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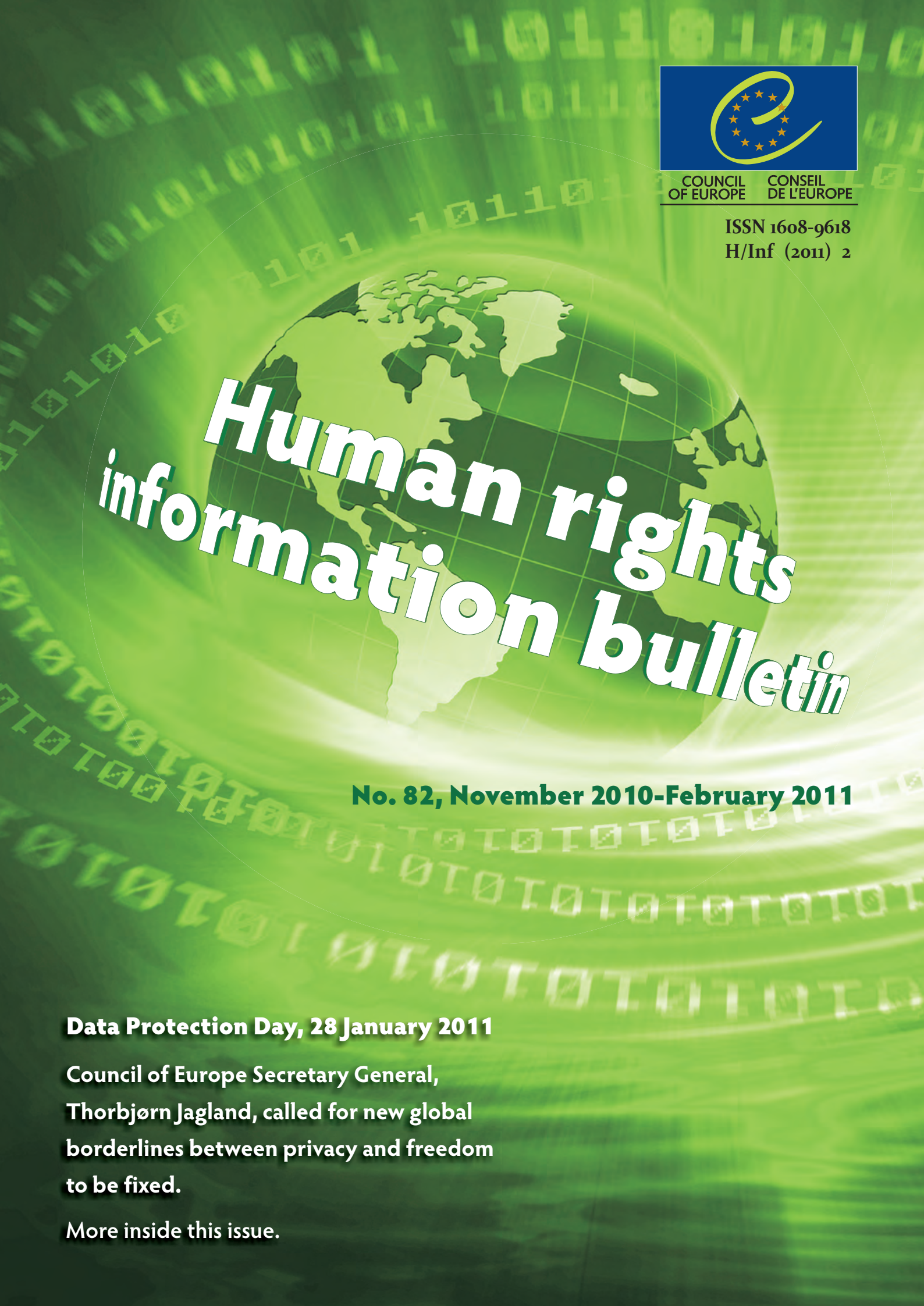

Human rights information bulletin

No. 82, November 2010-February 2011

Data Protection Day, 28 January 2011

Council of Europe Secretary General, Thorbjørn Jagland, called for new global borderlines between privacy and freedom to be fixed.

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Human rights information bulletin

No. 82, 1 November 2010-28 February 2011

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Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was ratified by Ukraine, San Marino and Italy on 29 November 2010.

Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings

Montenegro ratified the Additional Protocol on 8 December 2010.

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

The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes was ratified by Serbia on 10 February 2011 and Montenegro on 6 December 2010. It was signed by Montenegro on 1 December 2010.

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

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was ratified by Austria (25 February 2011) and Montenegro (25 November 2010). It was signed by Hungary on 29 November 2010.

European Convention on the Exercise of Children's Rights

The European Convention on the Exercise of Children's Rights was signed bu Albania (20 January 2011), Hungary (29 November 2010). It was accepted by Finland on 29 November 2010.

European Convention on the Adoption of Children (Revised)

The European Convention on the Adoption of Children (Revised) was ratified by Norway on 14 January 2011. It was signed by Hungary on 29 November 2010.

Convention on Access to Official Documents

The Convention on Access to Official Documents was signed by Moldova on 21 December 2010.

Convention on Cybercrime

Turkey signed the Convention on 10 November 2010.

Additional Protocol to the Convention on the Transfer of Sentenced Persons

Turkey signed the Additional Protocol on 10 November 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.

Court's case-load statistics (provisional) between 1 November 2010 and 28 February 2011:

- 573 (1 212)judgments delivered
- 530 (1 147) declared admissible, of which 522 (1 147) in a judgment on the merits and 8 in a separate decision
- 12 261 (12 662) applications declared inadmissible
- 931 (3 159) applications struck off the list

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

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.

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.

Sakhnovskiy v. Russia

Ineffective Legal Assistance during Appeal Proceedings in a Criminal Case in Russia

Judgment of 2 November 2010. Concerns: The case concerned a complaint by the applicant, sentenced to imprisonment for a murder, about his trial having been unfair, as he had no effective legal assistance at the appeal stage and had only communicated with his lawyer by video link. The Grand Chamber had also to decide whether an extraordinary re-opening of criminal proceedings was capable of depriving the applicant of his victim status under the Convention.

Principal facts

The applicant, Sergey Sakhnovskiy, is a Russian national who was born in 1979 and is currently serving a prison sentence for murder in the Novosibirsk region (Russia).

He was arrested on 30 April 2001 on suspicion of having killed his father and uncle. Three days later, a legal-aid lawyer was appointed to represent him. In December 2001 the competent regional court found him guilty of murder and sentenced him to 18 years in prison. He appealed unsuccessfully in October 2002. No defence counsel attended the appellate hearing before the Supreme Court and Mr Sakhnovskiy participated in it by video link.

Mr Sakhnovskiy filed several applications for supervisory review which were all refused without examination on the merits.

In March 2007 the Court brought to the attention of the Russian Government the fact that Mr Sakhnovskiy's application was pending before it. In July of the same year, the Presidium of the

Russian Supreme Court agreed to examine the case under the supervisory review procedure upon the request of the Russian Deputy Prosecutor General. The Presidium found that Mr Sakhnovskiy's right to legal assistance had been breached and sent his case for a fresh examination at the appellate stage.

In November 2007 the Supreme Court, sitting in Moscow, examined the case as an appellate instance. The applicant requested his personal presence at the hearing, but the Supreme Court found that it was not indispensable, and that a video link would be sufficient to ensure Mr Sakhnovskiy's effective participation in the proceedings. As a result, the applicant remained in Nosvossibirsk, some 3 000 km away from Moscow.

At the beginning of the hearing the Supreme Court introduced Mr Sakhnovskiy to his newly appointed legal-aid lawyer, who was present in the Supreme Court hearing room, and allowed them 15 minutes of talk by video link before the start of the examination of the appeal. Having talked to the legal-aid lawyer, Mr Sakhnovskiy refused to be assisted by her, arguing that he needed to meet his counsel in person. However, the Supreme Court did not grant that request and decided to proceed with the case immediately.

Following the hearing, the Supreme Court upheld the substantive findings and Mr Sakhnovskiy's sentence handed down in the December 2001 judgment.

Decision of the Court

Article 6 §1

Victim status

The Court first examined whether Mr Sakhnovskiy had lost his victim status after the reopening of the criminal proceedings against him at the appellate level. The Court recalled the general principle, well-established in its case-law, that an applicant might lose their victim status if the authorities had acknowledged a breach of the Convention and if they had eliminated its negative consequences for the applicant.

The Court stressed that the member states should be given a chance to put right violations of the Convention. However, they could not be allowed to use that right in order to escape the Court's jurisdiction.

The Court noted that in Mr Sakhnovskiy's case the proceedings had been reopened as part of the supervisory review procedure. However, Mr Sakhnovskiy's own efforts to obtain supervisory review of the October 2002 judgment had been in vain. Only after the Court had notified the Russian Government of Mr Sakhnovskiy's application before it, had the Prosecutor General requested a reopening. That had been the case in several other cases in respect of Russia which the Court had decided earlier. The Court noted that under the supervisory review procedure there was no limit to the number of times the proceedings could be reopened or to the circumstances in which that could happen, and it had depended on the discretion of a prosecutor or a judge. In that situation, the Court concluded that the Russian Government could have used the reopening by way of supervisory review as a means for evading the Court's examination of the case.

Consequently, the Court held that the reopening of legal proceedings could not be automatically regarded as sufficient redress capable of depriving an applicant of their victim status; in order to see whether the applicant lost his victim status it was necessary to consider the proceedings as a whole, including the part after the reopening.

Re-communication of applicant's complaint

The Government argued that the Court should have brought to their attention Mr Sakhnovskiy's complaints after it had been informed of the second set of appeal proceedings taking place in Russia.

The Court observed that Mr Sakhnovskiy had complained about the second appellate hearing of November 2007 by submitting additional pleadings in March 2008. A copy of those pleadings had been sent to the government in good time. Nothing had prevented the Russian authorities from submitting comments in turn. As the Court had later accepted the government's request for the examination of the case by the Grand Chamber, the government had had yet another opportunity to make comments. As a result, the Court held that the government had been placed on an equal footing with the applicant to present their position in the case.

Waiver of legal assistance

The Court noted that in 2007 Mr Sakhnovskiy had expressed his dissatisfaction with how his legal assistance had been organised by the Supreme Court and had refused to accept his newly-appointed lawyer's services. Indeed, he had not asked for a replacement lawyer or for an adjournment of the hearing, but, given that he had had no legal training, he could not have been expected to make specific legal claims. The Court concluded that the applicant's failure to take appropriate procedural steps could not have been considered as a waiver of his right to legal assistance.

Effective legal assistance

The Court recalled that people charged with a criminal offence were entitled to be physically present at their first-instance trial hearing, but that that was not necessarily the case at the appellate stage. As regards the video link, while it was not, as such, contrary to the right to a fair trial, arrangements had to be made for the applicants to follow the proceedings, to be heard without technical impediments, and to communicate in an effective and confidential manner with their lawyer.

Given the complexity of the questions raised before the Supreme Court at the appellate stage in Mr Sakhnovskiy's case, the Court found that his assistance by a lawyer had been crucial. However, that assistance should have been effective and not only formal. As they had been able to communicate for 15 minutes only right before the start of the hearing, that had clearly not been enough. In addition, Mr Sakhnovskiy had felt ill at ease about discussing the case via a video link.

While the Court accepted that transporting Mr Sakhnovskiy for over 3000 km to the hearing in Moscow could have been a lengthy and costly operation, a telephone conversation should have been organised between him and his lawyer well in advance of the hearing, or, he should have been appointed a local lawyer who could have personally visited him in detention prior to the hearing.

The Court concluded that Mr Sakhnovskiy had not been provided with effective legal assistance during the second set of appeal proceedings in November 2007.

In view of the above, the Court held that there had been a violation of Article 6 §1 taken in conjunction with Article 6 §3 (c) in the proceedings as a whole which had ended with the November 2007 judgment.

Şerife Yiğit v. Turkey

Judgment of 2 November 2010. Concerns: The case concerns the Turkish courts' refusal to award the applicant social-security benefits based on the entitlements of her deceased partner, with whom she had contracted a religious but not a civil marriage.

The Convention does not require a state to recognise an applicant as the heir of a man to whom she had been married on a purely religious basis.

Principal facts

The applicant, Şerife Yiğit, is a Turkish national who was born in 1954 and lives in İslahiye (district of Gaziantep, Turkey). In 1976 she married Ömer Koç (Ö.K.) in a religious ceremony (*imam nikahı*). Ö.K. died on 10 September 2002. The youngest of their six children, Emine, was born in 1990.

On 11 September 2003 Ms Yiğit brought an action, in her own name and that of Emine, seeking to have her marriage with Ö.K. recognised and to have Emine entered in the civil register as his daughter. The District Court allowed the second request but rejected the request concerning the marriage.

Ms Yiğit further applied to the retirement pension fund (*Bağ-Kur*) to have Ö.K.'s retirement pension and health-insurance benefits transferred to her and her daughter. The benefits were granted to Emine but not to her mother, on the ground that her marriage to Ö.K. had not been legally recognised. Ms Yiğit appealed unsuccessfully against that decision.

Complaint

Relying on Article 8, Ms Yiğit complained about the Turkish courts' refusal to transfer her deceased partner's social-security entitlements to her.

Decision of the Court

The Grand Chamber decided to examine Ms Yiğit's complaint not only from the standpoint of Article 8 (right to respect for private and family life), but also under Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property). The last two Articles were applicable in this case because, although Article 1 of Protocol No. 1 did not include the right to receive a social-security payment of any kind, if a state did decide to create a benefits scheme, it had to do so in a manner compatible with Article 14.

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

Ms Yiğit, who had been married in a religious ceremony, alleged that she had been treated differently from a woman married in accordance with the Civil Code and claiming social-security benefits in respect of her late husband. The question for the Court to determine was whether, if there had been such a difference in treatment, it had been discriminatory or, on the contrary, reasonable and objective, and hence acceptable.

The Court reiterated that Article 14 prohibited, within the ambit of the rights and freedoms guaranteed by the Convention, discrimination based on a personal characteristic by which persons or groups of persons were distinguishable from each other. The nature – civil or religious – of a marriage between two persons undoubtedly constituted such a characteristic. Accordingly, a "difference in treatment" such as that to which Ms Yiğit had been subjected might be prohibited by Article 14.

In examining whether there had been any objective and reasonable justification for the difference in treatment, the Court noted firstly that the decision taken by the Turkish authorities in this case had pursued the legitimate aims of protecting public order (civil marriage being designed, in particular, to protect women) and protecting the rights and freedoms of others. It then examined whether there had been a reasonable relationship of proportionality between the Turkish authorities' refusal to award Ms Yiğit social-security benefits on the basis of her late husband's entitlements and the aims pursued by the authorities. On this fundamental point, the Court considered it decisive that, in view of the relevant Turkish legal rules, Ms Yiğit could not have had any legitimate expectation of obtaining benefits on the basis of her partner's entitlement. The Civil Code was clear as to the pre-eminence of civil marriage and, being aware of her situation, Ms Yiğit had known that she needed to regularise her relationship in accordance with the Civil Code in order to be recognised as her partner's heir. That aspect clearly distinguished the present case from another recent case,[1] in which a woman married solely in accordance with Roma rites had been recognised by the Spanish authorities as her partner's "spouse" (among other things, she had been awarded social-security benefits as a spouse and had been issued with a family record book). Lastly, the Court noted that the substantive and formal conditions governing civil marriage were clear and straightforward and did not place an excessive burden on the persons concerned. Ms Yiğit – who had had 26 years in which to contract a civil marriage – thus had no grounds for maintaining that the efforts she had made to regularise her situation had been hampered by cumbersome administrative procedures.

Since there had been an objective and reasonable justification for the "difference in treatment" to which Ms Yiğit had been subjected, the Court held, unanimously, that there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Article 8

The Court reiterated the Chamber's finding that Ms Yiğit, her partner and their children had constituted a family (Ms Yiğit had entered into a religious marriage with Ö.K., had lived with him until his death and had six children with him, the first five of whom had been entered in the civil register under the father's name). She could therefore claim a right to respect for her "family life".

The Court observed that Ms Yiğit and her partner had been able to live peacefully as a family, free from any interference with their family life by the domestic authorities. The fact that they had opted for the religious form of marriage and had not contracted a civil marriage had not entailed any penalties such as to prevent Ms Yiğit from leading an effective family life for the purposes of Article 8.

The Court pointed out that Article 8 could not be interpreted as impos-

1. *Muñoz Díaz v. Spain*, (Chamber) judgment of 08.12.2009.

ing an obligation on the state to recognise religious marriage; nor did it require the state to establish a special regime for a particular category of unmarried couples. For that reason, the fact that Ms Yiğit did not have the status of heir did not in itself imply that there had been a breach of her rights under Article 8.

The Court therefore held, unanimously, that there had been no violation of Article 8.

Taxquet v. Belgium

Assize court proceedings in government minister murder case were unfair.

Judgment of 16 November 2010. Concerns: The case essentially concerned Mr Taxquet's complaint that his conviction for murder had been based on a guilty verdict which had not included any reasons and could not be appealed against to a body competent to hear all aspects of the case.

Principal facts

The applicant, Richard Taxquet is a Belgian national who was born in 1957 and is currently serving a 20-year prison sentence in Lantin (Belgium) for the murder, in July 1991 in Liège, of a government minister and for the attempted murder of the minister's partner.

Mr Taxquet was indicted on 12 August 2003. The indictment contained a detailed sequence of the police and judicial investigations and mentioned each of the offences with which he was charged. It stated, among other things, that an anonymous witness – as described by Mr Taxquet – had informed the investigators in June 1996 that the government minister's murder had been planned by six people, including the applicant and another leading politician. That witness was never interviewed by the investigating judge.

The trial of Mr Taxquet and his seven co-defendants lasted from 17 October 2003 to 7 January 2004. Many witnesses and experts gave evidence. In order to reach a verdict, the jury had to answer 32 questions put by the President of the Liège Assize Court. The questions were succinctly worded and identical for all the defendants. Four of them concerned the applicant, namely: was he guilty of intentional homicide and attempted intentional homicide and were each of those offences premeditated? The jury answered "yes" to all four questions. On 7 January 2004 he was sentenced by the Assize Court to 20 years' imprisonment. His appeal on points of law against his conviction was rejected by the Court of Cassation on 16 June 2004.

Decision of the Court

Article 6 §1

The Court noted that several Council of Europe member states had a lay jury system,[2] the defining feature of which was that professional judges were unable to take part in the jurors' deliberations. That system was guided by the legitimate desire to involve citizens in the administration of justice, particularly in relation to the most serious offences. The jury existed in a variety of forms in different states, reflecting each state's history, tradition and legal culture. The lay jury system was just one example among others of the variety of legal systems in Europe, and it was not the Court's task to standardise them. Nor was it the Court's task to review the relevant legislation in the abstract but, as far as possible, to examine the issues raised by the specific case before it.

In that context, the institution of the lay jury could not in itself be called into question. The contracting states enjoyed considerable freedom in the choice of the means to ensure that their judicial systems were in compliance with the requirements of Article 6. In Mr Taxquet's case, the Court's task was therefore to consider whether the method adopted to that end had led to results which were compatible with the Convention.

In previous cases before it, the Court has found that the absence of a reasoned verdict by a lay jury did not in itself constitute a breach of the accused's right to a fair trial. Nevertheless, for the requirements of a fair trial to be satisfied, sufficient safeguards had to be in place to enable the accused, and indeed the public, to understand the verdict that had been given. Such procedural safeguards could include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues at stake or the evidence given, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict could be based or sufficiently offsetting the fact that no reasons were given for the jury's answers.

However, in Mr Taxquet's case, neither the indictment nor the questions to the jury had contained sufficient information as to his involvement in the offences of which he had been accused.

The indictment, although having mentioned the offences of which he had been charged, had not indicated the prosecution's items of evidence against him. Nor had precise questions been put to the jury, an indispensable requirement in order for Mr Taxquet to understand any guilty verdict reached against him.

Even in conjunction, the indictment and questions had not enabled Mr Taxquet to ascertain which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to answer the four questions concerning him in the affirmative. He had been unable, for example, to make a clear distinction between the co-defendants as to their involvement in the commission of the offence; to ascertain the jury's perception of his precise role in relation to the other defendants; to understand why the offence had been classified as premeditated murder (*assassinat*) rather than murder (*meurtre*); to determine what factors had prompted the jury to conclude that the involvement of two of the co-defendants in the alleged acts had been limited, carrying a lesser sentence; or, to discern why the aggravating factor of premeditation had been taken into account in his case as regards the

2. The ten Council of Europe member States that have opted for a traditional jury system in criminal matters are Austria, Belgium, Georgia, Ireland, Malta, Norway (only in serious appeal cases), the Russian Federation, Spain, Switzerland (the Canton of Geneva), until 1 January 2011, and the United Kingdom (England, Wales, Scotland and Northern Ireland).

attempted murder of the government minister's partner. This shortcoming was all the more problematic because the case was both factually and legally complex and the trial had lasted more than two months during which time many witnesses and experts had given evidence.

Lastly, the Belgian system made no provision for an ordinary appeal against judgments of the Assize Court. An appeal to the Court of Cassation concerned points of law alone and accordingly did not provide Mr Taxquet with adequate clarification of the reasons for his conviction.

In conclusion, Mr Taxquet had not been afforded sufficient safeguards to enable him to understand why he had been found guilty and the proceedings were therefore unfair, in violation of Article 6 §1.

Article 6 §3 (d)

Mr Taxquet's complaint under Article 6 §3 (d) was closely linked to the facts which had led the Court to find a violation of Article 6 §1. In the absence of any reasons for the verdict, it was impossible to ascertain whether or not Mr Taxquet's conviction had been based on the information supplied by the anonymous witness. It was therefore unnecessary to examine separately the complaint of a violation of Article 6 §§1 and 3 (d).

Perdigão v. Portugal

Judgment of 16 November 2010. Concerns: The case concerned the applicants' complaint that the compensation awarded to them for the expropriation of their land was smaller than the court fees they had to pay in court proceedings in which they contested the compensation amount.

Forcing former owners of expropriated land to pay court fees that were higher than the compensation awarded breached the Convention.

Principal facts

The applicants, João José Perdigão and Maria José Queiroga Perdigão, are Portuguese nationals who were born respectively in 1932 and 1933 and live in Lisbon.

A piece of land measuring nearly 130 000 m² which they owned was expropriated in 1995 to build a motorway. As Mr and Mrs Perdigão did not agree with the authorities on the amount of compensation to be paid to them, an arbitration committee decided they were to be given 177 987.17 euros for the expropriated land. Mr and Mrs Perdigão appealed against that decision in March 1997, claiming that they were entitled to receive over 20 million euros in compensation, in exchange for their land and the potential profit they could have made by exploiting a quarry which existed on it. Subsequent expert assessments valued the land and the potential profit from the quarry at about 4 million and 9 million euros respectively.

In June 2000 the court rejected Mr and Mrs Perdigão's claim as it found that the potential profits from the quarry should not be taken into account. The court thus set, in June 2000, the compensation at just over 197 000 euros and, in April 2005, the court fees at just over 300 000 euros. Once the compensation awarded to the applicants had been deducted, they still owed the state 111 816.46 euros. Following a claim submitted by the applicants to the Constitutional Court, in September 2007 it declared unconstitutional the provision of the then Court Fees Code, as interpreted by the lower courts as it found that the sum which the applicants were asked to pay was large enough to have affected their right of access to a court. As the Constitutional Court did not decide on the amount of court fees finally owed by Mr and Mrs Perdigão, they turned to the appeal court for clarification. In January 2008 the appeal court decided, without giving reasons, that the court fees Mr and Mrs Perdigão owed should not exceed the compensation they were awarded by more than 15 000 euros.

As a result, not only did the amount awarded in compensation eventually revert to the state, but the applicants had to pay another 15 000, which they did in February 2008.

Decision of the Court

Article 1 of Protocol No. 1

Applicability to applicants' complaint

The Court first noted that the applicants' complaint concerned the way in which the Portuguese law regulations governing court fees had been applied in their case. It then confirmed the Chamber's finding that court fees had to be considered "contributions", under Article 1 of Protocol No. 1, which the State was entitled to collect in accordance with its own legislation.

Examining the question of whether Mr and Mrs Perdigão's obligation to pay the court fees had been an interference with their right to the peaceful enjoyment of their possessions, protected under paragraph 1 of Article 1 of Protocol No. 1, the Court decided to examine their application under Article 1 of Protocol No. 1 taken as a whole.

Compliance of authorities' actions

The Court reiterated that for a measure to be compatible with Article 1 of Protocol No. 1, it had to be lawful and not arbitrary. In addition, a fair balance had to be struck between the general interests of the community and the individual's fundamental right to protection of their property. The fair balance requirement meant that there always had to be a reasonable relationship of proportionality between the means employed by the authorities and the aim they pursued. If an individual had been made to bear an excessive burden as compared to the general interests of the community, the balance would not have been achieved. Notwithstanding the above, the Court held that, in general, states enjoyed a wide margin of appreciation, both in respect of the way they chose to interfere with someone's property rights and of assessing whether the consequences of their interference had been justified under Article 1 of Protocol No. 1.

The Court then observed that the applicants had seen the compensation awarded to them be fully absorbed by the court fees they had been asked to pay in the court proceedings in which they had contested the compensation. That had happened as a consequence of them having been deprived of their property. Having been awarded compensation in exchange for the expropriation of their land, Mr and Mrs Perdigão had received nothing as a result of the amount which the Portuguese courts had asked them to pay in court fees. Further, the

applicants had paid an additional 15 000 euros to the state on the basis of the national court's decision.

The Court noted that, while its task was not to examine the Portuguese method of calculating and fixing court fees, it had to consider how that method had been applied in Mr and Mrs Perdigão's case. It found that, clearly, the intended outcome of protecting the applicants' property rights while expropriating their land had not been achieved, as they had had to pay 15 000 euros to the state, in addition to losing their land.

The Court further remarked that it might appear paradoxical that a state should take away with one hand – in court fees – more than it had awarded with the other. While there was a difference in the legal nature of the obligation for the state to pay compensation for expropriation and the obligation of litigants to pay court fees, it was not an obstacle for the Court to examine – under Article 1 of Protocol No. 1 – the question of whether the amount of court fees Mr and Mrs Perdigão had to pay had been proportionate to the authorities' aim to expropriate their land in exchange for due compensation.

The Court then noted that, according to Portuguese legislation, by claiming a large sum the applicants had risked being asked to pay high court fees. However, their conduct or the procedural activity set in motion could not justify the imposition of such high court fees, especially in relation to the amount they had been awarded as compensation for the expropriation of their land.

Accordingly, Mr and Mrs Perdigão had had to bear an excessive burden and that had upset the fair balance which the Portuguese authorities had had to strike between the general interests and the fundamental property rights of the applicants.

There had, therefore, been a violation of Article 1 of Protocol No. 1.

A., B., and C. v. Ireland

Rights to abortion in Ireland.

Judgment of 16 December 2010. Concerns: The case concerned the complaint by three women that the restrictions on abortion in Ireland stigmatised and humiliated them, risked damaging their health, and, in the third applicant's case, even her life.

Principal facts

The applicants are three women over 18 years of age who live in Ireland: two are Irish nationals and one is a Lithuanian national.

All three applicants travelled to the United Kingdom in 2005 to have an abortion after becoming pregnant unintentionally.

The first applicant, unmarried, unemployed and living in poverty, had four children all of whom had been placed in foster care. A former alcoholic struggling with depression, she decided to have an abortion to avoid jeopardising her chances of reuniting her family. She paid for the abortion in a private clinic in the United Kingdom by borrowing money from a moneylender.

The second applicant was not prepared to become a single parent. While initially she feared an ectopic pregnancy, by the time she travelled to the United Kingdom for an abortion, she was already aware that that was not the case.

The third applicant, in remission from cancer and unaware that she was pregnant, underwent a series of check-ups contraindicated during pregnancy. Once she discovered she was pregnant, she believed that there was a risk that her pregnancy would cause a relapse of the cancer and was thus concerned for her health and life. She was also concerned about a risk to the foetus if she continued to term and claimed she could not obtain clear advice. She therefore decided to have an abortion in England.

In Irish law, abortion is prohibited under criminal law, and in particular, in section 58 of the Offences Against the Person Act of 1861 ("the 1861 Act"), still in force. It stipulates that every pregnant woman, or a third party, who undertakes any unlawful action with the intent to provoke a woman's miscarriage, shall be guilty of a crime which carries a penalty of life imprisonment. A referendum held in 1983 resulted in the Eighth Amendment to the Constitution: Article 40.3.3 of the Irish Constitution acknowledged the right to life of the unborn and, with due regard to the equal right to life of the mother, guaranteed to respect the latter in national laws.

As a result of cases taken before the Irish courts concerning the interpretation of the Eighth Amendment, the Supreme Court held, in a judgment in the *X* case in 1992, that abortion was lawful in Ireland, if there was a real and substantial risk to the life, as distinct from the health, of the mother as a result of her pregnancy. In similar judgments, delivered in subsequent cases, the courts regretted that Parliament had not enacted legislation regulating that constitutionally guaranteed right. In 1992 a referendum resulted in the Thirteenth Amendment to the Constitution, which lifted the ban on travelling abroad for abortion and allowed information about lawfully available abortions abroad to be disseminated in Ireland.

The first two applicants believed that they were not entitled to abortion in Ireland as Irish law did not allow abortion for health and/or well-being reasons, but solely when there was an established risk to the mother's life, including from suicide. The third applicant submitted that, although she believed her pregnancy put her life at risk, there was no law or procedure through which she could prove that, and – as a result – establish her right to an abortion in Ireland.

On their return to Ireland the applicants claim they experienced medical complications.

Decision of the Court

Scope of the case

The Court emphasised that its role was to examine the legal position on abortion in Ireland in so far as it directly affected the present applicants.

It then observed that it had not been disputed that all three applicants had travelled to England for abortion: the first two for reasons of health and well-being, and the third applicant given her fear that her pregnancy posed a risk to her life. While travel abroad had undoubtedly represented a psychological burden for all three, and for the first applicant a financial drain, the Court found that the necessary medical advice and treatment had been available to them in Ireland

both before and after their abortions. The Court found that, apart from the psychological impact on the applicants of going abroad to do something which was a criminal offence in their own country, the criminal sanctions in Ireland applicable to abortion had had no direct relevance to the complaints of the first and second applicant. The Court examined the risk of those sanctions in the third applicant's case together with the merits of her complaint.

Exhaustion of domestic remedies

The Court found ineffective the domestic legal remedies which the government considered the applicants should have exhausted, which namely a constitutional action and an application under the European Convention on Human Rights Act 2003. Consequently, there was no need for the first and the second applicant to use them before turning to the Court. As regards the third applicant, the Court examined that question together with its analysis on the merits.

Article 2

The Court recalled that there had been no legal obstacle to any of the applicants travelling abroad for an abortion. Given that the third applicant, who had suffered post-abortion complications, had not claimed that those had represented a threat to her life, the Court rejected her complaints as inadmissible.

Article 3

The Court rejected all three applicants' complaints under Article 3, as it found that the psychological and physical burden undoubtedly suffered by each of them as a result of their travelling abroad for an abortion, had not been sufficiently grave to represent inhuman or degrading treatment prohibited under Article 3.

Article 8

Third parties provided lengthy submissions both in favour and against widening access to abortion services in Ireland.

The Court held that, while Article 8 could not be interpreted as conferring a right to abortion, its prohibition in Ireland came within the scope of the applicants' right to respect for their physical and psychological integrity, hence within their private lives, and thus under Article 8. The Court examined the complaints of the first and second applicant separately from those of the third applicant.

First and second applicant

The Court found that the prohibition on the termination of the first and second applicants' pregnancies had represented an interference with their right to respect for their private lives. That interference had been in accordance with the law and had pursued the legitimate aim of protecting public morals as understood in Ireland.

Examining whether the prohibition had been necessary in a democratic society, and in particular, whether a pressing social need had existed to justify it, the Court observed that a consensus existed among the majority of the members states of the Council of Europe allowing broader access to abortion than under Irish law: abortion was available on request in some 30 European countries; it was available for health-related reasons in approximately 40 states; and it was available for well-being reasons in about 35 of those. Only three states[3] had more restrictive access to abortion than Ireland, where abortion was prohibited regardless of the risk to a woman's life. In addition, Ireland was the only Council of Europe member state which allowed abortion only when the pregnancy posed a risk to the life of the expectant mother.

