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No. 80, March-July 2010

Thorbjørn Jagland, Council of Europe Secretary General, in conversation with Viviane Reding, European Commission Vice-President

Viviane Reding attended a meeting in Strasbourg on 7 July 2010 organised to launch joint talks on the European Union's accession to the European Convention on Human Rights

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Human rights information bulletin

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Entry into force of Protocol No. 14 to the European Convention on Human Rights

Protocol No. 14 to the European Convention on Human Rights and Fundamental Freedoms, which aims to make the European Court of Human Rights more efficient, entered into force on 1st June 2010, three months after its ratification by Russia.

It introduces changes in three main areas:

- reinforcement of the Court´s filtering capacity to deal with clearly inadmissible applications
- a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage
- measures for dealing more efficiently with repetitive cases

The key amendments to the Convention are the following:

Election of judges

Judges will be elected for a non renewable term of office of nine years. In the current system judges are elected for a term of six years that may be renewed for another six. The aim of the reform is to increase their independence and impartiality. The age limit remains at 70.

Competences of single judges

A single judge will be able to reject plainly inadmissible applications, those "where a decision can be taken without further consideration". This decision will be final. Prior to the entry into force of Protocol No. 14, this requires a decision by a committee of three judges. In case of doubt as to the admissibility, the single judge will refer the application to a committee of judges or a chamber. When acting as a single judge, a judge shall not examine any applications against the state in respect of which he or she was elected.

Competences of three judge committees

A three judge committee will be able to declare applications admissible and decide on their merits in clearly well-founded cases and those in which there is a well-established case law. Currently three judges committees can only declare applications inadmissible by unanimity but not decide on the merits. These cases are handled by chambers of seven judges or the Grand Chamber (17 judges).

In contrast with the previous situation, even when a three judge committee decides on the merits of an application, the judges elected in respect of the state concerned by the application will not be compulsorily members of the committee. A committee may invite this judge to replace one of its members, only for specific reasons, for example, when the application is related to the exhaustion of national legal remedies.

Decisions on admissibility and merits

In order to allow the registry and the judges to process cases faster, the decisions on admissibility and merits of individual applications will be taken jointly. This has already become the common practice of the Court. However the Court may always decide to take separate decisions on particular applications. This does not apply for interstate applications.

New admissibility criterion

The protocol creates an additional tool to allow the Court to concentrate on cases which raise important human rights issues. It empowers it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not require an examination of the merits by the Court or do not raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

Commissioner for Human Rights

The Commissioner will have the right to intervene as a third party, by submitting written comments and taking part in hearings. So far, it was possible for the president of the Court to invite the Commissioner to intervene in pending cases.

Friendly settlements

In order to reduce the Court´s workload, Protocol No. 14 encourages friendly settlements at an early stage of the proceedings, in particular for repetitive cases. It also provides for the supervision of the execution of the decisions on these settlements by the Committee of Ministers.

Execution of judgments

The Protocol empowers the Committee of Ministers to ask the Court to interpret a final judgment if it encounters difficulties to do it when supervising its execution. In order not to overburden the Court, if there are disagreements in the Committee with regard to the interpretation of a judgment, a decision can be taken by a qualified majority.

Considering the importance of rapid execution of judgments, in particular in cases concerning structural problems, in order to prevent repetitive applications, the Protocol will allow the Committee of Ministers to decide, in exceptional circumstances and with a 2/3 majority, to initiate proceedings of non compliance in the Grand Chamber of the Court in order to make the state concerned execute the Court´s initial judgment. These proceedings before the Court would result in another judgment related to the lack of an effective execution.

European Union to accede to the European Convention on Human Rights

Press statement issued jointly by the European Commission and the Council of Europe, 7 July 2010

European Commission and Council of Europe kick off joint talks on EU's accession to the European Convention on Human Rights

Official talks started today on the European Union's accession to the European Convention on Human Rights. Thorbjørn Jagland, the Secretary General of the Council of Europe, and Viviane Reding, Vice-President of the European Commission, marked the beginning of this joint process at a meeting in Strasbourg. They discussed how to move the process forward so that citizens can swiftly benefit from stronger and more coherent fundamental rights protection in Europe.

"Today is a truly historic moment. We are now putting in place the missing link in Europe's system of fundamental rights protection, guaranteeing coherence between the approaches of the Council of Europe and the European Union," said Vice-President **Viviane Reding** *(left)*, the European Union's Commissioner for Justice, Fundamental Rights and Citizenship. "The European Union has an important role to play in further strengthening the Convention's system of fundamental rights. We already have our own Charter of Fundamental Rights, which represents the most modern codification of fundamental rights in the world. This is a very good precondition for a successful meeting of the minds between the negotiation partners."

"The European Convention on Human Rights is the essential reference for human rights protection for all of Europe. By accepting to submit the work of its institutions to the same human rights rules and the same scrutiny which apply to all European democracies, the European Union is sending a very powerful message – that Europe is changing – and that the most influential and the most powerful are ready to accept their part of responsibility for that change and in that change," said **Thorbjørn Jagland**, Secretary General of the Council of Europe *(right)*.

The European Union's accession to the European Convention on Human Rights will place the Union on the same footing as its member states with regard to the system of fundamental rights protection supervised by the European Court of Human Rights in Strasbourg. It will allow for the European Union's voice to be heard when cases come before the Strasbourg Court. With accession, the European Union would become the 48th signatory of the European Convention on Human Rights. The European Union would have its own judge at the European Court of Human Rights in Strasbourg.
Accession will also provide a new possibility of remedies for individuals. They will be able to bring complaints – after they have exhausted domestic remedies – about the alleged violation of fundamental rights by the European Union before the European Court of Human Rights.

Background

The European Union's accession to the European Convention on Human Rights is required under Article 6 of the Lisbon Treaty and allowed for by Article 59 of the Convention as amended by Protocol No. 14.
On 17 March the Commission proposed negotiation directives for the European Union's accession to the European Convention on Human Rights (IP/10/291). On 4 June, EU Justice Ministers gave the Commission the mandate to conduct the negotiations on their behalf. On 26 May the Committee of Ministers of the Council of Europe gave an ad-hoc mandate to its Steering Committee for Human Rights to elaborate with the European Union the necessary legal instrument for the Union's accession to the European Convention on Human Rights.

Next steps

As of today, negotiators from the Commission and experts from the Council of Europe's Steering Committee for Human Rights will meet regularly to work on the accession agreement. At the end of the process, the agreement on accession shall be concluded by the Committee of Ministers of the Council of Europe and unanimously by the Council of the European Union. The European Parliament, which has to be fully informed of all stages of the negotiations, must also give its consent. After the agreement is concluded, it will have to be ratified by all 47 contracting parties to the European Convention on Human Rights in accordance with their respective constitutional requirements, including by those who are also European Union member states. Both sides are committed to a smooth and swift conclusion of the talks, allowing the accession to take place as early as possible.

Signatures and ratifications

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

Protocol No. 14bis was ratified by Luxembourg on 14 April 2010, "the former Yugoslav Republic of Macedonia" on 27 April 2010 and Slovakia on 5 May 2010.

European Social Charter (revised)

Montenegro ratified the European Social Charter revised on 3 March 2010.

Council of Europe Convention on Action against Trafficking in Human Beings

The Convention was ratified by Azerbaidjan on 23 June 2010, and by Sweden on 31 May 2010. It

was accepted by the Netherlands on 22 April 2010.

Council of Europe Convention on Access to Official Documents

This Convention was ratified by Sweden on 19 April 2010.

Council of Europe Convention on the Prevention of Terrorism

"The former Yugoslav Republic of Macedonia" ratified the Convention on 23 March 2010.

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 this *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 Mach and 30 June 2010:

- 559 (484) judgments delivered
- 579 (472), of which 563 (459) in a judgment on the merits and 16 (13) in a separate decision
- 12,143 (12,043) applications declared inadmissible
- 734 (603) 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 of 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.

Carson and others v. the United Kingdom

Judgment of 16 March 2010. Concerns: The applicants alleged, in particular, that the United Kingdom authorities' refusal to up-rate their pensions in line with inflation had been discriminatory and that some of them had had to choose between surrendering a large part of their pension entitlement or living far away from their families. They relied on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property).

UK authorities' refusal to index-link pensions of former British residents not discriminatory

Principal facts

The case concerned an application brought by 13 British nationals: Annette Carson, Bernard Jackson, Venice Stewart, Ethel Kendall, Kenneth Dean, Robert Buchanan, Terence Doyle, John Gould, Geoff Dancer, Penelope Hill, Bernard Shrubsole, Lothar Markiewicz and Rosemary Godfrey, born between 1913 and 1937. The applicants spent some of their working lives in the United Kingdom, paying National Insurance Contributions, before emigrating or returning to South Africa, Australia or Canada.

In 2002, Ms Carson brought proceedings by way of judicial review in the United Kingdom to challenge the failure to index-link her pension. She claimed that she had been the victim of discrimination as British pensioners were treated differently depending on their country of residence. In particular, despite having spent the same amount of time working in the United Kingdom, having made the same contributions towards the National Insurance Fund and having the same need for a reasonable stand-

ard of living in her old age as British pensioners who were living in the United Kingdom or in other countries where up-rating was available through reciprocal agreements, her basic state pension was frozen at the rate payable on the date she left the United Kingdom. Her application for judicial review was dismissed in May 2002 and ultimately on appeal before the House of Lords in May 2005.

With the exception of one dissenting judge in the House of Lords, all the judges who examined Ms Carson's complaint in the British courts held that she was not in an analogous, or relevantly similar, situation to a pensioner of the same age and contribution record living in the United Kingdom or in a country where up-rating was available through a reciprocal bilateral agreement or that, in the alternative, the difference in treatment was reasonably and objectively justified. Social security benefits, including the state pension, were part of an intricate and interlocking system of social welfare and taxation which existed to ensure certain minimum standards of living for those in the United Kingdom. Contributions to the National Insurance Fund could not be equated to contributions to a private pension scheme, because the money was used, together with money provided from general taxation, to finance a range of different benefits and allowances. Quite different economic conditions applied in other countries: for example, in South Africa, where Ms Carson lived, although there was virtually no social security, the cost of living was much lower, and the value of the rand had dropped in recent years compared to sterling.

The domestic courts further held that Ms Carson and those in her position had chosen to live in societies, or more pointedly economies, outside the United Kingdom; to accept her arguments would be to lead to judicial interference in the political decision as to the redeployment of public funds.

Decision of the Court

The applicants' complaint under Article 14 taken in conjunction with Article 8 was declared inadmissible as it had never been raised before the domestic courts.

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

In order for an issue to arise under Article 14, there had to be a difference in the treatment of persons in relevantly similar situations.

The Court did not consider that it sufficed for the applicants to have paid National Insurance contributions in the United Kingdom to place them in a relevantly similar position to all other pensioners, regardless of their country of residence. Claiming the contrary would be based on a misconception of the relationship between National Insurance contributions and the state pension. Unlike private pension schemes, National Insurance contributions had no exclusive link to retirement pensions. Instead, they formed a part of the revenue which paid for a whole range of social security benefits, including incapacity benefits, maternity allowances, widow's benefits, bereavement benefits and the National Health Service. The complex and interlocking system of the benefits and taxation systems made it impossible to isolate the payment of National Insurance contributions as a sufficient ground for equating the position of pensioners who received up-rating and those, like the applicants, who did not.

Moreover, the pension system was primarily designed to serve the needs of and ensure certain minimum standards for those resident in the United Kingdom. Indeed, the essential national character of the social security system was recognised both at domestic (in the Social Security Administration Act 1992) and international (the 1952 International Labour Organisation's Social Security Convention and the 1964 European Code of Social Security) level.

Bearing that in mind, it was hard to draw any genuine comparison with the position of pensioners living elsewhere, because of the range of economic and social variables which applied from country to country. The value of the pension could be affected by any one or a combination of differences in, for example, rates of inflation, comparative costs of living, interest rates, rates of economic growth, exchange rates between the local currency and sterling (in which the pension is universally paid), social security arrangements, and taxation systems. Furthermore, as noted by the domestic courts, as non-residents, the applicants did not contribute to the United Kingdom's economy; in particular, they paid no United Kingdom tax to offset the cost of any increase in the pension.

Nor did the Court consider that the applicants were in a relevantly similar position to pensioners living in countries with which the United Kingdom had concluded a bilateral agreement providing for up-rating. Those living in reciprocal agreement countries were treated differently from those living elsewhere because an agreement had been entered into; and an agreement had been entered into because the United Kingdom considered this to be in its interests.

In that connection, states clearly had a right under international law to conclude bilateral social security treaties and, indeed, this was the preferred method used by the member states of the Council of Europe to secure reciprocity of welfare benefits. If entering into bilateral arrangements in the social security sphere obliged a state to confer the same advantages on all those living in all other countries, the right of states to enter into reciprocal agreements and their interest in so doing would effectively be undermined.

In summary, the Court did not consider that the applicants, who live outside the United Kingdom in countries which are not party to reciprocal social security agreements with the United Kingdom providing for pension up-rating, were in a relevantly similar position to residents of the United Kingdom or of countries which were party to such agreements. It therefore held, by eleven votes to six, that there had been no discrimination and no violation of Article 14 taken in conjunction with Article 1 of Protocol No.1.

Judges Tulkens, Vajić, Spielmann, Jaeger, Jočienė and López Guerra expressed a joint dissenting opinion which is annexed to the judgment.

Oršuš and others v. Croatia

Judgment of 16 March 2010. Concerns: The applicants alleged that their segregation into Roma-only classes at school deprived them of their right to education in a multicultural environment and dis-

criminated against them, and made them endure severe educational, psychological and emotional harm, and in particular feelings of alienation and lack of self-esteem. They also complained about the excessive length of the proceedings they brought before the domestic courts concerning those complaints. They relied, in particular, on Article 3 (prohibition of inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing within a reasonable time), Article 2 of Protocol No. 1 (right to education) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Segregating Roma children in Croatian primary schools ruled discriminatory

Principal facts

The applicants are 15 Croatian nationals of Roma origin. They were born between 1988 and 1994 and all live in Orehovica, Podturen and Trnovec in northern Croatia. The case concerned the applicants' complaint that they had been segregated at primary school because they were Roma.

The applicants attended primary school in the villages of Macinec and Podutren at different times between the years 1996 and 2000. They participated in both Roma-only and mixed classes before leaving school at the age of 15.

In April 2002, the applicants brought proceedings against their primary schools. They claimed that the Roma-only curriculum in their schools had 30 % less content than the official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002, Čakovec Municipal Court dismissed the applicants' complaint. It found that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in Croatian. Furthermore, the curriculum at Podturen and Macinec Elementary schools was the same as that used in parallel classes in those schools. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was also subsequently dismissed on appeal.

The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007.

Decision of the Court

Article 6 §1

The Court reiterated that the right to primary education is a civil right under Article 6 and therefore it had to apply in this case. It then found that the length of proceedings (more than four years) before the Constitutional Court in a case of such importance had been excessive and concluded unanimously that the right of the applicants to a fair trial within a reasonable time had not been respected, in violation of Article 6 §1.

Article 14 taken together with Article 2 of Protocol No. 1

The Court found that the issue raised in this case was primarily one of discrimination. It recalled its findings from its earlier case-law that, as a result of their history, the Roma had become a specific type of disadvantaged and vulnerable minority. They therefore required special protection, including in the sphere of education.

There had not been a general policy to automatically place Roma pupils in separate classes in the schools which the applicants had attended. However, only Roma children had been placed in separate classes in those primary schools. Consequently, there had been clearly a difference in treatment applied to Roma children, which the applicants were. The state therefore had to show that the practice of segregating Roma pupils had been objectively justified, appropriate and necessary.

The Court noted the reasons given by the government for the placement of the applicants in Roma-only classes, namely that they had lacked adequate command of the Croatian language. It considered that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to Article 14 of the Convention, when this affected, as in the present case, exclusively the members of a specific ethnic group, specific safeguards had to be put in place.

The Croatian laws at the time had not provided for separate classes for children lacking proficiency in the Croatian language. In addition, the tests applied for deciding whether to assign pupils to Roma-only classes had not been designed specifically to assess the children's command of the Croatian language, but had instead tested the children's general psycho-physical condition. While the applicants might have had some learning difficulties, as suggested by the fact that they had failed to go up a grade for the initial two years of their schooling, those difficulties had not been adequately addressed by simply placing them in Roma-only classes.

As regards the curriculum, once assigned to Roma-only classes the applicants had not been provided with a programme specifically designed to address their alleged linguistic deficiency. While additional Croatian classes had been offered to the applicants, that had not been sufficient given that the third, fourth and fifth of them had never received such classes, the sixth to eleventh applicant had only been offered those in their third grade and the thirteenth to fifteenth applicants - in their first grade. In any event, even additional classes in Croatian could have at best only compensated in part the lack of a curriculum specifically designed to address the needs of pupils placed in separate classes on the grounds that they lacked an adequate command of Croatian.

All applicants had spent a substantial period of their education in Roma-only classes. The eleventh to fifteenth applicants in particular had spent all eight years of their schooling in a Roma-only class. However, there had been no particular monitoring procedure and, although some of the applicants had attended mixed classes at times, the government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian. The lack of a pre-

scribed and transparent monitoring procedure had left a lot of room for arbitrariness.

Furthermore, the statistics submitted by the applicants for the region in which the applicants lived, and not contested by the government, had shown a drop-out rate of 84% for Roma pupils before the completion of primary education. The applicants, without exception, had left school at the age of fifteen without completing primary education and their school reports evidenced poor attendance. Such a high drop-out rate of Roma pupils in that region had called for the implementation of positive measures in order to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties they had encountered in following the school curriculum. However, according to the government, the social services had been informed of the pupil's poor attendance only in the case of the fifth applicant and no precise information had been provided on any follow-up.

As regards the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the Court held that the parents, themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent. In addition, no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest.

The applicants could have attended the government-funded evening school in a nearby town. However, that had not been sufficient to repair the above-described deficiencies in the applicants' education.

Consequently, while recognising the efforts made by the Croatian authorities to ensure that Roma children received schooling, the Court held that no adequate safeguards had been put in place at the relevant time to ensure sufficient care for the applicants' special needs as members of a disadvantaged group. Accordingly, the placement, at times, of the applicants in Roma-only classes during their primary education had not been justified, in violation of Article 14 taken together with Article 2 of Protocol No. 1.

Article 41 (just satisfaction)

The Court held that Croatia is to pay to each applicant 4,500 euros in respect of non-pecuniary damage and, to the applicants jointly, 10,000 euros in respect of costs and expenses.

Judges Jungwiert, Vajić, Kovler, Gyulumyan, Jaeger, Myjer, Berro-Lefèvre and Vučinić expressed a joint partly dissenting opinion which is annexed to the judgment.

Čudak v. Lithuania

Judgment of 23 March 2010. Concerns: Relying on Article 6, the applicant alleged that she was denied access to a court.

Lithuanian authorities breached the European Convention on Human Rights when declining to hear a sexual harassment complaint by an employee of the Polish embassy in Vilnius

Principal facts

The case concerned an application brought by a Lithuanian national, Alicija Čudak, who was born in 1961 and lives in Vilnius.

In November 1997, Ms Čudak was hired as a secretary and switchboard operator by the Embassy of the Republic of Poland in Vilnius. Her duties corresponded to those habitually expected of such a post, and were stipulated in her employment contract.

In 1999, Ms Čudak complained to the Lithuanian Equal Opportunities Ombudsperson that she was being sexually harassed by one of her male colleagues as a result of which she had fallen ill. The Ombudsperson held an inquiry and recognised that she was indeed a victim of sexual harassment.

Ms Čudak, on sick leave for two months, was not allowed to enter the building upon her return on 29 October 1999, and on two other occasions in the weeks that followed. She complained in writing to the ambassador and a few days later, on 2 December 1999, was informed that she had been dismissed for failure to come to work during the last week of November 1999. She brought an action for unfair dismissal before the civil courts, which declined jurisdiction on the basis of the doctrine of state immunity from jurisdiction, invoked by the Polish Ministry of Foreign Affairs, and according to which one state could not be subject to the jurisdiction of another. The Lithuanian Supreme Court found in particular that Ms Čudak had exercised a public-service function during her employment with the Polish Embassy in Vilnius and established that, merely from the title of her position, it could be concluded that her duties facilitated the exercise by the Republic of Poland of its sovereign functions and, therefore, justified the application of the state immunity rule.

Ms Čudak lodged her application with the European Court of Human Rights on 4 December 2001 and it was declared admissible on 2 March 2006. On 27 January 2009 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 301 of the Convention.

Decision of the Court

The court first noted that there was a trend in international law, confirmed with the adoption at the United Nations level of two international legal documents – the 1991 Draft Articles and the 2004 Convention on Jurisdictional Immunities of States and their Property – towards limiting the application of state immunity, notably by exempting contracts of staff employed in a state's diplomatic missions abroad from the immunity rule. Immunity still applied, however, to diplomatic and consular staff in cases where the subject of the dispute was the recruitment, renewal of employment or reinstatement of an individual, or where the employee was a national of the employer state, or there was a written agreement to that effect between the employer and the employee.

Ms Čudak had not been covered by any of those exceptions. She had not performed any particular functions closely related to the exercise of governmental authority. She had not been a diplomatic agent or consular officer, nor a national of the employer state, and, lastly, the subject matter of the dispute had had to do with the applicant's dismissal. In addition, it did not appear from the file that Ms Čudak had performed in reality any functions related to the exercise of sov-

ereignty by the Polish state and neither the Lithuanian Supreme Court nor the government had shown how her ordinary duties could have objectively related to the sovereign interests of the Polish state.

The mere allegation that Ms Čudak could have had access to certain documents or could have been privy to confidential telephone conversations in the course of her duties was not sufficient. Her dismissal and the ensuing legal proceedings had arisen originally from acts of sexual harassment that had been established by the Lithuanian Equal Opportunities Ombudsperson. Such acts could hardly be regarded as undermining Poland's security interests.

Consequently, by declining jurisdiction to hear the applicant's claim and accepting the Polish Government argument of state immunity, the Lithuanian courts' decisions had impaired the very essence of Ms Čudak's right of access to a court. Accordingly, there had been a violation of Article 6 § 1.

Under Article 41 (just satisfaction), the Court held that Lithuania is to pay to the applicant 10,000 euros in respect of pecuniary and non-pecuniary damage.

Depalle v. France
Brosset-Triboulet and others v. France

Judgment of 29 March 2010. Concerns: The applicants submitted that the obligation imposed on them to demolish the houses at their own expense and without compensation was not compatible with their rights under Article 1 of Protocol No. 1 (protection of property) to the Convention and of Article 8 (right to respect for home).

By ordering the demolition of houses built on maritime public property, there was no violation of the Convention by French authorities

Principal facts

In the first case the applicant, Louis Depalle, is a French national who was born in 1919 and lives in Monistrol d'Allier (France). In the second case the applicants are two French nationals, Mrs Ijjo Brosset-Triboulet, who was born in 1935 and lives in Sainte-Croix-Grand-Tonne (France), and Mrs Eliane Brosset-Pospisil, who was born in 1938 and died in 2008.[1]

In the first case, Louis Depalle and his wife purchased a dwelling house by notarial deed in the municipality of Arradon (the Morbihan département) in 1960. The house was built on land on the seashore falling within the category of maritime public property. At the time of purchase, occupancy of the public land was authorised by a decision of the Prefect of Morbihan that had been made in favour of the former occupants in consideration of payment of a charge. That authorisation was regularly renewed, by a prefectoral decision in favour of the applicant and his wife, until 31 December 1992.

Those prefectoral decisions specified that the authorities reserved the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, and without compensation. The decisions also stated that the applicant and his wife must, if required by the relevant authority, restore the site to its original state. For centuries French law has provided that maritime public property cannot be appropriated for private ends (it is inalienable and not subject to limitations).

In September 1993, the Prefect of Morbihan refused to renew the authorisation to occupy public property following the entry into force of the Act of 3 January 1986 on the Development, Protection and Enhancement of Coastal Areas (known as "the Coastal Areas Act"). However he offered Mr and Mrs Depalle the possibility of signing an agreement with the state authorising them to remain on the site for their lifetime, on condition that they did not undertake any works other than maintenance. The agreement prohibited the sale or transfer of the land and house to third parties.

The second case concerns similar facts. In 1945, the applicants' mother had acquired, by way of a gift, drawn up before a notary and published in the Vannes Mortage Registry, a dwelling house in the municipality of Arradon falling within the category of maritime public property. The successive occupants of the plot of land had been granted authorisation by the prefect to occupy the site and this had been systematically renewed since 25 September 1909. The last decision authorising occupancy, which had been granted to the applicants' mother, had expired on 31 December 1990. On 6 September 1993, on account of the entry into force of the Coastal Areas Act, the Prefect of Morbihan refused to renew authorisation to occupy the site and offered to enter into an agreement with the applicants' mother on the same lines as had been proposed to Mr and Mrs Depalle.

In both cases the applicants rejected the Prefect's proposals and, following the Prefect's refusal to simply renew the decisions authorising occupation of public property, sought judicial review of the Prefect's decision in the Rennes Administrative Court. The Prefect, for his part, when confronted with the applicants' refusal to regularise their position as unlawful occupants of public property, brought proceedings against them before the same court for unlawful interference with the highway and sought an order against them to restore the seashore at their own expense and without prior compensation. After the Rennes Administrative Court and the Nantes Administrative Court of Appeal had ruled in favour of the authorities, the Conseil d'État adopted a judgment on 6 March 2002 in both cases in which it found that the properties in question did indeed fall within the category of maritime public property, that the applicants could not therefore rely on any real property right over those dwellings and that, accordingly, the obligation to restore the properties to their original state without compensation was not a measure prohibited by Article 1 of Protocol No. 1 to the European Convention on Human Rights.

To date, the houses have not yet been demolished.

1. After her death on 14 May 2008, Mrs Brosset-Pospisil's two daughters, Sophie Robinet-Epiard and Elisabeth Pospisil, continued the proceedings as her heirs.

Decision of the Court

Complaint relating to the right of property (Article 1 of Protocol No. 1)

The Court accepted, first of all, that the applicants owned "possessions" within the meaning of Article 1 of Protocol No. 1 and that their complaints based on that Article therefore had to be examined on their merits. Whilst the authorisations to occupy public property had not given them real property rights over public property, the time that had elapsed had had the effect of vesting in them a proprietary interest in peaceful enjoyment of the house.

On the merits, the Court reiterated that the Convention recognised the right of Contracting States to control the use of property in accordance with the general interest, on condition that the right of property was respected. In these cases the non-renewal of decisions authorising occupancy of public property and the orders to demolish the houses could be seen as representing control over the use of property in accordance with the general interest of promoting free access to the shore. The role of the Court was to ensure that a "fair balance" was achieved between the demands of the general interest of the community and those of the applicants, who wanted to keep their house. In determining whether this requirement was met, the Court recognised that the state enjoyed a wide discretion in its decision-making, particularly in a case, like the present one, concerning regional planning and environmental conservation policies where the community's general interest was pre-eminent.

After analysing the arguments submitted by the applicants and the state in support of their respective positions, the Court held that the applicants could not justifiably claim that the authorities' responsibility for the uncertainty regarding the status of their houses had increased with the passage of time. On the contrary, they had always known that the decisions authorising occupation of the public property were precarious and revocable. The tolerance shown towards them by the state did not alter that fact.

The applicants, who maintained that the houses were part of the national heritage and did not in any way impede access to the shore, were not justified either in claiming that the measures imposed on them ran counter to the general interest. On that point the Court reiterated that it was first and foremost for the national authorities to decide which type of measures should be imposed to protect coastal areas.

It went without saying that after such a long period of time demolition would amount to a radical interference with the applicants' "possessions". However (and the applicants had, moreover, not disproved this), this was part and parcel of a consistent and rigorous application of the law given the growing need to protect coastal areas and their use by the public, and also to ensure compliance with planning regulations.

The Court noted further that the applicants had refused the Prefect's proposals to continue enjoying the houses subject to conditions. Those proposals, which did not appear unreasonable, could have provided a solution reconciling the competing interests.

The Court added lastly that the lack of compensation could not be regarded as a disproportionate measure used to control the use of the applicants' properties, carried out in pursuit of the general interest. The principle that no compensation was payable, which originated in the rules governing public property, had been clearly stated in every decision authorising temporary occupancy of the public property issued to the applicants over decades.

Having regard to all the foregoing considerations, the Court held that the applicants would not bear an individual and excessive burden in the event of demolition of their houses without compensation. Accordingly, the balance between the interests of the community and those of the applicants would not be upset. The Court held, by 13 votes to four, that there had not been a violation of Article 1 of Protocol No. 1.

Complaint relating to the right to respect for home (Article 8)

The Court observed that the complaint under Article 8 arose out of the same facts as those examined under Article 1 of Protocol No. 1 and considered that it did not raise any separate issue. It held, by 16 votes to one, that it was not necessary to examine separately the complaint under Article 8 of the Convention.

In both judgments Judge Casadevall expressed a concurring opinion; Judges Bratza, Vajić, Björgvinsson and Kalaydjieva a joint partly dissenting opinion; and Judge Kovler a partly dissenting opinion. The text of these separate opinions is annexed to each of the judgments.

Medvedyev and others v. France

Judgment of 29 March 2010. Concerns: Relying on Article 5 § 1, the applicants complained that they had been deprived of their liberty unlawfully, particularly in the light of international law, as the French authorities had not had jurisdiction in that regard. Under Article 5 § 3, they complained that it had taken too long to bring them before "a judge or other officer authorised by law to exercise judicial power" within the meaning of that provision.

Principal facts

The nine applicants are Oleksandr Medvedyev and Borys Bilenikin, Ukrainian nationals, Nicolae Balaban, Puiu Dodica, Nicu Stelian Manolache and Viorel Petcu, Romanian nationals, Georgios Boreas, a Greek national, and Sergio Cabrera Leon and Guillermo Luis Eduar Sage Martinez, Chilean nationals. They were crew-members of a cargo vessel named the Winner.

In June 2002, the French authorities requested authorisation to intercept the Winner, which was registered in Cambodia, as it was suspected of carrying significant quantities of narcotics for distribution in Europe. In a diplomatic note dated 7 June 2002, Cambodia consented to the intervention of the French authorities. On an order from the Maritime Prefect and at the request of the Brest public prosecutor, a tug was sent out from Brest to take control of the Winner and reroute it to Brest harbour. The French Navy apprehended the vessel off the shores of Cap Verde and the crew were confined to their

Ship's crew-members were unlawfully detained on the high seas but brought promptly before a judicial authority in France

quarters on board under French military guard.

On their arrival in Brest on 26 June 2002, 13 days later, the applicants were taken into police custody and were brought before investigating judges the same day. On 28 and 29 June, they were charged and remanded in custody.

On conclusion of the criminal proceedings against the applicants, three of them were found guilty of conspiracy to illegally attempt to import narcotics and received sentences ranging from three to 20 years' imprisonment. The other six applicants were acquitted.

Decision of the Court

Article 1

The Court had established in its case-law that the responsibility of a State Party to the European Convention on Human Rights could arise in an area outside its national territory when as a consequence of military action it exercised effective control of that area, or in cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, the state concerned.

France had exercised full and exclusive control over the Winner and its crew, at least de facto, from the time of its interception, in a continuous and uninterrupted manner. Besides the interception of the Winner by the French Navy, its rerouting had been ordered by the French authorities, and the crew had remained under the control of the French military throughout the voyage to Brest. Accordingly, the applicants had been effectively within France's jurisdiction for the purposes of Article 1.

Article 5 § 1

The applicants had been under the control of the special military forces and deprived of their liberty throughout the voyage, as the ship's course had been imposed by the French military. The Court therefore considered that their situation after the ship was boarded had amounted to a deprivation of liberty within the scope of Article 5.

The Court was fully aware of the need to combat international drug trafficking and could see why states were so firm in that regard. However, while noting the special nature of the maritime environment, it took the view that this could not justify the creation of an area outside the law.

It was not disputed that the purpose of the deprivation of liberty to which the applicants were subjected while the vessel was being escorted to France had been to bring them "before the competent legal authority" within the meaning of Article 5 § 1 (c). However, the intervention of the French authorities could not, as the government contended, be justified on the basis of the Montego Bay Convention or under international customary law. Nor were there grounds for French law to be applied, as Cambodia was not a party to the conventions transposed into domestic law, in particular the Vienna Convention, and the Winner had not been flying the French flag.

Cambodia nevertheless had the right to engage in co-operation with other countries outside the framework of the international conventions; the diplomatic note issued by the Cambodian authorities on 7 June 2002 constituted an ad hoc agreement authorising the interception of the Winner, but not the detention of the crew members and their transfer to France, which were not covered by the note. The fact that the French authorities had intervened on the basis of this exceptional co-operation measure – added to the fact that Cambodia had not ratified the relevant conventions and that no current and long-standing practice existed between Cambodia and France in the battle against drug trafficking at sea – meant that their intervention could not be said to have been "clearly defined" and foreseeable.

It was regrettable that the international effort to combat drug trafficking on the high seas was not better coordinated, bearing in mind the increasingly global dimension of the problem. For states that were not parties to the Montego Bay and Vienna Conventions, one solution might be to conclude bilateral or multilateral agreements, like the San José agreement of 2003, with other states. Developments in public international law which embraced the principle that all states had jurisdiction whatever the flag state, in line with what already existed in respect of piracy, would be a significant step forward.

Accordingly, the deprivation of liberty to which the applicants had been subjected between the boarding of their ship and its arrival in Brest had not been "lawful", for lack of a legal basis of the requisite quality to satisfy the general principle of legal certainty. The Court therefore held by ten votes to seven that there had been a violation of Article 5 § 1.

Article 5 § 3

The Court reiterated that Article 5 was in the first rank of the fundamental rights that protected the physical security of an individual, and that three strands in particular could be identified as running through the Court's case-law: strict interpretation of the exceptions, the lawfulness of the detention and the promptness or speediness of the judicial controls, which must be automatic and must be carried out by a judicial officer offering the requisite guarantees of independence from the executive and the parties and with the power to order release after reviewing whether or not the detention was justified.

While the Court had already noted that terrorist offences presented the authorities with special problems, that did not give them carte blanche to place suspects in police custody, free from effective control. The same applied to the fight against drug trafficking on the high seas.

In this case the applicants had been brought before the investigating judges – who could certainly be described as "judge[s] or other officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 – 13 days after their arrest on the high seas (the Court regretted the fact that the government had not submitted substantiated information concerning the presentation of the applicants to the investigating judges until the Grand Chamber stage).

At the time of its interception, the Winner had been off the coast of the Cape Verde islands, and therefore a long way from the French coast. There was nothing to indicate that it had taken any longer than necessary to escort it to France, particularly in view of the weather conditions and the poor state of repair of the vessel, which made it impossible for it to travel any faster. In view of these "wholly exceptional circumstances", it had been materially impossible to bring the applicants before the investigating judges any sooner, bearing in mind that they had been brought before them eight or nine hours after their arrival, a period which was compatible with the requirements of Article 5 § 3.

The Court therefore held by nine votes to eight that there had been no violation of Article 5 § 3.

Article 41 (just satisfaction)

The Court held by 13 votes to four that France was to pay 5,000 euros to each of the applicants in respect of non-pecuniary damage and 10,000 euros to the applicants jointly for costs and expenses.

Judges Costa, Casadevall, Bîrsan, Garlicki, Hajiyev, Šikuta and Nicolaou expressed a joint partly dissenting opinion, as did Judges Tulkens, Bonello, Zupančič, Fura, Spielmann, Tsotsoria, Power and Poalelungi. Both separate opinions are annexed to the judgment.

Tănase v. Moldova

Judgment of 27 April 2010. Concerns: The applicant complained that Law No. 273 interfered with his right to stand as a candidate in free elections and to take his seat in parliament if elected, thus ensuring the free expression of the opinion of the people in the choice of legislature. He relied on Article 3 of Protocol No. 1. He also complained under Article 14 (prohibition of discrimination) taken together with Article 3 of Protocol No. 1 that he had been subjected to discrimination.

Principal facts

The applicant, Alexandru Tănase, is a Moldovan and Romanian national, born in 1971, and lives in Chişinău. He is a member of the Moldovan Liberal Democratic Party and currently holds the office of Minister of Justice in the coalition government. In the legislative elections in April 2009 and July 2009 he was elected as a member of parliament (MP).

The case concerned the introduction in 2008 (Law No. 273) of a prohibition on Moldovan nationals holding other nationalities who had not started a procedure to renounce those nationalities taking their seats as members of parliament following their election. The application was originally lodged by Mr Tănase and another politician.

The Republic of Moldova is situated on territory which was part of Romania between 1918 and 1940, when it was annexed by the Soviet Union. That territory's population lost its Romanian citizenship after the annexation. Following Moldova's declaration of independence in August 1991, a new law was adopted on Moldovan nationality. All those who had lived in the territory of the former Moldavian Soviet Socialist Republic before annexation were proclaimed citizens of Moldova; as a descendant of those persons, the applicant obtained Moldovan nationality.

In 1991, the Romanian parliament also adopted a new law on citizenship: former Romanian nationals and their descendants who had lost their nationality before 1989 were allowed to re-acquire Romanian nationality. The applicant requested and obtained Romanian nationality, the restriction on Moldovan nationals holding other nationalities having been repealed in June 2003.

In April 2008, the Moldovan parliament reformed the electoral legislation, notably by introducing Law No. 273. Other important amendments included the raising of the electoral threshold and a ban on all forms of electoral blocks. The reform was enacted and entered into force in May 2008.

Both the Council of Europe's Commission against Racism and Intolerance ("ECRI") and the Venice Commission expressed concern about the amendments to the Moldovan electoral code. In particular, both bodies pointed out that the provisions of the new law were incompatible with the European Convention on Nationality (ECN), which required equal treatment of multiple and single nationals and was ratified by Moldova in November 1999.

The president of the Liberal Democratic Party brought a constitutional complaint against Law No. 273. In May 2009, the Constitutional Court delivered a judgment finding the law to be constitutional, holding in particular that that it did not prevent dual nationals from becoming MPs, as it offered them the possibility of complying with it by renouncing their other nationalities.

Following his election to parliament in April 2009, the applicant initiated a procedure to renounce his Romanian nationality in order to be able to take his seat. In his letter to the Romanian Embassy, he announced that he was forced to initiate the renunciation of his Romanian nationality, but indicated that he reserved his right to withdraw the letter after the judgment of the Grand Chamber in the present case. Having regard to his letter, the Constitutional Court validated his mandate. In the new elections in July 2009, held after parliament had failed to elect a President of the Republic, the applicant was re-elected as an MP and his mandate was again confirmed after he had shown that a procedure to renounce his second nationality was pending.

It is estimated that between 95,000 and 300,000 Moldovans obtained Romanian nationality between 1991 and 2001; in February 2007 some 800,000 Moldovans had applications pending for Romanian nationality.

Ban on MPs holding two or more nationalities unjustified

Decision of the Court

Noting that all parties had invoked the concept of ensuring loyalty as the aim pursued by Law No. 273, the Court reiterated that in a democracy only loyalty to the state, not to the government, could constitute a legitimate aim justifying restrictions on electoral rights. It was clear that members of parliament, in particular those from opposition parties, had the role of ensuring the accountability of the government in power and that the pursuit of different, sometimes opposite, goals was necessary to promote pluralism.

While members of parliament in principle were required to respect the country's constitution, laws, institutions, independence and territorial integrity, this respect had to be limited to requiring that any wish to bring about changes to any of these aspects had to be pursued in accordance with the laws of the state. Any other view would undermine the ability of MPs to represent the views of their constituents, in particular minority groups. The fact that Moldovan MPs with dual nationality might wish to pursue a political programme considered by some to be incompatible with the current principles of the Moldovan state did not make it incompatible with the rules of democracy.

The Court observed that Law No. 273 and the other measures of the electoral reform had had a harmful effect on opposition parties and that all MPs who were negatively affected by Law No. 273, because they held more than one nationality or had pending applications for a second nationality, were from opposition parties. Therefore the obligation on the government to demonstrate that the amendments were introduced for legitimate reasons was all the more pressing. However, the government had been unable to provide any example of an MP with dual nationality showing disloyalty to the State of Moldova. The Court was therefore not fully satisfied that the aim of the measure was to secure the loyalty of MPs to the state.

As regards the proportionality of the measure, a review of practice across Council of Europe member states revealed a consensus that where multiple nationalities were permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as an MP. Nonetheless the Court considered that a more restrictive practice might be justified, in particular by special historical or political considerations. Moldova's history made it likely that there was a special interest, at the time when it declared its independence, in taking measures to limit any threats to the independence and security of the state.

However, the ban on MPs with multiple nationalities had been put in place some 17 years after Moldova had gained independence and some five years after it had relaxed its laws to allow dual citizenship. In this light, the Court found the argument that the measure was necessary to protect Moldova's laws, institutions and national security to be far less persuasive. The government had not provided an explanation of why concerns had recently emerged regarding the loyalty of dual citizens and why such concerns were not present when the law was first changed to allow dual citizenship.

The Court acknowledged that a significant number of MPs held or were in the process of applying for a second citizenship. It was not convinced, however, that these numbers justified the approach taken, as submitted by the government, since a large proportion of citizens also held dual nationality and these citizens had the right to be represented by MPs who reflected their concerns. The Court moreover considered that there were other, more specific measures to protect Moldova's laws, institutions and national security, in particular sanctions for conduct that threatened national interests and security clearance for access to confidential documents.

The Court further dismissed the government's objection that the right to multiple nationalities and the right to acquire a nationality were not rights guaranteed by the Convention, and that the Court in its Chamber judgment had attached too much significance to Moldova's obligation under the ECN. The Court emphasised that it did not seek to examine the applicant's right to hold dual nationality but rather the right of Moldova to introduce restrictions on his right to take his seat following his election as a result of his dual nationality and the compatibility of any such restriction with the Convention. As regards the references to the ECN and the activities of other Council of Europe bodies, the Court underlined that it had consistently held that it must take into account relevant international instruments and reports, and in particular those of other Council of Europe organs, in order to interpret the guarantees of the Convention and to establish whether there is a common European standard in the field.

It attached importance to the fact that international reports, in particular by ECRI and the Venice Commission, had been unanimous in their criticism, expressing concerns as to the law's discriminatory impact. The Court finally recalled that according to its case-law, no restriction on electoral rights should have the effect of excluding groups of persons from participating in the political life of the country.

In the light of these considerations, the Court found the provisions preventing elected MPs with multiple nationalities from taking seats in parliament to be disproportionate and unanimously held that there had been a violation of Article 3 of Protocol No. 1.

Given this finding, the Court unanimously held that there was no need to examine separately the applicant's complaint under Article 14.

Kononov v. Latvia

Judgment of 17 May 2010. Concerns: The applicant complained, in particular, that the acts of which he had been accused had not, at the time of their commission, constituted an offence under either domestic or international law. He maintained that, in 1944 as a young soldier in a combat situation behind enemy lines, he could not have foreseen that those acts could have constituted war crimes, or have anticipated that he would subsequently be prosecuted. He also argued that his conviction following the independence of Latvia in 1991 had been a political exercise by the Latvian state rather than any real wish to fulfil international obligations to prosecute war criminals. He relied on Article 7 § 1 (no punishment without law) of the European Convention.

Vasiliy Kononov's conviction of war crimes during the second world war found not to have violated Article 7 (no punishment without law) of the European Convention on Human Rights

Principal facts

Vasiliy Kononov was born in Latvia in 1923. He was a Latvian national until 12 April 2000, when he was granted Russian nationality. In 1942 he was called up as a soldier in the Soviet Army. In 1943 he was dropped into Belarus territory (under German occupation at the time) near the Latvian border, where he joined a Soviet commando unit composed of members of the "Red Partisans".

According to the facts as established by the competent Latvian courts, on 27 May 1944, the applicant led a unit of Red Partisans wearing German uniforms on an expedition on the village of Mazie Bati, some of the inhabitants of which were suspected of having betrayed to the Germans another group of Red Partisans. The applicant's unit searched six farm buildings in the village. After finding rifles and grenades supplied by the Germans in each of the houses, the Partisans shot the six heads of family concerned. They also wounded two women. They then set

fire to two houses and four people (three of whom were women) perished in the flames. In all, nine villagers were killed: six men – five executed and one killed in the burning buildings – and three women – one in the final stages of pregnancy. The villagers killed were unarmed; none attempted to escape or offered any form of resistance.

According to the applicant, the victims of the attack were collaborators who had delivered a group of 12 Partisans into the hands of the Germans some three months earlier. The applicant said that his unit had been instructed to capture those responsible so that they could be brought to trial. He further claimed that he had not personally led the operation or entered the village.

In July 1998 the Centre for the Documentation of the Consequences of Totalitarianism (Totalitārisma seku dokumentēšanas centrs), based in Latvia, forwarded an investigation file concerning the events of 27 May 1944 to the Latvian Principal Public Prosecutor. Subsequently, Mr Kononov was charged with war crimes.

On 30 April 2004 the Criminal Affairs Division of the Supreme Court ultimately found the applicant guilty of war crimes under Article 68-3 of the 1961 Criminal Code of the Soviet Socialist Republic of Latvia (the "1961 Latvian Criminal Code").[1] Relying mainly on the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War ("Geneva Convention (IV) 1949"), it convicted the applicant for the ill-treatment, wounding and killing of the villagers, finding in particular that burning a pregnant woman to death violated the special protection afforded to women during war. Furthermore, the applicant and his unit had violated Article 25 of the Hague Regulations 1907 which forbade attacks against undefended localities, such as the villagers' farm buildings. Under Article 23(b) of the same Regulations, the applicant was also convicted separately of treacherous wounding and killing, as he and his unit had worn German uniforms during the Mazie Bati operation. Noting that he was aged, infirm and harmless, the Latvian courts imposed an immediate custodial sentence of one year and eight months.

The applicant lodged an unsuccessful appeal on points of law.

Decision of the Court

Had there been a sufficiently clear legal basis in 1944 for the crimes of which the applicant had been convicted?

Mr Kononov had been convicted under Article 68-3 of the 1961 Latvian Criminal Code, a provision introduced by the Supreme Council on 6 April 1993, which used the "relevant legal conventions" (such as the Geneva Convention (IV) 1949) as the basis for a precise definition of war crimes. The Latvian courts' conviction of the applicant had, therefore, been based on international rather than domestic law.

By May 1944, the prevailing definition of a war crime had been an act contrary to the laws and customs of war and international law had defined the basic principles underlying those crimes. States had been permitted (if not required) to take steps to punish individuals for such crimes, including on the basis of command responsibility. Consequently, during and after the second world war, international and national tribunals had prosecuted soldiers for war crimes committed during the second world war.

