applicants, it therefore decided that the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned should be taken into consideration. The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount. In the present case, the sum awarded for pecuniary damage

**Assessment of loss caused by constructive expropriation**
**Application of Article 41 (just satisfaction)**

amounted to 1 803 374 euros for the three applicants jointly. The Court also awarded them 45 000 euros for non-pecuniary damage and 30 000 euros for costs and expenses.

On 26 January the case was referred to the Grand Chamber at the applicants' request. A public hearing was held at the Human Rights Building, Strasbourg, on 17 June 2009.

### Decision of the Court

The Grand Chamber confirmed the change in the case-law described above with regard to the application of Article 41 in cases of constructive expropriation.

It emphasised that the new principles laid down in its judgment could be applied by the national courts in the disputes which were currently pending before them and in future cases.

With regard to the application of those principles to the applicants' case, the Grand Chamber reached a different conclusion from the Chamber. The latter had held that the date from which the applicants had been certain, from a legal standpoint, of having lost their right of ownership to the disputed property (the date used as the basis for assessing the damage sustained) was 14 July 1997, when the Nuoro District Court declared that the expropriation of the applicants' land was unlawful. The Grand Chamber found, on the contrary, that the Nuoro District Court had held in its 1997 judgment that the applicants had lost part of their property in 1982 and another part in 1983. In consequence, it used those latter dates as the basis for assessing the just satisfaction to be awarded to the applicants.

Finally, in application of Article 41, the Grand Chamber awarded the three applicants 2 145 000 euros jointly in respect of pecuniary damage, 45 000 euros in respect of non-pecuniary damage and 35 000 euros for costs and expenses.

Judge Spielmann expressed a dissenting opinion which is annexed to the judgment.

## Selected Chamber judgments

### Kolevi v. Bulgaria

*Judgment of 5 November 2009. Concerns: unlawful detention of a senior bulgarian prosecutor and ineffective investigation into his murder.*

**Violations of Article 2 (right to life) and Article 5 §§ 1, 3 and 4 (right to liberty and security)**

### Principal facts

The first applicant, Nikolai Kolev, was a Bulgarian national born in 1949. He died in December 2002. His wife and two children maintained his application after his death and submitted additional complaints.

Mr Kolev was a high-ranking prosecutor; he served as Deputy Chief Public Prosecutor of Bulgaria between 1994 and 1997. In January 2001, upon an application by the Chief Public Prosecutor, he was dismissed from his position as a prosecutor at the Supreme Cassation Prosecution Office with an order sending him into retirement. Following his appeal submitting that he had neither reached the requisite age nor had asked for retirement, the courts decided in his favour. He resumed work as a prosecutor, this time at the Supreme Administrative Prosecution Office.

Mr Kolev publicly stated his opinion that Mr F., the Chief Public Prosecutor, who occupied that post between 1999 and 2006, suffered from a psychiatric disorder, committed unlawful acts and ordered criminal proceedings on fabricated charges against persons he found inconvenient. Mr Kolev alleged that, as a retribution for his disagreements with the Chief Public Prosecutor, he himself had been retired compulsorily.

At the time, other public figures also expressed publicly concerns about the mental health of the Chief Public Prosecutor and alleged that he had committed a number of serious criminal acts.

Within a short period of time after Mr Kolev's public accusations, several sets of criminal proceedings were brought against him and members of his family, on various unrelated charges. In the first half of 2001, Mr Kolev wrote to the authorities and the press stating that he expected he would be arrested on charges of illegal possession of drugs which would be planted on him in an attempt to silence him.

On 20 June 2001 Mr Kolev was arrested in front of his home. According to the official record, small quantities of heroin, cocaine, a hand gun and other belongings were seized. On the day of the arrest, a prosecutor ordered Mr Kolev's provisional detention for 72 hours, at the expiry of which a new prosecutor ordered his detention for another 72 hours without mentioning the first order. Both orders were based on the Code of Criminal Procedure. Mr Kolev was charged with illegal possession of drugs and a fire-arm. He alleged that he had seen the prosecutors place the drugs among his possessions at the time of his arrest. He repeatedly challenged his continuous detention after the expiry of the first 72 hours. Initially, the court found that Mr Kolev's detention before 25 June was not subject to judicial control. in September 2001 it placed him under house arrest and ultimately released him in November 2001. In February 2002, the criminal proceedings against him were terminated as the court found that he enjoyed immunity from prosecution.

In November 2002 the Supreme Judicial Council (the Council) dealt with the public accusations against the Chief Public Prosecutor submitted by a former member of Parliament. Many high-placed officials, including prosecutors, the head of the National Security Service and a former Interior Minister testified against the Chief Public Prosecutor submitting that he terrorised and punished every subordinate who dared disobey his orders including when those were unlawful. Information about alleged serious criminal acts committed by him was also submitted. The Council called on the Chief Public Prosecutor to resign, which he refused to do.

Mr Kolev repeatedly voiced in public his fears that he might be killed as part of a merciless campaign against him orchestrated by the Chief Public Prosecutor. On the evening of 28 December 2002 he was shot dead in front of his home. An investigation was opened on the same day and a number of investigative steps were carried out in the days and weeks that followed, in-

cluding expertises and witness questioning. The same former member of Parliament who challenged the Chief Public Prosecutor before the Council testified in detail about earlier events concerning crimes allegedly committed by the Chief Public Prosecutor. He, Mr Kolev's family and other persons stated their conviction that the Chief Public Prosecutor and persons from the national anti-terrorist squad had been behind the murder. Although a number of new investigative acts were ordered and carried out, the investigation was suspended repeatedly, the last time in September 2008, for failure to identify the perpetrator.

## Decision of the Court

### *Article 5 complaints:*

#### Bringing Mr Kolev promptly before a judge

The Court first noted that Article 5 § 3 of the Convention required that a person be brought promptly before a judge or judicial officer as a guarantee against possible ill-treatment or unjustified limitations on a person's liberty. The Bulgarian authorities had not explained why it had not been possible to bring Mr Kolev before a judge earlier than five days and eight hours after his arrest as had been the case. Furthermore, the Bulgarian law applicable at the time had been deficient in that it either allowed blanket authorisation for or did not prohibit consecutive periods of police or prosecutor-ordered detention before a person was brought before a judge. The Court held unanimously that this deficiency in the law and the acts of the prosecutors had resulted in a violation of Article 5 § 3 of the Convention.

#### Unlawful and excessively long detention

The Court limited its examination to the period between 13 September and 29 November 2001, the complaint concerning the remaining period having been declared inadmissible. It found that Mr Kolev's deprivation of liberty had been unlawful under domestic law as he had enjoyed immunity from prosecution at the time and domestic law had expressly and clearly prohibited criminal proceedings against and the detention of persons who enjoyed such immunity. Therefore, the detention order in respect of Mr Kolev had been invalid and as such contrary to Article 5 § 1 of the Convention.

Furthermore, the Court did not accept the Government's arguments that the domestic case-law had not been settled at the time of Mr Kolev's detention and it had been thus unclear whether dismissal from office removed immunity with immediate effect or when the dismissal was upheld on appeal. The Court found that it had been flagrantly obvious that the dismissal order had been unlawful, as Mr Kolev had neither reached retirement age, nor asked for retirement. The Court also held unanimously that a lack of clarity in the legal rules governing deprivation of liberty, if it existed in the relevant domestic law, opened the door to arbitrariness and was therefore in breach of Article 5 § 1. Given this finding, the Court did not consider it necessary to examine separately the length of Mr Kolev's detention.

#### Prompt examination of appeal against detention

The Court found that Mr Kolev's appeal against his detention had only been examined 36 days after he had lodged it due, in particular, to a delay in its transmission. This delay had been unlawful and arbitrary, both in terms of domestic law which required that such appeals be transmitted to the courts immediately, and in terms of the Convention which required a speedy examination by a court. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 4.

### *Article 2 complaint (ineffective investigation):*

It was undisputed that the investigation into Mr Kolev's killing had started promptly and that numerous urgent and indispensable investigative steps had been taken. The applicants had complained, however, that the investigation had lacked independence and objectivity.

The Court noted that the investigative authorities had before them solid evidence of a serious conflict between Mr Kolev and Mr F., the Chief Public Prosecutor at the time. They had been aware that Mr F. had ordered or approved unlawful acts against Mr Kolev, such as his dismissal, his arrest and detention, and the bringing of certain unfounded criminal charges against him and his family. The investigators had also received testimonies of persons considering that high-ranking prosecutors, including the Chief Public Prosecutor himself, might have been implicated in Mr Kolev's murder. Consequently, in the absence of clear evidence that these allegations were groundless, the investigators should have examined them and should have undertaken the necessary investigation steps, even if the allegations eventually proved unfounded. That was decisive in the light of the Convention requirement that investigations' conclusions must be based on thorough, objective and impartial analysis of all relevant elements.

The Court noted that up until September 2003 the Bulgarian Constitution did not make it possible to bring criminal charges against the Chief Public Prosecutor against his will. While eventually the law had been changed, in practice no Bulgarian prosecutor would have brought charges against the Chief Public Prosecutor, as admitted by the Bulgarian Government. That had been the consequence of a number of factors, such as the centralised structure of the Prosecution service, the working methods which had prevailed when Mr F. had been the Chief Public Prosecutor and the existing institutional arrangement. In particular, the prosecutors alone had the exclusive power to bring criminal charges while the Chief Public Prosecutor had full control over each and every decision issued by a prosecutor or an investigator. In addition, the Chief Public Prosecutor could only be removed from office by decision of the Supreme Judicial Council, some of whose members were his subordinates. The Court observed that this arrangement has been repeatedly criticised in Bulgaria as failing to secure sufficient accountability. The Court also considered highly relevant that the Government had not informed the Court of any investigation ever undertaken into any of the numerous allegations made publicly about unlawful and criminal acts allegedly committed by the former Chief Public Prosecutor.

In these circumstances, given that the investigation of Mr Kolev's murder had been for practical purposes under the control of the Chief Public Prosecutor until the end of his term of office in 2006, that his possible involvement had not been investigated and that after 2006 no serious investigative measures had been undertaken, the Court held unanimously that the investigation had not been independent and effective, and there had been a violation of Article 2.

## Suljagić v. Bosnia and Herzegovina

*Judgment of 3 November 2009. Concerns: structural problem relating to Bosnia and Herzegovina's repayment scheme for foreign currency deposited before the dissolution of Yugoslavia*

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

### Principal facts

The applicant, Mustafa Suljagic, is a citizen of Bosnia and Herzegovina who was born in 1935. Working abroad in the 1970s and 1980s, he had deposited foreign currency with a bank in Tuzla during the era of the Socialist Federal Republic of Yugoslavia (SFRY).

The bank was nationalised after Bosnia and Herzegovina became independent and subsequently sold to a commercial bank in Slovenia. Following a complaint by the applicant about his inability to withdraw his funds, the Human Rights Commission of Bosnia and Herzegovina in 2005 found the relevant legislation, which did not allow withdrawal of "old" foreign-currency savings but only gave savers the possibility to use their deposits to purchase the state-owned flats in which they lived, to be in breach of the Convention.

In April 2006 the Old Foreign-Currency Savings Act entered into force, providing for the recompense of original deposits. Interest accrued by 1991 was to be calculated at the original rate, whereas interest accrued from January 1992 until 15 April 2006 was to be cancelled and recalculated at an annual rate of 0.5%. The Constitutional Court considered this reduction to be justified given the need to reconstruct the national economy following the war in Bosnia. The assessment of the amounts due to each claimant was to be carried out by verification agencies. Claimants having obtained verification certificates were entitled to a cash payment of up to 1,000 convertible marks (BAM; the equivalent of EUR 500) and any remaining amount was to be reimbursed in government bonds.

However, in the Federation of Bosnia and Herzegovina, one of the administrative entities of the State, bonds due in March 2008 have not yet been issued and the first instalment of the amortisation plan for the bonds was paid almost eight months after it was due.

### Decision of the Court

The Court first noted that, notwithstanding the fact that the application had been lodged in 2002, it would limit its analysis to the current legislation on "old" foreign-currency savings.

Concerning the applicant's complaint about the limited cash payments, the Court observed that in addition to the initial payment, according to the amortisation plan for the government bonds, he was entitled to receive his entire old foreign-currency savings in eight instalments. Given the effects of the war and the ongoing reforms of the economic structure the Court considered that the State could limit access to savings. The Court did not see any reason why the applicant would not be able to sell the bonds for anything near their nominal value. Moreover he was not required to sell them, but could instead opt for the cash payments in eight instalments, one of which he had already received.

Regarding the interest rate for the period from January 1992 to April 2006, the Court took note of the fact that the neighbouring countries, in which similar repayment schemes were set up, had agreed to pay considerably higher interest rates. Nevertheless, the Court did not consider this factor sufficient to render the current legislation contrary to Article 1 of Protocol No. 1, thereby following the argument of the Constitutional Court of Bosnia and Herzegovina regarding the need to reconstruct the national economy following the war.

The Court agreed with the applicant, however, that the implementation of the legislation was unsatisfactory. As a result of the fact that the bonds due in March 2008 had not been issued the applicant was still unable to sell them on the Stock Exchange and thus obtain early cash payments. Moreover there had been a delay in paying the instalments.

Notwithstanding the fact that the "old" foreign currency savings inherited from the SFRY constituted a considerable burden on the successor States, the rule of law underlying the Convention required the Contracting Parties to consistently apply the laws they had enacted. The Court therefore held unanimously that in view of the deficient implementation of the legislation there had been a violation of Article 1 of Protocol No. 1.

The Court moreover unanimously decided to adjourn, for six months from the date on which the judgment becomes final, the proceedings in any cases concerning "old" foreign-currency savings in the Federation of Bosnia and Herzegovina and in the administrative entity of the Brčko District in which the applicants have obtained verification certificates (like the applicant in the present case).

Under Article 46 (binding force and execution of judgments), the Court noted that the case concerned a systemic problem, namely the shortcomings of the repayment scheme for foreign currency deposited before the dissolution of the SFRY. This problem lay behind more than 1,350 similar applications currently pending before the Court.

The Court held unanimously that Bosnia and Herzegovina had to ensure, within six months from the date on which the judgment becomes final, that in the Federation of Bosnia and Herzegovina government bonds are issued, outstanding instalments are paid and that, in the case of late payments of forthcoming instalments, default interest is paid at the statutory rate.

## Gochev v. Bulgaria

*Judgment of 26 November 2009. Concerns: withdrawal of passport for more than six years without appropriate review.*

**Violation of Article 2 of Protocol No. 4 (freedom of movement)**

### Principal facts

The applicant, Mr Georgi Stefanov Gochev, is a Bulgarian national who was born in 1958 and lives in Varna (Bulgaria).

In October 1999 and April 2001 enforcement orders were issued against the applicant at the request

of private companies to which Mr Gochev owed money.

In decisions of 21 December 2001 and 27 May 2002, in accordance with the Bulgarian Identity Documents Act 1998, the director of the Department for Identity Documents ordered Mr Gochev's passport to be withdrawn and instructed the competent authorities not to issue him with a new one.

Mr Gochev made several appeals to the Supreme Administrative Court, but to no avail: the court upheld the impugned decisions.

His creditors having made no further claims, the enforcement proceedings against Mr Gochev were discontinued and he has been free to leave the country since 17 May 2008.

### Decision of the Court

A degree of ambiguity in the law on which the authorities had based their decision to restrict the applicant's freedom of movement could not in itself lead to the conclusion that the interference had been unforeseeable to the extent that it was unlawful.

The Court reiterated that the domestic authorities were under an obligation to ensure that a breach of an individual's right to leave his or her country was, from the outset and throughout its duration, justified and proportionate in view of the circumstances. Such review should normally be carried out, at least in the final instance, by the courts, since they offered the best guarantees of the independence, impartiality and lawfulness of the procedures.

In this case, however, Mr Gochev had been prevented from leaving the country for more than six years and four months, without any judicial review of the measures concerned. Once the measure had been imposed the authorities had not sought relevant information on the applicant's personal situation or the circumstances of his failure to pay his debts. Nor had the courts effectively reviewed the need for the measure. Mr Gochev had thus been subjected to measures of an automatic nature, with no limitation as to their scope or duration.

The Court accordingly found that the Bulgarian authorities had failed in their duty to ensure that the interference with Mr Gochev's right to leave the country was, from the outset and throughout its duration, justified and proportionate in the light of the circumstances. There had therefore been a violation of Article 2 of Protocol no. 4.

## Kalender v. Turkey

*Judgment of 15 December 2009. Concerns: authorities failed to take measures to protect the lives of railway accident victims.*

**Violations of Article 2 (right to life and investigation)**
**Violation of Article 6 § 1 (right to a fair hearing) on account of the length of the proceedings**
**No violation of Article 6 § 1 (impartiality of court)**

### Principal facts

The applicants are three Turkish nationals: Mrs Sevim Kalender and her children, Mr Adnan Kalender and Ms Aysun Kalender. They were born in 1940, 1964 and 1966 respectively and live in Istanbul.

The husband of Mrs Sevim Kalender, Kadir Kalendar, and his mother Şükriye Kalender, were killed in an accident in a railway station. On 4 May 1997 the victims had taken a TCDD (Turkish national railway company) train and on their arrival at the station they had been hit and killed by a goods train on the adjacent track.

A criminal investigation was opened immediately after the accident and liability was found to be shared between the TCDD – the safety measures in the station being insufficient – and the applicants' relatives, who had got off the train on the wrong side and had been attempting to cross the track by mistake. The train driver was acquitted of manslaughter and the Criminal Court then requested that a criminal investigation be opened into breaches of safety regulations on the part of the TCDD. However, the requested investigation was never opened.

The applicants brought civil proceedings against the TCDD seeking compensation for their pecuniary and non-pecuniary damage. The TCDD, for its part, claimed compensation for the pecuniary damage resulting from the delays caused by the accident. An expert appointed to assess the parties' respective liability concluded that Kadir and Şükriye Kalender were 60% liable and that the railway company was 40% liable.

After enforcement proceedings brought by the applicants, they obtained full payment of the compensation in June 2006.

### Decision of the Court

#### *Article 2*

All the court-appointed experts had concluded that the structure of the station and its management had failed to comply with minimum safety requirements: no subway, passage blocked by a goods train thus obliging passengers to cross the track, lack of information on the train, lack of staff. It could not therefore be said that any imprudent conduct on the part of the victims had been the decisive cause of the accident. On the contrary, the experts' reports and domestic courts had established a causal link between the shortcomings in railway safety and the deaths of Kadir and Şükriye Kalender. The authorities had thus failed in their duty to implement regulations for the purpose of protecting the lives of passengers. The Court therefore found that there had been a violation of Article 2.

Whilst the authorities had reacted speedily after the accident, having promptly opened a criminal investigation and proceedings against the train driver, the court's subsequent request for the opening of a criminal investigation concerning the TCDD had never been followed up. The Turkish criminal justice system had not therefore been in a position to determine the full extent to which the public servants and authorities were liable for the accident, and had not effectively implemented the provisions of domestic law that guaranteed the right to life. Accordingly, there had also been a violation of Article 2 in this respect.

#### *Article 6 § 1*

The expert's report on which the sharing of liability between the parties had been based was not disputed by the applicants. The complaint about a lack of impartiality and independence on the part of the court was thus rejected as ill-founded.

As to the applicants' second complaint under Article 6 § 1, the Court noted that the proceedings had

lasted eight years and seven months for two degrees of jurisdiction, whereas the case was not a particularly complex one and Mrs Kalender and her children had not delayed the proceedings. The enforcement had taken about three years, so payment of the compensation had been delayed accordingly. The Court therefore found that the length of the proceedings had not been reasonable and that there had been a violation of Article 6 § 1.

Having regard to its finding of a violation of Article 2 and of Article 6 § 1, the Court took the view that it did not need to examine the case under the other Articles relied upon by the applicants.

## Maiorano and Others v. Italy

*Judgment of 15 December 2009. Concerns: State was responsible in respect of double murder committed by dangerous offender on day release and failed to conduct a satisfactory investigation into individual negligence within the judicial system.*

**Violation of Article 2 (right to life)**

### Principal facts

The applicants, Roberta Maiorano, Immacolata Maiorano, Vincenza Maiorano, Mario Maiorano, Monica Maiorano, Matilde Cristofalo, Giovanni Maiorano and Cesare Maiorano, are Italian nationals who were born in 1968, 1959, 1964, 1956, 1973, 1937, 1955 and 1931 respectively. They live in the province of Lecce (Italy). They are relatives of Ms Maria Carmela Linciano and Ms Valentina Maiorano, who were murdered in 2005 by Mr Angelo Izzo.

In 1975, with two accomplices, Angelo Izzo held two young women in illegal confinement and subjected them, for several days, to rape and brutal abuse. One of them, who had been left for dead in the boot of a car with the corpse of her friend, had managed to attract the attention of the police. Izzo was quickly arrested and in 1976 was sentenced to life imprisonment. The Italian press at the time named this crime the "Circeo massacre", after the seaside resort where it took place.

In 1992, in spite of the numerous incidents in which he had been involved during his time in prison, leading to further convictions, and in particular an escape attempt with hostage-taking, Angelo Izzo began to benefit from periods of prison leave. The probation officers responsible for his assessment took the view that he had undertaken some self-analysis and had developed a significant feeling of guilt about the offences he had committed. On one occasion he failed to return to prison after his leave. He was arrested in France in 1993 with false identity documents and a large sum of money. The police authorities established that while he was on the run he had been helped by certain criminal organisations. He was sent back to Italy to serve the remainder of his prison sentences.

From 1999 onwards Angelo Izzo was again granted release on temporary licence, in particular for good conduct. In October 2003, after being allowed to leave prison by the sentence execution judge of Campobasso, provided that he did not frequent anyone with a criminal record, the carabinieri found him in a hotel room with a youth who was known to the police. They also noticed that three minors had been in his room shortly before. The youth and one of those minors were the sons of a fellow prisoner. Angelo Izzo was subsequently transferred to Palermo prison.

On 15 November 2004 Mr Izzo was granted day release by the sentence execution court of Palermo. That decision was taken on the basis of a comprehensive dossier containing an expert psychiatrist's report and probation officers' reports that were favourable to him. The day release scheme was implemented from 27 December 2004 onwards, under the supervision of the sentence execution judge of Campobasso, as Mr Izzo had in the meantime returned to Campobasso prison. The scheme included a resettlement programme and was subject to a certain number of restrictions, including an obligation to spend the night in prison and not to frequent anyone who was a repeat offender, outside the association which had agreed to employ him. The aim of this association was to assist in the rehabilitation of prisoners and other marginal groups.

On 25 August 2004 a fellow prisoner informed the police that Angelo Izzo had engaged him to kill the president of the sentence execution court of Campobasso. The police monitored calls made on his mobile phones and from phone boxes and discovered that he had re-established contacts with the criminal underworld. A second fellow prisoner informed the authorities about regular proposals he had received from Mr Izzo to participate in criminal activities. As it was waiting to ascertain whether Mr Izzo had actually re-offended, the public prosecutor's office did not forward this information to the sentence execution judge. The day release scheme was therefore maintained.

While on day release Angelo Izzo planned and carried out, with the help of two accomplices, the double murder of Maria Carmela Linciano and Valentina Maiorano, the wife and daughter of the seventh applicant, Giovanni Maiorano, a prisoner Mr Izzo had known in Palermo prison. The crime was discovered after one of his accomplices had been arrested in possession of a weapon. The victims' bodies were found the next day buried in a garden. By his own admission, Izzo had murdered them without any particular motive and had "felt elated" while he was doing it. He was sentenced once again to life imprisonment.

On 3 May 2005 the Minister of Justice opened an administrative inquiry to determine whether, in the procedure whereby Angelo Izzo had been granted day release, the judges of the sentence execution court of Palermo were accountable for disciplinary purposes. On 14 March 2008 the National Legal Service Council issued the judges concerned with a "reprimand", taking the view that in assessing Angelo Izzo's behaviour they had not taken into account the fact that he had already breached some of the rules governing his release on temporary licence.

On 20 September 2007 the applicants filed a criminal complaint against the public prosecutors of Campobasso and Bari, who, they alleged, should have forwarded to the sentence execution courts the information from Mr Izzo's two fellow prisoners about his suspicious behaviour and in particular his intention to commit a murder. That complaint was not acted upon.

## Decision of the Court

*Substantive limb of Article 2*

The Court reiterated that Article 2 of the Convention enjoined the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. In some cases there might be a requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act. In other cases it might be necessary to afford general protection to society against the potential acts of persons serving a prison sentence for a violent crime and to determine the scope of that protection.

In the present case, at the time Angelo Izzo was granted day release it had not been possible to identify Maria Carmela Linciano and Valentina Maiorano as potential targets of a lethal act on his part. The case thus concerned the obligation for the Italian judicial system to afford general protection to society against potential danger from a person who had been convicted for a violent crime.

In this connection, the Court could not find fault in general with the arrangements in Italy for the resettlement of prisoners. The system had a legitimate aim and provided for sufficient safeguards. However, the manner in which that system had been applied in Mr Izzo's precise case was questionable. Firstly, the Court noted that the positive factors which had led the Palermo sentence execution court to grant day release, in particular the favourable reports by probation officers and psychiatrists, had been counterbalanced by many indications to the contrary. Throughout his imprisonment Angelo Izzo had in fact regularly committed criminal offences and his behaviour had shown that he had a tendency to disrespect the law and authority. In view of the dangerousness of a repeat offender who had been convicted of exceptionally brutal crimes, those circumstances should have led the sentence execution court to be more prudent. Secondly, the Court noted that the public prosecutor of Campobasso had been promptly made aware of the fact that Angelo Izzo, once granted day release, had re-established contacts with the criminal underworld and was actively planning criminal acts. Despite the fact that it had taken this danger seriously, and had even ordered police surveillance, the public prosecutor's office had not informed the sentence execution judge with a view to the possible withdrawal of the day release scheme.

The Court took the view that the granting by the Palermo sentence execution court of day release to Angelo Izzo, despite his criminal record and behaviour in prison, together with the failure by the public prosecutor's office of Campobasso to forward information on his criminal activities to the sentence execution judge, had constituted a breach of the duty of care required by Article 2 of the Convention. Accordingly, the Court held unanimously that there had been a violation of Article 2 under its substantive head.

*Procedural limb of Article 2*

The Court reiterated that the positive obligations laid down in Article 2 of the Convention also required by implication that an efficient and independent judicial system should be set in place by which the cause of a murder could be established and the guilty parties punished, including where State agents or authorities were allegedly responsible.

In the present case, a criminal investigation into the murder of Maria Carmela Linciano and Valentina Maiorano had been opened quickly and had led to the sentencing of Angelo Izzo to life imprisonment. A disciplinary inquiry had also been conducted in order to determine the responsibilities of the judiciary in respect of this double murder.

However, whilst the Minister of Justice had brought disciplinary proceedings against the judges of the Palermo sentence execution court, as a result of which they had been reprimanded, the applicants' criminal complaint against the public prosecutors of Campobasso had not been acted upon and no disciplinary action had been taken against those prosecutors. Therefore, the State had not entirely fulfilled its positive obligation to ascertain whether any responsibility could be imputed to its agents in respect of the murder of Maria Carmela Linciano and Valentina Maiorano. The Court thus also held, unanimously, that there had been a violation of Article 2 of the Convention under its procedural head.

## Velcea and Mazăre v. Romania

*Judgment of 1 December 2009. Concerns: ineffective investigation into a man's murder of his wife and mother-in-law and failure to disqualify the murderer's family from inheriting from his wife.*

## Principal facts

The applicants, Stefan Velcea and Florica Mazăre, are Romanian nationals who were born in 1919 and 1949 respectively and live in Bucharest. They are the father and sister of Tatiana A. On 7 January 1993 Tatiana and her mother were killed during a fight that had started between Tatiana and her husband, Aurel A. On the night of the incident Aurel A's brother, George L., an off-duty police officer, had been with him. George L. had then left with his brother and taken him home. Shortly afterwards Aurel A committed suicide, leaving two letters in which he confessed to having killed his wife and mother-in-law. George L., acting in his capacity as a police officer, reported the incident to the police.

The criminal investigation in respect of Aurel A. was discontinued by the Bucharest County Court on the ground that the perpetrator of the crimes had died and no one else had been involved. The applicants obtained copies of the documents they had requested from the file. Following a criminal complaint lodged by the first applicant against George L., the Bucharest military prosecutor's office (which had jurisdiction because the accused was a police officer) opened an investigation, which was discontinued on 9 December 1994. On an appeal by the applicants, the Military General Prosecutor's Office of the Supreme Court of Justice decided to continue with the prosecution and the investigation was resumed. On 7 April 2003, following legislative amendments concerning the status of police officers, the case was referred to the prosecution service at the Bucharest County Court, which discontinued it on 2 March 2004. The applicants were not notified of those decisions.

**Violation of Article 2 (right to life) and violation of Article 8 (right to respect for private and family life)**

Proceedings for the division of Tatiana A's estate were commenced in 1993. The first applicant sought to have Aurel A's family disqualified from inheriting on the ground that his daughter had been killed by Aurel A. The Romanian Civil Code (Article 655 § 1 at the material time) provided that a person convicted of murdering the deceased was unworthy to inherit under the latter's estate. Applying a strict interpretation of that provision, the Romanian courts refused to declare Aurel A unworthy of inheriting because he had not been convicted of murder by a final court decision as he had committed suicide shortly after having killed his wife. Accordingly, Lucian L, Aurel A's brother, could inherit under Tatiana's estate.

### Decision of the Court

#### *Alleged violation of Article 2*

The Court reiterated that where an individual had been killed as a result of the use of force, an effective official investigation had to automatically be carried out both properly and speedily. There also had to be a sufficient element of public scrutiny of the investigation or its results.

In this case an investigation had indeed been carried out on the initiative of the authorities. However, although they had been informed of George L's involvement in the incident it had not been until several months later and after the applicants had lodged a formal criminal complaint that the authorities had opened an investigation in his regard.

Regarding whether the investigation had been adequate, the Court pointed out, among other things, that as George L had been a police officer (although he had not been acting in that capacity when the incident occurred), the investigation in his regard should have been carried out by independent officers. The independence of the military prosecutors who had carried out the investigation had been questionable given the national rules in force at the time according to which military prosecutors and police officers belonged to the same military structure, in accordance with the principle of hierarchical subordination. The role played by the prosecution service at the Bucharest County Court, which had merely discontinued the proceedings without undertaking any investigative measure, had not sufficed to offset the lack of independence of the military prosecutors.

It was also clear that the investigation – which lasted 11 years – into George L's involvement had not been conducted with the requisite speed.

Lastly, while acknowledging that the applicants had in some respects been kept involved in the proceedings, the Court found that they had not been duly informed of the orders of 9 December 1994 and 2 March 2004 discontinuing the proceedings, which might have prevented them from challenging those decisions effectively.

The Court held, unanimously, that the measures taken in respect of George L's involvement in the incident on 7 January 1993 had not amounted to a speedy and effective investigation and that accordingly Article 2 had been violated.

#### *Alleged violation of Article 8*

Inheritance rights were a feature of family life that could not be disregarded. The Convention did not require member States to enact legislative provisions in the area of worthiness to inherit, but where such provisions existed, as was the case under Romanian law, they had to be applied in a manner compatible with their aim.

In the present case there was no doubt that Aurel A had killed Tatiana A. The Court could not call into question the fundamental principle of domestic criminal law according to which criminal responsibility was personal and non-transferable. It found, however, that from a civil-law angle it was unacceptable that following a person's death (Aurel A here) the unlawfulness of his acts should remain without effect. In the specific circumstances of this case, by applying the provision of the Civil Code on causes of unworthiness mechanically and too restrictively, the Romanian courts had gone beyond what was necessary to ensure adherence to the principle of legal certainty.

The Court held, unanimously, that there had been a violation of Article 8.

## M. v. Germany

*Judgment of 17 December 2009. Concerns: retroactive extension of a prisoner's preventive detention not justified.*

**Violation of Article 5 § 1 (right to liberty) and Article 7 § 1 (no punishment without law)**

### Principal facts

The applicant, Mr M., is a German citizen, who was born in 1957 and is currently detained in Schwalmstadt Prison. After a long history of previous convictions, the Marburg Regional Court convicted him of attempted murder and robbery and sentenced him to five years' imprisonment in November 1986. At the same time it ordered his placement in preventive detention (Sicherungsverwahrung), relying on the report of a neurological and psychiatric expert, who found that the applicant had a strong tendency to commit offences which seriously harmed his victims' physical integrity, that it was likely he would commit further acts of violence and that he was therefore dangerous to the public.

After having served his full prison sentence, the applicant's repeated requests between 1992 and 1998 for a suspension on probation of his preventive detention were dismissed by two regional courts, respectively relying on an expert report and taking into consideration the applicant's violent and aggressive conduct in prison. In April 2001 the Marburg Regional Court again refused to suspend on probation the applicant's preventive detention and ordered its extension beyond September 2001, when he would have served ten years in this form of detention. This decision was upheld by the Frankfurt am Main Court of Appeal in October 2001, finding, as had the lower court, that the applicant's dangerousness necessitated his continued detention.

Both Courts relied on Article 67 d § 3 of the Criminal Code, as amended in 1998. Under that provision, applicable also to prisoners whose preventive detention had been ordered prior to the amendment, the duration of a convicted person's first period of preventive detention could be extended to an unlimited period of time. Under the version of the Article in force at the time of the applicant's offence and conviction, a first period of preventive detention could not exceed ten years.

In February 2004 the Federal Constitutional Court dismissed the applicant's constitutional complaint against these decisions in a leading judgment, holding that the prohibition of retrospective punishment under the German Basic Law did not extend to measures such as preventive detention, which had always been understood as differing from penalties under the Criminal Code's twin-track system of penalties on the one hand and measures of correction and prevention on the other.

### Decision of the Court

#### *Article 5 § 1*

The Court first confirmed that the applicant's preventive detention before expiry of the ten-year-period was covered by Article 5 § 1 (a) as being detention "after conviction" by the sentencing court.

As regards his preventive detention beyond the ten-year period, however, the Court found that there was no sufficient causal connection between his conviction and his continued deprivation of liberty. When the sentencing court ordered the applicant's preventive detention in 1986 this decision meant that he could be kept in this form of detention for a clearly defined maximum period. Without the amendment of the Criminal Code in 1998 the courts responsible for the execution of sentences would not have had jurisdiction to extend the duration of the detention.

The Court moreover found that the applicant's continued detention had not been justified by the risk that he could commit further serious offences if released, as these potential offences were not sufficiently concrete and specific so as to fall under sub-paragraph (c) of Article 5 § 1. Furthermore, the applicant could not have been kept as a "person of unsound mind" within the meaning of Article 5 § 1 (e). The Frankfurt am Main Court of Appeal had found that he no longer suffered from a serious mental disorder, which had been established earlier by the lower courts.

The Court therefore unanimously concluded that the applicant's preventive detention beyond the ten-year period amounted to a violation of Article 5 § 1.

#### *Article 7 § 1*

The Court principally had to determine whether preventive detention was to be qualified as a penalty for the purpose of Article 7 § 1. Like a prison sentence, preventive detention entailed a deprivation of liberty. In practice in Germany, persons subject to preventive detention were detained in ordinary prisons. There were minor alterations to the detention regime, but no substantial difference could be discerned between the execution of a prison sentence and that of a preventive detention order. Moreover, pursuant to the Execution of Sentences Act both forms of detention served the aim of protecting the public and helping the detainee to become capable of leading a responsible life outside prison.

The Court further noted, agreeing with the findings of the Council of Europe's Commissioner for Human Rights and the European Committee for the Prevention of Torture about preventive detention in Germany, that there was currently no sufficient psychological support specifically aimed at prisoners in preventive detention that would distinguish their condition of detention from that of ordinary long-term prisoners.

As to the severity of preventive detention, the Court noted that following the change in law in 1998 the measure no longer had a maximum duration and that the condition for its suspension on probation – there being no danger the detainee would re-offend – was difficult to fulfil. The measure was therefore among the severest which could be imposed under the German Criminal Code. The Court therefore concluded that preventive detention was indeed to be qualified as a penalty.

The Court was further not convinced by the Government's argument that the extension of the applicant's detention merely concerned the execution of the penalty imposed on the applicant by the sentencing court. Given that at the time of the offence the applicant could have been kept in preventive detention only for a maximum of ten years, the extension constituted an additional penalty which had been imposed on the applicant retrospectively.

The Court therefore unanimously concluded that there had been a violation of Article 7 § 1.

## Gurguchiani v. Spain

*Judgment of 15 December 2009. Concerns: harsher sentence imposed retroactively on convicted illegal immigrant.*

### Principal facts

The applicant, Giorgi Gurguchiani, is a Georgian national who was born in 1975 and was living illegally in Spain at the relevant time. In a judgment of 7 October 2002, upheld on appeal, Barcelona Criminal Court no. 20 sentenced him to 18 months' imprisonment for an attempted burglary in September 2002.

On 8 July 2003 the police administration's Deportation Department, under Article 89 of the Criminal Code as it read at the time, requested that the applicant be deported instead of serving his prison sentence. The Article provided that a criminal court enforcing a judgment in which a foreign national living illegally in Spain was given a prison sentence of up to six years had the possibility (there being no obligation) of replacing that sentence by deportation with exclusion from Spanish territory for between three and ten years. On 11 July 2003 Barcelona Criminal Court no. 21 decided, after Mr Gurguchiani had appeared before it, not to deport him as it found that the enforcement of his prison sentence would be more appropriate. The public prosecutor appealed against that decision.

On 6 April 2004 the Barcelona Audiencia Provincial upheld the appeal and ordered that Mr Gurguchiani be deported and prevented from re-entering Spain for ten years. It took the view that, with the new wording of Article 89 of the Criminal Code (since 1 October 2003), there was an obligation (save in exceptional cases not relevant here), where an illegal immigrant in Spain was given a prison sentence of up to six years, to replace that sentence by deportation. In accordance with the new Article 89, the Audiencia Provincial took its decision after hearing submissions from the public prosecutor alone. An amparo appeal lodged by the applicant

**Violation of Article 7 (no punishment without law)**

against that decision was dismissed by the Constitutional Court.

### Decision of the Court

As regards the complaint under Article 7 to the effect that in Mr Gurguchiani's case there had been a retroactive application of new criminal legislation that was less favourable than that in force at the time of the offence, the Court first had to verify the sentence he had faced at that time and to determine whether his sentence had been set within the statutory limits. The Court thus noted that the 18-month prison sentence given to him had been consistent with the Criminal Code in force in 2002, at the time of the attempted burglary. For the enforcement of such a prison sentence, the then Article 89 of the Criminal Code had left two possibilities open to the criminal court enforcing the judgment: the convicted person could either be imprisoned and not deported (as the court had decided on 11 July 2003) or be deported and prohibited from re-entering the country for between three and ten years, instead of going to prison.

In the Court's view, the replacement of Mr Gurguchiani's prison sentence by his deportation and his exclusion from Spain for ten years, as decided on appeal on 6 April 2004, meant that he had been given not only a new sentence but one that was harsher than the sentence provided for by law at the time he committed his offence. The decision had been based on a virtually automatic application of the new Article 89 (which had entered into force after the applicant's conviction), which had meant that the enforcing court no longer had a choice between maintaining the prison sentence and deporting the foreign national concerned. The new legislation had also prevented the applicant from being able to appear before the court on the same footing as the public prosecutor, in order to challenge his deportation if he so wished. Lastly, the provision at issue, in its 2003 version, required that the deported foreign national be prohibited from re-entering the country for a period of ten years, thus imposing a much harsher sentence than that provided for by the former Article 89 of the Criminal Code.

The Court thus found, unanimously, that there had been a violation of Article 7, as Mr Gurguchiani had been given a harsher sentence than that which had originally been provided for in respect of the offence for which he was convicted.

Having regard to the reasons for the Court's finding of a violation, it decided that it did not need to examine separately the complaint under Article 6 § 1 concerning the lack of a public hearing on appeal. No separate question was raised under Article 13.

## Gardel v. France

*Judgment of 17 December 2009. Concerns: inclusion in national sex offender database did not infringe the right to respect for private life.*

**No Violation of Article 8 (right to respect for private and family life)**

### Principal facts

The applicant is a French national who live in France; Fabrice Gardel, who was born in 1962 and is currently held in Monmédy Prison. He was sentenced in 2003 to terms of imprisonment for rape of 15 year old minors by a person in a position of authority.

On 9 March 2004 Law no. 2004-204 "adapting the judicial system to the evolution of criminality" created a national judicial database of sex offenders (later extended to include violent offenders). The provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005.

In November 2005, the applicant was notified of his inclusion in this database on account of his convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

### Decision of the Court

#### *Article 7*

The obligation arising from registration in the national Sex Offender Database pursued a purely preventive and dissuasive aim and could not be regarded as punitive in nature or as constituting a criminal sanction. The fact of having to prove one's address every year and to declare changes of address within a fortnight, albeit for a period of thirty years, was not serious enough for it to be treated as a "penalty".

The Court thus took the view that inclusion in the national Sex Offender Database and the corresponding obligations for those concerned did not constitute a "penalty" within the meaning of Article 7 § 1 of the Convention and that they had to be regarded as a preventive measure to which the principle of non-retrospective legislation, as provided for in that Article, did not apply. This complaint was thus rejected.

#### *Article 8*

The protection of personal data was of fundamental importance to a person's enjoyment of respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes.

The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicant had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation – thirty years maximum – was not disproportionate in relation to the aim pursued by the retention of the information.

Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.

The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

## G.N. and Others v. Italy

*Judgment of 1 December 2009. Concerns: discriminatory treatment in contaminated blood cases.*

**No violation of Article 2 (right to life) regarding the obligation to protect the lives of the applicants and their relatives**
**Violation of Article 2 regarding the conduct of the civil proceedings**
**Violation of Article 14 (prohibition of discrimination) in conjunction with Article 2**

### Principal facts

The applicants, Mr G.N., Mrs G.S., Mr D.C., Mrs G.D.M., Mr S.C., Mrs E.S. and Mrs D.C., are Italian nationals who were born in 1950, 1957, 1937, 1938, 1965, 1920 and 1973 respectively and live in Italy.

The first six applicants are the relatives of persons now deceased who contracted human immunodeficiency virus (HIV) or hepatitis C in the 1980s following blood transfusions carried out by the State health service. The same thing happened to the seventh applicant, Mrs D.C., who is the only surviving member of the infected group. The persons concerned had thalassaemia, a hereditary disorder whose sufferers need to be given blood and blood products in order to survive.

