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Action against violence

The Council of Europe Convention on preventing and combating violence against women and domestic violence was opened for signature at the Committee of Ministers' 121st session, held on 10 and 11 May 2011 in Istanbul. Pictured: Ahmet Davutoğlu, Turkish Foreign Minister, signs the treaty in the presence of the Secretary General and Deputy Secretary General of the Council of Europe.

Human rights information bulletin

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Treaties and conventions

Council of Europe Convention on preventing and combating violence against women and domestic violence

Background

On 7 April 2011, the Committee of Ministers of the Council of Europe adopted a landmark new Convention on preventing and combating violence against women and domestic violence.

This Convention is the first legally binding instrument in the world creating a comprehensive legal framework to prevent violence, to protect victims and to end the impunity of perpetrators. It defines and criminalises various forms of violence against women (including forced marriage, female genital mutilation, stalking, physical and psychological violence and sexual violence). It also foresees the establishment of an international group of independent experts to monitor its implementation at national level.

The Convention was opened for signature in Istanbul on 11 May 2011 and was signed by 13 countries.

Convention

The member States of the Council of Europe and the other signatories hereto,

Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);

Recalling the following recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence, Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms, Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, and other relevant recommendations;

Taking account of the growing body of case-law of the European Court of Human Rights which sets important standards in the field of violence against women;

Having regard to the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999) as well as General Recommendation No. 19 of the CEDAW Committee on violence against women, the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and the United Nations Convention on the Rights of Persons with Disabilities (2006);

Having regard to the Rome Statute of the International Criminal Court (2002);

Recalling the basic principles of international humanitarian law, and especially the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols I and II (1977) thereto;

Condemning all forms of violence against women and domestic violence;

Recognising that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women;

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called "honour" and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

Recognising the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

Recognising that women and girls are exposed to a higher risk of gender-based violence than men;

Recognising that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

Recognising that children are victims of domestic violence, including as witnesses of violence in the family;

Aspiring to create a Europe free from violence against women and domestic violence,

Have agreed as follows:

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 1 – Purposes of the Convention

1. The purposes of this Convention are to:

a. protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;

b. contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;

c. design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;

d. promote international co-operation with a view to eliminating violence against women and domestic violence;

e. provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

Article 2 – Scope of the Convention

1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.

2. Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.

3. This Convention shall apply in times of peace and in situations of armed conflict.

Article 3 – Definitions

For the purpose of this Convention:

a. "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b. "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

c. "gender" shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

d. "gender-based violence against women" shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

e. "victim" shall mean any natural person who is subject to the conduct specified in points a and b;

f. "women" includes girls under the age of 18.

Article 4 – Fundamental rights, equality and non-discrimination

1. Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.
2. Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

- embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
- prohibiting discrimination against women, including through the use of sanctions, where appropriate;
- abolishing laws and practices which discriminate against women.

3. The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.
4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

Article 5 – State obligations and due diligence

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Article 6 – Gender-sensitive policies

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.

Chapter II – Integrated policies and data collection

Article 7 – Comprehensive and co-ordinated policies

1. Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.
2. Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.
3. Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

Article 8 – Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

Article 9 – Non-governmental organisations and civil society

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil

society active in combating violence against women and establish effective co-operation with these organisations.

Article 10 – Co-ordinating body

1. Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.
2. Parties shall ensure that the bodies designated or established pursuant to this article receive information of a general nature on measures taken pursuant to Chapter VIII.
3. Parties shall ensure that the bodies designated or established pursuant to this article shall have the capacity to communicate directly and foster relations with their counterparts in other Parties.

Article 11 – Data collection and research

1. For the purpose of the implementation of this Convention, Parties shall undertake to:

a. collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;

b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.

2. Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.
3. Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.
4. Parties shall ensure that the information collected pursuant to this article is available to the public.

Chapter III – Prevention

Article 12 – General obligations

1. Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.
2. Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.
3. Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.
4. Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.
5. Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.
6. Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

Article 13 – Awareness-raising

1. Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.
2. Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

Article 14 – Education

1. Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles,

mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

2. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

Article 15 – Training of professionals

1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
2. Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Article 16 – Preventive intervention and treatment programmes

1. Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.
2. Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.
3. In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.