As to whether there had been a sufficiently clear and contemporary legal basis for the specific war crimes for which the applicant had been convicted, the Court began its assessment on the basis of a hypothesis that the deceased villagers could be considered to be "combatants" or "civilians who had participated in hostilities" (rather than "civilians"). The Court also recalled the "two cardinal principles" relied on by the International Court of Justice as applicable to armed conflict which constituted "the fabric of humanitarian law", namely "protection of the civilian population and objects" and "the obligation to avoid unnecessary suffering to combatants".

In that connection, and having regard notably to Article 23(c) of the Hague Regulations 1907, the villagers' murder and ill-treatment had violated a fundamental rule of the laws and customs of war by which an enemy rendered hors combat – in this case not carrying arms – was protected. Nor was a person required to have a particular legal status or to formally surrender. As combatants, the villagers would also have been entitled to protection as prisoners of war under the control of the applicant and his unit and their subsequent ill-treatment and summary execution would have been contrary to the numerous rules and customs of war protecting prisoners of war. Therefore, like the Latvian courts, the Court considered that the ill-treatment, wounding and killing of the villagers had constituted a war crime.

Furthermore, the domestic courts had reasonably relied on Article 23(b) of the Hague Regulations 1907 to separately convict Mr Kononov of treacherous wounding and killing. At the relevant time wounding or killing had been considered treacherous if it had been carried out while unlawfully inducing the enemy to believe they had not been under threat of attack by, for example, making improper use of an enemy uniform, which the applicant and his unit indeed had done. Equally, there was a plausible legal basis for convicting Mr Kononov of a separate war crime as regards the burning to death of the expectant mother, given the special protection for women during war established well before 1944 (i.e. the Lieber Code of 1863) in the laws and customs of war and confirmed immediately after the second world war by numerous specific and special protections in the Geneva Conventions. Nor had there been evidence domestically, and it had not been argued before the Court, that it had been "imperatively demanded by the necessities of war" to burn down the farm buildings in Mazie Bati, the only exception under the Hague Regulations 1907 for the destruction of private property.

Indeed, the applicant had himself described in his version of events what he ought to have done, namely, to have arrested the villagers for trial. Even if a partisan trial had taken place, it would not qualify as fair if it had been carried out without the knowledge or participation of the accused villagers, followed by their execution. Mr Kononov, having organised and been in control of the partisan unit which had been intent on killing the villagers and destroying their farms, had command responsibility for those acts.

In conclusion, even assuming, as the applicant maintained, that the deceased villagers could be considered to have been "civilians who had participated in hostilities" or "com-

1. The 1961 Criminal Code replaced the existing 1926 Criminal Code of Soviet Russia which had been introduced by decree in 1940 when Latvia became part of the Union of Soviet Socialist Republics ("USSR").

batants", there had been a sufficiently clear legal basis, having regard to the state of international law in 1944, for the applicant's conviction and punishment for war crimes as the commander of the unit responsible for the attack on Mazie Bati on 27 May 1944. The Court added that if the villagers were to be considered "civilians", it followed that they would have been entitled to even greater protection.

Had the crimes been statute-barred?

The Court noted that the prescription provisions in domestic law were not applicable: the applicant's prosecution required reference to international law both as regards the definition of such crimes and determination of any limitation period. The essential question was therefore whether, at any point prior to Mr Kononov's prosecution, such action had become statute-barred by international law. The Court found that the charges had never been prescribed under international law either in 1944 or in developments in international law since. It therefore concluded that the prosecution of the applicant had not become statute-barred.

Could the applicant have foreseen that the relevant acts had constituted war crimes and that he would be prosecuted?

As to whether the qualification of the acts as war crimes, based as it was on international law only, could be considered to be sufficiently accessible and foreseeable to the applicant in 1944, the Court recalled that it had previously found that the individual criminal responsibility of a private soldier (a border guard) was defined with sufficient accessibility and foreseeability by a requirement to comply with international fundamental human rights instruments, which instruments did not, of themselves, give rise to individual criminal responsibility. While the 1926 Criminal Code did not contain a reference to the international laws and customs of war, this was not decisive since international laws and customs of war were in 1944 sufficient, of themselves, to found individual criminal responsibility.

The Court found that the laws and customs of war constituted particular and detailed regulations fixing the parameters of criminal conduct in a time of war, primarily addressed to armed forces and, especially, commanders. Given his position as a commanding military officer, the Court was of the view that Mr Kononov could have been reasonably expected to take special care in assessing the risks that the operation in Mazie Bati had entailed. Even the most cursory reflection by Mr Kononov would have indicated that the acts, flagrantly unlawful ill-treatment and killing, had risked not only being counter to the laws and customs of war as understood at that time but also constituting war crimes for which, as commander, he could be held individually and criminally accountable.

As to the applicant's submission that it had been politically unforeseeable that he would be prosecuted, the Court recalled its prior jurisprudence to the effect that it was legitimate and foreseeable for a successor state to bring criminal proceedings against persons who had committed crimes under a former regime. Successor courts could not be criticised for applying and interpreting the legal provisions in force at the relevant time during the former regime, in the light of the principles governing a state subject to the rule of law and having regard to the core principles (such as the right to life) on which the European Convention system is built. Those principles were found to be applicable to a change of regime of the nature which took place in Latvia following the Declarations of Independence of 1990 and 1991.

Accordingly, the Latvian courts' prosecution and conviction of Mr Kononov, based on international law in force at the time of the acts he stood accused of, could not be considered unforeseeable. In conclusion, at the time when they were committed, the applicant's acts had constituted offences defined with sufficient accessibility and foreseeability by the laws and customs of war.

The Court therefore concluded, by 14 votes to three, that there had been no violation of Article 7.

Judge Rozakis expressed a concurring opinion, joined by Judges Tulkens, Spielmann and Jebens. Judge Costa expressed a dissenting opinion, joined by Judges Kalaydjieva and Poalelungi. The texts of these separate opinions are annexed to the judgment.

Gäfgen v. Germany

Judgment of 1 June 2010. Concerns: The applicant complained that he had been subjected to torture when questioned by the police, in violation of Article 3. Relying on Article 6, he further submitted that his right to a fair trial had been violated in particular by the use of evidence secured as a result of his confession obtained under duress.

Police threat to use violence against child abduction suspect amounted to ill-treatment but did not affect his right to a fair trial

Principal facts

The applicant, Magnus Gäfgen, is a German national who was born in 1975. He is currently in prison in Schwalmstadt (Germany).

The case concerned his complaint that he was threatened with ill-treatment by the police in order to make him confess to the whereabouts of J., the youngest son of a well-known banking family in Frankfurt am Main, and that the ensuing trial against him was not fair. In July 2003, Mr Gäfgen was sentenced to life imprisonment for the abduction and murder of J. The court found that his guilt was of a particular gravity, meaning that the remainder of his prison sentence cannot be suspended on probation after 15 years of detention.

The child, aged 11, had gotten to know the applicant, a law student at the time, through his sister. On 27 September 2002, the applicant lured J. into his flat by pretending that J.'s sister had left a jacket there. He then suffocated the child.

Subsequently, the applicant deposited a ransom demand at J.'s parents' home, requiring them to pay one million euros (EUR) to see their child again. He abandoned J.'s corpse under the jetty of a pond one hour's drive away from Frankfurt. On 30 September 2002 at around 1 a.m., Mr Gäfgen collected the ransom at a tram station. He was

placed under police surveillance and was arrested several hours later.

On 1 October 2002, one of the police officers responsible for questioning Mr Gäfgen, on the instructions of the Deputy Chief of Frankfurt Police, warned the applicant that he would face considerable suffering if he persisted in refusing to disclose the child's whereabouts. They considered that threat necessary as they assumed J.'s life to be in great danger from lack of food and the cold. As a result of those threats, the applicant disclosed where he had hidden the child's body. Following that confession, the police drove to the pond together with the applicant and secured further evidence, notably the tyre tracks of the applicant's car at the pond, and the corpse.

At the outset of the criminal proceedings against the applicant, the Frankfurt am Main Regional Court decided that all confessions made throughout the investigation could not be used as evidence at trial as they had been obtained under duress, in breach of Article 136a of the Code of Criminal Procedure and Article 3 of the European Convention. However, the court did allow the use in the criminal proceedings of evidence obtained as a result of the statements extracted from the applicant under duress.

On 28 July 2003, the applicant was found guilty of abduction and murder and was sentenced to life imprisonment. Despite the fact that he had been informed at the beginning of the trial of his right to remain silent and that all his earlier statements could not be used as evidence against him, the applicant nevertheless again confessed that he had kidnapped and killed J. The court's findings of fact concerning the crime were essentially based on that confession. They were also supported by the evidence secured as a result of the first extracted confession, namely the autopsy report and the tyre tracks at the pond, and by other evidence obtained as a result of the applicant being observed after he had collected the ransom money.

The applicant lodged an appeal on points of law which was dismissed by the Federal Court of Justice in May 2004. He subsequently lodged a complaint with the Federal Constitutional Court, which refused to examine it by decision of 14 December 2004. That court confirmed the regional court's finding, however, that threatening the applicant with pain in order to extract a confession constituted a prohibited method of interrogation under domestic law and violated Article 3 of the Convention.

In December 2004, the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines of 60 and 90 daily payments of 60 euros and 120 euros, respectively.

In December 2005, the applicant applied to the regional court for legal aid in order to bring official liability proceedings against the Land of Hesse to obtain compensation for being traumatised by the investigative methods of the police. The court dismissed the application, and, in February 2007, the court of appeal dismissed the applicant's appeal against this decision, holding in particular that the applicant would face difficulties establishing a causal link between the threats of torture and the alleged mental damage necessitating psychological treatment. On 19 January 2008, the Federal Constitutional Court quashed the court of appeal's decision and remitted the case. It found in particular that the refusal to grant the applicant legal aid had violated the principle of equal access to court and that whether the violation of his human dignity necessitated the payment of damages was a difficult legal question, which should not be determined in an application for legal-aid proceedings. The remitted proceedings are still pending before the regional court.

Decision of the Court

Article 3

Treatment contrary to Article 3

It had been established by the German courts that a police officer, acting on the instructions of the Deputy Chief of Frankfurt Police, had threatened the applicant with being subjected to intolerable pain in order to make him disclose J.'s whereabouts. The Court considered that these immediate threats of deliberate and imminent ill-treatment had to have caused the applicant considerable fear and mental suffering. It observed that, as established by the domestic courts, the deputy police chief had ordered his subordinates on several occasions to use force against the applicant, his order could therefore not be regarded as a spontaneous act, but had been calculated in a deliberate manner.

The Court accepted that the police officers had been motivated by the attempt to save a child's life. However, the prohibition on ill-treatment applied irrespective of the conduct of the victim or the motivation of the authorities; it allowed no exception, not even where the life of an individual was at risk. The Court considered that in the present case the immediate threats against the applicant for the purpose of extracting information from him were sufficiently serious to be qualified as inhuman treatment falling within the scope of Article 3. Having regard to its case-law and to the views taken by other international human rights monitoring bodies, it found, however, that the method of interrogation to which the applicant had been subjected had not reached the level of cruelty to attain the threshold of torture.

The applicant's victim status

The Court was satisfied that the domestic courts, both in the criminal proceedings against the applicant and against the police officers, had acknowledged expressly and in an unequivocal manner that the applicant's interrogation had violated Article 3.

It observed, however, that the police officers, having been found guilty of coercion and incitement to coercion, respectively, had been sentenced only to very modest and suspended fines. The domestic courts had taken into consideration a number of mitigating circumstances, in particular the fact that the officers' aim had been to save J.'s life. While the Court accepted that the present case was not comparable to cases concerning arbitrary acts of brutality by state agents, it nevertheless considered that the punishment of the police officers did not have the necessary deterrent effect in order to prevent further Convention violations of this kind. Moreover, the fact that one of the police officers had subsequently been appointed chief of a police agency raised serious doubts as to whether the authorities' reaction reflected adequately the seriousness involved in a breach of Article 3.

As regards compensation to remedy the Convention violation, the Court noted that the applicant's request for legal aid to bring liability proceedings, following a remittal, had been pending for more than three years and that no decision had yet been taken on the merits of his compensation claim. The domestic courts' failure to decide on the

merits of the claim raised serious doubts as to the effectiveness of the official liability proceedings.

In the light of these findings, the Court considered that the German authorities did not afford the applicant sufficient redress for his treatment in breach of Article 3.

The Court concluded, by 11 votes to six, that the applicant could still claim to be the victim of a violation of Article 3 and that Germany had violated Article 3.

Article 6

As the Court had established in its case-law, the use of evidence obtained by methods in breach of Article 3 raised serious issues regarding the fairness of criminal proceedings. It therefore had to determine whether the proceedings against the applicant as a whole had been unfair, because such evidence had been used.

The Court found that the effective protection of individuals from the use of investigation methods in breach of Article 3 may require, as a rule, the exclusion from use at trial of real evidence obtained as a result of a breach of that Article. It considered that this protection and a criminal trial's fairness were only at stake however if the evidence obtained in breach of Article 3 had an impact on the defendant's conviction or sentence.

In the present case, it was the applicant's new confession at the trial – after having been informed that all his earlier statements could not be used as evidence against him – which formed the basis for his conviction and his sentence. The evidence in dispute had therefore not been necessary to prove him guilty or determine his sentence.

As regards the question of whether the breach of Article 3 in the investigation proceedings had a bearing on the applicant's confession during the trial, the Court observed that he had stressed in his statements at the trial that he was confessing freely out of remorse and in order to take responsibility for his offence, despite the threats uttered against him by the police. The Court therefore had no reason to assume that the applicant would not have confessed if the courts had decided at the outset to exclude the disputed evidence.

In the light of these considerations, the Court found that, in the particular circumstances of the case, the failure of the domestic courts to exclude the impugned evidence, secured following a statement extracted by means of inhuman treatment, had not had a bearing on the applicant's conviction and sentence. As the applicant's defence rights had been respected, his trial as a whole had to be considered to have been fair.

The Court concluded, by 11 votes to six, that there had been no violation of Article 6.

Article 41 (just satisfaction)

The applicant did not claim any award for pecuniary or non-pecuniary damage, but stressed that the objective of his application was to obtain a retrial. As there had been no violation of Article 6, the Court considered that there was no basis for the applicant to request a retrial or the reopening of the case before the domestic courts.

Judges Tulkens, Ziemele and Bianku expressed a partly concurring opinion; Judges Rozakis, Tulkens, Jebens, Ziemele, Bianku and Power expressed a partly dissenting opinion; Judge Casadevall expressed a partly dissenting opinion, joined by Judges Mijović, Jaeger, Jočiene and López Guerra. The separate opinions are annexed to the judgment.

Selected Chamber judgments

Oyal v. Turkey

Turkish government to provide lifetime medical cover to teenager infected as a new-born with HIV virus during blood transfusions

Judgment of 23 March 2010. Concerns: Relying on Article 2 (right to life), the applicants alleged that the national authorities were responsible for Yiğit's life-threatening condition as they had failed to sufficiently train, supervise and inspect the work of the medical staff involved in his blood transfusions. Further relying on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy), they also complained about the excessive length of the administrative proceedings they had brought for compensation and that the compensation finally awarded did not even cover the costs of Yiğit's medication.

Principal facts

The applicants, Yiğit Turhan Oyal, born on 6 May 1996, and his parents, Neşe Oyal and Nazif Oyal, are Turkish nationals, born in 1973 and 1961 respectively. They live in Izmir (Turkey).

The first applicant was infected with the HIV virus when, born prematurely, he had to have a number of blood transfusions for an inguinal and umbilical hernia. His parents learnt of the infection when he was about four months old; they were also told that the virus could develop into the more severe Acquired Immune Deficiency Syndrome (AIDS).

In May 1997, the applicants brought criminal proceedings for medical negligence against the doctors involved in the blood transfusions, the Director General of the Turkish Red Cross in Izmir (the "Kızılay", from where the transfused blood had been obtained) and the Minister of Health. Those proceedings were terminated on the ground that no fault could be attributed directly to those persons.

On 19 December 1997, the applicants brought civil proceedings against the Kızılay and the Ministry of Health and, on 13 October 1998, administrative proceedings against the Ministry of Health. Both the civil and administrative courts ruled that the Kızılay was at fault for supplying HIV-infected blood and that the Ministry of Health was to be held responsible for the negligence of its staff in the performance of their duties. Furthermore, the Ankara Civil Court of First Instance established that the HIV-infected blood given to the first applicant had not been detected because the medical staff had not done the requisite test on the blood in question, considering that it would be too

costly. That court found moreover that, prior to the first applicant's infection, there was no regulation requiring blood donors to give information about their sexual history which could help determine their eligibility to give blood. On account of these deficiencies, and the defendants' failure to comply with the already existing regulations, the civil and administrative courts awarded the applicants non-pecuniary damages plus statutory interest.

Following those judgments the special card (the "green card"), issued by the Ministry of Health to provide those on borderline incomes with access to free health care and medicine, was withdrawn from the applicants.

Despite promises made by the authorities to pay the first applicant's medical expenses, both the Kızılay and the Ministry of Health rejected the applicants' claims for healthcare and medication amounting to 6 800 euros per month.

The third applicant has been severely affected by the reactions of other children's parents to his son's condition and the school administration's refusal to admit the first applicant to school. Due to ill-health, he is currently unable to work. In serious economic difficulty, the applicants' family is trying to pay medical expenses with the help of family friends.

The first applicant, although ultimately admitted to a public school, has no close friends and stammers. He has to have weekly psychotherapy.

Decision of the Court

Article 2

The applicants had had access to civil and administrative courts which established liability for the first applicant's infection with the HIV virus and awarded damages.

The Court found, however, that that redress had been far from satisfactory. The compensation awarded only covered one year's healthcare and medication for the applicant. With the applicants' claims to the Kızılay and the Ministry of Health rejected and their green card, strikingly, withdrawn, the family – already in debt and living in poverty – had been left to their own devices to meet the high costs (6 800 euros per month) of the first applicant's continued treatment.

Even though the national courts had adopted a sensitive and positive approach in determining the responsibility of the Kızılay and the Ministry of Health and in ordering them to pay damages to the applicants, the Court considered that the most appropriate remedy in the circumstances would have been to have ordered, in addition to the payment of non-pecuniary damages, lifetime payment of the first applicant's healthcare and medication expenses.

Also bearing in mind the excessive length – nine years, four months and 17 days – of the administrative proceedings, which were of consequence to the more general considerations of public health and safety and the prevention of similar errors, the Court held unanimously that there had been a violation of Article 2.

Article 6 § 1 and Article 13

The Court considered that the case had not been complex, the issues at stake – negligence and liability – already having been established during the civil proceedings. Given the gravity of the situation and what was at stake for the applicants, the courts should have acted with "exceptional diligence" in deciding upon the case. The Court therefore held unanimously that the length of the administrative proceedings had been excessive, in violation of Article 6 § 1. The Court, recalling that it had already found in a previous case that the Turkish legal system had not provided an effective remedy whereby the length of proceedings could be successfully challenged, further found, unanimously, that there had also been a violation of Article 13.

Article 41 (just satisfaction)

The Court held, by six votes to one, that the applicants were to be paid 300 000 euros in respect of pecuniary damage, 78 000 euros in respect of non-pecuniary damage and 3 000 euros for costs and expenses. In addition to that award, the Turkish government was to provide free and full medical cover to the first applicant for the rest of his life.

Judge Sajó expressed a partly concurring and partly dissenting opinion which is annexed to the judgment.

Al-Saadoon and Mufdhi v. the United Kingdom

Transferring two Iraqi nationals from United Kingdom detention facilities to the Iraqi authorities constituted a breach of the Convention

Judgment of 2 March 2010. Concerns: The applicants complained about their transfer to Iraqi custody. They relied on Article 2 (right to life), Article 3 (prohibition of torture and or inhuman and degrading treatment), Article 6 (right to a fair trial) and Article 1 of Protocol No. 13 (abolition of the death penalty). They also complained about the fact that they were transferred to the Iraqi authorities despite the Court's indication under Rule 39 of its Rules of Court, in breach of Articles 13 (right to an effective remedy) and 34 (right of individual petition).

Principal facts

The case concerned the complaint by the applicants, accused of involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003, that their transfer by the British authorities into Iraqi custody put them at real risk of execution by hanging.

The applicants, Faisal Attiyah Nassar Khalaf Hussain Al-Saadoon and Khalef Hussain Mufdhi, are Iraqi nationals who were born in 1952 and 1950. They are Sunni Muslims from southern Iraq and former senior officials of the Ba'ath party. They are currently detained in Rusafa Prison, near Baghdad.

Following the invasion of Iraq by an international coalition of armed forces on 20 March 2003, the applicants were arrested by British forces and detained in British-run detention facilities as they were suspected, among other things, of having orchestrated violence against the coalition forces. In October 2004, the UK's Royal Military Police concluded that the applicants had been involved in the deaths of two British soldiers, Staff Sergeant Cullingworth and Sapper Allsopp, ambushed and murdered in southern Iraq on 23 March 2003.

In August 2004, the Iraqi National Assembly reintroduced the death penalty to the Iraqi Penal Code in respect of certain violent crimes, in-

cluding murder and certain war crimes.

In December 2005, the British authorities decided to refer the murder case against the applicants to the Iraqi criminal courts. In May 2006, the applicants appeared before the Basra Criminal Court on charges of murder and war crimes. The Basra Criminal Court issued arrest warrants against them and made an order authorising their continued detention by the British Army in Basra. Subsequently, the Basra Criminal Court decided that the allegations against the applicants constituted war crimes and therefore fell within the jurisdiction of the Iraqi High Tribunal ("IHT": a court set up under Iraqi national law, to try Iraqi nationals or residents accused of genocide, crimes against humanity and war crimes allegedly committed during the period 17 July 1968 to 1 May 2003). The case was transferred to the IHT which, on 27 December 2007, formally requested the British forces to transfer the applicants into its custody; repeated requests were made to that effect until May 2008.

On 12 June 2008, the applicants brought judicial review proceedings in England challenging, among other things, the legality of their transfer. The case was heard by the English Divisional Court which, on 19 December 2008, declared the proposed transfer lawful. The court found that since the applicants were held in a British military detention facility, they were within the jurisdiction of the United Kingdom as provided by Article 1 (obligation to respect human rights) of the European Convention of Human Rights. Nonetheless, the court held that under public international law, the United Kingdom was obliged to surrender the applicants unless there was clear evidence that the receiving state intended to subject them to treatment so harsh as to constitute a crime against humanity. It found no substantial grounds for believing there to be a real risk that, on being transferred, a trial against the applicants would be flagrantly unfair or that they would face torture and/or inhuman and degrading treatment. While, on the other hand there was a real risk that the death penalty would be applied if the applicants were surrendered to the Iraqi authorities, the death penalty in itself was not prohibited by international law.

The applicants' appeal was refused by the Court of Appeal on 30 December 2008. The Court of Appeal found that there was a real risk that the applicants would be executed if transferred. It concluded, however, that the United Kingdom was not exercising jurisdiction because it was detaining the applicants on Iraqi territory and on the orders of the Iraqi courts. The Convention did not, therefore, apply and the United Kingdom had to respect Iraqi sovereignty and transfer the applicants.

Immediately after that decision, the applicants applied to the European Court of Human Rights for an interim measure under Rule 39 of its Rules of Court to prevent the British authorities making the transfer. On 30 December 2008 the Court indicated to the United Kingdom government that the applicants should not be removed or transferred from their custody until further notice. The following day, the United Kingdom government informed the Court that, principally because the UN Mandate which authorised the role of British forces in arrest, detention and imprisonment tasks in Iraq was due to expire at midnight on 31 December 2008, exceptionally they could not comply with the measure indicated by the Court and that they had transferred the applicants to Iraqi custody earlier that day.

On 16 February 2009, the applicants were refused leave to appeal by the House of Lords.

The applicants' trial before the IHT started in May 2009 and ended in September 2009 with a verdict cancelling the charges against them and ordering their immediate release. Upon an appeal by the prosecutor, the Iraqi Court of Cassation remitted the case for further investigation by the Iraqi authorities and for a retrial. The applicants remain in custody.

Decision of the Court

Jurisdiction

The Court adopted a decision on the admissibility of the applicants' complaints on 30 July 2009 in which it considered that the United Kingdom authorities had had total and exclusive control, first through the exercise of military force and then by law, over the detention facilities in which the applicants were held. The Court found that the applicants had been within the United Kingdom's jurisdiction and had remained so until their physical transfer to the custody of the Iraqi authorities on 31 December 2008.

The death penalty as inhuman and degrading treatment

The Court emphasised that 60 years ago, when the Convention was drafted, the death penalty had not been considered to violate international standards. However, there had been a subsequent evolution towards its complete abolition, in law and in practice, within all the member states of the Council of Europe. Two Protocols to the Convention had thus entered into force, abolishing the death penalty in time of war (Protocol 6) and in all circumstances (Protocol 13), and the United Kingdom had ratified them both. All but two member states had signed Protocol 13 and all but three states which had signed it had ratified it. This demonstrated that Article 2 of the Convention had been amended so as to prohibit the death penalty in all circumstances. The Court concluded therefore that the death penalty, which involved the deliberate and premeditated destruction of a human being by the state authorities, causing physical pain and intense psychological suffering as a result of the foreknowledge of death, could be considered inhuman and degrading and, as such, contrary to Article 3 of the Convention.

The Court accepted the findings of the national courts which had concluded, shortly before the physical transfer took place, that there were substantial grounds for believing there to be a real risk of the applicants' being condemned to the death penalty and executed. It further observed that the Iraqi authorities had still not given any binding assurance that they would not execute the applicants. Moreover, while it was impossible to predict the outcome of the new investigation and trial ordered by the Iraqi courts, there were still substantial grounds for believing that the applicants would run a real risk of being sentenced to death if tried and convicted by an Iraqi court.

The death penalty had been reintroduced in Iraq in August 2004. Nonetheless, and without obtaining any assurance from the Iraqi authorities, the United Kingdom authorities had decided in December 2005 to refer the applicants' case to the Iraqi courts and, in May 2006, proceedings commenced in the Basra Criminal Court. The Court considered that from that date at least the applicants had been subjected to a well-founded fear of execution, giving rise to a significant degree of

mental suffering, which must have intensified and continued from the date they were physically transferred into Iraqi custody.

The government had argued that they had no option but to respect Iraqi sovereignty and transfer the applicants, who were Iraqi nationals held on Iraqi territory, to the custody of the Iraqi courts when so requested. However, the Court was not satisfied that the need to secure the applicants' rights under the Convention inevitably required a breach of Iraqi sovereignty. It did not appear that any real attempt was made to negotiate with the Iraqi authorities to prevent the risk of the death penalty. Moreover, the evidence showed that the Iraqi prosecutors initially had "cold feet" about bringing the case themselves, because the matter was "so high profile". This could have provided an opportunity to seek the consent of the Iraqi government to an alternative arrangement involving, for example, the applicants being tried by a United Kingdom court, either in Iraq or in the United Kingdom. It does not appear that any such solution was ever sought.

Consequently, in view of the above, the Court concluded that the applicants had been subjected to inhuman and degrading treatment, in violation of Article 3.

Fair trial

The Court accepted the national courts' finding that, at the date of transfer, it had not been established that the applicants risked a flagrantly unfair trial before the IHT. Now that the trial had taken place, there was no evidence before the Court to cast doubt on that assessment. It followed that there had been no violation of Article 6.

Right to individual petition and to an effective remedy

The government had not satisfied the Court that they had taken all reasonable steps, or indeed any steps, to seek to comply with the Court's Rule 39 indication not to transfer the applicants to Iraqi custody. They had not informed the Court, for example, of any attempt made after the Court's indication and before the transfer took place to explain the situation to the Iraqi authorities or to reach a temporary solution which would have safeguarded the applicants' rights until the Court had completed its examination of the case. The failure to comply with the Court's indication and the transfer of the applicants out of the United Kingdom's jurisdiction had exposed them to a serious risk of grave and irreparable harm and had unjustifiably nullified the effectiveness of any appeal to the House of Lords. The Court therefore found violations of Articles 13 and 34 of the Convention.

Just satisfaction

Under Article 41 (just satisfaction) of the Convention, the Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage suffered by the applicants and awarded the applicants jointly 40 000 euros for costs and expenses.

Judge Bratza expressed a partly dissenting opinion, which is annexed to the judgment.

Kuzmin v. Russia

Judgment of 18 March 2010. Concerns: Relying on Article 3, the applicant complained about the conditions of his detention from 31 May to 16 December 1998. He also complained, under Article 6 § 2, that the comments by Mr Lebed and the language used in the application and order for his dismissal had infringed his right to presumption of innocence. Lastly, he alleged under Article 6 §§ 1 and 3 (d) that before the start of the trial he had not received the full bill of indictment with a list of the witnesses to be called.

Statements by a politician about a person charged with rape breached the presumption of innocence

Principal facts

The applicant, Anatoliy Kuzmin, is a Russian national who was born in 1964 and lives in Motygino (Russia). In 1998, while he was serving as district prosecutor in Motygino, criminal proceedings were brought against him for the rape of a 17-year-old girl. Shortly after the opening of the proceedings on 22 April 1998, Alexander Lebed, a candidate for election to the post of governor of the Krasnoyarsk region and a well-known public figure (having been, among other things, a general in the Russian army, a member of the State Duma in 1995, a candidate in the 1996 presidential elections and secretary of the National Security Council under President Yeltsin), declared in three television interviews in May 1998 that the applicant was a "criminal" who should have been in the "nick" for some time, promising that the "son of a bitch" would soon be "rotting in jail". On 17 May 1998, Mr Lebed was elected as regional governor.

On 22 May 1998, Mr Kuzmin was remanded in custody and charged with the rape of a minor, and on 11 June 1998 he was dismissed from the prosecution service. Both the application and the order for his dismissal stated that he had "committed a rape".

He was admitted to remand prison 24/1 in the city of Krasnoyarsk ("SIZO-24/1") and held in solitary confinement – at his request, according to the government. Following a complaint by Mr Kuzmin about the conditions of his detention, an investigation found that the toilets "[did] not meet elementary sanitary and hygiene requirements", that there was no ventilation system and that the surface area of the cell was 3.7 sq. m, in breach of the standards prescribed by law. The applicant also complained to the court of first instance about the conditions of his detention in a disciplinary cell, by personal order of the prison governor, and subsequently in a cell on the "special corridor" for prisoners sentenced to death. In a judgment of 20 September 2001 the court held that there had been no justification for placing the applicant in disciplinary cells as the necessity of such measures had not been proved, and also that the law requiring officials of the prosecution service and other law-enforcement authorities to be separated from other prisoners had not been observed. Mr Kuzmin was awarded 3 000 roubles (approximately 109 euros) for non-pecuniary damage.

In November 1998, after the preliminary investigation had been completed, the indictment was served on the applicant, who maintained

that he had not had access to the full version of the document. During the trial, witnesses were examined, including the rape victim's mother, the police officers who had received her complaint, the investigator dealing with the case, a medical expert and a friend of the victim. The applicant, the public prosecutor and the victim put questions to each of the witnesses.

Mr Kuzmin was convicted in 1999 and released in 2000 after being granted an amnesty.

Decision of the Court

Article 3

By placing the applicant in a cubicle measuring 3.7 sq. m, the authorities had not complied with Russian law, which required a minimum cell area of 4 sq. m per prisoner, while the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) advocate a minimum of 7 sq. m. The Court noted that improvements to the cells, in particular the installation of a ventilation system, had been carried out six months after the applicant had left.

Accordingly, having regard to the overcrowded conditions in which Mr Kuzmin was detained, coupled with his solitary confinement and the lack of a ventilation system, water, and natural light in his cell, the Court held unanimously that during his detention in SIZO-24/1 he had been subjected to degrading treatment, in breach of Article 3.

Article 6 § 2

Statements by Mr Lebed

The authorities were entitled to inform the public about ongoing criminal investigations, while ensuring the circumspection necessary for the presumption of innocence to be observed and paying particular attention to their choice of words.

Unlike the government, the Court did not consider that Mr Lebed, a very well-known politician, had expressed his views on television as a private individual. His comments, including a promise to arrest the applicant, could have been construed as confirming his belief that Mr Kuzmin was guilty of the alleged offence. Moreover, several days after the interviews in question, Mr Lebed had been elected governor and the applicant had been arrested and charged with the rape of a minor.

It had been particularly important at that early stage of the proceedings – before the indictment – not to make any public allegations which could have given the impression that certain senior officials believed the applicant to be guilty.

Given the very particular circumstances under which Mr Lebed had made the statements in question, the Court considered that they amounted to declarations by a public official which had served to encourage the public to believe the applicant guilty and prejudged the assessment of the facts by the competent judicial authority.

The Court therefore concluded by four votes to three that there had been a violation of Article 6 § 2 on that account.

Language used in the prosecuting authorities' documents

Although the assertive tone adopted by the regional prosecutor in the application for Mr Kuzmin's dismissal raised some concerns, that document did not contain a finding that the applicant was guilty but instead described a "state of suspicion".

The terms used – unfortunately without any qualification – in the order for the applicant's dismissal had to be seen in their specific context; their purpose had not been to declare the applicant guilty but to relieve him of his duties. They had formed part of a reasoned decision, for internal use within the prosecution service, by the Prosecutor General in his capacity as the applicant's superior and the head of the Russian Federation's prosecution system, and not by a senior official informing the public about the criminal case in question. The Court therefore held unanimously that there had been no violation of Article 6 § 2 on that account.

Article 6 §§ 1 and 3 (d)

The parties disagreed as to whether the applicant had received the full bill of indictment. However, even if he had received the indictment without a list of the witnesses to be called, there had been nothing to prevent the applicant from seeking to have witnesses called if he thought that their testimony would be decisive. Yet he had not taken any such steps and had not explained why their evidence might be useful.

After three witnesses for the defence had failed to appear at the trial, Mr Kuzmin had not asked the court to order their attendance. In their absence, the judges had relied on the statements which they had given during the investigation and which the applicant had not challenged. With regard to the victim's sister and the persons present at the scene of the crime, Mr Kuzmin had not asked to have them examined either.

The Court could only presume that he had wished to have certain witnesses examined in order to show that the victim's mother had been pressured into lodging a complaint and that, after forging certain documents, the authorities had managed to secure his imprisonment for rape. However, those allegations had been examined at the trial and the applicant had had the opportunity to defend his position when confronted with the police officers involved and the investigator dealing with the case. Accordingly, there had been no violation of Article 6 §§ 1 and 3 (d).

As no quantified claims had been submitted within the time allowed, the Court did not make an award to the applicant by way of just satisfaction (Article 41).

Paraskeva Todorova v. Bulgaria

The refusal to suspend a sentence on account of the accused's Roma origin was discriminatory

Judgment of 25 March 2010. Concerns: Ms Todorova complained that she had been discriminated against on the ground of her membership of the Roma minority as a result of the reasons given for the domestic courts' refusal to suspend her prison sentence. She further maintained that the Bulgar-

ian courts had not been impartial as they had taken account of her ethnic origin when determining her sentence. She relied in particular on Article 14 and Article 6 § 1 of the Convention.

Principal facts

The applicant, Paraskeva Todorova, is a Bulgarian national who was born in 1952 and lives in Trud (Plovdiv, Bulgaria). She belongs to the Roma minority.

In 2005, criminal proceedings were brought against the applicant for fraud. The prosecution recommended that the applicant be given a suspended sentence in view of several extenuating circumstances and her state of health. On 29 May 2006, the Plovdiv District Court sentenced the applicant to three years' imprisonment. The judgment mentioned her ethnic origin among the personal details used to identify her. As to the execution of her sentence, the court refused to suspend it, in particular on the ground that there was "an impression of impunity, especially among members of minority groups, who consider that a suspended sentence is not a sentence".

The applicant brought a complaint alleging discrimination before the higher courts, which did not respond to her allegations in that regard. On 16 October 2006, the Plovdiv Regional Court upheld the first-instance judgment, stating that it "subscribed fully" to the latter's conclusions regarding the refusal to suspend the sentence. On 5 June 2007, the Supreme Court of Cassation upheld the sentence and the refusal to suspend it.

Decision of the Court

Alleged discriminatory nature of the courts' reasons

The Court pointed to its case-law, according to which, where the reasoning of the domestic courts introduced a "difference in treatment" based solely on, for instance, ethnic origin,[1] it was incumbent upon the respondent state to justify that difference in treatment. It would otherwise be held in breach of Articles 14 and 6 § 1.

In the case of Ms Todorova, the Court was of the view that she had indeed been subjected to a "difference in treatment". The first-instance judgment had made mention at the outset of her ethnic origin. The court's remark concerning the existence of an impression of impunity (which was directed at minority groups and hence at the applicant herself), taken together with her ethnic and cultural origin, had been liable to engender a sense that the court was seeking to impose a sentence that would serve as an example to the Roma community. The impression that there had been a "difference in treatment" to the detriment of the applicant was further reinforced by the district court's failure to reply to the prosecutor's argument concerning the applicant's health (on the basis of which he requested a suspended sentence) and the failure of the higher courts to respond to the allegations of discrimination.

Before the Court, the Bulgarian authorities had simply endeavoured to prove that they had not subjected the applicant to any "difference in treatment", without adducing any evidence that might justify the difference in treatment observed in this case. The Court was of the view that, in any event, that difference could not be justified on objective grounds. It stressed the seriousness of the situation complained of by the applicant given that, in the multicultural societies of present-day Europe, stamping out racism had become a priority goal for all the Contracting States. It further observed that the principle of equality of citizens before the law was enshrined in the Bulgarian Constitution and that the Code of Criminal Procedure required the courts to apply the criminal law uniformly in respect of all citizens. The Court could not but observe that the reasons given by the courts in the present case appeared to be at variance with those principles.

The Court held that there had been a violation of Article 14 taken in conjunction with Article 6 § 1.

The impartiality of the domestic courts

In view of its finding of a violation, the Court considered that no separate issue arose concerning the impartiality of the domestic courts. There was therefore no need to examine this complaint separately.

Article 41 (just satisfaction)

The Court pointed out that, following its finding of a violation of the Convention, it was for the respondent state to adopt measures in order to place the applicant, as far as possible, in the position she would have been in had the violation not occurred. In Ms Todorova's case the most appropriate form of redress would be the reopening of the criminal proceedings. The Court noted that such a step appeared to be possible under the Bulgarian Code of Criminal Procedure.

The Court also awarded the applicant 5 000 euros for non-pecuniary damage and 2 218 euros for costs and expenses.

1. Article 14: "... sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Slyusarev v. Russia

Judgment of 20 April 2010. Concerns: Mr Slyusarev complained about his glasses having been taken away from him shortly after his arrest and that – still in pre-trial detention – they had only been returned to him five months later. He relied on Article 3 (prohibition of inhuman or degrading treatment).

Making a detainee wait five months before returning his damaged glasses to him and another two months for his new glasses amounted to degrading treatment

Principal facts

The applicant, Vladimir Slyusarev, is a Russian national who was born in 1970 and lives in Moscow. He is very short-sighted.

Mr Slyusarev was arrested on 2 July 1998 on suspicion of armed robbery; at some point during his apprehension his glasses were damaged and confiscated. Following his confession and signed written statement, criminal proceedings were brought against him. He was also subsequently charged with several counts of fraud, unrelated to the robbery. On 15 June 1999 he was found guilty of those charges and sentenced to

nine years' imprisonment, upheld on appeal.

According to Mr Slyusarev, while in pre-trial detention, he and his wife complained on five occasions to the prosecution authorities about the deterioration of his eyesight and requested that his glasses be returned to him.

According to the government, he had only complained in December 1998 about his glasses having been taken away.

Following an order by the prosecution on 9 September 1998, the applicant was examined by an optician. The specialist concluded that his eyesight had dropped and prescribed new glasses. In January 1999 he received those new glasses.

In the meantime, the applicant's old glasses were returned to him on 2 December 1998 following a formal request made by his lawyer.

Decision of the Court

The Court considered that the applicant, unable to read or write normally without his glasses, had to have suffered from such a situation. Indeed, that situation had to have created a lot of distress in the applicant's everyday life and made him feel insecure and helpless.

Contrary to the government's claim, the prosecution had to have been aware of the applicant's problem well before 2 December 1998 as a medical examination by an optician had been ordered in September 1998 following a request lodged by the defence some time earlier. Despite that examination, it had then taken the authorities almost five months to procure the new glasses prescribed for him. In the meantime, the applicant's old glasses could have been given back to him as, even if damaged, they could have alleviated some of his difficulties. Instead they had only been returned after five months' of his pre-trial detention. The government gave no explanation for these shortcomings. Nor did they explain why the applicant had only been examined by a specialist after two and half months' detention.

Moreover, taking the applicant's glasses could not be explained in terms of the "practical demands of imprisonment" and had been unlawful in domestic terms. Given the degree of the applicant's suffering, mainly imputable to the authorities, and its duration, the Court concluded that the applicant had been subjected to degrading treatment, in violation of Article 3.

The applicant had not submitted any claim under Article 41 (just satisfaction).

Mustafa and Armagan Akin v. Turkey

Domestic courts' custody arrangements should not have prevented brother and sister from seeing each other

Judgment of 6 April 2010. Concerns: Relying in particular on Article 8, the applicants complain that the brother and sister were prevented from seeing each other.

Principal facts

The applicants, Mustafa Akın, and his son, Armağan Akın, are Turkish nationals who were born in 1957 and 1988 respectively and live in Ödemiş (Turkey). When Mustafa Akın and his wife divorced in 2000, the civil court awarded custody of their son to him and custody of their daughter to the mother. By the same decision, the parents were to exchange the children during certain fixed periods of time. Mr Akın requested the court to grant an interim measure to the effect that he would have both children one weekend and his former wife would have them the next, arguing that this way the children would not lose contact with each other and he would have the opportunity to spend time with both of them together. The court rejected both this request and Mr Akın's appeal against the custody decision.

In September 2001, Mr Akın brought proceedings against his former wife, requesting that the children be able to see each other every weekend. He claimed that the court's custody decision, preventing the two children from seeing each other and him from spending time with both of them, was causing irreversible psychological problems for the children. He also claimed that when the children saw each other in the street, their mother prevented them from speaking to each other. The request was refused in February 2002. A subsequent appeal to the Court of Cassation, in which the applicants referred to previous decisions by that court according to which access arrangements should not prevent children of divorced parents from seeing each other, was rejected in April 2002. The Court of Cassation also rejected the applicants' rectification request against this decision in July 2002.

Decision of the Court

The Court first noted that the custody arrangements separating the two siblings had been determined by the domestic court of its own motion, as neither parent had requested such an arrangement and the mother had asked for the custody of both children. The absence of reasoning to justify the separation of the children was therefore striking. The Court was not convinced by the Turkish government's argument that the children were not prevented from seeing each other, as they lived in the same neighbourhood. Maintaining the ties between the children was too important to be left to the parents' discretion, in particular since the mother had prevented the siblings from speaking to each other in the street.

The Court could not concur with the reasoning that contact arrangements as requested by the applicants would confront Mr Akın's daughter with "variations in discipline", as the domestic court had not given any precise explanations in this regard. Even if those arrangements had been unsuitable, the domestic court could have considered finding another agreement to ensure the children would see each other on a regular basis. The Court further observed with regret that despite the significance of the case before it, the Court of Cassation had not addressed the detailed submissions by the applicants, which included references to its own decisions concerning the need for siblings to keep in contact.

The Court concluded that the domestic courts' handling of the case had fallen short of the state's obligation to protect family life, in violation of Article 8.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants jointly 15 000 euros in respect of non-pecuniary damage.

Moretti and Benedetti v. Italy

Judgment of 27 April 2010. Concerns: Relying on Article 8 in particular, the applicants alleged that the relevant law and procedural rules had been wrongly applied in respect of their adoption request.

Shortcomings in adoption proceedings: failure to respect foster parents' rights

Principal facts

The applicants, Luigi Moretti and his wife, Maria Brunella Benedetti, are Italian nationals who were born in 1966 and 1959 respectively and live in Lugo di Ravenna (Italy). They lived with their daughter and a child adopted by Mrs Benedetti. They had previously fostered children subsequently adopted by other families.

By an emergency order of 20 May 2004, a newborn baby, A., whose mother had ceased looking after her a few days after her birth, was provisionally placed with them by court decision for a period of five months that was subsequently extended until December 2005. In the meantime, proceedings were instituted to declare A. free for adoption.

On 26 October 2004, the applicants sought a special adoption order in respect of A. When they received no response they repeated their request in March 2005. In the meantime the court had declared the child free for adoption. On 19 December 2005 a new family was given custody of A. in a decision that was not served on the applicants. On the same day the child was removed from the applicants' home with the assistance of the police.

The court dismissed a request to adopt by Mr Moretti and Mrs Benedetti on the ground that another family had been chosen in the meantime in the child's best interests. On appeal by the applicants, the Court of Appeal set aside the lower court's decision on grounds of lack of reasoning and held that the application to adopt should have been examined before the child was declared free for adoption and a new family chosen. An expert opinion requested by the Court of Appeal found that the child appeared to be attached to both couples in question but seemed to be well integrated into her new family. On 27 October 2006 the Court of Appeal held that a further separation would risk traumatising the child. The adoption order in respect of A. became final on an unspecified date.

Decision of the Court

With regard to the applicants' standing to apply to the Court on behalf of A., the Court noted that Mr Moretti and Mrs Benedetti did not exercise any parental responsibility over the child, that the steps they took to adopt her had been unsuccessful and that they had no power of attorney to represent A.'s interests. Accordingly, they did not have the necessary legal powers to represent the child's interests. The part of the application submitted in A.'s name was therefore dismissed as being incompatible with the provisions of the Convention.

The Court reiterated that the notion of "family life" in Article 8 was not confined solely to marriage-based relationships but could also encompass other de facto "family ties" where further elements of dependency were present involving more than emotional ties. The determination of the family nature of a such a relationship had to take account of a number of factors, such as the length of time the persons in question had been living together, the quality of the relationship and the adult's role in respect of the child. The Court noted that the applicants had lived with A. during the important stages of the first 19 months of her life and that she had been well integrated into the family, which had fostered her social development. Having regard to the strength of the bond that had developed between the applicants and the child, the Court found that this had amounted to family life for the purposes of Article 8.

Whilst Article 8 did not guarantee a right to adopt, it did not prevent an obligation arising on states, in certain circumstances, to allow family ties to be formed. In the present case it had been of primary importance that the request for a special adoption order lodged by the applicants be examined carefully and speedily. The Court reiterated that where cases concerning family life were concerned the passage of time could have irremediable consequences. It was regrettable that the request for adoption lodged by the applicants had not been examined before declaring A. free for adoption and that it had been dismissed with no reasons being stated.

It was not for the Court to substitute its own reasoning for that of the national authorities regarding the measures that should have been taken, and the good faith on the part of the courts in securing A.'s well-being was not in doubt. However, the shortcomings observed in the proceedings in question had had a direct impact on the applicants' right to family life, and the authorities had failed to ensure effective respect for that right. Accordingly, the Court held, by six votes to one, that there had been a violation of Article 8.