In 1993 a group of about a hundred persons commenced proceedings (the so-called "Emo uno" case) against the Ministry of Health ("the Ministry"), seeking compensation for damage sustained in similar cases. On various dates the applicants intervened in those proceedings. Following an appeal against the first-instance judgment, the Ministry was ordered to provide compensation only in respect of cases occurring after certain key dates in terms of the understanding of the viruses. As the applicants and their relatives had been infected before those dates, they did not obtain compensation. The Court of Cassation upheld that decision in 2005, taking the view that before hepatitis C and HIV had been identified by the global scientific community, no causal link had existed between the Ministry's conduct and the damage sustained.

A decree enacted in November 2003 enabled the Ministry to conclude out-of-court settlements with haemophiliacs infected in this manner. Because they suffered from thalassaemia, the applicants were unable to benefit. All the persons involved in the "Emo uno" case, with the exception of the applicants and ten others, settled out of court.

Two other groups of persons infected in the same circumstances brought actions for damages against the Ministry. These cases, known as "Emo bis" and "Emo ter", are still pending. In these proceedings the courts did not follow the guidelines established in "Emo uno" with regard to the starting dates from which the Ministry's responsibility was engaged vis-à-vis infected persons.

### Decision of the Court

#### *Article 2*

It had not been established that at the material time the Ministry had known or should have known about the risk of transmission of HIV or hepatitis C via blood transfusion, and the Court could not determine from what dates onward the Ministry of Health had been or should have been aware of the risk. Nor could the assessment of the Ministry's responsibility by the domestic courts in the "Emo uno" case be regarded as arbitrary or unreasonable. Accordingly, the Italian authorities could not be said to have failed in their duty to protect the life of Mrs D.C. and the other applicants' relatives. The Court therefore held that there had been no violation of Article 2 on this point.

The Court observed that while the Italian system, by offering the applicants the possibility of a civil remedy, had in theory satisfied the procedural requirements of Article 2, in practice the proceedings in question had lasted for periods ranging from three and a half years to over ten years depending on the applicant, despite the fact that exceptional diligence was called for in compensation proceedings brought by persons infected following blood transfusions. While the Court accepted that the proceedings had been complex, it observed that there had been delays and periods of inactivity, and noted that the subsequent proceedings before the Court of Cassation had lasted for three years and ten months. Lastly, the remedy provided by the "Pinto Act" in order to complain of the excessive length of proceedings would not have been suitable in the applicants' case. Accordingly, the Court considered that the authorities had not provided them with an adequate and prompt response and held that there had been a violation of Article 2 in this respect.

#### *Article 14*

The Court examined the applicants' complaint concerning discriminatory treatment under Article 14 in conjunction with Article 2.

With regard to the alleged discrimination against the applicants in relation to the infected persons who had brought the "Emo bis" and "Emo ter" proceedings, the Court considered that the difference between the findings of the Italian courts in these two cases and in the "Emo uno" case stemmed from a change in the case-law and did not provide sufficient basis for concluding that the first set of proceedings had been arbitrary and had given rise to discriminatory treatment. This part of the complaint was therefore rejected as being manifestly ill-founded.

As to the discrimination claimed by the applicants as thalassaemia sufferers or their heirs in relation to the haemophiliacs who had benefited from out-of-court settlements, the Court observed that there had been a difference in treatment between persons in similar situations. The distinction had been based on the type of hereditary disorder from which Mrs D.C. and the other applicants' relatives suffered and on the fact that, under the law, the Italian Government could only conclude out-of-court settlements with haemophiliacs. The Court therefore considered that the applicants had been subjected to discriminatory treatment and ruled in this regard that there had been a violation of Article 14 taken in conjunction with Article 2.

#### *Article 3*

As to the inhuman and degrading treatment alleged by the applicants on account of their infection, the Court noted that it had not been established that the risk of infection was known to the Italian authorities at the time, nor had there been any intention on their part to humiliate or debase the applicants or their relatives. This complaint was therefore declared inadmissible as being manifestly ill-founded.

#### *Article 8*

The applicants had not lodged a complaint with the Italian Court of Cassation concerning their right to respect for their private and family life and had therefore not exhausted domestic remedies. The Court also noted that the case did not disclose any appearance of an infringement of the applicants' rights in this regard. Accordingly, it declared the

complaint inadmissible as being manifestly ill-founded.

*Article 6 § 1*

The Court did not consider it necessary at this stage to examine the complaint concerning the length of the proceedings in the "Emo uno" case.

## Zaunegger v. Germany

*Judgment of 3 December 2009. Concerns: impossibility of securing judicial review of custody of a child born out of wedlock discriminates against father.*

**Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for family life)**

### Principal facts

The applicant, Horst Zaunegger, is a German national who was born in 1964 and lives in Pulheim (Germany). He has a daughter born out of wedlock in 1995, who grew up with both parents until their separation in August 1998 and from that time until January 2001 lived with the applicant. After the child had moved to live with the mother, the parents reached an agreement with the help of the Youth Welfare Office, according to which the applicant would have contact with the child on a regular basis.

Pursuant to the relevant provisions of domestic law, Article 1626a § 2 of the German Civil Code, the mother held sole custody for the child. As she was not willing to agree on a joint custody declaration, the applicant applied for a joint custody order. The Cologne District Court dismissed the application, holding that under German law joint custody for parents of children born out of wedlock could only be obtained through a joint declaration, marriage or a court order, the latter requiring the consent of the other parent. The decision was upheld by the Cologne Court of Appeal in October 2003.

Both courts referred to a leading judgment of the Federal Constitutional Court of 29 January 2003, which had found that the relevant provision of the Civil Code was constitutional with regard to the situation of parents of children born out of wedlock who had separated after 1 July 1998, the date an amended Law on Family Matters entered into force.

On 15 December 2003 the Federal Constitutional Court declined to consider the applicant's constitutional complaint.

### Decision of the Court

The Court noted that by dismissing the applicant's request for joint custody without examining whether it would be in the child's interest – the only possible decision under national law – the domestic courts had afforded him a different treatment in comparison with the mother and in comparison with married fathers. To assess whether this treatment was discriminatory for the purposes of Article 14, the Court first considered that the provisions on which the domestic courts' decisions had been based were aimed at protecting the welfare of a child born out of wedlock by determining its legal representative and avoiding disputes between the parents over custody questions. The decisions had therefore pursued a legitimate aim.

It further considered that there could be valid reasons to deny the father of a child born out of wedlock participation in parental authority, for example if a lack of communication between the parents risked harming the welfare of the child. These considerations did not apply in the present case, however, as the applicant continued to take care of the child on a regular basis.

The Court did not share the Federal Constitutional Court's assessment that joint custody against the mother's will could from the outset be assumed to be contrary to the child's interest. While it was true that legal proceedings on the attribution of parental authority could unsettle a child, domestic law provided for judicial review of the attribution of parental authority in cases where the parents were or had been married or had opted for joint parental authority. The Court did not see sufficient reasons why the situation of the present case should allow for less judicial scrutiny.

Consequently there was not a reasonable relationship of proportionality between the general exclusion of judicial review of the initial attribution of sole custody to the mother and the aim pursued, namely the protection of the best interests of a child born out of wedlock. The Court therefore held by 6 votes to 1 that there had been a violation of Article 14 taken together with Article 8.

The Court further held unanimously that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

## Muñoz Díaz v. Spain

*Judgment of 8 December 2009. Concerns: roma marriage: denial of survivor's pension was discriminatory.*

**Violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property)**

### Principal facts

The applicant, María Luisa Muñoz Díaz, is a Spanish national belonging to the Roma community. She was born in 1956 and lives in Madrid.

In November 1971 she married M.D., who also belonged to the Roma community, in a marriage solemnised according to the rites of that community. They had six children, who were all listed in a family record book issued by the Spanish authorities. In 1986 they were granted "large family" status.

M.D. died on 24 December 2000. He had worked as a builder and had paid social security contributions for over 19 years. Mrs Muñoz Díaz applied for a survivor's pension but it was refused by the National Social Security Institute on the ground that her marriage to M.D. had not been registered in the Civil Register. That decision was confirmed in May 2001.

The applicant applied to the Labour Court and, in a judgment of 30 May 2002, was recognised as being entitled to a survivor's pension. The court held that the National Social Security Institute's decision represented discriminatory treatment based on ethnic identity.

On an appeal by the other party, the Madrid Higher Court of Justice quashed that judgment on 7 November 2002, on the ground that the couple had not been married according to the applicable law but in a customary form that produced no civil effects.

The applicant lodged an amparo appeal but it was dismissed by a Constitutional Court judgment of 16 April 2007. The court found that Mrs Muñoz Díaz and M.D. had chosen not to get married in a statutory or other recognised form whilst being free to do, as anyone could enter into a civil marriage regardless of ethnic considerations. The court further pointed out the importance of limiting the survivor's pension to marital relationships, in a context of limited social security resources that had to cater for a wide variety of needs. One of the Constitutional Court judges delivered a dissenting opinion.

### Decision of the Court

#### *Article 14 taken together with Article 1 of Protocol No. 1*

Mrs Muñoz Díaz had had six children with M.D. and they had lived together until his death. The civil registration authorities had issued them with a family record book and they had obtained the administrative status of large family, for which the parents had to be "spouses". Moreover, M.D. had been covered by social security for more than 19 years and his benefit card had indicated that he supported the applicant, as his wife, and his six children. The Court noted that this card was an official document as it had been stamped by the National Social Security Institute.

The Court emphasised the importance of the beliefs that the applicant had derived from belonging to the Roma community, which had its own values that were well established and deeply rooted in Spanish society. The applicant could not have been required, without infringing her right to religious freedom, to marry under canon law – the only possibility in 1971 – when she expressed her wish to marry according to Roma rites.

The Court observed that there was an emerging international consensus amongst European States recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, to safeguard their interests and preserve cultural diversity.

The applicant had believed in good faith that the marriage solemnised according to Roma rites and traditions had produced all the effects inherent in the institution of marriage, especially as official documents showed her as a wife, and had thus had a legitimate expectation that she would be entitled to a survivor's pension. In their refusal the authorities had not taken account of her good faith or of her social and cultural specificities.

It was disproportionate for the Spanish State, which had granted large-family status, had provided health coverage to M.D.'s family and had collected M.D.'s social security contributions for over 19 years, then to have refused to recognise the effects of Mrs Muñoz Díaz's Roma marriage when it came to the survivor's pension. The Court could not accept the Government's argument that the applicant could have avoided the discrimination by entering into a civil marriage: to accept that a victim could have avoided discrimination by altering one of the factors at issue would render Article 14 devoid of substance.

The Court thus found, by six votes to one, that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1

#### *Article 14 taken together with Article 12*

The Court observed that civil marriage in Spain, as in force since 1981, was open to everyone, and it took the view that its regulation did not entail any discrimination on religious, cultural, linguistic or ethnic grounds.

Whilst certain religious forms (Catholic, Protestant, Muslim and Jewish) of expression of consent were accepted under Spanish law, they were recognised by virtue of agreements with the State and thus produced the same effects as civil marriage.

The fact that Roma marriage had no civil effects as desired by Mrs Muñoz Díaz did not constitute discrimination prohibited by Article 14. That complaint was thus rejected as manifestly ill-founded.

## Seyidzade v. Azerbaijan

*Judgment of 3 December 2009. Concerns: registration of a candidate in parliamentary elections refused arbitrarily.*

**Violation of Article 3 of Protocol 1 (right to free elections)**

### Principal facts

The applicant, Mr Miraziz Mirasgar oglu Seyidzade is an Azerbaijani national who was born in 1949 and lives in Baku.

Mr Seyidzade held the following positions: head of the education department of the Caucasus Muslims Board (Qafqaz Müsəlmanlar İdarəsi, the official governing body of Muslim religious organisations in Azerbaijan), member of the Qazi (Islamic Judges') Council (Qazılar Şurası) of the Caucasus Muslims Board, and director of the Sumgayit branch of Baku Islamic University. He was also a founder and editor-in-chief of "Kelam", a journal with Islamic religious content.

On an unspecified date, he applied to the electoral commission to be registered as a candidate for the November 2005 parliamentary elections. He submitted with his application an undertaking to terminate any professional activity incompatible with the office of member of parliament and by August 2005 he had resigned from all his positions involving professional religious activity. However, the electoral commission refused to register him as a candidate for the elections finding that he continued to act as a professional clergyman. Mr Seyidzade appealed unsuccessfully before several court instances. While acknowledging that he had resigned from his positions, the courts found that this fact did not exclude his engaging in professional religious activity which, in accordance with the Constitution and the Electoral Code, was an obstacle to standing for parliamentary elections.

### Decision of the Court

The Court first noted that the applicant had resigned from all his positions which could have been interpreted as "professional religious activity" believing that this would have made him eligible to

stand for election. However, without even specifying any reasons for their finding, the electoral authorities had considered him still a professional clergyman and consequently belonging to the category of persons affected by the domestic law restriction on people eligible to stand for election. The courts, like the electoral commission, had failed to point out on the basis of what definition and evidence had he been considered a clergyman.

The Court found that the relevant domestic law had not been clear or precise and thus had left considerable room for speculation as to the definition of the categories of persons whose rights had been restricted. Furthermore, the Azerbaijani authorities had not submitted examples of consistent interpretation given in domestic practice to the scope of the legal restriction on the right to stand for elections. In fact, the authorities had arbitrarily applied the restrictions in respect of Mr Seyidzade and had thus prevented him, without a clear or sufficient explanation, from exercising his right to free elections, in violation on Article 3 of Protocol 1.

## Rantsev v. Cyprus and Russia

*Judgment of 7 January 2010. Concerns: Cypriot and Russian authorities failed to protect 20-year old russian cabaret artiste from human trafficking*

**Violation of Article 2 (right to life) for failure to conduct effective investigation by Cyprus and no violation of this Article by Russia**
**Violations of Article 4 (prohibition of slavery and forced labour) by Cyprus and Russia**
**Violation of Article 5 (right to liberty and security) by Cyprus**

### Principal facts

The applicant, Mr Nikolay Rantsev, is a Russian national who was born in 1938 and lives in Svetlogorsk, Russia. He is the father of Ms Oxana Rantseva, also a Russian national, born in 1980, who died in strange and unestablished circumstances having fallen from a window of a private home in Cyprus in March 2001.

Ms Rantseva arrived in Cyprus on 5 March 2001 on an "artiste" visa. She started work on 16 March 2001 as an artiste in a cabaret in Cyprus only to abandon her place of work and lodging three days later leaving a note that she was going back to Russia. After finding her in a discotheque in Limassol some ten days later, at around 4 a.m. on 28 March 2001, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expelling her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquiries into her immigration status. The cabaret manager collected Ms Rantseva at around 5.20 a.m.

Ms Rantseva was taken by the cabaret manager to the house of another employee of the cabaret, where she was taken to a room on the sixth floor of the apartment block. The cabaret manager remained in the apartment. At about 6.30 a.m. on 28 March 2001 Ms Rantseva was found dead in the street below the apartment. A bedspread was found looped through the railing of the apartment's balcony.

Following Ms Rantseva's death, those present in the apartment were interviewed. A neighbour who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty at Limassol police station earlier that morning when the cabaret manager had brought Ms Rantseva from the discotheque. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. The applicant subsequently visited the police station in Limassol and requested to participate in the inquest proceedings. An inquest hearing was finally held on 27 December 2001 in the applicant's absence. The court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment in which she was a guest, but that there was no evidence to suggest criminal liability for her death.

Upon a request by Ms Rantseva's father, after the body was repatriated from Cyprus to Russia. Forensic medical experts in Russia carried out a separate autopsy and the findings of the Russian authorities, which concluded that Ms Rantseva had died in strange and unestablished circumstances requiring additional investigation, were forwarded to the Cypriot authorities in the form of a request for mutual legal assistance under treaties in which Cyprus and Russia were parties. The request asked, inter alia, that further investigation be carried out, that the institution of criminal proceedings in respect of Ms Rantseva's death be considered and that the applicant be allowed to participate effectively in the proceedings.

In October 2006, Cyprus confirmed to the Russian Prosecution Service that the inquest into Ms Rantseva's death was completed on 27 December 2001 and that the verdict delivered by the court was final. The applicant has continued to press for an effective investigation into his daughter's death.

The Cypriot Ombudsman, the Council of Europe's Human Rights Commissioner and the United States State Department have published reports which refer to the prevalence of trafficking in human beings for commercial sexual exploitation in Cyprus and the role of the cabaret industry and "artiste" visas in facilitating trafficking in Cyprus.

### Decision of the Court

#### *Unilateral declaration by Cyprus*

The Cypriot authorities made a unilateral declaration acknowledging that they had violated Articles 2, 3, 4, 5 and 6 of the Convention, offering to pay pecuniary and non-pecuniary damages to the applicant, and advising that on 5 February 2009 three independent experts had been appointed to investigate the circumstances of Ms Rantseva's death, employment and stay in Cyprus and the possible commission of any unlawful act against her.

The Court reiterated that as well as deciding on the particular case before it, its judgments served to elucidate, safeguard and develop the rules instituted by the Convention. It also emphasised its scarce case law on the question of the interpretation and application of Article 4 to trafficking in human beings. It concluded that, in light of the above and the serious nature of the allegations of trafficking in the case, respect for human rights in general required it to continue its examination of the case, notwith-

standing the unilateral declaration of the Cypriot Government.

*Admissibility*

The Court did not accept the Russian Government's submission that they had no jurisdiction over, and hence no responsibility for, the events to which the application pertained as it found that if trafficking occurred it had started in Russia and that a complaint existed against Russia's failure to investigate properly the events which occurred on Russian territory. It declared the applicant's complaints under Article 2, 3, 4 and 5 admissible.

*Right to life*

As regards Cyprus, the Court considered that the chain of events leading to Ms Rantseva's death could not have been foreseen by the Cypriot authorities and, in the circumstances, they had therefore no obligation to take practical measures to prevent a risk to her life.

However, a number of flaws had occurred in the investigation carried out by the Cypriot authorities: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had happened. There had therefore been a violation of Article 2 as a result of the failure of the Cypriot authorities to investigate effectively Ms Rantseva's death.

As regards Russia, the Court concluded that there it had not violated Article 2 as the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction. The Court emphasised that the Russian authorities had requested several times that Cyprus carry out additional investigation and had cooperated with the Cypriot authorities.

*Freedom from ill-treatment*

The Court held that any ill-treatment which Ms Rantseva may have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under Article 4.

*Failure to protect from trafficking*

Two non-governmental organisations, Interights and the AIRE Centre, made submissions before the Court arguing that the modern day definition of slavery included situations such as the one arising in the present case, in which the victim was subjected to violence and coercion giving the perpetrator total control over the victim.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that Article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. In light of its findings as to the inadequacy of the Cypriot police investigation under Article 2, the Court did not consider it necessary to examine the effectiveness of the police investigation separately under Article 4.

There had also been a violation of this Article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

*Deprivation of liberty*

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus. It held that the detention by the police following the confirmation that Ms Rantseva was not illegal had no basis in domestic law. It further held that her subsequent detention in the apartment had been both arbitrary and unlawful. There was therefore a violation of Article 5 § 1 by Cyprus.

The Court rejected the applicant's other complaints.

## Gillan and Quinton v. the United Kingdom

*Judgment of 12 January 2010. Concerns: police stop and search powers under anti-terrorism legislation too wide and not adequately safeguarded by domestic law against abuse.*

### Principal facts

The case concerned the police power in the United Kingdom under sections 44-47 of the Terrorism Act 2000 ("the 2000 Act") to stop and search individuals without reasonable suspicion of wrongdoing.

Under the 2000 Act a senior police officer may issue an authorisation, if he or she considers it "expedient for the prevention of acts of terrorism", permitting any uniformed police officer within a defined geographical area to stop any person and search the person and anything carried by him or her. The authorisation must be confirmed by the Secretary of State within 48 hours. A search can be carried out by a constable in an authorised area whether or not he has grounds for suspicion, but may only be 'for articles of a kind which could be used in connection with terrorism'. The police officer may request the individual to remove headgear, footwear, outer clothing and gloves and place his or her hand inside pockets, feel around and inside collars, socks and shoes and search hair. The search takes place in public and failure to submit to it amounts to an offence punishable by imprisonment or a fine or both.

Sections 44-47 of the 2000 Act came into force on 19 February 2001. A rolling programme of successive section 44 authorisations, each cov-

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

ering the whole of the Metropolitan Police district and each for the maximum permissible period (28 days), have been made and confirmed ever since that time.

Between 2004 and 2008 the total of searches recorded by the Ministry of Justice went from 33,177 to 117,278.

The applicants, Kevin Gillan and Pennie Quinton, are British nationals who were born in 1977 and 1971 respectively and live in London. On 9 September 2003 they were both stopped and searched by the police, acting under sections 44-47 of the 2000 Act, while on their way to a demonstration close to an arms fair held in the Docklands area of East London. Mr Gillan was riding a bicycle and carrying a rucksack when stopped and searched by two police officers. Ms Quinton, a journalist, was stopped and searched by a police officer and ordered to stop filming in spite of the fact that she showed her press cards. Mr Gillan was allowed to go on his way after having been detained for about 20 minutes; the record of Ms Quinton's search showed she was stopped for five minutes but she thought it was more like 30 minutes.

The applicants applied for judicial review. On 31 October 2003 the High Court dismissed the application. The Court of Appeal, on 29 July 2004, made no order on the applicants' claims against the Commissioner of the Metropolitan Police and dismissed the claim against the Secretary of State. On 8 March 2006 the House of Lords unanimously dismissed the applicants' appeals. In particular, the Law Lords were doubtful whether an ordinary superficial search of the person could be said to show a lack of respect for private life, so as to bring Article 8 of the European Convention on Human Rights into operation. Even if Article 8 did apply, the procedure was in accordance with the law and it would be impossible to regard a proper exercise of the power as other than proportionate when seeking to counter the great danger of terrorism.

## Decision of the Court

### *Article 8*

#### Whether there was an interference

The Court considered that the use of the coercive powers conferred by the anti-terrorism legislation to require an individual to submit to a detailed search of their person, clothing and personal belongings amounted to a clear interference with the right to respect for private life. The public nature of the search, with the discomfort of having personal information exposed to public view, might even in certain cases compound the seriousness of the interference because of an element of humiliation and embarrassment. The interference could not be compared to searches of travellers at airports. An air traveller may be seen as consenting to such a search by choosing to travel. He knows that he and his bags are liable to be searched before boarding the aeroplane and has a freedom of choice, since he can leave personal items behind and walk away without being subjected to a search. The search powers under section 44 are qualitatively different. The individual can be stopped anywhere and at any time, without notice and without any choice as to whether or not to submit to a search.

#### Whether the interference was "in accordance with the law"

In the Court's view, the wide discretion conferred on the police under the 2000 Act, both in terms of the authorisation of the power to stop and search and its application in practice, had not been curbed by adequate legal safeguards so as to offer the individual adequate protection against arbitrary interference.

Firstly, at the authorisation stage there was no requirement that the stop and search power be considered "necessary", only "expedient". The authorisation was subject to confirmation by the Secretary of State within 48 hours and was renewable after 28 days. The Secretary of State could not alter the geographical coverage of an authorisation and although he or she could refuse confirmation or substitute an earlier time of expiry, it appeared that in practice this had never been done. Indeed, the temporal and geographical restrictions provided by Parliament had failed to act as any real check on the issuing of authorisations by the executive, demonstrated by the fact that an authorisation for the Metropolitan Police District had been continuously renewed in a "rolling programme" since the powers had first been granted.

An additional safeguard was provided by the Independent Reviewer appointed under the 2000 Act. However, his powers were confined to reporting on the general operation of the statutory provisions and he had no right to cancel or alter authorisations, despite the fact that in every report from May 2006 onwards he had expressed the clear view that "section 44 could be used less and I expect it to be used less".

Of still further concern was the breadth of the discretion conferred on the individual police officer. The officer's decision to stop and search an individual was one based exclusively on the "hunch" or "professional intuition". Not only was it unnecessary for him to demonstrate the existence of any reasonable suspicion; he was not required even subjectively to suspect anything about the person stopped and searched. The sole proviso was that the search had to be for the purpose of looking for articles which could be used in connection with terrorism, a very wide category which covering many articles commonly carried by people in the streets. Provided the person concerned was stopped for the purpose of searching for such articles, the police officer did not even have to have grounds for suspecting the presence of such articles.

The Court was struck by the statistical and other evidence showing the extent to which police officers resorted to the powers of stop and search under section 44 of the Act and found that there was a clear risk of arbitrariness in granting such broad discretion to the police officer. While the present cases did not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons was a very real consideration and the statistics showed that black and Asian persons were disproportionately affected by the powers. There was, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention.

Although the powers of authorisation and confirmation exercised by the senior police officer and the Secretary of State respectively were subject to judicial review, the breadth of the discretion involved meant that applicants faced formidable obstacles in showing that any authorisation and confirmation were ultra vires or an abuse of power. Similarly, as shown in the applicants' case, judicial review or an action in damages to challenge the exercise of the stop and search powers by a police officer in an individual case were unlikely to succeed. The absence of any obligation on the part of the officer to show a

reasonable suspicion made it almost impossible to prove that that power had been improperly exercised.

In conclusion, the Court considered that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They were not, therefore, "in accordance with the law", in violation of Article 8.

### *Other Articles*

Given the finding above, the Court held that it was not necessary to examine the applicants' complaints under Articles 5, 10 and 11.

## Jaremowicz v. Poland

*Judgement of 5 January 2010. Concerns: refusal to allow prison inmates to marry breached the convention.*

**Violations of Articles 12 (right to marry) and 13 (right to an effective remedy)**

### Principal facts

The applicants, Rafał Frasik and Paweł Jaremowicz are two Polish nationals. Mr Frasik lives in Krakow and Mr Jaremowicz is currently detained in Wołów Prison. They were both serving prison sentences - Mr Frasik for rape and for threatening his long-term partner I.K., and Mr Jaremowicz for attempted burglary, when they asked, in April 2001 and June 2003 respectively, the competent courts to allow them to marry in prison.

Their requests were refused.

Mr Frasik was detained in September 2000 following a complaint by I.K. who submitted that he had raped and battered her. Starting in December 2000 and January 2001, both he and I.K. asked several times, unsuccessfully, the prosecutor that Mr Frasik be released under police supervision as they had been reconciled as a couple and wanted to marry and live together. In July 2001, the trial court refused Mr Frasik's request to marry I.K. in prison and sentenced him, in November 2001, to a term in prison for rape and uttering threats. Following his cassation appeal, the Supreme Court held in a judgment in 2003 that although the refusal to let Mr Frasik marry in prison clearly violated Article 12 of the European Convention on Human Rights, it did not have an effect on his conviction and therefore could not be quashed.

Mr Jaremowicz asked in June 2003 the prison administration to be allowed visits by a certain M.H., a young woman he had met in the prison the previous year. In June 2003 both he and M.H. asked the competent regional court a permission to marry in prison. The court refused on the grounds that they had become "acquainted illegally in prison" and in any event their relationship had represented nothing but "a very superficial and unworthy contact" given that they had mostly communicated by means of sending kites and writing messages on their hands, often without seeing each other. On an unspecified date in November 2003 the prison governor issued a certificate addressed to the civil status office confirming that Mr Jaremowicz had obtained leave to marry M.H. in prison.

### Decision of the Court

#### *Right to marry*

The Court first noted that the exercise of the right to marry was not conditioned upon whether a person was free or in prison. While imprisonment deprived people of their liberty and certain civil rights and privileges that did not mean that those detained could not marry. As provided for in the European Prison Rules, restrictions placed on persons in detention had to be the minimum necessary and proportionate to the legitimate objective for which they had been imposed.

The Polish authorities had not justified their refusal to allow the applicants to marry with considerations such as existing danger to security in prison or the prevention of crime and disorder. Instead, their assessment had been limited to the nature and quality of the applicants' relationships both of which had been found by the authorities unsuitable for marriage. The Court emphasised in this respect that the choice of partner and the decision to marry them, at liberty and in detention alike, was a strictly private and personal matter. Except for overriding security considerations the authorities were not allowed, under Article 12, to interfere with a prisoner's decision to marry with a person of their choice, especially - as had been the situation in the present cases - on the grounds that the relationships were not acceptable to the authorities and deviated from prevailing social conventions and norms.

The Court did not accept the argument of the Polish Government that Mr Fraski had been at liberty to marry after his release and that Mr that Jaremowicz had been allowed to marry five months after he had asked the authorities, or that he too could have married after his release. It emphasised that a delay imposed before entering into a marriage to persons of full age and otherwise fulfilling the conditions for marriage under the national law, could not be considered justified under Article 12. The refusals had resulted in impairing the very essence of the applicants' right to marry, and there had, therefore, been a violation of that Article in both cases.

#### *Right to an effective remedy*

As regards the case of Mr Frasik, the Government had admitted that there had been no procedure through which the applicant could challenge effectively the decision denying him his right to marry in detention.

In respect of Mr Jaremowicz, although he could and had indeed challenged the initial refusal by the prison authorities before the penitentiary court, the procedure had lasted for nearly five months without a decision being given and, consequently, it had had no meaningful effect. The belated permission Mr Jaremowicz had been granted had not offered the redress required by Article 13 either.

The Court concluded that there had been a violation of this Article in both cases.

#### *Detention*

The Court found that the Polish authorities had concluded sufficiently promptly the investigation and the first instance court proceedings, and therefore it rejected Mr Frasik's complaint that his detention had been excessive an in breach of Article 5§3.

The Court further noted that his appeal against the decision prolonging his detention had been examined by the domestic court 46 days after it had been lodged and 11

days after the contested decision had expired, thus having rendered its examination purposeless. This delayed examination could not be considered sufficiently speedy as required by Article 5 § 4 and therefore there had been a violation of that Article.

## Sinan Isik v. Turkey

*Judgment of 2 February 2010. Concerns: indication of religion on identity cards was in breach of convention.*

**Violation of Article 9 (freedom of thought, conscience and religion)**

### Principal facts

The applicant, Sinan Işık, is a Turkish national who was born in 1962 and lives in İzmir (Turkey). He is a member of the Alevi religious community, which is deeply rooted in Turkish society and history. Their faith, which is influenced, in particular, by Sufism and pre-Islamic beliefs, is regarded by some Alevi scholars as a separate religion and by others as a branch of Islam.

In 2004 Mr Işık applied to a court requesting that his identity card feature the word "Alevi" rather than the word "Islam". Until 2006 it was obligatory for the holder's religion to be indicated on an identity card (but since 2006 he or she has been entitled to request that the entry be left blank).

On 7 September 2004 the İzmir District Court dismissed the applicant's request, on the basis of an opinion it had sought from the legal adviser to the Religious Affairs Directorate (a public body). The court found, endorsing that opinion, that the term "Alevi" referred to a sub-group of Islam and that the indication "Islam" on the identity card was thus correct. The applicant appealed on points of law, complaining that he was under an obligation to disclose his beliefs as a result of this obligatory indication on his identity card. He argued that this obligation contravened both the Convention (freedom of religion and conscience) and the Constitution ("no one shall be compelled ... to disclose his or her religious beliefs and convictions"). On 21 December 2004 the Court of Cassation upheld the judgment of the court below without any other reasoning.

### Decision of the Court

The Court reiterated that the freedom to manifest one's religion or beliefs had a negative aspect, namely an individual's right not to be obliged to disclose his or her religion or to act in a manner that might enable conclusions to be drawn as to whether or not he or she held such beliefs.

The Court did not find persuasive the Government's argument that the indication of religion on identity cards (obligatory until 2006) did not constitute a measure that compelled Turkish citizens (and Mr Işık in particular) to disclose their religious convictions and beliefs. As regards the procedure whereby the applicant, in 2004, had unsuccessfully attempted to obtain the rectification of his identity card, the Court took the view that, since it had led the State to make an assessment of the applicant's faith, it had been in breach of the State's duty of neutrality and impartiality in such matters.

The Government further contended that since the law of 2006 the applicant, in any event, could no longer claim that he was a victim of a violation of Article 9, because since then all Turkish citizens had been entitled to request that the information about religion on their identity cards be changed or that the appropriate entry be left blank. On this point the Court found that the law had not affected its assessment of the situation. The fact of having to apply to the authorities in writing for the deletion of the religion in civil registers and on identity cards, and similarly, the mere fact of having an identity card with the "religion" box left blank, obliged the individual to disclose, against his or her will, information concerning an aspect of his or her religion or most personal convictions. That was undoubtedly at odds with the principle of freedom not to manifest one's religion or belief.

The Court pointed out that the breach in question had arisen not from the refusal to indicate the applicant's faith (Alevi) on his identity card but from the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional.

The Court found, by six votes to one, that there had been a violation of Article 9. It further decided, by the same majority, that it did not need to examine separately whether there had been a violation of Articles 6 and 14.

As the applicant had not submitted any claim under Article 41 (just satisfaction) of the Convention, the Court did not make any award. Referring to Article 46 (binding force and execution of judgments), the Court indicated that the deletion of the "religion" box on identity cards could be an appropriate form of reparation to put an end to the breach in question.

## Ahmet Arslan and Others v. Turkey

*Judgment of 23 February 2010. Concerns: criminal conviction of members of a religious group for their manner of dressing in public held to be unjustified.*

**Violation of Article 9 (freedom of thought, conscience and religion)**

### Principal facts

The applicants are 127 Turkish nationals, including Mr Ahmet Arslan. They belong to a religious group known to its members as Aczimendi tarikatÿ.

In October 1996 they met in Ankara for a religious ceremony held at the Kocatepe mosque. They toured the streets of the city while wearing the distinctive dress of their group, which evoked that of the leading prophets and was made up of a turban, "salvar" (baggy "harem" trousers), a tunic and a stick. Following various incidents on the same day, they were arrested and placed in police custody.

In the context of proceedings brought against them for breach of the anti-terrorism legislation, they appeared before the State Security Court in January 1997, dressed in accordance with their group's dress code.

Following that hearing, proceedings were brought against them and they

were convicted for a breach both of the law on the wearing of headgear and of the rules on the wearing of certain garments, specifically religious garments, in public other than for religious ceremonies. They appealed against their conviction, but without success. In addition, their application to the Ministry of Justice, seeking leave to lodge a reference by written order was also dismissed.

### Decision of the Court

It was established that the applicants had not received criminal-law convictions for indiscipline or lack of respect before the State Security Court, but rather for their manner of dressing in public areas that were open to everyone (such as public streets or squares), a manner that was held to be contrary to the legislative provisions.

The applicants' conviction for having worn the clothing in question fell within the ambit of Article 9 – which protected, among other things, the freedom to manifest one's religious beliefs – since the applicants were members of a religious group and considered that their religion required them to dress in that manner. Accordingly, the Turkish courts' decisions had amounted to interference in the applicants' freedom of conscience and religion, the legal basis for which was not contested (the law on the wearing of headgear and regulations on the wearing of certain garments in public).

It could be accepted, particularly given the importance of the principle of secularism for the democratic system in Turkey, that this interference pursued the legitimate aims of protection of public safety, prevention of disorder and protection of the rights and freedoms of others. However, the sole reasoning given by the Turkish courts had consisted in a reference to the legal provisions and, on appeal, a finding that the disputed conviction was in conformity with the law.

The Court further emphasised that this case concerned punishment for the wearing of particular dress in public areas that were open to all, and not, as in other cases that it had had to judge, regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.

There was no evidence that the applicants represented a threat for public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. In the opinion of the Religious Affairs Organisation, their movement was limited in size and amounted to "a curiosity", and the clothing worn by them did not represent any religious power or authority that was recognised by the State.

Accordingly, the Court considered that the necessity for the disputed restriction had not been convincingly established by the Turkish Government, and held that the interference with the applicants' right of freedom to manifest their convictions had not been based on sufficient reasons. It held, by six votes to one, that there had been a violation of Article 9.

## Akdas v. Turkey

*Judgment of 16 February 2010. Concerns: seizure of the novel les onze mille verges by guillaume apollinaire and conviction of the publisher hindered public access to a work belonging to the european literary heritage.*

**Violation of Article 10 (freedom of expression)**

### Principal facts

The applicant, Mr Rahmi Akdaş, was born in 1958 and lives in Bandırma. He is a publisher and in 1999 published the Turkish translation of the erotic novel Les onze mille verges by the French writer Guillaume Apollinaire ("The Eleven Thousand Rods" – On Bir Bin Kırbaç in Turkish), which contains graphic descriptions of scenes of sexual intercourse, with various practices such as sadomasochism or vampirism.

Mr Akdaş was convicted under the Criminal Code for publishing obscene or immoral material liable to arouse and exploit sexual desire among the population. The applicant argued that the book was a work of fiction, using literary techniques such as exaggeration or metaphor, and that the postface to the edition in question was written by specialists in literary analysis. He added that the book did not contain any violent overtones and that the humorous and exaggerated nature of the text was more likely to extinguish sexual desire.

The seizure and destruction of all copies of the book was ordered and the applicant was given a "heavy" fine – a fine that may be converted into days of imprisonment – of 684,000,000 Turkish liras (equivalent to approximately 1,100 euros). In a final judgment of 11 March 2004 the Court of Cassation quashed the part of the judgment concerning the order to destroy copies of the book, in view of a 2003 legislative amendment. It upheld the remainder of the judgment.

Mr Akdaş paid the fine in full in November 2004.

### Decision of the Court

It was not disputed that there had been an interference, that the interference had been prescribed by law and that it had pursued a legitimate aim, namely the protection of morals. The Court further reiterated that those who promoted artistic works also had "duties and responsibilities", the scope of which depended on the situation and the means used.

The requirements of morals varied from time to time and from place to place, even within the same State. The national authorities were therefore in a better position than the international judge to give an opinion on the exact content of those requirements, as well as on the "necessity" of a "restriction" intended to satisfy them.

Nevertheless, the Court had regard in the present case to the fact that more then a century had elapsed since the book had first been published in France (in 1907), to its publication in various languages in a large number of countries and to the recognition it had gained through publication in the prestigious "La Pléiade" series. Acknowledgment of the cultural, historical and religious particularities of the Council of Europe's member States could not go so far as to prevent public access in a particular language, in this instance Turkish, to a work belonging to the European literary heritage.

Accordingly, the application of the legislation in force at the time of the

events had not been intended to satisfy a pressing social need. In addition, the heavy fine imposed and the seizure of copies of the book had not been proportionate to the legitimate aim pursued and had thus not been necessary in a democratic society, within the meaning of Article 10. There had therefore been a violation of that provision.

The Court considered that it was not necessary to examine the applicant's other complaints.

## Handbook on European Non-discrimination Case-law to be published by the Court and the EU Agency for Fundamental Rights

The European Court of Human Rights and the European Union Agency for Fundamental Rights will join forces to work on a year-long joint project aimed at increasing the knowledge and domestic implementation of EU law and other legal instruments in the field of non-discrimination.

The joint project will result in the publication of a case-law handbook in English, to be translated into Bulgarian, Czech, French, German, Greek, Hungarian, Italian, Polish, Romanian and Spanish. The handbook will analyse the key principles as developed by the European Court of Human Rights and the Court of Justice of the European Union mainly in the area of non-discrimination. The handbook and related e-learning tools will be distributed at the beginning of 2011 to judges, prosecutors, lawyers and law enforcement officials in a host of target countries. The material will also be made available online.

***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 on Human Rights (Article 46, paragraph 2) entrusts the Committee of Ministers (CM) with the supervision of the execution of the European Court of Human Rights' judgments.

### The applicant's individual situation

Individual measures include the effective payment of any just satisfaction awarded by the Court (including interest accrued in case of late payment). Where such just satisfaction is not sufficient to redress the violation found, the CM ensures that specific measures are taken in favour of the applicant. These measures may consist of the granting of a residence permit, the reopening of criminal proceedings or the removal of convictions from criminal records.

### The prevention of new violations

The obligation to abide by the judgments of the Court also includes a duty to prevent new violations of the same kind. These so-called "general measures" may include constitutional or legislative amendments, changes of the national courts' case-law , or practical measuressuch as the recruitment of judges.

In view of the large number of cases reviewed by the CM, only a thematic selection is presented here. Further information on on all cases 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.

Information concerning the adoption of execution measures required is published ten days after each HR meeting, and is available on the CM website. Web addresses are listed on page 63.

Interim and Final Resolutions are accessible via the Hudoc database.

## 1072nd Human Rights meeting – general information

During the 1072nd meeting (1-4 December 2009), the CM supervised payment of just satisfaction in some 1 320 cases and monitored 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.) in some 278 cases. In 2 433 cases (sometimes grouped together according to the issues raised), it monitored the adoption of general measures to prevent similar violations (for example constitutional and legislative reforms, changes of domestic case-law and administrative practice). The CM also started examining 274 new judgments and considered draft final resolutions concluding in 66 cases that states had complied with the Court's judgments.

## Main texts adopted at the 1072nd meeting

*After examination of the cases on the agenda of the 1072nd meeting, the Deputies have notably adopted the following texts.*

## Selection of decisions adopted (extracts)

During the 1072nd meeting, the CM examined and adopted a decision for 4 543 cases. Whenever the CM concluded that the execution obligations had not yet been entirely fulfilled, it decided to resume consideration of the case(s) at a later meeting. In some cases, it also expressed adetailed assessment of the situation in its decision. A selection of these decisions is presented below, according to the (English) alphabetical order of the member state concerned.

