Our rights, our freedoms

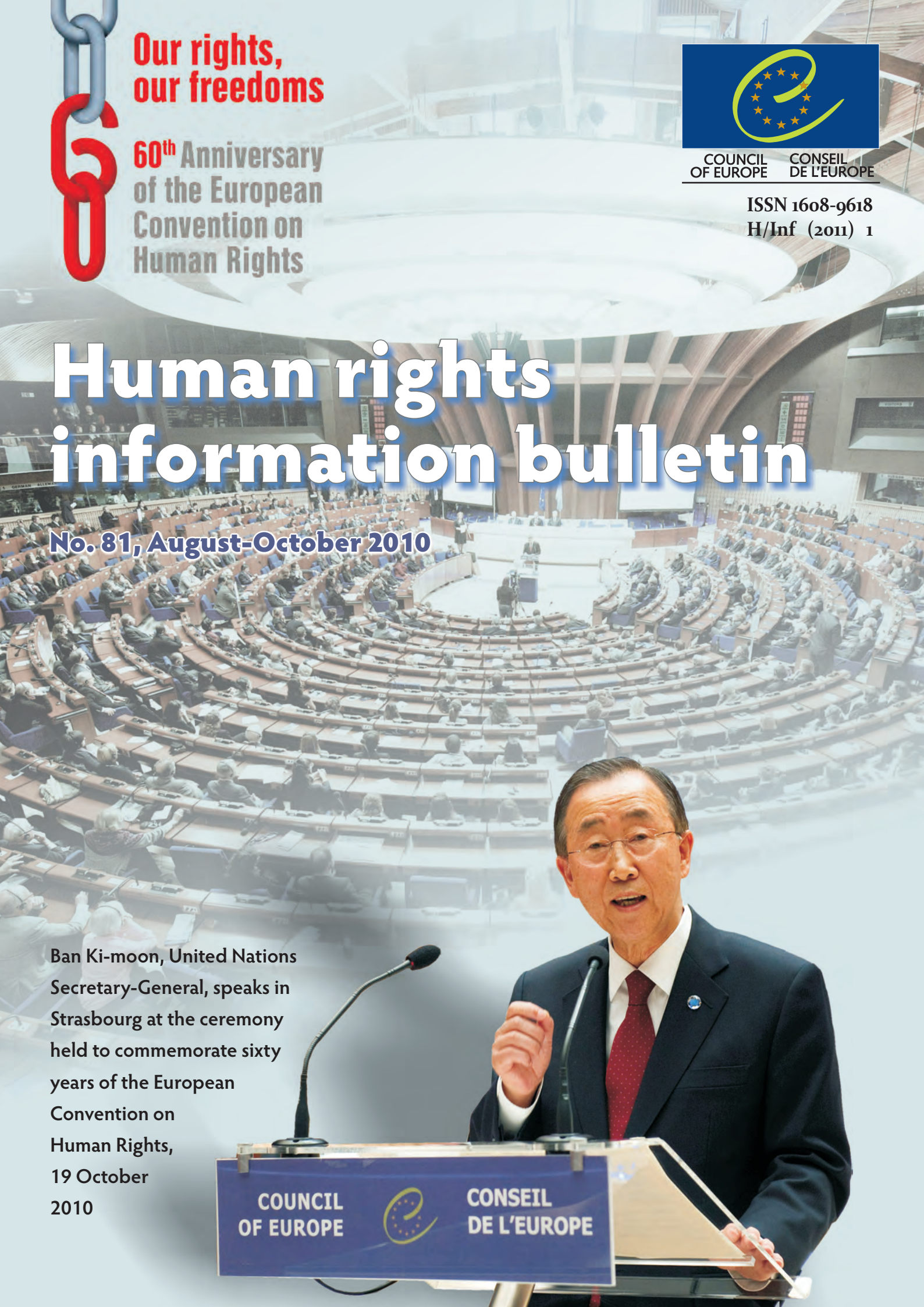
60th Anniversary of the European Convention on Human Rights

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

ISSN 1608-9618
H/Inf (2011) 1

Human rights information bulletin

No. 81, August-October 2010



Ban Ki-moon, United Nations Secretary-General, speaks in Strasbourg at the ceremony held to commemorate sixty years of the European Convention on Human Rights, 19 October 2010

Human rights information bulletin

No. 81, 1 August-31 October 2010

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

This issue published January 2010. Date of next issue: April 2011. ISSN: 1608-9618 (print edition) and 1608-7372 (electronic edition). Internet address: http://www.coe.int/justice/.

Contents

European Social Charter

Convention for the Prevention of Torture

European Commission against Racism and Intolerance (ECRI)

Framework Convention for the Protection of National Minorities

Law and policy

Human rights capacity building

Legal co-operation

Media and information society

European human rights institutes

Commissioner for Human Rights

Treaties and conventions

Signatures and ratifications

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Slovenia ratified Protocol No. 12bis on 7 July 2010.

Convention on Access to Official Documents

Bosnia and Herzegovina signed the Convention on 1 September 2010.

Convention on Action against Trafficking in Human Beings

Ireland ratified the Convention on 13 July 2010.

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

The Convention entered into force on 1 July 2010. The Convention was signed by Armenia on 29 September 2010 and by Malta on 6 September 2010. It was ratified by France on 27 September 2010, Malta on 6 September 2010, Spain on 5 August 2010 and Serbia on 29 July 2010.

European Convention on the Adoption of Children (Revised)

Spain ratified this Convention on 5 August 2010.

European Convention on the Exercise of Children's Rights

Montenegro ratified this Convention on 1 October 2010.

European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes and the European Convention on the Compensation of Victims of Violent Crimes

Serbia signed these conventions on 12 October 2010.

Additional Protocol to the Convention on the Transfer of Sentenced Persons

Slovenia signed the Additional Protocol on 15 October 2010.

Convention on the Avoidance of Statelessness in relation to State Succession

The Netherlands signed the Convention on 16 September 2010. Austria ratified the Convention on 23 September 2010.

Convention on the Prevention of Terrorism

Sweden ratified the Convention on 30 August 2010 and the Netherlands on 22 July 2010.

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

The Netherlands accepted this Protocol on 22 July 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 July and 31 October 2010:

- 856 (442) judgments delivered
- 757 (349) declared admissible, of which 742 (337) in a judgment on the merits and 15 (12) in a separate decision
- 9005 (8969) applications declared inadmissible
- 707 (525) 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.

Neulinger and Shuruk v. Switzerland

Return of a boy abducted by his mother would not be in his interest and would breach the Convention
Violation of Article 8 (right to respect for private and family life) if the return order were enforced

Judgment of 6 July 2010. Concerns: The applicants relied, in particular, on Article 8 of the European Convention on Human Rights, submitting that Noam's return to Israel would constitute an unjustified interference with their right to respect for their family life.

Principal facts

The applicants, Isabelle Neulinger and her son Noam Shuruk, are Swiss nationals who were born in 1959 and 2003 respectively and live in Lausanne (Switzerland, Canton of Vaud). In 1999 Ms Neulinger settled in Israel where she married Shai Shuruk in 2001. Their son, Noam, was born in Tel Aviv in 2003. Fearing that Noam would be taken by his father to a "Chabad-Lubavitch" community – she described the Lubavitch movement as ultra-orthodox, radical and known for its zealous proselytising – Ms Neulinger applied to the Tel Aviv Family Court, which in 2004 imposed a ban on Noam's removal from the country until he attained his majority. She was awarded temporary custody, and guardianship was to be exercised by both parents jointly. The father's access rights were subsequently restricted on account of his threatening behaviour. In February 2005 the parents divorced and in June Ms Neulinger secretly left Israel for Switzerland with her son. In a decision of 30 May 2006, issued following an application by the child's father, the Tel Aviv Family Court observed that Noam was habitually resident in Tel Aviv and that the parents had joint guardianship. The court held that the child's removal from Israel without the father's consent was wrongful within the meaning of

Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 ("the Hague Convention").

In a decision of 29 August 2006, the father's application for his son's return to Israel was dismissed by the Lausanne District Justice of the Peace on the ground that there was a grave risk that the child's return to Israel would expose him to physical or psychological harm or otherwise place him in an intolerable situation. The Vaud Cantonal Court dismissed the father's appeal, confirming that this case was an exception to the principle of the child's prompt return, in accordance with Article 13, sub-paragraph (b), of the Hague Convention.

On 16 August 2007, the Swiss Federal Court allowed the father's appeal, on the ground that the article in question had been wrongly applied, and ordered Ms Neulinger to return the child to Israel.

In February 2009, the applicants provided the European Court of Human Rights with a certificate from a doctor who had examined Noam in 2005, and several times since then, indicating that "an abrupt return to Israel without his mother would constitute a significant trauma and a serious psychological disturbance for this child".

In a provisional measures order of 29 June 2009 the Lausanne District Court, at the request of Ms Neulinger, decided that Noam should live at his mother's address in Lausanne, suspended the father's right of access in respect of his son and granted parental authority to the mother, so as to allow her to renew the child's identity papers.

Decision of the Court

Article 8

The Grand Chamber found, like the Chamber, that Noam's mother had removed him from Israel "wrongfully". Under Israeli law, the principle of guardianship – which included the right to determine the child's place of residence – was comparable to custody rights under the Hague Convention, which had therefore been breached, because guardianship was to be exercised by both parents jointly. In addition, the mother had removed the child in breach of an order prohibiting his removal from Israel that had been made by the domestic court at her own request, and the removal rendered illusory, in practice, the possible exercise by the father of his right of access. She had thus committed an abduction for the purposes of the Hague Convention and the Swiss Federal Court's order for the child's return therefore had a sufficient legal basis. The Grand Chamber shared the Chamber's opinion that the order pursued the legitimate aim of protecting the rights and freedoms of Noam and his father, which the parties had not denied.

In ascertaining whether a fair balance between the competing interests at stake – those of the child, of the parents, and of public order – had been struck, the child's best interests had to be the primary consideration. This consisted in maintaining his ties with his family but also ensuring his development in a sound environment. The concept of the child's best interests was inherent in the Hague Convention, which in principle required the prompt return of the abducted child unless there was a grave risk that the child's return would expose him to physical or psychological harm. It was not the Court's task to take the place of the competent authorities in examining whether Noam would be exposed to such harm if he returned to Israel, but to ascertain whether the domestic courts had respected Article 8 of the European Convention on Human Rights, particularly taking into account the child's best interests. The Court noted in this connection that those courts had not been unanimous, first dismissing then allowing the father's appeal. According to the experts' reports there would be a risk for Noam in the event of his return to Israel, and in any event, in the view of the courts, he could return only with his mother so as to avoid significant trauma.

The Court was prepared to accept that in the present case the return order remained within the margin of appreciation afforded to national authorities in such matters. Nevertheless, if such a measure was enforced a certain time after the child's abduction, that might undermine the pertinence of the Hague Convention, it being essentially an instrument of a procedural nature and not a human rights treaty. Moreover, according to that instrument, a child's return could not be ordered if he was settled in his new environment. Noam had Swiss nationality and had arrived in the country at the age of two. According to the applicants he had settled well there, attending a municipal secular day nursery and a state-approved private Jewish day nursery. He now went to school in Switzerland and spoke French. Even though he was at an age (7 years old) where he still had a certain capacity for adaptation – as the Chamber had pointed out –, the fact of being uprooted again would probably have serious consequences for him.

The Court noted that restrictions had been imposed by the Israeli courts on the father's right of access. Moreover, the applicants had submitted, without being contradicted by the Swiss Government, that Noam's father had remarried and only a few months later had divorced his pregnant wife, who had subsequently brought proceedings against him for failure to pay maintenance. The Court doubted that such circumstances, assuming they were established, would be conducive to Noam's well-being and development. In addition, whilst the Chamber had found no reason to doubt the credibility of the Israeli authorities' assurances concerning the risk of criminal sanctions against Ms Neulinger, the Grand Chamber observed that according to a letter of April 2007 from the Israeli Central Authority, the possibility of her not being prosecuted would depend on a number of conditions such as respect for the father's right of supervised access, pending any further decision. Criminal proceedings could not therefore be ruled out entirely and if Ms Neulinger were to be imprisoned that situation would not be in Noam's best interests, his mother being the only person to whom whom he is is related. In the event of her imprisonment, it was doubtful whether the father would have the capacity to take care of the child, whom he had not seen since his departure, in view of his past conduct and limited financial resources. Ms Neulinger – a Swiss national and therefore entitled to remain in the country – was not therefore totally unjustified in refusing to return to Israel.

In the light of all the foregoing considerations, particularly the more recent developments in the applicants' situation, as indicated in the provisional measures order of 2009, the Court was not convinced that it would be in the child's best interests for him to return to Israel. As to the mother, she would sustain a disproportionate interference with her right to respect for her family life if she were forced to return to Israel. Consequently, the Court held, by 16 votes to one, that there would be a

violation of Article 8 in respect of both applicants if the decision ordering Noam's return to Israel were to be enforced.

Article 6 § 1

The Grand Chamber unanimously confirmed the Chamber's finding that the complaint under Article 6 § 1 constituted one of the essential points of the complaint under Article 8 and that it was not necessary to examine it separately.

Article 41

By way of just satisfaction, the Court ordered Switzerland to pay the applicants a total of 15 000 euros jointly for costs and expenses.

Separate opinions

Judge Lorenzen expressed a concurring opinion joined by Judge Kalaydjieva. Judges Cabral Barreto and Malinverni each expressed a concurring opinion. Judges Jociene, Sajó and Tsotsoria expressed a joint separate opinion and Judge Zupancic expressed a dissenting opinion. These opinions are annexed to the judgment.

McFarlane v. Ireland

Irish law provides no effective remedy for unjustified delays in criminal proceedings. Violation of Articles 13 (right to an effective remedy) and 6 § 1 (right to a fair trial within a reasonable time)

Judgment of 10 September 2010. Concerns: the applicant complained, under Article 6 § 1, that the Irish authorities delayed bringing and proceeding with the criminal proceedings against him; under Article 6 § 3 (d), that, as a result of the delay, key prosecution evidence was lost and that there was a lack of evidence against him other than questionable police interviews; under Article 8 § 2 (right to respect for private and family life), that his arrest and detention amounted to a deliberate and disproportionate interference with his private and family life; and, under Article 13, that there was no effective remedy under Irish law for his grievances, particularly concerning the length of the proceedings.

Principal facts

The applicant, Brendan McFarlane, is an Irish national who was born in 1951 and lives in Belfast. The case concerned unjustified delays in the criminal proceedings brought against him for offences allegedly committed in 1983, of which he was acquitted in 2008.

In January 1998, Mr McFarlane was released on parole after serving a prison sentence in Northern Ireland for his involvement in a bombing in the 1970s for which the IRA (Irish Republican Army) was found to be responsible. A few days after his release, he was arrested and detained by the Irish police and subsequently charged by the Special Criminal Court (SCC) in Dublin with false imprisonment and the unlawful possession of firearms, offences he was alleged to have committed in 1983 when he had escaped from prison. On 13 January 1998, he was released on bail, subject to reporting restrictions.

Mr McFarlane brought judicial review proceedings with regard to his prosecution, claiming that the delay in bringing criminal proceedings against him had prejudiced his chance of having a fair trial and that the failure of the prosecuting authorities to maintain and have available for inspection certain items of evidence (such as fingerprints) had limited his ability to fully contest the nature and strength of the evidence to be introduced at his trial. His claims regarding the delay in bringing proceedings were eventually dismissed by the Supreme Court in 2006, finding that the decision of when to prosecute clearly rested with the prosecuting authorities. With regard to the loss of evidence, the Supreme Court concluded that the trial court deciding on the case would have to assess whether there was any unfairness for which the prosecution was responsible. A further application to prohibit the prosecution on grounds of delay was dismissed in January 2008. During the criminal proceedings against him, Mr McFarlane reported to the SCC some 40 times, a round trip to and from his home of 320 km. He was finally acquitted in June 2008.

Decision of the Court

Article 13

The Court did not find effective any of the domestic remedies proposed by the Irish Government.

Concerning the first and main remedy proposed – an action for damages for a breach of the constitutional right to reasonable expedition – the Court found that there was significant uncertainty as to its availability.

While it had been available in theory for almost 25 years, it had never been invoked. The development and availability of a remedy said to exist, including its scope and application, had to be clearly set out and confirmed or complemented by practice or case-law, even in the context of a common law inspired system with a written constitution providing an implicit right to trial within a reasonable period of time (as in Ireland).

The Court also considered that it had not been demonstrated that such an action could constitute a remedy as regards a judge's delay in delivering a judgment. Moreover, the fact that the proposed constitutional remedy would form part of the High and Supreme Court body of civil litigation, for which no specific and streamlined procedures had been developed, meant that it would amount to a legally and procedurally complex constitutional action for damages in the High Court, with a likely appeal to the Supreme Court which, at least at the outset, would present some legal novelty. Two problems ensued: the time such proceedings could take (possibly several years) and the potentially high legal costs and expenses involved in taking such an action.

As to the remaining remedies proposed by the Irish Government, the Court found an action for damages under the European Convention on Human Rights Act 2003 ineffective since, among other things, it appeared that any delay attributable to "the courts" was not actionable under that act and since the 2003 Act did not enter into force until 31 December 2003, by which time the applicant's proceedings had been ongoing for almost six years (the 2003 Act is not retroactive). An application for a prohibition order by reason of prejudice and real risk of unfair trial due to delay was substantively different from, and not effective as regards, a

complaint about unreasonable delay within the meaning of Article 6 § 1.

The Court therefore concluded that the government had not demonstrated that any of the remedies proposed by them constituted effective remedies available to the applicant in theory and in practice at the relevant time. Accordingly, there had been a violation of Article 13, in conjunction with Article 6 § 1.

Article 6 § 1

The Court considered that the criminal proceedings against the applicant had lasted over 10 years and six months, from the applicant's arrest on 5 January 1998 to his acquittal on 28 June 2008.

While the conduct of the applicant had contributed somewhat to the delay, it did not explain the overall length of the proceedings against him. On the other hand, the government had not provided convincing explanations for certain delays attributable to the authorities, which added to the overall length of the criminal proceedings.

As to what was at stake for the applicant, the charges against him were serious and he bore the weight of such charges and of the potential sentences, for approximately 10 years and six months, during which time he had reporting obligations and was frequently required to appear in Dublin before the SCC.

The Court concluded that the overall length of the criminal proceedings against the applicant were excessive, in violation of Article 6 § 1.

Inadmissible complaints

The Court declared the remainder of the applicant's complaints inadmissible; as he had been acquitted, he could no longer claim to be a victim of a violation of Article 6 §3 (d) and his complaints under Article 8 were out of time.

Article 41

By way of just satisfaction, the Court ordered Ireland to pay the applicant a total of 5,500 euros for non-pecuniary damage and 10,000 euros for costs and expenses.

Separate opinions

Judges Gyulumyan, Ziemele, Bianku and Power expressed a joint dissenting opinion and Judge Lopez-Guerra expressed a separate dissenting opinion. These opinions are annexed to the judgment.

Sanoma Uitgevers B.V. v. the Netherlands

Judgment of 14 September 2010. Concerns: Relying on Article 10, the applicant company complained that they had been compelled to disclose information to the police that would have revealed their journalists' sources.

Seizure of journalists' confidential source material illegal
Violation of Article 10 (freedom of expression)

Principal facts

The applicant, Sanoma Uitgevers B.V., is a Dutch magazine publishing company, based in Hoofddorp (the Netherlands). The case concerned photographs to be used for an article on illegal car racing, which the company was compelled to hand over to police investigating another crime, despite the journalists strong objections to being forced to divulge material capable of identifying confidential sources.

On 12 January 2002, an illegal car race was held in an industrial area on the outskirts of the town of Hoorn. The company maintained that journalists working for its magazine Autoweek – who were doing a feature article on illegal car racing – were given permission to cover the event, provided that they did not identify those involved. The photographs were to be touched up to prevent the identification of the cars or participants and then stored on a CD-ROM. In the event, the race was stopped by the police, who were also present. No arrests were made.

The police later suspected that one of the cars (an Audi RS4) used in the race had also been used as the getaway car in a ram raid on 1 February 2001, during which a cash point machine was stolen and a bystander threatened with a firearm.

Later that day the police tried to order the applicant company to surrender the CD-ROM containing the photographs for seizure. The applicant company refused, in order to protect the confidentiality of their journalistic sources. The Amsterdam public prosecutor then issued the company with a summons under Article 96a of the Code of Criminal Procedure to surrender the photographs and any related material concerning the race. The magazine's editor-in-chief refused, again invoking the journalists' undertaking not to identify the participants. At 6.01 p.m. on 1 February 2002, he was arrested and brought before the Amsterdam public prosecutor. He was released at 10 p.m.

Sanoma Uitgevers B.V.'s lawyer obtained the agreement of the public prosecutors to seek the intervention of the duty investigating judge of Amsterdam Regional Court, who, although recognising from the outset that he had no legal competence in the matter, took the view that the needs of the criminal investigation outweighed the applicant company's journalistic privilege.

On 2 February 2002 at 1.20 a.m., the applicant company, under protest, surrendered the CD-ROM, which was then officially seized.

On 15 April 2002, the company lodged a complaint before the Regional Court, seeking the lifting of the seizure and restitution of the CD-ROM, an order to the police and prosecution to destroy copies of the data recorded on the CD-ROM and an injunction preventing the police and prosecution from using information obtained through the CD-ROM. On 19 September 2002, the court granted only the request to lift the seizure and to return the CD-ROM.

Decision of the Court

Article 10

Like the Chamber, the Grand Chamber saw no reason to disbelieve Sanoma Uitgevers B.V.'s claim that its journalists had promised not to identify the people involved in the illegal car race. The case concerned an order for the compulsory surrender of journalistic material which contained information capable of identifying journalistic sources. That sufficed for the Court to find that the order constituted, in itself, an interference with the company's freedom to receive and impart information under Article 10 § 1.

Unlike the Chamber, however, the Grand Chamber found that the

interference was not "prescribed by law".

All agreed that the interference in question had a statutory basis (Article 96a § 3 of the Code of Criminal Procedure). Discussion centred on the quality of the law, in particular on the procedural guarantees required.

The Court noted that orders to disclose sources potentially had a detrimental impact, not only on the source, whose identity might be revealed, but also on the newspaper or publication against which the order was directed, whose reputation might be negatively affected in the eyes of future potential sources by the disclosure, and on members of the public, who had an interest in receiving information imparted through anonymous sources.

The most important safeguard was the guarantee of review by a judge or other independent and impartial decision-making body. It should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources existed prior to the handing over of such material, and to prevent unnecessary access to information capable of disclosing the sources' identity if it did not.

For urgent orders or requests, an independent review carried out at the very least prior to the access and use of obtained materials should be sufficient to determine whether any issue of confidentiality arose and to weigh up the various interests involved. Any independent review that only took place subsequent to the handing over of material capable of revealing such sources would undermine the very essence of the right to confidentiality.

The judge or other independent and impartial body had therefore to be in a position to weigh the potential risks and respective interests prior to any disclosure and with reference to the material in question. The decision to be taken should be governed by clear criteria, including whether a less intrusive measure could suffice. It should be open to the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed. In urgent cases, a procedure should exist to identify and isolate, prior to the exploitation of the material by the authorities, information that could lead to the identification of sources from information that carried no such risk.

In the Netherlands, since the entry into force of Article 96a, that decision was entrusted to the public prosecutor rather than an independent judge. In terms of procedure the public prosecutor was a "party", who could hardly be seen as objective and impartial.

Neither was the Court satisfied that the involvement of the investigating judge in the case could be considered to provide an adequate safeguard; the investigating judge had only an advisory role and one without any legal basis – as the judge in the case himself admitted. Thus, it was not open to him to issue, reject or allow a request for an order, or to qualify or limit such an order as appropriate. Such a situation was scarcely compatible with the rule of law. And, the Court added, it would have reached that conclusion on each of the two grounds mentioned, taken separately.

Those failings were not rectified by the Regional Court, which was likewise powerless to prevent the public prosecutor and the police from examining the photographs stored on the CD-ROM the moment it was in their possession.

In conclusion, the quality of the law in question was deficient in that there was no procedure with adequate legal safeguards available to the applicant company to enable an independent assessment as to whether the interest of the criminal investigation overrode the public interest in the protection of journalistic sources. There had therefore been a violation of Article 10 in that the interference complained of was not "prescribed by law".

Article 41

By way of just satisfaction, the Court ordered the Netherlands to pay the applicant a total of 35,000 euros for costs and expenses.

Separate opinion

Judge Myjer, who had been one of the majority of the Chamber which had found no violation, expressed a separate opinion concurring with the Grand Chamber that there had been a violation. This opinion is annexed to the judgment.

Mangouras v. Spain

The bail set for the release of the captain of a ship which caused an ecological disaster was not excessive. No violation of Article 5 § 3 (right to liberty and security)

Judgment of 28 September 2010. Concerns: Relying on Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights, the applicant alleged, in particular, that the sum set for bail in his case had been excessive and had been fixed without his personal circumstances being taken into consideration.

Principal facts

Apostolos Ioannis Mangouras was formerly the captain of the ship Prestige, which in November 2002, while sailing off the Spanish coast, discharged the 70,000 tonnes of fuel oil it was carrying into the Atlantic Ocean when its hull sprang a leak.

The oil spill caused an ecological disaster whose effects on marine flora and fauna lasted for several months and spread as far as the French coast.

A criminal investigation was opened and the applicant was remanded in custody with the possibility of release on bail of three million euros.

Mr Mangouras was detained for 83 days and granted provisional release when his bail was paid by the shipowner's insurers.

The Spanish authorities later authorised the applicant's return to Greece, on condition that the Greek authorities enforced compliance with the periodic supervision to which he had been subject in Spain. As a result, he must report every two weeks to a police station. The criminal proceedings against him are still pending.

Decision of the Court

The Court reiterated that under Article 5 § 3, bail could only be required as long as reasons justifying detention prevailed, and that the authorities had to take as much care in fixing appropriate bail as in deciding whether or not the

accused's continued detention was indispensable.

Furthermore, while the amount of bail had to be assessed principally by reference to the accused and his assets it was not unreasonable, in certain circumstances, to take into account also the amount of the loss imputed to him.

Mr Mangouras had been deprived of his liberty for 83 days and had been released following the lodging of a bank guarantee of 3,000,000 euros. In fixing bail, the Spanish courts had taken into consideration the risk that the applicant might abscond, taking the view that it was essential to ensure his appearance in court. In addition to the applicant's personal circumstances, they had also taken into consideration the seriousness of the offence of which he stood accused, the impact of the disaster on public opinion and the applicant's "professional environment", namely the maritime transport of petrochemicals.

New realities had to be taken into consideration in interpreting the requirements of Article 5 § 3, namely the growing and legitimate concern both in Europe and internationally in relation to environmental offences and the tendency to use criminal law as a means of enforcing the environmental obligations imposed by European and international law. The Court was of the view that the increasingly high standard being required in the area of human rights protection correspondingly required greater firmness in assessing breaches of the fundamental values of democratic societies. Hence, it could not be ruled out that the professional environment which formed the setting for the activity in question should be taken into consideration in determining the amount of bail, in order to ensure that the measure was effective.

Given the exceptional nature of the applicant's case and the huge environmental damage caused by the marine pollution, which had seldom been seen on such a scale, it was hardly surprising that the judicial authorities should have adjusted the amount required by way of bail in line with the level of liability incurred, so as to ensure that those responsible had no incentive to evade justice and forfeit the security. It was not certain that a level of bail set solely by reference to the applicant's assets would have been sufficient to ensure his attendance at the hearing.

In addition, the very fact that payment had been made by the shipowner's insurer appeared to confirm that the Spanish courts, when they had referred to the applicant's "professional environment", had been correct in finding – implicitly – that a relationship existed between Mr Mangouras and the persons who were to provide the security.

The Spanish courts had therefore taken sufficient account of the applicant's personal situation, and in particular his status as an employee of the ship's owner, his professional relationship with the persons who were to provide the security, his nationality and place of permanent residence and also his lack of ties in Spain and his age. In view of the particular context of the case and the disastrous environmental and economic consequences, the authorities had been justified in taking into account the seriousness of the offences in question and the amount of the loss imputed to the applicant.

Accordingly, the Court held, by ten votes to seven, that there had been no violation of Article 5 § 3.

Separate opinions

Judges Rozakis, Bratza, Bonello, Cabral Barreto, David Thór Björgvinsson, Nicolaou and Bianku expressed a joint dissenting opinion, which is annexed to the judgment.

Selected Chamber judgments

A. v. the Netherlands, Ramzy v. the Netherlands, N. v. Sweden

Afghan woman and Libyan man risk ill-treatment if returned to country of origin

Judgment of 20 July 2010. Concerns: The applicants complained that, if expelled or deported to their country of origin, they would be at risk of being subjected to inhuman and degrading treatment, in breach of Article 3. A. and Mr Ramzy further complained under Article 13 that they could not effectively challenge the ground used – that they were a threat to national security – for the exclusion orders against them.

Principal facts

The first applicant, A., is a Libyan national, born in 1972 and living in the Netherlands. The second applicant, Mohammed Ramzy, is an Algerian national, born in 1982, whose current whereabouts are unknown. The third applicant, N., is an Afghan national who was born in 1970 and lives in Fagersta (Sweden).

All three cases concerned the applicants' complaints that they would risk ill-treatment if expelled or deported to their country of origin.

A. entered the Netherlands in November 1997 and applied, unsuccessfully, for asylum as he feared persecution in Libya for his involvement since 1988 in a clandestine, nameless opposition group. Following a report by the Dutch General Intelligence and Security Service, he was arrested in August 2002 on suspicion of belonging to a criminal organisation conducting a holy war (jihad) against the Netherlands. He was acquitted of all charges in June 2003. In November 2005, an exclusion order was imposed on him in the Netherlands as he was found to represent a danger to national security.

Mr Ramzy was apprehended in January 1998 in the Netherlands when he was trying to leave in a lorry for the United Kingdom. He applied for asylum, telling the authorities that he grew up in an orphanage, did not know his parents, and left Algeria because it was unstable and dangerous. He also stated, without further explanation, that he was approached by an Islamic fundamentalist movement long before he left Algeria. His asylum application and subsequent appeal being rejected, he continued to live illegally in the Netherlands. In June 2002, he was arrested on suspicion of participating in a criminal organisation which supported, among others, the Taliban and their allies (Al-Qaeda and/or other pro-

Taliban combatants). An exclusion order was imposed on him in September 2004 as the Dutch authorities considered he posed a threat to national security. He was acquitted of all charges and was released in August 2005.

N. applied for asylum, together with her husband X., three days after their arrival in Sweden, in August 2004. They claimed that they had been persecuted in Afghanistan because X. had been a politically active member of the communist party. The asylum application being rejected in March 2005, N. appealed claiming that, as she had in the meantime separated from her husband, she would risk social exclusion and possibly death if she returned to Afghanistan. Her appeal was also rejected. She applied for a residence permit three times, as well as for divorce from X., submitting that she was at an ever-heightened risk of persecution in Afghanistan, as she had started an extra-marital relationship with a man in Sweden which was punishable by long imprisonment or even death in her country of origin. All her applications were rejected.

Decision of the Court

A. v. the Netherlands

The governments of Lithuania, Portugal, Slovakia and the United Kingdom challenged what they considered to be the rigid way in which the Court systematically applied the absolute prohibition on ill-treatment. They submitted that, by not allowing the risk of such treatment of the individual in the country of destination to be weighed against the reasons for expulsion, even national security, the Court had caused the states bound by the Convention many difficulties, by preventing them in practice from enforcing expulsion measures. Those four governments proposed that, if such a state presented evidence that the individual was a threat to national security, in order to trigger the protection of the Convention under Article 3, that individual should have to show that "it was more likely than not" that they would be ill-treated in the receiving country.

Several international human rights organisations strongly supported the Court's approach to Article 3. According to the AIRE Centre, the rule prohibiting expulsion to face torture or ill-treatment had become a norm of international law. Amnesty International and others reiterated that the burden of proof could not rest with the individual alone, especially as s/he did not always have access to the same information as the state. Also, diplomatic assurances did not suffice to offset an existing risk of torture. It was enough for the applicant to make an arguable case, leaving the expelling state to refute the claims. According to the organisations Liberty and Justice, any change would amount to a dilution of a fundamental human right which would have a long-term corrosive effect on democratic values and the Convention.

The Court reiterated that the prohibition of ill-treatment under Article 3 was absolute, that is to say it made no provision for exception. It further noted that it was not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a state was engaged under Article 3. In addition, the existence of domestic laws and accession to international human rights treaties by a state which was not party to the Convention was not by itself sufficient to ensure adequate protection from ill-treatment. That was especially the case where reliable sources had reported practices, manifestly contrary to the Convention, which were actively pursued or tolerated by the authorities.

The Court then noted that the overall human rights situation in Libya continued to give rise to serious concerns. Reports showed that detainees in Libya were at a real risk of being tortured or otherwise ill-treated. Although A. had been acquitted in the Netherlands, his case had been broadly covered in the media and the Libyan authorities had been informed that he had been placed in aliens' detention for removal purposes. Consequently, it was likely that – once in Libya – A. would be detained and questioned, and that he risked ill-treatment.

Accordingly, the Court concluded that A.'s expulsion to Libya would breach Article 3.

The Court found that there had been no violation of Article 13 as A. had had available an effective remedy in respect of his grievance under Article 3.

Under Article 41, the Court held that the Netherlands had to pay 6,470.25 euros to A. for costs and expenses.

Ramzy v. the Netherlands

The Court noted that Mr Ramzy's legal representatives did not know his whereabouts and so could not answer the Court's questions. It concluded that Mr Ramzy had lost interest in pursuing his application, and decided to strike out the case.

N. v. Sweden

While being aware of reports of serious human rights violations in Afghanistan, the Court did not find that they showed, on their own, that there would be a violation of the Convention if N. were to return to that country.

Examining N.'s personal situation, however, the Court noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system there. The mere fact that N. had lived in Sweden might well be perceived as her having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Among other things, the Court noted that a recent law, the Shiite Personal Status Act of April 2009, required women to obey their husbands' sexual demands and not to leave home without permission. Reports had further shown that around 80% of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations to having a personal or professional life, and were doomed to social exclusion. They also often lacked the means for survival if not protected by a male relative.

Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3.

Dadouch v. Malta

Long delay in registering a Russian marriage in Malta

Judgment of 20 July 2010. Concerns: Relying in particular on Article 8, Mr Dadouch complained that the failure of the Maltese authorities to register his marriage, for 28 months, had breached his right to private life.

Principal facts

The applicant, Mazen Dadouch, is a Maltese national who was born in Damascus (Syria) in 1967, and lives in Sliema (Malta). In 1993, he acquired Maltese citizenship as a consequence of his marriage to a Maltese national, which was annulled. He retained Maltese nationality.

In July 2003, he married a Russian national in Moscow. In July 2004, he applied to the Public Registration Office to have his marriage registered in Malta. On several occasions, notwithstanding the presentation of his Maltese identity card and a Maltese passport, the Public Registry required that Mr Dadouch submit a letter from the Department of Citizenship declaring that he was a citizen of Malta. Despite his contention that this request had no legal basis in domestic law, Mr Dadouch asked the department to issue the letter. His request was refused. On 31 May 2005, Mr Dadouch obtained a decision of the Court of Revision of Notarial Acts, requiring the Director of the Public Registry to register the marriage, upon Mr Dadouch submitting his original act of marriage in Russian together with an English translation authenticated by his lawyer. On 5 April 2006, that decision was revoked by the Court of Appeal. The latter, while expressing doubts as to whether the Court of Revision of Notarial Acts had any competence in this case, held that a Maltese passport was not conclusive evidence of citizenship.

Mr Dadouch instituted proceedings before the Civil Court in its constitutional jurisdiction, complaining that the refusal to register his marriage was in violation of his right to private life. The evidence submitted by the relevant government minister showed that the requirement for a "letter of citizenship" did not result from the law or a legal notice but from an internal regulation. On 10 October 2006, the court rejected the application, with legal costs to be paid by Mr Dadouch. It held that Article 8 had not been breached, since the Director of the Public Registry had not categorically refused to register the marriage, but had merely requested appropriate documentation. Mr Dadouch also appealed to the Constitutional Court, which found on 9 March 2007 that his right to private life had not been breached.

In the course of those proceedings a circular, applicable to all government departments, had been issued stating that Maltese passports could be accepted as proof of citizenship. On 2 May 2006, the Head of the Nationality Department had confirmed that Mr Dadouch was a Maltese citizen. On 13 November 2006, the marriage had been registered on the basis of the documents originally submitted by Mr Dadouch.

Decision of the Court

The Court held that registration of a marriage, being a recognition of an individual's legal civil status, came within the scope of Article 8 § 1. Thus, the delay of over 28 months in the registration of Mr Dadouch's marriage clearly had an impact on his private life (lack of such documentation makes the processing of certain requests, such as applications for social or tax benefits, lengthier and more complex, if possible at all). Such an interference was in breach of Article 8 unless it could be justified as being "in accordance with the law", as pursuing a legitimate aim and as being "necessary in a democratic society" in order to achieve the aim or aims concerned. The Court had considerable doubt whether the relevant law satisfied the requirements of precision and forseeability, but did not find it necessary to decide the question. It was ready to accept the Maltese Government's contention that national regulation of the registration of marriage might serve the legitimate aim of the prevention of disorder and the protection of the rights of others. The Court's main task was to assess whether the interference was "necessary in a democratic society".

The Court noted that apart from the issue as to whether the documents submitted by the applicant fulfilled formal requirements, the government had not given any reason justifying the need for refusing registration of Mr Dadouch's marriage for over two years. Even assuming that the marriage act itself required further verification, it could have been done more speedily.

Similarly, as regards the certification of Mr Dadouch's citizenship, the Court was of the view that, since he was in possession of a valid Maltese passport, a presumption of his Maltese nationality arose. If the authorities believed that he might have renounced his Maltese citizenship, it was for them to verify the matter with the relevant department and within an appropriate time-frame, rather than to require the holder of a valid Maltese passport to prove that he still retained Maltese nationality. The Court further observed that Mr Dadouch had attempted to obtain a letter of citizenship, notwithstanding the precarious legal basis for such a requirement, but the authorities refused to issue such a letter.

Thus, the Court rejected the government's argument that the delay was due to Mr Dadouch's decision to institute proceedings; it noted that the government itself conceded that the procedure had been unnecessarily prolonged.

In consequence, in the circumstances of Mr Dadouch's case, the denial to register his marriage for a period of over two years was a disproportionate interference with his right to private life, in violation of Article 8.

Under Article 41 (just satisfaction) the Court held that Malta had to pay Mr Dadouch 3 000 euros for non-pecuniary damage, and 3 000 euros for costs and expenses.

Clift v. the United Kingdom

Early release scheme discriminates against prisoner serving long, fixed-term sentence

Judgment of 13 July 2010. Concerns: Mr Clift complained that his continued imprisonment, following the recommendation of the Parole Board that he be released on licence, violated his rights under Article 5 in conjunction with Article 14 on account of the difference in treatment compared with prisoners serving fixed-term sentences of less than 15 years or life sentences.

Principal facts

The applicant, Sean Clift, is a British national who was born in 1966 and lives in Westcliff-on-Sea, England. His case concerns the difference in treatment as regards the early release of prisoners depending on the length of the sentence originally imposed.

Mr Clift was sentenced to 18 years' imprisonment in April 1994 for serious crimes including attempted murder. In March 2002, he became eligible for release on parole and the Parole Board recommended his release. Under the legislation applicable at the time, prisoners serving fixed-term sentences of imprisonment of 15 years or more were required to secure, in addition to a positive recommendation from the Parole Board, the approval of the Secretary of State for early release. However, prisoners serving fixed-term sentences of less than 15 years and those serving life sentences were entitled to early release upon the positive recommendation of the Parole Board only; no Secretary of State approval was required. The Secretary of State rejected the Parole Board's recommendation in Mr Clift's case, finding that to release him would pose an unacceptable risk to the public. Mr Clift was finally released on licence in March 2004, after the Secretary of State approved release following a further positive recommendation by the Parole Board at that time.

In the meantime, Mr Clift brought judicial review proceedings in respect of the Secretary of State's decision to refuse his early release in 2002. In June 2003, the divisional court dismissed the claim. Mr Clift's appeal was subsequently dismissed by the court of appeal and, in December 2006, by the House of Lords. Their Lordships did not find the difference in treatment to be the result of Mr Clift's "status", such as to fall within the prohibition on discrimination in the European Convention on Human Rights.

Decision of the Court

Whether the applicant's status fell under the prohibition of discrimination

The Court underlined that the protection under Article 14 of the Convention was not limited to different treatment based on characteristics which were personal in the sense of being innate or inherent. Moreover, the term "other status" had been given a wide meaning in the Court's case-law.

The Court had held in another case that differences in treatment between prisoners in relation to parole did not confer to them "other status" where the different treatment was based on the gravity of the offence. However, Mr Clift did not allege a difference of treatment based on the gravity of the offence he had committed, but one based on his position as a prisoner serving a fixed-term sentence of more than 15 years. While sentence length bore some relationship to the perceived gravity of the offence, a number of other factors could also be relevant, including the sentencing judge's assessment of the risk posed by the applicant to the public.

Where an early release scheme applied differently to prisoners depending on the length of their sentences, there was a risk that, unless objectively justified, it would run counter to the need to ensure protection of the individual from arbitrary detention under Article 5. The Court concluded that Mr Clift did enjoy "other status" for the purposes of Article 14.

Whether the applicant was in an analogous position to other prisoners treated more favourably

In order for an issue to arise under Article 14 there had to be a difference in the treatment of people in analogous or relevantly similar – but not necessarily identical – situations. The Court noted that the failure to approve the early release of a prisoner was not intended to constitute further punishment but to reflect the assessment that the prisoner posed an unacceptable risk upon release. As regards the risk assessment of a prisoner eligible for early release, no distinction could be drawn between long-term prisoners serving less than 15 years, long-term prisoners serving fifteen years or more and life prisoners. The methods of assessing risk were in principle the same for all categories of prisoners. The Court therefore concluded that Mr Clift could claim to be in an analogous position to long-term prisoners serving less than 15 years and life prisoners.

Whether the difference in treatment was objectively justified

The Court accepted that differences in treatment between groups of prisoners might be justified in principle if they pursued the legitimate aim of protecting the public, provided that it could be demonstrated that those to whom more stringent early release regimes applied posed a higher risk to the public upon release. The imposition of a fixed-term sentence rather than a life sentence appeared to indicate that Mr Clift posed a lower and not a higher risk when released. It was therefore difficult to see any objective justification for a system in which prisoners serving fixed-term sentences of 15 years or more were subject to more stringent conditions for early release than life prisoners.

As regards the difference in treatment between those serving more and those serving less than 15 years, the Court accepted that such a distinction might not automatically be discriminatory. However, any distinction in treatment was only justified where it achieved the legitimate aim pursued. In Mr Clift's case, the United Kingdom Government had failed to demonstrate how the approval of the Secretary of State required for certain groups of prisoners addressed concerns for public security.

In those circumstances, the Court considered that the early release scheme to which Mr Clift had been subject lacked objective justification. The Court therefore unanimously concluded that there had been a violation of Article 5 in conjunction with Article 14.

Just satisfaction

The Court held that the United Kingdom had to pay Mr Clift 10 000 euros for non-pecuniary damage.