However, the Court found that the undisputed consensus among the Council of Europe member states was not sufficient to narrow decisively the broad margin of appreciation the state enjoyed in that context. The Court had accepted in a prior case – *Vo v. France* – that the question of when life began came within the states' margin of appreciation. As there was no European consensus on the scientific and legal definition of the beginning of life and as the right of the foetus and mother were inextricably linked, a state's margin of appreciation concerning the question of when life began implied a similar margin of appreciation as regards the balancing of the conflicting interests of the foetus and the mother.

The Court then applied that margin of appreciation. Having regard to the first and second applicants' right to travel abroad to obtain an abortion and to appropriate pre- and post-abortion medical care in Ireland, as well as to the fact that the impugned prohibition in Ireland on abortion for health or well-being reasons was based on the profound moral values of the Irish people in respect of the right to life of the unborn, the Court concluded that the existing prohibition on abortion in Ireland struck a fair balance between the right of the first and second applicants to the respect of their private lives and the rights invoked on behalf of the unborn.

There had, therefore, been no violation of Article 8 as regards the first and the second applicants.

Third applicant

The Court noted that the third applicant had a rare form of cancer and she feared it might relapse as a result of her being pregnant. The Court considered that the establishment of any such risk to her life clearly concerned fundamental values and essential aspects of her right to respect for her private life.

It went on to find that the only non-judicial means for determining such a risk on which the government relied, the ordinary medical consultation between a woman and her doctor, was ineffective. The uncertainty surrounding such a process was such that it was evident that the criminal provisions of the 1861 Act constituted a significant chilling factor for women and doctors as they both ran a risk of a serious criminal conviction and imprisonment if an initial doctor's opinion that abortion was an option as it posed a risk to the woman's health was later found to be against the Irish Constitution.

Neither did the Court consider recourse by the third applicant to the courts (in particular, the constitutional courts) to be effective, as the constitutional courts were not appropriate for the primary determination of whether a woman qualified for a lawful abortion. It was likewise inappropriate to ask women to pursue such complex constitutional proceedings when their right to have an abortion if pregnancy posed a threat to their life was not disputed. In any event, it was unclear how the courts were to enforce any mandatory order requiring doctors to carry out an abortion, given the lack of clear information from the government

3. Andorra, Malta and San Marino

to the Court as regards lawful abortions currently carried out in Ireland.

The Court concluded that neither the medical consultation nor litigation options, relied on by the Irish Government, constituted effective and accessible procedures which allowed the third applicant to establish her right to a lawful abortion in Ireland. Moreover, there was no explanation why the existing constitutional right had not been implemented to date.

Consequently, the Court concluded that Ireland had breached the third applicant's right to respect for her private life given the failure to implement the existing constitutional right to a lawful abortion in Ireland. Accordingly, there had been a violation of Article 8.

The Court rejected the applicants' remaining complaints.

Paksas v. Lithuania

Permanent and irreversible disqualification of a former president from parliamentary office following his removal in impeachment proceedings was disproportionate

Judgment of 6 January 2011. Concerns: The case concerned the applicant's disqualification from holding parliamentary office following his removal as President of Lithuania in impeachment proceedings[4] for committing a gross violation of the Constitution and breaching the constitutional oath.

Principal facts

The applicant, Rolandas Paksas, is a Lithuanian national who was born in 1956 and lives in Vilnius. On 5 January 2003 he was elected President of the Republic of Lithuania. Following impeachment proceedings against him, he was removed from office on 6 April 2004 by the Seimas (the Lithuanian Parliament) for committing a gross violation of the Constitution and breaching the constitutional oath.

The Constitutional Court found that, while in office as president, the applicant had, unlawfully and for his own personal ends, granted Lithuanian citizenship to a Russian businessman, disclosed a state secret to the latter by informing him that he was under investigation by the secret services, and exploited his own status to exert undue influence on a private company for the benefit of close acquaintances.

On 22 April 2004 the Central Electoral Committee found that there was nothing to prevent the applicant from standing in the presidential election called as a result of his removal from office. However, on 4 May 2004 the Seimas amended the Presidential Elections Act by inserting a provision to the effect that a person who had been removed from office in impeachment proceedings could not be elected President until a period of five years had expired (as a result of which the Central Electoral Committee ultimately refused to register the applicant as a candidate). The matter was referred by members of parliament to the Constitutional Court, which ruled on 25 May 2004 that such a disqualification was compatible with the Constitution, but that subjecting it to a time-limit was unconstitutional. On 15 July 2004 the Seimas passed an amendment to the Seimas Elections Act, to the effect that anyone who had been removed from office following impeachment proceedings was disqualified from being a member of parliament.

Criminal proceedings were also brought against the applicant on a charge of disclosing information classified as a state secret, but he was eventually acquitted.

Decision of the Court

Article 6 §§1 and 2, Article 7 and Article 4 §1 of Protocol No. 7

The first set of proceedings in the Constitutional Court had concerned the compliance with the Constitution and the law of a naturalisation decree issued by the applicant by virtue of his presidential powers, and the second set had sought to ascertain whether he had committed gross violations of the Constitution or breached his constitutional oath. In the Court's view, the proceedings in question had not concerned the "determination of his civil rights and obligations" or of a "criminal charge" against him within the meaning of Article 6 §1 of the Convention; nor had he been "charged with a criminal offence" within the meaning of Article 6 §2 in those proceedings, or "convicted" or "tried or punished ... in criminal proceedings" within the meaning of Article 4 §1 of Protocol No. 7, and the proceedings had not resulted in his being held "guilty of a criminal offence" or receiving a "penalty" within the meaning of Article 7 of the Convention.

The Court therefore rejected this part of the application as being incompatible *ratione materiae* (in terms of subject matter) with the provisions of the Convention.

Article 3 of Protocol No. 1

Admissibility

The Court observed first of all that Article 3 of Protocol No. 1, concerning the right to free elections, applied only to the election of the "legislature". It thus concluded that in so far as the applicant's complaint related to his removal from office or disqualification from standing for the presidency, it was incompatible *ratione materiae* with the provisions of the Convention and hence inadmissible. However, it was admissible *ratione materiae* in so far as it related to his inability to stand for election to the Seimas.

The Court then dismissed the government's arguments that the applicant had not exhausted domestic remedies for the purposes of Article 35 §1 of the Convention and that his application had been lodged outside the six-month time-limit prescribed by the same provision. It also held that, contrary to what the government maintained, Article 17 of the Convention, prohibiting the abuse of rights, could not be applied in his case.

Merits

The Court noted that, as a former President of Lithuania removed from office following impeachment proceedings, the applicant belonged to a category of people directly affected by the rule set forth in the Constitutional Court's ruling of 25 May 2004 and the Act of 15 July 2004. Since he had thus been deprived of any possibility of

4. Formal indictment procedure whereby the legislature may remove from office a head of State, a senior official or a judge for breaching the law or the Constitution.

running as a parliamentary candidate, he was entitled to claim that there had been interference with the exercise of his right to stand for election. The interference satisfied the requirements of lawfulness and pursued a legitimate aim for the purposes of Article 3 of Protocol No. 1, namely preservation of the democratic order.

Assessing the proportionality of the interference, the Court observed on the one hand that, as it had previously held, Article 3 of Protocol No. 1 did not exclude the possibility of imposing restrictions on the electoral rights of a person who had, for example, seriously abused a public position or whose conduct had threatened to undermine the rule of law or democratic foundations. The applicant's case concerned circumstances of that kind, since his inability to serve as a member of parliament was the consequence of his removal from office by the Seimas in a decision taken in impeachment proceedings on the basis of the Constitutional Court's ruling that he had committed a gross violation of the Constitution and breached his constitutional oath. The Court further noted that, in the context of impeachment proceedings, which could result in senior officials being removed from office and barred from standing for election, Lithuanian law provided for a number of safeguards protecting those concerned from arbitrary treatment.

On the other hand, while not wishing either to underplay the seriousness of the applicant's alleged conduct in relation to his constitutional obligations or to question the principle of his removal from office as president, the Court noted the extent of the consequences of his removal for the exercise of his rights under Article 3 of Protocol No. 1: he was permanently and irreversibly deprived of the opportunity to stand for election to Parliament. That appeared all the more severe since removal from office had the effect of barring the applicant not only from being a member of parliament but also from holding any other office for which it was necessary to take an oath in accordance with the Constitution. The Court found it understandable that a State should consider a gross violation of the Constitution or a breach of the constitutional oath to be a particularly serious matter requiring firm action when committed by a person holding an office such as that of President of Lithuania; however, that was not sufficient to persuade it that the applicant's permanent and irreversible disqualification from standing for election as a result of a general provision was a proportionate means of satisfying the requirements of preserving democratic order.

The Court noted that Lithuania's position in that area constituted an exception in Europe. It then observed that not only was the restriction in question not subject to any time-limit, but the rule on which it was based was also set in constitutional stone, with the result that the applicant's disqualification from standing from election carried a connotation of immutability that was hard to reconcile with Article 3 of Protocol No. 1. Lastly, it found that although the relevant legal provision was worded in general terms and was intended to apply in exactly the same manner to anyone whose situation corresponded to clearly defined criteria, it was the result of a rule-making process strongly influenced by the particular circumstances.

Accordingly, and having regard especially to the permanent and irreversible nature of the applicant's disqualification from holding parliamentary office, the Court concluded that there had been a violation of Article 3 of Protocol No. 1.

Article 13 taken in conjunction with Article 3 of Protocol No. 1

In view of its finding of a violation of Article 3 of Protocol No. 1, the Court considered that the applicant had an "arguable claim" calling in principle for the application of Article 13.

However, the absence of remedies against a decision of a constitutional court did not raise an issue under Article 13, which did not go so far as to require the provision of a remedy allowing a constitutional precedent with statutory force to be challenged.

This part of the application was therefore rejected as being manifestly ill-founded.

M.S.S. v. Belgium and Greece

Belgian authorities should not have expelled asylum seeker to Greece

Judgment of 21 January 2011. Concerns: The case concerned the expulsion of an asylum seeker to Greece by the Belgian authorities in application of the European Union Dublin II Regulation.

Principal facts

The applicant, M.S.S., an Afghan national, left Kabul early in 2008 and, travelling via Iran and Turkey, entered the European Union through Greece.

On 10 February 2009 he arrived in Belgium, where he applied for asylum. By virtue of the "Dublin II" Regulation,[5] the Belgian Aliens Office submitted a request for the Greek authorities to take charge of the asylum application. While the case was pending, the UNHCR sent a letter to the Belgian Minister for Migration and Asylum Policy criticising the deficiencies in the asylum procedure and the conditions of reception of asylum seekers in Greece and recommending the suspension of transfers to Greece. In late May 2009 the Aliens Office nevertheless ordered the applicant to leave the country for Greece, where he would be able to submit an application for asylum. The Aliens Office received no answer from the Greek authorities within the two-month period provided for by the Regulation, which it treated as a tacit acceptance of its request. It argued that Belgium was not the country responsible for examining the asylum application under the "Dublin II" Regulation and that there was no reason to suspect that the Greek authorities would fail to honour their obligations in asylum matters.

The applicant lodged an appeal with the Aliens Appeals Board, arguing that he ran the risk of detention in Greece in appalling conditions, that there were deficiencies in the asylum system in Greece and that he feared ultimately being sent back to Afghanistan without any examination of the reasons why he had fled that country, where he claimed he had escaped a murder attempt by the Taliban in reprisal for his having worked as an interpreter for the air force troops stationed in Kabul.

His application for a stay of execution having been rejected, the applicant was transferred to Greece on 15 June 2009. On arriving at Athens airport, he was immediately placed in detention in an adjacent building, where, according to his reports, he was locked up in a small space with 20 other detainees, access to the toilets was restricted, detainees were not allowed out into the open air, were given very little to eat and had to sleep on dirty mattresses or on the bare floor. Following his release and the issuing of an asylum seeker's card on 18 June 2009, he lived in the street, with no means of subsistence.

Having subsequently attempted to leave Greece with a false identity card, the applicant was arrested and again placed in the detention facility next to the airport for one week, where he alleges he was beaten by the police. After his release, he continued to live in the street, occasionally receiving aid from local residents and the church. On renewal of his asylum seeker's card in December 2009, steps were taken to find him accommodation, but according to his submissions no housing was ever offered to him.

Decision of the Court

Article 3: detention conditions in Greece

While the Court did not underestimate the burden currently placed on the states forming the external borders of the European Union by the increasing influx of migrants and asylum seekers and the difficulties involved in receiving them at major international airports, that situation could not absolve Greece of its obligations under Article 3, given the absolute character of that provision.

When the applicant arrived in Athens from Belgium, the Greek authorities had been aware of his identity and of the fact that he was a potential asylum seeker. In spite of that, he was immediately placed in detention, without any explanation being given. The Court noted that various reports by international bodies and non-governmental organisations of recent years confirmed that the systematic placement of asylum seekers in detention without informing them of the reasons was a widespread practice of the Greek authorities. The applicant's allegations that he was subjected to brutality by the police during his second period of detention were equally consistent with numerous accounts collected from witnesses by international organisations, in particular the European Committee for the Prevention of Torture. Findings by the Committee for the Prevention of Torture and UNHCR also confirmed the applicant's allegations about the unsanitary conditions and the overcrowding in the detention centre next to the Athens international airport.

Despite the fact that he was kept in detention for a relatively short period of time, the Court considered that the conditions of detention experienced by the applicant in the holding centre had been unacceptable. It found that, taken together, the feeling of arbitrariness, inferiority and anxiety he must have experienced, as well as the profound effect such detention conditions indubitably had on a person's dignity, constituted degrading treatment. In addition, as an asylum seeker he was particularly vulnerable, because of his migration and the traumatic experiences he was likely to have endured. The Court concluded that there had been a violation of Article 3.

Article 3: living conditions in Greece

Article 3 did not generally oblige member states to give refugees financial assistance to secure for them a certain standard of living. However, the Court considered that the situation in which the applicant had found himself was particularly serious. In spite of the obligations incumbent on the Greek authorities under their own legislation and the Committee for the Prevention of Torture Reception Directive, he spent months living in extreme poverty, unable to cater for his most basic needs – food, hygiene and a place to live – while in fear of being attacked and robbed. The applicant's account was supported by the reports of a number of international bodies and organisations, in particular the Council of Europe Commissioner for Human Rights and UNHCR.

5. An EC regulation under which European Union member states are required to determine, based on a hierarchy of criteria, which member state is responsible for examining an asylum application lodged on their territory.

The authorities had not duly informed the applicant of any accommodation possibilities. A document notifying him of the obligation to go to the police headquarters to register his address could not reasonably be understood as an instruction to let the authorities know that he had nowhere to stay. In any event, the Court did not see how the authorities could have failed to assume that the applicant was homeless. The government itself acknowledged that there were fewer than 1 000 places in reception centres to accommodate tens of thousands of asylum seekers. That data considerably reduced the weight of the Greek Government's argument that the applicant's situation was a consequence of his inaction.

The situation of which the applicant complained had lasted since his transfer to Greece in June 2009 and was linked to his status as an asylum seeker. Had the authorities examined his asylum request promptly, they could have substantially alleviated his suffering. It followed that through their fault he had found himself in a situation incompatible with Article 3. There had accordingly been a violation of that provision.

Article 13 taken together with Article 2 and 3 (Greece)

It was undisputed between the parties that the situation in Afghanistan had posed and continued to pose a widespread problem of insecurity. As regards the risks to which the applicant would be exposed in that country, it was in the first place for the Greek authorities to examine his request. The Court's primary concern was whether effective guarantees existed to protect him against arbitrary removal.

While Greek legislation contained a number of such guarantees, for a few years the UNHCR, the European Commissioner for Human Rights and other organisations had repeatedly and consistently revealed that the relevant legislation was not being applied in practice and that the asylum procedure was marked by major structural deficiencies. They included: insufficient information about the procedures to be followed, the lack of a reliable system of communication between authorities and asylum seekers, the lack of training of the staff responsible for conducting interviews with them, a shortage of interpreters and a lack of legal aid effectively depriving asylum seekers of legal counsel. As a result, asylum seekers had very little chance of having their applications seriously examined. Indeed, a 2008 UNHCR report showed a success rate at first instance of less than 0.1%, compared to the average success rate of 36.2% in five of the six European Union countries which, along with Greece, received the largest number of applications. The organisations intervening as third parties had regularly denounced forced returns of asylum seekers by Greece to high-risk countries.

The Court was not convinced by the Greek Government's argument that the applicant was responsible for the inaction of the authorities because he had not reported to the police headquarters within a three-day time-limit as prescribed in a document he had received. Like many other asylum-seekers, as revealed by the reports, he had misinterpreted that convocation to the effect that its only purpose was to declare an address, which he did not have. To date, the authorities had not offered the applicant a real and adequate opportunity to defend his application for asylum.

As regards the applicant's opportunity of applying to the Greek Supreme Administrative Court for judicial review of a potential rejection of his asylum request, the Court considered that the authorities' failure to ensure communication with him and the difficulty in contacting a person without a known address made it very uncertain whether he would learn the outcome of his asylum application in time to react within the prescribed time-limit. In addition, although the applicant clearly could not pay for a lawyer, he had received no information concerning access to organisations offering legal advice. Added to that was the shortage of lawyers in the list drawn up for the legal aid system which rendered the system ineffective in practice. Moreover, according to information supplied by the Commissioner for Human Rights, uncontested by the Greek Government, the average duration of appeals to the Supreme Administrative Court was more than five years, which was additional evidence that such an appeal was not accessible enough and did not remedy the lack of guarantees in the asylum procedure.

In view of those deficiencies, the Court concluded that there had been a violation of Article 13 taken in conjunction with Article 3. In view of that finding it further considered that there was no need for it to examine the complaints lodged under Article 13 taken in conjunction with Article 2.

Article 2 and 3: The Belgian authorities' decision to expose the applicant to the asylum procedure in Greece

The Court considered that the deficiencies of the asylum procedure in Greece must have been known to the Belgian authorities when they issued the expulsion order against the applicant and he should therefore not have been expected to bear the entire burden of proof as regards the risks he faced by being exposed to that procedure. The UNHCR had alerted the Belgian Government of that situation while the applicant's case was pending. While in 2008 the Court had found in another case that removing an asylum seeker to Greece under the "Dublin II" Regulation did not violate the Convention,[6] numerous reports and materials had been compiled by international bodies and organisations since then which agreed as to the practical difficulties involved in the application of the Dublin system in Greece. Belgium had initially issued the expulsion order solely on the basis of a tacit agreement by the Greek authorities and had proceeded to execute that order without any individual guarantee given by those authorities at a later stage, although under the Regulation Belgium could have made an exception and refused the applicant's transfer.

Against that background, it had been up to the Belgian authorities not merely to assume that the applicant would be treated in conformity with the Convention standards but to verify how the Greek authorities applied their legislation on asylum in practice, which they had failed to do. The applicant's transfer by Belgium to Greece had thus given rise to a violation of Article 3. Having regard to that conclusion the Court found that there was no need to examine the complaints under Article 2.

Article 3: The Belgian authorities' decision to expose the applicant to the

6. *K.R.S. v. the United Kingdom* (decision) (32733/08) of 2 December 2008

detention and living conditions in Greece

The Court had already found the applicant's detention and living conditions in Greece to be degrading. These facts had been well known and freely ascertainable from a wide number of sources before the transfer of the applicant. In that view, the Court considered that by transferring the applicant to Greece, the Belgian authorities knowingly exposed him to detention and living conditions that amounted to degrading treatment, in violation of Article 3.

Article 13 taken together with Article 2 and 3 (Belgium)

As regards the complaint that there was no effective remedy under Belgian law by which the applicant could have complained against the expulsion order, the Belgian Government had argued that a request for a stay of execution could be lodged before the Aliens Appeals Board "under the extremely urgent procedure". That procedure suspended the execution of an expulsion measure for a maximum of 72 hours until the Board had reached a decision.

However, the Court found that the procedure did not meet the requirements of the Court's case-law that any complaint that expulsion to another country would expose an individual to treatment prohibited by Article 3 be closely and rigorously scrutinised, and that the competent body had to be able to examine the substance of the complaint and afford proper redress. Having regard to the Aliens Appeals Board's examination of cases, which was mostly limited to verifying whether those concerned had produced concrete proof of the damage that might result from the alleged potential violation of Article 3, the applicant would have had no chance of success. There had accordingly been a violation of Article 13 taken in conjunction with Article 3. The Court further considered that there was no need to examine the complaints under Article 13 taken in conjunction with Article 2.

Article 46 (Binding force and execution of judgments)

The Court considered it necessary to indicate some individual measures required for the execution of the judgment in respect of the applicant, without prejudice to the general measures required to prevent other similar violations in the future. It was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant.

Selected Chamber judgments

Gillberg v. Sweden

Professor's criminal conviction for refusal to hand over research on hyperactive children was justified

Judgment of 2 November 2010. The case concerned a professor's criminal conviction for refusing to comply with a court decision granting access to his research on hyperactivity and attention-deficit disorders in children to other researchers.

Principal facts

The applicant, Christopher Gillberg, is a Swedish national who was born in 1950. He is a well-known professor and former Head of Department of Child and Adolescent Psychiatry at the University of Gothenburg (Sweden). For several years, he was responsible for a long-term research project on hyperactivity and attention-deficit disorders in children, carried out at the university between 1977 and 1992. Parents of a group of 141 pre-school children volunteered to participate in the study, which was followed up every third year. Certain assurances were made to the children's parents and later to the young people themselves concerning confidentiality. According to Mr Gillberg, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents.

In 2002 a sociological researcher from another university requested access to the research material, submitting that she had no interest in the personal data as such but in the method used and the evidence the researchers had for their conclusions. In the same year, a paediatrician requested access to the material, submitting that he needed to keep up with current research. Both requests were refused by the University of Gothenburg, and both researchers appealed against the decisions. By two separate judgments of February 2003, the Administrative Court of Appeal found that the researchers should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the handling of confidential data. The university was to specify the conditions for access in order to protect the interests of the individuals concerned. In August 2003 the Administrative Court of Appeal in two judgments lifted some of the conditions imposed by the university and subsequently a new list of conditions was set for each of the two researchers, which included restrictions on the use of the material and the prohibition to remove copies from the university premises.

Notified by the university's vice-chancellor that the two researchers were entitled to immediate access by virtue of the judgments, Mr Gillberg refused to hand over the material. Following discussions about the matter, in January and February 2004, the university decided to refuse access to the sociological researcher and to impose a new condition on the paediatrician, asking him to demonstrate that his duties required access to the research material in question. Those university decisions were annulled by two judgments of the Administrative Court of Appeal on 4 May 2004. A few days later, the research material was destroyed by a few colleagues of Mr Gillberg.

In all sets of proceedings before the Administrative Court of Appeal, Mr Gillberg requested relief for substantive defects of the judgments before the Supreme Administrative Court, which was refused because he was not considered to be party to the case.

In January 2005 the Swedish Parliamentary Ombudsman brought criminal proceedings against Mr Gillberg, and in June he was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of 4 000 euros. The university's vice president and the officials who had destroyed the research material were also convicted. Mr Gillberg's conviction was upheld in February 2006 by the Court of Appeal, which held in particular that he had wilfully disregarded the obligations of his office by failing to comply with the judgments of the Administrative Court of Appeal. It further held that the assurances of confidentiality given to the participants in the study went in some respects further than permitted by the Secrecy Act, a domestic law aiming to protect individuals from the disclosure of information about their personal circumstances. In April 2006 leave to appeal to the Supreme Court was refused.

Decision of the Court

While on the face of it the case raised important ethical issues involving, among other things, the interest of the children participating in the research, medical research in general and public access to information, the Court was only in a position to examine whether Mr Gillberg's criminal conviction was compatible with the Convention, since his complaints concerning the outcome of the civil proceedings had been lodged out of time.

Article 8

The Court left it open whether there had been an interference with Mr Gillberg's right to respect for his private life for the purpose of Article 8, because even assuming that there had been such an interference, it found that there had been no violation of that provision for the reasons below.

Convention states had to ensure in their domestic legal systems that a final binding judicial decision did not remain inoperative to the detriment of one party; the execution of a judgment was an integral part of a trial. The Swedish State therefore had to react to Mr Gillberg's refusal to execute the judgments granting the two external researchers access to the material.

The Court noted Mr Gillberg's argument that the conviction and sentence were disproportionate to the aim of ensuring the protection of the rights and freedoms of others, because the university's ethics committee had required an absolute promise of confidentiality as a precondition for carrying out his research. However, the two permits by the committee he had submitted to the Court did not constitute evidence of such a requirement. The Swedish courts had moreover found that the assurances of confidentiality given to the participants in the study went further than permitted by the Secrecy Act and had noted that no domestic law provided for greater secrecy than that Act. In the Court's view, it had been legitimate for the Swedish courts to conclude that the assurances of confidentiality therefore did not take precedence over the law as it stood.

As regards Mr Gillberg's argument that the Swedish courts should have taken into account as a mitigating circumstance the fact that he had attempted to protect the integrity of the participants in the research, the Court agreed with the criminal courts that the question of whether the documents were to be released had been settled in the civil proceedings. Whether or not the university considered that they were based on erroneous or insufficient grounds had no significance for the validity of the administrative court's judgments. It had thus been incumbent on the university administration to release the documents and Mr Gillberg had intentionally failed to comply with his obligations as a public official arising from the judgments.

The Court therefore did not find that his conviction or sentence was arbitrary or disproportionate to the legitimate aims pursued. It concluded, by five votes to two, that there had been no violation of Article 8.

Article 10

The Court noted that Mr Gillberg was not prevented from exercising his "positive" right to freedom of expression under Article 10, but that he invoked his "negative right" to remain silent. The Court accepted that some professional groups might have a legitimate interest in protecting professional secrecy as regards clients or sources. However, Mr Gillberg had been convicted for misuse of office for refusing to make documents available in accordance with the instructions he received from the university administration; he was thus part of the university that had to comply with the judgments of the administrative courts.

Moreover, his conviction did not as such concern the university's or his own interest in protecting professional secrecy with clients or the participants in the research. That part had been settled by the administrative courts' judgments, in relation to which the Court was prevented from examining any alleged violation of the Convention.

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

Hajduová v. Slovakia

Judgment of 30 November 2010. Concerns: the applicant complained that the domestic authorities had failed to comply with their statutory obligation to order that her former husband be detained in an institution for psychiatric treatment, following his criminal conviction for having abused and threatened her.

Authorities failed to protect the applicant from her former husband's abusive and threatening behaviour

Principal facts

The applicant, Marta Hajduová, is a Slovak national who was born in 1960 and lives in Košice (Slovakia). Criminal proceedings were brought against A., her (now former) husband, in August 2001 and he was remanded in custody after he attacked her, both verbally and physically, in public and uttered death threats. Suffering a minor injury and fearing for her life and safety, Mrs Hajduová and her children moved into the premises of a non-governmental organisation in Košice.

A.'s indictment stated that he had been convicted four times in the past, including of two offences in the last ten years involving breaches of court or administrative orders. Rather than imposing a prison sen-

tence, the court ordered, as recommended by experts, that A. be detained for psychiatric treatment as he was suffering from a serious personality disorder.

A. was then transported to a hospital in Košice. That hospital did not carry out the treatment which he required, nor did the District Court order it to carry out such treatment. On being released, A. renewed his threats against Ms Hajduová and her lawyer, who filed new criminal complaints and informed the District Court accordingly. Following A.'s visit to Ms Hajduová's lawyer and his threats against her and her employee, he was arrested by the police and charged with a criminal offence. The District Court arranged for psychiatric treatment of A. who was consequently transported to the hospital.

The complaint filed by Mrs Hajduová with the Constitutional Court – that the District Court had failed to ensure that her husband be placed in a hospital for the purpose of psychiatric treatment immediately after his conviction – was rejected.

Decision of the Court

Article 8

The Court recalled that states had a duty under Article 8 to protect the physical and psychological integrity of an individual from others, in particular in the case of vulnerable victims of domestic violence, as emphasized in a number of international instruments.[7]

The Court noted that the reason why the District Court had held that, instead of being sentenced to imprisonment, A. should be sent to a hospital, had been the domestic court's reliance on expert opinions according to which he was suffering from a serious personality disorder and should be treated as an in-patient in a psychiatric facility. However, due to the District Court's failure to discharge its statutory obligation to order the hospital to detain him, A. had quickly been released from that hospital, an omission following which Ms Hajduová and her lawyer had been subjected to renewed threats from him.

Although unlike other cases brought before the Court, A.'s threats had not actually materialised into concrete physical violence, the applicant's fear that they might be carried out had been well-founded, given A.'s history of physical abuse and menacing behaviour.

While the Court appreciated the police intervention, it noted that it had happened only after Ms Hajduová and her lawyer had filed fresh criminal complaints. Moreover, the Court could not overlook the fact that A. had been able to continue to threaten them because of the domestic authorities' inactivity and failure to ensure his detention for psychiatric treatment. Finally, the Court noted that the domestic authorities had had sufficient indications of the danger of future violence and threats against the applicant and should have consequently exercised a greater degree of vigilance.

The Court therefore concluded that the lack of sufficient measures in reaction to A.'s behaviour, notably the District Court's failure to comply with its statutory obligation to order his detention for psychiatric treatment, had amounted to a breach of the state's obligation to secure respect for the applicant's private life, in violation of Article 8.

Article 5

The applicant's complaint under Article 5 essentially concerned the authorities' failure to protect her "security of person" by ordering the detention of A. No such right existed under Article 5 and the concept of security was to be understood in the context of physical liberty rather than physical safety. As a result, that complaint was incompatible with the Convention and therefore rejected.

P.V. v. Spain

Restriction of contact arrangements between a transsexual and her six-year-old son was in the child's best interests

Judgment of 30 November 2010. Concerns: the applicant complained about the restrictions ordered by a judge on the arrangements for contact with her son, on the ground that her lack of emotional stability following her gender reassignment was liable to upset the child, who had been six years old at the time.

Principal facts

The applicant, P.V., is a Spanish national who was born in 1976 and lives in Lugo (Spain). She is a male-to-female transsexual who, prior to her gender reassignment, had a son with P.Q.F. in 1998. When they separated in 2002 the judge approved the amicable agreement they had concluded, by which custody of the child was awarded to the mother and parental responsibility to both parents jointly. The agreement also laid down contact arrangements for the applicant, who was to spend every other weekend and half of the school holidays with the child.

In May 2004 P.Q.F. applied to have P.V. deprived of parental responsibility and to have the contact arrangements and any communication between the father and the child suspended, arguing that the father had shown a lack of interest in the child and adding that P.V. was undergoing hormone treatment with a view to gender reassignment and usually wore make-up and dressed like a woman. P.Q.F.'s application was dismissed in respect of the first point.

As regards the contact arrangements, the judge decided to restrict them rather than suspend them entirely. Since ordinary contact arrangements could not be made on account of P.V.'s lack of emotional stability, a gradual arrangement was put in place, initially involving a three-hour meeting every other Saturday "until [P.V.] undergoes surgery and fully recovers her physical and psychological capacities". The judge pointed out that P.V. had begun the gender-reassignment process only a few months earlier and that it entailed far-reaching changes to all aspects of her life and her personality and hence emotional instability, a characteristic noted by the psychologist in her report.

7. In particular the Committee of Ministers of the Council of Europe's Recommendation Rec (2002) 5 of 30 April 2002 on the protection of women against violence. For a summary of the relevant international material, see Chamber Judgment *Opuz v. Turkey*, 9 June 2009 (no. 33401/02), §§72-86.

That decision was upheld by the *Audiencia Provincial*, which reiterated that ordinary contact arrangements could undermine the child's emotional stability. The child would have to come to terms gradually with his father's decision, which he was in the process of doing since they enjoyed a good emotional relationship. As regards the applicant's objection to the psychologist who had drawn up the report, the *Audiencia Provincial* held that it had not been raised in time.

The contact arrangements were extended in February 2006 to five hours every other Sunday and subsequently, in November 2006, to every other Saturday and every other Sunday, for approximately eight hours each time.

In December 2008 an *amparo* appeal by the applicant was dismissed. The Constitutional Court held that the ground for restricting the contact arrangements had not been P.V.'s transsexualism but her lack of emotional stability, which had entailed a real and significant risk of disturbing her son's emotional well-being and the development of his personality, in view of his age – he had been six years old at the time of the expert report – and the stage of his development at that time. The court held that in reaching that decision, the judicial authorities had taken into account the child's best interests, weighed against those of the parents, and not P.V.'s status as a transsexual.

Decision of the Court

The Court agreed that once they had learned of P.V.'s gender emotional instability, the Spanish courts had adopted contact arrangements that were less favourable to her than those laid down in the separation agreement.