**10508/02, judgment of 23/10/2007, final on 31/03/2008**
**3738/02, judgment of 18/12/2007, final on 07/07/2008**

**Gjonbocari and others against Albania**
**Marini against Albania**

*Non-execution of final judicial decisions of 2003 (violations of Art. 6§1); excessive length of civil proceedings, still pending since 2000 in the Gjonbocari case (violations of Art. 6§1) as well as the absence of an effective remedy in this respect (violation of Art. 13 taken alone or together with Art. 6§1). In the Marini case,there was also a violation of the applicant's right of access to a court as a result of the Constitutional Court's failure to take a decision in 2005 on his constitutional complaint (violation of Article 6§1), and of his right to peaceful enjoyment of his possessions (violation of Art. 1 of Prot. No. 1).*

The Deputies,

1.welcomed the extensive information provided by the Albanian authorities at the meeting with respect to general measures, covering most of the violations established by the European Court in these cases;

2. noted the extensive information related to the measures planned to accelerate judicial proceedings and to improve the execution of judgments in civil cases, and encouraged the authorities to continue their efforts to find adequate solutions to these problems, in particular through further improved training programs;

3. noted that the Constitutional Court had taken practical measures to avoid new exceptional situations of tied votes or when a proposal fails to attract a majority of votes, but encouraged nevertheless the further reflection on additional measures and the necessity of amendments to the law concerning the Constitutional Court;

4. underlined the importance of ensuring, without further delay, the provision of domestic remedies in conformity with Article 13 of the European Convention in respect of excessive length of judicial proceedings,

5. noted with interest in this connection the information provided concerning recent developments in the case-law of the Constitutional Court, according to which it considers itself competent to examine requests for redress in respect of excessively lengthy enforcement proceedings;

6. encouraged the development of this case-law as well as, to the extent necessary, the prompt adoption of legislative measures, so as to ensure the provision of rapid acceleratory and / or compensatory redress in all situations in which parties have not obtained final judgments within a reasonable time;

7. noted, concerning individual measures in the Gjonbocari case, that the Local Land Commission had now implemented the Supreme Court's judgment as required by the judgment of the European Court, but recalled that the violations also related to the length of the proceedings and requested accordingly information on the measures taken further to accelerate the proceedings which were still pending;

8. noted that the information provided merited careful examination and decided to resume consideration of these items at the latest at their 1086th meeting (June 2010) (DH), in the light of the results of this examination and possible further information to be provided on individual and general measures adopted or envisaged.

**37959/02, judgment of 29/07/2008, final on 01/12/2008**

**Xheraj against Albania**

*Violation of the applicant' right to a fair trial as a result of the quashing in 2001 of a final judgment of 1998 acquitting the applicant following the proceedings initiated by the Prosecutor outside the statutory time-limit (violation of Art. 6§1) contrary to the principle of legal certainty, , .*

The Deputies,

deplored the lack of information on measures adopted or envisaged to execute this judgment;

urged the Albanian authorities to withdraw the extradition request and to ensure and to confirm, without further delay, the applicant's final acquittal and the erasure of his conviction from his criminal record in compliance with the European Court judgment;

invited in this context the authorities to examine rapidly the possibilities of confirming the applicant's acquittal through a new an appeal out of time;

urged the authorities to provide the necessary information on individual and general measures adopted or envisaged;

decided to resume consideration of these items at the latest at their 1086th meeting (June 2010) (DH), in the light of information to be provided on individual and general measures adopted or envisaged, and in the light of an assessment of the state of the execution of this judgment.

**34445/04, judgment of 11/01/2007, final on 11/04/2007**

**Mammadov (Jalaloglu) against Azerbaijan**

*Torture inflicted on the applicant, the then Secretary General of the Democratic Party of Azerbaijan , while he was in police custody in October 2003 (violation of Art. 3); lack of an effective investigation into the applicant's complaints in this respect (violation of Art. 3) and lack of an effective domestic remedy, because the domestic courts endorsed the criminal investigation without independently assessing the facts of the case (violation of Art. 13).*

The Deputies,

1. as regards individual measures, regretted that nearly one year after the investigation in Mr. Mammadov's complaint for ill-treatment has been resumed, no information on the developments of this investigation was made available to the Committee of Ministers and called upon the Azerbaijani authorities to provide detailed information on this issue;

2. took note, as regards general measures, of the information concerning the draft law on the rights and freedoms of individuals kept in detention, which remains to be assessed, and invited the Azerbaijani authorities and the Secretariat to keep the Committee informed of any modification of this draft, in particular concerning access to a lawyer, medical supervision, con-

tacts with relatives and the remedies available to complain of violations of the rights provided for in this draft law;

3. took note of the information provided at the meeting by the Azerbaijani delegation and recalled that detailed information on the legislative and regulatory provisions applicable in case of allegations of ill-treatment, including in police custody, is awaited as well as concrete examples of implementation of these provisions;

4. decided to resume consideration of this item at the latest at their 1086th meeting (June 2010) (DH), in the light of information to be provided on individual and general measures.

**Angelova and Iliev against Bulgaria**
**Dimitrov Nikolay against Bulgaria**

**55523/00, judgment of 26/07/2007, final on 26/10/2007**
**72663/01, judgment of 27/09/2007, final on 27/12/2007**

*Authorities'sfailure to conduct an effective investigation into a racially motivated attack in 1996, causing the death of a relative of the applicants, although the main assailants had been identified immediately after the attack, and to distinguish racially motivated offences and prosecute such offences (Angelova and Iliev) (violation of Art. 2 and of Art. 14 combined with Art. 2); failure of the authorities to conduct an effective investigation into the applicant's credible allegations, supported by medical evidence, of ill-treatment inflicted in August 1997 by other individuals (Dimitrov Nicolay) (violation of Art.3).*

The Deputies,

1. took note of the information provided recently by the Bulgarian authorities on the development in the criminal proceedings against the alleged assailants of the applicants' relative in the case of Angelova and Iliev; noted that this information remains to be studied in detail;

2. noted the information provided at the meeting on individual measures in the case of Nikolay Dimitrov, and invited the authorities to submit it in writing and to keep the Committee informed of any development in this matter;

3. took note of the information provided by the authorities, including at the meeting, on general measures and, in particular, on the publication of the European Court's judgments in these cases and on the training activities organised by the National Institute for Justice;

4. recalled in this respect that an action plan and/or an action report is expected from the authorities for the execution of the European Court's judgments in these cases;

5. decided to resume consideration of these cases at the latest at their 1086th meeting (June 2010) (DH), in the light of the assessment of the information provided, as well as of further information to be provided by the authorities.

**Havelka and others against Czech Republic**
**Wallowa and Walla against Czech Republic**

**23499/06, judgment of 21/06/2007, final on 21/09/2007**
**23848/04, judgment of 26/10/2006, final on 26/03/2007**

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

The Deputies,

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

2. recalled that this problem seems to be of systemic character in the Czech Republic and therefore took note with interest of the information submitted by the Czech authorities concerning the general measures addressing this problem, and in particular the adoption by the Czech government on 13 July 2009 of the National Action Plan for transformation and unification of the care system for children at risk;

3. invited the Czech authorities to provide further information on the general measures taken and/or envisaged to avoid placing children in public institutions on economic grounds, in particular on the impact of the measures already adopted and on the implementation of the National Action Plan;

4. decided to resume consideration of these items at the latest at their 1092nd meeting (September 2010) (DH), in the light of clarification to be provided on the individual situation of the first applicant in the Havelka and others case, and information to be provided on general measures.

**Poghossian against Georgia**
**Ghavtadze against Georgia**

**9870/07, judgment of 24/02/2009, final on 24/05/2009**
**23204/07, judgment of 03/03/2009, final on 03/06/2009**

*Degrading treatment of the detained applicants resulting from the authorities' failure in their obligation to provide them with 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 Art. 3).*

The Deputies,

1. noted that the provisional action plan presented by the Georgian authorities provides prevention measures and screening measures for hepatitis C, invited the Georgian authorities to widen the action plan to include adequate treatment for contagious illnesses in general and to keep the Committee of Ministers informed of the other measures under way in this field;

2. recalled that general measures are awaited 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 the ef-

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| | fectiveness of the existing recourse procedure in this field;<br>3. took note of the information provided at the meeting by the delegation on the applicant's state of health and invited the delegation to | specify how medical advice on the treatment needed by the applicant will effectively no longer be hindered;<br>4. decided to resume consideration of these items at their 1078th | meeting (March 2010) (DH), in the light of updated information on the applicant's situation in the Ghavtadze case and the action plan completed. |
| **32526/05, judgment of 05/06/2008, final on 05/09/2008** | **Sampanis and others against Greece**<br><br>*Unjustified discrimination of Roma children resulting from the authorities' failure to provide schooling for them in 2004-2005 and their subsequent placement in special preparatory classes because of their origin (violation of Art. 14 taken* | *together with Art. 2 of Protocol No.1); lack of an effective remedy to secure redress for the violation (violation of Art. 13).*<br>The Deputies,<br>1. noted with interest the information provided at the meeting by the Greek authorities on the individual measures to allow the schooling of the applicants' children in ordinary classes, as well as on general measures aimed at including Roma | children in the education system in a non discriminatory manner;<br>2. noted that this information needs to be evaluated in depth and invited the Greek authorities to submit it in writing in the form of a detailed action plan / action report;<br>3. decided to resume consideration of this item, at the latest, at their 1086th meeting (June 2010) (DH), in the light of the evaluation of the information already provided and of further possible information to be provided. |
| **476/07+, judgment of 28/07/2009, final on 28/10/2009** | **Olaru against Moldova**<br><br>*Violations of the applicants' right of access to a court and right to peaceful enjoyment of their possessions on account of the state's failure to enforce final domestic judgments awarding them housing rights or monetary compensation in lieu of housing (violations of Art. 6 and Art. 1 of Prot. No. 1).*<br>The Deputies,<br>1. took note of the information provided on various measures which | are being taken and envisaged by the Moldovan authorities to comply with the pilot judgment of the Court;<br>2. stressed the importance of timely compliance with the pilot judgment and called upon all Moldovan authorities to give priority to finding appropriate solutions in order to provide adequate and sufficient redress to all persons in the applicants' situation within the time-limits set by the Court;<br>3. noted the information provided by the Moldovan authorities to the effect that they appealed for possible financial support for the proper execution of the measures required by the pilot judgment to the | Council of Europe Development Bank and to other international financial institutions;<br><br>4. took note in this respect of the bilateral consultations to be held in Chisinau on 10-11 December 2009 on the different issues raised by the pilot judgment;<br><br>5. decided to resume consideration of this case at their 1078th meeting (March 2010) (DH) to assess the progress achieved in the implementation of the above general measures possibly on the basis of a draft Interim Resolution to be prepared by the Secretariat. |
| **3456/05, judgment of 04/10/2005, final on 04/01/2006** | **Sarban and other similar cases against Moldova**<br><br>*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 Art. 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 Art. 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 Art. 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 Art. 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 Art. 3)*<br>The Deputies,<br>1. took note of the information provided by the Moldovan authorities as summarised in the revised Memorandum CM/Inf/DH(2009)42rev;<br>2. invited the Moldovan authorities to provide the necessary information on the outstanding issues, as highlighted in this Memorandum;<br>3. decided to resume consideration of these cases at the latest at their 1086th meeting (June 2010) (DH), to examine the outstanding issues on the basis of an updated and completed version of the Memorandum to be prepared by the Secretariat. |

**Kudla and other similar cases agains Poland**
**Podbielski and other similar cases against Poland**

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

The Deputies,

1. welcomed the ongoing reform of the Criminal Code, Code of Criminal Procedure, Code of Execution of Criminal Sentences and Code of Civil Procedure, as well as of the Criminal Fiscal Code, with a view to accelerating and simplifying procedures;

2. noted with interest the amendments to the Code of Civil Procedure, envisaged to the same end;

3. recalled that the problem of excessive length of judicial proceedings in Poland is of a systemic nature and noted with concern that the increased influx of new criminal and civil cases has resulted in the fact that the domestic judicial backlog has not decreased considerably;

4. invited the Polish authorities to continue carrying out their thorough reflection on a solution to this structural problem and to provide an action plan on additional measures envisaged;

5. decided to resume consideration of these items at the latest at their 1092nd meeting (September 2010) (DH), in the light of information to be provided on additional general measures and on individual measures, if need be.

**30210/96+, judgment of 26/10/2000 - Grand Chamber, Interim Resolution (2007)28**
**27916/95+, judgment of 30/10/1998 (final), Interim Resolution (2007)28**

**Trzaska and other similar cases against Poland**

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

The Deputies,

1. welcomed the information provided by the authorities on the legislative reforms, the monitoring of proceedings concerning accused persons detained on remand and on the recent statistics;

2. noted with interest that the downward trend in the number of detentions on remand ordered by domestic courts and in the number of detentions on remand lasting over 2 years, observed in 2008, was confirmed for the first half of 2009;

3. recalled nevertheless that the problem of excessive length of detention on remand is of a systemic nature and noted with concern the increased number of judgments of the European Court finding violations of Article 5§3 in respect of Poland;

4. encouraged the Polish authorities to continue their efforts to reduce the excessive length of detention on remand and invited them to provide an action plan on further possible general measures to be taken in this context;

5. decided to resume consideration of these items at the latest at their 1092nd meeting (September 2010) (DH), in the light of information to be provided on additional general measures and on individual measures, if need be.

**25792/94+, judgment of 11/07/2000 (final), Interim Resolution (2007)75.**

**Oliveira Modesto and other similar cases against Portugal**

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

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

1. noted with interest the information provided by the Portuguese authorities on the measures adopted to solve the structural problem of excessive length of judicial proceedings, as well as the statistical data illustrating the evolution of the backlog and of the average length of proceedings in recent years, and encouraged them to continue their efforts in this field;

2. noted with concern that the domestic proceedings in the Oliveira Modesto case have been pending before the national jurisdictions for almost 22 years and urged the Portuguese authorities to accelerate them as much as possible to bring them to an end as soon as possible;

3. decided to resume consideration of this group of cases at their 1078th meeting (March 2010) (DH) in view of the adoption of an Interim Resolution prepared by the Secretariat.

**34422/97, judgment of 08/07/2000, final on 08/09/2000, Interim Resolution (2007)108**

**Moldovan and others and other similar cases against Romania**

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

The Deputies,

1. took note of the information submitted by the Romanian authorities on the state of the execution of this group of cases and of the outstanding issues, as presented in the updated memorandum prepared by the Secretariat;

2. noted with interest the developments achieved in implementing the action plan for the localities Plăieșii de Sus and Cașinul Nou and encouraged the authorities to continue their efforts, particularly in view of drawing the consequences of the experts' conclusions concerning the needs of these communities;

3. noted that further information and clarification are necessary concerning the continuation and the financing of the action plan for the Hădăreni village;

4. underlined the need for the authorities to evaluate the impact of measures already implemented and the necessity to adopt further measures for all the localities at issue, and to inform the Committee of their conclusions in this respect;

5. decided to declassify the updated memorandum and to resume consideration of these items at the

**41138/98, judgments of 05/07/2005 (friendly settlement) and of 12/07/2005, final on 30/11/2005 (finding of violations); CM/Inf/DH(2009)31 rev**

latest at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided.

**57942/00, judgment of 24/02/2005, final on 06/07/2005**
**CM/Inf/DH(2006)32 revised 2, CM/Inf/DH(2008)33**

### Khashiyev and other similar cases against the Russian Federation

*Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2002: State responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the applicants' relatives due to the attitude of the investigating authorities (violation of Art. 2, 3, 5, 8, 13 and of Art. 1 Prot. 1). Failure to co-operate with the ECHR organs contrary to Art. 38 of the ECHR in several cases.*

The Deputies,

1. took note of the information provided on the results of the bilateral consultations between the Secretariat and the competent Russian authorities and encouraged them to continue these consultations on the outstanding issues;

2. decided to resume consideration of these cases at their 1078th meeting (March 2010) (DH), in particular in the light of an up-dated version of the Memorandum CM/Inf/DH(2008)33 to be prepared by the Secretariat and in the light of the information to be provided by the authorities on the impact of the general measures taken on certain individual cases.

**23032/02+, judgment of 06/10/2005, final on 06/01/2006**

### Lukenda and other similar cases against Slovenia

*Excessive length of proceedings before civil courts (violations of Art. 6§1), lack of effective remedy against excessive length of proceedings (violations of Art. 13).*

The Deputies,

1. noted the systemic character of the violations found by the European Court regarding the excessive length of civil proceedings and the lack of effective remedies in this respect;

2. noted that in the Lukenda case, the European Court considered that this systemic problem "has resulted from inadequate legislation and inefficiency in the administration of justice" and underlined that "the respondent State must, through appropriate legal measures and administrative practices, secure the right to a trial within a reasonable time";

3. welcomed the measures taken by the Slovenian authorities in response to the Lukenda judgment and noted that these measures have had a positive impact on the reduction of the backlog of civil cases before domestic courts;

4. noted that Slovenian law now provides acceleratory and compensatory remedies against excessive length of proceedings;

5. observed that the European Court found in a number of judgments and decisions that these remedies could be considered effective with regard to the proceedings before first and second-instance courts;

6. further observed that the European Court noted that the Slovenian authorities should take particular care to ensure that these remedies are applied in conformity with the Convention standards and that an aggrieved party has prompt access to the compensatory remedies after the acceleratory remedies have been used;

7. invited the Slovenian authorities to take the necessary measures with a view to complying with the findings of the European Court in this respect;

8. noted that the effectiveness of the remedies available in respect of proceedings before the Supreme Court had not been clearly demonstrated and that, as highlighted by the European Court, no effective remedies had been introduced in respect of excessive length of proceedings before the Constitutional Court;

9. invited the Slovenian authorities to take the necessary measures to ensure that effective remedies are made available in respect of excessive length of proceedings before the Constitutional Court and the Supreme Court;

10. stressed that, in certain cases in this group, the domestic proceedings are still pending and invited the Slovenian authorities to take the necessary measures to ensure that the proceedings in these cases are brought to an end;

11. decided to resume consideration of these cases at the latest at their 1086th meeting (June 2010) (DH) in light of further information to be provided on general and individual measures.

**25781/94, judgment of 10/05/2001 – 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 Art. 2, 5, 3); home and property of displaced persons (violation of Art. 8, 1 Prot. 1, 13), living conditions of Greek Cypriots inthe Karpas region of the northern part of Cyprus (violation of Art. 9, 10, 1 Prot. 1, 2 Prot. 1, 3, 8, 13); rights of Turkish Cypriots living in the northern part of Cyprus (violation of Art. 6).*

The Deputies,

**Concerning the question of missing persons:**

1. took note with satisfaction of the information provided by the Turkish authorities on progress of the work of the CMP and, in particular, on the measures taken to promote its acceleration;

2. encouraged the Turkish authorities to take concrete measures to ensure the CMP's access to all relevant information and places, without impeding the confidentiality which is essential to the carrying-out of its mandate;

3. reiterated the importance of preserving all the data obtained during the Programme of Exhumation and Identification carried out by the CMP;

4. invited the Turkish authorities to inform them already now of the concrete measures that they could envisage in continuity with the CMP's work with a view to the effective investigations required by the judgment;

5. decided to resume consideration of this question at their 1078th meeting (March 2010) (DH);

Concerning the property rights of displaced persons

6. 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;

7. 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);

8. noted with interest, in this context, the very recent information submitted by the Turkish authorities in response to the invitation made by the Committee during the latest examination of this case to provide information "highlighting in particular all legal and practical consequences of the introduction of an application before the "Immovable Property Commission" concerning restitution of property" and noted that this information requires detailed examination;

9. firmly recalled, in this same context, their invitation to the Turkish authorities to provide information on the questions raised in the information document CM/Inf/DH(2008)6/5;

10. decided to resume consideration of the issues of protective measures at their 1078th meeting (March 2010) (DH).

## Demirel and other similar cases against Turkey

**39324/98+, judgment of 28/01/2003, final on 28/04/2003**

*Excessive length of criminal proceedings and of detentions on remand, lack of independence and impartiality of state security courts and unfairness of criminal proceedings before them, on account of the failure to communicate to the defence the Public prosecutor's written observations (violation of Art. 5§3 and 6).*

The Deputies,

1. noted that the European Court in the case of Cahit Demirel v. Turkey (application no: 18623/03) considered that the violations found in these cases "originated in widespread and systemic problems arising out of the malfunctioning of the Turkish criminal justice system and the state of the Turkish legislation, respectively", and underlined that "general measures at national level must be taken in order to ensure the effective protection of the right to liberty and security in accordance with the guarantees laid down in Article 5 §§ 3 and 4 of the Convention";

2. highlighted that it is extremely important that the domestic courts, when applying the domestic legislation, give relevant and sufficient reasons to justify continued detention and invited the Turkish authorities to provide information on domestic courts' practice in this respect and in particular examples of decisions of the Court of Cassation;

3. invited the Turkish authorities to consider issuing a circular to all judges and public prosecutors drawing their attention to the Convention requirements;

4. further invited the Turkish authorities to provide information regarding the existence of an effective remedy providing adversarial proceedings to challenge the lawfulness of detention on remand, as well as on the application by domestic courts the relevant legislation providing compensation for unlawful detention;

5. noted with concern that in certain cases in this group the applicants are still being detained on remand and/or the proceedings against them are still pending and invited the Turkish authorities to clarify the applicants' situation in these cases and to take the necessary measures to bring to an end the applicants' continued detention as well as the proceedings against them;

6. decided to resume consideration of these cases at the latest at their 1086th meeting (June 2010) (DH) in light of further information to be provided on general and individual measures.

## Hulki Güneş and other similar cases against Turkey

**28490/95, judgment of 19/06/03, final on 19/09/03**
**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 between1994 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 Art. 6 §§ 1 and 3, 3 and 13).*

The Deputies,

1. welcomed the information provided by the Turkish authorities that the draft law allowing the reopening of proceedings in the applicants' cases is before Parliament for adoption;

2. took note with satisfaction that the Turkish Government would accord priority to this piece of legislation and invited the Turkish authorities to keep the Committee of Ministers informed about the developments concerning its adoption;

3. encouraged the Turkish authorities to take the necessary measures to ensure that the draft law when adopted is applied in conformity with Recommendation Rec(2000)2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

4. decided to resume consideration of these items at their 1078th meeting (March 2010) (DH), in the light of further information to be provided.

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|---|---|---|---|
| **38595/97, judgment of 22/11/2005, final on 22/02/2006** | **Kakoulli against Turkey**<br><br>*Killing in 1996 of the applicants' husband and father by soldiers on guard duty along the cease-fire line in Cyprus and lack of an effective and impartial investigation into this killing (Violation of Art. 2).* | The Deputies,<br>1. noted the very recent information provided by the Turkish authorities on individual and general measures and considered that this information remained to be assessed in detail; | 2. decided to resume consideration of this item at their 1078th meeting (March 2010) (DH), in the light of the assessment of the information provided as well as of possible further information to be provided by the Turkish authorities. |
| **39437/98, judgment of 24/01/2006, final on 24/04/2006**<br>**Interim Resolution CM/ResDH(2007)109 and CM/ResDH(2009)45** | **Ülke against Turkey**<br><br>*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).*<br><br>The Deputies, | 1. noted that, following the Committee of Ministers' decision adopted at the 1065th meeting (September 2009) the Chairman of the Committee of Ministers addressed a letter to his Turkish counterpart on 1 October 2009 conveying the Committee's grave preoccupation regarding the absence of any information on the measures required in this case;<br>2. noted that the Secretariat had had fruitful bilateral consultations with the Minister of Justice of Turkey regarding the measures required in this case;<br>3. strongly urged the Turkish authorities to ensure that the legislative work aimed at providing | redress to the applicant and preventing similar violations in the future is brought to a conclusion without any further delay;<br>4. called upon the Turkish authorities to provide a reply to the letter of the Chairman of the Committee of Ministers containing concrete information on the legislative work under way as well as the timetable for the adoption of any draft laws proposed;<br>5. decided to resume consideration of this item at their 1078th meeting (March 2010) (DH), in the light of the reply to be provided by the Turkish authorities to the Chairman's letter. |
| **46347/99, judgments of 22/12/2005, final on 22/03/2006 and of 07/12/2006, final on 23/05/2007**<br>**CM/Inf/DH(2007)19, Interim Resolution CM/ResDH(2008)99** | **Xenides-Arestis against Turkey**<br><br>*Violation of the right to respect for applicant's home (violation of Art. 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 Art. 1, Prot. No. 1).*<br><br>The Deputies, | 1. recalled that last October the Chairman of the Committee of Ministers sent a letter to his Turkish counterpart informing him of 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 7 December 2006, and emphasising the Turkish authorities' obligation to pay these sums without further delay, including the default interest due; | 2. regretted that this letter remains unanswered to date;<br>3. instructed the Secretariat to prepare a draft Interim Resolution for the next examination of this case, unless the Turkish authorities provide by then relevant information on the steps taken towards payment of the above mentioned just satisfaction;<br>4. decided to resume consideration of this item at their 1078th meeting (March 2010) (DH). |
| **39948/06, judgment of 18/12/2008, final on 18/03/2009** | **Saviny against Ukraine**<br><br>*Breach of the applicants' right to respect for their family life due to placement of their children in public care in different institutions without adequate evidence that the applicants were unable to care for the children (violation of Art. 8).*<br><br>The Deputies,<br>1. recalled that the violation of Article 8 found by the Court in this case was due to the fact that the reasons advanced by the domestic judicial authorities for the removal of three of their children from the applicants' care were not sufficient to justify such a serious interference, | 2. recalled further that, as a result of the removal order, the children were not only separated from their family of origin, but were also placed in different institutions which rendered it difficult to maintain regular contacts between the family members;<br>3. welcomed in this respect the information provided by the Ukrainian authorities to the effect that the applicants' children were eventually placed in the same institution near their parents' place of residence and that they have regular contacts with the parents;<br>4. noted with satisfaction the information provided by the Ukrainian authorities to the effect that on 11 November 2009, following the European Court's judgment, the Supreme Court of Ukraine quashed the judicial decisions at issue and | remitted the case for fresh consideration to the first-instance court;<br>5. stressed the importance of taking into account the shortcomings, identified by the Court in its judgement, during the reconsideration of the case;<br>6. noted with satisfaction that the Ukrainian authorities undertook to keep the Committee regularly informed about the progress in the proceedings before the domestic courts;<br>7. also invited the Ukrainian authorities to provide further information with respect to general measures;<br>8. decided to resume consideration of this item at the latest at their 1086th meeting (June 2010) (DH) in the light of information to be provided on individual and general measures. |

### S. and Marper against the United Kingdom

30562/04+, judgment of 04/12/2008 - Grand Chamber

*Unjustified interference with the applicants' right to respect for their private life due to the retention of cellular samples, fingerprints and DNA profiles taken from them in 2001, in connection with their arrest for offences for which they were ultimately not convicted (S., an 11 year old, was acquitted of attempted robbery and Marper saw charges dropped as the complaint against him for harassment was withdrawn) (violation of Art. 8).*

The Deputies,

1. recalling that the Court found that "the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard";

2. welcomed, as regards individual measures, the steps taken by the United Kingdom authorities to delete the relevant fingerprints, cellular sample and DNA profile with respect to both applicants;

3. noted, as regards general measures, that the public consultation engaged on the measures proposed by the government to implement the judgment ended on 7 August 2009, and that the government now proposes to implement the necessary legislative reform by way of primary legislation, having included revised proposals concerning powers of retention in the Crime and Security Bill which has been presented to Parliament;

4. welcomed the steps taken in the meantime by the United Kingdom authorities to delete information held on the National DNA Database concerning all persons under the age of ten years,

5. welcomed that the new proposals foresee that all cellular samples should be retained for a maximum of six months from the date on which they were obtained and that time limits for the retention of fingerprints and DNA profiles should be introduced, with special provisions for minors;

6. nevertheless noted that a number of important questions remain as to how the revised proposals take into account certain factors held by the European Court to be of relevance for assessing the proportionality of the interference with private life here at issue, most importantly the gravity of the offence with which the individual was originally suspected, and the interests deriving from the presumption of innocence (see paragraphs 118 – 123 of the judgment), and requested, accordingly, that the Secretariat rapidly clarify such questions bilaterally with the United Kingdom authorities;

7. noted that further information was also necessary as regards the institution of an independent review of the justification for retention in individual cases;

8. decided to resume consideration of this item at their 1078th meeting (March 2010) (DH), in the light of further information to be provided on general measures.

## Interim Resolutions (extract)

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted three interim resolutions. This kind of resolutions may notably provide information on adopted interim measures and planned further reforms, it may encourage the authorities of the state concerned to make further progress in the adoption of relevant execution measures, or provide indications on the measures to be taken. Interim Resolutions may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, they may urge states to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the respondent state has not complied with the Court's judgment.

Extracts from the Interim Resolutions adopted are presented below. The full text of the resolutions is available on the website of the Department for the Execution of Judgments of the European Court of human Rights, the Committee of Ministers' website and the HUDOC database of the European Court of Human Rights.

### Interim resolution adopted at the 1072th meeting

### Interim Resolution CM/ResDH(2009)160 Hirst against the United Kingdom No. 2

74025/01, judgment of 06/10/2005 - Grand Chamber

*General, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote (violation of Art. 3 of Prot. No. 1).*

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

Expressed serious concern that the substantial delay in implementing the judgment has given rise to a significant risk that the next United Kingdom general election, which must take place by June 2010, will be performed in a way that fails to comply with the Convention;

Urged the respondent state, following the end of the second stage consultation period, to rapidly adopt the measures necessary to implement the judgment of the Court;

Decided to resume consideration of this case at their 1078th meeting (March 2010) (DH), in the light of further information to be provided by the authorities on general measures.

**56848/00, judgment of 29/06/2004, final on 29/09/2004**
**Interim Resolution (2008)1, (2009)159**
**Memorandum CM/Inf/DH(2007)30 (rev. in English only) and CM/Inf/DH(2007)33**

### Interim Resolution CM/ResDH(2009)159 Zhovner and other similar cases against Ukraine

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

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

Deplored that, despite the urgency of the situation and the Committee's repeated calls to that effect, the Ukrainian authorities have continuously failed to give priority to finding effective solutions to the important problem of non-enforcement of domestic courts' decisions;

Reiterated its call to the Ukrainian authorities at the highest level to adhere to their political commitment to resolving the problem of non-enforcement of domestic courts' decisions and thus complying with Ukraine's obligation under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Strongly urged the Ukrainian authorities:

– to rapidly adopt general measures, including legislative initiatives previously reported to the Committee of Ministers, to solve structural problems at the origin of these persistent violations of the Convention;

– to set up as a matter of priority a domestic remedy against excessive delays of enforcement of domestic courts' decisions which would secure adequate and sufficient redress in line with the Convention requirements;

Decided to resume consideration of the present issues in the context of the Court's judgments concerned at the 1078th meeting (March 2010) (DH) in the light of the information to be submitted by the Ukrainian authorities on outstanding individual and general measures.

**33509/04, judgment of 15/01/2009, final on 04/05/2009**
**Interim Resolution CM/ResDH(2009)43**

### Interim Resolution CM/ResDH(2009)158 Burdov No. 2 against the Russian Federation

*Violations of the applicants' right to a court due to the structural problem of the social authorities' failure to enforce final judicial decisions (violations of Art. 6§1 and of Art. 1 of Prot. No. 1); lack of an effective remedy in respect of the continued non-enforcement of the judgments in the applicant's favour (violations of Art. 13).*

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

Strongly urged the Russian authorities to adopt without further delay the legislative reform required by the pilot judgment;

Encouraged the Russian authorities to continue to resolve the similar individual cases lodged with the Court before the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their subsequent implementation;

Decided to resume consideration of the progress in the legislative reform at their 1078th meeting (March 2010) (DH).

## 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 1072nd meeting, the CM adopted 41 Final Resolutions (closing the examination of 87 cases). Some examples of extracts or summaries from the Resolutions adopted follow, in their chronological order (see for their full text the website of the Department for the Execution of judgments of the ECtHR, the website of the CM or the HUDOC database).

### Final resolutions adopted at the 1072th meeting

**– Yildiz, 37295/97, judgment of 31 October 2002, final on 31 January 2003;**
**– Jakupovic, 36757/97, judgment of 6 February 2003, final on 6 May 2003;**
**– Radovanovic, 42703/98, judgment of 22 April 2004, final on 22 July 2004, and of 16 December 2004 (Article 41), final on 16 March 2005;**
**– Maslov, 1638/03, judgment of 23 June 2008 (Grand Chamber)**

### Resolution CM/ResDH(2009)117 Yildiz, Jakupovic, Radovanovic and Maslov against Austria

*Breach of the applicants' right to private and family life due to the residence prohibitions imposed on them under the 1992 and 1997 Aliens Act, and to their expulsion following criminal offences committed in Austria in the light of the fact that their family and social ties with Austria were much stronger than any ties they had with their country of origin (violation of Art. 8).*

#### Individual measures

The European Court awarded Mr Maslov just satisfaction for non-pecuniary damage. It considered that the finding of a violation constituted sufficient just satisfaction for non-pecuniary damages sustained by the other applicants. Subsequently, the residence prohibitions were lifted in all the cases.

In the Yildiz case, on 20/02/2004 the applicant was granted a type "D" visa allowing him to re-enter Austria (valid for a six-month stay). Until 25/05/2006 he held a tourist visa, but the Ministry of the Interior undertook to issue him a residence permit upon his request. To this end, on 21/10/2005 a settlement certificate (*Niederlassungsnachweis*) was issued and he had been repeatedly requested via his lawyer to collect it. However, the applicant failed to do so, nor has he later requested a residence permit.

In the Jakupovic case, in May 2003 the applicant was granted a type "C" visa allowing him to re-enter Austria, valid for a three-month stay. On 13/05/2005 he was issued an unlimited residence permit.

In the Radovanovic case, on 25/01/2005 the applicant was granted a certificate of residence (under the then applicable 1997 Aliens Act). This type of residence permit corre-

sponded to the status he enjoyed prior to his expulsion and included the possibility of access to the labour market.

The exclusion order against Mr Maslov was lifted in domestic proceedings on 31/07/2008. The Austrian authorities indicated on 14/08/2008 that the applicant may enter the country at any time.

### General measures

The former 1992 Aliens Act has been replaced twice, in 1997 and again in 2005. Since 1997, an explicit reference to Article 8§2 of the Convention is included in its text. Furthermore, when imposing a residence prohibition, the authorities have duly to balance the protection of private and family life against the public interest in expulsion taking due account of elements such as the degree of integration of the person concerned or of his or her family and the strength of existing family or other ties.

Furthermore, given the direct effect of the Convention and the European Court's case-law in Austria, the publication and dissemination of the Court's judgments to the competent Austrian authorities and courts should suffice to align their practice with the requirements of the Convention under Article 8 as they emerge from the present judgments.

For this purpose, the judgments were published in the Austrian Institute for Human Rights' *Newsletter* (Yildiz: NL 2002, p.251 (NL 02/6/04), available online at http://www.menschenrechte.ac.at/docs/02_6/02_6_04; Jakupovic: NL 2003, p.25 (NL 03/1/06) available online http://www.menschenrechte.ac.at/docs/03_1/03_1_06 Radovanovic: NL 2004, p.87 (NL 04/2/11), see http://www.menschenrechte.ac.at/docs/04_2/04_2_11 ; and Maslov: NL 2008, p.157, (NL 08/3/11), available online at http://www.menschenrechte.ac.at/docs/08_3/08_3_11); and in *Österreichische Juristenzeitung* (Yildiz and Jakupovic: ÖJZ 2003, p.158 and p.567, respectively; Radovanovic: ÖJZ 2005, p.76; Maslov: ÖJZ 2008, p.779). Furthermore, the Court's judgments were disseminated to the Administrative Court, the Constitutional Court, and all authorities responsible for decisions on residence prohibitions, to provide guidelines when dealing with juvenile offenders.

## Resolution CM/ResDH(2009)118 Schreder and nine other cases against Austria[1]

**Excessive length of certain civil proceedings before Austrian Courts conducted under the Code of civil proceedings or the non-contentious proceedings Act (violations of Art. 6§1).**

### Individual measures

The European Court awarded no just satisfaction in the cases of Schreder, H.E, and Girardi, in which no claim had been made. The proceedings are over in all cases.

### General measures

#### 1. Legislative reforms:

a. *The Code of Civil Proceedings (Zivilprozessordnung)*: The Code of Civil Proceedings was amended on 30/04/2002 (published in Federal Law Gazette I No. 76/2002, entry into force on 1/01/2003), with a view to streamlining and accelerating judicial proceedings. A number of measures were introduced to prevent abuse of procedures, not least by precluding belated presentations by the parties by their own fault (Section 179), setting time-limits for the submission of expert opinions (Section 357§1), and by introducing sanctions where parties unjustifiably refuse to co-operate with experts (Section 357§2). In addition, the summons procedure has been simplified (Section 371§2). Moreover, an important part of the reform lies in streamlining the proceedings (Verfahrenskonzentration), for example, by introducing a preliminary hearing where a "case-processing programme" (Prozessprogramm) shall be established (Section 258).

*b) The Non-Contentious Proceedings Act (Ausserstreitgesetz):* A new Non-Contentious Proceedings Act entered into force on 1/01/2005 (published in Federal Law Gazette (BGBl) I No. 111/2003, available online at http://www.ris.bka.gv.at/Dokumente/BgblPdf/2003_111_1/2003_111_1.pdf.

A number of provisions are similar to the amended Code of Civil Procedure, to guarantee the efficient and speedy conduct of the proceedings, such as stricter time-limits for parties to respond to other parties' requests, enhancing the efficiency of the summons procedure, and limiting the possibilities of submitting new evidence during the course of proceedings. Section 13 provides that courts are obliged to minimise the length of the proceedings as far as possible and that parties are obliged to contribute to their speedy conduct. Section 23 provides for the same time-limits as set out in the Code of Civil Proceedings.

c) *The Rent Act (Mietrechtsgesetz)*: On 1/05/2005 procedural amendments of the Rent Act entered into force. Section 37§3 item 16 provides new legal remedies which contain components aimed at accelerating proceedings. Item 17 provides reimbursement of the winning party's legal representation by the losing party only insofar as these acts have been adequate and have not unnecessarily delayed the proceedings.

#### 2. Supervisory (disciplinary) mechanism:

In addition, a supervisory disciplinary mechanism has been set up in respect of the courts that had caused the delay in the case of H.E., taking into account that the main problem had been the repeated change of judges.

#### 3. Dissolution of the Vienna Juvenile Court:

Following a re-organisation of the judiciary, the Vienna Juvenile Court was dissolved in 2003 and custody proceedings now fall within the competence of first-instance district courts.

#### 4. Publication and dissemination

All judgments of the European Court against Austria concerning a violation in respect of the length of civil proceedings are automatically transmitted to the competent Higher Regional Court with the request to disseminate it in the area of its jurisdiction and to inform the authorities that had been directly involved in this violation. Furthermore, the judgments are accessible to all judges and state attorneys

1. Schreder, 38536/97, judgment of 13 December 2001, final on 13 March 2002; Gollner, 49455/99, judgment of 17 January 2002, final on 17 April 2002; H.E., 33505/96, judgment of 11 July 2002, final on 6 November 2002; Girardi, 50064/99, judgment of 11 December 2003, final on 11 March 2004; Löffler (No. 2), 72159/01, judgment of 4 March 2004, final on 4 June 2004, rectified on 2 December 2004; Wohlmeyer Bau GmbH, 20077/02, judgment of 8 July 2004, final on 8 October 2004; Ullrich, 66956/01, judgment of 21 October 2004, final on 21 January 2005; El Massry, 61930/00, judgment of 24 March 2005, final on 24 June 2005; Baumann, 76809/01, judgment of 7 October 2004, revised on 9 June 2005, final on 30 November 2005; Holzinger (No. 3), 9318/05, judgment of 15 January 2009, final on 5 June 2009

through the internal database of the Austrian Ministry of Justice (RIS).

**50049/99, judgment of 24 May 2007, final on 24 August 2007**

## Resolution CM/ ResDH(2009)119 Da Luz Domingues Ferreira against Belgium

*Unfair criminal trial on account of an appeal court's refusal in 1998 to reopen proceedings which had taken place in the absence of the accused despite clear indications that he wished to avail himself of his right to appear in court (violation of Art. 6§1).*

### Individual measures

The European Court held that the finding of a violation constituted in itself sufficient just satisfaction for the alleged damage. In reply to a request of the applicant, the Court indicated that it was not competent to ask the Belgian state to undertake that the applicant would not have to serve the six-year sentence imposed by the Liège appeal court.

At the stage of the execution of the European Court's judgment, the applicant requested and obtained the reopening of the proceedings at issue (judgment of the *Cour de cassation* of 09/04/2008), under the new law on reopening of judicial proceedings which entered into force on 01/12/2007 (see also the Göktepe case, Final Resolution CM/ResDH(2009)65). The case has been sent back to the Mons Court of Appeal, to be ruled upon anew.

### General measures

The European Court noted that the applicant had twice applied to have his conviction set aside (in August 1994 and September 1998) and that in both cases his application was declared inadmissible, in the first instance because he had not respected the formalities, and in the second case for failure to respect the time limit. The Court acknowledged the importance of respecting rules for lodging appeal but considered that in a case such as this the rules, or their application, should not prevent an applicant from making use of an available remedy.

In order to avoid similar cases, the European Court's judgment was published without delay on the internet sites of the Ministry of Justice and the *Cour de cassation* so that the European Court's conclusions could be taken into account in practice.

Subsequently, on 18 June 2008, the College of Prosecutors General sent out a circular letter (No. COL 5/ 2008), giving an "order on the notification of his or her rights to a person convicted *in absentia*, detained or not, located within the Kingdom or abroad".

According to this order, when the public prosecution requests bailiffs (*huissiers*), prison directors or any other person given such power by law, to notify a decision of conviction *in absentia*, it shall now instruct them to include, in the notification document, all the necessary elements to request that the conviction be set aside, as prescribed by law. A similar instruction shall be given in cases where an arrest warrant is given, or to the prison director if the person convicted *in absentia* is detained.

If the convicted person lives abroad, a notification along the same lines is also possible, as normally the notification is made by letter. If need be, the notification may also be made through the appropriate foreign judicial authorities.

As a uniform procedure is necessary, one single document indicating the person's rights shall be used everywhere. The use of this document is mandatory for huissiers and prison directors without dissertation.

Now, a standard document (appended to the order) shall be used to notify every decision or judgment delivered *in absentia*.

Finally, information on the procedure to follow to request that a conviction *in absentia* be set aside and on the rights of the person concerned will also be included in the European arrest warrant, in the section "legal guarantees".

**59489/00, judgment of 20/10/2005, final on 20/ 01/2006 CM/Inf/DH(2007)8**

## Resolution CM/ ResDH(2009)120 UMO Ilinden-Pirin and others against Bulgaria

*Infringement of the freedom of association of an organisation aimed at achieving "the recognition of the Macedonian minority in Bulgaria" due to the dissolution in 2000 of its political party, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Art. 11).*

### Individual measures

#### 1. Procedures for re-registration of the political party

*a) First request for re-registration (2006-2007):* the representatives of UMO Ilinden - PIRIN decided to introduce an application for the registration of their party on the basis of the new 2005 Political Parties Act, even though this law raised the number of required members for the registration of a new party from 500 to 5000. The request was rejected by the court of the City of Sofia in October 2006 for non-compliance with the registration formalities under the law on political parties of 2005. The Supreme Court of Cassation confirmed the decision of the first-instance court (decision of 14/02/2007).