Under Article 41 (just satisfaction), the Court held that Italy was to pay jointly to the first two applicants 10 000 euros for non-pecuniary damage, and 5 000 euros for costs and expenses.

S. H. and others v. Austria

Judgment of 1 April 2010. Concerns: The applicants complained that the prohibition of sperm and ova donation for in vitro fertilisation violated their right to respect to family life under Article 8, and that the difference in treatment compared to couples who wished to use medically assisted procreation techniques but did not need to use ova or sperm donation for in vitro fertilisation amounted to a discriminatory treatment, in violation of Article 14.

Ban on using sperm and ova donation for in vitro fertilisation unjustified

Principal facts

The applicants, all Austrian nationals, are two married couples who live in Austria. Suffering from infertility, they wish to use medically assisted procreation techniques which are not allowed under Austrian law.

S.H. suffers from fallopian-tube-related infertility and her husband D.H. is also infertile. Owing to their medical conditions, only in vitro fertilisation with the use of sperm from a donor would allow them to have a child of whom one of them is the genetic parent. H.E.-G. suffers from agonadism, which means that she does not produce ova, while her husband M.G. can produce sperm fit for procreation. Only in vitro fertilisation with the use of ova from a donor would allow them to have a child of whom one of them is the genetic parent. However, both of these possibilities are ruled out by the Austrian Artificial Procreation Act, which prohibits the use of sperm from a donor for in vitro fertilisation and ova donation in general. At the same time the Act allows other assisted procreation techniques, in particular in vitro fertilisation with ova and sperm from the spouses or cohabitating partners themselves (homologous methods) and, in exceptional circumstances, donation of sperm when it is introduced into the reproductive organs of a woman.

In May 1998, S.H and H.E.-G. lodged an application with the Constitutional Court for a review of the relevant provisions of the Artificial Procreation Act. In October 1999, the Constitutional Court gave decision, finding that there was an interference with the applicants' right to respect for family life, but that it was justified, as the provisions aimed to avoid the forming of unusual personal relations such as a child having more than one biological mother (a genetic one and one carrying the child). They also aimed to avoid the risk of exploitation of women, as pressure might be put on a woman from an economically disadvantaged background to donate ova, who otherwise would not be in a position to afford an in vitro fertilisation in order to have a child of her own.

Decision of the Court

The Court noted that among the Council of Europe member states there was no uniform approach to medically assisted procreation and that states were under no obligation to allow it. However, once the decision had been taken to do so, the legal framework governing artificial procreation had to be shaped in a coherent manner, allowing the different legitimate interests involved to be taken into account. In the present case the applicants were subject to a difference in treatment in comparison with persons in a similar situation. In order to assess if in the present case the difference in treatment afforded to the applicants compared to persons in a similar situation was justified, the Court found it had to examine the situation of the two couples separately.

With regard to the situation of H.E.-G and M.G. and their wish to resort to in vitro fertilisation with the use of ova from a donor, the Court was not convinced by the Austrian Government's argument that a complete prohibition was the only way to prevent the risks associated with this technique. The risk that women might be exploited and that the technique might be used for selective reproduction was an argument that could be used against other means of artificial procreation as well. Moreover, Austrian law did not allow remuneration for ovum donation. The argument that obtaining ova for the purpose of donation was a risky medical intervention could equally be raised with regard to in vitro fertilisation where the ova are taken from the woman aspiring to be a mother herself, a technique allowed in Austria.

Concerning the argument that using a donor's ova for in vitro fertilisation would create unusual family relationships, the Court noted that family relations which do not follow the typical parent-child relationship based on a direct biological link, were nothing new. They had existed since the institution of adoption, which created a family relationship not based on descent but on contract. The Court saw no insurmountable obstacles to bringing family relations resulting from a successful use of the artificial procreation techniques at issue into the general framework of family law. The Court therefore concluded, by five votes to two, that there had been a violation of Article 14 in conjunction with Article 8.

With regard to the situation of S.H and D.H. and their wish to resort to in vitro fertilisation with the use of sperm from a donor, the Court observed first that this artificial procreation technique combined two techniques which taken alone were allowed under the Artificial Procreation Act, namely in vitro fertilisation with ova and sperm of the couple itself on the one hand and sperm donation for non-in vitro conception on the other hand. A prohibition of the combination of these lawful techniques would thus have required particularly persuasive arguments. Most of the arguments brought forward by the government were not specific to sperm donation for in vitro fertilisation, however. As regards the government's argument that non-in vitro artificial insemination had been in use for some time, that it was easy to handle and its prohibition would therefore have been hard to monitor, the Court found that a question of mere efficiency carried less weight than one of principle based on moral and ethical convictions shared by society. Balancing these relatively weak arguments against the applicants' interest, their wish to conceive a child, the Court found that the difference in treatment at issue was not justified. It therefore concluded, by six votes to one, that there had been a violation of Article 14 in conjunction with Article 8.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each applicant couple 10 000 euros in respect of non-pecuniary damage.

Kennedy v. the United Kingdom

Secret surveillance measures did not interfere with the applicant's private life

Judgment of 18 May 2010. Concerns: Relying on Article 8 the applicant complained about the alleged interception of his communications. He further complained, under Article 6 § 1, that the hearing before the IPT had not been fair, and, under Article 13, that as a result he had been denied an effective remedy.

Principal facts

The applicant, Malcolm Kennedy, is a British national who was born in 1946 and lives in London. When arrested for drunkenness in 1990, he

spent the night in detention with an inmate who was found to be dead the next day. Mr Kennedy was subsequently found guilty of the man's murder and sentenced to life imprisonment. His case was controversial in the United Kingdom on account of missing and conflicting evidence.

Released from prison in 1996, Mr Kennedy started a removal business. He alleged that his business mail, telephone and email communications were being intercepted because of his high profile case and his subsequent involvement in campaigning against miscarriages of justice.

The applicant complained to the Investigatory Powers Tribunal ("IPT") that his communications were being intercepted in "challengeable circumstances" amounting to a violation of his private life. Mr Kennedy sought the prohibition of any communication interception by the intelligence agencies and the "destruction of any product of such interception". He also requested specific directions to ensure the fairness of the proceedings before the IPT, including an oral hearing in public, and a mutual inspection of witness statements and evidence between the parties.

The IPT proceeded to examine the applicant's specific complaints in private, and in 2005 ruled that no determination had been made in his favour in respect of his complaints. This meant either that there had been no interception or that any interception which took place was lawful.

Decision of the Court

Article 8

The Court reiterated that, based on the principle of effective protection by the Convention's system, an individual might – under certain conditions to be determined in each case – claim to be the victim of a violation as a result of the mere existence of secret measures, even if they were not applied to him. This departure from the Court's general approach was to ensure that such measures, although secret, could be challenged and judicially supervised. In the applicant's case, the Court considered that it could not be excluded that secret surveillance measures were applied to him or that he was, at the time in question, potentially at risk of being subjected to such measures. Accordingly, the Court concluded that he could complain of an interference with his Article 8 rights.

The Court considered it clear that the interference pursued the legitimate aims of protecting national security and the economic well-being of the country and preventing crime. In addition, it was carried out on the basis of the Regulation of Investigatory Powers Act 2000 ("RIPA"), supplemented by the Interception of Communications Code of Practice ("the Code"). The RIPA was available on the Internet, and hence accessible. It defined with sufficient precision the cases in which communications could be intercepted. While the offences allowing interception were not set out by name, the Court noted that states were not compelled to exhaustively list national security offences as those were by nature difficult to define in advance. Finally, as only communications within the United Kingdom were concerned in the present case – unlike in Liberty and others v. the United Kingdom[1] – the domestic law described more fully the categories of persons who could be subject to an interception of their communications.

As regards the processing, communication and destruction of data, the Court noted that the overall duration of interception measures had to be left to the discretion of the domestic authorities, as long as adequate safeguards were put in place. In the present case the renewal or cancellation of interception warrants were under the systematic supervision of the Secretary of State. In addition, contrary to the practice for communications with other countries, the domestic law provided that warrants for internal communications related to one person or one set of premises only, thereby limiting the scope of the authorities' discretion to intercept and listen to private communications. The law – more specifically the Code – also strictly limited the number of persons who had access to the intercept material, of which only a summary would be disclosed whenever sufficient. It also required the data to be destroyed as soon as they were no longer necessary, and detailed records of the warrants to be kept.

In terms of supervision of the RIPA regime, a Commissioner was appointed under the legislation who was independent from the executive and legislative authorities. His annual report to the Prime Minister was a public document and was laid before parliament. The Court found his role in ensuring that the legal provisions were applied correctly very valuable, as well as his biannual review of a random selection of specific cases in which interception had been authorised. The Court further highlighted the extensive jurisdiction of Investigatory Powers Tribunal to examine any complaint of unlawful interception of communications. Unlike in many other countries, any person could apply to the IPT, which was an independent and impartial body. It had access to closed material and could require the Commissioner to order disclosure of all documents it considered relevant. When the IPT found in the applicant's favour, it could quash any interception order, require destruction of intercepted material and order compensation. The publication of the IPT's legal rulings further enhanced the level of scrutiny over secret surveillance activities in the United Kingdom.

The Court concluded that in the present case the relevant domestic provisions indicated with sufficient clarity the procedures concerning interception warrants as well as the processing, communicating and destruction of data collected. The Court further observed that there was no evidence of any significant shortcomings in the application and operation of the surveillance regime. Therefore there had been no violation of Article 8.

Article 6 § 1

The Court reiterated that there might be restrictions on the right to fully adversarial proceedings where strictly necessary in the light of a strong countervailing public interest. Restrictions in the IPT proceedings were justified by confidentiality considerations and the nature of the issues justified the absence of an oral hearing. The Court further noted that according to Article 6 § 1 of the Convention, national security might justify the exclusion of the public from the proceedings. As to the policy of the authorities to "neither confirm nor deny", the Court found it was sufficient that an applicant be informed in those terms.

The Court emphasised the breadth and convenience of access to the IPT enjoyed by those complaining about interception within the United Kingdom. Bearing in mind the importance of secret surveil-

1. *Liberty and others v. the United Kingdom*, no. 58243/00.

lance to the fight against terrorism and serious crime, the Court considered that the restrictions on the applicant's rights in the context of the proceedings before the IPT were both necessary and proportionate and were not contrary to Article 6.

Article 13

Having regard to its conclusions in respect of Article 8 and Article 6 § 1, the Court considered that the IPT offered to the applicant an effective remedy insofar as his complaint was directed towards the alleged interception of his communications. In respect of the applicant's general complaint under Article 8, the Court reiterated that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms. The Court therefore dismissed the applicant's complaint under this Article.

Other relevant judgments

The judgments below can be consulted in the HUDOC database of the case-law of the European Convention on Human Rights – http://hudoc.echr.coe.int/

Grosaru v. Romania

Judgment of 2 March 2010. Concerns: Refusal to allocate a seat as a member of parliament under an electoral law that lacked clarity and with no effecive remedy to complain.

Alajos Kiss v. Hungary

Judgment of 20 May 2010. Concerns: Automatic disenfranchisement of a person under guardianship unjustified.

Saghinadze and others v. Georgia

Judgment of 27 May 2010. Concerns: Unlawful eviction of an internally displaced person.

Schalk and Kopf v. Austria

Judgment of 24 June 2010. Concerns: The European Convention of Human Rights does not oblige states to ensure the right to marry to homosexual couples.

Schwizgebel v. Switzerland

Judgment of 10 June 2010. Concerns: Refusal to authorise adoption, mainly on account of applicant's age, was not discriminatory.

Jehovah's Witnesses of Moscow v. Russia

Judgment of 10 june 2010. Concerns: Unjustified dissolution and refusal to re-register theJehovah's Witnesses religious community in Moscow.

Grzelak v. Poland

Judgment of 15 June 2010. Concerns: Failure to provide a pupil excused from religious instruction with ethics classes and marks associated therewith.

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

Execution of the Court's judgments

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

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

The applicant's individual situation

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

The prevention of new violations

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

In view of the large number of cases reviewed by the CM, only a thematic selection of those appearing on the agenda of the **1078th** and **1086th** Human Rights (HR) meetings[1] (2-4 March 2010 and 1-3 June 2010) is presented here. Further information on the below mentioned cases as well as on all the others is available from the Directorate General of Human Rights and Legal Affairs, as well as on the on the website of the Department for the Execution of Judgments of the European Court of Human Rights.

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

Interim and Final Resolutions are accessible through www.echr.coe.int on the Hudoc database: select "Resolutions" on the left of the screen and search by application number and/or by the name of the case. For resolutions referring to grouped cases, resolutions can more easily be found by their serial number: type in the "text" search field, between brackets, the year followed by NEAR and the number of the resolution. Example: "(2007) 75)".

1. Meetings specially devoted to the supervision of the execution of judgments.

2. Replacing the Rules adopted in 2001.

1078th and 1086th HR meetings – General Information

During the **1078nd** (2-4 March 2010) and **1086th** meetings (1-3 June 2010), the CM supervised payment of just satisfaction respectively in some 1 320 and 1 360 cases. It also monitored, in some 278 (1078th meeting) and 270 (1086th meeting) cases the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, re-opening domestic judicial proceedings, etc.) and, in some 1 753 and 4 593 cases respectively (sometimes grouped together), the adoption of general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The CM also started examining 274 (1078th meeting) and 471 (1086th meeting) new ECtHR judgments and considered draft final resolutions concluding, in 66 and 87 cases respectively, that states had complied with the ECtHR's judgments.

Main texts adopted at the 1078th and 1086th meetings

After examination of the cases on the agenda of the 1078th and 1086th meetings, the Deputies have in particular adopted the following texts.

Information documents opened to public access

During the period concerned, the Committee of Ministers decided to render public the information documents below. They are available on the website of the Department for the execution of judgments and on that of the Committee of Ministers.

- CM/Inf/DH (2010) 15: Round Table on "Effective remedies against non-execution or delayed execution of domestic court decisions" – Conclusions of the Round Table held in the Strasbourg, Council of Europe, 15-16 March 2010
- CM/Inf/DH (2010) 26E: Action of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights – Update of Memorandum CM/Inf/DH (2008) 33 – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) [1086th meeting]
- CM/Inf/DH (2010) 25E: Cases concerning the non-enforcement of final court or administrative decisions in Serbia – Progress achieved in implementing the Court's judgments and outstanding issues in respect of the general measures – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) [1086th meeting]
- CM/Inf/DH (2010) 22E: Cases concerning the non-enforcement of final domestic court decisions in Bosnia and Herzegovina – Progress achieved in executing the Court's judgments and outstanding issues – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) [1086th meeting]
- CM/Inf/DH (2010) 20E: Cases concerning the non-enforcement of final domestic decisions in Albania – General measures to comply with the European Court's judgments – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) [1086th meeting]

Selection of decisions adopted (extracts)

During the **1078th** and **1086th** meetings, the CM respectively examined 4543 and 7562 cases and adopted for each of them a decision, available on the CM website. 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 in detail in the decision its assessment of the situation. A selection of these decisions[3] is presented below, in alphabetical order of the member state concerned.

3. In cases indicated with an asterisk (*), where decisions have also been taken during the 1078th meeting, only the decisions of the 1086th meeting are presented.

33771/02, judgment of 13 November 2007, final on 2 June 2008
CM/Inf/DH (2010) 20

Driza and other similar cases v. Albania

Breach of the right to legal certainty because a final judgment of 1998 granting compensation for property nationalised during the communist regime was subsequently quashed twice by the Supreme Court, once in parallel proceedings and once by means of supervisory review (violation of Article 6§1); lack of impartiality of the Supreme Court due to the role of its president in the supervisory review proceedings and because a number of judges had to decide a matter on which they had already expressed their opinions, and even justify their earlier positions (violation of Article 6§1); the lack of enforcement of the final judgments also deprived the right of access to court of all useful effect (violation of Article 6§1); interference with the applicants' property rights and lack of effective remedies in this respect (violation of Article 1 of Protocol No. 1 alone and in conjunction with Article 13).

1086th meeting

The Deputies,

1. recalled that the questions raised in these cases concern the systemic problem of the non-enforcement of final domestic judgments and administrative decisions ordering restitution of properties nationalised during the communist regime or compensation of former owners;

2. welcomed the general measures taken so far by the Albanian authorities to remedy this important problem and took note of the issues still pending;

3. noted, however, that in order to evaluate fully the adequacy of measures proposed by the authorities, complementary information and explanations as well as a complete action plan/action report should be provided on those measures;

4. noted that additional information is also still awaited on the individual measures concerning the applicants in the cases of *Driza* and *Ramadhi*;

5. decided to declassify the memorandum prepared by the Department for the execution of judgments of the European Court of Human Rights (CM/Inf/DH (2010) 20), presenting the measures proposed by the Albanian authorities as well as the pending issues, and to resume consideration of these items at their 1100th meeting (December 2010) (DH), in the light of an action plan/action report to be provided by the Albanian authorities on individual and general measures.

Meltex Ltd and Mesrop Movsesyan v. Armenia

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

Unlawful interference with the applicant's right to freedom of expression on account of the refusal by the National Television and Radio Commission (NTRC), on seven occasions in 2002 and 2003, to deliver the applicant a broadcasting licence in the context of different tender calls. The refusals were not required by law to be motivated and the system did thus not provide adequate guarantees

1078th meeting

The Deputies,

1. took note with interest of the information provided by the Armenian government confirming the holding of a call for tenders, in which the applicant will be given the possibility to participate, in July 2010; recalled in this context the recommendations and declarations adopted by the Committee of Ministers on freedom of expression, media pluralism and diversity;

2. stressed the importance of the call for tender for the execution of this judgment and took note of the government's position according to which, while awaiting the issue of the procedure, no measure is possible in favour of the applicant company because any measure other than an effective and transparent conduct of a tender process would lead to a situation in which the rights of third parties would be infringed;

3. invited the Armenian authorities to keep the Committee of Ministers informed of the progress of the call for tenders and recalled that detailed information on the developments regarding the remedies pursued by the applicant before the competent national judicial authorities is awaited;

4. decided to resume consideration of this item at the latest at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided by the authorities.

Muradova v. Azerbaijan

22684/05, judgment of 2 April 2009, final on 2 July2009

Inhuman and degrading treatment inflicted on the applicant during the dispersion of a demonstration in October 2003 and lack of an effective investigation into the applicant's complaint lodged after the events (substantial and procedural violations of Article 3).

1086th meeting

The Deputies,

1. noted that following the judgment of the European Court, the Office of the Government Agent asked the Prosecutor General's Office to carry out an investigation of the facts of the case;

2. invited the Azerbaijani authorities to keep the Committee of Ministers informed of the development of the investigation in this case and recalled in this respect that to comply with the requirements of the Convention, such an investigation should be effective, conducted with reasonable speed and adequate public scrutiny and capable of leading to the identification and punishment of those responsible;

3. noted that the Court's judgment has been transmitted to the Ministry of Internal Affairs and the Prosecutor General's office for dissemination among police officers and prosecutors and invited the authorities also to disseminate the judgment to courts;

4. encouraged the authorities to organise as soon as possible the planned training for police officers and Prosecutors;

5. recalled that when authorities resort to the use of force, there should exist some form of independent monitoring of the action taken, to ensure accountability for the force used and invited the Azerbaijani authorities to inform the Committee rapidly of any existing monitoring of this kind and, where necessary, of any measure envisaged with a view to establishing such independent monitoring;

6. decided to resume consideration of this item at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided on individual and general measures.

Karanović v. Bosnia and Herzegovina
Jeličić and other similar cases v. Bosnia and Herzegovina

39462/03, judgment of 20 November 2007, final on 20 February 2008
41183/02, judgment of 31 October 2006, final on 31 January 2007
CM/Inf/DH (2010) 22

Karanović : *Non-enforcement since 2003 of a final decision of the former Human Rights Chamber of Bosnia and Herzegovina ("HRC") finding discrimination against persons returning to the Federation of Bosnia and Herzegovina ("the Federation") from the Republika Srpska ("RS"), after being internally displaced during the armed conflict, as they were not entitled to pension rights under the Federation fund, generally more favourable than those they had under the RS fund; the HRC ordered the transfer of the pension rights of these persons, including those of the applicant, to the Federation's pension fund and the payment of the difference in pension as from the date of application to the HRC (violation of Article 6§1).*

Jeličić and 4 other cases: *Failure by the Administration to abide by final domestic judgments; violation of applicants' right to protection of their property (violation of Article 6§1 and of Article 1 of Protocol No. 1).*

1086th meeting

The Deputies,

1. noted that the authorities of Bosnia and Herzegovina have taken legislative and budgetary measures aimed at preventing non-enforcement of court decisions ordering the release of "old savings";

2. invited the authorities of Bosnia and Herzegovina to clarify whether there are still court decisions ordering the release of "old savings" that have not been enforced within their jurisdiction;

3. noted that the legislative initiatives aimed at abolishing the difference in treatment with respect to pension rights have not produced any result in the Federation of Bosnia and Herzegovina;

4. encouraged the authorities of Bosnia and Herzegovina to intensify their efforts with a view to finding an appropriate solution to eliminate the difference in treatment with respect to pension rights;

5. invited the authorities of Bosnia and Herzegovina to determine the exact number of pensioner returnees from the Republika Srpska to the Federation of Bosnia and Herzegovina that are entitled to payment of a difference in pension;

6. decided to declassify Memorandum CM/Inf/DH (2010) 22;

7. invited the authorities of Bosnia and Herzegovina to provide the Committee with further information on the outstanding issues identified in the Memorandum;

8. decided to resume consideration of this case at their 1100th meeting (December 2010) (DH), in the light of further information to be provided on the outstanding general measures.

27996/06, judgment of 22 December 2009 – Grand Chamber

Sejdić and Finci v. Bosnia and Herzegovina*

Discriminatory violation of the applicants' right to free elections in that, as citizens of Roma and Jewish origin, they were ineligible to stand for election because they were not affiliated to a "constituent people" (i.e. Bosniacs, Croats and Serbs) as required by the Constitution (violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1 as regards election to the House of Peoples and violation of Article 1 of Protocol No. 12 as regards election to the Presidency).

1086th meeting

The Deputies,

1. expressed concern for the lack of political consensus on the content of the constitutional and legislative amendments necessary to execute the present judgment;

2. observed that the measures envisaged in the action plans that had been previously submitted to the Committee of Ministers have not been taken within the deadlines provided therein;

3. took note, however, of the statement of the Minister of Foreign Affairs of Bosnia and Herzegovina, Mr Sven Alkalaj, made during the 120th Ministerial Session, that "as a member of the Council of Europe, Bosnia and Herzegovina is obliged to respect the judgment and [it] intends to do so" and that "the effective implementation of the judgment is of crucial political and legal importance for [Bosnia and Herzegovina] and represents a great challenge for Bosnia and Herzegovina";

4. strongly encouraged the authorities of Bosnia and Herzegovina to bring the country's Constitution and its Electoral Code in line with the Convention as a matter of priority;

5. reiterated its call upon the authorities of Bosnia and Herzegovina to take into account the relevant opinions of the Venice Commission in this regard;

6. invited the authorities of Bosnia and Herzegovina to continue keeping the Committee informed of the developments regarding the measures to be taken;

7. decided to resume consideration of this case at the latest at their 1100th meeting (December 2010) (DH), in the light of further information to be provided on general measures.

27912/02, judgment of 3 November 2009, final on 3 February 2010

Suljagić v. Bosnia and Herzegovina

Violation of the applicant's right to protection of his property ("old" foreign currency savings) due to the deficient implementation of the domestic legislation (violation of Article 1 of Protocol No. 1).

1086th meeting

The Deputies,

1. noted that authorities of the Federation of Bosnia and Herzegovina have issued the government bonds intended for the repayment of "old savings" and undertook to pay default interest at the statutory rate in the event of late payment of any forthcoming instalment related to "old savings";

2. noted further that the relevant deadlines have been extended throughout Bosnia and Herzegovina to enable those who have not yet obtained a verification certificate in respect of their "old savings" to obtain such a certificate;

3. noted with interest that the authorities of Bosnia and Herzegovina have already taken steps to ensure that until 3 August 2010 at the latest any outstanding instalment in respect of "old savings" is paid in the Federation of Bosnia and Herzegovina;

4. invited the authorities of Bosnia and Herzegovina to keep the Committee of Ministers informed of the developments regarding the payment of outstanding instalments in respect of "old savings" in the Federation of Bosnia and Herzegovina;

5. decided to resume consideration of this case at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided on individual and general measures.

38736/04, judgment of 31 July 2007, final on 30 January 2008, rectified on 24 January 2008

FC Mretebi v. Georgia

Infringement of the right of access to a court and thus to a fair hearing, in that the applicant, the Football Club Mretebi, could not continue proceedings for damages following the refusal by the Supreme Court to grant its request for exemption from court fees (violation of Art. 6§1).

1078th meeting

The Deputies,

1. welcomed the draft amendments to the Code of civil procedure which will allow a judgment of the European Court of Human Rights to be regarded as a new fact allowing the re-examination or the reopening of civil proceedings;

2. took note that these amendments, once adopted, will enable the FC Mretebi to ask for the re-examination of the proceedings, as suggested by the European Court in its judgment;

3. welcomed the fact that these amendments are part of the implementation of Committee of Ministers' Recommendation No. R (2000) 2 of to member states 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 this item at the latest at their 1092nd meeting (September 2010) (DH), in the light of information to be provided on the follow-up of the procedure of amendment and on the individual measures awaited in this case.

Olaru and others v. Moldova*

476/07+, judgment of 28 July 2009, final on 28 October 2009, of 6 April 2010 – Friendly settlement (just satisfaction in the Lungu application, 17911/08) and of 20 April 2010, possibly final on 20 July 2010 – Striking-out (just satisfaction in the Racu application, 13136/07)

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 Article 6 and Article 1 of Protocol No. 1).

1086th meeting

The Deputies,

1. welcomed the government's commitment to execute the pilot judgment, as demonstrated by the participation of the Justice and Finance Ministers in the Round Table on the issue of effective domestic remedies held in Strasbourg on 15 and 16 March 2010;

2. noted with interest that the Moldovan authorities recommend introducing a remedy covering all cases of non-enforcement and unreasonably delayed enforcement of domestic judicial decisions and that draft laws in this respect have already been prepared;

3. observed, however, that the deadline set by the Court for introducing the remedy required by the pilot judgment had expired;

4. strongly encouraged the Moldovan authorities to give priority to making the general remedy which they have recommended into a practical reality, at the same time ensuring that it fully meets the requirements of the Convention;

5. further encouraged the Moldovan authorities to complete as soon as possible the process of identifying all persons benefiting from a domestic judicial decision entitling them to social housing and rapidly to find appropriate solutions;

6. took note of the information provided by the Moldovan authorities concerning the settlement of individual applications which were submitted to the Court before the delivery of the pilot judgment, and invited them to enhance their efforts to provide the applicants concerned with appropriate redress within the time-limit set by the Court;

7. decided to resume consideration of this case at their 1092nd meeting (September 2010) (DH) in order to assess the progress made in implementing the measures mentioned above.

Orchowski and Sikorski Norbert v. Poland

17885/04, judgment of 22 October 2009, final on 22 January 2010
17599/05 , judgment of 22 October 2009, final on 22 January 2010

Inhuman and degrading treatment of the applicants due to their imprisonment in inadequate conditions (as from 2001 and 2003), particularly overcrowding (violations of Article 3).

1078th meeting

The Deputies,

- recalled that the European Court found that overcrowding in Polish prisons and remand centres stems from a persistent structural dysfunction and underlined that consistent and long-term efforts by the authorities must be undertaken to achieve compliance with Article 3;
- welcomed the information that Mr Sikorski has been conditionally released and Mr Orchowski transferred to a prison which is not affected by overcrowding;
- noted that on 26 February 2010 the Polish authorities submitted an action report and an action plan, presenting practical measures taken and envisaged, as well as relevant legislative measures adopted or under way, intended to remedy the systemic problem of overcrowding in prisons and considered that this recent information still needed more in-depth assessment and some clarification;
- underlined, however, that additional information is already necessary to allow full assessment, particularly on the impact of the measures adopted and on a provisional timetable, and on the impact expected from the additional measures envisaged;
- thus strongly encouraged the authorities to continue their efforts to remedy the structural problem revealed by these judgments and to provide to the Committee the additional information awaited, as well as any relevant information on the implementation of the authorities' action plan;
- decided to resume consideration of these cases at their 1086th meeting (June 2010) (DH), in the light of the action report and action plan completed by the authorities.

Străin and other similar cases v. Romania Viaşu v. Romania

57001/00, judgment of 21 July 2005, final on 30 November 2005
75951/01, judgment of 9 December 2008, final on 9 March 2009

Violation of the applicants' right to the peaceful enjoyment of their possessions on account of the failure to restore to their owners properties nationalised by the earlier communist regime as a result of the sale of the properties by the state to third persons; absence of any clear domestic rules on compensation to the owners in such situations (violations of Article 1 of Protocol No. 1).

1078th meeting

The Deputies,

1. recalled that the questions raised in these cases concern an important systemic problem, related particularly to the failure to restore or award compensation for property which had been nationalised and subsequently sold by the state to third parties;

2. noted that the European Court underlined, in particular in the Viaşu judgment, that the problem had its origin in deficient Romanian legislation and an administrative practice concerning the restitution of nationalised property; that the authorities must assure, by appropriate legal and administrative measures, the effective and rapid implementation of the right to restitution and that those objectives might be chiefly achieved by amending the current restitution mechanism and establishing simplified and efficient procedures as a matter of urgency;

3. also noted that, given the large number of similar applications before it, the European Court has considered it appropriate to apply the pilot judgment procedure in two cases raising the same issues [*Solon v. Romania* (No. 33800/06) and *Atanasiu and Poenaru v. Romania* (No. 30767/05)];

4. noted with interest in this context the action plan submitted by the Romanian authorities on 25 February 2010 and invited them to submit complementary information, in particular a projected calendar for the adoption of the measures envisaged;

5. recalled, however, that in order fully to assess the relevance of the

measures proposed by the authorities, a comprehensive action report is needed on the measures taken to date, in particular precise and exhaustive statistical data on the current progress of the compensation process for owners whose property rights have been prejudiced and on the number of claimants yet to be compensated;

6. recalled that information is also still awaited on the current situation of a number of applicants;

7. decided to resume consideration of these items at the latest at their 1100th meeting (December 2010) (DH), in the light of additional information to be provided by the authorities on general measures, as well as on individual measures.

33509/04, judgment of 15 January 2009, final on 4 May 2009
58263/00, judgment of 23 October 2003, final on 23 January 2004
CM/Inf/DH (2006) 19rev2, CM/Inf/DH (2006) 19rev3, CM/Inf/DH (2006) 45, Interim Resolution CM/ResDH (2009)43, Interim Resolution CM/ResDH (2009) 158

Burdov No. 2 v. Russian Federation*
Timofeyev and other similar cases v. Russian Federation*

Violation of the applicants' right to a court due to the structural problem of the social authorities' failure to enforce final judicial decisions in the applicant's favour, including decisions ordering to pay certain compensation and (violations of Article 6§1 and of Article 1 of Protocol No. 1); lack of an effective remedy in respect of the continued non-enforcement of the judgments in the applicant's favour (violation of Article 13).

1086th meeting

The Deputies,

1. welcomed the Russian authorities' adoption of the reform to introduce the domestic remedy for non-enforcement or delayed enforcement of domestic judicial decisions;

2. strongly encouraged the Russian authorities, particularly the higher judicial bodies, to take any necessary step to ensure the coherent application of the reform in accordance with the requirements of the Convention;

3. encouraged the Russian authorities to bring to an end the settlement of the "frozen" individual petitions having regard to the extension of the time allowed by the Court in this respect;

4. invited the Russian authorities to provide information on the other measures, taken or envisaged, to resolve the problems underlying violations of the Convention;

5. decided to resume consideration of these cases not later than the 1100th meeting (December 2010) (DH) in the light of information to be provided by the Russian authorities on the progress made with these measures.

57942/00 and 57945/00, judgment of 24 February 2005, final on 6 July 2005
CM/Inf/DH (2006) 32rev2, CM/Inf/DH (2008) 33, CM/Inf/DH (2008) 33add, CM/Inf/DH (2009) 32

Khashiyev and Akayeva and other similar cases v. 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 Articles 2, 3, 5, 8, 13 and of Article 1 of Protocol No. 1). Failure to co-operate with the ECHR organs contrary to Article 38 of the ECHR in several cases.

1086th meeting

The Deputies,

1. decided to declassify Memorandum CM/Inf/DH (2010) 26;

2. invited the Russian authorities to provide information on the concrete measures taken in response to the issues raised in Memorandum CM/Inf/DH (2010) 26, as well as on their effects in practice;

3. noted that consultations between the Russian authorities and the Secretariat concerning the questions related to the safeguards applicable in case of deprivation of liberty, whatever its nature and legal status, in particular in the course of anti-terrorist related operations, and domestic investigations into alleged abuses are still ongoing;

4. decided to resume consideration of these cases at their 1092nd meeting (September 2010) (DH).

3102/05, judgment of 21 June 2007, final on 21 September 2007
CM/Inf/DH (2010) 25

EVT Company and other similar cases v. Serbia

Breach of the applicants' right to a fair trial and to peaceful enjoyment of their possessions through the authorities' failure to effectively carry out the enforcement proceedings (violation of Article 6§1 and of Article 1 of Protocol No. 1); lack of an effective remedy in this respect (violation of Article 13).

1086th meeting

The Deputies,

1. noted that the Serbian authorities have taken a number of measures, in particular the preparation of the draft Enforcement Act, with a view to improving the efficiency of enforcement procedures;

2. invited the Serbian authorities to inform the Committee as to the timetable for the adoption of this draft Act, as well as the measures taken to ensure its effective implementation;

3. observed that problems related to the non-enforcement of court decisions rendered in respect of socially owned companies are a major issue of concern as there are already over 400 similar applications pending before the European Court;

4. strongly encouraged the Serbian authorities to take the necessary measures to find appropriate solutions to this problem, first, by identifying the number of such unenforced decisions and making a global assessment of the aggregated debt arising from these decisions and second by ensuring its payment;

5. decided to declassify Memorandum CM/Inf/DH (2010) 25;

6. invited the Serbian authorities to provide the Committee with further information on the outstanding issues identified in the Memorandum;

7. decided to resume consideration of these cases at their 1100th meeting (December 2010) (DH), in the light of further information to be provided on individual and general measures.

Cyprus v. Turkey

25781/94, judgment of 10 May 2001 – Grand Chamber
CM/Inf/DH (2008) 6, CM/Inf/DH (2007) 10/1rev, CM/Inf/DH (2007) 10/3rev, CM/Inf/DH (2008) 6/5, CM/Inf/DH (2009) 39; Interim Resolutions ResDH (2005) 44 and CM/ResDH (2007) 25

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning:
– Greek Cypriot missing persons and their relatives (violation of Articles 2, 5, 3);
– Home and property of displaced persons (violation of Articles 8 and 13 and Article 1 of Protocol No. 1);
– Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Articles 3, 8, 9, 10 and 13, and Articles 1 and 2 of Protocol No. 1);
– Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Article 6).

1078th meeting

The Deputies,

Concerning the question of missing persons:

1. took note with interest of the presentation of the CMP's activities made at the meeting by the Turkish delegation;

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

3. noted in this respect with satisfaction that, according to the information provided, the Turkish authorities had acceded to several requests from the CMP for access to places situated in military zones;

4. insisted on their request that the Turkish authorities inform them already now of the concrete measures envisaged in the continuity of the CMP's work with a view to the effective investigations required by the judgment;

5. decided to resume consideration of this issue at their 1086th meeting (June 2010) (DH).

Concerning the property rights of enclaved persons:

6. recalled that the Secretariat had already presented its assessment of this issue in the Information Document CM/Inf/DH (2009) 39, which had been presented at the 1065th meeting (September 2009)(DH) and that, in this respect, the Committee had noted that a number of questions still needed to be examined in depth;

7. recalled also that, in this context, the Cypriot delegation had proposed to submit its own assessment and that, at its request, the Committee had asked the Turkish authorities to provide, before 15 December 2009, a copy of the entirety of the legislation, as amended, and related decisions relevant for the examination of this issue, in particular the entire text of "Law No. 41/77";

8. noted that the Turkish authorities had provided within the time-limit set the legislative texts and a related decision they considered relevant for the examination of this issue, as well as the entire text of "Law No. 41/77";

9. noted that the Cypriot delegation considered that it should have at its disposal additional documents in order to be able to assess this issue and offered to explain in writing, for the June 2010 meeting (DH), the reasons why the following documents seem indispensable for this delegation:

- all the decisions of the "Council of Ministers" under "Article 3 of Law No. 41/77" and under "Articles 2 of laws Nos. 32 and 33 of 1975", accompanied by their English translation;
- "Law No. 27/82", accompanied by its English translation;
- "Law No. 52/95", accompanied by its English translation;
- "Law No. 39/98", accompanied by its English translation;

10. decided to resume consideration of this issue at their 1086th meeting (June 2010) (DH) with a view to assessing the relevance of the texts requested by the Cypriot delegation for the examination of this question.

Concerning the property rights of displaced persons:

11. decided to resume consideration of this issue at their 1086th meeting (June 2010) (DH).

Hulki Güneş and other similar cases v.Turkey*

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

Unfair criminal proceedings (judgments final 1994-99), 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 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 Articles 6 §§ 1 and 3, 3 and 13).

1086th meeting

The Deputies,

1. observed that the draft law allowing the reopening of proceedings in the applicants' cases is still before Parliament for adoption;

2. noted that the Turkish authorities informed the Committee that Parliament will resume the debate on the draft law after the summer recess;

3. urged the Turkish authorities to bring the legislative process to an end without any further delay;

4. decided to resume consideration of these items at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided.

Kakoulli and other similar cases v. Turkey

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

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

1078th meeting

The Deputies,

Concerning the individual measures:

1. recalled, as regards the Kakoulli case, that the Prosecutor General found, in a decision of 28 March 2007, that a new investigation was impossible at present, particularly since Mr Kakoulli's body was buried in the southern part of Cyprus;

2. recalled that the Cypriot authorities have indicated in this respect that it would be possible to carry out a further forensic examination of Mr Kakoulli's body;

3. found that the other grounds indicated in support of the above mentioned decision do not seem sufficient to justify the absence of a new investigation;

4. considered that, in these circumstances, it is for the competent Turkish authorities to reassess the possibility of carrying out a new investigation into the death of Mr Kakoulli and invited them to submit information in this respect;

5. noted, furthermore, with concern that no information has been provided to date on the individual measures required in the cases of Isaak and Solomou and invited the Turkish authorities to submit information in this respect;

Concerning the general measures:

6. noted that it was not clear from the information provided that the regulatory framework governing the use of firearms by the security forces requires that the use of force must be "absolutely necessary", that is to say strictly proportionate to the circumstances, and invited the Turkish authorities to provide clarifications in this respect;

7. recalled, moreover, that information is also awaited in the framework of the Isaak and Solomou cases, in particular on the regulatory framework governing the use of force and firearms by the police forces and on the measures taken to ensure that effective investigations are carried out into the killings of civilians in the northern part of Cyprus;

39437/98, judgment of 24 January 2006, final on 24 April 2006
Interim Resolutions CM/ResDH (2007) 109 and CM/ResDH (2009) 45, DD (2009) 556

Ülke v. Turkey*

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

1086th meeting

The Deputies,

1. took note of the information provided by the Turkish authorities according to which work on legislative amendments is currently being examined by the monitoring group on legislative reforms and that several authorities concerned have been invited to give an opinion on this amendment;

2. urged the Turkish authorities to ensure that the legislative work aiming at remedying the applicant's situation is carried out without further delay;

3. decided to resume consideration of this case at their 1092nd meeting (September 2010) (DH), in the light of further information to be provided by the Turkish authorities.

16064/90+, judgment of 18 September 2009 – Grand Chamber

Varnava and others v. Turkey

Failure to conduct effective investigations into the fate of nine Greek Cypriots who had disappeared during the military operations carried out by Turkey in Cyprus in 1974; inhuman treatment of the relatives of the missing persons due to the authorities' silence in face of their real concerns; failure to conduct effective investigations into the whereabouts of two of the nine missing men, in respect of whom there has been an arguable claim that they had been detained at the time of their disappearance (violation of Articles 2, 3 and 5).

1078th meeting

The Deputies,

1. noted that the Court, while fully acknowledging the importance of the CMP's activities and giving full credit to its work, also underlined that "important though these measures are as a first step in the investigative process, they do not exhaust the obligation under Article 2";

2. insisted therefore on their request that the Turkish authorities inform them already now of the measures envisaged in the prolongation of the CMP's work with a view to the effective investigations required by this judgment,

3. decided to resume consideration of this case at their 1086th meeting (June 2010) (DH).

56848/00, judgment of 29 June 2004, final on 29 September 2004
40450/04, judgment of 15 October 2009, final on 15 January 2010
CM/Inf/DH (2007) 30rev CM/Inf/DH (2007) 33 Interim Resolution CM/ResDH (2008) 1, Interim Resolution CM/ResDH (2009) 159

Zhovner and other similar cases v. Ukraine*
Yuriy Nikolayevich Ivanov v. Ukraine*

Violations of the applicants' right of access to a court on account of the state authorities' failure or serious delay in complying with final judicial decisions delivered in the applicants' favour; violations of the applicants' right to protection of their property and lack of an effective remedy in this respect (violations of Article 6 §1, Article 1 of Protocol No. 1 and Article 13).

1086th meeting

The Deputies,

1. recalled that the Committee of Ministers has been supervising execution by Ukraine of judgments regarding non-enforcement of domestic judicial decisions since 2004 and that the lack of progress in resolving this structural problem has already given rise to two Interim resolutions (CM/ResDH (2008) 1 and CM/ResDH (2009) 159) and a pilot judgment of the Court;

2. took note of the information provided at the present meeting on different initiatives addressing certain problems underlying the repetitive violations of the Convention;

3. underlined, however, that this information needs to be assessed by the Committee of Ministers bearing in mind all other initiatives previously reported in the context of the execution of these judgments;

4. strongly hoped in this respect that consultations will be held between the Secretariat and the Ukrainian authorities at the appropriate level in order to clarify the situation;

5. decided to resume consideration of these cases at their 1092nd meeting (September 2010) (DH) in the light of further information to be provided by the authorities and of the results of the consultations.

Hirst No. 2 v. the United Kingdom*

74025/01, judgment of 6 October 2005 – Grand Chamber
Interim Resolution CM/ResDH (2009) 160

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

1086th meeting

The Deputies,

1. recalled that in the present judgment, delivered on 6 October 2005, the Court found that the general, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote, fell outside any acceptable margin of appreciation and was incompatible with Article 3 of Protocol No. 1 to the Convention;

2. recalled that in December 2009, the Committee of Ministers adopted Interim Resolution CM/ResDH (2009) 160, in which it expressed serious concern that the substantial delay in implementing the judgment had given rise to a significant risk that the United Kingdom general election in 2010 would be performed in a way that fails to comply with the Convention, and urged the respondent state to rapidly adopt measures to implement the judgment;

3. recalled further that in March 2010 the Committee reiterated its serious concern that a failure to implement the Court's judgment before the general election and the increasing number of persons potentially affected by the restriction could result in similar violations affecting a significant category of persons, giving rise to a substantial risk of repetitive applications to the European Court;

4. expressed profound regret that despite the repeated calls of the Committee, the United Kingdom general election was held on 6 May 2010 with the blanket ban on the right of convicted prisoners in custody to vote still in place;

5. expressed confidence that the new United Kingdom government will adopt general measures to implement the judgment ahead of elections scheduled for 2011 in Scotland, Wales and Northern Ireland, and thereby also prevent further, repetitive applications to the European Court;

6. decided to resume consideration of this case at their 1092nd meeting (September 2010) (DH), in the light of a draft interim resolution to be prepared by the Secretariat if necessary.

S. and Marper v. the United Kingdom

30562/04+, judgment of 4 December 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 Article 8)

1078th meeting

The Deputies,

1. recalled the progress made in the execution of this judgment, as summarised in the Committee of Ministers' decision of 3 December 2009 (1072nd DH meeting);

2. recalled the fact that a number of important questions remained outstanding, and that the Committee requested, accordingly, that the Secretariat rapidly clarify such questions bilaterally with the United Kingdom authorities;

3. welcomed the rapid organisation of the bilateral consultations and the constructive climate in which they were engaged and took note of the information provided as to the issues discussed and the results obtained (see also document DD (2010) 119E);

4. noted in particular that following the Court's judgment Article 8 of the Convention is now applicable to the retention of the data at issue so that the value of retention has to be weighed against the individuals' right to respect for private life, but that the bilateral consultations have not so far permitted arrival at a common understanding as to how certain factors deemed relevant by the Court for this exercise are reflected in the current proposals, in particular as to whether

- the latest research material presented by the Government constitutes such an important development, as compared to the factors taken into account by the Court and the material available to it, as to now provide the "weighty reasons" required by the Court to justify a difference in treatment of persons in the applicants' situation, compared to that of other unconvicted people (§123 of the judgment);
- the draft proposals have adequately addressed the problem identified by the Court that "there is no provision for independent review of the justification for the retention according to defined criteria, including such factors as the seriousness of the offence, previous arrests, the strength of the suspicion against the person and any other special circumstances" (§119 of the judgment).

5. noted in this context also the recent positions taken by the Information Commissioner in his expert evidence to the United Kingdom Parliament on 23 February 2010 and the United Kingdom Parliament Joint Committee of Human Rights on 2 March 2010;

6. recalled the urgency of resolving these outstanding issues as the Crime and Security Bill is currently being examined by Parliament;

7. welcomed the Secretariat's and the United Kingdom authorities' intention to continue their consultations and underlined the importance of rapidly conveying the results to the Committee in an appropriate form, accessible also for the national decision making process;

8. decided to resume consideration of this item at their 1086th meeting (June 2010) (DH).

Interim resolutions (extracts)

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted four **interim resolutions**. 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.

An extract from these Interim Resolutions adopted is presented below.

The full text of the resolutions is available on the website of the Department for the Execution of Judgments of the European Court of human Rights, the Committee of Ministers' website and the HUDOC database of the European Court of Human Rights.

Interim Resolutions adopted at the 1078th meeting

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

Interim Resolution CM/ ResDH (2010) 34 Oliveira Modesto and other similar cases v. Portugal

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

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

As regards the individual measures,

Urged the Portuguese authorities to provide for acceleration as much as possible of the pending proceedings, in order to bring them to an end as soon as possible;

As regards the general measures concerning

Civil proceedings

Urged the authorities to envisage the adoption of *ad hoc* measures to reduce the civil backlog by giving priority to the oldest cases and to cases requiring particular diligence;

Encouraged them to pursue actively their efforts to ensure reduction of the length of civil proceedings, especially before first-instance courts and to assure appropriate monitoring of the reform of 2007 so as to evaluate its effects;

Invited the authorities also to submit information and statistical data on the general trend before family courts, no information being currently available on this issue;

Criminal proceedings

Encouraged the Portuguese authorities to continue their efforts in monitoring the reform, in view of a full consolidation of its positive effects on the average length of proceedings, including those before first-instance criminal courts;

Administrative proceedings

Strongly encouraged the Portuguese authorities to pursue actively their efforts to reduce the length of administrative and fiscal proceedings, in particular before first-instance courts;

Invited them to continue appropriate monitoring of the implementation of the reform of 2004, so as to be able to evaluate its impact on length of proceedings, and to keep the Committee of Ministers informed of any development on this issue.