The Court emphasised that, although no issue of sexual orientation arose in the applicant's case, transsexualism was a notion covered by Article 14, which contained a non-exhaustive list of prohibited grounds for discrimination.

While emotional disturbance had not been considered a sufficient reason for restricting contact, the decisive ground for the restriction had been the risk of jeopardising the child's psychological well-being and the development of his personality. In addition, P.V.'s lack of emotional stability had been noted in a psychological expert report which she had had the opportunity to challenge.

Rather than suspending contact entirely, the judge had made a gradual arrangement, whereby he would review the situation on the basis of a report submitted every two months. From a three-hour meeting every two weeks under professional supervision, the contact arrangements were eventually extended to eight hours every other Saturday and every other Sunday. The overriding factor in that decision had been the child's best interests and not the applicant's transsexualism, the aim being that the child would gradually become accustomed to his father's gender reassignment. The Court further noted that the contact arrangements had been extended although there had been no change in the applicant's gender status during that period.

The Court therefore considered that the restriction of the contact arrangements had not resulted from discrimination on the ground of the applicant's transsexualism and concluded that there had been no violation of Article 8 taken in conjunction with Article 14.

Greens and M.T. v. the United Kingdom

Time Limit Imposed on United Kingdom Government to Introduce Legislation Giving Convicted Prisoners the Vote

Judgment of 23 November 2010. The case concerns the continued failure to amend the legislation imposing a blanket ban on voting in national and European elections for convicted prisoners in detention in the United Kingdom.

Principal facts

The applicants are two British nationals, Robert Greens and M.T., who were both serving a prison sentence at HM Prison Peterhead at the time their applications were lodged with the Court. Mr Greens was eligible for release on parole from 29 May 2010, but it is not known whether he has been released. M.T. is scheduled to be released in November 2010.

On 23 June 2008 the applicants posted voter registration forms to the Electoral Registration Officer for Grampian, using HM Prison Peterhead as their address.

They argued that, following the *Hirst v. the United Kingdom (no. 2)* judgment (among other things), the Electoral Registration Officer was obliged to add their names to the electoral register.

On 12 August 2008 the Electoral Registration Officer refused the applicants' registration applications on the basis of their status as convicted prisoners in detention. Their appeals were unsuccessful.

Section 3 of the Representation of the People Act 1983 imposes a blanket restriction on all convicted prisoners in detention irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. The legislation has not been amended since *Hirst*. As a result, the applicants were ineligible to vote in the United Kingdom General Election on 6 May 2010.

The blanket restriction introduced by section 3 of the 1983 Act was extended to elections to the European Parliament by section 8 of the European Parliamentary Elections Act 2002. The applicants were therefore also ineligible to vote in the elections to the European Parliament on 4 June 2009.

Decision of the Court

Article 3 of Protocol No. 1 (right to vote)

The Court noted that the applicants had been prevented from voting in the June 2009 European elections and the May 2010 general election as a result of their status as convicted prisoners in detention. However, both men became eligible for/were scheduled for release well before the elections to the Scottish Parliament on 5 May 2011. Accordingly, the Court only examined their complaints under Article 3 of Protocol No. 1 in relation to the European and general elections.

Section 3 of the 1983 Act had not been amended since *Hirst*. As a result, the applicants were ineligible to vote in the May 2010 general election. As a result of section 8 of the 2002 Act, the applicants were also ineligible to vote in the June 2009 European elections. The Court therefore concluded that there had

been a violation of Article 3 of Protocol No. 1 for both applicants.

Article 13 (effective remedy)

The Court recalled that Article 13 did not guarantee a remedy allowing the national laws (in the applicants' cases section 3 of the 1983 Act and section 8 of the 2002 Act) of a State which had ratified the European Convention on Human Rights to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms. There had therefore been no violation of Article 13.

Article 41 (just satisfaction)

The Court found that "it was a cause for regret and concern" that, in the five years which had passed since the *Hirst* judgment, no amending measures had been brought forward by the government.

However, the Court did not consider that aggravated or punitive damages were appropriate in the applicants' cases.

The Court noted the recent decision of the Committee of Ministers, which made reference to the fact that the new United Kingdom Government was "actively considering the best way of implementing the judgment" in *Hirst*. While the Court accepted that the continuing prohibition on voting might be frustrating for prisoners who could reasonably expect potentially to benefit from a change in the law, it nonetheless concluded that the finding of a violation, taken together with the Court's directions under Article 46, constituted sufficient just satisfaction in the applicants' cases.

The Court held that the United Kingdom was to pay the applicants 5 000 euros in respect of costs and expenses. The award was limited to the proceedings before the European Court of Human Rights and reflected the fact that extensive written submissions were lodged. In any future cases the Court noted that it would be likely to consider that legal costs were not reasonably and necessarily incurred and, therefore, make no award for costs under Article 41.

Article 46 (pilot judgment procedure)

The Court decided to apply its pilot judgment procedure to the case, under Article 46, given the United Kingdom's lengthy delay in implementing the decision in *Hirst* and the significant number of repetitive applications received by the Court shortly before, and in the six month's following, the May 2010 general election.

Specific measures

The Court emphasised that the finding of a violation of Article 3 of Protocol No. 1 in the applicants' cases was the direct result of the failure to comply with the ***Hirst*** judgment.

One of the fundamental implications of the pilot judgment procedure was that the Court's assessment of the situation complained of in a "pilot" case necessarily extended beyond the sole interests of the individual applicant/s and required it to examine that case from the perspective of general measures that needed to be taken in the interest of other people who might be affected. As the Court had already indicated, the prevailing situation had given rise to the lodging of numerous subsequent well-founded applications.

The Court had received approximately 2 500 applications in which a similar complaint had been made, around 1 500 of which had been registered and were awaiting a decision. The number continued to grow, and with each relevant election which passed without amended legislation, there was the potential for numerous new cases to be lodged. According to the United Kingdom Equality and Human Rights Commission, there were approximately 70 000 serving prisoners in the United Kingdom at any one time, all of whom were potential applicants. The failure of the United Kingdom to introduce the legislative proposals in question was not only an aggravating factor as regards the state's responsibility under the Convention for an existing or past state of affairs, but also represented a threat to the future effectiveness of the Convention system.

The Court recalled that, in *Hirst*, the Grand Chamber left to the discretion of the United Kingdom the decision as to how precisely to secure the right to vote guaranteed by the Convention. *Hirst* was currently under the supervision of the Committee of Ministers. It was not disputed by the government that general measures at the national level were needed to ensure the proper execution of the *Hirst* judgment. It was also clear that legislative change was required to bring United Kingdom electoral law in line with the Convention. Given the lengthy delay which had already occurred and the results of that delay, the Court, like the Committee of Ministers, was anxious to encourage the quickest and most effective solution to the problem, in compliance with the Convention.

The Court considered that a wide range of policy alternatives were available to the United Kingdom Government which, following appropriate consultation, should, in the first instance, decide how to achieve compliance with Article 3 of Protocol No. 1 when introducing legislative proposals. Such proposals would then be examined by the Committee of Ministers.

However, while the Court did not consider it appropriate to specify the content of future legislative proposals, the lengthy delay to date had demonstrated the need for a timetable. Accordingly, the Court concluded that the United Kingdom had to introduce legislative proposals to amend section 3 of the 1983 Act and, if appropriate, section 8 of the 2002 Act, within six months of today's judgment becoming final, with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in *Hirst* according to any time-scale determined by the Committee of Ministers.

Comparable cases

Given the findings in today's judgment, and in *Hirst*, it was clear that every comparable case pending before the Court which satisfied the admissibility criteria would give rise to a violation of Article 3 of Protocol No. 1. It was therefore to be regretted that the government had not acted more quickly to rectify the situation before the European elections in 2009 and the general election in 2010. Further, while it was to be hoped that new legislation would be in place as soon as practically possible, it was far from apparent that an appropriate solution would be in place prior to the Scottish elections, scheduled for May 2011; and the likely consequence of that failure would be a wave of new applications to the Court.

The Court noted that no individual examination of comparable cases was required in order to assess appropriate redress, and no financial compensation was payable. The only relevant remedy was a change in the law, which, while no doubt satisfying all those who had been or might be affected by the current

blanket ban, could not undo past violations of the Convention concerning particular individuals. In light of that and the six-month deadline fixed for introducing legislative proposals, the Court considered that the continued examination of each comparable case was no longer justified.

An amendment to the electoral law to achieve compliance with *Hirst* would also result in compliance with today's judgment and any future judgment in any comparable case. In those circumstances, the Court did not think anything was to be gained, or that justice would be best served, by the repetition of its findings in a lengthy series of similar cases, which would be a significant drain on its resources and add to its already considerable caseload. In particular, such an exercise would not contribute usefully or in any meaningful way to the strengthening of human rights protection under the Convention.

The Court accordingly considered it appropriate to discontinue its examination of all registered applications raising similar complaints pending compliance by the United Kingdom with the instruction to introduce legislative proposals. In the event of such compliance, the Court proposed to strike out all such registered cases, without prejudice to its power to restore them to the list should the United Kingdom fail to comply. The Court also considered it appropriate to suspend the treatment of such applications which had not yet been registered, as well as future applications, without prejudice to any decision to recommence treatment of those cases if necessary.

Ternovszky v. Hungary

Legal uncertainty prevented mother from giving birth at home

Judgment of 14 December 2010. Concerns: the applicant alleged that the fact that she had not been able to benefit from adequate professional assistance for a home birth in view of the relevant Hungarian legislation – and as opposed to those wishing to give birth in a health institution – had amounted to discrimination in the enjoyment of her right to respect for her private life.

Principal facts

The applicant, Anna Ternovszky, is a Hungarian national who was born in 1979 and lives in Budapest. She was pregnant when she lodged her application with the Court.

She intended to give birth at her home, rather than in a hospital or a birth home, but alleged she had not been able to do so because health professionals were effectively dissuaded by law[8] from assisting her as they risked being convicted. It appeared that at least one such prosecution had taken place in recent years.

Decision of the Court

The Court observed that "private life" incorporated aspects of an individual's physical and social identity including the right to respect for both, the decisions to become and not to become a parent, hence the right of choosing the circumstances of becoming a parent. Although Ms Ternovszky had not been prevented as such from giving birth at home, there had been an interference with the exercise of the right to respect for her private life given that legislation arguably dissuaded health professionals from providing the requisite assistance.

The relevant legislation might reasonably be seen as contradictory. While the Health Care Act 1997 recognised patients' right to self-determination, including the right to reject certain interventions, a government decree sanctioned health professionals carrying out activities within their qualifications in a manner incompatible with the law or their licence.

The Hungarian Government recognised the necessity of regulating this matter; however no specific decree to that end had been enacted yet. It had moreover not been disputed that, in at least one case, proceedings had been instituted against a health professional for home birth assistance.

The Court therefore concluded that the matter of health professionals assisting home births was surrounded by legal uncertainty prone to arbitrariness. Because of the absence of specific and comprehensive legislation and of the permanent threat posed to health professionals inclined to assist them, the applicant was effectively not free to choose to deliver at home. Consequently, there had been a violation of Article 8.

Chavdarov v. Bulgaria

Legal impossibility of having biological paternity established was not contrary to respect for family life

Judgment of 21 December 2010. The case concerned a man's inability under Bulgarian law to be recognised as the legal father of three children who were born during a period (1989-2002) when he and their mother were living together.

Principal facts

The applicant, Atanas Chavdarov, is a Bulgarian national who was born in 1973 and lives in Ruptzi (Bulgaria). In 1989 he set up a home with a married woman (who was living separately from her husband); she gave birth to three children, in 1990, 1995 and 1998, while they were living together. The woman's husband was named as the children's father on their birth certificates and the children were given his surname.

At the end of 2002 the woman left Mr Chavdarov and the children in order to set up a home with another partner. Since then, according to Mr Chavdarov, he has lived with the three children.

At the beginning of 2003 Mr Chavdarov consulted a lawyer with a view to bringing proceedings for recognition of paternity. However, the lawyer informed him that there were no provisions under Bulgarian law for this purpose, since the presumption of a husband's paternity

8. Section 101 (2) of Government Decree no. 218/1999

could not be contested. As a result, Mr Chavdarov applied directly to the Court a few days later.

Decision of the Court

The Court noted that Bulgaria had an obligation to secure effective enjoyment of the right to "family life" where it existed, although it possessed a margin of appreciation in how it did so.

Accordingly, the Court verified first whether the relations between Mr Chavdarov and the three children amounted to "family life". It noted, firstly, that the long period during which Mr Chavdarov and his former companion had cohabited (1989-2002) and the birth of the three children during that period indicated that this was indeed a *de facto* family unit, in which Mr Chavdarov had been able to develop emotional ties with the children. His attachment to them was also evident from the rapid steps taken by him following the separation with a view to overcoming the lack of any formal family ties between himself and the children, and from the fact that the children had lived with him since the separation. In the Court's view, it was therefore established that the ties between Mr Chavdarov and the three children, whose biological father he claimed to be, did indeed amount to "family life" within the meaning of the Convention.

The Court then examined whether Bulgaria had done what was required of it in order to secure effective respect for this "family life". In that respect, it noted at the outset that the existence of the family formed by Mr Chavdarov and the three children had not been threatened at any point by the authorities, by the mother or by the latter's husband. The Court also took into consideration the margin of appreciation enjoyed by the state in regulating paternal filiation, and noted that there was no Europe-wide consensus on whether domestic legislation should enable the biological father to contest the presumption of a husband's paternity. It also emphasised that, although Mr Chavdarov was unable to bring an action to challenge the three children's paternal filiation, domestic legislation did not deprive him of the possibility of establishing a paternal link in their respect or of overcoming the practical disadvantages posed by the absence of such a link (in particular, he could have applied to adopt the children, or asked the social services to have them placed under his responsibility as a close relative of abandoned underage children). Since it had not been shown that he had availed himself of those possibilities, the Court could not hold the state authorities responsible for the applicant's own passivity. The children's legitimate interests had also been secured by domestic legislation.

The Court concluded unanimously that there had not been a violation of Article 8.

Jakóbski v. Poland

Prison should not have denied detainee vegetarian diet he demanded in order to obey religious rules

Judgment of 7 December 2010. The case concerned the authorities' refusal to provide a detainee with a meat-free diet in prison, contrary to the dietary rules of his faith.

Principal facts

The applicant, Janusz Jakóbski, is a Polish national who was born in 1965 and is currently serving an eight-year prison sentence in Nowogród Prison (Poland) for rape, of which he was convicted in 2003.

A Buddhist, he repeatedly requested to be served meat-free meals in Goleniów Prison where he was held for a number of years, stating that he adhered strictly to the Mahayana Buddhist dietary rules which required refraining from eating meat. His requests were refused. For some time he was granted a diet which did not include pork, but other meats and fish.

In April 2006 Mr Jakóbski brought criminal proceedings against the prison employees, complaining that, despite his requests, he was receiving meals containing meat products and that he could not refuse them as this would have been regarded as a decision to start a hunger strike and would have entailed disciplinary punishment. The criminal proceedings were discontinued. Subsequently, the Buddhist Mission in Poland sent a letter to the prison authorities in support of Mr Jakóbski, and he made another unsuccessful request, addressed to the prison director, noting that the pork-free diet contained meat and thus did not satisfy his needs.

Mr Jakóbski again asked the prosecutor to institute criminal proceedings against the prison employees, arguing that his religious convictions had not been respected. The prosecutor refused to institute proceedings. Mr Jakóbski's appeals against the prosecutor's decisions were dismissed by the District Court in October and December 2006 respectively. In the meantime, in reply to further complaints by Mr Jakóbski, the Regional Prisons Inspector informed him that the only special diet available in the prison was the pork-free diet he had received earlier. The prisons inspector also underlined that the prison authorities were not obliged to provide an individual with special food in order to meet the specific requirements of his or her faith. Mr Jakóbski's subsequent complaint to the Regional Court concerning the matter was dismissed in December 2007. The court held in particular that in view of the technical conditions and understaffing in prison kitchens it was not possible to provide each prisoner individually with food in conformity with his or her religious dietary requirements.

In 2009 Mr Jakóbski was transferred to the Nowogród prison, where his requests for meat-free meals were also refused.

Decision of the Court

Article 9

In response to the government's argument that vegetarianism could not be considered an essential aspect of the practice of Mr Jakóbski's religion, the Court underlined that the refusal of the prison authorities to provide him with a vegetarian diet did fall within the scope of Article 9. His decision to adhere to that diet could be regarded as motivated or inspired by a religion. In other cases, the Court had already held that observing dietary rules could be considered a direct expression of beliefs.

While the Court was prepared to accept that a decision to make special arrangements for one prisoner within the system could have financial implications for the custodial institution, it had to consider whether the state had struck a fair balance between the different interests involved. The Court noted that

Mr Jakóbski only asked to be granted a diet without meat products; his meals did not have to be prepared, cooked and served in a prescribed manner, nor did he require any special products. The Court was not convinced that the provision of a vegetarian diet would have entailed any disruption to the management of the prison or a decline in the standards of meals served to other prisoners. It further underlined that the Committee of Ministers of the Council of Europe in its Recommendation on the European Prison Rules, had advised that prisoners should be provided with food that took into account their religion.

The Court concluded that the authorities failed to strike a fair balance between the interests of the prison authorities and those of Mr Jakóbski, in violation of his rights under Article 9.

Article 14

In view of these findings, the Court did not see the need for a separate examination of the facts from the standpoint of Article 14.

O'Donoghue and others v. the United Kingdom

Judgment of 14 December 2010. The case concerned a Certificate of Approval Scheme requiring people subject to immigration control to pay a fee in order to marry.

United Kingdom immigration law to prevent sham marriages breached the right to marry and was discriminatory

Principal facts

The applicants are a Nigerian national, Osita Chris Iwu, and three dual British and Irish nationals, Sinéad O'Donoghue (Mr Iwu's wife), Ashton Osita Iwu, their son, and Tiernan Robert O'Donoghue, Ms O'Donoghue's son from a previous relationship. They were born in 1974, 1979, 2006 and 2000 respectively and live in Londonderry (Northern Ireland). They are practising Roman Catholics.

Mr Iwu arrived in Northern Ireland in 2004 and claimed asylum in 2006. In November 2009 he was granted "discretionary leave to remain", which runs until November 2011. He is not entitled to work. Ms O'Donoghue has disabled parents and receives benefits and income support. They met in November 2004 and began living together in December 2005. In May 2006 Mr Iwu proposed to Ms O'Donoghue and she accepted.

Under a scheme first introduced in the United Kingdom in 2005, Mr Iwu, as a person subject to immigration control,[9] had to have either entry clearance expressly granted for the purpose of enabling him to marry or a certificate of approval granted under Section 19 of the Asylum and Immigration Act 2004. In order to obtain such a certificate he had to submit an application to the Secretary of State for the Home Department together with an application fee of £295. Furthermore, only those foreign nationals with sufficient leave to enter or remain (that is those who had been granted leave to enter or remain for a period of more than six months and who had at least three months of that leave remaining at the time of making the application) could qualify for a certificate. The scheme did not apply to those couples seeking to marry in accordance with the rites of the Church of England.

Following domestic judgments delivered in April 2006 in which it was held that the scheme substantially interfered with the right to marry guaranteed by the European Convention on Human Rights, the first version of the scheme was amended. Under the new procedure those who had insufficient leave to enter or remain could be asked to submit further information in support of their applications to satisfy the Home Office that the proposed marriage was genuine.

Mr Iwu and Ms O'Donoghue could not marry, however, under that second version of the scheme as Mr Iwu, who had no leave to remain in the United Kingdom at the time, did not qualify for a certificate of approval.

On 19 June 2007 a third version of the scheme was introduced which extended the possibility of qualifying for a certificate of approval to those who were awaiting the outcome of an application for leave to remain.

Although Mr Iwu thus qualified for a certificate from then on, he could not afford the application fee. He nevertheless submitted an application in July 2007 requesting exemption from the fee, explaining that he was not allowed to work and therefore destitute and that his partner survived on a carer's allowance and income support. That application was refused outright for non-payment of the fee, it being considered that an exception could not be applied in his case.

The couple obtained a certificate of approval on 8 July 2008 after friends helped them to pay the fee. They married on 18 October 2008.

Decision of the Court

Article 12

The Court recalled that a contracting state would not necessarily be acting in violation of Article 12 by imposing reasonable conditions – to establish if a proposed marriage was one of convenience – on a foreign national's ability to marry.

However, the Court had a number of grave concerns about the scheme operating in the United Kingdom. Firstly, the decision whether or not to grant a certificate of approval had not been, and continued not to be, based solely on the genuineness of the proposed marriage. Indeed, under all three versions of the scheme applicants with "sufficient" leave to remain qualified for certificates of approval without any apparent requirement that they submit information concerning the genuineness of the proposed marriage.

Secondly, the Court was especially concerned that the first and second versions of the scheme imposed a blanket prohibition on the exercise of the right to marry on all persons in a specified category (namely those like Mr Iwu who had no leave to enter), regardless of whether the proposed marriage was one of convenience or not.

Thirdly, the Court found, like the House of Lords in the domestic judgments on the matter, that a fee fixed at a level which a needy applicant could not afford could impair the essence of the right to marry, especially given that many of those subject to immigration control would either be unable to work in

9. The definition of "a person subject to immigration control" excluded European Economic area nationals and those who had been granted Indefinite Leave to Remain.

the United Kingdom – such as Mr Iwu – or would fall into the lower income bracket. Moreover, the system of refunding fees to needy applicants, introduced in July 2010, was not an effective means of removing any breach of Article 12 as the very requirement to pay a fee acted as a powerful disincentive to marriage.

In conclusion, the right to marry of the applicant couple, clearly in a longstanding and permanent relationship, had been breached from May 2006 (the date from which they formed the intention to marry) to 19 June 2007 (when the third version of the domestic scheme was introduced), because Mr Iwu had not been eligible for a certificate of approval and, from 19 June 2007 to 8 July 2008, that right had been breached by the level of the fee charged. There had accordingly been a violation of Article 12.

Article 14 in conjunction with Articles 9 and 12

In order for an issue to arise under Article 14 there had to be a difference in treatment of persons in relevantly similar situations. A person without leave to remain who was willing and able to marry in the Church of England was free to marry unhindered. Mr Iwu, in a relatively similar position to such a person, was however both unwilling (on account of his religious beliefs) and unable (on account of his residence in Northern Ireland) to enter into such a marriage. Consequently he was initially prohibited from marrying at all in the United Kingdom and, following amendments to the scheme, was unable to marry due to the sizeable fee required to obtain authorisation. There had therefore been a clear difference in treatment between Mr Iwu and a person who was willing and able to marry in the Church of England. As the government had not reasonably or objectively justified such a difference in treatment, the Court held that there had been a violation of Article 14 in conjunction with Article 12. It did not consider it necessary to examine whether the scheme had been discriminatory on any other ground (such as nationality).

As regards concerned discrimination on the ground of religion, the Court noted that the government had conceded that there had been a breach of Mr Iwu's Convention rights as he had been subject to a regime to which those wishing to marry in the Church of England would not have been subject. It therefore held that there had also been a violation of Article 14 in conjunction with Article 9.

Other Articles

Given its findings under Article 12, the Court held that there was no need to examine separately the applicants' complaints under Article 8, either read alone or in conjunction with Article 14.

Savez Crkava Riječ Života and others v. Croatia

Croatian authorities discriminated against Reformist churches

Judgment of 9 December 2010. The case concerned the complaint of a number of Reformist churches that, unlike other religious communities in Croatia, could not provide religious education in public and nursery schools or obtain official recognition of their religious marriages as the domestic authorities refused to conclude an agreement with them regulating their legal status.

Principal facts

The applicants are *Savez crkava "Riječ života"* (Union of Churches "The Word of Life"), *Crkva cjelovitog evanđelja* (Church of the Full Gospel) and *Protestantska reformirana kršćanska crkva u Republici Hrvatskoj* (Protestant Reformed Christian Church in the Republic of Croatia). Based in Zagreb and Tenja, they are churches of a Reformist denomination and have been registered as religious communities under Croatian law since 2003.

In June 2004 they submitted a request to the Commission for Relations with Religious Communities in order to conclude an agreement with the government which would regulate their relations with the state, stating that without it they were unable to provide religious education in public schools and nurseries, to perform religious marriages with the effects of a civil marriage, or to provide pastoral care to their members in medical and social-welfare institutions and in prisons. In January 2005 the Commission informed the churches that they did not satisfy the criteria required from religious communities in order to conclude such an agreement, as set out in an instruction adopted by the government in December 2004, in particular that that they had not been present in the territory of Croatia on 6 April 1941 and that the number of their adherents did not exceed 6 000. The Commission also pointed out that members of religious communities which had not concluded such an agreement with the government had a right to receive pastoral care in medical and social-welfare institutions and prisons.

A second request by the churches was also rejected, and they lodged a request for the protection of a constitutionally-guaranteed right with the administrative court against the Commission's decision. After the court had declared the action inadmissible, the churches lodged a constitutional complaint, alleging a violation of their constitutional right to equality of all religious communities before the law. The Constitutional Court dismissed the complaint. The churches also filed a petition with the Constitutional Court, asking for a review of the constitutionality and legality of the instruction of December 2004. The petition was declared inadmissible in June 2007.

Decision of the Court

Article 14 in conjunction with Article 9

The Court first found that the applicant churches' complaints concerning pastoral care in medical and social-welfare institutions and prisons were inadmissible. It noted that the relevant provisions of the Croatian Religious Communities Act guaranteed to all religious communities the right to provide pastoral care to their members in those institutions. According to the Government's explanations, this right applied irrespective of whether the community in question had concluded an agreement with the Government regulating their legal status. The churches had not provided examples to prove that the right to provide pastoral care had been denied to them.

As regards the complaints concerning religious education in public

and nursery schools and the official recognition of religious marriages, the Court noted that it was not disputed between the parties that the applicant churches were treated differently from those religious communities which had concluded agreements with the government. In another case concerning a religious community in a similar situation as the applicant churches[10], the Court had found that the imposition of criteria which a religious community had to satisfy in order to obtain a status entitling it to a number of privileges called for particular scrutiny, as the state had a duty to remain neutral in exercising its regulatory power in its relations with different religions and denominations.

The applicant churches, which already had a legal personality, were refused the agreement with the government entitling it to provide the religious services at issue while other religious communities, whose number of adherents did not exceed 6 000 either and which thus did not fulfil the numerical criterion set out in the relevant instruction, were granted such agreements. The Court did not see why the government's argument that those other religious communities satisfied the alternative criterion of being "historical religious communities of the European cultural circle" could not equally be applied to the applicant churches, being of a Reformist denomination. The Court concluded that the criteria were not applied on an equal basis to all religious communities, and that this difference in treatment did not have an objective and reasonable justification, in violation of Article 14 in conjunction with Article 9.

Other articles

The Court considered that in view of those findings it was not necessary to examine separately whether there had also been a violation of Article 1 of Protocol No. 12. It further rejected the applicant churches' complaints under Article 9 alone, under Article 6 §1 and Article 13 as inadmissible.

Payet v. France

Judgment of 20 January 2011. Concerns: The case concerned, in particular, the prison regime imposed on the applicant on account of his dangerousness and his repeated involvement in escape attempts. The regime consisted in numerous transfers between prisons and detention in a punishment wing following his second escape.

The conditions of detention of a "high-risk prisoner" were inhuman but his repeated transfers were justified

Principal facts

The applicant, Pascal Payet, is a French national who was born in 1963. He is currently in Châteauroux Prison (France), where he is serving a number of criminal sentences (for murder of a cash courier, escape, organising the escape of accomplices, armed robbery and armed assault of police officers). In October 2001, after he escaped by helicopter from Aix-en-Provence Prison, he was classified as a "high-risk prisoner". He was placed in solitary confinement and made subject to security rotations consisting of frequent changes of his place of detention in order to prevent any planned escape. In July 2005 an attempt to help the applicant escape by helicopter failed.

The applicant applied to the Paris Administrative Court in April 2007 seeking suspension of the security rotations to which he had been subject for three years. In an order of 25 May 2007 the urgent-applications judge ruled that Mr Payet's transfers had been necessary because he had been due to appear before the Assize Court and because of his proven dangerousness and the particularly high risk of his escaping.

In July 2007 the applicant again escaped by helicopter. He was arrested in Spain and imprisoned in Fleury-Mérogis Prison in France, where he was placed in the punishment wing for 45 days. Mr Payet alleged that the premises were unfit for human habitation, in particular because he had only 4.15 square metres of space in his cell, there was a lack of ventilation and light, the building was prone to flooding and the scope for outdoor exercise was limited. He further alleged that the only water in the cell came from a tap which ran directly into the toilet bowl and was also used to flush the toilet, and that the toilets were not sectioned off although they were situated close to the eating area. The Senator for the *département* of Essonne, Claire-Lise Campion, who visited the Fleury-Mérogis Prison on 19 November 2007, wrote in her report that she had been deeply shocked by her visit to the punishment wing and that major renovations were long overdue in order to provide decent accommodation and living conditions for prisoners.

An internal appeal lodged by Mr Payet in October 2007 against the disciplinary measure was declared inadmissible for failure to lodge an application for judicial review. On 14 December 2007 the *Conseil d'Etat* delivered its judgment on the appeal lodged by the applicant, before his escape in July 2007, against the order of 25 May 2007 by the urgent-applications judge. The *Conseil d'Etat* set aside the order, taking the view that the decision subjecting the applicant to security rotations had not been an internal measure but an administrative decision which was open to judicial review. On the merits, it considered that the prison regime to which Mr Payet had been subject was commensurate with the need to ensure public safety, in view of his repeated escape attempts, his dangerousness and the category of prisoner to which he belonged. The *Conseil d'Etat* therefore rejected the application to have the measure suspended.

Decision of the Court

Article 3

Security rotations

The applicant had been transferred 26 times (11 times under a court order and 15 times following an administrative decision). While the Court accepted that constant transfers could have a very negative impact on the prisoner concerned, it considered that the French Government's fears that the applicant might escape – which had been the reason for the security rotations – had not been unreasonable given

10. *Religionsgemeinschaft der Zeugen Jehovas and others v. Austria* (no. 40825/98) of 31 July 2008.

that Mr Payet had escaped twice, an attempt had been made to help him escape and he himself had organised the escape of some of his accomplices. The Court further noted that the applicant had been detained in the same location since September 2008.

Consequently, in view of the applicant's profile, his dangerousness and his history, the prison authorities had struck a fair balance between the need to ensure security and the requirement to provide prisoners with humane conditions of detention. Those conditions had not attained the minimum threshold of severity required to constitute inhuman treatment within the meaning of Article 3 of the Convention. There had therefore been no violation of Article 3 with regard to the security rotations to which the applicant had been subject.

Disciplinary measure imposed in the Fleury-Mérogis Prison

The applicant's allegations concerning the poor conditions of detention in the punishment wing (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing, etc.) appeared to be confirmed by several sources.

In its judgment of 9 April 2008 the *Conseil d'Etat* mentioned that the urgent-applications judge of the Versailles Administrative Court had "noted that the premises of the punishment wing of the Fleury-Mérogis Prison [were] particularly run-down". Furthermore, Senator Campion said that she had been shocked by her visit to the wing. Her view that renovations were long overdue had been shared by the architectural expert appointed by the Administrative Court.

The Court considered that, even if the authorities had not had the intention to humiliate the applicant, his conditions of detention had been liable to cause him both mental and physical suffering and a feeling of gross violation of his human dignity. It held that there had been a violation of Article 3 in that regard.

Article 6

While the Court accepted that the characterisation of the offences of which the applicant was accused (escape and damage to prison premises) was "mixed", that is to say, that the offences entailed both criminal and disciplinary liability, it considered that the disciplinary measure imposed on Mr Payet did not fall within the criminal sphere since it had not extended his detention.

Hence, the applicant could not be said to have faced a "criminal charge" within the meaning of Article 6 and the latter was not applicable to the disciplinary proceedings in question. The applicant's complaint under Article 6 §1 was therefore rejected.

As to Mr Payet's complaint under Article 6 §3 (c), the Court observed that the applicant's allegations were of a general nature and did not specify in what way his defence had been hampered; it also pointed out that no interference had been alleged with his free and confidential communication with counsel. The Court further reiterated that the applicant's transfers had been justified. Accordingly, this complaint was rejected as manifestly ill-founded.

Article 8

Visits by the applicant's family had not been restricted by order of the prison authorities, but may have been limited in practice on account of the security rotations, which the Court had held not to have been contrary to Article 3 of the Convention in Mr Payet's case.