The applicants addressed several complaints to the Committee with respect to these proceedings.

The applicants indicated in particular that certain actions of the police had the aim of intimidating their members. They indicated that as a result of these actions they would not be able at present to gather the 5000 members required for a new political party under the 2005 Political Parties Act. The authorities indicated in this respect that the investigations carried out by the police had been ordered by the prosecution authorities on the basis of indications concerning irregularities and falsification of documents committed in view of registering this party.

*b) Second application for re-registration (2007):* Faced with the situation described above, UMO Ilinden - PIRIN complained of the fact that further registration proceedings on the basis of the new Political Parties Act would be doomed to failure

having regard to the problems encountered on meeting the requirement of 5000 members. They maintained in this respect that according to the transitional provisions of this law, existing parties are not subject to new registration and in consequence may continue to function even if they do not meet the requirements for a new registration. In other words, if the party had not been dissolved in 2000 it would not have been subject to the 5000-member requirement. In view of these particular problems, the Committee invited the Secretariat, in co-operation with the Bulgarian authorities and the applicants, rapidly to examine the avenues at the applicants' disposal with a view to obtaining the registration of UMO Ilinden - PIRIN (see the decision adopted at the 997th meeting, June 2007).

Following the consultations between the Secretariat, the Bulgarian authorities and the representatives of UMO Ilinden - PIRIN, the Secretariat wrote to the Bulgarian authorities suggesting that the most appropriate and swift avenue for obtaining the erasure of the consequences of the violation established - and thus the registration of the party - appeared to be a new application for registration on the basis of the new Political Parties Act. Indeed this law, if interpreted in the light of Bulgaria's obligations following the judgment of the Court, appeared to allow the registration of a party on the basis on the list of 6 000 members presented before the courts in the registration proceedings of 2006-2007.

In the light of this information, the applicants immediately re-founded a political party with the same name and similar statutes as that which had been unjustifiably dissolved. They lodged a new application for registration in July on the basis of the list of 6 000 members gathered in 2006. This new application was rejected by the Court of the City of Sofia (decision of 23/08/2007). In this decision, the court reiterated the grounds for unconstitutionality of the party's political programme already challenged by the European Court's judgment in this case. No reference was made to the judgment of the European Court in the present case. The court also found that the members' list was no longer valid and added also certain grounds related to formal deficiencies. The first-instance court's judgment was confirmed by the Supreme Court of Cassation (decision of 11/10/2007). The grounds on which the Supreme Court of Cassation relied concern only the fact that the list of members was not up to date. Moreover, it should be noted that the first two refusals to re-register mentioned above are the subject of two new applications before the European Court (Nos. 41561/07 and 20972/08).

In May 2008, the applicants complained of new actions of the police towards their members. The Bulgarian authorities indicated that these actions concerned examination of witnesses in the framework of criminal proceedings opened in 2008 on indications of forgery of documents regarding the registration of this party in 2006.

*c) Third application for re-registration (2008-2009):* In October 2008, the applicants lodged a new application for the registration of their party with the competent court. The application was based on the transitional provisions of the 2005 Political Parties Act according to which the parties registered at the time of the entry into force of the law (01/04/2005) must put their statutes in conformity with the provisions of the law by 30/06/2006. The applicants applied for the registration of certain amendments in the statutes of the party pointing out that the party should be considered as an existing one. They also asked for an extension of the time-limit provided by the transitional provisions. The applicants motivated their application *inter alia* on the obligation for *restitutio in integrum* following from the European Court's judgment in this case.

The Sofia City Court dismissed the application by a decision of 19/12/2008. The court indicated that UMO Ilinden - PIRIN was not a registered party at the time of the entry into force of the 2005 Act and that, consequently, the applicants could not base their application on the transitional provisions of that law. The court also found that, assuming that the application was aimed at a new registration of the party, the legal requirements concerning the foundation of a political party were not fulfilled. The first-instance court's judgment was confirmed by the Supreme Court of Cassation (decision of 19/05/2009). The grounds on which the Supreme Court of Cassation relied concern exclusively the non-respect of registration formalities under the 2005 Political Parties Act. It is important to note that in these proceedings the national courts referred to the judgment of the European Court. However, they indicated that they were not in a position to examine all the consequences of the European Court's judgment as to the merits, since the preliminary question they had to decide related exclusively to compliance with the law of the material acts for the constitution of the party and of the related documents to be submitted.

#### 2. Decrease of the number of members required

In the meantime, in January 2009, the Political Parties Act was amended. According to the amendments introduced, the number of members required at present for the foundation of a political party dropped from 5 000 to 2 500.

#### 3. Declaration of the government as regards the possibility of registering the party

The government declared that it "sees no obstacle to the applicants' obtaining the registration of their organisation as a political party on the condition that the requirements of the Constitution of the state and the formal requirements of the Political Parties Act are met, without any grounds such as those incriminated by the European Court being opposed to the applicants".

### General measures

#### 1. Awareness-raising measures

It was noted that the Constitutional Court's decision challenged in the judgment was inspired by the Convention and by the European Court's case-law existing at that time. It was also noted that 3 out of 12 judges voted against the dissolution on the basis of grounds similar to those of the European Court's judgment. In this situation, the government considered it sufficient to send the European Court's judgment United Macedonian Organisation Ilinden - PIRIN and others to the Constitutional Court and to the courts competent for the registration of political parties in order to ensure that applicable domestic law is interpreted in conformity with the Convention and thus to prevent new violations, similar to that found by the European Court. This dissemination was done by a circular letter drawing these courts' attention to the fact that this communication is made within the framework of the adoption of the general measures for the execution of the European Court's judgment. In addition, with a view to raising the awareness of the competent authorities, a CD manual, elaborated by the National Institute of Justice, was sent to 153 courts, the same

number of prosecutor's offices and to 29 investigation offices. The manual contains examples of case-law of the European Court in the field of the freedom of association and freedom of assembly, as well as articles, studies and other material relating to these areas. It may be downloaded from Internet, at www.blhr.org/bibl.htm

Following the decisions adopted by the Committee of Ministers in the framework of the case of the UMO Ilinden-PIRIN and others in October 2007 and in June 2008, several training activities have been organised.

A seminar for judges and prosecutors on freedom of association and assembly with the participation of the Council of Europe was organised by the National Institute of Justice in October 2007. Another seminar on this subject, for judges, prosecutors, representatives of the Ombudsman's Office, lawyers and NGOs was organised in December 2007 by the Ministry of Justice and the Department for execution of judgments. Yet another training activity for mayors and police chiefs took place in May 2008. Another seminar for judges and prosecutors was organised by the National Institute of Justice in June 2008. In October 2008 a group of judges from the Supreme Court of Cassation, of prosecutors and of representatives of the Government Agent's Office paid a study visit to the Council of Europe during which they participated in a working seminar.

The Government undertook to continue to organise awareness raising activities in the field of application of Article 11 of the Convention, including visits to the Council of Europe of judges in particular from the competent courts.

**2. Publication**

The judgment of the European Court was published on the website of the Ministry of Justice www.mjeli.government.bg <http://www.mjeli.government.bg>, to draw the public' attention, as well as that of other authorities which may be brought to act in this area, to the requirements of the Convention in this field. The judgment was also published in the new quarterly journal *European Law and Integration*, which is published by the Ministry of Justice in 1000 copies and distributed to magistrates and academics (No. 2/2006), together with an article analysing the European Court's conclusions in these cases, as well as the Court's case-law in this field.

**General measures**

The European Court noted that the domestic courts' interpretation of the relevant substantive and procedural laws was in contravention to the Supreme Court's practice (§27 of the judgment). The Croatian authorities consider that given the direct effect of the Convention in Croatia, publication and dissemination of the judgment of the European Court to the relevant courts should be sufficient to avoid similar violations. In this context it should be noted that the judgment of the European Court has been translated into Croat and disseminated to the Constitutional Court, the Supreme Court and to the courts involved. It is also available on the Internet site of the Ministry of Justice (www.pravosudje.hr) and has been published in a periodical on the case-law of the European Court of Human Rights (Vol. 3 No. 2 2007).

**38355/05, judgment of 8/11/2007, final on 2/06/2008**

## Resolution CM/ResDH(2009)121 Biondić against Croatia

*Violation of the applicant's right of access to a court due to the refusal by the domestic courts to examine the substance of the applicant's counterclaim submitted in civil proceedings concerning an inheritance instituted against her by a third party; although the lower courts' decisions were contrary to the Supreme Court's practice, the latter also dismissed the applicant's claim as inadmissible ratione valoris (violation of Art. 6§1).*

**Individual measures**

The applicant submitted no claim for just satisfaction. The European Court noted that the applicant had a possibility to request the reopening of the proceedings in question in accordance with section 428 (a) of the Civil Procedure Act, which would allow a fresh examination of her claim (§31 of the judgment). In this context it should be noted that the proceedings questioned in the judgment of the European Court were reopened in 2008. The Croatian authorities underline that, it is expected that in the new proceedings the competent courts will take into account the findings of the European Court in the present case (see general measures below).

**Bulena, 57567/00, judgment of 20 April 2004, final on 20 July 2004; Kadlec and others, 49478/99, judgment of 25 May 2004, final on 25 August 2004; Zedník, 74328/01, judgment of 28 June 2005, final on 28 September 2005; Zemanová, 6019/03, judgment of 13 December 2005, final on 13 March 2006**

## Resolution CM/ResDH(2009)122 Bulena, Kadlec and others, Zedník, Zemanová against Czech Republic

*Infringement of the applicants' right of access to the Constitutional Court in various civil proceedings (bankruptcy proceedings in Bulena, recovery of confiscated flats in Kadlec and others, partial withdrawal of a disability pension in Zedník and request for alimony in Zemanová) on account of an excessively formal interpretation by the Constitutional Court of the admissibility rules (violation of Art. 6§1).*

**Individual measures**

The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained. Considering the nature of the violation, the damages suffered by the applicants and the fact that their cases had been considered on the merits at both first instance and appeal, no specific individual measures appear to be necessary. In addition, the applicants have submitted no claims for such measures.

**General measures**

These cases present certain similarities to those of Běleš (judgment of 12/11/2002, closed by Final Resolution CM/ResDH(2007)115), and Zvolský and Zvolská (judgment of 12/11/2002, closed by Final Resolution CM/ResDH(2007)30), following which the authorities adopted legislative and jurisprudential measures to clarify the admissibility requirements for constitutional appeals in the Czech Republic (in particular the rules regarding time-

limits for these appeals and exhaustion of other remedies).

However, these measures did not resolve the particular problem raised by these four judgments, that is the excessive formalism of the Constitutional Court in declaring constitutional appeals inadmissible for failure to observe certain procedural requirements. Consequently, the Constitutional Court was invited to discuss this issue at one of its plenary sessions. The outcome of this discussion was published in a press release of the President of the Constitutional Court on 23/07/2007. It emerges from this document that, as regards the wording of the *petitum* of the constitutional appeals and the identification of the decisions challenged in these appeals (see cases of Bulena and Kadlec and others), judges must avoid an excessively formalistic approach, without necessarily compensating for the procedural activity of the applicants.

Concerning the calculation of the time-limit set for constitutional appeals (see cases of Zedník and Zemanová), constitutional judges agreed that particular attention was necessary so that the appeals are not declared inadmissible unjustifiably. It was underlined that the procedure to be followed depended on the concrete nature of the appeal in question.

Moreover, the judgments of the European Court have been translated and published on the website of the Ministry of Justice (www.justice.cz) and sent out to the authorities concerned, including in particular the Constitutional Court.

## Resolution CM/ResDH(2009)123 M.S. against Finland

**46601/99, judgment of 22/03/2005, final on 22/06/2005**

*Breach of the applicant's right to a fair trial in criminal proceedings brought against him, as he was not informed of a statement received by the court of appeal and was not given the opportunity to comment on it (violation of Art. 6§1).*

### Individual measures

According to Chapter 31 of the Code of Judicial Procedure, extraordinary appeals may be lodged against final decisions if, *inter alia*, "a procedural error has been committed which may have had an effect on the decision". This provision allows the applicant to request the reopening of criminal proceedings found to violate the Convention, if he wishes to do so. The applicant has made no such request.

### General measures

Appeal court procedures are regulated by the Code of Judicial Procedure, which provides that parties to proceedings are given the opportunity, in an oral hearing, to comment on other parties' requests and on evidence which may affect the resolution of the matter. Exceptions to this principle exist where such an oral hearing is found to be "manifestly unnecessary". Nevertheless, the direct effect afforded by the Finnish courts to the case-law of the European Court should determine that their discretion when interpreting such an exception will be exercised in accordance with the principle of fair trial enshrined in Article 6 of the Convention.

The judgment of the European Court has in addition been published in the *Finlex* database. A summary of the judgment in Finnish has been published in the same database. The judgment has been disseminated to the relevant national authorities as well as to the District Court of Hyvinkää and to the Helsinki Court of Appeal.

## Resolution CM/ResDH(2009)124 Mild and Virtanen against Finland

**39481/98 and 40227/98, judgment of 26/07/2005, final on 26/10/2005**

*Unfairness of certain criminal proceedings brought against the applicants in 1995, in that that they were denied the right to examine witnesses because the domestic legislation at the relevant time did not ensure the attendance of these witnesses (violation of Art. 6 §§ 1 and 3 (d)).*

### Individual measures

According to Chapter 31 of the Code of Judicial Procedure, extraordinary appeals may be lodged against final decisions if, *inter alia*, "a procedural error has been committed which may have had an effect on the decision". This provision allows the applicants to request the reopening of criminal proceedings found to violate the Convention, if they wish to do so.

### General measures

Chapter 17, section 18 of the Code of Judicial Procedure was amended by Law 690/1997 which entered into force on 1 October 1997. According to the new provisions, if a person to be heard as a witness has already been convicted of the same offence in other proceedings, he cannot be considered as a witness. In this kind of situation, the provisions on the summonsing, absence and hearing of a party apply, insofar as appropriate, also to that person. In this respect, the direct effect afforded by the Finnish courts to the case-law of the European Court of Human Rights seems to be sufficient to prevent new, similar violations.

The judgment of the European Court has been published in the *Finlex* database. A summary of the judgment in Finnish has been published in the same database. Moreover, the judgment has been sent out to the relevant national authorities.

## Resolution CM/ResDH(2009)125 Posti and Rahko against Finland

**27824/95, judgment of 24/092002, final on 21/05/2003**

*Lack of access to a court in that the applicants could not challenge before a court the lawfulness of decrees issued by the Ministry of Agriculture and Forestry in 1996 and 1998 (based on the 1982 Fishing Act) restricting certain fishing rights that the state had previously leased to them for the period 1995-1999 (violation of Art. 6§1).*

### Individual measures

Given that neither the Finnish authorities nor the European Court found a violation of the applicants' property rights, the need to reopen the domestic proceedings does not seem to arise. In addition, the appli-

cants have not engaged any new court action.

#### General measures

The Finnish authorities have indicated that in all likelihood, courts will take into account the case-law of the European Court when deciding which statutes may be subject to appeal.

The judgment of the European Court was published in the *Finlex* database. A summary of the judgment in Finnish was published in the same database. The judgment was sent out to the relevant national authorities, including the Supreme Administrative Court, and the Ministry of Agriculture and Forestry.

**25803/94, judgment of 28/07/1999, final on 28 / 07/1999**

### Resolution CM/ ResDH(2009)126 - Selmouni against France

*Torture inflicted on the applicant while in police custody between 5 and 29 November 1991 in proceedings related to drug-trafficking (violation of Art. 3); excessive length of the subsequent criminal proceedings against the police officers involved (violation of Art. 6§1).*

#### Individual measures

It transpires from the Court's judgment that the judicial proceedings against the policemen suspected of the offences at issue resulted in a judgment of the Versailles Court of Appeal of 1 July 1999 which held the policemen guilty of "assault and wounding with or under the threat of the use of a weapon, occasioning total unfitness for work for less than eight days (...) by police officers in the course of their duty and without legitimate reason" and sentenced them to imprisonment, some of which was suspended. When the European Court gave its judgment, it was still possible to appeal before the *Cour de cassation*. Before the Committee of Ministers the importance of bringing the criminal proceedings against the policemen to a close quickly was emphasised. The government subsequently made it known that that their appeal on points of law had been dismissed on 31 May 2000.

The Court held that having regard to the extreme seriousness of the violations of the Convention of which Mr Selmouni was victim, it considered that he suffered personal injury and non-pecuniary damage for which the findings of violations in this judgment did not afford sufficient satisfaction. Making its assessment on an equitable basis, it awarded the applicant the sums set out above.

The applicant had asked the Court to specify in its judgment that the sums awarded under Article 41 should be exempt from attachment. In reply, the Court stated that it considered that:

"The compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, inter alia, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the state itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind, the Court considers that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory. However, the Court does not have jurisdiction to accede to such a request [...]. It must therefore leave this point to the discretion of the French authorities."

The French authorities assured the Committee of Ministers that the sums would not be attached.

Finally the applicant requested before the Court to be transferred to the Netherlands to serve the remainder of his sentence there. The Court reiterated that Article 41 does not give it jurisdiction to make such an order against a contracting state. Before the Committee of Ministers, the applicant did not reiterate this request.

#### General measures

The European Court's judgment was rapidly published and commented upon, in particular in *les cahiers du CREDHO* n°6.

After the judgment of the European Court, Law 2000-494 of 6 June 2000 created the National Commission for Policing Ethics (*Commission Nationale de Déontologie de la Sécurité*, www.cnds.fr), mandated to supervise the respect of ethics by all those working in security in the French Republic. The Commission is an independent administrative authority and began work in 2001.

In its report for 2001, the Commission underlined the growing importance of the European court's case-law, referring to the finding against France in the Selmouni case. Since then, it has investigated a number of complaints concerning detention on remand and the conditions thereof. In several opinions and recommendations, the Commission asked the Interior Ministry to take action to ensure that state officials ordering and administering detention on remand strictly respect the legal and ethical rules. On 11 March 2003 the Minister of the Interior, of Internal Security and of Local Freedoms issued a circular: *Guaranteeing the dignity of remand prisoners.* This text reminded police staff of several basic rules necessary to maintain the integrity and dignity of remand detainees.

Furthermore, the French government recalled that for some years it had been engaged in dialogue with the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) on the implementation of the this circular, which had been welcomed by the CPT (cf. CPT/ Inf(2004)6, p30).

**Application No. 28524/95, judgment of 16/07/2001 - Grand Chamber**

### Resolution CM/ ResDH(2009)127 – Peers against Greece

*Degrading treatment of the applicant, on account of the detention conditions in 1994 in the Korydallos prison (violation of Art. 3); unnecessary interference with the applicant's correspondence, while in prison, with the former European Commission of Human Rights (violation of Art. 8).*

#### Individual measures

The applicant is no longer detained in Greece. He was expelled in 1998.

#### General measures

***1. Violation of Article 8***: The Penitentiary Code (Art 53 §§ 4 and 7 of Law 2776/1999) now offers suffi-

cient safeguards for the protection of prisoners' correspondence. Article 53§4 expressly prohibits any control of prisoners' correspondence and any other form of communication, safe when such a control is justified by national security reasons or related to particularly serious offences. According to Article 53§7, when a restriction is imposed on correspondence or communications, the prisoner may appeal to the competent judge pursuant to Law No. 2225/1994 on freedom of correspondence and communication.

**2. Violation of Article 3**

*Construction of new prisons*: The construction of new prisons forms part of an overall reform to modernise the penitentiary system as a whole. The first phase was completed at the end of 2007. It consisted in the construction of seven prisons, with a total capacity of 2700 places, of which one was opened in Trikala in June 2006, three others have been in operation since 2008 in Domokos, Grevena and Thiva, and three more will be in operation before the end of 2009 in Drama, Serres and Chania. Furthemore, two new wings with a capacity of 56 and 24 places respectively will be operational before the end of 2009 in the Diavata and Larissa prisons.

The second phase of this programme, which began on schedule in 2008, foresees the construction of five new prisons with a total capacity of 4000 places. During this phase the prisons of Lassithi (Crete), Kassavetia, St John of Corinth and Diavata will be replaced by new prisons. The authorities indicated that these new prisons are being built in accordance with international standards. In addition, important renovation work has been carried out in many prisons.

Once new prisons had been built, prisoners from Korydallos, the prison at issue in the present case, were transferred to Trikala and the recently opened establishment at Domokos, which has also received transfers from Komotini, Chios and Thessaloniki. Likewise, 350 women prisoners from Korydallos will be sent to the new prison at Thiva. The remaining detainees serving sentences in Korydallos will be transferred to the new prison in Grevena. There are few prisoners left in Korydalos, most of them being men detained on remand. The prosecutor supervising this prison found that the conditions in the solitary confinement units have considerably improved as a result of the new sanitary equipment and the activity schedules for prisoners that allow them to meet outside their cells every day.

**Special measures for preventing prison overpopulation**

- Law 3388/2005 provides, *inter alia*, that the reception capacity of operating prisons should not exceed 300 detainees, while in the future, new prisons' capacity should not exceed 400;

- Law 3346/2005 provides for the conditional release of detainees who have served a part of their sentence. Since its adoption, 400 detainees have benefited from this measure ;

- decision 138317/2005 of the Justice Minister introduced the possibility of community service as alternative measure to imprisonment.;

- decision 8508/2005 of the Justice Minister allowed the transfer of 650 detainees to agricultural prisons which are less crowded;

- as 35% of prisoners are foreigners, a programme to enable them to serve their sentences in their countries of origin is underway.

- a new law concerning in particular the "improvement of conditions of detention and the reduction of prison population density" was adopted on 18 December 2008. By virtue of this law , approximately 5500 prisoners will be released in 2009, in particular prisoners that have been sentenced to less than 5 years' imprisonment or prisoners whose prison sentences can be commuted to other penalties. Moreover, the maximum length of detention on remand has been reduced. As a result, the total number of prisoners is expected to be lowered to 6 815 for an actual prison capacity of 8 243 places. In January 2009, 589 prisoners were released on the basis of this law including 27 who were detained in the Korydallos prison.

*Training of prison staff*: In 2005 125 prison surveillance staff members took part in seminars on the treatment of detainees.

*Effective domestic remedy against detention conditions*: Article 6 of Law 2776/1999 (Penitentiary Code) and Ministerial Decree No. 58819/2003 grant any prisoner the right complain regarding the conditions of detention before the prison authorities and in particular the prosecutor/supervisor of the prison. If the complaint is rejected, detainees may challenge this decision under Articles 6 and 86 of Law 2776/1999 before the competent enforcement tribunal. National courts' case-law demonstrates that requests to the prison council and appeals to enforcement tribunals may relate to conditions of detention in prison such as the size of the cell, the quality of ventilation or heating systems, means of communication with third parties (cf. decisions 2075/2002 and 175/2003 of the Indictment Chamber of the Piraeus Criminal Court).

Moreover, Article 572 of the Code of Criminal Procedure sets out a right to complain to the prosecutor responsible for the enforcement of sentences and security measures who is required to visit the prison at least once a week. In accordance with Article 7 of Ministerial Decree 58819/2003, detainees have the right to seek information from the competent prosecutor concerning the various steps they can take and appeals available in respect of their conditions of detention.

The European Court found these remedies effective and sufficient for the purposes of Article 35 of the Convention, having declared several complaints about detention conditions inadmissible on account of their not having been exhausted (Gehre against Greece, decision of 5/07/2007, Vaden against Greece, judgment of 29/03/2007 and Tsivis against Greece, judgment of 6/12/2007).

*Continuing improvement of prison conditions*: The authorities have indicated their firm commitment to implementing the series of measures described above. Their efforts to improve detention conditions in prisons will be continued, especially within the framework of their co-operation with the European Committee for the Prevention of Torture (CPT) and in the light of its recommendations.

**40907/98, judgment of 6/03/2001, final on 6/06/2001**
**Interim Resolution (2005)21**

## Resolution CM/ResDH(2009)128 - Dougoz against Greece

*Degrading conditions of the applicant's detention between 1997 and 1998, pending his expulsion following a court order: in particular, considerable overpopulation of the detention centre and lack of bedding combined with the excessive length of his detention under such conditions (about 17 months in total); detention pending expulsion not in accordance with a procedure "prescribed by law" and impossibility for the applicant to have the lawfulness of his detention pending expulsion examined by a national court (violation of Art. 3, 5§1 and 5§4).*

### Individual measures

The applicant is no longer detained in Greece, he was expelled in 1998. The European Court awarded him just satisfaction in respect of the non-pecuniary damage he had suffered. In these circumstances, no other individual measure was considered necessary.

### General measures

#### 1. Violation of Article 3

The Alexandras Avenue Police Headquarters in is no longer used for the detention of aliens awaiting expulsion. The Drapetsona Detention Centre was refurbished in 2005 to provide the best conditions of cleanliness for detainees; it moreover accommodates detainees awaiting expulsion for very short periods only.

In 2006, a new detention centre aliens was opened in Athens (Petrou Ralli Avenue). Another centre was opened in 2007 in the Prefecture of Evros in Nothern Greece. Another centre has been in operation since November 2007 on Samos Island. In the old centres of detention at Rhodope, Mytilini and Piraeus, improvements of the installations have been carried out in accordance with the observations of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Seven new detention centres have opened in various police headquarters, four of which are on the frontier islands of Chios, Samos, Lesbos and Corfu.

Furthermore, special reception centres with appropriate medical staff are also provided to accommodate adults, minors and families. Since 2008, two new centres have been operational, one at Lakonia and one other at Amygdaleza Attikis, the latter being intended for the accommodation of minors.

The authorities underlined the fact that the country, in view of its geographical position, faces an inflow of illegal immigrants which requires action at a European level (see in particular the Commissioner for Human Rights' report following his visit to Greece on 8-10 December 2008, CommDH(2009)6§37 and following; furthermore, according to the national authorities' statistics, in 2008 the number of irregular immigrants exceeded 96 000). In this context they plan to build 27 new accommodation centres with the help of European funding. In order to deal with illegal immigration, closer co-operation between Greece, Cyprus, Malta and Italy was announced by the Greek Minister for the Interior following the decisions of Council of Ministers of the Interior of the European Union, on 27 November 2008, in Brussels.

Finally it should be noted that access to lawyers, consular authorities and NGOs is available seven days a week in all detention centres for foreigners. In addition, leaflets outlining the rights of detainees are available in 15 languages in all those centres. A personal file is set up for each person detained pending expulsion in which all events which take place during his or her detention are recorded.

Furthermore, by Laws Nos. 2910/2001 and 3386/2005 (amended by Law No. 3536/2007 and by the recent Law No. 3772/2009 (A112/10-7-2009), a maximum time-limit was fixed for the length of detention pending expulsion. In this respect, it should be recalled that these measures are being examined by the Committee of Ministers within the framework of its supervision of the execution of the judgment in Kaja against Greece (judgment of 27/07/2006), which concerns mainly the excessive length of the applicant's detention pending his expulsion.

The authorities have underlined their firm commitment to pursuing their efforts to improve detention conditions, in the light, in particular, of the recommendations of the CPT.

#### 2. Violations of Article 5§§1 and 4

The detention and expulsion of aliens following a court order are now regulated by Inter-ministerial Decision 137954 (OJHR B 1255/16.10.2000), issued under Immigration Law 1975/1991 and making express reference to Article 5§1f of the Convention. According to this inter-ministerial Decision, the detention of aliens under expulsion following a court order is now subject to review by the public prosecutor and the courts (see also Article 565 of the Code of criminal procedure).

**36887/97 and 34720/97, judgments of 21/12/2000, final on 21/03/2001**
**Interim Resolution ResDH(2003)149**

## Resolution CM/ResDH(2009)129 - Quinn and Heaney & McGuinness against Ireland

*Failure to respect the right of the applicants – arrested and detained in police custody on suspicion of having committed terrorist acts – to remain silent and not to incriminate themselves and consequent breach of the presumption of their innocence (violation of Art. 6§1 and of Art. 6§2).*

### Individual measures

**The Quinn case***:* on 23/04/2004 the High Court quashed the applicant's conviction. The final judgment (neutral citation [2004] IEHC 103) has been published by the British and Irish Legal Information Institute (BAILII) at htttp://www.bailii.org/ie/cases/IEHC/2004/103.html. The relevant court was informed that the applicant's conviction had been quashed. Both the register of the court and police records now reflect the High Court's decision and the European Court's judgment, so that a response to inquiries about the applicant to the police authorities would not reveal any indication of that conviction.

**The Heaney and McGuinness case***:* on 29/05/2006, the Court of Criminal Appeal quashed the applicants' convictions on the ground that they were unsafe. The Registrar of that court advised the Garda Criminal Records Office that the applicants' convictions had been quashed.

#### General measures

The measures adopted are detailed in the appendix to the interim resolution referred to above, which was adopted at the 847th meeting (July 2003) and by which it was decided to close the Committee's examination of general measures.

They may be summarised as follows.

- The Irish authorities decided that the *Garda Siochana* (the police) were no longer to avail themselves of Section 52 of the 1939 Offences against the State Act.
- In its judgment of 21 January 1999 in *Re: National Irish Bank (No.1)*[2], the Supreme Court found that no statement made under a certain legislative provision (which was similar to that found in Section 52 of the 1939 Act) would be admitted into evidence unless the trial judge was satisfied that the confession was voluntary. The Supreme Court considered that compelling a person to confess and convicting that person on the basis of that compelled confession would be contrary to Article 38 of the Constitution.
- In the Irish legal system, a judgment of the Supreme Court, the highest court in the country, is part of the law of Ireland. A judgment of the Supreme Court, such as that given in the *National Irish Bank Ltd* case, must be applied by all criminal courts.
- The position in Irish law now is that a statement obtained as a result of a statutory demand would be inadmissible in evidence where the judge decided that that statement was not given voluntarily.

Following that judgment, the police authorities ceased to invoke Section 52 of the 1939 Act in the questioning of suspects.

The European Convention on Human Rights Act 2003, which is part of Irish law, requires Irish courts to interpret and apply the law in a manner compatible with the Convention and to take into account the case-law of the European Court.

The adaptation of Irish law to the Convention requirements is also evident from the decisions taken in the context of the individual measures.

The judgment of the European Court is accessible on the Irish Courts Service website (www.courts.ie) and available in legal libraries.

2. which can be found at http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/1999/18.html&query=National%20Irish%20Bank

## Resolution CM/ResDH(2009)130 – Slivenko and others against Latvia

**48321/99, judgment of 09/10/2003 – Grand Chamber; Memorandum CM/Inf/DH(2005)32 revised**

*Deportation of the applicants, a mother and her 18-year-old daughter, former Latvian residents of Russian origin, to Russia in the context of the implementation of the 1994 agreement regarding the withdrawal of Russian troops (violation of Art. 8).*

#### Individual measures

A friendly settlement agreement was concluded on 29 March 2006 between the parties. On 21 June 2006, the Minister of the Interior adopted a separate decision with respect to each of the applicants, granting them permanent residence permits. These decisions were communicated to the applicants accompanied by their residence permits respectively on 4 July 2006 and on 24 July 2006.

#### General measures

The Latvian translation of the judgment of the Court has been published in the official periodical Latvijas Vēstnesis on 27 November 2003, No.167 (2932) in hard copy as well on online (www.vestnesis.lv) and at the website of the Government Agent (www.mkparstavis.am.gov.lv). The translated judgment has also been sent out to judges and a short analysis has been included in the Bench Book for judges published in 2004. The issue has also been included in the training programme for judges and assistants at administrative courts.

The administrative decisions at the basis of the violation have already been declared unlawful by the Latvian courts.

## Resolution CM/ResDH(2009)131 - Lavents and Jurjevs against Latvia

**Lavents, 58442/00, judgment of 28/11/2002, final on 28/02/2003**
**Jurjevs, 70923/01, judgment of , final on**

*Violations related to the pre-trial detention of the applicants: irregularity of such detention (violation of art. 5§1 in the Jurjevs case), excessive length of the detention on remand (violation of art. 5§3 in the Lavents case) lack of an effective judicial review (violation of art. 5§4 in both cases), total refusal of family visits during part of the detention and continuing monitoring of the correspondence between the applicant, his lawyer and his family (violation of Art. 8 in the Lavents case); also, in the Lavents case, illegality of the criminal proceedings brought against him on account of the unlawful composition of the Riga regional court and its lack of impartiality, breaching the applicant's presumption of innocence (violation of Art. 6§1 and 6 §2).*

#### Individual measures

In the Lavents case, the applicant was released pending trial on 27 January 2003 and placed under police supervision. On 13 February 2003 the Senate of the Latvian Supreme Court quashed the judgment of the Riga Court of first instance of 19 December 2001 and referred the case back to that court for re-examination with a new bench of judges. The Riga Regional Court delivered its judgment on 26 April 2005. On 16 May 2005, the two co-accused lodged an appeal but the applicant used the opportunity provided by national law and asked for the judgment to be translated into Russian. The translation was expected to be completed in October 2005. Following receipt of the translated judgment, the applicant will have the right to submit an appeal.

In the Jurjevs case, the applicant is no longer detained on remand: on 24 February 2005 he was convicted and sentenced to imprisonment. Before the European Court the applicant stated that the finding of violations of his rights under the Convention constituted sufficient vindication in respect of the non-pecuniary damage he had sustained.

### General measures

*As regards the violation of Article 5§1,* the article in the Latvian Code of the Criminal Procedure in force at the material time has been repealed by a new law of 20 January 2005 which entered into force on 1 February 2005.

*As regards the violations of Articles 5§3 and 5§4,* the new Law on Criminal Procedure entered into force on 1 October 2005. The new law introduces a post of investigative judge whose main function is to supervise the observance of human rights in criminal proceedings. The judge decides on the application and extension of certain means of restraint (detention, house arrest, placement in an institution) as well as on complaints related to other means of restraint (e.g. restraint order, bail, conditions of police supervision). The new law also imposes several time-limits for pre-trial detention.

*As to the violation of Article 8 due to the monitoring of the applicant's correspondence*, the new Law on Criminal Procedure and the new internal Rules of pre-trial detention centres provide stricter conditions in monitoring of correspondence during the pre-trial investigation. Correspondence may be supervised only when investigating grave or extremely grave crimes and only for a period not exceeding 30 days.

*Concerning the violation of Article 8 due to the refusal of family visits* during a part of the applicant's detention, on 29 April 2003, the Latvian government adopted the Regulation on the internal Rules of pre-trial detention centres, which provides *inter alia* that the administration of such an establishment should allow a detainee to contact his family or other persons. In addition, by a decision of 19 December 2001, the Latvian Constitutional Court declared unconstitutional any form of interference with the subjective rights of an individual solely on the basis of a ministerial order.

*Training and awareness-raising measures:* Issues relating to human rights in detention are included in the training programme for judges and prosecutors. Moreover, a research paper concerning the recent case-law concerning detention issues has been distributed to all participants in training. In May 2003, the Human Rights Institute of the University of Latvia organised a seminar on detention issues for judges, prosecutors, practicing lawyers, government and parliament representatives.

*Publication and dissemination:* The Latvian translation of the judgment was published in the official periodical Latvijas Vēstnesis on 12 February 2003, No. 23(2788) in hard copy as well on online (www.vestnesis.lv) and at the website of the Government Agent (www.mkparstavis.am.gov.lv). The translated judgment has also been sent out to judges and prosecutors and a short analysis included in the Bench Book for judges published in 2004 as well as in the compilation of the Court's decisions and judgments against Latvia published in 2004.

**60255/00, judgment of 9/05/2006, final on 09/08/2006**

## Resolution CM/ResDH(2009)132 - Pereira Henriques against Luxembourg

*Ineffective investigation by the prosecution authorities into the causes of the death of the applicants' husband and father in 1995 in an industrial accident on a private construction site; lack of an effective remedy by which to seek compensation from the state for the ineffective investigation (violation of Art. 2 and 13).*

### Individual measures

At this stage it is no longer possible to obtain the expert opinion which should have been sought according to the European Court, as the building at issue no longer exists; so it is materially impossible to enhance the investigation of the events at issue in any useful way.

Furthermore, the government indicates that any public prosecution would be time-barred, thus making a criminal investigation pointless.

The European Court granted the applicants just satisfaction in respect of the non-pecuniary damage suffered.

### General measures

#### 1. Violation of Article 2

Several measures have been taken to ensure that such failure to investigate will not occur in the future.

The Public Prosecutor's Office has been informed of the findings of the European Court in this case: on 8/06/2006 the Ministry of Justice transmitted the judgment to the State Prosecutor General, who sent it out to all the presidents of courts by a letter dated 9/06/ 2006.

Earlier, in 2000, memoranda on industrial accidents had been sent out to public prosecutors and to the Director General of the Luxembourg Police, who sent a similar memorandum to police officers responsible for investigations, by letter dated 24/05/2006.

Finally, the general public has also been informed of the requirements of the Convention as they emerge from this judgment, as it was published in Codex, issue No. 04 of 2006 (p. 173) and on the Internet site of the Ministry of Justice (http://www.mj.public.lu/juridictions/arrets_concernant_le_luxembourg/index.html).

#### 2. Violation of Article 13

The Law of 01/09/1988 on the civil liability of the state and public authorities - in particular Articles 1 and 2 - makes it possible to seek compensation in cases of ineffective criminal investigation. It is possible under this law to engage the state's liability on grounds of defective functioning of its authorities (both administrative and judicial). Under this law it is also possible, *inter alia*, to grant compensation even in the absence of such a dysfunction, if there is specific and exceptional damage, that it would be unfair to let the affected person bear. There are examples in national jurisprudence applying this law, or at least declaring it applicable, to engage the state's liability relying on the way in which pre-trial investigations were pursued, e.g. in view of the disproportionate character of certain investigation measures (see *Tribunal d'arrondissement de Luxembourg*, XI Ch., No. 81446 of 16/12/2005 ; *Cour d'appel*, 1st Ch., No. 24442, judgment of 11/07/2001, confirmed by the *Cour de Cassation*, No. 1928, judgment of 19/12/2002).

In the present case, the applicants did not try to engage the state's liability relying on this law; this possi-

bility has not been discussed before the Court either.

Given the wording of the law, the fact that courts have already applied this law in case of defective functioning of justice in criminal investigations, and the fact that the Luxemourg courts - who have been duly informed of this judgment - directly apply the Convention as interpreted by the Court, it seems possible to conclude that in the future, an effective remedy will make it possible to seek compensation following an ineffective investigation.

## Resolution CM/ ResDH(2009)133 – Lorsé and others, Van der Ven, Baybaşin, Salah and Sylla against the Netherlands

**Lorsé and others, 52750/99, judgment of 4/02/2003, final on 4/05/2003; Van der Ven, 50901/99, judgment of 4/02/2003, final on 4/05/2003; Baybaşin, 13600/02, judgments of 6/07/2006, final on 6/10/2006 and of 7/06/2007, final on 7/09/2007; Salah, 8196/02, judgments of 6/07/2006, final on 6/10/2006 and of 8/03/2007 (final); Sylla, 14683/03, judgments of 6/07/2006, final on 6/10/2006 and of 26/04/2007, final on 26/07/2007**

*Inhuman and degrading treatment of the applicants on account of their detention conditions, between 1994-2003, in a high security prison (EBI), where they were subjected to several very stringent security measures combined with routine strip-searching practiced over long periods (violations of Art. 3).*

### Individual measures

In the cases of Lorsé and others, Van der Ven and Sylla, the consequences of the violation found have been redressed by the European Court through the award of just satisfaction in respect of the non-pecuniary damages suffered. In the Baybaşin case, the European Court struck the part of the application concerning compensation out of its list of cases since the applicant had taken domestic civil proceedings in tort against the respondent state. In the Salah case, the parties reached a friendly settlement concerning the compensation for, *inter alia*, the non-pecuniary damage sustained by the applicant.

Moreover, as the applicants are no longer subject to the regime in question, no other individual measures seem necessary.

### General measures

According to the Netherlands authorities, following the judgments, the prison rules were modified and the practice of weekly strip-searches was abolished on 01/03/2003 (see §§ 21 and 80 of the Baybaşin judgment). Whether a detainee is strip-searched now depends on the length of his stay in the EBI, the effects of such searches on the detainee and, in particular, on the goal of these searches. Although such searches still occur regularly, their necessity is judged on a case-by-case basis. The new practice as regards strip-searches in the EBI, as applied since 01/03/2003, was found by the European Court to be compatible with Article 3. Furthermore, it was noted that detainees had the opportunity to bring a civil action against the State in order to obtain compensation for non-pecuniary damages sustained as a result of the now-abolished practice of routine strip-searches (see § 80 of the Baybaşin judgment).

The Netherlands authorities provided a summary of the study *"Detention in the EBI; Effects and perception of detention in the Extra Security Institution"* (*Detentie in de EBI; Effecten en beleving van detentie in de Extra Beveiligde Inrichting*).

In this study, the researchers conclude that "the answer to the question of whether the EBI regime fosters additional psychological strain is partially affirmative and partially negative." Negative consequences of the EBI regime are probable, but no objective substantiation of the reported level of psychological strain was found. The researchers recommend some adaptations to the regime and suggest regime differentiation.

The Netherlands authorities also stated that the contact between the prison staff and the detainees would be the subject of continuing attention and that the living environment of detainees was being modified. It emerges from the report of the CPT published on 15/11/2002 that renovation works had started in the EBI in 2002, in particular to adapt the exercise yards so as to allow more interaction between staff and inmates. Other measures to increase communication between staff and inmates were being taken through a training programme known as "Safety at the door". The CPT also mentions a slight expansion of the types of activities offered to inmates.

Moreover, the Lorsé and others judgment was published in several newspapers and in a legal periodical (*NJB 2003, nr. 14*) and was commented on in several other periodicals (for example *NJCM-Bulletin 2003, nr. 4, pp. 471-491*).

## Resolution CM/ ResDH(2009)134 - Sokolowski against Poland

**75955/01, judgment of 29/03/2005, final on 29/06/2005**

*Breach of the applicant's right to freedom of expression due to his criminal conviction for defamation in 2001 and his sentencing to the payment of a high fine for having contended in a political pamphlet in 1995 that local councillors appointed themselves members of local election committees out of self-interest (violation of Art. 10).*

### Individual measures

In October 1997 the applicant paid the fine imposed on him in violation of Article 10.