Lopata v. Russia

State intimidated applicant who complained about police brutality to the European Court of Human Rights

Judgment of 13 July 2010. The case notably concerned the authorities' intimidation of Mr Lopata following his complaint to the European Court of Human Rights about police brutality. He also alleged that his complaint about ill-treatment had not been investigated effectively. He relied on Article 3 (prohibition of inhuman or degrading treatment), and Article 34 (right of individual petition). Further relying on Article 6 §§ 1 and 3 (c) (right to a fair trial), he also complained that his conviction had been based on a confession made under duress and without a legal representative.

Principal facts

The applicant, Aleksandr Lopata, is a Russian national who was born in 1963 and is currently serving a nine-year prison sentence for the murder of D., his daughter's friend.

Mr Lopata was arrested in August and September 2000 in connection with the murder of D. He submitted that he was ill-treated on both occasions in order to force him into making a confession. In particular, between 8 and 9 September 2000 he alleged that officers of Uchaly police station repeatedly beat, kicked and punched him, pulled his hands and feet back towards his spine and threatened to rape him with a truncheon. He was intermittently taken back to a cell, with the officers programming a television to switch on when the beatings were to resume. In the early hours of 9 September he finally gave in and wrote out a confession. A few days later he was taken to a remand centre in Beloretsk and, on arrival, was not given a medical examination. To corroborate his allegations, he referred to statements by his lawyer – who he was eventually allowed to see on 12 September 2000 – and cellmates in the remand centre who attested to having seen cuts and bruises on his face and body.

He was examined by a doctor on 14 September: the ensuing report noted his complaints about pain in the left ear but concluded that there were no injuries to his body.

On seeing his lawyer, he immediately retracted his confession, claiming that it had been obtained from him under duress. He repeated that claim both during the ensuing investigation into his complaints about ill-treatment and the trial against him. The accused police officers denied any accusations of torture throughout.

On 24 September 2000, the prosecution authorities refused to bring criminal proceedings against the police officers in question, referring to their denials of ill-treatment and the medical report of 14 September. Another inquiry, launched in 2005, was also subsequently discontinued.

Mr Lopata was found guilty as charged on 15 January 2001; his conviction was essentially based on his confession. His allegation that that confession was obtained through ill-treatment was once again dismissed.

On 6 January 2004 – that is after bringing his application to the European Court of Human Rights – Mr Lopata was visited in prison by Captain G., a state official for Execution of Sentences. According to Mr Lopata, the Captain tried to pressure him to retract one of his complaints to the Court and threatened him with reprisals when he refused. He subsequently had two further visits from state officials who also questioned him about his application to the Court.

After those visits, Mr Lopata submitted that, transferred to premises with worse living conditions, he had to give up his prison job as a welder, and was threatened with criminal prosecution for making false statements.

Mr Lopata alleged that, as a consequence of the beatings, he suffered from pain in his kidneys and collar bone and went deaf in one ear.

Decision of the Court

Article 3

The Court had serious reservations concerning the accuracy and reliability of the medical report of 14 September 2000 – which had been the basis of the decision to discontinue any further investigation into the applicant's allegations – and the way in which his medical examination had been conducted. It was particularly surprising that, although the expert mentioned that the applicant had complained about pain in the left ear, he had not considered it necessary to question the applicant about his symptoms and how they had come about, or indeed to even examine his ear. Moreover, despite concerns voiced by the applicant and his lawyer about the report, the expert had never been summoned for interview during the ensuing trial.

Nor, strikingly, had the prosecutor in charge of the inquiry interviewed the police officers, the applicant, his lawyer, the remand centre medical staff or the applicant's cellmates (at either the police station or the remand centre). Although the trial court had later interviewed the applicant and some of the police officers, there had been serious contradictions in their statements: one of the police officers claiming before the prosecutor that he had interviewed the applicant, to then go on and state before the trial court that he had in fact been on leave that day; and, another officer at the trial acknowledging that he had interviewed the applicant at the same time as denying ever having been present.

The Court therefore held that both the inquiry and the trial had been undermined by shortcomings and discrepancies resulting in the applicant's allegations of ill-treatment not having been investigated effectively, in violation of Article 3.

Given that failure to react to and investigate effectively the applicant's complaints, the evidence available prevented the Court from being able to find beyond all reasonable doubt that Mr Lopata had been subjected to ill-treatment as alleged. Consequently, the Court could not find that there had been a

violation of Article 3 in respect of the applicant's alleged ill-treatment while in police custody.

Article 6 §§ 1 and 3 (c)

It was not in dispute that the applicant had not had access to his lawyer until 12 September 2000. Nor was there any evidence that the applicant had waived his right to legal assistance. Furthermore, as soon as the applicant had been interviewed by his lawyer, he had immediately retracted his confession. Moreover, the trial and appeal courts disregarded the applicant's complaint that his confession had been obtained in the absence of legal assistance. Therefore, the use of his written confession obtained in circumstances which had raised doubts as to its voluntary character, in the absence of legal assistance, together with an apparent lack of appropriate safeguards at the trial, had rendered the applicant's trial unfair, in violation of Article 6 § 1 in conjunction with Article 6 § 3 (c).

Article 34

The government denied that any pressure had been put on the applicant during his conversation with Captain G. and claimed that it had been aimed at obtaining information on his complaints so as to prepare the government for the Strasbourg Court proceedings. However, it had not provided any documents, for example, a transcript of the conversation, which could have refuted or cast doubt on the applicant's submissions.

Indeed, the Court found it peculiar that there had been a one-year gap between Captain G.'s visit in 2004 and the resulting investigative steps taken in the additional inquiry of 2005. In any event, there was nothing in the case file which could link the domestic inquiry to the applicant's questioning by Captain G.

Although there was no proof in the case file to support the applicant's submissions concerning the deterioration of his conditions of detention, the Court concluded that the applicant could well have had good reason to have felt intimidated by his conversation with Captain G. and his ensuing repeated questioning by state officials, as well as legitimate fear of reprisals on account of his application to the Court. Accordingly, he had been subjected to illicit pressure, amounting to undue interference with his right of individual petition, meaning that Russia had failed to comply with its obligations under Article 34.

Under Article 41 (just satisfaction) of the Convention, the Court awarded Mr Lopata 15,000 euros in respect of non-pecuniary damage and 5 700 euros for costs and expenses.

Dink v. Turkey

The authorities failed in their duty to protect the life and freedom of expression of the journalist Firat (Hrant) Dink

Judgment of 14 September 2010. Concerns: Relying in particular on Article 2, the applicants other than Fırat Dink complained that the state had failed in its obligation to protect the life of Fırat Dink. Under the same provision, they alleged that the criminal proceedings brought against the state agents concerned for failing to protect the journalist's life had been ineffective. On the latter point they also relied on Article 13. Under Article 10 in particular, they further alleged that the fact that Fırat Dink had been found guilty of denigrating Turkish identity had infringed his freedom of expression and made him a target for nationalist extremists.

Principal facts

The applicants are six Turkish nationals: Fırat Dink, who was known under the pen name of Hrant Dink, his wife (Rahil Dink), his brother (Hasrof Dink) and Fırat and Rahil Dink's three children (Delal Dink, Arat Dink and Sera Dink). Fırat Dink was born in 1954 and was assassinated on 19 January 2007. The remaining applicants were born in 1959, 1957, 1978, 1979 and 1986 respectively and live in Istanbul. Fırat Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of Agos, a bilingual Turkish-Armenian weekly newspaper published in Istanbul since 1996.

Between November 2003 and February 2004, Fırat Dink published eight articles in Agos in which he expressed his views on the identity of Turkish citizens of Armenian origin. In particular, in the sixth and seventh articles of the series, he wrote that Armenians' obsession with having their status as victims of genocide recognised had become their raison d'être, that this need on their part was treated with indifference by Turkish people and that this explained why the traumas suffered by the Armenians remained a live issue. In his view, the Turkish element in Armenian identity was both a poison and an antidote. He added that Armenian identity could come to terms with its Turkish component in one of two ways. Either Turkish people could display empathy towards Armenians – something that would be difficult to achieve in the short term – or the Armenians could come to terms with the Turkish element by characterising the events of 1915 in a manner independent of the characterisation accepted by the world at large and by Turkish people. In the eighth article Mr Dink, pursuing the line of argument begun in the rest of the series, wrote that "the purified blood that will replace the blood poisoned by the 'Turk' can be found in the noble vein linking Armenians to Armenia, provided that the former are aware of it". Mr Dink was of the view that the Armenian authorities should make more active efforts to strengthen ties with the country's diaspora, as a basis for a healthier national identity. He published an additional article in which he referred to the Armenian origins of Atatürk's adoptive daughter. Extreme nationalist groups responded to the articles by staging demonstrations and writing threatening letters.

In February 2004, a nationalist extremist lodged a criminal complaint against Fırat Dink, alleging that the latter had insulted Turkish people with his use of the phrase "the purified blood that will replace the blood poisoned by the 'Turk' can be found in the noble vein linking Armenians to Armenia". In April 2004, the Şişli (Istanbul) public prosecutor's office instituted criminal proceedings against Fırat Dink under the article of the Turkish Criminal Code which made it an offence to denigrate "Turkishness" (Türklük) (Turkish identity). In May 2005, an expert report concluded that Fırat Dink's remarks

had not insulted or denigrated anyone, since what he had described as "poison" was not Turkish blood, but rather Armenians' obsession with securing recognition that the events of 1915 amounted to genocide. In October 2005, the Şişli Criminal Court found Mr Dink guilty of denigrating Turkish identity and sentenced him to six months' imprisonment, suspended. The court held that the public could not be expected to read the whole series of articles in order to grasp the real meaning of his remarks. On 1 May 2006, the Court of Cassation (Ninth Criminal Division) upheld the guilty verdict. On 6 June 2006, Principal State Counsel at the Court of Cassation lodged an extraordinary appeal on points of law, arguing that Mr Dink's remarks had been incorrectly construed and that his freedom of expression should be protected. On 11 July 2006, the appeal was dismissed by the Court of Cassation sitting as a full criminal court. On 12 March 2007, the Criminal Court to which the case had been remitted discontinued the proceedings on account of the death of Fırat Dink.

On 19 January 2007, Fırat Dink was killed by three bullets to the head. The suspected perpetrator was arrested in Samsun (Turkey). In April 2007, the Istanbul public prosecutor's office instituted criminal proceedings against 18 accused. The proceedings are still pending.

In February 2007, investigators from the Ministry of the Interior and the gendarmerie opened an investigation in order to ascertain whether the Trabzon gendarmerie had been negligent or had failed in their duty to prevent the killing, given that an informant claimed to have warned two non-commissioned officers (NCOs) of the gendarmerie about the intended crime. The gendarmes denied having been informed about the preparations for the killing. The Trabzon provincial governor's office authorised the institution of criminal proceedings against the two NCOs but not against their superior officers. The NCOs eventually admitted that an informant had warned them of a possible killing; they claimed to have passed on all the details to their superior officers, who had been responsible for acting on the information received. The NCOs further stated that they had been ordered by their superior officers during the investigation to deny having received the information. The proceedings in question are still in progress.

The Istanbul public prosecutor's office also requested the Trabzon public prosecutor to start proceedings against the police authorities in Trabzon, on the ground that one of the accused, who was an informant of the Trabzon police, had also provided the latter with information on the preparations for the killing. The Trabzon police authorities had made no attempt to thwart these plans but had confined themselves to officially informing the Istanbul police of the likelihood of an assassination attempt. The Istanbul public prosecutor added that one of the Trabzon police chiefs had openly voiced extreme nationalist views and supported the accused. On 10 January 2008, the Trabzon prosecuting authorities decided to take no further action against the Trabzon police, noting in particular that the accusations made by the Istanbul public prosecutor had been based on a statement by one of the accused, which had later been retracted. The prosecuting authorities were persuaded by the argument that the Trabzon police had not judged the information received to be credible. Finally, they stressed that the police chief suspected of supporting the defendants' actions had denied the accusations against him. An objection lodged by the applicants against the decision to take no further action was dismissed.

The investigation by the Istanbul public prosecutor's office confirmed that on 17 February 2006 the Trabzon police had officially informed the Istanbul police of the likelihood that Fırat Dink would be assassinated and had identified the suspects. The Istanbul police had not acted upon this information. Following the conclusions of three investigations into this failure to act, the management board of the Istanbul provincial governor's office decided to bring criminal proceedings for negligence against certain members of the Istanbul police authorities. However, the Istanbul Regional Administrative Court of Appeal set aside the corresponding orders on the ground that the investigation had been inadequate.

Finally, following a complaint by the applicants, a criminal investigation was opened concerning members of the Samsun police and gendarmerie on charges of defending the crime. While the suspected perpetrator was in police custody the persons concerned had had their photograph taken with the suspect, who was seen holding a Turkish flag: on the wall behind them were the words "Our country is sacred – its future cannot be left to chance". In June 2007, the Samsun public prosecutor's office decided to discontinue the proceedings against the officers in question, taking the view that defending a crime was only an offence if it was done in public. However, disciplinary action was taken against the officers.

Decision of the Court

Complaint concerning the alleged failure of the Turkish State to protect the life of Fırat Dink (Article 2)

The Court took the view that the Turkish security forces could reasonably be considered to have been aware of the intense hostility towards Fırat Dink in nationalist circles. The investigations carried out by the Istanbul public prosecutor's office and the Interior Ministry investigators had highlighted the fact that the police in both Trabzon and Istanbul, and the Trabzon gendarmerie, had been informed of the likelihood of an assassination attempt and even of the identity of the suspected instigators. In view of the circumstances, the threat of an assassination could be said to have been real and imminent.

The Court next considered whether the authorities had done everything that could reasonably have been expected of them to prevent Fırat Dink's assassination. None of the three authorities informed of the planned assassination and its imminent realisation had taken action to prevent it. Admittedly, as stressed by the Turkish Government, Fırat Dink had not requested police protection. However, he could not possibly have known about the plan to assassinate him. It was the responsibility of the Turkish authorities, who were informed of the plan, to take action to safeguard Fırat Dink's life.

There had therefore been a violation of Article 2 (in its "substantive aspect").

Complaint concerning the alleged ineffectiveness of the criminal investigations (Article 2)

The Court examined the criminal proceedings instituted following the careful and detailed investigation into the way in which the Trabzon and Istanbul security forces had managed the informa-

tion received on the planned assassination.

It noted first of all that the provincial governor's office had refused to authorise criminal proceedings against the Trabzon gendarmerie officers, with the exception of two NCOs. No judicial ruling had been given on the reasons why the officers competent to take the appropriate steps following transmission of the information by the NCOs had failed to take action. In addition, the NCOs had been forced to give false statements to the investigators. This was a case of a manifest breach of the duty to take steps to gather evidence concerning the events in question and of concerted action to hamper the capacity of the investigation to establish who was responsible.

As to the failures imputed to the Trabzon police, the Court observed that the Trabzon prosecuting authorities' decision to take no further action had been based on arguments which were contradicted by other evidence in the case file. In particular, the public prosecutor had taken the view that the police officers had not judged the information received on the planned assassination to be credible, whereas in fact they had informed the Istanbul police that an assassination attempt was imminent. Furthermore, the decision not to proceed with the charges against the chief of police had not been based on any investigation. Taken overall, the prosecuting authorities' investigation had amounted to little more than a defence of the police officers concerned, without providing any answers to the question of their failure to take action vis-à-vis the suspected assassins.

With regard to the failures imputed to the Istanbul police, the Court noted that no criminal proceedings had been started against them either, despite the findings of the Interior Ministry investigators to the effect that the police authorities had not taken the measures which the situation required. No explanation had been provided as to why the Istanbul police had not responded to the threat.

The Court acknowledged that criminal proceedings were still in progress against the suspected perpetrators of the attack. However, it could not but note that all the proceedings in which the authorities were implicated had been discontinued (with the exception of the proceedings against two NCOs in Trabzon, although this did nothing to alter the Court's conclusion).

Lastly, the Court observed that the investigations concerning the Trabzon gendarmerie and the Istanbul police had been conducted by officials belonging to the executive, and that the dead man's relatives had not been involved in the proceedings, a fact which served to undermine the investigations. The suspicion that one of the police chiefs had supported the accused's actions did not appear to have been the subject of detailed investigation either.

There had therefore been a breach of Article 2 (in its "procedural aspect") as no effective investigation had been carried out into the failures which occurred in protecting the life of Fırat Dink.

Complaint concerning Fırat Dink's freedom of expression (Article 10)

The Turkish Government contended that there had been no breach of Fırat Dink's right to freedom of expression since at the time of his death he had not been finally convicted. The Court stressed, however, that at the time Fırat Dink died, the highest criminal court had upheld the finding that he was guilty of denigrating Turkish identity. Moreover, this finding had made him a target for extreme nationalists, and the Turkish authorities, who had been informed of the plot to kill him, had not taken steps to protect him. There had therefore been interference with the exercise of Fırat Dink's right to freedom of expression. According to the Court's case-law, such interference was acceptable if it was prescribed by law, pursued a "legitimate aim" and could be regarded as "necessary in a democratic society". The Court doubted whether it had satisfied the first two criteria, but concentrated its reasoning on the third criterion.

The Court shared the view of Principal State Counsel at the Court of Cassation that an analysis of the full series of articles in which Fırat Dink used the impugned expression showed clearly that what he described as "poison" had not been "Turkish blood", as held by the Court of Cassation, but the "perception of Turkish people" by Armenians and the obsessive nature of the Armenian diaspora's campaign to have Turkey recognise the events of 1915 as genocide. After analysing the manner in which the Court of Cassation had interpreted and given practical expression to the notion of Turkish identity, the Court concluded that, in reality, it had indirectly punished Fırat Dink for criticising the state institutions' denial of the view that the events of 1915 amounted to genocide. The Court reiterated that Article 10 of the Convention prohibited restrictions on freedom of expression in the sphere of political debate and issues of public interest, and that the limits of acceptable criticism were wider for the government than for a private individual. It further observed that the author had been writing in his capacity as a journalist on an issue of public concern. Lastly, it reiterated that it was an integral part of freedom of expression to seek historical truth. The Court therefore concluded that Fırat Dink's conviction for denigrating Turkish identity had not answered any "pressing social need".

The Court also stressed that states were required to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. In a case like the present one, the state must not just refrain from any interference with the individual's freedom of expression, but was also under a "positive obligation" to protect his or her right to freedom of expression against attack, including by private individuals. In view of its findings concerning the authorities' failure to protect Fırat Dink against the attack by members of an extreme nationalist group and concerning the guilty verdict handed down in the absence of a "pressing social need", the Court concluded that Turkey's "positive obligations" with regard to Fırat Dink's freedom of expression had not been complied with.

There had therefore been a violation of Article 10.

Complaint concerning the alleged lack of an effective remedy (Article 13 in conjunction with Article 2)

In cases concerning the right to life, Article 13 required not only the payment of compensation where appropriate, but also an in-depth and effective investigation capable of leading to the identification and punishment of those responsible and encompassing effective access for the family to the investigation (this went beyond the obligation to conduct an effective investigation

imposed by Article 2). The lack of an effective criminal investigation in this case therefore led the Court to find that there had also been a violation of Article 13 of the Convention taken in conjunction with Article 2 as the applicants had thereby been denied access to other remedies available in theory, such as a claim for damages.

Just satisfaction (Article 41)

The Court held, in respect of non-pecuniary damage, that Turkey was to pay 100 000 euros jointly to Fırat Dink's wife and children and 5 000 euros to his brother. It was also to pay 28 595 euros to the applicants jointly for costs and expenses.

Judge Sajó, joined by Judge Tsotsoria, expressed a separate opinion which is appended to the judgment.

Florea v. Romania

Judgment of 14 September 2010. Concerns: Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital and being provided with a diet which was unsuited to his various medical conditions.

Applicant's subjection to passive smoking in detention was in breach of the Convention

Principal facts

The applicant, Gheorghe Florea, is a Romanian national who was born in 1949 and lives in Botoşani (Romania). He was detained from March 2002 until February 2005 in Botoşani Prison and in Târgu Ocna Prison Hospital.

At the time of his imprisonment the applicant suffered from chronic hepatitis and arterial hypertension. In Botoşani Prison he had to share a cell for approximately eight or nine months with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. He was also in the company of smokers during his three stays in the prison hospital, which were ordered because of his worsening health, and on his return from that establishment.

In January 2005 the applicant was advised by his doctor to avoid smoking.

In response to the complaints made by Mr Florea the Ministry of Justice acknowledged that due to overcrowding two prisoners sometimes had to share one bed and that it was impossible to separate smoking and non-smoking prisoners because of the lack of space.

The National Prisons Authority indicated that the applicant had been detained in cells ranging in size from approximately 21 sq. m – with nine beds – to approximately 55 sq. m – with 35 beds – and stated that no data was kept on the number of prisoners in each cell. According to the authority, smoking was permitted only in the toilets and the exercise yard.

Similarly, in the prison hospital, statistics had been recorded only for each wing rather than by individual ward. Hence, the wing for chronically ill patients measured around 113 sq. m and was divided into two wards with between nine and 59 patients in each, with no separate areas for smokers and non-smokers.

The applicant was granted conditional release on 15 February 2005. According to the National Prisons Authority, his condition had remained stable during his detention.

In April 2004, the applicant lodged a claim for compensation on account of the deterioration of his health caused by being detained in cells together with prisoners who smoked and by the poor conditions of detention. His claim was dismissed by the County Court in 2006 on the ground that no causal link had been established.

Decision of the Court

Article 3

The Romanian Government contended that the applicant had not exhausted domestic remedies as he could have lodged a complaint against the prison staff and an action for tortious liability. The Court noted that the applicant had repeatedly drawn the competent authorities' attention to the poor conditions of detention, including the fact that there were smokers in his cell. It further observed that the government had not indicated how the remedies referred to might have redressed the alleged conditions of detention. It therefore dismissed the Romanian Government's preliminary objection of failure to exhaust domestic remedies.

The Court observed that, far from depriving persons of their rights under the Convention, imprisonment in some cases called for enhanced protection of vulnerable individuals. The state had to ensure that all prisoners were detained in conditions which respected their human dignity, that they were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised.

In cases concerning prisoners' living space, the Court had established a minimum threshold of 3 sq. m of personal space. Where the space provided was above that threshold the Court took other factors, such as standards of hygiene, into consideration. In Mr Florea's case, given the total surface area in relation to the number of prisoners, it was clear that he had had between 1.57 sq. m and 2.36 sq. m of personal space in prison and between 1.89 sq. m and 3.63 sq. m in hospital. The Court noted that the Ministry of Justice had acknowledged that the capacity of Botoşani Prison had been exceeded and, like the Romanian courts, that there existed a systemic problem of overcrowding in the country's prisons.

Mr Florea had therefore spent approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. The Court noted, however, that the standard for personal space in communal cells in Romania had been increased in the meantime to 4 sq. m.

As to the other factors, the Court noted that Mr Florea had been confined to his cell for 23 hours a day in deplorable hygiene conditions, with the same room being used for sleeping and eating. As to the issue of passive smoking raised by the applicant, the Court observed that no consensus existed among the member states of the Council of Europe with regard to protection against passive smoking in prisons.

Unlike the applicants in some other cases, Mr Florea had never had an individual cell and had to put up with his fellow prisoners' smoking

even in the Botoşani prison infirmary and on the wards for chronically ill patients of the prison hospital, against his doctor's advice. However, a law enacted in June 2002 prohibited smoking in hospitals and the Romanian courts had frequently held that smokers and non-smokers should be detained separately.

Accordingly, the conditions of detention to which the applicant had been subjected were in breach of Article 3. In view of that finding, the Court held that it was unnecessary to examine the impact of Mr Florea's conditions of detention on his overall state of health as no expert medical report had established the cause of his medical conditions or found that they had deteriorated in detention.

Article 41

By way of just satisfaction, the Court held that Romania was to pay Mr Florea 10 000 euros in respect of non-pecuniary damage.

Iskandarov v. Russia

Ex-leader of the Tajik political opposition unlawfully removed from Russia to Tajikistan

Judgment of 23 September. Concerns: Relying on Articles 3 and 5, Mr Iskandarov complained that he had been unlawfully detained and removed to Tajikistan, as a result of which he had been ill-treated and persecuted for his political views.

Principal facts

The applicant, Mukhamadruzi Iskandarov, is a Tajikistani national who was born in 1954 and lives in Dushanbe.

The case concerned Mr Iskandarov's complaint that he was unlawfully abducted and transferred from Russia to Tajikistan by the Russian authorities despite the serious risk he ran of being ill-treated there.

One of the leaders of the United Tajik Opposition during the 1990s, Mr Iskandarov, openly criticised the President of Tajikistan some time before he moved to Russia on 11 December 2004.

Having been charged in Tajikistan and in his absence with terrorism and various other offences, he was placed on an international "wanted" list and, on 1 December 2004, the Russian Prosecutor General received an extradition request for him. He was arrested in Russia on 9 December 2004 pending extradition, which was however refused on 1 April 2005 in view of his pending asylum application. He was released on 4 April 2005 and thereafter stayed with his friend in the town of Korolev, Moscow Region.

In the applicant's submission, while taking a walk in the evening of 15 April 2005, he was approached by two men wearing traffic police officers' uniforms, who – assisted by several men with Slavic features who had surrounded the area – handcuffed him, placed him in a car and drove off. Detained and beaten overnight in a sauna in an unknown location, he was taken to a forest where his abductors spoke in unaccented Russian to other men, whom he concluded were Russian law-enforcement officers. He was then taken to an airport, blindfolded. His identity papers were not checked, on the plane he did not hear any instructions or other information usually conveyed on a civil aircraft. He remained blindfolded throughout the flight at the end of which he was handed over to the Tajik law-enforcement agencies upon landing at Dushanbe airport.

Detained under a false name for the first 10 days after his arrival, Mr Iskandarov claimed that he was regularly beaten, kept in a tiny dirty cell, not allowed to go for walks or to wash, and was hardly fed at all. He made a self-incriminating statement under threat of losing his life. He saw his lawyer for the first time only 13 days after his arrival in Tajikistan and his meetings with him took place in the presence of prison officials. In October 2005, he was sentenced to 23 years in prison. Following that, he sent numerous complaints to the Russian authorities related to his unlawful detention and transfer to Tajikistan, all of which either remained unanswered or were dismissed.

Various institutions, such as the European Union, Human Rights Watch, Amnesty International and the United States Department of State, reported on the detention of Mr Iskandarov as well as on the general human rights situation in Tajikistan up to 15 April 2005.

Decision of the Court

Establishment of the facts

The Court pointed out that Mr Iskandarov had provided a generally clear and coherent description of his removal from Russia to Tajikistan. His allegations that he had been unlawfully extradited by the Russian authorities had been supported by the reports of the US Department of State. The Russian Government had provided no explanation about how he, who had last been seen in the Moscow region in the evening of 15 April 2005, had arrived in Tajikistan. Given that the shortest road between Korolev and Dushanbe was 3,660 kilometres long and passed through two sovereign states – Kazakhstan and Uzbekistan – the Court found it implausible that Mr Iskandarov could have been illegally transferred by his kidnappers to Tajikistan in less than two days by any means of transport other than aircraft. Consequently, the Court accepted Mr Iskandarov's allegations that he had been arrested and put on a plane by Russian state agents who transferred him to Tajikistan without having to go through the regular cross-border controls.

Ill-treatment

The Court first considered the general political climate in Tajikistan at the time, looking at evidence from a number of objective sources. It found that the overall human rights situation in Tajikistan, including the treatment of detainees, had given rise to serious concerns. In particular, reports had showed that torture by state officials had been common practice and that perpetrators had enjoyed immunity. Prison conditions had been harsh, even life-threatening, a number of prisoners having died of hunger.

Examining the personal situation of Mr Iskandarov, the Court noted that he had been one of the possible challengers to the Tajik President in the presidential race at the time. When Mr Iskandarov had been removed from Russian territory, reports had shown that another prominent opposition leader critical of the regime, Mr Shamsiddinov, had been ill-treated. Consequently, even though it had not been possible to establish whether Mr Iskandarov had actually been ill-treated in Tajikistan, the special dis-

tinguishing features of his profile and situation should have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan. As there had not been an extradition order concerning him, Mr Iskandarov could not appeal before a court against his removal.

Accordingly, his removal to Tajikistan had been in breach of the obligation of the Russian authorities to protect him against risks of ill-treatment, and thus in violation of Article 3.

Unlawful detention

The Court found it deeply regrettable that opaque methods had been used by state agents in respect of Mr Iskandarov. It emphasised that his detention had not been carried out on the basis of a decision issued in accordance with national laws, and concluded that he had been unlawfully removed in order to circumvent the Russian Prosecutor General's Office dismissal of the extradition request. Mr Iskandarov's detention had neither been acknowledged nor logged in any arrest or detention records and had thus constituted a complete negation of right to liberty and security of people.

Accordingly, there had been a violation of Article 5 § 1.

Just satisfaction

The Court held that, under Article 41, Russia had to pay to Mr Iskandarov 30 000 euros for non-pecuniary damage and 3 000 euros for costs and expenses.

Obst v. Germany, Schüth v. Germany

Judgment of 23 September 2010. Concerns: Relying on Article 8, both Mr Obst and Mr Schüth complained of the refusal of the courts to overturn their dismissal.

Dismissal of Church employees for adultery: domestic court required to balance rights of both parties and take account of specific nature of post concerned

Principal facts

Both cases concerned the applicants' dismissal from a Church for engaging in an extra-marital relationship. The Court for the first time addressed the dismissal of Church employees on grounds of conduct falling within the sphere of their private lives.

The applicant in the first case is Michael Obst, a German national who was born in 1959 and lives in Neu-Anspach. He grew up in the Mormon faith and married in 1980 in accordance with Mormon rites. After holding various positions within the Mormon Church, he was appointed to the post of director of public relations for Europe in 1986. In early December 1993, Mr Obst addressed his pastor, confiding to him that his marriage had been deteriorating for years and that he had had an affair with another woman. Following the pastor's advice, Mr Obst addressed his superior about the issue, who informed him of his dismissal without notice a few days later. Mr Obst was subsequently excommunicated by way of an internal disciplinary procedure.

Mr Obst brought proceedings before the Frankfurt Labour Court, which by judgment of January 1995 declared the dismissal void. The labour court of appeal initially upheld the judgment, but the Federal Labour Court quashed it and remitted the case, observing that by his conduct Mr Obst had not honoured the obligations arising from provisions in his work contract. It further referred to a leading judgment by the Federal Constitutional Court of 4 June 1985 concerning the lawfulness of the dismissal of Church employees after a violation of their loyalty obligations. Following this judgment, Church employers had the right to govern their affairs in an autonomous manner, while at the same time labour courts were bound by the principles of the Church employers' religious and moral precepts only to the extent that they did not conflict with the fundamental principles of the legal order of the state. According to the Federal Labour Court, the requirements of the Mormon Church regarding marital fidelity did not conflict with the fundamental principles of the legal order, because marriage was also of pre-eminent importance under the German Basic Law. The dismissal had been necessary for the Church to keep its credibility, which was under threat in view of Mr Obst's responsibilities as director of public relations for Europe. Moreover, the Church had not been obliged to give an advance warning. Given his long career with the Church, Mr Obst must have been aware of the severity of his misconduct. Following the remittal, the labour court of appeal overturned the first-instance judgment in January 1998.

Mr Obst's further appeal to the Federal Labour Court was to no avail. In June 2002, the Federal Constitutional Court dismissed his constitutional complaint with reference to its leading judgment of 4 June 1985.

The applicant in the second case is Bernhard Schüth, a German national, born in 1957, who lives in Essen. He had been the organist and choirmaster in the Catholic parish of St Lambert in Essen since the mid-1980s, when he separated from his wife in 1994. From 1995 on he lived with his new partner. After his children had spoken in kindergarten about the fact that their father was going to have another child, the dean of the parish held a meeting with Mr Schüth in July 1997. A few days later, the parish informed him of his dismissal as of April 1998, on the grounds that he had violated the basic regulations of the Catholic Church on employment with the Church. In particular, by engaging in an extra-marital relationship with another woman who expected a child from him, he had not only committed adultery but was also guilty of bigamy.

Mr Schüth brought proceedings before the Essen Labour Court, which in a judgment of December 1997 declared the dismissal void. The labour court of appeal initially upheld the judgment, but the Federal Labour Court quashed it and remitted the case, finding that the labour court of appeal should have heard the dean of the parish to establish whether he had tried to induce Mr Schüth to end his extra-marital relationship. As in the case of Mr Obst, the Federal Labour Court referred to the leading judgment by the Federal Constitutional Court and pointed out that the requirements of the Catholic Church concerning marital fidelity did not conflict with the fundamental principles of the legal order.

Following the remittal, the labour court of appeal overturned the first-instance judgment in February 2000, finding that given Mr Schüth's determined stance to uphold his new relationship, the dean had rightly been able to assume that an advance warning would have been superfluous. The court held that the parish could not continue employing him as an organist without losing all credibity,

since his activity was closely connected to the Church's mission.

Mr Schüth's further appeal to the Federal Labour Court was to no avail. In July 2002, the Federal Constitutional Court dismissed his constitutional complaint with reference to its leading judgment of 4 June 1985.

Decision of the Court

In both cases, the Court had to examine whether the balance struck by the German labour courts, between the applicants' right to respect for their private life under Article 8 on the one hand and the Convention rights of the Catholic and the Mormon Church on the other, had afforded the applicants sufficient protection. The Court reiterated that the autonomy of religious communities was protected against undue interference by the state under Article 9 (freedom of religion) read in the light of Article 11 (freedom of assembly and association).

By putting in place a system of labour courts and a constitutional court having jurisdiction to review the former courts' decisions, Germany had in principle complied with its positive obligations towards litigants in the area of employment law. The applicants had been able to bring their cases before a labour court with jurisdiction to determine whether the dismissal had been lawful under state labour law while having regard to ecclesiastical labour law. In both cases, the Federal Labour Court had found that the requirements of the Mormon Church and the Catholic Church, respectively, regarding marital fidelity did not conflict with the fundamental principles of the legal order.

As regards Mr Obst, the Court observed that the German labour courts had taken account of all the relevant factors and undertaken a careful and thorough balancing exercise regarding the interests involved. They had pointed out that the Mormon Church had only been able to base Mr Obst's dismissal on his adultery because he had informed the Church of it by his own initiative. According to the German courts' findings, his dismissal amounted to a necessary measure aimed at preserving the Church's credibility, having regard in particular to the nature of his post. The courts had explained why the Church had not been obliged to inflict a less severe penalty, such as a warning, and they had underlined that the injury suffered by Mr Obst as a result of his dismissal was limited, having regard among other things to his relatively young age.

The fact that, after a thorough balancing exercise, the German courts had given more weight to the interests of the Mormon Church than to those of Mr Obst, did not itself raise an issue under the Convention. The conclusion that Mr Obst had not been subject to unacceptable obligations was reasonable, given that, having grown up in the Mormon Church, he had been or should have been aware when signing the employment contract of the importance of marital fidelity for his employer and of the incompatibility of his extra-marital relationship with the increased duties of loyalty he had contracted towards the Church as director for Europe of the public relations department.

As regards Mr Schüth, in contrast, the Court observed that the labour court of appeal had confined itself to stating that while his functions as organist and choirmaster did not fall within the group of employees who in case of serious misconduct had to be dismissed, namely those working in counselling, in catechesis or in a leading position, his functions were nonetheless so closely connected to the Catholic Church's proclamatory mission that the parish could not continue employing him without losing all credibility. That court had not examined this argument any further but appeared to have simply reproduced the opinion of the Church employer on this point.

The labour courts had moreover made no mention of Mr Schüth's de facto family life or of the legal protection afforded to it. The interests of the Church employer had thus not been balanced against Mr Schüth's right to respect for his private and family life, but only against his interest in keeping his post. A more detailed examination would have been required when weighing the competing rights and interests at stake.

While the Court accepted that in signing the employment contract, Mr Schüth had entered into a duty of loyalty towards the Catholic Church which limited his right to respect for his private life to a certain degree, his signature on the contract could not be interpreted as an unequivocal undertaking to live a life of abstinence in the event of separation or divorce. The German labour courts had given only marginal consideration to the fact that Mr Schüth's case had not received media coverage and that, after 14 years of service for the parish, he did not appear to have challenged the position of the Catholic Church.

The fact that an employee who had been dismissed by a Church employer had only limited opportunities of finding another job was of particular importance. This was all the more so where the dismissed employee had special qualifications that made it difficult, or even impossible, to find a new job outside the Church, as was the case with Mr Schüth, who now worked part-time in a Protestant parish. In that connection, the Court noted that the rules of the Protestant Church relating to Church musicians stipulated that non-members of the Protestant Church might only be employed in exceptional cases and solely in the context of an additional job.

The Court found that the German labour courts had failed to weigh Mr Schüth's rights against those of the Church employer in a manner compatible with the Convention.

The Court unanimously concluded that there had been no violation of Article 8 in Mr Obst's case and that there had been a violation of Article 8 in Mr Schüth's case.

Just satisfaction

The Court held that the question of the application of Article 41 (just satisfaction) in Mr Schüth's case was not ready for decision and would be decided at a later stage. The parties have three months from the delivery of the judgment to reach an agreement in this respect.

J.M. v. the United Kingdom

Rules on child maintenance prior to introduction of Civil Partnership Act discriminated against those in same-sex relationships

Judgment of 28 September 2010. Concerns: J.M. alleged that, when setting the level of child maintenance she was required to pay, the authorities had discriminated against her on the basis of her sexual orientation. She relied on Article 14 (prohibition of discrimination), submitting that that Article applied to her situation either in conjunction with Article 8 (right to respect for private and family life) and/or Article 1 of Protocol No. 1 (protection of property).

Principal facts

The applicant, J.M., a British national, is the mother of two children, born in 1991 and 1993. She and her husband subsequently divorced and the applicant left the family home. For the purposes of the UK's child support legislation, her former husband became the parent with care of the children and the applicant, as the non-resident parent, was required to contribute financially to the cost of their upbringing. Since 1998 the applicant has been living with another woman in an intimate relationship. Her child maintenance obligation was assessed in September 2001 in accordance with the regulations that applied at that time. These provided for a reduced amount where the absent parent had entered into a new relationship, married or unmarried, but took no account of same-sex relationships. The applicant complained that the difference was appreciable – she was required to pay approximately 47 British pounds per week, whereas if she had formed a new relationship with a man the amount due would be around 14 British pounds.

Her complaint was upheld by three levels of jurisdiction, but the case was overturned by a majority ruling in the House of Lords in 2006. The applicant's reliance on Article 8 of the Convention, especially its family life aspect, was rejected. Two members of the majority held that the applicant's situation did not fall within the ambit of Article 8 of the Convention as the link between the regulations and her relationship with her partner was too tenuous. Even if it were not, they considered that the United Kingdom had remained within its margin of appreciation up to the point in time when the Civil Partnership Act 2004 removed the difference in treatment complained of. The other two members of the majority held that same-sex relationships were not, at that time, recognised by the Strasbourg case-law as a form of family life within the meaning of Article 8. All of the members of the majority rejected the argument that the situation was within the ambit of Article 1 of Protocol No. 1. They saw that provision as primarily concerned with the expropriation of assets for a public purpose and not with the enforcement of a personal obligation of an absent parent. It would be artificial to view child support payments as a deprivation of the absent parent's possessions.

Decision of the Court

The Court decided that the case most naturally fell within the scope of Article 1 of Protocol No. 1. The sums paid by the applicant out of her own financial resources towards the upkeep of her children were to be considered as "contributions" (just like social security benefits or taxation) since payment was required by the relevant legislative provisions and enforced through the Child Support Agency. Article 14 thus applied to the situation complained of. The Court did not find it necessary to decide whether the facts of the case fell within the scope of Article 8.

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. Where the complaint was one of discrimination on grounds of sexual orientation, the state had to give particularly convincing and weighty reasons to justify such a difference in treatment.

The Court considered that J.M. could compare her situation to that of an absent parent who had formed a new relationship with a person of the opposite sex. The only point of difference between her and such persons was her sexual orientation. Therefore, her maintenance obligation towards her children had been assessed differently on account of the nature of her new relationship.

Yet, bearing in mind the purpose of the domestic regulations, which was to avoid placing an excessive financial burden on the absent parent in their new circumstances, the Court could see no reason for such difference in treatment. Indeed, it was not clear why the applicant's housing costs should have been taken into account differently than would have been the case had she formed a relationship with a man. The Court therefore concluded that there lacked sufficient justification for such discrimination in 2001-2002. The reforms introduced by the Civil Partnership Act some years later, however laudable, had no bearing on the matter.

The Court therefore held that there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1.

Other articles

Under Article 41 (just satisfaction) of the Convention, the Court held that the United Kingdom was to pay the applicant 3,000 euros in respect of non-pecuniary damage, and 18 000 euros for costs and expenses.

DMD GROUP, a.s. v. Slovakia

Distribution of cases among judges of a Slovakian district court lacked transparency

Judgment of 5 October 2010. Concerns: Relying on Article 6 § 1 (right to have a hearing before a tribunal established by law), the DMD GROUP a.s. complained that the President of the District Court reassigned its case to himself and decided on it on the same day, thereby depriving the company of the opportunity to raise objections. The company alleged in particular that the President of the

District Court had intervened in its case for political reasons, due to a power struggle between economic groups.

Principal facts

The applicant, DMD GROUP, a.s., is a joint-stock company which was established in 1997 and is based in Trenèin (Slovakia).

In September 1998, the applicant company sought enforcement before the Martin District Court of a financial claim (2 900 000 euros) against a major company involved in arms production. In the course of the enforcement proceedings, the defendant's movable property and certain of its shares were seized and transferred to the applicant company. In April 1999, the applicant company requested that the enforcement proceedings be discontinued as its claim had been satisfied. However, on 30 June 1999, the newly appointed President of the District Court – in his administrative capacity – reassigned the case to himself as a judge. On the same day he ruled that the enforcement of the applicant company's claim by selling shares was improper and discontinued the proceedings. The decision could not be appealed.

The applicant company brought a constitutional complaint contesting, among other things, that its right to a hearing by a tribunal established by law had been violated by the President of the District Court assigning the case to himself. It also alleged that frequent modifications to the District Court's 1999 work schedule had made the process of assignment and reassignment of cases uncontrollable and opaque. In January 2003, the Constitutional Court found that there had been no violation of Article 48 § 1 (which provides that no one may be deprived of his or her lawfully appointed judge) of the Constitution. It notably concluded that the reassignment had taken place in the context of modifications to the District Court's 1999 work schedule in order to ensure the equal distribution of cases concerning enforcement proceedings and in compliance with the applicable rules. Between 1 March and 15 July 1999, a total of 348 cases were reassigned between various sections of the District Court. Of that total, 49 cases were reassigned to the section of the President of the District Court. He made further amendments to the work schedule throughout 1999, taking effect in June, August and October 1999. Although not a requirement by law, those modifications were all notified to the Regional Court.

Decision of the Court

Article 6 § 1

The Court observed that if judicial and administrative functions were combined in the management of a court – as had occurred in the reassignment of the applicant company's case by the President of the District Court and his deciding on the case on the same day – particular clarity of the legal rules as well as clear safeguards were called for in order to prevent abuse. However, the applicable rules had been far from exhaustive: apart from simply defining that distribution of work was to be determined in a work schedule for a whole calendar year and providing for the modalities regarding substitution or replacement of judges, no other statutory rules on the courts' work schedules existed at the relevant time. Indeed, significant latitude had been left to the president of the court in question. This had been illustrated by the number of modifications to the work schedule that had been made at the District Court in 1999 without, apparently, any specific safeguards. It had not even been a requirement that such modifications be notified to a superior court. Furthermore, the reassignment of the applicant company's case had taken place by means of an individualised decree rather than by way of a general reassignment. As the decision of the President of the District Court in his capacity as a judge was subject to no appeal, the applicant company had not been given the opportunity to raise any objections and was thereby also prevented from potentially challenging the President of the District Court for bias.