Noting that the applicant had formulated his complaint in general terms – without specifying how the changes of location had affected his family visits – and that he had been held for most of the time in institutions in the south of France, the Court rejected this complaint as manifestly ill-founded.

Article 13

The Court examined whether the remedies available to the applicant under French law by which to complain of his conditions of detention in the punishment cell had been "effective", that is to say, capable of preventing the occurrence or continuation of the alleged violation.

It observed that the remedy provided for by the Code of Criminal Procedure did not have suspensive effect, although placement in a punishment cell was usually immediate, and that an application to the administrative court had to be preceded by an appeal to the inter-regional director of the prison service. As a result of that procedure, the applicant had no longer been in the punishment cell by the time a judge was finally able to rule on his application.

Given the serious repercussions of detention in a punishment cell it was essential for the prisoners concerned to have access to an effective remedy enabling them to appeal against both the form and substance of such measures before a judicial body. As the applicant had had no such remedy available to him, the Court held that there had been a violation of Article 13.

Berü v. Turkey

Turkish authorities not to blame for death of girl attacked by stray dogs

Judgment of 11 January 2011. The case concerned the death of a child in an attack by stray dogs, which were already known to be dangerous.

Principal facts

The applicants, Zeki, Hacı, Zübeyde, Meral, Keziban and Berivan Berü, are six Turkish nationals, all members of the same family.

On 19 March 2001 their daughter or sister, then aged nine, Gazal Berü, was fatally attacked by stray dogs around Yiğitler cemetery (Bingöl district) just outside their village.

An investigation was immediately opened. According to various concurring statements, the dogs had previously injured other villagers and killed cattle before the fatal attack in question. The previous year a gendarme had been admitted to hospital after being bitten and villagers had also discussed the matter with the gendarmerie's commanding officer, who had told them to kill the dogs if they were dangerous. Some villagers stated that the dogs belonged to the gendarmerie near the village, but the gendarmes asserted that they were stray dogs who would scavenge in the gendarmerie's dustbins about 200 metres beyond the barbed-wire fence surrounding the station. The gendarme on duty on the day of the incident indicated that he had seen the dogs attack the child but had not fired because he was afraid of injuring her. He had, however, raised the alarm, following which

his colleagues had rushed out to chase the dogs away and try to save the child.

On 26 April 2001 the public prosecutor found that the commanding officer's liability might be engaged in the case, in view of the testimony to the effect that the dogs belonged to the gendarmerie. He therefore requested the Karlıova provincial governor's office for authorisation to prosecute for gross negligence manslaughter. After conducting its investigation, the administrative board of the provincial governor's office decided not to authorise the prosecution on the ground that there was no causal link between the fatal attack by stray dogs and the commanding officer's liability. On 18 April 2002 the public prosecutor discontinued the criminal proceedings.

The child's father had in the meantime filed a complaint for intentional homicide, alleging that the gendarmes had knowingly ordered the dogs to attack and that the dogs belonged to them. On 12 June 2002 the public prosecutor again issued a discontinuance order, upheld on 18 July by the Muş Assize Court.

On 28 March 2002 the applicants claimed damages before the Malatya Administrative Court against the Ministry of the Interior. On 27 February 2007 their application was dismissed and that decision was upheld on 9 April 2007 by the Supreme Administrative Court. The courts took the view that the dogs were strays and that the authorities could not be found liable for the tragic attack.

Decision of the Court

Article 2 (right to life)

The Court reiterated that the authorities' liability could be engaged (in respect of the right to life) if they knew or ought to have known of the existence of a real and immediate risk to the life of an individual and failed to take measures which, judged reasonably, might have been expected to avoid that risk.

Examining the circumstances of Gazal's death in light of that principle, the Court first noted that the allegations according to which the dogs belonged to the gendarmes, who had failed to prevent the attack, were not based on any reliable evidence. The Turkish courts had established the facts of the case – finding that stray dogs had been involved – and the Court thus based its analysis on their assessment.

The Court observed that a series of incidents had already taken place before the fatal attack (villagers and a gendarme injured, cattle killed, etc.). However, in the Court's view, those factors were not sufficient for it to find that the authorities had a "positive obligation" to take preventive measures. There was no evidence in the file that the authorities knew or should have known that there was an immediate risk to Gazal's life because of a few stray dogs outside the village. The incident, admittedly a tragic one, had in reality happened by chance and Turkey's responsibility could not therefore be engaged without extending that responsibility in an excessive manner.

The Court thus found, by six votes to one, that there had been no violation of Article 2.

Article 6 §1 (right to a fair hearing within a reasonable time)

Like the applicants, the Court took the view that the length of the administrative proceedings they had brought (about five years for two levels of jurisdiction) had been excessive.

It thus found, unanimously, that there had been a violation of Article 6 §1.

Nuri Özen and others v. Turkey

No legal basis for refusal to dispatch prisoners' letters written in a language other than Turkish

Judgment of 11 January 2011. Concerns: the applicants complained about the refusal by the prison authorities to dispatch letters that they had written in a language other than Turkish. They all alleged that they had suffered a breach of their right to freedom of correspondence and some of the applicants criticised the related fact that the authorities could not cover the cost of translating their letters into Turkish.

Principal facts

The applicants are ten Turkish nationals who, at the time they lodged their applications, were serving their sentences in high-security facilities (the type F prison in Tekirdağ and high-security Bolu prison).

The disciplinary boards in those facilities refused to dispatch the applicants' letters to their families or other prisoners on the ground that, as they were written in Kurdish, they could not be checked to ascertain that their content was not "troublesome", as provided for by the regulations.

Appeals by the applicants were rejected by the post-sentencing judge, who found that there were no procedural or legal reasons to uphold them, taking the view in particular that no statutory provision required custodial facilities to provide for the translation of letters, as they had neither the budget nor the staff for that purpose.

The judge explained that the refusal to dispatch the letters was not because they were written in Kurdish but because their content was incomprehensible and therefore impossible to check, having regard especially to the requirements of order and security.

Decision of the Court

Article 8

It was not in dispute that the prison authorities had refused to dispatch the applicants' letters, those refusals having been approved by the judicial authorities to which the applicants had complained. Such refusal constituted interference with the applicants' freedom of correspondence, since the authorities had interfered with private communication – the Court pointed out in that connection that the question of the letters' content did not come into play.

The Court reiterated that a certain scrutiny of prisoners' correspondence was acceptable and not in itself in breach of the Convention, having regard to the normal and reasonable demands of imprisonment. It noted nevertheless that, under Turkish legislation and the regulations in question, a decision not to dispatch correspondence could be

taken only when its content was capable of undermining security and order in the prison, when serving officials were designated as targets, when it enabled communication between terrorist or other criminal organisations, or when it contained untruths and false information that might cause panic among individuals or institutions, or threats and insults.

The decisions taken concerning the applicants had not, however, been based on any such grounds. While under domestic law the attribution to custodial facilities of a power of scrutiny and censorship of correspondence concerned only its content, in the applicants' case the decisions had been taken regardless of content. The Court inferred from that that the interference with the applicants' correspondence had not been in "accordance with the law". The Court observed that no statutory provision envisaged the use of a language other than Turkish in prisoners' letters and no restrictions or prohibitions were provided for in that connection.

The Court noted that, in the absence of any legal framework clarifying the processing of correspondence written in a language other than Turkish, the prison authorities had developed a practice which consisted of imposing a prior obligation of translation at the prisoner's own expense. Such a practice, as implemented, was incompatible with Article 8 because it automatically excluded from the protection under that provision an entire category of private correspondence from which prisoners could expect to benefit.

The Court observed that a ministerial circular of 2009 seemed to be aimed at removing any restriction on letters written in a language other than Turkish, but that its adoption post-dated the facts of the case.

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

Aydin v. Germany

Criminal conviction for contravening a ban on PKK found not to breach the Convention

Judgment of 27 January 2011. The case concerned the applicant's complaint about her conviction for signing a declaration in support of the "Workers' Party of Kurdistan" (the PKK).

Principal facts

The applicant, Aysel Aydin, is a Turkish national who was born in 1972 and lives in Wuppertal (Germany). In July 2001 she signed a declaration in support of the PKK, which had been banned in Germany since 1993 under the Law on Associations (*Vereinsgesetz*). The declaration, which was part of a campaign initiated by the PKK's leadership, called for the recognition of the rights of the Kurds and a lifting of the ban on the PKK's activities. At the same time, it stated that the person signing the declaration was a member of the PKK, that he or she condemned the prohibition and the criminal prosecution of PKK membership, and declared that he or she did not acknowledge that prohibition and would assume all responsibility arising from that stance. Ms Aydin organised a collection of signatures together with other people and handed over two folders containing a few hundred signed declarations to the Berlin public prosecutor. She also made donations to a sub-organisation of the PKK, which was subject to the ban. Overall, around 100 000 declarations were submitted to the German authorities in the framework of the campaign.

In July 2003 the Berlin Regional Court convicted Ms Aydin of contravening a ban imposed on an association's activity and sentenced her to a fine of 1 200 euros. It held that, while demanding freedom and self-determination for the Kurdish people and calling for an end of the ban on the PKK fell within her freedom of expression, she had flouted that ban by signing the declaration, by taking part in the campaign and by making donations to the party's sub-organisation. The Federal Court of Justice upheld the judgment in January 2004, holding in particular that Ms Aydin's aim to hamper the criminal prosecution of the ban had been demonstrated by the fact that she and other campaigners had not addressed the Ministry of the Interior, which would have been competent to lift the ban, but had instead submitted a large number of declarations to the public prosecutor's office. The Federal Constitutional Court, in a decision of 26 September 2006, refused to accept Ms Aydin's complaint against the judgment.

Both federal courts referred to a pilot judgment of the Federal Court of Justice of 27 March 2003, in which it had confirmed its earlier case-law by holding that a person breached a prohibition of an association if his or her activity made reference to the association's banned activity and was conducive to that activity. It had found that the submission of the declarations within the framework of the large-scale campaign aimed to support the PKK's activities.

Decision of the Court

Article 10

The Court noted that Ms Aydin's criminal conviction was not based on the fact that she had expressed a certain opinion as the domestic courts had acknowledged that it fell within her freedom of expression to demand freedom and self-determination for the Kurdish people and to call to end the ban on the PKK. They had considered, however, that the declaration she had signed had to be understood as a commitment not to respect the ban on PKK activities in the future. Accordingly, the Court's task was limited to examining whether Ms Aydin's criminal conviction for lending support to an illegal organisation violated her right to freedom of expression under Article 10.

It was undisputed by the German Government that Ms Aydin's conviction had amounted to an interference with her right to freedom of expression. As regards the question whether that interference had been justified, the Court was satisfied that her conviction was prescribed by law for the purpose of Article 10. While the relevant provisions of the domestic Law on Associations, imposing criminal liability on anyone contravening the enforceable prohibition of an association, was phrased in broad terms, the case-law of the Federal Court of Justice was sufficiently precise to make the consequences of her action foreseeable to Ms Aydin. Her conviction had further aimed to protect public order and safety and thus pursued legitimate aims.

As regards the question whether the interference had been necessary in a democratic society, the Court observed that the prohibition order imposed on the PKK's activities would be ineffective if its followers were de facto free to pursue the banned organisation's activities. It

was not disputed between the parties that the prohibition order was subject to review and could be lifted by the Interior Ministry. Ms Aydin thus would have remained free to address that Ministry and to demand the lifting of the prohibition without risking criminal prosecution. The domestic courts had further thoroughly examined the content of the declaration, taking into account the fact that it had been made as part of a large-scale campaign initiated by the PKK leadership and the fact that Ms Aydin had made a donation to one of the party's suborganisations. Moreover, the sanction imposed did not appear disproportionate to the aim pursued.

In light of those considerations, the Court concluded that there had been no violation of Article 10.

Ali v. the United Kingdom

Judgment of 11 January 2011. The case concerned the temporary exclusion from secondary school of a student suspected of having started a fire in a classroom.

Temporary exclusion from school did not breach student's right to education

Principal facts

The applicant, Abdul Hakim Ali, is a British national who was born in 1987 and lives in Milton Keynes (United Kingdom).

After a fire was started in a waste paper basket in his school on 8 March 2001, the fire brigade called to deal with it informed the police that the fire had been started deliberately. Given that Abdul Ali had been in the vicinity of the classroom at the time the fire had been started, he was excluded from school until the police investigation was completed. At the time, no specific time-limit was placed on the exclusion.

The school wrote to Abdul Ali's parents on several separate occasions informing them that his exclusion was prolonged and indicating for how long. He was allowed to return to school in May 2001 to sit the standard assessment tests (SATs) required from all students, which he did. Up until the SATs, the school was sending him revision-based, self-assessing work so that he could continue studying, although the work sent did not cover the entire mandatory curriculum. As Abdul's parents did not contact the school to arrange to collect further work, no work was set after 14 May 2001.

The relevant national legal provision set the standard maximum period for fixed-term exclusions as no longer than 45 days. In Abdul Ali's case that period expired on 6 June 2001.

On 19 June 2001 the criminal proceedings against Abdul Ali in connection with the school fire were discontinued for lack of sufficient evidence. On the same day, unaware that the proceedings had ended, the Local Educational Authority access panel recommended that tuition be provided to Abdul Ali until a decision was taken on his future at the school. The Head Teacher wrote to his parents inviting them to a meeting on 13 July 2001 with a view to facilitating his re-integration. Given that the parents did not attend that meeting, the Head Teacher informed them in writing that she was removing Abdul Ali from the school roll. Abdul did not return to school in September 2001 and in mid-October 2001 his parents were still unsure whether they wanted him to return to the school. The school advised them to decide quickly. Abdul did not receive any education during that period. By the time that Abdul's father wrote to the school, on 6 November 2001, asking for Abdul's reinstatement, the school had removed his name from the roll and allocated his place to another student.

Abdul Ali complained before the national high court that his right to education, as protected by the European Convention on Human Rights, had been violated. When the case was examined by the court of final instance, the House of Lords, Abdul Ali did not contest the lower courts' finding that the period of exclusion between 9 March 2001 and 6 June 2001 had not violated his right to education under the Convention. The House of Lords found no violation of his right to education in respect of the period after 6 June 2001.

Decision of the Court

Admissibility

The Court found that since Abdul Ali had not contested the lower courts' rejection of his complaint concerning his exclusion between 9 March 2001 and 6 June 2001, he had not exhausted domestic remedies in respect of that complaint, contrary to the requirement of the Convention for applications to be admissible. Accordingly, the Court held that only his complaint concerning the period after 6 June 2001 was admissible.

Merits

The Court noted that the right to education under the Convention comprised access to an educational institution as well as the right to obtain, in conformity with the rules in each state, official recognition of the studies completed. Any restriction imposed on it had to be foreseeable for those concerned and pursue a legitimate aim. At the same time, the right to education did not necessarily entail the right of access to a particular educational institution and it did not in principle exclude disciplinary measures such as suspension or expulsion in order to comply with internal rules.

The Court found that the exclusion of Abdul Ali had not amounted to a denial of the right to education. In particular, it had been the result of an ongoing criminal investigation and, as such, had pursued a legitimate aim. It had also been done in accordance with the 1998 Act and had thus been foreseeable.

In addition, Abdul Ali had only been excluded temporarily, until the termination of the criminal investigation into the fire in one of the school's bins. His parents had been invited to a meeting with a view to facilitating his reintegration, yet they had not attended. Had the parents done so, their son's reintegration would have been likely. However, they had not attempted to contact the school until mid-October 2001, when Abdul's name had been taken from the school's roll and given to another student on the waiting list.

Further, Abdul Ali had been offered alternative education during the exclusion period, but did not take up the offer.

Accordingly, the Court was satisfied that Abdul Ali's exclusion had been proportionate to the legitimate aim pursued and had not interfered with his right to education. There had, therefore, been no violation of Article 2 of Protocol No. 1.

Yazgül Yılmaz v. Turkey

Gynaecological examination of an unaccompanied 16-year-old girl in police custody amounted to degrading treatment

Judgment of 1 February 2011. The case concerned a gynaecological examination to which the applicant, a minor, was subjected while she was in police custody – in order to ensure, according to the authorities, that she had not been assaulted – and the failure to prosecute the doctors who had carried it out.

Principal facts

The applicant, Yazgül Yılmaz, is a Turkish national who was born in 1986 and lives in İzmir (Turkey). In 2002, when she was sixteen years old, she was taken into police custody for lending assistance to the PKK (Workers' Party of Kurdistan, an illegal organisation). On the second day of her police custody a medical and gynaecological examination was requested by the police superintendant responsible for juveniles in order to establish whether there was evidence of assault committed during the police custody and if her hymen was broken. The examination request was not signed by the applicant. The next day she was remanded in custody and criminal proceedings were brought against her in July 2002, then in October 2002 she was acquitted and released.

After her release, Ms Yılmaz, suffering from psychological problems, went for a medical examination. A report of 16 January 2003, drawn up by a number of doctors (psychiatrist, gynaecologist, orthopaedist, general practitioner), concluded that she was suffering from post-traumatic stress and depression. In addition, at the applicant's request, a panel of the İzmir Medical Association produced a report of 13 October 2004 based on the conclusions of numerous examinations carried out between 7 November 2002 and 2 July 2004 by a general practitioner, an orthopaedist, a gynaecologist and a psychiatrist. This report indicated that the medical reports drawn up during the applicant's police custody did not meet the requirements of the Istanbul Protocol or the circular of the Ministry of Health concerning forensic medical services and the drafting of forensic medical reports, because they had not shown whether the applicant had sustained any physical or psychological violence. It moreover confirmed the diagnosis of post-traumatic stress disorders.

In December 2004 Ms Yılmaz filed a complaint for abuse of authority against the doctors who had examined her in police custody. She alleged that she had been deprived of the fundamental safeguards afforded to detainees and that she had not given her consent to the gynaecological examination. The case was entrusted to the Deputy Director for Health in the provincial governor's office. In spite of the non-compliance of the medical reports, as established by the inquiry report, he proposed that no disciplinary proceedings should be opened against the doctors, as the disciplinary offence was subject to a two-year limitation period. That proposal was accepted by the provincial governor's office and in March 2005 the public prosecutor's office terminated the proceedings. A challenge by the applicant was dismissed by the Assize Court.

Decision of the Court

Article 3

The examinations

The applicant had been detained for two days on the premises of the security police without her parents or a legal representative being informed. There was nothing to suggest that the authorities had tried to obtain her consent or that of her legal representative for the gynaecological examination. Ms Yılmaz had stated before the public prosecutor that she had never given her consent.

In the Court's view, the obtaining of a minor's consent should have been surrounded by minimum guarantees commensurate with the importance of a gynaecological examination. At the time there had been an omission in the law as regards such examinations of female detainees, which were carried out without any safeguards against arbitrariness. Unlike other medical examinations, a gynaecological examination could be traumatising, especially for a minor, who had to be afforded additional guarantees and precautions (for example, by ensuring that consent was given at all stages and by allowing the minor to be accompanied and to choose between a male or female doctor, and by informing her of the reason for the examination, its organisation and results, as well as respecting her sense of decency).

The Court could not agree with a general practice of automatic gynaecological examinations for female detainees, for the purpose of avoiding false sexual assault accusations against police officers. Such a practice did not take account of the interests of detained women and did not relate to any medical necessity. In that connection, moreover, Ms Yılmaz had never complained of a rape during her police custody – she had alleged sexual harassment, which could certainly not be disproved by an examination of her hymen. The Court noted with interest that the new Code of Criminal Procedure regulated, for the first time, internal bodily examinations, including of a gynaecological nature, although there was no specific provision for minors.

In addition, the report of 13 October 2004 had indicated that the medical certificates were not compliant with the medical assessment criteria provided for in the circulars adopted by the Ministry of Health or in the Istanbul Protocol. The report had also shown that the applicant's allegations of assault in police custody were largely corroborated by the new medical examinations, which supported her assertions about the superficial nature of the examinations in police custody.

Thus, the lack of fundamental safeguards during the applicant's police custody – no measure having been taken to protect her during that deprivation of liberty – had placed Ms Yılmaz in a state of deep distress. The extreme anxiety that the examination must have caused her, and of which the authorities could not have been unaware given her age and the fact that she was not accompanied, enabled the Court to characterise the examination in the present case as degrading treatment.

The investigation

Following the applicant's complaint, it was the Deputy Director for Health who was entrusted with the case, whereas he reported to the same hierarchy as the doctors whom he was investigating. The Court observed that it had already expressed serious doubts as to the

capacity of the administrative organs concerned to conduct an independent investigation. Following the conclusion of the Deputy Director for Health that the prosecution of the doctors was time-barred, the public prosecutor had decided to discontinue the proceedings and therefore no criminal investigation had been conducted. Moreover, the report, which had found the doctors liable, had not been notified to the applicant and the doctors had thus benefited from the statute of limitations without any judicial finding as to their possible liability.

Accordingly, the shortcomings in the investigation had had the result of granting virtual impunity to the presumed perpetrators of the offending acts and had rendered the criminal action – and also any civil action for compensation – ineffective.

Other articles

Having regard to the violations of Article 3, the Court took the view that it did not need to examine separately the applicant's complaints under Articles 6, 8 and 13 of the Convention.

Other relevant judgments

Dobri v. Romania

Failure to test detainee for tuberculosis on arrival in prison

The applicant, Pavel Dobri, is a Romanian national who was born in 1960 and lives in Trăisteni (Romania). He was given a prison sentence in 2003 and applied to be released on health grounds but was unsuccessful. Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, he submitted in particular that he had contracted tuberculosis on account of the poor conditions of his detention.

In this case of 14 December 2010, the Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment).

Wasmuth v. Germany

Taxpayer's obligation to disclose non-affiliation with church to employer did not violate his right to freedom of religion

In this case, Mr Wasmuth complained that the compulsory disclosure on his wage-tax card of his non-affiliation with a religious society authorised to levy religious tax amounted to a breach of Article 8 and Article 9, and also of Article 14 (prohibition of discrimination) taken together with Article 9.

In the Chamber judgment of 17 February 2011, the Court held, by a majority, that there had been:

- No violation of Article 9 (freedom of thought, conscience and religion);
- No violation of Article 8 (right to respect for private and family life).

Nalbantski v. Bulgaria

Prohibition on leaving the country on account of a criminal conviction

Relying on Article 6 §1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy), Mr Nalbantski complained about the excessive length of criminal proceedings brought against him for theft in 1991. He was found guilty as charged in 2002 and sentenced to two years' imprisonment, later upheld on appeal in 2004. Further relying on Article 2 of Protocol No 4 (freedom of movement), he also complained about three bans on his leaving Bulgaria, two imposed while the proceedings against him were pending and one imposed after his conviction became final.

In its case of 10 February 2011, the Court held that there had been:

- violation of Article 6 §1 (length);
- violation of Article 13;
- violation of Article 2 of Protocol No. 4.

Recent publications

Annual Report 2010

The Court has issued its Annual Report for 2010. It contains a wealth of statistical and substantive information such as the Jurisconsult's short survey of the main judgments and decisions delivered by the Court in 2010 as well as a selection in list form of the most significant judgments, decisions and communicated cases. It is available in English and French on the Court's Internet site.

Practical Guide on Admissibility Criteria

The Court has launched a comprehensive guide for lawyers to try to stem the flow of obviously inadmissible applications which are flooding it. There are over 145 000 cases pending before the Court, but generally more than 95% of pending cases are rejected for failure to satisfy the admissibility criteria set out in the European Convention on Human Rights. The Court nonetheless spends time dealing with obviously inadmissible applications, which are now examined by a single judge, time which could be devoted to serious and important cases which do meet the criteria.

The guide, which explains in detail the Court's admissibility criteria, is intended to help lawyers judge where their client's case has absolutely no chance of success so that they refrain from applying to the Court in the first place. It is also designed to ensure that applications which do warrant examination on their merits pass the admissibility test. Applicants are reminded, for example, that they must bring their case to the Court within six months of the last national decision in the case.

The Practical Guide on Admissibility Criteria is available on-line on the Court's Internet site in English and French. It will later be available in Russian and Turkish, with, it is hoped, other languages to follow.

Handbook on European non-discrimination law

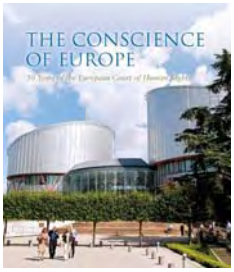
The *Handbook on European Non-Discrimination Law*, published jointly by the European Union Agency for Fundamental Rights and the European Court of Human Rights, is the first comprehensive guide to European non-discrimination law. It is based on the case-law of the European Court of Human Rights and the Court of Justice of the European Union. It covers: the context and background to European non-discrimination law (including the UN human rights treaties), discrimination categories and defences, the scope of the law (including who is protected) and the grounds protected such as sex, disability, age, race and nationality.

The handbook is aimed at legal practitioners at the national and European level, including judges, prosecutors, lawyers, law-enforcement officials, and others involved in giving legal advice, such as national human rights institutions, equality bodies and legal advice centres, to whom it will be distributed.

It can also be consulted on-line or downloaded (www.echr.coe.int and www.fra.europa.eu) and there is an accompanying CD-Rom dealing with the relevant legislation, specialist literature, case studies and case-law summaries.

The handbook is already available in English, French and German. Versions in Bulgarian, Czech, Hungarian, Italian, Romanian, Spanish, Greek and Polish will follow shortly and the material will in due course be available in almost all European Union languages as well as Croatian.

The conscience of Europe: 50 years of the European Court of Human Rights



The Court launched its anniversary book at the opening of its judicial year 2011, thus concluding the celebrations marking the Court's 50th anniversary in 2009 and the 60th anniversary of the European Convention on Human Rights in 2010.

This richly-illustrated book groups a variety of individual contributions around photographs and text retracing the main events over the last half-century. Beyond the institutional and legal dimensions, the Court's history is also told through the personal recollections of those who were part of it for a time. Through these, the reader will learn some of the lore that has built up in an international tribunal that has reached the half-century mark as well as the many diverse personalities associated with its success. The book also looks ahead to what the future may hold for the Court. Some of the proposals for reform of the Court made at various points in the past ten years are set out, up to and including the milestone conference at Interlaken in February 2010.

The book in English or French may be purchased online from the publisher at www.tmiltd.com.

Facts and Figures

The European Court of Human Rights in Facts and Figures retraces the Court's activities and case-law since its foundation in 1959. The presentation of several hundred of the cases the Court has examined, together with statistics for each State, paints an overall picture of the Court's work and the impact its judgments have had in the member states it has condemned for violating the Convention.

With its approach by theme and by article of the European Convention on Human Rights, this work shows the full extent of the rights and freedoms the States Parties to the Convention have undertaken to secure to everyone within their jurisdiction. It also shows just how alive the Convention is today, 60 years after its adoption, and how the Court's interpretation of it has helped it to keep abreast of social change in Europe.

This book in English or French may be purchased online from the Council of Europe Publishing at http://book.coe.int.

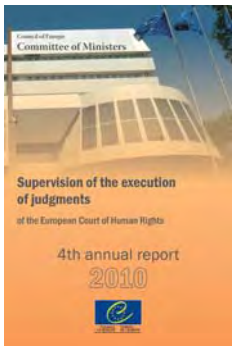
Internet: http://www.echr.coe.int/

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.

Annual report

Owing to the work involved in the preparation of the *Annual Report 2010 on the Supervision of judgments of the European Court of Human Rights*, the Department for the Execution of Judgments of the European Court of Human Rights was unable to provide a contribution to this issue. A specific article on the Annual Report will be included in the next issue of the Bulletin (No. 83, to be published in October 2011).



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

Committee of Ministers

The Council of Europe's decision-making body comprises the foreign 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.

Chairmanship of the Committee of Ministers – Turkey presents its priorities

Turkey took over the chairmanship of the Committee of Ministers of the Council of Europe on 10 November 2010 for a six-month period. With a view to reinforcing the political role, visibility and influence of the oldest pan-European organisation on the European and international scene, its programme focuses on five priorities:

"1. **Reform of the Council of Europe**: Turkey will support the ambitious reform package presented by the Secretary General, which aims to put the Council of Europe back in a central position on the international scene, as an innovative, flexible, high-profile organisation, capable of adapting to Europe's changing political landscape.
2. **Reform of the European Court of Human Rights**: to secure the long-term effectiveness of the European system for the protection of human rights, Turkey will continue its predecessors' work, hosting a conference on the reform of the Court following up on the process launched in Interlaken in February 2010.
3. **Strengthening independent monitoring mechanisms**: the Turkish Chairmanship will hold seminars, round table meetings and workshops to raise awareness about these tools which make the Council unique. Other European and international partners will be involved to highlight the comparative advantage of the Council's mechanisms.
4. **EU accession to the European Convention on Human Rights**: Turkey will encourage all partners to accelerate the accession process and help to identify solutions to any technical problems which may arise.
5. **Meeting the challenges of multicultural societies in Europe**: Turkey is convinced that the Council of Europe is the best placed regional and international body to meet the new challenges posed by the resurgence of intolerance and discrimination in Europe. At its instigation, a Group of Eminent Persons has been appointed to open new lines of inquiry and make new proposals on how to 'live together'."

Texts adopted by the Committee of Ministers

Judges' independence, efficiency and responsibilities

Recommendation CM Rec (2010) 12
19 November 2010

The Committee of Ministers adopted a Recommendation to member states on judges' independence, efficiency and responsibilities. It updates a 1994 recommendation, taking into account significant changes that have occurred since then.

This Recommendation enables to strengthen the protection of human rights and fundamental freedoms, as the judges' role in the exercise of their judicial functions is crucial to the protection of those rights and freedoms.

In particular, it places emphasis on the independence of every individual judge and of the judiciary as a whole, precisely to guarantee the independence of individual judges. The notion of "internal independence" which aims at protecting judicial decisions from undue internal influences is one of the main innovations of the Recommendation, which aims at safeguarding both external and internal independence.

For the first time ever, judicial "efficiency" is defined in a clear and simple manner as "the delivery of quality decisions within a reasonable time following fair consideration of the issues".

Further measures proposed concerning the selection and training of judges, their responsibility, as well as judicial ethics, are further steps towards strengthening the role of individual judges and the judiciary in general.

Profiling and data protection

Recommendation CM/Rec (2010) 13
25 November 2010

The Committee of Ministers adopted a new recommendation on profiling and data protection, the first text to lay down internationally-agreed minimum privacy standards to be implemented through national legislation and self-regulation.

Profiling is the technique of observing, collecting and matching people's personal data online, which can now be performed easily, rapidly and invisibly with new communications technology.

Profiling techniques can benefit individuals, the economy and society by, for instance, by leading to better market segmentation or permitting an analysis of risks and fraud. However, their use without precautions and specific safeguards could severely damage human dignity by unjustifiably depriving individuals from accessing certain goods or services.

The recommendation to all 47 Council of Europe member states aims at:

- providing a coherent regulatory framework, which strikes a fair balance between the interests at stake (for instance, the interest of a bank to assess customer's credit risks and the interest of the customer to be informed about the profiling taking place, its purpose and the logic behind it);
- ensuring effective protection of the rights of data subjects and fair procedures in situations where mass quantities of data are processed, such as through Internet searches, the use of mobile telephones or records of consumer habits. For instance, the observation of a user's clickstream to increase the effectiveness of an advertising campaign should be accompanied by appropriate information to that user;
- avoiding decisions, discrimination or stigmatisation made automatically, on the basis of profiles. As a general rule, individuals should be allowed to object to any decision taken solely on the basis of profiling.

With this recommendation, the Council of Europe strengthens the protection of personal data, as will also be the case with the planned modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention no. 108). Ministers of Justice who met in Istanbul at the 30th Council of Europe Conference of Ministers of Justice on 25 November 2010 adopted a resolution on data protection and privacy in the third millennium. This resolution aims at supporting the modernisation work launched by the Council of Europe.

Guidelines on child-friendly justice

Guidelines
17 November 2010

The Committee of Ministers adopted new guidelines on child-friendly justice which give European governments guidance to enhance children's access to and treatment in justice, in any sphere – civil, administrative or criminal.

"The justice system cannot be blind to the fact that children have specific needs and rights. When children are involved in judicial proceedings, the scales of justice can only be balanced if the child's best interest is preserved and if they are given a proper chance to understand what is at stake and participate in the decisions concerning them," said Council of Europe Deputy Secretary General Maud de Boer-Buquicchio when she welcomed the adoption of the guidelines.

These guidelines are not only a declaration of principles, but aspire to be a practical guide for the implementation of internationally agreed and binding standards in both in-court and out-of-court proceedings.