Moreover, under Article 107, paragraph 4, of the Criminal Code currently in force, such penalty is automatically removed from the criminal record after 5 years following its execution. At the request of the condemned person, the judge may order the striking-out of the penalty after 3 years. The data concerning the applicant's conviction were thus removed from the Criminal Register and the Central Register of Condemned Persons in 2002.

Lastly, under Article 540, paragraph 3, of the Code of Criminal Procedure, the applicant has the right to request the reopening of the proceedings which concern him, by invoking the finding of a violation of the Convention by the European Court.

### General measures

The Ministry of Justice has sent out a circular to the presidents of courts of appeal drawing their attention to the European Court's conclusions in this judgment and asking them to inform the judges under their administrative jurisdiction. Moreover, the judges of the Supreme Court have become acquainted with the European Court's judgment through the legal journal Review of the European Case-law in Criminal

Cases (*Przegląd Orzecznictwa Europejskiego w Sprawach Karnych*, No 1/2005 and 4/2005), accessible on the Supreme Court's Internet and Intranet website www.sn.pl. The European Court's judgment has been published on the Ministry of Justice's website www.ms.gov.pl.

**13909/05, judgment of 06/11/2007, final on 31/03/2008**
**27935/05, judgment of 20/11/2007, final on 20/02/2008**

## Resolution CM/ResDH(2009)135 – Lepojić & Filipović against Serbia

*Unjustified interference with the freedom of expression of local politicians as these were convicted of criminal defamation or insult and subsequently ordered in civil proceedings to pay substantial damages to the plaintiff, a local mayor, although the statements at issue were not "gratuitous personal attacks" and the applicants clearly had legitimate reason to believe that the mayor might have been involved in the alleged illegal activities (violations of Art. 10).*

### Individual measures

In the Lepojić case, on 31/07/2008, the Municipal Court of Babušnica ordered the deletion of the applicant's conditional conviction from his criminal record.

In the case of Filipović, the Serbian authorities indicated that, on 16/11/2007, the Pirot Police Department had erased the applicant's conviction from his criminal record.

Following to the Courts' judgments in the present cases and in compliance with the provisions of the Serbian Civil Procedure Law (Article 422, Sections 10 and 7), both applicants are entitled to request reopening of the civil proceedings at issue and obtain reimbursement for the non-pecuniary damages they were ordered to pay in those proceedings.

### General measures

On 25/11/2008 the Serbian Supreme Court adopted a legal position allowing the direct application of the case-law of the Court in the particular context of the present cases. According to this legal position, the degree of acceptable criticism is much wider for public figures than private individuals. The legal position is binding for all lower courts in the country.

The Serbian authorities also provided a copy of a judgment rendered by the District Court of Valjevo on 12/08/2008 in an unrelated case. Referring to Article 10 of the European Convention, this judgment states that the holders of public offices had to accept any criticism expressed on their account, even if such criticism exceeds the limits of customary decency.

The Court's judgments were published in the Official Gazette of the Republic of Serbia, Nos. 111 of 04/12/2007 and 114 of 08/12/2007 respectively, as well as on the website of the Government Agent (www.zastupnik.gov.rs). The Agent forwarded the judgments with a note to the Ministry of Justice, the Supreme Court, the District Court of Pirot and Municipal Court of Babušnica. In addition, he published his comments on these judgments in the Paragraf legal journal and in the leading Serbian daily Politika on 22/11/2007. The judgments were also included in a book published by the Office of the Government Agent.

**65559/01, judgment of 27/02/2007 final on 27/05/2007**

## Resolution CM/ResDH(2009)136 – Nešťák against Slovakia

*Failure to respect the adversarial principle in proceedings in which the applicant challenged the legality of his detention (violation of Art. 5§4); breach of the applicant's presumption of innocence in a decision extending his detention (violation of Art. 6§2); lack of impartiality of the court which convicted the applicant as it was composed of the same judges who had earlier decided on extending the applicant's detention, which included the statement that he was guilty (violations of Art. 6§1).*

### Individual measures

On 25/03/2003 the applicant was released on parole.

The Slovak Code of Criminal Procedure provides the possibility of reopening proceedings following a judgment of the European Court finding that the fundamental rights or freedoms of the accused were violated by a decision of a prosecutor or a court of the Slovak Republic, or in the proceedings which preceded it, provided that the negative effects of this decision cannot be otherwise redressed (Article 394§4).

The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage sustained.

In these circumstances, no further individual measure was considered to be needed.

### General measures

***Violation of Article 5§4*** : Following changes in force from 01/01/2006, the Code of Criminal Procedure (Act No.301/2005) now includes a number of provisions designed to prevent this violation. Section 72(1) and (2) of the Code provide that "An accused person must be heard before issue of a decision to remand or not remand him/her in custody". A decision varying the terms of detention cannot be taken in private where the accused has requested a public hearing or indicated his/her wish to be heard and that he/she would like to present relevant, new facts. Section 293(1-10) provides that where an accused person is detained, a public session must not be held in their absence where the law imposes imprisonment of more than five years.

***Violations of Articles 6§2 and 6§1***: The judgment of the European Court was translated and published in *Justičná Revue* No 6-7/2007. On 21/12/2007, it was sent out to all regional courts and to the Supreme Court by a circular letter from the Minister of Justice. The presidents of regional courts and the President of the Criminal Division of the Supreme Court have brought the judgment to the attention of all judges in the Supreme, regional and district courts.

The Slovak authorities insisted, furthermore, on the direct effect of the European Convention in Slovakia. This direct effect will, according to the authorities, ensure that in future, national judges will apply the European Courts' ruling in similar cases.

## Resolution CM/ ResDH(2009)137 – Rehbock against Slovenia

29462/95, judgment of 28/11/2000 (final)

*Inhuman treatment inflicted to the applicant, a German national, in the hands of police during his arrest in September 1995 (violation of Art. 3); failure by a regional court to examine speedily the applicant's requests for release, resulting in the violation of his right to compensation (violations of Art. 5§4 and 5§5); breach of the applicant's right to respect for his private life in that his correspondence with the former European Commission of Human Rights had been monitored without any justification (violation of Art. 8).*

### Individual measures

On 01/09/1996 the applicant was conditionally released.

### General measures

***Violation of Article 3:*** The Ministry of Internal Affairs regularly inspects the work of the Police to monitor the legality of the procedures applied and protect individuals' rights. The rules specifying the powers of the Minister of Internal Affairs over the Police were published in the *Official Gazette* No 97/ 2004 of 03/09/2004.

The Police provide continuous training to its staff on the exercise of its powers and practical implementation of procedures. It regularly publishes brochures on the issue of the exercise of these powers in the context of human rights. The Human Rights Ombudsman is involved in this training process.

The Ministry of Justice sent the translation of the judgment to the Director-General of the Police, who ordered all heads of units of the General Police Directorate and the heads of all police directorates in writing to inform all police officers of the Court's judgment.

The measures aimed at eliminating the ill-treatment of detained persons in hands of the police have also been indicated in the Response of the Slovenian Government to the 2006 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/ Inf(2008)8).

***Violation of Article 5, paragraph 4:*** The Ministry of Justice drew the attention of the Supreme Court to the part of the judgment in which the Court established that the Slovenian courts had failed to examine promptly either of the applications for release submitted by the applicant. The authorities further indicated that the Convention has a direct effect in Slovenian law.

***Violation of Article 5, paragraph 5:*** The Slovenian authorities stated on four occasions in 2001 and 2004 that the right to compensation for unlawful deprivation of liberty is guaranteed by Article 30 of the Slovenian Constitution as well as by provisions of Article 539 and 540 of the Code of Criminal Procedure. The requirements for payment of such compensation are laid down in detail in Article 538 and Article 542 of the Code of Criminal Procedure. The injured party should file a claim for damages with the State Attorney's Office in an attempt to reach an agreement on the existence of the loss and the type and extent of the compensation. If no agreement on damages can be reached, the claim is to be filed with a court of law in charge. The authorities further communicated that the practice of the Slovenian courts provided for compensation for pecuniary damages occurred as a result of unlawful detention on remand or imprisonment. It was indicated that in 2007 and 2008 Slovenian courts awarded both pecuniary and non-pecuniary damages for unlawful deprivation of liberty in 46 cases (e.g. the decisions of Ljubljana District Court nos. P.2202/2001-III of 18/10/2004, P. 2062/2005-III of 15/ 02/2007 and P.1002/2006-II of 23/11/ 2007).

***Violation of Article 8:*** The Court noted that since the enactment of Section 213b of the Code of Criminal Procedure on 23/10/1998, correspondence between detained persons and the Court has ceased to be monitored.

***Publication:*** The Court's judgment was published in the journal *Sodnikov informator* (Judges' Bulletin) as well as on the website of the Information and Documentation Centre of the Council of Europe.

## Resolution CM/ ResDH(2009)138 – Olaechea Cahuas against Spain

24668/03, Judgment of 10/08/2006, final on 11/ 12/2006

*Failure to comply in 2003 with an interim measure indicated under Rule 39 of the Rules of the European Court of Human Rights in a case concerning the expulsion of a presumed terrorist to Peru (violation of Art. 34).*

### Individual measures

The Court awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicant on account of the violation found in this case. Moreover, the Court noted that it appeared from the documents submitted by the parties that after having been extradited in spite of the interim measures indicated by the Court, the applicant had been placed in a Peruvian prison then granted conditional release three months later, and that he had constantly been in touch with his counsel in London. The Court found that it was therefore not possible to conclude that the applicant's right to an effective remedy was hindered (§79 of the judgment). In these circumstances, no other individual measure appears to be required.

### General measures

The Spanish authorities consider that the Olachea Cahuas case was an isolated occurence which happened in specific circumstances. They refer to two cases subsequent to the Olaechea Cahuas case - Yaoub Saoudi (Application n° 22871/06) and Murat Ajmedovich Gasayev (Application No. 48514/06) in which Spain complied with the interim measures indicated by the Court until in the first case the Court had dismissed the claim and in the second case the Court decided to lift the interim measures it had indicated.

The Court's judgment has been translated into Spanish and published in the Ministry of Justice's information bulletin (*Boletin de Informacion, Ministero de Justicia*) and widely disseminated to the competent authorities.

17995/02, judgment of 05/04/2007, final on 05/07/2007

## Resolution CM/ResDH(2009)139 - Stoimenov against "the former Yugoslav Republic of Macedonia"

*Unfair criminal proceedings: the applicant's right to equality of arms was violated as a result of the domestic courts' dismissal of his repeated requests for an alternative expert examination in 2000-2001 (violation of Art. 6§1).*

### Individual measures

In 2001 the applicant was sentenced to four years' imprisonment as a result of the proceedings at issue. He was released from prison on 24/06/2005. On 19/09/2007 the Kočani Court of First Instance allowed the reopening of the proceedings and the court appointed an independent Institute for Forensic Medicine and Criminology from Skopje to conduct an expert examination. On 05/01/2009 the Kočani Court of First Instance confirmed the applicant's previous conviction. This judgment has been appealed by the applicant.

Nevertheless, the shortcoming identified by the Court's judgment has been remedied because the domestic court commissioned an independent and alternative expert report in the reopened proceedings. It appears therefore that no other individual measure is necessary in this case.

### General measures

On 29/06/2007 the Supreme Court rendered a legal opinion concerning the present case. It confirmed that the Convention was an integral part of the domestic legal order and that the domestic courts should refer to the Court's judgments in their reasoning. The Supreme Court stated that the domestic courts should respect the right to a fair trial and make sure that the principle of equality of arms is observed in criminal proceedings. The opinion of the Supreme Court was published on its website (www.vrhoven.sud.mk).

The authorities of the respondent state also submitted a copy of a judgment rendered by the Supreme Court concerning an unrelated domestic case, in which it reiterated that domestic courts are under an obligation to respect the right to a fair trial in accordance with Article 6 of the Convention.

The judgment was translated and published on the website of the Ministry of Justice (www.pravda.gov.mk). The Government Agent forwarded the judgment with an explanatory note to the Kočani Court of First Instance and to the Directorate for Execution of Sanctions.

6563/03, Judgment final on 04/01/2006

## Resolution CM/ResDH(2009)141 - Shannon against the United Kingdom

*Unfairness of criminal proceedings in 1999 for not respecting the right not to incriminate oneself on ground of the requirement for the applicant to attend an interview with financial investigators and to be compelled to answer questions in connection with events in respect of which he had already been charged with offences (violation of Art. 6§1).*

### Individual measures

In his claims in respect of pecuniary damage, the applicant included, *inter alia,* the sum of 200 GBP that he was required to pay as a fine. The Court awarded the applicant a sum in respect of pecuniary and non-pecuniary damage.

The Northern Ireland Office has advised that he may apply to the Criminal Cases Review Commission for a review of his conviction, if he wishes. If the CCRC considered it appropriate, it might refer the case to a county court in Northern Ireland under section 12 of the Criminal Appeal Act 1995.

### General measures

The action plan/report presented by the United Kingdom on 26/10/2006 may be summarised as follows:

- The relevant Northern Ireland legislation was amended with effect from 14/04/2000. Paragraph 6(b) of Schedule 2 to the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299, N.I. 9) was amended by section 59 and paragraph 26 of Schedule 3 of the Youth Justice and Criminal Evidence Act 1999 to permit use of statements made under paragraph 5 of Schedule 2 to the 1996 Order only if they are adduced, or if they are the subject of questions at trial, by the defence.
- Subsequently, an interdepartmental legislative review was also undertaken. Government departments were asked to consider whether the legislative schemes which they apply would allow the situation that arose in Shannon to recur, and if so, whether any further action was needed to address this. In April 2007 that review concluded that no further action was needed.
- The government is satisfied that no further action is required to implement the judgment.

6638/03, judgment of 19/07/2005, final on 19/10/2005

## Resolution CM/ResDH(2009)143 - P.M. against the United Kingdom

*Discrimination suffered by the applicant resulting from the refusal, in the 1998-1999 tax year, to grant him a tax deduction, granted to separated or divorced fathers, for child maintenance payments, on the ground that he had never been married to the mother of his child (violation of Article 14 in conjunction with Article 1 of Protocol No. 1).*

### Individual measures

As to just satisfaction, the Court awarded the applicant a sum corresponding to the tax deduction he was refused in the 1998-1999 tax year. He also claimed and received tax relief on child maintenance payments made in the 1999-2000 tax year. Qualifying maintenance payments were abolished for payments made as of 06/04/2000 except in one very specific circumstance, which does not apply in the applicant's case (see the general measures below).

### General measures

After 06/04/2000 the tax deductibility of maintenance payments was abolished, except where one of the

parties to the marriage was born before 06/03/1935 (section 347B (1A) Income and Corporation Taxes Act 1988 inserted by section 36 of the Finance Act 1999).

On 05/12/2005, shortly after the present judgment, Regulation 67 of the Tax and Civil Partnership Regulations 2005 (SI 3229/2005) extended the limited tax exemption to payments made between parents for the maintenance of a child regardless of whether the parents had ever been married to each other. On 13/01/2006 updates on the position regarding maintenance payments were published on Her Majesty's Revenue and Customs (HRMC) website, available to the public.

Publication of the Court's judgment: The judgment of the Court appeared in *The Times Law Reports* on 15/09/2005 under the heading "M v. UK". An article on the decision was published in *The Taxation* (a tax journal) on 18/08/2005 and on the website of the Low Incomes Tax Return Group on 10/08/2005. The judgment was brought to the attention of all tax offices.

## Resolution CM/ResDH(2009)144 - Keegan against the United Kingdom

**28867/03, judgment of 18/07/2006, final on 18/10/2006**

*Breach of the applicant's right to respect for their private and family life on account of the forcible entry by the police to search their home in 1999 (violation of art. 8) and lack of effective remedy in this respect as the applicant's civil claim could only succeed if they could prove that the police had acted with malice (violation of art. 13).*

### General measures

The government believes that the Human Rights Act 1998 taken together with PACE Code B (Code of Practice for Searches of Premises by Police Officers and the Seizure of Property found by Police Officers on Persons or Premises, made under section 66 of the Police and Criminal Evidence Act 1984), which entered into effect on 01/01/2006, prevents new, similar violations of Articles 8 and 13 from arising.

Paragraph 3.1 of Code B provides guidance on obtaining search warrants and clearly states that before making an application on the basis of information that appears to justify an application, the officer must take reasonable steps to check that the information is accurate, recent and not provided maliciously or irresponsibly, and make reasonable enquiries to establish whether anything is known about the likely occupier of the premises.

The relevant provisions of the Human Rights Act, are Sections 6, 7 and 8. Here it should be recalled that public authorities are obliged, under Section 6 of that Act, to act in accordance with the Convention. If they were not to do so, their acts would be unlawful and the injured party could bring proceedings under Section 7 of the Act. By virtue of Section 8 of the Act, a court may grant whatever remedies it considers just and appropriate, including damages.

As regards the information provided to the relevant authorities about the Convention requirements, the Government recalls that the Court's judgment has been published and commented upon, inter alia, in the *All England Reports* [2006] All ER (D) 235, the *Times Law Reports* (09/09/2006), and the *Human Rights Law Review* EHRLE 2006, 5, 648-650.

## Resolution CM/ResDH(2009)145 - Paul and Audrey Edwards against United Kingdom

**46477/99, judgment of 14/03/2002, final on 14/06/2002**

*Breach of the authorities' positive obligation to protect the life of the applicant's son, who was killed during his detention on remand by another detainee; ineffectiveness of the inquiry into the death of the applicant's son; lack of an effective remedy in this respect (violations of Art. 2 and 13).*

### Individual measures

Following the European Court's judgment, the Prison Service conducted a second investigation, which according to the United Kingdom authorities was intended to address the two failings of the first inquiry, identified by European Court: the inability of the inquiry to compel witnesses and the lack of involvement of the applicants in the investigation procedure. The prison officers who had declined to attend the earlier inquiry willingly gave oral evidence in the second Prison Service inquiry. The interview transcripts were made available to the applicants who met and questioned one of the prison officers concerned (whom the European Court considered might potentially have significant evidence). Further, all Prison Service employees who were asked to be interviewed for the post-judgment investigation, agreed to such interviews.

Furthermore, the authorities of the United Kingdom underline the fact that the applicants' questions provided the framework for the second investigation. During the investigation they remained in contact with the Prison Service and were provided with reports on progress, including through meetings. During one of these meetings, the applicants met face-to-face and questioned the four prison officers who had had key roles. Moreover, the authorities stress that all documentation within the control of the Prison Service was made available to the applicants at the end of the post-judicial inquiry (see also general measures below).

### General measures

#### 1. Substantive violation of Article 2

Since 2004, a national strategy has directed every public sector prison to have in place a local violence reduction strategy (VRS). From June 2007 this policy has also been applied to contracted prisons. The strategy requires each prison to undertake regular analysis of the problem areas, consider solutions and provide an action plan to improve personal safety and reduce violence for all those who live and work in the prison. (The most recent version of this strategy was published in 2007 and is available to the public on the Prison Service website (http://pso.hmprisonservice.gov.uk/PSO_2750_violance_reduction.doc) ). There is currently a further ongoing review of the VRS, which includes the Cell Sharing Risk Assessment which was first introduced in 2002.

All prisons are required to apply this strategy, which must include guidance which makes clear to all prison staff the requirements of this strategy and their individual responsibilities in reducing violence. Moreover, a number of other measures were adopted including in particular the Prisoner Escort Record, a new Suicide/Self-Harm Warning Form, the setting up of a new reception screening process for prisoners, to ensure a better detection of immediate and serious health problems.

**The Magistrates Courts** have been instructed to ensure that they provide the prison escort contractor with information on antecedent history, previous convictions, a medical/psychiatric report and any other relevant documents. Practical measures have also been taken to optimise the transmission of such relevant information. Measures have also been taken in relation to detentions on remand to ensure that the relevant medical information on a prisoner's state of health can duly be taken into account.

These measures are continuously monitored through two important domestic inspection bodies, among others: Her Majesty's Inspectorate of Court Administration and Her Majesty's Inspectorate of Prisons which, following their inspections, make detailed recommendations to the United Kingdom authorities.

Furthermore, the United Kingdom authorities draw attention to the answer it gave to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report following its 2003 visit. In this answer, the United Kingdom government stated that it aims "to ensure that prisoners are held in establishments that provide the degree of security they require; are suitable to their gender, age and legal status and which provide special facilities appropriate to prisoner needs" which have specialised structures capable of answering the prisoners' needs. The United Kingdom authorities insist on their willingness to continue their efforts to improve conditions of treatment of prisoners, through co-operation with the CPT and the domestic inspection instances.

#### 2. Procedural violation of Article 2

For the United Kingdom authorities, the Coroner's preliminary inquest is the main vehicle to meet the requirements of Article 2 in such cases. The obligations imposed on the Coroner to resume a suspended inquest have been reinforced by the judgment in R v HM Coroner for the Western District of Somerset and another ex parte Middleton (2004) 2 ALL ER. Furthermore it is unlawful for the Coroner to act in a way which is incompatible with a Convention right in light of Section 6 of the Human Rights Act 1998. If a Coroner decides not to resume an inquest in circumstances similar to the present case, a request for review of this decision can be made to the Attorney General, under Section 13 of the Coroners Act 1988 asking that the High Court order the holding of an inquest. A party aggrieved by the Coroner's decision not to hold an inquest may apply for a judicial review of the Coroner's decision. Where an inquest has been adjourned in the light of related criminal proceedings, the Ministry of Justice will contact the Coroner at the close of the criminal proceedings asking him or her to consider whether the inquest should be resumed.

#### 3. Violation of Article 13

This case presents similarities to *Bubbins against the United Kingdom*, which was closed by the Committee of Ministers (see Final Resolution CM/ResDH(2007)101). Section 7 of the Human Rights Act creates a cause of action, which can found a claim for relief, including damages, against a public authority that has acted unlawfully in breach of its Convention rights.

#### 4. Publication

The judgment of the European Court was disseminated to all the authorities concerned and published in the European Human Rights Reports at (2002) 35 EHRR 487.

***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.**

## Switzerland takes over chairmanship of the Council of Europe

On 18 November 2009, Switzerland took over the chairmanship of the Committee of Ministers of the Council of Europe.

Addressing the Committee of Ministers on the subject of the Swiss chairmanship, Federal Councillor Calmy-Rey stressed that Switzerland attached the highest importance to respect for the values on which Europe's identity is based. She stated that in line with the undertakings made at the Warsaw summit in 2005 and with the efforts of the preceding chairmanships, Switzerland would focus on three main areas: protection of human rights and the primacy of law; strengthening of democratic institutions; and increasing the transparency and the effectiveness of the Council of Europe.

In this context, Switzerland would pay particular attention to the future of the European Court of Human Rights as the guarantor of human rights and of basic freedoms in Europe. Ms Calmy-Rey went on to say that the institution was confronted with extraordinary challenges which far exceeded its capacities. In order to discuss necessary reforms and the implementation of a long-term strategy, Switzerland therefore invited representatives of the member states and of international organisations to a high-level conference at Interlaken in February 2010.

In her speech, Micheline Calmy-Rey also said that she was looking forward to working together closely with the new Secretary-General Thorbjørn Jagland in order to increase the transparency and the effectiveness of the Council of Europe, and to strengthen dialogue and co-operation between the Committee of Ministers and the Parliamentary Assembly.

# Reform of the European Court of Human Rights: joint declaration reached in Interlaken

**Conference on the future of the European Court of Human Rights, Interlaken (Switzerland), 18-19 February 2010**

In its role as Chair of the Council of Europe's Committee of Ministers, Switzerland organised a ministerial conference in Interlakenon 18 and 19 February 2010 in order to decisively spur the reform of the overburdened European Court of Human Rights. By issuing a joint declaration, the representatives of the 47 member states of the Council of Europe confirm their intention to secure the long-term future of the Court.

The conference aimed at setting the course for the future reform of the Court. With the issuing of a joint declaration, the event was deemed a success. According to the declaration, it is necessary in particular to reach a balance between the incoming cases and the settled ones, and to reduce the volume of outstanding cases, which currently stands at approximately 120 000, as well as to guarantee that new appeals are dealt with in a reasonable time. Moreover, the national implementation of the Court's judgments should be improved and the Committee of Ministers should guarantee an effective supervision of the implementation process. In order to reach these objectives, the political declaration contains an action plan with a list of short and medium-term measures, as well as an agenda for their implementation.

The Secretary General of the Council of Europe Thorbjørn Jagland declared: "We will save the Court because we have no other choice. People in Europe deserve no less and will get no less". Jean-Paul Costa, President of the Court, said: "I can assure you that in its independence, our Court is extremely willing to follow the road indicated at the Interlaken Conference". The President of the Council of Europe Parliamentary Assembly, Mevlüt Çavusoğlu, welcomed the measures taken to increase the efficiency of the Court, but insisted that such measures could only be fruitful given a strong Council of Europe.

Federal Councillor Micheline Calmy-Rey underlined that: "In Interlaken we have laid the foundations that will enable us to accelerate the reform process of the Court. Switzerland will actively pursue this goal during its Chairmanship of the Council of Europe's Committee of Ministers and thereafter". Federal Councillor Eveline Widmer-Schlumpf declared: "I wish to point out that we can be very pleased with the result of the Interlaken Conference. It was important that the result was not limited to a merely political declaration of intent, but suggests more concrete measures".

## Interlaken Declaration

**Adopted on 19 February 2010**

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference"):

PP 1 Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the European Court of Human Rights ("the Court");

PP 2 Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

PP 3 Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

PP4 Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

PP 5 Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

PP 6 Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

PP 7 Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

PP 8 Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

PP 9 Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

i. achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;
ii. enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human rights;
iii. ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

PP 10 Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

The Conference

(1) Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;

(2) Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;

(3) Stresses that this principle implies a shared responsibility between the States Parties and the Court;

(4) Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;

(5) Invites the Court to make maximum use of the procedural tools and the resources at its disposal;

(6) Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;

(7) Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;

(8) Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;

(9) Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;

(10) Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;

(11) Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.

**Action Plan**

*A. Right of individual petition*

1. The Conference reaffirms the fundamental importance of the right of individual petition as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court.
2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.
3. With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

*B. Implementation of the Convention at the national level*

4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:
   a) continuing to increase, where appropriate in co-operation with national human rights institutions or other rele-

vant bodies, the awareness of national authorities of the Convention standards and to ensure their application;

b) fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;

c) taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;

d) ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;

e) considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;

f) ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations.

5. The Conference stresses the need to enhance and improve the targeting and co-ordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

*C. Filtering*

6. The Conference:

a) calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;

b) stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;

c) recommends, with regard to filtering mechanisms,

i. to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;

ii. to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i).

*D. Repetitive applications*

7. The Conference:

a) calls upon States Parties to:

i. facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;

ii. co-operate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases.

b) stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;

c) calls upon the Committee of Ministers to:

i. consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C);

ii. bring about a co-operative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

*E. The Court*

8. Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:

a) ensure, if necessary by improving the transparency and quality of the selection procedure at both national and Eu-

ropean levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;

b) grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.

9. The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:
   a) avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law according to which it is not a fourth instance court;
   b) apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;
   c) give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle de minimis non curat praetor.
10. With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:
    a) make use of the possibility to request the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;
    b) pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

*F. Supervision of execution of judgments*

11. The Conference stresses the urgent need for the Committee of Ministers to:
    a) develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;
    b) review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

*G. Simplified procedure for amending the Convention*

12. The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified procedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:
    a) a Statute for the Court;
    b) a new provision in the Convention similar to that found in Article 41(d) of the Statute of the Council of Europe.

**Implementation**

In order to implement the Action Plan, the Conference:

(1) calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;

(2) calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;

(3) calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;

(4) invites the Committee of Ministers to follow-up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;

(5) invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a

filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;

(6) invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;

(7) asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;

(8) invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration.

## Declarations by the Committee of Ministers

### Russia ratifies Protocol No. 14 to the European Convention on Human Rights

**Statement by Micheline Calmy-Rey, Chairperson of the Committee of Ministers, 18 February 2010**

The Chairperson of the Committee of Ministers, Micheline Calmy-Rey, welcomes the deposit, by the Russian Federation, of its instrument of ratification of Protocol No. 14 to the European Convention on Human Rights, shortly before the beginning of the ministerial conference in Interlaken. Russia is joins the other 46 member states which have already ratified the protocol, thereby enabling the latter to come into force on 1 June next. This is excellent news for all Europeans. The European Court of Human Rights will now be able to deal more efficiently with the many applications it receives and thus help reinforce fundamental rights on our continent. The entry into force of Protocol No. 14 also paves the way for EU accession to the European Convention on Human Rights, which was facilitated by the entry into force of the Lisbon Treaty.

Further measures are, however, needed if the Court is to continue to play its full role as guarantor of fundamental rights and freedoms in Europe.

### Declaration of the Committee of Ministers on measures to promote the respect of Article 10 of the European Convention on Human Rights

**Adopted by the Committee of Ministers on 13 January 2010**

Freedom of expression and information, including freedom of the media, are indispensable for genuine democracy and democratic processes. When those freedoms are not upheld, accountability is likely to be undermined and the rule of law can also be compromised. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction the fundamental right to freedom of expression and information, in accordance with Article 10 of the European Convention on Human Rights.

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The enforcement mechanism provided for in the European Convention on Human Rights, namely the European Court of Human Rights, operates in relation to alleged violations of Article 10 brought before the Court after exhaustion of domestic remedies. This mechanism, together with the execution procedure, has achieved considerable results and continues to contribute to improving respect for the fundamental right to freedom of expression and information.

In addition to redress for violations, other means for the protection and promotion of freedom of expression and information and of freedom of the media are essential components of any strategy to strengthen democracy. The Council of Europe has adopted a significant body of standards in this area which give guidance to member states. It is important to strengthen the implementation of those standards in the law and practice of member states. The promotion of the respect of Article 10 of the European Convention on Human Rights is therefore a priority area for Council of Europe action. It requires the active support, engagement and co-operation of all member states.

Various Council of Europe bodies and institutions are able, within their respective mandates, to contribute to the protection and promotion of freedom of expression and information and of freedom of the media. The Committee of Ministers, the Parliamentary Assembly, the Secretary General, the Commissioner for Human Rights and other bodies are all active in this area. The action taken by other institutions, such as the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, as well as civil society organisations, must also be acknowledged and welcomed.

The Committee of Ministers welcomes the proposals made by the Steering Committee on the Media and New Communication Services (CDMC) to increase the potential for Council of Europe bodies and institutions to promote, within their respective mandates, respect of Article 10 of the European Convention on Human Rights.

In line with those proposals, the Committee of Ministers invites the Secretary General to make arrangements for improved collection and sharing of information and enhanced co-ordination between the secretariats of the different Council of Europe bodies and institutions, without prejudice to their respective mandates and to the independence of those bodies and institutions.

The Committee of Ministers calls on all member states to co-operate with the relevant bodies and institutions of the Council of Europe in ensuring compliance of national law and practice with the relevant standards of the Council of Europe, guided by a spirit of dialogue and co-operation.

The Secretary General is further invited to report to the Committee of Ministers and to the Parliamentary Assembly on the implementation of these arrangements and to conduct within three years an evaluation on their functioning and effectiveness.

## The moratorium on the death penalty in Russia

**19 November 2009**

The Chairperson of the Committee of Ministers of the Council of Europe welcomed the declaration made by the Russian Constitutional Court indicating that no death penalty sentence can be pronounced or applied in Russia.

"I strongly hope that Russia will now transform the existing moratorium on executions into de jure abolition of the death penalty and ratify Protocol No. 6 to the European Convention on Human Rights", said Ms Calmy-Rey. She recalled, in this connection, the strong and urgent appeal made along these lines by the Committee of Ministers to the Russian Federation last October.

## Protecting children against violence – Council of Europe steps up its action

**Joint statement by the outgoing Slovenian Chair of the Committee of Ministers, Samuel Žbogar, and the incoming Swiss Chair, Mrs Micheline Calmy-Rey, on the occasion of the handover meeting of the chairmanship**
**18 November 2009**

The Council of Europe is calling on member states to adopt and implement a blanket national scheme to protect the rights of the child and eradicate violence against children.

The foreign affairs ministers of Slovenia and Switzerland, Samuel Žbogar and Micheline Calmy-Rey, welcomed today's adoption of guidelines to this end by the Council's Committee of Ministers.

The Council of Europe's recommendations include the prohibition of all forms of violence towards children, the setting up of independent child protection institutions and information campaigns on the rights of the child, beginning with the right to protection from all forms of violence. Information would cover the damaging consequences of violence against children, the principles of positive parenting and the need to guide children in their discovery of the Internet and limit the risks linked to new technologies (violence in certain video and online games, child pornography sites, bullying, blackmailing, etc.). These campaigns would target the general public but above all parents, teachers and internet service providers.

The Council aims to secure public condemnation and the elimination of social or cultural acceptance or even encouragement of violence (sexist clichés, discrimination, harmful customs,etc.).

The Council of Europe is also looking to increase understanding among Governments and individuals of their obligation to condemn and prevent violence and to assist the children that fall victim to violence.

Professionals working with children should receive training and acquire the skills necessary for preventing and detecting violence, particularly towards the most vulnerable children (disabled, minorities, etc.).

This text meets one of the objectives set at the Warsaw Summit in 2005. The awareness-raising campaign against corporal punishment entitled "Raise your hand against smacking!" launched in 2008 was a first step and forms the Council of Europe's contribution to the celebration of the 20th anniversary of the United Nations Convention on the Rights of the Child, of which Article 19 places states under a clear obligation to protect children from all forms of violence, any time and anywhere.

## Federal Councillor Micheline Calmy-Rey in Tbilisi for discussions

Micheline Calmy-Rey, Chairperson of the Committee of Ministers, was in Georgia on 16 and 17 January for discussions with representatives of the authorities, political parties and civil society. Her main purpose was to obtain first-hand information about the progress of reforms and the consequences of the August 2008 conflict. Ms Calmy-Rey expressed satisfaction with these constructive discussions and noted that, while reforms had made progress, the work started needed to be continued. She assured Georgia of the Council of Europe's continuing support.

The head of the Federal Department of Foreign Affairs met Georgian President Mikhail Saakashvili, Minister of Foreign Affairs Grigol Vashadze, Minister for Reintegration Issues Temur Iakobashvili, and Prisons Minister Khatuna Kalmakhelidze. She also had discussions with ombudsman Giorgi Tugushi, and with representatives of the judicial system, members of the opposition and representatives of NGOs.

The discussions centred on subjects within the Council of Europe's remit, the priorities being the safeguarding of human rights and the promotion of the rule of law and democratic structures. At the end of the discussions, Ms Calmy-Rey noted that Georgia had made progress in the fulfilment of its obligations as a Council of Europe member state. She invited the authorities to complete the remaining legislative amendments, particularly concerning the protection of minorities and the signature of the European Charter for Regional or Minority Languages. She emphasised how important it was for the forthcoming local elections and the election campaign to be free and transparent.

The Council of Europe has given high priority to the consequences of the conflict in Georgia ever since the hostilities in the summer of 2008. Ms Calmy-Rey welcomed the commit-

ment and success of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, whose activities in recent months had been centred on cases of persons who were in detention or had disappeared. She encouraged her interlocutors to continue to support his efforts and, on behalf of the Council of Europe, she offered to make available experts to assist with the search for disappeared persons.

According to Ms Calmy-Rey, observation of the human rights situation in the areas affected by the conflict was another contribution that the Council of Europe could make. Finally, Ms Calmy-Rey called on the authorities to complete the exchange with the other parties to the conflict of prisoners and of the remains of victims of the conflict.

The Council of Europe is represented by an office in Tbilisi. As well as making regular reports, the Council of Europe is supporting a number of projects in Georgia, particularly in respect of reform of the judicial system, criminal justice system and election legislation. Other projects relate to the needs of victims of the conflict (such as displaced persons).

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

# Parliamentary Assembly

**The parliamentarians who make up the Parliamentary Assembly of the Council of Europe (PACE) come from the national parliaments of the Organisation's 47 member states. They meet four times a year to discuss topical issues, and ask European governments to take initiatives and report back. These parliamentarians are there to represent the 800 million Europeans who elected them.**
**They determine their own agenda, and the governments of European countries – which are represented at the Council of Europe by the Committee of Ministers – are obliged to respond. They are greater Europe's democratic conscience.**

## Mevlüt Çavusoğlu of Turkey elected as new PACE President

The 318 members of the Parliamentary Assembly elected Mevlüt Çavusoğlu as their new President at the opening of PACE's plenary session in Strasbourg (25-29 January). Mr Çavusoğlu succeeds Lluís Maria de Puig as the Assembly's 25th President. He is the first Turk to hold the office since Turkey's accession to the Council of Europe in August 1949.

**Extract of speech following his election**

"I come from a country which has prided itself for two millennia on being a bridge between continents," Mevlüt Çavusoğlu said in his first speech as PACE President. "I want to bring that political understanding to a new level, to act as a bridge for the peoples of Europe, whether they are in the frozen Arctic or on the temperate beaches of Antalya."

He stressed that one of the major challenges facing societies was increasing intolerance and discrimination. "Tolerance remains an important European goal which we cannot ignore. Creating new fault lines, with the false image of others and disrespect for difference, must be fought with renewed urgency and vigour. First, we must break down the walls in our minds. Unless we do that, there is no real freedom", Mr Çavusoğlu said.

"The foundation of our common European home must be built on an open society, based on respect for diversity, not on exclusion, not on discrimination, not on fear and not on hatred. We must eradicate racism, xenophobia, anti-semitism, Islamophobia and all kinds of similar phobias leading to discrimination and intolerance."

Among his other priorities as President of the Assembly, Mr Çavusoğlu referred to the entry into force of the Lisbon Treaty, which opened new avenues of co-operation, including the EU's accession to the European Convention on Human Rights.

He also called on PACE to strive for the European ideal of allowing everyone to live in dignity and security and, in this regard, he reiterated the importance of the fight against terrorism.

The President also said that he considered co-operation with the new Council of Europe Secretary General Thorbjørn Jagland as a "golden opportunity" to reflect on how to increase the relevance and effectiveness of the work of the organisation and achieve the necessary reform.

He concluded by committing himself to championing the Parliamentary Assembly's cause throughout the European continent.

**Biography**

A politician and an economist, Mevlüt Çavusoğlu has been a Member of Parliament for Antalya since 2002. He has long-standing international experience in PACE and the European Security and Defence Assembly. He has served as PACE Vice-President and Chair of the Turkish delegation (2007-10), Chair of the Committee on Migration, Refugees and Population (2006-8) and second Vice-Chair of the European Democratic Group since 2009. He is a founding member of the Justice and Development Party (AKP) in Turkey, and has served as the Vice-Chair of the party's Foreign Affairs Department.

Mr Çavusoğlu was born in Alanya on 5 February 1968, and is married with one daughter.

## Human rights situation

### Fundamental values and national referenda: statement on Human Rights Day by PACE President

Statement by Lluís Maria de Puig, then President of the Parliamentary Assembly, on the eve of Human Rights Day: "Wisdom resides in the people – this truth is at the heart of the democratic culture which has kept Europe secure for the last sixty years. But democracy can be practised in many ways. National referenda have a valuable role to play, yet we have seen how they can also be misused for political ends.

I believe there are fundamental values that should never be put to a popular vote. In Europe, many of these have been enshrined in the European Convention on Human Rights, jointly agreed by democratically-elected governments and parliaments. I believe its core values should not be subject to a vote.

The Convention too is ultimately the wisdom of the people – but a deeper wisdom, born of a longer perspective. Let us respect their judgment."

### Abolition of the death penalty: the Council of Europe leads the way

"The World Congress in Geneva sends out a powerful message: the death penalty is on its way out, worldwide", said Renate Wohlwend, PACE rapporteur on the abolition of the death penalty, addressing the World Congress against the Death Penalty in Geneva today. "Europe has shown others the way, and more and more countries are joining the consensus: capital punishment violates the right to life and human dignity, and it is counter-productive from a law-enforcement perspective. I warmly invite two of the Council of Europe's observer states, Japan and the United States of America, to join in the movement towards abolition of this barbaric punishment."

## Anti-terrorist blacklists: Dick Marty welcomes British court ruling

**Resolution 1597 (2008) Recommendation 1824 (2008) – United Nations Security Council and European Union blacklists**

Dick Marty, rapporteur for the Parliamentary Assembly on UN and EU anti-terrorist blacklists, has given a warm welcome to the ruling by Britain's Supreme Court that the United Kingdom must not apply UN Security Council anti-terrorist sanctions where they violate basic human rights. Mr Marty said:

"I congratulate Britain's recently-established Supreme Court for recognising, in one of its first judgments, that human rights take precedence over executive decisions founded on international law, including those originating from the United Nations Security Council. International law cannot be a round-about means of bypassing citizens' most basic fundamental rights."

"Pending a real reform of the Security Council's procedures to ensure greater respect for human rights, I can but hope that other national courts will follow the example of the British Supreme Court and the European Court of Justice, which last year issued similar rulings in cases concerning European Union blacklists. I also call on national parliaments to exert pressure on their governments, as the Swiss Senate has done, so that these international sanctions are applied in accordance with minimum standards of respect for fundamental rights."

## Action against trafficking in human beings: the wider the ratification of the Convention, the better the protection for victims

**Resolution 1702 (2010) – Action against trafficking in human beings: promoting the Council of Europe convention**

"The Council of Europe Convention on action against trafficking in human beings will reach its full potential when it is ratified by other countries in Europe and beyond. The wider the ratification of the Convention is, the better the protection for victims will be. The role of parliamentarians is crucial to this end," Kent Olsson stated at a seminar on trafficking in human beings, organised in London by the Inter-Parliamentary Union and the British Group of the Inter-Parliamentary Union.

In its resolution adopted last January, the Assembly called on Council of Europe member states which had not yet done so to sign and/or ratify this convention, and encouraged the European Union to accede to it.

## Trafficking in human beings: a victim's father speaks

As part of a parliamentary debate on action against trafficking in human beings and the need to promote the Council of Europe convention on trafficking, the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly has held an exchange of views, in the presence of Nikolay Mikhaylovich Rantsev, the father of a victim of trafficking.

Mr Rantsev took his case to the European Court of Human Rights and on 7 January 2010, the Court found against Cyprus and Russia.[1]

Looking ahead to this event, Ms Wurm, a member of the Committee said: "Trafficking in human beings is a modern form of slavery. The problem shows no signs of abating and, if anything, the current economic and financial crisis has made women even more vulnerable. More than ever, PACE urges those member states which have not yet done so to sign and/or ratify this convention."