The Court therefore concluded that the reassignment of the applicant company's case to the President of the District Court, who had then decided the case, had not been compatible with the applicant company's right to have a hearing before a tribunal established by law, in violation of Article 6 § 1.

Other articles

Under Article 41 (just satisfaction) of the Convention, the Court held that Slovakia was to pay the applicant 4 000 euros in respect of non-pecuniary damage.

Özpınar v. Turkey

Dismissal of judge for reasons related to her private life was in breach of Convention

Judgment of 19 October 2010. Concerns: The applicant relied on Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy), alleging that her dismissal by the National Legal Service Council had been based on aspects of her private life and that no effective remedy had been available to her. She also relied on Article 6 (right to a fair hearing) and complained of sex discrimination under Article 14 (prohibition of discrimination).

Principal facts

The applicant, Arzu Özpınar, is a Turkish national who was born in 1972 and lives in Ankara. She became a judge in 1997. In 2002, a disciplinary investigation was opened against her following an anonymous complaint on behalf of a group of patriotic police officers. The public prosecutor and the representative of the Commissioner of Police for Gulnar also filed complaints against her. The applicant was reproached in particular for her close relationship with a lawyer, whose clients had allegedly benefited from favourable decisions on her part, her repeated lateness for work and her unsuitable clothing and make-up. Testimony was taken from about forty witnesses, who gave contradictory statements, and the cases that the applicant had dealt with as a judge were examined. No information from the investigation was disclosed to Ms Özpınar.

The disciplinary investigation file was transmitted to the National Legal Service Council (the Council), which decided in November 2003 to remove Ms Özpınar from office as a judge, under Law no. 2802, mainly on the grounds that by her inappropriate attitudes and relationships she had undermined the dignity and honour of the profession. A request by the applicant for a review of that decision was denied, without her being informed. She then challenged her dismissal, which was confirmed by the Council on 12 January 2004, after a hearing in which she had taken part. She was notified of the refusal to reinstate her but was not told the reasons for that decision.

Decision of the Court

Article 8

The Court reiterated that the notion of private life did not exclude professional activities: restrictions in that area could have repercussions for the development of a persons relationships with other human beings and therefore for his or her social identity. In the case of Ms Özpınar the dismissal decision had been directly related to her conduct both professionally and in private. Moreover, her right to respect for her reputation, as protected by Article 8, had been at stake. There had therefore been an interference with Ms Özpınar's right to respect for her private life and it could be said to have had a legitimate aim in relation to the duty of judges to exercise restraint in order to preserve their independence and the authority of their decisions.

The ethical duties of judges might encroach upon their private life when their conduct tarnishes the image or reputation of the judiciary. As regards the criticisms, in the proceedings against the applicant, concerning her conduct as a judge, they had not constituted interference with her private life.

However, the applicant nevertheless remained a private person entitled to Article 8 protection. The Court noted that even if certain aspects of the conduct attributed to her, in particular decisions allegedly driven by personal considerations, might have warranted her dismissal, the investigation had not substantiated those accusations and had taken into account numerous actions by Ms Özpınar that were unrelated to her professional activity. Moreover, she had been afforded few safeguards in the proceedings against her, whereas any judge who faced dismissal on grounds related to private or family life must have guarantees against arbitrariness, and in particular a guarantee of adversarial proceedings before an independent and impartial supervisory body. Such safeguards were all the more important in the case of Ms Özpınar as, with her dismissal, she automatically lost the right to practise law. The applicant had appeared before the Council only at the point when she had challenged the dismissal and she had not received beforehand the reports of the inspector or of the witness testimony.

The Court found that there had been a violation of Article 8 as the interference with the applicant's private life had not been proportionate to the legitimate aim pursued.

Article 13 in conjunction with Article 8

As domestic law did not allow the applicant any possibility of a judicial appeal against the dismissal decision, Article 6 was not applicable. The Court decided that the applicant's complaint concerning that provision should be examined under Article 13.

The Court had previously found that the impartiality of the Council's panel that examined challenges to its decisions was highly questionable, because the panel included members who had taken part in the dismissal decisions themselves.

Furthermore, during the proceedings, no distinction had been made between aspects of Ms Özpınar's private life that bore no direct connection with her duties and those that might have done.

Accordingly, the applicant had not had access to a remedy meeting the minimum requirements of Article 13 for the purposes of her Article 8 complaint. The Court found that there had been a violation of Article 13 in conjunction with Article 8.

Article 14

The Court rejected the applicant's complaint under Article 14 as out of time.

Article 41

Ms Özpınar had not submitted a request for just satisfaction within the time-limit.

Separate opinion

Judges Sajó and Popović expressed a separate opinion, which is annexed to the judgment.

Aune v. Norway

Judgment of 28 October 2010. Concerns: Relying in particular on Article 8 (right to respect for private and family life) of the Convention, Ms Aune complained about the decision by the Norwegian Supreme Court, which deprived her of her parental responsibilities in respect of her son and authorised his adoption.

Authorisation of adoption of applicant's son was in the child's best interests

Principal facts

The applicant, Lise Aune, is a Norwegian national who was born in 1976 and lives in Stjørdal (Norway).

Her son A., born in February 1998, was first taken into compulsory foster care in August 1998 as an emergency measure, then as a permanent measure in December 1998. The authorities, aware that A.'s parents had a history of drug abuse, suspected that he had been ill-treated. Notably in July 1998, A. had been taken unconscious to hospital and, placed in intensive care, was treated for a brain haemorrhage.

On 25 April 2005, the local social authorities board deprived Ms Aune of her parental responsibilities with respect to A. and authorised his adoption by his foster parents. That decision was ultimately upheld on appeal by the Supreme Court on 20 April 2007.

Notably, the Supreme Court held that the conditions required under section 4-20 (3) (c) of the Child Welfare Act 1992 for deprivation of parental responsibilities had been fulfilled: namely, the foster parents had shown that they were fit to raise A. as their own child, A. was attached to his foster parents and it had been found by a court-

appointed expert that his biological mother – despite positive developments in her situation – was unable to provide him with proper care. Furthermore, it found that A., although well adjusted in his new family, remained vulnerable, and needed reassurance that he would stay with his foster parents. Indeed, his need for absolute emotional security was likely to increase as he grew up as he became aware of the fact that both his mother and father had been heavy drug abusers and that he had been exposed to serious ill-treatment. Nor could the Court ignore that the biological family, particularly Ms Aune's father and his partner, had protested about A.'s placement as they had fostered the applicant's other son, A.'s half-brother, and considered that the two boys should be together. There was a possibility that that conflict would continue if he was not adopted. It was also emphasised that A.'s foster parents had facilitated contact with the biological family far beyond their entitlement, both as regards the circle of people concerned (which included A.'s half-brother and biological grandparents) and the extent of the contact. Indeed, there was no doubt that that openness to permitting contact would continue.

A., who is now 12, has been in foster care practically all his life, having lived with the applicant only for the first six months of his life. During the five years which followed those first six months, they saw one another on six of the 15 opportunities offered. For approximately a year, contact was interrupted because of a relapse in Ms Aune's drug abuse. In the autumn of 2003, contact resumed and in 2004 it became regular. They met once in 2005, and then twice in 2006, 2007 (before and after the Supreme Court's judgment of 20 April 2007), 2008 and 2009. This included overnight visits to A.'s home and the applicant's home, which took place several times in the presence of his half-brother and the applicant's mother.

Ms Aune has spent periods in detoxification centres since 2000. Since taking part in a rehabilitation scheme (with methadone treatment) in the autumn of 2005, she has been drug-free. She has set up a renovation business with her current partner, obtained a driving licence and planned to take up studies.

Decision of the Court

Article 8

The Court noted that the interference with Ms Aune's private and family life had had a legal basis, namely section 4-20 of the Child Welfare Act 1992, and that that interference had pursued the legitimate aim of protecting the best interests of her son.

For formal reasons, the Court had no jurisdiction under the Convention to examine the justification for the compulsory public care measures, which in any case continued to be permanent. The only question that the Court could examine was whether it had been necessary to replace the foster care arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicant's legal ties with A. would be broken.

Bearing in mind that authorisation of adoption against the will of the parents should be granted only in exceptional circumstances, the Court was satisfied that such circumstances did exist in the applicant's case to justify those more far reaching measures.

The applicant had not questioned the social authority and national court findings concerning the suitability of her son's foster parents or his attachment to them. Furthermore, nothing had come to light in the proceedings before this Court which would make it differ from the Supreme Court's conclusion that the applicant was unable to provide proper care for her son.

A. had no real attachment to his biological parents and the social ties between the applicant and A. have been very limited. Indeed, A.'s particular need for security – which would no doubt increase with time – had been significantly challenged by Ms Aune's wish for A. to live with Ms Aune's father and the conflict around A.'s placement in foster care. The applicant had stated clearly before this Court that there was no risk that the earlier conflicts would resume as she would not seek to have A. returned to live with her and that she considered it was in his best interest to grow up with his foster parents. However, the Court considered that, from the material submitted to it and the pleadings of the applicant's lawyer, there was still a latent conflict which could challenge A.'s particular vulnerability and need for security. Adoption would counter such an eventuality.

Moreover, from what the Court understood, the disputed measures corresponded to A.'s wishes.

As to the doubt raised by the applicant about whether the foster parents would continue to be open to contact (in the event of adoption it no longer being the applicant's legal right to have such contact), the Court observed that, after the Supreme Court judgment, the number of visits remained the same, which clearly confirmed that the national courts had been correct in their asssement of the foster parents' good will. The disputed measures had not in fact prevented the applicant from continuing to have a personal relationship with A. and had not "cut him off from his roots".

The Court was therefore satisfied that the decision to deprive the applicant of parental responsibilities and to authorise the adoption had been supported by relevant and sufficient reasons and had been proportionate to the legitimate aim of protecting A.'s best interests. Accordingly, there had been no violation of Article 8.

Saliyev v. Russia

Withdrawal of copies of municipal newspaper by editor-in-chief after publication unjustified

Judgment of 21 October 2010. Concerns: Relying on Article 10, Mr Saliyev complained that the newspaper copies with his article had been withdrawn for political reasons, amounting to political censorship.

Principal facts

The applicant, Kakhraman Saliyev, is a Russian national who was born in 1957 and lives in Magadan (Russia). A.s the president of a non-governmental organisation, he wrote an article in 2001 about the acquisition of shares in a local energy producing company, which was at the time a part of the state holding Edinye Energeticheskiye

Systemy Rossii, by a group of Moscow-based firms. He described the purchase as a crooked deal and alleged that a high-level official from Moscow, one of the leaders of the pro-government political party, was behind the transaction. The editor-in-chief of a municipally owned newspaper, Vecherniy Magadan, agreed to publish the article in its issue of 2 November 2001. While more than 2000 copies of the issue were sent to subscribers and libraries, a certain number of copies submitted to a distributing company were withdrawn from news-stands shortly after distribution and later destroyed. A few days later the editor-in-chief resigned from his post.

Mr Saliyev lodged a formal complaint with the regional prosecutor's office, submitting that the withdrawal of the newspapers amounted to unlawful interference with freedom of the press, an offence under the Criminal Code. After questioning the head of the distributing company and the editor-in-chief, the investigator in January 2003 decided not to open a criminal investigation. He found that there had been no interference with freedom of the press, as the decision to withdraw the copies had been taken by the editor-in-chief himself without any coercion and had been motivated by the need to avoid civil lawsuits which might have followed the publication of the article. Mr Saliyev challenged the decision before the town court, testifying that the editor-in-chief had explained to him that the copies of the newspaper had been withdrawn by a decision of the distributing company. However, both the head of the distributing company and the editor-in-chief confirmed their earlier testimonies to the effect that the latter had taken the decision alone. The decision not to open a criminal case was eventually upheld by the regional court in May 2003.

Mr Saliyev also brought civil proceedings, seeking to have the withdrawn copies of the newspaper with his article reprinted and sold at news-stands. The courts eventually dismissed his action in August 2003, stating that the newspaper, as the owner of the copies, could freely dispose of them and that there had been no contract between Mr Saliyev and the newspaper obliging the latter to distribute the issue containing the article.

Decision of the Court

Article 10

The Court noted that copies of the newspaper had been withdrawn and destroyed after the article had been accepted by the editorial board, and after it had been printed and made public. After publication, any decision limiting the circulation of Mr Saliyev's article had to be regarded as an interference with his freedom of expression. Further, the main reason for the withdrawal had been the content of the article. The Russian Government had conceded that the editor-in-chief had withdrawn the newspapers for fear of possible civil or administrative sanctions. The withdrawal therefore amounted to an interference with Mr Saliyev's rights under Article 10.

From the evidence before it, the Court saw no reason to depart from the domestic courts' findings that the withdrawal had been ordered by the newspaper's editor-in-chief. He had been appointed and paid by the municipality, which, holding the newspaper's assets, had the right to shape its editorial policy to a certain extent. It appeared that the editor-in-chief's decision had been motivated by his own perception of the situation and the possible negative consequences of the article, without a state authority having expressed dissatisfaction with it. Nevertheless, given the fact that he was required to ensure the loyalty of his newspaper to the municipality and its policy line, his decision could be characterised as an act of policy-driven censorship. The Court was not convinced by the government's argument that the municipality was not a state authority for the purpose of the Convention, given that under Russian law municipal authorities were treated on the same footing as federal or regional bodies for many purposes. The interference with Mr Saliyev's rights could therefore be attributed to a state authority.

Domestic law entitled editors-in-chief to decide on questions relating to the distribution of a newspaper. The decision to withdraw the copies could therefore be considerd as lawful. The Court was also prepared to accept that the decision pursued the legitimate aim of protecting "the reputation or rights of others" for the purpose of Article 10, namely the state officials and managers of the local energy company targeted by the article.

As to the question whether the withdrawal had been "necessary in a democratic society", the Court underlined that Mr Saliyev had reported on a matter relating to the management of public resources, lying at the core of the media's responsibility and the right of the public to receive information. The domestic courts had not addressed the question whether he had exceeded the limits of permissible criticism or analysed the content or the form of the article at all, but had simply treated Mr Saliyev's complaint as a business matter. The Court pointed out that the relationship between a journalist and an editor-in-chief is not only or always a business relationship and in Mr Saliyev's case it was not such a relationship, as the newspaper was, according to its own charter, a municipal institution aiming to inform the public about local social, political and cultural issues. The domestic courts had therefore failed to give a justification for the withdrawal from the standpoint of Article 10. The critical views expressed in Mr Saliyev's article were moreover reasonably supported by facts which had never been challenged.

The Court unanimously concluded that there had been a violation of Article 10.

Article 41

The Court did not make any award under Article 41 (just satisfaction) of the Convention, since Mr Saliyev had not submitted a claim.

Alekseyev v. Russia

Judgment of 21 October 2010. Concerns: Relying on Articles 11, 13 and 14, Mr Alekseyev complained about the repeated ban on holding the gay-rights marches and pickets, about not having an effective

Repeated unjustified ban on gay-rights marches in Moscow

remedy to challenge those bans, and about them being discriminatory because of his and the other participants' sexual orientation.

Principal facts

The applicant, Nikolay Alekseyev, is a Russian national who was born in 1977 and lives in Moscow (Russia). He was one of the organisers of several marches in 2006, 2007 and 2008 which were aimed at drawing public attention to the discrimination against the gay and lesbian community in Russia and to promoting tolerance and respect for human rights.

The organisers submitted notices to the Moscow mayor's office on several different occasions announcing their intention to hold marches. They also undertook to co-operate with the law-enforcement authorities in ensuring safety and respect for public order by the participants and to comply with the regulations on restriction of noise levels when using loud speakers and sound equipment. Despite that, all they received were refusals to hold the marches. The mayor's decisions explained those refusals with the need to protect public order, health, morals and the rights and freedoms of others, as well as to prevent riots. The decisions specified that, as numerous petitions had been received against the marches, negative reactions – including violence – against the participants in the marches were likely, which in turn could lead to public disorder and mass riots.

In addition to the official decisions issued on those occasions, the Moscow mayor and his staff were quoted in the media more than once saying that "the government of Moscow would not even consider the organisation of gay marches" and that no gay parade would be allowed in Moscow under any circumstances "as long as the city mayor held his post". The mayor further called for an "active mass media campaign ... with the use of petitions brought by individual and religious organisations" against the gay-pride marches. Their marches having been refused, the organisers informed the mayor's office of their intention to hold short pickets instead on the days initially planned for some of the marches. The pickets were also refused. Mr Alekseyev challenged unsuccessfully in court the decisions not to allow the marches or the pickets.

Decision of the Court

Article 11

The Court recalled that Article 11 protected non-violent demonstrations which might annoy or offend people who did not share the ideas promoted by the demonstrators. It also stressed that people had to be able to hold demonstrations without fearing that they would be physically agressed by their opponents.

At the same time, the mere risk of a demonstration creating a disturbance was not sufficient to justify its ban. If every probability of tension and heated exchanges between opposing groups during a demonstration resulted in the demonstration's prohibition, society would be deprived of hearing differing views on questions which offended the sensitivity of the majority opinion, and that ran contrary to the Conventions' principles.

The Moscow authorities had repeatedly, over a period of three years, failed to adequately assess the risk to the safety of the participants and public order. Although counter protesters could have indeed taken to the streets to oppose the gay-pride marches, the Moscow authorities should have made arrangements to ensure that both events proceeded peacefully and lawfully, thus allowing both sides to express their views without a violent clash. Instead, by banning the gay pride marches, the authorities had effectively approved of and supported groups who had called for the disruption of the peaceful marches, in breach of law and public order.

The Court further noted that the considerations of safety had been of secondary importance for the decisions of the authorities who had been mainly guided by the prevailing moral values of the majority. The Moscow mayor had on many occasions expressed his determination to prevent gay parades as he found them inappropriate. The Russian Government had also stated in its submissions to the Court that such events had to be banned as a matter of principle because gay propaganda was incompatible with religious doctrines and public morals, and could harm children and adults who were exposed to it.

The Court stressed that if the exercise of the right to peaceful assembly and association by a minority group were conditional on its acceptance by the majority, that would be incompatible with the values of the Convention. The purpose of the gay pride demonstrations had been to promote respect for human rights and tolerance towards sexual minorities; they had not intended to include nudity or obscenity, nor to criticise public morals or religious views. In addition, while no European consensus had been reached on questions of adoption by or marriage between homosexual people, ample case-law had shown the existence of a long-standing European consensus on questions such as the abolition of criminal liability for homosexual relations between adults, on homosexuals' access to service in the armed forces, to the granting of parental rights, to equality in tax matters and the right to succeed to the deceased partner's tenancy. It was also clear that other Convention member states recognised the right of people to openly identify themselves as gay and to promote their rights and freedoms, in particular by peacefully and publicly gathering together. The Court emphasised that it was only through fair and public debate that society could address such complex issues as gay rights, which in turn would benefit social cohesion, as all views would be heard. An open debate of the kind, which had been exactly the type of event the demonstrators had attempted to organise unsuccessfully many times, could not have been replaced by Moscow's official figures expressing uninformed views considered to be popular.

Consequently, the bans imposed on the holding of gay-rights marches and pickets had not been necessary in a democratic society, and had been in violation of Article 11.

Article 13

The Court noted that there had been no legally binding rule obliging the authorities to decide on the holding of the marches before the dates on which those had been planned. Therefore, there had been no effective remedy available to Mr Alekseyev that could have provided adequate redress in respect of his complaints. There had thus been a violation of Article 13.

Article 14

The Court observed that the main reason for the bans on the gay marches had been the authorities' disapproval of demonstrations which, they considered, promoted homosexuality. In particular, the Court could not disregard the strong personal opinions publicly expressed by the Moscow mayor and the undeniable link between those statements and the bans. Consequently, the Court found that, as the government had not justified their bans in a way compatible with the Convention requirements, Mr Alekseyev had suffered discrimination because of his sexual orientation. There had therefore been a violation of Article 14.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay to Mr Alekseyev 12,000 euros in respect of non-pecuniary damage and 17 510 euros for costs and expenses.

Konstantin Markin v. Russia

Judgment of 7 October 2010. Concerns: Relying in particular on Article 14 taken in conjunction with Article 8, Mr Markin complained that the refusal to grant him parental leave amounted to discrimination on account of sex

Refusal to grant serviceman parental leave, unlike their female counterparts, is discriminatory

Principal facts

Konstantin Markin is a Russian military serviceman who was born in 1976 and lives in Novgorod.

Mr Markin and his wife divorced the same day their third child was born in September 2005. A few days later they entered into an agreement by which their three children would live with Mr Markin, and his wife would pay maintenance for them. He subsequently asked the head of his military unit for three years' parental leave. The request was rejected because parental leave of this duration could only be granted to female military personnel. Initially he was allowed to take three months' leave, but a few weeks later, in November 2005, he was recalled to duty. Mr Markin challenged the recall to duty, but his claims were eventually rejected by the military courts in April 2006.

In parallel, Mr Markin brought proceedings against his military unit, claiming three years' parental leave. In March and April 2006, the military courts dismissed his claim as having no basis in domestic law.

In October 2006, the head of his military unit granted Mr Markin parental leave until September 2008, when his youngest son would turn three. He subsequently received financial aid of the equivalent of 5,900 euros, being informed that the aid had been granted in particular in view of his difficult family situation and the absence of other sources of income. The military court issued a decision in December 2006 criticising the military unit for disregarding the courts' judgments.

In August 2008, Mr Markin applied to the Constitutional Court, claiming that the provisions of the military service act concerning the three-year parental leave were incompatible with the equality clause in the Constitution. In January 2009, the Constitutional Court rejected his application, holding in particular that by entering the military, a serviceman accepted certain limitations on his civil rights in order to create appropriate conditions for efficient professional activity in defence of the country. The Constitutional Court also pointed out that the possibility for servicewomen to take parental leave took into account the limited participation of women in the military and the special social role of women associated with motherhood. If a serviceman decided to take care of his child himself, he was entitled to early termination of his service for family reasons.

Decision of the Court

Article 37 (striking out applications)

The Court rejected the Russian Government's request for the application to be struck out of its list of cases in accordance with Article 37 in view of the measures taken by the domestic authorities to redress Mr Markin's situation. It underlined that its judgments served not only to provide individual relief, but also to safeguard and develop the rules instituted by the Convention. The alleged discrimination under Russian law against male military personnel as regards entitlement to parental leave involved an important question of general interest, which the Court had not yet examined.

Article 14 in conjunction with Article 8

While Article 8 did not include a right to parental leave, the Court underlined that if a state decided to create a parental leave scheme, it had to do so in a non-discriminatory manner. Advancing the equality of men and women is today a major goal in the Council of Europe member states and very weighty reasons had to be put forward before a difference in treatment between the sexes could be regarded as compatible with the Convention.

The Court was not convinced by the Russian Constitutional Court's argument that the different treatment of male and female military personnel concerning parental leave was justified by the special social role of mothers in the upbringing of children. In contrast to maternity leave, primarily intended to enable the mother to recover from the fatigue of childbirth and to breastfeed if she so wished, parental leave related to the subsequent period and was intended to enable the parent to look after the infant at home. As regards this role, both parents were in a similar position.

Over the last decade, the legal situation as regards parental leave entitlements had evolved. In an absolute majority of Council of Europe member states the legislation now provided that parental leave could be taken by both mothers and fathers. Russia could therefore not rely on the absence of a common standard among European countries to justify such difference in treatment.

Furthermore, the Court was not convinced by the argument of the Russian Constitutional Court that military service required uninterrupted performance of duties and that therefore the taking of parental leave by servicemen on a large scale would have a negative effect on the operational effectiveness of the armed forces. Indeed, there was no

expert study or statistical research on the number of servicemen who would be in a position to take three years' parental leave at any given time and who would be willing to do so. The Constitutional Court had thus based its decision on pure assumption. Its argument that a serviceman was free to resign if he wished to take personal care of his children was particularly striking, given the difficulty in directly transferring essentially military qualifications and experience to civilian life.

For these reasons, the Court considered that not entitling servicemen to parental leave, while servicewomen were entitled to such leave, was not reasonably justified. It therefore concluded, by six votes to one, that there had been a violation of Article 14 in conjunction with Article 8.

Article 41 (just satisfaction)

Given that Mr Markin had been allowed, on an exceptional basis, to take parental leave and received financial aid, the Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained.

Separate opinion

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

Other relevant judgments

Szypusz v. the United Kingdom

The applicant, Mr Simeon Szypusz, is a British national who was born in 1985 and is currently detained in Nottingham. Sentenced to 25 years in prison for attempted murder, he complained that the criminal proceedings against him had not been fair, because a police officer responsible for operating video equipment had been permitted to remain alone with the jury for almost two hours while they viewed important video evidence in his case. The applicant relied on Article 6 § 1 (right to a fair trial).

No violation of Article 6 § 1

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 with the supervision of the execution of the European Court of Human Rights' 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, in particular, the effective payment of any just satisfaction awarded by the Court (including interest in case of late payment). Where such just satisfaction is not sufficient to redress the violation found, the Committee of Ministers ensures, in addition, that specific measures are taken in favour of the applicant. These measures may, for example, consist in the 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 Court also comprises a duty of preventing new violations of the same kind as that or those found in the judgment. General measures, which may be required, include notably constitutional or legislative amendments, changes of the national courts' case-law (through the direct effect granted to the Court's judgments by domestic courts in their interpretation of the domestic law and of the Convention), as well as practical measures such as the recruitment of judges or the construction of adequate detention centres for young offenders, etc.

In view of the large number of cases reviewed by the Ministers, only a thematic selection of those appearing on the agenda of the **1092nd** Human Rights meeting[1] (14-15 September 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 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 Human Rights meeting, in the document called "annotated agenda and order of business" available on the Committee of Ministers' website. 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, they can be found more easily 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.

1092nd HR meeting – General Information

During the 1092nd meeting (14-15 September 2010), the Committee of Ministers supervised payment of just satisfaction in some 1422 cases. It also monitored, in some 265 cases the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, reopening domestic judicial proceedings, etc.) and, in some 2597 cases (sometimes grouped together), the adoption of general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The Committee of Ministers also started examining 291 new Court judgments and considered draft final resolutions concluding, in 152 cases, that states had complied with the Court's judgments.

Main texts adopted at the 1092nd meeting

After examination of the cases on the agenda of the 1092nd meeting, the Deputies have particularly adopted the following texts.

Information documents opened to public access

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

- CM/Inf/DH (2010) 37E: Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system – Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL)

Selection of decisions adopted (extracts)

During the 1092nd meeting, the CM examined 4790 cases and adopted f a decision or each of them, available on the Committee of Minister's website. Whenever the Ministers concluded that the execution obligations had not been entirely fulfilled yet, it decided to resume consideration of the case(s) at a later meeting. In some cases, it also expressed in detail in the decision its assessment of the situation. A selection of these decisions is presented below, in alphabetical order of the member state concerned.

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

Meltex Ltd and Mesrop Movsesyan v. Armenia

Unlawful interference with the applicant company'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. Insofar as the law did not require the NTRC to justify its decisions, the procedure did not provide adequate protection against arbitrariness (violation of Article 10).

1092nd meeting

The Deputies,

1. noted with concern the recent amendments to the TV and Radio Broadcasting Act whose provisions no longer explicitly require that reasons are given in respect of an unsuccessful competitor or applicant for a broadcasting licence;

2. welcomed the official statement by the government agent according to which "Article 49 (3) of the TV and Radio Broadcasting Act should be interpreted in accordance with Article 10 of the Convention, and in the light of the Meltex judgment, in a way that a single decision of the Commission provides a full and proper substantiation and reasoning of the results of the points-based vote, including both in respect of the winner of the competition, as well as of all of its other participants";

3. invited the Armenian authorities to provide the Committee of Ministers with a comprehensive overview of the legislative and regulatory framework that substantiates the unambiguous obligation of the NRTC under Armenian law to give reasons for its decisions to award or not, or to revoke broadcasting licences, in the framework of competitions or applications for broadcasting, as well as information on the concrete implementation of this framework in respect of the ongoing tender procedures;

4. recalled the obligation of the respondent state to provide in due time information on developments regarding the execution of judgments of the European Court of Human Rights;

5. decided to resume consideration of this case at their 1100th meeting (November-December 2010) (DH), in light of further information to be provided by the authorities, in particular, on competitions which will be held at the end of this year.

25965/04, judgment of 7 January 2010, final on 10 May 2010

Rantsev v. Cyprus and Russian Federation

Failure by the Cypriot authorities to conduct an effective investigation into the death of the applicant's daughter in 2001 (procedural violation of Article 2). Failure by the Cypriot authorities in their positive obligation to put in place an appropriate legislative and administrative framework to combat trafficking and exploitation resulting from the artists' visa system in force and police failure to take adequate specific measures to protect the applicant's daughter (violation of Article 4). Failure by the Russian authorities to conduct an effective investigation into the recruitment of the applicant's daughter in Russia by traffickers (procedural violation of Article 4). Unlawful and arbitrary deprivation of liberty of the applicant's daughter on account of the Cypriot police's decision to release her into the custody of her manager at his apartment (violation of Article 5).

The Deputies,

1. recalled that this judgment concerns the alleged trafficking of the applicant's daughter from the Russian Federation to Cyprus and the European Court's finding that trafficking in human beings threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention, and that trafficking itself, within the meaning of Article 3 (a) of the UN Palermo Protocol and Article 4 (1) of the Anti-Trafficking Convention falls within the scope of Article 4 of the Convention;

2. recalled that the European Court in particular found a violation of Article 2, in its procedural aspect and Articles 4 and 5 in respect of Cyprus, and a violation of Article 4, in its procedural aspect in respect of the Russian Federation;

As regards individual measures

3. noted that prior to the European Court's judgment, the Cypriot Council of Ministers appointed an independent committee headed by the President of the Independent Authority for the Investigation of Allegations and Complaints Against the Police to investigate Ms Rantseva's death including the question of whether there was any link between her death and the allegations of trafficking;

4. noted that in the meantime the Russian authorities opened a single criminal investigation into Ms Rantseva's death and in the framework of this investigation will examine the allegations of trafficking, including the circumstances of Ms Rantseva's recruitment;

5. stressed the manifest importance of close co-operation between Cypriot and Russian authorities in this respect with a view to ensuring that an effective investigation aimed at identification and punishment of those responsible is carried out;

As regards general measures

6. welcomed the information presented by the Cypriot authorities and in particular confirmation that the system of "artist" visas has been abolished and noted that detailed information has been presented by the Cypriot authorities on the general measures;

7. took note with interest of the information provided by the Russian authorities on the existing national mechanisms to prevent and to combat trafficking of human beings;

8. noted that the Group of Experts on Action against Trafficking in Human Beings (GRETA) will visit Cyprus this autumn, with a view to having their report on Cyprus adopted in the first quarter of 2011;

9. decided to resume consideration of this item at their 1100th meeting (November-December 2010) (DH), in the light of further information to be provided on the individual and general measures and in the light of the assessment to be made by the Secretariat.

Ben Khemais v. Italy

24607/07, judgment of 24 February 2009, final on 6 July 2009 Interim Resolution CM/ResDH (2010) 83

Violation of the applicant's right to individual petition to the European Court of Human Rights on account of the Italian authorities' failure to comply with an interim measure whereby the European Court of Human Rights ordered to suspend the applicant's expulsion to Tunisia. The applicant's expulsion in June 2008 prevented the European Court of Human Rights from effectively examining the applicant's complaints that he risked being tortured. Furthermore, the applicant had no effective remedy to challenge the deportation order before Italian courts (violation of Articles 3 and 34).

The Deputies,

1. noted the information provided by the Italian authorities on case-law developments and on the circular letter of the Ministry of Justice, showing a positive trend towards ensuring full compliance with interim measures indicated by the European Court;

2. noted however that it remains to be seen how the indicated measures will be applied in practice, in particular in respect of expulsion orders issued by the Ministry of Interior or by Prefects;

3. decided to resume consideration of this item at their 1100th meeting (November-December 2010) (DH), in the light of information to be provided by the Italian authorities.

Xenides-Arestis v. Turkey

46347/99, judgment of 7 December 2006, final on 23 May 2007 CM/Inf/DH (2007) 19, CM/Inf/DH (2010) 21, CM/Inf/DH (2010) 36, Interim Resolution CM/ResDH (2008) 99, DD (2009) 540 Interim Resolution CM/Int/ ResDH (2010) 33

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).

The Deputies

1. reiterated their decision taken at the 1086th meeting (June 2010) in which they recalled their Interim Resolution CM/ResDH (2010) 33 of 4 March 2010, strongly urging Turkey to pay without any further delay the just satisfaction awarded to the applicant by the Court, as well as the default interest due;

2. decided to resume consideration of this item at one of their forthcoming meetings.

Yuriy Nikolayevich Ivanov and 378 other similar cases v. Ukraine

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

Violation 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; violation of the applicants' right to protection of their property and lack of an effective remedy in this respect (violations of Article 6 §1, of Article 1 of Protocol No. 1 and of Article 13).

The Deputies

1. recalled that since 2004 the Committee of Ministers has been supervising the execution by Ukraine of more than 300 judgments regarding non-enforcement of domestic judicial decisions; further recalled 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. recalled further that in its pilot judgment, the Court "stresse[d] that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay in order to bring it into line with the Court's conclusions in the present judgment and to comply with the requirements of Article 46 of the Convention[...]" and that "the respondent state must introduce without delay, and at the latest within one year from the date on which the judgment becomes final, a remedy or a combination of remedies in the national legal system [...]";

3. expressed deep concern that although the Ukrainian authorities expressed their commitment to abide by the pilot judgment, no tangible and concrete information has been provided as to whether a comprehensive strategy has been developed with the aim of complying with the judgment and the deadlines set therein;

4. stressed that the Ukrainian authorities' failure to adopt the necessary measures continues to deprive the broad categories of persons, including vulnerable people, of effective protection at the domestic level against non-enforcement of judicial

decisions, resulting in numerous applications to the Court;

5. strongly urged the Ukrainian authorities to give priority, at the highest political level, to devising a comprehensive strategy to implement the pilot judgment, in particular with regard to a domestic remedy as required by this judgment, and to inform the Committee of such a strategy without further delay;

6. decided to resume consideration of these items at their 1100th meeting (November-December 2010) (DH), in light of information to be provided by the authorities and possibly on the basis of a draft interim resolution to be prepared by the Secretariat.

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

Hirst (No. 2) v. the United Kingdom

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

The Deputies,

1. recalled that in the present judgment, delivered on 6 October 2005, the Court found that the general, automatic and indiscriminate restriction of 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 since its 1059th meeting (June 2009), the Committee has urged the United Kingdom to prevent future, repetitive applications by adopting general measures to implement the judgment;

3. deeply regretted that despite the Committee's calls to the United Kingdom over the years to implement the judgment, the risk of repetitive applications to the European Court has materialised as the Court has communicated 3 applications to the government with a view to adopting the pilot judgment procedure and has received over 1 340 applications;

4. noted, that according to the information provided by the United Kingdom authorities during the meeting, the new government is actively considering the best way of implementing the judgment;

5. regretted, however, that no tangible and concrete information was presented to the Committee on how the United Kingdom now intends to abide by the judgment;

6. called upon the United Kingdom, to prioritise implementation of this judgment without any further delay and to inform the Committee of Ministers on the substantive steps taken in this respect;

7. highlighted in this connection that, within the margin of appreciation of the state, the measures to be adopted should ensure that if a restriction is maintained on the right of convicted persons in custody to vote, such a restriction is proportionate with a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned;

8. decided to resume consideration of this item at their 1100th meeting (November-December 2010) (DH) and instructed the Secretariat, in the absence of any concrete developments, to prepare a second draft interim resolution.

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 1092nd meeting, the CM adopted 43 Final Resolutions (closing the examination of 152 cases). Some examples of extracts from the Resolutions adopted follow in their chronological order (for their full text see the website of the Department for the Execution of judgments of the Court, the website of the CM or the HUDOC database).

36812/97, judgment of 24 April 2003, final on 24 July 2003

Resolution CM/ResDH (2010) 84 Sylvester v. Austria

Breach of the applicant's right to respect for his family life due to the Austrian court's failure to take adequate measures to enforce court decisions of 1995 ordering the return of his child in the United States (violation of Article 8).

Individual measures

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

When the Court's judgment was rendered, the first applicant, Mr Sylvester, had an out-of-court agreement (from 2001) with the child's mother for approximately 12 days' visit in Austria a year. After the judgment the applicant sought in vain an agreement with the mother extending these visiting rights. On 4 April 2005, the United States authorities, on Mr Sylvester's behalf, sent the Austrian authorities a request based on Article 21 of the Hague Convention concerning extended access rights. The Austrian Central Authority sent the application to the competent court. Mr Sylvester was granted free legal aid and an Austrian lawyer was appointed to represent him in the proceedings free of charge.

The Austrian authorities indicated that, according to § 271 (1) of the Civil Code, a guardian was to be appointed *ex officio* during the proceedings in the case of a conflict between the interests of the child and her/his legal representative and in case the interests of the child could not be taken care of by the court itself pursuant to its general duty to mediate between the parties in cases of this kind. Subsequently, the Graz District Court obtained an expert opinion by a child psychologist, who recommended that no contact between the applicant and his daughter was to take place until May 2006, except for telephone conversations if the daughter agreed to accept them. Four court hearings took place in 2005. In March 2006, the applicant, considering that the judicial proceedings had harmed his relationship with his daughter who had refused to talk to him on the telephone since July 2005, decided to discontinue the pursuit of legal proceedings and agreed with the mother to take up out-of-court negotiations to reach an agreement on his visiting rights. In this context, he could visit his daughter at Christmas 2006. Subsequently, the applicant confirmed that he had no intention to resume legal proceedings, although he has also submitted a number of complaints regarding the manner in which the proceedings have been handled at first instance.

The authorities underlined that proceedings could be resumed on one party's request, in particular to address the additional grievances made by the applicant, and that in this context, the wishes of the second applicant, now 16 years old, would be taken into consideration (see Section 148§1 of the Civil Code, read in conjunction with Article 12 of the 1989 UN Convention on the Rights of the Child).

In view of the situation, and particularly taking into account the measures taken by the Austrian authorities in order to ensure that Mr Sylvester has if he so wishes adequate access to court in order to protect his and his child's interests under the Convention, it seems that no further individual measure is required for the execution of the present judgment.

General measures

The Austrian authorities have adopted a series of measures to ensure the prompt enforcement of return orders or visiting rights under the 1980 Hague Convention.

(a) A new law, adopted in November 2003 which entered into force in January 2005, provides a concentration of competence to deal with requests for return based on the Hague Convention. This concentration aims at specialising the judges on these issues and will facilitate their training. The law also provides explicitly that decisions in non-contentious proceedings relating to the Hague Convention are to be adopted speedily.

(b) It is possible under Austrian legislation to request, as a preliminary urgent measure while the return proceedings are pending, a right of access to the child. When ordering such access, the competent court may, under the 2003 law, decide that visits to the child by the bereft parent should be supervised by a person accompanying the child, in order to prevent the removal of the child and also to re-establish personal contacts in cases where contacts with the child have become loose. In bigger urban areas (such as Vienna or Graz), special institutions have been created for holding such visits, which also offer the possibility of supervision by social workers.

(c) According to the above legislative reform, in non-contentious proceedings concerning the return of children and concerning access to a child under the Hague Convention, a practicing lawyer is appointed to represent the applicant free of charge and without precondition of a means test already at the initial stage of court proceedings at the first instance.

(d) Court orders on custody or visiting rights may also be enforced ex officio under the 2003 law. Execution can be ensured more swiftly through the use of "appropriate coercive measures", such as coercive fines or detention, provided that such measures do not endanger the well-being of a child.

(e) Additional safeguards for the prompt enforcement of judicial decisions have been provided by the EC Council Regulation No. 2201/2003 (applicable as of 1 March 2005) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

As regards the particular problem of ensuring the active involvement of the competent state authorities in locating children who are hidden by their parents, both the Ministry of Justice acting as Central Authority under the Hague Convention and the courts have several possibilities to trace missing children, e.g. through the centralised residence registration system (Zentrales Melderegister) or by checking with regional registries of schools. Furthermore, police authorities may be called upon to help in locating children.

Lastly, the authorities underlined that, given the direct effect enjoyed by the European Convention and the case-law of the European Court in Austrian law, the competent authorities are expected to align their practice to the Convention's requirements under Article 8 as they result from this judgment so as to provide effective assistance to persons in the applicant's position.

For this purpose, the judgment was published in German in various law journals (in particular the Newsletter of the Austrian Human Rights Institute, NL 2003, p. 89 (NL 03/2/08), available online at http://www.menschenrechte.ac.at/docs/03_2/03_2_08 and in Ecolex 2003/799). The Ministry of Justice requested the Presidents of the higher courts of Vienna, Graz, Linz and Innsbruck to send the judgment out to all judicial authorities within their area of competence. All judgments of the European Court are accessible to judges, state attorneys and to the Central Authority under the 1980 Hague Convention through the Internet database of the Austrian Federal Chancellery (RIS).

Resolution CM/ResDH (2010) 85 Mazélié v. France

5356/04, judgment of 9 May 2003, final on 24 September 2003

Illegal interference with the applicant's right to respect for his property on account of the fact that the authorities mistakenly considered that the applicant was the owner of ramparts, which needed restoration. This mistake of law, attributable to the authorities, gave rise to litigation between the applicant and the authorities stretching, because of administrative negligence, from 1969 to 2000, which affected the market value of the property owned by the applicant and his enjoyment of his possessions (violation of Article 1 of Protocol No. 1).

Individual measures

Before the European Court, the applicant claimed just satisfaction as redress for all the pecuniary damage which he considered due to the violation. He asked for the reversal of all the French court judgments and decisions, restitution of the house and the land of which he had lost possession in the meantime, compensation for having forfeited the enjoyment of an outbuilding with a view, demolished during the work done on the property, and for the various losses linked with the impossibility of turning to account an invention of which he was the originator.

The Court recalled that its finding of a violation of Article 1 of Protocol No. 1 concerned neither the forced sale of the applicant's property nor the damage done to it by the state. Consequently, there was no question of awarding a sum on those grounds. It also considered that no causal link had been proven between the established violation of the Convention and the loss of profit that the applicant might have derived from the sale of his invention and from the ownership of his patents, and the outlay which he had made to protect them. Finally, it dismissed all the applicant's claims in respect of pecuniary damage. On the other hand, the European Court awarded the applicant just satisfaction in respect of the

non-pecuniary damage caused by anxiety and tension engendered over a very long period.

General measures

The government considers that the violation found arose from an isolated error, not an intrinsic malfunction of the state property register system. The Ministry of Economy stated in particular that the general state property register included no historical details of the assets but was updated yearly, which could account for the "disappearance" of the property adjacent to the applicant's land from this register which was different each year.