Enforcement proceedings

Encouraged the Portuguese authorities to continue their efforts to ensure that the recent reform of enforcement proceedings fully contributes to the acceleration of such proceedings;

Called upon the authorities to assess the effects of the reform as it proceeds, with a view to adopting, if appropriate, any further measures necessary to ensure its effectiveness, and to keep the Committee of Ministers informed of the developments in this field.

Measures for improving the efficiency of the judiciary

Invited the Portuguese authorities to assess the effects of the measures adopted, to take any further necessary measures, if appropriate, to improve their effectiveness and to keep the Committee of Ministers informed of this assessment and on possible developments on this issue;

Measures regarding effective remedies

Encouraged the authorities to pursue their efforts to introduce the remedy for harmonisation of the domestic courts' case-law as soon as possible;

Invited them to provide information on the current practice of courts and its evolution following the Court's judgment in the Martins Castro and Alves Correia de Castro case;

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

- at the end of 2010 as far as the issue of an effective remedy is concerned;
- in mid-2011 as far as the issue of excessive length of judicial proceedings is concerned.

47095/99, judgment of 15 July 2002, final 15 October 2002
Interim Resolution ResDH (2003) 123

Interim Resolution CM/ ResDH (2010) 35 Kalashnikov and other similar cases v. the Russian Federation

Poor conditions of pre-trial detention amounting to degrading treatment and lack of effective remedies; excessive length of this detention; excessive length of criminal proceedings (violation of Articles 3 and 13, 5§3 and 6§1).

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

Encouraged the Russian authorities to pursue the ongoing reforms with a view to aligning the conditions of detention in remand prisons with the requirements of the Convention, taking also into account the relevant standards and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Expressed concern that, notwithstanding the measures adopted, a number of remand prisons in Russia still do not afford the personal space guaranteed by domestic legislation, and remain overpopulated;

Strongly encouraged the Russian authorities to give priority to reforms aiming at reducing the number of persons detained on remand and to other measures combating the overcrowding of remand facilities by

- ensuring that judges, prosecutors and investigators consider and use detention on remand as a solution of last resort and make wider use of alternative preventive measures;
- ensuring the availability at the national level of effective preventive and compensatory remedies allowing adequate and sufficient redress for any viola-

tion of Article 3 resulting from poor conditions of detention on remand;

Invited the authorities to keep the Committee of Ministers informed of progress in the implementation of general measures to comply with their obligations under the Convention, notably by providing statistics regarding the number of remand prisoners and information on the conditions of their detention;

Decided to resume the examination of these cases at the latest at the first DH meeting in 2011.

Interim Resolution CM/ResDH (2010) 33 Xenides-Arestis v. Turkey

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

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

Declared that Turkey's continuing refusal to comply with the judgment of the Court is in flagrant conflict with its international obligations, both as a High Contracting Party to the Convention and as a member state of the Council of Europe;

In view of this situation, which gives serious cause for concern, strongly urged Turkey to review its position and to pay without any further delay the just satisfaction awarded to the applicant by the Court, as well as the default interest due.

46347/99, judgment of 7 December 2006, final on 23 May 2007
Interim Resolution CM/ResDH (2008) 99; CM/Inf/DH (2007) 19, CM/Inf/DH (2010) 21

Interim Resolution adopted at the 1086th meeting

Interim Resolution CM/ResDH (2010) 83 Ben Khemais v. Italy

Failure to comply with an interim measure ordered by the ECtHR, thus hindering the effective exercise of the right of petition to the ECtHR: the applicant's expulsion to Tunisia in June 2008, in spite of the ECtHR's order to suspend it, prevented the ECtHR from effectively examining his complaint that he risked being tortured in Tunisia. Furthermore, the applicant had no effective remedy to challenge the deportation order before Italian courts (violation of Articles 3 and 34).

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

Firmly recalled the obligation of the Italian authorities to respect interim measures indicated by the Court;

Urged the Italian authorities to take all necessary steps to adopt sufficient and effective measures to prevent similar violations in the future;

Decided to examine the implementation of this judgment at each human rights meeting until the necessary urgent measures are adopted.

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

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 1078th and 1086th meetings, the CM adopted respectively 18 and 62 Final Resolutions (closing respectively the examination of 66 and 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 1078th meeting

Resolution CM/ResDH (2010) 1 Moser v. Austria

Violation by a domestic court of the right to respect for family life of a mother and her son (both Serbian nationals) as the child was placed with foster parents eight days after his birth in 2000 and custody transferred to the Youth Welfare Office without alternative solutions having been explored in an appropriate manner (violation of Article 8); violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Article 6§1).

Individual measures

The European Court awarded just satisfaction for non-pecuniary damages sustained by the first applicant.

In 2005 the foster-parents moved to Tulln, a town situated 36km from Vienna, where the visits are taking place since. The visits are conducted with the help of the social services to ensure that the relationship between the applicants is continued without putting the child in a situation of conflict. The foster-parents are not present during the visits due to the tense relationship between the first applicant and the foster-mother.

In June 2008 the foster-parents divorced. Since then the foster-mother has had sole custody of the child.

1. Proceedings on the first applicant's request for extended visiting rights

On 12 July 2007 the first applicant requested an extension of her visiting rights. On 22 May 2009, after having held several hearings, the Tulln District Court dismissed the applicant's request, essentially on the ground of an expert opinon from a child psychologist appointed by the Court concluding that maintaining the existing visiting rights was in the best interest of the child. On the applicant's appeal, on 7 October 2009 the St. Pölten Regional Court, after holding a

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

hearing at which the first applicant, the foster-mother and the representative of the social services were heard, decided to extend the monthly visiting rights from two to three hours, and determined that further visits should take place around the applicants' birthdays and Christmas.

It also ordered the Vienna Youth Welfare Office to inform the first applicant of all important developments concerning the second applicant. It dismissed the first applicant's further request to see her son unaccompanied at shorter intervals. Acknowledging the difficulties incurred by all parties, the court appealed to mutual understanding of the various positions and welcomed the first applicant's reasonable approach towards extending visiting rights smoothly according to the needs of the child.

2. Proceedings on the first applicant's residence status

On 15 October 2008 the Ministry of the Interior rejected the first applicant's request to prolong her residence permit (proceedings having already been pending at the time of the European Court's judgment) for failure to submit the necessary documents requested by the authorities. On 14 April 2009 the first applicant lodged a complaint with the Administrative Court against this decision. She also requested that suspensive effect be granted, which the Administrative Court granted on 17 April 2009. The proceedings are pending before the Administrative Court.

The Austrian authorities consider that given the direct effect granted to the Convention and the case-law of the European Court in Austria, the Administrative Court will examine the applicant's situation in the light of the decision of 7 October 2009 concerning her visiting rights and taking into account her rights under Article 8 of the Convention as well as the European Court's judgment in this case. The authorities moreover give assurances that her rights will be taken into consideration in future decisions concerning her situation with regard to her rights in respect of her child.

General measures

1. Violation of Article 8

The Austrian authorities stated that, considering the direct effect of the Convention and the European Court's case-law in Austria, the publication of the judgment of the European Court and its dissemination to the competent authorities and courts should prevent similar violations. For this purpose, the Federal Chancellery, on 6 February 2007, sent out a summary of the judgment to the relevant Austrian authorities as well as to Parliament and courts (see http://www.bka.gv.at/DocView.axd?CobId=20443). A summary version of the judgment was published in German in the *Newsletter* of the Austrian Institute for Human Rights (NL 2006, p. 226, NL 06/5/02), available online at http://www.menschenrechte.ac.at/docs/06_5/06_5_02, together with a link to the Court's judgments in English.

2. Violations of Article 6§1

a. Equality of arms: The violation appears to be an isolated incident resulting from the particular circumstances of the case. In 2002, in the context of the Buchberger case (Section 6.2), the Austrian authorities provided several decisions of the Supreme Court to illustrate its constant jurisprudence according to which the principle of equality of arms is fully implemented, even in proceedings conducted under the Non-Contentious Proceedings Act, as in the present case.

b. Lack of a public hearing and of public pronouncement: The reformed Austrian Non-Contentious Proceedings Act (entry into force on 1 January 2005) gives the judge discretion to hold family-law and guardianship proceedings in public and contains criteria for the exercise of such discretion (§50 of the judgment). It also allows for public pronouncement of decisions (Section 36 of the reformed Act). In this context, the publication and dissemination of the judgment mentioned above will enable domestic courts to apply theses provisions in accordance with the requirements of the Convention. It is also recalled that the judgments of the European Court against Austria in respect of cases under the Code of Civil Procedure are automatically transmitted to the President of the Supreme Court and the Presidents of the four Courts of Appeal (*Oberlandesgerichte*) with the request to disseminate it to all subordinate judicial authorities and to inform the authorities directly involved in the violation.

26103/95, judgment of 21 January 1999 – Grand Chamber

Resolution CM/ResDH (2010) 2 Van Geyseghem and other similar cases v. Belgium

Infringements of the right to legal assistance of their own choosing at different stages of criminal proceedings and of the right of access to a tribunal (applicants failing to appear and refusing to comply with warrants for their arrest) (violations of Article 6§1 combined with Article 6§3c)).

Individual measures

In the case of Van Geyseghem, the sentence imposed on the applicant has been time-barred since 14 June 98.

In the cases of Stroek and Goedhart, on 29 November 2001 the Belgian authorities partly pardoned the applicant, as a result of the international arrest warrants taken out against them have been declared void.

In the Pronk case, the applicant's sentence has been time-barred since 1 October 2008 and, in the Stift case, since 29 June 2008.

In addition, a law allowing the reopening of criminal proceedings following a judgment of the European Court was passed on 1 April 2007. The Act entered into force on 1 December 2007 (see Resolution CM/ResDH (2009) 65, by which the Committee of Ministers closed its examination of the case of Göktepe) and provided for, as a transitional measure, a possibility for applicants concerned by a judgment of the European Court whose execution was still pending before the Committee of Ministers to apply for the reopening of proceedings within six months of its entry into force.

General measures

The Code of Criminal Procedure had been amended by an Act of 12 March 2003, so that it is now established that lawyers may represent their clients under all circumstances and that anyone may lodge an appeal on points of law, even if they are not detained in accordance with a judicial decision.

Moreover, the European Court's judgment in the Van Geyseghem case has been widely disseminated with a circular and the *Cour de cassation* has changed its case law (see judgment of the *Cour de cassation*

of 16 March 1999, case No P980861N).

Resolution CM/ResDH (2010) 5 Vetter v. France

59842/00, judgment of 31 May 2005, final on 31 August 2005

Violation of privacy on account of the use of listening devices by the criminal police in an apartment regularly visited by the applicant, suspected of murder in the absence of sufficient legal safeguards in the law (violation of Article 8); unfairness of the proceedings before the criminal chamber of the Court of Cassation, due to the failure to communicate the report of the reporting judge to the applicant or to his lawyer, whereas this report had been submitted to the advocate-general (violation of Article 6§1).

Individual measures

The European Court awarded the applicant just satisfaction for the non-pecuniary damage sustained.

Concerning the violation of Article 6§1, the applicant had the possibility of applying for the re-opening of his cassation appeal on the basis of Articles L 626-1 ff of the Code of Criminal Procedure.

Concerning Article 8, the authorities indicated that, following the request of the State Prosecutor, the evidence (including the recordings) was destroyed on 9 December 2004.

General measures

A. Violation of Article 8

The European Court considered that eavesdropping on conversations using planted microphones must be based on a "law" which is particularly precise (see §26 of the judgment of the European Court).

1. Law No. 2004-204 of 9 March 2004: on 1 October 2004, subsequent to the facts of the case, a new law entered into force, adapting justice to the changes in crimes. This law includes measures relating to the use of listening devices in proceedings relating to organised crime (Article 706-96 of the Code of Criminal Procedure (CCP):

As regards the categories of people who might be subjected to such measures and the nature of the offences which might warrant them, Article 706-96 of the CCP refers to Article 706-73 of the same Code for the definition of crimes and offences for which the use of technical operations aiming at recording of sound and pictures is allowed. The Article also defines the scope in relation to persons against whom such measures may be directed by laying down, first, that the technical operations set up are for listening, transcription, transmission and recording of words spoken privately or confidentially, in private or public premises or vehicles or of the image of one or more persons whilst in private premises and, secondly, that such operations are allowed in a vehicle or private premises without the knowledge or consent of the owner of the premises or vehicle or the person residing in the premises or any other person that has a right over the premises or the vehicle. Moreover, Article 706-96 specifies that sound recording or video operations cannot concern places/premises specified in Article 56-1, 56-2 and 56-3 (lawyers' offices, press or broadcasting companies, doctors' surgeries, notaries', solicitors' or bailiffs' offices) or take place in the vehicle, office or home of persons specified in Article 100-7, which concerns, in specific circumstances, clearly defined persons (lawyers' offices, parliamentarians, magistrates). It appears that this law applies to visiting rooms in detention centres (public places) in proceedings relating to organised crime. Finally, the law provides for a limit to the duration of those operations, the conditions for drawing up summaries of conversations overheard, as well as the circumstances in which recordings are erased or destroyed.

2. Case-law of the Cour de cassation

The authorities submitted two judgments of the *Cour de cassation* dated 1 March 2006 and 21 March 2007, which demonstrate the due control exercised by this court of this new legislative framework, referring to Article 8 of the Convention as well as to the European Court's case-law.

3. Decision of the Conseil constitutionnel (Decision No. 2004-492 DC of 2 March 2004)

Seised of the law adapting justice to the changes in crimes, the *Conseil constitutionnel* found that different offences relating to organised crime enumerated in the new Article 706-73 of the CPP were defined precisely enough and presented sufficiently serious and complex character to justify exceptional procedures in the framework of the investigation or prosecution. The *Conseil constitutionnel* verified that contested operations (including the recording of images and sounds in private or public premises) would be submitted to a decision of the judge of investigation and liberties or the investigating judge.

4. Publication and dissemination

The judgment of the European Court has been published on the *Legifrance* website and disseminated to all domestic courts via the website of the Service of European and International Affairs.

B. Violation of Article 6§1

This aspect of the case presents similarities to those of Reinhardt and Slimane-Kaïd (no. 22921/93, Resolution DH (98) 306) and Slimane-Kaïd No. 2 (no. 48943/99, Resolution CM/ResDH (2008) 13). The *Cour de Cassation* has changed the way in which cases submitted to it are investigated and judged. The report of the reporting judge fixing the legal content of the case is now communicated with the file to the prosecution and to the parties.

31677/96, Interim resolution DH (2000) 20 of 14 February 2000

Final Resolution CM/ResDH (2010) 3 Watson v. France

Illegal interference with the applicant's right to respect for his correspondence, on account of the fact that, while he was detained, the prison authorities opened letters addressed to him by the secretariat of the former European Commission of Human Rights and by a member of the European Parliament, between 1995 and 1998, although this had been explicitly forbidden by domestic applicable law since 1994 as regards the Commission and since 12 May 1997 as regards the European Parliament (violation of Article 8).

Individual measures

The violation has stopped and the applicant has been awarded a just satisfaction in respect of the non-pecuniary damage suffered and the costs and expenses incurred. No further individual measure appears to be necessary.

General measures

As regards the correspondence with the organs of the Convention, this case is similar to the case of A.B. v. France (no. 22135/93, finding of violation established by Committee of Ministers' decision of 16 May 1996, Final Resolution DH (1997) 482): following the introduction of the application in the case of A.B., the Minister of Justice had sent a note, dated 20 June 1994, to all prison directors specifying that detainees' correspondence with the European Commission of Human Rights, whatever the organ (the president, a member or the secretariat) should remain unopened. These instructions were still in force at the time of the facts in the case of Watson.

As regards the correspondence with the European Parliament, an order (*arrêté*) of 12 May 1997 extended to the correspondence with members of the European Parliament the exemption from control.

These safeguards have been integrated into Section A40 of the Code of Criminal Procedure which accordingly provides *inter alia* that members of the European Parliament and the European Court of Human Rights are listed among the administrative authorities with whom detainees can correspond in sealed envelope (see also Final Resolution CM/ResDH (2007) 50 in the case of Slimane-Kaïd v. France). This part of the provision has not been affected by the further amendments to the Code.

30943/96, judgment of 8 July 2003, Grand Chamber
31871/96, judgment of 8 July 2003, Grand Chamber

Resolution CM/ResDH (2010) 17 Sahin and Sommerfeld v. Germany

Discriminatory treatment of the applicants, on account of the domestic courts' dismissal, in 1991-94, of their requests for access to their children born out of wedlock, based on provisions of the Civil Code at the time of facts, establishing unjustifiably different criteria for fathers of children born out of wedlock, compared with divorced fathers, to obtain access to their children; discriminatory treatment of the applicant (Sommerfeld) on account of the impossibility for him to lodge a further appeal under the Non-Contentious Proceedings Act, appeal available only to divorced fathers of children born in wedlock (violations of Article 14 taken together with Article 8).

Individual measures

In the Sahin case, the German authorities stated in December 2003 that the applicant could at any time submit a new request to the competent authorities for access to his child. The latter is now of age.

In the Sommerfeld case, the applicant's child turned 18 in 1999. Consequently, no further individual measure is necessary.

General measures

As regards the violations caused by the legislation on family matters, general measures were adopted following the *Elsholz* case (closed by Final Resolution ResDH (2001) 155 adopted on 17 December 2001). Accordingly, the statutory provisions on custody and access, which are to be found in the German Civil Code (*Bürgerliches Gesetzbuch*), were amended on several occasions and many were repealed by the new Law on Family Matters (*Reform zum Kindschaftsrecht*) of 16 December 1997, which entered into force on 1 July 1998. In particular, pursuant to Article 1626a §1 as amended, the parents of a minor child born out of wedlock jointly exercise custody if they make a declaration to that effect or if they marry. According to Article 1684 as amended, a child is entitled to have access to both parents: each parent is obliged to have contact with, and entitled to have access to, the child. Family courts can determine the scope of the right of access and prescribe more specific rules for its exercise; they can also restrict or suspend that right if such a measure is necessary for the child's welfare.

Section 63a of the Non-Contentious Proceedings Act, which caused the second violation in the Sommerfeld case, was repealed by the Law on Family Matters of 1997 (see §36 of the judgment). Section 63 now provides the right to lodge a further appeal challenging the first appeal decision. The authorities also stated that there were new provisions regarding the procedural rights of parents of children born out of wedlock.

Finally, both judgments were published in *Europäische Grundrechte Zeitschrift (EuGRZ,* 2004, pp. 707-714).

15048/03, judgment of 15 February 2007, final on 15 May 2007

Resolution CM/ResDH (2010) 7 Mathony v. Luxembourg

Unfairness of criminal proceedings (2001-02) brought against the applicant and in particular lack of objective impartiality of the court which convicted him, given that the appellate court was composed of the same judges who convicted the applicant in the first instance (violation of Article 6§1).

Individual measures

The driving ban has expired and the non-pecuniary damage sustained was compensated by the just satisfaction awarded by the European

Court. Moreover, even if the European Court considered the applicant's fears *objectively* justified, it did not find in this case any *subjective* impartiality. Thus it does not seem that the violation arose from shortcomings sufficiently serious to raise any real doubt as to the outcome of the domestic proceedings in question.

General measures

The European Court recalled that the mere fact that a judge had already taken decisions before the trial does not, as such, justify doubts as to his or her impartiality. The finding of the Court in this case was related to the specific circumstances of the case: the judges who convicted the applicant had in fact already given their opinion on the applicant's behaviour prior to the criminal proceedings, when they examined his request for the restitution of his car (See for example a contrario the decision of 18 January 2001 in *Revoldini and others v. Luxembourg*).

The judgment of the European Court was sent by the Ministry of Justice, on 3 May 2007, to the State Prosecutor General, who was asked to disseminate it to the magistrates concerned. The State Prosecutor General confirmed that the judgment had indeed been sent to all magistrates concerned. The judgment has been published on the Internet site of the Ministry of Justice. Finally, the judgment has also been published in Codex (March 2007 – http://www.codex-online.com). The authorities of Luxembourg indicated that it will now be for the domestic courts which grant direct effect to the Convention, and in particular for criminal courts, to ensure – with respect to the composition of the relevant court in each case – that the Mathony judgment is respected.

Resolution CM/ResDH (2010) 8 Metropolitan Church of Bessarabia and others and Biserica Adevărat Ortodoxă din Moldova and others v. Moldova

45701/99, judgment of 13 December 2001, final on 27 March 2002 – Interim Resolution ResDH (2006) 12
952/03, judgment of 27 February 2007, final on 29 May 2007

Government refusal, upheld by the courts, to recognise and register the Metropolitan Church of Bessarabia with the consequence that the church could neither organise itself nor operate and, lacking legal personality, it could not bring legal proceedings to protect its assets or other interests; its members could not meet to carry on religious activities and could not defend themselves against acts of intimidation; refusal by the government in 2001 both to register the Biserica Adevărat Ortodoxă din Moldova and others as ordered by the courts, and to pay the damages awarded by the courts on account of this refusal (violations of Articles 9 and 13 and of Article 1 of Protocol No. 1).

Individual measures

1. Case of Metropolitan Church of Bessarabia and others

1.1. Recognition of the applicant Church and its entities and the protection of its religious activities

Following the European Court's judgment, the Moldovan authorities recognised and registered the applicant Church on 30 July 2002 in accordance with the Moldovan Law on Religious Denominations, as amended on 12 July 2002 (see below general measures). The Church thereby acquired legal personality, allowing it, and its members, to protect its interests usefully, including pursuing its claims as regards property entitlements. This registration also allowed the beginning of the registration process of different components of the applicant Church.

According to the information provided by the Moldovan authorities in March 2006, several component parts of the applicant Church have been registered, of which 86 parishes, 9 monasteries, 2 social missions with 73 sub-divisions, 2 seminaries (one theological and one monastic) and a school of ecclesiastical arts. The applicant Church also disposed at the time of more than 120 rectories with almost 160 priests. As of 1 March 2007, 293 entities of the applicant Church had been registered.

However, between 2004 and 2006, the applicant Church informed the Committee that it had on several occasions encountered obstacles to the registration of some of its parishes. In particular, it claimed in a number of cases that the local authorities refused to issue the certificate of presence on their territories required to obtain registration. This obstacle to the registration was eventually abolished following the entry into force of the new Law on Religious Denominations on 17 August 2007 (see below, general measures).

Between November 2006 and May 2007 the applicant Church also submitted complaints before the domestic courts, concerning the refusals by the Service for religious denominations to register certain of its parishes. These proceedings were joined by decision of the Court of Appeal of 31 October 2007 which also designated the Ministry of Justice as a defendant party in this case. By decision of 25 February 2008, the Court of Appeal ordered the Ministry of Justice to register the parishes of the applicant Church, but the Ministry submitted an appeal before the Supreme Court of Justice, which accepted it. On 23 July 2008 the Supreme Court of Justice quashed the decision of the Court of Appeal, mainly on procedural grounds and ordered the re-examination of the case by the Court of Appeal. However, the representative of the applicant Church did not appear at the hearing and the case was struck off its list on 9 December 2008.

Despite the adoption of the new Law on Religious Denominations in August 2008, in June and October 2009 the applicant Church denounced the persisting problems of registration of its parishes, notably alleging the introduction of requirements unforeseen in the law, or interfering with the relationships between the "mother" Church and the local components, or through other measures such as engaging *ex officio* graphologist al tests of the authenticity of signatures submitted. It has also complained of the continuation of a more general hostile campaign against it launched by state authorities.

In response the Moldovan authorities have indicated that with the entry into force of the new Law on Religious Denominations, the new registration system within the Ministry of Justice began to function only in the beginning of 2008 (see general measures) and that the system had admittedly had certain initial problems in ensuring the rapid management of registration requests. However, these problems were discussed with the representatives of religious communities at a round table organised by the Ministry of Justice in July 2008 in

Chişinău. These discussions resulted in the publication in February 2009 of a set of guidelines with examples to assist in formulating registration requests so as to comply with the new legislation. A number of further registrations have also taken place since, both of "mother" churches and their local components, including two local components of the applicant Church. Besides, the government has underlined that none of the problems raised by the applicants under the new Law on Religious Denominations before the Committee of Ministers were previously raised before the domestic courts. The only judicial proceedings engaged concerned the old law and were eventually terminated as the applicant Church did not appear at the hearing (see above). The government has nevertheless communicated the complaints, as formulated before the Committee of Ministers, to the new Service for the registration of the religious denominations so that it can investigate possible additional assistance to applicant Church.

The government has also given some explanations about the allegations concerning the alleged negative official campaign it would have conducted against the applicant Church and its members. It has in particular stressed its neutrality in religious matters. As regards the applicant Church's reference to certain individual incidents, not least regarding the right of foreign citizens linked with the applicant Church to enter Moldova or work there for the Church, the government has stressed that these incidents were based on failure to respect Moldovan legislation regarding the right to enter and work in Moldova. Notwithstanding these incidents, all the persons concerned subsequently received residence permits and administrative fines were cancelled.

The government stressed that under the new Law on Religious Denominations (Article 8), acts which hinder the free exercise of a religious cult or which spread religious hatred should be punished. Also, the new Criminal Code, adopted in 2002, expressly prohibits interference with freedom of religion, including discrimination on religious grounds by persons in positions of responsibility. In addition, acts which infringe the rights enshrined in the new Law on Religious Denominations may be challenged before the courts (Article 9). The government believes that this protection should effectively impede any intimidating campaigns against the applicant Church.

1.2. The protection of other interests, notably property interests

Since it was awarded legal personality, in July 2002, the applicant Church is able to protect its own interests, in particular its patrimony.

Already in February 2002, the applicant Church could challenge a government decision (of 26 September 2001 – see the Court's judgment, §42) approving an amendment to the statute of the Moldovan Metropolitan Church by which it proclaimed itself to be the legal successor to the former Metropolitan Church of Bessarabia (which ceased its activity in 1944). The applicant Church was claiming that such approval allegedly infringed its property. On 14 April 2004, the Enlarged Collegium of the Supreme Court, sitting as a cassation court, confirmed its earlier decision of 2 February 2004 by which it cancelled the government's decision of 26 September 2001. However, this decision did not thereby recognise the succession rights of the appellant Church. The registration decision appealed against was cancelled merely on the ground that, in the light of the legislation currently in force, the former Metropolitan Church of Bessarabia had no legal successor at the moment of cessation of its activity in 1944.

The government underlines that this decision was only taken in response to a request for registration of statutes of a religious denomination and does not prejudice the possibilities of the applicant Church to protect its property interests in other proceedings directly concerned with such property rights as the Church may claim.

The applicant Church also complained that the Moldovan Government refused to restore the church archives illegally confiscated and nationalised.

In response, the government indicated that all documents were deposited at the National Archives and are part of the State Archives Fund which is state property, constitutes national patrimony, and consequently enjoys the protection of the state so that historically important documents may not be destroyed or otherwise disposed of and may be consulted by anyone. The archived documents are open to the public, to physical or moral persons, i.e. including the Metropolitan church of Bessarabia, which may obtain certified copies without restriction.

2. Case of Biserica Adevărat Ortodoxă din Moldova and others

The applicant Church was registered as ordered on 16 August 2007 and did not submit any further request in respect of individual measures.

In view of the different developments referred to above, as well as of the general measures undertaken and explained below, the Moldovan authorities consider that they have taken sufficient action to satisfy to their obligations under Article 46 as far as individual measures are concerned.

General measures

1. The reform of the Law on Religious Denominations: recognition of religious freedom and setting-up of effective remedies

The first amendments to the Law on Religious Denominations were brought by Law No. 1220-XV which entered into force on 12 July 2002. These amendments were, however, insufficient to prevent similar violations, inasmuch as they did not sufficiently integrate the right to an effective remedy in each situation, nor the requirement of proportionality.

Between March 2003 and February 2006, six draft laws were submitted to the Committee of Ministers and examined by independent experts appointed by the Council of Europe and by the Department for the Execution of Judgments of the Court. They have in particular stressed the importance of not reserving registration and recognition only for larger groups, as well as that of providing effective remedies. In March 2006 the Committee of Ministers adopted an Interim Resolution (ResDH (2006) 12), urging the Moldovan authorities rapidly to enact the necessary legislation and to adopt the required implementation measures without further delay.

In June 2007 the Committee of Ministers expressed its regret that the final draft Law on Religious Denominations was not communicated to the Committee of Ministers and declared that it expected that the findings of the Court have been taken into account in the new Law on Religious Denominations as well as different expertise done by the experts of the Council of Europe. The Committee of Ministers also noted the assurances given by the

Moldovan authorities on this matter.

The new Law on Religious Denominations was adopted by the Parliament on 11 May 2007 and entered into force on 17 August 2007.

After examining the text, the Committee of Ministers noted that although the new Law on Religious Denominations presented many improvements compared to previous drafts, some of the recommendations of the Council of Europe experts and certain of the Committee of Ministers' own preoccupations had still not been taken into consideration (in particular, the law had maintained the requirement of a minimum of 100 members for the registration of a religious denomination and the registration procedure continued to contain a number of confusing provisions). The Committee accordingly stressed the importance of conceiving the proposals for the implementation legislation and regulations so as to ensure that the new global regulatory framework fully respected the requirements of the Convention. The Committee also stressed the importance of ensuring that the judicial remedies provided were fully effective.

2. The additional reform work and special training activities

Following the adoption of the new Law on Religious Denominations, by government decision No. 1130 of 26 October 2007, the former State Service for Religious Denominations was dissolved and all registration files were transferred to the Ministry of Justice, which started its work on 10 January 2008. Simultaneously, the government abolished its order of 1994 which had made registration of component parts of recognised cults dependent on a certificate of presence from the local authorities. The government rapidly provided additional information with first examples of registration according to the new system.

The Committee of Ministers noted these developments, but recalled the need to clarify a number of aspects, in particular those related to the rights of religious groups or denominations which did not fulfil the requirements set by the new law to obtain their registration. In this respect it encouraged the rapid organisation of meetings between the Secretariat and the Moldovan authorities to clarify the outstanding issues.

A first meeting was held on 8 and 9 September 2008 in Chişinău between the Secretariat and the relevant Moldovan authorities, including the Ministry of Justice, the Service for registration of religious denominations, the Ministry of the Interior, the Prosecutor's office, judges of the Supreme Court, the National Institute of Justice, etc.

The Secretariat presented its conclusions of these meetings in Memorandum CM/Inf/DH (2008) 47 rev (December 2008). It found that:

– the control of the proper functioning of the new Service for Registration of Religious Denominations improved;
– assurances had been given by the Ministry of Justice, the Ministry of the Interior and the Chief Prosecutor that also non-registered religious groups enjoyed freedom of religion and state protection;
– such groups could use other forms of associations than those under the new Law on Religious Denominations to protect their interests.

However, a number of questions were found to be outstanding, notably as regards the registration procedure (allegations of unjustified registration requirements), the recognition of unregistered groups (see e.g. of the Court's judgment in the Talgat Masaev case criticising sanctions imposed in 2004 on an unregistered group which had held religious service in private premises) and the scope and justifications of a number of rights and duties obtained through registration. There also appeared to be a need to harmonise the new law with a number of other laws, including the Code of Contraventions, in order to fully safeguard freedom of religion.

In response, the government informed the Committee of Ministers that the registration procedure has been clarified through the issue in February 2009 of a set of guidelines (see individual measures above). The government also indicated that the allegations of unjustified registration requirements should first be examined in the context of judicial review of the registration process (which would clearly ensure respect for the Court requirements).

As regards the freedom of religion of unregistered groups, the government renewed before the Committee of Ministers its undertakings made during the Secretariat's visits and also indicated its intention to amend the Code of Contraventions accordingly. Awaiting the adoption by Parliament of the amendments prepared by the government in 2009, a special inter-ministerial coordination group composed of representatives of the Ministry of Justice, the Ministry of the Interior and the Prosecutor General's Office was created and met twice in 2009. Within this group clear instructions have been given to police and prosecutors to apply the existing Code in accordance with the proposed amendments.

The new draft laws (abolishing the sanction of expulsion in case of disrespect of the requirement of prior authorisation for certain religious activities in public by foreigners and limiting the punishable activities to activities exercised in violation of the new Law on Religious Denominations) have been adopted too late to be included in the new Code of Contraventions, adopted by the Parliament in January 2009, in force as from 31 May 2009. These new texts (Article 54 §§ 2 and 3) were, however, approved by the Parliament in November 2009.

3. The effectiveness of the remedies set up

The government underlined that at present the new Law on Religious Denominations ensures judicial review of the registration procedure of religious denominations and of their component parts, including in cases of refusal of registration, of suspension of their activities or of their liquidation. In the course of the different contacts taken with relevant authorities a clear consensus also emerged that the law, read together with the Law on Administrative Procedure, also provides access to judicial review in case of absence of reply or unreasonable delay in providing a reply.

It also recalled that the new law provides clear judicial protection of other aspects of freedom of religion (see under individual measures above).

In view of the violation in the case of Biserica Adevărat Ortodoxă din Moldova, the government has also stressed that this case was an isolated incident which will not be repeated. The special questions linked with the delayed enforcement of the judicial decisions awarding of damages which also arose in that case are dealt with in the context of the Committee's examination of the group of cases Luntre and others (application no. 2916/02, 1086th meeting, June 2010).

4. Publication and other measures to improve the direct effect of the Court's judgments

In addition to legislative and other measures mentioned above, the government also stressed the important efforts it has made to improve the direct effect of the Court and of the case-law of the Court in Moldova at national level, including the recent declaration of 30 October 2009 made by the Moldovan Parliament regarding the state of justice in the Republic of Moldova and measures required to be taken in order to improve the situation.

From this point of view, the judgments were rapidly published in the *Official Journal* and posted on the website of the Ministry of Justice (http://www.justice.gov.md/). Besides, special efforts were displayed to improve judges' and prosecutors' training on the requirements of the Convention on issue of freedom of religion, notably with the help of the National Institute of Justice (a special training session was organised with the participation of the Department for the execution of Judgements in June 2009). Other activities are foreseen.

The government believes that these activities will contribute to an application of the new Law on Religious Denominations, as well as of the rights and obligations acquired by the registration, in conformity with the requirements of the Convention interpreted in the light of the Court's jurisprudence and, in particular, with the principle of proportionality.

The government is aware of the importance attached to the continuation of these activities and commits itself to support and to undertake any other measure necessary to the good functioning of the system.

Application no. 1948/04, judgment of 11 January 2007, final on 23 May 2007

Resolution CM/ResDH (2010) 10 Salah Sheekh v. the Netherlands

Risk of ill-treatment in case of expulsion to Somalia following the rejection of the applicant's request for asylum and the fact that the applicant, as member of a minority, was unlikely to be allowed to settle in a relatively safe area (violation of Article 3) Payment of just satisfaction and individual measures

The applicant has not submitted any claim for just satisfaction before the European Court.

On 10 March 2006 the applicant was granted a residence permit for asylum purposes on the basis of a temporary categorical protection policy (Article 29 §1 (d) of the Aliens Act 2000) adopted by the Minister of Justice on 24 June 2005 in respect of asylum seekers coming from certain parts of Somalia. Following the European Court's judgment, the applicant has been granted a new residence permit for asylum purposes on the basis of Article 29 §1 (b) of the Aliens Act 2000 (risk of torture or inhuman or degrading treatment or punishment), which is valid from June 2005 to June 2010. This residence permit is, in principle, renewable. In addition, the Dutch authorities gave assurances that they will apply the principles of their reformed *non-refoulement*/expulsion policy in conformity with Article 3 of the Convention (see below under General Measures) in their future decisions concerning the applicant.

General measures

1. Publication and dissemination

The European Court's judgment was published and annotated in numerous legal journals (*AB Rechtspraak Bestuursrecht* (2007, 76), *Jurisprudentie Vreemdelingenzaken* (2007, 30) and *NJCM-Bulletin* (2007, pp. 111-113 and 179-194); and the *Nederlands Juristenblad* (2007-7) issued a special edition on the case. The judgment was broadcast on radio and television. According to the Dutch authorities, in view of the direct effect of the European Court's judgments in the Netherlands, these measures will allow all authorities concerned to align their practice to the present judgment.

2. Changes in non-refoulement/ expulsion policy regarding the assessment of a risk of treatment contrary to Article 3

According to a letter of 22 June 2007 from the State Secretary for Justice to the Dutch parliament, the assessment of an alleged risk of treatment contrary to Article 3 in asylum procedure was adapted. Individuals are still required to show that they have been singled out for persecution, but the overall situation in a country, including the general circumstances (i.e. the fact of being a member of a minority) were included in the assessment. Furthermore, specific groups of asylum seekers ("vulnerable minority groups", including, *inter alia*, the Reer Hamar (Ashraf) in Somalia) were identified where the general situation in their country of origin suggested that upon their return they would be in risk of treatment contrary to Article 3 of the Convention. These asylum seekers only have to adduce minor indications to qualify for a residence permit for asylum purposes under Article 29 §1 (b) of the Aliens Act 2000. This directive was published in the *Dutch Government Gazette* on 3 August 2007. Finally, assessment is no longer based solely on the country reports of the Ministry of Foreign Affairs but also increasingly on other sources.

35731/97, judgment of 17 December 2002, final on 17 March 2003

Resolution CM/ResDH (2010) 9 Venema v. the Netherlands

Breach of the right of the applicants (parents and their minor daughter) to respect for their family life in that they were not involved in the decision-making process before the Child Welfare Board and the Juvenile Judge which led, in 1995, to the adoption of provisional orders for the daughter to be placed away from her parents (violation of Article 8).

Individual measures

After a separation of five months and eighteen days, the family was reunited on 22 May 1995. The consequences of the violation found have been redressed by the European Court through the award of just satisfaction for non-pecuniary damages suffered.

General measures

The procedures followed by the Child Welfare Board were radically changed and new rules were laid down in a policy framework "Standards 2000", an updated version of which entered into force on 1 May 2003. The new procedures provide *inter alia* the involvement of parents in the decision-making process concerning the placement of children into care as well as an intervention of a behavioural psychologist and a legal expert in child protection

cases. As a matter of course, the Child Welfare Board now involves the parents of the child in its investigations; it may deviate from this rule only in highly exceptional circumstances and it always consults experts from different disciplines before doing so. The policy framework is a binding instruction from the Minister of Justice to the Child Welfare Board. Moreover, the European Court's judgment was published broadly and disseminated.

Resolution CM/ResDH (2010) 12 Adalı v. Turkey

38187/97, judgment of 31 March 2005, final on 12 October 2005

Lack of an effective investigation into the death of the applicant's husband, who was shot in 1996 (violation of Articles 2 and 13) and interference with the applicant's freedom of association on account of a refusal of permission to cross from northern part of Cyprus to the southern part to attend a bi-communal meeting in 1997 (violation of Article 11).

Individual measures

An additional inquiry into the death of Mr Adalı was carried out, following a letter of 24 March 2006 by the Prosecutor General to the police authorities ordering them to initiate a further investigation, taking into account the shortcomings identified by the European Court in its judgment. All elements pointed out by the European Court as deficient in the initial investigation which led to the violation, were considered and re-examined in the new inquiry. The collecting of new fingerprints proved to be objectively impossible, given the long period of time which elapsed since the events, the environmental changes affecting the location and the fact that external persons had subsequently been at the scene of the crime. During the initial investigation, the scope of the ballistic tests was broadened to cover the archives of the police in Turkey, but to no avail. The corresponding report could not be found subsequently. The victim's mobile telephone was sought but not found. As regards the investigation of the motives behind the killing of the applicant's husband, the competent authorities have examined all allegations advanced without obtaining conclusive results. The documents and results of all investigations carried out in connection with this case have been submitted to the Prosecutor General. The applicant never requested either the autopsy or the ballistic reports. It should be noted that two of the key witnesses not questioned at the time of the facts – Mr Ceylan and Mr Demirci – have been heard during the additional investigation opened in 2002 (under No. CTKC/440/1996). A third important witness – Mr Mendi – was heard by the European Court (§§163-174 of the judgment).

Having carried out the additional investigative acts considered necessary by the European Court, the authorities concluded that it had not been possible to obtain new documents, information or testimonies on the basis of which criminal charges could be brought against any person. On the other hand, the Turkish authorities have underlined that as no period of limitation applies to proceedings in this case, the emergence any new element may give rise at any moment to an appropriate follow-up.

On 12 March 2009 the Turkish authorities wrote to the applicant informing her of the new inquiry carried out following the European Court's judgment. The letter states that given the amount of time which has elapsed, the authorities were unable to obtain any further evidence that would permit criminal charges to be brought. The applicant did not react to this letter.

General measures

1. Violations of Article 2 and 13

The Turkish authorities have stressed that the shortcomings in the investigation found by the Court emanated from practice and not from legislation in place. The authorities provided in support of this statement a copy of the "Coroners Law" and of the "Law on Criminal Procedures" of the "TRNC". They indicated in particular that investigations of deaths are conducted *ex officio* by investigating magistrates and under their exclusive control. As regards the involvement of victims' families into the investigations carried out, Article 14 of the "Coroners Law" states that "every interested party may appear either by advocate or in person and examine, cross-examine or re-examine, as the case may be, any witness". In addition, Article 29 of the "Act on the Law Office" was amended on 13 March 2006 to the effect that the Attorney General, if he finds it necessary, may supervise or direct investigations carried out by the General Directorate of the Police Forces and may give orders in this respect. Consequently, the role of the Attorney General in police investigations has been enhanced. The judgment of the European Court has been translated into Turkish, posted on the "TRNC" courts' website (http://www.mahkemeler.net/cgi-bin/aihm.aspx) and was disseminated to all jurisdictions via the channels of the Prosecutor General's Office on 13 May 2008. In addition, an article entitled *The Ilkay Adalı Case and Aspects of the Right to Life* has been published in the Lefkoşa Bar Journal, No. 13 (April 2005), in order to raise awareness of the requirements of the Convention as regards effective investigations of the authorities entrusted with applying the law.

2. Violation of Article 11

The necessary measures have been taken in the framework of the case of Djavit An v. Turkey (Final Resolution CM/ResDH (2008) 59). The "Council of Ministers of the TRNC" adopted several decisions following the judgment of the European Court in that case, in order to provide a legal basis regulating the crossing from the northern part to the southern part.

Under the terms of decision No. E-762-2003 the crossing from the north to the south is carried out after presentation of an identity card or a passport and the computerised recording of the passage of persons and vehicles. Each person may carry personal effects. Moreover, the provisions requiring passage on a day-trip basis with the return before midnight were repealed by a decision of the "Council of Ministers of the TRNC" No. T-820-2004.

Final Resolutions adopted at the 1086th meeting

Application No. 76900/01, judgment of 29 June 2006, final on 29 September 2006

Resolution CM/ResDH (2010) 36 Öllinger v. Austria

Breach of the applicant's right to freedom of peaceful assembly due to the authorities' refusal to authorise him to hold a silent vigil with six others in Salzburg municipal cemetery in memory of the Jews of the city killed by the SS and in protest against a rally of combat veterans, mainly former SS members, on the same day, All Saint's Day, 1 November 1998 (violation of Article 11).

Individual measures

The applicant had made no claim for pecuniary or non-pecuniary damages before the European Court.

General measures

The violation appears to constitute a single incident resulting from the particular circumstances of the case. The Austrian authorities consider that given the direct effect of the Convention and the case-law of the European Court in Austria, the publication and dissemination of the judgment should guarantee that the competent authorities align their practice to the requirements of the Convention under Article 11 as they result from the present case. Thus, the Court's judgment was published in German e.g. in the *Newsletter* of the Austrian Human Rights Institute (NL 2006, p. 150 (NL 06/3/14), available online at http://www.menschenrechte.ac.at/docs/06_3/06_3_14). As with all judgments of the Court against Austria, the judgment was automatically transmitted to the Presidency of the domestic court concerned. A summary of the Court's judgments and decisions concerning Austria is regularly prepared by the Federal Chancellery and disseminated widely to relevant Austrian authorities as well as Parliament and courts. Furthermore, judgments of the European Court are accessible to all state authorities through internal databases as well as the general database provided by the Federal Chancellery (RIS).

2293/03, judgment of 22 February 2007, final on 22 May 2007

Resolution CM/ResDH (2010) 38 Wieser v. Austria

Non-necessary and unjustified strip-search of the applicant by police during his arrest on 9 February 1998 which was qualified as degrading treatment by the ECtHR given that it has been invasive and potentially debasing for the applicant, who was not simply ordered to undress, but was undressed by the police officers while in a situation of particular distress (violation of Article 3).

Individual measures

The applicant was released on 10 February 1998 and criminal proceedings against him were discontinued on 25 June 1998. The European Court awarded him just satisfaction in respect of non-pecuniary damage resulting from the strip search. Consequently, no other individual measure was considered necessary.

General measures

The European Court considered that the violation resulted from the particular circumstances in which the strip-search had been carried out in the present case. It did not question the domestic legal provisions nor did it find any procedural flaws. The violation seems to constitute an isolated violation resulting from the particular circumstances of the case. Thus, the Austrian authorities consider that publication and dissemination of the European Court's judgment should be sufficient to prevent similar violations. The judgment has been sent out to public authorities at federal and regional levels, including the Ministry of the Interior and the federal and regional police services. It has been published in German, particularly in the *Newsletter* of the Austrian Human Rights Institute (http://www.menschenrechte.ac.at/docs/07_1/07_1_13), and on the website of the Constitutional Service of the Austrian Chancellery (http://bka.gv.at/DocView.axd?CobId=29401).

33400/96, judgment of 15 July 2003, final on 15 October 2003)

Resolution CM/ResDH (2010) 39 Ernst and others v. Belgium

Infringement of the right to respect for home and private life of the applicants (four journalists and two associations of journalists) because of the searches carried out in 1995 at their homes and business premises, under broadly worded search warrants and without adequate grounds, and of the absence of information on the legal proceedings that made the operation necessary and on the great number of seized objects (violation of Art. 8); infringement of the applicants' right to freedom of expression in that the searches aimed at discovering their journalistic sources and were not proportionate to the intended legitimate aims (violation of Article 10).

Individual measures

The applicants' lawyer has confirmed to the Belgian authorities that some of the objects and documents seized had been returned, that the rest were no longer of interest, and that none of the applicants has any further claim in this respect. Consequently, no further individual measure seems to be required in this respect.