1. Case of Rantsev v. Cyprus and Russia

## Positive discrimination needed in electoral systems to increase political representation of women

**Recommendation 1899 (2010) – Increasing women's representation in politics through the electoral system**

Under-representation of women in politics is a threat to the legitimacy of democracies. The global situation is severe - under 20% of parliamentary seats are held by women and fewer than 5% of heads of state are women. At the end of a debate on the ways to increase women's representation in politics through the electoral system, the Assembly called on member states to employ a series of measures to rectify this situation by reforming electoral systems and by applying positive discrimination, such as introducing quotas for women on political party lists (in countries with a proportional representation system).

The adopted texts, based on the proposals by Lydie Err, also encourage measures such as gender-sensitive civic education in political parties who, together with the media and trade unions, have traditionally often shown "built-in" bias against women.

### Member states must do more to guarantee respect for freedom of the media

PACE today adopted a recommendation to the Committee of Ministers containing a series of measures to guarantee greater respect for media freedom and the safety of journalists. The Assembly proposes in particular a review of national legislation to ensure that anti-terrorism measures fully respect media freedom. It also reaffirms that defamation laws should not be used to silence critical comment and satire in the media, and calls on governments to ensure fair and equal access of all political parties and candidates to the media before elections.

The parliamentarians also asked the Committee of Ministers to assist member states in training their judges, law-enforcement authorities and police in respecting media freedom in order to protect journalists against violent threats. Furthermore, they asked the Secretary General of the Council of Europe to allocate the resources necessary to collate information regularly on violations of media freedom, analyse this information on a systematic basis, country by country, and circulate it to the governments of the member states at least quarterly.

**Recommendation 1897 (2010) – Respect for media freedom**

### Detention of asylum seekers: PACE calls for rules governing minimum standards

The detention of asylum seekers and irregular migrants in Council of Europe member states has increased substantially in recent years. PACE today set down guiding principles on the legality of detention, and put forward a number of European rules governing minimum standards for conditions in detention centres which should be guaranteed by member states and adopted by the Committee of Ministers as European rules. Following the proposals by the rapporteur (Ana Catarina Mendonça), the parliamentarians encouraged member states to use alternatives to detention, such as placement in special establishments, release on bail/surety or electronic monitoring.

**Resolution 1707 (2010) – The detention of asylum seekers and irregular migrants in Europe**

## Situation in member states

### Greece and Turkey should treat all their religious minorities according to European standards, says PACE

Both Greece and Turkey should treat all their citizens who are members of religious minorities according to the standards of the European Convention on Human Rights – rather than invoking "reciprocity" under the 1923 Treaty of Lausanne as a basis for refusing to implement some rights.

Approving a report today on "Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)", the Parliamentary Assembly acknowledged the question was "emotionally very highly charged".

But it said the two countries should "treat all their citizens without discrimination, without taking into account the way in which the neighbouring state might treat its own citizens".

In a resolution, the Assembly said the recurrent invoking by Greece and Turkey of the principle of reciprocity as a basis for refusing to implement the rights guaranteed to the minorities concerned by the Treaty of Lausanne was "anachronistic" and could jeopardise each country's national cohesion.

However, it also welcomed "a degree of new awareness by the authorities of both countries, which have demonstrated their commitment to finding appropriate responses to the difficulties facing the members of these minorities".

The parliamentarians urged both governments to recognise the "freedom of ethnic self-identification" and to make a series of changes in minority, education and religious policy. They were asked to report back to the Assembly within a year on progress made.

**Resolution 1704 (2010) – Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)**

### Need for Italy to speed up its court system

Christos Pourgourides, rapporteur of the Parliamentary Assembly on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Rome (23-24 November 2009) by calling for a

solution to the structural problem of excessive length of judicial proceedings in Italy.

Mr Pourgourides called upon members of the Chamber of Deputies and the Senate, representing both the ruling party and the opposition, to act together to adopt all the necessary measures to speed up criminal and civil proceedings.

The rapporteur also invited Italian parliamentarians to establish within the Parliament a committee to monitor the implementation of European Court judgments.

During the visit, Mr Pourgourides met the Prosecutor General and judges of the Supreme Court, as well as a number of other officials, to discuss problems with the implementation of the Strasbourg Court's judgments.

This is the third in a series of visits by the same rapporteur aimed at mobilising parliamentary support in states where delays or other difficulties in implementing judgments of the European Court of Human Rights have arisen. The rapporteur has previously undertaken similar visits to Bulgaria and Ukraine, and will later travel to Greece, Moldova, Romania, the Russian Federation and Turkey.

## PACE asks its Presidential Committee to visit Albania as soon as possible

**Resolution 1709 (2010) Recommendation 1902 (2010) – The functioning of democratic institutions in Albania**

At the close of its debate on the functioning of democratic institutions in Albania, the Parliamentary Assembly asked its Presidential Committee,[2] accompanied by the Monitoring Committee's co-rapporteurs for Albania, Jaakko Laakso and David Wilshire, to visit Albania as soon as possible, "in order to support the process of resolving the current political situation, and to assist President Topi in his role of mediator and his efforts to restore political dialogue".

The Assembly urged the Albanian government and the opposition "to put an end to the current political crisis in the country and assume their responsibilities in order to proceed with the vitally needed reforms". In particular, it called the government "to set up, without further delay, a parliamentary inquiry committee into the June 2009 elections", and urged the opposition "to return to parliament and fully participate in its work".

The Assembly notes that "the absence of parliamentary dialogue ... seriously hampers the democratic functioning of the state's institutions". It further regrets that, "in the absence of any meaningful parliamentary dialogue, inflammatory rhetoric is being increasingly used by all involved". This "could further destabilise the country," according to PACE.

2. The Presidential Committee comprises the President of the Parliamentary Assembly, the Chairs of the political groups and the Secretary General of the Assembly.

## PACE co-rapporteurs urge authorities of Bosnia and Herzegovina to change the constitution in order to comply with the European Court of Human Rights' recent judgment

"We have taken note of the final judgment by the Grand Chamber of the European Court of Human Rights which says that prohibiting a Rom and a Jew from standing for election to the House of Peoples of the Parliamentary Assembly and for the State Presidency in Bosnia and Herzegovina amounts to discrimination and breaches their electoral rights," the Council of Europe Parliamentary Assembly co-rapporteurs Mevlüt Çavusoğlu and Kimmo Sasi, said on the functioning of democratic institutions in Bosnia and Herzegovina.

"The Court thereby confirms that the rules governing the elections to the Parliamentary Assembly of Bosnia and Herzegovina and to the Presidency of the country violate the European Convention on Human Rights and its additional protocols.

In order to comply with the Court's judgments, Bosnia and Herzegovina has to change the constitution as a matter of urgency. We urge the authorities to immediately take all the necessary steps, especially in the light of the forthcoming elections scheduled for October 2010," the co-rapporteurs concluded.

## Co-operation with other international organisations

### Franco Frattini: "Working together towards the globalisation of human rights"

"Close co-operation between theCouncil of Europe, the European Union and OSCE is absolutely necessary for the globalisation of human rights", the Italian Minister of Foreign Affairs said, highlighting the relevance of international organisations' co-ordination, in order to strengthen fundamental rights' protection in Europe, and especially a common governance on migration policies. Franco Frattini stressed the importance of the European identity, and confirmed the country's commitment to working for women's rights. In the framework of the Council of Europe core-business, a final mention has been for the Italian input on the 20th anniversary of the Venice Commission and the recent Presidency of the North-South Centre in Lisbon.


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

# Commissioner for Human Rights

**The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation. To discharge the functions set out in the mandate, the Commissioner works along three main interconnected lines:**

**– a system of country visits and dialogue with the governments and civil society;**

**– thematic work and awareness-raising activities;**

**– co-operation with Council of Europe and other international human rights bodies.**

## Country monitoring

*The Commissioner carries out visits to all member states in order to comprehensively evaluate and monitor the human-rights situation. During the visits, he meets with the highest representatives of government, parliament and the judiciary, as well as leading members of human rights protection institutions and civil society. He also visits places relevant to countries' human-rights situations, including prisons, psychiatric hospitals and 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 in which improvements may be achieved.*

## Visits

**Bulgaria**
**From 3 to 5 November 2009**

During his visit to **Bulgaria** from 3 to 5 November 2009, Commissioner Hammarberg held high-level discussions with the Ministers of the Interior, Foreign Affairs ministers, ministers for Labour and Social Policy, the Acting Minister of Education, Youth and Science, as well as with members of parliament. He also met the Ombudsman, the Commission for the Protection against Discrimination, religious leaders and a large number of civil society representatives. The discussions focused on the situation of certain minorities and ethnic groups living in Bulgaria, such as Pomaks and Turks. The Commissioner also brought up an important topic, namely the protection of the rights of children placed in institutions. (see also below "Report and continuous dialogue"). In this context, he delivered a keynote speech on the inclusive education of children with disabilities during an event organised by the Mental Disability Advocacy Centre and the Bulgarian Helsinki Committee.

**Portugal**
**From 12 to 13 November 2009**

From 12 to 13 November 2009, the Commissioner visited **Portugal** where he met with the Deputy Minister of Justice, the Secretary of State of European Affairs and the High Commissioner for Immigration and Intercultural Dialogue, as well as with NGOs and the Portuguese Bar Association. During his meetings, he discussed the situation of minorities, the fight against discrimination and issues concerning migration. After his visit, the Commissioner addressed a letter to the Minister of Justice and a letter to the Secretary of State of Europe as a follow-up to the discussions they held in Lisbon.

**Georgia**
**27 November-**
**3 December 2009**
**16-19 December 2009**
**26-28 February 2010**

Visits to **Georgia** were carried out from 27 November to 3 December, from 16 to 19 December 2009 and from 26 to 28 February 2010. The main aims of these visits were to contribute to the release of detainees and to family reunification, as well as to clarifying the fate of missing persons. The Commissioner also assessed the progress on the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in the immediate aftermath of the August 2008 conflict. In the course of the visits, he managed to secure the release of two Georgian teenage school boys detained in Tskhinvali since 4 November 2009. In addition to this, five Ossetians were released from Gori and so were also free to rejoin their families. During his second mission, three remaining Georgian minors detained in Tskhinvali were released, thanks to the Commissioner's good offices. During the most recent visit, the Commissioner introduced two international experts who will be monitoring the ongoing investigations into cases of missing persons on all sides.

**Moscow**
**14 December 2009**

On 14 December 2009, Commissioner Hammarberg went to **Moscow** where he held discussions with the government authorities and the Investigating Committee at the Office of the General Prosecutor concerning the follow-up to the report on his September 2009 visit to the North Caucasus (Chechen Republic and Republic of Ingushetia. See also below "Reports and continuous dialogue"). He was also received by the President of the Russian Federation, Dmitry Medvedev, with whom he discussed in particular the implementation of the recommendations made in the Commissioner's recent report on Chechnya and Ingushetia, as well as necessary steps to protect human rights in the field of administration of justice. He expressed the hope that the recent steps taken with respect to the newly-created North Caucasus Federal District will contribute positively towards economic and social development and improve the effective protection of human rights in the region.

**Greece**
**10 February 2010**

On 10 February 2010, Commissioner Hammarberg concluded a three-day visit to **Greece** during which he held discussions with a number of authorities as well as with national, international and non-governmental organisations. While welcoming the willingness of the Greek government to tackle long-standing structural problems in the field of asylum and police misconduct, the Commissioner noted with deep concern that asylum seekers in Greece continue to face enormous difficulties trying to gain access to the asylum procedure and do not always enjoy basic safeguards such as interpretation and legal aid. He was pleased to note the ongoing reform of nationality legislation, which aims to facilitate acquisition of Greek citizenship *inter alia* by children born in Greece to non-Greek parents. He further stressed that the Greek authorities need to show greater receptiveness to diversity in their society and to take further measures that would allow minority groups to express their identity on the basis of self-identification.

**Kosovo**
**11 to 13 February 2010**

Mr Hammarberg went to **Kosovo** from 11 to 13 February 2010 to assess the situation of returnees. He expressed his concern over the fact that several European governments were forcibly returning persons to Kosovo who have found shelter in their countries. He focused in particular on the Roma, some of whom have ended up in the lead-contaminated camps of Česmin Lug and Osterode in northern Mitrovica.

The Commissioner called on European states to stop these forced returns until Kosovo could provide the infrastructure that would allow a sustainable reintegration of returnees. This statement echoed a previous one made on December 2, as well as a letter sent to Angela Merkel, Chancellor of the Federal Republic of Germany, published on 15 December.

## Reports and continuous dialogue

On 24 November 2009, Commissioner Hammarberg published a report following a visit to the Russian Federation in September 2009. The main aim of the visit was to review the human rights situation in the North Caucasus, in particular the Chechen Republic and the Republic of Ingushetia in the Southern Federal District. He concluded that, in view of the extraordinary challenges in this part of the North Caucasus, the protection of human rights will require sustained efforts and a multifaceted approach. In particular he stressed that counter-terrorism measures should be carried out in full compliance with human rights norms and called for effective and independent investigations into alleged abductions, disappearances, unlawful killings, and unlawful detention. Mr Hammarberg emphasised the need to promote safe and favourable conditions for the valuable human rights work performed by non-governmental organisations. He stressed that co-ordinated measures should be taken against corruption and encouraged the authorities to persevere in their efforts to improve the region's socio-economic situation.

On 26 November 2009, Mr Hammarberg made public a letter sent to the Prime Minister of Hungary, Mr Gordon Bajnai, on the fight against intolerance, discrimination and racism affecting minority groups, in particular Roma. The letter followed the Commissioner's visit to Hungary last October. He reiterated his grave concern about the observed rise of extremism, intolerance and racism which has targeted Roma in particular. While welcoming some positive measures undertaken by the Hungarian government to integrate Roma, he stressed that such measures should be accompanied by activities to increase public awareness of the situation of national minorities and other communities which suffer from discrimination or intolerance, including the Roma, the Jewish community and LGBT (lesbian, gay, bisexual, transgender) people.

On 10 December 2009, the letters sent in August 2009 to the Minister of Interior of Italy, Roberto Maroni, and to the Minister for Justice and Home Affairs of Malta, Carmelo Mifsud Bonnici, were made public. They referred to the incident involving a boat which set off from Libya with more than 70 people on board, of whom only five survived. The Commissioner underlined that the responsibility to rescue persons at sea appeared to have been neglected and recommended that both countries investigate the incident and engage in constructive co-operation to develop sea patrolling which is duly respectful of human rights and humanitarian principles.

A report on Bulgaria was published on 9 February 2010, following the visit in November 2009. To highlight the protection of minorities against discrimination, racism and intolerance, the Commissioner recommended a simpler law on registration of religious denominations to fully protect their freedom of association. He stated that educational efforts aimed at integrating children from minority groups and children with disabilities should be furthered, urging the authorities to improve access to information and health services to members of socio-economically disadvantaged minority groups – particularly Roma, ethnic Turks and Pomaks.

On 17 February 2010, Mr Hammarberg published two letters sent to the Prime Minister of **Lithuania** and to the Speaker of the Seimas (Parliament) after his visit to the country carried out in October 2009. The Commissioner cautioned against the adoption of legislative provisions which would contain unduly broad restrictions on speech or freedom of assembly, or which would discriminate against people based on their sexual orientation. He also expressed the hope that an acceptable solution would be found for the use of minority languages for bilingual topographical indications and welcomed the parliamentary investigation into the alleged existence in Lithuania of a secret detention centre for terrorist suspects. Finally, he recommended the ratification by Lithuania of Protocol No. 12 to the European Convention on Human Rights, containing a general prohibition of discrimination, and the acceptance of the collective complaints procedure under the European Social Charter.

## 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 one, 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 states 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.*

From 9 to 10 November, the Commissioner participated in the **International Conference on Roma migration and Freedom of Movement**, jointly organised in Vienna by the EU Fundamental Rights Agency, the Commissioner's Office and the Office for Democratic Institutions and Human Rights as well as the High Commissioner on National Minorities of the OSCE. Commissioner Hammarberg stressed that Roma migrants are faced with a double jeopardy, in that migration makes life even harder for those who already face a plethora of serious, discrimination-related problems.

On 16 November, on the initiative of Commissioner Hammarberg, the Council of Europe published the book "Janusz Korczak – The child's right to respect" which features the views of five child rights experts on current challenges in the field of children's rights. In their lectures, which are dedicated to Janusz Korczak, they focus on areas of prime importance for children's welfare, such as the principle of the best interests of the child; the necessity of being protected from corporal punishment; children and prisons; children and institutional care; and respecting the views of children. The publication also presents an English translation of one of Korczak's best-known texts, "Prawo dziecka do szacunku" (*The Child's Right to Respect*), which contains a summary of his thinking on the relationship between children and adults. All the lectures included in the book call for further work in the spirit of Janusz Korczak and his message of respect for children and their inherent value as human beings, as well as for their capacity and competence.

On 9 December, preceeding the high-level conference on the future of the European Court held in Interlaken on 18 and 19 February 2010, Commissioner Hammarberg published a memorandum in which he underlined the importance of the prevention of human rights violations for the European human rights system, and provided recommendations regarding the systematic implementation of existing standards at national level. In his memorandum and the speech given at the conference, the Commissioner called on states to adopt national action plans founded on baseline studies, high-level political support and the participation of all stakeholders, including civil society and local authorities in order to fill the human rights implementation gap.

On 14 December, the Commissioner took part in a conference on the occasion of the 20th anniversary of the death of Nobel Peace Prize laureate and physicist Andrei Sakharov, organised by the Andrei Sakharov Museum and Public Centre with the support of the Commissioner's Office and in co-operation with the Information Office of the Council of Europe in Moscow. In his speech and Viewpoint published on the same day, the Commissioner underlined the continuing relevance of Sakharov's ideas to contemporary society and highlighted his contributions in the movement to achieve honest and transparent government, popular participation, being honest about the past, the rule of law, freedom of association and freedom of the media. The exhibition "Andrei D. Sakharov: Alarm and Hope" was also inaugurated and subsequently brought to the Council of Europe from 25 January to 28 February, at the initiative of the Commissioner.

In an Issue Paper presented in Brussels on 4 February 2010, Mr Hammarberg stressed that criminalising the irregular entry and presence of migrants in Europe corrodes established international law principles and causes many human tragedies without achieving its purpose of genuine control. The Commissioner further underlined that, although states wish to control their borders, criminalisation is a disproportionate measure and immigration offences should remain administrative in nature. The Issue Paper examines systematically the human rights implications of the criminalisation of migration in Europe and analyses external border crossing, migrants' residence and protection of their social rights including employment, as well as asylum and detention. It concludes with a number of recommendations for Council of Europe member states, intended as a starting point to ensure the correct intersection of human rights standards and the treatment of foreign nationals.

The following Viewpoint articles were published at two-week intervals:

- "Intelligence secrecy must not be used as an excuse to ignore or cover up human rights violations" (2 November 2009)
- "Realising children's rights requires more than rhetoric – systematic and concrete actions are now needed" (16 November 2009)
- "Multiculturalism is an important dimension of our national identities" (30 November 2009)
- "Human rights activists all over Europe are still learning from the example of Andrei Sakharov" (14 December 2009)
- "Society has an obligation to support abandoned children and offer them a positive home environment – also when budget resources are limited" (28 December 2009)
- "Impunity for rape of women has to be stopped" (11 January 2010)
- Language rights of national minorities must be respected – their denial undermines human rights and causes inter-communal tensions" (25 January 2010)
- "The Strasbourg Court is a source of hope for many – its continued effective functioning must be guaranteed" (8 February 2010)
- "European migration policies discriminate against Roma people" (22 February 2010)

## International co-operation

*The Commissioner's independent status within the Council of Europe endows him with the unique flexibility to work with other institutions, including human rights monitoring mechanisms and intergovernmental and parliamentary committees.*

On 24 November 2009, Commissioner Hammarberg and the EU Commissioner for Employment, Social Affairs and Equal Opportunities, Vladimír Špidla, met in Strasbourg. Their meeting focused on three main areas: the situation of Roma, discrimination on the basis of sexual orientation and gender identity, and migration. Discussing improving the human rights situation of Roma and Travellers in Europe, they identified priority areas for intervention and approaches for European institutions and organisations to follow. Mr Hammarberg also stressed the need to stop the forced return of Roma from EU countries to Kosovo. The need for better awareness of transgender issues in society was also addressed at the meeting.

The third co-ordination meeting between the Council of Europe and the Office of the UN High Commissioner for Human Rights took place in Strasbourg on 16 and 17 November 2009. The Commissioner's Office participated in the following sessions: Durban follow-up, human rights indicators, arbitrary detention, migration, and children's rights.

***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

On 3 March 2010, Montenegro ratified the Revised European Social Charter and became the 30th State Party to the Revised Charter. At present, 13 states are still bound by the 1961 Social Charter and only four member states have not yet ratified either of the two instruments. Of the latter, Monaco and San Marino have signed the Revised Charter and Liechtenstein and Switzerland have signed 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

Conclusions 2009 (for the states having ratified the Revised Social Charter) and Conclusions XIX-2 (for the states bound by the 1961 Charter) have been adopted by the Committee. They are related to the application by all Parties to the Charter of the accepted provisions of the 2nd Thematic Group (Health, social security and social protection) and have been published on the Social Charter website.

## Significant events

### Seminars organised in the framework of the Third Summit Action Plan:

Three seminars on the Social Charter were organised in the framework of the **Third Summit Action Plan**:

- 5 and 6 November 2009 in Tirana (Albania),
- 11 November 2009 in Vienna (Austria),
- 15 and 16 December 2009 in Krasnodar (Russia)

During these seminars, comprehensive information on the Social Charter and its monitoring mechanisms were given to national and regional authorities, lawyers, experts, officials, NGOs, etc.

The following events on the **protection of disadvantaged groups** were attended by Committee members and/or staff members of the Department of the Social Charter:

- an exchange of views on the rights of disadvantaged groups on 8 November 2009 in Paris, organised by the Monitoring Committee of the Parliamentary Assembly;
- International Conference on Roma Migration and Freedom of Movement on 9 and 10 November 2009 in Vienna (Austria), jointly organised by the Council of Europe's Commissioner for Human Rights, the EU Fundamental Rights Agency and the OSCE;
- Round Table on the social rights of refugees, asylum seekers and internally displaced persons on 7 December 2009 in Strasbourg, organised by the UNHCR Representation to the European Institutions in Strasbourg and the Department of the Social Charter.

### Hearing on the Social Charter in Bern (Switzerland), 11 January 2009

The Foreign Policy Committee of the Council of States in Switzerland organised a hearing on the Social Charter in order to resume the examination of possible ratification of the Social Charter by Switzerland.

In addition to the members of the Committee, two representatives of the Federal Department of Foreign Affairs, the Deputy Director of International Law and the person in charge of Council of Europe – OSCE issues attended the hearing.

Further to the statement made by the Executive Secretary of the European Committee of Social Rights, many questions were raised by the members of the Foreign Policy Committee, who then discussed a motion for a "postulat" which was adopted by nine votes to two, with two abstentions.

### Seminar on the role of the European Committee of Social Rights, Athens (Greece), 3 February 2010

This seminar was organised by the Association of Labour Law and Social Security. The statements and debates related to the Revised Charter and the collective complaints procedure, with particular emphasis placed on the impact of the Committee on domestic legislation in the States Parties to the Social Charter.

This visit to Athens also provided an opportunity to hold a meeting with the Presidium of the Consultative Committee of Human Rights and to meet the Ambassador Louis-Alkiviades ABATIS, in charge of matters pertaining to the Council of Europe in the Greek Ministry of Foreign Affairs.

## Collective complaints: latest developments

### Decisions on the merits

Four decisions on the merits were published:

**1. *Confédération française démocratique du Travail (CFDT) v. France* (Complaint No. 50/2008)**

The decision on the merits became public on 9 December 2009.

It was alleged that the rules governing the integration of civilians working for the French forces based in Germany into the French administration, following the dissolution of these forces were not in conformity with the rights laid down in Articles 4 (right to a fair remuneration), 12 (right to social security), 18 (right to engage in a gainful occupation in the territory of other parties) and 19 (right of migrant workers and their families to protection and assistance) alone or read in conjunction with

Article E (non-discrimination) of the European Social Charter (revised).

The European Committee of Social Rights concluded that there was no violation of the aforementioned articles.

### 2. European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia (Complaint No. 53/2008)

The decision on the merits became public on 30 January 2010.

FEANTSA alleged a violation of Articles 16 and 31 of the Revised European Social Charter, taken alone or in conjunction with Article E, on the grounds that Slovenia has failed to ensure an effective right to housing for its residents, especially families. In particular, it submits that the Housing Act of 1991 placed some 13 000 families in an extremely precarious position by exempting public entities from the obligation of selling to former holders of the Housing Right, on advantageous terms, the flats which had been transferred to public ownership through nationalisation, confiscation or expropriation, and without offering such tenants security of tenure equivalent to the option of buying on advantageous terms.

The European Committee of Social Rights concluded:

- Violation of Article 31§1 of the Revised Charter (unanimous)
  "The Committee has consistently held that the right to adequate housing means *inter alia* a right that is protected by law. It considers that the status conferred to tenants of non-profit flats in Slovenia prior to the 1991 Housing Act clearly fitted this definition. The rules introduced by the 1991 Act allowing former holders of the Housing Right – which the Act abolished - to purchase at an advantageous price the flats in respect of which they had previously held this right, also ensured sufficient legal security of tenure for the persons concerned.
  The Committee considers, however, that as regards the situation of former holders of the Housing Right over flats which were restituted to their private owners, that the combination of insufficient measures for the access to or purchase of a substitute flat, the changes in the rules on tenancy and the increase in rents, are likely to place a significant number of households in a very precarious position and to prevent them from effectively exercising their right to housing, at the end of the Slovenian Government's reforms".
- Violation of Article 31§3 of the Revised Charter (unanimously)
  "The Committee considers that, in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income, something that is clearly not the case with former holders of the Housing Right, in particular elderly persons, who have been deprived not only of this right, but also of the opportunity to purchase the flat they live in, or another one, on advantageous terms, and of the opportunity to remain in the flat, or move to and occupy another flat, in return for a reasonable rent".
- Violation of Article E of the Revised Charter in conjunction ith Article 31§3 (nine votes to five)
  "The Committee considers that the treatment accorded to former holders of the Housing Right in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator".
- Violation of Article 16 of the Revised Charter (13 votes to one)
  "The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16".
- Violation of Article E of the Revised Charter in conjunction with Article 16 (11 votes to 3)
  "The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family,

the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16".

### 3. European Roma Rights Centre (ERRC) v. France (Complaint No. 51/2008)

The decision on the merits became public on 27 February 2010

The complainant organisation pleaded a violation of Articles 16 (right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non-discrimination), on the grounds that Travellers in France were victims of injustice with regard *inter alia* to access to housing, social exclusion, forced eviction as well as residential segregation, substandard housing conditions and lack of security. Furthermore, France has failed to take measures to address the deplorable living conditions of Romani migrants from other Council of Europe member states.

The European Committee of Social Rights concluded:

- unanimously, that there was a violation of Article 31§1 of the Revised Charter

a) on the ground of the failure to create a sufficient number of stopping places;

b) on the ground of the poor living conditions and operational failures at these sites;

c) on the ground of lack of access to housing for settled Travellers;

- unanimously, that there was a violation of Article 31§2 of the Revised Charter on the ground of the eviction procedure and other penalties;
- by 12 votes to two, that there was a violation of Article E taken in conjunction with Article 31 of the Revised Charter; on the ground that "the specific differences of Travellers are not sufficiently taken into account at and that, as a result, they are discriminated against when it comes to implementing the right to housing";
- unanimously, that there was a violation of Article 16 and Article E taken in conjunction with Article 16 of the Revised Charter; given that "the population concerned by this collective complaint unquestionably includes families. In view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31 or Article E in conjunction with Article 31, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16";
- unanimously, that there was a violation of Article 30 of the Revised Charter:

a) on the ground that "France has failed to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion";

b) on the ground that "under section 8 of Act No. 69-3 on circulation documents, the number of holders of circulation documents without a fixed domicile or residence attached to a given municipality must not be greater than 3% of the municipal population". [Consequently,] "When the 3% quota is reached, Travellers cannot attach themselves to a municipality and do not therefore have the right to vote";

- by 11 votes to three, that there was a violation of Article E taken in conjunction with Article 30 of the Revised Charter; for the two aforementioned complaints;
- unanimously, that there was a violation of Article 19§4c of the Revised Charter because this population includes Roma migrant workers from other States Parties who are in a legal situation yet do not enjoy the rights set out in Article 19§4c.

### 4. Defence for Children International (DEI) v. the Netherlands (Complaint No. 47/2008)

The decision on the merits became public on 28 February 2010.

DCI alleged that Dutch legislation and practice which deny children unlawfully present in its territory access to adequate housing, are in violation of Article 31 (right to housing) taken alone or in conjunction with Article E (non discrimination) of the Revised Charter. DCI stated that housing is a prerequisite for the preservation of human dignity and therefore legislation or practice which denies entitlement to housing to foreign nationals, even if they are on the territory unlawfully, should be considered contrary to the Revised Charter. DCI further held that the finding of a violation of the right to housing implied a violation of Articles 11, 13, 16, 17 and 30 taken alone or in conjunction with Article E of the Revised Charter.

The key challenge of the complaint was to ascertain whether the Committee would exclude

from the scope ratione personae of the Charter, children unlawfully present on the territory of a State Party, given that, as argued by the government of the Netherlands, the terms of paragraph 1 of the Appendix of the Charter limit such scope of application to "foreigners only in so far as they are nationals of other parties lawfully resident or working regularly within the territory of the party concerned".

In this regard, the Committee observed that this restriction attaches to a wide variety of social rights and impacts on them differently (complaint No. 14/2003, FIDH v France, decision on the merits of 8 September 2004, § 30). It further held that such restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake. Consequently, it explained that with regard to each alleged violation, it had to preliminarily determine whether the right invoked was applicable to the specific vulnerable category of persons concerned, i.e. children unlawfully present in the Netherlands.

As to the scope *ratione materiae* of the complaint, in the light of the submissions made by the parties, the Committee observed that allegations concerning violation of rights other than that to housing for children unlawfully present in the Netherlands were presented as subsidiary and were not sufficiently developed. It therefore considered that in substance the complaint concerned the following issues:

- denial of access to housing of an adequate standard to children unlawfully present in the Netherlands (Article 31§1);
- failure to prevent or reduce homelessness by not providing shelter to children unlawfully present in the Netherlands as long as they are in the Netherlands' jurisdiction (Article 31§2).
- failure to take all appropriate and necessary measures designed to provide protection and special aid from the state to children unlawfully present in the Netherlands by denying them entitlement to shelter (Article 17§1.c);
- discrimination in access to housing against children unlawfully present in the Netherlands (Article E read in conjunction with Articles 31 and 17).

The European Committee of Social Rights unanimously concluded that:

- the denial of adequate housing, which includes a legal guarantee of security of tenancy, to children unlawfully present on its territory, does not automatically entail a denial of the basic care needed to avoid persons living in intolerable conditions. Article 31§1 was thus not applicable in the present case.
- States Parties are required under Article 31§2 to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children. Moreover, since in the case of unlawfully present persons no alternative accommodation may be required by states, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity. This not being the case in the Netherlands, the Committee held that the situation in the Netherlands constitutes a violation of Article 31§2.
- Article 17§1.c requires that states take the appropriate and necessary measures to provide the requisite protection and special aid to children temporarily or definitively deprived of their family's support. As long as their unlawful presence in the Netherlands persists, these children are deprived of their family's support in that by law (see section 10 of the Aliens Act) they may not claim entitlement to the benefits or facilities which would inter alia secure them shelter. Given that the obligations related to the provision of shelter under Article 17§1.c are identical in substance with those related to the provision of shelter under Article 31§2, the Committee considered that there also is violation under Article 17§1.c for as long shelter is not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.
- Article E was not applicable to the present case as the question, as submitted by the complainant organisation in the instant case, did not concern equality of treatment of children unlawfully present in the Netherlands compared to children lawfully resident. The question instead was whether such a category of persons could claim entitlement to rights under the Charter and under what conditions (see above the challenge of the complaint and the response by the Committee to it).

### Decisions on the admissibility

Two collective complaints were declared admissible by the European Committee of Social Rights on 8 December 2009:

**Centre on Housing Rights and Evictions (COHRE) v. Italy (Complaint No. 58/2009)**

The complainant organisation alleges that the recent so-called emergency security measures and racist and xenophobic discourse have resulted in unlawful campaigns and evictions leading to homelessness and expulsions, disproportionately targeting Roma and Sinti. It pleads a violation of Articles 16 (right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non discrimination) of the Revised Charter.

**European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium (Complaint No. 59/2009)**

The complainant organisations believe that judicial intervention in social conflicts in Belgium, in particular concerning restrictions imposed on the action of picket line, violate Article 6§4 of the Revised Charter (right to strike).

For more detailed information, see the Social Charter website.

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*"La Charte sociale européenne révisée: le défi des droits sociaux face à la pauvreté"*, Régis BRILLAT dans *La pauvreté, un défi pour les droits de l'homme*, sous la direction d'Emmanuel Decaux et Alice Yotopoulos-Marangopoulos, Editions A. Pedone, Paris, 2009, p. 59-69

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An electronic newsletter on the activities of the European Committee of Social Rights comes out three times a year. It is possible to sign up for the newsletter on the homepage of the European Social Charter website.

***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, psychiatrists, prison and police experts, etc.*

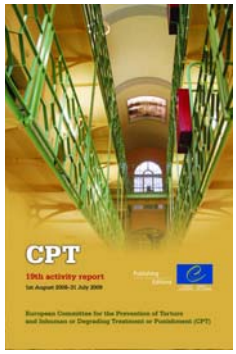
The CPT's task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority. Apart from periodic visits, the committee also organises visits which it considers necessary (ad hoc visits). The number 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.

## 20 years of combating torture in Europe

During the 20 years of its existence, the European Committee for the Prevention of Torture has been at the forefront of efforts in Europe to stamp out ill-treatment by state officials. It has conducted some 270 visits in 47 European states, examining the situation in thousands of places of detention. In its 19th General Report, the CPT takes stock of what has been achieved over the last two decades and reflects on the challenges that lie ahead.

The general report recalls the gradual extension of the CPT's field of operations across Europe. Nevertheless, it points out that there remain certain parts of the continent in which the Committee has not yet been able to operate, in particular Belarus. The CPT expresses the hope that the time will soon be ripe to extend an invitation to the Belarus authorities to accede to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, by which the Committee was established.




The report stresses that successfully combating deliberate forms of ill-treatment involves overcoming the problem of impunity, which the CPT has encountered in many countries. In addition, it is essential to get to grips with the phenomenon of overcrowding, which continues to blight prison systems throughout Europe; the report emphasises that "simply building more prisons is not the solution". Attention is also drawn to the fundamental need for States founded on human rights and the rule of law to remain true to these basic values when fulfilling the obligation to protect their

citizens (for example, against acts of terrorism).

The general report provides information on the 19 visits carried out by the CPT between August 2008 and July 2009. In particular, it explains the main objectives of the nine ad hoc visits deemed to have been "required in the circumstances". The report also includes highlights from recently published visit reports and government responses; they provide an insight into some of the major issues which the Committee confronts during its work and the action taken by states to address them.

In a substantive section of the general report, the CPT sets out its views on safeguards for irregular migrants deprived of their liberty. Issues addressed include material conditions of detention, legal safeguards and health issues. Particular attention is paid to the principle of "non-refoulement", as well as to the necessity for specific safeguards for unaccompanied and separated children.

## CPT President calls for an end to impunity for perpetrators of torture

The President of the Council of Europe Committee for the Prevention of Torture (CPT), Mauro Palma, called on countries to take effective measures to end the practice of impunity in Europe for state officials suspected of perpetrating acts of torture and ill-treatment, a problem encountered by the CPT in many countries.


"The credibility of the prevention of torture is undermined each time officials responsible for such offences are not held to account for their actions," he said. "It's time to move firmly on this issue and it's time to end it," he said in a press briefing held in Strasbourg on the margins of the conference marking the CPT's 20th anniversary.

Mr Palma, who has himself visited many detention facilities as a member of CPT delegations, also pointed to the growing problem of overcrowding in prison systems throughout Europe.

"Simply building more prisons is not the solution; interrelated measures looking into, for example sentencing guidelines, community sanctions, conditional release should be put in place to overcome the phenomenon of overcrowding. Otherwise, overcrowding will continue to jeopardise both the safe running of prisons and the rehabilitation of individual offenders," he said.

With around half a million irregular migrants entering European countries annually, the issue of safeguards for immigration detainees has become another priority area of activity for the CPT.

"Irregular migrants are particularly vulnerable to various forms of ill-treatment. Unfortunately there are still far too many instances where the CPT comes across places of deprivation of liberty for irregular migrants which are totally unsuitable," said Mr Palma.

"States should be selective when exercising their power to deprive them of their liberty and every effort should be made to avoid it when it comes to minors," said the CPT President, adding that in the most recent General Report, the Committee has set out its views on the safeguards that should be adopted for this group of persons.

During the briefing, Mauro Palma also acknowledged that states sometimes see a tension between their obligation to protect their citizens, for example, against acts of terrorism, and the need to uphold basic values. "For the CPT, striking the right balance is misguided when talking about the prohibition of torture. It is only by defending those values which distinguish democratic societies from other types of society that Europe can best guarantee its security."

Mr Palma stated that the CPT had examined the application of surgical castration on sentenced sex offenders in the Czech Republic, and found that it amounted to degrading treatment. The Committee has called upon the authorities to end its use immediately. He added that it was an "invasive, irreversible and mutilating" measure which had no place in Europe today.

Mr Palma also stated that the issue of restraints in psychiatric establishments remained of particular concern for the CPT. "A patient should

only be restrained as a measure of last resort and for the shortest period possible. The time is ripe for every psychiatric establishment in Europe to have a comprehensive, carefully developed policy on this question."

Finally, Mr Palma reflected on the 20 years of the existence of the CPT and the reputation of the Committee as an independent professional body monitoring places of detention in Europe. "The total eradication of torture in the European continent may never come, but it can certainly be combated successfully and reduced to a marginal phenomenon. The CPT will continue to play its part working with the relevant actors in the countries it visits," he concluded.

## Periodic visits

### Poland

**Visit to Poland from 26 November to 8 December 2009**

The visit was carried out within the framework of the CPT's programme of periodic visits for 2009 and was the Committee's fourth periodic visit to Poland.

The CPT's delegation assessed progress made since the previous visit in 2004 and the extent to which the Committee's recommendations have been implemented, in particular in the areas of police custody, imprisonment (with a focus on prisoners classified as "dangerous") and the detention of foreign nationals under aliens legislation. It also visited for the first time in Poland a social care home.

In the course of the visit, the delegation met Krzysztof Kwiatkowski, Minister of Justice, as well as senior officials from the Ministries of Internal Affairs and Administration, Justice, Health, and Labour and Social Policy. Meetings were also held with representatives of the Office of the Commissioner for Civil Rights Protection, the Head of the UNHCR Office in Warsaw, and members of non-governmental organisations active in areas of concern to the CPT.

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

### Latvia

**Visit to Latvia from 3 to 8 December 2009**

The main objective of the visit was to review progress made as regards the treatment and conditions of detention of prisoners in the light of the recommendations made by the Committee after its 2007 visit to Latvia. To that end, the CPT's delegation visited Jekabpils prison and the units for life-sentenced prisoners at the Daugavgrivas and Jelgava prisons.

In the course of the visit, the delegation had consultations with Mareks Segliņš, Minister of Justice, Mārtiņš Lazdovskis, State Secretary of the Ministry of Justice, Visvaldis Puķīte, Head of the Latvian Prison Administration, as well as other senior officials from the Ministry of Justice and the Prosecution Office. It also met Romāns Apsītis, Ombudsman of Latvia.

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

### Greece

**Talks in Athens from 18 to 19 January 2010**

The main objective of the talks was to gauge the commitment of the Greek authorities to combating impunity within the police, to improving the conditions of detention of irregular migrants, and to addressing long-standing problems in the prison system. In this context, the delegation was keen to learn about the measures already taken or being considered by the new government to tackle the problems found by the CPT in the course of its visits over the last few years. The talks were carried out in a spirit of openness and all parties expressed their desire to improve co-operation.

### Prison on the island of Imrali (Turkey)

**Visit to Turkey from 26 to 27 January 2010**

The delegation visited the F-type high-security closed prison on the island of Imrali, in order to examine the conditions under which Abdullah Öcalan and other inmates were held. Particular attention was paid to communal activities offered to the prisoners and the application in

practice of the prisoners' right to receive visits from relatives and lawyers. All the prisoners were interviewed by the delegation.

The visit was carried out following the recent establishment of a new detention facility on the island and the transfer to that facility of five prisoners from other prisons.

In the course of the visit, the delegation met Sait Gürlek, Chief Public Prosecutor of Bursa, and Yahya Özkök, Enforcement Judge responsible for Imrali F-type High-Security Closed Prison.

### Ireland

**Visit to Ireland from 25 January to 5 February 2010**

The delegation assessed progress made since the previous visit in 2006 and the extent to which the Committee's recommendations have been implemented. Particular attention was paid to the conditions of detention of persons in prison, and to the care afforded to patients in psychiatric institutions. The operation of the various safeguards in place in An Garda Síochána (Police) stations was also examined, and the delegation visited for the first time in Ireland an establishment for the intellectually disabled.

The delegation visited the following places of deprivation of liberty: Establishments under the Ministry of Justice, Equality and Law Reform (An Garda Síochána; Prison Service) and Establishments under the Ministry of Health and Children.

Targeted visits were paid to Cloverhill and Wheatfield Prisons and the Dóchas Women's Centre to examine care afforded to prisoners with mental health disorders.

### Georgia

**11-day visit to Georgia**

During the visit, the delegation assessed progress made since the previous periodic visit in 2007 and the extent to which the CPT's recommendations have been implemented, in particular in the areas of initial detention by the police, imprisonment and psychiatry. Furthermore, the delegation visited a social care institution for the first time in Georgia.