In order to prevent gross administrative negligence (§29 of the judgment) of this kind from recurring, the attention of the competent authorities was drawn to the Court's finding of a violation, so that they might take direct account of it. The European Court's judgment was circulated to the authorities concerned, in particular local authorities, and posted on the website of the Ministry of the Interior. It was also presented in Médiateur Actualités, le journal du Médiateur de la République, 23rd edition, in November 2006 and was the subject of a commentary in a legal journal with a high circulation among state government departments and local authorities. It is published on the website of the Court of Cassation (section Observatoire du Droit européen).

Finally, having regard to the duration of the proceedings, the French authorities recall that many measures have been taken to avert undue length of proceedings, whether administrative (see Final Resolution CM/ResDH(2008) 12 in the case of Raffi against France and thirty other cases) or civil (see Final Resolution CM/ResDH (2008) 39 in the case of C.R. against France and 9 other cases).

7508/02, judgment of 10 October 2006, final on 12 February 2007

Resolution CM/ResDH (2010) 86 L.L. v. France

Infringement of the applicant's right to respect for his private and family life on account of the production and use before the court, in divorce proceedings between 1996 and 2000, of certain documents from the applicant's medical records (violation of Art. 8).

Individual measures

The European Court held that the finding of a violation constituted in itself sufficient redress of the non-pecuniary damage incurred. Moreover, the French authorities also guarantee that the data concerning private life in the divorce case file and judgment are protected by the legislative provisions referred to in the following section on general measures.

Consequently, no further individual measure appears necessary.

General measures

The authorities adopted measures designed to ensure close scrutiny, in accordance with the Convention's requirements, of the expediency of measures constituting interference with private and family life. In particular, the judgment was brought to the attention of all courts having jurisdiction over this type of case, and of the relevant Ministry of Justice directorates. A summary of the Court's judgment has been presented on the website of the Court of Cassation (section Observatoire du droit européen) since July 2007. Lastly, the European Court's judgment was sent to the Prosecutor General of the Court of Cassation (and to the Prosecutor General of the Rennes Court of Appeal). French judges giving the Convention direct effect are thus in a position to draw the appropriate inferences directly from this judgment when applying the relevant national provisions.

The authorities have also provided information on the guarantees surrounding the use of data concerning the private lives of parties to proceedings of this kind. They emphasise in this connection that Article 1082-1 of the new Code of Civil Procedure (which came into force on 1 January 2005) absolutely prohibits dissemination of excerpts from a divorce ruling beyond its bare operative clauses. In practical terms, the public has at its disposal on the official website of the French administration (www.service-public.fr) an official notice entitled "Demande de copie d'une décision de justice civile, sociale ou commerciale" (request for a copy of a civil, social or commercial court decision (document reference CERFA N° 50825#02)); this official document indicates that if "you wish to obtain a certified copy of a court decision", and if "you were not a party to the proceedings", "you can obtain a copy of the court decisions made public", but that "in matters of divorce, only an excerpt from the decision can be released to you (Article 1082-1 of the Code of Civil Procedure)". The authorities further emphasise that in divorce proceedings, the items on the case file (such as the medical certificate at issue in the case of L.L.) are only to be consulted by the parties to the proceedings and their counsel, who are subject to professional secrecy. These provisions are applied stringently and in accordance with the requirements of the Convention.

12316/04, judgment of 18 October 2007, final on 18 January 2008

Resolution CM/ResDH (2010) 87 Asnar v. France

Unfairness of proceedings before the Conseil d'Etat in 1999, concerning the applicant's request for an early pension taking into account his military service: violation of the adversarial principle, due to the fact that a submission by the Ministry of Education had not been communicated to the applicant. Given that this submission included a reasoned opinion on the merits of the applicant's claim, the Court held that the applicant should have been given the opportunity to submit his comments (violation of Article 6§1).

Individual measures

Before the European Court, the applicant requested the reimbursement of the sums which had been unduly claimed (more than 122 000 euros); but the Court rejected the applicant's request, on the ground that it could not speculate on the outcome of the proceedings at issue in the absence of a violation of Article 6, paragraph 1.

The applicant appealed to the French administrative courts of appeal against the contested decisions requiring him to reimburse the sums to the state (decisions of which he had, furthermore, obtained suspension), and requested compensation for the damage allegedly caused to him by the postponement of his pension from 1991 to 1996. In 2005, the Bordeaux Administrative Court partly allowed his request and ordered the state to pay him 120 000 euros in compensation

for the pecuniary damage suffered and 11 000 euros for non-pecuniary damage. In a judgment of 3 January 2008, the Bordeaux Administrative Court of Appeal upheld this decision. No appeal has been lodged against this judgment.

It is also pointed out that the Court held that its finding of a violation of the Convention in itself constituted sufficient just satisfaction in respect of non-pecuniary damage.

Finally, no consequences of the unfairness of the proceedings appear to remain.

General measures

According to Article R 611-1 of the Administrative Justice Code, memorials in reply should be communicated to the other party if they contain new elements. Domestic law did not therefore directly cause the violation, which was a consequence of its interpretation by the Conseil d'Etat, which did not disclose the memorial in reply to the applicant (the defendant in this case) considering – wrongly in the European Court's opinion – that it included no new element that might have any bearing on the outcome of the dispute.

Taking into account the fact that the courts concerned grant direct effect to the Convention, measures taken to draw their attention to this judgment will suffice to avoid new, similar violations.

In particular, the judgment has been brought by the Conseil d'Etat documentation centre to the attention of the Conseil d'Etat, of the administrative courts and of the administrative courts of appeal, via their respective intranet sites, with a view to granting the broadest possible publicity to all administrative courts.

Since October 2008, the judgment has appeared permanently, together with a commentary, on the intranet site of the Ministry of the Interior's Office for European, International and Constitutional Law – Directorate of Civil Rights and Legal Affairs. This site is accessible to all staff of the Ministry and the external departments attached to it (central government service, prefectures, police). Furthermore, the judgment has been circulated to all the administrative courts (first instance and appeal) through the Conseil d'Etat intranet site and its legal documentation centre's information service. It has also been sent out specifically to the courts and directorates of the Ministry of Justice with an interest in the case. All these measures affect the authorities with responsibilities in the enforcement of decisions delivered by administrative courts (see the section of the Court's judgment on relevant domestic law and practice: Le droit et la pratique internes pertinents).

Furthermore, since July 2007, the judgment has appeared on the Court of Cassation's Internet site (in the Observatoire du droit européen section) and appears in summary form in the *Bulletin d'information de la Cour de cassation* No. 648 of 15 October 2006.

57516/00, judgment of 26 September 2006, final on 6 December 2006

Resolution CM/ResDH (2010) 88 Société de Gestion du Port de Campoloro et société fermière de Campoloro v. France

Violation of the applicant companies' right of access to a court as well as of their right to the peaceful enjoyment of their possessions due to the impossibility – for which no justification was put forward – to obtain enforcement of certain administrative courts' judgments of 1992 awarding them compensation following the annulment by a municipal council of contracts they had concluded with another local authority (violation of individual measures).

The Court considered that the payment by the state of the sums due pursuant to the 1992 domestic courts' judgments would place the applicant parties as far as possible in a situation equivalent to that had the violations of Article 6§1 of the Convention and Article 1 of Protocol No. 1 not taken place.

Hence, the European Court concluded that the respondent state should pay the applicants or their successors these sums, including the interest until the day on which the judgment was delivered, plus any tax which might be chargeable on these sums. This has been done.

Concerning the question of taxes possibly payable by the Société de Gestion du Port de Campoloro, the Minister responsible for the Budget said that "with a view to simplification, any sums that may be taxable in pursuance of this judgment will not be subject to tax for the partners (in the applicant company)". The French authorities specified that compensation received by way of damages and interest in pursuance of a court decision are not taxable in France.

Furthermore, the applicant companies' lawyer expressly confirmed to the Committee of Ministers that the case was completely settled.

Consequently, no other individual measure was considered necessary.

General measures

The European Court found both violations because the relevant authorities had not taken the necessary measures to enforce the national judicial decisions at issue. In view of the direct effect granted by these authorities to the Convention, the various measures taken to draw their attention to this judgment will suffice to avoid similar violations in the future.

58148/00, judgment of 18 May 2004, final on 18 August 2004

Resolution CM/ResDH (2010) 89 Société Plon v. France

Disproportionate interference with the applicant publishing company's right to freedom of expression on account of a blanket ban, in October 1996, on the distribution of a book published on 17 January 1996 (and submitted to a temporary ban the day after), containing information covered by medical confidentiality relating to former French President François Mitterrand (violation of Article 10).

Individual measures

The European Court held that the pecuniary damage invoked by the applicant company ("loss of income" consequential to the permanent injunction prohibiting the distribution of the book) was "extremely speculative" and dismissed this claim (§61 of the judgment).

The question of the applicant company distributing the book therefore no longer arose. Indeed, at the time when the injunction prohibiting publication, termed disproportionate by the European Court, became final, the text of the book was already available on the Internet (see the Court's judgment, §§17 and 61). Subsequently, the

book was released by another publisher.

Consequently, no further individual measure seems necessary.

General measures

The judgment was circulated to the competent courts so that they might take account of it in future; in this regard, it is recalled that the French courts apply the Convention directly. Moreover, the judgment was also circulated to the Directorate for Criminal Affairs and Pardons of the Ministry of Justice and published on the Ministry intranet. Finally, commentaries on the judgment were published in several law journals.

56651/00, judgment of 18 May 2004, final on 18 August 2004

Resolution CM/ResDH (2010) 90 Destrehem v. France

Unfairness of criminal proceedings against the applicant as his conviction by the Appeal Court in 1999 was grounded on a new interpretation of the evidence given by witnesses it had not itself examined, notwithstanding the applicant's requests to that effect (violation of Articles 6§§1 and 3b)

Individual measures

The applicant may ask for his case to be re-examined under Articles 626-1 ff of the Code of Criminal Procedure. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The government confirmed that the judgment had been sent out to all the courts that might be required to hear similar cases.

59480/00, judgment of 29 March 2005, final on 29 June 2005

Resolution CM/ResDH (2010) 91 Harizi v. France

Unfairness of default criminal proceedings against the applicant in 1999. He was found guilty of failure to comply with a deportation order and was prohibited to re-enter the territory for ten years, although the reason why he was unable to appear before the Court of Appeal was that he had in the meantime been deported to Algeria and the authorities that should have issued him with documents to re-enter France had not been informed by the Paris Public Prosecutor that the applicant was summoned to appear before the Court of Appeal (violation of Article 6§1). Furthermore, pursuant to the domestic law in force at the time, given the applicant's absence, his lawyer was not permitted to attend the hearing (violation of Article 6§3c).

Individual measures

The applicant filed no objection to the Paris Court of Appeal's judgment of 15 October 1999. The sentence against him became time-barred on 21 January 2005, so could no longer be executed. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The European Court also referred to the Dentico judgment delivered by the plenary assembly of the Court of Cassation on 2 March 2001, that is after this case had come before the European Court. According to this judgment, "the right to a fair trial and the right of every person accused to be represented by counsel are incompatible with a court's judging an accused who fails to be present without excuse, without giving a hearing to the accused person's counsel, if present in the court".

In view of the critical importance of the accused being present at hearings (§ 49 of the judgment) and of the need for the applicant to be allowed entry into French territory to attend the hearing as he wished, the judgment has also been sent to the relevant authority in this case, namely the office of the Paris Public Prosecutor.

46044/99, judgment of 11 April 2002, final on 11 July 2002

Resolution CM/ResDH (2010) 92 Lallement v. France

Disproportionate interference with the applicant's right to the peaceful enjoyment of his possessions due to the inadequate compensation paid to him for the expropriation of a portion of his land in 1993, since the expropriation made it financially unviable for him to continue to farm the remaining portion of his land and thus led to the loss of his source of income, which was not covered by the compensation paid (Violation of Article 1 of Protocol No. 1).

Individual measures

The just satisfaction awarded by the Court covered the pecuniary damage resulting from the loss by the applicant of his source of livelihood without appropriate compensation, as well as the non-pecuniary damage. No other individual measure was considered necessary to execute the judgment. No other individual measure was therefore considered necessary by the Committee of Ministers.

General measures

The government confirmed that the judgment on the merits had been circulated to all the departments and courts that may have to deal with similar cases. The judgment on the merits has also been published on the www.legifrance.gouv.fr website and commented in the AJDA review (*Actualité Juridique du Droit Administratif).*

17997/02, judgment of 4 October 2007, final on 4 January 2008

Resolution CM/ResDH (2010) 93 Le Stum v. France

Breach of the applicant's right to an impartial tribunal insofar as the judge who presided over the court which ruled on the management imputed to the applicant in 1997 had already been involved in the judicial administration and liquidation proceedings against the applicant at an earlier stage, thus raising "objectively reasoned" doubts on the impartiality of the court (violation of Article 6§1).

Individual measures

Before the European Court, the applicant claimed compensation for the pecuniary damage corresponding to the amount he actually paid

pursuant to the decision against him (over 6 000 euros), but the Court rejected this request on the ground that it could not speculate as to the outcome of the proceedings at issue had the violation not taken place. The sums owed by the applicant under the judgment were actually attributable to the company under liquidation. Under those circumstances and in the light of the principle of legal certainty, reopening of the proceedings did not seem necessary. The Court also held that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage.

General measures

The finding of a violation in this kind of proceedings depends on a case-by-case appreciation in the light of the functions of the insolvency judge in the context of the insolvency proceedings. However, as noted by the Court as a subsidiary consideration (§33), the law has been amended and now when, as in the present case, a court is required to rule on a manager's potential responsibility for the insufficiency of assets, the insolvency judge may neither be part of the bench hearing of the case nor take part in the deliberations (Law No. 2005-845 of 26/07/2005; Article L651-3 of the Commercial Code). Similar measures have been taken concerning other cases of responsibilities and sentences ordered by a court against managers (obligation to meet the company's liabilities – Article L652-5; personal bankruptcy and other prohibitions – Article L653-7).

Resolution CM/ResDH (2010) 94 Palau-Martinez v. France

64927/01, judgment of 16 December 2003, final on 16 March 2004

Discriminatory and disproportionate infringement of the applicant's right to respect for her private and family life in that, in the context of divorce proceedings, in 1998, the Court of Appeal decided that her children should live with their father, on account of the alleged adverse effects on the children of the applicant's religious convictions as a Jehovah's Witness, although no social inquiry was made to ascertain the children's living conditions and their real interest (violation of Article 8 in conjunction with Article 14).

Individual measures

By a letter of 17 June 2004, the applicant's lawyer informed the Secretariat that the children were still living with their father, but the applicant did not wish to take any action in order to change this situation.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The government confirmed that this judgment had been circulated to all departments and courts that might have to deal with similar cases. The judgment has also been posted on the intranet site of the Ministry of Justice and can therefore be consulted by all members of the judiciary.

Resolution CM/ResDH (2010) 95 Pélissier and Sassi v. France

25444/94, judgment of 25 March 1999 – Grand Chamber

Breach of the applicants' right to be informed in detail of the nature and cause of the accusation against them and of their right to have adequate time and facilities for the preparation of their defence, on account of the requalification by the Court of Appeal of the charges against the applicants during the deliberations (violation of Article 6§3 a) and b)); excessive length (from 1984-1985 to 1994) of individual measures criminal proceedings (violation of Article 6§1).

The applicants' conviction is deemed null and void, as indicated in certificate No. 1 of their criminal records. This indication means that the conviction at issue is no longer effective in criminal law and must no longer be mentioned in certificate No. 2 of their criminal records, which is solely accessible to public authorities and legal entities. The applicants are therefore considered as if they had never been convicted.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

An information note concerning the Court's judgment, dated 5 July 1999, was sent to the First Presidents of Courts of Appeal and Principal State Prosecutors at Courts of Appeal with a view to its wide circulation. A long excerpt from the judgment was also issued in the *Bulletin d'information de la Cour de cassation*.

Besides, general measures have been taken to avoid excessive length of criminal proceedings as a whole. They have been described in respect of other cases (cf. Resolution CM/ResDH (2007) 39).

Resolution CM/ResDH (2010) 97 Rachdad v. France

71846/01, judgment of 13 November 2003, final on 13 February 2004

Unfairness of criminal proceedings brought against the applicant, a Moroccan national, in that he was convicted in 1998 for drug trafficking-related offences to six years' imprisonment and permanent exclusion from French territory on the sole basis of statements made by witnesses whom he had not been able to cross-examine or to have cross-examined at any stage of the proceedings (violation of Articles 6§1 and §3d).

Individual measures

On 26 January 2005, the Reims Court of Appeal invalidated the order excluding the applicant from French territory. The applicant may still request a review of his case pursuant to Articles 626-1 et seq. of the Code of Criminal Procedure.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The government indicated that the judgment had been posted on the Ministry of Justice Intranet site and could be accessed by all courts as well as by the Ministry of Justice directorates. The government added that the judgment had been circulated to all courts that might be dealing with a similar case.

40892/98, judgment of 30 September 2003, final on 30 December 2003

Resolution CM/ResDH (2010) 99 Koua Poirrez v. France

Violation of the right of the applicant, a Côte d'Ivoire national, to the peaceful enjoyment of his possessions, due to the discriminatory rejection by the social security authorities in 1990 of his application for a disabled adult's allowance, on grounds that there was no reciprocal agreement with the Côte d'Ivoire, as required by the law in force at the relevant time (violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1).

Individual measures

Following a change in the law on 11 May 1998, the applicant submitted a fresh application and secured the payment of a disabled adult's allowance as of 1 June 1998. Where the previous period is concerned, the Court found that he "undoubtedly suffered pecuniary and non-pecuniary damage" and awarded him the sum of 20 000 euros in respect of all heads of damage.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The Act of 11 May 1998 on entry of foreign nationals into France, their residence in the country and the right of asylum (Act No. 98-439) abolished the contested nationality requirement.

37637/05, judgment of 17 July 2008, final on 17 October 2008

Resolution CM/ResDH (2010) 100 Sarnelli and Matteoni and others v. Italy

Breach of the applicants' right to the peaceful enjoyment of their possessions on account of the inadequate compensation awarded to them in 2005 following the occupation of the applicants' land under expedited expropriation procedures by the state authorities in 1981 and the applicants' subsequent loss of title by effect of the case-law rule of "constructive expropriation" (occupazione acquisitiva). According to this rule, the public authorities acquire title to the land from the outset if work has been carried out on the expropriated land, irrespective of whether its occupation is eventually found lawful or not by the courts (violations of Article 1 of Protocol No. 1). Unfairness of the related proceedings, due to the unjustified retroactive application of a new compensation regime provided by a Law of 1992, less favourable to the applicants (violation of Article 6§1).

Individual measures

The European Court awarded just satisfaction in respect of the full amount of pecuniary and non-pecuniary damage sustained. As regards the amount of pecuniary damages, the Court awarded "an amount corresponding to the difference between the value of the property at the time of expropriation and the amount obtained at the domestic level, plus indexation and interests so as to offset, at least in part, the long period for which the applicants have been deprived of the land" (judgment Sarnelli, §42, see also §77 of the Matteoni judgment).

General measures

1) Findings of the European Court

Under Article 46 in a judgment concerning, *inter alia* the same issues (Scordino No. 1, 36813/97, judgment of 29 March 2006, Mostacciuolo group, 64705/01, Section 4.2), the European Court considered that "the respondent state should, above all, remove every obstacle to the award of compensation bearing a reasonable relation to the value of the expropriated property, and thus ensure, by appropriate statutory, administrative and budgetary measures, that the right in question is guaranteed effectively and rapidly in respect of other claimants affected by expropriation of property, in accordance with the principles of the protection of pecuniary rights set forth in Article 1 of Protocol No. 1, in particular the principles applicable to compensation arrangements" (§237).

The Court has also reiterated that "in many cases of lawful expropriation, such as a distinct expropriation of land with a view to building a road or for other purposes "in the public interest", only full compensation can be regarded as reasonably related to the value of the property (Scordino No. 1, § 256). However, legitimate objectives of "public interest", such as those pursued by measures of economic reform or measures designed to achieve greater social justice, may call for less than the reimbursement of the full market value" (Matteoni and others, § 50; Scordino No. 1, § 256).

2) Declaration of unconstitutionality

Following the Scordino No. 1 judgment (see above), the Court of Cassation responded with three Orders, (one of 29 May 2006 and two of 19 October 2007) all raising the problem of the compliance of Article 5bis of Law No. 359 of 1992 with the constitution and the Convention.

In its decision No. 348 of 24 October 2007, the Constitutional Court declared Article 5bis of Law No. 359 of 1992 unconstitutional, and, consequently, also paragraphs 1 and 2 of Article 37 of the Consolidated Text containing measures reforming expropriation (Presidential decree No. 327 of 2001, modified in 2002 and in force since 2003), which endorsed this provision. The Constitutional Court's reasoning underlined the incompatibility of the provision at issue with both Article 42 of the constitution and Article 1 of Protocol No. 1 to the Convention, as well as with the case-law of the European Court, on account of the inadequate amount of compensation provided (between 30 and 50% of the estimated market value of the property) subsequently taxed at a rate of 20%. According to the Constitutional Court, such compensation was neither reasonably related to the property value, as advocated by the Strasbourg Court, nor coherent with the notion of "serio ristoro" (serious restoration) affirmed in its own case-law on the subject. However, the Constitutional Court recalled that the legislator will not be obliged to award full compensation: when seeking for a "fair balance" between the demands of the general and individual interests, the legislator will have to take into account the social function of property as protected by Article 42 of the Constitution. The declaration of unconstitutionality determined the retroactive non-application of the provision at issue in all pending domestic proceedings.

3) Legislative changes

The Act on the 2008 budget (Law No. 244 of 24/12/2007) amended the consolidated text on expropriation, in particular Article 37, paragraphs 1 and 2. The amended article provides that compensation for expro-

priation of building land must be fixed at the level of the market value of the property. If the expropriation is carried out pursuing objectives of economic, social or political reform, compensation may be diminished by 25%. The provision at issue applies to all pending proceedings, with the exception of proceedings in which compensation for expropriation has already been accepted or has been finally fixed. The Italian authorities have indicated that recent judgments of the Court of Cassation on the subject (judgments Nos. 26275 of 14/12/2007, 599 of 14 January 2008, and 3175 of 11 February 2008) confirmed the application of this criterion for compensation, meanwhile recalling the European Court's case-law on the amount of compensation. According to this case-law, full compensation must be awarded in case of an isolated expropriation. Instead, the reimbursement may be lower than the full market value of the property if the expropriation is carried out as part of a process of economic, social or political reform. The amount must then be converted to current value to offset the effects of inflation, and interest must be paid; it must also be completed by compensation for the occupation of the property (interest calculated on the compensation for expropriation for the period previous to expropriation).

Resolution CM/ResDH (2010) 101 Covezzi and Morselli v. Italy

52763/99, judgment of 9 May 2003, final on 24 September 2003

Violation of the right of the applicants to respect for their family life due to the Youth Court's failure to adequately involve them in the decision-making process concerning their parental rights. In 1998, the Youth Court, having ordered the removal of four of the applicants' children (then aged 11, 9, 7 and 4), waited more than four months before hearing the applicants and more than twenty months before withdrawing their parental rights in 2000. During these excessively long periods, the tribunal's initial emergency care order was extended without re-examination on the merits and the applicants had no effective remedy to challenge it (violation of Article 8).

Individual measures

The adoption of individual measures does not appear necessary in this case: the European Court found no breach of the Convention as regards the emergency care order made in respect of the applicants' children or the way in which it had been implemented, the failure to hear the applicants before its implementation, the placement of the children or the lengthy suspension of contacts between the children and the applicants, who had been convicted of sexually abusing the children.

General measures

1) Legislative measures

After the facts at the origin of this case, a new law (No. 149/01, which entered into force on 27 April 2001) modified the provisions concerning adoption and placement of minors in public care. This law provides for greater involvement of parents at the beginning of emergency order proceedings, in particular by allowing them to participate, assisted by a lawyer, in enquiries ordered by the tribunal, to file their applications and to request the judge's authorisation to access the file. The law confirms the tribunal's obligation to decide within 30 days whether to confirm, modify or revoke emergency care orders. Furthermore, the suspension of the proceedings should be motivated and cannot exceed one year.

2) Awareness activities

In order to raise Youth Court judges' awareness of the Convention's requirements as interpreted in the European Court's case-law on family matters, the judgment of the European Court was communicated to all youth courts in December 2003, and published in the Official Bulletin of the Ministry of Justice, No. 1 of 15 January 2004.

Furthermore, the Supreme Judicial Board (CSM) had organised seminars concerning the case-law of the European Court and the execution of its judgments.

Resolution CM/ResDH (2010) 102, Gurov v. Moldova

36455/02, judgment of 11 July 2006, final on 11 October 2006

Unfair civil proceedings: the Appeal Court which decided against the applicant in 2002 was not a "tribunal established by the law" because it was presided by a judge whose term of office had expired since 2000 – at the time of the facts the practice allowed judges, whose term of office had expired, to continue to exercise their functions, without a legal basis, for an undetermined period, at the discretion of the executive (violation of Article 6§1).

Individual measures

The European Court recalled that where it has found that an applicant's case has been decided by a tribunal which was not independent and impartial within the meaning of Article 6, paragraph 1, of the Convention, it has considered that, in principle, the most appropriate form of relief would be to ensure that the applicant was granted in due course a rehearing of the case by an independent and impartial tribunal. The Court further noted that under Moldovan law it was possible for the applicant to obtain a re-hearing of her civil case in the light of the Court's finding (paragraph 43 of the judgment). Accordingly, the Court decided not to grant any just satisfaction (paragraph 44).

Following the European Court's judgment, the applicant requested the reopening of the proceedings in her case. On 1 November 2006, the Supreme Court of Justice (Civil and Administrative Chamber) granted the applicant's request for reopening, quashed the decision of the Court of Appeal of 16 April 2002, and referred the case for re-hearing to the Court of Appeal. On 15 February 2007, the Court of Appeal confirmed the decision of the first-instance court of 5 October 2001, ruling in favour of the applicant.

General measures

On 22 July 2005, new provisions governing the appointment of judges were introduced in the Law on the status of judges of 20 July 1995. They provide that judges are first appointed for a 5-year term by the President of the Republic of Moldova at the proposal of the Supreme Council of Magistrates. At the end of this period, judges are appointed by the president until they reach 65 years.

37328/97, judgment of 29 January 2002, final on 29 April 2002

Resolution CM/ResDH (2010) 103 A.B. v. the Netherlands

Unjustified interference with the applicant's right to respect for his private life due to the control, by the prison authorities in the Netherlands Antilles where he was confined, of his correspondence with his lawyer – a former inmate – and the former European Commission of Human Rights between 1997 and 1998 (violation of Article 8). Lack of an effective remedy to complain about his detention conditions or the interference with his correspondence, since the authorities did not adequately implement the relevant judicial orders, as well as the urgent CPT recommendations (violation of Article 13).

Individual measures

The applicant was released on 27 February 1998, having served his prison sentence. The European Court awarded just satisfaction in respect of the non-pecuniary damage sustained. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The regulations governing the prison system of the Netherlands Antilles were changed after the facts of this case, notably with the introduction on 06 August 1999 of the National Decree containing general measures and adopting the Prison Rules 1999. These provisions seem to remedy the violations of Article 8 found by the Court. Article 26 of this decree states that correspondence with anyone who is entitled to take cognisance of complaints or to hear cases following a complaint shall not be subject to scrutiny and shall not be opened without the inmate's written consent. Furthermore, the blanket provision banning all correspondence with former inmates was lifted (Article 25 of the decree).

The violation of Article 13 also seems to have been remedied, since the judgment of the Court was communicated to the Netherlands Antilles penitentiary authorities, drawing their attention to the need to secure adequate implementation of judicial orders aimed at improving the shortcomings of penitentiary facilities, in order to prevent violations similar to those found in the present case. In addition, the report by the CPT on the Netherlands Antilles (concerning their visit in February 2002) is significantly more positive than the earlier reports, and the urgent recommendations made in this report were implemented relatively quickly. Furthermore, the report by the CPT on the Netherlands Antilles of 2007 indicates that various improvement plans have been drawn up in the context of the Netherlands Antilles Security Plan which are intended to implement a sustained improvement of the administration of the prison system among other things. The State Secretary of the Interior and Kingdom Relations promised an additional amount of 9.5 million euros for the prison system on the Netherlands Antilles. This amount has been made available to resolve the issues raised by the CPT. Finally, semi-annual reports are submitted by two independent experts.

Lastly, the judgment of the European Court was published in sevaral legal journals in the Netherlands, in particular, the *Nederlands Juristenblad* (2002, 359) *NJCM-Bulletin* (2002, 1033), E*uropean Human Rights Cases* (2002, 23) and *Nederlandse Jurisprudentie* (2002, 619).

46300/99, judgment of 9 November 2004, final on 9 February 2005

Resolution CM/ResDH (2010) Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands

Violation of the applicant companies' right of access to a court as they have not been able to exercise their right of appeal effectively. In December 1995, they were persuaded by the Advocate General to withdraw their appeals in exchange of remission of sentence. However, their pleas for remission of sentence were dismissed in January 1997, when it was no longer possible to lodge a further appeal. Excessive length (1990 – 1998) of criminal proceedings (violations of Article 6§1).

Individual measures

According to the new legislation which entered into force on 1 January 2003, the applicants may request the reopening of criminal proceedings following the finding of a violation by the Court (Article 457 § 1 (3) of the Code on Criminal Procedure). Consequently, the Committee of Ministers considered that no further individual measures were necessary in this case.

General measures

Given the direct effect of the European Court's judgments in the Netherlands, all authorities concerned are expected to align their practice with the present judgment. For this purpose, the judgment of the Court was published in several legal journals in the Netherlands, in particular in the *European Human Rights Cases* (2005, No. 2) and *Nederlands Juristenblad* (2005, No. 49). Furthermore, the judgment was presented specifically to the Council for the Judiciary and the Public Prosecution Service.

Dutch law also provides the possibility to file a complaint against the behaviour of a member of the judiciary.

As regards the excessive length of proceedings, the Netherlands authorities recalled that in criminal cases, recognition by the domestic court that the reasonable time requirement had been violated may result in a mitigation of the penalty. The Supreme Court set out general guidelines in this respect. (Supreme Court 3 October 2000 (LJN: AA7309) and 17 June 2008 (LJN: BD2578)).

60665/00 judgment of 1 December 2005, final on 1 March 2006

Resolution CM/ResDH (2010) 108 Tuquabo-Tekle and others v. the Netherlands

Disproportionate interference with the applicants' right to respect for their private and family life due to the authorities' refusal to allow Mrs Tuquabo-Tekle's daughter, living in Eritrea, to join her mother and stepfamily in the Netherlands (violation of Article 8).

Individual measures

On 4 February 2010, the Royal Netherlands Embassy in Khartoum (Sudan) issued the daughter of Mrs Tuquabo-Tekle, who had presented herself there, a laissez-passer and an entry visa for the Netherlands. On 11 February 2010, she arrived in the Netherlands. Consequently, no

other individual measure was considered necessary by the Committee of Ministers. Mrs Tuquabo-Tekle was issued a residence permit on 23 April 2010.

General measures

Following the European Court's judgment, on 25 September 2006, the Ministry of Justice adopted a new policy in cases concerning the right to family reunion of minors with a parent legally residing in the Netherlands (TK 2006-2007, 18 637, No. 1089). According to the authorities, the criterion of "factual family ties" used to determine whether a right to family reunion exists, is now interpreted in conformity with the European Court's interpretation of Article 8 of the Convention. Thus, it is now assumed that a child has factual family ties with the parent concerned if family life within the meaning of Article 8 of the Convention exists. The judgment was published in the *European Human Rights Cases* 2006, p. 648, No.11, *Nederlands Juristenblad* (2006, 648) and *Jurisprudentie Vreemdelingenrecht* (2006, 34).

Resolution CM/ResDH (2010) 109 Bocos-Cuesta v. the Netherlands

54789/00 judgment of 10 November 2005, final on 10 February 2006

Unfairness of criminal proceedings against the applicant as he was denied a proper opportunity to challenge pre-trial witness statements of decisive importance for his conviction given by minors whom he was suspected of sexually assaulting (violation of Article 6§1 in conjunction with Article 6§3d).

Individual measures

The Court dismissed the applicant's claim for just satisfaction in respect of pecuniary and non-pecuniary damages, considering that national law allowed for adequate redress through the reopening of the proceedings (Article 457 of the Code on Criminal Procedure). Consequently, the Committee of Ministers considered that no further individual measures were necessary in this case. The applicant has however not made use of this opportunity.

General measures

Since 1 October 2006, the Netherlands police have been making audiovisual recordings of interviews with persons under 16 if the offence in question carries a maximum penalty of 12 years' imprisonment or more, or if this maximum penalty is less than 12 years but the offence has resulted in the death or serious bodily injury of the victim, if the offence is of a sexual nature with a maximum penalty of 8 years' imprisonment or more, or if it involves sexual abuse in a dependent relationship. These measures have now been established in the instruction "Audio and Audiovisual Recording of the Examination of Informants, Witnesses and Suspects" (Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten (*Staatscourant*, 28 July 2010, No. 11885)).

In addition, the Court's judgment was published in several legal journals in the Netherlands, in particular in the *Nederlands Juristenblad* (2006, No. 1, pp. 18-19), *Nederlandse Jurisprudentie* (2006, 239) and *Trema* (2005, No. 10, pp. 442-444). The Netherlands authorities consider that given the direct effect of Court's judgments in the Netherlands, all authorities concerned are expected to align their practice on this judgment. This judgement is still regularly being given consideration in legal publications, see for example the publication of Bas de Wilde in *NJCM-bulletin* (2009, 34-5, pp. 495-511).

Resolution CM/ResDH (2010) 110 Dacosta Silva v. Spain

69966/01, judgment of 2 November 2006, final on 2 February 2007

Unlawfulness of the house arrest imposed in 1998 on the applicant, member of the Civil Guard, by his superiors in the context of military disciplinary proceedings (violation of Article 5§1a).

Individual measures

The house arrest imposed on the applicant was limited in time and he is no longer deprived of his liberty. Before the European Court he stated that the finding of violation of his rights under the Convention constituted sufficient vindication in respect of the damages he had sustained. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The new Law No.12/2007 removed the disciplinary sanction of the house arrest. The judgment has been translated into Spanish and published in the Ministry of Justice's information bulletin (Boletín de Información, ministero de justicia).

Resolution CM/ResDH (2010) 111 Komanický v. Slovak Republic

32106/96, judgment of 4 June 2002, final on 4 September 2002

Unfair civil proceedings, in that the District court proceeded with the applicant's case (concerning his dismissal in 1991) in his absence, although he had notified the court in advance that he could not attend the hearing for health reasons (violation of Article 6§1).

Individual measures

Following the judgment of the European Court, the applicant complained on several occasions of the impossibility to request the reopening of the domestic proceedings due to the expiry of the time-limit provided in the Code of Civil Procedure ("CCP"). At this time, according to Article 230§2 of the CCP the request for reopening had to be made within three years following the date of the final domestic decision and in the applicant's case this time-limit had expired before the date of the judgment of the European Court.

The Slovakian Government indicated in this respect that, considering the circumstances of the case, the violation found was not based on procedural shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings. Consequently, in the government's opinion, the reopening of the domestic proceedings was not required in this case.

That being so, the Committee indicated to the Slovakian authorities that the conditions at that time governing the reopening of domestic proceedings following a judgment of the European Court constituted a considerable obstacle for such requests.

In 2005, the provisions on the reopening of the proceedings were modified. The amended law provides at present that the request for reopening must be lodged within a time-limit of six months following

the moment when the interested party learns about the ground for reopening. In addition, according to Article 230§2 of the CCP, in cases where the reopening is requested following a judgment of the European Court, the request can be made after the expiration of the maximum time-limit of three years from the date of the final domestic judgment.

Following the entry into force of these legislative amendments, the applicant requested the reopening of the proceedings called into question by the judgment of the European Court. His request was rejected by the first-instance court on 16 January 2006. The court considered, *inter alia* that the contested domestic decision was not declared incompatible with the Convention and that the violation found was not based on procedural shortcomings of such gravity that a serious doubt was cast on the outcome of the domestic proceedings in question. The decision of the first-instance court was confirmed on appeal on 6 October 2006. The applicant also submitted a constitutional claim. This claim was rejected as manifestly ill-founded on 9 December 2009.

In these circumstances, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The judgment of the European Court was published in *Justičnà* Revue No. 11/2002. It was also sent to the President of the Supreme Court and to the presidents of all district courts, to be disseminated to all judges.

13284/04, judgment of 8 November 2005, final on 8 February 2006

Resolution CM/ResDH (2010) 112 Bader and Kanbor v. Sweden

Risk for the first applicant of being arrested, submitted to ill-treatment and executed if a decision of 2003 was applied, which rejected his request for asylum for himself and his family and ordered their deportation to Syria, where he had been sentenced to death in absentia (violation of Articles 2 and 3).

Individual measures

The applicants were granted a permanent residence permit on 27 October 2005. This measure seems to ensure that the applicants are not expelled to Syria. Therefore, no further individual measure appears necessary.

General measures

Having regard to the direct effect granted to the Convention and to the case-law of the European Court in Swedish law, the government considers that the dissemination of the European Court's judgment to the competent authorities is sufficient measure for execution.

The government indicated, in this respect, that the European Court's judgment has been translated and published on the government's Internet site (www.manskligarattigheter.gov.se) and has been sent out to the relevant authorities.

In addition, the authorities indicated that the appeal procedure in cases concerning aliens was changed in March 2006. The former appeal organ, the Aliens Appeal Board, was replaced by special Migration Courts, thus creating a three-level appeal system with the Administrative Court of Appeal in Stockholm (Kammarrätten i Stockholm) as the highest instance. Moreover, a new Aliens Act entered into force at the same time. It provides clearer rules on the issue of residence permits and places more emphasis on grounds for protection.

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

Resolution CM/ResDH (2010) 113 Verein gegen Tierfabriken (VgT) (No. 2) v. Switzerland

Failure of the Swiss authorities to comply with their positive obligation to take the necessary measures to allow the applicant (an animal protection association) to broadcast a television commercial, after the Court had found, in a first judgment in 2001 (Verein gegen Tierfabriken (VgT) No. 24699/94, judgment of 28 June 2001), that the ban imposed on the applicant's commercial had violated its freedom of expression (violation of Article 10). In particular, the Swiss Federal Court had refused on excessively formalistic grounds the applicant's request to have the proceedings at issue in the 2001 case reopened.

Individual measures

The Court made no award for just satisfaction as the applicant association submitted no claim for pecuniary or non-pecuniary damage.

According to the action report provided promptly by the Swiss authorities, the applicant association filed another request for review, which the Federal Court granted on 4 November 2009 and quashed its judgments of 29 April 2002 and 20 August 1997. Furthermore, allowing the applicant association's initial administrative-law appeal, it also quashed the decision of the Federal Office of Communication of 22 May 1996. Moreover, it held that the commercial did not constitute a prohibited political television advertisement and directed the Swiss radio and television company (SRG) and Publisuisse SA to broadcast it. The commercial was broadcast three times between 27 and 29 January 2010 by SRG and Publisuisse SA.

Consequently, no other individual measure appears necessary.

General measures

The Swiss authorities immediately transmitted the European Court's judgment to all authorities and agencies directly concerned. It was also presented in the quarterly bulletin of the Federal Ministry of Justice. These quarterly bulletins are sent out to all Federal authorities concerned (Federal Court, Federal Administrative Court, Federal Criminal Court, Office of the Parliament), as well as to all cantonal judicial authorities (in particular Courts of Appeal and Justice Departments). A summary of the judgment was also published in the Annual Report of the Federal Council on the activities of Switzerland within the Council of Europe in 2009.

58757/00, judgment of 13 July 2006, final on 13 October 2006

Resolution CM/Res DH (2010) 114, Jäggi v. Switzerland

Failure to respect the applicant's right to his private life due to the refusal to authorise him to obtain DNA evidence from the mortal remains of a person, believed to be his father, to estab-

lish his parentage with certainty (violation of Article 8).

Individual measures

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

In January 2007, the applicant lodged an application for revision with the Federal Court, seeking first to quash the 1999 domestic decisions by which he was refused a DNA test on the remains of his alleged father and secondly the authorisation to proceed with the same test at his own expense. On 30 July 2007, the Federal Court admitted the application and quashed its own previous decision of 1999. However, it excluded the possibility for the applicant to directly invoke the European Court's judgment to obtain the authorisation to proceed with the DNA test from the Federal Court itself, because this fell within the competence of a first-instance court.

Subsequently, the applicant asked the Geneva first-instance court for authorisation to proceed with the DNA test. On 12 January 2009, this court authorised him to order a DNA test on the body of his alleged father, with a view to proving whether or not he was his ascendant. Subsequently, the test was carried out and, in September 2009, the applicant was informed of its results confirming that A.H. was his father.

Consequently, no other individual measure appears necessary.

General measures

In July 2006, the European Court's judgment was sent out to the authorities directly concerned and was brought to the attention of the Cantons via a circular of November 2006. Furthermore, it was published in *Verwaltungspraxis der Bundesbehörden* and was mentioned in the Federal Council's annual report on the activities of Switzerland in the Council of Europe in 2006. The judgment has also been commented (*inter alia*: Regina E. Aebi-Müller, EGMR-Entscheid Jäggi c. Suisse: "Ein Meilenstein zum Recht auf Kenntnis der eigenen Abstammung", Jusletter 2 OCtober 2006, Rz. 8).

Furthermore, the Swiss Federal Court, in a judgment delivered on 28 February 2008 concerning the protection of identity and the right of children of age to know their ancestry (ATF 134 III 241), referred to the Jäggi judgment. It is also presented as a reference judgment (Leiturteil) in the Collection of the Federal Court's judgments.

Resolution CM/ResDH (2010) 115 Selçuk v. Turkey

21768/02, judgment of 10 January 2006, final on 10 April 2006

Excessive length of the applicant's detention on remand (more than four months) in the light of the lack of convincing grounds justifying the continuation of this detention and of the fact that the applicant was a minor at the time (violation of Article 5§3).

Individual measures

As indicated in the European Court's judgment, the applicant was released pending trial in 2002. The Court awarded him just satisfaction in respect of non-pecuniary damage. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

Law No. 5395 on the protection of minors came into force on 15 July 2005. Under the terms of its first provision, its purpose is to determine the guiding principles and the procedures relating to measures to safeguard the rights and health of minors who have committed an offence, and to the establishment of juvenile courts.

Various provisions of this law show in particular how the juvenile courts, assisted by experts specialising in psychology, are to operate for the effective protection of minors' rights. For instance, Article 4 of the law, after providing for the effective participation of minors and their families in the juvenile court decision-making processes (Article 4 d)) and close collaboration between minors, their family, public institutions and non-governmental organisations (Article 4 f)), provides that proceedings against minors must be prompt, effective, and fair and must seek to foster the rights of the minors against whom proceedings are brought before the juvenile courts.

Specifically, measures restricting freedom including prison sentences must be applied as a last resort to minors (Article 4 i)). Instead of measures restricting freedom, the law provides measures not involving detention, such as confinement to certain designated places or prohibition of contact with certain persons (Article 20 (1)). The reaching of a decision to hold a minor in detention on remand is moreover subject to strict conditions that must be observed by the judges who in turn receive special training in child rights and psychology (Article 28 (1) and Article 32). Thus, a remand decision can only be taken if it is proved that no result can be achieved through alternative measures or if the minors do not comply with these measures. Nor may a measure of detention be applied where minors are less than 15 years of age unless the offence with which they are charged is punishable by a prison sentence of over 5 years (Article 21). It is pointed out that where a decision to order detention is taken in respect of a minor, he or she must be held in units for minors, separately from adults (Article 4 k)).