Article 17 – Participation of the private sector and the media

1. Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.
2. Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

Chapter IV – Protection and support

Article 18 – General obligations

1. Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.
2. Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.
3. Parties shall ensure that measures taken pursuant to this chapter shall:

- be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
- be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
- aim at avoiding secondary victimisation;
- aim at the empowerment and economic independence of women victims of violence;
- allow, where appropriate, for a range of protection and support services to be located on the same premises;
- address the specific needs of vulnerable persons, including child victims, and be made available to them.

4. The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.
5. Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

Article 19 – Information

Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

Article 20 – General support services

1. Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
2. Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

Article 21 – Assistance in individual/collective complaints

Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

Article 22 – Specialist support services

1. Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.
2. Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

Article 23 – Shelters

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out proactively to victims, especially women and their children.

Article 24 – Telephone helplines

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

Article 25 – Support for victims of sexual violence

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

Article 26 – Protection and support for child witnesses

1. Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.
2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

Article 27 – Reporting

Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.

Article 28 – Reporting by professionals

Parties shall take the necessary measures to ensure that the confidentiality rules

imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

Chapter V – Substantive law

Article 29 – Civil lawsuits and remedies

1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.
2. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 – Compensation

1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.
2. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.
3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

Article 31 – Custody, visitation rights and safety

1. Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
2. Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

Article 32 – Civil consequences of forced marriages

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Article 33 – Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 – Stalking

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

Article 35 – Physical violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.

Article 36 – Sexual violence, including rape

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

b. engaging in other non-consensual acts of a sexual nature with a person;

c. causing another person to engage in non-consensual acts of a sexual nature with a third person.

2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts com-

mitted against former or current spouses or partners as recognised by internal law.

Article 37 – Forced marriage

1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.
2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a. excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
b. coercing or procuring a woman to undergo any of the acts listed in point a;
c. inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

Article 39 – Forced abortion and forced sterilisation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a. performing an abortion on a woman without her prior and informed consent;
b. performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

Article 40 – Sexual harassment

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

Article 41 – Aiding or abetting and attempt

1. Parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38.a and 39 of this Convention.
2. Parties shall take the necessary legislative or other measures to establish as offences, when committed intentionally, attempts to commit the offences established in accordance with Articles 35, 36, 37, 38.a and 39 of this Convention.

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.
2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

Article 43 – Application of criminal offences

The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

Article 44 – Jurisdiction

1. Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

a. in their territory; or
b. on board a ship flying their flag; or
c. on board an aircraft registered under their laws; or
d. by one of their nationals; or
e. by a person who has her or his habitual residence in their territory.

2. Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence

established in accordance with this Convention where the offence is committed against one of their nationals or a person who has her or his habitual residence in their territory.

3. For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.

4. For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction as regards points d and e of paragraph 1 is not subordinated to the condition that the prosecution can only be initiated following the reporting by the victim of the offence or the laying of information by the State of the place where the offence was committed.

5. Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.

6. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.

7. Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 45 – Sanctions and measures

1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

2. Parties may adopt other measures in relation to perpetrators, such as:

- monitoring or supervision of convicted persons;
- withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;

b. the offence, or related offences, were committed repeatedly;

c. the offence was committed against a person made vulnerable by particular circumstances;

d. the offence was committed against or in the presence of a child;

e. the offence was committed by two or more people acting together;

f. the offence was preceded or accompanied by extreme levels of violence;

g. the offence was committed with the use or threat of a weapon;

h. the offence resulted in severe physical or psychological harm for the victim;

i. the perpetrator had previously been convicted of offences of a similar nature.

Article 47 – Sentences passed by another Party

Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence.

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

1. Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.
2. Parties shall take the necessary legislative or other measures to ensure that if the payment of a fine is ordered, due account shall be taken of the ability of the perpetrator to assume his or her financial obligations towards the victim.

Chapter VI – Investigation, prosecution, procedural law and protective measures

Article 49 – General obligations

1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.
2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

Article 50 – Immediate response, prevention and protection

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Article 51 – Risk assessment and risk management

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.
2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

Article 52 – Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 53 – Restraining or protection orders

1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.
2. Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;
- issued for a specified period or until modified or discharged;
- where necessary, issued on an *ex parte* basis which has immediate effect;
- available irrespective of, or in addition to, other legal proceedings;
- allowed to be introduced in subsequent legal proceedings.

3. Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Article 54 – Investigations and evidence

Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.

Article 55 – Ex parte and ex officio proceedings

1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.
2. Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

Article 56 – Measures of protection

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
b. ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;
c. informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;
d. enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
e. providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
f. ensuring that measures may be adopted to protect the privacy and the image of the victim;
g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
h. providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
i. enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.

2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Article 57 – Legal aid

Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

Article 58 – Statute of limitation

Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

Chapter VII – Migration and asylum

Article 59 – Residence status

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:

a. where the competent authority considers that their stay is necessary owing to their personal situation;

b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

Article 60 – Gender-based asylum claims

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

Article 61 – Non-refoulement

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

Chapter VIII – International co-operation

Article 62 – General principles

1. Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

a. preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;

b. protecting and providing assistance to victims;

c. investigations or proceedings concerning the offences established in accordance with this Convention;

d. enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.

2. Parties shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention and committed in the territory

of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.

3. If a Party that makes mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by another Party to this Convention conditional on the existence of a treaty receives a request for such legal co-operation from a Party with which it has not concluded such a treaty, it may consider this Convention to be the legal basis for mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by the other Party in respect of the offences established in accordance with this Convention.
4. Parties shall endeavour to integrate, where appropriate, the prevention and the fight against violence against women and domestic violence in assistance programmes for development provided for the benefit of third States, including by entering into bilateral and multilateral agreements with third States with a view to facilitating the protection of victims in accordance with Article 18, paragraph 5.

Article 63 – Measures relating to persons at risk

When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence referred to in Articles 36, 37, 38 and 39 of this Convention on the territory of another Party, the Party that has the information is encouraged to transmit it without delay to the latter for the purpose of ensuring that appropriate protection measures are taken. Where applicable, this information shall include details on existing protection provisions for the benefit of the person at risk.

Article 64 – Information

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing criminal offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such criminal offences or that it might lead to a request for co-operation by that Party under this chapter.
3. A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.

Article 65 – Data Protection

Personal data shall be stored and used pursuant to the obligations undertaken by the Parties under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

Chapter IX – Monitoring mechanism

Article 66 – Group of experts on action against violence against women and domestic violence

1. The Group of experts on action against violence against women and domestic violence (hereinafter referred to as "GREVIO") shall monitor the implementation of this Convention by the Parties.
2. GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.
3. The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.
4. The election of the members of GREVIO shall be based on the following principles:

a. they shall be chosen according to a transparent procedure from among persons of

high moral character, known for their recognised competence in the fields of human rights, gender equality, violence against women and domestic violence, or assistance to and protection of victims, or having demonstrated professional experience in the areas covered by this Convention;

b. no two members of GREVIO may be nationals of the same State;

c. they should represent the main legal systems;

d. they should represent relevant actors and agencies in the field of violence against women and domestic violence;

e. they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.

5. The election procedure of the members of GREVIO shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.

6. GREVIO shall adopt its own rules of procedure.

7. Members of GREVIO, and other members of delegations carrying out the country visits as set forth in Article 68, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.

Article 67 – Committee of the Parties

1. The Committee of the Parties shall be composed of the representatives of the Parties to the Convention.

2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GREVIO. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.

3. The Committee of the Parties shall adopt its own rules of procedure.

Article 68 – Procedure

1. Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREVIO, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREVIO.

2. GREVIO shall consider the report submitted in accordance with paragraph 1 with the representatives of the Party concerned.

3. Subsequent evaluation procedures shall be divided into rounds, the length of which is determined by GREVIO. At the beginning of each round GREVIO shall select the specific provisions on which the evaluation procedure shall be based and send out a questionnaire.

4. GREVIO shall define the appropriate means to carry out this monitoring procedure. It may in particular adopt a questionnaire for each evaluation round, which shall serve as a basis for the evaluation procedure of the implementation by the Parties. This questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GREVIO.

5. GREVIO may receive information on the implementation of the Convention from non-governmental organisations and civil society, as well as from national institutions for the protection of human rights.

6. GREVIO shall take due consideration of the existing information available from other regional and international instruments and bodies in areas falling within the scope of this Convention.

7. When adopting a questionnaire for each evaluation round, GREVIO shall take due consideration of the existing data collection and research in the Parties as referred to in Article 11 of this Convention.