General measures

On 7 April 2005 the Belgian Parliament adopted a law on the protection of journalistic sources (*Moniteur belge* of 27 April 2005), making it illegal to seek such information, in particular through searches or seizures. The only exception to this prohibition is that a judge may ask for a search of journalists' sources of information if such information is likely to prevent the commission of offences constituting a serious physical threat to a person or a group of persons, and if the information sought is of crucial importance in avoiding the commission of such offences and cannot be obtained by other means.

Furthermore, in view of the direct effect granted to the Convention in

Belgium, further measures have been taken to draw the attention of the competent authorities to the Ernst judgment, so that they can take it into account in practice.

Thus, this judgment - like all other judgments of the European Court concerning Belgium - has been published in the three official languages on the Internet site of the Ministry of Justice and was sent on 11 February 2004 to the Secretariat of the College of Prosecutors General, the Federal Police and the Court of Cassation.

Resolution CM/ResDH (2010) 42 G.B. and Iorgov v. Bulgaria

42346/98, judgment of 11 March 2004, final on 11 June 2004
40653/98, judgment of 11 March 2004, final on 7 July 2004

Degrading treatment of the applicants, sentenced to death despite the fact that a moratorium on capital punishment had already been established, on account of the stringent custodial regime and the material conditions of their detention (from 1990 to 1998 in the G.B. case and from 1995 to 1998 in the Iorgov case (violations of Article 3).

Individual measures

Following the abolition of the death penalty in Bulgaria in 1998, the applicants' sentences were commuted to life imprisonment and the applicants were no longer subject to the prison regime and conditions which the European Court held to be in violation of the Convention. The European Court awarded just satisfaction for the non-pecuniary damage sustained by the applicants. Consequently no further individual measures was considered necessary.

General measures

All death sentences passed before the death penalty was abolished have been commuted to life imprisonment. The Bulgarian government has pointed out that the prison regime and the material conditions in which this category of prisoners are held has been examined on several occasions by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). More specifically, during the visit it made in 2002 (see document CPT/Inf (2004) 21, §92), the CPT noted that [...] the evidence gathered during the 2002 visit suggests that steps have been taken by the Bulgarian authorities to improve the situation of life-sentenced inmates in the light of its recommendations. In this regard, the CPT's delegation was pleased to learn of plans to progressively integrate life-sentenced prisoners into mainstream prison regimes. The Bulgarian authorities are fully determined to pursue their efforts in this field, in the light, in particular, of the most recent recommendations of the CPT (see document CPT/Inf (2008) 11).

Resolution CM/ResDH (2010) 41 I.D. v. Bulgaria

43578/98, judgment of 28 April 2005, final on 28 July 2005

Violation of the applicant's right of access to a court due to the dismissal in 1997 of her claim against her employer for damages in respect of an occupational disease. The domestic courts dealing with the case considered themselves to be bound by the conclusions of the medical commissions to the effect that there was no link between her illness and the nature of her job, and dismissed the applicant's claim without examining the case on its merits (violation of Article 6§1).

Individual measures

The applicant had the possibility to ask for the re-opening of the proceedings concerning her claim for damages on basis of the former Article 231§1, letter "z" of the Code of Civil Procedure (in force at the time when the European Court delivered its judgment). In these circumstances, no individual measure was considered necessary by the Committee of Ministers.

General measures

The European Court noted in its judgment that in a series of decisions delivered since 1999, the Supreme Administrative Court (unlike its predecessor, the Supreme Court) has held that of the medical commissions' decisions are subject to judicial review (§§34 and 54 of the judgment).

Furthermore, it should be noted that the regulation adopted by the Council of Ministers in 2001 on the declaration and the establishment of an occupational disease provided expressly that the decisions of these commissions are subject to judicial review under the Administrative Procedure Act (Article 15 of the regulation). Similar provision was included in the new Regulation on this matter adopted in 2008 (Article 12).

Resolution CM/ResDH (2010) 40 Varbanov and other similar cases v. Bulgaria

31365/96 Varbanov, judgment of 5 October 2000

Unlawful detention of the applicants in a psychiatric hospital between 1995 and 2000 to undergo medical examinations at the behest of prosecutors in proceedings concerning psychiatric confinement, even though the prosecutor had no power to issue such an order and had not sought a prior medical assessment of the need for the applicants' detention (violations of or complaint under Article 5§1); impossibility for the applicants (Varbanov and Kayadjeva cases) to bring judicial proceedings to challenge the lawfulness of their detention (violations of Article 5§4).

Individual measures

The question of individual measures does not arise since the applicants had all been released before the European Court rendered its judgments and all received just satisfaction either under Article 41 or by virtue of a friendly settlement.

General measures

On 29 July 2004, Parliament adopted the new Health Act. The act was published in the *Official Journal*, No.70 of 10 August 2004, and entered into force on 1 January 2005. According to its provisions, only a court is competent to order an expert opinion and, if necessary to order confinement with a view to obtaining a psychiatric examination, following a public hearing at which the person concerned, assisted by counsel and a psychiatrist, must be heard. The decision may be appealed.

New delegated legislation adopted in this field in 2005 also provides that a medical examination for the purposes of possible psychiatric confinement is ordered by the court (Article 4 of the regulation of

medical examinations ordered in the framework of proceedings concerning psychiatric confinement). The authorities confirmed that these regulations are applied by the competent authorities and in particular by the domestic courts in accordance with the principles set out in the case-law of the European Court.

In order to promote awareness of these principles, the Varbanov judgment was communicated to the Ministry of Health and to the Congress of Bulgarian Psychiatrists in November 2000 and was published (in Bulgarian translation) on the Internet site of the Ministry of Justice, http://www.mjeli.government.bg/.

23890/02, judgment of 20 December 2007, final on 20 March 2008

Resolution CM/ResDH (2010) 43 Phinikaridou v. Cyprus

Violation of the right to respect for the private life of the applicant, who was born in 1945, owing to the rigid time-limit for the exercise of paternity proceedings. Under the 1991 Children (Relatives and Legal Status) Law, an adult could only bring such proceedings within three years from the date of the introduction of the law, i.e. until 1994. Consequently, the proceedings instituted by the applicant in 1997, when she was informed of the presumed identity of her father, were unsuccessful (violation of Article 8).

Individual measures

Following the legislative reform (see general measures below) the applicant is able to bring new proceedings to establish paternity. The Court awarded the applicant just satisfaction in respect of the non-pecuniary damage suffered.

General measures

1. Legislative changes

Following the judgment of the European Court, sections 22 (3) and 25 (1) of the Children (Relatives and Legal Status) Law 1991 have been amended by Law 69 (I)/08, which came into force on 25 July 2008. The Law as amended now provides a three-year time-limit starting from the date on which the person concerned can establish that they first became aware of information enabling him or her to identify their putative father. It is for the claimant to satisfy the domestic court that, despite efforts to inquire into his or her paternity, which were reasonable in the circumstances, it had not been possible to discover such information earlier. Where the person concerned first became aware of such facts before the 2008 amendments, the time-limit commences from the date on which the amendments came into force. Furthermore, the dismissal or withdrawal of previous paternity proceedings as time-barred cannot be a ground for the dismissal of any new paternity proceedings brought after the 2008 amendments.

2. Publication and dissemination

Under cover of an explanatory letter from the Human Rights Sector of the Attorney General's Office, copies of the judgment were sent to the Supreme Court, the Ministry of Justice and Public Order, the Presidents of the Cyprus Bar Association and the Legal Affairs and Human Rights Parliamentary Committees. The judgment has been published in English and Greek on the human rights section of the government legal service website. The Greek translation has also been published online by the Cyprus Bar Association and in the Cyprus Law Journal [third issue of 2008].

10254/03, judgment of 20 March 2008, final on 20 June 2008

Resolution CM/ResDH (2010) 68 Drahorád and Drahorádová and other similar cases v. the Czech Republic

Violation of the applicants' right of access to a court due to the dismissal of their constitutional appeals by the Constitutional Court as being out of time or for non-exhaustion of available remedies (violations of Article 6§1).

Individual measures

In all five cases, the European Court held that the finding of the violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

In the cases of Drahorád and Drahorádová, Hoření and Ješina, the European Court found no causal link between the damage claimed by the applicants and the violation of Article 6, and concluded that it could not speculate further on what would have been the issue of the proceedings, should the Constitutional Court have accepted and examined the constitutional appeal lodged by the applicants.

In the Mourek case, the applicant submitted no request for pecuniary damage; his request for non-pecuniary damage related to the inadmissible complaint about the length of proceedings.

In the Glaser case, the European Court dismissed the applicant's claim as there was no causal link between the violation of Article 6 found and the pecuniary damage claimed.

The Czech authorities underlined that these cases had been examined on the merits at least at first and second instance, that the same alleged violations of the Convention which the applicants intended to raise before the Constitutional Court had been declared inadmissible by the European Court, and that the applicants had made no claim in respect of individual measures.

Moreover, any suggestion of re-opening the proceedings before the Czech Constitutional Court would seem to run up against the principle of legal certainty to which the other party to the civil proceedings is entitled. Finally, in the light of the Czech authorities' arguments and those of the European Court concerning the claims of just satisfaction, it does not seem that the violation affected the outcome of the proceedings in question.

Consequently, no other individual measure was considered necessary.

General measures

Following earlier similar cases (see Běleš and others group, Final Resolution CM/ResDH (2007) 115, adopted on 31 October 2007; Zvolský and Zvolská, Final Resolution CM/ResDH (2007) 30, adopted on 20 April 2007; and Vodárenská akciová společnost, A.S., Final Resolution CM/ResDH (2008) 27, adopted on 27 March 2008), the Czech authorities adopted a number of measures to prevent new violations:

(a) The plenary of the Constitutional Court changed its practice in 2003 (communication published in the *Official Journal* No. 32/2003 of 3 February 2003) by allowing constitutional appeals against decisions of lower jurisdictions to be lodged following the decision on an ex-

traordinary appeal, such as an appeal on points of law (see §21 of the judgment of the European Court in the case of Vodárenská akciová společnost, A.S.).

(b) Subsequently, Parliament adopted Law No. 83/2004 (which entered into force on 1 April 2004) which amended Law No. 182/1993 on the Constitutional Court. According to the amended law (Article 75§1), the extraordinary appeal, admissibility of which depends only on the discretionary assessment of the competent authority, does not necessarily have to be exhausted before addressing the Constitutional Court. Moreover, if the extraordinary appeal is declared inadmissible by the competent authority only on the basis of its discretionary assessment, the constitutional appeal may be lodged within 60 days counting from the notification of the decision relating to the admissibility of that extraordinary appeal (Article 72§4).

The violations in the present cases occurred before these modifications.

It was confirmed during the bilateral contacts that these issues are being given special attention.

The European Court's judgments were translated and published on the website of the Ministry of Justice (http://www.justice.cz/) and they were also discussed at the meeting of the plenary of the Constitutional Court.

Resolution CM/ResDH (2010) 45 Laaksonen and Juha Nuutinen v. Finland

70216/01, judgment of 12 April 2007, final on 12 July 2007
45830/99, judgment of 24 April 2007, final on 24 July 2007

Unfairness of criminal proceedings brought against the applicants, in that they were not informed in detail of the accusations against them and were not been able to properly contest the accusations brought against them (violation of Article 6 §1 and §3 (a) and (b)).

Individual measures

The European Court awarded just satisfaction in respect of the non-pecuniary damage suffered by the applicants. Furthermore, the applicants may apply for the reopening of the proceedings (Chapter 31, Article 2, of the Code of Judicial Procedure). Consequently, no other individual measure was considered necessary.

General measures

The new Criminal Procedure Act (Act No. 689/1997), which came into force on 1 October 1997, codified the rule according to which an accused may not be convicted of an offence not mentioned in the bill of indictment. This provision was not observed in the present cases, as the proceedings at issue began before the entry into force of the new Act.

As regards the lack of oral hearing in the Laaksonen case, even according to the provisions of the Code of Judicial Procedure (Act No. 661/1978) in force at the time, the appellate court could not change the first instance court's judgment without holding an oral hearing unless the sentence was only a fine or the oral hearing was manifestly unnecessary (see §17 of the judgment). The current Chapter 26, Section 15 (165/1998) of the Code of Judicial Procedure provides that the Court of Appeal shall hold an oral hearing if the credibility of testimony admitted before a court of first instance is at stake.

The judgments of the European Court have been published on the judicial database Finlex (http://www.finlex.fi/) in English. A summary and an excerpt from the judgments were also published in Finnish on the same database. They were sent out to several domestic authorities, including the Parliamentary Constitutional Committee, the Parliamentary Ombudsman, the Supreme Court, the Ministry of Justice and the courts concerned.

Resolution CM/ResDH (2010) 49 Faure v. France

19421/04, judgment of 15 January 2009, final on 15 April 2009

Violation of the applicant's right to liberty and security, as his arrest and detention were effected not in accordance with a procedure prescribed by law given that the detention order, executed between 15 May 2003 and 29 October 2003, had been issued by the "cour d'assises", whereas at the time the Code of Criminal Procedure reserved the right to issue such detention orders to the investigating courts (violation of Article 5 §1).

Individual measures

The applicant's detention ended on 29 October 2003 and he is currently in prison having being convicted on 29 October 2003.

Given the particular nature of the case, the European Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

General measures

After the facts of this case, Law No. 2004-204 of 9 March 2004 created a new procedure called *le défaut criminel* (to replace proceedings *in absentia*) according to which the detention order disappeared and Assize courts were awarded the right to issue an arrest warrant, which now allows the detention of an accused. This change in the law should avoid further similar violations.

Moreover, the judgment has been published on the *Legifrance* website and sent out to all domestic courts via the website of the Department of European and International Affairs.

Resolution CM/ResDH (2010) 46 Guilloury v. France

62236/00, judgment of 22 June 2006, final on 22 September 2006

Breach of the applicant's right to a fair trial in criminal proceedings which resulted in his conviction in 2000 for aggravated sexual assault, as the courts had essentially relied on the statements of the victims and witnesses, without the applicant having ever been given the opportunity to examine the prosecution witnesses or to have them examined in relation to that issue and without hearing evidence from the defence witnesses by the appellate court (violation of Article 6 §§1 et 3 (d)).

Individual measures

By virtue of Articles L 626-1 ff of the Code of Criminal Procedure, it was open to the applicant to apply for reconsideration of the criminal verdict at issue (in this respect, see also §69 of the judgment).

General measures

According to the legislation in force at the material time, appellate judges could order the hearing of new prosecution witnesses who had not testified at first instance (as in the present case). Such hearing was, however, optional and judges could decline it provided that they gave reasons for their decision (in this regard, see in particular former Article 513 of the Code of Criminal Procedure and the judgment of principle of the *Cour de cassation* dated 12 January 1989, summarised in §§43-44 of the European Court's judgment). As regards defence witnesses, no such limitation was provided by the legislation. In the present case, the European Court noted (§61) that the appellate court had not heard them even though at least two of them had been present at the hearing and it had thus the material possibility to do so.

Subsequent to the facts in this case, former Article 513 was amended by Law No. 2000-516 of 15 June 2000 (see § 45 of the judgment). This article provides that witnesses called by the accused shall be heard in conformity with the rules provided in Articles 435-437. The prosecution may object to such witnesses' testifying if they have already been heard by the court. It is for the court to determine such issues before considering the merits. Thus, the hearing of the defence witnesses by the judge is guaranteed.

A summary of the judgment of the European Court was published in *La Cour européenne des droits de l'Homme 2002-2006 – Arrêts concernant la France et leurs commentaires* – a publication of the European Law Observatory (*Observatoire de droit européen*), available on the website of the Court of Cassation: http://www.courdecassation.fr/IMG/File/pdf_2007/observatoire_droit_europeen/cedh_2002_2006%20_internet.pdf.

70456/01, judgment of 26 July 2007, final on 26 October 2007

Resolution CM/ResDH (2010) 77 Sayoud v. France

Violation of the right to respect for private and family life of the applicant (a French citizen, born in Algeria when it was French territory, living in France since 1965, father of two children) on account of his unlawful sentencing in 2000 to exclusion from French territory for five years and his placement in 2002 on a flight to Algiers, following criminal proceedings in which he had been wrongly supposed to be Algerian, although both national and international law forbid the expulsion of nationals (violation of Article 8).

Individual measures

The European Court rejected the applicant's request for just satisfaction which was not lodged in conformity with the Rules of the Court. The applicant was readmitted to France in April 2006. In October 2006, a certificate of nationality and a national identity card were delivered to the applicant by the French authorities (respectively the Registry of the Rheims *Tribunal d'instance* and the Rheims Sub-Prefect's office). Consequently, no other individual measure was considered necessary.

General measures

According to the judgment (§24), the violation originates in the authorities' manifest negligence. The European Court said that it did not question the government's good faith in stating that the authorities would not have deported the applicant had they known that he was a French national. It even added that there is little doubt that the applicant himself contributed to the complexity of his own situation by being dilatory in obtaining documentary proof of his French nationality. It insisted however that the authorities should have made sure that the interference with the applicant's rights under Article 8 was "in accordance with the law". Considering in particular the date and place of the applicant's birth and the existence of national regulations entitling persons born in Algeria at that time to take French nationality (Order No. 62-825 of 21 July 1962, see §17), the authorities should have ascertained whether or not the applicant had made use of those provisions before they decided to exclude him from French territory and enforced the decision.

According to authorities, the violation in this case seems to be an isolated case and no general measure would be required. However, for all practical purposes, the judgment of the European Court accompanied by a comment is subject to permanent dissemination on the intranet site of the Department of Public Liberties and Legal Affairs of the Ministry of Interior, accessible to all agents of central administration and decentralised services (prefects' offices and national police services, in particular). The judgment has also been published on the *Legifrance* website.

54810/00, judgment of 11 July 2006, Grand Chamber

Resolution CM/ResDH (2010) 53 Jalloh v. Germany

Inhuman and degrading treatment resulting from the forceful administration of emetics in 1993 against a minor drug-dealer for the simple purpose of securing more rapidly evidence which would otherwise in all likelihood have appeared "the natural way" (violation of Article 3); and use of the obtained evidence in the criminal proceedings leading to the applicant's conviction to six months suspended imprisonment, thus causing a violation of the right not to incriminate oneself (violation of Article 6§1).

Individual measures

The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. On 10 December 2007 the Mönchengladbach District Court decided, at the request of the applicant's counsel, to reopen the criminal proceedings. The hearing set for 18 April 2008 had to be cancelled as the applicant had left Germany before the summons was sent. In August 2009, the counsel informed the District Court that the applicant was still abroad and gave no further information on his presumed return to Germany. However, a new hearing is possible only if the applicant is present. In these circumstances, no individual measure was deemed necessary.

General measures

As regards the violation of Article 3, the practice of administering emetics to obtain evidence was expressly abandoned in the *Länder* which had used it (Berlin, Bremen, Hamburg, Hessen and North Rhine-Westphalia).

Concerning the violation of Article 6§1, according to the German authorities it is assumed that in view of the direct effect of the Convention in Germany that the require-

ments of this provision of the Convention and the European Court's case-law will be taken into account in the future, after the publication and dissemination of the Court's judgment, thus preventing similar violations. In this context it should be noted that all judgments of the European Court against Germany are publicly available via the website of the Federal Ministry of Justice (http://www.bmj.de/; *Themen: Menschenrechte*, EGMR). The judgment was also sent out to the courts concerned, local administrations (all state administrations of justice, all Ministries of Justice of the *Länder – Landesjustizverwaltungen*) and federal authorities (Federal Ministries of Interior and of Health).

Resolution CM/ResDH (2010) 52 Kaemena and Thöneböh v. Germany

45749/06+, judgment of 22 January 2009, final on 22 April 2009

Excessive length of joint criminal proceedings (9 May 1996-5 July 2006) against the applicants convicted to a life sentence on account of substantial periods of delay occurred before the Federal Constitutional Court more than 6 years and one month) (violation of Article 6§1); lack of an effective remedy at the applicants' disposal capable of affording redress for a violation of the reasonable-time requirement (violation of Article 13).

Individual measures

The proceedings are closed. The European Court awarded the applicants just satisfaction in respect of non-pecuniary damage sustained. Consequently, no other individual measure was considered necessary.

General measures

1. Violation of Article 6§1

The German authorities submitted that the violation resulted from the particular workload of the Federal Constitutional Court at the material time, which in the meantime had been redressed by establishing an additional registry and recruiting additional legal officers. Moreover, a simplified procedure had been introduced, according to which decisions are taken by a chamber composed of three judges (§§ 93b, c and d of the Federal Constitutional Court Act).

2. Violation of Article 13

By a decision of 17 January 2008 the Federal Court of Justice changed its case-law, affording redress for excessive length of proceedings in cases in which a mandatory life sentence is imposed in such a way that a specified part of the life sentence – which is enforced for at least fifteen years – had to be considered as having been served (so called "execution approach", "*Vollstreckungslösung*"; §§ 50-54, 76 and 86 of the judgment). The European Court welcomed this reversal of case-law (§ 87 of the judgment), which, however, was not applicable to the applicants as it was introduced after their conviction.

3. Publication and dissemination

The European Court's judgment has been transmitted to the courts directly concerned and to the Ministries of Justice of the *Länder*. It was published in various law journals (*Strafverteidiger*, 10/2009, p. 561; and *Newsletter Menschenrechte* 1/2009, p. 26). The judgment will also be included in the Ministry of Justice's *Report of the case-law of the European Court for Human Rights and the execution of its judgments in proceedings against the Republic of Germany in 2009*.

All judgments of the European Court against Germany are publicly available via the website of the Federal Ministry of Justice (http://www.bmj.de/, Menschenrechte, EGMR) which provides a direct link to the European Court's website for judgments in German (http://www.coe.int/T/D/Menschenrechtsgerichtshof/Dokumente_auf_Deutsch).

Resolution CM/ResDH (2010) 56 Guidi and other similar cases v. Italy

28320/02, judgment of 27 March 2008, final on 27 June 2008

Illegal and arbitrary monitoring (between 2002 and 2007) of part of the correspondence of the applicants (prisoners), in particular with their lawyers, with the ECtHR and their families; the applicants, subject to the special prison regime provided by Article 41bis of the Prisons Act applicable to prisoners convicted of offences linked with the mafia, were subject to restrictions inter alia with respect to correspondence (violations of Article 8).

Individual measures

The European Court considered that the finding of a violation constituted just satisfaction in respect of the non-pecuniary damages suffered. Furthermore, the Court found no link between the violations and pecuniary damages claimed by the applicants (Guidi, §64; De Pace, §67, Zara, §42). As regards possible new, similar violations in respect of the applicants, reference should be made to the general measures adopted by the Italian authorities.

General measures

The legal problems found by the Court concerning the legislation prior to April 2004 were remedied through the introduction in April 2004 of Article 18 *ter* of the Law on Prison Administration (see Resolution ResDH (2005) 55 adopted on 5 July 2005, closing supervision of the cases of Calogero Diana and others). In particular, limits to the monitoring of detainees' correspondence were introduced: the length of monitoring is limited to 6 months (extensible by up to 3 months) and correspondence with lawyers and international organisations for the protection of human rights cannot be subject to monitoring. Furthermore, any limitations to correspondence are ordered by the judge with a motivated decree, which can be appealed (*reclamo*). Despite this new legislative framework, the continuation of censorship after April 2004 up to 2007 in some of these cases cast doubt on its proper application.

To raise awareness and prevent similar violations, the Ministry of Justice translated the judgment of the European Court in the Guidi case into Italian and sent it out to the competent courts. Furthermore, the Prison Administration Department sent several circulars to the directors of Italian prisons, recalling the basic rules on monitoring of correspondence and the need to comply with the legal framework provided by Act No. 95/2004. All the judgments have also been published in the database of the Court of Cassation on the case-law of the European Court of Human Rights (http://www.italgiure.giustizia.it/). This website is widely used by all those who practise law in Italy: civil servants, lawyers, prosecutors and judges alike.

50435/99, judgment of 31 January 2006, final on 3 July 2006

Resolution CM/ResDH (2010) 60 Rodrigues da Silva and Hoogkamer v. the Netherlands

Breach of the right to respect for family life of the applicants (the mother, a Brazilian national and her daughter, born in 1996 in the Netherlands) due to the refusal in 1997 and 2002 by the respondent state to issue a residence permit to the first applicant, which could involve her expulsion and have far-reaching consequences on her responsibilities as a mother (violation of Article 8).

Individual measures

The first applicant was granted a residence permit with retroactive effect as from 15 July 1999. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The Dutch authorities noted that following this judgment, Dutch policy regarding Article 8 of the Convention has been adapted by a special decision (Wijzigins-Besluit Vreemdelingencirculaire WBV 2007/30), which has been incorporated in chapter B2/10 of the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*) 2000). The authorities consider that given the direct effect of the European court's judgments in the Netherlands, all authorities concerned are expected to align their practice to the present judgment. For that purpose, the judgment was disseminated to the immigration authorities and published in several legal journals in the Netherlands, in particular the *NJCM-Bulletin* (2006, no. 6, pp. 844-851), *European Human Rights Cases* (2006, no. 3, pp. 310-316) and *Nederlands Juristenblad* (2006, no.17, p. 953).

45214/99, judgment of 24 May 2005, final on 24 August 2005

Resolution CM/ResDH (2010) 78 Sildedzis v. Poland

Breach of the applicant's right to the peaceful enjoyment of his possessions, in that, for more than two years he was prevented from using his car bought at a public auction organised by the Tax Office in 1997, due to the administrative authorities' refusal to register it on suspicion that it had been stolen (violation of Article 1 of Protocol No. 1).

Individual measures

The applicant's car was registered on 19 July 1999, following the change of regulations. The European Court awarded the applicant just satisfaction in respect of the pecuniary and non-pecuniary damage resulting from the violation.

In the circumstances, no further individual measure appears necessary.

General measures

The administrative authorities' persistent refusal to register the car was due to the lack of clarity of the Regulation of the Minister of Transport and Maritime Economy of 1 February 1993 (in force at the material time), concerning criteria for registering vehicles. However, this was replaced by a new regulation, adopted on 19 June 1999 which entered into force on 1 July 1999 (see §29 of the judgment), which exempts car owners from the obligation to submit certain certificates if the car has been purchased at a public auction or from a person executing an order for forfeiture to the state treasury.

The Regulation of 19 June 1999 was repealed by a legislative amendment which entered into force on 1 January 2002. Since that date the registration of vehicles purchased at public auctions or from persons executing an order of forfeiture to the state treasury has been governed by Section 72 of the Road Traffic Act. It provides that the owner of a vehicle thus acquired is exempted from the obligation to submit certain certificates and moreover (Section 66a), that if the identification numbers of the vehicle have been removed or forged, the competent administrative body (*starosta*) must allocate new ones with a view to the vehicle's registration.

In the circumstances, no further general measures appear necessary.

50959/99, judgment of 21 February 2006, final on 3 July 2006

Resolution CM/ResDH (2010) 63 Odabaşı and Koçak v. Turkey

Unjustified interference with the applicants' right to freedom of expression due to their criminal conviction in 1998 for publishing a book which was considered by Turkish courts to defame the memory of Atatürk, under Articles 1 and 2 of Law No. 5816(violation of Article 10).

Individual measures

Mr Odabaşı was sentenced to 18 months' imprisonment and Mr Koçak was fined.

On 6 September 1999 the applicants' sentences were suspended in accordance with Law No. 4454 concerning the suspension of pending cases and penalties in media-related offences which also provides, under certain conditions, erasure of convictions and their consequences. In particular, the Turkish authorities indicated that the applicants had no convictions registered on their criminal records. Consequently, no other individual measure was considered necessary.

General measures

The Turkish authorities submitted that the direct application of the Convention in Turkish law has been reinforced following the amendment of Article 90 of the Constitution in 2004. In particular, the Turkish authorities submitted a number of examples of decisions not to prosecute given by public prosecutors. A certain number of these decisions concern Law No. 5816 on crimes against the memory of Atatürk in which complaints under this law had been rejected with reference to Article 10 of the Convention and explicit reference to the European Court's case-law on freedom of expression. These decisions consider debate on historical issues, including Atatürk and his personality, as falling outside the scope of defamation or insulting the founder of the Turkish Republic.

The judgment in this case has been translated into Turkish and circulated to the relevant authorities including the Ministry of Justice and the Court of Cassation.

Resolution CM/ResDH (2010) 79 Copland v. the United Kingdom

62617/00, judgment of 3 April 2007, final on 3 July 2007

Secret monitoring in 1999 of the telephone, e-mail and Internet usage of the applicant, an employee of a state education institution, at the order of the head of the institution because of suspicions that she made excessive use of the institution's facilities for personal purpose; absence of a domestic law regulating such monitoring (violation of Article 8).

Individual measures

The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. Consequently, no other individual measure is considered necessary.

General measures

Legislative measures were adopted before the delivery of the judgment (§20). The Regulation of Investigatory Powers Act 2000 provides for the regulation *inter alia* of interception of communications. The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI No. 2699), made under the 2000 Act, came into force on 24 October 2000. The Regulations set out the circumstances in which employers may record or monitor employee's communications (such as e-mail or telephone) without the consent of the employee or the other party to the communication. Employers are required to take reasonable steps to inform employees that their communications might be intercepted (§20).

Along with the adoption of the regulations, guidance on monitoring staff usage of technology was put in place. The guidance includes the following:

- the requirement to inform staff of interceptions made under the Regulations without consent;
- for interceptions outside the scope of the Regulations, the consent of the sender and recipient is required; and
- such consent may be obtained by inserting a clause in staff contracts and by call operators or recorded messages at the beginning of a call stating that calls might be monitored or recorded unless third parties objected.

The judgment was published in the *All England Law Reports* [2007] All ER (D) 32 (April); *European Court of Human Rights* [2007] ECHR 253 and *The Times Law Reports* (TLR), 24 April 2007. A letter drawing attention to the judgment was sent to all further education institutions in England and Wales.

Resolution CM/ResDH (2010) 80 King v. the United Kingdom

13881/02, judgment of 16 November 2004, final on 16 February 2005

Excessive length of certain criminal proceedings before the tax authorities (between 1987 and 2001) on account of the periods of delay or inactivity attributable in particular to the Special Commissioners (violation of Article 6§1).

Individual measures

The proceedings were concluded in 2001. Consequently, no other individual measure is considered necessary.

General measures

Procedures regarding decisions of the Special Commissioners have changed since the material time.

There is now a two-month target set for the production and release of a written decision after a hearing before the Special Commissioners. That target has been met invariably.

Instructions (EM 1362) have been issued to officers of HMRC (Her Majesty's Revenue and Customs which now integrates the work of Inland Revenue and HM Customs and Excise) to advise taxpayers of their rights under Article 6 of the Convention as soon as the possibility of a penalty arises. Tax officers have been instructed to make penalty determinations as soon as practicable (although no time-limit has been set) and to review files every six months to ensure that a matter is progressing at an appropriate rate.

The judgment was published in the *European Human Rights Reports* under reference (2005) 41 EHRR 2 and in *Simon's Tax Cases* under reference (2005) STC 438. A copy of the judgment was circulated by HMRC to all relevant parties, in particular to the Inland Revenue teams specifically concerned with technical and policy matters with respect to penalties and to the Department of Constitutional Affairs (now, the Ministry of Justice), which has responsibility for all the Tax Tribunals. In April 2005 the DCA distributed a circular (Circular 2/2005) to all General Commissioners of Income Tax (approximately 2 500 of them) drawing their attention to the judgment, to the violation found, and in particular, to the delays caused by Inland Revenue, Special Commissioners and General Commissioners.

Resolution CM/ResDH (2010) 67 Saadi v. the United Kingdom

13229/03, judgment of 29 January 2008, Grand Chamber

Violation of the right of the applicant (an Iraqi national who claimed asylum upon his arrival in the United Kingdom) to be informed promptly of the reasons for his arrest; he was told the real reason for his detention 76 hours after his placement in a detention facility for asylum seekers on the basis that his claim was being treated according to a "fast-track" procedure; the applicant was granted asylum on 14 January 2003 (violation of Article 5§2)

Individual measures

The European Court considered that the finding of a violation constituted in itself sufficient just satisfaction. In the circumstances, no further individual measure appears necessary.

General measures

The reasons for detention of asylum seekers upon arrival in the United Kingdom are listed in form IS91R ("Reasons for Detention and Bail Rights" notice), as referred to in paragraph 13 of the judgment. The completed form is presented to asylum seekers when they are detained. The form sets out a list of boxes to tick, indicating the basis on which detention is authorised. At the time of the applicant's detention, there was no box on the form which stated that the purpose of detention was to process an application through the fast-track procedure. The form was changed in April 2002 to include a box indicating that detention was authorised for applications "which may be decided using the fast-track procedures".

In addition, in July 2004, an instruction was circulated to Immigration Officers responsible for filling in the forms, stating that they must include all the reasons why detention is considered appropriate and not just focus upon the sole reason that detention is authorised to process an application under the fast-track procedure.

Following these changes, asylum seekers who are detained due to their application being processed under the fast-track procedure are notified immediately of the reason for their detention.

The European Court's judgment has been published in several law journals and the national press.

Internet:
Department for the Execution of Judgments: http://www.coe.int/execution/
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.

120th session of the Committee of Ministers, Strasbourg 11 May 2010

The 120th session of the Committee of Ministers brought together, in Strasbourg, Ministers for Foreign Affairs or State Secretaries for European Affairs of the 47 member states of the organisation. At the close of the session, "the former Yugoslav Republic of Macedonia" took over from Switzerland the chairmanship of the Committee of Ministers for the next six months.

Antonio Miloshoski, Minister of Foreign Affairs of "the former Yugoslav Republic of Macedonia" and Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs of Switzerland

The Ministers adopted a number of decisions intended to provide follow-up to the Declaration and Action Plan adopted unanimously at their conference at Interlaken in February 2010 on the future of the European Court of Human Rights.

In particular, they invited the Secretary General to make proposals by December 2010 as to the possible means of providing comprehensive and objective information to potential applicants to the Court on the Convention and the Court's case-law. They also instructed their Deputies to step up efforts to make the supervision of execution of the judgments of the Court more effective and transparent and to bring this work to a conclusion by the end of the year. Lastly, they adopted a Recommendation on Education for Democratic Citizenship and Human Rights Education.

The Ministers examined action taken by the Council of Europe following the conflict in Georgia. Amongst other things, the Secretary General reported to them on the progress of his own initiatives to reform the Organisation.

Following the entry into force of the Lisbon Treaty, Ministers welcomed the commitment of the European Union to accede to the European Convention on Human Rights. They called for the early completion of negotiations and a rapid accession. Whilst welcoming the substantial progress in co-operation between the Council of Europe and the European Union in a number of areas, they also called for stronger synergies, in particular in the context of implementation of the EU's Stockholm programme.

Discussion during the informal working lunch centred around the situation in Bosnia-Herzegovina and action taken by the Council of Europe, in particular following the December 2009 judgment of the European Court of Human Rights in the case of Sedjic and Finci.

The Chair and Vice-Chair made a statement on this occasion.

Priorities of the incoming Chairmanship of the Council of Europe

When presenting his priorities, Antonio Miloshoski, incoming Chair, said "The Macedonian chairmanship will hold a series of events throughout its tenure to emphasise this focus.

Antonio Miloshoski, Chairman of the Committee of Ministers of the Council of Europe, Minister of Foreign Affairs of "the former Yugoslav Republic of Macedonia"

For example, it will organise a conference in Skopje entitled Strengthening subsidiarity: integrating the Courts' case law in the national law and practice. The aim of the conference is to reflect upon the possibilities for strengthening the principle of subsidiarity and the need for substantive incorporation of the European Convention on Human Rights into national systems. Such an incorporation would ensure compatibility of national legislation and judicial and administrative practice with the provisions of the Convention and the case-law of the Court".

An inclusive Europe cannot be imagined without integrating national minorities in European societies. In co-operation with the Secretariat of the Framework Convention for the Protection of National Minorities and the Advisory Committee, the new chairmanship will organise a conference on the integration of national minorities. The gathering will provide an opportunity to highlight the complementarities between the Advisory Committee and the OSCE High Commissioner on National Minorities and the interaction with other international organisations in fostering diversity in Europe.

Because young people are the driving force of our societies, the new chairmanship will also organise a youth gathering in Ohrid, in September 2010, which could be considered as one of the Council of Europe's contributions marking 2010 as the "International Year of Youth," as proclaimed under the UN General Assembly Resolution 64/134.

Recommendations of the Committee of Ministers to member states

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family - in-

cluding criminalisation, marginalisation, social exclusion and violence - on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights (hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons";

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and "deprivation of economic, social and cultural rights, including the right to health";

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

3.ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I.Right to life, security and protection from violence

A."Hate crimes" and other hate-motivated incidents

1.Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsi-

ble for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3.Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5.Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

B. "Hate speech"

6.Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8.Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9.Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10.Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11.Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III.Freedom of expression and peaceful assembly

13.Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual

orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14.Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15.Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16.Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17.Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV.Right to respect for private and family life

18.Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19.Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20.Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21.Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22.Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23.Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24.Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25.Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26.Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27.Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28.Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

[...]

X.Right to seek asylum

42.In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43.Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44.Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45.Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as - as far as national law so provides - examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII.Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Declarations by the Committee of Ministers and its Chairperson

2010 International Day in support of victims of torture

Joint Statement by the Chairman of the Committee of Ministers and the President of the Parliamentary Assembly of the Council of Europe, 26 June 2010

"Today we pay our respects to all victims of torture. We also pay tribute to all those who work to denounce cases of torture and provide help to alleviate their tragic consequences. The Council of Europe has been fighting torture during the more than 60 years of its existence. All 47 Council of Europe member states stand behind the prohibition of this and other inhuman or degrading treatment or punishment, as required by the European Convention on Human Rights. Beyond the Human Rights Convention, Europe has managed to set up a unique non-judicial procedure to prevent any such treatment through its European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. We highly value the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and its visits to places of detention in member states. We call for the publication by all member states of CPT reports."

2010 World Refugee Day

Joint Statement by the Chairman of the Committee of Ministers and the President of the Parliamentary Assembly of the Council of Europe, 18 June 2010

On the occasion of World Refugee Day, the Chairman of the Committee of Ministers of the Council of Europe, Minister of Foreign Affairs Antonio Miloshoski, and the President of the Parliamentary Assembly of the Council of Europe, Mevlüt Çavusoglu, referred to this year's theme "home" and underlined the vulnerability of all those who had to flee from their home and their country. They drew attention to the obligation of Council of Europe member states to comply with international treaties for the protection of refugees and asylum seekers and the necessity to collaborate with the UNHCR.

Recalling that the Council of Europe was created to protect the rights of all people within Europe, they noted that "more than ever, there is a need to ensure that the rights of refugees, asylum seekers and displaced persons are guaranteed in practice. Each case is a special one and involves a personal drama, which all the more deserves special attention and approach, especially having in mind that almost half of the worldwide displaced persons and refugees are children. The Council of Europe is well placed to contribute to the protection of refugees at pan-European level through its human rights approach."

Belarus: Council of Europe calls to commute two new death sentences

Strasbourg, 17 May 2010

Council of Europe Committee of Ministers Chair Antonio Miloshoski, and Council of Europe Parliamentary Assembly President Mevlüt Çavusoglu called on the authorities of Belarus to commute the death sentences of Andrei Burdyko and Oleg Grishkovtsov who have just been sentenced to death by the Court of the Grodno region.

"We call on President Lukashenko to immediately commute the two death sentences, to declare forthwith a moratorium on the use of the death penalty, and to commute the sentences of all prisoners sentenced to death to terms of imprisonment as a firm step to bring the country closer to the Council of Europe.

The death penalty has no place in the penal systems of today's societies. Willingness to institute an immediate moratorium on executions, and to abolish the death penalty, is a precondition for accession to the Organisation", they said.

Belarus is not a member State of the Council of Europe. Belarusian parliament's special guest status to the Parliamentary Assembly was suspended on 13 January 1997, and Belarus' request for membership of the Council of Europe was frozen the following year.

The Council of Europe supports the Roma community

Joint statement of the Chair of the Committee of Ministers, Micheline Calmy-Rey, and the President of the Parliamentary Assembly, Mevlüt Çavusoglu, 7 April 2010

"Roma are full citizens of Europe. Yet their situation within our society raises serious human rights issues," say Micheline Calmy-Rey, Chair of the Committee of Ministers, and Mevlüt Çavusoglu, President of the Parliamentary Assembly, in a statement to mark International Roma Day.

"There are approximately 10 million Roma in Europe and their communities continue to suffer discrimination, poverty and social exclusion. In many cases they do not even have guaranteed access to such fundamental rights as education, employment, health and housing. This is an unacceptable situation which we must all strive to change.

Within the Council of Europe we have the necessary legal framework to combat discrimination against Roma and promote their integration. But we also have to change opinions and attitudes since discrimination is often based on ignorance. This is why the Council of Europe launched the Dosta! campaign, which aims to make the public more aware of Roma lifestyles, culture and language.

International Roma Day is an opportunity for all concerned – the authorities, the media, non-governmental organisations and Roma themselves – to discuss together what steps should be taken to make equal opportunities and non-discrimination a reality for all the Roma communities of Europe."

International Day for the Elimination of Racial Discrimination (21 March)

Statement by Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs of Switzerland, Chair of the Committee of Ministers of the Council of Europe, 19 March 2010

"Racial discrimination is one of the scourges of our contemporary societies and must be combated resolutely and relentlessly." Those were the words of Micheline Calmy-Rey, Chair of the Committee of Ministers of the Council of Europe, on the occasion of the International Day for the Elimination of Racial Discrimination.

"Treating an individual differently because of his or her 'race', colour, language, religion, nationality or national or ethnic origin is an unacceptable violation of human rights. The Council of Europe will keep up its efforts against discrimination of this kind with the aid of all the instruments at its disposal and, in particular, by strengthening the action of its European Court of Human Rights, which the Swiss Chairmanship will continue to work for.

The vital work done by the Council of Europe's anti-racism body – the European Commission against Racism and Intolerance (ECRI) –, to which I pay tribute, must also be encouraged in order to back up member states' policies for combating racism and racial discrimination," she added.

8 March: International Women's Day

The Chair of the Committee of Ministers and the President of the Assembly call for a stronger participation of women in politics, 5 February 2010

According to Micheline Calmy-Rey, Chair of the Committee of Ministers of the Council of Europe, speaking on International Women's Day, women make up more than half the population and the electorate of the organisation's member states, but are still grossly under-represented in key political and public decision-making posts in many of those member countries. "Yet women have a major role to play in our public institutions," she continued. "I am convinced of this, both as a woman and, even more, as a woman in politics."

Mevlüt Çavusoglu, President of the Council of Europe Parliamentary Assembly (PACE), added that the worldwide situation was serious, with less than 20 per cent of parliamentary seats held by women, and not even 5 per cent of heads of state being women. "A substantial increase of the representation of women in politics is indispensable to improve the quality of our democracies," he said.

"As Chair of the Committee of Ministers," Mrs Calmy-Rey said, "I am very keen to see a more balanced representation of women and men in politics and public life. I call on member states' governments to take firm action on this at both national and international levels. Both human rights and democracy are at stake. I also call on women to deploy their talents on behalf of public life in all our countries."

Welcoming Mrs Calmy-Rey's call to member states, the PACE President pointed out that in January this year the Assembly had adopted a recommendation on increasing women's representation in politics through the electoral system. "We have also called on the Committee of Ministers to consider drafting an additional protocol to the European Convention on Human Rights in order to enshrine the right to equality for women and men therein, as well as the necessary exception allowing positive discrimination measures for the under-represented sex," the PACE President concluded.

Replies to Parliamentary Assembly Recommendations

"Rape of women, including marital rape"

Parliamentary Assembly Recommendation 1887 (2009)
Reply adopted by the Committee of Ministers on 16 June 2010 at the 1088th meeting of the Ministers' Deputies

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 1887 (2009) on "Rape of women, including marital rape". It has drawn the attention of member states' governments to this recommendation, which it transmitted to a number of intergovernmental bodies.[4]

2. The Committee of Ministers fully shares the Parliamentary Assembly's view that rape, including marital rape, is an unacceptable violation of women's rights and dignity, as well as a most serious crime, and agrees with the Assembly that the fight against rape needs to be stepped up. The Committee of Ministers invites

4. Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) for information; Steering Committee for Equality between Women and Men (CDEG), European Committee on Crime Problems (CDPC) and European Committee on Legal Co-operation (CDCJ), for information and possible comments.

all member states to implement in full its Recommendation Rec(2002)5 on the protection of women against violence.

3. The Committee of Ministers supports the idea that member states' legislation on rape and sexual violence must reach the highest possible standard and avoid a "re-victimisation" of the victim by the criminal justice system. In this respect, the Committee of Ministers wishes to inform the Assembly that, following the adoption of Resolution No. 1 at the 29th Conference of European Ministers of Justice (Tromsø, Norway,

18-19 June 2009) on preventing and responding to domestic violence, the European Committee on Crime Problems (CDPC) has begun work on the status and rights of victims in criminal proceedings, with a view to granting them status in criminal cases.

4. As to the Assembly's request that member states establish marital rape as a separate offence under their domestic law, the Committee of Ministers takes the view that this is not necessary. Rape is classified as a crime in member states' legislation, irrespective of the relationship that may exist between the perpetrator and the victim. The introduction of such a distinction might induce the law maker to define or maintain marital rape as a privileged offence in comparison to extra-marital rape. The Committee of Ministers considers that such a move would run counter to the overall objectives of Parliamentary Assembly Recommendations 1691 (2009) and 1887 (2009). However, the Committee of Ministers wishes to draw the Assembly's attention to the interim report of the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), according to which the definitions of offences in the future convention should take into account international law and the definitions contained, inter alia, in Recommendation Rec(2002)5, which refers specifically to "rape between spouses". In view of the above, the Committee of Ministers is of the opinion that the standard-setting work in progress would adequately address the criminal law and criminal procedural law questions raised by the Parliamentary Assembly in relation to rape, including marital rape.

5. The Committee of Ministers wishes to point out that, according to the CAHVIO interim report adopted by the Committee of Ministers on 1 July 2009, the future draft convention will cover the widest possible range of forms of violence perpetrated against women, amongst them sexual violence, including sexual assault, rape and sexual harassment. The aforementioned report also refers to prevention of violence against women, including through education and training, and protection and support of victims, all of which will be covered in the future convention.

6. Finally, the Committee of Ministers wishes to draw attention to its recent declaration on "Making gender equality a reality", in which member states are invited to "renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe [...]". The Committee of Ministers would therefore be in favour of the idea of starting a Council of Europe campaign on combating the rape of women, including marital rape, with a view to changing public attitudes to rape and sexual violence, provided that its financing is ensured and that the conditions are such that it would have an impact. The launching of the campaign could take place in the context of the promotion of the future Council of Europe convention.