## Report to government following visits

*After each visit, the CPT draws up a report which sets out its findings and includes recommendations and other advice, on the basis of which a dialogue is developed with the state concerned. The committee's visit report is, in principle, confidential; however, almost all states choose to allow the report to be published.*

### Report on Azerbaijan

**Report on the ad hoc visit to Azerbaijan in December 2008 published on 26 November 2009**

During the visit, the CPT's delegation reviewed the situation at Gobustan Prison (previously visited by the CPT in 2005 and 2006). The delegation received several credible allegations from life-sentenced prisoners of deliberate physical ill-treatment and excessive use of force by prison officers. In their response, the Azerbaijani authorities indicate that staff at Gobustan prison have been instructed to apply physical force and special means only in exceptional circumstances determined by law.

In the units for lifers, the delegation observed some improvements to material conditions. However, life-sentenced prisoners continued to spend 23 hours a day locked up in their cells, without being offered any form of organised activity. The CPT has called upon the Azerbaijani authorities to take steps to devise and implement a comprehensive regime of out-of-cell activities for life-sentenced prisoners. Furthermore, the Committee has stressed once again that it can see no justification for keeping life-sentenced prisoners apart from other prisoners. The authorities' response makes reference to plans to set up workshops and sports facilities at Gobustan prison, as well as to enable inmates to receive education.

During the 2008 visit, the CPT's delegation also carried out a visit to the Central Penitentiary Hospital in Baku. It found that nursing staff resources were insufficient and that no healthcare staff were present in the wards after 4 p.m. Furthermore, the delegation gained the impression that the treatment provided at the

hospital's internal diseases, narcology and psychiatry wards left a lot to be desired. The CPT has recommended that a thorough assessment of the hospital's healthcare services be carried out. The authorities' response refers to various training courses for healthcare staff at the hospital and the involvement of experts from the Ministry of Health in the treatment of prisoners.

At the Republican Psychiatric Hospital No. 1 in Mashtaga, the CPT's delegation heard a number of allegations from patients of occasional physical ill-treatment, mostly by orderlies and occasionally by nurses. Living conditions in the wards which had already been refurbished were on the whole acceptable, but conditions in the non-refurbished wards were very poor. The worst situation was observed in Ward 12; there, conditions in the ward's two isolation rooms were particularly bad. According to the authorities' response, a refurbishment of Ward 12 has been launched and the isolation rooms have been abolished.

As regards the Regional Psycho-Neurological Dispensary in Sheki (previously visited by the CPT in 2006), the delegation observed a number of positive changes. That said, the dormitories remained overcrowded, dilapidated and impersonal, and lacked privacy. The response refers to a decision to move the dispensary to a new hospital to be built in the Sheki region.

More generally, the CPT has recommended that steps be taken at psychiatric establishments to adopt a policy on the use of means of restraint, and that the recording of information on the use of means of restraint be improved. Other recommendations made by the Committee concern the legal safeguards in the context of involuntary hospitalisation and the setting up of a system for regular visits to psychiatric establishments by independent outside bodies responsible for the inspection of patients' care.

## Report on the United Kingdom

**Report on the sixth visit to the United Kingdom in November/December 2008 published on 8 December 2009**

In England, the CPT's delegation examined the safeguards afforded to persons deprived of their liberty by the police as well as the treatment of inmates and conditions of detention in three local prisons (Manchester, Wandsworth and Woodhill) and a juvenile young offender institution (Huntercombe). In Northern Ireland, the delegation looked at developments as regards policing in the two adult male prisons (Maghaberry and Magilligan) since the Committee's last visit there in 1999. In both these parts of the country, the situation of immigration detainees was also examined, including during a visit to an immigration removal centre (Harmondsworth).

### Appendix

*Summary of the visit report and response*

#### England

As regards policing matters, the CPT's delegation received no allegations of severe ill-treatment by police officers. However, in view of the significant number of complaints in the "oppressive behaviour" category registered by the Independent Police Complaints Commission, the Committee has recommended that senior police officers regularly deliver the clear message that the ill-treatment of detained persons is not acceptable. The CPT has also noted the plans to extend the use of electro-shock weapons (Tasers) by police forces and expressed concern that the current guidance leaves scope for misuse of such weapons. In terms of safeguards during police custody, the CPT considers that the provision of medical care could be improved, and it recommends that all 17-year-olds detained by the police should be treated as juveniles (not as adults), thereby strengthening the safeguards surrounding their custody. In response, the authorities refer to the criteria for the use of Taser by specially trained units and the safeguards in place. They also provide information on the steps being taken to improve custody officer training and to strengthen healthcare provision in police stations. They confirm that a legislative amendment will be introduced to treat all under 18s as juveniles. Responding to recommendations made by the CPT concerning persons detained under the Terrorism Act 2000, the authorities highlight improvements to conditions of detention at Paddington Green high-security police station; however, they reiterate their position that it is not always necessary for a detained person to be brought within the direct physical presence of a judge.

On prison matters, the report expresses concern over the continuing rise in the prison population and the resultant overcrowding. The CPT advocates a more imaginative approach towards reducing prison numbers; it also advises against the building of 'Titan' prisons. In response, the authorities provide infor-

mation on enhancing the effectiveness of alternatives to custody, increasing the capacity of the prison estate, including through the building of five large prisons (each with space for up to 1 500 inmates), and introducing savings on administration and overheads.

As regards conditions of detention in the three prisons visited, the report highlights the overcrowding observed by the CPT's delegation and the fact that too many inmates continue to spend too much time locked in their cells with little access to any meaningful activities. The authorities contest some of the findings and point to the varied opportunities offered to prisoners for work, education and recreation, and the ongoing measures taken to provide good cell accommodation.

The report highlights a number of shortcomings as regards the management of prisoners with indeterminate sentences for public protection (IPP); among other things, such prisoners often had difficulties in accessing behavioural offender programmes. In their response, the authorities refer to a series of measures that have been introduced to address these concerns. In response to recommendations by the CPT, they also provide information on the regime afforded to prisoners in the Category A unit at Manchester prison, and comment extensively on the Close Supervision Centre at Woodhill prison, which holds some of the most challenging prisoners in the system.

The CPT has noted the positive developments in the provision of healthcare in prisons, following the transfer of responsibility to the National Health Service (NHS) in 2005. In this respect, the authorities note that experienced NHS staff are continuing to take up healthcare posts in prisons. As for mental health in prison, the Committee comments that inmates with severe mental disorders need to be transferred more rapidly to appropriate in-patient facilities. The authorities concur, and refer to the Bradley Review of April 2009, which makes clear that there is a need to have more robust models of primary healthcare in prison.

Other prison-related issues raised in the CPT's report include staffing and the functioning of the complaints system.

As regards juvenile detention, the report welcomes the increased range of measures and schemes aimed at reducing recourse to deprivation of liberty and trusts they will be adequately funded. In response, the authorities state their commitment to reducing the number of young people in custody, and provide information on the new Youth Rehabilitation Order and the increased role of local authorities, particularly as concerns the provision of effective resettlement services for young people leaving custody.

The CPT's delegation gathered no evidence of physical ill-treatment of inmates by staff at Huntercombe young offenders' institution. However, concern is expressed about the number of incidents of inter-inmate violence which required use of force by staff to end. The report highlights the importance of ensuring both that there are sufficient numbers of staff present and that special procedures and courses are in place for the recruitment and training of all staff working with young persons. The authorities' response points to current increased staffing levels at Huntercombe as well as the development of specific recruitment procedures and enhanced training for staff working with juveniles, including the introduction of conflict resolution training.

In addition to this, the authorities provide information on the efforts being made to offer a meaningful regime and make reference to the new education contract, increased physical education and association activities. However, the authorities disagree with the CPT that the routine practice of strip-searching is disproportionate. Further, they argue that the extremely challenging behaviour of some young people means that the use of pain compliant means of restraint on young persons as a last resort should be retained, while advocating a series of safeguards to minimise resort to restraint. In response to the recommendation that steps be taken to improve the complaints system, the authorities refer to a review being undertaken by the Youth Justice Board. Information is also provided in respect of recommendations relating to healthcare, discipline, contacts with the outside world, as well as on action being taken to reduce the time juveniles spend in secure transportation vans.

As regards immigration detainees, the CPT visited Harmondsworth Immigration Removal Centre and found both the conditions and regime satisfactory for the average length of stay. Recommendations have been made to improve the medical screening of detainees and for a mental health nurse to be recruited. More generally, the report expresses concern over the growing number of persons spending longer than a year in immigration detention. The authorities provide information on the various issues raised in the report, and affirm

that persons are not detained longer than is necessary.

#### Northern Ireland

The CPT's report notes the extensive changes in policing over the past decade, and highlights the fact that it received no allegations of ill-treatment of persons detained by the Police Service of Northern Ireland (PSNI). However, it makes reference to the necessity of having strict criteria in place for the use of electro-shock weapons (Tasers), which should closely correspond to those governing the use of firearms. The authorities concur and refer to the strict guidelines and training for police officers currently in place.

The report states that formal safeguards against ill-treatment appear to operate satisfactorily, but concerns are raised as to the availability of appropriate psychiatric care for persons detained by the police; for example, situations where police officers resort to tying detained persons naked to a chair in order to prevent acts of self-harm are not acceptable. The CPT has also made recommendations about medical confidentiality and care provided to persons on suicide watch in police stations. The police stations visited were generally well maintained and clean. However, concern is expressed about the practice of holding immigration detainees in police custody suites for up to seven days; the CPT recommends that more appropriate facilities be provided for the detention of such persons.

In response, the PSNI points out that measures are being taken to improve care afforded to persons with mental health problems held in police stations. It also states that a feasibility study for a short-term holding facility for immigration detainees is underway, but that funding is currently not available.

As to prisons, the report recommends that measures be taken to prevent overcrowding becoming a permanent feature of the prison system, and that cells of 7m² should not accommodate more than one prisoner. In their response, the authorities provide information on measures to increase the use of alternatives to custody and on the development of the prison estate. However, they state that current population levels mean that 7m² cells must continue to be used to accommodate two prisoners, while acknowledging that the cells of this size at Maghaberry prison were not designed for this purpose.

The report documents several allegations of ill-treatment by members of the Stand-by Search Team (SST) at Maghaberry prison, and recommends action is taken to ensure the SST does not abuse its powers. More generally, the CPT stresses the importance of prison management following up on all complaints of ill-treatment. Further, in the light of complaints by prisoners, the Committee has recommended the authorities to ensure that all full-body searches are carried out in accordance with the relevant rules and respect the dignity of the prisoner concerned. Measures are also recommended to reduce the incidence of inter-prisoner violence at Maghaberry prison.

In response, the Police Service of Northern Ireland argues that the very nature of the tasks assigned to the SST (searches, responding to incidents, etc.) will result in more complaints; it states that every complaint is investigated but that, to date, none have been upheld. Nevertheless, the role of the SST is one of the issues the new management team at Maghaberry prison will be considering. The Prison Service refutes allegations made by prisoners concerning inappropriate body searches but has reminded staff of the procedure to be followed. Further, it states that measures are being taken to reduce incidents of inter-prisoner violence at Maghaberry prison, through increased surveillance, education of prisoners and seeking to reintroduce prison staff into the rooms used by prisoners for association.

The authorities also provide information on the measures being taken to enhance the provision of healthcare, and respond to the concerns raised in the report in relation to the safeguards in place governing discipline and segregation. In response to the CPT's recommendation for the complaints system to offer appropriate guarantees of independence, impartiality and thoroughness, the authorities provide details on a new internal complaints procedure.

## Report on French Guyana

**Report on the ad hoc visit to to French Guyana in November/December 2008 published on 10 December 2009**

The main objectives of this visit were to examine the situation of prisoners at Rémire-Montjoly prison, the only prison in this French administrative region, as well as the treatment of foreign nationals deprived of their liberty under aliens legislation. The CPT also reviewed the conditions of detention of persons in police

custody and the implementation of fundamental safeguards against ill-treatment.

In their response, the French authorities provide information on the measures being taken or envisaged to address the issues raised in the CPT's report.

## Report on Sweden

**Report on the fourth periodic visit to Sweden, in June 2009, published on 11 December 2009**

The overwhelming majority of the persons met by the CPT's delegation during the 2009 visit who were, or had recently been, detained by the police, indicated that they had been correctly treated. Nevertheless, the delegation heard a few allegations of physical ill-treatment by police officers. The report pays attention to the procedural safeguards against ill-treatment and concludes that further action is required in order to bring the law and practice in this area into line with the Committee's standards. The CPT has also invited the Swedish authorities to further develop the system of investigating complaints of police ill-treatment, with a view to ensuring that it is independent, impartial and effective.

In the report, the CPT once again expresses concern about the procedure for the application of restrictions to remand prisoners and the impact of such measures on their mental health. At the time of the visit to Gothenburg remand prison, restrictions were being applied to 46% of the prisoners, some of them having been subject to long periods of isolation (up to 18 months). The overwhelming majority of the prisoners met had been given no explanation of the reasons for the restrictions imposed on them. The CPT has made a number of recommendations aimed at ensuring that the imposition of restrictions on remand prisoners is an exceptional measure rather than the rule.

The situation of prisoners held in high-security units and segregated for administrative reasons was another focal point of the visit. The report stresses that a move towards a more intensive security provision in prisons – unless it is justified on the basis of an objective, case-by-case assessment – can render the complex task of safely managing prisons more rather than less difficult, and would be corrosive rather than protective of human rights. Further, the CPT has recommended that the Swedish authorities establish a clear distinction between segregation for administrative reasons and segregation on disciplinary grounds, and review the regime for prisoners placed in administrative segregation.

Material conditions in the prisons visited were generally of a good standard, and genuine efforts were being made at Hall and Kumla prisons to engage prisoners in a range of purposeful activities. However, the regime for inmates subject to restrictions remained impoverished.

The continuing practice of holding immigration detainees in prisons is another issue of concern for the CPT. The Committee has recommended that urgent steps be taken to ensure that persons detained under aliens legislation are not held on prison premises.

As regards the two Migration Board centres visited, in Märsta and Gävle, the report gives an overall positive assessment of the situation there. However, the CPT has made a number of recommendations designed to improve the provision of healthcare to immigration detainees.

At the two psychiatric establishments visited – the Department for Forensic Psychiatric Assessment in Huddinge and the Psychiatric Clinic South-West in Huddinge – the atmosphere was relaxed and material conditions were of a very high standard. However, at the Psychiatric Clinic, there was a lack of staff in charge of rehabilitative and occupational activities and, as a result, treatment relied exclusively on pharmacotherapy.

The report draws attention to allegations received at the Fagareds Home for Young Persons of excessive use of force by staff to control violent and/or recalcitrant residents. The CPT has also recommended that a system for the systematic recording of episodes of segregation be set up at the Fagareds home, as well as in all other institutions for young persons in Sweden.

The Swedish government is currently preparing its response to the issues raised by the Committee.

## Report on Moldova

Report on its ad hoc visit to Moldova, carried out in July 2009 published on 14 December 2009

During the visit, the CPT's delegation heard a remarkably large number of credible and consistent allegations of police ill-treatment in the context of the post-election events in April 2009. In its report, the CPT recommends together with other measures that the methods used by members of the special police unit "Fulger", and other police forces involved in the apprehension of persons in the context of crowd-control situations, be subject to closer and more effective independent supervision.

As regards investigations into cases possibly involving ill-treatment in the context of the post-election events, the delegation examined the overall investigative approach as well as a number of specific cases with a view to assessing the effectiveness of the action taken by the competent authorities.

The report concludes that, in many cases, prosecutors had not taken all reasonable steps in good time to secure evidence, and had failed to make genuine efforts to identify those responsible. The CPT recommends that the competent authorities adopt a more proactive, co-ordinated and comprehensive approach in order to meet the criteria of an "effective" investigation as established by the European Court of Human Rights.

The CPT also recommends, in the medium term, the setting-up of a specialised agency for the investigation of cases possibly involving ill-treatment by law enforcement officials which is fully independent of both law enforcement and prosecuting authorities.

## Report on Latvia

Report on its visit to Latvia, carried out in November/December 2007 published on 15 December 2009

During the 2007 visit, the CPT reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and to conditions of detention in police "short-term isolators".

The Committee also examined in detail various issues related to prisons, in particular the situation of juvenile and female prisoners as well as the regime and security measures applied to life-sentenced prisoners. In addition, the CPT visited a psychiatric hospital and a social welfare institution, where it examined the treatment and living conditions of patients and residents and the legal safeguards in the context of admission procedures.

In their responses to the visit report, the Latvian authorities provide information on the measures being taken to implement the CPT's recommendations.

## Report on the Slovak Republic

Report on its fourth periodic visit to the Slovak Republic, carried out in March/April 2009 published on 11 February 2010

The findings of the 2009 visit indicate that there has been an improvement in the treatment of persons deprived of their liberty by law enforcement officials, as compared to the situation found during previous visits to Slovakia by the CPT. However, in addition to a number of complaints concerning remarks of a racist nature, the delegation did receive several allegations of physical ill-treatment of detained persons by police officers, which concerned mainly excessive use of force during apprehension. As for investigations into allegations of police ill-treatment, the CPT has recommended that the Slovak authorities improve the effectiveness and independence of such investigations. The report also assesses the procedural safeguards against ill-treatment and concludes that further action is required in order to bring the law and practice in this area into line with the Committee's standards. In their response, the Slovak authorities provide inter alia information on the training in apprehension techniques received by police officers .

As regards the detention centres for foreigners visited in Medved'ov and Secovce, the CPT gives an overall positive assessment. However, it is recommended that the programme of activities offered to foreigners be developed. The report also expresses concern over the unregulated nature of the "separation regime" in place for the seclusion of certain detainees and the lack of appropriate safeguards surrounding that regime. According to the authorities' response, an alien is placed under a separation regime in circumstances determined by law and for a period of time which is reasonably necessary.

On prison matters, the Committee criticises the practice of collective strip searches and the use of dogs for routine prison duties involving inmates. As for the situation of life-sentenced prisoners, the report notes that certain measures have been taken to improve the detention regime of these persons, most notably by the introduction of an internal differentiation aimed at mitigating the standard regime. However, it would appear that this development has yet to be fully implemented; the regime afforded to the vast majority of life-sentenced prisoners remained impoverished. The conditions of prisoners held in the high-seurity department ofLeopoldov prison is another issue of concern for the CPT. The Committee observed that the high-security department is limited to providing a secure setting, while the majority of prisoners it accommodates appear to be in need of psychiatric care. The Slovak authorities' response states inter alia that the provision of the Ilava prison internal regulations authorizing the use of service-dogs during evening head-counts has been repealed. As regards the high-security department in Leopoldov, the authorities indicate that most prisoners held in this department do not require psychiatric care as they are affected by personality disorders.

The Committee also visited the psychiatric ward at Trencin prison hospital. The report highlights that patients placed in the protective psychiatric treatment unit and those receiving protective treatment for substance abuse benefit from a full programme of activities, whereas the regime offered to patients in the unit for acute psychiatric conditions is poor. In their response, the authorities state that prisoners of different guarding levels and categories are treated at the unit for acute psychiatric conditions, and that the daily activities offered to such prisoners depend on their physical state and the medication that has been administered to them. For this reason, it is not possible to organise group activities.

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

# Framework Convention for the Protection of National Minorities

**The Framework Convention for the Protection of National Minorities provides for a monitoring system to evaluate how the treaty is implemented in State Parties. It results in recommendations to improve minority protection in the states under review. The Committee responsible for providing a detailed analysis on minority legislation and practice is the Advisory Committee. It is a committee of 18 independent experts which is responsible for adopting country-specific opinions. These opinions are meant to advise the Committee of Ministers in the preparation of its resolutions.**

## First Monitoring Cycle

### Submission of the State Report

**Netherlands** — **17 February 2010**

The 1st Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on the Netherlands was made public at the same time as the government comments. The Advisory Committee adopted this Opinion in June 2009 following a country visit in February 2009.

*Summary of the Opinion:*

"Following the receipt of the initial State Report of the Netherlands on 16 July 2008 (due on 1 June 2006), the Advisory Committee commenced the examination of the State Report at its 33rd meeting on 6-8 October 2008. In the context of this examination, a delegation of the Advisory Committee visited the Netherlands from 25 to 27 February 2009, in order to seek further information on the implementation of the Framework Convention from representatives of the government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on the Netherlands at its 35th meeting on 25 June 2009.

The Advisory Committee considers that the Netherlands has made commendable efforts with respect to the implementation of the Framework Convention with regard to the Frisians living in Fryslân. Measures have been taken to facilitate the use of Frisian in relations with the administration and the judiciary, teaching of Frisian is available in primary and secondary schools and instruction in Frisian is increasing slightly. Further efforts are however needed in terms of teacher training, supervision of Frisian teaching and the amount of teaching in Frisian needs to be further discussed with Frisian representatives in order to adequately meet their demands. A possible devolution of powers from the central to the local authorities is currently being discussed and it is expected that reforms in this area will result in enhancing the preservation and development of Frisian language and culture.

The Advisory Committee finds that the personal scope of application of the Framework Convention which is presently limited to the Frisians has not been satisfactorily addressed by the authorities. The Roma and Sinti, many of whom have long ties with the Netherlands, have been excluded from the protection of the Framework Convention. In addition, they have been left out of any institutionalised and direct dialogue with the national authorities and measures to address their socio-economic and educational situation have not been adopted at national level.

The Advisory Committee welcomes the comprehensive legal and institutional measures taken by the Dutch authorities both at national and local levels to combat discrimination. At the same time, it considers that the overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, have had negative consequences on the preservation of a climate of mutual understanding between the majority population and the ethnic minorities."

## Second Monitoring Cycle

### Advisory Committee Opinion adopted

**5 November 2009**

**Portugal and Kosovo**

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted opinions on Portugal and Kosovo which are restricted for the time-being. These opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

**7 December 2009**

**Poland**

The Second Opinion on Poland was made public by the Government. The Advisory Committee adopted this Opinion in March 2009 following a country visit in December 2008.

*Summary of the Opinion:*

"Since the adoption of the first Opinion of the Advisory Committee on Poland on 27 November 2003, Poland has continued to pay attention to the protection of national minorities. A number of positive steps have been taken in this area, such as the adoption of the Act on National and Ethnic Minorities and on Regional Language and the setting up of the government structure for combating discrimination. National minorities continue to enjoy a high level of protection and relations between national minorities and the majority are characterised by a climate of mutual understanding and tolerance.

The above-mentioned Act provides for the opportunity to use the minority language as "supporting language" in administration and for topographical indications in the municipalities where the number of residents declaring their belonging to a national minority is not lower than 20%. This significantly increases the scope of linguistic rights enjoyed by persons belonging to national minorities.

Minority language teaching continues to constitute a main priority for the authorities. The educational subsidy for each pupil belonging to a national minority has been substantially increased to one and a half times the applicable amount for a pupil in a public school of the same type in the same municipality. Roma pupils benefit from targeted assistance in the form of Roma educational assistants and scholarships specifically earmarked for them. The authorities are integrating Roma pupils into ordinary schools and almost all separate Roma classes have been abolished.

National minorities participate actively in social and economic life and in public affairs in Poland. A significant number of representatives of national minorities were elected to local councils at all levels. Wide consultative prerogatives of the Joint Commission of Government and National and Ethnic Minorities enable it to influence significantly the debate on national minority issues and create a useful channel of communication with the authorities.

Funding for the protection, preservation and development of the cultural identity of minorities in Poland has increased considerably in the last few years.

There remain, however, shortcomings in the implementation of the Framework Convention. There has been an increase in the number of racially-motivated offences committed in the last few years in Poland. Adequate measures to combat racist incidents committed especially prior to, during and after sporting events have not been taken.

There are concerns about obstacles created at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, and the conditioning of respect for minority rights on reciprocity in neighbouring countries.

Further steps should be taken, in co-operation with those concerned, to address the difficulties faced by many Roma in housing, employ-

ment, and healthcare. Additional efforts should be made to find solutions to the problems they face in fields such as education and, more generally, in combating their social exclusion and marginalisation.

The actual number of municipalities using a minority language as "supporting language" in administration and displaying traditional local names, street names and other topographical indications in a minority language remains low. In addition, the right to use the "supporting language" in administration is restricted to municipal self-government authorities and does not extend to the police, health care services, the post office or the state administration at the local level.

In addition, there is a need to pursue a more inclusive approach and a wider dialogue at the domestic level with regard to the personal scope of application given to the Framework Convention in Poland."

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

## Resolution on the protection of national minorities adopted by the Committee of Ministers

### Resolution on the protection of national minorities in Bosnia and Herzegovina

**9 December 2009**

The Committee of Ministers adopted a resolution on the protection of national minorities in Bosnia and Herzegovina. 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:

- Consider the possibility of introducing, in the legal order, new terminology to be used to refer to persons belonging to national minorities;
- Take determined measures and mobilise the necessary resources to ensure the effective implementation of the action plans for the Roma in the fields of employment, housing and health care, in close co-operation with the latter's representatives; continue the active implementation of the Action Plan on the Educational Needs of Roma and Members of other National Minorities, focusing on participatory monitoring and evaluation of the measures taken so far;
- Envisage collecting comprehensive up-to-date data on the situation of national minorities while complying with international standards regarding the protection of personal data;
- Take a more determined approach to combating all forms of discrimination on ethnic, national or religious grounds, prosecute incitement to racial or religious hatred and discourage expressions of prejudice and stereotype, including in the media and politics;
- Take resolute steps to counteract the worrying trend towards increased school segregation of pupils along ethnic lines;
- Take all possible steps to ensure that the Councils of National Minorities can effectively perform their role and are thus able to improve the participation of persons belonging to national minorities in public affairs; adopt, where necessary, legislative and practical measures to allow improved representation of national minorities, and in particular of the Roma, in elected bodies, especially at the local level;
- Strive to give national minorities more substantial support on a regular basis with a view to preserving and developing their cultural heritage and languages;

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, carry out an assessment of the needs and demand of persons belonging to national minorities regarding the use of minority languages in relations with administrative authorities and on topographical signs and regarding teaching in and of these languages."

# Third Monitoring Cycle

## Submission of the State Report

**5 November 2009** — **Armenia**

Armenia submitted its third state report in English and Armenian, 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.

**21 December 2009** — **Italy**

Italy submitted its third state report in English and Italian, 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.

**17 February 2010** — **Finland**

Finland submitted its third state report in English and Finnish, 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.

## Country-visits

**30 November 2009** — **Slovak Republic**

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited the Slovak Republic from 30 November – 4 December in the context of the monitoring of the implementation of this convention in this country.

**7 December 2009** — **Hungary**

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Hungary from 7 - 11 December in the context of the monitoring of the implementation of this convention in this country.

**7 December 2009** — **Germany**

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Germany from 7 - 10 December in the context of the monitoring of the implementation of this convention in this country.

**22 February 2010** — **Croatia**

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Zagreb and Vukovar from 22 - 26 February in the context of the monitoring of the implementation of this convention in Croatia.

## Advisory Committee Opinion adopted

**13 December 2009** — **San Marino**

San Marino demonstrates a constructive approach towards a correct implementation of the Framework Convention for the Protection of National Minorities of the Council of Europe. According to the third Opinion of the Advisory Committee, published in December, important legal measures have been adopted against discrimination as well as initiatives to facilitate immigrants' integration. The Advisory Committee welcomes the general climate of dialogue and tolerance in the country, with no record of any overt form of discrimination and intolerance. In order to contribute to the preservation of an atmosphere of mutual understanding in San Marino, it points out that further efforts are needed to increase awareness of the relevance of fighting racism. The Committee also recommends setting-up an independent institution to monitor racism and discrimination.

**11 December 2009** — **Moldova**

The 3rd Advisory Committee Opinion on Moldova, adopted on 26 June 2009, was made public together with the comments of the

Moldovan Government. This publication is in line with the new Committee of Ministers' Resolution (2009)3, which was adopted in April 2009 and foresees that the Advisory Committee Opinions should be made public four months after their being communicated to the State Party concerned.

Since the ratification of the Framework Convention, Moldova has pursued its efforts to develop a system of protection of minority rights and implement existing legislation in this regard.

The following points have been highlighted as requiring prompt action from the authorities:

- Adopt as a matter of priority a comprehensive anti-discrimination legislation; carry out, on a regular basis, monitoring of discrimination, as well as of racially-motivated or anti-Semitic acts;
- Take more resolute measures to combat all forms of intolerance, including in the media and in political life, and promote mutual respect and understanding. Effectively investigate and sanction all forms of misbehaviour by the police;
- Take more resolute measures to ensure that the implementation of the Action Plan for Roma results in substantial and lasting improvement in the situation of the Roma in all areas, including by allocating adequate resources to its implementation; take steps to promote a better representation of the Roma at all levels.

The Committee of Ministers will now prepare and adopt a resolution containing 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 in Moldova.

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

# 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.**

At its 50th plenary session, held on 15-18 December 2009, ECRI elected a new Chair (Mr Nils Muiznieks, member in respect of Latvia) and two Vice-Chairs (Mr Christian Åhlund, member in respect of Sweden and Ms Vasilika Hysi, member in respect of Albania). It also elected three new bureau members. Their terms of office began on 1 January 2010.


To mark its 50th plenary session, ECRI organised an exchange of views with the new Secretary General of the Council of Europe, Thorbjørn Jagland, and held a special brainstorming meeting with the former Chairs of ECRI, during which they made concrete suggestions for the future. The question of how best to rise to the challenges posed to member states by immigration and the need to combat racism and racial discrimination in the current climate of debates concerning national identity were among the issues discussed.


The 50th plenary session coincided with the publication of a book entitled "The European Commission against Racism and Intolerance, its first 15 years", written by Lanna Hollo, a specialist in equality legislation and minorities issues. This book examines how ECRI has fulfilled and developed its mandate during the first 15 years of its existence. It discusses the ECRI's unique contribution to the development of standards in the field of discrimination (on issues such as positive measures and curbs on racist expression). ECRI's proposals on how to respond to the current racist climate are also analysed.

## Country-by-country monitoring

ECRI closely examines the state of affairs in each of the Council of Europe's member states. On the basis of its analysis of the situation, ECRI makes suggestions and proposals to governments as to how the problems of racism, racial discrimination, xenophobia, anti-Semitism 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 nine to ten countries per year. A contact visit takes place in each country prior to the preparation of the relevant country report.

At the beginning of 2008, ECRI started work on a new monitoring cycle. The fourth round country monitoring reports focus mainly on the implementation of the main recommendations addressed to governments in the third round reports. They examine whether, in what ways and how effectively ECRI's recommendations have been put into practice by the authorities. They include an evaluation of policies as well as the analysis of new developments since the last report. The fourth monitoring cycle includes a new follow-up mechanism, whereby, two years after the publication of the report, ECRI requests member states to provide information on the implementation of specific recommendations for which priority action has been requested.

On 1 December 2009, ECRI issued a statement in which it expressed its deep concern about a new provision included in the Swiss Federal Constitution to ban the construction of minarets (see the text below).

### Statement by the European Commission against Racism and Intolerance on the ban of the construction of minarets in Switzerland (1 December 2009)

The European Commission against Racism and Intolerance (ECRI) wishes to express its deep concern about the results of the Swiss popular initiative which approved the inclusion, in the Federal Constitution, of a new provision banning the construction of minarets.

In its report on Switzerland published on 15 September 2009, ECRI clearly regretted that "an initiative that infringes human rights can be put to vote". ECRI added that it "very much hoped that it would be rejected".

The figure of 57.5% in favour of the ban, and the fact that the Federal Council's and other key Swiss stakeholders' call to vote against went unheeded, are difficult to reconcile with the efforts made to combat prejudice and discrimination in the country over the last years. This vote will result in discrimination against Muslims and infringe their freedom of religion. As ECRI has warned in its report, this risks creating further stigmatisation and racist prejudice against persons belonging to the Muslim community.

ECRI calls on the Swiss authorities to study carefully the consequences of this vote and do their utmost to find solutions that are in keeping with international human rights law. In the meantime, ECRI emphasises the urgent need for the Swiss authorities to follow-up on its recommendation "to pursue their efforts and dialogue with Muslim representatives".

## 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 is currently undertaking work on two new General Policy Recommendations, on combating anti-Gypsyism and combating racism and racial discrimination in employment.

For reference, ECRI has adopted to date twelve General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation

of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing and combating racism and racial discrimination in the field of sport.

## 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.

On 16 November 2009, ECRI held a national round table in Budapest, following the publication of ECRI's fourth report on Hungary (2 February 2009).

This Round Table gave government representatives, policy-makers, academics, trade unions and NGOs the opportunity to hold a national debate on racism and related forms of discrimination and intolerance and identify the measures that need to be taken to follow-up on the many recommendations contained in ECRI's report. The meeting was structured around three main sessions: responding to racially motivated violence; freedom of expression and fighting against racism, xenophobia, antisemitism and intolerance in public discourse and issues of implementation of anti-racial discrimination legislation and policies.


***Internet: http://www.coe.int/ecri/***

# Action against trafficking in human beings

**Trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and the integrity of the human being. This new convention is a comprehensive treaty aimed at the prevention of trafficking, protecting the human rights of its victims and prosecuting the traffickers. It is the first European treaty in this field and the most important Council of Europe human rights treaty in the last ten years.**

**Its monitoring mechanism consists of two pillars: GRETA and the Committee of the Parties.**

## Council of Europe Convention on Action against Trafficking in Human Beings

This Convention is considered to be one of the Council of Europe's major achievements in its 60 years of existence, and its most important human rights treaty in the last decade. It is the first European treaty against trafficking in human beings, and the only international convention focusing on the human rights of the victims. In addition, the Convention provides for the setting up of an effective and independent monitoring mechanism to control the implementation of the obligations contained in its provisions.

The Convention entered into force on 1 February 2008. It has been ratified by 26 Council of Europe member states, and signed but not yet ratified by 17 other member states. The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

## Monitoring the implementation of the Convention

The Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Convention, following an evaluation procedure divided into four-year rounds. For each evaluation round, GRETA will prepare a questionnaire on the implementation by the parties of the specific provisions of the Convention on which the evaluation is based.

The Questionnaire for the First Round of the Evaluation of the Implementation of the Convention by the Parties was adopted by GRETA at its 4th meeting (8-11 December 2009). The Questionnaire focuses on core concepts and definitions contained in the Convention, such as the integration of the human rights approach into action against trafficking in human beings, and the use of a comprehensive legal and policy framework on this issue. The Questionnaire also includes key provisions concerning prevention of trafficking in human beings, protection of its victims, and prosecution of those responsible as well as a set of statistical questions aimed at obtaining reliable and comparable statistics on the situation of trafficking in human beings in the different states party to the Convention.

The first evaluation round (2010-2013) was launched in February 2010, when the Questionnaire was sent to the first ten parties of the Convention: Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and the Slovak Republic, who must respond by 1 September 2010.

GRETA will carry out the first country visits in the second half of 2010. Its first monitoring reports will be prepared by the end of this year, and will be published in early 2011.

## Judgment of the ECtHR on trafficking on human beings for the purpose of sexual exploitation (Rantsev v. Cyprus and Russia)

GRETA welcomes the judgment by the European Court of Human Rights (ECtHR) on the *Rantsev v. Cyprus and Russia* case on trafficking in human beings for the purpose of sexual exploitation, delivered on 7 January 2010, and recognises the importance of this judgment for its work.

The case confirms the human rights approach contained in the Council of Europe Convention on Action against Trafficking on Human Beings, which specifically states that "trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and the integrity of the human being".

The Court noted that, like slavery, trafficking in human beings was based on the exercise of powers attaching to the right of ownership: it treated human beings as commodities to be bought and sold and put to forced labour, it implied close surveillance of the activities of victims, and it involved the use of violence and threats against them. Accordingly, the Court concluded that trafficking itself was prohibited by Article 4 of the European Convention on Human Rights, and held that there had been a violation of Article 4 by Cyprus, for not providing Ms Rantseva with practical and effective protection against trafficking and exploitation, and by not taking the necessary specific measures to protect her. The Court also held that there had been a violation of Article 4 by the Russian Federation, on account of its failure to investigate the recruitment of Ms. Rantseva, including the identification of those involved in this particular case.

When producing its assessments of Cyprus and Russia, GRETA will include the conclusions of this judgment. Similarly, the Group considers it advisable that the Committee of Ministers takes account of GRETA's findings during the supervision of the execution of this judgment.

## Joint CoE/UN Study on Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs

This first ever joint Council of Europe/United Nations Study, on Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs was launched in October 2009 and widely disseminated among CoE and UN member states in November 2009.

The joint study highlights the existence of widespread confusion in the legal and scientific communities between "trafficking in organs, tissues and cells" (OTC) and "trafficking in human beings for the purpose of the removal of organs". One of the major aims of the joint study is to distinguish between trafficking in OTC and trafficking in human beings for the purpose of organ removal. The joint study only covers trafficking in OTC for the purpose of transplantation, and its starting point is the prohibition of receiving financial gains from the human body or its parts. This principle is also very important in order to avoid jeopardising the donation system, which must be the basis of the organ transplantation system, as it is based on its donors' altruism.

The Joint Study recommends that "an international legal instrument be prepared, setting out a definition of 'Trafficking in organs, tissues and cells' and the measures to prevent such trafficking and protect the victims, as well as the criminal-law measures to punish the crime".

***Internet: http://www.coe.int/trafficking***

# Law and policy

## Intergovernmental co-operation in the human rights field

**One of the Council of Europe's key 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.**

## Reform of the Court: preparation of the Interlaken Conference

During its 69th meeting (24-27 November 2009), the CDDH adopted an opinion, prepared by the Committee of Experts on the Reform of the European Court of Human Rights (DH-GDR), on issues to be covered at the high-level conference organised by the Swiss Chairmanship of the Committee of Ministers on the future of the European Court of Human Rights. The CDDH emphasised its strong commitment to the right of individual application, which should remain the cornerstone of any reform, as well as to the principle of subsidiarity, and stressed the shared responsibility of all those involved in protecting Convention rights to ensure the long-term effectiveness of the Convention system. In this context, it appealed to the national authorities to assume their primary responsibilities under the Convention to provide effective protection of human rights, including through full and effective execution of Court judgments; to the Court to discharge consistently its responsibilities to issue clear and coherent judgments and decisions that provide authoritative guidance to national courts and other authorities; and to the Committee of Ministers to supervise the execution of Court judgments promptly and efficiently. In the opinion, the CDDH invited the Conference to examine the possibility of a simplified procedure for amendment of certain provisions of the Convention relating to the Court's operating procedures and to assess the need for a new mechanism to filter applications, going beyond the single judge procedure established by Protocol No. 14 to the Convention.[1]

The Conference took place at Interlaken (Switzerland) on 18-19 February 2010. The Declaration adopted by the Conference will form the basis of future work of the CDDH and its subordinate bodies concerning the reform of the Court.

Selections of Background documents (see doc. H/Inf (2010)2) and of Preparatory contributions (see doc. H/Inf (2010)3) were prepared for the Conference. The Proceedings of the Conference will also be published.

1. Protocol No. 14 will now enter into force on 1 June 2010 following ratification by the Russian Federation at Interlaken on 18 February 2010.

### Effective remedies for excessive length of proceedings

At the same meeting, the CDDH adopted a draft Recommendation of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, together with a guide to good practice, both prepared by the Committee of Experts on Effective Remedies for Excessive Length of Proceedings (DH-RE). During its 1077th meeting held on 24 February 2010, the Ministers' Deputies

adopted the recommendation and took note of the guide to good practice.

## Opinions on PACE recommendations

The CDDH also adopted opinions on the following recommendations of the Parliamentary Assembly of the Council of Europe:

- 1865(2009) on the protection of human rights in emergency situations,
- 1866(2009) on the situation of human rights defenders in Council of Europe member states,
- 1868(2009) on action to combat gender-based human rights violations, including abduction of women and girls,
- 1881(2009) on the urgent need to combat so-called "honour crimes",
- 1858(2009) on private military and security firms and the erosion of the state monopoly on the use of force,
- 1883(2009) on the challenges posed by climate change,
- 1885(2009) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, and
- 1876(2009) on the state of human rights in Europe: the need to eradicate impunity.

## Human rights of members of the armed forces

At their 1077th meeting (24 February 2010), the Deputies adopted the draft recommendation on human rights of members of the armed forces transmitted by the CDDH. The aim of this recommendation is to provide specific guidance to member states on how to better ensure that individuals serving in the armed forces enjoy their human rights and fundamental freedoms to the fullest extent possible. This concern emerged clearly from the work of the Parliamentary Assembly, which had been at the origin of this activity. The starting point of this recommendation is the acknowledgement that members of the armed forces do not surrender their human rights and fundamental freedoms upon joining the armed forces. While the special character of military duties and life may justify certain restrictions on the enjoyment of human rights and fundamental freedoms which would not be acceptable for civilians, members of the armed forces, like any other individuals, should have their rights and freedoms respected and protected. The recommendation is based on existing international legal instruments with particular emphasis on the European Convention on Human Rights, in the light of the relevant case-law of the European Court of Human Rights, and the European Social Charter, taking into account the relevant case-law of the European Committee on Social Rights.

## Sexual orientation and gender identity

At its 69th meeting (24-27 November 2009), the CDDH adopted a draft Recommendation of the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity. The draft has been transmitted to the Committee of Ministers for adoption.

## Human rights and the environnement

At its 69th meeting (24-27 November 2009), the CDDH considered that the current circumstances justified updating the 2006 Manual on Human Rights and the Environment, that lists principles emerging from the case-law of the European Court of Human Rights from 1980 to November 2005, and that it would be useful to continue studying the issue of human rights and the environment. It entrusted the Committee of Experts for the Development of Human Rights (DH-DEV) with this task. Discussion on this issue and on other possible future activities, including on the links between climate change and human rights, will take place at the next meeting of the DH-DEV in April, with a

view to formulate concrete proposals to the CDDH.

## Death penalty

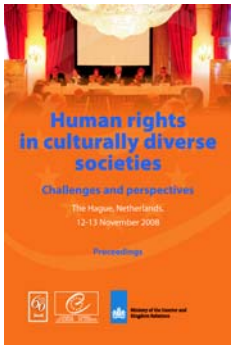
The Council of Europe was present at the 4th World Congress against the death penalty, held in Geneva from 24 to 26 February 2010. This event brought together abolitionists from across the world, representing institutions and civil society, for three days of debates on ways to continue making progress towards universal abolition of the death penalty. Bianca Jagger, Goodwill Ambassador for the fight against the death penalty, spoke in the opening session of the Congress. Jan Kleijssen, Director of standard setting activities, and Renate Wohlwend, Rapporteur on the death penalty of the Parliamentary Assembly, took part in the two plenary sessions, respectively on "International and Regional Organisations: commitments to abolition of the death penalty" and on "Next challenges for universal abolition: the examples of USA, Japan, China and Iran".