"On the eve of the Universal Children's Day to be celebrated on 20 November, our message is simple: children's rights must be guaranteed, and this cannot be the case if justice is denied to children," said Mrs de Boer-Buquicchio. "Protecting and promoting children's rights has been and will continue to be a priority for the Council of Europe."

The guidelines are also responding to a demand by children themselves. The text benefited from the very concrete input of over 3 700 children from 25 countries. Their comments helped to shape provisions on the right to be heard and to receive information, to enjoy independent representation, as well as the right to access independent and effective complaints mechanisms.

Declarations by the Committee of Ministers and its Chairperson

2010 International Day for Tolerance

Statement by Ahmet Davutoğlu, Minister for Foreign Affairs of Turkey, Chairman of the Committee of Ministers, 15 November 2010

"Tolerant societies are those that uphold the human rights of individuals on the basis of respect for each person's distinct identity," declared the Chairman of the Committee of Ministers, on the occasion of the International Day for Tolerance. "Council of Europe member states are guided in their action towards achieving this ideal by their obligations under the European Convention on Human Rights whose 60th anniversary we celebrate this year. They are also assisted by the advice of the Council of Europe bodies, in particular the Commissioner for Human Rights as well as the European Commission against Racism and Intolerance (ECRI).

The challenges are many. Discrimination is still rife in Europe, whether based on colour, ethnic or national origin, religion, language, citizenship or other grounds. Deteriorating social ties lead to increased radicalisation among certain groups. Moreover, the standards set by our organisation are increasingly being questioned openly by those who engage in xenophobic or Islamophobic political discourse, spurious debates about integration and national values or simply hate speech.

Learning how to live together is a concept that must be strengthened in the 21st century. This is why we have tasked a group of 'eminent persons' to come up with concrete recommendations as a matter of absolute priority. This initiative will complement others already under way in the fields, for example, of education and intercultural dialogue.

The International Day for Tolerance provides me with an opportunity to reiterate the Council of Europe's commitment to co-operate actively with our partner organisations, universal and regional, in the quest for deep security founded on freedom, equality, justice, opportunity and respect for diversity."

Joint statement on Human Rights Day

Joint statement by Secretary General Thorbjørn Jagland and Committee of Ministers' Chairman Ahmet Davutoğlu at the Human Rights Day, 10 December 2010

The Council of Europe's Secretary General and the Minister of Foreign Affairs of Turkey, current Chairman of the Committee of Ministers, issued the following statement to mark Human Rights Day on 10 December 2010:

"2010 is the year of the 60th anniversary of the European Convention on Human Rights, but also the year of consolidation and expansion of its unique mechanism for the protection of fundamental rights and freedoms.

The reform of the European Court of Human Rights is well under way. In parallel, the negotiations on the accession of the European Union to the European Convention on Human Rights are progressing, and will hopefully be completed in the first half of 2011. With the European Union becoming the 48th party to the Convention, we will create a new, continent-wide zone of dialogue, co-operation and inter-

action in the areas of democracy, human rights and the rule of law.

A consolidated and genuinely pan-European area of common standards and human rights will be a historic step forward in the struggle to promote and protect human rights throughout Europe. At the same time, Europe continues to face new and difficult challenges, including those stemming from the need to ensure best ways of integration, for living together with different cultural and religious backgrounds, while respecting our fundamental values and human rights, and preventing the spread of intolerance and discrimination. For the Council of Europe, this is a political necessity, a moral imperative and a legal obligation."

Situation in Belarus

Declaration on 12 January 2011

The worrying developments that took place in Belarus following the presidential elections held on 19 December 2010 raise a number of questions, in particular for the Council of Europe. The Committee of Ministers asked the Belarus authorities to provide additional information explaining on what basis the presidential candidates, journalists and human rights activists were arrested in the wake of the elections. The Committee of Ministers said that they should immediately be released and their human rights guaranteed. Political freedoms should be fully respected.

The Committee of Ministers said that it would continue supporting the establishment of closer relations between the Council of Europe and Belarus only on the basis of respect for European values and principles.

Defending religious freedom

Declaration on religious freedom, 21 January 2011

The Committee of Ministers adopted a Declaration on religious freedom:

"As recent tragic events have shown, individuals of all religious confessions are increasingly victims of discrimination and aggression – sometimes at the cost of their lives – only because of their religious beliefs.

We, the 47 member states of the Council of Europe, strongly condemn such acts and all forms of incitement to religious hatred and violence. Freedom of thought, conscience and religion is an inalienable right enshrined in the UN Universal Declaration of Human Rights and guaranteed by Article 18 of the 1966 International Covenant on Civil and Political Rights and by Article 9 of the European Convention on Human Rights, of which the Council of Europe is the custodian.

There can be no democratic society based on mutual understanding and tolerance without respect for freedom of thought, conscience and religion. Its enjoyment is an essential precondition for living together."

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

Parliamentary Assembly

The national representatives who make up the Parliamentary Assembly of the Council of Europe 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

60 years of the European Convention on Human Rights

"The European Convention on Human Rights has helped to build a Europe united from the Atlantic to the Pacific, and from the Arctic to the Mediterranean, and now faces a new chapter in its history with European Union accession and reform of the Court," according to Assembly President, Mevlüt Çavuşoğlu. Speaking at a conference in Rome to mark the 60th anniversary of the Convention, he pledged the Assembly's support for these changes, adding that he would "spare no effort" to promote ratification of Protocol No. 12 to the Convention, which prohibits discrimination.

But the President also warned that the European Court of Human Rights should be a "last resort measure", and that the main responsibility for protecting human rights lies with national institutions. While the Court could help to identify systemic problems in member states, it was the task of national bodies to ensure citizens' rights under the Convention are fully protected, he said.

Poverty linked to human rights violations

There is a vicious circle in which extreme poverty equates with the denial of all human rights. Human rights are interdependent and interconnected. The loss of one leads to the loss of others. Conversely access to one human right offers access to others. Examples of this interdependence are a precarious financial situation, bad housing, poor education, job insecurity and almost non-existent social and family support networks. Poverty leads to social exclusion and vice versa. These are some of the conclusions of a hearing on "combating poverty", organised by the Social Affairs Committee in Paris on 15 November 2010.

According to those taking part, if we really want to eliminate extreme poverty, we need to be guided by the concept of human rights and universal respect for human dignity. It is no longer enough to rely on statistics and charity. Our approach now must be to focus on rights and access to these rights without discrimination. In line with this principle, they sounded a warning about the European Union's goal of reducing by 20 million the number of poor in Europe by 2020. This was tantamount to abandoning millions of persons. Such an objective could reinforce exclusion by concealing inequalities and encouraging member states to concentrate on those who were most easily reached and best equipped to escape poverty, at the expense of the poorest and most marginalised members of the community. Governments should really set objectives such as ensuring that within ten years no one lacked decent housing and that within five years not a

single young person left the education system without proper schooling.

Participants stressed the importance of a system in which the victims of human rights violations could hold those responsible to account for their actions, or their unwillingness to act, not least through the machinery of the European Court of Human Rights. New forms of governance and participation were also needed at all levels – local, national and international. Finally, action needed to be taken as soon as people approached the poverty threshold, particularly when young children were concerned, though they should not be separated from their parents. The message was that avoiding and preventing poverty was the best means of combating it.

"Clearly, financial poverty is one of the most dramatic aspects of the problem. However my report will also reflect other aspects of poverty, such as capacity for inclusion in society – through the strengthening of family ties and more general participation in public life – and a whole raft of measures already available to prevent it from arising in the first place", concluded the rapporteur, Luca Volontè.

Human trafficking

The accession by the European Union to the Council of Europe Convention on Action against Trafficking in Human Beings will ensure that "the Convention's high standards and human rights approach are uniformly applied throughout Europe", said the participants in the Conference "Parliaments united against trafficking in human beings", organised in Paris by the Parliamentary Assembly Committee on Equal Opportunities on 3 December 2010. To that purpose, the participants decided "to take up this issue further in their relations with European Union institutions, in particular the European Parliament".

The final declaration also underlines that "the effective implementation of the Convention provisions by the state parties is the main challenge ahead", and stresses the conviction that "national parliaments should play an active role" in monitoring the effective implementation of the Convention.

"Trafficking in human beings affects us all as members of parliament. Victims of trafficking are powerless. We have the power to change their situation. We have the power to give them a voice," said José Mendes Bota, Chairman of the Parliamentary Assembly's Committee on Equal Opportunities. "Each of us has an individual political responsibility: let us not tolerate slavery. Let us not be powerless witnesses but fight against it," he added.

In the light of good practices identified during the conference, the participants recommended that Council of Europe member states and national parliaments implement a number of measures to promote the Convention.

Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, underlined the Parliamentary Assembly's role in promoting the Council of Europe Convention on Action against Trafficking in Human Beings. "The Parliamentary Assembly has been at the forefront of promoting this Convention and today's event again testifies to its continued effort in this respect. Your action is crucial," she stated.

Reinforced protection of the rights of migrant women

Participants at a round table on the rights of migrant women, organised by the Parliamentary Assembly Migration Committee in Paris on 8 December 2010, called for reinforced protection through legal means and improved practices. "214 million international migrants are women. Whereas earlier the presence of women was attached to family reunification, the current trend shows that women are migrating independently," said rapporteur Pernille Frahm.

"However, for far too many women, and especially those working in poorly regulated sectors such as domestic service, migration presents risks of exploitation and harsh conditions. It is therefore important to recognise domestic work as work under labour law and to allow more flexibility for domestic workers to change employers or type of employment as well as to promote decent, dignified and remunerative employment of migrant women in general," the rapporteur concluded.

Participants said it was crucial to provide migrant women, who may be victims of trafficking, but also of discrimination, abuse, exploitation and violence with access to the legal and judicial system. They agreed that migrant women entering Council of Europe member states should be granted an independent and autonomous right of legal residence as well as

the right to a work permit independently of their family situation. Migrant women in irregular status should also have full access to their fundamental rights, including to healthcare and education, fair working conditions, exposure to and ability to report violence and exploitation.

Finally, participants called for the recognition of gender-based forms of asylum.

Fighting terrorism while respecting human rights

"All Council of Europe member states are under the obligation to protect the public against terrorist attacks [...] and all perpetrators of terrorist acts, but also the instigators and organisers, must be held to account for their actions," stressed the Parliamentary Assembly Vice-President Andres Herkel , speaking on behalf of the Parliamentary Assembly President at the opening of a conference on the prevention of terrorism held by the Council of Europe in Istanbul on 16 December 2010. "However, eradicating impunity also implies that law-enforcement agencies and security services may only use means compatible with the standards of the European Convention on Human Rights," he added.

He added that prevention of terrorism – which complements prosecution and sanctions – also means the creation of conditions in our societies in which terrorism simply cannot develop. In this respect, he mentioned the importance of promoting inter-cultural dialogue, including its inter-religious dimension, and implementing socio-economic policies contributing to the eradication of racism, xenophobia and intolerance within society.

Protection of refugees

"The European Court of Human Rights today delivered a milestone judgment damning how Europe is protecting its refugees, asylum seekers and irregular migrants," said the Assembly President at the January session.

"While the *M.S.S. v. Belgium and Greece* judgment is only against two member states, the implications of the judgment will be rippling through the capitals of Europe," he added. "The myth that European Union member states are safe places to return asylum seekers has been exploded by the European Court of Human Rights."

The President stated that the Court had found massive deficiencies in detention conditions in Greece and in the procedures and remedies designed to safeguard the rights of asylum seekers, refugees and irregular migrants in Europe. He commented that Greece was not alone in failing on detention safeguards and that the Assembly had recently addressed recommendations to all member states on steps to improve detention facilities in Europe.

"What is also clear from this judgment is that the European Union's 'Dublin system' for determining the state responsible for deciding an asylum decision has to be changed as a matter of urgency. It is based on the false premise that European Union member states are all safe and able to cope. They are not, and the 'Dublin system' creates enormous burdens on front-line states, such as Greece," the President declared.

He called on the European Union to work with the Council of Europe, UNHCR and others to solve the problem of returns under the "Dublin system" and reiterated a concern repeatedly highlighted by the Assembly that Europe needs to make its asylum systems fairer (see Resolution 1695 (2009)) and needs clear rules on detention of irregular migrants and asylum seekers (see Resolution 1707 (2010)).

"Europe has European Prison Rules applying to criminals, but we still do not have similar rules for irregular migrants and asylum seekers who have committed no crime," he concluded.

Disclosure of journalists' sources

Following a debate on the protection of journalists' sources at its January session, the Parliamentary Assembly declared that the disclosure of information identifying a source should be "limited to exceptional circumstances" where vital public or individual interests are at stake. In specific cases, the competent authorities should state why the vital interests of disclosure outweigh the interests of non-disclosure. "If sources are protected against their disclosure under national law, their disclosure must not be requested," the Assembly said in a recommendation.

Members of the Assembly believe that the protection of journalists' sources "is a basic condition for both the full exercise of journalism and the right of the public to be informed on matters of public concern".

They expressed their concern at the large number of cases in Europe in which "public authorities have forced, or attempted to force, journalists to disclose their sources", despite the clear standards set by the European Court of Human Rights and the Committee of Ministers.

Referring to a new Hungarian law on the press and the media, the Assembly called on the government and parliamentarians to amend the legislation in question, ensuring that its enactment did not restrict the right enshrined in Article 10 of the European Convention on Human Rights.

The Assembly called on member states to analyse and improve their legislation on the protection of the confidentiality of journalists' sources, in particular by supporting the review of their national laws on surveillance, anti-terrorism, data retention and access to telecommunications records.

Member states which did not have legislation specifying the right of journalists not to disclose their sources of information should, according to the text, "pass such legislation in accordance with the case-law of the European Court of Human Rights" and the recommendations of the Committee of Ministers.

Action to combat sexual abuse against children

A network of Parliamentary Assembly parliamentarians held its first meeting in Strasbourg on 26 January 2011 to launch the parliamentary dimension of the Council of Europe's "One in five" campaign to combat sexual violence against children.

The group – which will eventually bring together "contact parliamentarians" from each of the Council of Europe's 47 parliaments – will be pressing for better laws to protect children, spread good practice and organise awareness-raising events across the continent.

"It is estimated that one child in five becomes a victim of sexual exploitation or abuse of some form," said the President, addressing the launch. "These figures are frightening." He said parliamentary action was crucial to the success of the campaign: "Let us mobilise the means at our disposal as parliamentarians and contribute to a society in which our children may grow happily and safely in their 'circles of trust'."

The President also officially launched a 120-page handbook for parliamentarians on promoting the Lanzarote Convention, a multilateral treaty which harmonises European laws to protect children from sexual abuse and exploitation. "We can say without exaggeration that it is the most comprehensive and most innovative instrument worldwide today," the President pointed out. Ten states have so far ratified and a further 32 have signed the convention, which came into force in July 2010.

International Holocaust Remembrance Day

In his speech at a commemoration ceremony on the occasion of International Holocaust Remembrance Day held at the Council of Europe on 27 January 2011, the President stressed the importance of the event "to keep alive the memory of millions of innocent victims".

"All forms of intolerance towards those considered 'different' are on the rise again – be it anti-Semitism, Islamophobia or racism and xenophobia in general. Ethnic, religious or cultural differences between people are being artificially exacerbated and manipulated in political discourse, to divert attention from the real problems and real solutions. Politicians and parties reverting to such discourse have now been democratically elected in many national parliaments," the PACE President warned.

He also announced his participation on 1 February in a visit to Auschwitz, organised by UNESCO, the City of Paris and the Aladdin Project, a foundation promoting better understanding between Jews and Muslims.

Situation in member states

Prisoner voting in the United Kingdom

Following the vote on 10 February 2011 in the British House of Commons on prisoners' voting rights, Christos Pourgourides, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, made the following statement:

"I am deeply disappointed by last night's vote in defiance of the ruling by the European Court of Human Rights on prisoner voting. I had hoped that the parliament of one of Europe's oldest democracies – regarded as playing a leading role in protecting human rights – would have encouraged the United Kingdom to honour its international obligations, as our Assembly urged only last month. Every member state must implement the judgments of the Court.

"The United Kingdom government has said that it intends to implement this judgment, and I encourage it to find a way to do so that is consistent with its international legal obligations. There are different ways this can be done, as shown by the range of positions on this issue in the Council of Europe member states."

Suspension of Belarus' special guest status maintained

Dismayed by the unprecedented wave of violence and persecution which followed the announcement of the results of the presidential election in Belarus in December 2010, the Parliamentary Assembly called on the Belarus authorities to "release immediately" all opposition candidates, journalists and human rights activists detained on political grounds and to put an end to all acts of harassment and intimidation.

At the end of an emergency debate, and in line with the proposals put forward by the rapporteur, Sinikka Hurskainen, the members of the Assembly called for a transparent investigation into "the abusive and disproportionate use of force" by the police against the demonstrators. They also urged the authorities to stop expelling students from universities and dismissing people from their workplace on account of their participation in the protests.

In view of the "current additional serious setbacks", the Assembly reaffirmed its decision to put on hold its activities involving high-level contacts with the Belarusian authorities. It further called on the Bureau of the Assembly not to lift the suspension of special guest status for the Parliament of Belarus until a moratorium on the execution of the death penalty has been decreed and until there is substantial, tangible and verifiable progress in terms of respect for the democratic values and principles upheld by the Council of Europe.

The Assembly considered that any sanctions relating to contacts with those responsible for these events should not lead to "further isolation of the Belarusian people", but called on member states to sign up to the European Union's sanctions against the country's senior officials. Accordingly, it resolved to strengthen dialogue with the democratic forces in the country, civil society, opposition groups, the free media and human rights activists.

Protecting witnesses for the success of justice and reconciliation in the Balkans

In a resolution adopted unanimously, the Parliamentary Assembly called on the authorities of Bosnia and Herzegovina, Croatia, Serbia and Kosovo[11] to improve the protection of witnesses in war-crimes cases tried in national courts. Since the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY) will soon expire, most of these cases are now tried in the national courts.

The report by Jean-Charles Gardetto emphasises that the level of witness protection varies greatly across the region and that this has had a whole range of consequences including the disclosure of the identity of protected witnesses in Croatia, witnesses being threatened and intimidated in Bosnia and Herzegovina, and witnesses who are on the point of testifying being assassinated in Kosovo. The Assembly is of the view that witnesses "are owed reliable

11. 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.

and durable protection" and that, without this, "justice and reconciliation cannot be achieved".

The Assembly also considers that it is not in the interest of justice for the identity of all anonymous witnesses to be systematically revealed to the defence as this puts such persons at risk; it proposes that the ICTY should make use of a "special advocate", independent of both the prosecution and the defence. It also suggests that in view of "ICTY's long-term (and moral) commitment towards its own witnesses, a residual mechanism, with a view to continuing to maintain witness protection after its mandate ends, should also be established", and proposes that this mission should be assigned to the International Criminal Court.

"Worrying delays" in implementing judgments of the European Court of Human Rights

The Parliamentary Assembly has named nine states with "major systemic deficiencies" which are causing repeated violations of the European Convention on Human Rights.

In a resolution based on a report by Christos Pourgourides, the Assembly said structural problems in Bulgaria, Greece, Italy, Moldova, Poland, Romania, Russia, Turkey and Ukraine were causing "extremely worrying delays" in implementing judgments of the European Court of Human Rights.

The main problems were deaths or ill-treatment caused by law-enforcement officials, unlawful or over-long detention, legal proceedings which take too long and court judgments which are not enforced. The parliamentarians pointed out that resolving these issues at the national level would reduce the number of cases coming to the Court.

Other states with outstanding problems include Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia.

In a separate resolution, based on a report by David Darchiashvili, the Assembly also denounced "blatant disregard" of the Court by some states which had ignored its clear instructions not to deport individuals who might be at risk of torture or ill-treatment. Such "interim measures", usually involving failed asylum seekers or irregular migrants whose expulsion is imminent, are intended to give the Court time to consider their complaints. States should "fully comply with the letter and spirit" of these requests.

The Assembly also expressed concern at the rapid increase in the number of applications for interim measures, putting pressure on governments and the Court – especially given the Court's recent ruling, in the case *M.S.S. v. Belgium and Greece*, that not all European Union states can be considered safe for returns. The parliamentarians said that states should improve their asylum procedures to avoid the need for such requests.

Illegal organ trafficking in Kosovo[12]

The Parliamentary Assembly has called for international and Albanian investigations into crimes committed in the aftermath of the conflict in Kosovo, including "numerous indications" that organs were removed from prisoners on Albanian territory to be taken abroad for transplantation.

Adopting a resolution based on the report by Dick Marty, the Assembly demanded follow-up investigations into indications of secret detention centres under the control of the Kosovo Liberation Army (KLA) and disappearances linked to the Kosovo war, as well as "the collusion so often complained of between organised criminal groups and political circles".

It called for EULEX, the European Union mission in Kosovo, to be given a clear mandate, the resources and high-level political support it needed to carry out its "extraordinarily complex and important role". In particular, the Assembly emphasised the need for effective witness protection programmes.

The parliamentarians said the "appalling crimes committed by Serbian forces" had stirred up very strong feelings worldwide, giving rise to the assumption that it was invariably one side which were the perpetrators of crimes and the other side the victims. "The reality is less clear-cut and more complex," the resolution reads. "There cannot be one justice for the winners and another for the losers."

The resolution calls on the Albanian authorities and Kosovo administration to "co-operate unreservedly" with EULEX or any other international body mandated to find out the truth about crimes linked to the conflict in Kosovo, irrespective of the origins of the suspects or victims.

12. See footnote 11 above.

Moldovan parliamentary elections met most international standards

The parliamentary elections on 28 November 2010 in Moldova met most OSCE and Council of Europe commitments, the international observers concluded in the statement below.

The observers noted that the elections were administered in a transparent and impartial manner and a diverse field of candidates provided voters with a genuine choice. Election day was assessed positively although some procedural errors were observed. Civil and political rights were respected during the election campaign. A lively and diverse media covered the campaign actively and provided voters with varied information. A number of amendments to the electoral code improved the electoral framework overall. However, the introduction of a new mandate allocation system – shortly before the elections and without public consultations – was problematic. The quality of voter lists remained a weak point and led to diminished public confidence. Further efforts are needed to remedy remaining deficiencies and strengthen public confidence.

"These elections reflected the will of the people, and were a positive step in Moldova's democratic development. We commend the competitive and pluralistic environment of this country, and hope that the political forces will act responsibly in building bridges and bringing Moldova out of this political crisis," said Tonino Picula, who led the short-term OSCE observer mission and headed the delegation of the OSCE Parliamentary Assembly.

"We congratulate the citizens of Moldova on their democratic conduct both during the election campaign and on the election day itself with a remarkably high turnout. The delegation insists once again that it now belongs to the main political stakeholders, whatever their political position, to assure, at last, the functional operation of public institutions and to put the interests of the country as a whole over and above their personal or political disagreements," said Indrek Saar, head of the delegation of the Parliamentary Assembly.

"The European Parliament delegation observed real democratic elections and witnessed the clear improvement of the election process since the last elections. The election results reflect the will of the people. When elections are held every year, it is politics in crisis and not politics as usual. For us these elections mean that Moldova is perceived as the flagship of the Eastern Partnership of the European Union," said Monica Macovei, head of the delegation of the European Parliament.

"I am pleased that we can issue an overall positive assessment. These elections have strengthened democracy in Moldova. But a number of deficiencies remain to be tackled. Every effort should be made to build broad-based support among political parties for the outstanding reforms of the electoral framework," said Peter Eicher, head of the election observation mission of the OSCE Office for Democratic Institutions and Human Rights.

Switzerland: deportation of foreigners convicted of serious crimes

According to the Assembly President, "public support in Switzerland for an initiative of the Swiss People's Party to automatically deport foreigners convicted of serious crimes is a matter of concern to the Parliamentary Assembly of the Council of Europe and the values it stands for."

Continuing, he said: "The fact that the expulsion would be both automatic and not subject to any appeal procedure makes it highly likely that such a measure would not be in conformity with the European Convention on Human Rights. Furthermore, such automatic expulsion includes the risk of sending people to countries where they might be at risk of torture or other forms of persecution. Any expulsion must respect the provisions of the Convention, in particular the prohibition of torture, but also the right to respect for private and family life and the right to an effective remedy.

"Every day, somewhere in Europe, the principles of the European Convention on Human Rights are being put to the test. We need to send a message from Strasbourg that we will stand up for the full respect of human rights even more strongly when times are difficult, and when resentment stirred by economic decline and social crisis is being exploited by populist discourse. Anti-immigrant trends can currently be observed in many Council of Europe member states. It is our role, as a human rights watchdog, to be vigilant and to make it very clear that no transgression of the rights enshrined in the European Convention on Human Rights will be tolerated," he concluded.

Elections in Azerbaijan

The parliamentary elections in Azerbaijan held on 8 November 2010 were characterised by a peaceful atmosphere and all opposition parties participated in the political process, but the conduct of these elections overall was not sufficient to constitute meaningful progress in the democratic development of the country, international observers said in a statement.

The observers noted that the Central Election Commission overall administered the technical aspects of the electoral process well. But limitations of media freedom and freedom of assembly, and a deficient candidate registration process, further weakened the opposition and made vibrant political discourse almost impossible. This and a restricted competitive environment created an uneven playing field for candidates, making it difficult for voters to make an informed choice. On the positive side, voters had the opportunity to check the centralised voter register and request correction or inclusion, and the Central Election Commission conducted a voter education campaign, including in the media. Voting on election day was assessed positively in almost 90 per cent of the polling stations visited, while serious problems were noted in 10 per cent. Counting deteriorated, with almost a third of polling stations observed rated bad or very bad, with worrying problems like ballot box stuffing noted in a number of places.

"It is never easy to do justice to a country which is developing its democratic institutions, especially in a difficult environment. We have seen the many efforts made to make progress and the areas in which the country does very well, and we welcome them as much as the hospitality demonstrated by all our interlocutors. However, despite all the efforts made, the country needs to do much more to make progress in developing a truly pluralist democracy," said Wolfgang Grossruck, who led the short-term OSCE observer mission and headed the delegation of the OSCE Parliamentary Assembly.

"In a welcome departure from the past, the run-up to the elections and election day were peaceful and not marred by violent incidents, all opposition parties opted to participate in the political process, sometimes running as part of electoral blocs, rather than to boycott it, as was the case in the past. A positive environment was created by good co-operation between the authorities, international institutions and the domestic actors," said Paul Wille, head of the delegation of the Parliamentary Assembly.

"Economic growth and stability are evident in Azerbaijan. Sustainability of this situation can only be reinforced by greater political liberalisation and democratisation of the country. Independent observers have reported vote count irregularities, harassment of opposition observers and ballot box stuffing. Azerbaijan has to make further efforts to ensure greater democratisation," said Anneli Jäätteenmäki, Head of the delegation of the European Parliament.

"Regrettably, our observation of the overall process shows that the conditions necessary for a meaningful democratic election were not established. We are particularly concerned about restrictions of fundamental freedoms, media bias, the dominance of public life by one party, and serious violations on election day. We stand ready to assist the authorities in moving Azerbaijan's elections towards meeting OSCE commitments," said Ambassador Audrey Glover, Head of the OSCE/ODIHR long-term election observation mission.

Election of judges to the European Court of Human Rights

Sitting in plenary session, the Assembly elected Paulo Sérgio Pinto de Albuquerque as judge in respect of Portugal for a term of office of nine years starting after 5 February 2011

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

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

Commissioner for Human Rights

The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, whose role is to promote awareness of and respect for human rights in the 47 member states of the Organisation. His activities focus on three major and closely-related areas:

– a system of country visits and dialogue with the authorities and civil society

– thematic work and awareness-raising activities

– co-operation with other Council of Europe bodies and international human rights bodies.

Because of a technical error, the Commissioner's activities were not included in the printed edition of *Human rights information bulletin*, No. 81 (January 2011). This issue's report covers the period July 2010 to February 2011.

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 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 relevance to human rights, including prisons, psychiatric hospitals, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups. Following the visits a report is issued 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

Albania, 13-15 February 2011

From 13 to 15 February 2011 the Commissioner visited Albania in order to assess the human rights aspects of developments during a demonstration at which four demonstrators were shot dead and a number of policemen and demonstrators were injured. During his visit, the Commissioner held meetings with the President of the Republic, the Prime Minister, the Minister of Justice, the Minister of the Interior, the Prosecutor General, the Acting Ombudsman, the Commissioner for the Protection against Discrimination and the Commissioner for Personal Data Protection. In addition, he had meetings with a number of Ambassadors present in Albania as well as representatives of non-governmental organisations and media.

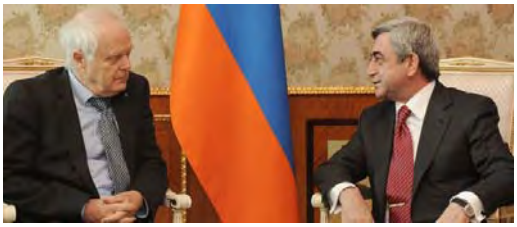
Armenia 18-21 January 2011

Mr Hammarberg carried out a visit to Armenia from 18 to 21 January 2011. Issues related to the events of March 2008, freedom of expression and of the media, and human rights in the army were the main themes of the visit.

He recommended concrete measures to address the needs of the families of the victims; he also stressed that the legislation and practice on freedom of assembly should be brought fully in line with international human rights principles. The Commissioner highlighted the importance of ensuring that the media environment in Armenia is sufficiently diverse and pluralistic. He noted the work to amend the Law on Television and Radio and trusted that the question of the independence and pluralis-

tic membership of the regulatory authorities would be addressed.

The Commissioner also encouraged the ongoing reforms taking place in the armed forces, including in relation to disciplinary procedures and the establishment of effective complaint mechanisms. He also addressed the issue of the right to conscientious objection during his visit.



Mr Hammarberg with Armenia's President Serzh Sargsyan

Bosnia and Herzegovina, 27 November- 1 December 2010

The Commissioner visited Bosnia and Herzegovina from 27 November to 1 December 2010 to discuss issues relating to the fight against discrimination, the human rights of displaced persons and refugees and post-war justice. During the visit, he met with the State and Entity authorities as well as with international and non-governmental organisations, national human rights structures and representatives of minority groups. Furthermore, he visited a collective centre for displaced persons in Lukavica, near Sarajevo and expressed his concern about its substandard living conditions.

He stressed the need for more systematic work to improve access of Roma to quality education and employment, two sectors in which they remain dramatically disadvantaged. The Commissioner also highlighted the necessity to continue with determination the efforts aimed at identifying the approximately 10 000 pending cases of missing persons due to the war.

Czech Republic, 17-19 November 2010

From 17 to 19 November 2010 the Commissioner visited the Czech Republic to discuss issues relating to the fight against discrimination, racism and extremism and the protection of the human rights of Roma. During the visit, the Commissioner met with several governmental high representatives, the Deputy Ombudsperson and with representatives of a number of civil society organisations. He also visited Roma communities in two different localities in Kladno, near Prague.

The issues discussed concerned the legal and institutional framework in place to combat discrimination, racism and extremism. As regards the protection of the human rights of Roma, the Commissioner insisted on the need to ensure an effective official response to all cases of violent hate crimes, which still have Roma as one of their main targets. Furthermore, as for the issue of the sterilisation of women, in particular of Roma origin, without their full and informed consent, the Commissioner underlined the importance of creating avenues so that compensation is available to these women, in accordance with international law standards.

Hungary, 27-28 January 2011

At the end of a visit to Budapest from 27 to 28 January, Commissioner Hammarberg declared that Hungary should incorporate Council of Europe standards on freedom of expression and media pluralism when reviewing its media.

Commissioner Hammarberg pointed out that concerns arising from the media legislation were serious and covered several areas: content regulation of all media, including print and Internet press; the use of unclear definitions for such regulation that may be subject to misinterpretation; the establishment of a politically unbalanced regulatory machinery with disproportionate powers and lack of full judicial supervision; threats to the independence of public-service broadcast media; and erosion of the protection of journalists' sources. The Commissioner considered that, irrespective of the concrete implementation of these provisions, their aggregate result created the risk of a chilling effect on the media and of self-censorship within the media profession.

Netherlands, 28 September 2010

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.

Romania, 12-14 October 2010

From 12 to 14 October 2010 the Commissioner was in 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.

The Commissioner on his visit to Romania in October 2010

Russian Federation, 10-14 December 2010

In the course of his visit to the Russian Federation, between 10 and 14 December 2010, the Commissioner notably met several governmental high representatives, the Children's Ombudsman and representatives of non-governmental organisations. The discussions mainly centred on the situation in the North Caucasus, investigations into crimes against human rights activists and journalists, measures taken to enforce the judgments of the European Court of Human Rights, freedom of assembly and the protection of children.