8. GREVIO may receive information on the implementation of the Convention from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, as well as those established under other international instruments. Complaints presented to these bodies and their outcome will be made available to GREVIO.

9. GREVIO may subsidiarily organise, in cooperation with the national authorities and with the assistance of independent national experts, country visits, if the information gained is insufficient or in cases provided for in paragraph 14. During these visits, GREVIO may be assisted by specialists in specific fields.

10. GREVIO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREVIO when adopting its report.
11. On the basis of all the information received and the comments by the Parties, GREVIO shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GREVIO shall be made public as from their adoption, together with eventual comments by the Party concerned.
12. Without prejudice to the procedure of paragraphs 1 to 8, the Committee of the Parties may adopt, on the basis of the report and conclusions of GREVIO, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GREVIO, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of this Convention.
13. If GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of violence against women.
14. Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GREVIO may designate one or more of its members to conduct an inquiry and to report urgently to GREVIO. Where warranted and with the consent of the Party, the inquiry may include a visit to its territory.
15. After examining the findings of the inquiry referred to in paragraph 14, GREVIO shall transmit these findings to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.

Article 69 – General recommendations

GREVIO may adopt, where appropriate, general recommendations on the implementation of this Convention.

Article 70 – Parliamentary involvement in monitoring

1. National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.
2. Parties shall submit the reports of GREVIO to their national parliaments.
3. The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.

Chapter X – Relationship with other international instruments

Article 71 – Relationship with other international instruments

1. This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.
2. The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Chapter XI – Amendments to the Convention

Article 72 – Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 75, and any State invited to accede to this Convention in accordance with the provisions of Article 76.

2. The Committee of Ministers of the Council of Europe shall consider the proposed amendment and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.
3. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 2 shall be forwarded to the Parties for acceptance.
4. Any amendment adopted in accordance with paragraph 2 shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General of their acceptance.

Chapter XII – Final clauses

Article 73 – Effects of this Convention

The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence.

Article 74 – Dispute settlement

1. The Parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention shall first seek to resolve it by means of negotiation, conciliation, arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.
2. The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the Parties in dispute if they should so agree.

Article 75 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.
4. In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 76 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 77 – Territorial application

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the

expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 78 – Reservations

1. No reservation may be made in respect of any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3.
2. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in:

- Article 30, paragraph 2;
- Article 44, paragraphs 1.e, 3 and 4;
- Article 55, paragraph 1 in respect of Article 35 regarding minor offences;
- Article 58 in respect of Articles 37, 38 and 39;
- Article 59.

3. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 and 34.
4. Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

Article 79 – Validity and review of reservations

1. Reservations referred to in Article 78, paragraphs 2 and 3, shall be valid for a period of five years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservations may be renewed for periods of the same duration.
2. Eighteen months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before the expiry, the Party shall notify the Secretary General that it is upholding, amending or withdrawing its reservation. In the absence of a notification by the Party concerned, the Secretariat General shall inform that Party that its reservation is considered to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.
3. If a Party makes a reservation in conformity with Article 78, paragraphs 2 and 3, it shall provide, before its renewal or upon request, an explanation to GREVIO, on the grounds justifying its continuance.

Article 80 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 81 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory, any Party, the European Union, and any State invited to accede to this Convention of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance, approval or accession;
c. any date of entry into force of this Convention in accordance with Articles 75 and 76;
d. any amendment adopted in accordance with Article 72 and the date on which such an amendment enters into force;
e. any reservation and withdrawal of reservation made in pursuance of Article 78;

f. any denunciation made in pursuance of the provisions of Article 80;
g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Istanbul, 11 May 2011, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Union and to any State invited to accede to this Convention.

"It starts with screams but must never end in silence."
Image and slogan used in the Council of Europe's anti-violence campaign.

Signatures and ratifications

Convention on the avoidance of statelessness in relation to State succession

The Convention was accepted by the Netherlands on 30 June 2011.

Additional Protocol to the Criminal Law Convention on Corruption

Finland accepted the Additional Protocol on 24 June 2011.

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

The Additional Protocol was ratified by Germany on 10 June 2011 and accepted by Finland on 20 May 2011.