As regards the inadequacy of the grounds justifying the continuation of detention on remand for minors (violation of Article 5§3) found by the Court in this case, the Turkish authorities consider that the general organisation of the law on protection of minors, particularly the predominance of protective measures over custodial measures such as detention on remand, together with juvenile court judges' special training in the psychology of minors and the fact that these courts are assisted by experts including psychologists, will prompt judges to give a detailed statement of grounds for the need to place and to keep minors in detention on remand.

Lastly, the judgment of the European Court has been published and circulated to the authorities concerned. The Turkish translation of the judgment is available on the websites of the Ministry of Justice and the Court of Cassation.

Resolution CM/ResDH (2010) 116 Tunceli Kültür ve Dayanışma Derneği v. Turkey

61353/00, judgment of 10 October 2006, final on 12 February 2006

Disproportionate interference with the right to freedom of association of the applicant, a cultural association, in that it was dissolved by the authorities in

2000 under the Associations Act No. 2908, following the criminal conviction of its chairperson and of a member of its board of management due to statements considered contrary to the association's social aim (violation of Article 11).

Individual measures

The applicant party may apply for registration in accordance with the provisions of the new Law on Associations (Law No. 5253) which came into force on 23 November 2004. The Turkish authorities informed the Committee that the applicant had made no request for registration. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The Associations Act No. 2908 at the origin of the violation was repealed and replaced by the new Law No. 5253, which contains no provision similar to former Article 76§1 mentioned above. According to the provisions of the new law, the criminal conviction of members of an association for having carried out activities against the social aim of their association does not amount to the dissolution of the latter.

28602/95, judgment of 21 February 2006, final on 21 May 2006

Resolution CM/ResDH (2010) 117 Tüm Haber Sen and Çınar v. Turkey

State's failure to comply with its positive obligation to secure the applicant civil servants' trade union with the enjoyment of its freedom of association: the applicant trade union was dissolved in 1995 because in the absence of clear legislation, the courts considered that all trade union activity was excluded for civil servants, despite Turkey's ratification of the International Labour Organisation Convention No. 87 providing such a right (violation of Article 11).

Individual measures

Under the new law on civil service unions (see below), the applicant trade union may be re-established. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The applicant trade union was active from 1992 until May 1995, when it was dissolved. The prohibition on civil servants forming trade unions was lifted by legislative amendments made shortly after the facts at the origin of this case.

A number of constitutional and legislative amendments have been made with the aim of allowing civil servants to form trade unions. Article 51 (as amended in October 2001) and 53 (as amended in July 1995) of the Constitution now allow civil servants to found and become members of trade unions. Article 53, paragraph 3, provides that "the unions and their higher organisations to be established by civil servants [...], may appeal to the judicial authorities on behalf of their members and may hold collective bargaining meetings with the administration in accordance with their aims".

In addition, Law No. 4688 on civil service unions, as amended by Law No. 5198 of 24 June 2004, guarantees trade union freedom to civil servants so that they may "defend their economic, social and professional interests" (Article 1 and 14). Article 18 imposes a general prohibition against any discriminatory act by employers which could risk undermining union freedom in employment matters. In particular, dismissing a civil servant on the ground of his or her affiliation to a union or participation in union activities outside working hours (or with the employer's consent, within working hours) is prohibited by Article 18§1.

The European Court's judgment in this case was translated into Turkish and sent out to the authorities concerned.

35765/97, judgment of 31 July 2000, rectified on 24 October 2000, final on 31 October 2000

Resolution CM/ResDH (2010) 118 A.D.T. v. the United Kingdom

Breach of the applicant's right to respect for his private life on account of his conviction, in 1996, for gross indecency, in accordance with the law applicable at the time, which prohibited homosexual acts between more than two male adults, even when the latter were consenting and the acts had taken place in private (violation of Article 8).

Individual measures

The European Court accepted the applicant's claims in respect of pecuniary and non-pecuniary damages and awarded him a sum covering, *inter alia* the value of the items confiscated and destroyed as a result of a search carried out at the applicant's home.

The applicant was conditionally discharged on 20 November 1996 and his representative indicated in 2003 that they did not wish to pursue the issue of possible further individual measures. Furthermore, since the entry into force in 2004 of new legislation, (see general measures below) persons convicted under the same circumstances may request the removal of restrictions attached to this type of conviction.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

New legislation (Sexual Offences Act 2003) came into force on 1 May 2004. This Act repealed entirely the provisions at the origin of the applicant's conviction in this case, i.e. sections 12 (buggery offence) and 13 (gross indecency) of the Sexual Offences Act 1956, as well as section 1 of the Sexual Offences Act 1967 which provided that a homosexual act "in private" shall not be an offence, except when more than two persons took part. The new law operates around the concept of consent and there are no specific offences for any homosexual activity in private between consenting adults.

In addition, persons subject to the obligation to notify certain information to the police (under the Sex Offenders Act 1997, which was subsequently replaced by the Sex Offenders Act 2003) as a result of a conviction, finding or caution in respect of the provisions at issue in the present case can henceforth apply to the Secretary of State to cease to be subject to these requirements. This also applies to persons convicted before the new Act came into force.

The judgment of the European Court was published at (2001) 31 EHRR 803 and has received wide coverage in the press.

Resolution CM/ResDH (2010) 120 John Murray v. the United Kingdom and 4 other cases

Quinn, 23496/94, Interim Resolution DH (98) 214; Kevin Murray, 22384/93, Interim Resolution DH (98) 156; Magee, 28135/95, judgment of 6 June 2000, final on 6 September 2000; John Murray, 18731/91, judgment of 8 February 1996; and Averill, 36408/97, judgment of 6 June 2000, final on 6 September 2000

Unfairness of criminal proceedings on account of the infringement of the right to silence, the right not to incriminate oneself and denial of access to legal advice during the first 48 hours of detention, in combination with the provisions in national law whereby the choice of the accused to remain silent could result in a court or a jury drawing unfavourable conclusions (violation of Article 6§3c alone or combined with Article 6§1).

Individual measures

In the Magee, Averill and the John Murray cases, the European Court held that the finding of a violation of the Convention in itself constituted sufficient just satisfaction. In the Kevin Murray and Quinn cases, the applicants were awarded just satisfaction in respect of non-pecuniary damages.

In the Quinn, Averill, John Murray and Kevin Murray cases, no violation was found of Article 6, paragraph 1, with respect to the courts drawing adverse inferences from the silence of the accused, given the safeguards in place and the weight of the evidence in each case.

In the Magee case, the European Court found a violation of Article 6, paragraph 1 in conjunction with Article 6, paragraph 3 (c) in that the applicant was denied access to a solicitor. The incriminating statements made by the applicant within the first 24 hours of detention prior to being granted access to a solicitor became the central platform of the prosecution's case. The applicant was convicted and sentenced to 20 years' imprisonment. Referring to the judgment of the European Court, the Court of Appeal quashed the applicant's conviction on 6 April 2001.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

A number of interim measures were taken by the United Kingdom before the adoption of the legislative measures set out below. These included:

i) guidance to police officers to ensure that suspects have legal advice before being questioned;

ii) guidance to prosecutors not to rely on inferences drawn from defendants' silence where no legal adviser was present and to inform any court likely to rely on such silence of the John Murray judgment.

In England and Wales, Section 58 (on non-permissible inferences from silence of suspects prior to access to legal advice) of the Youth Justice and Criminal Evidence Act 1999, came into force on 01/04/2003 (under the Youth Justice and Criminal Evidence Act 1999 (Commencement Order 2003); SI 2003 No. 707 (C.33)). Section 58 sets out that provisions of a previous law (sections 34 and 36-8 of the Criminal Justice and Public Order Act 1994) permitting a court to draw inferences from the silence of an accused do not apply where the accused was at an authorised place of detention and where the accused did not have prior access to legal advice. The Code of Practice covering the detention, treatment and questioning of persons by police officers (revised Code C), which enabled the implementation of Section 58, came into force on 1 April 2003.

In Northern Ireland, the relevant provision (Article 36, on non-permissible inferences from silence of suspects prior to access to legal advice) of the Criminal Evidence Order (Northern Ireland) 1999 came into force on 1 March 2007. Article 36 of the Criminal Evidence Order (Northern Ireland) 1999 mirrors Section 58 of the Youth Justice and Criminal Evidence Act 1999.

Resolution CM/ResDH (2010) 124 Martinie, Richard-Dubarry and Siffre, Ecoffet and Bernardini v. France

Application No. 58675/00, judgment of 12 April 2006 – Grand Chamber; Application No. 53929/00, judgment of 1 June 2004, final on 1 September 2004; Application No. 49699/99+, judgment of 12 December 2006, final on 12 March 2007, rectified on 27 March 2007

Excessive length of civil proceedings before financial courts; unfairness of civil proceedings (violations of Article 6§1).

Individual measures

1. Martinie case

Before the European Court, the applicant claimed a sum of 762.25 euros (see §§12 and 57 of the judgment) plus interest at the statutory rate, in respect of the sum still owed by him at the end of the domestic proceedings which had led to reduction/remission of the amount which the applicant had been ordered to pay to the school in respect of disbursements carried out on behalf of the establishment.

Where this possible pecuniary damage was concerned, the European Court considered that it could not speculate as to the outcome of the contested proceedings if the violation had not taken place. It therefore rejected the applicant's claim in this respect. Furthermore, the applicant made no request at the stage of supervision by the Committee of Ministers of the execution of the European Court's judgment.

As to the non-pecuniary damage, the European Court considered that the finding of a violation constituted in itself sufficient just satisfaction. No other individual measure therefore seemed to be necessary.

2. Richard-Dubarry case

The European Court granted just satisfaction in respect of the non-pecuniary damage sustained by the applicant. When the judgment was delivered in 2004, four sets of proceedings were still pending. The two sets pending before the regional board of audit culminated in decisions on the merits in 2007. In the two other sets of proceedings, the Court of Audit, taking account of the case-law of the European Court in this case and in the Martinie case, took steps to transfer directly to itself examination of the merits of the cases (thus reducing the time taken to give judgment) and issued a final ruling on the merits of the cases in two judgments in 2008.

The applicant appealed against these decisions and judgments.

The applicant also lodged a new application with the European Court of Human Rights in 2006 (application No. 46719/06) in which, relying on Article 6, paragraph 1 of the Convention, she complains of the length and unfairness of the financial proceedings. In its admissibility decision of January 2010, the European Court declared both of the applicant's complaints inadmissible for failure to exhaust domestic remedies, in pursuance of Article 35, paragraphs 1 and 4 of the Convention.

3. Siffre, Ecoffet and Bernardini case

The proceedings at issue have been closed, and the European Court has awarded just satisfaction in respect of the non-pecuniary damage suffered by the applicants.

II. General measures

1. Proceedings before financial courts

a. Unfairness of proceedings

The French authorities have taken several sets of measures, some of these prior to the Martinie judgment (but subsequent to the facts at issue), such as amendments to the Financial Courts Code instituting adversarial proceedings before regional boards of audit and, in some cases, providing for exclusion of the rapporteur from deliberations. Immediately after the Martinie judgment, the First President of the Court of Audit took interim measures (applied from 16 May 2006 by the financial courts), introducing, *inter alia* public hearings at first instance and at appeal, excluding the reporting judge and the prosecution from all deliberations, and authorising the parties to consult the file and obtain communication of any document. The Financial Courts Code was further amended by Decree No. 2007-543, authorising the parties to make oral observations at the hearing to amplify or add detail to written observations already submitted.

The final measures were adopted by Law No. 2008-1091 relating to the Court of Audit and the regional boards of audit, which came into force on 1 January 2009. This law was explicitly designed to meet the requirements of Article 6 of the Convention and of the European Court's judgments in these cases (see the relevant explanatory memorandum). It consolidates the provisional measures taken in May 2006 and introduces some new ones. In view of the European Court's findings in the Martinie case, it should be noted in particular that:

- public hearings are now the norm in proceedings before financial courts. Only exceptionally, after the prosecutor has been consulted, can the president of the bench decide that a hearing will be held or continued in private, where required by considerations of public order or by the confidentiality of intimate personal information or secrets protected by law;

- the adversarial nature of the proceedings has been reinforced. The financial administrator under examination (as well as the official authorising the expenditure under consideration) may henceforth present his/her observations, either in person or through counsel during the debate, and have the last word. He/she also benefits from an adversarial written procedure, having access to the file and the right to request a copy of any document, of the existence of which he/she is systematically informed. In addition, the investigation, prosecution and judgment functions are kept rigorously separate: proceedings may only be opened on application by a prosecutor (the rapporteur is no longer competent in this respect). Neither the investigating judge nor the prosecutor takes part in the deliberations of the bench.

It should be noted that, under the transitional provisions, the new law does not apply to cases in progress which gave rise to legal proceedings on a provisional basis and notified before 1 January 2009. These cases nonetheless benefit from the provisional measures previously adopted.

b. Excessive length of proceedings

Law No. 2008-1091 on the Court of Audit and the regional boards of audit mentioned above is intended to reduce the length of proceedings. Its purpose is to "satisfy" the "reasonable time requirement". Two main measures may be mentioned in this respect:

- abolition of the "double judgment" rule (provisional decision followed by final decision);

- the court order discharging a financial administrator against whom charges are not upheld may be issued by a single judge.

More generally, procedures have been simplified and harmonised between regional boards and the Court of Audit, thus increasing their efficiency. The authorities state that the time required to reach decisions on financial cases has thereby been reduced.

Finally, in cases to which this law cannot yet be applied, it is pointed out that judges, duly informed of the findings of violations in the Richard-Dubarry and Siffre, Ecoffet and Bernardini cases, apply the Convention directly and ensure compliance with Article 6§1, which covers among other things the reasonable time requirement.

c. Remedies against excessive length of proceedings

Remedies exist enabling complaints to be made about excessive length of proceedings in financial courts. One such remedy is an action to invoke the responsibility of the state before the Conseil d'Etat. Another is a complaint to the financial administrative courts themselves (internal supervision). Parties may ask the Court of Audit, in the context of its mandate to supervise the regional boards of audit, to draw up recommendations if proceedings before a regional board are lengthy. Furthermore, in similar cases, parties may always request the president of the court to take the necessary measures, exercising his or her powers as the person responsible for that court.

It is also pointed out that heads of courts' awareness of the question of excessive length of proceedings has been heightened by the supervision of the performance of public services which has been intensified since the entry into force of the Institutional Law on Finance Acts of August 2001. This performance monitoring expressly includes the average length of proceedings.

2. Proceedings before the Conseil d'Etat

As regards the violation stemming from the presence of the Government Commissioner at the deliberations of the bench of the Conseil d'Etat, general measures were adopted following the judgment in the case of Kress against France (see Resolution CM/ResDH (2007) 44) and in another five cases concerning the right to a fair trial before the Conseil d'Etat.

22520/93, judgment of 24 October 1997, final on 24 October 1997; 517/02, judgment of 21 June 2005, final on 21 September 2005

Resolution CM/ResDH (2010) 139 Johnson and Kolanis v. the United Kingdom

Continued detention of the applicants in a mental hospital (respectively from 1989 to 1993 and from 1999 to 2000) in the absence of adequate safeguards to ensure that release from detention in such situations would not be unreasonably delayed (violation of Article 5, paragraph 1 in the Johnson case and of Article 5, paragraph 4 in the Kolanis case). Lack of an enforceable right to redress (violation of Article 5, paragraph 5 in the Kolanis case).

Individual measures

Mr Johnson was released from hospital on 21 January 1993. In December 2000, Ms Kolanis was conditionally discharged from hospital to a resettlement project hostel in London.

Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

Violation of Article 5, paragraphs 1 and 4: In 2002, there was a development in domestic case-law with respect to section 73 of the Mental Health Act 1983 when the courts considered a case similar to the Kolanis case which overruled previous authority that was perceived to conflict with the requirements of Article 5 (the IH case, judgments of Court of Appeal of 15 May 2002 and of House of Lords of 13 November 2003). When giving judgment, the House of Lords took the European Court's case-law into account and found that there had been a breach of Article 5 (4). The House of Lords also gave guidance as to how the authorities should give effect to the legislation to avoid breaches in the future. According to the guidance, if the conditions fixed in a decision to direct a conditional discharge by a mental health review tribunal cannot be immediately implemented, then that decision should be considered to be a provisional decision and the tribunal should monitor progress in implementing the conditions and vary the conditions or modify its decision (see §§58-60 Kolanis).

The applicant in IH subsequently made an application to the European Court, which was found inadmissible following the judgment of the House of Lords (admissibility decision 17111/04) on the basis that "the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress as appropriate" (paragraph 2).

Concerning the violation of Article 5, paragraph 5: an enforceable right to compensation for the violation of Article 5, paragraph 4 was introduced by the Human Rights Act 1998 which entered into force in 2000 (see §85 of the Kolanis judgment).

The Johnson judgment was published in the *European Human Rights Reports* at (1999) 27 EHRR 296. The Kolanis judgment was published in *Butterworth's Medical Legal Reports* (2005) at 84 B.M.L.R. 102, and also in *The Times* on 28 July 2005.

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.

European governments act to help Roma

Representatives of the 47 Council of Europe countries, the EU and the Roma community gathering in Strasbourg on 20 October 2010 unanimously condemned widespread discrimination against Roma and their social and economic marginalisation.

Council of Europe Secretary General Thorbjørn Jagland, who called the meeting following concerns about Roma rights during the summer, said "the time for action has come. Today we have made a fresh start to actually helping the Roma population of Europe. Roma are fellow Europeans".

Member states agreed to a joint effort and pan-European response to meet the needs of the estimated 12 million Roma living in Europe.

The "Strasbourg Declaration" includes guiding principles and priorities:

- Non-discrimination, citizenship, women's and childrens rights.
- Social inclusion including education, housing and healthcare.
- Empowerment and better access to justice.

"The Strasbourg Declaration on Roma"

(1) Roma[3] in many parts of Europe continue to be socially and economically marginalised, which undermines the respect of their human rights, impedes their full participation in society and effective exercise of civic responsibilities, and propagates prejudice.

(2) Any effective response to this situation will have to combine social and economic inclusion in society and the effective protection of human rights. The process must be embraced and supported by society as a whole. A genuine and effective participation of our fellow Europeans of Roma origin is a precondition for success.

(3) While the primary responsibility for promoting inclusion lies with the member states of which Roma are nationals or long-term legal residents, recent developments concerning Roma in Europe have demonstrated that some of the challenges we face have cross-border implications and therefore require a pan-European response.

(4) As situations differ from country to country, the role of international organisations should be first and foremost to support and assist the efforts carried out at national, regional and especially local level.

(5) Based on these considerations the member states of the Council of Europe have adopted the following "Strasbourg Declaration":

(6) Reaffirming that all human beings are born free and equal in dignity and rights;

(7) Reaffirming their attachment to human dignity and the protection of human rights for all persons;

(8) Recalling the fundamental values, norms and standards of democracy, human rights and the rule of law, which are shared by the Council of Europe member states and which must guide action at all levels;

(9) Confirming their commitment to promote social inclusion and create the conditions for an effective exercise of civic rights and responsibilities by every individual;

(10) Recalling that active participation of the Roma is crucial for achieving their social inclusion and encouraging them to participate in addressing the problems of, *inter alia* relatively low rates of education and employment;

(11) Bearing in mind that the process of inclusion of Roma contributes to social cohesion, democratic stability and to the acceptance of diversity;

(12) Recalling that in the exercise of his/her rights and freedoms everyone must respect the national legislation and the rights of others;

(13) Condemning unequivocally racism, stigmatisation and hate speech directed against Roma, particularly in public and political discourse;

(14) Recalling the obligations of States Parties under all relevant Council of Europe legal instruments which they have ratified, in particular the European Convention on Human Rights and the Protocols thereto, and, where applicable, the European Social Charter and the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;

(15) Recommending that State Parties take fully into account the relevant judgments of the European Court of Human Rights and relevant decisions of the European Committee of Social Rights, in developing their policies on Roma;

(16) Recalling their commitment to the principles of tolerance and non-discrimination, as expressed in the statute of European Commission against Racism and Intolerance (ECRI);

(17) Drawing on the initiatives, activities and programmes already developed and conducted by member states aimed at the full inclusion of Roma;

(18) The member states of the Council of Europe agree on the following non-exhaustive list of priorities, which should serve as guidance for more focused and more consistent efforts at all levels, including through active participation of Roma:

Non-discrimination and citizenship

Non-discrimination

(19) Adopt and effectively implement anti-discrimination legislation, including in the field of employment, access to justice, the provision of goods and services, including access to housing and key public services, such as health care and education.

Criminal legislation

(20) Adopt and effectively implement criminal legislation against racially motivated crime.

3. The term "Roma" used throughout the present text refers to Roma, Sinti, Kale, Travellers, and related groups in Europe, and aims to cover the wide diversity of groups concerned, including groups which identify themselves as Gypsies.

Citizenship

(21) Take effective measures to avoid statelessness in accordance with domestic law and policy and to grant Roma legally residing in their national territory access to identification papers.

Women's rights and gender equality

(22) Put in place effective measures to respect, protect and promote gender equality of Roma girls and women within their communities and in the society as a whole.

(23) Put in place effective measures to abolish, where still in use, harmful practices against Roma women's reproductive rights, primarily forced sterilisation.

Children's rights

(24) Promote through effective measures the equal treatment and the rights of Roma children especially the right to education and protect them against violence, including sexual abuse and labour exploitation, in accordance with international treaties.

Empowerment

(25) Promote effective participation of Roma in social, political and civic life, including active participation of representatives of Roma in decision-making mechanisms affecting them, and co-operation with independent authorities such as Ombudsmen in the field of human rights protection.

Access to justice

(26) Ensure equal and effective access to the justice system, including where appropriate through affordable legal aid services.

(27) Ensure timely and effective investigations and due legal process in cases of alleged racial violence or other offences against Roma.

(28) Provide appropriate and targeted training to judicial and police services.

Combat trafficking

(29) Bearing in mind that Roma children and women are often victims of trafficking and exploitation, devote adequate attention and resources to combat these phenomena, within the general efforts aimed at curbing trafficking of human beings and organised crime, and, in appropriate cases, issue victims with residence permits.

Fighting stigmatisation and hate speech

(30) Strengthen efforts in combating hate speech. Encourage the media to deal responsibly and fairly with the issue of Roma and refrain from negative stereotyping or stigmatisation.

(31) Remind public authorities at national, regional and local levels of their special responsibility to refrain from statements, in particular to the media, which may be reasonably understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, or other forms of discrimination or hatred based on intolerance.

(32) Consider joining the campaign of the Council of Europe and the European Commission "Dosta! Go beyond prejudice, discover the Roma!" and enhance activities in this framework.

Social inclusion

Education

(33) Ensure effective and equal access to the mainstream educational system, including preschool education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in-service training of teachers and educational staff.

Employment

(34) Ensure equal access of Roma to employment and vocational training in accordance with international and domestic law, including, when appropriate, by using mediators in employment offices. Provide Roma, as appropriate, with possibilities to validate their skills and competences acquired in informal settings.

Health Care

(35) Ensure equal access of all Roma to the healthcare system, for instance, by using health mediators and providing training for existing facilitators.

Housing

(36) Take appropriate measures to improve the living conditions of Roma.

(37) Ensure equal access to housing and accommodation services for Roma.

(38) Provide for appropriate and reasonable notice and effective access to judicial remedy in cases of eviction, while ensuring the full respect of the principle of the rule of law.

(39) In consultation with all concerned and in accordance with the domestic legislation and

policy, provide appropriate accommodation for nomadic and semi-nomadic Roma.

Culture and language

(40) Where appropriate, take measures to foster knowledge of the culture, history and languages of Roma and understanding thereof.

International co-operation

(41) Ensure focused, sustained and effective co-operation regarding Roma, at the pan-European level, between member states, regions, local authorities and European organisations, drawing on the many examples of good practice which exist at European, national, regional and local levels. In particular, encourage co-operation with the European Union, including through joint programmes such as the intercultural cities, as well as the OSCE;

(42) Ensure close co-operation with Roma communities at all levels, pan-European, national, regional and local, in the implementation of these commitments;

(43) Recognising the need to contribute to the implementation of these priorities through the use of good practices, expertise and available financial resources which exist at European, national, regional and local level, the member states of the Council of Europe:

(44) welcome the decision of the Secretary General to re-organise resources in a transversal manner within the Council of Europe Secretariat with the task of further developing co-operation with national, regional and local authorities and international organisations in collecting, analysing, exchanging and disseminating information on policies and good practice on Roma, providing advice and support upon the request of national, regional and local authorities as well as practical assistance in the implementation of new policy initiatives, especially at the local level, and providing access to training, capacity-building and educational material;

(45) encourage close co-operation with member states, other Council of Europe institutions, other international organisations, especially the European Union and the OSCE, as well as civil society, including Roma associations and relevant non-governmental organisations, in order that its work complements rather than duplicates that of other bodies;

(46) agree to set up a European Training Programme for Roma Mediators with the aim to streamline, codify and consolidate the existing training programmes for and about Mediators for Roma, through the most effective use of existing Council of Europe resources, standards, methodology, networks and infrastructure, notably the European Youth Centres in Strasbourg and Budapest, in close co-operation with national and local authorities;

(47) encourage member states to use a co-ordinated, inter-agency approach to dealing with issues which affect Roma;

(48) take note of the list of good practices elaborated by the Secretary General, entitled "Strasbourg Initiatives" for which he calls for support. This open catalogue of projects having an immediate and measurable impact could serve as a catalyst for future action;

(49) invite the Secretary General of the Council of Europe to present a first progress report on the implementation of the "Strasbourg Declaration" to the Council of Europe Ministerial Session in Istanbul in May 2011.

Council of Europe states its committment to network neutrality

The Committee of Ministers of the Council of Europe adopted a Declaration on network neutrality in which it states its commitment to network neutrality on the Internet and points out that any exceptions to this principle would need to be justified by overriding public interest.

Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice, the Committee says. It also declares that a competitive and dynamic environment may encourage innovation, increasing network availability and performance, and lowering costs, and can promote the free circulation of a wide range of content and services on the Internet.

Operators of electronic communication networks may need to manage Internet traffic, in connection with ensuring quality of services, the development on new services, network stability and resilience, or combating cybercrime. However, the Committee of Ministers stresses that those measures should be proportionate, appropriate, avoid unjustified discrimination and be reviewed periodically. Users should be informed about them and be able to understand how they affect their fundamental rights, in particular freedom of expression and privacy.

The Committee of Ministers has also adopted a Declaration on the Digital Agenda for Europe and a Declaration on the management of Internet protocol address resources in the public interest. In the former, it welcomes the European Union's Granada Ministerial Declaration and its Digital Agenda for Europe, encourages Council of Europe member states to pursue the objectives of this agenda at the national level, and invites the European Union to co-operate with the Council of Europe in this field.

In the declaration on the management of Internet protocol addresses, the Committee of Ministers underlines the importance of addressing the issue of scarcity of Internet resources, notably IPv4 addresses. It states that Internet protocol address resources should be regarded as shared public resources and allocated and managed in the public interest by the entities entrusted with these tasks taking into account the present and future needs of Internet users. It also points out that timely and effective deployment of the new Internet Protocol IPv6 – which offers a far larger address space – in the public sector should be ensured and swift preparations for migration to and deployment of IPv6 in the private sector should be encouraged and promoted.

The Committee also declares that, to the extent that information on users´activities and communications, as well as traffic data, amount to personal data, they should be treated and used in compliance with Article 8 of the European Convention on Human Rights and relevant case-law of the European Court of Human Rights, as well as the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Strengthening subsidiarity: integrating ECHR case-law into national practice

Skopje, 1–2 October 2010

Strengthening the principle of subsidiarity through the effective implementation of the standards of the European Convention on Human Rights in the domestic legal orders of Council of Europe member states is essential for ensuring the long-term effectiveness of the Convention system. Opening a conference organised on this subject in Skopje on 1 and 2 October, Minister of Justice Mihajlo Manevski said, on behalf of the Chairmanship of the Committee of Ministers: "We hope that this conference, organised by the Macedonian Chairmanship, will identify tangible ways and means of recognising the interpretative authority of judgments against other states, improving the effectiveness of domestic remedies and ensuring swift and full execution of the Court's judgments."

Some 100 representatives of the highest national courts, government experts, Court judges, the Parliamentary Assembly, the Office of the Human Rights Commissioner and civil society worked together to tackle these issues. The participants discussed subsidiarity from their different perspectives and the role they play in fulfilling it.

Conclusions from the conference in Skopje will be presented at the next High-level Conference on the Future of the Court, to be held in 2011, during the Turkish Chairmanship of the Committee of Ministers.

Committee of Ministers Chairman meets European Commission Vice-President

On 19 July, in Brussels, Antonio Miloshoski, Chairman of the Council of Europe Committee of Ministers, and Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship, discussed co-operation between the Council of Europe and the European Union and the areas where it can be further improved, based on the 2007 Memorandum of Understanding. They agreed that the accession of the EU to the European Convention on Human Rights will play a significant role in further strengthening the system of human rights protection to the benefit of all European citizens.

The official talks on the accession of the EU to the European Convention on Human Rights started on 7 July in Strasbourg and the meeting between Mr Miloshoski and Ms Reding will give added impetus to this complex process.

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

Parliamentary Assembly

The national representatives who make up the Parliamentary Assembly of the Council of Europe (PACE) come from the 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

Applying all Strasbourg case-law at the national level could "save the Court from drowning"

National legislators and courts across Europe must better take into account judgments of the European Court of Human Rights even when they concern violations that have occurred in other countries, the Chair of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights said.

Speaking at a conference in Skopje on the principle of subsidiarity, Christos Pourgourides said this principle could be "the key to saving the Strasbourg Court from drowning in large numbers of repetitive cases".

He gave the example of a court ruling against Belgium in 1979 that children born out of wedlock should not face discrimination, pointing out that France changed its law only after the court made a similar ruling against it in 2000: "Twenty years lost for the victims of such discrimination, and many years of unnecessary litigation!"

"Human rights violations must first and foremost be avoided," Mr Pourgourides said, stressing that the judges in Strasbourg should step in only when remedies did not function at the national level.

Christos Pourgourides speaking at a conference in Skopje on the principle of subsidiarity

For the principle of subsidiarity to work, national courts must be made more aware of the Court's judgments concerning other countries, he pointed out. But the Court itself would also have to exercise "self-restraint" by respecting States Parties' "margin of appreciation" concerning fundamental moral issues or deep-rooted national traditions.

Child abuse in institutions: more far-reaching measures to grant justice to victims

At the end of a debate on child abuse in institutions, the Parliamentary Assembly called for "more far-reaching measures in the future when it comes to according full justice to victims of past offences". According to the Assembly, "more committed action will be required" at the national level when it comes to reinforcing legislation on child abuse and applying it to various institutional contexts. No authority or institution "should be exempt from critical review", as "all institutions without exception" are subject to the same

national legislation, in particular in the field of criminal law.

The adopted text,[4] based on the proposals by the rapporteur Marlene Rupprecht, expresses concern at the "lack of committed action" which has sometimes been observed when it comes to dealing with offences against minors. It recommends that European governments ensure legislative protection by providing for the *ex-officio* prosecution in cases of child abuse in any context, defining as illegal and excluding certain practices with regard to the punishment of minors in institutions which are contrary to their dignity and rights.

The Assembly also calls for reinforcing rules and modalities for the external supervision of various institutions, notably ensuring that institutions are never run and supervised by the same authority. It also advocates the setting up of neutral, independent and child sensitive bodies that children can safely access and consult with confidentiality whenever they feel threatened, suffer abuse or witness it in their institutions.

The adopted text calls on the Council of Europe member states to sign and ratify the Convention on the protection of children against sexual exploitation and sexual abuse, and invites public authorities and national parliaments to join in the Council of Europe's campaign to stop sexual violence against children, due to be launched in Rome on 29 and 30 November 2010.

4. Recommendation 1934 (2010), adopted by the Assembly on 5 October 2010.

Measures to combat the upsurge of extremism in Europe

The Assembly expressed its concern at the upsurge of certain forms of extremism in Europe, particularly racism and xenophobia, "in the light of the rise of the electoral support of parties" inspired by these ideas. To counter this trend, and in line with the proposals by the rapporteur Pedro Agramunt, parliamentarians called on European governments to devise clear and sustainable immigration policies "accompanied by appropriate integration policies", to work out an international legal mechanism to put an end to "all forms of financial support to extremist groups", and to enforce the penalties provided for under their legislation against public incitement to violence, racial discrimination and intolerance, including Islamophobia.[5]

5. See Resolution 1754 (2010) and Recommendation 1933 (2010), adopted by the Assembly on 5 October 2010.

The work of the EU Agency for Fundamental Rights must not duplicate that of the Council of Europe

In a resolution,[6] the Assembly calls upon EU member states and institutions to take all necessary measures to avoid unnecessary duplication of the work of the Council of Europe by the EU Agency for Fundamental Rights. The Assembly members believe that such duplication could cause confusion in the interpretation of European human rights standards or even lead to the emergence of double standards.

According to the rapporteur on the subject, Boriss Cilevics, the activities of both organisations – whether the data collection and analyses conducted by the Agency, or the monitoring carried out by the Council – may complement each other.

Boriss Cilevics, PACE rapporteur, believes that the activities of both organisations could complement each other

The Assembly also believes that fruitful co-operation will only be possible if the Council of Europe's acquis in the area of human rights protection is always used as the main point of reference in the Agency's work.

6. Resolution 1756 (2010), adopted by the Assembly on 5 October 2010. See also Recommendation 1935 (2010).

PACE calls for laws to protect individuals from corporate abuses of human rights

The Assembly has called for national laws to protect individuals from corporate abuses of rights enshrined in the European Convention on Human Rights and revised European Social Charter. Presenting a report[7] on human rights and business, Holger Haibach said: "Businesses will only reap profits in the long term if they act ethically and responsibly." The parliamentarians also called on Council of Europe governments not to give contracts to firms which are associated with human rights abuses, including transnational firms operating beyond Europe.

7. See report of the Committee on Legal Affairs and Human Rights (Document 12361). See also Resolution 1757 (2010) and Recommendation 1936 (2010), adopted on 6 October 2010.

Rights of irregular migrants: "politically difficult but no one should be left behind"

John Greenway, Chair of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe publicly welcomed the timely and outspoken position taken by the Global Migration Group[8] on the controversial issue of human rights of migrants in an irregular situation.

"The strong and unequivocal statement by the Global Migration Group last week entirely reflects the stance taken by this Assembly in recent years. I particularly welcome the unambiguous demand that, in dealing with migrants in an irregular situation, member states must have regard to applicable human rights standards and guarantees at all stages of the migration process. Entering or overstaying in a country in violation of its immigration laws does not deprive migrants of their fundamental human rights, nor does it affect member states' obligation to protect these rights.

As the key intergovernmental human rights organisation on the European continent, the Council of Europe has a particular role to play in ensuring respect for the rights of irregular migrants to human dignity, physical integrity as well as safety and freedom from discrimination and minimum social rights. "The issue may be controversial, it may be politically difficult," said Mr Greenway, "but no one should be left behind, when it comes to certain basic and fundamental rights."

In a resolution on the activities of the OECD, the Assembly reconfirmed its position that the structural needs for labour in Europe as the economy recovers call for an examination of the possibility of regularisation of the status of irregular migrants in Europe who cannot or will not be returned to their countries, yet who are able and willing to integrate in the European labour markets.

8. The Global Migration Group (GMG) is an inter-agency group bringing together 14 agencies (12 United Nations agencies, the World Bank, and the International Organization for Migration) to promote the application of relevant international instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better co-ordinated approaches to the issue of international migration.

The European Convention on Human Rights – "a miracle of international legal co-operation"

In his speech during the commemoration ceremony for the 60th anniversary of the European Convention on Human Rights, the Assembly President stressed that "to this day the Convention – given shape and form during the debates in Strasbourg – remains a miracle of international legal co-operation, unique in the world." He also stressed that the situation was unacceptable with regard to the late or non-execution of judgments and that both national parliaments and the Parliamentary Assembly could summon ministers to account at hearings for the lack of effective application of the Convention by the governments of member states.

The right to conscientious objection in lawful medical care

The Assembly emphasised the need to affirm the right of conscientious objection in lawful medical care.

At the end of a debate on the subject, during which the text presented by the Committee on Social Affairs was substantially amended, the adopted resolution[9] states that "no person and no hospital or institution shall be coerced, held

9. Resolution 1763 (2010), adopted by the Assembly on 7 October 2010.

liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion [...]".

The adopted text invites member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services.

PACE denounces the rise of security discourse stigmatising Roma

The Parliamentary Assembly of the Council of Europe denounced the increasingly frequent use of security discourse on the national political scene.

Anne Brasseur presents her report to the Assembly

Presenting her report[10] to the Assembly, Anne Brasseur pointed out that this security rhetoric, which is being used by political leaders in several member states, "tends to link insecurity with ethnic communities", as has recently been the case with Roma. "We cannot accept a whole community being associated with crime and trafficking, using this as an excuse for toughening security measures against them," she stressed, quoting the dismantling of Roma settlements and the recent waves of repatriation of Roma migrants to their countries of origin.

During an urgent debate with contributions from Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, and Thomas Hammarberg, Commissioner for Human Rights, the parliamentarians asserted that "a clear distinction must be made in political discourse between individuals who have committed crimes and entire groups of people, such as Roma or any other minority or migrant group".

Consequently, to avoid the risk of playing into the hands of the extremists, the Assembly called on the public authorities and institutions at the national, regional and local levels and their officials to "refrain from statements [...] which may [...] be understood as hate speech, or as speech likely to produce the effect of [...] promoting racial hatred, xenophobia, or other forms of discrimination [...] based on intolerance".

Particular responsibility also goes to the media, which must refrain from disseminating messages liable to feed animosity towards persons belonging to a specific ethnic community or minority.

Furthermore, the Assembly welcomed the initiative by the Secretary General of the Council of Europe to organise a high-level meeting in Strasbourg on 20 October to agree on priority measures geared to improving the situation of Roma in Europe. The Assembly will continue to closely monitor this issue, also in the light of the outcome of the high-level meeting.

10. See the report of the Political Affairs Committee (Document 12386. See also Resolution 1760 (2010), adopted on 7 October 2010

Member states must take account of the gender dimension in asylum applications

All asylum application procedures should take account of the particular forms of persecution and human rights abuses that women face in the light of their gender, was the conclusion reached by the Assembly at the close of a parliamentary debate on the issue. In presenting his report[11] to the Assembly, Andrej Zernovski said that this gender-related persecution includes sexual exploitation, forced marriage, honour crimes and forced abortion and sterilisation, as well as rape during armed conflict. The Assembly therefore recommended[12] a series of measures to member states to ensure that proper account is taken of the gender dimension when asylum applications are being assessed. In the asylum process, member states should, in particular, take into account the special problems faced by victims of trafficking and of female genital mutilation. The Assembly also called on the Committee of Ministers to

11. Report of the Committee on Migration, Refugees and Population (Document 12350).

12. Recommendation 1940 (2010) and Resolution 1765 (2010), adopted on 8 October 2010.

instruct the appropriate intergovernmental body in the Council of Europe to carry out a study on the approach of member states to gender-related asylum claims and provide them with guidelines on the matter.

Situation in member states

PACE calls for process of constitutional reform in Ukraine

The Parliamentary Assembly warmly welcomed the political will displayed by the new authorities in Ukraine to enact ambitious reforms, but warned that they must have wide political consensus and public support to succeed.

Debating a monitoring report[13] by Renate Wohlwend and Mailis Reps, the parliamentarians said the recent Constitutional Court ruling in Ukraine should now prompt the Verkhovna Rada to initiate "a comprehensive constitutional reform process" to bring the country's constitution fully into line with European standards.

The Assembly also expressed concern at reports of undue involvement of the security services in domestic political affairs, including pressure on journalists and NGO activists, and reports that democratic freedoms and rights – such as freedom of assembly, expression and the media – have come under pressure in recent months.

13. See the report of the Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee) (Document 12357) and Resolution 1755 (2010), adopted by the Assembly on 5 October 2010.

Election of judges to the European Court of Human Rights

The Parliamentary Assembly, meeting in plenary session, elected:

- Julia Laffranque as judge to the European Court of Human Rights in respect of Estonia for a term of office of 9 years starting on 1 January 2011;
- Linos-Alexander Sicilianos as judge to the European Court of Human Rights in respect of Greece for a term of office of 9 years starting on 18 May 2011.

Judges are elected by the Assembly from a list of three candidates nominated by each state which has ratified the European Convention on Human Rights.

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

European Social Charter

The European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties. This legal instrument was revised in 1996 and the revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty.

Signatures and ratifications

To date all 47 Council of Europe member states have signed the Charter: 45 states have signed the Revised Charter and only 2 have signed the 1961 Charter (Liechtenstein and Switzerland).

43 member states have ratified the Charter: 30 are bound by the Revised Charter and 13 by the 1961 Charter.

The remaining four states which have not yet ratified either instrument are: Liechtenstein, Monaco, San Marino and Switzerland.

Four ratifications are still necessary for the entry into force of the 1991 Amending Protocol: Denmark, Germany, Luxembourg and the United Kingdom.

About the Charter

The rights guaranteed

The European Social Charter guarantees rights in a variety of areas, such as housing, health, education, employment, legal and social protection, movement of persons, and non-discrimination.

National reports

The States Parties submit a yearly report indicating how they implement the Charter in law and in practice.

On the basis of these reports, the European Committee of Social Rights – comprising 15 members elected by the Council of Europe's Committee of Ministers – decides, in "conclusions", whether or not the states have complied with their obligations. If a state is found not to have complied, and if it takes no action on a decision of non-conformity, the Committee of Ministers adopts a recommendation asking it to change the situation.

Complaints procedure

Under a protocol which opened for signature in 1995 and which came into force in 1998, complaints of violations of the charter may be lodged with the European Committee of Social Rights by certain organisations. The Committee's decision is forwarded to the parties concerned and to the Committee of Ministers, which adopts a resolution in which it may recommend that the state concerned takes specific measures to bring the situation into line with the Charter.

Election of members of the European Committee of Social Rights

At the 1097th meeting of the Ministers' Deputies, on 10 November 2010, the Committee of Ministers declared the following candidates elected as members of the European Committee of Social Rights, with effect from 1 January 2011, for a term of office which will expire on 31 December 2016:

- Mr Colm O'Cinneide (Irish), second term,
- Mr Lauri Leppik (Estonian), second term,
- Ms Karin Lukas (Austrian),
- Ms Elena Machulskaya (Russian),
- Mr Giuseppe Palmisano (Italian).

Collective complaints: latest developments

Decision on the merits

Centre on Housing Rights and Evictions (COHRE) v. Italy (No. 58/2009)

On 21 October 2010, the Committee of Ministers adopted Resolution CM/ResChS (2010) 8 on the complaint "*Centre on Housing Rights and Evictions (COHRE) v. Italy* (No. 58/2009), as a result of which the ECSR's decision on the merits became public before the 4 months deadline, (in keeping with Article 8 of the Protocol providing for a system of collective complaints).

The complainant organisation alleged that the situation of Roma and Sintis in Italy was not in conformity with Article E in conjunction with each of the following provisions of the Revised Charter:

- Article 16: right of the family to social, legal and economic protection,
- Article 19: right of migrant workers and their families to protection and assistance,
- Article 30: right to be protected against poverty and social exclusion,
- Article 31: right to housing.