Reports and continuous dialogue

Letters addressed to the Italian Ministers of Foreign Affairs and of the Interior concerning a group of Eritrean migrants and asylum seekers detained in Libya

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.

Letters addressed to the Minister of Justice and to the Minister of the Interior of Turkey following the Commissioner's visit in this country

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.

Letter addressed to the Minister of the Interior of Cyprus mainly focuses on human trafficking issues, the protection of the human rights of asylum seekers and refugees

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.

Letter addressed to the Prime Minister of "the former Yugoslav Republic of Macedonia" on the situation of refugees from Kosovo

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.[13]

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.

13. 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.

letter addressed to the French Minister for Immigration, Integration, National identity and Development Solidarity concerning the human rights of migrants in France

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, 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.

Report on monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia

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.

Report following the Commissioner's last visits to Georgia

On 7 October 2010 the Commissioner published a report following his last visits to 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.

Mr 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.

Letter sent to the French Minister of the Interior concerning number of desecrated cemeteries in France

On 2 November 2011 the Commissioner published a letter sent to the French Minister of the Interior, Mr Brice Hortefeux. In his dialogue with the French authorities, Commissioner Hammarberg expressed his concern regarding the number of desecrated cemeteries in France. Noting that states have an obligation to protect religious buildings from any damage or destruction, the Commissioner underlined that appropriate technical and human resources should be made available to find the perpetrators of these acts. The Minister's reply can be found on the Commissioner's website.

Letter addressed to the Prime Minister of Bulgaria concerning the human rights of national and religious minorities

On 4 November, the Commissioner published a letter addressed to the Prime Minister of Bulgaria, Mr Boyko Borisov, concerning the human rights of national and religious minorities. In his letter, he urged the authorities to review all programmes and plans adopted with the aim of improving the situation of Roma in the country. Commissioner Hammarberg stressed the importance of respect for the freedom of ethnic self-identification, which should be effectively applied to national, religious and linguistic minorities. The reply of the Prime Minister of Bulgaria is available on the Commissioner's website.

Letter addressed to the Prime Minister of Montenegro on the Law on Anti-Discrimination

On 8 December 2010 the Commissioner published a letter addressed to the Prime Minister of Montenegro. Milo Djukanovic. In his letter, he welcomed the adoption of the Law on Anti-Discrimination and the inclusion of sexual orientation and gender identity as grounds of discrimination banned under the Law. He urged the Montenegro authorities to take all necessary steps in order to raise awareness among authorities and the public regarding the principles contained in this Law. The reply of the Prime Minister of Montenegro is available on the Commissioner's website.

Letter sent to the German Federal Minister of the Interior on forced returns to Kosovo and the conduct of law enforcement officials

On 9 December, Commissioner Hammarberg published a letter sent to the German Federal Minister of the Interior, Mr Thomas de Maizière. Following up on his dialogue with the German authorities during the visit to Berlin on 27 October 2010, the Commissioner wrote about the issue of forced returns to Kosovo and the conduct of law enforcement officials. As concerns the latter, the Commissioner encouraged the German federal and regional authorities to consider developing the existing mechanisms by introducing an independent police complaints body.

Letter addressed to the Prime Minister of Romania concerning the situation of Roma

On 16 December 2010 the Commissioner published a letter addressed to the Prime Minister of Romania, Mr Emil Boc. In his letter, whilst welcoming the different measures undertaken by the authorities to improve the situation of Roma, the Commissioner expressed his concern about pervasive discrimination faced by Roma in various sectors. He called upon the authorities to show determination and comprehensive action in order to improve their situation. The reply of the Prime Minister of Romania is available on the Commissioner's website.

Letter addressed to the Prime Minister of Turkey

On 3 February 2011 Mr Hammarberg published a letter addressed to the Prime Minister of Turkey, Mr Recep Tayyip Erdoğan. In his letter, he noted with satisfaction the measures taken to strengthen the protection of places of worship, properties and religious freedom of non-Muslim minorities and welcomed the Prime Minister's instruction to counter publications containing elements of incitement to hatred and hostility towards non-Muslim communities. The Commissioner was also concerned by the slow implementation by Turkey of the judgments of the European Court of Human Rights concerning freedom of religion. He also called for a solution to the issue of identity cards containing an indication of religion, in accordance with the 2010 judgment of the Strasbourg Court, which condemned Turkey for violating the right to freedom of religion on account of the very fact that the applicant's identity card contained an indication of religion. The reply of the Turkish authorities is available on the Commissioner's website.

Special report following the Commissioner's mission to Albania

On 22 February 2011 Mr Hammarberg published a special report following his three-day mission to Albania (13-15 February 2011). In his report, he stressed that there was a need for a thorough, impartial and credible investigation into the human rights violations which took

place in Tirana on 21 January 2011. He welcomed the fact that the major political groupings had told him that the responsibility for the investigations should rest with the Office of the General Prosecutor. However, he regretted that there had been critical public statements against the Prosecutor. He also noted that technical assistance provided by the US authorities to the General Prosecutor's Office appeared to have been of considerable value. He suggested in his report that the international community continues to respond positively to requests for assistance in this context.

Thematic work, awareness-raising and advising on human rights systematic implementation

The Commissioner conducts thematic work on subjects central to the protection of human rights in Europe. He also provides advice and information on the prevention of human rights violations and releases opinions, Issue Papers and reports. 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.

Follow-up to Roma situation

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 Mr Hammarberg and the OSCE High Commissioner on National Minorities, Knut Vollebaek, republished the study "Recent Migration of Roma in Europe". The republication, which includes a joint preface by Mr Hammarberg and Mr 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 Mr 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.

Co-operation with national human rights structures

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 Equal-

ity 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.

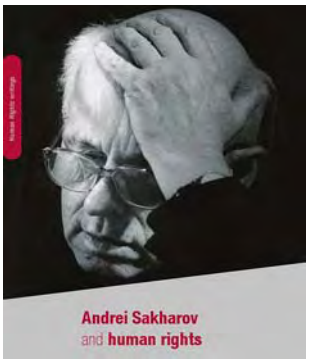
Another message was transmitted to the participants of the round table with the Ombudsmen of the Russian Federation (28-29 September 2010, St Petersburg), referring to the specific ways in which the federal and regional Ombudsmen could exercise their role with a view to preventing human rights violations.

Round table on Human Rights Defenders in South East Europe on 1 and 2 December 2010 in Sarajevo (Bosnia and Herzegovina)

The Office of the Council of Europe Commissioner for Human Rights organised a Round table on Human Rights Defenders in South East Europe on 1 and 2 December 2010 in Sarajevo (Bosnia and Herzegovina). The round table brought together representatives of international and regional intergovernmental organisations and international non-governmental organisations as well as national human rights defenders (including members of human rights NGOs, journalists, lawyers and independent experts). The event provided an opportunity to exchange information on the situation of human rights defenders and their work environment. The specific themes discussed included: challenges to freedom of expression and ways to overcome them; the security of human rights defenders and ways to improve the efficiency of protection strategies; and the participation of human rights defenders in decision-making processes.

Andrei Sakharov exhibition "Alarm and Hope"

The Andrei Sakharov exhibition "Alarm and Hope" travelled to Bosnia and Herzegovina, Estonia, France, Latvia and Slovakia. The exhibition was also displayed from 13 to 16 December 2010 at the European Parliament and featured an "inauguration" event on 15 December presented jointly by the Vice-President of the European Parliament, Mr McMillan Scott, and Mr Hammarberg. On this occasion the book *Andrei Sakharov and human rights* containing a selection of Sakharov's writings was launched.



Book: "Andrei Sakharov and human rights", ISBN 978-92-871-6947-1

Speech during the Conference on Nationality, held in Strasbourg on 17 December 2010

In his speech at the Council of Europe Conference on Nationality, held in Strasbourg on 17 December 2010, the Commissioner underlined that more than 600 000 Europeans were stateless and deprived of their right to citizenship; he added that a large number of them were living in precarious circumstances. He urged European governments to fully restore their rights.

Seminar on human rights dimensions of migration in Europe was held in Istanbul, on 17 and 18 February 2011

A seminar on human rights dimensions of migration in Europe was held in Istanbul, on 17 and 18 February 2011. It was organised by the Commissioner for Human Rights and the Turkish Chairmanship of the Council of Europe Committee of Ministers The event gathered representatives from Council of Europe member states, migration experts from intergovernmental and non-governmental organisations and academics. The aim was to exchange views on the most important discrepancies between European migration laws and practices and human rights standards, as well as on optimal ways to provide assistance to states in reflecting on and revisiting their migration policies.

Opinion on "Hungary's media legislation in light of Council of Europe standards on freedom of the media"

On 25 February 2011 Mr Hammarberg published his opinion on "Hungary's media legislation in light of Council of Europe standards on freedom of the media." The Commissioner underlined that Hungary should abide by its commitments as a member state of the Council of Europe and make the most of the organisation's expertise in the fields of freedom of

expression and media independence and pluralism. The Opinion follows the Commissioner's visit to Budapest on 27 and 28 January 2011.

Issue Paper on ethical journalism and human rights

On 28 February 2011 the Commissioner published an Issue Paper on ethical journalism and human rights. The focus of the Issue Paper is the close link between codes of ethics of journalism and human rights standards; the changes that have occurred through digital media and new forms of communication; the number of major legal restraints on journalism; current state practice and the development of relevant human rights law; and major practical means by which ethical journalism can be established, such as peer-agreed codes of conduct for journalists and self-regulation mechanisms.

Several articles on current and important human rights issues

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

The Commissioner also published several articles on refugees, desecrations of cemeteries, the cases of missing persons from countries of the former Yugoslavia, the effects of austerity budgets on child poverty, family reunion as well as the rights of migrant children.

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*. The case concerned the transfer of an Afghan asylum seeker from Belgium to Greece pursuant to the European Union "Dublin Regulation".[14]

In his first 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 had submitted to the Court on 31 May 2010.

The Commissioner stressed that European Union member states should halt transfers of asylum seekers to Greece, as 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

14. For more on the case, see above, page 13.

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

European Social Charter

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

Signatures and ratifications

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 fifteen 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 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

On 24 January 2011, the first day of the 248th session of the European Committee of Social Rights, three new members of the Committee, Mrs Karin Lukas (Austrian), Mrs Elena Machulskaya (Russian) and Mr Giuseppe Palmisano (Italian) made a solemn declaration pursuant to Rule 4 of the Committee's Rules.

The Committee wishes to express its appreciation and gratitude to its two outgoing members, Ms Lyudmila Harutyunyan (Armenian) and Ms Polonca Koncar (Slovenian) who served as President of the Committee from 2006 to 2010.

It then proceeded to elect its Bureau in accordance with Rule 8 of its Rules. The new Bureau has the following composition:

President: Mr Luis Jimena Quesada
Vice-President: Mr Colm O'Cinneide
Vice-President: Ms Monika Schlachter
General Rapporteur: Mr Jean-Michel Belorgey

Mr Luis Jimena Quesada, President of the European Committee of Social Rights

Adoption of Conclusions

Conclusions 2010 (for the states having ratified the Revised Social Charter) and Conclusions XIX-3 (for the states bound by the 1961 Charter) have been adopted by the Committee. They are related to the application by all Parties to the Charter of the accepted provisions of the 3rd Thematic Group (Labour rights) and have been published on the Social Charter's website.

50th anniversary of the European Social Charter

On 18 October 2011 it will be 50 years since the European Social Charter was adopted. This anniversary will be marked by the Council of Europe in different ways during the course of 2011. The Committee for its part will launch a reflection on how the visibility and impact can be improved and for this purpose it will, *inter alia*, review existing procedures and working methods. It also invites the States Parties to consider how a wider application of the Charter can be ensured and in this respect it wishes to encourage those states who have not already done so will take steps to ratify the Revised Charter and the collective complaints procedure in 2011.

The first event held to mark this occasion took place on 8 February 2011 in Helsinki where a Seminar on the reform of the Charter was organised at the initiative of the Finnish government. After the opening of the Seminar by the President of the Republic of Finland, Ms Tarja Halonen, the Deputy Secretary General, Ms Maud de Boer-Buquicchio, outlined the evolution of the European Social Charter and its monitoring mechanisms. She considers that the collective complaints procedure is an absolute priority and that its acceptance should be regarded as a priority by every European democracy.

In the course of this Seminar, several practical and more immediately feasible proposals emerged, in particular:

1. the reinforcement of the collective complaints procedure

The participants stressed the need for other states to accept the procedure so that gradually all member states will be bound by it.

The participants also expressed the wish to ensure a better follow-up to the decisions pronounced by the European Committee of Social Rights on the merits of complaints and to do away with the four-month period during which these decisions are under embargo.

2. Increase in the number of ratifications

Three aims were mentioned: ratification by all member states, ratification of the Turin Protocol by the four remaining states and progression from the 1961 Charter to the Revised Charter by the states concerned.

3. Raising the political profile of the Charter in the activities of the Council of Europe

The rights guaranteed by the Charter are at the very heart of the statutory mission of the Council of Europe and contribute to the realisation of the Organisation's priorities. In this regard, the role of the Committee of Ministers in ensuring the follow-up to the conclusions and decisions of the European Committee of Social Rights could be reinforced.

4. Development in the reporting system

There is a need to strengthen the impact and political relevance of the Committee's annual conclusions and to ensure a wider dissemination of these conclusions at the national level. Adapting the existing methods of examining national reports might be a means to achieve these goals inter alia by concentrating the examination on situations of major significance, whether because they raise manifest problems of conformity or because they relate to important evolutions in the way social rights are applied in the countries concerned.

To mark the 50th anniversary of the European Social Charter a new poster has been published in A1 and A2 formats. It is also available as a postcard.

To obtain copies, please use the electronic form on the Social Charter's website.

5. Prospect of the accession of the European Union to the Charter

It might be useful to launch a reflection and research work on the perspective of EU accession to the Charter once accession to the European Convention of Human Rights has been achieved.

6. Procedure for election of members of the European Committee of Social Rights

Pursuant to the decision of the Committee of Ministers of 11 December 1991, the amending Protocol to the Charter (which has not yet entered into force) is being applied, except for a provision stating out that the members of the Committee are to be elected by the Parliamentary Assembly, and no longer by the Committee of Ministers. It may be feasible at present for the Committee of Ministers to apply this provision as well.

Another proposal was a form of dialogue between the Committee of Ministers and the Parliamentary Assembly to develop a procedure involving the two organs of the Council of Europe in this process of election.

Collective complaints: latest developments

Decision on the merits

Three decisions on the merits were published:

***European Council of Police Trade Unions (CESP) v. France*, Complaint No. 54/2008**

The CESP claimed that the new regulations introduced by the French Government on 15 April 2008 are in breach of Article 2§1 (reasonable working time) on the grounds that it is impossible to ascertain whether daily and weekly police working hours are reasonable because such working hours are not recorded. The CESP also contends that the flat, that is non-increased, rate of remuneration for overtime work provided for in the new regulations of 17 April 2008 infringes Article 4§2 (increased remuneration for overtime work) because the rate of remuneration for overtime work, where the latter is taken into consideration, is based on a rate below the hourly rate for police officers, and where compensation is available in the form of rest periods, such compensation is ineffective.

The Committee concluded that there was no violation of Article 2§1 and 4§2 of the Revised Charter.

***Confédération générale du Travail (CGT) v. France*, Complaint No. 55/2009**

The complaint related to Articles 2 (the right to just conditions of work) and 4 (the right to a fair remuneration). The CGT claimed that the new regulations on working time introduced in France on 20 August 2008 violates these provisions).

The Committee concluded unanimously that there was violation of Article 2§1 (reasonable working time), on the ground of annual working days system and on the ground of on-call duty; violation of Article 2 §5 (weekly rest period) given the consequences on weekly rest day of the assimilation of on-call periods to rest periods: violation of Article 4 §2 (increased remuneration for overtime work), on the ground of the annual working days system, but that there is no violation of Article 4 §2 of the Revised Charter due to the introduction of the unpaid solidarity day.

***Confédération française de l'Encadrement "CFE-CGC" v. France*, Complaint No. 56/2009**

The complaint related to Articles 1 (the right to work), 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions), 4 (right to a fair remuneration), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), and 27 (right of workers with family responsibilities to equal opportunities and equal treatment), read alone or in conjunction with Article E (non discrimination), of the Revised Charter. The CFE-CGC claimed that the new regulations on working time introduced in France on 20 August 2008 violate these provisions.

In its decision, the Committee concluded that there was violation of Article 2§1 (reasonable working time) of the Revised Charter, on the ground of the excessive length of weekly working time permitted and the absence of adequate guarantees under the annual working days system; and violation of Article 4 §2 (increased remuneration for overtime work) of the Revised Charter, on the ground of the remuneration of overtime work as provided for under the annual working days system. The Committee also concluded that the invoked claims did not come within the scope of Article 1 §1 (right to work – policy of full employment) of the Revised Charter and of Article 3 (the right to

safe and healthy working conditions) of the Revised Charter and that the claim under Article E taken in conjunction with Articles 20 and 27 regarding the impact of the working time and overtime work on employees coming under the annual working days system was not founded.

Decision on admissibility

On 1 December 2010 the Committee declared admissible the Complaint *International Federation of Human Rights (FIDH) v. Belgium* (No. 62/2010) related to Travellers.

The FIDH alleges a violation by Belgium of Article E (non-discrimination), as well as Articles 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.

Registration of collective complaints

Four complaints were registered:

***Centre on Housing Rights and Evictions (COHRE) v. France* (No. 63/2010)**

The complaint concerns the eviction and expulsion of Roma from their homes and from France during the summer of 2010. The complainant organisation alleges that such evictions and expulsions amount to violations of Article 31 (right to housing) and Article 19§8 (guarantees concerning expulsion) of the Revised Charter. The complainant organisation also argues that the facts at stake constitute discrimination (Article E) in the enjoyment of the above mentioned rights.

***European Roma and Travellers Forum (ERTF) v. France* (No. 64/2011)**

According to the complainant organisation the French Government continues to forcibly evict Roma without providing suitable alternative accommodation and that Roma in France continue to suffer discrimination in access to housing, in violation of Articles 16 (right of the family to social, legal and economic protection), 19§8 (guarantees concerning expulsion), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) of the Revised European Social Charter, read alone or in conjunction with the non discrimination clause in Article E.

***General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* (No. 65/2011)**

According to the complainant trade unions, the measures relating to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 are in violation of Article 4 (right to a fair remuneration) of the European Social Charter and Article 3 of the Additional Protocol of 1988 (right to take part in the determination and improvement of the working conditions and working environment).

***General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* (No. 66/2011)**

According to the complainant trade unions, the measures relating to remuneration and working conditions for apprentices and young persons contained in Act No. 3899/2010 of 17 December 2010 are in violation of Articles 1 (right to work) , 4 (right to a fair remuneration), 7 (the right of children and young persons to protection), 10 (right to vocational training), and 12 (right to social security) of the European Social Charter.

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

Focus on data protection

This year the Council of Europe celebrates the 30th anniversary of its Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, known as "Convention 108". Since its opening for signature on 28 January 1981 the convention has been a cornerstone of privacy and personal data protection in Europe. It has been ratified by 43 member states of the Council of Europe and is open for signature by any country in the world.

A little history

Council of Europe action on data protection

Already a benchmark for forty-three states in Europe, and the only international legally binding instrument in the field with the potential to be applied worldwide, Convention 108 of the Council of Europe was opened for signature in 1981. Any country in the world with the required data protection legislation can become a party.

The convention defines a series of universally recognised core principles and legally binding standards. Its technologically neutral provisions protect against privacy intrusions by public and private authorities. It provides a legal framework for the transfer of personal data between countries that have ratified it and a platform for multilateral co-operation of States Parties on an equal footing. Countries can exchange ideas and best practices, and together develop new standards. In 2001 Convention 108 was supplemented by an additional protocol dealing with supervisory authorities and transborder data flow.

Data Protection Day

Thorbjørn Jagland, Council of Europe Secretary General

28 January was chosen to mark Data Protection Day because it celebrates the anniversary of Convention 108. The aim of Data Protection Day is to give individuals the chance to understand what personal data are collected and processed about them and why, and what their rights are in this context.

Thirty years after the opening for signature of Convention 108, this year's Data Protection Day was particularly significant for the Council of Europe. Together with the European Commission, on 28 January it organised a joint high-level meeting in Brussels to allow both institutions to join forces and promote the fundamental right to data protection. The event was an opportunity for some 300 participants from all over the world and all stakeholder sectors to take stock of current challenges and exchange their views on issues at stake.

In his opening speech, Council of Europe Secretary General, Thorbjørn Jagland, described Convention 108 as "a key tool ensuring this right for thirty years [which] must be adapted to ensure this for the next thirty years as well".

He stressed "the need for a truly international framework that is human rights-based, flexible, transparent and inclusive".

Viviane Reding, European Commission Vice-President responsible for Justice, Fundamental Rights and Citizenship, emphasised the link between human rights and data protection.

"Effective data protection is vital for our democracies and underpins other fundamental rights and freedoms," she said. "We need to balance privacy concerns with the free flow of information, which helps create economic opportunities."

Viviane Reding, European Commission Vice-President

Modernising Convention 108

With new data protection challenges arising every day, the convention is being overhauled to meet new realities, and the Council of Europe is now working on modernising it. The technological developments of the information and communication society together with the globalisation of exchanges lead to unexplored challenges and potential new risks for the protection of human rights and fundamental freedoms.

The 30th Conference of Council of Europe Ministers of Justice, held in Istanbul from 24 to 26 November 2010, took advantage of this momentum and adopted a resolution on data protection and privacy in the third millennium. The resolution takes note of the challenges presented by the use of new technologies to the application of data protection principles, and accordingly acknowledges the need to adapt the existing standards to such new challenges.

Through this resolution, the Ministers of Justice expressed strong support in favour of the modernisation of Convention 108, referred to as the only potentially universally binding legal instrument in the field of data protection. They also encouraged further ratification of the convention, both at European and non-European level.

The Council of Europe has published a collection of legal texts relevant to data protection

Consultation

Data Protection Day 2011 saw the launch of a consultation aimed at helping decide on the best ways of bringing Convention 108 up to date.

The replies (over 50 received for a total compiled content of nearly 400 pages) originate from state actors (including non-European ones) as well as other stakeholders (NGOs, academia and private firms) and individuals. They will be instrumental in the modernisation of Convention 108 and will as such be considered by the T-PD – the expert committee set up under the convention, which is in charge of the modernisation.

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

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

Serbia

Visit from 1 to 11 February 2011

The visit was the Committee's third periodic visit to Serbia.

The CPT's delegation assessed progress made since the previous visit in 2007 and the extent to which the Committee's recommendations have been implemented, in particular in the areas of police custody, imprisonment and legal safeguards for patients in psychiatric institutions. The delegation also carried out a follow-up visit to Serbia's only prison hospital and to Dr Laza Lazarevic Special Psychiatric Hospital in Belgrade. Further, it visited for the first time the Požarevac Correctional Institution for Women, the Special Psychiatric Hospital in Gornja Toponica and the Educational Institution for Juveniles in Niš.

In the course of the visit, the delegation met Svetozar Ciplic, Minister of Human and Minority Rights, Dragan Markovic, Secretary of State at the Ministry of Interior, Periša Simonovic, Secretary of State at the Ministry of Health, Suzana Paunovic, deputy Minister of Labour and Social Policy, as well as other senior officials from the Ministries of Interior, Justice, Health, and Labour and Social Policy, and from the Prosecutor's Office. It also met Saša Jankovic, the Serbian Ombudsman and Miloš Jankovic, deputy Ombudsman for the protection of persons deprived of their liberty in Serbia. Meetings were also held with representatives of the OSCE and UNHCR as well as with members of non-governmental organisations active in areas of concern to the CPT.

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

France

Visit from 28 November to 10 December 2010

During the visit, the delegation examined, among other matters, the measures taken by the French authorities following the recommendations made by the Committee after its previous visits. In this connection, it reviewed the treatment of persons detained by law enforcement agencies and of foreign nationals held under aliens legislation, as well as condi-

tions of detention in prisons. The delegation also paid particular attention to the situation of patients placed involuntarily in psychiatric establishments.

The delegation had consultations with François Molins, Director of the Private Office of the Minister of Justice and Liberties, Marguerite Berard-Andrieu, Director of the Private Office of the Minister of Labour, Employment and Health, and Guillaume Larrive, Deputy Director of the Private Office of the Minister of the Interior and Immigration, as well as with other senior officials from these ministries.

Further, the delegation met Jean-Marie Delarue, General Controller of Places of Deprivation of Liberty, as well as members of the National Consultative Commission on Human Rights and the National Ethics and Security Commission, and representatives of the Ombudsman of the Republic. Discussions were also held with members of non-governmental organisations active in areas of interest to the CPT.

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

Germany

Visit from 25 November to 7 December 2010

During the visit, the CPT's delegation reviewed the measures taken by the German authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and the conditions of detention in units for immigration detainees in various prisons. The delegation also examined in detail the situation of persons subject to preventive detention (Sicherungsverwahrung) and of juvenile offenders held in penitentiary establishments. Further, for the first time in Germany, the delegation visited a prison for women.

In one of the *Länder* visited, namely Berlin, the delegation collected information on the surgical castration of sexual offenders who are deprived of their liberty, under the Law on Voluntary Castration and Other Treatment Methods.

The delegation had fruitful consultations with Ms Sabine Leutheusser-Schnarrenberger, Federal Minister of Justice, Ms Birgit Grundmann, State Secretary of the Federal Ministry of Justice, Mr Jürgen Martens, Minister of Justice of Saxony, Mr Wilfried Bernhardt, State Secretary of Justice of Saxony, Ms Brigitte Mandt, State Secretary of Justice of North Rhine-Westphalia, and Mr Michael Steindorfner, Permanent Representative of the Minister of Justice of Baden-Württemberg, as well as with senior officials from the Federal Ministries of Justice and the Interior and various ministries of the Länder visited. It also met the Heads of the Federal Agency for the Prevention of Torture and the Joint Länder Commission for the Prevention of Torture, both of which form part of the National Preventive Mechanism (NPM) established under the Optional Protocol to the United Nations Convention against Torture (OPCAT). Moreover, the delegation held meetings with representatives of the German Institute of Human Rights 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 German authorities.

Ad hoc visits

Albania

Visit to Albania to monitor the treatment of persons detained during recent disturbances in Tirana

A delegation of the CPT has just completed a three-day ad hoc visit to Albania. The main objective of the visit, which began on 30 January 2011, was to examine the treatment of persons who had been taken into custody in the context of disturbances that had occurred on 21 January 2011 in Tirana. For this purpose, the delegation interviewed in private virtually all the persons still in detention (some 35 in total) and examined relevant records at Tirana Prisons Nos. 302 and 313 and at several police establishments in Tirana (Police Directorate General, Police Stations Nos. 1 and 2).

In the course of the visit, the delegation held consultations with Lulzim Basha, Minister of the Interior, and Hysni Burgaj, Director General of the State Police, as well as with Ina Rama, Prosecutor General of Albania. In addition, it met representatives of the Office of the People's Advocate (in their capacity as National

Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture) and Dr Besim Ymaj, Director of the National Institute of Forensic Medicine.

Greece

Visit from 20 to 27 January 2011

The visit was carried out to assess the concrete steps taken by the Greek authorities to implement long-standing recommendations, in particular those contained in the reports on the CPT's visits of September 2005, February 2007, September 2008 and September 2009.

In the course of the visit, the CPT's delegation examined the treatment and conditions of detention of migrants held in aliens detention centres and in police and border guard stations, particularly in the Attica and Evros regions. The delegation also examined the situation in several prison establishments, including the provision of health care and the regime offered to inmates. In addition, the visit offered the opportunity to review the treatment of detained persons suspected of criminal offences and the safeguards in place for them.

In the course of the visit, the delegation met the Special Secretary for Correctional Policy and Forensic Services, Marinos Skandamis, General Director of Penitentiary Policy, Christina Petrou and Brigadier General Vasileios Kousoutis, Director of the Aliens Division of the Hellenic Police, as well as other senior officials from the Greek Police Force and representatives from the Ministries of Citizen's Protection, Foreign Affairs and Justice. The delegation also met the Deputy Ombudsman for human rights and for children, representatives of the United Nations High Commissioner for Refugees (UNHCR) and members of several non-governmental organisations, including Médecins sans frontières.

Reports to governments following visits

Belgium

Report on the visit to Belgium (September/ October 2009)

The CPT's report on the visit in September/ October 2009 was published in July 2010. The response of the Belgian authorities is available on the CPT's website.

In its response, the Belgian Government makes reference to the measures being taken to improve the situation in the light of the recommendations made by the CPT.

Ireland

Report on the fifth visit to Ireland (25 January to 5 February 2010)

In the course of the visit, the CPT reviewed the treatment of people detained by the Irish police, the Garda Síochána. It also examined the treatment of inmates and conditions of detention in a number of prisons, as well as visiting three psychiatric hospitals, and an institution for persons with intellectual disabilities.

The information gathered in the course of the 2010 visit indicates that progress continues to be made in reducing ill-treatment by police officers; nevertheless, the persistence of some allegations makes clear that the Irish authorities must remain vigilant. The CPT recommends that senior police officers remind their subordinates at regular intervals that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions.

As regards prisons, the CPT notes that most inmates interviewed stated that they were treated correctly by prison officers; however, a number of allegations of ill-treatment were received. The Committee stresses that resolute action by senior managers is essential to combat ill-treatment, as recognised in a policy document on the investigation of Prison Complaints issued at the beginning of 2010. In the light of its findings, the CPT also expresses serious concern about the continuing high level of inter-prisoner violence at Mountjoy Prison; the Committee recommends that the Irish authorities intensify their efforts to tackle this phenomenon.

A series of concerns relating to the provision of healthcare at Cork, Midlands and Mountjoy Prisons are raised in the report, including as regards the administration of methadone and the prescription of medication. The CPT also criticises the use of special observation cells and encourages the authorities to continue to improve access to psychiatric care in prisons. More generally, the CPT observes that several of the prisons visited remained overcrowded

with poor living conditions, and that they offered only a limited regime for prisoners. Recommendations are also made in relation to the disciplinary process, complaints procedures and contacts with the outside world.

In the two psychiatric hospitals of St Brendan's (Dublin) and St Ita's (Portraine), and St Joseph's Intellectual disability service (Portraine), the CPT found a significant level of violence, both between patients and directed towards staff, as well as poor living conditions for patients. The CPT also expresses concern as regards the understaffing in all three institutions. Further, the Irish authorities are urged to make progress in adopting a new Mental Capacity Bill in order to replace the outdated 1871 Lunacy Regulation (Ireland) Act.

As regards the Central Mental Hospital in the Dundrum area of Dublin, the CPT notes positive developments concerning the treatment of patients and staffing levels.

In their response, the Irish authorities provide information on the steps being taken to address the issues raised by the CPT. In particular, they acknowledge the rapidly expanding prison population and the subsequent challenges while outlining various measures being taken to redress the situation. Reference is also made to a number of reviews in the areas of health, complaints procedures and the use of special observation cells. As regards mental health institutions and institutions for persons with intellectual disabilities, the authorities refer to the recruitment of additional staff and investments in both new and existing infrastructures.

The report and response are available on the CPT's website.

Malta

Report on the fourth visit to Malta (19-26 May 2008)

In the course of the visit, the CPT examined the treatment of persons detained by the police, irregular immigrants detained under the Immigration Act and prisoners in the Corradino Correctional Facility. It also visited several wards at the Mount Carmel Hospital as well as the Fejda Programme and Jeanne Antide establishments for female minors and juveniles.

The 2008 visit report states that the majority of persons met by the CPT's delegation made no complaints of ill-treatment by **police** officers. The report does however refer to one specific allegation and makes recommendations concerning the treatment of vulnerable persons in police custody, the conduct of inquiries into allegations of ill-treatment and the use of electro-shock weapons by the police. Further, the right of a person detained by the police to consult in private with a lawyer was still not in force at the time of the visit. In addition to calling for this right to be applied without any further delay, the CPT also recommends that the Maltese authorities extend this right to all criminal suspects deprived of their liberty and that it include the possibility for a lawyer to be present during police interrogations.

As regards **foreign nationals** detained under the Immigration Act, the report refers to a particular incident of alleged ill-treatment of detainees at Safi Barracks. It recommends that a criminal investigation be carried out every time credible allegations of ill-treatment by public officials are made by persons deprived of their liberty. Recommendations are also made to improve the material conditions, regime and health care provision in immigration detention centres.