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

Finland accepted the Convention on 9 June 2011. Romania ratified the Convention on 17 May 2011.

Third Additional Protocol to the European Convention on Extradition

Serbia ratified the Third Additional Protocol on 1 June 2011.

European Convention on Mutual Assistance in Criminal Matters, the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

Chile acceded to this Convention and its Additional Protocols on 30 May 2011.

Convention on Cybercrime

The United Kingdom ratified the Convention on Cybercrime on 25 May 2011.

European Social Charter (Revised)

Austria ratified the European Social Charter (Revised) on 20 May 2011.

Council of Europe Convention on preventing and combating violence against women and domestic violence

Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Montenegro, Portugal, Slovakia, Spain, Sweden and Turkey have signed the Council of Europe Convention on preventing and combating violence against women and domestic violence on 11 May 2011.

European Convention on the Adoption of Children (Revised)

Ukraine ratified the Convention on 4 May 2011.

Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes

Moldova ratified the Additional Protocol on 29 April 2011.

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of

Personal Data, regarding supervisory authorities and transborder data flows

Armenia signed the Convention and the Additional Protocol on 8 April 2011.

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine

Albania signed and ratified the Convention on 30 March 2011.

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

France signed the Convention on 23 March 2011.

Council of Europe Convention on the Prevention of Terrorism

The Convention was ratified by Hungary on 21 March 2011 and by Germany on 10 June 2011.

Internet: http://conventions.coe.int/

European Court of Human Rights

The judgments summarised below constitute a small selection of those delivered by the Court. More extensive information can be found in the HUDOC database of the case-law of the European Convention on Human Rights.

The summaries of cases presented here are produced for the purposes of this *Bulletin*, and do not engage the responsibility of the Court.

The procedure of joint examination of admissibility and merits under Article 29 §3 of the Convention is now used frequently. Separate admissibility decisions are only adopted in more complex cases. This expedites the processing of applications, as one procedural step is done away with.

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

- 475 (367) judgments delivered
- 463 (349) declared admissible, of which 458 (346) in a judgment on the merits and 5 (3) in a separate decision
- 13 880 (13 462) applications declared inadmissible
- 1 227 (900) applications struck off the list

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

Internet: HUDOC database: http://hudoc.echr.coe.int/

Grand Chamber judgments

The Grand Chamber of 17 judges deals with cases that raise a serious question of interpretation or application of the Convention, or a serious issue of general importance. A chamber may relinquish jurisdiction in a case to the Grand Chamber at any stage in the procedure before judgment, as long as both parties consent. Where a judgment has been delivered in a case, either party may, within a period of three months, request referral of the case to the Grand Chamber. Where a request is granted, the whole case is reheard.

Lautsi and Others v. Italy

Crucifixes in Italian State-school classrooms: the Court finds no violation
The Court held, by a majority (15 votes to two), that there had been: no violation of Article 2 of Protocol No. 1 (right to education).

Judgment of 18 March 2011. The case concerned the presence of crucifixes in State-school classrooms in Italy, which, according to the applicants, was incompatible with the obligation on the State, in the exercise of the functions which it assumed in relation to education and to teaching, to respect the right of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions.

Principal facts

The applicants are Italian nationals who were born in 1957, 1988 and 1990 respectively. The first applicant, Soile Lautsi, and her two sons, Dataico and Sami Albertin[1], live in Italy. In the school year 2001-2002 Dataico and Sami Albertin attended the Istituto comprensivo statale Vittorino da Feltre, a State school in Abano Terme. A crucifix was fixed to the wall in each of the school's classrooms. On 22 April 2002, during a meeting of the school's governors, Ms Lautsi's husband raised the question of the presence of religious symbols in the classrooms, particularly mentioning cru-

1. "the second and third applicants": in her application the first applicant stated that she was acting in her own name and on behalf of her children Dataico and Sami Albertin, then minors. The latter, who have subsequently come of age, confirmed that they wished to remain applicants.

cifixes, and asked whether they ought to be removed. Following a decision of the school's governors to keep religious symbols in classrooms, Ms Lautsi brought proceedings in the Veneto Administrative Court on 23 July 2002, complaining of, among other things, an infringement of the principle of secularism.