According to COHRE, Italian authorities did not give adequate follow-up to the decision on the merits of 7 December 2005 in the complaint "*European Roma Rights Centre* (ERRC) v. Italy" (No. 27/2004). Furthermore, recent measures taken between 2006 and 2008, such as the adoption of "Pacts for security", state of emergency decrees, as well as orders and guidelines have further deteriorated the living conditions of Roma and Sintis resulting in evictions and homelessness for a great number of them. The organisation also complained about the policy and practice of segregating Roma and Sinti families, as well as the racist and xenophobic propaganda relating to emigration and immigration of Roma and Sintis.

The European Committee of Social Rights considered that, neither in the submissions from the Government, nor during the public hearing which took place on 21 June 2010, the Italian authorities have provided credible evidence to refute the claims of the complainant organisation.

It concluded unanimously that there was a violation of Article E in conjunction with:

- Article 16: right of the family to social, legal and economic protection,
- Article 19§1: assistance and information on migration,
- Article 19§4c: equality regarding employment, right to organise and accomodation,
- Article 19§8: guarantees concerning deportation,
- Article 30: right to be protected against poverty and social exclusion,
- Article 31§1: adequate housing,
- Article 31§2: reduction of homelessness,
- Article 31§3: affordable housing.

For the first time, the Committee considered that there was an aggravated violation.

An aggravated violation is constituted when the following criteria are met:

- on the one hand, when measures violating human rights specifically targeting and affecting vulnerable groups are taken,
- on the other, when public authorities are not only passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.

As far as the complaint "COHRE v. Italy" is concerned, the Committee noted an aggravated violation of Article E taken in conjunction with Article 19§1 because of misleading racist propaganda against migrant Roma and Sintis, indirectly allowed or directly emanating from the Italian authorities.

It also noted an aggravated violation of Article 31§2 because of evictions of Roma and Sintis as well as violent acts perpetrated against them during these evictions.

Centre on Housing Rights and Evictions (COHRE) v. Croatia (No. 52/2008)

The complaint "*COHRE v. Croatia*" (No. 52/2008) became public on 8 November 2010.

The complainant organisation alleged that the ethnic Serb population displaced during the war in Croatia was subjected to discriminatory treatment: these families have not been allowed to reoccupy their former dwellings prior to the conflict, nor have they been granted financial compensation for the loss of their homes. According to the COHRE, the Croatian state has not complied with Article 16 of the Social Charter – which provides for the right of the family to social, legal and economic protection – read alone or in the light of the non-discrimination clause of the Preamble to the Charter.

The committee concluded unanimously that there was a violation of Article 16 read in light

of the non-discrimination clause of the Preamble on the grounds of failure to implement the housing programme within a reasonable timeframe and failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

Decision on the admissibility

The complaint "*European Roma Rights Centre (ERRC) v. Portugal*" (No. 61/2010) was declared admissible by the committee on 17 September 2010. The complainant organisation pleads a violation by Portugal of Article 16 (right of the family to social, legal and economic protection), 30 (right to be protected against poverty and social exclusion) and 31 (right to housing) of the Revised Charter.

Registration of a collective complaint

The complaint "*International Federation of Human Rights (FIDH) v. Belgium*" (No. 62/2010) was registered on 30 September 2010.

It concerns the right to housing for travellers.

The FIDH alleges a violation by Belgium of Article E (non-discrimination), as well as Article 16 (right of the family to social, legal and economic protection) and 30 (right to be protected against poverty and social exclusion) of the Revised Charter on the grounds of insufficiency of stopping places, problems stemming from the non-recognition of caravans as a home, lack of respect of the required conditions when carrying out evictions, lack of a global and co-ordinated policy to combat poverty and social exclusion of travellers.

Adoption of a Resolution by the Committee of Ministers on the complaint "MDAC v. Bulgaria" (No. 41/2007)

The Committee of Ministers adopted Resolution CM/ResChS (2010) 7 on 20 September 2010 with regard to the complaint lodged by "*Mental Disability Advocacy Center" (MDAC) v. Bulgaria* (No. 41/2007), where the Committee concluded that there was discrimination against children residing in homes for mentally disabled children, as a very low number of such children received any type of education when compared to other children.

In appendix to this resolution, a note communicated by the government gives information on substantial progress made by Bulgaria with regard to education of disabled children. Following the decision on the merits in this complaint a range of measures have been taken since 2008 to bring the situation in conformity with the Charter, in particular:

- individual plans for reform entailing restructuring or closure of all of the 26 specialised institutions for children with disabilities have been approved;
- Ordinance No. 1 of 23 January 2009 on the education of children with special educational requirements and/or suffering from chronic illness, provides for examination and individual evaluation of the health status of children with special educational requirements, by a special body of experts in the Ministry of Education, which guarantees precision and objectivity during the evaluation process and guidance of these children and pupils in institutions;
- information campaigns involving teachers, pupils, children and parents have been launched aiming towards a wider acceptance of integrating special needs pupils in meanstream schools;
- in February 2010, the Bulgarian Government adopted a new national strategy guaranteeing aid to families and development of assistance services in order to reduce risk of children being abandoned by their parents.

Significant events

Exchange of views between the Secretary General of the Council of Europe and the European Committee of Social Rights

At its 245th session, on 13 September 2010, the Committee held an exchange of views with Mr Thorbjørn Jagland.

The Secretary General underlined his commitment to the principle of the indivisibility of human rights, acknowledging the complementarity of the Charter and the European Conven-

tion on Human Rights and the important role of the committee in enforcing social rights in Europe. He pledged to do his utmost to promote the Revised Charter and the collective complaints procedure noting that the upcoming anniversary was an excellent opportunity for this purpose.

He referred to relations with the European Union and the current negotiations concerning its accession to the Convention. He considered accession as an absolute necessity to avoid the development of conflicting human rights regimes in Europe and he felt that accession would pave the way for subsequent accession also to the Charter, the ultimate goal being the achievement of one single pan-European space for all human rights.

After a lively discussion on the ways of improving the two procedures of the supervisory mechanism of the Charter and thus the visibility and the impact of the Committee, the reflections focused on current issues such as the situation of Roma in Europe.

Finally, the Executive Secretary of the Committee presented the draft planning for the celebration of the 50th anniversary of the Social Charter which will take place in October 2011. He expressed his hope that the Secretary General would be available to participate in this event.

Participation of the President of the Committee in the celebration of the 60th anniversary of the European Convention on Human Rights, Strasbourg

The European Committee of Social Rights was represented by its President, Mrs Polonca Koncar, at the celebration of the 60th anniversary of the Convention, on 19 October 2010 in Strasbourg. Mrs Koncar recalled the complementarity of the two major treaties of the Council of Europe and the interaction between the European Court of Human Rights and the Committee. The latter often refers to the case-law of the Court and vice versa, the Court quotes more and more frequently the committee case-law in its judgments. She considers these reciprocal references very important to avoid conflicts between different human rights instruments and contribute to the reinforcement of human rights at large.

International colloquy on the protection of social rights

Many European academics and lawyers were present at this colloquy, organised by the University of Seville from 22 to 24 September 2010, which consisted in an exchange of information on social rights at the national level, as well as on European and international law and its impact. Specialists on the Social Charter – academics, members of the Committee and of the Secretariat recalled the evolution of the European Social Charter and its monitoring, especially the procedure of collective complaints.

Bibliography

Book

- "*Social Human rights of Europe*", Matti Mikkola, Ed. Karelactio, Finland, 2010, 694 p., ISBN 978-952-92-8040-7.

Electronic newsletter

- The next issue of the electronic newsletter on the activities of the European Committee of Social Rights, (No.4) will be published in December 2010.

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

Convention for the Prevention of Torture

Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Co-operation with national authorities is at the heart of the Convention, given that its aim is to protect persons deprived of their liberty rather than to condemn states for abuses.

The European Committee for the Prevention of Torture (CPT) was set up under the Convention 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

Czech Republic

Visit from 7 to 16 September 2010

In the course of the visit, particular attention was paid to the treatment of persons detained by the police and the implementation in practice of fundamental safeguards for the prevention of ill-treatment during police custody. The delegation also examined in detail various issues related to prison establishments, including health care services provided to prisoners and the situation of juveniles. In addition, the delegation visited a psychiatric hospital and an educational institute for youth and children.

The delegation had consultations with Marek Ženíšek, Deputy Minister of Justice, Martin Plíšek, Deputy Minister of Health, David Kafka, Deputy Minister of Labour and Social Affairs, as well as with other senior officials of the relevant ministries.

It also met Michael Kocáb, Government Commissioner for Human Rights, members of the Governmental Committee against Torture, Jitka Seitlová, Deputy Public Defender of Rights, and representatives of the Prague Office of the United Nations High Commissioner for Refugees (UNHCR) 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 Czech authorities.

Romania

Visit from 5 to 16 September 2010

In the course of the visit, the CPT's delegation reviewed the measures taken by the Romanian authorities to implement the recommendations made by the committee after previous visits, in particular in the areas of detention by law enforcement agencies and imprisonment. The delegation also examined in detail the system and procedures in place to investigate cases of alleged ill-treatment by members of the police or prison staff of persons arrested or imprisoned.

The delegation held consultations with Adrian Streinu-Cercel, Secretary of State at the Ministry of Health, Radu Constantin Ragea and

Gabriel Tanasescu, respectively Under Secretary of State and Secretary General at the Ministry of Justice, Marian Tutilescu, Head of Department at the Ministry of the Administration and the Interior, Dumitru Pârvu, Deputy Inspector General of the Romanian Police, and Lacramioara Corches, Director General at the Ministry of Labour, Family and Social Protection, as well as with other senior officials of these ministries. It also held consultations with Tiberiu Nitu, First Deputy Prosecutor General, and other members of the Public Prosecutor's Office. Furthermore, the delegation met deputies of the People's Advocate (Romanian Ombudsman). Discussions were also held with representatives of non-governmental organisations active in areas of concern to the CPT.

In addition, the delegation had a meeting with Teodor Viorel Melescanu, Vice-President of the Senate, in order to discuss the issue of the alleged existence some years ago of secret detention facilities on Romanian territory operated by the Central Intelligence Agency (CIA) of the United States of America.

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

"The former Yugoslav Republic of Macedonia"

Visit from 21 September to 1 October 2010

The CPT's delegation focused on the treatment and conditions of detention of sentenced and remand prisoners, evaluating the progress made since its previous visits. A further area of interest was the treatment of social care home residents and of patients in the country's three psychiatric hospitals. The delegation also considered the way in which persons are treated when they are deprived of their liberty by law enforcement agencies and the measures taken to investigate allegations of ill-treatment by the police.

In the course of the visit, the delegation held meetings with Gordana Jankulovska, Minister of the Interior, Mihajlo Manevski, Minister of Justice, Bujar Osmani, Minister of Health and Dzelal Bajrami, Minister of Labour and Social Policy. It also met Lidija Gavriloska, Director of the Directorate for the Execution of Sanctions, as well as other senior officials from relevant ministries. In addition, discussions were held with the Ombudsman, Ihxet Memeti, Deputy Ombudsman, Nevenka Krusharovska, and representatives from civil society.

At the end of the visit the delegation presented its preliminary conclusions to the national authorities.

Moldova

Visit to the Transnistrian region of Moldova on 21 July 2010

The CPT's delegation began a visit to the Transnistrian region[14] of Moldova on 21 July 2010. Against the background of the CPT's reports on its previous visits to the region in 2000, 2003 and 2006, the intention of the delegation was to review the situation of persons deprived of their liberty in police and prison establishments.

Following initial consultations with Sergey Stepanov, the person responsible in the region for justice-related issues, the delegation commenced a visit to the remand section (SIZO) of Colony No. 3 in Tiraspol on 22 July 2010. However, the delegation was informed that, unlike the Committee's previous visits, it would not be allowed to interview remand prisoners in private. Such a restriction contradicts one of the fundamental characteristics of the preventive mechanism embodied by the CPT, namely the power to interview in private any person deprived of his or her liberty. Consequently, the delegation decided to interrupt its visit to places of deprivation of liberty in the region until such time as the enjoyment of this power could be guaranteed.

Nevertheless, the Committee's delegation visited penitentiary establishments Nos. 8 and 12 in Bender; these establishments are located in an area controlled by the de facto authorities of the Transnistrian region but form part of the prison system of the Republic of Moldova. The opportunity was also taken to review the treatment of persons detained by the Moldovan police. In this context, the delegation paid follow-up visits to temporary detention isolators in Anenii Noi and Bender, as well as to the temporary detention isolator of the General Police Directorate in Chisinau. Further, the delegation interviewed in private a number of newly-arrived remand prisoners at Chisinau penitentiary establishment No. 13 on the subject of their treatment by the police.

14. The Transnistrian region unilaterally declared itself an independent republic in the early 1990s.

At the end of the visit, the CPT's delegation had a meeting with Alexandru Tanase, Minister of Justice of the Republic of Moldova, and senior officials of the Ministry of Internal Affairs, the Prosecution Service and the Department of Penitentiary Institutions, and presented to them its preliminary observations.

Report to governments following visits

Sweden

Publication of the response of the Swedish Government to the report on the CPT's most recent periodic visit in June 2009

The response has been made public at the request of the Swedish authorities. The CPT's report on the June 2009 visit was published on 11 December 2009.

In their response, the Swedish authorities express the view that the new system for the investigation of complaints of police misconduct, according to which internal investigation activities are to be moved from the local police authorities to a separate unit within the National Police Board, will ensure the independence and impartiality of the investigative process. All cases of alleged police misconduct are referred to a special national department for police cases, consisting of high-rank prosecutors and subordinated directly to the Prosecutor General, which decides whether to open a preliminary investigation and what investigative measures to take.

In reaction to the CPT's recommendations aimed at ensuring that the imposition of restrictions on remand prisoners is an exceptional measure rather than the rule, the Swedish authorities indicate that the new Act on Treatment of Persons Arrested or Remanded in Custody, which should enter into force on 1 April 2011, includes the possibility to appeal a decision on specific restrictions to the Court of Appeal, and ultimately to the Supreme Court.

In response to the CPT's recommendation that the practice of occasionally holding on prison premises persons detained under aliens legislation be stopped, the Swedish authorities state that the Commission of Inquiry on Detention, which was set up to carry out a thorough examination of the legal framework on detention under the Aliens Act, was expected to submit its proposals on 15 June 2010. This commission is also mandated to address issues related to the provision of health care to detained foreign nationals.

Albania

Publication of the response of the Albanian Government to the CPT's report on the June 2008 visit

The response has been made public at the request of the Albanian authorities. It provides information on various measures taken by the authorities in the light of the recommendations made by the Committee in the visit report, in particular as regards the treatment of persons detained by the police and conditions of detention in remand prisons and pre-trial detention centres.

The CPT's report on the 2008 visit was published on 21 January 2009.

Turkey

Publication of the report on the January 2010, ad hoc visit to Turkey, together with the government's response

During that visit, the delegation visited the new detention facility of the F-type high-security closed prison on the island of Imrali, in order to examine the conditions under which Abdullah Öcalan and five other inmates who had recently been transferred to the establishment were held. Particular attention was paid to communal activities offered to all prisoners and the application in practice of the prisoners' right to receive visits from relatives and lawyers.

Czech Republic

Publication of the report on its ad hoc visit to the Czech Republic in October 2009, together with the response of the Czech Government

Both documents have been made public at the request of the Czech authorities.

One of the main objectives of the visit was to review action taken to bring an end to the application of testicular pulpectomy ("surgical castration") vis-à-vis detained sex offenders, in the light of the recommendations made in the report on the CPT's visit to the Czech Republic in March/April 2008. The CPT's delegation held discussions with government ministers

and officials on this subject. In its visit report, the CPT once again calls upon the Czech authorities to bring an immediate end to the application of surgical castration in the context of the treatment of sex offenders.

In their response, the Czech authorities state that the issue of surgical castration of sex offenders is the subject of ongoing discussions by various advisory bodies to the government. Furthermore, to assist the process of reflection, an expert study is being prepared by the Ministry of Health in collaboration with the Government Commissioner for Human Rights. In addition to examining the medical, ethical and legal aspects of the application of testicular pulpectomy in relation to sex offenders, the study will also include a comparison of the advantages and disadvantages of possible alternative methods for treating sex offenders, as well as information about the methods used to treat sex offenders in other countries.

The Czech authorities also refer in their response to measures taken to ensure that CPT visiting delegations have unrestricted access to medical records.

Belgium

Publication of the report on its 5th periodic visit carried out in September/ October 2009

The report has been made public at the request of the Belgian authorities.

In the prisons sector, the CPT once again examined the question of overcrowding affecting the Belgian prison system (and, in particular, the situation in Jamioulx prison where the level of occupancy reached 150%). In this regard, the CPT took note of the "2008-2012 Master Plan for a more humane prison infrastructure" and of the application of an altogether novel solution, the fixed-term rental of cell space located in a neighbouring country (in this case, Tilburg prison in the Netherlands). As to the questions relating to the prison staff strike, the CPT again called upon the Belgian authorities, as it had already done after the visit in 2005, to introduce, without further delay, a "guaranteed service" for prisoners. The very serious ill-treatment allegedly committed by police officers standing in for the prison staff in a Brussels prison in September and October 2009, once again reinforces the need to find a lasting solution to this question. Regarding the prison units subject to special security measures ("Quartiers des mesures de sécurité particulières individuelles" – QMSPI), the Committee stressed the importance of strict compliance with the selection criteria for detainees assigned to these units, which are not intended to be maximum security units ("Quartiers à sécurité renforcée" – QSR). The CPT also took note of the changes made to the layout of the psychiatric annexe of Lantin prison, and recommended that the Belgian authorities make similar changes in the psychiatric annexe of Jamioulx prison. It also took note of the reinforcement of the medical and psychiatric teams, and stressed the need for still greater efforts in this regard. At a more general level, the CPT stressed the need for all provisions of the "Loi de principes" (Prison Principles Act) to be brought into force quickly, as the non-application of certain chapters was causing legal uncertainty, particularly with regards to disciplinary sanctions.

As regards the police, the CPT took note of the small number of advances made in respect of fundamental safeguards given to persons placed under administrative arrest. The Committee also noted the adoption of two Royal Decrees, one governing the physical conditions in police detention cells and the other bringing into force a code of ethics for the police. By contrast, the committee could only observe the lack of action regarding the implementation of the recommendations made over many years concerning the fundamental safeguards to be offered to persons placed under judicial arrest, and in particular, as regards access to a lawyer while in custody. Furthermore, it made recommendations on the application of special techniques, such as the use of electro-shock weapons (Taser) and the escorting of "level 3" prisoners presumed to be dangerous. Regarding the holding cells in the Portalis Court of Justice Building in Brussels, the committee recommended that the Belgian authorities carry out a fire safety audit and invited them to consider transferring the holding cells to premises specially designed and equipped for detention purposes.

As a result of worrying information which it received earlier in the year, the attention of the CPT has also been drawn to the "'t Knipoogje" boarding establishment of the "'t Vurstjen" medico-educational institute at Evergem. It has made detailed recommendations concerning this establishment and has also recommended that an ill-treatment prevention plan be drawn up for all the boarding schools in the country and that regular inspections be carried out. The visit to the special admissions department

("Hôpital d'accueil spécialisé" – HAS) of the Fond'Roy psychiatric clinic in Uccle has prompted a review of the questions concerning the implementation of the procedures in place for compulsory hospitalisation and a discussion concerning the question of psychiatric treatment without the patient's consent. The CPT has also made a number of recommendations following its visit to the Centre for Irregular Migrants in Vottem and the INAD Centre at Brussels National Airport.

Romania

Publication of the report on its ad hoc visit in September/October 2009, together with the response of the Romanian authorities

These documents have been made public at the request of the Romanian authorities.

The main objective of the visit was to review the situation of residents and patients at Nucet medico-social centre and at Oradea Hospital for Neurology and Psychiatry (Bihor county), in the light of the recommendations and comments made by the committee concerning these two establishments in the report on its 2006 visit.

Georgia

Publication of the report on its 4th periodic visit carried out in February 2010

The report has been made public at the request of the Georgian authorities.

The findings from the visit confirmed that the situation as regards the treatment of persons detained by the police in Georgia has considerably improved in recent years, and the CPT has welcomed the determined action taken by the Georgian authorities to prevent ill-treatment. Nevertheless, the persistence of some allegations clearly indicates that they must remain vigilant. The CPT has recommended that the Georgian authorities continue to deliver a firm message of "zero tolerance" of ill-treatment, including through ongoing training activities, to all police staff. As part of this message, it should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In its report, the CPT also looks at the issue of investigations into complaints of ill-treatment by the police and recommends that steps be taken to ensure that such investigations fully meet the criteria of an "effective" investigation as established by the European Court of Human Rights.

Turning to prisons, overcrowding was rife in several of the establishments visited. Despite a massive prison-building programme, the continuing increase in the prisoner population undermines the efforts made to create a humane penitentiary system. The CPT has called upon the Georgian authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison. The Committee has also recommended that the authorities review as soon as possible the norms fixed by legislation for living space per prisoner, so as to ensure at least 4 m² per inmate in multi-occupancy cells in all penitentiary establishments.

In the light of information received during the visit, the CPT has recommended that the management of prison No. 8 in Tbilisi (Gldani), penitentiary establishment No. 7 in Ksani and penitentiary establishment No. 8 in Geguti take appropriate steps to ensure that prison staff do not abuse their authority and resort to ill-treatment.

No allegations of ill-treatment of patients by staff were received during the follow-up visit to the hospital facility of Asatiani Psychiatric Institute in Tbilisi. However, the ever-deteriorating state of the hospital made it unfit for accommodating patients and created conditions which could easily be described as inhuman and degrading. While awaiting the implementation of projects for the transformation of the Asatiani Psychiatric Institute, the CPT has called upon the Georgian authorities to address the most urgent deficiencies as regards patients' living conditions, and in particular to improve heating throughout the hospital.

At the institution for persons with mental and physical disabilities in Dzevri, the CPT's delegation received no allegations of ill-treatment of residents by staff and gained a generally positive impression of residents' living conditions. However, the Committee has recommended that a systematic and regular evaluation of the residents' state of health be organised with a view to offering psycho-social rehabilitative activities adapted to their needs. The report also includes an assessment of the legal safeguards applicable to persons placed in a specialised institution.

The Georgian Government is currently preparing its response to the issues raised by the Committee.

Bulgaria

Publication of the report on its ad hoc visit in December 2008, together with the response of the Bulgarian authorities

Both documents have been made public at the request of the Bulgarian authorities.

The main objective of the visit was to review progress as regards the implementation of previous CPT recommendations concerning conditions of detention in investigation detention facilities (IDFs) and prisons. The CPT also visited for the first time the special home for temporary placement of foreign nationals in Busmantsi.

At the home in Busmantsi, the CPT's delegation received several allegations of physical ill-treatment of detained foreign nationals by police staff. The ill-treatment alleged (consisting of slaps and kicks) was said to have taken place in the establishment's solitary confinement unit. In this context, it appeared that staff had a wide margin of discretion to impose placement in a solitary confinement cell. The CPT has recommended that staff working at the home in Busmantsi be given the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of sanctions. Material conditions at the Busmantsi home were an improvement on those observed by the CPT in the past at the facility in Drouzhba (Sofia) previously used for the temporary accommodation of foreign nationals; further, the open-door policy during the day was a positive feature of the regime. That said, the CPT has made several recommendations aimed at improving conditions of detention in the home.

Detainees in the two investigation detention facilities visited made no complaints about their treatment by custodial staff. As regards conditions of detention in IDFs, the CPT has witnessed certain progress over the years; nevertheless, the pace of improvement has been slow. The conditions observed during the 2008 visit at the IDFs in Pernik and Slivnitsa were indicative of failure to implement the Committee's long-standing recommendations. The CPT has called upon the Bulgarian authorities to intensify their efforts to bring investigation detention facilities up to the required standards.

During the follow-up visit to Sofia prison, the CPT's delegation heard no allegations of physical ill-treatment of prisoners by staff. That said, low staffing levels remained an issue of serious concern. The CPT has called upon the Bulgarian authorities to improve prison staffing levels as a priority and to develop a recruitment strategy based on proper funding and enhanced conditions of service. The report also contains recommendations concerning the treatment of life-sentenced prisoners and foreign national prisoners held at Sofia prison.

In their response, the authorities make reference to various measures being taken to improve the situation in the light of the recommendations made by the CPT.

Strict regulation of electrical discharge weapons

20th General Report of CPT, 1 August 2009 – 31 July 2010

The CPT has called for the use of electrical discharge weapons (EDW) to be strictly regulated.

In its annual report, which was published on 26 October 2010, the CPT states that it understands the wish of national authorities to provide law enforcement officials with means enabling them to give a more graduated response to dangerous situations. The Committee acknowledges that the possession of less lethal weapons such as EDW may in some cases make it possible to avoid the use of firearms. However, it stresses that these weapons can cause acute pain and are open to abuse.

"It is becoming increasingly common for police officers and other law enforcement officials to be issued with electrical discharge weapons, and these weapons are being used more and more during arrests. Authorities must ensure that their use is strictly regulated and that they are used only when this is really necessary", said Mauro Palma, President of the CPT.

In the Committee's view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury. It is inadmissible to use them solely with the purpose of ensuring compliance with an order. Furthermore, their use should only be authorised when less coercive methods – such as negotiation and persuasion or manual control techniques – have failed or are imprac-

ticable and when it is the only alternative to other methods presenting greater risk of death or injury. The Committee also stresses the importance of adequately training public officials who may use EDW.

The Committee expresses strong reservations about the use of EDW in prison and closed psychiatric settings. Only very exceptional circumstances, such as a hostage-taking situation, might justify their use in these settings. The CPT also makes clear that it opposes the use of electric stun belts for controlling the movement of detained persons, whether inside or outside places of deprivation of liberty. Such equipment is inherently degrading for the person to whom it is applied, and the scope for misuse is particularly high.

The CPT states that before EDW are made available they should go through a technical authorisation procedure and that they should be equipped with memory chips which can record information on their use, enabling supervision by the competent authorities.

During the period covered by its 20th annual report – between August 2009 and July 2010 – the CPT made 20 visits to examine the conditions of detention in a broad range of institutions throughout Europe. During its periodic visits, the committee is paying increased attention to social care facilities for the mentally and/or physically disabled, and the treatment of persons under aliens legislation. The CPT's ad hoc visits dealt with a variety of issues, ranging from isolation and surgical castration to alleged secret detention facilities.

Proceedings of the Conference on "new partnerships for torture prevention in Europe"

The CPT published on 19 July 2010 the proceedings of the "Conference on new partnerships for torture prevention in Europe".

The aim of this conference was to examine how existing national, European and universal monitoring bodies can best complement each other in the fight against torture and other forms of ill-treatment in places of detention in Europe today.

Thematic panels dealt with the following three topics:

- Promoting the sharing of information between the preventive bodies
- Facilitating the coherence of standards
- Ensuring the effective implementation of the recommendations of the preventive bodies

The proceedings include the speeches given during these panels, as well as the summary of the debates made by the rapporteurs. They also include the opening speeches given by Maud de Boer-Buquicchio (Deputy Secretary General of the Council of Europe), Mauro Palma (President of the CPT), Victor Rodriguez Rescia (Chairperson of the UN Subcommittee on Prevention of Torture) and Thomas Hammarberg (Council of Europe Commissioner for Human Rights), as well as the summing up of the conference discussions by Manfred Nowak (UN Special Rapporteur on Torture).

The conference was held on 6 November 2009 in Strasbourg and was organised by the CPT and the Association for the Prevention of Torture (APT), a non-governmental organisation based in Geneva.

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, anti-Semitism and intolerance. ECRI's statutory activities are: country-by-country monitoring work; work on general themes; relations with civil society.

On 8 July 2010, ECRI published its Annual Report on its activities covering the period from 1 January to 31 December 2009. This report examines the main trends in the field of racism, racial discrimination, xenophobia, anti-Semitism and intolerance in Europe.

In the report, ECRI expresses its concern about the effects of the economic crisis on vulnerable groups – in particular the rise in unemployment and cuts to social services. The negative climate of public opinion, fuelled by increasingly xenophobic political speech, has led to a hardening of the immigration debate and a rise in xenophobic and intolerant attitudes in general, including virulent verbal attacks and violent incidents.

Other issues of concern for ECRI are the persistence of the widespread police practice of racial profiling, abuses in the fight against terrorism and police brutality against vulnerable groups. The report concludes that: Roma and travellers continue to experience open hostility and social exclusion, as well as raids against their settlements, and murders. Anti-Black racism persists in Europe, often translated into attacks against this community, and colour related insults are frequent in sports events. Muslims continue to be discriminated against in employment, law enforcement, town-planning, immigration and education, and lately they are targeted by specific legal restrictions. States need to do more to encourage tolerance of religious diversity. Anti-Semitism persists in Europe. Attacks on synagogues and Jewish cemeteries and Holocaust denial continue to be issues of concern.

ECRI calls on European states to apply their laws effectively to prevent and combat racism, intolerance and xenophobia, and to fill the legal gaps that still exist, including the swift ratification of Protocol No. 12 to the European Convention on Human Rights, which prohibits discrimination in general, by member states that have not already done so. Although ECRI acknowledged that some states have adopted appropriate legislation, it also stressed that its application often remained a challenge.

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, anti-Semitism and intolerance identified in each country might be overcome, in the form of a country report.

ECRI's country-by-country approach concerns all Council of Europe member states on an equal footing and covers 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.

In early autumn 2010, ECRI carried out contact visits to Azerbaijan, Cyprus and Serbia, 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.

Statement by the European Commission against Racism and Intolerance on the situation of Roma migrants in France

On 24 August 2010, ECRI issued a statement in which it expressed its deep concern about the treatment of Roma migrants in France:

"The European Commission against Racism and Intolerance (ECRI) is deeply concerned about the treatment of Roma migrants in France today.

In a report published in June 2010, ECRI had called on the French authorities to combat the racist attitudes and hostility harboured by the majority population *vis-à-vis* this community. In recent weeks high-ranking officials have made political statements and the government has taken action stigmatising Roma migrants. The latter are held collectively responsible for criminal offences and singled out for abusing EU legislation on freedom of movement. ECRI can only express disappointment about this most negative development.

Already in 2005, ECRI had recommended that France should ensure Roma migrants' social rights to housing, health and education. In 2010 many such persons still live in squalid conditions in makeshift camps. A policy based on evictions and "incentives" to leave France, even assuming that relevant human rights standards are complied with, cannot provide a durable answer.

While France may impose immigration controls in accordance with its international obligations, ECRI wishes to recall that EU citizens have the right to be on French territory for certain periods of time and to return there. In these circumstances, France should look for sustainable solutions in co-operation with partner states and institutions.

Generally speaking, ECRI considers that anti-gypsyism, which is a particular form of racism, should be effectively combated in all European countries. Well-resourced programmes capable of reaching out to the real target groups are needed to counter Roma marginalisation and the negative image that inevitably accompanies it. Government policies or legislative proposals that are grounded in discrimination on ethnic grounds are impermissible and run counter to legal obligations binding on all Council of Europe member states."

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 discrimination against Roma and combating racism and racial discrimination in employment. The draft General Policy Recommendation on Combating anti-Gypsyism and Discrimination against Roma has been sent to institutions, NGOs and other

persons with expertise in the field for a written consultation. The work on combating racism and racial discrimination in employment has so far focused on the implementation of international standards and identifying good practices.

For reference, ECRI has adopted to date twelve General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing, and combating racism and racial discrimination in the field of sport.

Publications

- Annual Report on ECRI's activities covering the period from 1 January to 31 December 2009, 8 July 2010
- Statement by the European Commission against Racism and Intolerance on the situation of Roma migrants in France, 24 August 2010

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

Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities provides for a monitoring system to evaluate how the treaty is implemented in State Parties. It results in recommendations to improve minority protection in the states under review. The committee responsible for providing a detailed analysis on minority legislation and practice is the Advisory Committee. It is a committee of 18 independent experts which is responsible for adopting country-specific opinions. These opinions are meant to advise the Committee of Ministers in the preparation of its resolutions.

Advisory Committee on the Framework Convention for the Protection of National Minorities

The new bureau of the Advisory Committee, elected on 13 October is as follows:

Mr Rainer Hofmann, President
Ms Lidija Basta-Fleiner, 1st Vice-President
Ms Barbara Wilson, 2nd Vice-President

Monitoring

Second Monitoring Cycle

Advisory Committee follow-up visit

The Albanian authorities and the Council of Europe organised a follow-up seminar on 1 July to discuss how the findings of the monitoring bodies of the Framework Convention are being implemented in Albania.

Third Monitoring Cycle

State Reports

State Reports were received from the Czech Republic (3 May), Norway (1 July), Austria and Spain (23 August)

Advisory Committee country visits

A delegation of the Advisory Committee visited Tallinn, Ida-Viru County and Narva from 14 to 17 September and Copenhagen and Åbenrå, from 6 to 9 September in the context of the monitoring of the implementation of this Convention in Estonia and Denmark.

Advisory Committee Opinions

The Advisory Committee adopted country-specific opinions under the third cycle of monitoring in respect of Armenia and Finland on 14 October and the opinion on Italy was adopted on 15 October. They are restricted for the time being.

Opinion on Cyprus

The 3rd opinion of the Advisory Committee on Cyprus was made public on 8 October at the same time as the government comments. The Advisory Committee adopted this opinion in March 2010.

Summary

"Since the ratification of the Framework Convention, Cyprus has pursued its efforts to improve the protection of the Armenians, the Latins and the Maronites under the Framework Convention. According to the representatives of the three groups, the monitoring process has had a positive impact on their situation. The recent extension of the protection provided by this Convention to the Roma is a positive development.

Despite ongoing efforts, only limited progress has been made towards a lasting settlement of the Cyprus problem. This continues to have an impact on the climate of dialogue and understanding which, in general, characterises Cypriot society, and on the government's policy related to minority protection and human rights. This concerns *inter alia* the implementation of the principle of free self-identification, especially in respect of the Armenians, the Latins and the Maronites, as well as the Roma.

Efforts have been made to increase awareness of the issue of non-discrimination and of the relevant legal remedies available. Nevertheless, in view of the growing number of discrimination-related complaints in recent years, these awareness-raising efforts should be intensified. The institutional framework for combating discrimination also needs to be strengthened and the competent authorities provided with more adequate resources."

Opinion on Hungary

The third opinion on Hungary, together with the government's comments were published on 17 September following the authorities' agreement to early publication. Its key conclusions are the following:

Summary

"Since it ratified the Framework Convention, Hungary has made considerable efforts to ensure the continuation of improvements in the protection of the rights of persons belonging to national minorities and to implement the legislation in force in this field. Substantial financial resources have been released to ensure the full application of these measures.

Steps have also been taken to extend the scope of anti-discrimination legislation, while the activities of the Equal Treatment Authority make an effective contribution to sanctioning discrimination against persons belonging to national minorities. Despite these efforts, a new wave of mistrust and hostility towards the Roma is widespread within Hungarian society.

Hungarian anti-discrimination legislation should nevertheless be reviewed to sanction racist and hate speech while ensuring freedom of expression.

Roma are confronted with discrimination and are often the victims of racially motivated offences. Cases of ill-treatment by the police have also been reported. Given the climate of intolerance that is developing in Hungary, the authorities must act vigorously to promote intercultural dialogue and combat all forms of intolerance, including in the media and in political discourse.

The authorities have launched an ambitious action plan with a view to improving the situation of the Roma in several spheres such as housing, employment, education and health. However, further efforts are necessary to ensure that the situation of those Roma, who are excluded from mainstream society, improves significantly, in particular in the field of education where Roma children still suffer from segregation.

The media continue to broadcast programmes in different minority languages but often outside prime time hours. The possibilities for learning minority languages have increased and steps have been taken to promote bilingual education.

The reform of minority self-governments now guarantees that they are independent from both the operational and financial standpoint, particularly in the fields of culture and education. Several minority self-governments have now acquired a number of cultural institutions and schools, for which they have administrative and financial responsibility.

Despite the fact that there is a highly developed system for the representation of minorities, the institutional framework needs to be rapidly adjusted to ensure that national minorities are adequately represented in the Hungarian Parliament."

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

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 Committee of Experts on the Reform of the Court (DH-GDR) held its fourth meeting from 15-17 September 2010. During that meeting, the Committee exchanged views with the chairperson of the Ad hoc Working Party on the follow-up process to the Interlaken Declaration (GT-SUIVI.Interlaken).[15] It then began work on the issues of filtering – a new filtering mechanism and repetitive applications – judicial treatment, on the basis of a draft report presented by its rapporteur. Concerning the issue of access to the European Court of Human Rights – fees for applicants, the committee exchanged views with an expert consultant on his preparation of a study on the various systems in certain member states requiring applicants to superior courts to pay a fee or other sum. Regarding the issue of election of judges to the European Court of Human Rights, the Committee supported the idea of preparing a compilation of national practices, with the ultimate aim of optimising national selection procedures, including the question of how to attract the best applicants, with a view in particular to the significant number of forthcoming elections. Finally, it prepared a draft final report on measures that do not require amendment of the Convention, for transmission to the CDDH with a view to its finalisation and subsequent submission to the Committee of Ministers.

The Committee of Experts held its first meeting from 6-8 October 2010 on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS). During that meeting, the Committee clarified and prioritised its objectives. It then began considering which provisions of Section II of the European Convention on Human Rights could be subject to a simplified amendment procedure and which other provisions or matters from outside the Convention could be "upgraded" into a possible future statute. In the light of the preliminary outcome of those discussions, it began considering which modality should be preferred for introducing a simplified amendment procedure. The Committee also heard an intervention from the Registrar of the European Court of Human Rights, who presented a court paper on a simplified amendment procedure.

15. GT-SUIVI.Interlaken was set up by the Committee of Ministers to steer, under their authority, the follow-up process to the Interlaken Declaration as a whole.

Opinions on Parliamentary Assembly Recommendations

The CDDH adopted opinions on the following Recommendations of the Parliamentary Assembly of the Council of Europe:

- 920 (2010) – Reinforcing the effectiveness of the Council of Europe treaty law;
- 1925 (2010) – Readmission agreements: a mechanism for returning irregular migrants;
- 1932 (2010) – Decent pensions for women.

It also took note of Recommendation 1927 (2010) – Islam, Islamism and Islamophobia in Europe.

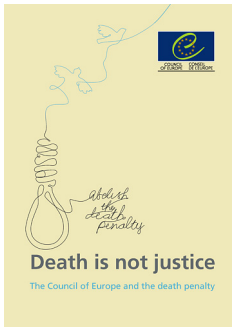
Fighting impunity

At its 71st meeting (2-5 November 2010), the Steering Committee for Human Rights (CDDH) adopted the draft "Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations", prepared by the Committee of Experts on Impunity (DH-I). The draft has been transmitted to the Committee of Ministers for adoption in early 2011.

European Day against the Death Penalty

To mark the European Day against the Death Penalty and the World Day against the Death Penalty, Thorbjørn Jagland, Secretary General of the Council of Europe and Baroness Catherine Ashton, Vice President of the European Commission and EU High Representative for Foreign Affairs and Security Policy, made a joint declaration reaffirming the opposition of the Council of Europe and the European Union to the use of capital punishment in all circumstances, and their commitment to the abolition of the death penalty worldwide.

An exhibition of 100 posters from the competition "Death is not justice" organised by Poster4Tomorrow under the patronage of the Secretary General of the Council of Europe was held on this occasion in Minsk (as well as in around 30 other cities worldwide). The exhibition followed a round table, held in September, where the Council of Europe and the authorities of Belarus discussed the introduction of a moratorium on the death penalty in the country. "Death is not justice" is also the title of a Council of Europe brochure on the abolition of capital punishment, the third edition of which was published on the occasion of the European Day against the Death Penalty.



Accession of the EU to the European Convention on Human Rights

The informal working group established by the Steering Committee on Human Rights (CDDH) to draft and discuss with the European Commission the legal instruments for the accession of the European Union to the European Convention on Human Rights held three working meetings with the European Commission between July and September 2010. During these meetings the group discussed general issues, technical adaptations to provisions of the Convention and some aspects of the procedure before the European Court of Human Rights. At its next meetings, it will continue discussing with the European Commission aspects of the procedure before the Court, as well as institutional and financial issues and the final clauses of the accession agreement. A first draft of an accession agreement could be presented to the CDDH for discussion at its 72nd meeting, in April 2011.

Internet : http://www.coe.int/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 Court at the national level, support for national human rights structures, support for police and prison reform and training of professional groups.

Armenia

A number of activities were organised between July and October under the three-year European Union/Council of Europe Joint Programme on "Support to access to justice in Armenia". They focused on support to the professions of lawyer and judge.

The activities aimed at developing regulations on the examination and testing procedures of the future School of Advocates and establishing operational capacities for the implementation of these procedures, as well as introducing a mandatory initial training for candidate advocates and a mandatory continuous legal education for licensed advocates took place.

Seminars on the development of exam procedures for the future School of Advocates and their follow-up were organised, along with pilot seminars to test the exams, in July and August. At the follow-up of these seminars, conclusions were drawn as to the directions to be taken in the main areas concerning the examinations to be organised by the school for lawyers' candidates. The conclusions will be submitted to the Board of the Chamber once the school is set up.

The activities to prepare the curriculum, training materials and training courses for the initial training of candidate advocates and the continuous training of licensed advocates started in September and continued in October, with the involvement of the President of the Chamber of Advocates, to define the profiles and tasks of the local consultants who will draft the pilot training course with the participation of one international mid-term consultant.

In October, a five-day study visit with ten participants was organised to France (Paris and Versailles) in order to learn about the functioning and the organisation of a School of Advocates as well as free legal aid/pro bono services. The knowledge gained from this visit will help the lawyers to lobby for amendments to the draft law on advocacy to be discussed by the National Assembly during its Autumn part-session.

As regards the strengthening of initial and in-service training for judges, the development of the training curriculum and materials for candidate judges and the preparation of the training-of-trainers courses for judges started in July and continued in September. In November, the trainers who were trained under the project tested their abilities and skills during pilot training courses.

In July, a five-day study visit was organised to the Judicial School of Spain (Barcelona) with ten participants, in order to enable them to discuss with its trainers the improvement of initial training of candidate judges.

A working meeting was held in September between international consultants and one national expert with a view to elaborating training tools for judges on small cases and incorporating them into the continuous training curricula of the judicial school. The proposals were submitted to the Ministry of Justice

which will examine whether they can be implemented in the framework of the on-going judicial reform.

Belarus

The Legal and Human Rights Capacity Building Department organised a round table on steps towards the abolition of the death penalty, which was held on 23 September in the National Library in Minsk.

The objective of the round table was to establish a climate of trust between the Council of Europe and the Belarus authorities, in particular the recently established Parliamentary Ad hoc Working Group on capital punishment matters (the Parliamentary Working Group), with a view to sharing the Council of Europe's views on the abolition of the death penalty and discuss the obstacles to doing so in Belarus, in order to identify ways to overcome them.

Some 40 participants took part in the round table, including the members of the Parliamentary Working Group and its Chairman, Nikolai Samoseiko, the Minister of Justice, Viktor Golovanov, the Prosecutor General – and former Chairman of the Constitutional Court – Grigorii Vasilevich, members of parliament and three NGO representatives, long-standing partners of the Council of Europe, Alexander Vashkevich (Society for Comparative Law), Valery Filippov (Legal Initiative Organisation) and Oleg Hulak (Belarus Helsinki Committee).