As regards **Corradino Correctional Facility**, the report states that the findings of the visit were of such scope and seriousness that the CPT considered it essential to recommend that an independent and comprehensive audit of the establishment be carried out. In particular, concerns are raised about the lack of trained staff, the absence of an allocation and classification system in the prison, and the existence of informal power structures which place numerous inmates in a submissive position vis-à-vis gang-type practices and allow a considerable amount of drug trafficking to take place.

The report also criticises the material conditions in several wings of the prison and makes a number of recommendations to improve the provision of health care and to put in place formal disciplinary procedures that are properly applied. Particular concern is raised in relation to the detention in the prison of children of less than 16 years of age.

In respect of **Mount Carmel Hospital**, the report states that no allegations of ill-treatment of patients were received. Reference is made to the good living conditions on several wards; however, those on the Forensic, Maximum Security and Irregular Immigrants' Wards are criticised. Several recommendations are made concerning the lack of staff resources and the use of means of physical restraint and seclusion/"time out" rooms. The report also makes a

number of comments on the draft of the new Mental Health Act.

The two institutions for female juveniles and children, **Fejda Programme** and **Jeanne Antide**, were found to offer acceptable living conditions for relatively short stays only. A number of recommendations are made in particular aimed at improving health care provision.

In their response, the Maltese authorities provide information on the steps being taken to address the issues raised by the CPT. In particular, reference is made to inquiries carried out into the allegations of ill-treatment raised in the report and to the Board of Inquiry set up to examine the situation in Corradino Correctional Facility. Information is also provided on the training and safeguards in place concerning the use of electro-shock weapons by police officers. As regards Mount Carmel Hospital, the authorities refer to the policy in place regarding seclusion and list the steps taken to improve the living conditions. Information is also provided on the situation in the Fejda Programme and Jeanne Antide establishments.

The CPT's visit report and the Maltese Government's response are available on the Committee's website.

Channel Islands

Reports on the visit to the Channel Islands (Bailiwicks of Guernsey and Jersey)

The CPT's delegation gathered no evidence of the ill-treatment of persons in police custody. However, in both Bailiwicks, a few allegations were received of excessive use of force at the time of arrest. The CPT comments in its reports that police officers need to be reminded regularly that no more force than is strictly necessary should be used when effecting an arrest.

Conditions of detention at the Police Headquarters in St. Peter Port, Guernsey, were on the whole adequate. In contrast, they were not satisfactory at the Police Headquarters in Rouge Bouillon, Jersey; in their response, the Jersey authorities refer to plans for a new police station which will incorporate a modern custody facility.

The CPT's delegation received no allegations of ill treatment of prisoners by staff at La Moye Prison in Jersey and, with one exception, the same was true of Guernsey Prison. Positive staff-prisoner relations were in evidence in both establishments.

Material conditions of detention were generally of a good standard in both Guernsey and La Moye Prisons. However, efforts should continue to be made to improve activities for prisoners, in particular those subject to the "standard" regime; in their responses, the authorities highlight the action being taken in this connection.

The CPT expresses concern about the current practice of holding juveniles (i.e. persons under the age of 18) in the two prisons. It emphasises that juveniles who have to be deprived of their liberty should be held in facilities specifically designed for persons of this age. The Committee recommends that for as long as juveniles continue to be held at Guernsey and La Moye Prisons, particular attention be paid to their education (including physical education) and to offering them a wide range of opportunities to develop their life skills. In their responses, the authorities recognise the drawbacks of the present situation and highlight efforts to overcome them.

In the light of the information gathered during the visit, the CPT also recommends that the Guernsey and Jersey authorities take the necessary steps to ensure that all prisoners suffering from a severe mental health disorder are cared for, without delay, in an adequately equipped hospital environment.

The CPT's visit reports and the responses of the States of Jersey and the States of Guernsey are available on the CPT's website.

Greece

Report on the fifth visit to Greece (September 2009)

In the course of the 2009 visit, the CPT's delegation reviewed the measures taken by the Greek authorities to implement recommendations made by the Committee after its previous visits. It focused in particular on the treatment and safeguards afforded to persons deprived of their liberty by law enforcement officials, and examined the conditions of detention in police and border guard stations, coast guard posts and in special facilities for irregular migrants. The CPT's delegation also visited a number of prisons, examining the treatment and conditions of detention of inmates, including the activities offered to them and health care provision.

In their response to the various recommendations made in the CPT's visit report, the Greek authorities provide information on the measures being taken to address the concerns raised by the Committee.

The CPT's visit report and the response of the Greek Government are available on the CPT's website.

Publications

Leaflet "The CPT in brief"

The text of the CPT leaflet ("The CPT in brief") has been completely revised, and is now available in English, French and 28 other languages.

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

European Commission against Racism and Intolerance

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.

Country-by-country monitoring

ECRI closely examines the state of affairs in each of the 47 member States of the Council of Europe. On the basis of its analysis of the situation, ECRI makes suggestions and proposals to Governments as to how the problems of racism, racial discrimination, xenophobia, antisemitism and intolerance identified in each country might be overcome, in the form of a country report.

ECRI's country-by-country approach concerns all Council of Europe member States on an equal footing and covers 9 to 10 countries per year. A contact visit takes place in each country prior to the preparation of the relevant country report.

At the beginning of 2008 ECRI started a fourth country monitoring cycle (2008-2012). The fourth round country monitoring reports focus on the implementation of the principal recommendations addressed to Governments in the third round. They examine whether and how ECRI's recommendations have been followed up by the authorities. They evaluate the effectiveness of Government policies and analyse new developments. The fourth monitoring cycle includes a new follow-up mechanism, whereby ECRI requests priority implementation of three specific recommendations and asks the member States concerned to provide information in this connection within two years from the publication of the report.

On 8 February 2011 ECRI published five reports of its fourth round of country monitoring, on Armenia, Bosnia and Herzegovina, Monaco, Spain and Turkey. The reports note improvements in certain areas in all five Council of Europe member States, but also detail continuing grounds for concern.

ECRI's report on **Armenia** notes that while there have been improvements, there are still some concerns in the areas, for example, of religious freedom and refugees' social rights.

ECRI's report on **Bosnia and Herzegovina** notes that, although there has been progress in certain areas, some issues give rise to concern, such as continuing ethnic discrimination in the field of electoral law, marginalisation of the Roma and politicians' use of virulent nationalistic rhetoric.

ECRI's report on **Monaco**. notes that although there have been improvements, additional action is needed such as the consolidation of the legislative framework in the field of protection against discrimination.

ECRI's report on **Spain** notes that, while there are positive developments, some issues of concern remain, such as the continued existence of "ghetto" schools of immigrant and Roma pupils and the absence of data on racist crime or incidents of discrimination on grounds of racial or ethnic origin.

ECRI's report on **Turkey** notes that, while there have been improvements in certain areas, some issues give rise to concern, such as the situation

of the Kurds, Roma and asylum-seekers, discrimination against members of minority religious groups and misuse of criminal law provisions.

The publication of ECRI's country-by-country reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member States with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

ECRI carried out contact visits to **Italy** and **Lithuania** in late autumn 2011, and visited **Montenegro** for the first time in February 2011, before drafting reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's Rapporteurs to meet officials from ministries and public authorities, as well as representatives of NGOs working in the field and any other persons concerned by the fight against racism and intolerance.

Work on general themes

ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. In this framework, ECRI adopts General Policy Recommendations addressed to the Governments of member States, intended to serve as guidelines for policy makers.

General Policy Recommendations

ECRI is currently undertaking work on two new General Policy Recommendations, on Combating anti-Gypsyism and 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 for written consultation to institutions, NGOs and other persons with expertise in the field. 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 antisemitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing and combating racism and racial discrimination in the field of sport.

Seminar on the "Fight against Discrimination based on Racial, Ethnic, Religious or Other Bias"

Ankara, 10-11 January 2011

In co-operation with the Turkish Authorities in the framework of the Turkish Chairmanship of the Committee of Ministers, ECRI organised a seminar on the "Fight against Discrimination Based on Racial, Ethnic, Religious or Other Bias", which was held on 10 and 11 January 2011 in Ankara, Turkey.

The seminar brought together national and international experts to discuss the implementation of ECRI's recommendations to combat discrimination based on racial, ethnic, religious or other bias. It was also intended as a discussion-oriented forum for exchanging information, experiences and ideas on ECRI's mandate, and to explore ways to increase synergy between ECRI and its international partners.

The seminar examined the following issues in four main sessions:

– ECRI and its international partners;

– freedom of speech and the fight against racism and racial discrimination;
– specialised bodies and the fight against racism and racial discrimination;
– new challenges in combating discrimination.

The meeting was opened by the Chair of ECRI, Nils Muiznieks, and Birnur Fertekligil, Deputy Undersecretary for Multilateral Affairs of the Ministry of Foreign Affairs of the Republic of Turkey. Representatives of Council of Europe member States and States with observer status, representatives of international organisations, as well as ECRI members and representatives of NGOs participated in the seminar.

Publications

- **ECRI Report on Armenia**, 8 February 2011, CRI (2011) 1
- **ECRI Report on Bosnia and Herzegovina**, 8 February 2011, CRI (2011) 2
- **ECRI Report on Monaco**, 8 February 2011, CRI (2011) 3
- **ECRI Report on Spain**, 8 February 2011, CRI (2011) 4
- **ECRI Report on Turkey**, 8 February 2011, CRI (2011) 5

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 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.

State Reports of the third monitoring cycle

The State Report on Albania was received on 10 January.

Advisory Committee country visits of the of the third monitoring cycle

A delegation of the Advisory Committee visited **Slovenia** from 15 to 18 November, and **"the former Yugoslav Republic of Macedonia"** from 29 November to 2 December in the context of the monitoring of the implementation of this convention.

Advisory Committee Opinions of the third monitoring cycle

Opinion in respect of Croatia

The third cycle Advisory Committee opinion in respect of **Croatia** was made public **o**n 6 December together with the government comments.

Summary of the Opinion

"Since ratifying the Framework Convention in 1997, Croatia has stepped up its efforts to protect national minorities. The authorities have continued to show their commitment to the implementation of this treaty and have drawn on it when drafting the Constitutional Act the Rights of National Minorities, which entered into force in 2002.

Croatia adopted the Discrimination Prevention Act in July 2008 which provides a clear legal basis for protection against discrimination. The Act provides protection and prohibits discrimination (among others) on racial, ethnic, national or religious grounds and establishes a judicial procedure for its enforcement. Despite this positive development, cases of discrimination of persons belonging to the Serbian minority and the Roma in the field of education, employment, housing, recognition of property and other acquired rights, reconstruction of housing units damaged during the war, sustainability of minority returns, access to health care and social protection continue to be reported.

In the field of employment, in particular in public administration, the judiciary, local government and public enterprises, the non-respect of the right to proportional representa-

tion of persons belonging to national minorities established under the provisions of the Constitutional Act on the Rights of National Minorities gives rise to serious concern.

The progress made in the repossession of property as well as in the allocation of housing care for former tenancy rights holders has had a positive effect on the overall return process, including its sustainability. There has been however a lack of transparency surrounding the allocation of housing units in 2008 and 2009 and there are concerns about the considerable number of unresolved cases particularly of former tenancy/occupancy right holders in the urban areas inhabited by a substantial number of persons belonging to the Serbian minority.

Ethnically-motivated incidents against persons belonging to national minorities, in particular the Serbs and Roma, continue to be a serious problem in Croatia, with many cases of attacks remaining unreported due mainly to a lack of trust in the police and justice systems. Various sources concur that the response from the law enforcement officials to ethnically-motivated incidents is inadequate. In addition, racism and anti-Semitism continue to plague Croatian football stadiums.

A well-developed system of minority language education exists in Croatia, permitting students belonging to national minorities to receive instruction in or of their languages. The number of children attending schools teaching minority language or in minority language remains stable. Textbooks for mother tongue education developed in the "kin-States" have been approved for use in Croatian schools and efforts have been undertaken at the primary school level to translate textbooks used for teaching other subjects from Croatian into minority languages. Regrettably, no similar efforts have followed at the secondary school level.

The functioning of the councils of national minorities, established under the Constitutional Act on the Rights of National Minorities is, in many self-government units, unsatisfactory. In particular, in many self-government units, co-operation between the councils of national minorities and local authorities is lacking.

The authorities have increased efforts to combat discrimination and integrate Roma into society. The National Action Plan for the Decade of Roma Inclusion 2005-2015 has already yielded some results, especially through increased inclusion of Roma children into the educational system (from the pre-school to higher-level educational institutions), improved access to health care for the Roma population, and sustained efforts to resolve housing issues. Roma continue however to face persistent discrimination and difficulties in different sectors, in particular in employment, education, access to healthcare and housing. In some settlements the inhabitants face deplorable living conditions, without proper roofing, electricity, running water, sewage treatment, and roads.

Issues for immediate action

- complete promptly and without any discrimination all pending cases concerning the repossession and reconstruction of private property and the allocation of housing units;
- prevent, identify, investigate, prosecute and sanction, as necessary, all racially and ethnically-motivated or anti-Semitic acts; take decisive action against racist and anti-Semitic acts perpetrated prior to, during and after football matches in the spirit of the Committee of Ministers Recommendation R (2001) 6 on the prevention of racism, xenophobia and racial intolerance in sport;
- review the procedures applicable to the implementation of the right to proportional representation of persons belonging to national minorities in public administration, the judiciary, local government and public enterprises, in conformity with Article 22 of the Constitutional Act on the Rights of National Minorities: observe stricter monitoring and enforce possible sanctions, in order to ensure the full and effective implementation of this provision at all levels;
- review legal provisions and administrative practice regulating the election and functioning of the councils of national minorities with a view to eliminating the identified shortcomings, as regards the representativity of these organisations, their funding and their co-operation with local authorities."

Opinion in respect of Germany

The third cycle Advisory Committee opinion in respect of **Germany** was made public on 6 December together with the government comments.

Summary of the Opinion

"Germany has continued its constructive approach to the Framework Convention's monitoring process and, as in previous monitoring cycles, has provided ample opportunity for minority representatives to participate in the drafting process of the 3rd State Report.

The General Equal Treatment Act of 2006, as well as other measures against racism and racial violence, were adopted and a Federal Anti-Discrimination Agency set up. The authorities have continued to give support to the preservation and development of the languages and cultures of persons belonging to national minorities. A range of mechanisms are available to enable persons belonging to national minorities to participate in the decision-making process on issues of relevance to them.

However, the approach to the scope of application of the Convention remains inflexible despite ongoing dialogue with some groups. Both the implementation of the General Equal Treatment Act and the work of the Federal Discrimination Agency have attracted some criticism. The Agency is limited to providing advice to potential victims but cannot itself instigate proceedings or gather additional information. It further seems that potential victims of discrimination are still unfamiliar with the Act's provisions and that too little use is made of these provisions in cases of ethnically-motivated discrimination.

Roma and Sinti representatives deplore the fact that they are still unable to obtain funding for their projects. Participation in public life by the Roma and Sinti also remains very low at all levels. Cases of discrimination against the Roma and Sinti in the education system continue to be reported as are instances of their being denied access to public places or of ethnic profiling by the police force.

There has been no decrease in the number of racist, xenophobic or anti-Semitic offences perpetrated in recent years. Measures to combat racism are concentrated mainly on extreme right-wing movements but do not provide an adequate response to the many dimensions and manifestations of racism. Prejudice against and stereotyping of the Roma and Sinti and other minorities continue to be spread by some media. A bill put forward in 2007 seeking inclusion in the Criminal Code of the motivation of racial hatred as an aggravating factor of any offence was, regrettably, not adopted."

Issues requiring immediate action

- Intensify measures to raise public awareness of the General Equal Treatment Act, and ensure that compliance with the Act is regularly monitored; take additional measures to ensure that persons most vulnerable to discrimination be fully informed of the legal remedies available to them;
- Continue resolutely to combat racism in its many dimensions and manifestations; adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet, and in sports stadiums; adopt specific legislation that expressly punishes racist motivation as an aggravating factor of any offence;
- Take measures to bring about a significant increase in participation in public life by the Roma and Sinti, with due regard for the cultural diversity found within these groups; promote and support projects and initiatives which will contribute to improving their participation in social and political life, and take resolute action without delay to end the unjustified placing of Roma and Sinti pupils in 'special' schools.

Opinion in respect of the Slovak Republic

The third cycle Advisory Committee opinion in respect of the **Slovak Republic** was made public **on** 18 January together with the government comments.

Summary of the Opinion

"Since the entry into force of the Framework Convention in 1998, the Slovak Republic has pursued its efforts to improve the protection of national minorities. The authorities have continued to show their commitment to the implementation of this convention and have taken steps to complete the legislative framework pertaining to the protection of persons belonging to national minorities.

The Slovak Republic has amended the Anti-Discrimination Law, which provides a clear legal basis for protection against discrimination. The law has introduced positive measures aiming to redress social and economic inequalities or disadvantages facing persons belonging to more vulnerable groups. Despite this positive development, efforts should be stepped up to improve the collection of reliable data on the situation of persons belonging to national minorities in fields such as employment, and

to raise awareness of the concept and positive effects of positive measures.

Support has been allocated to minority organisations for the preservation and development of the cultures of national minorities. However, the mechanisms relating to the distribution of funds need to be improved, in particular as regards their transparency and the relevant selection procedures. Additional measures are needed to ensure that mainstream curricula adequately reflect the culture and history of persons belonging to national minorities.

While a climate of tolerance and dialogue generally prevails in the Slovak Republic, negative attitudes and prejudice against persons belonging to certain groups such as the Roma, have continued to be reported. In addition, recent legislative initiatives have contributed to an increase in tension within society.

The overall situation of the Roma is a matter of deep concern. Many have experienced discrimination in employment, housing and healthcare and segregation in schools. A considerable number of Roma children continue to be placed in 'special' schools designed for pupils with learning difficulties and only limited progress has been made with regard to their inclusion into mainstream education.

The authorities have strengthened the use of the Slovak language through amendments to the State Language Law adopted in 2009. Notwithstanding the efforts made through the adoption of Government Principles to provide guidance on the interpretation and implementation of the 2009 State Language Law, there is still a need to clarify a number of its provisions. This includes the extent of its application in the private sphere and its inter-relation with the 1999 Law on the Use of Minority Languages and other relevant legislative provisions. An adequate balance should be maintained between the legitimate promotion and strengthening of the State language and the right to use minority languages in private and public life, as protected by the Framework Convention. The imposition of fines, in case of a violation of the 2009 State Language Law, raises an issue of compatibility with the Framework Convention.

The authorities have pursued their efforts to develop textbooks and to provide teachers giving instruction of or in minority languages with training opportunities. Schools with minority language instruction receive increased financial allocations. Regrettably, a decrease in interest in minority language learning has been reported amongst numerically-smaller national minorities. Also, efforts should be made to provide children belonging to the national minorities enrolled in schools with instruction in the Slovak language, in particular members of the Hungarian minority, with sufficient opportunities to learn their language.

Persons belonging to national minorities are generally well-represented in elected bodies, especially at the local level. At the same time, the participation of the Roma in Parliament is very low. There needs to be an improvement in the effective participation of national minorities in decision-making on issues that particularly affect them.

The employment of persons belonging to national minorities, in particular numerically-smaller ones and the Roma, in public administration and law-enforcement agencies is limited. Additional measures are required to create conditions so that public administration reflects the diversity of society."

Issues for immediate action

- Take adequate legislative steps to adopt a more comprehensive legislation on minority languages in order to ensure an appropriate balance between the legitimate promotion of the State language and the right to use minority languages, as provided in the Framework Convention; favour a policy of incentives over a punitive approach in relation to the implementation of the 2009 State Language Law, both in the public and private sphere;

- Take more resolute measures to combat intolerance based on ethnic origin and take further steps to promote mutual understanding and respect between persons belonging to various groups; increase efforts to fight against and sanction effectively discrimination and take resolute steps to design and implement positive measures, accompanied by adequate awareness-raising;

- Take resolute measures to put an end, without further delay, to the continuing segregation of Roma children at school and their unjustified assignment to 'special' schools. Pursue and strengthen efforts to ensure adequate inclusion of Roma children into mainstream education.

Advisory Committee follow-up visit

The Moldovan authorities and the Council of Europe organised a follow-up seminar on 29 November to discuss how the findings of the monitoring bodies of the Framework Convention are being implemented in **Moldova**.

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.

Reforming the human rights protection system: implementation of the Interlaken Declaration

The Interlaken Declaration, adopted by the High Level Conference on the Future of the European Court of Human Rights (Interlaken, Switzerland, 18-19 February 2010), formed the starting point for current work.[15]

In November 2010 the CDDH adopted a report for the Committee of Ministers on measures that do not require amendment of the Convention and met the President of the European Court of Human Rights.

In December 2010 its Committee of Experts on the Reform of the Court (DH-GDR) discussed in particular filtering applications by the Court, including the possibility of establishing a new mechanism to this end. In addition, the Committee exchanged views with the Court's Jurisconsult on two documents containing remarks by the Court on, firstly, clarity and consistency of the Court's case-law and, secondly, the principle of subsidiarity.

In February 2011 the DH-GDR Committee held a consultation with representatives from civil society and national human rights institutions on implementation of the Interlaken Declaration, discussed the possible introduction of a system of fees for applicants to the European Court of Human Rights, as well as the possibility for the Court to issue advisory opinions requested by the highest level of national jurisdictions. The Committee adopted a draft on a possible structure for the reports that member States are requested to present at the end of 2011 on measures taken to implement the Interlaken Declaration and agreed on elements to present to the CDDH for the preparation of a report on measures that require amendment of the Convention.

15. This work will be reinforced in the light of decisions which, in the Interlaken follow-up, will be taken during the High Level Conference which to be organised by the Turkish Chairmanship of the Committee of Ministers in İzmir, Turkey, on 26-27 April 2011.

Opinions on Parliamentary Assembly recommendations

In November 2010 the CDDH adopted opinions on the following recommendations of the Parliamentary Assembly of the Council of Europe:

- 1920 (2010) – Reinforcing the effectiveness of the Council of Europe treaty law;

- 1925 (2010) – Readmission agreements: a mechanism for returning irregular migrants;
- 1930 (2010) – Prohibiting the marketing and use of the "Mosquito" youth dispersal device;
- 1932 (2010) – Decent pensions for women;
- 1933 (2010) – Fight against extremism: achievements, deficiencies and failures;
- 1936 (2010) – Human Rights and business.

Human rights and the environment

The DH-DEV Working Group on Environment held its first meeting in Strasbourg on 22 and 23 February 2011. The primary task of this group is to revise the 2006 *Manual on Human Rights and the Environment* in the light of the recent relevant case-law of the European Court of Human Rights, and with a view to including other European and international standards, namely the relevant decisions of European Committee of Social Rights. The revised manual should be finalised and approved by the CDDH by the end of this year. The Working Group will also consider possible other activities in the field of human rights and the environment and report back to the CDDH.

Accession of the European Union to the European Convention on Human Rights

The informal working group established by the Steering Committee on Human Rights to discuss and draft, together with the European Commission, the legal instruments for the accession of the European Union to the European Convention on Human Rights held two working meetings between November 2010 and February 2011. It discussed in particular the introduction of a mechanism which would allow the European Union to join proceedings before the European Court of Human Rights where an application against one of its member states also alleges the incompatibility of a provision of European Union law with the Convention. In this context, the Group also reflected on how to ensure that the Court of Justice of the European Union will have had the opportunity to review the consistency of European Union law with fundamental rights before the European Court of Human Rights will adjudicate on such an application. The Group also discussed the institutional and financial aspects of the Union's accession, including the possible presence of the European Union in the Committee of Ministers and in the Parliamentary Assembly of the Council of Europe, when they exercise functions related to the Convention. At its next meeting, in March 2011, the Group will consider a first draft of the accession agreement and its explanatory report which will then be presented to the CDDH for discussion at its 72nd meeting, in April 2011.

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

Media and information society

With Article 10 of the European Convention on Human Rights at its source, the Council of Europe strives to defend and promote freedom of expression and freedom of the media in all aspects of the information society, in all the media – legacy media as well as emerging media. Among the essential conditions for the effective exercise of other human rights and fundamental freedoms, the protection of personal data is also of fundamental importance. The Council of Europe is addressing these issues boldly with innovative and participative working methods. Fundamental rights apply on line as well as off line. The objective is to secure a maximum of rights and freedoms, subject to a minimum of restrictions, while guaranteeing the level of security people are entitled to expect

Texts and instruments

Meetings of conventional committees, expert committees and groups of specialists

2nd meeting of the Ad hoc Advisory Group on Cross-border Internet (MC-S-CI) – Strasbourg 8-9 November

The Group explored prospects and options for future standard-setting action in relation to the protection of resources that are critical for the functioning of the Internet and the protection of the cross-border flow of Internet traffic. It agreed to prepare a draft declaration on Internet governance principles and a draft recommendation on international co-operation in respect of resources that are critical for the functioning of the Internet.

13th meeting of the Steering Committee on Media and New Communication Services (CDMC) – Strasbourg, 16-19 November

Important work was carried out on the preparation of standard-setting texts in respect of several areas: the protection of resources that are critical for the functioning of the Internet and the cross-border flow of Internet traffic; the governance of public service media (PSM) in relation to the need for changes to the internal and external governance of PSM to meet their objectives; a new notion of media and the protection of human rights with regard to search engines and social network service providers. A hearing was organised on "libel tourism" to consider the impact on freedom of expression and freedom of the media of the opportunistic search for jurisdiction in defamation cases. The CDMC concluded that there was a need for further transversal work on the matter to explore possible standard-setting responses to the problem. Having regard to the member states call (Declaration of the Committee of Ministers: Making gender equality a reality (Madrid, 12 May 2009), the CDMC also discussed gender-related issues in respect of the media and agreed to the need to revise existing standards setting instruments (e.g. as regards media coverage of election campaigns).

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

Venice Commission

The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters. Established in 1990, the commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. It contributes to the dissemination of the European constitutional heritage, based on the continent's fundamental legal values while continuing to provide "constitutional first-aid" to individual states. The Venice Commission also plays a unique and unrivalled role in crisis management and conflict prevention through constitution building and advice.

Human rights standards in Kosovo

In December 2010 the Venice Commission adopted an opinion on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo.[16]

Background

Opinion CDL-AD (2010) 051, adopted by the Venice Commission at its 85th plenary session, 17-18 December 2010

At its October 2004 plenary session, the Venice Commission adopted an opinion on "Human Rights in Kosovo: possible establishment of review mechanisms" (CDL-AD (2004) 033). It recommended in particular, as a short term solution, the setting up of an independent Advisory Panel which would be competent to examine complaints lodged by any person claiming that his or her fundamental rights and freedoms have been breached by any laws, regulations, decisions, acts or failures to act emanating from UNMIK. The Advisory Panel (hereafter: Panel) was formally established in March 2006, its members were appointed in January 2007 and it started to function in November 2007.

On 4 February 2008 the European Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, whose central aim is to assist and support the Kosovo authorities in the rule of law area, specifically in the police, judiciary and customs areas, through "monitoring, mentoring and advising, while retaining certain executive responsibilities".

The Parliamentary Assembly of the Council of Europe, through its Recommendation 1822 (2008), welcomed the possible deployment of a European Union Rule of Law Mission to Kosovo, and invited the Committee of Ministers of the Council of Europe to provide its support and expertise to the relevant authorities in Kosovo, *inter alia* in the protection of human rights and in the strengthening of human rights protection mechanisms, including the ombudsperson institution and other mechanisms aimed, *inter alia*, at ensuring accountability of the international community in Kosovo.[17]

On 24 June 2009 the Chairman of the Political Affairs Committee of the Parliamentary Assembly requested the Venice Commission to prepare a follow-up opinion on mechanisms to review the compatibility with human rights

17. Parliamentary Assembly Recommendation 1822 (2008), Developments as regards the future status of Kosovo, paras. 4 and 5.

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.

standards of acts of UNMIK and EULEX in Kosovo. In July 2009 the rapporteurs of the Venice Commission were consulted by the secretariat of the Council of the European Union in the context of the preparation of a concept paper for the establishment of a Human Rights Review Panel for EULEX Kosovo. On 16 and 17 November 2009 a Venice Commission delegation met in Pristina with representatives of UNMIK and EULEX, the Ombudsperson and his Deputy; as well as representatives of three NGOs. The present opinion CDL-AD (2010) 051 was adopted by the Commission at its December 2010 Plenary Session.

International administration in Kosovo

Following the conflict in 1999, international civil and security presences were deployed in Kosovo, under United Nations auspices and with the agreement of the then Federal Republic of Yugoslavia, pursuant to Security Council's Resolution No. 1244 (1999). The United Nations Interim Mission in Kosovo (UNMIK) was thus established and mandated, under the authority of the Special Representative of the Secretary-General (SRSG), to take charge of the interim civil administration of Kosovo, in co-operation with the European Union and the Organisation for Security and Co-operation in Europe (OSCE).[18]

The adoption of the Constitutional Framework for Provisional Self-government in Kosovo on 15 May 2001 (UNMIK Resolution 2001/9) aimed at facilitating the transfer of powers from UNMIK to Kosovo's newly created institutions of self-government: the Assembly; the President of Kosovo; the Government; the Courts; and other bodies and institutions set forth in this Constitutional Framework.

After years of international administration, during which a range of competences had gradually been transferred to the Kosovo Provisional Institutions of Local Self-Government, the so-called "Ahtisaari Plan" was presented to the UN Security Council in March 2007. It envisaged supervised independence and termination of the UN mandate in Kosovo, while laying the ground for a set of new international presences in Kosovo in view of enhancing Kosovo's European perspective, in particular, the International Civilian Office (ICO) double-hatted as EU Special Representative (EUSR) – who was to succeed UNMIK – and the EU Rule of Law Mission in Kosovo (EULEX). On 4 February 2008 the EU Council adopted the Joint Action[19] establishing EULEX Kosovo.

Following the rejection of the compromise solution based on the Ahtisaari Plan and the failure of the Troika (comprising representatives of the USA, Russia and the EU) to find a consensual solution, on 17 February 2008 representatives of Kosovo unilaterally declared Kosovo independent.

The reorganisation of the international presence in Kosovo and a scaling-down of UNMIK started in November 2008, further to an arrangement with the UN, which placed the EULEX Mission under UNSC resolution 1244 and the overall authority of the United Nations.[20] Today, four international organisations remain present in Kosovo:

- KFOR is mainly responsible for maintaining the security and stability of Kosovo at the border posts, in the Serb regions of Kosovo and in the city of Mitrovica. It has 10 000 troops (as of May 2010) and is transitioning towards becoming a deterrent presence which will lead to further reduction in its troop levels.
- UNMIK maintains a residual presence, in close co-operation with the other international stakeholders present on the ground (it has about 500 personnel, including one-third international staff).
- The OSCE Mission focuses on issues related to strengthening institutions, as well as democracy and human rights. It operates within the framework of UNMIK.
- The EU's presence is made up of three components:
  - a *political entity* in the EUSR, that is supporting the Kosovo authorities in meeting their obligations and conforming to European standards (double-hatted as ICO);

18. Four "pillars" were initially set up by UNMIK: Pillar I: Police and Justice, under the direct leadership of the United Nations; Pillar II: Civil Administration, under the direct leadership of the United Nations; Pillar III: Democratisation and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE); and Pillar IV: Reconstruction and Economic Development, led by the European Union (EU).

19. Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, Official Journal of the European Union, L/42/92, of 16 February 2008, as amended by Council Joint Action 2009/445/CFSP of 9 June 2009.

20. Statement by the President of the Security Council, S/PRST/2008/44, of 26 November 2008; see also: UN Security Council, Report of the Secretary General on the UN Interim Administration Mission in Kosovo, S/2008/692, 24 November 2008, paras. 21-29 and 48-51.

– *an operational entity* in the EULEX Mission which is the largest civilian mission deployed by the EU within the framework of the Common Security and Defence Policy (CSDP); and
– a *reform driving entity* in the European Commission office that assists Kosovo in its long-term reform efforts and economic development.

In accordance with the reconfiguration of the international presence, EULEX now carries out among other things the operational tasks associated with the rule of law, which previously came under the responsibility of UNMIK. The mandate of the EULEX Mission is large: it assists the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and a multi-ethnic police and custom service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. It also has some limited correctional powers in the broader field of the rule of law, in particular to investigate and prosecute serious and sensitive crimes. EULEX operates under the local political guidance provided by the EUSR in Kosovo and reports to the Civilian Operations Commander in Brussels. The EU Political and Security Committee (PSC) exercised, under the responsibility of the Council of the EU, political control and strategic direction of the mission.