On 30 October 2003 the Minister of Education, Universities and Research – who in October 2002 had adopted a directive instructing school governors to ensure the presence of crucifixes in classrooms – joined the proceedings brought by Ms Lautsi. He argued that her application was ill-founded because the presence of crucifixes in State-school classrooms was based on two royal decrees of 1924 and 1928.[2]

In 2004 the Constitutional Court declared the question as to constitutionality, which had been referred to it by the Administrative Court, manifestly inadmissible on the ground that it was directed towards texts – the relevant provisions of the two royal decrees – which, not having the status of law, but only that of regulations, could not form the subject of a review of constitutionality.

On 17 March 2005 the Administrative Court dismissed the application lodged by Ms Lautsi. It held that the provisions of the royal decrees in question were still in force and that the presence of crucifixes in State-school classrooms did not breach the principle of the secular nature of the State, which was "part of the legal heritage of Europe and western democracies". The court took the view, in particular, that the crucifix was a symbol of Christianity in general rather than of Catholicism alone, so that it served as a point of reference for other creeds. It went on to say that the crucifix was a historical and cultural symbol, possessing an "identity-linked value" for the Italian people, and that it should also be considered a symbol of a value system underpinning the Italian Constitution.

Ms Lautsi appealed to the *Consiglio di Stato*, which gave judgment on 13 April 2006 confirming that the presence of crucifixes in State-school classrooms had its legal basis in the royal decrees of 1924 and 1928 and, regard being had to the meaning that should be attached to the crucifix, was compatible with the principle of secularism. In so far as it symbolised civil values which characterised Italian civilisation – tolerance, affirmation of one's rights, the autonomy of one's moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination – the crucifix in classrooms could fulfil, in a "secular" perspective, a highly educational function.

Complaints and procedure

Relying on Article 2 of Protocol No. 1 (right to education) and Article 9 (freedom of thought, conscience and religion), the applicants complained of the presence of crucifixes in the classrooms of the State school formerly attended by Dataico and Sami Albertin.

Relying on Article 14 (prohibition of discrimination), they submitted that all three of them, not being Catholics, had suffered a discriminatory difference in treatment in relation to Catholic parents and their children.

In accordance with Article 36§2 of the European Convention on Human Rights and Rule 44§2 of the Rules of the European Court of Human Rights, leave to intervene in the written procedure[3] was given to

- 33 members of the European Parliament acting collectively;
- the following non-governmental organisations: Greek Helsinki Monitor[4], *Associazione nazionale del libero Pensiero*, European Centre for Law and Justice, Eurojuris, acting collectively; International Committee of Jurists, Interights and Human Rights Watch, acting collectively; *Zentralkomitee der deutschen Katholiken: Semaines sociales de France* and *Associazioni cristiane lavoratori italiani*.
- the Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, Monaco, Romania and the Republic of San Marino.

The Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta and the Republic of San Marino were also given leave to intervene collectively in the oral procedure.

Decision of the Court

Article 2 of Protocol No. 1

It could be seen from the Court's case-law[5] that the obligation on the member States of the Council of Europe to respect the religious and philosophical convictions of parents did not apply only to the content of teaching and the way it was provided; it bound them "in the exercise" of all the "functions" which they assumed in relation to education and teaching. That included the organisation of the school environment where domestic law attributed that function to the public authorities. The decision whether crucifixes should be present in State-school classrooms formed part of the functions assumed by the Italian State and, accordingly, fell within the scope of Article 2 of Protocol No. 1. That provision conferred on the State the obligation, in the exercise of the functions they assumed in relation to education and teaching, to respect the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions.

The Court found that, while the crucifix was above all a religious symbol, there was no evidence before the Court that the display of such a symbol on classroom walls might have an influence on pupils. Furthermore, whilst it was nonetheless understandable that the first applicant might see in the display of crucifixes in the classrooms of the State school formerly attended by her children a lack of respect on the State's part for her right to ensure their education and teaching in conformity with her own philosophical convictions, her subjective perception was not sufficient to establish a breach of Article 2 of Protocol No. 1.