The Council of Europe experts included Robert Badinter, the charismatic former Minister of Justice of France who abolished the death penalty in his country, Eric Svanidze, former Deputy Minister of Georgia and former member of the European Committee for the Prevention of Torture, who also led his country to abolishing the death penalty, Tamara Chikunova, the mother of a person executed in Uzbekistan, and Peter Hodgkinson, a renowned researcher on the use of the death penalty and its alternatives.

All participants agreed on the temporary character of the death penalty, even those who are not fervent abolitionists, such as the Minister of Justice. The question is no longer "whether?" but "how?" and "when?". The round table confirmed that there were two main obstacles to the abolition in Belarus: a public opinion strongly in favour of the death penalty, and the need to organise a referendum on this question. With the population of Belarus expressing overwhelming support for capital punishment in a consultative referendum in 1996, the authorities want to ensure that public opinion will now support a moratorium and its eventual abolition. A second referendum is therefore not a legal necessity but a political imperative. As a result, the Working Group's objective is to provide arguments for abolition, so that support for the abolition of capital punishment among the population increases.

The round table enabled the experts and the participants to discuss openly. It confirmed that there were no legal constraints for the adoption of a moratorium. However, given the authorities' wish to mobilise public opinion in favour of abolition, the Council of Europe will continue to provide its support towards the authorities' effort.

Bosnia and Herzegovina

European Union/Council of Europe Joint Programme on "Efficient Prison Management in Bosnia and Herzegovina"

A conference "Prison Management in Bosnia and Herzegovina, the way ahead" was held in September and it served to present the outcomes of the joint programme, achieved within the originally agreed implementation period. It was attended by high-level officials, policy

makers and prison professionals, as well as representatives of other international agencies involved in prison reform in Bosnia and Herzegovina. The joint programme's proceedings were also presented and distributed to the participants, compiling the outcomes of the six components that made up the project, in particular: strategy paper on the introduction of community sanctions in practice, training manual on human rights, treatment programmes for some of the vulnerable categories in Bosnia and Herzegovina custody, guidelines and standards for independent prison inspection, technical and financial preconditions for the possible introduction of IT in prison service(s) and recommendations for the harmonisation of mental health regulations with European standards in this area. In addition certificates were delivered to all the working groups' members who were actively involved in the implementation of the joint programme. This was a successful final conference which could provide the momentum for successful action on prison reform. However, the political context clearly remains the major challenge as Bosnia and Herzegovina cannot have a modern European prison system that provides safe, effective punishment of offenders and the co-ordinated re-integration of these offenders into society unless there is genuine co-operation and partnership across the whole country.

The 7th Steering Committee meeting of the joint programme was organised in September following the originally foreseen 18 months implementation period. Following the announcement of the joint programme's extension until 31 December 2010, the following is a list of activities foreseen to take place before the project ends: a high level meeting on training issues, a high-level meeting on mental health regulations, two cascade training sessions on human rights standards and two cascade training sessions on the treatment of vulnerable categories of prisoners, as well as the final 8th Steering Committee meeting by local authorities. The project team undertook to implement the remaining six activities within the extended timeframe, according to the agreed quality and quantity standards.

Georgia

"Promotion of Judicial Reform, Human and Minority Rights in Georgia in accordance with Council of Europe Standards" (DANIDA)

On 7 October, the Council of Europe launched the project "Promotion of Judicial Reform, Human and Minority Rights in Georgia in accordance with Council of Europe Standards" funded by the Danish Government. The programme aims at improving human and minority rights protection in Georgia, through support to the judicial reform and strengthening state and independent institutions involved in the justice and human rights protection system by enhancing participatory national minority policy-making and implementation, and ensuring that the standards and obligations set by the Council of Europe instruments are met and secured by relevant bodies. Activities envisaged within the programme include, but are not limited to, awareness raising and monitoring implementation of the new Georgian Criminal Procedure Code and the new Imprisonment Code, capacity-building activities for the High School of Justice, Parole Board and the Probation Service, Training Centre of the Ministry of Justice and Training Centre for Penitentiary and Probation, as well as activities designed to help the Public Defender's Office to fulfil its important responsibilities of human rights protection more effectively.

Moldova

The Legal and Human Capacity Building Department continues to provide assistance to the Department of Penitentiary Institutions (DPI) of the Republic of Moldova, and the Council of Europe is regarded as one of the most important international partners of the institution. In particular, the Council of Europe takes measures together with national authorities to address the ill-treatment of detained persons. While advocating for the transfer of the responsibility for preliminary detention facilities from the Ministry of the Interior of the Republic of Moldova to the Ministry of Justice, the Council of Europe would like to make

sure that this will not be merely a formal change, but a substantial evolution in human rights protection for people deprived of their liberty for legitimate reasons.

In this context, a training seminar for officers and security agents of the penitentiary system of Moldova entitled "Conflict resolution and prevention of violence in prisons" was carried out on 24-26 August in Chisinau. In the opening of the seminar, the Minister of Justice, Alexandru Tanase, highlighted the importance of having professional, disciplined and well organised personnel in charge of the penitentiary institutions and ensuring continuous training of such personnel on specific concerns related to breaches of human rights of detained persons. In her turn, the Special Representative of the Secretary General, Birute Abraitiene, stressed in her opening address that the public interest is to improve standards of detention and create a penitentiary system that will not multiply crimes, anger or the spirit of revenge, but will stop proliferation of crimes, re-educate and bring back to the society its "lost" members. The leadership of the DPI has shown its interest in a more consistent co-operation with the Council of Europe. Therefore, an analysis is being carried out in order to design a project for the Moldovan prison system.

European Union/Council of Europe "Democracy Support Programme in the Republic of Moldova"

In response to violent events which followed the vote of 5 April 2009 and the subsequent deterioration of the political and social situation in Moldova, the European Commission and the Council of Europe launched a joint project entitled the "Democracy Support Programme". The Legal and Human Capacity Building Department is responsible for the implementation of the first four components of this complex project, namely: 1) assessment of existing and proposed legislation with regard to its compliance with European standards, focusing on the judiciary, the prosecution service and the police; 2) ensuring accountability for human rights violations; 3) safeguarding pre-trial guarantees; 4) support to the Centre for Human Rights of Moldova (Ombudsman institution).

An important number of activities were carried out in the framework of the Democracy Support Programme between July-October. Through this project, the Council of Europe is actively involved in the police reform process. A report on the Reform Concept for the Ministry of Internal Affairs of the Republic of Moldova was drawn up by a Council of Europe expert and submitted to the government. According to the expert, policing in Moldova, as in any country, should have as its fundamental objective the protection of human rights. The reform process should include a comprehensive review of the legal framework concerning the Ministry of Internal Affairs, and ensure that respect for human rights is enshrined as a fundamental principle of all aspects of policing. The serious problems of ill-treatment of detainees by the Moldovan police, objectively verified by various international and national actors, should also be a priority for the reform process. The project will follow closely all developments related to the said reform and stands ready to provide to the government all necessary assistance in this regard.

It is an undisputed fact that institutions, such as the Ombudsman, hold a strong, important and permanent position among the range of institutions that form the infrastructure of a democratic system based on the rule of law and human rights. The ability of this type of institution to play an appropriate role within a state depends on many political, social, and legal factors. Such an institution must assume its proper place within the constitutional framework, possess a sufficiently broad scope of competences as well as a range of legal instruments allowing it to effectively stimulate the legal sphere and actual practice in significant human rights areas. An important characteristic of an effectively operating institution of this type must be its independence, particularly, but not exclusively, in relation to the executive. Unfortunately, the Institute of Parliamentary Advocates (Moldovan Ombudsman institution) is faced with serious problems of statutory independence and institutional capacity. It is in urgent need of reform, and in order to launch the process of its institutional consolidation and capacity building, an expert assessment of the current state of affairs was carried out between June-July. The report on the assessment of the current problems of the Ombudsman institution in Moldova was produced by Mr Marek Antoni Nowicki, former International Ombudsperson in Kosovo[16], and contains strategic guidelines for the development of the Ombudsman institution. Follow-up activities aiming at strengthening the capacity of the Moldovan Ombudsman and

assisting with the review of the legal framework of the institution, in line with European standards, and providing capacity-building support will be carried out in co-operation with the Polish Ombudsman.

The standards for the prevention and combating of ill-treatment and impunity were the focus of a training-of-trainers seminar, organised in Chisinau, on 27 September – 1 October, in co-operation with the National Institute of Justice. The five-day event brought together some 30 judges, police officers and prosecutors, in order to create a core group of national trainers on the standards of the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for combating ill-treatment and impunity. The national trainers will subsequently provide training to their peers in a series of cascade seminars to be organised in the framework of the project. This training is an essential component of the project's efforts in combating torture and ill-treatment and promoting human rights awareness in Moldova. It was conducted by two international experts – Mr Eric Svanidze and Mr Henry Lovat, with the participation of a national expert, Mr Vlad Gribincea.

16. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

On 20-21 September and on 18-20 October, the project held a training seminar on riot control for law enforcement officials at the Police Academy in Chisinau. Expert police trainers from the Netherlands, Spain and the United Kingdom gave an overview of international principles in upholding freedom of assembly, and the role of different de-escalation tactics in eliminating tensions during demonstrations. The training seminar enhanced the participants' crowd control capacity, teaching officers to deal with lawful and unlawful gatherings, sporting events, political rallies and concerts in line with international policing standards and human rights. About 24 police officers participated in this training seminar.

On 18-22 October the Democracy Support Programme in co-operation with the National Institute of Justice organised a training-of-trainers on the use of alternatives to pre-trial detention and imprisonment. The five-day event brought together 20 judges and prosecutors to be trained on the use of alternatives to pre-trial detention and imprisonment for the purpose of providing cascade seminars to their peers throughout the country. The use of alternatives to pre-trial detention and imprisonment – national and international context, the national legislation relating to pre-trial detention and alternatives – were the main topics discussed during the training sessions. This training session is an essential component of the project's efforts in safeguarding pre-trial guarantees and promoting human rights awareness in Moldova.

Serbia

The Council of Europe final report "Support of the Reform of the Judiciary in Serbia in the light of the Council of Europe Standards" was presented at a conference attended by high-level officials in Belgrade on 29 September. The report was published as a result of a six-month project, financed by the World Bank, which assessed the state of implementation of the National Judicial Reform Strategy adopted in 2006 and identified legislative gaps and obstacles hindering the judicial reform process. The report included a road map indicating specific measures to be taken in the short-, mid- and long-term to ensure a continued and sustainable reform of the judiciary in Serbia, in line with relevant European standards. The report is available at: http://serbiamdtf.org

Turkey

The European Union/Council of Europe Joint Programme on "Enhancing the role of the supreme judicial authorities in respect of European standards" was launched in February. The first three round tables and one study visit to the European Court of Justice (ECJ), in Luxembourg, and the Council of Europe, including the European Court of Human Rights, in Strasbourg, for members of the Turkish Constitu-

tional court were organised between March and July 2010.

The second study visit to Luxembourg and Strasbourg was organised for members of the Court of Cassation on 5-8 July, with the participation of the president of the court. Three other study visits took place after the summer break and the Judicial Holiday in Turkey for the Constitutional Court (13-16 September) and the Council of State (27-30 September and 11-14 October) with the participation of the President and the Chief Advocate General of the Council of State.

The participants attended meetings with the judges and lawyers in the European Court of Justice where they were able to learn about the proceedings before the court, preliminary ruling procedure, the role of the advocate general and the structures and roles of General Court and Civil Service Tribunal. They also attended a hearing and had a chance to visit different parts of the Court's building.

During the study visit to the Council of Europe, including the European Court of Human Rights, the participants had a chance to discuss important topics and cases relevant to Turkey with judges and senior lawyers of the European Court of Human Rights. Issues included the authority of the case-law of the European Court of Human Rights, the right to life, prohibition of torture, fair trial, freedom of expression, freedom of thought, conscious and religion and the right to property. They also had the chance of attending a Grand Chamber hearing before the Court. Mr Hasan Gerçeker and Mr Mustafa Birden, the presidents of the Court of Cassation and the Council of State respectively also met the President of the European Court of Human Rights, Mr Jean-Paul Costa, in bilateral meetings.

The visit to the Council of Europe included meetings with lawyers and experts from the following departments of the Council: Department for the execution of judgments of the Court, Justice Division (CEPEJ, CCJE and CCPE), Venice Commission, the Secretariat of the European Social Charter, Gender Equality Division and Bioethics Division.

As of the end of October, five study visits and three round table meetings have been completed within the framework of the project. 73 members, prosecutors and reporters from the Turkish supreme courts have participated in the study visits where they met 59 judges, lawyers and experts from European encounters. The round tables organised in Ankara also hosted 14 international experts, academics and judges from other European countries and 205 judges and reporters from the Turkish beneficiary courts participated. All news, documents and project activities were published on the website of the project: www.yargitay.gov.tr/abproje

In addition to the quantitative indicators stated above, the interest of the beneficiary courts was also manifested during the presentations and discussions in which the participants exchanged their knowledge and experience on the issues discussed in each meeting, which contributed to the development of a close relationship between the Turkish supreme courts and the European institutions for a better protection of human rights at the national level.

Important constitutional changes have taken place since the referendum of 12 September in Turkey, which also affected the structures and roles of the Turkish Constitutional Court and the High Council of Judges and Prosecutors. The Council of Europe discussed the new situation with some members of the Constitutional Court in Strasbourg and suggested revising the project activities in line with their needs and new roles. This issue was also on the agenda of the Project Steering Committee on 20 October where parties agreed to consider next activities accordingly.

Ukraine

Between 1 July and 30 October, the European Union/Council of Europe joint programme on "Transparency and efficiency of the judicial system of Ukraine" focused on bringing the legal framework of the Ukrainian judiciary in line with European standards.

Following the new adopted Law on the judiciary and status of judges, the joint programme established successful working relations with newly established bodies of the judiciary, namely the Council of Judges, the High Qualification Commission of Judges and the State Court Administration.

In addition, the joint programme continued to assist in the preparation of the legislative opinions on the Law of Ukraine, both on the Judiciary and the status of judges, and on the amendment of certain legislative acts of

Ukrainian law, preventing abuse of the right to appeal. In order to address these issues, the project, together with the Venice Commission, organised bilateral technical meetings with Ukrainian stakeholders on 4-5 October, during which an exchange of views on the laws took place, as well as a discussion of the experts' preliminary opinions. Following these meetings, both joint opinions were adopted at the 84th plenary session of the Venice Commission, (15-16 October). According to the Ukrainian authorities, these opinions will be taken into account in the course of further legislative amendments.

From 5 to 9 July, the project held a Mediation Week across four Ukrainian courts (Bila Tzerkva City Court of Kyiv Region, Vinnitsa Circuit Administrative Court, Appeal Administrative Court of Donetsk Region and Ivano-Frankivsk City Court). During Mediation Week, each court used mediation for the first time to settle a minimum of ten cases, and organised a high profile public awareness campaign, consisting of press conferences in Kyiv and in each pilot region, as well as interviews and publications. In order to create more support for court-bound mediation in Ukraine, a mediation training course was conducted in October for high-level stakeholders and decision makers.

The joint programme continued with its activities in setting up an automated case-management system in the courts. This system will enable the courts to organise internal business operations in an automated way, in particular, to assign cases automatically. This will increase the effectiveness of the judges' work through their specialisation as well as ensuring the objective criteria of the workload of judges. For this purpose, the joint programme organised a number of working group meetings where the draft regulation on the automated case-management system in the courts was evaluated by the Council of Europe expert. It is expected that the aforementioned draft regulation along with recommendations of the Council of Europe expert will be adopted by the Council of Judges of Ukraine in December.

The project also organised a study visit to the High Council of Justice of Portugal and the Centre for Judicial Studies in Lisbon, Portugal (8-10 September) for members of the High Council of Justice. The activity was aimed at showing how the Portuguese judiciary works. The presentations made during the visit will be used by the High Council of Justice to implement some aspects of this European system into their own.

To support the drafting of the curricula for initial and continuous training for the Academy of Judges, the project organised a number of activities aimed at assessing training needs (TNA) for the ongoing training of judges. The joint programme continued its support of the State Court Administration in its procurement of computer equipment for the courts. Within the reporting period, a respective tender was held and the winner was identified. It is expected that the equipment will be delivered to the courts within the next few months.

Multilateral activities

The Joint Programme between the European Union and the Council of Europe entitled "Combating ill-treatment and impunity" (1 January 2009-30 June 2011) continued its capacity-building phase after the fact-finding/research phase in 2009.

The series of cascade seminars for judges and prosecutors continued in the regions of Ukraine. In July, a training seminar for police officers and one for human rights NGOs were also organised. These training events targeted legal professionals involved in dealing with issues of ill-treatment in the course of pre-trial investigation. They highlighted the case-law and standards developed by the European Court of Human Rights as regards effective investigation of ill-treatment. They followed a significant number of training seminars organised in March – June 2010 in all five beneficiary countries of the project: Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

In parallel, in all 5 beneficiary countries, the following documents of the project were distributed to legal professionals, NGOs, independent experts, educational institutions and libraries: the country reports as regards effective investigation of ill-treatment; the "Guidelines on European standards for effective investigation of ill-treatment"; and the brochure on the rights of detainees and obligations of the law enforcement officials.

The Council of Europe has been following up on the implementation of the recommendations made by the project's long-term consult-

ants, Eric Svanidze and Jim Murdoch, in the above-mentioned country reports.

On 6 October 2010, the Steering Committee (SC) meeting of the programme took place in Kyiv, bringing together the representatives from all five beneficiary countries. The progress and lessons of the project were discussed. The Steering Committee members emphasised their appreciation for the project and suggested further activities which the Council of Europe has taken on board. In particular, they supported the recommendations of the project's long-term consultants as regards effective investigation of ill-treatment. Each of the beneficiary countries has already undertaken concrete steps to remedy the identified shortcomings. In Armenia, the draft presidential decree on establishing a commission supervising law enforcement agencies was being examined in the light of the Council of Europe expertise submitted to the authorities at their request. In Azerbaijan, the legislation related to torture prevention would soon be changed and brought closer to European standards. In particular, it would incorporate the definition of torture provided by international and European instruments. The Georgian Inter-Agency Co-ordination Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted the strategy against torture elaborated by its working group, and would prepare an action plan against torture in co-operation with the Council of Europe. Moldova recently established the national preventive mechanism and a division on combating torture in the office of the Prosecutor General. In Ukraine, the working group on criminal justice reform recently established would examine the setting-up of an independent investigation body in close co-operation with the joint programme.

The HELP Programme

Following the first annual meeting in Strasbourg to re-establish the European Programme for Human Rights Education for the Legal Professionals network, the HELP II Programme has followed up the information presented at the meeting by the representatives of the twelve beneficiary countries. Throughout the summer, the HELP II Programme continued to work closely with the representatives of the national training institutions. Information presented by the representatives relating to the current state of integration of human rights training into the training programmes of beneficiary countries' national training institutions has allowed the HELP II Programme to continue to offer support in relation to training methodology, developing European Court of Human Rights curricula and training materials and developing European Court of Human Rights E-learning tools. Further substantive updates have also been made to the HELP website. A "check-list" training design has been added to provide a quick tool for trainers to identify all relevant issues to consider in the process of developing a training event. The checklist is based on the HELP manual on training methodology which is also available on the website. The presentation 'Intercultural Impact' provides information on cultural differences in communication and learning styles. Human rights trainers active on an international level encounter different culturally influenced styles of communication, affecting the learning process and learning styles of the participants. Awareness and understanding of these cultural differences and adapting training methodology as required is vital in ensuring human rights training is effective.

In October, three working groups were established to work on the three components of the HELP II Programme and thereby contribute to addressing the problems identified by the representatives of the national training institutions. The representatives agreed to participate in working groups on the following subjects: materials, training-of-trainers and e-learning. The working groups were held in Strasbourg on 3, 4 and 5 November. The materials working group discussed the development and dissemination of training materials in the national training institutions. The working group on training-of-trainers focused on the selection criteria and training programmes employed for national human rights trainers in the respective beneficiary countries. The e-learning working group will address the development and accessibility of e-learning courses for judges and prosecutors within the national training institutions.

"Peer-to-Peer II Project" – Nurturing the European Network of National Human Rights Structures (NHRSs)

Forty of the 47 member states of the Council of Europe have Paris Principle compliant NHRSs that operate at the nationwide level, i.e. ombudsmen and/or national human rights commissions/institutions. Almost all of those participate actively in the co-operation activities organised under the "Peer-to-Peer II Project", a joint European Union-Council of Europe project for the years 2010-2012.

The overall objective of the Peer-to-Peer II project is to enhance the domestic promotion and protection of a wide range of human rights. *Project activities*:

- foster peer exchange, critical reflection and creative thinking on the mandates and working methods of NHRSs operating at the nationwide level;
- promote co-operation between them;
- promote the exchange of experiences and co-operation between the nationwide and sub-nationwide structures, such as regional ombudsmen;
- promote co-operation between the NHRSs and relevant Council of Europe human rights bodies;
- promote the setting-up of NHRSs compliant with Paris Principles in those member states that still do not have any.

Project activities: 1 July to 30 October

The 2010 edition of the Annual Round Tables with the Russian Federal and Regional Ombudsmen was organised with the help of the St Petersburg Centre for Humanities and Political Studies "Strategy" in Pushkin near St Petersburg on 28 and 29 September. The 57 Ombudsmen of the Russian Federation or their representatives as well as Federal Ombudsman, Vladimir Lukin, engaged in lively discussions with relevant Council of Europe experts and staff on the following three issues: development of Russian legislation and practice in the light of the Revised European Social Charter, ratified by Russia in 2009, and the possible contribution by the Russian Ombudsmen to the Council of Europe's monitoring of the Charter's implementation; the ratification of Protocol 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its practical consequences from a domestic Russian and from an international perspective; problems and perspectives on the development of the ombudsman institution in Russia at the federal and regional level, especially as regards the defense of political rights. A debriefing paper is under preparation.

"European NPM Project"

Setting-up and nurturing the European Network of National Preventive Mechanisms against torture (NPMs) and organising the exchange of know-how between the members of the network, the UN Sub-committee Against Torture (SPT) and the Council of Europe's European Committee for the Prevention of Torture (CPT), with the help of the Association for the Prevention of Torture (APT, Geneva).

All the, now 21, existing NPMs in Council of Europe member states are actively participating in the co-operation activities organised under the "European NPM Project", which is part of the "Peer-to-Peer II Project", a joint European Union-Council of Europe project that is benefitting from additional funding by the Council of Europe's Human Rights Trust Fund (HRTF).

The overall objective of the European NPM Project is to strengthen the prevention of torture in Europe, especially by enhancing domestic prevention. The project activities:

- foster peer exchange, critical reflection and creative thinking on NPM work;
- make NPMs, the CPT and the SPT aware of each other's standards and working methods;
- promote co-operation between NPMs, the CPT and the SPT;
- promote the ratification by Council of Europe member states of the Optional Protocol to the UN Convention Against Torture (OPCAT) and the establishment of OPCAT compliant NPMs where they do not exist.

Project activities: 1 July to 30 October

An "On-site Exchange of Experiences" was held in Tbilisi with the Georgian NPM from 29 June to 2 July 2010. It involved 26 participants from the NPM of Georgia on the one side, 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 Georgian NPM in the light of the OPCAT requirements were examined. Preparation was also undertaken for a common on-site visiting exercise on the second day to a place of deprivation of liberty, at which the participants split in small groups. On the third and fourth days, the international experts presented their observations on the working methods of the national experts and these observations were discussed in plenary. A confidential debriefing paper has been sent to the participants in this on-site visit.

A thematic workshop on "NPM Methodology: planning strategies for an NPM visit" was held on 13-14 October in Yerevan, Armenia. The event was co-organised with and hosted by the Human Rights Defender of the Republic of Armenia (the NPM of Armenia) and saw the participation of 22 NPM experts from 18 of the 21 currently operating European NPMs, members of the SPT and the CPT, and representatives of the APT, as well as individual experts. The workshop was divided into three working sessions that explored the breakdown of the key objective elements to planning and structuring an NPM visit. Lively discussions were had and views were shared on the methodology of planning an NPM visit from national and international perspectives. A debriefing paper is currently in the process of being drafted and will be circulated electronically to all participants in due course.

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 gives information on the activities of the network and its members, including activities under the European NPM project, and provides updates regarding the setting-up, legislative basis and functioning of NPMs in Europe. It also regularly poses a question considered to be an issue of topical concern for the European NPM community, with an overview of the NPMs' views on the given topic as well as some experts' perspectives. The previous August/September issue of the European NPM newsletter asked the European NPM network whether they considered orphanages to fall within the ambit of a "place of deprivation of liberty". The next issue will raise a topical question relating to surveillance in places of deprivation of liberty balanced with the right to privacy. 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.

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 Convention No. 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 the Internet.

Work on mutual administrative assistance in tax matters

On 24 March 2010, the Committee of Ministers adopted the 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 was opened for signature on the occasion of the OECD Ministerial meeting which took place in Paris on 27 May 2010. It was signed on that occasion by 15 states, 10 of them Council of Europe member states.

European Committee on Crime Problems (CDPC)

The CDPC was entrusted by the Committee of Ministers the responsibility for overseeing and co-ordinating the Council of Europe's activities in the field of crime prevention and crime control. The CDPC identifies priorities for intergovernmental legal co-operation, makes proposals to the Committee of Ministers on activities in the fields of criminal law and procedure, criminology and penology, and implements these activities.

The CDPC is currently working on the following priority issues:

Draft recommendation on foreign nationals in prison

This work continues to address the treatment of foreign nationals detained in European prisons, which remains a growing problem. It focuses primarily on tailoring support to the specific needs of various groups, including more vulnerable prisoners such as children and the elderly.

Overcrowding of prisons, the use of alternatives to imprisonment, and dangerous offenders: how to manage them, their sentencing and treatment and how to protect citizens from their possible re-offending

On a more general note, the challenges facing ever increasing numbers of detained persons are being addressed via the development of a framework of European standards related to prisoners' treatment and rehabilitation, the protection of public safety and human rights issues.

Scientific proof in criminal matters

This is continuing work related to assessing the increasing complexity of scientific evidence and the implications of such developments for fair trials. It is considered especially relevant to the concept of equality of arms, given parties to proceedings often lack the knowledge to handle such evidence themselves and must thus seek professional advice.

Work related to the drafting of the Medicrime Convention

The Medicrime Convention will be the first binding international criminal instrument on counterfeiting medical products, and similar crimes involving threats to public health. The CDPC seeks to harmonise extant international legislation and implement sanctions with a real deterrent effect, which are proportionate to the harm caused by offences in this area.

Work related to the promotion of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

The CDPC was invited by the EU Parliament to comment on the latest draft Directive combating child sexual abuse, sexual exploitation and child pornography in the context of the Council of Europe Convention, at an open hearing of the Parliament in Brussels, 28-29 September. Strategies for minimising the dissemination of pornographic material, in particular the role played by the Internet, were the focus.

Cybercrime Convention Committee (T-CY)

The main priority of the T-CY is currently jurisdiction and state sovereignty, in particular the use of cross-border investigative measures on the Internet. Terms of reference are being drawn up with a view to further work in the short term.

Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC)

The priority of the PC-OC is the modernisation of the European Convention on Extradition. This is being addressed through a fourth additional protocol, which includes jurisdiction and international co-operation, reinforcement of the role of the PC-OC in discussing practical cases, and difficulties relating to the application of the Conventions.

A recent seminar on effective tools for mutual legal assistance recently gave its overwhelming support to the model forms and guidelines for requesting mutual legal assistance under the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30). These tools

were developed with a voluntary contribution from Germany in 2009, and will now have to be adapted to the domestic requirements of each State Party to the Convention.

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

Media and information society

Freedom of expression and of the media is a cornerstone of democracy. It is guaranteed 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 the 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 priority workstream for the present and coming years.

Main events

5th European Dialogue on Internet Governance (EuroDIG)

Vilnius, 14-17 September 2010

In 2010 again, the Council of Europe had a strong presence in the 5th edition of the UN-led Internet Governance Forum. It organised and co-organised a series of well attended workshops.

Among them featured a workshop addressing the issue of "Protecting women's rights: Internet content from a gender perspective". Its main outcome was a call for a Free Fun saFe Feminine women-Friendly Internet.

Expert members of the Ad hoc Advisory Group on Cross-border Internet (MC-S-CI) discussed with IGF participants possible international law responses to the need to ensure the universality, openness and ongoing functioning of the Internet as a means for ensuring full enjoyment of freedom of expression and access to information regardless of frontiers.

Meetings of conventional committees, expert committees and groups of specialists

3rd Meeting of the Committee of Experts on New Media (MC-NM)

Strasbourg, 27-28 September 2010

The experts worked on future standard-setting texts: a draft recommendation on the new notion of media and draft recommendations with self-regulatory guidelines on the protection of human rights with regard to (i) search engines and (ii) social networks service providers.

2nd meeting of the Ad hoc Advisory Group on Public Service Media Governance (MC-S-PG)

Strasbourg, 12-13 October 2010

The group considered in detail standard-setting responses to the question of public service media governance and agreed on future standard-setting texts.

Texts and instruments

Declaration on network neutrality

Adopted on 29 September 2010

The Council of Europe commits to upholding network neutrality on the Internet and points out that any exceptions to this principle should be justified by overriding public interest. Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. A competitive and dynamic environment may encourage innovation, increasing network availability and performance while lowering costs, and promote the free circulation of a wide range of content and services on the Internet.

Declaration on the digital agenda for Europe

Adopted on 29 September 2010

The Committee of Ministers welcomes the European Union's strategy set forth in the Digital Agenda for Europe and highlights the commonality of goals pursued by the Council of Europe and the European Union on public policy issues related to Internet governance, in particular as regards its own recommendation to member states on measures to promote the public service value of the Internet. Council of Europe member states generally should promote the objectives of the Digital Agenda for Europe in their respective domestic activities and the Committee of Ministers invites the European Union to co-operate in this field with the Council of Europe.

Declaration on the management of the Internet protocol address resources in the public interest

Adopted on 29 September 2010

The Committee of Ministers underlines the importance of addressing the issue of scarcity of Internet resources, notably IPv4 addresses. It states that Internet protocol address resources should be regarded as shared public resources and allocated and managed in the public interest by the entities entrusted with these tasks, taking into account the present and future needs of Internet users. It also points out that timely and effective deployment of the new Internet Protocol IPv6 – which offers a far larger address space – in the public sector should be ensured and swift preparations for migration to and deployment of IPv6 in the private sector should be encouraged and promoted.

Publications

Language versions of Living Together

In 2009, the Council of Europe published Living Together, a handbook on Council of Europe standards on media's contribution to social cohesion, intercultural dialogue, understanding, tolerance and democratic participation. In order to broaden the dissemination of that valuable contribution to social cohesion, new languages versions have been published: Russian (Жить вместе), Ukrainian (Жити разом), Turkish (Birlikte yaşama), and Albanian (Të jetuarit sëbashku). A Bulgarian version (Да живеем заедно) was prepared in co-operation with the Bulgarian authorities. PDF versions can be downloaded from the Media Division's website.

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

European human rights institutes

Through their research and teaching activities, the institutes play an important part in the development of human rights awareness.

The following, non-exhaustive list gives an outline of the resources of various human rights institutes and their activities in 2008. The information, provided by the institutes, is presented in the language in which it was drafted.

Austria/Autriche

Internationales Forschungszentrum für Grundfragen der Wissenschaften

Edith-Stein-Haus, Mönchsberg 2a, 5020 Salzburg
Tel.: + 43 (0) 662 84 31 58 – 11 (Secretariat), + 43 (0) 662 84 31 58 – 13, 14 (newsletter/documentation)
Fax: +43 (0) 662 84 31 58 – 15
E-mail: office@menschenrechte.ac.at (Secretariat)/newsletter@menschenrechte.ac.at (newsletter)
Website: http://www.menschenrechte.ac.at/

Publications

Newsletter Menschenrechte, a publication in the German language which is published six times a year, giving precise and timely information about recent decisions of the European Court of Human Rights, the European Court of Justice, the Austrian Supreme Court as well as the Constitutional Court and the Administrative Court. The *Newsletter Menschenrechte* has been published, since 2010, by the Jan Sramek Verlag (Vienna) and has a print run of 400 copies per issue.

Events

On 16 April 2010, the Austrian Human Rights Institute held, in co-operation with the "Advocacy for Equality Issues" (an official institution to which anyone may apply if he feels discriminated on grounds of sex, age, et cetera), a symposium dealing with equality issues. The focus was on questions of legal protection for discriminated persons and how to render evidence of alleged suffered discrimination.

On 3 December 2010, the Institute commemorated the anniversary of the UN Declaration of Human Rights. The former president of the European Court of Human Rights, Emeritus Professor Luzius Wildhaber, gave a lecture on the highly current topic "The European Court of Human Rights– overloaded, overloading or just right?" (*Der Menschenrechtsgerichtshof für Europa – überlastet, überlastend oder gerade richtig?*).

Projects

The Austrian Human Rights Institute is participates in projects run upon the initiative of the Austrian Association of Judges. Its aim is to improve and consolidate the knowledge of trainee judges of the rights guaranteed by the European Convention on Human Rights.

Documentation

The Institute's homepage provides visitors with a freely accessible archive, comprising all the volumes of the *Newsletter Menschenrechte* (containing Strasbourg case-law in abridged form, starting from 1992) as well as the titles of its library. Potential complainants also have access to useful information on how to bring complaints before the European Court of

Human Rights. Since 2010, actual decisions of the Supreme Court, the Constitutional Court and the Administrative Court, dealing with special human rights aspects, have been published on the institute's homepage. An overview of the current human rights literature and legislation is also available to the public via the Internet.

Library

The collection of volumes in the field of human and fundamental rights comprises approximately 2 100 titles and 32 periodic journals.

Legal advice

We are a platform for anyone who seeks legal advice concerning alleged violations of his/her human rights, especially of those guaranteed by the European Convention on Human Rights. This service is also available via internet and is free of charge.

National correspondent for Human Rights

The Institute collects information on the development of human rights in Austria (jurisprudence, laws, bibliography).

Traineeship

A traineeship programme gives students of the Faculty of Law of the University of Salzburg an insight into human rights and invites them to do their own research work.

Finland/Finlande

Institute for Human Rights

Åbo Akademi University, Gezeliusgatan 2, 20500 Turku/Åbo
Tel.: 358–2–215 4713
Fax: 358–2–215 4699
Website: http://www.abo.fi/instut/imr

Main services for the public

These include:

- Human rights library
- Depository library for the Council of Europe
- United Nations depository library
- Bibliographic reference database for human rights literature (FINDOC)
- Database for Finnish case-law pertaining to human rights (DOMBASE)

Main programmes, courses and seminars in 2010

*Master's Degree Programme in International Human Rights Law,*a two-year programme, open for applicants holding a law degree or another bachelor's degree with subjects relevant to the legal protection of human rights.

Advanced Course on the International Protection of Human Rights, 16–27 August 2010, an intensive course for post-graduate students and practitioners with a good knowledge of human rights law.

Intensive Course on the Role of Human Rights in Development: Impact and Responsibility, 8–12 November 2010, a specialised intensive course for post-graduate students and practitioners, focusing on the conceptual and practical relevance of the international human rights framework to development co-operation and on the various strategies to integrate the two fields.

Seminar 'The 1949 Geneva Conventions Revisited: Reflections on Current Challenges to International Humanitarian Law', 29 January 2010: Arranged jointly by the Finnish Red Cross, the Åbo Akademi University Institute for Human Rights and the Finnish Committee for European Security.

Seminar (in Finnish) *'Thirty years of the CEDAW Convention*, 9 March 2010: Arranged jointly by the Faculty of Law of the University of Turku, the Åbo Akademi University Institute for Human Rights and the Council for Gender Equality.

Forthcoming courses, seminars, etc.

- *Intensive Course on Justiciability of Economic, Social and Cultural Rights: Theory and Practice*, 16–20 May 2011, application deadline 11 February 2011.
- *Advanced Course on the International Protection of Human Rights*, 15–26 August 2011, application deadline in April 2011.
- *Master's Degree Programme in International Human Rights Law, Autumn 2011 – Spring 2013*, application deadline 28 February 2011.

France

Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH)

Locaux et bibliothèque : 158 rue Saint-Jacques, 75005 Paris
Adresse postale : 12 place du Panthéon, 75231 Paris Cedex 05
Tel. : +33/(0)1 44 41 49 16 (dir. 49 15)
Fax : 01 44 41 49 17
Courriel : jbenzimra-hazan@u-paris2.fr
Site internet : http://www.crdh.fr/

Le CRDH est aujourd'hui dirigé par le professeur Emmanuel Decaux. Il sert de cadre à un Master 2 droits de l'homme et droit humanitaire avec une branche recherche et une branche professionnelle. Le Centre anime une revue électronique sur les droits fondamentaux.

Emmanuel Decaux a publié un recueil des Grands textes internationaux des droits de l'homme, Documentation française, 2008, et un cours sur Les formes contemporaines de l'esclavage (Les livres de poche de l'Académie de droit international de la Haye, Nijhoff, 2009)

Les activités de recherche individuelle et collective du CRDH ont donné lieu à une série de publications récentes ou en préparation.

- Emmanuel Decaux et d'Alice Marangopoulos (ed), *La pauvreté, un défi pour les droits de l'homme*, sous la direction, Pedone, (collection de la Fondation Marangopoulos pour les droits de l'homme) 2009.
- Le CRDH a organisé les 15-16 octobre 2009 un colloque marquant le 20e anniversaire de la *Convention des Nations Unies sur les droits de l'enfant*, à paraître chez Pedone (collection de la Fondation Marangopoulos pour les droits de l'homme).

Colloques internationaux

- Il organise avec le Centre de droit européen de Paris II, un colloque consacré à *La Charte des droits fondamentaux de l'Union européenne*, qui aura lieu le 10 mai 2011, dont les actes seront publiés chez Bruylant (collection Droit et Justice).

- Emmanuel Decaux et Christophe Pettiti (ed.), *La tierce intervention devant la Cour européenne des droits de l'homme et en droit comparé*, Collection Droit et Justice n°84, 2009.
- Emmanuel Decaux et Olivier de Frouville (ed), *La Convention pour la protection de toutes les personnes contre les disparitions forcées*, Collection Droit et Justice n°87, 2009.
- Emmanuel Decaux (ed), *La responsabilité des entreprises multinationales en matière de droits de l'homme,* collection Bruylant, Droit et Justice n° 89, 2010.
- Le CRDH a été associé, avec le Protection Project de la Johns Hopkins University, à la conférence internationale organisée par le Médiateur de la République qui a réuni à Paris le 1er février 2010 l'ensemble des médiateurs et institutions nationales indépendantes du Conseil de l'Europe et de la Ligue arabe, sur *Les droits de l'homme aujourd'hui: principes universels et garanties régionales, l'exemple de la Charte arabe des droits de l'homme et de la Convention européenne des droits de l'homme.*

Journées d'étude

- Le CRDH organise le 16 décembre 2010, une journée d'étude sur *La France et le Pacte international relatif aux droits civils et politiques,* à l'occasion de la sortie du commentaire collectif du Pacte, chez Economica.

Plusieurs thèses soutenues dans le cadre du CRDH ont été publiées :

- Mylène Bidault, *La protection internationale des droits culturels*, Bruylant, 2009.
- Mouloud Boumghar, *Une approche de la notion de principe dans le système de la Convention européenne des droits de l'homme*, Prix Jacques Mourgeon de la SFDI, Pedone, 2010.
- Julian Fernandez, *La politique juridique extérieure des Etats-Unis à l'égard de la Cour pénale internationale*, Prix de thèse de l'Institut des hautes études de la Défense nationale, Pedone, 2010.

Publications de thèses

Commentaires collectifs

Enfin, le commentaire du *Pacte international relatif aux droits civils et politiques* dirigé par Emmanuel Decaux, avec une préface de Christine Chanet, est paru chez Economica en 2010.

Le commentaire du *Statut de la Cour pénale internationale*, sous la direction de Julian Fernandez et Xavier Pacreau, doit paraître chez Pedone en 2011.

Un commentaire du *Pacte international relatif aux droits économiques, sociaux et culturels*, sous la direction d'Emmanuel Decaux et d'Olivier De Schutter, est en préparation chez Economica, pour 2012.

Institut de formation en droits de l'homme du barreau de Paris

Adresse postale : 57 Avenue Bugeaud – 75116 Paris, France

Tel. +33/(0)1 55.73.30.70

Fax. +33/(0)1 45.05.21.54

Courriel : chpettiti@pettiti.com

L'Institut des droits de l'homme du barreau de Paris, créé en 1978, a pour activité principale la formation des avocats français et étrangers au droit international des droits de l'homme. Les formations sont également accessibles à des juristes non avocats. L'Institut organise des sessions de formation avec le concours des Ecoles de formation des Barreaux, et des conférences et séminaires avec d'autres associations, ONG, universités et organisme internationaux.

Conferences, colloques, formation et activités

- La protection des droits sociaux fondamentaux par le droit européen : la charte sociale Européenne et la charte des droits fondamentaux avec Jean-Michel Belorgey et Pierre Rodiere, Lieu : Maison du Barreau, 14 juin 2010.
- Droits fondamentaux et réfugiés climatiques avec le Collectif Argos, France 5 et Yvon Martinet : Lieu : Maison du Barreau, 2 novembre 2010.
- L'Institut a assuré la formation des élèves avocats sur le thème de la Convention européenne des droits de l'homme à l'Ecole de formation Professionnelle des Barreaux de la Cour d'Appel de Versailles, en 2010.
- L'Institut a organisé, avec l'Institut des droits de l'Homme des Avocats Européens, une journée de formation dans le cadre de la formation continue des avocats du Barreau de Paris, à l'Université de la Sorbonne à Paris, au mois de juillet 2010, sur la pratique du pro bono de l'avocat en France, la procédure devant la Cour Européenne des droits de l'homme, le programme de Stockholm et la procédure pénale dans l'espace de liberté, de sécurité et de justice.
- En collaboration avec l'Institut des droits de l'Homme des Avocats Européens, un colloque sur le thème : « Vers la fin du recours individuel : devant la Cour Européen des droits de l'homme », à La Brede (Gironde) le 8 octobre 2010.
- L'Institut a participé à la remise du 15ème prix international des droits de l'homme Ludovic Trarieux, au mois d'octobre 2010, avec l'Institut des droits des droits de l'homme des avocats européens. Ce prix remis à un avocat, a été décerné cette année à M^{e} Karrina Moskalenko (Russie). Il est décerné en concours avec l'Institut des droits de l'homme des avocats européens, avec l'Institut des droits de l'homme du Barreau de Bordeaux, l'Unione Forense per la Tutela dei Diritti dell'uomo (Rome), et de l'Institut des droits de l'Homme du Barreau de Bruxelles.
- L'Institut a participé au forum européen pro bono organisé par le Public Interest Law Institute (PILI), à Paris en novembre 2010.

Activités avec l'université

L'Institut poursuit ses activités avec le groupe de réflexion et d'intervention *law clinic*, créé avec le CRDH de l'université Paris II et le CREDHO de l'université Paris XI-Sceaux.

L'Institut participe à la formation du master II contentieux européen de l'Université Paris II, sur la Convention européenne des droits de l'homme, et le droit des étrangers.

Publications 2010

Aux Editions Bruylant, sous la direction de l'Institut des droits de l'homme des avocats européens, la Charte des droits fondamentaux de l'Union européenne après le Traité de Lisbonne.