The international human rights panels

The UNMIK Human Rights Advisory Panel

Established by the Special Representative of the Secretary-General through UNMIK Regulation No. 2006/12 of 23 March 2006 to "examine complaints from any person or group of individuals claiming to be the victim of a violation by Unmik of the human rights, as set forth in one or more" international legal instruments, such as the Universal Declaration of Human Rights and the European Convention on Human Rights. The Panel sits in Pristina and consists of three international jurists, appointed by the Special Representative of the Secretary-General for a renewable term of two years upon the proposal of the President of the European Court of Human Rights. As to the decisions of the Panel:

> "17.1. The Advisory Panel shall issue findings as to whether there has been a breach of human rights and, where necessary, make recommendations. Such findings and any recommendations of the Advisory Panel shall be submitted to the Special Representative of the Secretary-General.
>
> ...
>
> 17.3. The Special Representative of the Secretary-General shall have exclusive authority and discretion to decide whether to act on the findings of the Advisory Panel."[21]

21. Ibidem.

The Human Rights Review Panel of EULEX Kosovo (HRRP)

Established on 29 October 2009 in accordance with the provisions of the Joint Action to promote a so-called "external human rights accountability" of EULEX.[22] The HRRP mandate is:

> "... to review alleged human rights violations committed by EULEX in the performance of its executive mandate. The HRRP is an independent body which discharges its functions with integrity and impartiality. The HRRP examines complaints relating to alleged violations that occurred since 9 December 2008 in Kosovo. Complaints must be submitted to the HRRP within three months from 9 June 2010, when the HRRP became operational or within six months from the date of the alleged violation, whichever is the more favourable to the Complainant. The HRRP submits its findings to the Head of Mission and, where necessary, makes non-binding recommendations for remedial action. The recommendations may not result in monetary compensation. The findings and recommendations are made public."[23]

On 4 May 2010 the three members of the Panel – one is a serving EULEX judge – were appointed by the Acting Head of EULEX Kosovo Mission for a one-year term, renewable. In addition, a

22. The "accountability concept" of the HRRP, adopted by the Council of the European Union in November 2009, is a restricted document. Although the Venice Commission feels obliged to respect this restricted character, it is of the view that transparency and accessibility of the mechanism requires that the legal basis of the HRRP be made known to the public.
23. Cf.: http://www.hrrp.eu.

substitute member, also a EULEX judge, was appointed on 4 May 2010, to replace the member-judge should a conflict of interest arise.

The HRRP became operational on 9 June 2010. During its first session (9-11 June 2010) it adopted its rules of procedure.[24] According to the data available at 15 December 2010,[25] 16 cases had been registered, 6 of which had been declared inadmissible.

24. http://www.hrrp.eu/docs/ROP.pdf.
25. http://www.hrrp.eu/Statistics.php; last visited on 20 December 2010.

Conclusions

In its opinion of 2004 on the human rights situation in Kosovo, the Venice Commission stressed that, when an international organisation carried out executive functions that were similar to those of a state, it must not be exempted from any independent legal review, in particular, from a system of independent review of conformity with international human rights standards.[26]

As for the **UNMIK Human Rights Advisory Panel**, the Venice Commission welcomed its establishment in November 2007 largely in line with its own recommendations of 2004. At the same time, the Commission urged this Panel and UNMIK to find a solution so that the over 450 cases currently pending before the Panel may be processed before UNMIK leaves Kosovo. The Panel's mandate had to be extended for such a reasonable period of time as to allow it to process all pending applications. In addition, the Commission considered that in the cases where the Panel found that there had been violation of the ECHR rights by UNMIK, the determinations of the Panel had to be complied with by UNMIK according to existing remedial possibilities.

With regard to the **EULEX Human Rights Review Panel**, established in November 2009, it appears to be generally in conformity with the recommendations formulated by the Venice Commission in 2004 as well. The Commission stressed, however, that those recommendations had been made in a context of a post-conflict emergency situation with only partly operating institutions. A different situation pertained in Kosovo today, and in this respect, as long as the acts of EULEX were supportive or corrective within a generally peaceful situation, EULEX had to be put under a more stringent review. The Commission, therefore, advised the Council of the European Union to reconsider some of the features of the Panel in the light of European and international standards. The Commission noted, *inter alia*, that for the sake of independence, the length of the initial mandate of the panel members had to be extended automatically within the limit of the mandate of EULEX. In addition, the mandate in respect of the justice sector was unclear; it was for the "case-law" of the HRRP to clarify now what matters could be submitted to the Panel. It would also be preferable that possible decisions by the Head of Mission not to implement the Panel's findings would be duly and publicly motivated.

Finally, considering that *restitutio in integrum* was the most suitable manner of redress of human rights violations, the possibility for the HRRP to recommend remedial action removing the effects, and the causes, of the violation were crucial. However, in some cases the most effective remedy would be to claim financial compensation at least for material damage under the Third Party Liability Insurance scheme of EULEX. The Venice Commission stressed, at the same time, that the procedure under the insurance scheme should not be unduly lengthy or complex. It noted in this respect that the Head of Mission of EULEX committed himself to reviewing the insurance procedures to ensure that they remain effective.

26. CDL (2004) 033, para. 91.

Internet: http://venice.coe.int/

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

European Union/Council of Europe Joint Programme: "Support to access to justice in Armenia"

The Joint Programme between the European Union and the Council of Europe entitled "Support to access to justice in Armenia" (1 October 2009 – 31 December 2011) entered a decisive phase in 2011 with the internal change of the national co-ordinator within the Ministry of Justice, following the replacement of the Minister and the two Deputy Ministers. This new phase opened new opportunities for the Ministry of Justice to propose amendments to the work plan, whilst keeping the objectives and expected results of the project. As a result of this opportunity, the Ministry of Justice requested and was provided with Council of Europe expertise in new areas under the project, notably on the changes to the Judicial Code following the setback of the draft law "On the Justice Academy", as well on the draft law "On Justice Fees".

A sub-project within the project entitled "Pilot Training Programme" started to operate with two mid-term local consultants and one international mid-term consultant to work on the initial training and continuous training programmes of the future School of Advocates (for details, see the previous edition of the Human Rights Information Bulletin No. 81). Study visits were organised in the framework of the project: 1) for the Armenian Court of Cassation to the Court of Cassation, the *Ecole nationale de la Magistrature* and the Council of Justice in Paris in December 2010 in order to discuss the continuous training of judges; 2) for Armenian lawyers to the Bar Association of Austria to study the methodology and structure of continuous legal education.

Georgia

"Promotion of Judicial Reform, Human and Minority Rights in Georgia in accordance with Council of Europe Standards" (DANIDA)

"Promotion of judicial reform, human and minority rights in Georgia in accordance with Council of Europe standards" is a three-year project implemented by the Council of Europe with the financial support of the Danish Ministry of Foreign Affairs. The project aims to improve the Georgian judicial and penitentiary systems by assisting the authorities to implement reforms in line with relevant European standards; to develop and strengthen the capacity of the Public Defender's Office (PDO); to strengthen the state capacity and enhance

public consultation on minority issues. Since the launch of the project in October 2010 a number of activities were organised to attain these objectives.

Under the Judiciary Component of the Project, emphasis was placed on strengthening the capacity of the High School of Justice in the training of legal professionals in the field of human rights. Prosecutors and judges, judges' legal assistants, and a new group of students of the High School of justice were trained on ECHR general principles and selected ECHR Articles particularly relevant to their work. Furthermore, the Project contributed to the organisation of activities concerning the newly enacted Criminal Procedure Code (CPC) of Georgia, targeting primarily the judges of lower courts. The aim of these activities was to facilitate the implementation of the new CPC, which included important features such as the application of the adversarial principle in all stages of criminal procedure, in line with European standards. In addition, 280 000 leaflets were distributed to households throughout Tbilisi, where the jury trial system has been introduced for the first time. The citizens of Tbilisi learned about this specific institution and their rights and obligations as potential jurors. This activity was organised jointly between the Ministry of Justice, the Public Prosecutors Office, and the Training Centre of the Public Prosecutor's Office.

Under the Penitentiary Component, following the entry into force of the Code of Imprisonment on 1 October 2010, the project trained 187 staff of the penitentiary institutions in western Georgia on the features introduced by the new Code, with a view to facilitating its smooth implementation. The project organised round table discussions on the ongoing reform of penitentiary system, focusing on a parole board system and conditional release issues, and the European models of parole boards. A set of recommendations for improving the legislation in force were elaborated on and presented to the Ministry of Correction and Legal Assistance for consideration. The project contributed to improving primary health care services in three penitentiary institutions (Tbilisi No. 8 Prison, Rustavi No. 6 Prison and Women's Prison and Penitentiary Institution No 5) by purchasing the basic necessary diagnostic equipment and medical instruments stock.

Under the Public Defender's Component, training was provided to increase the knowledge of the staff on the ECHR and the European Social Charter. Moreover, the Project aimed at providing the PDO with the knowledge and skills to effectively carry out its duties as a National Preventive Mechanism (NPM). The training sessions on prison monitoring focused on the role of an NPM as an independent and non-executive body and the steps to be taken in connection with the NPM monitoring process (such as scheduling visits, preparation process for the visit, establishing and maintaining professional relations with prison authorities during the monitoring, investing in trust, identifying channels of communications inside prison). Targeted recommendations were subsequently provided to the NPM staff.

The Minority Component of the project organised a three-day awareness raising conference on minority issues and a study tour to Tbilisi for high ranking officials of local government structures. The conference brought together more than 60 local level officials from four different regions of Georgia. Progress has also been made in enhancing strategy and capacity development of the Council of National Minorities (CNM) and its member organisations through a participatory process also contributing to the establishment of a more permanent dialogue between the CNM membership and the State Inter Agency Commission. The dialogue established between the State Inter Agency Commission and the minority representatives, facilitated by the European Centre on Minority Issues, has resulted in a number of public policy initiatives addressing the needs of national minorities. In addition, the first round of the Component's Mini Grant Mechanism for minority NGOs has supported eight small initiatives focused on the needs and specific concerns of minorities, such as gender equality and protection of women's rights in the regions of the country; rights and obligations of the national minorities in light of the constitutional changes and the preservation of the cultural heritage of smaller minority groups.

Moldova

European Union/Council of Europe Joint Programme: "Democracy Support Programme in the Republic of Moldova"

The Legal and Human Capacity Building Department is responsible for the implementation of the first four components of the joint project between the European Union and the Council of Europe entitled the "Democracy Support Programme in the Republic of Moldova". These four components are as follows:

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).

Overall, the project's progress has been considerable. This observation was supported by the European Union in a statement during the 1101st meeting of the Committee of Ministers of the Council of Europe on 8 December 2010 stated that it "considers that its co-operation with the Council of Europe aimed at sustaining the European path of the Republic of Moldova, through joint initiatives such as the "Democracy Support Programme", has led to progress in consolidating democracy and the rule of law, promoting human rights and implementing needed structural reforms". Between November 2010 and February 2011 several important activities were carried out in the framework of the project.

The project achieved good results as regards the training of judges, prosecutors and the police on the ECHR and CPT standards for prevention and combating ill-treatment and impunity and on the use of alternatives to pre-trial detention and imprisonment. Overall 400 judges and 400 prosecutors will benefit from cascade seminars on the above mentioned topics. Six seminars took place in November-December 2010, and further sessions will be organised in March to May 2011. Very fruitful co-operation in this context has been established with the National Institute of Justice of Moldova (NIJ). Organising training activities in co-operation with the NIJ ensures an important capacity building effect for this judicial training institution, created in 2007 upon direct assistance from the Council of Europe and the European Union, as well as improved sustainability of the training in general, bearing in mind that involved trainers, curricula and training support materials will remain available for a longer time to the NIJ. As a result of this mutually appreciated partnership, the NIJ formulated in February 2011 a request to follow-up activities form last year as well as for some new activities to strengthen the impact on knowledge and skills of judges and law enforcement agents to apply the ECHR in their daily work.

On 17-21 November 2010 a study visit was carried out to London Metropolitan Police Service for 11 police officers who participated earlier in the project's in-depth seminars on riot control for law enforcement officials. The aim of the visit was to allow the participants to study in more details specific crowd management and riot control tactics and techniques. The Moldovan police officers were provided with information which could help improve the conduct of special operations such as riot control measures in line with European standards for the prevention of human casualties. The participants had the opportunity to learn about equipment and other technical means used for the purpose of preserving public order. They visited the Special Operations Room of the Metropolitan Police, where an in-depth presentation of the operational planning and chain of command was made. The participants also had the chance to visit the Public Order Training Centre (Milton) where they observed the public order training practices and techniques, including the ones related to the use of force. The Moldovan delegation was also acquainted with the operational planning and the chain of command principles in a live football match setting.

The project organised with the University of Glasgow a 3-day seminar and study visit programme to Scottish governmental institutions entitled "The effective investigation of ill-treatment: Scots Law and Practice". On 13-15 December 2010 six prosecutors, including members of the Division for Combating Torture established within the General Prosecutor's Office, as well as two police officers from the Internal Investigations Unit of the

Ministry of Internal affairs took part in the study visit to Scotland. The programme provided to the participants the opportunity to visit and learn about the work of the Crown Office, the Police Complaints Commissioner for Scotland, several Police headquarters (Strathclyde Police and Helen Street Police Stations), HM Prison Barlinnie and the University of Glasgow. The seminar organised in the framework of the visit covered European standards and the Scottish system for combating ill-treatment and police impunity. The aims of the seminar were to seek understanding on how domestic practices of investigation into allegations of ill-treatment can be improved through establishing effective working procedures and to examine practical means of providing effective protection for detainees against ill-treatment. Agenda included presentations on the Scottish system for Investigation of complaints against the police; the role of the prosecutor in the investigation of allegations of ill-treatment; investigating allegations of ill-treatment: the role of the police; the role of the Scottish Police Complaints Commissioner in combating ill-treatment; comparative analysis of European standards, Scottish and Moldovan practice of combating ill-treatment and impunity.

The new Division for Combating Torture, established within the General Prosecutor's Office, is supported to perform efficiently investigation in cases related to torture and ill-treatment. Apart form important training activities, the Council of Europe assisted for the purpose of refurbishing and re-equipping the premises of the central office of the Division, in order to ensure adequate working conditions for the staff. In accordance with an official request by the Moldovan Prosecutor General the Division for Combating Torture was provided with office equipment corresponding entirely to unit's needs.

Project's efforts aiming at strengthening the capacity of the Moldovan Ombudsman's Office resulted in organisation of a training seminar for the staff of the Centre for Human Rights of the Republic of Moldova on standards of the European Convention on Human Rights Three members of the Polish Ombudsman Office and one expert on methodology of adults' learning carried out a seminar for Moldovan Parliamentary Advocates and support staff on 16-17 December 2010. The training was realised in the format of an exchange of experience and ideas in the light of Articles 3 and 8 of the ECHR. The experts revealed the Polish experience on how problems related to the prohibition of torture and implementation of efficient guarantees for the right to respect for private and family life are solved in the course of action of the Polish Ombudsman Office. The main focus of such training activities, a number of which will be organised during 2011, is on strengthening the capacity of the Centre for Human Rights in assessing the national legal framework, evaluating the prerequisites of recurrent infringements of human rights and drawing up normative or institutional responses to such infringements.

Russian Federation

European Union/Council of Europe Joint Programme: "Introduction of the appeal in the Russian judicial system"

On 23 December 2010 LHRCBD launched a new project on "Introduction of the appeal in the Russian judicial system". This is a joint project of the European Union and the Council of Europe and will be implemented by the Council of Europe in close partnership with the State Legal Department of the Administration of the President of the Russian Federation. The project, with a budget of €1.6 million, will run until June 2013.The project aims at contributing to the establishment of a fully fledged appeal within the system of courts of general jurisdiction in Russia. The work to be carried out will take different forms, such as analysing whether relevant legislation is in line with European standards; preparing recommendations on the necessary amendments to the cassation and supervisory review; drawing up training methodology for the implementation of the new system of appeal; organising workshops and seminars on appeal reform; evaluating the legislative changes and the implementation of the appeal reform. The project reflects the outstanding issues with regard to Russia's obligations in the framework of the Council of Europe's monitoring mechanisms and the case-law of the European Court of Human Rights. The Supreme Court of the Russian Federation and all of its subordinate

structures will be closely involved in the implementation of the project.

The project held its opening ceremony on 24 February 2011 at the European Union Delegation to Russia in Moscow. The ceremony was hosted by Mr Sergey Pchelintsev, Deputy Head of the State Legal Directorate of the President of the Russian Federation and by Mr Etienne Claeye, Head of EU-Russia Co-operation Programme, Delegation of the European Union to the Russian Federation. The Council of Europe will be represented by Ms Hanne Juncher, Head of the Legal and Human Rights Capacity Building Department, Directorate of Co-operation of the Directorate General of Human Rights and Legal Affairs.

Turkey

European Union/Council of Europe Joint Programme: "Training of Military Judges and Prosecutors in Turkey on Human Rights Issues"

The Joint Programme between the European Union and the Council of Europe entitled "Training of Military Judges and Prosecutors on Human Rights Issues" (2 November 2010-24 December 2012) started to operate in January 2011, after an initial contact-making phase in November and December 2010.

The two working groups planned in the project were established in their foreseen composition. The first working group on the training programme/curricula and materials already had clarified the selection criteria for 50 trainers to be trained under the training of trainers programme and had identified the training materials and resources available.

Among the resources available were a considerable number of cases brought to the European Court of Human Rights concerning military justice in Turkey. A number of cases concerning the military of other member states of the Council of Europe were also identified as being already translated into Turkish; others were to be translated as quickly as possible. Draft agendas were approved for both training of trainers sessions on the Council of Europe, the European Court of Human Rights and general information about the European Convention on Human Rights and training methodology. Further work will include the preparation of the outlines for the training courses in accordance with the training programme which is currently being defined.

The second working group launched the analysis of the military justice systems. The approach of the work was adopted and tasks were given to the different members of the group. The Ministry of National Defence are to prepare presentations giving a full overview of the current system from an operational, administrative and criminal point of view. A needs assessment will be prepared on the basis of this information and of information collected with the Justice Academy, the body responsible for the training of military judges and prosecutors.

A launching event is planned to be organised further in the year.

European Union/Council of Europe Joint Programme: "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey"

Workshops were organised on the Development of an NGO Strategy for the Directorate General of Prisons and Detention Houses of Turkey (DGPDH) 26-27 October 2010 in Ankara.

The purpose of the workshops was to open discussions between DGPDH and representatives of different NGOs and to identify strengths and weaknesses in DGPDH-NGO relations in order to be able to establish a realistic NGO strategy that would lead to improved relations between the two sides. To that end, two focus groups were convened: one with staff from the prison system, headquarters and the field, and another with a group of NGO members. The purpose of two separate the focus groups was to get information on different views and issues that might be explored in greater depth in joint seminars that will take place latter on in the project and addressed by a development strategy. The discussions held during the workshop displayed that there were significant similarities between the opinions of the NGOs and the DGPDH representatives on public sector-NGO relations. Both groups agreed that more needed to be done to place collaboration on a programmed, sustainable, properly specified

and evaluated basis. The two groups also spoke of a general lack of interest in collaborative working and of the high levels of distrust existing between the prison system and many NGOs.

The common analysis of the DGPDH and NGOs encouraged the Council of Europe long-term-consultant (LTC) to suggest the development of a "compact", a tool effectively used in other jurisdictions to remedy the lack of trust between the two sides and to identify standard operating procedures on matters that necessitate closer co-operation between the public sector and NGOs. However, the workshops displayed that there were also significant differences of interests between the two sectors. The focus of interest of the prisons group was exclusively on the supply of services by NGOs, the focus of the NGO group was more on the other roles outlined for them in the European frameworks like monitoring, policy and legal development. This difference of interests revealed the need to better inform both sectors on European guidance on the role of NGOs in the penitentiary system. As a result, the LTC opinion on how to develop an NGO strategy for the DGPDH allocated a comprehensive chapter to European guidance on that subject matter.

European Union/Council of Europe: "Enhancing the role of the supreme judicial authorities in Turkey in respect of European standards"

The European Union/Council of Europe Joint Programme on "Enhancing the role of the supreme judicial authorities in Turkey in respect of European standards" was launched in February 2010. The project activities continued according to the work plan.

On 26 January, the fourth meeting of project's Steering Committee took place in Ankara, bringing together the representatives of the high courts, the European Union delegation in Ankara and the Council of Europe project team. The progress made in 2010 and the plan of activities for 2011 were discussed. The Steering Committee adopted the Progress Report for 2010 and agreed on the planned activities for 2011 taking into account the increase in the number of participants for the study visits due to structural changes in the high courts of Turkey.

The first study visit in 2011 was held from 7 to 10 February for twenty members of the Turkish Court of Cassation. They visited the European Court of Justice in Luxembourg and the Council of Europe, including the European Court of Human Rights, in Strasbourg.

The participants attended meetings with judges and lawyers of the European Court of Justice in Luxemburg where they learned about the proceedings before the Court, preliminary ruling procedure, the role of the Advocate General and the structure and role of the General Court and the Civil Service Tribunal. They also attended a hearing and had a chance to visit different parts of the Court's building.

The visit to the Council of Europe included meetings with lawyers and experts from the relevant bodies including the Department for the Execution of Judgments of the European Court of Human Rights, the European Commission for the Efficiency of Justice, the Venice Commission, the Consultative Councils of European Judges and Prosecutors. Mr Andras Sajo, judge of the European Court of Human Rights in respect of Hungary, presented recent developments in Court case-law.

The project activities allowed all parties involved to understand better each other's work and institutional mandate, and interpretation of the national legislation in line with European standards. It is expected that there will be a spill over effect and that the outputs will be disseminated to the whole judiciary in the country via the decisions of the high courts. It remains to be seen, nevertheless, how and when the judgments issued by the supreme judicial authorities of Turkey will begin to reflect the knowledge acquired during the project activities.

Ukraine

European Union/Council of Europe Joint Programme: "Transparency and Efficiency of the Judicial System of Ukraine"

The overall objective of the Project is to assist with the establishment of an independent, impartial, efficient and professional judiciary in Ukraine, and to ensure that the Ukrainian

judiciary is transformed into a transparent and fair judicial system that is accessible to all citizens, working effectively and transparently *vis-à-vis* citizens and civil society.

On 17 December 2010 the project organised a training seminar on the presentation and application of functionalities of the computer programme "Workflow in commercial courts" which deals with the automatic case assignments to judges. This one-day training seminar brought together about 100 participants, representing all the commercial courts of Ukraine. It focused on the basics of a new Random Case Assignment module to be implemented in the next version of the court Document Flow System for commercial courts.

From 6 to 8 December 2010 the project organised a study visit to the Council of Europe, including the European Court of Human Rights, for 15 judges of the High Administrative Court of Ukraine. It was their first visit to these institutions, enabling them to hear first-hand how the various bodies and mechanisms of the Council of Europe operated. They also attended a hearing before the European Court of Human Rights and got acquainted with its recent case-law developments.

On 9-10 December 2010 the same participants also visited a certain number of French judicial institutions, in particular the Paris Appeal Court and the Conseil d'État. The aim of the visit was to strengthen the level of co-operation between the French and Ukrainian administrative courts as well as to exchange experiences in the administration of justice by the respective courts.

On 11 December 2010 the documentary *A Path to Understanding or Win-Win Negotiations* was broadcast on Ukrainian television on the "5th Channel". This was the first film devoted to the Alternative Dispute Resolution issues produced within the project's activities. Along with the central TV companies, the documentary will be broadcast on regional TV channels as well as printed on DVD.

From 7 to 10 February and from 28 February to 2 March 2011 the project organised two visits of the Council of Europe expert, Mr Jeremy McBride, to Ukraine to assess the training needs of Ukrainian judges with regard to the European Convention on Human Rights and the case-law of the European Court of Human Rights. He discussed with the representatives of the relevant institutions and NGOs their experience in training the beneficiaries under the project and the problems encountered. In particular, the expert met with the representatives of the following institutions: the Supreme Court, the High Specialised Court for Civil and Commercial Cases, the High Administrative Court, the Academy of Prosecutors, the Union of Advocates, the High Qualification Commission of Judges, the National School of Judges, the High Commercial Court, as well as law schools and NGOs. It is expected that following these visits, the expert will prepare a report which will include concrete proposals for improvements in the above-mentioned areas and a draft of a Convention curriculum to be implemented by Ukrainian counterparts during the next two years.

From 22 to 25 February 2011 the Council's expert, Ms Cristina Cojocaru, carried out an assessment visit on the training needs for the ongoing training of judges. In this connection, the project organised preparatory meetings with three research companies in order to explain the future process of collecting data for the training needs assessment, the workshop for national experts on collecting the necessary data for the assessment and putting the information into a statistical report.

On 23 February 2011 the project organised a round table on the provisions of the new Law of Ukraine on the Judiciary and the Status of Judges related to the training of judges. The new legislative development in the field of training of judges is the Law of Ukraine on the Amendments to the Law of Ukraine on the Judiciary and the Status of Judges regarding the special training of candidates for judicial positions, adopted by the Parliament of Ukraine on 3 February 2011. The background of this Law and further steps for its implementation were discussed. The Council of Europe experts, Ms Lieke van Zanten and Mr Wojciech Postulski, presented their opinions on the provisions of the new Law: the objectives, background, recommendations and conclusions. Ms Cristina Cojocaru made a presentation on the admission procedure to the National Institute of Justice of Moldova for future judges, including concrete references to the Moldovan legal framework.

From 22 to 25 February 2011, at the request of the High Administrative Court, the project held two training sessions for judges of administrative courts on the application of the European Convention on Human Rights and the case-law of the European Court of Human Rights. The training courses, aimed at judges from all administrative courts in Ukraine who had never been trained on these issues before,

provided information on the basic provisions of the European Convention on Human Rights and the functioning of the European Court of Human Rights and its case-law. As a result of this training, 80 judges from administrative courts have gained an insight into the provisions and principles of the ECHR, and their capacity to apply the latter in their daily work has been developed.

Multilateral

The European Programme for Human Rights Education for Legal Professionals – HELP II Programme

The European Programme for Human Rights Education for Legal Professionals – HELP II Programme (1 February 2010-31 January 2013) has continued to provide support to member states in implementing the European Convention on Human Rights (ECHR) at national level by assisting the national training institutions for judges and prosecutors in fully incorporating the ECHR into their curricula for initial and continuous training.

In November 2010 three Working Group Meetings were held in Strasbourg attended by representatives of national training institutions of the twelve beneficiary countries. The first Working Group focused on the development of Convention training materials in the national training institutions. Over the course of the day, lively discussion ensued as to how such training materials could be updated in accordance with the specific needs of the national training institutions. The Working Group also featured presentations of key experts from the Vienna District Court, Austria and the European Court of Human Rights in Strasbourg, France. A lively debate occurred during the second Working Group's Meeting on training-of-trainers. Representatives of the national training institutions discussed what selection criteria should be employed in selecting national trainers on the Convention. Additional feedback was provided on the problems encountered in their selecting, assessing and retaining. The Working Group concluded with a presentation from an expert of the Belgian Judicial Training Institute. The future of human rights training was at issue in the third Working Group's Meeting attended by those representatives of the national training institutions who were particularly interested in the advancement of E-Learning in their respective institutions. This high-tech and interactive Working Group featured presentations from experts sent from the Shell corporation and the National Examination Centre of the Republic of Macedonia.

The HELP website continues to form a focal point for the programme in 2011 and a number of updates have been made to it. Two new in-depth case studies on Article 11 (freedom of assembly and association) have been added. In addition, a brand new interactive e-learning course specifically designed for judges and prosecutors has been made available. The e-learning course focuses on police ill-treatment of suspects is presented in the light of the numerous violations of Article 3 of the Convention found by the European Court of Human Rights as a result of police brutality.

Further useful additions to the website including textbooks on human rights and criminal procedure intended to assist judges, lawyers and prosecutors take account of the many requirements of the Convention when interpreting and applying codes of criminal procedure and comparable legislation. Additionally, a practical guide on admissibility criteria prepared by the European Court of Human Rights has been made available. All materials continue to be accessible free of charge and available in several languages.

At present, substantial time and effort is being invested in the redesign and reformatting of the HELP website. The new website design will feature a more user-friendly and interactive "newspaper" style design which aims to enable users quicker and easier access to the websites resources. Additionally, more interactive features e.g. multimedia, forums and blogs relating to current human rights training issues will be made available as a result of the redesign. Efforts continue to be made to publicise the resources available on the HELP website and to expand its user base.

Workshop "Make Ethics Grow!"

On the occasion of the tenth anniversary of the European Code of Police Ethics (ECPE), an international workshop was held at the Council of Europe Headquarters in Strasbourg on 24 and 25 February 2011. The workshop was made possible by a generous contribution of the German government and organised by the Directorate General of Human Rights and Legal Affairs (Prisons and Police Unit).The ECPE was adopted by the Committee of Ministers in 2001 and the Directorate General of Human Rights and Legal affairs decided to renew efforts to disseminate its key principles among front line police officers. The Code provides guidelines to help police officers uphold the law in a way that serves the public in a democratic society. Participants were senior police officers, senior staff members of the police academies and of the Ministries of the Interior from Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Montenegro and Serbia as well as individual experts from Germany, England and Slovenia and representatives of the OSCE . They discussed good practices for the implementation of the European Code of Police Ethics on the ground. The experiences that were reflected in the discussions provide possible directions for further development of this instrument.

European Union/Council of Europe Joint Programme: "Combating ill-treatment and impunity"

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 in 2010/11, after the fact-finding/research phase in 2009.

The series of cascade seminars for judges and prosecutors continued in the regions of Ukraine. Thematic seminars for lawyers were organised in Armenia, Georgia and Moldova. Round-table discussion took place in Moldova as regards implementation of the recommendations of the Country Report.

These training events targeted legal professionals involved in dealing with ill-treatment in the course of pre-trial investigation. They highlighted the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the case-law of the European Court of Human Rights as regards effective investigation of ill-treatment. In total, in the course of 2010, 3 475 judges, prosecutors, lawyers, law enforcement officials and representatives of human rights NGOs were trained in Armenia, Azerbaijan, Georgia, Moldova and Ukraine, which are the beneficiary countries of the project. The training sessions have clearly developed and continue developing the legal professionals' capacity to implement European standards in their daily work. This points in the right direction, however, it does not offer a guarantee in itself of compliance. The latter will require not only training sessions but continuous efforts including at the highest political level to develop a policy of zero tolerance for ill-treatment.

In parallel, in all 5 beneficiary countries, the following key documents of the project were distributed to the key groups of legal professionals, NGOs, independent experts, educational institutions and libraries:

1. the country reports as regards effective investigation of ill-treatment;
2. the guidelines on European standards for effective investigation of ill-treatment;
3. the brochure on the rights of detainees and obligations of the law enforcement officials.

The Council of Europe has been following up on the implementation of the recommendations made by the programme's long-term consultants, Mr Eric Svanidze and Mr Jim Murdoch, in the above-mentioned country reports.

In Georgia, the Inter-Agency Co-ordination Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has adopted the Action Plan against torture which is based, among other sources, on the Council of Europe recommendations formulated in the Country Report on Georgia. In Ukraine, the recent Decree of the President "On the Action Plan to meet obligations and commitments of Ukraine which derive from its membership in the Council of Europe" included several sections directly relevant to combating ill-treatment and impunity:

- on implementation of the CPT recommendations;
- on information campaign as regards the need to use remand detention only in exceptional cases and give priority to alternative pre-emptive measures;

- on draft law on ratification of the European Convention on the Compensation of Victims of Violent Crimes;
- on the establishment of a national preventive mechanism according to Article 3 of the Optional Protocol to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- on information campaign among law enforcement officers to ensure compliance with the principle of presumption of innocence and procedural guarantees of the rights of detainees.

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

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Given the success of these t-shirts and in response to heavy demand, the Council of Europe has decided to make them available for wide distribution on a non-profit-making basis. They can be ordered directly on the site **http://www.wearyourrights.org/**







The European Court of Human Rights - Facts and figures (2011)

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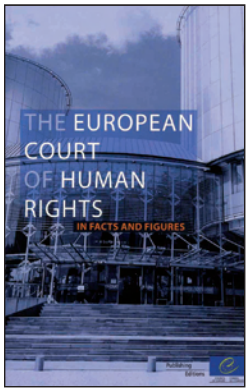

The importance of the European Court of Human Rights in the European judicial landscape and its influence well beyond Europe's borders are undeniable. For over 50 years the Court's rulings have resulted in numerous changes to domestic legislation and helped to strengthen the rule of law throughout the wider Europe.

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