The Italian Government submitted that the presence of crucifixes in State-school classrooms now corre-

2. Article 118 of royal decree no. 965 of 30 April 1924 (internal regulations of middle schools) and Article 119 of royal decree no. 1297 of 26 April 1928 (approval of the general regulations governing primary education).
3. Observations of third-party interveners: see §§ 47 to 56 of the judgment.
4. Previously intervened before the Chamber.
5. Judgments of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* of 7 December 1976 (§ 50); *Valsamis v. Greece* of 18 December 1996 (§ 27); *Hasan and Eylem Zengin v. Turkey* of 9 October 2007 (§ 49); and *Folgerø and Others v. Norway*, Grand Chamber judgment of 29 June 2007 (§ 84)

sponded to a tradition which they considered it important to perpetuate. They added that, beyond its religious meaning, the crucifix symbolised the principles and values which formed the foundation of democracy and western civilisation, and that its presence in classrooms was justifiable on that account.
With regard to the first point, the Court took the view that, while the decision whether or not to perpetuate a tradition fell in principle within the margin of appreciation of the member States of the Council of Europe, the reference to a tradition could not relieve them of their obligation to respect the rights and freedoms enshrined in the Convention and its Protocols. Regarding the second point, noting that the Italian *Consiglio di Stato* and the Court of Cassation had diverging views on the meaning of the crucifix and that the Constitutional Court had not given a ruling, the Court considered that it was not for it to take a position regarding a domestic debate among domestic courts.

The fact remained that the States enjoyed a margin of appreciation in their efforts to reconcile the exercise of the functions they assumed in relation to education and teaching with respect for the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. The Court therefore had a duty in principle to respect the States' decisions in those matters, including the place they accorded to religion, provided that those decisions did not lead to a form of indoctrination. Accordingly, the decision whether crucifixes should be present in classrooms was, in principle, a matter falling within the margin of appreciation of the State, particularly where there was no European consensus.[6] That margin of appreciation, however, went hand in hand with supervision by the Court, whose task was to satisfy itself that the choice did not amount to a form of indoctrination.

In that connection it observed that by prescribing the presence of crucifixes in State-school classrooms the Italian regulations conferred on the country's majority religion preponderant visibility in the school environment. In its view, that was not in itself sufficient, however, to denote a process of indoctrination on Italy's part and establish a breach of the requirements of Article 2 of Protocol No. 1. It referred on that point to its earlier case-law in which it had held[7] that having regard to the preponderance of one religion throughout the history of a country the fact that the school curriculum gave it greater prominence than other religions could not in itself be viewed as a process of indoctrination. It observed that a crucifix on a wall was an essentially passive symbol whose influence on pupils was not comparable to that of didactic speech or participation in religious activities.

The Court also considered that the effects of the greater visibility which the presence of the crucifix gave to Christianity in schools needed to be further placed in perspective by consideration of the following points: the presence of crucifixes was not associated with compulsory teaching about Christianity; according to the Government, Italy opened up the school environment to other religions (pupils were authorised to wear symbols or apparel having a religious connotation; non-majority religious practices were taken into account; optional religious education could be organised in schools for all recognised religious creeds; the end of Ramadan was often celebrated in schools, and so on). There was nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions. In addition, the applicants had not asserted that the presence of the crucifix in classrooms had encouraged the development of teaching practices with a proselytising tendency, or claimed that Dataico and Sami Albertin had ever experienced a tendentious reference to the crucufix by a teacher. Lastly, the Court noted that Ms Lautsi had retained in full her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions.

The Court concluded that, in deciding to keep crucifixes in the classrooms of the State school attended by Ms Lautsi's children, the authorities had acted within the limits of the margin of appreciation left to Italy in the context of its obligation to respect, in the exercise of the functions it assumed in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Accordingly, there had been no violation of Article 2 of Protocol No. 1 in respect of the first applicant. The Court further considered that no separate issue arose under Article 9.

The Court came to the same conclusion regarding the case of the second and third applicants.

Article 14

In its Chamber judgment the Court had held that, regard being had to its conclusion that there had been a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention, there was no cause to examine the case under Article 14.

After reiterating that Article 14 of the Convention had no independent existence, since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols, the Grand Chamber held that, proceeding on the assumption that the applicants wished to complain of discrimination regarding their enjoyment of the rights guaranteed by Article 9 of the Convention and Article 2 of Protocol No. 1, it did not see in those complaints any issue distinct from those it had already determined under Article 2 of Protocol No. 1. There was accordingly no cause to examine that part of the application.