## Accession of the EU to the European Convention on Human Rights

In accordance with the Lisbon Treaty, which entered into force on 1 November 2009, the European Union "shall accede" to the European Convention on Human Rights. In November, the CDDH had a first exchange of views on the organisation of future work concerning this issue. The Committee of Ministers took note of this exchange of views and reiterated the importance of a rapid start to this work. The Secretary General also reaffirmed, on various occasions, the great political and legal importance of the future accession, which should happen as soon as possible. Informal contacts regularly take place between the Council of Europe and the EU in preparation of this work. The European Commission is expected to present in March its draft directives for the negotiation of the accession agreement to the Council of the EU, with a view to their adoption before the end of the Spanish Presidency of the EU.

## Human rights in culturally diverse societies

A book containing the proceedings of the conference "Human Rights in culturally diverse societies: challenges and perspectives" which took place in The Hague on 12 and 13 November 2008 and the declaration on human rights in culturally diverse societies adopted by the Committee of Ministers on 1 July 2009 has been published in December 2009, with the support of the Ministry of Interior and Kingdom Relations of the Netherlands.




***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.**

## Armenia

**European Union/Council of Europe Project to support access to justice**

A three-year European Union/Council of Europe Project to support access to justice in Armenia, implemented by the Council of Europe together with the Ministry of Justice of Armenia, started its activities on 1 February 2010 in Yerevan. Two rounds of discussions on the draft law on Advocacy and the draft law on Justice Academy were held; two seminars on pro bono legal services and legal aid were organised, as well as a seminar on initial training of judges.

On 3-4 February, a round table on the draft law amending the law of 14 December 2004 on Advocacy was organised, while the detailed discussion on elements of that law took place on 15 February (on advocates' societies) and on 16 February (on continuous training for lawyers). The discussions with the Chamber of Advocates were to be continued in March 2010 to make sure that the final draft took the Council of Europe's recommendations on board.

A seminar on the development and strengthening of *pro bono* legal services was organised on 5 and 8 February and focused on the perspectives opened by the provisions of the draft law amending the law, as well as on the possible repercussions of the case-law of the European Court of Human Rights on its implementation. It was complemented by a seminar on the functioning of legal aid organised on 15 and 16 February. The discussions on legal aid were scheduled to be continued in March 2010 in order to make sure that the final draft took the Council of Europe's recommendations into account.

A meeting was held on 9 February under the chairmanship of the Vice-Minister of Justice and gathered for the first time representatives of the Judicial School, the Prosecutors' School, as well as Council of Europe experts, to discuss the draft law on the Justice Academy. It was a follow-up to the first round table organised on the first draft law in October 2009. While many of the Council of Europe recommendations were taken on board, the second draft still gave the impression that the Academy would be jointly managed by judges and prosecutors. At the end of the meeting, it was agreed that the draft would be modified so as to provide a distinct management within the Academy, by judges and prosecutors, respectively.

Finally, on 11 and 12 February, an expert meeting was organised on initial training for those aspiring to become a judge. The Council of Europe experts regretted the limited duration of the current scholarship (14 open days) and the absence of guarantees given by the status of trainee (the trainee does not seem to be considered as a future judge), as well as the all too heavy sanction attached to a negative evaluation of the probationary period. The discussions between the Council of Europe and the Judicial School on these three issues will be pursued during the follow-up round tables to be held in April 2010.

## Bosnia and Herzegovina

**European Union/Council of Europe Joint Programme on "Efficient Prison Management in Bosnia and Herzegovina"**

A series of six cascade training sessions on human rights standards were held in Sarajevo between November 2009 and February 2010. These sessions, carried out by national trainers, targeted various categories of prison staff from the state and entities levels, such as security, treatment and medical staff. The participants were assisted in the process of enhancement of their skills with a better understanding of the concept of respect for prisoners' human rights. The national training team structured its presentations so as to allow for the exchange of experiences and to include some practical work on case studies within each group of participants. The case studies were based on the jurisprudence of the ECtHR and on daily life in the prison environment in Bosnia and Herzegovina.

The objective of the cascade seminars was to support mixed groups of participants in improving their interaction with prisoners and their ability to handle challenging situations in an appropriate manner. Designed in co-operation with the Council of Europe long and short-term consultants, the sessions were delivered entirely by the national training team. As a result, a total of 78 staff members enhanced their skills and gained a better understanding of the respect for prisoners' human rights standards.

A high-level workshop to present drafting results and the human rights standards related to the treatment of mentally ill persons was held in Sarajevo on 2 and 3 February 2010. The aim was to discuss with policy-makers and professionals the proposal for changes and amendments to the existing laws on mental health intended to bring them closer to modern European legislation in this field. The proposed amendments have been drafted by the members of a working group established for that purpose within the current project. Representatives of relevant ministries agreed to continue working on the recommendations presented by the Council of Europe experts. Their active participation in the meeting suggests that further positive developments might occur, including continued co-operation between different actors in the field of mental health in prisons. Such meetings provide a significant forum for professionals from different backgrounds working on the same topic to exchange their knowledge and experience. Such exchanges and commitment to closer co-operation in the future should be an encouragement and seen as an example of best practice in the framework of the project.

## Georgia

**Programme "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia"**

In Georgia, the Denmark's Caucasus Programme 2008-2009, Enhancing Good Governance, Human Rights and the Rule of Law in Georgia, has been running since January 2008. The Programme activities are implemented under three components.

Under *Component I - Improving the Capacity of the Judicial System of Georgia*, three thematic seminars were organised on substantive provisions of the ECHR and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law. The seminars were organised in co-operation with the High School of Justice of Georgia and held on its premises on 7-8 November 2009 and on 20-21 February 2010, with the participation of judges' legal assistants, and on 14-15 November 2009, with the participation of acting judges.

Under *Component II - Enhancing the Capacity of the Public Defender (Ombudsman) of Georgia*, two study visits for members of the Public Defender's Office were organised in the reported period. On 2-6 November 2009, a study visit for seven staff members was organised to Strasbourg and on 17-19 February 2010, a study visit for the PDO management (Public Defender, Deputy Public Defender, Head of Justice Department and Deputy Head of Monitoring Department) was organised to the Ombudsman institution of Spain. The aim of the second visit was to share experiences in complaints handling, case management systems, monitoring practices and the main challenges of their work. On 17-19 December 2009, training on the monitoring of psychiatric institutions was organised for lawyers and experts from the PDO's National Preventive Mechanism (NPM). The CPT experts shared their experiences on their work methodology with the participants and conducted on-site monitoring in one of the psychiatric hospitals. On 15 February 2010, a round table to discuss various problems in the field of the protection of child's rights was organised together with the PDO's

Centre on children and women's rights, NGOs and civil society representatives. The PDO staff was provided with knowledge on the main concerns and shortcomings in the field of child protection, which facilitated outlining a future work plan for the institution. On 26-28 February 2010, training on legal writing was organised for the PDO lawyers. Training was an important activity for the office in order to standardise all documents and for the new case-management system that will soon be established in the institution.

Under *Component III - Strengthening the state capacity on minority issues*, the Council of National Minorities (CNM) organised 22 meetings dedicated to different issues on minorities in the period of November 2009 - February 2010. Starting from December 2009, the CNM signed Memoranda of Co-operation with the State Minister for Reintegration, the Ministry of Justice and the Ministry of Internal Affairs. Co-operation between the parties will be carried out through regular consultations between all the agencies involved, discussions, exchange of views, seminars and conferences for the effective monitoring and implementation of the National Concept for Tolerance and Civic Integration as well as the five-year Action Plan adopted by the Georgian government on 8 May 2008.

In December 2009, the third stage of the Small Grants Initiative for the CNM member NGOs was launched to support five small projects. On 4 December 2009, a seminar was organised on self-governance issues to present to policy-makers, including parliamentarians and high-ranking government officials, examples of self-governance and local administration in relation to national minorities in different regions of Europe. On 9-10 December 2009, a training seminar entitled Minority Governance – Media and Educational Standards in Europe was carried out for the members of the Inter-Agency Commission on issues concerning national minorities and public broadcasting. The beneficiaries were introduced to the European models of minority governance systems with special emphasis on media and education.

## Kosovo[1]

On 28 and 29 January, the second training for EULEX judges, prosecutors and legal officers was organised in Pristina, following a request by the EULEX Mission in Kosovo*. The event was attended by 40 participants and was dedicated to the protection of property rights in Kosovo* under the ECHR. The Council of Europe expert focused its presentation on how Article 1 of Protocol No. 1 of the ECHR and its case-law have been applied in cases coming from states which were part of former Yugoslavia, in particular in relation to restitution claims, protected tenancy, banks, taxes, pension rights and social benefits.

The expert's presentations alternated with presentations from EULEX staff members working in the field of property rights and discussions on how to bring about improvements. The discussion focused on the direct applicability of the ECHR, cases of violations of property rights in Kosovo*, the remittal and length of proceedings encountered by the EULEX judges. The evaluation questionnaires filled in by the participants showed that the training was highly appreciated. The participants also expressed their wish to continue co-operating with the Council of Europe.

## Moldova

**Programme "Increased independence, transparency and efficiency of the justice system of the Republic of Moldova"**

In Moldova, a comprehensive capacity-building programme entitled has been carried out since October 2006. The European Union-funded programme provides assistance to the main judicial institutions, *inter alia*, in legislative acts review and ensuring compatibility with Council of Europe standards in the field of the judiciary, improving co-operation between state authorities in the process of judicial reform and ensuring transparency in the justice system.

Among the activities implemented in the period between November 2009 - February 2010, a meeting of a working group on the first concept of the draft law on private enforcement system took place in November 2009. The par-

1. Reference to Kosovo in this document, with regard to territory, institutions, population, and communities shall be understood as in line with United Nation's Security Council Resolution 1244.

ticipants benefited from the experts' findings and discussed how to draft a legal framework regulating the enforcement system. Following that, a working group on writing court decisions and rulings according to the ECHR principles and best European practices was carried out in December. The aim of the seminar was to provide judges with training on how to draft their decisions, in particular judgments in the field of civil law, in a more structured and logical manner, thus enhancing the quality of the judicial acts and fostering citizens' trust in the work of the judiciary. Several important publications were finalised in the reported period, namely the Commentary to the Enforcement Code (civil part), the Guide of the MoJ on International Legal Co-operation, the Guide on Freedom of Expression and the Leaflets and Guidelines on Legal Aid. Furthermore, in February, a round table to outline priorities for future reform in the Moldovan legal system was organised to discuss the current state of affairs within the justice sector and to outline the main directions future justice reforms should take. The meeting was attended by over 70 participants, representing the most important partners involved in the justice sector.

## Russian Federation

**The European Union/ Council of Europe 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"**

One of the main objectives of the Programme is to train legal professionals on the ECHR and the mechanism of the ECtHR. From 17 to 19 November 2009, a group of Russian lawyers participated in a study visit to the Council of Europe, including the ECtHR. On 11 and 12 February 2010, a seminar for Russian lawyers was organised in Ufa. The training activities focused on the presentation of the articles of the ECHR on which the majority of Russian applications to the Court are based, as well as on a presentation of selected Council of Europe human rights bodies and the Revised European Social Charter, following its ratification by the Russian Federation in October 2009.

So far, 18 seminars for judges, ten seminars for prosecutors, 14 seminars for lawyers and eight seminars for NGOs have taken place. Three additional seminars involved a participation of judges, prosecutors, lawyers, NGO activists and representatives of the Federal Service of the Execution of Judgments. Furthermore, representatives of the Ministry of the Interior, the Ombudsman office, the Office of the Prosecutor General, a number of academics and students of the Moscow University of the Ministry of the Interior participated in two conferences organised within the framework of the Project. These activities were evaluated by the participants as interesting and valuable events and confirmed a strong interest in the ECHR among Russian legal professionals. The participation of judges and lawyers from the ECtHR was highly appreciated and the involvement of Russian speaking experts contributed to the successful implementation of the training events. It remains to be seen how this interest will be translated into an effective implementation of the ECHR at the national level.

## Turkey

**European Union/Council of Europe Joint Programme "Dissemination of model prison practices and promotion of the prison reform in Turkey"**

Under the European Union/Council of Europe Joint Programme "Dissemination of model prison practices and promotion of the prison reform in Turkey", the training-of-trainers (ToT) phase has gotten off to a good start.

From 14 to 18 December 2009, the ToT on Good Prison Management, Leadership and Operational Standards was delivered by the long-term consultant and two short-term experts to 20 prison governors in Antalya. These trainers-to-be will in turn train 780 prison governors and deputy governors during the intermediate cascade training seminars in 2010. The five-day training programme addressed the following issues: 1) The introduction of the training programme on Good Prison Management, Leadership and Operational Standards, which is to be delivered by those in attendance to 780 colleague governors and second governors throughout the Turkish prison service. 2) The re-launch the recently revised and updated Prison Management Manual. 3) The introduction of those in attendance to a range of training methods to refine their skills and increase their confidence in delivering this training programme to others. The ToT was well received with positive feedback and constructive comments made by the participants.

Two of the intermediate cascade training sessions were completed on 2-5 February 2010 and on 8-11 February 2010 in Antalya, with the participation of 260 governors and deputy gover-

nors. The programme aimed to deliver training on Effective Leadership and Prison Management to governors and second governors employed within the Directorate General of Prisons and Detention Houses and to relaunch the recently revised and updated Prison Management Manual. During each intermediate cascade training session, the 130 participants were divided into five groups each with two national trainers. All gathered together for common lectures delivered by the long-term consultant and the short-term expert. The four-day training programme covered an introduction, objectives, evaluation, ground rules, qualities of effective leadership, leadership styles, using legitimate authority, the importance of behaviour and pro-social modelling, self-management and self-control, communication skills, time management, managing meetings and strategic planning. The evaluation forms completed by the participants demonstrated that the participants found the sessions to be effective and successful. Participants indicated that they wished to reflect on the information they had received and how they may adapt their behaviour and style to become a more motivational leader and demonstrate positive role modelling.

**European Union/Council of Europe Joint Programme "Enhancing the role of the supreme judicial authorities in respect of European standards"**

On 24 February, a launching conference of the European Union/Council of Europe Joint Programme *Enhancing the role of the supreme judicial authorities in respect of European standards* took place in Ankara, in which more than 300 judges participated, as well as prosecutors from the Constitutional Court, the Court of cassation, the Council of State, members of the High Council of Judges and Prosecutors, and representatives of the Ministry of Justice and Ministry of Defence.

This project, which will run for 30 months and has a budget of 3.3 million euros, will contribute to enhancing the role of the superior judiciary in Turkey in initiating changes in the normative framework and its implementation in line with the rights and freedoms guaranteed by the ECHR, the provisions of the European Social Charter and the European Union *acquis*.

The target groups of this project are members and the Rapporteur-Judges of the Constitutional and Cassation Courts, the Council of State, and the High Council of Judges and Prosecutors. They will participate in round tables, conferences, study visits and placements in European institutions, through which they will have the opportunity to share experiences on the implementation of the ECHR and the European Social Charter at the national level. The main activities under the project are intended to provide a forum for fruitful exchanges of experiences and information between members of the supreme judicial authorities of Turkey and their European counterparts. They build on previous projects implemented by the Council of Europe in Turkey. The first round table, devoted to the right to liberty and security of the person and the right to a fair trial was to take place in March 2010.

## Ukraine

**European Union/Council of Europe Joint Programme on "Transparency and efficiency of the judicial system of Ukraine" focused on the implementation of a mediation strategy**

Between 1 November 2009 and 28 February 2010, the European Union/Council of Europe Joint Programme on "Transparency and efficiency of the judicial system of Ukraine" focused on the implementation of a mediation strategy that had been recommended in an expert opinion provided by the Council of Europe. This mediation strategy aims at introducing alternative dispute resolution systems in civil, commercial and administrative matters in four pilot courts (the Kyiv City Commercial Court, the Bila Tzerkva City Court, the Vinnitsa Circuit Administrative Court and the Appeal Administrative Court of Donetsk region) in Ukraine. A series of training sessions on concepts of mediation and mediation techniques were carried out for 15 judges and 80 lawyers from the areas of the pilot courts' jurisdiction in January and February 2010. The judges acquired the skills necessary to become mediators and the lawyers learnt how to facilitate the mediation procedure. The second part of the training sessions will take place in April 2010. These training sessions raised awareness of mediation as a means of decreasing the workload of courts and strengthening their efficiency, and paved the way for further discussions on the creation of a national mediation body in Ukraine.

The Joint Programme continued its effort to bring the legal framework on the judiciary in line with European standards. Expert opinions on draft laws on the judiciary and the status of judges and on the Bar Association were presented during round tables which enabled dialogue between the Council of Europe expert consultants and the national counterparts. Preparatory meetings for setting-up the Legal

Advice Group (LAG) took place in order to further reinforce the promotion of the active implementation of the Council of Europe experts' recommendations and to provide expert assistance with the drafting of the legislation. In addition, the LAG will increase co-operation between the Joint Programme and the national counterparts.

## Multilateral activities

### European Programme for Human Rights Education for Legal Professionals (HELP Programme II)

On 1 February 2010, LHRCBD launched a three-year project funded by the Council of Europe Human Rights Trust Fund, which is the continuation of the European Programme for Human Rights Education for Legal Professionals . The HELP II Programme aims to integrate training on the ECHR into the national training structures for judges and prosecutors in 12 beneficiary countries: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova, Montenegro, the Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia", and Ukraine.

In February 2010, the Permanent Representations to the Council of Europe of the beneficiary countries were informed of the launch of the Programme. Furthermore, DGHL has started to reconstitute the European Human Rights Training Network established under the HELP Programme.

The three objectives of HELP II are: (1) to integrate the HELP curriculum and use the materials in the target groups' national training; (2) to develop and update further ECHR materials and tools, including through the HELP website (www.coe.int/help); and (3) to encourage and facilitate the European Human Rights Training Network through bilateral and multilateral meetings of the national training institutions.

### European Union/Council of Europe JP on "Combating ill-treatment and impunity"

#### Publications

Between November 2009 and February 2010 the long-term consultants under The European Union/Council of Europe JP "Combating ill-treatment and impunity" finalised three publications. In November 2009 the "Guidelines on European standards for the effective investigation of ill-treatment" were published and translated into the national languages of the beneficiary countries. These guidelines are the first comprehensive list of applicable safeguards and guarantees against ill-treatment incorporating criteria for its effective investigation.

In the same month, a brochure highlighting the rights of detainees and the concrete obligations of law enforcement officials in line with applicable European and international human rights standards was prepared. The brochure was drafted in a user-friendly format to make it accessible not only to legal professionals and other decision-makers, but also to the mass audience.

In February 2010, the country reports on each of the beneficiary countries (Armenia, Azerbaijan, Georgia, Moldova and Ukraine) were finalised. The reports highlighted the regulatory framework, as well as structures, procedures and mechanisms aimed at combating ill-treatment and impunity in line with European standards elaborated by the CPT, the ECtHR, the Council of Europe the HRC, as well as other monitoring institutions and bodies of the Council of Europe. The reports have been sent for comments by the main partners under the project.

#### Capacity-building

The second phase of the project, with a strong capacity-building dimension, started with two seminars which took place in Kyiv, Ukraine. On 5 and 6 November 2009, an in-depth seminar on the conformity of investigations of allegations of ill-treatment with European standards aimed at national ECHR judges' trainers took place. The seminar resulted in the reinforcement of the existing pool of national ECHR judges' trainers, their improved knowledge of best international practices and enhanced capacity to implement the European standards in the course of their daily work. Furthermore, the seminar served as a forum for discussion among judges of the progress and problems in their work and thereby contributed to professional networking.

A refresher seminar on how to conduct an effective investigation of allegations of ill-treatment in line with European standards aimed at

national ECHR prosecutors' trainers was held on 4 and 5 February 2010. The objective of the seminar was to gain an insight into the specifics of effective investigation of allegations of ill-treatment, relevant procedures and mechanisms, to inform the national ECHR prosecutors' trainers on the modalities for the domestic application of the European standards in this area and also to provide a forum for discussion of their experience and recommendations.

More capacity building activities will take place in all beneficiary countries during the project, which is expected to last until the end of 2010. An additional feature which will be developed in the coming months will be the regional dimension, which will allow the exchange of best practices among the beneficiary countries.

## Network of National Preventive Mechanisms against torture (NPMs)

Following the encouraging results from the European NPM Pilot Project, the NHRS Unit obtained funding for a full project under a joint EC/Council of Europe programme (the so-called "P2P II Project") and from the Human Rights Trust Fund[2]. The project is called the "European NPM Project" and will be implemented during 2010 and 2011 in all Council of Europe member states which have ratified OPCAT and have an operating NPM. Together, these NPMs (of which there are currently 20) form the "European NPM Network".

The annual activities that fall within the aegis of the European NPM Project include: four on-site exchange of experiences between the NPMs, the CPT, the UN Sub-Committee on the Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT); three thematic workshops on specific methodological and substantive topics applicable to the whole of the NPM Network; two meetings of the Heads and the Contact Persons of the NPMs and the issuing of a regular European NPM Newsletter.

The First Meeting of the Heads of the European NPM Network was held in Strasbourg on 5 November. The objectives of this first meeting were twofold: firstly, to present and discuss the "European NPM Project" and to create a forum and active network whereby the NPMs could exchange views and experiences, and secondly, to discuss the issue of producing and disseminating NPM annual reports. The meeting gathered 31 representatives from 17 operating NPMs. This first meeting marked the start of the European NPM Project, as the institutions present expressed their keen interest in the project. All participants were asked to designate a Contact Person for their respective NPMs. The meeting was funded by a grant from the German MFA.

Meetings between the European NPM Project Team and the SPT were held during the SPT Plenary Session at the United Nations Office, Geneva, on 20 November 2009 and 26 February 2010. The European NPM Project was discussed during the plenary of the SPT in Geneva, some of whose members had been involved in the design of the project as well as in the activities under the pilot project for testing the feasibility and usefulness of the actual project. In the light of its members' reports on these pilot activities and the first in-depth discussion with the project team, the SPT confirmed its readiness to strongly contribute to the European NPM Project, which it perceives as creating a win-win situation for all actors involved and for the ultimate benefit of persons deprived of their liberty. The modalities of the SPT's input in the project, the channels for ongoing communication with the project team and for a progress evaluation as well as the desired volume of activities for the first year of the project (2010) were discussed and agreed upon. The SPT underlined its willingness to contribute to all types of activities.

The First Meeting of the Contact Person of the NPM Network, Padua was organised by the NHRS Unit and the Inter-departmental Centre on Human Rights and the Rights of People of the University of Padua in Padua , Italy, on 27-28 January 2010. The Contact Persons from 19 of the 20 operating European NPMs, representatives of the EC and the SPT, former members of the CPT, and experts from the APT participated. On the first day, the participants tried to clarify the concept of preventive monitoring as opposed to the concept of complaints-based monitoring, as well as the relationship between both. The second day was dedicated to the common work programme under the European NPM Project for the coming two years. It was decided that a first series of "On-site exchanges

2. The Human Rights Trust Fund (HRTF) was established in March 2008 following an agreement between the MFA of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined as contributors.

of experiences" between the staff of volunteering NPMs, SPT members, experts with CPT experience and from the APT, lasting four days each, will be held in the coming months in Poland and Georgia and next year in Albania. The idea is to compare in detail everybody's working methods and to give constructive criticism. Further, it was decided that two-day "Thematic workshops" with specialised staff from the NPMs and the SPT, the CPT and APT members as well as individual experts will be co-hosted in 2010 by the NPMs of Albania and Armenia and in 2011 by those of Azerbaijan, Estonia and France, with the possibility of an additional workshop in Spain.

## Nurturing an active network of National Human Rights Structures (NHRSs)

LHRCB continued to promote active co-operation between the NHRSs of the member states and the Council of Europe in the so-called "Peer-to-Peer Network" established at the beginning of 2008, under a Joint European Union/Council of Europe Project (the so-called "Peer-to-Peer Project" or "P2P I Project"). It also prepared the continuation of that work in 2010 and 2011 under the "P2P II 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 thematic mandate) in the member states, i.e. presently 50 structures. In addition, specific co-operation is taking place with the regional Ombudsmen in the Russian Federation and their elected co-ordinator.

The 3rd annual meeting of the Contact Persons of the Peer-to-Peer Network took place in Budapest on 17-18 November 2009 and was co-organised by the Council of Europe's DGHL and the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua. This meeting was funded by two sources. For participants from Council of Europe member states who are not members of the European Union (Albania, Armenia, Azerbaijan, Bosnia & Herzegovina, Croatia, Georgia, Moldova, Montenegro, the Russian Federation, Serbia, "The former Yugoslav Republic of Macedonia", Ukraine and Kosovo[3]), participation was funded by the P2P I Project. The participation of European Union members was financed by a grant from the German MFA.

The purpose of the meeting was to take stock of the co-operation between the NHRSs and the Council of Europe at the end of the P2P I Project, to give feedback on the past year's activities organised under it, and to make suggestions for future co-operation activities planned for 2010 and 2011.

An overview of the activities of the Peer-to-Peer Network in 2008-2009 and explanations for organisational changes that have occurred on the Council of Europe side were presented and discussed. There was an analysis and review of the Peer-to-Peer thematic workshops of the past year. The Contact Persons were very positive about the format, the themes and the organisation of the Peer-to-Peer workshops in 2009. These workshops were judged relevant and useful for the NHRSs' work, addressing both the theoretical, substantive and practical aspects of their work, corresponding to the priorities of the NHRSs and taking national specificities duly into consideration. Furthermore, the reduced number of participants allowed for in-depth discussion on each topic.

There was widespread consensus among the participants to express strong support for, and acknowledgment of the continued usefulness of the Regular Selective Information Flow (RSIF) (also supported by a grant from the German authorities). This is a tool that enables the NHRSs to read all Council of Europe bodies' activities, ranging from the judgments of the European Court of Human Rights to the work of the monitoring bodies, in one place, arranged under themes deemed of pertinent interest to the Peer-to-Peer Network readership. The participants considered the RSIF as a major achievement of the enhanced co-operation of the Peer-to-Peer Network, and a useful and positive tool for the NHRSs. Many of the NHRSs analysed thoroughly the RSIF content, held internal meetings on relevant topics, and acknowledged that it provided useful up-to-date information and that it helped equip some NHRSs for meetings with national authorities on relevant topics or case-law issues. Furthermore, many NHRSs translated pertinent sections into their local language, and

3. All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

disseminated the information widely within the NHRS and beyond. Discussions were also held on the scope for improvement to the RSIF in the future.

The Contact Persons also discussed in great detail a "Compendium of the Annual Reports issued by the national human rights structures of member states of the Council of Europe covering the years 2006 and 2007", which was prepared by the NHRS Unit with the help of outside consultants, thanks to funding from the German Government. The Contact Persons considered such a publication most useful, as it allowed them to understand the image their annual reports conveyed on their human rights activities. It also gave them a chance to easily compare their institutions' activities to those of sister institutions in other countries, including each other's "specialities". If this exercise were to be continued it would allow the development of the human rights activities of the NHRSs in Europe to be gauged. A small number of inaccuracies were also spotted and some passages of the analytical part deemed insufficient. It was agreed to prepare an improved version of this first compendium.

A first round of discussions was held on the themes of the future workshops for 2010 and 2011. Building on that discussion, the list of themes will be adopted by written procedure by the Contact Persons.

A debriefing paper of the meeting is being produced.

***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 which are regularly reviewed and updated to defend, promote and maintain freedom of expression and freedom of the media. However, the ways in which information is sought and shared are changing as new technologies develop, and so is the users' relationship to media, to the extent that the notion of media itself needs to be reviewed. While existing standards developed for traditional media may still apply to new media, some states may need additional guidance. This may also apply to suppliers of new services, who should be aware of their own rights as well as their duties as regards human rights. In this context, the Council of Europe is looking to public service media, 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. The Internet is now an essential everyday tool for a growing number of people and carries with it 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 members of society.

The Council of Europe is actively engaged in these areas through innovative and participatory working methods.

## Texts and instruments

### Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights, adopted on 13 January 2010

Freedom of expression and information is indispensable for genuine democracy. When this freedom is not upheld, accountability is likely to be undermined, and the rule of law can be compromised. All Council of Europe member states have undertaken to secure the fundamental right to freedom of expression and information to everyone within their jurisdiction, in accordance with Article 10 of the European Convention on Human Rights.

The Committee of Ministers welcomes the proposals made by the Steering Committee on the Media and New Communication Services to increase the potential for Council of Europe bodies and institutions to promote respect for Article 10 of the Convention. In line with those proposals, the Secretary General is invited to make arrangements for the improved collection and sharing of information and enhanced co-ordination between the secretariats of the different Council of Europe bodies and institutions, without prejudice to their respective mandates or to their independence.

# Main events

## Internet Governance Forum

**Sharm el Sheikh, 15-18 November**

### More international protection and respect for human rights, rule of law and democracy on the Internet

As an important contributor to the 2009 Internet Governance Forum, the Council of Europe called for greater protection and respect for human rights, rule of law and democracy on the Internet.

The key subjects of the event were security, openness and privacy, access and diversity, Internet governance, the management of critical Internet resources, and emerging issues such as the impact of social networks. For example, how does the management of Internet infrastructure and the interference with Internet access affect the right to freedom of expression? How can children be protected from sexual abusers that use the Internet to perpetrate their crimes? Which tools exist to prevent and prosecute cybercrime? Can the marketing of counterfeit medicines on the Internet be stopped? How can privacy be safeguarded?

This UN-led multi-stakeholder event was an opportunity for the Council of Europe to organise a series of workshops and to participate in several sessions in order to share its expertise and harvest ideas and views on many Internet-related issues which are having an impact on the core values of the Council of Europe. These range from the public service value of the Internet, to freedom of expression and data protection, to cybercrime and democracy.

## Protection of neighbouring rights of broadcasting organisations: steps towards a Council of Europe convention

**Consultation meeting, Strasbourg, 28-29 January**

In view of the standstill of the negotiations on a legal instrument on the protection of neighbouring rights of broadcasting organisations within WIPO (World Intellectual Property Organisation) and following of a stock taking in 2008 of the regional European views in the matter, the Council of Europe decided to continue work on drawing up an instrument to provide broadcasting organisations with an updated and modernised framework of protection. The ad hoc advisory group on the protection of neighbouring rights of broadcasting organisations (MC-S-NR) was given the mandate to pursue this work. With the support of Finland and the co-operation of the best experts in the field, the MC-S-NR will prepare an international legal instrument on the subject.

# Publications

## Internet Literacy Handbook – third edition

The Internet Literacy Handbook is a guide for teachers, parents and students explaining how to get the most out of the Internet, while protecting privacy on websites and social networks.

The third version of the handbook contains 25 fact sheets, each presenting a specific theme related to the use of Internet. Pointing out ethical issues and security, it provides advice on how best to use the Internet for educational purposes. It also suggests ideas for practical activities in class or at home, presents best practices in terms of the use of Internet and offers many definitions and gives links to websites giving practical examples and other detailed information. The revised version of the Handbook provides advice on how to use social websites like MySpace, Facebook or Friendster, and the Web 2.0. Thousands of young people and children today are interacting on the Net with their friends, classmates and people with common hobbies or interests and frequently publishing photographs and data of highly personal nature. Sharing this information is a great opportunity for communication with others, but also carries risks that users must know how to avoid.

***Internet: http://www.coe.int/media/***

# Law Reform

## European Committee on Crime Problems (CDPC)

*When the European Committee on Crime Problems (CDPC) was established in 1958, 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 draws up conventions, agreements, recommendations and reports. It also organises criminological research conferences and criminological colloquies, and conferences of directors of prison administration.*

**The CDPC is continuing its work on the following two 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

This draft convention 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 both 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 sets up a monitoring mechanism. The future convention will be a significant contribution to the fight against counterfeiting and the trafficking of counterfeit medical products, and could have an impact worldwide by enabling non-member states of the Council of Europe to become parties.

### The draft third additional protocol to the European Convention on Extradition

This draft protocol complements the Convention on Extradition of 1957 by simplifying extradition procedures where the persons concerned consent to their 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

This draft recommendation 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 f ield will be sent to the Committee of Ministers for adoption in 2010.

## 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, who are then entitled to vote on various matters discussed by the CDCJ.*

### Work in the field of family law

In the context of the work of the European Committee on Legal Affairs (CDCJ) and the Committee of Experts on Family Law (CJ-FA), the Council of Europe and the European Commission jointly organised the Conference "Challenges in adoption procedures: ensuring the best interests of the child" on 30 November – 1 December 2009.

The Committee of Ministers adopted, on 9 December 2009, the following recommendations, prepared under the aegis of the CDCJ and the CJ-FA:

– Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity, which draws the attention of member states that are in the process of adopting, or that are considering drafting, legislation concerning persons with incapacity, to the possibility of introducing or refining the methods of self-determination, or of encouraging the population to make use of such tools as a precaution against unexpected illnesses or accidents;

– Recommendation CM/Rec(2009)12 on principles concerning missing persons and the presumption of death, which deals with the issuing of a declaration of presumed death and provides guidance to states in the three following situations:

- when death can be taken as certain;
- when it is reasonable to conclude that the death of the missing person is likely;
- when, although the missing person's death is uncertain, his or her disappearance cannot be reasonably attributed to any cause other than death.

A Working Party of the CJ-FA has been set up with the task to draft one or more legal instruments on the rights and legal status of children and parental responsibilities (based on the study on the rights and legal status of children being brought up in various forms of marital and non-marital partnerships). It started this work at the meeting which took place on 1-3 February 2010.

### Work in the field of justice

At its meeting held on 16-17 December 2009, the Group of Specialists on the Judiciary (CJ-S-JUD) approved the final version of the draft recommendation on judges: independence, efficiency and responsibilities, and its explanatory memorandum which will have to be approved by the CDCJ before being submitted for adoption to the Committee of Ministers (end of 2010). This new legal instrument should replace the current Recommendation No. R (94) 12 on the independence, efficiency and role of judges which needs a substantial update in order to reinforce all measures necessary to promote judges' independence and efficiency, assure and make more effective their responsibility and strengthen the role of individual judges and the judiciary generally.

### Work in the field of child-friendly justice

The Group of Specialists on child-friendly justice (CJ-S-CH) held a meeting on 8-10 December 2009 for pursuing the drafting of the Council of Europe Guidelines on child-friendly justice. It also organised, on 7 December, a hearing of NGOs and other stakeholders on this draft, as well as a preparatory meeting of a consultation of children on this draft text, held on 29 January 2010. This hearing gathered 45 participants including 15 specialists of the CJ-S-CH and four participants with observer status with the Group, three Council of Europe member states, two with observer status with the Council of Europe, 13 international NGOs and other stakeholders as well as eight representatives of other Council of Europe bodies or committees.

The draft text of the Guidelines, in its present form, is open for consultation and available at: www.coe.int/childjustice

### Work on nationality

The Committee of Ministers adopted, on 9 December 2009, Recommendation CM/Rec(2009)13 on the nationality of children, prepared under the aegis of the CDCJ, with the main aim to ensure the right of children to a nationality, facilitate their access to a nationality and reduce statelessness.

### Work on mutual administrative assistance in tax matters

**Revision of the joint COE/OECD Convention on Mutual Administrative Assistance in Tax Matters**

The Council of Europe and the Organisation 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.

## 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 extent 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 reflection 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.

## Main events

The Council of Europe attended the **International Conference of Data Protection and Privacy Commissioners**, held in Madrid from 3 to 6 November 2009.

The Council of Europe participated in **workshops at the Internet Governance Forum** (Egypt, November 2009) in order to promote its work in this field.

The **Consultative Committee of Convention ETS 108 (T-PD)** is currently preparing a draft recommendation on profiling.

***Internet: http://www.coe.int/justice***

# 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.**

## Italy

### International Institute of Humanitarian law

*Villa Ormond - C.so Cavallotti 113, 18038 Sanremo (IM), Italy*

*Tel: +39 018 45 41 848*

*Fax: +39 018 45 41 600*

*Email: gianluca@iihl.org*

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The International Institute of Humanitarian Law is an independent and non- profit organisation, whose objective is to promote the development, application, and dissemination of international humanitarian law in all its dimensions. This contributes to the safeguarding and the respect of human rights and fundamental freedoms throughout the world.

Thanks to its specific, well-tested experience, the Institute has earned an international reputation as a centre of excellence in the field of training, research, and the dissemination of all aspects of international humanitarian law.

Publications

The Institute has published a report of its 2008 activities, which is available on its website. It also publishes periodic newsletters, information bulletins, and manuals on substantive areas of international humanitarian law. The Institute's most recent publications are the proceeding of the 2008 Roundtable on International Migration Law and Migration Policies in the Mediterranean Context, the proceedings of the 31st Roundtable on International Humanitarian Law, Human Rights and Peace Operations and the Rules of Engagement Handbook, published in November 2009.

#### Training programmes

The 2010 programme of courses at the institute will include:

- Foundation courses on international humanitarian law for military personnel (in English, French, and Spanish). These courses will be conducted from 8-19March (English with Arabic class), 3-14 May (French), 24 May-4 June (English with Arabic and Russian classes), 13-24 September (Spanish with Portuguese class) and 8-18 November (English with Chinese class)
- Advanced course on international humanitarian law for military personnel (in English and French). This course will be conducted on the 4-15 October
- Courses on refugee law (in English, French and Spanish). These courses will be conducted on the 13-17 April (English), 18-22 May (French and Arabic), 19-23 October (Spanish) and 2-6 November (English)

- Thematic courses in migration law and the protection of internally displaced persons (in English). These courses will be conducted from the 27 September-1 October, 7-12 June and 22-26 November.
- 3rd course on IHL and human rights in Iraq (in English) from 14-24 March in Baghdad
- The 9th Competition on IHL for military academies (in English) from 22-26 March
- A specialised course on human rights for field officers (in English) from the 3-14May
- The 7th course on international human rights and humanitarian law in peace operations (in English) from 14-18 June
- A course on IHL for international personnel of the Italian Red Cross from the 21-25 June (tbc)
- 10th summer course on international humanitarian law (in English) from the 28 June-10July, Sanremo/Geneva
- A rules of engagement (ROE) workshop (in English) from 13-17 September
- An IHL (LOAC) targeting group workshop (in English) from 25-29 October
- 3rd joint IIHL/NATO course on IHL and human rights law in peace operations (in English) 29 November-3 December at the NATO school in Oberammergau
- Courses on IHL for planners and executors and controllers of air and naval operators (in English) from 29 November-3 December
- Courses for directors of courses and trainers in IHL (in English and French) from 6-10 December
- A cultural property workshop (in English) on 14 December

**The Library**

The Institute's library is in possession of a collection of over 4000 books which is replenished on a regular basis not only through its own acquisitions but also through donations from other international organisations concerned with humanitarian problems, such as the United Nations, the Council of Europe, OSCE, NGOs and the International Red Cross and Red Crescent Movement, particularly the ICRC. In addition, the library has an expanding collection of videos, DVDs and CDs for didactic purposes, and numerous periodicals.

The library is open weekdays from 09.00 to 17.00 and is run on a "consultation only" basis, although facilities are available for a limited amount of photocopying.

Internship programme

The Institute offers a variety of internship programmes for researchers and students with an interest and background in international humanitarian law. More details are available on the website.

## Luxembourg

### Institut Luxembourgeois des droits de l'homme

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## Biomedicine and human rights - The Oviedo Convention and its additional protocols (2010)

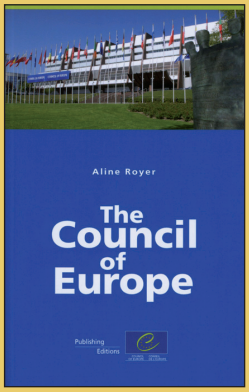
**ISBN 978-92-871-6662-3, €29/US$58**


The Convention on Human Rights and Biomedicine, also referred to as the «Oviedo Convention», is a legally binding instrument that aims to protect the integrity, dignity and identity of all human beings, and guarantees everyone, without discrimination, the respect for their rights and fundamental freedoms with regard to the application of biology and medicine. The Oviedo Convention addresses new challenges in biomedicine that are brought about by technological and scientific developments, making it a reference text for patient rights at the European level. The principles laid down in the Convention were further developed and complemented in additional protocols in specific fields: prohibition of cloning of human beings, transplantation of organs and tissues of human origin, and biomedical research and genetic testing for health purposes.

## The Council of Europe (2010)

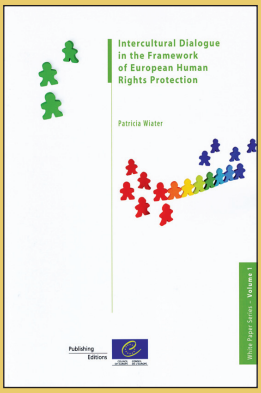
**ISBN 978-92-871-6745-3, €6/US$12**

Published for the 60th anniversary of the Council of Europe, the book gives an overview of the history, activities and achievements of this international organisation which receives little recognition and is still frequently confused with the European Union. Clear accounts that go straight to the core of the issues and well-selected illustrations ensure that this publication has universal appeal.




## Intercultural Dialogue in the Framework of European Human Rights Protection (White Paper Series - Volume 1) (2010)

**ISBN 978-92-871-6750-7, €19/US$38**




This report analyses the jurisprudence of the European Court of Human Rights in terms of the promotion of cultural diversity, as championed by the Council of Europe particularly through its «White Paper on Intercultural Dialogue» (2008). The Court's views on the governance principles and preconditions of intercultural dialogue - and particularly the case law on freedom of thought, conscience and religion, freedom of expression and freedom of association and assembly - provide guidelines for politicians, academics and practitioners alike.

## Penitentiary questions: Council of Europe recommendations and resolutions (2010)

**ISBN 978-92-871-6680-7, €39/US$78**


This book offers an overview of relevant Council of Europe standards on prison matters as developed in binding texts such as conventions and protocols, as well as Committee of Ministers recommendations and resolutions.
It also includes conventions and recommendations which do not deal directly with penitentiary questions but whose topics are of importance to people who are detained and staff working with them - subjects such as the transfer of sentenced prisoners, conditional release or other community sanctions and measures, or mediation.

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