"The state of human rights in Europe: the need to eradicate impunity"

Parliamentary Assembly Recommendation 1876 (2009)
Reply adopted by the Committee of Ministers on 21 April 2010 at the 1083rd meeting of the Ministers' Deputies

1. The Parliamentary Assembly's Recommendation 1876 (2009) on "The state of human rights in Europe: the need to eradicate impunity" raises serious issues to which the Committee of Ministers pays considerable attention. It has communicated the recommendation to the governments of member states and to the Steering Committee for Human Rights (CDDH), to the European Commission against Racism and Intolerance (ECRI) and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), for information and comments. The recommendation has also been transmitted to the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) for information.

2. The Committee of Ministers considers that the eradication of impunity is a priority for Council of Europe action. It recalls that it has instructed the CDDH to examine the feasibility of guidelines in this field. The latter has re-

ported back that such guidelines would be feasible and a committee of experts subordinated to the CDDH[5] has been instructed to draft the guidelines on the basis of the indications provided by the CDDH at its last meeting. The instrument is intended to send a clear signal of Europe's willingness to end impunity regarding serious human rights violations. The CDDH has taken note of the Assembly's views concerning state secrecy, immunities and measures and remedies to tackle all forms of impunity, which will be taken into account in its future work. The committee of experts has held two meetings and completed a first reading of the draft guidelines. The guidelines are to be completed by the end of 2010.

3. The Committee of Ministers refers to its reply to Parliamentary Assembly Recommendation 1872 (2009) on "The rights of today's girls: the rights of tomorrow's women" and underlines that the future Council of Europe convention under elaboration by CAHVIO will cover the severest and most widespread forms of violence against women, including domestic violence and so-called "honour crimes".

4. Referring to its role in supervising the execution of judgments of the European Court of Human Rights, the Committee of Ministers notes that it is encouraged by the Assembly to explore the possibility for states to re-open domestic legal proceedings subsequent to a ruling of the European Court of Human Rights finding the domestic investigations or proceedings fundamentally flawed, to prevent criminals from being granted impunity by virtue of the ne bis in idem rule.

5. As to the Assembly's invitation to the Committee of Ministers to examine the advisability of establishing an independent European committee to investigate serious allegations of gross and systematic violations of human rights, the Committee stresses the role of the existing Council of Europe monitoring mechanisms, of the Secretary General and of the Commissioner for Human Rights. It sees no need to create an additional structure at this stage.

Appendix 1 to the reply

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) fully shares concerns expressed by the Parliamentary Assembly in its Recommendation 1876 (2009) on "The state of human rights in Europe: the need to eradicate impunity".

2. Following the request addressed by the Parliamentary Assembly to the Committee of Ministers to speed up and intensify its work on elaborating Council of Europe guidelines on human rights and the fight against impunity, the CDDH recalls that it was instructed by the Committee of Ministers to examine the feasibility of guidelines in this field. The CDDH set up its Committee of Experts on Impunity (DH-I), which held its first meeting from 9 to 11 September 2009. The latter had concluded that guidelines against impunity for human rights violations would be feasible. Whilst leaving a number of questions open regarding the definition of impunity and the scope of the guidelines, the Committee had drawn up a preliminary list of possible topics to be examined. The guidelines would reflect the standards derived from the Court's case law and those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as, if necessary, other standards which could prove relevant in the fight against impunity. This instrument could send a clear signal of Europe's willingness to end impunity regarding human rights violations. At its November meeting, the CDDH had the opportunity to examine the first conclusions of the DH-I and instructed the latter to start to elaborate the guidelines.

3. The CDDH takes note of the views given by the Parliamentary Assembly concerning state secrecy, immunities and measures and remedies to tackle all forms of impunity. These will be taken into account in the future work of the DH-I, which should be completed during 2010.

Appendix 2 to the reply

Comments by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT has taken note with great interest of Parliamentary Assembly Recommendation 1876 (2009). The Committee shares the Assembly's view that the eradication of impunity should be a priority for Council of Europe action. The CPT has emphasised on many occasions, most recently in its 19th general report, that the credibility of the prohibition of torture and inhuman or degrading treatment or punishment is undermined each time officials responsible for such offences are not held to account for their actions. The CPT is contributing to the ongoing work on elaborating Council

5. The Committee of Experts on Impunity (DH-I).

of Europe guidelines against impunity for human rights violations and hopes that work will soon be successfully completed.

"Action to combat gender-based human rights violations, including abduction of women and girls" and "The urgent need to combat so-called "honour crimes""

Parliamentary Assembly Recommendation 1868 (2009) and 1881 (2009) Reply adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendations 1868 (2009) on "Action to combat gender-based human rights violations, including abduction of women and girls", and 1881 (2009) on "The urgent need to combat so-called "honour crimes"". It has brought both recommendations to the attention of the governments of member states and has forwarded them to a number of intergovernmental bodies.[6]

2. The Committee of Ministers agrees with the Assembly about the need to take action to combat gender-based human rights violations, including abduction of women and girls and so-called "honour crimes". Recommendation 1881 (2009) refers to a strategy based on the elimination of every form of legislative justification for diminishing or removing the criminal responsibility of the perpetrators of "honour crimes". The Committee of Ministers fully supports this approach. There can be no justification based on custom, religion, tradition or honour for acts of violence against women.

3. The Committee of Ministers is furthermore of the opinion that member states should adopt, according to their national legal systems, the necessary legislative or other measures to ensure that any form of violence committed in the name of honour is criminalised and punishable by effective, proportionate and dissuasive sanctions, taking into account its seriousness.

4. The Council of Europe's standard-setting work in this field is going ahead according to schedule. The Committee refers to its reply to Assembly Recommendation 1872 (2009) on "The rights of today's girls: the rights of tomorrow's women", and recalls that, according to the interim report of the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), considered by the Ministers' Deputies on 1 July 2009, the focus of the future Council of Europe convention on domestic violence should be on the elimination of violence against women and should deal with domestic violence which affects women disproportionally. The convention should cover all forms of violence perpetrated against women, whether physical, psychological, sexual or economic in nature. It should cover any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in the public or private sphere. This would include, but not be limited to, physical and psychological violence, including stalking; sexual violence, including sexual assault, rape and sexual harassment; as well as other forms of violence against women, including forced marriage, deprivation of liberty, female genital mutilation and crimes committed in the name of honour.

5. According to the interim report, the draft convention will contain a chapter on protection and support of victims, including the establishment of support services such as telephone helplines, shelters and emergency centres. Moreover, as a follow-up to Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (18-19 June 2009, Tromsø, Norway) on preventing and responding to domestic violence, which includes crimes committed in the name of honour, the Committee of Ministers has asked the European Committee on Crime Problems (CDPC) to initiate work on the status and rights of victims in criminal proceedings with a view to granting them status in criminal cases.

6. The Committee of Ministers notes that the Assembly considers that a unified statistical data collection system for gender-based human

6. Recommendation 1868 (2009): Steering committee for Equality between Women and Men (CDEG), Steering Committee for Human Rights (CDDH), Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) and Executive Council of the North South Centre, for information and possible comments.
Recommendation 1881 (2009): European Committee on Crime Problems (CDPC), Steering Committee for Equality between Women and Men (CDEG) and Steering Committee for Human Rights (CDDH), for information and possible comments, and Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), for information.

rights violations could be a useful tool for decision makers when laying down policies to combat these phenomena. The Committee is not sure, however, that the benefits would be such as to justify the establishment of such a system in the present budgetary context. The introduction of a unified statistical collection system is currently being studied by the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO).

7. As pointed out by the Assembly, the European Centre for Global Interdependence and Solidarity (North-South Centre) has an important role to play in maintaining a dialogue on gender equality and combating gender-based violence with countries of emigration and countries of immigration on gender equality issues. The Committee of Ministers refers to the appended comments made by the Executive Council of the North-South Centre and underlines that the latter reiterates its will to develop its role as a catalyst in the reinforcement of synergies among players working for the promotion of women's rights in the world, particularly in the Euro-Mediterranean and Euro-African regions.

8. The Committee of Ministers will consider how the fight against the most severe and most widespread forms of violence against women can best be included in the Council of Europe's assistance and co-operation programmes. It recalls its Declaration "Making gender equality a reality", adopted at the 119th Ministerial Session in Madrid in May 2009, in which member states are urged to "renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources".

9 Finally, the Committee of Ministers refers to its reply to Parliamentary Assembly Recommendation 1798 (2007) on "Respect for the principle of gender equality in civil law", in which it stated that it does not see the need for drafting a new protocol to the European Convention on Human Rights. In this context, it draws the Assembly's attention in particular to the comments made by the Steering Committee for Human Rights (CDDH).

Appendix to the reply

Comments received from committees on Parliamentary Assembly Recommendation 1868 (2009) on "Action to combat gender-based human rights violations, including abduction of women and girls"

Comments by the Steering Committee for Equality between Women and Men (CDEG)

As regards the stepping up of the programmes of the North-South Centre on gender equality, the CDEG recalled that following the thematic debate of the Committee of Ministers on gender equality in October 2008, the latter requested the CDEG to continue and extend its action for integrating a gender perspective in Council of Europe activities. It already had the opportunity to contribute actively to the activities organised by the North-South Centre, in particular in the framework of the preparation of the White Book on Intercultural Dialogue, and on women's participation in political and public life. It therefore supports the proposal of the Parliamentary Assembly to contribute actively to the programmes of the North-South Centre by sharing its experience and its extensive knowledge in the field of equality between women and men.

As regards the drafting of a new protocol to the European Convention on Human Rights on gender equality, it recalls its comments on Recommendation 1798 (2007) of the Parliamentary Assembly – "Respect for the principle of gender equality in civil law" in which it underlined the existing instruments of the Council of Europe which already provide a legal framework to combat any form of discrimination against women.

The CDEG also added in its comments that the drawing up of a new protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, could in due time be considered by the Committee of Ministers. It has also considered that the CDEG could examine further this proposal in co-operation with the other relevant Council of Europe steering committees, in particular the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

[...]

Comments received from committees on Parliamentary Assembly Recommendations 1868 (2009) on "Action to combat gender-based human rights violations, including abduction of women and girls", and 1881

(2009) on "The urgent need to combat so-called "honour crimes""

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) welcomes Recommendation 1868 (2009) of the Parliamentary Assembly on "Action to combat gender-based human rights violations, including abduction of women and girls", and Recommendation 1881 (2009) on "The urgent need to combat so-called 'honour crimes'", which touch upon serious problems present in all member states of the Council of Europe and of which the number of victims tends to increase. The CDDH notes that in these texts, the Assembly notably repeats its request for the drafting of a new protocol the European Convention on Human Rights devoted to equality between women and men.

2. While understanding the reasons underlying this proposition, the CDDH refers to the comments it had already formulated regarding Recommendation 1798 (2007) on "Respect for the principle of gender equality in civil law", referred to in the aforementioned texts. It reaffirms that implementing the existing legal framework, meaning Article 14 of the Convention, Article 5 of Protocol No. 7 and Protocol No. 12 to the Convention, can solve the issues which have been raised without requiring a new binding legal instrument (convention, protocol or treaty). In this regards, it reminds that on the basis of existing dispositions, the European Court of Human Rights recently found a violation of Article 14 of the Convention, jointly with Articles 2 and 3, in a case that dealt with the authorities' failure to protect the applicant and her mother against acts of domestic violence. The Court judged that the physical abuse inflicted on the applicant and her mother was related to their sex and that it must thus be seen as a form of discrimination against women.[7]

3. The CDDH draws attention to the significant drafting work of the Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO), of a draft Convention on the prevention of violence against women and domestic violence. That said, the CDDH is convinced that legal responses, whilst essential in this field, are nevertheless not sufficient; they must be combined with educational and cultural measures likely to deter, in a long-term perspective, the phenomenon of violence against women and domestic violence. Consequently, the CDDH suggests that within the Council of Europe, a particular emphasis be put on actions in the field of human rights education and culture.

Comments received from committees on Parliamentary Assembly 1881 (2009) on "The urgent need to combat so-called "honour crimes""

[...]

Comments by the Steering Committee for Equality between Women and Men (CDEG)

The CDEG has noted with interest recommendations 1881 (2009) and 1887 (2009) of the Parliamentary Assembly on, respectively, "The urgent need to combat so-called "honour crimes"" and "Rape of women, including marital rape".

The CDEG fully supports the spirit of these recommendations and refers to its action since the 1970s and right up to the present day to combat all forms of violence against women. It welcomes the fact that its efforts, combined with those of the Parliamentary Assembly, will lead to the first European human rights treaty in this area, in the form of a Council of Europe convention on preventing and combating violence against women and domestic violence.

The Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO) has decided that the convention should cover all forms of violence against women, whether this be physical, psychological, sexual or economic. The convention should cover all forms of sexist violence that results or could result in physical, sexual or psychological suffering or harm, including the threat of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

This includes the following non-exhaustive aspects:

- physical and mental aggression, including criminal harassment;
- sexual violence, including sexual assaults, rape and sexual harassment;
- other forms of violence against women, including forced marriages, deprivation of liberty, female genital mutilation and honour crimes.

Concerning more particularly paragraph 2.3 of Recommendation 1887 (2009) requesting member states to "establish marital rape as a

7. *Opuz v. Turkey*, application No. 33401/02, judgment of chamber of 9 June 2009; *Abdulaziz, Cabales and Balkandali v. United Kingdom*, application No's. 9214/80, 9473/81 and 9474/81, judgment of 28 May 1985.

separate offence under their domestic law if they have not already done so, in order to avoid any hindrance of legal proceedings", some CDEG members considered that establishing marital rape as a separate offence was not necessary, rape being considered as a crime in their legislation, independently of the existing relationship between the perpetrator and the victim.

In connection with the drafting of a new protocol on equality to the European Convention on Human Rights, as advocated in Recommendation 1881 (2009) on "The urgent need to combat so-called "honour crimes"", it repeats its comments on Parliamentary Assembly Recommendation 1798 (2007) on "Respect for the principle of gender equality in civil law". In these comments, the CDEG referred to the existing Council of Europe instruments that already offered a legal basis for combating all forms of discrimination against women and asked member states that had not already done so to sign and ratify them, particularly Protocol No. 12 of the European Convention on Human Rights, and to fully apply the provisions of these instruments.

The CDEG also notes that Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms invites member states to ratify and implement the "international legal instruments on human rights in general and on women's and girls' full enjoyment of human rights in particular" because "they are a fundamental and authoritative basis and a framework for national policies to eliminate discrimination on the grounds of sex and promote gender equality. Their ratification is a first decisive step towards these objectives and their full implementation must be ensured and constantly monitored and evaluated."

The CDEG added in its comments that the Committee of Ministers might envisage a new protocol to the European Convention on Human Rights in due course. It also thought that it could give this proposal more detailed consideration in conjunction with other relevant Council of Europe steering committees, in particular the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

As to the proposed launch of a Council of Europe campaign against rape, including marital rape, possibly in connection with the promotion of the future Council of Europe convention, as proposed in Recommendation 1887 (2009) on the "Rape of women, including marital rape", the CDEG would support such an idea provided that the necessary human and financial resources were made available. This point was made by the Committee of Ministers itself in its recent Declaration "Making gender equality a reality", in which member states are urged to "renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources".

"The situation of human rights defenders in Council of Europe member states"

Parliamentary Assembly Recommendation 1866 (2009)
Reply adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

1. The Committee of Ministers has taken note of Parliamentary Assembly Recommendation 1866 (2009) on "The situation of human rights defenders in Council of Europe member states", which it has brought to the attention of the member states' governments and communicated to the Steering Committee for Human Rights (CDDH) for comments. It recalls the commitment made by Heads of State and Government meeting at their Third Summit in Warsaw 2005 that the Council of Europe "shall – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights".

2. The Committee of Ministers considers that human rights defenders play an important role at national and international levels in ensuring the effective protection of individual rights and freedoms. It deeply regrets that they are often victims of violations of their rights, threats and attacks, despite efforts at both national and international levels. The Committee of Ministers condemns all attacks on human rights defenders.

3. In February 2008, the Committee of Ministers adopted a Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities. This declaration presents a set of provisions for states to observe for the protection of human rights defenders and promotion of their work. Whereas it acknowledges that primary responsibility and duty to promote and protect human rights defenders lies with the state, the

Committee of Ministers underlines that the Council of Europe shall also contribute to creating an enabling environment for human rights defenders and to protecting them and their work in defending human rights. The declaration calls on member states to take a certain number of measures, including to "provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas".

4. In the context of the follow-up to the 118th Ministerial Session (Strasbourg, May 2008), the Ministers' Deputies instructed the Steering Committee for Human Rights, in consultation with the Commissioner for Human Rights, to undertake a first review of the follow-up given to the Committee of Ministers' declaration and to report back. At the handover meeting of the Chairmanship of the Committee of Ministers between Slovenia and Switzerland on 18 November 2009, the Committee of Ministers took note of a report on the follow-up given to its declaration. On the same occasion, the Committee of Ministers reaffirmed its condemnation of all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors. It also welcomed the work undertaken in this field by all Council of Europe bodies and institutions and reiterated its call to these bodies to pay special attention to issues concerning human rights defenders in their respective work.

5. The Committee of Ministers has on several occasions highlighted the important role played by the Council of Europe Commissioner for Human Rights in protecting and supporting human rights defenders. It welcomes the useful information contained in the Commissioner's 2008 annual activity report as well as the report he published in March 2009 on the Round Table on the situation of human rights defenders in Europe.[8] The Committee of Ministers recalls that the Commissioner's competences are particularly suitable for effective contribution to the protection of human rights defenders. The Committee also welcomes the Assembly's statement that it will actively co-operate with and help the Commissioner with this task when the need arises. It notes that the Commissioner works in close co-operation with other intergovernmental organisations and institutions.

6. Regarding efforts seeking to put an end to impunity for human rights violations, the Committee of Ministers refers, inter alia, to ongoing work in the CDDH, which is currently elaborating a set of guidelines against impunity for human rights violations. These guidelines will be completed towards the end of 2010.

7. The Committee of Ministers supports the Assembly's call for increased focus on human rights defenders within the Council of Europe's human rights awareness-raising and training activities, notably those concerning law-enforcement bodies and the media. As regards media freedom, it wishes to draw the Assembly's attention to its Declaration on measures to promote respect for Article 10 of the European Convention on Human Rights adopted on 13 January 2010 and to its invitation to the Secretary General to make arrangements for improved collection and sharing of information and enhanced co-ordination in the field of freedom of expression and information, including freedom of the media. In this context, the Committee of Ministers has also made a call 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.

8. Finally, the Committee of Ministers welcomes the work of the Council of Europe Conference of International Non-Governmental Organisations and its Expert Council on NGO Law. It recalls the work under way to follow-up the implementation of its Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, which stipulates that NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.

Appendix to the reply

Comments by the Steering Committee for Human Rights (CDDH)

1. Considering particularly the recent assassinations of human rights defenders,[9] the Steering

8. CommDH(2009)15 – Strasbourg, 20 March 2009 – Report of the Round Table on the situation of human rights defenders in the member states of the Council of Europe, organised by the Office of the Commissioner for Human Rights (Strasbourg, 3-4 November 2008). Comm DH(2009)12 – Strasbourg, 22 April 2009 – Annual activity report 2008 by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe presented to the Committee of Ministers and the Parliamentary Assembly

Committee for Human Rights (CDDH) can only join in on the concerns expressed by the Parliamentary Assembly in its Recommendation 1866 (2009) on "The situation of human rights defenders in Council of Europe member states". The CDDH remains convinced of the essential importance of the protection of human rights defenders, who play a fundamental role in the promotion and protection of human rights and who contribute in a crucial way to the efforts put in place within the framework of international human rights, as it was underlined in the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008.

2. In the first place, the CDDH refers to its activity report from 2008[10] and recalls that the aforementioned declaration is a common minimum norm which the states must observe for the protection of human rights defenders and promotion of their work. The primary responsibility and duty to promote and protect human rights defenders lies with the state. In this regard, the declaration orders member states to take a certain number of measures, namely "provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas".

3. In its activity report, the CDDH underlined that the Council of Europe has an important role to play by contributing to the creation of an environment favourable to human rights defenders and that the Commissioner should reinforce his key role. Similarly, the CDDH has invited the Council of Europe to carry out its activities concerning human rights defenders in direct co-operation and in complementarity with other intergovernmental organisations, mainly the OSCE, the European Union and the United Nations.

4. In this sense, the CDDH thus welcomes the terms of the Recommendation 1866 (2009). Regarding the efforts seeking to eradicate violations of the rights of human rights defenders and to put an end to impunity for these violations, the CDDH wishes to remind of the work that it is currently carrying out in relation to the feasibility of guidelines against impunity for human rights violations. This work should be accomplished in 2010.

5. Furthermore, the CDDH welcomes the report prepared by the Commissioner for Human Rights in 2009 and recalls that this body has competences particularly suitable for effective contribution to the protection of human rights defenders.

9. See the statements of the Parliamentary Assembly of the Council of Europe from 16 July and 11 August 2009.
10. CDDH activity report on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008.

"The protection of human rights in emergency situations"

Parliamentary Assembly Recommendation 1865 (2009)
Reply adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies

1. The Committee of Ministers notes with interest Parliamentary Assembly Recommendation 1865 (2009) on "The protection of human rights in emergency situations", which it has brought to the attention of the members states' governments. It has also communicated it to the Steering Committee for Human Rights (CDDH) and to the Committee of Legal Advisers on Public International Law (CAHDI) for comments. The comments received are appended to this reply.

2. The Committee of Ministers agrees with the Parliamentary Assembly that as the declaration of a state of emergency entails restrictions on the rights and freedoms of individuals, it must be used with utmost care and as a means of last resort only. It must never become a pretext to restrict the exercise of fundamental human rights unduly.

3. The Committee of Ministers observes that under Article 15, paragraph 3 of the European Convention on Human Rights (ETS No. 5), a High Contracting Party derogating from its obligations under the Convention shall keep the Secretary General fully informed of the measures it has taken and the reasons therefore. He/she shall also be informed when the measures cease to operate. The Secretary General has the possibility to request supplementary information from the High Contracting Party concerned during and after the state of emergency and has made use of this possibility on several occasions in the past. The Secretary General can transmit the information received to other member states and to the relevant bodies within the Organisation.

4. As to the Assembly's recommendation to add more rights to the list of those that are currently non-derogable under Article 15 of the

Convention, especially rights whose suspension is not essential even in a state of emergency, the Committee of Ministers agrees with the CDDH, that in the light of the Court's role in assessing the national margin of appreciation, it is not necessary to take such a step. It recalls that although it is not for the Court to say what measures are best adapted to situations of emergency because this comes under the direct responsibility of governments, the Court has nevertheless confirmed that "Contracting Parties do not enjoy an unlimited power of appreciation. It is for the Court to rule on whether, inter alia, the states have gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation".[11]

5. Recalling the subsidiary nature of the Convention's control mechanism, the Committee of Ministers agrees with the Assembly about the usefulness of a possibility for judicial scrutiny at national level of the validity of a state of emergency and its implementation. It also agrees that the legislature could have an important role to play in scrutinising the decision-making process.

Appendix 1 to the reply

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) notes with interest Recommendation 1865 (2009) of the Parliamentary Assembly on "The protection of human rights in emergency situations", which deals with a crucial problem. At the moment of a declaration of a state of emergency, the level of surveillance at the national and at the European level must be effective in order to respect human rights, with the relevant Council of Europe control mechanisms fully playing their role.

2. The Committee has already looked into situations where fundamental rights are at risk of being violated, under the pretext of protecting them, particularly within the framework of drafting the Guidelines of the Committee of Ministers on Human Rights and the Fight against Terrorism, adopted on 11 July 2002. Following from Article 15 of the European Convention on Human Rights and the Court's jurisprudence, it is intended that when the fight against terrorism intervenes in a state of war or public danger which threatens the life of the nation, it is possible to unilaterally adopt measures temporarily derogating from certain obligations which follow from international human rights instruments, but only to the extent strictly required by the exigencies of the situation, as well as within the limits and under the conditions fixed by international law. It is emphasised that states may never, whatever the acts of the person suspected of terrorist activities, or convicted of such activities, derogate from the right to life as guaranteed by these international instruments, from the prohibition of torture or inhuman or degrading treatment or punishment, from the principle of legality of sentences and of measures, nor from the ban on the retrospective effect of criminal law (Guideline XV).

3. The CDDH takes note of the suggestion of the Parliamentary Assembly to grant to the Secretary General, upon the receipt of a declaration of derogation in accordance with Article 15 of the Convention, the possibility to request additional information during and after the state of emergency, in order to pass this information on to other member states and affected bodies within the Organisation. It recalls that the legal framework for the exercise of this competence by the Secretary General already exists in paragraph 3 of Article 15 of the Convention.

4. The CDDH nevertheless recalls that the Court affirmed its competence for exercising control over the existence of a public danger threatening the life of the nation: "it is for the Court to determine whether the conditions laid down in Article 15 for the exercise of the exceptional right of derogation have been fulfilled in the present case".[12] The Court does not exercise this competence in abstracto, but only in the event of a concrete situation which has been brought to its attention following an individual or state application.

5. In addition, if it is not for the Court to say what measures are best adapted to situations of emergency because this comes under the direct responsibility of governments, the Court has nevertheless confirmed that "Contracting Parties do not enjoy an unlimited power of ap-

11. Brannigan and McBride v. United Kingdom, 26 May 1993, para. 43, series A No. 258; A. and others v. United Kingdom, 19 February 2009, application No. 3455/05, para. 173.

12. *Lawless v. Ireland*, 1 July 1961, series A No. 3, para. 22.

preciation. It is for the Court to rule on whether, inter alia, the states have gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation".[13]

6. Rather than extending the list of rights in relation to which no derogations can be made under Article 15 of the Convention, the CDDH wants to underline the crucial role of the Court in assessing the national margin of appreciation.

Appendix 2 to the reply

Communication by the Chair of the Committee of Legal Advisers on Public International Law (CAHDI)

In this recommendation, the Assembly invites the Committee of Ministers to look into ways to elevate the level of scrutiny applied to declarations of a state of emergency, in particular by considering the opportunity of granting the Secretary General, upon receipt of a declaration of a derogation under Article 15 of the European Convention on Human Rights (ETS No. 5), the possibility to request supplementary information during and after the state of emergency, and to transmit this information to all Contracting Parties, the Chairperson of the Committee of Ministers, the President of the European Court of Human Rights, the Council of Europe Commissioner for Human Rights, as well as the Presidents of the Parliamentary Assembly and of the Congress of Local and Regional Authorities of the Council of Europe.

Besides, the Assembly proposes considering of a possibility of adding more rights to the list of those that are currently non-derogable under Article 15 of the European Convention on Human Rights, especially with respect to rights whose suspension is not essential even in a state of emergency, as is the case in Article 27 of the American Convention on Human Rights.

The CAHDI received the text of this recommendation and the invitation for presenting its comments after its September meeting (Strasbourg, 10-11 September 2009). Since the next meeting of CAHDI is planned for 18 and 19 March 2010 the Committee will not be able to consider this request of comments before the deadline, namely 15 December 2009.

However, the President of CAHDI considers it important to underline that the questions raised by the Recommendation 1865 (2009) would in any case require an amendment of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

13. *Brannigan and McBride v. the United Kingdom*, 26 May 1993, para. 43, series A No. 258; *A. and others v. the United Kingdom*, 19 February 2009, application No. 3455/05, para. 173.

Replies to Parliamentary Assembly Written Questions

Written Question No. 581 by Mr Pourgourides: "Urgent need for the adoption of measures implementing a judgment of the European Court of Human Rights"

Reply of the Committee of Ministers adopted on 14 April 2010 at the 1082nd meeting of the Ministers' Deputies

Question:

In light of the urgent need for the adoption of measures implementing the European Court of Human Rights judgment in the case of Hirst (No.2) v. the United Kingdom, of 6 October 2005,

Mr Pourgourides,

To ask the Committee of Ministers,

What steps is the Committee of Ministers taking to follow-up the Interim Resolution adopted at its December 2009 Human Rights meeting, which calls upon the United Kingdom authorities to implement measures ensuring that the forthcoming general election will be performed in a way which is compliant with the European Convention on Human Rights, as interpreted by the Court?

Reply:

As the honourable parliamentarian is aware, the Committee of Ministers is supervising the execution of the judgment mentioned in his question in the context of its responsibility under Article 46, paragraph 2, of the European Convention on Human Rights. In the framework of the exercise of this responsibility, at their 1078th Human Rights meeting (2-4 March 2010), the Ministers' Deputies, after a thorough debate concerning the outstanding issues in this case, adopted the following decision:

"The Deputies

1. recalled that in the present judgment, delivered on 6 October 2005, the Court found that the general, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote, fell outside any acceptable margin of appreciation and was incompatible with Article 3 of Protocol No. 1 to the Convention;

2. recalled further that at the last DH meeting in December 2009, the Committee of Ministers adopted Interim Resolution CM/ResDH(2009)160, in which it 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, and urged the respondent state to rapidly adopt measures to implement the judgment;

3. noted that notwithstanding the Grand Chamber's judgment in 2005, a declaration of incompatibility with the Convention under the Human Rights Act 1998 by the highest civil appeal court in Scotland[14] and the large number of persons affected, the said automatic and indiscriminate restriction remains in force;

4. reiterated their serious concern that a failure to implement the Court's judgment before the general election and the increasing number of persons potentially affected by the restriction could result in similar violations affecting a significant category of persons, giving rise to a substantial risk of repetitive applications to the European Court;

5. strongly urged the authorities to rapidly adopt measures, of even an interim nature, to ensure the execution of the Court's judgment before the forthcoming general election;

6. decided to resume consideration of this item at their 1086th meeting (June 2010) (DH) in the light of further information to be provided by the authorities on general measures."

14. The Registration Appeal Court of Scotland (part of the Court of Session): *Smith v. Scott* 2007 S.L.T 137 judgment of 24/01/2007.

Written Question No. 571 by Mrs Däubler-Gmelin: "Repetitive non-compliance by Italy with interim measures ordered by the European Court of Human Rights"

Reply of the Committee of Ministers adopted on 21 April 2010 at the 1083rd meeting of the Ministers' Deputies

The Committee of Ministers is supervising the execution of the judgment of the European Court of Human Rights in the Ben Khemais case (Application No. 246/07, judgment of 20 February 2009) as part of its function laid down in Article 46, paragraph 2, of the European Convention on Human Rights. In reply to the question put forward by the honourable member, it would like to communicate to the Parliamentary Assembly the text of the decision it adopted in the context of this case at its 1078th meeting (DH)

(2-4 March 2010), which reads as follows:

"The Deputies

1. noted that the Italian authorities are fully committed to complying with interim measures indicated by the European Court under Rule 39 of the Rules of Court;

2. noted further that the Italian authorities have made certain efforts aimed at collecting information on the applicant's situation in prison in addition to the diplomatic assurances given by the Tunisian authorities;

3. welcomed the Italian authorities' readiness to pursue their efforts in this respect;

4. took note of the information provided by the Italian authorities that, in a similar case in which the European Court indicated an interim measure under Rule 39, an Italian court decided to apply an alternative measure to deportation by way of placing the applicant in a working centre (casa di lavoro);

5. invited the Italian authorities to clarify whether this alternative measure, or any other similar measures, will be applied in all other similar cases of new interim measures indicated by the Court under Rule 39 and offer sufficient effective safeguards in order to prevent similar violations in the future;

6. decided to resume consideration of this item at their 1086th meeting (1-3 June 2010) (DH), in the light of updated information to be provided on individual and general measures."

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.

Human rights situation

Child abuse in institutions: PACE's Social Committee to hold a hearing

Parliamentary Assembly's Committee on Social Affairs hold, in Strasbourg on 22 June 2010, a Hearing on "Child abuse in institutions: ensuring full protection of the victims", in the framework of the preparation of a report on the subject by Marlene Rupprecht.

Participants include Massimo Introvigne, Sociologist (Vatican City) ; Marian Shanley, Member of the Commision to Inquire into Child Abuse (Ireland); Christine Bergmann, Special Representative on Cases of Child Abuse (Germany) and Helgard Van Hüllen, Member of the Executive Board of Victim Support Europe (Germany).

According to the motion for a resolution, considering accounts of physical and sexual child abuse occurring within residential facilities, boarding schools, churches and other institutional settings, it is regrettable regret that "the needs of the victims of this abuse have often been disregarded" both in the past and in the present. European Governments should ensure that "any case of child abuse is subject to their criminal law system, and that perpetrators are prosecuted and all victims (and also whistleblowers) receive the same protection regardless of the institutional setting in which the crime was committed".

Irregular migrants: readmission agreements and voluntary return programmes

In a joint debate the Assembly called on member States to only apply readmission agreements in the cases of countries which respect human rights and have a fully functioning asylum system. This is fundamental, the parliamentarians said, to protect irregular immigrants, especially third-country nationals who may risk finding themselves in a country which is not their`s of origin and where they have limited social rights and no opportunities to submit an asylum application. According to the rapporteur Tineke Strik, "the chain of readmission agreements will hinder the chances of refugees to reach a safe haven". The adopted text based on her proposals urges towards greater transparency by compiling statistics on and monitoring the implementation of readmission agreements.

In a second text also adopted, based on a report by Ozlem Turkone, PACE invited member states to promote assisted voluntary returns favouring programmes suggested by the International Organization for Migration (IOM) which include: pre-departure counselling, giving current information about their home region and assistance in obtaining the necessary documents; then transportation assistance whether financially or in practical terms ac-

cording to need; and finally post arrival assistance which ensures a sustainable return and helps development in the country of origin through training and employment opportunities.

PACE unanimously opposed to a general ban on wearing of the burqa

There should be no general prohibition on wearing the burqa and the niqab or other religious clothing, the Parliamentary Assembly has said – though it added that legal restrictions may be justified "for security purposes, or where the public or professional functions of individuals require their religious neutrality, or that their face can be seen".

In a resolution unanimously adopted, the Assembly – which brings together parliamentarians from the 47 Council of Europe member states – said the veiling of women is often perceived as "a symbol of the subjugation of women to men" but a general ban would deny women "who genuinely and freely desire to do so" their right to cover their face.

However, the parliamentarians added: "No woman should be compelled to wear religious apparel by her community or family. Any act of oppression, sequestration or violence constitutes a crime that must be punished by law." European governments should also seek to educate Muslim women on their rights, as well as their families and communities, and encourage them to take part in public and professional life.

In addition, the Assembly recalled that Muslims in Europe often encounter stigma and discrimination for their customs and beliefs, and they are also prey to religious radicalism; in short, they must face both Islamophobia on the one hand, and Islamism on the other. European governments, meanwhile, must try to find a balance, protecting the right to free worship, as long as it is compatible with common European values, yet also permitting criticism of Islam, provided it does not spill over into hate-speech.

The Assembly, approving a report on Islam, Islamism and Islamophobia prepared by Mogens Jensen, also called on Switzerland to repeal as soon as possible its general ban on the construction of minarets, which it described as discriminatory.

Electoral reform needed despite a general improvement in election laws

Debating the state of democracy in Europe and the progress of the Assembly`s monitoring procedure, the Assembly said some of the member countries assessed were still in need of electoral reform in spite of a general improvement noted in election laws. Parliamentarians discussed how well democratic institutions are working in Albania, Armenia, Bosnia and Herzegovina, Monaco, Moldova, Montenegro, and Serbia while Bulgaria was involved in post-monitoring dialogue.

Sexist stereotypes in the media – a barrier to gender equality

In a resolution adopted, the Parliamentary Assembly recommends a series of measures designed to combat sexist stereotypes in the media. It invites in particular the member states to set up regulatory and self-regulatory media authorities to reduce gender-based discrimination and to devise codes of good practice with partners in the profession to promote the balanced presence of women and men in the media.

At the same time, the Assembly encourages national parliaments to adopt legal measures to penalise sexist remarks or insults. However, as the rapporteur on this issue, Doris Stump, points out, media education also needs to be provided from an early age to teach young people how to decode images and messages.

Situation in member states

Croatian President outlines human rights progress in Croatia

In his first address ever before the Parliamentary Assembly as Croatian President, Ivo Josipovic called the role of the Council of Europe "indispensable" for promoting human rights and described in detail the condition of democracy, human rights and freedoms in his country.

He outlined progress made and challenges still to be faced with regard to minority rights, refugees and displaced persons, fighting corruption, reforming the judiciary, cooperating with the International Criminal Tribunal for the former Yugoslavia and working with neighbours in the Balkans to improve regional stability.

He expressed "his conviction that the Republic of Croatia is in the final stage of negotiations for accession to the European Union as the 28th member".

Ivo Josipovic, Croatian President

PACE urges Russia to fight terrorism in the North Caucasus 'in line with human rights'

The Parliamentary Assembly has urged Russia to fight terrorism in the North Caucasus by "respecting fundamental rights and the tenets of the rule of law", by following the example of other countries that have had to face it, and by working more closely with local NGOs and the Council of Europe.

In a resolution unanimously approved based on a report by Dick Marty, the Assembly expressed "compassion and solidarity" with the families of those who had suffered terrorist attacks, but said the human rights situation in the North Caucasus was "the most serious and most delicate" in the whole Council of Europe area. The parliamentarians noted:

- in the *Chechen Republic*, despite impressive reconstruction efforts, "a climate of pervading fear", disappearances of government opponents and human rights defenders, reprisals against the families of suspected fighters, and intimidation of the media and civil society, all in an atmosphere of "personalisation of power";
- *in Ingushetia*, the growth of "constructive dialogue" with civil society since the appointment of the new President, but also an alarming upsurge of violence since 2009, including murders and disappearances;
- *in Dagestan*, an outbreak of fresh terrorist acts, prompting responses from the security forces which "were not always lawful and productive", putting in peril the admirable age-old tradition of peaceable religious cohabitation there.

Addressing the Assembly as part of the debate, the President of Ingushetia Yunus-Bek Yevkurov said there had been "enormous progress" in the region in the last three or four years, and pledged to uphold human rights and punish violations. "As President I, more than anyone, am interested in turning the North Caucasus into a zone of order - we are the ones who live there."

In their resolution, the parliamentarians pointed out that the European Court of Human Rights had been compelled to assume a role of "last-ditch protection" for many victims in the region, finding grave and repeated violations of fundamental rights which illustrate a "climate of impunity". This and the passiveness of the authorities undermine the population's trust in the security forces and "feed the nefarious spiral of violence," they said.

They also said there were strong indications that the Chechen power, or at least circles close to it, were directly implicated in the murder of Umar Israilov on the streets of Vienna.

They recommended that the Council of Europe Committee of Ministers directly monitor Russia's commitments as regards the situation in the North Caucasus.

More Council of Europe involvement in Kosovo necessary, says PACE

In a recommendation adopted, the Assembly advocates greater Council of Europe involvement in Kosovo[1] beside other international partners such as EULEX and OSCE. The parliamentarians feel that a larger commitment by the Organisation could help "raising standards in the field of democracy, human rights and the rule of law", and enable the population of Kosovo to enjoy an equivalent level of rights as that upheld by the Council of Europe.

According to the text adopted on the basis of the report by Björn von Sydow, "the poor respect for the rule of law affects the everyday lives of all persons in Kosovo, irrespective of the community they belong to, and undermines their trust in the political system." Despite the reforms being made to the administration and the judiciary, much remains to be done to enhance the democratic functioning of the institutions and ensure a level of governance which would bring Kosovo into line with Council of Europe standards.

Consequently, the Organisation should "broaden the range of its activities in Kosovo" and demonstrate flexibility and imagination in finding formulas to apply its monitoring mechanisms to Kosovo while respecting its current policy of status-neutrality.

The Assembly for its part decided "to initiate a dialogue with representatives of the political forces elected to the Kosovo Assembly on issues of common interest, while taking into account the legitimate interests and concerns of Serbia".

1. All references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Ukraine: any regression in the respect of democratic freedoms "would be unacceptable"

In an information note on their fact-finding visit to Kyiv (1-4 June 2010), declassified by the Monitoring Committee on 22 June, the co-rapporteurs Renate Wohlwend and Mailis Reps express their concern about the increasing number of allegations that democratic freedoms, such as freedom of assembly, freedom of expression and freedom of the media have "come under pressure in recent months". Any regression in the respect for and protection of these rights, they said, "would be unacceptable for the Assembly".

The protection of witnesses: a cornerstone for justice and reconciliation in the Balkans

"Improving the protection of witnesses is essential for the success of the work of justice and a key means of achieving reconciliation in the Balkans," said Jean-Charles Gardetto. In his report adopted by the PACE's Committee on Legal Affairs and Human Rights, Mr Gardetto assesses the effectiveness of the protection and support programmes for witnesses to the war crimes committed in the former Yugoslavia in proceedings at national level (in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Kosovo) and international level, before the International Criminal Tribunal for the former Yugoslavia.

"The systems currently in place do not always provide adequate protection to the witnesses giving evidence in war crimes cases in national courts," the rapporteur said. He stressed that that "the consequences are sometimes tragic", referring in his report to people who had been murdered in Kosovo just as they were about to give evidence, the threats to and intimidation of witnesses in Bosnia and Herzegovina, and the disclosure of the identity of protected witnesses in Croatia and Serbia. "It is urgent to protect witnesses since valuable testimonies - and with them a part of the truth - could be lost forever", he concluded. Mr Gardetto's report is due to be debated at a forthcoming session.

Azerbaijan: the forthcoming parliamentary elections must be in full compliance with European standards

Ahead of the parliamentary elections in November 2010, the PACE called on the Azerbaijani authorities "to ensure the necessary conditions for the full compliance of the forthcoming elections with the European standards". In line with the conclusions of the monitoring co-rapporteurs, Andres Herkel and Joseph Debono Grech, it encouraged the authorities to co-operate with the Venice Commission in order to continue with the revision

of the electoral code and to "generate conditions for a fair electoral campaign" by fully implementing the law on the freedom of assembly and by ensuring the freedom of the media.

In this context, the PACE called on the Azerbaijani authorities "to pass on a clear message, at the highest political level, that electoral fraud will not be tolerated" and urged all political parties to take part in the forthcoming elections. The Assembly stressed that these elections were all the more important given that "it was necessary to reinforce the application of the constitutionally-guaranteed principle of the separation of powers" and, especially, to strengthen the parliament's role vis-à-vis the executive.

Lastly, with regard to the media situation, the Assembly condemned the arrests, intimidation, harassment, and physical threats of journalists, reiterated its position that defamation should be decriminalised and called on the authorities to release Eynulla Fatullayev as ordered by the European Court of Human Rights.

PACE rapporteurs urge Armenian authorities to revise media legislation

The two co-rapporteurs on Armenia of the Parliamentary Assembly, John Prescott and Georges Colombier, have welcomed a series of initiatives outlined in the reply of the Speaker of the Armenian Parliament to their letter recommending the establishment of a clear roadmap for reforms in Armenia. While not able to give a detailed assessment of the initiatives outlined in the letter at this stage, they cautioned that more needs to be done to ensure that the reforms address the important issues raised by the Assembly.

"With regard to the electoral code outlined in the Speaker's letter, we note that the draft code has not been discussed with the opposition in the framework of the working group especially set up for this purpose. It is clear to us that any election code that has not been discussed with the different political forces in the country, and that is not based on an as wide as possible a consensus among them, will not help to create the necessary public trust in the electoral system," said the co-rapporteurs.

In addition, the co-rapporteurs expressed their concern about the amendments to the Law on Broadcasting. They noted that several highly-respected organisations have criticised this law for failing to ensure the required pluralistic media environment in Armenia. In that respect, they underscored that in the view of the Assembly, as adopted in several of its resolutions, the reform of the legal framework for the media in Armenia should not only result in a fully transparent licensing procedure, but also in a far more diverse and pluralistic media environment than is currently the case in Armenia.

The rapporteurs expressed their satisfaction with the direction of the police reform and reform of the justice sector. In that respect they stressed that the independence of the proposed police complaints body should be fully guaranteed in law and that this body should have wide investigative powers. Moreover, they stressed that the recommendations contained in the report of OSCE/ODIHR on the trial monitoring project in Armenia should be fully taken into account when elaborating the reforms in the justice sector.

"We will return to Armenia in the autumn to discuss these issues in full detail with the authorities. Our discussions will also be based upon the results of a hearing in the Monitoring Committee with a wide range of Armenian political forces that we intend to organise," they concluded.

Election of Judges to the European Court of Human Rights

The Parliamentary Assembly, meeting in plenary session, elected

- Angelika Nussberger as judge to the European Court of Human Rights with respect to Germany for a term of office of 9 years starting on 1 January 2011;
- Vincent Anthony De Gaetano as judge to the European Court of Human Rights with respect to Malta for a term of office of 9 years starting as of the date of taking up office and in any event not later than 3 months as from 22 June 2010.

Judges are elected by PACE from a list of three candidates nominated by each State which has ratified the European Convention on Human Rights.

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, whose role is to promote awareness of and respect for human rights in the 47 member states of the Organisation. His activities focus on three major and closely-related areas:

– a system of country visits and dialogue with the authorities and civil society

– thematic work and awareness-raising activities

– co-operation with other Council of Europe bodies and international human rights bodies.

Country monitoring

The Commissioner carries out visits to all member states to monitor and evaluate the human rights situation. In the course of such visits, he meets with the highest representatives of government, parliament, the judiciary, civil society and national human rights structures. He also talks to ordinary people with human rights concerns, and visits places of human rights relevance, including prisons, psychiatric hospitals, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups. Following the visits, a report is released containing an assessment of the human rights situation in the country concerned, as well as recommendations on how to overcome possible shortcomings in law and practice.

Visits

During his visit to **Azerbaijan,** from 1 to 5 March 2010, Commissioner Hammarberg met with President Ilham Aliyev, the Ministers of Internal Affairs, Ramil Usubov, and Justice, Fikrat Mammadov, the Deputy Minister for Foreign Affairs, Mahmud Mammad-Guliyev,the Prosecutor General, Zakir Garalov, and the Head of the Azerbaijani delegation to the Parliamentary Assembly of the Council of Europe Samed Seyhidov. He also held discussions with the Ombudsman, and representatives of civil society. In addition, the Commissioner visited the Autonomous Republic of Nakhchivan for the first time, where he met among others with the Chairman of the Supreme Council. Freedom of expression, situation of non-governmental organisations, respect of human rights by law enforcement officers, and the administration of justice were the main themes of this visit. The Commissioner also took note of the concerns expressed by various interlocutors regarding recent legislative amendments that could further restrict the work of mass media and could hinder journalists' freedom of gathering and disseminating information (see also below "Report and continuous dialogue").

The Commissioner on his visit to Croatia in April 2010

From 6 to 9 April 2010, the Commissioner visited **Croatia** where he met with national, regional and local authorities, including with President Ivo Josipovic and Prime Minister Jadranka Kosor as well as international and non-governmental organisations. The Commissioner also held meetings with national human rights structures and representatives of minority groups. During his meetings, he discussed the human rights of displaced persons and asylum seekers, proceedings relating to post-war justice and the situation of Roma (see also below "Report and continuous dialogue").