Centre de recherches et d'études sur les droits de l'homme et le droit humanitaire (CREDHO)

Université de Paris Sud (Paris XI)

Faculté Jean Monnet , 54, boulevard Desgranges, 92330 Sceaux

tel. +33 (0)1 40 91 17 19
fax +33 (0)1 46 60 92 62
e-mail credho@credho.org
site www.credho.org

Le CREDHO est un centre de recherches universitaire dont les activités essentielles sont la recherche bibliographique ainsi que la recherche de type académique donnant lieu à l'organisation de colloques dont les actes sont publiés dans la collection du CREDHO (aux Editions Bruylant, Bruxelles, 16 volumes parus, 4 en préparation). Les membres du CREDHO interviennent dans de nombreux colloques en France et à l'étranger et leurs contributions donnent lieu à publication. Ils participent également aux activités d'enseignement en matière de droits de l'homme et de droit humanitaire, dans les universités françaises et étrangères. Le CREDHO peut aussi fournir des services de consultation dans les domaines de sa compétence. En outre, il accueille quelques étudiants étrangers avancés.

Colloque annuel (La France et la CEDH) organisé à Paris-Sud

La quinzième session d'information du CREDHO (20 mars 2009) était placée sous la présidence du Juge Giorgio Malinverni ; elle a permis de passer en revue la jurisprudence en 2008. Les actes du colloque ont été publiés en 2010 chez Bruylant, collection du CREDHO n° 16 (voir *infra)*.

Colloques organisés à Rouen

- « Sécurité et liberté à l'épreuve de la lutte contre le terrorisme (SELELCT) » Journée d'étude organisée par le groupe de recherche SELELCT du CREDHO-Rouen, sous la direction de Charlotte Girard, 29 février 2008 (actes publiés dans la collection du CREDHO, à paraître fin 2010).
- « Les conventions de Genève 60 ans après : le droit international humanitaire face aux défis du XXIe siècle » Colloque organisé par Abdelwahab Biad et Paul Tavernier, dans le cadre du CREDHO-Rouen, avec la coopération du CREDHO-Paris Sud, 29 avril 2010 (actes publiés dans la collection du CREDHO, à paraître fin 2010).
- « Combattre la corruption sans juge d'instruction » Colloque organisé par Juliette Lelieur, 7 mai 2010 (actes publiés dans la collection du CREDHO, à paraître).

Collaboration avec d'autres instituts des droits de l'Homme

Le CREDHO collabore avec le CRDH (université de Paris II) et publie depuis plusieurs années, sous la direction de Paul Tavernier et Emmanuel Decaux, la *Chronique de jurisprudence de la Cour européenne des droits de l'homme* au Journal du droit international.

Il coopère également depuis nombreuses années avec le Centre for Human Rights de Pretoria (Afrique du Sud) pour la publication des *Human Rights Law in Africa Series*. Il a préparé la version française (Recueil juridique des droits de l'homme en Afrique - RJDHA) publiée chez Bruylant en 2002 et 2005 (T.I : XXIII-1312 p. ; T II : 2 vol. XXXI-2117 pages, collection du CREDHO nos 2 et 10).

Le CREDHO collabore avec l'Institut de formation en droits de l'homme du barreau de Paris.

Il participe à une clinique juridique (*Law clinic*) avec l'Institut et le CRDH en vue notamment de la préparation de mémoires d'*amici curiae* devant la Cour européenne des droits de l'homme (dernièrement affaire Zolotoukine – 2010).

Le CREDHO a noué des relations étroites avec l'Institut international des droits de l'homme et de la paix de Caen (IIDHP). Il prépare actuellement avec cet Institut le tome III du recueil juridique des droits de l'homme en Afrique (RJDHA).

Publications pendant l'année 2009-2010

- *Bulletin d'information du CREDHO n° 18/2008 et 19/2009*, contenant, notamment, une bibliographie des ouvrages, thèses et articles parus en français sur les droits de l'homme, les libertés publiques et le droit international humanitaire (parution en décembre sur le site du CREDHO).
- *Liste des thèses de doctorat sur les droits de l'Homme, les libertés publiques, les droits fondamentaux et le droit humanitaire* soutenues depuis 1984 dans les universités

francophones (mise à jour en 2009 et disponible sur le site du CREDHO).
- *Bibliographie systématique des ouvrages et articles parus en français depuis 1987 sur les droits de l'Homme, les libertés publiques, les droits fondamentaux et le droit humanitaire* (mise à jour en 2009 et disponible sur le site du CREDHO).
- *Bibliographie thématique et critique sur Islam et droits de l'Homme* (mise à jour en 2009 et disponible sur le site du CREDHO).
- Paul Tavernier (sous la direction de), *La France et la Cour européenne des droits de l'homme 2008. La jurisprudence en 2008* (Bruxelles : Bruylant, 2010, VIII-253 p., coll. du CREDHO n° 16).
- Paul Tavernier et Emmanuel Decaux (sous la direction de), *Chronique de jurisprudence de la Cour européenne des droits de l'homme. Année 2008* (Journal du droit international (Clunet), n° 3, 2009, pp.999-1077).
- Paul Tavernier et Emmanuel Decaux (sous la direction de), *Chronique de jurisprudence de la Cour européenne des droits de l'homme. Année 2009* (Journal du droit international (Clunet), n° 3, 2010, pp.955-1053).

Colloque à Rouen, avril 2010 : G.Quintane, Président C.Öskul, Président de l'Université de Rouen, A.Biad et P.Tavernier

Ireland/Irlande

Irish Centre for Human Rights

National University of Ireland, Galway

Tel: +353 (0)91 493948
E-mail: humanrights@nuigalway.ie
Web: www.nuigalway.ie/human_rights

The Irish Centre for Human Rights offers four distinct LLM courses (International Human Rights Law; Peace Operations, Humanitarian Law and Conflict; International Criminal Law; Economic, Social and Cultural Rights) completed entirely within the Centre itself, and in addition participates in three inter-university programmes (Cross Border LLM in Human Rights Law and the LLM/MSSc in Human Rights and Criminal Justice are offered in conjunction with Queen's University; European Master's Degree in Human Rights and Democratisation (EMA), co-ordinated by the European Inter-University Centre for Human Rights (EIUC) in Venice, Italy).

The Irish Centre for Human Rights is at the forefront of doctoral research in the field of human rights, with one of the largest cohorts of students in the world. Most graduates have taken up permanent teaching positions at prestigious institutions and the vast majority have published, or are in the course of publishing, their doctoral theses. A small number are also working at a high level for various inter-governmental and non-governmental organisations. The total number of graduates from the Centre over its ten years of existence recently reached 23 with the success of three candidates over the last year.

Each year, the Irish Centre for Human Rights offers two highly acclaimed summer school programmes on **Minority Rights, Indigenous Peoples & Human Rights Law** and the **International Criminal Court**. Each summer school has a week-long duration and the programmes offer participants a unique chance to immerse themselves in two increasingly important areas of international criminal law and international human rights law, and to benefit from the knowledge of an unrivalled panel of experts.

Over the past year, the Centre has published 5 monographs, 3 edited volumes and over 50 journal articles:

Books and Monographs

- Cullen, Anthony, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, 2010
- Hughes, Edel, *Turkey's Accession to the European Union: The Politics of Exclusion?* Routledge-Cavendish, 2010
- Lubell, Noam, *Extraterritorial Use of Force against Non-State Actors*, Oxford University Press, 2010 (Oxford Monographs in International Law Series)
- Schabas, William A., *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, 2010
- Temperman, Jeroen, *State–Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance*, Brill, 2010

Edited Volumes

- Schabas, William A., *Capital Punishment: Strategies for Abolition*, Akashi, 2009 (co-editor, Peter Hodgkinson) (Japanese translation)
- Schabas, William A., *Sixing Lifa Gaige Zhuanti Yanjiu* ('Reform of the Death Penalty'), China Legal Publishing House, 2009 (co-editor, Zhao Bingzhi)
- Schabas, William A., *Hacia la Abolitión Universal de la pena capital*, Tirant lo Blanch, 2010, (co-editors, Luis Arroyo & Paloma Biglino)

Conferences over the last year

Corporations and Armed Conflict: The Role of International Law

On 9 – 10 April 2010, the Irish Centre for Human Rights co-hosted with the Geneva Academy for International Humanitarian Law and Human Rights, a conference that explored the extent to which International Human Rights Law, Humanitarian Law and Criminal Law are adequate to deal with the role of businesses operating in conflict zones, given existing gaps in the law, evolving norms, and attempts in various fora to hold private sector actors accountable.

Irish Centre for Human Rights and NUI Galway School of Law co-hosts Mastering Law Conference

The Irish Centre for Human Rights and the NUI Galway School of Law co-hosted the two day conference Mastering Law; Conflicts, Challenges and Solutions in Today's Society over 3 - 4 June 2010. Geared towards current LLM Students, The Mastering Law Conference brought together current Master's students in both the school of law and the Irish Centre for Human Rights to engage in a formal exchange of ideas, to prepare their own academic works and explore the ways in which diverse fields of study intersect.

Customary Law, Traditional Knowledge and Human Rights Conference

A one-day conference on Customary Law, Traditional Knowledge and Human Rights, oragnised by doctoral candidate **Brendan Tobin**, was held on 18 June 2010. The conference was co-hosted by the Irish Centre for Human Rights, the Indigenous Peoples Law and Policy Program, University of Arizona, Middlesex University, the Natural Justice Peruvian Society for Environmental Law (SPDA) and the United Nations University, Institute for Advanced Studies (UNU-IAS). Issues centring largely on the intersection between customary law and indigenous rights, specifically included Customary Law and the Protection of Indigenous People's Land Rights, Customary Law and Community Governance of Natural Resource Rights in the Philippines, and Traveller's Rights in Ireland.

Ongoing Projects

EU-China Human Rights Network

In March 2009, the Irish Centre for Human Rights, NUI Galway launched the activities of the new EU-China Human Rights Network. The three-year project funded by the European Union provides a grant of 1.5 million euros to the Irish Centre for Human Rights to develop and lead an unrivalled network of human rights specialists from across the EU and China. The 30 European and 20 Chinese institutions involved in the Network collaborate with non-governmental organisations to analyse human rights practices through the EU-China Human Rights Seminar process and associated activities. On 29 June 2010, the Irish Centre for Human Rights led the organisation of the third EU-China Seminar at the Universidad Nacional de Educación a Distancia in Madrid, which discussed more specifically Freedom of Information and the Right to Privacy as well as the Implementation of Economic, Social and Cultural Rights by National Human Rights Institutions. Since its beginning in 2009, the EU-China project has involved the participation of over 200 academics, civil society and official representatives.

China Death Penalty Project

Officially launched in Beijing, China on 20 -21 June 2007, the China Death Penalty Project wasa three-year research project into the abolition of the death penalty in China. The project, which was funded by the European Initiative for Democracy and Human Rights, involved research into death penalty cases as well as survey work on public opinion and the death penalty. The academic element was complemented by a series of seminars culminating in a recommendation to the National People's Congress and public forums for discussion of the issues surrounding the death penalty. The project was organised under the directorship of the Great Britain China Centre with the Irish Centre for Human Rights as a partner organisation. On the Chinese side, the project was lead by the College for Criminal Law Science, Beijing Normal University.

International Centre on Human Rights and Drug Policy

In November 2009, the International Centre for Human Rights and Drug Policy (CHRDP) was officially inaugurated. This is a joint venture with and housed by the Irish Centre for Human Rights. The CHRDP is dedicated to developing and promoting innovative and high quality legal and human rights scholarship on issues related to drug laws, policy and enforcement. This mandate is pursued by the publication of original, peer-reviewed research on drug issues as they relate to international human rights law, international humanitarian law, international criminal law and public international law.

Completed Projects

Burma, the Rohigyas, and Crimes Against Humanity

In 2008, Irish Aid – The Department of Foreign Affairs provided funding for independent research to be conducted by the Irish Centre for Human Rights on the situation of the Rohingyas, an indigenous people in Burma. As part of the project, the Burma research unit was established at the Irish Centre for Human Rights with a view to carrying out open source research and a fact-finding mission, culminating in the drafting of a report. The report of the project, entitled "Crimes against Humanity in Western Burma: the Situation of the Rohingyas", was officially launched on 16 June 2010 by **Micheál Martin**, the Irish Minister for Foreign Affairs, at Iveagh House, Dublin. Noting the recommendation in the Report that the Security Council establish a Commission of Inquiry to determine whether there is a prima facie case that crimes against humanity have been committed, as well as similar recent comments by UN Special Rapporteur on Burma, **Tomás Ojea Quintana**, Minister Martin said that he fully supported these calls for all such alleged crimes to be formally investigated.

Awards

Professor William Schabas Receives Prestigious Vaspasian V. Pella Medal

Irish Centre for Human Rights Director, Professor William Schabas, was awarded the Vaspasian V. Pella Medal for International Criminal Justice by the Association Internationale de Droit Penal. The award was presented to Prof. Schabas on 24 May 2010, and is given by the association to a single individual once every ten years. The medal has been awarded three times, the first two laureates being Benjamin Ferencz, who was one of the prosecutors at Nuremberg, and Professor M. Cherif Bassiouni, who is now the honorary president of the association.

Norway/Norvège

The Norwegian Centre for Human Rights

The Norwegian Centre for Human Rights (NCHR) is both Norway's National Institution for Human Rights and a university institute, as part of the University of Oslo. With a turnover of approx. 10 million euros and more than 60 employees, its activities comprise research and teaching, activities such as the Norwegian national institution for human rights, and international programmes.

- NCHR is internationally recognised as **a leading research institution in the field of human rights** with research staff including lawyers, political scientists, social anthropologists, social geography and philosophy.
- The research is organised in **four thematic working groups**. Each group involves both, scientistists and programme officers, ensuring a close co-operation between research and applied knowledge.

- The groups are: **Human Rights and Constitutionalism**, **Human Rights and Development**, **Human Rights and Diversity** and **Human Rights and Conflict**.
- The NCHR is responsible for editing the ***Nordic Journal of Human Rights/ Nordisk Tidsskrift for Menneskerettigheter*** and heading **the Association of Human Rights Institutes** (AHRI).
- NCHR has a **two-year Master's programme in "The Theory and Practice of Human Rights"**. NCHR is also involved in the teaching of human rights and international humanitarian law for law students and other students at the University of Oslo.
- The ***Yearbook for Human Rights in Norway,*** published annually by NCHR, is a flagship publication for NCHR and provides an independent review of pressing human rights issues in Norway.
- **The NCHR library** presents the largest and most updated collection of human rights literature available in Norway. The collection is open both for research purposes and the general public.

National Instituion for Human Rights

In 2001, NCHR was mandated by Royal Decree as Norway's National Institution for Human Rights. NCHR's activities as the National Institution for Human Rights are based on the United Nations Paris Principles, such as research, study, monitoring, consultancy, education and information concerning the human rights situation in Norway. This includes, in addition to the publication of the Yearbook for Human Rights in Norway, submission of reports and statements to international human rights bodies, publication of summaries of selected decisions from the European Corut of Human Rights and consultative statements on draft laws. NCHR also takes part in international networks for national insitutions under the auspices of the UN High Commissioner for Human Rights and the Council of Europe.

International Programmes

NCHR's **international programmes** are funded through agreements with the Norwegian Ministry of Foreign Affairs and the Norwegian Agency for Development Cooperation (NORAD). The programmes include both, research and administrative capacities and draw on internal and external expertise in their initiatives. Activities include applied research, analysis, education, workshops and conferences. Academic and educational institutions predominate as partner institutions.

The following programmes are currently part of the Centre:

NORDEM

NORDEM, Norwegian Resource Bank for Democracy and Human Rights, established in 1993, provides highly qualified personnel to the EU, OSCE and UN and their civil crises management operations within the field of human rights and democratisation. NORDEM is run by NCHR with the support of the Norwegian Ministry of Foreign Affairs.

NORDEM recruits, trains and deploys personnel to international operations.

The ICC Legal Tools Programme

The Centre signed a Co-operation Agreement with the International Criminal Court (ICC) in 2005 and has since become a leading partner in the development of the Court's Legal Tools Project. The main objective is to provide users both, inside and outside the Court, equal access to legal information services required to construct legal arguments in cases containing charges of genocide, crimes against humanity and war crimes.

The China Programme

The programme contributes to raised awareness about human rights in China. It has contributed to the development of human rights law education in China and has developed several research projects on human rights issues. Activities have included the organisation of a large number of academic human rights training courses at different Chinese universities, publication of the first Chinese textbook on international human rights law, translations, publications and support to guest researchers and students.

The Indonesia Programme

The programme is, together with the China and Vietnam programmes, conducted under the umbrella of Norway's bilateral human rights dialogues. The Indonesia programme seeks to strengthen knowledge and competence in human rights in Indonesia with the aim of further improving Indonesia's human rights compliance by running projects addressing current human rights issues in Indonesia. The programme activities are conducted in co-operation with state institutions, academic institutions and non-governmental organisations.

The Vietnam Programme

The Vietnam Programme was established in March 2008 as an academic compliment to the human rights dialogue between Vietnam and Norway. The programme aims to strenghten knowledge and implementation of international human rights standards in Vietnam. The programme runs co-operative projects on human rights education, access to information legislation, and criminological research based on proposals from our Vietnamese partners in government, academia, and the non-governmental sector.

The Socio-Economic Rights Programme – SERP

SERP was established in June 2009 with the aim of supporting research, policy-making, advocacy and education on economic, social and cultural rights at the national and international levels. It seeks to build on and develop the Centre's long tradition in research and promotion of economic, social and cultural rights.

The Oslo Coalition on Freedom of Religion or Belief

The NCHR serves as a secretariat for the Coalition, which is an international network of representatives from religious and other life-stance communities, NGOs, international organisations and research institutes. The Oslo Coalition works to advance freedom of religion or belief as a common benefit that is embraced by all religions and persuasions.

The China Autonomy Programme

This is a research programme that concentrates on the implementation of minority rights in China. A specific focus of this research co-operation, with central and local research institutions in both China and Norway, is the implementation of the regional national autonomy system in a comparative perspective. The activities of the programme include academic dissertations, conferences, training and teaching.

Poland/Pologne

Poznań Human Rights Centre Institute of Legal Studies of the Polish Academy of Sciences

Ul. Mielynskiego 27/29, 61-725 Poznań
Tel. and fax: +48 61 8 520 260
E-mail: phrc@man.poznan.pl
Website: http://www.phrc.pl/

International cooperation

The Poznań Human Rights Centre in its activity has established contacts with a number of institutions in Poland and abroad, including the Human Rights Directorate of the Council of Europe in Strasbourg, the Office of the United Nations High Commissioner for Human Rights in Geneva, the Institute of Human Rights in Abo Akademii University of Turku (Finland), the Netherlands Institute of Human Rights (SIM) in Utrecht, The Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund (Sweden). The Centre is a member of the Association of Human Rights Institutes (AHRI) and of the EU China Human Rights Network, as well as a partner of the European Inter-University Centre for Human Rights and Democratisation – EIUC (E.MA Programme – European Master's Degree in Human Rights and Democratisation).

Library

The Poznań Human Rights Centre has established its own library and documentation centre. The library collection consists of 3 000 volumes, mainly from the fields of human rights and constitutional law, but also family law and children's rights. The library also has a selection of periodicals and a variety of in-house documents.

Publications

In 2010, researchers of the Poznań Human Rights Centre published numerous articles in Polish and international periodicals. It also printed a book in Polish: the collection of conference papers concerning hate speech (Mowa nienawiści a wolność słowa. Aspekty prawne i społeczne, eds. R. Wieruszewski, M. Wyrzykowski, A. Bodnar, A. Gliszczyńska-Grabias).

Course on International Protection of Human Rights – Protection of National Minorities

The 19th Course on International Protection of Human Rights took place in Poznań from 30 August – 8 September 2010. It was organized by the Centre in co-operation with Adam Mickiewicz University, Faculty of Law and Administration, and support of the Trust for Civil Society in Central and Eastern Europe, E.MA Programme, OSCE and Wardyński & Partners law firm. The main objective of the course was to enhance the participants' knowledge and understanding of the existing standards and institutional aspects of the protection of human rights at the international level. The Course also focused on issues related to the rights of national minorities. It was offered to NGO activists, young researches, lawyers and students from all over the world, in particular, from the countries being in democratic transition (Eastern and Central Europe and Central Asia, as well as the Balkans region). The number of participants was limited to 30.

Participants in the 2010 Course

The course consisted of 60 hours of lectures and case studies given in English. The lectures were held by eminent professors and experts in the field of human rights and international law. The case studies involved discussions on decisions of the European Court of Human Rights. The next course - 20th Anniversary Edition – will take place in September 2011 and will be advertised on the Centre's website.

Conference on Legal Limits of the Freedom of Religion

The conference took place on 29 November 2010 and was organised by the Poznań Human Rights Centre and Human Rights Chair, Faculty of Law and Administration of the Warsaw University with financial support from the Institute of Legal Studies (Polish Academy of Science) and the Trust for Civil Society in Central and Eastern Europe. Its objective was to discuss what kinds of limitations of freedom of religion are acceptable in a democratic society and how freedom of religion should be defined in view of the case-law of the European Court of Human Rights and the United Nations treaty bodies. The following problems were also discussed: religious symbols in public areas, teaching religion in public schools, financing religious schools through the public budget, freedom of art and freedom of speech v. freedom of religion. The speakers were Polish scholars. A book containing conference papers will be published by Wolters Kluwer Polska in 2011.

Portugal

Bureau de documentation et de droit comparé de l'office du procureur général de la République

Gabinete de Documentação e Direito Comparado,
Procuradoria-Geral da República,
Rua do Vale do Pereiro, n.º 2, 1269-113 Lisboa
http://www.gddc.pt/
Tel. 00 351 21 382 03 52
Fax. 00 351 382 03 01

Parmi ses nombreuses activités, le Bureau organise depuis 2003-2004, des stages (non rémunérés), collectifs et individuels, à des jeunes diplomés ou en fin d'études.

Site internet du bureau

Le Bureau dispose également d'un site internet, ainsi que les textes des instruments juridiques internationaux les plus importants, issus des Nations Unies, du Conseil de l'Europe et du droit communautaire.

Sur la page « Le Portugal et les droits de l'homme » figure la liste des arrêts où le Portugal a été condamné par la Cour européenne des droits de l'homme et le Comité des droits de l'homme des Nations Unies

De nombreux matériaux relatifs aux droits de l'homme, issus d'organisations internationales, ont été traduits vers le Portugais. Ainsi, dans la collection « Fiches d'informations sur les droits de l'homme » (fact-sheet), de nouveaux titres ont été publiés tels que :

- Les disparitions forcées ou involontaires ;
- Le Comité pour l'élimination de la discrimination raciale ;
- Le Comité des droits économiques, sociaux et culturels ;
- Les droits des minorités.

Dans la série « Formation professionnelle », trois ouvrages ont été traduits :

- Droits de l'homme et application de la loi ;
- Règles internationales des droits de l'homme pour l'application de la loi ;
- Droits de l'homme et prisons – Guide du formateur.

Enfin, un manuel relatif à l'usage par les magistrats du mandat d'arrêt européen est disponible sur la page relative à la coopération judiciaire internationale.

Le Bureau attache une importance particulière aux questions afférentes à la coopération judiciaire internationale, en particulier dans le domaine pénal.

Spain/Espagne

The Human Rights Institute of Catalonia (IDHC)

C/ Pau Claris, 92, entl. 1ª, 08010 Barcelona
Tel.: +34 93 301 77 10
Fax.: +34 93 301 77 18
E-mail: institut@idhc.org
Website: www.institut.org

The Human Rights Institute of Catalonia (IDHC) was established in 1983 by a group of people committed to fighting for the progress of freedom and democracy in the world. Their aim was to join both, individual and collective forces, coming from both, public and private institutions, in order to expand political, social and cultural rights for each individual.

The main activities of the IDHC are study, research, dissemination and promotion of human rights. And with this purpose in mind, the IDHC develops three main areas of activity: promotion, advising and education.

Education

Annual Human Rights Course

The 29th edition will take place from 8 to 25 March 2011. The course offers a largely legal overview of the many aspects of human rights. The regional and universal systems are also studied from a historical viewpoint and through the process of codification and internationalisation of human rights. Furthermore, even though international law is the main issue, national, regional and local legislation are also covered.

Scholarship programme

The IDHC awards three kinds of scholarships for the best essays written by those students who choose to do so for:

- A three-month internship in the Office of the United Nations High Commissioner for Human Rights, Geneva.
- A 15-day visit to the headquarters of the Council of Europe and the European Court of Human Rights, Strasbourg, for up to five students.
- A six-month internship at the office of the Ombudsman of Catalonia, Barcelona.

The IDHC also awards three scholarships to three residents in South America in order for them to attend the Annual Human Rights Course for three weeks in Barcelona.

Internship programme

The IDHC offers several internships in its office, through the European Leonardo pro-

gramme and other agreements with different universities.

Master's programme on-line

Since 2008, the IDHC has hosted a Master's programme on Human Rights and Democracy, with the collaboration of the Open University of Catalonia. The programme, which involves 1 500 hours of study, is made up of four modules: Introduction to Human Rights and Democracy; Legal Protection of Human Rights; Human Rights, Democracy and Globalisation, and Human Rights, Democracy and Conflict. This course is entirely on-line and starts every March and October.

Human Rights Training for Aid Workers

This course is organised twice a year and the 11th edition will take place in May 2011. The main purpose of the course is to provide those who work in different areas of development cooperation the necessary tools to understand the international context through the knowledge and study of international human rights law, humanitarian law, and international criminal law.

Other seminars and courses for specific collectives

Periodically, the IDHC organises several courses for specific collectives, such as civil servants and teachers, that need to further their knowledge in human rights.

Courses *ad hoc*

In response to the demand of public and private entities in need of human rights training, the IDHC organises courses for a specific groups and people.

Research and publications

The IDHC has two main lines of research:

- **Emerging human rights:** The IDHC is currently working on the next publication regarding *the right to a city*, which will be published in 2011**.**
- **European system of human rights:** The IDHC is currently working on the next publication regarding *the system of the European Convention on Human Rights: 60 years of the acknowledgement and protection of human rights in Europe*, which will be published on 2011.

The IDHC is also working on various other lines of publications:

- **Emerging human rights series:** Research papers on updating human rights and new rights provoked by the new needs and consequences of the context of today's world.
- **Forgotten conflicts series.** This series contains research and reports on forgotten conflicts and a compilation of the written discourses of the speakers that have participated in several round tables organised to analyse these conflicts from the human rights point of view.

Handbooks for the study of human rights

Human rights in the 21st century. **A** didactic manual that explains the theory of human rights, from national and international perspectives, and with practical exercises that allow students and teachers to tackle the study of human rights in an interactive manner.

The European Convention on Human Rights, the Strasbourg Court and its case-law. This book consists of three parts - the first introduces the Council of Europe and the European Convention on Human Rights, the second is about the functioning of the European Court of Human Rights, while the third explains the Court's case-law.

Services

Bibliographical resources. The head office of the IDHC disposes of a vast library on human rights with more than 1000 monographs, several collections of specialised magazines and publications by international organisations and other institutions.

On-line resources. On the IDHC's website, the on-line library contains a selection of resources on human rights and basic legislative documentation, as well as resources for further analysis of several conflicts.

Scientific consultancy in the field of human rights. The IDHC carries out scientific consultancy in the field of human rights for public institutions and private entities, most of them on the "European Charter for Safeguarding Human Rights in Cities".

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

On 28 September 2010, the Commissioner paid a visit to the Netherlands where he delivered a speech before the Dutch Senate. He spoke about certain important developments that have taken place in the Netherlands since the publication, in March 2009, of his visit report. The Commissioner subsequently engaged in a discussion with the members of the Senate on the human rights challenges currently faced by the Netherlands, as well as by other Council of Europe member states, such as the rising tendencies of racism and xenophobia.

He also raised concerns about recent reports regarding the creation by some local authorities of databases with comprehensive information about Roma people living in the municipality. Furthermore, the Commissioner expressed the hope that the Dutch authorities provide shelter to irregular migrant children in the Netherlands, in line with the decision of the European Committee of Social Rights of 20 October 2009. As regards juvenile justice, he recommended that the age of criminal law responsibility be increased in line with the majority of European states.

From 12 to 14 October, 2010, the Commissioner went to Romania, for a visit focused on the human rights of Roma. During this visit, he held discussions with a number of non-governmental organisations and visited Roma communities in the municipality of Barbulesti and the Bucharest neighbourhood of Ferentari. After his stay, he underlined that the country needed a set of comprehensive measures to tackle pervasive discrimination against Roma.

In particular, the Commissioner underlined that emphasis should be put on educating the general public about Roma history and also that local administrations and NGOs had a key role to play in the inclusion of Roma.

Reports and continuous dialogue

On 6 July 2010, the Commissioner published two letters addressed to the Italian Ministers of Foreign Affairs and of the Interior, Franco Frattini and Roberto Maroni. The letters followed reports received by the Commissioner according to which a group of Eritrean migrants detained in Libya, including asylum seekers, had been ill-treated and were possibly facing a forced return to Eritrea. According to the reports, the group included persons who had attempted to reach Italy to seek international protection and had been returned to Libya without being given a possibility of doing so. Noting the recent decision of the Libyan authorities to discontinue UNHCR's activities in the country, the Commissioner asked that the situation of the migrants be clarified as a matter of urgency.

On 8 July 2010, the Commissioner published two letters addressed to the Minister of Justice and to the Minister of the Interior of Turkey, Mr Sadullah Ergin and Mr Beşir Atalay. The letters followed up on a visit he carried out to Turkey from 23 to 26 May 2010.

In his letter addressed to the Minister of Justice, the Commissioner welcomed the law reforms undertaken in the area of juvenile justice, but expressed deep concern at the practice of arresting, detaining and prosecuting children pursuant to anti-terrorist legislation, particularly in east and south-east Turkey; he stressed the need to reform the anti-terrorist laws, and bring them into line with international and European standards. He also welcomed the legislative amendment allowing local human rights boards to have access to places of detention without seeking prior authorisation from public prosecutors, and recommended the dissemination of this information in all provinces.

In the letter addressed to the Minister of Interior, the Commissioner welcomed the plans of the government to enact new immigration and asylum legislation in accordance with the case-law of the European Court of Human Rights. Referring to the ministerial circulars concerning access to asylum procedures, the Commissioner asked the authorities to closely monitor the situation with a view to ensuring coherent practice across the country. He also addressed the question of internally displaced persons and the need to fully respect their right to return home, resettle or integrate locally. The replies by the Ministers of Justice and the Interior can be found on the Commissioner's website.

On 26 July 2010, the Commissioner published a letter addressed to the Minister of the Interior of Cyprus, Mr Neoklis Sylikiotis, following his visit on 10 June 2010. The letter mainly focuses on human trafficking issues and the protection of the human rights of asylum seekers and refugees. The Commissioner called on the Cypriot authorities to remain vigilant against organised crime and ensure that no type of visa or working permit can be abused for such unlawful purposes as trafficking in human beings.

The Commissioner also expressed appreciation for improvements in asylum seekers' access to health care, the labour market and legal aid. Nevertheless, he expressed concern regarding the long periods of detention faced by some rejected asylum seekers, and advised an individual examination of each case in order to assess the proportionality of detention. The Minister's reply can be found on the Commissioner's website.

On 7 September 2010, the Commissioner published a letter addressed to the Prime Minister of "the former Yugoslav Republic of Macedonia", Mr Nikola Gruevski, on the situation of refugees from Kosovo.[1]

The Commissioner noted that around 1 500 displaced persons from Kosovo, most of whom are Roma, still live in the "the former Yugoslav Republic of Macedonia" without clear and long-term perspectives for local integration and adequate access to human rights, including social and economic rights. The Commissioner stressed that the identification of durable solutions could no longer be postponed; he added that the best possible solution for Roma unable to return home in safety and dignity was local integration through a process which would ultimately lead to the acquisition of nationality. The Prime Minister's reply is available on the Commissioner's website.

On 21 September 2010, the Commissioner published a letter addressed to the French Minister for Immigration, Integration, National identity and Development Solidarity, Mr Eric Besson, concerning the human rights of migrants in France.

Recalling his 2008 recommendations which had been addressed to the French Government,

1. All references to Kosovo, whether to the territory, institutions of population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

the Commissioner highlighted the lack of progress in certain areas, including the policy of fixing annual targets for the number of irregular migrants to be deported.

As regards the draft immigration Bill, the Commissioner expressed concern at a number of its provisions, such as those concerning the intention to substantively reduce judicial review of the detention of migrants as well as to resort to accelerated procedures in a larger number of asylum applications. Finally, he called on the French authorities to suspend returns of asylum seekers to Greece until the Greek national asylum system becomes fully operational and in line with European standards. The Minister's reply is available on the Commissioner's website.

On 29 September 2010, the Commissioner published a report on monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia. The report is based on the work of Bruce Pegg and Nicolas Sébire, two international experts in the field of police investigations into serious crimes.

The work of these experts in Georgia was carried out from the beginning of March until the end of June 2010.

The work of the experts highlighted some serious shortcomings in the process of clarifying the fate of missing persons and ensuring accountability for the perpetrators of illegal acts.

On 7 October 2010, the Commissioner published a report following his last visits in Georgia in which he took stock of the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in the aftermath of the conflict. He urged the Georgian authorities to continue granting the status of internally displaced persons (IDPs) without discrimination to all those who cannot return to their place of residence. He noted that while the security situation in the conflict-affected areas had become more stable overall, incidents continue to occur in several locations along the administrative boundary line.

Commissioner Hammarberg regretted that little progress was achieved with regard to access by international humanitarian actors to the areas affected by the conflict; he added that all sides should facilitate and support the work of the international community aimed at protecting the human rights of the population.

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 has followed closely the implementation of a policy to repatriate Roma from France to Romania and Bulgaria over the summer of 2010 and the ensuing debate in the political arena, the media and society at large. He gave interviews and made statements on this subject, which continues to be of concern to him. The Commissioner has noted the apparent challenges which migration, including Roma migration, can pose to European countries. A number of states have failed to address negative attitudes towards Roma on the part of the general population, often stoked by hostile media reports. Such negative attitudes have sometimes been encouraged by statements made by leading politicians. The Commissioner has underlined that ignorance frequently prevails at national or local level regarding the obligations arising from states' human rights commitments, notably those pursuant to the European Convention on Human Rights.

On 17 August and 15 September 2010, the Commissioner published two Human Rights Comments concerning the issue of Roma. The first one, "Stateless Roma: no documents – no rights" addressed the situation of tens of thousands of Roma who are stateless or at risk of statelessness in Europe, especially in the Western Balkans. Without personal documents, these persons are often denied basic rights such as education, healthcare, social assistance and the right to vote. In the second comment, "Do not stigmatise Roma", the Commissioner stressed that meaningful reforms to protect the human rights of Roma would not be

possible while hate speech from politicians and others continued to prevent the dialogue that is a precondition to these reforms. He underlined the necessity to recognise and address the reasons behind Roma migration – abject poverty, discrimination across all areas of life, statelessness and a bitter history of repression.

Furthermore, on 19 September 2010, an article by the Commissioner entitled "History teaches us that anti-Roma rhetoric is playing with fire" was published in New Europe.

On 18 October 2010, Commissioner Hammarberg and the OSCE High Commissioner on National Minorities, Knut Vollebaek, republished the study "Recent Migration of Roma in Europe". The re-publication, which includes a joint preface by Commissioner Hammarberg and High Commissioner Vollebaek and a new executive summary, provides an analysis of the existing human rights standards concerning migration and highlights discriminatory practices that Roma migrants still face. The study concludes with a set of recommendations for action by member states in order to enhance the effective protection of the human rights of Roma migrants in Europe.

On 20 October 2010, Commissioner Hammarberg attended the high level meeting organised in Strasbourg by the Council of Europe aimed at identifying a pan-European response to meet the needs of the estimated 12 million Roma living in Europe.]

The Commissioner on his visit to Romania in October 2010

The Commissioner continued to develop his co-operation with national human rights structures. On 8 and 9 July 2010, he organised an expert workshop on "Effective and independent structures for promoting equality". The participants included representatives of equality bodies, national human rights institutions, ombudsmen, the European Network of Equality Bodies (Equinet), the European Group of National Human Rights Institutions, national authorities, NGOs, international organisations and academic experts. The workshop explored the role of equality bodies and other national human rights structures in combating discrimination and promoting equality. The participants shared experiences from different countries and discussed good practices and challenges regarding the different models.

The Commissioner also transmitted a message to the participants of the International Ombudsman's Conference organised by the Office of the Public Defender of Georgia on "the role and influence of the Ombudsman's institution on the improvement of the condition of human rights protection", which took place on 23 and 24 September in Tbilisi.

Another message was transmitted to the participants of the round table with the Ombudsmen of the Russian Federation (28 – 29 September 2010, St. Petersburg), referring to the specific ways in which the federal and regional Ombudsmen could exercise their role with a view to preventing human rights violations.

The exhibition paying tribute to Andrei Sakharov - Nobel Peace Prize winner, physicist and human rights activist - has already been displayed in Finland, France, Estonia and Lithuania, and will continue its Europe-wide itinerary.

By means of a new communication tool, the Human Rights Comment, the Commissioner published several articles on current and important human rights issues:

- Children victimised when families are forced to return to Kosovo – 9 July 2010
- Those responsible for the death of Natalia Estemirova must be brought to justice – 13 July 2010
- Landmines still kill in Europe: time for an absolute ban – 26 July 2010
- Elderly across Europe live in extreme hardship and poverty – 5 August 2010
- Stateless Roma: no documents - no rights – 17 August 2010
- Refugee children should have a genuine chance to seek asylum – 24 August 2010
- Forced divorce and sterilisation - a reality for many transgender persons – 31 August 2010
- Do not stigmatise Roma – 15 September 2010
- The 'Dublin Regulation' undermines refugee rights – 22 September 2010
- The public has the right to know what those they elected are doing – 27 September 2010
- Airlines are not immigration authorities – 12 October 2010

- Inhuman treatment of persons with disabilities in institutions – 21 October 2010
- Freedom to demonstrate is a human right - even when the message is critical – 26 October 2010
- European Muslims are stigmatised by populist rhetoric – 28 October 2010

Third Party Intervention before 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 1 September 2010, the Commissioner intervened orally during the hearing before the Grand Chamber of the European Court of Human Rights in the case of M.S.S. v. Belgium and Greece. This case concerned the transfer of an Afghan asylum seeker from Belgium to Greece pursuant to the EU 'Dublin Regulation'.

In his first-ever oral intervention as a third party before the Court, the Commissioner provided his observations on major issues concerning refugee protection in Greece, including asylum procedures and human rights safeguards, as well as asylum seekers' reception and detention conditions, thereby complementing the written observations he submitted to the Court on 31 May 2010.

On this occasion, the Commissioner stressed that EU member states should halt transfers of asylum seekers to Greece, as the asylum law and practice in Greece are not in compliance with human rights standards.

The Commissioner talking to asylum seekers during his visit to Greece in 2008

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

Publishing
Editions

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Council of Europe Publishing
Les Editions du Conseil de l'Europe
F-67075 Strasbourg Cedex
Tel. : +33 (0)3 88 41 25 81 - Fax. : +33 (0)3 88 41 39 10
E-mail: publishing@coe.int - Website: http://book.coe.int

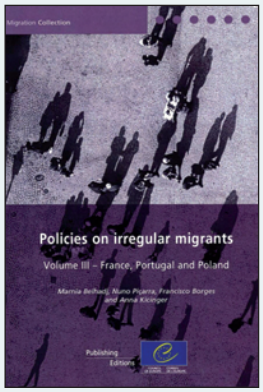
Policies on irregular migrants - Volume III: France, Portugal and Poland (2010)

ISBN 978-92-871-6768-2 €15/US$30

Volume IV: Spain and the United Kingdom (2010)

ISBN 978-92-871-6770-5, €15/US$30

Irregular migrants, who by definition are in an unlawful situation, face insecurity on a daily basis. This prompted the Council of Europe's European Committee on Migration (CDMG) to assess the policy and practice in member states. The aim of the exercise was to identify and evaluate national experiences regarding regularisation proceedings and to draw up proposals for dealing with irregular migration and improving co-operation between countries of origin and host countries.

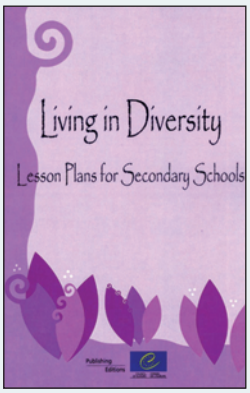


Volumes I and II cover 5 countries that participated in the first series of evaluations: Armenia, Germany, Greece, Italy and the Russian Federation.

Volume III and IV include reports prepared within the second series and cover 5 other countries: France, Poland, Portugal, Spain and the United Kingdom.

Living in Diversity - Lesson Plans for Secondary Schools (2010)

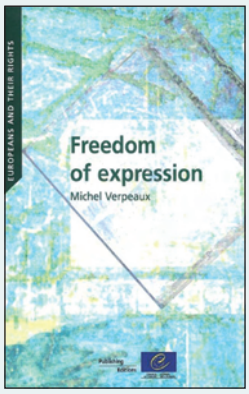
ISBN 978-92-871-6754-5, €13/US$26



The Council of Europe is strongly committed to the promotion of an cultural perspective in education and has played a major role, not only in the development and promotion of a coherent theoretical reference framework in this field, but also in the development of methodological guidelines and in the production of educational resources that can be used in teaching and training in both formal and non-formal education. The handbook should be seen as a tool for teachers of different subjects who want to integrate an intercultural dimension in their practice. It can also act as a useful resource for teacher trainers in this field.

Europeans and their rights - Freedom of expression (2010)

ISBN 978-92-871-6464-3, €29/US$58



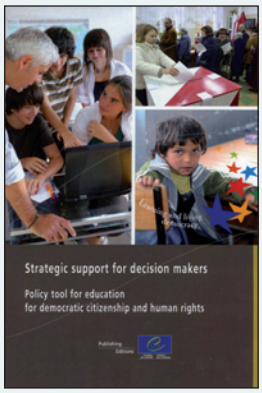
Freedom of expression is not absolute, even although it is a fundamental right enshrined in the European Convention on Human Rights. Under the terms of the Article 10 of the Convention, its exercise may be subject to such restrictions as are prescribed by law and are ″necessary in a democratic society″ in order to uphold the rights of all individuals.

The author compares and analyses the protection of and limits on the right to freedom of expression in the case law of European constitutional courts and the European Court of Human Rights, drawing on practical examples, to see whether a common European approach exists in this area.

Strategic support for decision makers - Policy tool for education for democratic citizenship and human rights (2010)

Authors: David Kerr and Bruno Losito with Rosario Sanchez, Bryony Hoskins, William Smirnov and Janez Krek

ISBN 978-92-871-6896-2, €15/US$30



Citizenship and human rights education are among society's strongest defences against the rise of violence, discrimination and intolerance. However, their aims, objectives and approaches are not always understood and their implications for policy and practice only partially recognised. This policy tool explains what citizenship and human rights education are about and what they mean in terms of policy making in a lifelong learning perspective. It sets out a policy cycle involving policy design and implementation, as well as policy review and sustainability.

ISSN 1608-9618

Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex

http://www.coe.int/justice/

Human rights information bulletin, No. 81