A visit to **Georgia** was carried out from 30 April to 4 May 2010, with the aim of restarting the process of resolving the humanitarian and human rights issues. Following the Commissioner's visit to Tskhinvali, six detained Georgians were released. Pursuant to an initiative by the Commissioner, the Georgian authorities had already released six detainees on 30 March. The work of the international experts in monitoring ongoing investigations into cases of missing persons on all sides was completed in June. They will submit to the Commissioner their assessment and review of the events concerned.

Commissioner Hammarberg on his visit to Calais and the surrounding area on 19 May 2010

On 19 May, Commissioner Hammarberg visited **Calais** (France) and the surrounding area to assess the human rights situation of migrants as well as the consequences of the European Union migration regulations. Meetings with the Mayor, the Regional Prefect, UNHCR and civil society were organised. The Commissioner noted that migrants are subject to police pressure intended to move them away from Calais and called for better respect of their dignity. He also met in Paris with the French Minister of immigration, integration, national identity and solidarity development, Eric Besson. Their discussion focused on the specific situation in Calais as well as on the measures taken by the French authorities to implement the Commissioner's recommendations from 2008.

Commissioner Hammarberg went to **Turkey** from 23 to 26 May 2010 to continue his dialogue with the authorities, following up on his two reports published in October 2009 regarding the human rights of minorities and refugees. He held high-level meetings with officials of the Ministries of Foreign Affairs, Interior and Justice, as well as with UNHCR and members of civil society in Ankara. In Diyarbakır the Commissioner met with the regional and local authorities and NGOs and visited the juvenile wing of the E-type prison. He stressed that systematically resorting to the detention and imprisonment of children, occasionally with very heavy sentences of more than ten years, runs counter to the fundamental principles of the UN Convention on the Rights of the Child and the guidelines contained in the Issue Paper on children and juvenile justice, issued by the Commissioner in 2009. Commissioner Hammarberg welcomed the legislative reforms under way and invited the Turkish authorities to translate into practice the positive signs of goodwill aimed at resolving persistent issues pertaining to the protection of the human rights of minorities, especially in southeast Turkey. Finally, he welcomed the existing draft legislation aimed at bringing asylum law and practice fully into line with the case-law of the European Court of Human Rights.

Reports and continuous dialogue

On 15 March 2010, the Commissioner published a letter sent on 24 November 2009 to the Deputy Minister of Justice of **Portugal,** José Magalhães. The letter addressed issues related to the fight against discrimination, migration policy and the situation of minorities. The Commissioner expressed concerns about substandard housing conditions of Roma communities and reported widespread discrimination they face. Welcoming the broad anti-discrimination protection under the Portuguese Constitution and legislation, the Commissioner

recommended the ratification by Portugal of Protocol N° 12 to the European Convention on Human Rights.

On 13 April, the Commissioner published three letters – and their replies – which had been addressed to the **Greek** Ministers for Citizen Protection, Mihalis Chrysochoidis, Justice, Haris Kastanidis, and to the Deputy Minister of the Interior, Theodora Tzakri, following his visit to Greece on 8-10 February 2010. The Commissioner welcomed the first steps taken by the Greek government towards the establishment of a fair, accessible and swift refugee protection system and highlighted the urgent need for the authorities to support the ongoing reform in this field with the necessary institutional capacity and tools for implementation. Furthermore, the Commissioner called for the full and effective implementation of judgments of the European Court of Human Rights concerning freedom of association of members of minorities and recommended the ratification by Greece of the Framework Convention for the Protection of National Minorities, signed in 1999. Finally, the Commissioner welcomed the plans to establish an office to deal with police complaints. In order to ensure effectiveness, the Commissioner highlighted the importance of the institutional and practical independence of such a mechanism and the adequacy of its investigatory powers.

Commissioner Hammarberg speaking on the situation in Greece.

On 17 June 2010, the Commissioner published a report following his visit to **Croatia** from 6 to 9 April 2010 (see also above "Visits"). The report focused on the human rights of displaced persons and asylum seekers, proceedings relating to post-war justice and the situation of Roma. The Commissioner welcomed the efforts made by the Croatian authorities to resolve long-standing human rights issues caused by the 1991-1995 war, underlining at the same time the fundamental right of all displaced persons to voluntary return in safety and dignity. The Commissioner also called for further improvements in asylum law and practice, in particular by ensuring free legal aid in first instance proceedings, allowing interviews in the accelerated procedures and creating a permanent reception centre for asylum seekers. He underlined that special care should be given to vulnerable groups of migrants, including victims of ill-treatment and trafficking as well as unaccompanied or separated children. Furthermore, the Commissioner encouraged the authorities to continue efforts aimed at identifying missing persons and enhancing inter-ethnic reconciliation and social cohesion, in particular through impartial history teaching. As for the situation of Roma, he stressed that further progress was needed to achieve tangible results throughout the country, in particular as concerns representation of Roma in political life, public administration and the judiciary and also education, employment and housing of this minority, as well as access to citizenship, especially for children.

On 29 June 2010, the Commissioner published a report following his visit to **Azerbaijan** from 1 to 5 March 2010 (see also above "Visits"). The report focused on freedom of expression and association, the conduct of law enforcement officials and administration of justice, and containing some observations on the visit to the Autonomous Republic of Nakhchivan. The Commissioner highlighted his continuing concerns about cases of threats, harassment, and violence against journalists or human rights activists which have not been properly investigated. While recognising the need to promote professionalism among journalists, the Commissioner expressed strong reservations about the existence of a black-list of racketeering newspapers, published by the Press Council, and invited it to reconsider this practice. The Commissioner acknowledged the willingness of the authorities to take steps to facilitate the registration of NGOs, but was concerned about recent legislative changes which could limit freedom of association. As regards the issue of misconduct by law enforcement officials, he called for an independent and effective investigation of all allegations of torture and ill-treatment with the imposition of appropriate sanctions. He recommended the adoption of adequate measures to ensure the independence of the judiciary and the respect of fair trial guarantees.

Thematic work and awareness-raising

In order to provide advice and information on the protection of human rights and the prevention of violations, the Commissioner may release opinions and other thematic documents regarding specific human rights issues. 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. He further contributes to the debate and the reflection on current and important human rights matters through the publication of periodic articles and Issue Papers.

The Commissioner participated in the debate on corporal punishment jointly organised by the Council of Europe and Save the Children Sweden on 27 April. The event took stock of 30 years of the corporal punishment ban in Sweden. Following the discussion, the Commissioner published a Human Rights Comment calling on the remaining 25 Council of Europe Member states which have not adopted a law fully protecting children against violence to do so. He underlined that schools and teachers can play an important role in raising awareness of this important issue among children and their parents.

The Commissioner participated in the European Conference of Presidents of Parliament that took place in Limassol, Cyprus on 10-12 June 2010, where he was keynote speaker for one of the two selected themes of the Conference: "National Parliaments and International Human Rights Law: Implementation of the Principle of non-Discrimination". In his speech, Commissioner Hammarberg recalled that discrimination is at the origin of a major part of the human rights problems in Europe today and that individuals are still denied equal treatment on grounds such as ethnicity, gender, social origin, sexual orientation, gender identity, age, disability, nationality, language, religion, or political opinion. Parliaments can contribute to redressing the situation by acting in four major areas of work: law making and ratifications; approving human rights policies and plans; adopting state budgets; and controlling the executive.

On 14 and 15 June, the Commissioner participated in the Regional Conference "Providing access of Roma to personal identification documents, a regional challenge", organised in Skopje by the current Committee of Ministers' Chairmanship. In his address, the Commissioner called for a resolute political will to resolve this serious problem which prevents access to basic human rights. The Commissioner emphasised that governments must adopt clear and workable action plans that include efforts to map out the situation, the simplification of legislation and procedures regarding civil registration, the provision of free legal aid and waiving of fees, as necessary, for registration proceedings.

The initiative to raise awareness of the human rights legacy of the Nobel Peace Prize laureate, physicist and human rights activist Andrei Sakharov continued. In April, a letter from the Commissioner was sent to all of the Permanent Representatives informing them about the possibility of hosting the itinerant exhibition "Andrei D. Sakharov: Alarm and Hope" in their own countries. Sweden was the first country to display it, and it remained in Stockholm throughout April. On June 8 it was inaugurated in Helsinki in the presence of the Council of Europe Secretary General. It will be on display at the National Archives in Finland all summer. A video clip of 15 minutes on the work of the Commissioner has also been released on the web. Furthermore, a new communication tool, the Human Rights Comment, has been established. Published in English, French and Russian, the comments are a new series of articles which follow on from the Viewpoints, which have been discontinued as from the end of March. The list of Human Rights Comments published so far is as follows:

- *Children coming alone as migrants should not be automatically returned* - 20 April 2010
- *Time to give smacking a beating – children deserve total ban against adults hitting them* - 28 April 2010
- *Changing media landscape creates crisis of journalism in Europe* - 3 May 2010
- *Adoption should only be agreed when in the child's best interests* - 12 May 2010
- *Segregated schools marginalise Roma children – the decisions of the Strasbourg Court must be implemented* - 20 May 2010
- *Pride events are still hindered – this violates freedom of assembly* - 2 June 2010
- *Torture allegations must be properly investigated* - 9 June 2010
- *European states should respect advice by UNHCR* - 16 June 2010

- *European states must respect Strasbourg Court's orders to halt deportations* - 25 June 2010

The last 2 Viewpoints were published on March 8: "Rulings anywhere that women must wear the burqa should be condemned - but banning such dresses here would be wrong" and on March 22: "Atrocities in the past must be recognised, documented and learned from - but not distorted or misused for political purposes" .

The fourth compendium of viewpoints, "Human rights in Europe: growing gaps", was published in April, in English, Russian and French.

Third Party to the European Court of Human Rights

With the entry into force of Protocol No. 14 to the European Convention on Human Rights, the Commissioner has the right to intervene proprio motu as third party in the Court's proceedings.

On 16 March, following an invitation by the Court, in a group of cases concerning return of asylum seekers from the Netherlands to Greece by virtue of the EC 'Dublin Regulation', the Commissioner published a third party intervention. In this submission, based on visits to Greece in December 2008 and February 2010 as well as on continuous country monitoring, the Commissioner concluded that current asylum law and practice in Greece were not in compliance with international and European human rights standards, expressing at the same time his full support to the Greek government's decision and ongoing efforts to overhaul the refugee protection system and overcome its current serious deficiencies.

A second intervention, on 31 May, referred to the case of *M.S.S. v. Belgium and Greece* to be examined by the Court's Grand Chamber. The Commissioner reiterated and updated the observations presented to the Court in his previous submission last March.

International co-operation

The Commissioner's status as an independent institution within the Council of Europe allows him a unique flexibility to work with other institutions, including human rights monitoring mechanisms and intergovernmental and parliamentary committees. The Commissioner cooperates with all of the Council of Europe bodies and with a broad range of international institutions, most importantly the United Nations and its specialised offices, the European Union and the Organisation for Security and Cooperation in Europe (OSCE). The office also cooperates closely with national human rights structures, leading human rights NGOs, universities and think tanks.

On 12 April, the Commissioner went to Brussels for talks with the EU Commission Vice President for Justice, Fundamental Rights and Citizenship, Viviane Reding, and the EU Commissioner for Enlargement and Neighbourhood Policy, Mr Štefan Füle. The discussions with Vice-President Reding focused on the situation of national minorities, including Roma, children's rights and the protection of privacy in counter-terrorism measures. The EU's Neighbourhood Policy and Eastern Partnership with particular reference to Croatia, Turkey, Armenia, Azerbaijan and Georgia were the issues raised with Commissioner Füle.

On 16 June, Commissioner Hammarberg met with EU Home Affairs Commissioner, Cecilia Malmström,. The meeting continued the dialogue established during their first meeting in March on the human rights situation of migrants, unaccompanied minors and the European asylum system.

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 becoming 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. See Appendix: simplified chart of ratifications of the European Social Charter.

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.

Collective complaints: latest developments

Decision on the merits

On 25 May 2010, the complaint "*International Centre for the Legal Protection of Human Rights* (Interights)" v. Greece (No. 49/2008) became public.

In this complaint, INTERIGHTS alleges that, on one hand, the Greek Government continues to forcibly evict Roma without providing suitable alternative accommodation or effective remedies and on the other hand, that the significant

numbers of Roma in Greece continue to live in inadequate dwellings, most of them located in improvised and dangerous encampments and not connected to the basic utilities. Consequently, according to Interights, Roma suffer discrimination in access to housing in Greece which does not respect Article 16 of the European Social Charter (the right of the family to social, legal and economic protection), read alone or in conjunction with the non discrimination clause in the Preamble of the Charter.

The European Committee of Social Rights concluded unanimously that there was a violation of Article 16 on the grounds:

- that the different situation of Roma families was not sufficiently taken into account with the result that a significant number of Roma families continued to live in conditions that fail to meet minimum standards;
- that Roma families continued to be forcibly evicted in breach of the Charter and the legal remedies generally available were not sufficiently accessible to them.

Adoption by the Committee of Ministers of Resolutions on collective complaints

Furthermore, the Committee of Ministers adopted on 31 March and 30 June 2010 two Resolutions: CM/ResChS(2010) 2 and CM/ResChS(2010) 5 related to two complaints lodged by the European Roma Rights Centre (ERRC): one against Bulgaria (No. 48/2008) and the other one against France (No. 51/2008).

As far as the complaint against Bulgaria is concerned, the European Committee of Social Rights concluded on 18 February 2009 that there was a violation of Article 13§1 of the Revised Charter (the right to social and medical assistance). (See Human rights information bulletin No. 78).

The Permanent Representative of Bulgaria informed the Committee of Ministers (on 19 March 2010) that the impugned provision of the Act had been abolished by an amendment of the Social Assistance Act adopted by the National Assembly of the Republic of Bulgaria on 10 February 2010. This amendment will enter into force on 1st January 2011. This information is attached in Appendix to Resolution CM/ResChS(2010) 2 of the Committee of Ministers.

As far as the complaint against France is concerned, the European Committee of Social Rights concluded on 19 October 2009, that there was a violation of Articles 30 (the right to protection against poverty and social exclusion), 31§1 (the right to adequate housing), 31§2 (reduction of homelessness), 16 (the right of the family to social, legal and economic protection), 19§4 (the right of migrant workers and their families to equality regarding employment, the right to organise and accomodation), most often read in conjunction with Article E (non-discrimination) of the Revised Charter. (See Human rights information bulletin No.79).

At the 1077th meeting of the Ministers' Deputies (24 February 2010) the Representative of France submitted comprehensive information mentioning the measures which had already been taken and others which were ongoing in order to improve the halting sites for the reception and the maintenance of sites and equipment, to build specially designed accommodation for Travellers and to ensure them genuine entitlement to social rights.

All this information, with backing figures and dates, are included in Appendix to Resolution CM/ResChS(2010) 5 of the Committee of Ministers.

The Committee of Ministers looks forward to these two States reporting, on the occasion of their next report concerning the relevant provisions of the Revised Social Charter, on the application in practice of the laws announced and on progress in the implementation of the measures taken.

Decision on the admissibility

The collective complaint *"European Council of Police Trade Unions (CESP)"* v. Portugal (No. 60/2010), registered on 18 March 2010 was declared admissible by the European Committee of Social Rights on 22 June 2010.

The CESP claims that that Portuguese legislation does not allow the investigative personnel of the Criminal Police to receive compensation for overtime work. The CESP also contends that the Portuguese state refuses to negotiate on this matter with national trade unions.

Consequently there would be violation by Portugal of the following Articles of the Revised European Social Charter:

- Article 4 §1 and §2 (right to adequate remuneration and right to increased rate of remuneration for overtime work),
- Article 6 §1 and §2 (right to collective bargaining – joint consultation and machinery for voluntary negotiations), and

- Article 22 (right to take part in the determination and improvement of the working conditions and working environment).

Registration of a collective complaint

***"European Roma Rights Centre (ERRC)"* v. Portugal (No. 61/2010)**

This complaint was registered on 23 April 2010: the complainant organisation pleads a violation by Portugal of:

- Article 16 (the right of the family to social, legal and economic protection),
- Article 30 (right to protection against poverty and social exclusion), and
- Article 31 (right to housing)

read alone or in conjunction with Article E (non discrimination) of the Revised Charter. The ERRC maintains that the sum of housing-related injustices in Portugal, including problems of access to social housing, substandard quality of housing, lack of access to basic utilities, residential segregation of Romani communities, etc. violate these provisions.

New INGOs entitled to lodge complaints

At its 121st meeting (3-6 May 2010), the Governmental Committee agreed to include the following new 4 international non governmental organisations to the list of INGOs entitled to lodge collective complaints with the ECSR as of 1 July 2010:

- Alzheimer Europe (AE)
- Hospital Organisation of Pedagogues in Europe (HOPE)
- International Professional Union of Gynaecologists and Obstetricians (UPIGO)
- ZONTA International (ZI).

Cooperation with the Parliamentary Assembly

At its 244th session (21-25 June 2010), the European Committee of Social Rights held an exchange of views with Mrs Liliane Maury Pasquier (Switzerland), Chairperson of the Social, Health and Family Affairs Committee of the Parliamentary Assembly, accompanied by Mr Bernard Marquet, Vice-Chairperson of the same Committee.

Many questions were raised by the members of the Committee, in particular on the collective complaints procedure: should the aim be striving towards an individual complaint system? After a lively discussion, participants concluded that it would be better to keep the current procedure and strive to urge States which had not yet done so, to accept the Protocol providing for a system of collective complaints. To date only 14 States have adhered to this Protocol.

The discussion also touched upon the election of Committee members: in fact, these were still elected by the Committee of Ministers although the Protocol amending the Social Charter (Turin Protocol, 1991) sets out their election by the Parliamentary Assembly.

Furthermore, the issue of the accession of the European Union to the Social Charter was brought up, even if this process would seem long and complex.

The participants in the exchange of views agreed to strenghten the cooperation between the Parliamentary Assembly and the European Committee of Social Rights, first of all by increasing the communication between the two Secretariats.

Significant events

Two seminars on the Revised Social Charter were organised in the framework of the **Third Summit Action Plan**:

- on 24 March 2010 in Belgrade (Serbia): Serbia having ratified the Revised Charter in September 2009, this Seminar consisted in training for lawyers and officials from different ministries, as well as for other partners from civil society, aimed at the preparation of the first report on the application of the Revised Charter by Serbia.
- on 15 April 2010 in Skopje ("the former Yugoslav Republic of Macedonia"): "The former Yugoslav Republic of Macedonia" is a State party to the 1961 Charter, but signed the Revised Charter in May 2009. In addition to the general objective of implementing social rights, this seminar also aimed at assisting

this State in its progress towards ratification of the Revised Charter.

In the framework of **Joint Programmes with the European Union**, members of the European Committee of Social Rights and/or from the Department of the Charter attended several events, in particular:

- **on 14 April 2010 in Ankara (Turkey)**, a Round Table on the European Social Charter and the European Convention on Human Rights on Enhancing the role of the Supreme Judicial Authorities in respect of European Standards;
- **on 31 May 2010 in Strasbourg**, a meeting on the contribution of the Council of Europe to the yearly report on the progress of the applicant countries to the European Union;
- **from 1 to 4 June 2010 in Yalta (Ukraine)**, an international Conference on the standards of the European Social Charter and of other international instruments which are relevant in the context of the "Project on strengthening and protecting women's and children's rights in Ukraine" (TRES);
- **on 2 and 3 June 2010 in St. Petersburg (Russia)**, a training session on the Social Charter and the European Convention on Human Rights for Russian Prosecutors;
- **on 14 and 16 June 2010 in Moscow (Russia)** a training session for Russian regions in order to provide assistance on the drafting of the first national report on the Revised Social Charter by the Russian Federation.

The Social Charter was on the agenda of several **events organised by universities** such as:

- **from 16 to 18 June 2010 in Milano (Italy)**, the international Conference on the legal status of Romas and Sintis in Italy;
- **on 18 and 19 June 2010 in Graz (Austria)**, the Workshop on monitoring bodies entitled "Creating synergies and learning from each other";
- **on 21 and 22 June 2010 in Strasbourg**, the Colloquium "Actors, collective strategies and the European field of human rights"

The collective complaints procedure was examined at **conferences organised by non governmental organisations**, in particular:

- **from 5 to 7 May 2010 in Barcelona (Spain)**, at the Conference on "Housing rights, from theory to practice", organised by the European Federation of National Organisations working with the Homeless (FEANTSA);
- **on 10 and 11 May in Cracow (Poland)**, at the Conference on the collective complaints procedure organised by Eurocop-Police;
- **on 24 and 25 May in Warsaw (Poland)**, at the Colloquium "Extreme poverty and human rights – a challenge for Poland, a challenge for Europe" organised by the ATD Fourth World Poland.

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Book

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Article

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- Electronic newsletter on the activities of the European Committee of Social Rights, No.3, June 2010: http://www.coe.int/t/dghl/monitoring/socialcharter/Newsletter/NewsletterN03June2010_en.asp.

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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.

The European Committee for the Prevention of Torture (CPT) was set up under the Covention and its 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.

Periodic visits

Albania

Visit to Albania from 10 to 21 May 2010

The CPT's delegation carried out a periodic visit to Albania from 10 to 21 May 2010. It was the CPT's ninth visit to this country.
In the course of the visit, the CPT's delegation reviewed the measures taken by the Albanian authorities to implement the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police detention facilities. The delegation also examined in detail various issues related to prisons and pre-trial detention centres, including health-care services provided to prisoners and the situation of juveniles. In addition, the delegation visited a psychiatric hospital and, for the first time, three "supported homes" for disabled patients.

The delegation had fruitful consultations with Lulzim Basha, Minister of the Interior, Bujar Nishani, Minister of Justice, Petrit Vasili, Minister of Health, Albert Gajo, Deputy Minister of Health, Spiro Ksera, Minister of Labour, Social Affairs and Equal Opportunities, and Gazmend Dibra, Director General of Prisons, as well as with other senior officials of the relevant ministries. It also met representatives of the Office of the People's Advocate, the OSCE Presence in Albania, the European Assistance Mission to the Albanian Justice System (EURALIUS) and non-governmental organisations active in areas of concern to the CPT.

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

Armenia

Third periodic visit to Armenia, from 10 to 22 May 2010

The delegation assessed progress made since previous visits and the extent to which the Committee's recommendations have been implemented, in particular in the areas of initial detention by law enforcement agencies, imprisonment and psychiatry. Further, the delegation visited for the first time in Armenia a social care home.
In the course of the visit, the CPT's delegation held consultations with Gevork Danielyan, Minister of Justice, Nikolay Arustamyan, Deputy Minister of Justice, Hunan Poghosyan,

First Deputy Head of the Police Service, Artur Osikyan, Deputy Head of the Police Service, Aleksandr Ghukasyan, Deputy Minister of Health, and Ara Nazaryan, Deputy Minister of Defence, as well as with other senior Government officials. It also had a meeting with Aghvan Hovsepyan, Prosecutor General, and Andranik Mirzoyan, Head of the Special Investigation Service. Further, it met Armen Harutyunyan, Human Rights Defender, and members of his team. Discussions were also held with representatives of non-governmental and international organisations active in areas of concern to the CPT.

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

Kosovo

Visit to Kosovo from 8 to 15 June 2010

The CPT's delegation carried out its second visit to Kosovo from 8 to 15 June 2010. The visit was carried out on the basis of an agreement signed in 2004 between the Council of Europe and the United Nations Interim Administration in Kosovo (UNMIK).

The delegation examined the treatment of detained persons and the conditions of detention in a variety of places of deprivation of liberty throughout Kosovo, including police stations, penitentiary establishments and psychiatric/social welfare institutions.

In the course of the visit, the delegation had consultations with Ambassador Lamberto Zannier, Special Representative of the Secretary-General of the United Nations in Kosovo, Ambassador Werner Almhofer, Head of the OSCE Mission in Kosovo, and Mr Roy Reeve, Deputy Head of the European Union Rule of Law Mission (EULEX), as well as with Mr Haki Demolli, Minister of Justice, Mr Bajram Rexhepi, Minister of Internal Affairs, Mr Nenad Rašić, Minister of Labour and Social Welfare, and other senior officials of the relevant ministries.

Further, the delegation met Lieutenant General Markus Bentler, Commander of KFOR, Mr Sami Kurteshi, Ombudsperson of Kosovo, and representatives of various International Organisations and non-governmental organisations.

Russian Federation

Visit to the Russian Federation from 13 to 20 April 2010

The CPT delegation carried out a one-week visit to the Russian Federation.

The main purpose of the visit, which began on 13 April 2010, was to hold high-level talks with the Russian authorities on issues of common interest. After 19 visits to the Russian Federation, the CPT considered it important to review the state of its dialogue with the Russian authorities and to have an exchange of views on progress made towards implementation of the most important recommendations made by the Committee in the past. The aim of the visit was also to take stock of new developments in areas falling under the CPT's mandate, in particular the proposed reforms of the penitentiary system and the Ministry of Internal Affairs.

In the course of the visit, the CPT's delegation met Vasiliy Lihachev and Alexander Smirnov, Deputy Ministers of Justice, Alexander Yakovenko, Deputy Minister of Foreign Affairs, Alexander Reimer, Director of the Federal Service for the Execution of Sentences, and representatives of the Ministry of Internal Affairs, the General Prosecutor's Office and the Investigation Committee. Further, the delegation held consultations with Vladimir Lukin, Human Rights Commissioner of the Russian Federation, Ella Pamfilova, Chairperson of the Presidential Council for the Promotion of Civil Society Institutions and Human Rights, and Sergey Katyrin, Vice-President of the Council of the Civic Chamber of the Russian Federation.

In addition, the delegation met representatives of the Public Monitoring Commission for Moscow City and non-governmental organisations active in areas of concern to the CPT.

United Kingdom

Visit to the Channel Islands from 15 to 22 March 2010

The CPT's delegation carried out a visit to the Bailiwicks of Guernsey and Jersey from 15 to 22 March 2010. This was the CPT's first visit to the Channel Islands.

The CPT's delegation consisted of Wolfgang Heinz, Head of delegation and member of the CPT in respect of Germany, and two experts, Veronica Pimenoff, Expert for psychiatry at Kuopio Administrative Court (Finland), and

Jurgen Van Poecke, Director of Bruges Prison (Belgium), supported by Hugh Chetwynd, Head of Division, and Caterina Bolognese, of the CPT's Secretariat.

In Guernsey, the CPT's delegation met Lyndon Trott, Chief Minister, Hunter Adams, Minister of Health and Social Services, Francis Quin, Deputy Minister of the Home Department, Howard Roberts QC, Attorney General, Mike Brown, Chief Executive of the States of Guernsey, as well as senior officials from relevant departments.

In Jersey, the CPT's delegation met Jackie Hilton, Assistant Minister for Home Affairs, Judith Martin, Assistant Minister for Health and Social Services, as well as senior officials from relevant departments. It also met William Bailhache QC, Deputy Bailiff, Howard Sharp, Solicitor General, and members of the Police Complaints Authority and of the Prison Board of Visitors. The CPT's delegation also met officials from the Ministry of Justice in London.

Ad hoc visits

Italy

Ad hoc visit to Italy from 14 to 18 June 2010

The CPT's delegation carried out an ad hoc visit to Italy from 14 to 18 June 2010. It was the Committee's ninth visit to this country.

During the visit, the delegation examined three issues: the provision of health care in prisons, further to the transfer of responsibility from the Prison Administration to the National Health Service; the policies adopted and measures taken to reduce the incidence of suicides and acts of self-harm in prison; and the system in place to investigate cases of alleged ill-treatment of arrested and/or detained persons.

In the course of the visit, the delegation held consultations with officials of the Ministry of Foreign Affairs, Ministry of Health, Ministry of the Interior and Ministry of Justice, as well as with representatives of the Carabinieri and the Guardia di Finanza.

The delegation met with Mr Vitaliano Esposito, the Prosecutor-General, Mr Giovanni Ferrara, Chief Prosecutor of Rome, and Mr Gabriele Ferretti, Chief Prosecutor of Teramo, and a number of prosecutors at the Supreme Court and the Rome district Court.

The delegation also met with Senator Albertina Soliani and Deputy Leoluca Orlando, each representing a parliamentary committee active in the focus areas of the CPT's visit. The delegation met Angiolo Marroni, the Garante dei detenuti (detained persons' Ombudsman) for the Lazio region. Further, it met representatives of non-governmental organisations active in areas of concern to the CPT.

Lithuania

Ad hoc visit to Lithuania from 14 to 18 June 2010

The CPT's delegation carried out a visit to Lithuania from 14 to 18 June 2010.

One of the main objectives of the visit was to examine the measures taken by the Lithuanian authorities to implement the recommendations made by the CPT after its 2008 visit to Kaunas Juvenile Remand Prison and Correction Home. The visit also provided an opportunity to review the treatment of persons detained in police establishments. In addition to returning to Kaunas Juvenile Remand Prison, the delegation also visited several other police establishments.

Another issue addressed by the CPT's delegation was the alleged existence some years ago on Lithuanian territory of secret detention facilities operated by the Central Intelligence Agency of the United States of America. The delegation had talks with the Chairman of the Lithuanian Parliament's Committee on National Security and Defence, Arvydas Anušauskas, about the findings of the investigation recently undertaken by the Committee in relation to this matter. It met members of the Prosecutor General's Office entrusted with the pre-trial investigation which had subsequently been launched, in order to discuss the scope and progress of the investigation. And the issue was also raised at a meeting with Jonas Markevičius, Chief Adviser to the President of Lithuania. Further, the delegation visited the facilities referred to as "Project No. 1" and "Project No. 2" in the report of the Parliamentary Committee.

At the end of the visit, the CPT's delegation had consultations with Remigijus Šimašius, Minister of Justice, and Algimantas Vakarinas, Vice-

Minister of the Interior, and presented to them its preliminary observations.

United Kingdom

Ad hoc visit to the United Kingdom on 20 and 21 June 2010

The CPT's delegation carried out a visit to the United Kingdom on 20 and 21 June 2010. It was a follow-up to a visit organised by the CPT earlier in the year.

The purpose of the visit was to examine the situation of Radislav Krstić, a prisoner convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) who is serving his sentence in the United Kingdom.(1) On 7 May 2010, some two months after having been visited by a delegation of the CPT, this prisoner was assaulted by other inmates in his cell at Wakefield Prison. In the light of this event, the CPT considered it necessary to observe for itself the prisoner's current conditions and treatment, and to hold discussions with senior officials responsible for his care.

The CPT's delegation consisted of Wolfgang Heinz, Head of delegation and member of the Committee in respect of Germany, Veronica Pimenoff, Expert for psychiatry at Helsinki Administrative Court (Finland), and Hugh Chetwynd, Head of Division, of the CPT's Secretariat.

Report to governments following visits

Armenia

Report on the visit to Armenia in March 2008, published on 19 March 2010

The CPT's report on its ad hoc visit to Armenia in March 2008, together with the response of the Armenian Government, has been made public at the request of the Armenian authorities.

The main purpose of the visit was to examine the treatment of persons detained in relation to events which followed the Presidential election of 19 February 2008. In the aftermath of the election, on 1 March 2008, a police operation took place aimed at dispersing opposition rallies in Yerevan. Dozens of persons were arrested in the course of and following that operation, hundreds were injured and a number of persons died.

The delegation carried out individual interviews with most of the persons remanded in custody on charges related to the post-election events. Practically all the persons who had been detained on 1 March 2008 alleged that they had been physically ill-treated at the time of their apprehension, even though they apparently had not offered resistance. The delegation also received a few allegations of physical ill-treatment at the time of questioning by the police.

The CPT has recommended that the investigation into the events of 1 March 2008 be conducted in accordance with the criteria of an effective investigation, and that its results be used to provide guidance for future police operations in terms of planning, training and police tactics in crowd-control situations. The visit report also contains other recommendations aimed at combating ill-treatment by law enforcement officials, including through strengthening the formal safeguards against ill-treatment which are offered to persons deprived of their liberty by the police (i.e. the rights of notification of custody, access to a lawyer and access to a doctor).

Austria

Report on the ad hoc visit to Austria in February 2009, published on 11 March 2010

In the visit report, the CPT reviewed the measures taken by the Austrian authorities following the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and to the conditions of detention under which foreign nationals are held in police detention centres. The CPT also examined in detail various issues related to prisons, including the situation of juvenile prisoners. In addition, the report covers visits to a civil psychiatric hospital and – for the first time in Austria – to a social welfare institution for persons with learning disabilities.

Bosnia and Herzegovina

Report on the ad hoc visit to Bosnia and Herzegovina in May 2009, published on 31 March 2010

The May 2009 visit provided an opportunity to assess the progress made since the periodic visit in March/April 2007. The CPT's delegation examined in detail various issues related to Sarajevo and Zenica Prisons, including the regime and treatment of remand prisoners as well as of prisoners placed in administrative and disciplinary isolation and in the high-security unit.

Particular concern is expressed in the report about Zenica Prison still not being under the effective control of prison staff, due to a combination of overcrowding, large dormitories (kolektivi) and the extremely low staffing levels. Further, a number of recommendations are made to improve the provision of health care in prisons in the Federation of Bosnia and Herzegovina.

The report also recommends that juveniles deprived of their liberty should not be held in institutions for adults but instead in specially designed facilities; where juveniles are held in institutions for adults, they must be accommodated separately and offered an appropriate regime.

The visit also focused on the situation of forensic psychiatric patients. The CPT recommends that the living conditions of patients at Sokolac Psychiatric Clinic be improved, and that measures be taken to reinforce the staffing levels and to introduce individual treatment plans for each patient. As regards Zenica Prison Forensic Psychiatric Annexe, the CPT calls upon the authorities to take the necessary steps to improve material conditions, patient treatment and staffing levels in the annexe, as well as to carry out a review of the clinical needs of all the patients.

In their response, the authorities make reference to various measures taken to improve the situation in the light of the recommendations made by the CPT. As regards Zenica Prison, information is provided on steps taken to make the prison safe, including the recruitment of an additional 50 prison officers. Reference is also made to the introduction of a legal provision to permit juveniles to serve their sentences in a dedicated juvenile facility located in another Entity of the State. Particular emphasis is placed in the response on a national strategy for combating drug abuse, which includes the provision of assistance to prisoners with drug abuse problems.

As regards Sokolac Psychiatric Clinic, the authorities provide information on the ongoing measures being taken to improve living conditions and state that all patients do have an individual treatment plan. They also provide information on the inter-Entity agreement on the placement and funding of patients in the Sokolac Special Hospital for Forensic Psychiatry, and state that the facility will now be renovated with funds donated by Switzerland.

Hungary

Report on the fourth periodic visit to Hungary, in March/April 2009, published on 8 June 2010

During the visit, the delegation received a few allegations of excessive use of force at the time of apprehension by the police. The CPT has recommended that a firm message continue to be delivered to police officers that no more force than is strictly necessary should be used when effecting an apprehension. In their response, the Hungarian authorities refer to instructions given to senior police officials to draw the attention of police officers to the legal consequences of the excessive use of force. Further, in response to the Committee's recommendations aimed at strengthening the legal safeguards against ill-treatment (in particular the rights of notification of custody, access to a lawyer and access to a doctor), the authorities make reference to recent police instructions on prompt notification of custody.

The situation of a remand prisoner held in a high-security cell at the Budapest police central holding facility was of particular concern to the CPT. The person concerned was constantly under powerful spotlights within his cell and was subjected to multiple means of restraint whenever taken out of the cell. The Hungarian authorities indicate that the conditions of this prisoner have been improved.

As regards foreign nationals held under aliens legislation, the delegation received no allegations of ill-treatment, except at the Nyírbátor holding facility, where the atmosphere was tense. Material conditions of detention in the establishments visited were on the whole satisfactory. However, the paucity of purposeful activities for foreign nationals remains a matter of concern.

With regard to prisons, the delegation heard several credible accounts of physical ill-treatment of inmates by staff at Miskolc and Tiszalök Prisons. Further, at Miskolc Prison,

overcrowding was compounded by serious understaffing which resulted in a high-risk situation in terms of inter-prisoner violence. At Sátoraljaújhely Prison, particular attention was paid to prisoners held in the Special Security Unit (KBK) and the report makes recommendations aimed at improving the placement procedure, developing a suitable programme of activities and minimising the use of means of restraint. According to the authorities' response, new regulations on placement in a KBK are to be adopted in 2010. At Tiszalök Prison, which is one of the two prisons in Hungary involving private contractors, the programme of activities for prisoners did not correspond to the expectations. In their response, the Hungarian authorities indicate that action has been taken to create more work places at that establishment.

The CPT has criticised the disproportionate use of means of restraint to bring prisoners under control and certain excessive security arrangements (such as the routine body-belting of prisoners for transfers outside a prison). The Committee has also recommended that the Hungarian authorities review the regulations on the use of electric stun batons and stop using electric stun body-belts.

Turning to psychiatric establishments, most of the patients interviewed spoke positively of the attitude of staff. However, the delegation found clear indications of inter-patient violence in the closed ward of Unit II of Nyírő Gyula Hospital in Budapest. The CPT has recommended to equip bedrooms with doors and to separate patients in an acute psychotic condition from psycho-geriatric patients. The report also contains recommendations related to the practice of resorting to means of restraint and the implementation of the legal safeguards in the context of involuntary hospitalisation. In their response, the Hungarian authorities refer to new arrangements introduced to ensure that, whenever means of restraint are applied to a psychiatric patient, this is done out of the sight of other patients. Amendments to the Civil Procedure Act have also been drawn up to ensure that court decisions on involuntary hospitalisation are promptly delivered to the patients concerned.

Italy

Report on the fifth periodic visit to Italy, from 14 to 26 September 2008, published on 20 April 2010

As concerns the treatment of persons deprived of their liberty by law enforcement officials, the report states that the CPT's delegation received a number of allegations of physical ill-treatment and/or excessive use of force by police and Carabinieri officers and, to a lesser extent, by officers of the Guardia di Finanza, particularly in the Brescia area. The alleged ill-treatment consisted mainly of punches, kicks, or blows with batons, at the time of apprehension and, on occasion, during custody in a law enforcement establishment. In a number of cases, the delegation found medical evidence consistent with the allegations made. The report 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 CPT's standards. In their response, the Italian authorities state that specific directives have been issued to prevent and sanction inappropriate aggressive behaviour of law enforcement officials. Further, the authorities provide information on the points raised by the CPT as regards procedural safeguards against ill-treatment.

The conditions of detention at the Identification and Expulsion Centre in Milan, Via Corelli (CEI) were also examined. The CPT recommends, inter alia, that irregular migrants held there be offered a greater number and broader range of activities

On prison matters, the Committee's delegation focused on overcrowding, prison health care (responsibility for which has now been transferred to the regions) and the treatment of prisoners who are subject to a maximum security regime ("41-bis"). The CPT was very concerned by the level of inter-prisoner violence at Brescia-Mombello and Cagliari-Buoncammino Prisons, where episodes of inter-prisoner violence in the course of 2008 had resulted in serious injuries and, in one case, the death of a prisoner. In addition, a number of allegations were received at Cagliari that staff did not always intervene promptly when violence between prisoners occurred. In their response, the Italian authorities have stated that the Directorate General for Prisons has called upon the Brescia and Cagliari prisons to adopt the necessary measures to counter inter-prisoner violence. Further, they have stated that since autumn 2008, episodes of violence have decreased as a result of a Convention entered into between Cagliari Prison and Caritas (a Catholic relief, development and social service organisation).

As regards the Filippo Saporito judicial psychiatric hospital (OPG) in Aversa, the report draws attention to the poor material conditions and the need to improve the patients' daily regime, by increasing the number and variety of day-to-day activities offered to patients. Further, the delegation found that certain patients were detained in the OPG for longer than their condition required and that others were held in the hospital even when their placement order had expired. In their response the Italian authorities state that the hospital is in the process of being renovated and that the law does not establish a maximum duration for the temporary enforcement of a security measure.

As regards the Psychiatric diagnosis and Treatment Department (SPDC) at San Giovanni Bosco Hospital in Naples, the delegation focused on the involuntary medical treatment of patients. The Committee recommends that the judicial phase of the involuntary medical treatment procedure (TSO) be improved.

Italy

Report on the ad hoc visit to Italy in July 2009, published on 28 April 2010

The main purpose of the visit was to look into the new policy of the Italian authorities to intercept, at sea, migrants approaching Italy's Southern Mediterranean maritime border and to send them back to Libya or other non-European States (frequently referred to as the "push-back" policy). In this context, the delegation carrying out the visit focused on push-back operations that took place between May and the end of July 2009 and sought to examine the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment. The delegation also examined the treatment afforded to migrants during the time that they were deprived of their liberty by the Italian authorities in the course of such operations.

In the report, the CPT expresses the view that, in its present form, Italy's policy of intercepting migrants at sea and obliging them to return to Libya or other non-European countries, violates the principle of non-refoulement. The Committee emphasises that Italy is bound by the principle of non-refoulement wherever it exercises its jurisdiction, which includes via its personnel and vessels engaged in border protection or rescue at sea, even when operating outside its territory. Moreover, all persons coming within Italy's jurisdiction should be afforded an appropriate opportunity and facilities to seek international protection. The information available to the CPT indicates that no such opportunity or facilities were afforded to the migrants intercepted at sea by the Italian authorities during the period examined. On the contrary, the persons who were pushed back to Libya in the operations carried out from May to July 2009 were denied the right to obtain an individual assessment of their case and effective access to the refugee protection system.

According to the report, Libya cannot be considered a safe country in terms of human rights and refugee law; the situation of persons arrested and detained in Libya, including that of migrants – who are also exposed to being deported to other countries by Libya – indicates that the persons pushed back to Libya are at risk of ill-treatment.

In its response to the report, the Italian authorities refer to the above-mentioned operations as the "return of migrants, intercepted in international waters, upon request by Algeria and Libya" and as search and rescue operations. The authorities state that in the course of such operations, during the period examined by the CPT, no migrant, once transferred onto an Italian ship, expressed his/her intention to apply for asylum. Further, the authorities state that English and French speaking personnel are present aboard Italian vessels in order to provide adequate information to migrants in the event of an asylum request, and when such a request is articulated the migrant is brought to mainland Italy. The Italian Government further argues that Libya is bound by international conventions under which it must respect human rights, and that it has ratified the 1969 Organisation of the African Union Refugee Convention, under which it must protect all persons who are persecuted and who originate from "areas at risk". The Italian authorities also state that the UNHCR has an office in Libya which can respond to the protection needs of those persons who are returned.

Montenegro

Report on the CPT's first periodic visit (September 2008) to Montenegro as an independent State, published on 9 March 2010

During the visit, the CPT's delegation received numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police and observed, in some cases, physical marks consistent with allegations made. Particular attention was paid to the manner in which investigations were being carried out into cases involving allegations of ill-treatment. The report concludes that the effectiveness of such investigations needs to be improved. Further, the Committee has made a series of recommendations aimed at strengthening legal safeguards against ill-treatment. In their response, the Montenegrin authorities refer to steps taken to improve training for police officers.

At the Remand Prison in Podgorica (part of the "Spuž Prison Complex"), the delegation received several allegations of physical ill-treatment of prisoners by staff, some of which were supported by medical evidence. The CPT has recommended that the authorities deliver to prison staff a firm message that physical ill-treatment and verbal abuse of inmates are not acceptable and will be dealt with severely.

A number of improvements were noted as regards material conditions for sentenced prisoners in Podgorica as compared to the situation found during a visit in 2004. However, the conditions in which remand prisoners were being held had deteriorated, due to the alarming level of overcrowding. The situation was exacerbated by the fact that remand prisoners remained for 23 hours or more a day inside their cells, in some cases for several years.

The majority of patients at the Dobrota Special Psychiatric Hospital spoke positively about the attitude of the staff and the atmosphere was relaxed. However, in the hospital's forensic psychiatric unit, the CPT's delegation heard a number of allegations of physical ill-treatment of patients by private security guards. After the visit, the Montenegrin authorities informed the Committee that they had established a protocol defining the rights and responsibilities of the security service and that special training was being provided to security staff. As regards material conditions at the hospital, most wards had benefitted from thorough refurbishment.

At the Komanski Most Institution for People with Special Needs, the extremely low number of staff was at the core of the Institution's inability to provide adequate protection, care, hygiene and regime for the residents. Material conditions were appalling, and the CPT's delegation found residents fixated to beds or other furniture, mostly with torn strips of cloth but also by chains and padlocks. The Committee called upon the Montenegrin authorities to carry out a comprehensive review of the situation and to draw up a detailed action plan for reforming the Komanski Most Institution. In their response, the Montenegrin authorities refer to the recruitment of additional staff, the separation of children from adult residents, and measures to improve the hygiene and to provide better living conditions for residents.

Internet : http://www.cpt.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, racial discrimination, xenophobia, antisemitism and intolerance. ECRI's statutory activities are:

- country-by-country monitoring work,
- work on general themes,
- relations with civil society.

Country-by-country monitoring

ECRI closely examines the state of affairs in each of the 47 member States of the Council of Europe. On the basis of its analysis of the situation, ECRI makes suggestions and proposals to governments as to how the problems of racism, racial discrimination, xenophobia, antisemitism and intolerance identified in each country might be overcome, in the form of a country report.

ECRI's country-by-country approach concerns all Council of Europe member States on an equal footing and covers 9 to 10 countries per year. A contact visit takes place in each country prior to the preparation of the relevant country report.

At the beginning of 2008, ECRI started a new monitoring cycle (2008-2012). The fourth round country monitoring reports focus on the implementation of the principal recommendations addressed to governments in the third round. They examine whether and how ECRI's recommendations have been followed up by the authorities. They evaluate the effectiveness of government policies and analyse new developments. The fourth monitoring cycle includes a new follow-up mechanism, whereby ECRI requests priority implementation of three specific recommendations and asks the member States concerned to provide information in this connection within two years from the publication of the report.

On 2 March 2010, ECRI published four reports of its fourth round of country monitoring, on Albania, Austria, Estonia and the United Kingdom. The reports note improvements in certain areas in all four of these Council of Europe member states, but also detail continuing grounds for concern.

Some of the main concerns noted in ECRI's report on **Albania** are a low awareness of discrimination, social and economic difficulties faced by Roma and Egyptians and the lack of an independent system for the investigation of allegations of ill treatment by the police.

ECRI's report on **Austria** notes the prevalence of racist discourse, the disadvantaged position of foreign children in education and the lack of a comprehensive integration policy.

ECRI's report on **Estonia** focuses on the large number of stateless persons, the limited contact between Russian speakers and Estonians, high unemployment among minority groups and discrimination against Roma.

ECRI's report on the **United Kingdom** pointed out that racist incidents have become more frequent, police powers are exercised in a manner that disproportionately affected minority groups, Gypsies and Travellers still face serious discrimination and asylum-seekers remain in a vulnerable position.

On 15 June 2010, ECRI published four country reports on France, Georgia, Poland and "the former Yugoslav Republic of Macedonia".

Some of ECRI's main concerns noted in its report on **France** are minorities' perception of the police and racial profiling, prejudice against Muslims also expressed in the debate on the prohibition of the niqab, and the tone of the immigration debate.

ECRI's report on **Georgia** points out that members of ethnic minorities still face exclusion due to their lack of command of Georgian, Roma remain in a vulnerable position and violent attacks against Jehovah's Witnesses and Muslims continue to be a problem.

In **Poland**, the persistence of racist and antisemitic discourse in politics, publications and the field of sports, the lack of comprehensive anti-discrimination legislation and the vulnerable situation of the Roma remain worrying.

ECRI's report on **"the former Yugoslav Republic of Macedonia"** focuses on the strong division of society along ethnic lines, ethnic separation in the media and in education, the vulnerable situation of the Roma, and reports of ill-treatment by the police.

The publication of ECRI's country-by-country reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member States with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

In Spring 2010, ECRI carried out contact visits to Armenia, Bosnia-Herzegovina, Monaco and Spain, before drafting reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's Rapporteurs to meet officials from ministries and public authorities, as well as representatives of NGOs working in the field and any other persons concerned by the fight against racism and intolerance.

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 antisemitism; 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 12 May 2010, ECRI, with the German Institute for Human Rights, held a national round table in Berlin, following the publication of ECRI's fourth report on Germany (16 May 2009).

This Round Table brought together representatives from the Federal and Länder authorities, academics, NGOs and trade unions, who examined the following themes: how to change employers' attitudes towards people of immigrant background; improving responses to racial discrimination and racist violence and the evaluation of the National Integration Plan. The meeting was structured around three main sessions: the legislative and institutional framework on combating racial discrimination; preventing and responding effectively to racism and integration. Participants also discussed the follow-up given to the recommendations contained in ECRI's fourth report on Germany.

Publications

- **ECRI Report on Albania** (fourth monitoring cycle), 2 March 2010
- **ECRI Report on Austria** (fourth monitoring cycle), 2 March 2010
- **ECRI Report on Estonia** (fourth monitoring cycle), 2 March 2010
- **ECRI Report on France** (fourth monitoring cycle), 15 June 2010
- **ECRI Report on Georgia** (fourth monitoring cycle), 15 June 2010
- **ECRI Report on Poland** (fourth monitoring cycle), 15 June 2010
- **ECRI Report on the "former Yugoslav Republic of Macedonia"** (fourth monitoring cycle), 15 June 2010
- **ECRI Report on the United Kingdom** (fourth monitoring cycle), 2 March 2010

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

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. At present, reform of the European Court of Human Rights and accession of the European Union to the European Convention on Human Rights constitute two principal activities of the CDDH and its subordinate bodies.

Reform of the Court: implementation of the Interlaken Declaration

The Interlaken Declaration, adopted by the High Level Conference on the Future of the European Court of Human Rights (Interlaken, Switzerland, 18-19 February 2010) formed the basis of the work of the CDDH and its subordinate bodies concerning the reform of the Court. The CDDH began its work on implementation of the Declaration with a meeting of its Bureau in Strasbourg on 23 March 2010, which in particular examined the question of allocation of various issues to the CDDH's subordinate bodies.

On the basis of this repartition, the Committee of Experts on the Reform of the European Court of Human Rights (DH-GDR) examined the issues of "access to the Court – advisability of introducing a fee for applicants" and of "proposals for dealing with repetitive applications that would not require amendment of the Convention". In respect of each, it adopted a draft report prepared on the basis of contributions from experts and observers.

The Committee of Experts on the improvement of procedures for the protection of human rights (DH-PR) adopted a draft report on proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues. The Committee also expressed its willingness to assist with Interlaken follow-up work on execution of Court judgments and the supervision of the execution by the Committee of Ministers and exchanged views on issues concerning implementation of the Convention at national level.

During its 70th meeting in June 2010, the CDDH adopted the above-mentioned reports, as well as its first report to the Committee of Ministers on implementation of the Interlaken Declaration. This report summarises the work achieved since March 2010. The CDDH also requested the Committee of Ministers to provide some clarifications and instructions, with a view to the CDDH's future work.

Resolution on member states' duty to respect and protect the right of individual application to the Court

Further to the request by the Committee of Ministers, the CDDH prepared a draft Committee of Ministers' Resolution on member States' duty to respect and protect the right of individual application to the European Court of Human Rights. This text calls upon the States Parties to refrain from putting pressure on applicants and certain other persons, to fulfil

their positive obligation to protect them from reprisals by individuals or groups and to identify and appropriately investigate all cases of alleged interferences with the right of individual application. It further calls upon the States Parties to take prompt and effective action to comply with any order of interim measure made under Rule 39 of the Rules of Court.

Sexual Orientation and Gender Identity

At their 1081st meeting, 31 March 2010, the Deputies adopted Recommendation CM/Rec (2010) 5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. This text is the first instrument drawn up by the Committee of Ministers dealing specifically with the question of discrimination based on sexual orientation or gender identity. Member states are invited to guarantee that the principles and measures set out in its appendix are applied in national legislation, policies and practices relative to the protection of the human rights of lesbian, gay, bisexual and transgender persons and the promotion of tolerance towards them. The Deputies agreed to examine the implementation of the Recommendation three years after its adoption.Effective remedies for excessive length of proceedings.

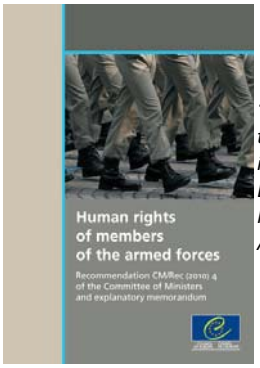
At the same meeting, the CDDH adopted a draft Recommendation of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, together with a guide to good practice, both prepared by the Committee of Experts on Effective Remedies for Excessive Length of Proceedings (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.

Combating impunity

The Committee of Experts on Impunity (DH-I) held its second and third meetings on 3-5 March and on 26-28 May 2010 respectively. The draft guidelines on eradicating impunity for serious human rights violations prepared during these two meetings will be finalised at the last meeting of the Committee, on 22-24 September 2010, and then submitted to the Steering Committee for Human Rights (CDDH) for adoption at its November meeting.

Human rights of members of the armed forces

Recommendation CM/Rec (2010)4 of the Committee of Ministers to Member states on the human rights of members of the armed forces, adopted on 24 February 2010, has been published in May 2010, together with its explanatory memorandum.



"Human rights of members of the armed forces" is published in English and French by the Directorate General of Human Rights and Legal Affairs

Death penalty

The Council of Europe took part in the 5th international meeting organized by the Community of Sant'Egidio, "From the Moratorium to the abolition of capital punishment – No justice without life", in Rome, on 17-18 May 2010. The meeting brought together ministers of justice and other key actors from about 30 countries in the world to discuss ways to progress towards the worldwide abolition of the death penalty.

Accession of the EU to the European Convention on Human Rights

After the entry into force of the Lisbon Treaty and of Protocol No. 14 to the European Convention on Human Rights, the accession of the EU to the Convention becomes a legal obligation. The Council of Europe and the European Union have made all the necessary efforts to start the accession process as soon as possible, since a number of adjustments to the Convention system are inevitable in order to welcome as the 48th High Contracting Party a non-state entity with a specific and complex legal system.

On the EU side, on the basis of a proposal presented by the European Commission in March, the Council of the European Union has adopted on 4 June a mandate asking the European Commission to negotiate the accession on behalf of the Union.

On the Council of Europe side, on 26 May the Committee of Ministers gave ad hoc terms of reference to the Steering Committee for Human Rights to elaborate, together with the representatives of the EU, a legal instrument setting out the modalities of accession of the EU to the Convention, by 30 June 2011 at the latest. In turn, on 15 June the CDDH established an informal working group (CDDH-UE), composed of 14 experts from the member states, chosen on the basis of their personal expertise, who, under the guidance of the CDDH, will draft and discuss the accession instrument with the European Commission. The first meeting of the CDDH-UE with the European Commission will take place on 6 and 7 July in Strasbourg.

Opinions on Parliamentary Assembly Recommendations

The CDDH adopted opinions on the following Recommendations of the Parliamentary Assembly of the Council of Europe:

- 1900 (2010) – The detention of asylum seekers and irregular migrants in Europe;
- 1901 (2010) – Solving property issues of refugees and displaced persons;
- 1915 (2010) – Discrimination on the basis of sexual orientation and gender identity;
- 1917 (2010) – Migrants and refugees: a continuing challenge for the Council of Europe.

It also took note of Recommendations:

- 1903 (2010) – Fifteen years since the International Conference on Population and Development Programme of Action and
- 1910 (2010) – The impact of the global economic crisis on migration in Europe.

Internet : http://www.coe.int/t/e/human_rights/cddh/

Human rights capacity building

The Legal and Human Rights Capacity Building Department (LHRCB) is responsible for co-operation programmes in the field of human rights and the rule of law. It provides advice and assistance to Council of Europe member states in areas where the Council of Europe's monitoring mechanisms have revealed a need for new measure or a change in approach. The specific themes addressed under the projects are: support for judicial reform, implementation of the ECHR at the national level, support for national human rights structures, support for police and prison reform and training of professional groups.

Armenia

A three-year European Union/Council of Europe Joint Programme to support access to justice in Armenia, implemented by the Council of Europe in co-operation with the Ministry of Justice of Armenia, started its activities on 1 February 2010. On the occasion of the second working session on the redrafting of the Law on Advocacy, the Deputy Minister of Justice and the Head of the Judicial Reform Department of the Ministry of Justice were present and the subsequent sessions on the redrafting of the Law, held in March and in April, were attended by the Head of Judicial Reform. As a result of these meetings, a new version of the draft Law on Advocacy was drawn up, finalised and submitted to the government.

In March, meetings were organised with participants from the Chamber of Advocates to draft the Charter of the future School of Advocates, the building of which should be provided by the Ministry of Justice, as well as the draft sustainability plan for the staff (to make the staff of the School ready to implement the tasks of the School in accordance with the Law and the Charter of the School) and to study the continuous legal education and other training structures in other European countries in order to find a suitable model for Armenia and subsequently prepare draft regulations on this for the school.

A seminar for the development of templates of exams which can be applied to the Judicial School was also held in March.

In April, a follow-up round table on the development of templates of exams was organised in Tsakhkadzor. Sessions with the Chamber of Advocates were also held to prepare the necessary regulations for training activities, as well as a seminar with a view to defining the selection process for the staff of the future school and one needs-assessment meeting to assist the future school in setting up the training modules and cycles to be offered there, following the adoption of the necessary regulations.

During the last week of April, a five-day study visit was organised to Italy (Rome and Naples) with ten participants, to discuss best practices and international experience in the process of the selection of judges.

In May, two four-day pilot training courses were implemented, during which 20 trainers were presented with the opportunity to focus on the following crucial topics for Armenia: how to rely on the European Court of Human Rights (ECHR) in Armenia, how to launch an application to the European Court of Human Rights (ECtHR), methods of enforcing the judgments of the ECtHR concerning Armenia, the right to peaceful enjoyment of possessions, Armenian urban planning cases in the ECtHR, the right to liberty and security, freedom of expression, the principles of interpretation of the ECHR, and the standard and burden of proof in Strasbourg proceedings.

From 31 May to 5 June, a five-day study visit was organised to the Czech Republic (Prague and Brno) with ten participants, with the aim of

studying the organisation of public defence, the comparative legislative framework regulating the Public Defender's Institute, and the structure and functioning of similar institutions.

In June, a two-day follow-up round table with officials from the Council of Court Chairmen and the Council of Justice was implemented. In the course of the activity, the following key issues were discussed: judges' recruitment needs, assessment, presentation and discussion of statistical data, annual needs for recruitment, numerical variations of the list of judge-candidates, number and experience of candidates aspiring to become a judge; exams in the Judicial School, number, nature and scope of exams; trainers of the Judicial School, recruitment, evaluation, training-of-trainers.

Azerbaijan

The closing conference of the project "Support for Prison Reform in Azerbaijan", financed by the Norwegian government and implemented by the Council of Europe was held in Baku, Azerbaijan on 6 May 2010. An overview of the implementation of the project with an assessment of the results achieved was made and suggestions for future steps were formulated regarding the following three components of the project:

- increasing the capacity building of the Prison Training Centre and enhancing the professional skills of the prison staff;
- improving the provision of health care in prison;
- promoting the role of community sanctions and measures and the establishment of the probation service.

Both the authorities and Council of Europe leading experts emphasised that the key objectives pursued under the three components had been reached through the following actions: the enhancement of the human rights component of the curricula and the establishment of a group of human rights trainers among prison staff; the provision to prison medical staff, through training, of the standards of the Recommendations of the Committee of Ministers of the Council of Europe Rec. (98)7 and (93)6 and best European practices regarding psychiatric and psychological care to prisoners; education on contagious diseases and assistance to prisoners with drug-related problems; and the raising of awareness among relevant institutions in Azerbaijan of the importance of establishing a probation service in order to reduce overcrowding and reoffending and support the offenders' rehabilitation in the community.

The authorities confirmed their commitment to engage in a follow-up to this project in order to further consolidate the improvements that had already taken place in the penitentiary system with the support of the project. The Council of Europe is ready to continue to assist the authorities in the following areas: to increase the prison staff's professional skills by further improving the training curricula and providing more cascade training; to improve the knowledge and understanding of medical ethics by medical and non-medical staff in prison; and to establish a fully-functional probation service with an efficient mechanism for the supervision of the offenders in the community.

Georgia

Since January 2008, the Council of Europe has implemented a Danish-funded programme "Enhancing Good Governance, Human Rights and the Rule of Law in Georgia". The programme includes three components, namely "Improving the capacity of the judicial system of Georgia" (Component 1), "Enhancing the capacity of the Public Defender of Georgia" (Component 2) and "Strengthening the State capacity on minority issues" (Component 3, implemented in co-operation with the European Centre on Minority Issues). The main objective of the programme is to assist the Georgian authorities in improving their judicial system in line with the European standards, as well as general human rights and minority protection, in order to fulfill the commitments undertaken by Georgia upon its accession to the Council of Europe.

Under *Component 1*, particular emphasis was placed on increasing the understanding and knowledge of ECHR requirements by legal professionals throught the organisation of specific thematic seminars for acting judges and judges legal assistants, in cooperation with the High School of Justice. In addition, the Council of

Europe assisted the Georgian authorities with the review of the compatibility of the new Criminal Procedure and its Action Plan with relevant European standards.

Under *Component 2*, training sessions on Articles 5 and 6 of the ECHR and the new Criminal Procedure Code of Georgia were organised for the lawyers of the Office of Public Defender (PDO). Moreover, the Council of Europe contributed to the organisation of a workshop on monitoring psychiatric institutions for the PDO staff and the experts from PDO's National Preventive Mechanism (NPM). It also supported the translation into Georgian of the latest report of the European Committee on the Prevention of Torture, the translation into Georgian of the Committee of Ministers guidelines on the monitoring of closed institutions and the publication of the Georgian and English versions of the Public Defender's report on the protection of human rights and freedoms in Georgia. Furthermore, a round table on Child's Rights Protection for children from different schools of Georgia (including the regions) was organised with the participation of NGO representatives, the Vice-Speakers of Parliament of Georgia, the Head of the Human Rights Committee of Parliament of Georgia, the Minister of Education, the Minister on Health and Social Affairs and media.

Under *Component 3*, specific support was provided to the Council of National Minorities (CNM) in order to increase its operational and outreach capacity. A photo exhibition – "Multiethnic Georgia" was opened within the Georgian parliament. Finally, a training seminar for the Members of the Inter-Agency Commission in charge of the protection of national minorities and CNM members was also organised under this component.

Moldova

Following the post-electoral events of April 2009, a number of Council of Europe and European Union high-level visits were made to Moldova to better understand the situation with a view to making recommendations to the authorities regarding the fundamental principles of human rights, the rule of law and pluralist democracy. It is in this context that the Council of Europe Commissioner for Human Rights stated in one of his reports: "it is of great concern that these violations [of human rights] could take place in spite of a legal ban on torture, formal preventive safeguards, a code of conduct for the police and a number of training courses."

Intense consultations were held during the summer of 2009 between the Council of Europe, the European Union and the Moldovan authorities to define the broad lines of technical assistance designed to address the shortcomings and the root causes that had led to such a breakdown of human rights protection mechanisms in the country. This resulted in an European Union/Council of Europe joint action entitled "Democracy Support Programme". The Council of Europe is responsible for the implementation of the project and the use of the project funds under the contract with the Delegation of the European Union to Moldova. The project started on 4 January 2010 and its duration is 18 months.

The programme includes a broad range of beneficiaries, national partners, implementation methods and specific activities, as this has proved to lead to more effective implementation in previous joint actions in Moldova. It is composed of seven components, four of which are under the responsibility of the DG-HL:

1) **Legislative assessment** of existing and proposed legislation (including amendments currently in preparation) with European standards. The main activities under Component 1 will consist of legislative expertise and assessment by Council of Europe experts, coupled with specially-designed activities to ensure proper follow-up to the experts' recommendations.
2) **Ensuring accountability for human rights violations**: (i) assistance with structural reforms of the police and the General Prosecutor's Office; (ii) capacity-building: training of police and prosecutors inter alia on positive obligations under Article 3 of the ECHR and CPT standards, (iii) reinforcement of the police's capacity to effectively apply riot control measures in line with European standards. The main activities will focus on training for police officers and prosecutors on combating ill-treatment and impunity.
3) **Safeguarding pre-trial guarantees:** (i) advising on the transfer of temporary detention isolators from the Ministry of Interior to the Ministry of Justice; (ii) supporting the setting up of a judicial/court police; (iii) extension of the use of bail pro-

visions and assisting in the implementation of the probation law, and (iv) training of judges and prosecutors, in order to avoid excessive use of pre-trial detention. Establishment of a fully independent agency specialised in the investigation of cases possibly involving ill-treatment by law enforcement officials shall be a focus of this component which will take into consideration several aspects, inter alia, the internal and external inspections, investigation mechanisms etc.

4) **Support to the Centre for Human Rights of Moldova (Ombudsman):** (i) providing assistance with the revision of the institutional/legal framework; (ii) thematic capacity-building.

During the reporting period, a Project Team was established and in-depth contacts were established with the beneficiaries to adjust the Work Plan.

"Increased independence, transparency and efficiency of the justice system of the Republic of Moldova" joint programme

In Moldova, a comprehensive capacity-building European Union/Council of Europe Joint Programme entitled "*Increased independence, transparency and efficiency of the justice system of the Republic of Moldova*" has been carried out since October 2006. This programme provides assistance to the main players in the field of justice, in particular as regards reviewing national legislation in line with European standards in the field of judiciary and strengthening the capacity of the Ministry of Justice, the Public Prosecution Service, the National Institute of Justice and the Bar Association.

Among the activities implemented in the period of March – June 2010, it is worth recalling a training seminar for judges and prosecutors on freedom of expression and access to information, which was organised with a view to assisting the beneficiaries in improving their understanding and knowledge of relevant ECHR standards. This activity was followed by a training session for Moldovan lawyers on Article 10 of the ECHR.

Moreover, a round table to discuss the concept of the draft law on a private enforcement system was held in April with the participation of representatives from the Ministry of Justice and civil society, as well as bailiffs. The participants were given an overview of different models of private enforcement systems, in particular those of European countries which had passed from a public to a private enforcement system. The Council of Europe also assisted the Moldovan authority in the review of the draft law on a private enforcement system.

Furthermore, the Council of Europe also analysed the compatibility of the Moldovan legislation on the status, procedural position and rights of lawyers with respect to the defence of their clients with European standards.

In June 2010, two training sessions on communication and public relations within the Public Prosecutors' Service were organised for the Moldovan prosecutors. The training facilitated the drafting of training curricula which will be used as basic training material in future courses. A "Compendium of main international documents dealing with independence and well functioning of justice" was also prepared with the joint programme's support.

Russian Federation

European Union/Council of Europe Joint Programme "Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the European Convention on Human Rights"

The joint programme between the European Union and the Council of Europe entitled "*Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the European Convention on Human Rights*" was implemented by the Directorate General of Human Rights and Legal Affaires of the Council of Europe from December 2006 to 22 June 2010.

One of the main purposes of the programme was to inform legal professionals about the ECHR and the mechanism of the ECtHR. During the implementation of the project, over 700 judges, 700 prosecutors, 700 lawyers, 300 NGOs representatives, 25 police officers and 50

trainees from the Academy of the Ministry of the Interior underwent training on the Convention. Knowledge of human rights standards was enhanced in remote regions of the Russian Federation – from Vladivostok to Vladikavkaz, from Murmansk to Irkutsk - where, in addition, a very high degree of motivation for such activities was observed. The training activities focused on the Articles of the ECHR on which the majority of Russian applications to the Court are based.

The last activity organised within the framework of the programme was the final conference which took place in Moscow on 17 June 2010. The conference was attended by representatives of the Presidential Administration of the Russian Federation, representatives of the Federal Chamber of Lawyers, the General Prosecutor's Office, the Russian Academy of Justice, judges and representatives of the Council of Europe and the Delegation of European Union to Russia. This event confirmed the commitment of the Russian authorities and legal professionals to additional ECHR training to make sure that human rights are effectively protected at the national level, in line with the Interlaken Declaration of 19 February 2010.

Training seminar for prison staff from the Chechen Republic on the preparation for release from prison, programmes of social rehabilitation within the penitentiary system and in liberty (Moscow, 3-4 March 2010)

The working sessions were led by international experts and each of them was followed by a discussion on ways of improving practice in the Chechen prison system. The training was combined with theoretical and practical group work, and role play.

The participants became acquainted with the general principles of social rehabilitation, preparation for social rehabilitation during imprisonment and monitoring while in liberty, key elements of conditional release, and assessment of prisoners' suitability for a community measure (such as home leave, conditional release, or suspended sentences). References were made to relevant articles in the Russian Criminal Code and to the Recommendations of the Committee of Ministers of the Council of Europe, in particular Rec (2010)1 on the Council of Europe Probation Rules.

Serbia

The Council of Europe has been implementing a World Bank-funded project entitled *"Support of the Reform of the Judiciary in Serbia in the light of the Council of Europe Standards"*. The project's goal is to improve the independency, transparency, efficiency and accessibility of the Serbian judicial system. To this end, a comprehensive stock-taking of the reforms undertaken in the justice sector, in particular the degree of implementation of the National Judicial Reform Strategy adopted in 2006, is being carried out by Council of Europe experts. Special emphasis is being placed on the identification of legislative gaps and obstacles hindering the reform of the judiciary in Serbia and in formulating recommendations on specific measures to ensure a continued and sustainable reform of the judiciary in Serbia, in line with relevant European standards. As part of this exercise, a road map will be presented to the Serbian authorities early September, with a view to facilitating a coherent implementation of the proposed recommendations.

Turkey

European Union/Council of Europe Joint Programme on "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey"

Two seminars were organised in İzmir and Gaziantep, on 20-21 April and 6-7 May respectively, with the participation of 90 Commanders of Gendarmerie in charge of the perimeter security of prisons, and 79 Prison Prosecutors, along with Council of Europe consultants and representatives of the Turkish Ministry of Justice. The aim of the seminars was to inform the target groups of the content of the European Prison Rules and ECHR, the working methods and findings of the European Committee for the Prevention of Torture, the working

methods of the ECtHR and its case-law, recent developments in the penitentiary field in Turkey and other relevant international mechanisms for protecting those deprived of their liberty.

Beyond the subject matter, the significance of these two events was that they were the first ones in Turkish history bringing together the Prosecutors and the Gendarmerie in a single event under the same roof.

Participants made extremely positive comments about the content of the programme, its delivery and usefulness to them in their professional roles. Almost every participant felt that it had been a positive and constructive learning experience and the opportunity to work with colleagues from other operational areas was considered as particularly beneficial.

In addition, a series of seven cascade training seminars on the Leadership Training Programme was provided to approximately 800 prison governors between February and May 2010 in the Antalya region. The training was provided by 21 national trainers trained by the Council of Europe under the Project. The training sessions involved a combination of large group presentations and small group interactive work.

A consistently high percentage of participants reported positively on the benefits they received from the training. Some of the content was new to them and that which was not new was meaningful to have been reiterated. Participants also confirmed the advantage of sharing experiences with their peers, away from day-to-day work pressures. The participants embraced the concepts presented during the course, however the real challenge will be their ability to return to their establishments and act as positive role models and agents of change.

European Union/Council of Europe Joint Programme on "Enhancing the role of the supreme judicial authorities in respect of European standards"

Since the launching conference of the European Union/Council of Europe Joint Programme on "*Enhancing the role of the supreme judicial authorities in respect of European standards*" in February 2010, the Programme has raised high expectations of the beneficiary institutions.

The Programme started at full speed: the first of the five round tables envisaged was organised between 15 and 17 March 2010 in Ankara. It was devoted to the rights to liberty and security and to a fair trial. It was followed by two round tables on positive obligations under Articles 2 and 3 of the ECHR, the European Social Charter, on property rights and the protection of the environment held on 14-16 April and 9-11 June 2010, respectively. Some 170 members of the Constitutional Court, the Court of Cassation, the Council of State and the High Council of Judges and Prosecutors participated in these activities, which significantly exceeded the number of participants originally planned. The interest of the beneficiary institutions was also manifested during the discussions in which the participants exchanged experience on the ECHR and the European Social Charter with Council of Europe experts.

In addition, a study visit of 16 members of the Constitutional Court to the European Court of Justice in Luxembourg and to the Council of Europe, including the ECtHR was carried out in May 2010.

The round tables and the study visit have contributed to the development of a close relationship between the Turkish supreme courts and the European institutions and to the strengthening of the capacity of the judges of the higher courts to apply European standards in their daily work and to a better human rights protection at the national level.

Ukraine

From 1 March to 30 June 2010, the European Union/Council of Europe Joint Programme *"Transparency and efficiency of the judicial system of Ukraine"* (TEJSU Project) focused on bringing the legal framework of the Ukrainian judiciary in line with European standards. The TEJSU Project held its first two meetings of the Working group within the Legal Advice Group (LAG) to discuss issues related to the judiciary and the Law on the Bar. Following these meetings, recommendations for the improvement of the legislation in the respective areas were drawn up. These recommendations were subsequently presented to the respective Parliamentary Committees responsible for the reforms of the judiciary and of the legal profession.

The TEJSU Project was invited by the Minister of Justice to take part in meetings of the Working Group on the Judiciary created in March 2010 by the President of Ukraine. All the recommendations prepared by the experts under the TEJSU Project were presented to the Presidential Working Group. As a result, the Presidential Working Group drew up a draft Law on the Judiciary and the Status of Judges which was accepted by the President of Ukraine and adopted by Parliament in the first reading. A few recommendations, both of the TEJSU Project and Venice Commission (VC) experts as well as of the LAG Working Group were taken into account in the draft. On 15 June, the Ministry of Justice requested the Venice Commission to evaluate the compatibility of the draft law with European standards. Bearing in mind the urgency of the matter, the VC and the Directorate of Co-operation experts already presented preliminary comments on the draft law. The TEJSU Project will continue to provide its expert advice jointly with the Venice Commission.

The TEJSU Project continued its activities aimed at setting up a system of Alternative Dispute Resolution (ADR, i.e. mediation) in commercial and administrative matters. The second part of the basic mediation training on setting up a system of ADR in commercial and administrative matters as well as a meeting of the Expert working group "Strategies for strengthening mediation in Ukraine" were organised in May. Judges from the different "pilot courts" involved (Vinnitsa Administrative District Court, Donetsk Administrative Appeal Court, Bila Tserkva City-District Court), as well as representatives of the Supreme Court, the High Administrative Court, and the Ministry of Justice took part in the training. Following the activities taken on by the TEJSU Project, the "pilot courts" are expected to begin the application of mediation in July 2010. For this purpose, the TEJSU Project will organise a "Mediation Week" – an event that will be held in Kyiv and in the "pilot courts" with a view to launching the application of ADR in those courts.

Kosovo[1]

On 21 May and on 10 June 2010 in Pristina, Kosovo[1], the Legal and Human Rights Capacity Building Department held its 3rd and 4th training sessions for EULEX judges, prosecutors and legal officers. They were organised following the Memorandum of Understanding signed by the Council of Europe and the EULEX Mission in Kosovo[1] in July 2009.

The 3rd session focused on measures to prevent and combat domestic violence in Kosovo. The Council of Europe expert focused her presentation on the examination of the legal problems of the cases presented, referring to the case law of the ECtHR. The expert's presentations alternated with presentations by EULEX staff on the challenges to an effective prosecution system and on the EULEX Police mandate to combat domestic violence. The evaluation questionnaires completed by the participants demonstrated that they had found the analysis of concrete cases very useful in order to better understand how to deal with daily cases regarding domestic violence.

The 4th training session was devoted to the Council of Europe Convention on Action against Trafficking in Human Beings. The Executive Secretary of the Convention gave two presentations and underlined the importance of the Council of Europe Convention on Action against Trafficking in Human Beings, as this convention is one of the most important human rights treaties of the last decade. In addition, she presented its monitoring mechanisms. The participants expressed their satisfaction to have been able to meet the Executive Secretary of the Convention in order to get a better understanding of the Council of Europe's actions against trafficking in human beings.

Both events were attended by 40 staff members, including judges, prosecutors and legal officers. EULEX confirmed its strong commitment to and interest in additional activities organised by the Council of Europe on Council of Europe standards and monitoring mechanisms. The expectations of these activities are continuously increasing as EULEX staff rely on them as a significant opportunity to exchange views and get updated information on the

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.

findings of the Council of Europe monitoring bodies.

Multilateral

European Union/Council of Europe Joint Programme "Combating ill-treatment and impunity"

The European Union/Council of Europe Joint Programme "Combating ill-treatment and impunity" (1 January 2009 – 30 June 2011) entered its capacity-building phase in 2010, after a fact-finding/research phase in 2009.

The training campaign which started in 2010 progressed rapidly in all five beneficiary countries of the project. Series of cascade seminars for judges and prosecutors continued in Ukraine. In March, 2 training seminars were organised for judges and prosecutors in Armenia and Moldova and a seminar for lawyers was organised in Georgia. In April, a seminar for Human Rights Advisers of the Minister of Interior was organised in Ukraine. In June, 3 seminars for police officials and 2 seminars for lawyers were organised in Ukraine, 2 seminars for judges and one seminar for prosecutors in Azerbaijan, 2 seminars for prosecutors and one seminar for judges in Georgia. All these training events targeted legal professionals involved in dealing with issues of ill-treatment in the course of pre-trial investigation and highlighted the case law and standards developed by the ECtHR as regards effective investigation of ill-treatment.

In parallel, in all 5 beneficiary countries the following materials produced under the project were translated and in almost all of them already published:

1. the country reports as regards effective investigation of ill-treatment;
2. the guidelines on European standards for effective investigation of ill-treatment;
3. the brochure on the rights of detainees and obligations of law enforcement officials.

All these publications are being distributed to key legal professional groups, NGOs, independent experts, educational institutions and libraries. The Council of Europe is following up on the implementation of the recommendations made by the programme's long-term consultants, Eric Svanidze and Jim Murdoch, in the above mentioned country reports.

The European Programme for Human Rights Education for Legal Professionals Programme (HELP II)

A project to strengthen professional training on the European Convention on Human Rights – European Programme for Human Rights Education for Legal Professionals (the HELP II programme) was launched in the presence of representation from 12 beneficiary countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia", Russian Federation and Ukraine) in Strasbourg on 29 June 2010.

This follow up project, financed by the Council of Europe's Human Rights Trust Fund.

The project's aim is to strengthen the capacity of national training institutions for judges and prosecutors in the 12 beneficiary countries and to fully integrate the ECHR into their initial and continuous training in accordance with Committee of Ministers' Recommendation (2004) 4 of 12 May 2004 and in line with the Interlaken Declaration of 19 February 2010.

The key objectives of the project are as follows:

- Target countries integrate the HELP curriculum and use the materials in their national training, using the HELP methodology and tools.
- Further ECHR materials and tools are developed and updated. Target countries can access all HELP materials on-line in their national languages.
- The European Human Rights training Network for the exchange of good practice and experience among those responsible for initial and in-service training of judges and prosecutors encouraged and facilitated through bilateral and multilateral meetings. Regional cooperation will also be encouraged under the HELP II Programme.

During the launching event, three working groups were established which will deal respectively with E-learning methodology, the development of training materials and training-of-trainers.

Setting-up an active network of National Preventive Mechanisms against torture (NPMs) and organising the exchange of know-how between the universal, regional and national mechanisms

The Optional Protocol to the UN Convention Against Torture (OPCAT), which obliges states Parties to set up an NPM within one year of ratification, came into force in 2006. 54 states worldwide have now ratified OPCAT, 26 of them are Council of Europe member States. Of the 25 OPCAT ratifying Council of Europe member States, 21 have set up NPMs.

The OPCAT foresees co-operation between the NPMs and the UN Sub-Commitee for the Prevention of Torture (SPT), itself also authorised to inspect places of detention in the States Parties, but *de facto* (i.e. mainly for financial reasons) not in a position to conduct more than a few visits per year, world-wide. The OPCAT also tasks the SPT to advise the NPMs, but there exists presently no or almost no budget for that activity. On its side, in two decades, the Council of Europe's Committee for the Prevention of Torture (CPT) has accumulated intensive international experience in the planning and conduct of and reporting on independent, unannounced in-depth inspection visits to the various types of places where human beings can be deprived of their liberty. For many years, the CPT has called for the setting-up of preventive mechanisms at national level.

In this situation, the challenge is to elaborate a coherence of approaches of the SPT, the CPT and the NPMs as regards their respective tasks. Significantly different perceptions by these three independent actors could lead to duplication of work and/or contradictions of their findings.

The First Thematic Workshop of the European NPM Project was held in Padua on 24-25 March 2010 on "The role of NPMs in preventing ill-treatment in psychiatric institutions". 18 specialised staff from 16 of the 20 then operating NPMs of the Council of Europe region participated in the workshop as well as members of the SPT and its Secretariat, former members of the CPT, representatives of the APT, the Mental Disability Advocacy Centre (MDAC) and the OCSE and individual medical and legal experts. The underlying legal norms and best practices and experiences from the SPT, CPT and NPMs were discussed in depth.

A consultation meeting on "Prospects for the ratification of the OPCAT and the setting-up of an NPM in Italy" followed on the next day. Italian politicians, civil society representatives and Government officials and many representatives of the European NPM Network discussed a "road map" to prepare for the ratification of OPCAT by Italy.

At the demand of several Russian Public Monitoring Commissions of places of detention (PMCs) a consultation meeting was convened in Moscow on 21 April 2010 by the Council of Europe and the Ombudsman of the Russian Federation to discuss the possibility of engaging in a meaningful co-operation project with the PMCs.

The first "On-site Exchange of Experiences" under the European NPM Project was held with the Polish NPM in Warsaw on 4 – 7 May 2010. (A previous meeting of this kind had been organised sucessfully with the Estonian NPM in September/October 2009, under a pilot project).The exchange of experiences involved the entire team of the NPM of Poland on the one side (20 experts) and on the other side members or former members of the SPT, the CPT and the APT. On the first day of the meeting the designation, composition, functioning and general working methods of the Polish NPM in the light of the OPCAT prescriptions were examined. The second day served to prepare a common on-site visiting exercise to three different types of places of deprivation of liberty for which participants split in small groups on the third day. On the fourth day, the international experts presented their observations on the working methods of the national experts and these observations were discussed in plenary.

The Second Thematic Workshop, on "The role of NPMs in protecting individuals' key rights upon deprivation of liberty by the police", was held on 9-10 June 2010 in Tirana, Albania. The event was co-organised with the Office of the People's Advocate for the Republic of Albania (the NPM of Albania) and saw the participation of experts from 18 of the 21 operating European NPMs, members and former members of the SPT and the CPT, representatives of the APT and UNDP as well as individual experts. The workshop was divided into two working sessions that explored the key rights of individuals deprived of their liberty by the police from a substantive perspective as well as from a methodological perspective.

The second NPM On-site Exchange of Experiences was held in Tbilisi with the Georgian NPM on 29 June – 2 July 2010. It involved 26 participants from the NPM of Georgia and on members or former members of the SPT, the

CPT and the APT. The working method of the meeting followed by and large that of the one visit in the Polish NPM (See above).

A bi-monthly newsletter in English has been circulated to the members of the European NPM Network as well as to interested institutions and individuals. It informs of the activities of the network and its members, including the activities under the European NPM Project, and provides updates regarding the setting-up, legislative bases and the functioning of NPMs in Europe. The newsletters will also be posted on specific sections of the websites of the Council of Europe's Directorate General of Human Rights and Legal Affairs and of the APT.

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

Legal Co-operation

European Committee on Legal Co-operation (CDCJ)

Set up under the direct authority of the Committee of Ministers, the European Committee on Legal Co-operation (CDCJ) has, since 1963, been responsible for many areas of the legal activities of the Council of Europe, including family law, access to justice, nationality and data protection.

The achievements of the CDCJ are to be found, in particular, in the large number of conventions and recommendations which it has prepared for the Committee of Ministers. The CDCJ meets at the headquarters of the Council of Europe in Strasbourg (France). The governments of all member states may appoint members, entitled to vote on various matters discussed by the CDCJ.

Work in the field of justice

The draft recommendation on judges: independence, efficiency and responsibilities, and its explanatory memorandum have been finalised and will be examined by the Plenary meeting of the CDCJ (11-14 October 2010) 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 data protection

The draft Recommendation on the protection of individuals with regard to automatic processing of personal data in the framework of profiling prepared by the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS No. 108] will be examined by the Plenary meeting of the CDCJ (11-14 October 2010) before being submitted for adoption to the Committee of Ministers (end of 2010). An important promotion of the Convention 108 was made during the third Edition of EuroDIG (Madrid, 29-30 April 2010) as the Plenary session on Privacy addressed the need in the field for international global standards for internet.

Work on mutual administrative assistance in tax matters

On 24 March 2010, the Committee of Ministers has adopted Protocol amending the 1988 Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208). This joint Council of Europe-OECD Convention provides for a broad range of administrative assistance, including information exchange on request, simultaneous tax audits, and optionally automatic exchange of information, assistance in tax collection and service of documents.

The Protocol has been opened for signature on the occasion of the OECD Ministerial meeting which took place in Paris on 27 May 2010. It has been signed on that occasion by 15 states, 10 of them Council of Europe member States.

European Committee on Crime Problems (CDPC)

The CDPC is currently working on the following priority issues:

Draft recommendation on foreign nationals in prison

The aim is to address the growing number of detained foreign nationals in Europe (including such vulnerable groups as women, children, and elderly), their specific needs and treatment, training of staff, contacts with the outside world, the possible transfer to their country of origin, preparation for release and social reintegration.

The sentencing, management and treatment of 'dangerous' offenders in the Council of Europe member states

The CDPC seeks to identify key issues in relation to the management/treatment of dangerous offenders in the European criminal justice systems and how to balance public expectations of safety with the offender's right to fair treatment. The work should lead to developing European standards in this area by highlighting good practices in treatment of dangerous offenders in closed and open settings, protection of public safety and human rights issues.

Work related to the criteria for admissibility, appraisal and equality of arms in the use of scientific proof in the criminal justice process in Europe

The aim is to assess the use of scientific evidence in criminal proceedings in Europe, its interpretation and appraisal, as well as its impact in terms of equality of arms. Such evidence is becoming increasingly complex and its use in criminal justice is rising while as the parties to the criminal process often lack the necessary knowledge to be able to handle such evidence.

The collection of the annual penal statistics of the Council of Europe SPACE I (prisons) and SPACE II (community sanctions and measures)

SPACE I have been collected for more than 25 years and their use and usefulness are acknowledged by the professionals working in the penal field. Already for several years SPACE II have also been collected and their aim is to compare data regarding alternatives to custody so that member states make more efficient use of these.

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

European Commission for Democracy through Law (Venice Commission)

The Venice Commission is the Council of Europe's consultative body on constitutional matters. It provides impartial advice and legal expertise on draft constitutions and constitutional amendments, as well as on para-constitutional laws, i.e. laws close to the constitution such as electoral laws and laws on human rights. The Commission gives its advice upon request by the participating states or the other Council of Europe's bodies. It is composed of independent experts in the field of constitutional law. The opinions adopted by the Commission are not binding but are mostly followed by member states.

Today, the Commission counts 56 member states – the 47 member states of the Council of Europe, Algeria, Brazil, Chile, Israel, Kyrgyzstan, the Republic of Korea, Mexico, Morocco and Peru. Belarus is an associate member and there are seven observers (Argentina, Canada, the Holy See, Japan, Kazakhstan, the United States and Uruguay). Tunisia was recently invited to become a member of the Commission and South Africa and Palestinian National Authority have a special co-operation status similar to that of the observers.

Report on counter-terrorism measures and human rights

The report on counter-terrorism measures and human rights was prepared upon the request by the Parliamentary Assembly of the Council of Europe, and adopted by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010). The request of PACE was made in 2008, in the context of concerns raised by draft legislation with regard to counter terrorism in the United Kingdom. PACE then considered that the British draft legislation should be examined within a more general comparative study of anti-terrorism legislation in Council of Europe member States in order to assess, in particular, the compatibility of such legislation with the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

While it does not deal with specific anti-terrorism measures in different countries or the way that domestic courts have responded to those measures, the report outlines the most recurring issues which have arisen at the national level, and the range of their possible incompatibilities under the European Convention on Human Rights and Fundamental Freedoms. It draws in most part on the case-law of the European Court of Human Rights which demonstrates how fundamental human rights and the fight against terrorism may complement each other without unduly compromising their respective aims. Issues addressed include terrorist offences and principle of legality, surveillance powers, arrest, interrogations and length of detention, treatment of detainees, military and special tribunals and targeted sanctions against individuals or groups.

It is stressed, in the Report, that the security of the State and its democratic institutions, and the safety of its population, are vital public and private interests that deserve protection, if necessary at high costs. States are even obliged to provide protection. However, States not only have the duty to protect State security, and the individual and collective safety of their inhabitants; they also have the duty to protect the (other) rights and freedoms of those inhabit-

ants. Real security means that everybody in society can exercise his or her basic human rights without being threatened by violence; maintaining security is meant to be in the interest of ensuring human rights, and thus should respect those rights. State security and fundamental rights are, consequently, not competitive values; they are each other's precondition.

The report underlines that the gravity of the potential harm that counter-terrorism measures may cause requires that they be measured to the extent to which they can be demonstrated to enhance the ability to identify, apprehend and prosecute individuals planning terrorist attacks whilst remaining within the framework of the rule of law and human rights. In other words, against the international tests of legality, necessity, proportionality and non-discrimination. This is why it is of vital importance, both for their legality and for their acceptability in society, that such far-reaching police powers as those relating to data-matching, surveillance, arrest, search and seizure - both their legal regulation and their application in practice - are eventually reviewed for their full conformity with the general principles of legality, necessity, proportionality and non-discrimination. In addition to parliamentary control and internal executive checks, judicial review thus remains of the utmost importance, with as an extra guarantee supervision by an international independent tribunal.

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

Media and information society

Freedom of expression and of the media is a cornerstone of democracy. It is guaranted by Article 10 of the European Convention on Human Rights. For many years, there has been intense standard-setting work to advance and uphold this fundamental freedom. Instruments have been developed concerning the press, audiovisual media, journalists' work in time of crisis and various aspects of freedom of expression.

The emergence of new technologies and their constant rapid development generate new modes of communication. Society as a whole is thereby transformed. The very nature of these changes bears directly on the media with new media appearing and "traditional" media adapting to new environments. These developments prompt debate on the citizens' rights to express themselves and on he freedom of information of providers and distributors. The Internet, which has become an essential everyday tool for growing numbers of people, raises many questions. Its accessibility, cross-border functioning and freedom have become enabling tools for the enjoyment of human rights, fundamental freedoms and democracy. Nonetheless, attention has to be paid to the risks that the new media environment may involve, particularly for the most vulnerable. The Council of Europe has taken this course boldly with innovative and participative working methods. Human rights in the information society is a priotity workstream for the present and coming years.

Texts and instruments

Declaration on enhanced participation of Member States in Internet governance matters – of the Internet Corporation for Assigned Names and Numbers (ICANN)

Adopted on 26 May 2010

Internet and other information and communication technologies serve to promote human rights and fundamental freedoms and therefore have high public service value. Enabling access to and use of the Internet, as well as ensuring their protection, should be high priorities for member states' policies with regard to Internet governance. All Council of Europe member states are encouraged to actively participate in GAC or other forms of involvement in ICANN's work in order to promote the Council of Europe's values and standards in the multi-stakeholder governance of the Internet. The Council of Europe will participate as an observer in GAC's activities.

Main events

3rd European Dialogue on Internet Governance (EuroDIG) – Madrid, 29-30 April 2010

The third EuroDIG was held on 29-30 April 2010 at the headquarters of Telefónica, in Madrid. It was organised by the Spanish IGF, the Council of Europe and the Swiss Federal Office of Communication (OFCOM) together with a number of other stakeholders, with the support of Telefónica and Fundación Madrid, the Ministry of Industry, Tourism and Commerce of Spain (through red.es) and the City of Madrid, coinciding with the Spanish Presidency of the European Union.

EuroDIG 2010 was attended by around 300 participants from all stakeholder groups and regions across Europe. Ten remote hubs

enabled the interaction with the Madrid meeting of about 220 participants in Baku (Azerbaijan), Yerevan (Armenia), Sarajevo (Bosnia), Toulouse and Strasbourg (France), Tbilisi (Georgia), Chisinau (Moldova), Bucharest (Romania), Belgrade (Serbia) and Kiev (Ukraine), using a combination of live video-streaming, real time captioning and tweets, social networks and wiki reports. Following an opening session on the public and economic value of the Internet in Europe and a dialogue between representatives of 10 national IGF platforms, there were seven thematic workshops and five plenary sessions organised by open groups of interested European stakeholders.

The *Messages from Madrid* distill the main results of discussions at the 3rd. They are not a negotiated text, but were put together by the rapporteurs, in consultation with the organising teams of each session. The messages from Europe should feed into the global debate on Internet Governance.

12th meeting of the Steering Committee on Media and New Communication Services – Strasbourg, 8-11 June 2010

The Steering Committee on the Media and New Communication Services (CDMC) held its 12th meeting in Strasbourg, from 8 to 11 June. Its work focused on several draft Committee of Ministers declarations, respectively on network neutrality, the management of the Internet protocol address resources in the public interest and on the Digital agenda for Europe, as well as on a discussion on creative rights in the Internet age in light of a Parliamentary Assembly Recommendation on the subject.

Publications

Internet Literacy Handbook – publication of the 3rd edition in German on line

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. With a Geman version now available online at: http://www.coe.int/t/dghl/standardsetting/internetliteracy/Source/Lit_handbook_3rd_de.swf the Handbook already exists in ten languages.

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