Separate opinions

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

6. §§ 26 to 28 of the judgment.
7. *Folgerø and Others v. Norway*, Grand Chamber judgment of 29 June 2007, and *Hasan and Eylem Zengin v. Turkey*, Chamber judgment of 9 October 2007

Giuliani and Gaggio v. Italy

Judgment of 24 March 2011. The case concerned the death of the applicants' son and brother, Carlo Giuliani, during clashes at the G8 summit held in Genoa from 19 to 21 July 2001.

Death of a demonstrator at the 2001 G8 summit in Genoa: no violation.
The Court held:
– that there had been no violation of Article 2 (right to life) with regard to the use of lethal force;
– that there had been no violation of Article 2 with regard to the domestic legislative framework governing the use of lethal force or with regard to the weapons issued to the law-enforcement agencies at the G8 summit in Genoa;
– that there had been no violation of Article 2 with regard to the organisation and planning of the policing operations at the G8 summit in Genoa;
– that there had been no violation of Article 2 with regard to the alleged lack of an effective investigation into the death;
– that it was not necessary to examine the case under Article 3 (prohibition of inhuman or degrading treatment) or Article 6 (right to a fair hearing);
– that there had been no violation of Article 13 (right to an effective remedy);
– that there had been no violation of Article 38 (adversarial examination of the case).

Principal facts

The applicants, Giuliano Giuliani, his wife Adelaide Gaggio and their daughter Elena Giuliani, are Italian nationals who were born in 1938, 1944 and 1972 respectively and live in Genoa and Milan (Italy). They are the parents and sister of Carlo Giuliani.

On 20 July, during an authorised demonstration, extremely violent clashes broke out between anti-globalisation activists and the law-enforcement agencies (18 000 officers stationed in Genoa for the G8 summit). At around 5 p.m., under pressure from demonstrators, a group of *carabinieri* – who had withdrawn in order to rest, regroup and allow injured officers to board jeeps – retreated on foot, leaving two of the jeeps stranded. One of the vehicles, with three *carabinieri* on board, remained hemmed in on Piazza Alimonda. It was surrounded and violently attacked by a group of demonstrators, some of them armed with crowbars, pickaxes, stones and other blunt instruments. One of the *carabinieri*, who had been injured, drew his firearm and, after giving a warning, fired two shots outside the vehicle. Carlo Giuliani, who was wearing a balaclava and was playing an active part in the attack, was fatally wounded by a bullet to the face. In an attempt to move the vehicle away, the driver drove twice over the young man's body as he lay dying. When the demonstrators had been dispersed, a doctor arrived at the scene and pronounced Carlo Giuliani dead.

An investigation was opened immediately by the Italian authorities. Criminal proceedings on charges of intentional homicide were instituted against the officer who had fired the shots and the driver of the vehicle. An autopsy performed within 24 hours of the death revealed that Carlo Giuliani had been killed by the shot and not by the attempts to drive the vehicle away. The forensic expert found that the shot had been fired at a downward angle.

At the public prosecutor's request three expert reports were prepared. In the third report, submitted in June 2002, a panel of four experts (one of whom had written an article in a specialist journal supporting the view that the *carabiniere* had fired the shots in self-defence) deplored the fact that it had been impossible to examine the body since the public prosecutor had in the meantime authorised the family to have it cremated. The experts nevertheless concluded that the *carabiniere* had fired upwards but that the bullet had been deflected by a stone thrown at the vehicle by another demonstrator.

On 5 May 2003 the investigating judge discontinued the proceedings. She found that the driver of the vehicle, whose actions had resulted only in bruising, could not be held responsible for the death as he had been unable to see Carlo Giuliani because of the confusion prevailing around the vehicle. As to the officer who had fired the fatal shot, the judge took the view that he had fired into the air without intent to kill and had in any case acted in self-defence, in view of the violent attack to which he and his colleagues were being subjected.

Complaints

Relying on Article 2, the applicants alleged that Carlo Giuliani's death had been caused by excessive use of force, that there had been shortcomings in the domestic legislative framework (as a result of which the adverse consequences of the use of force had not been reduced as far as possible), that the organisation of the operations to maintain and restore public order had been defective and, finally, that there had been no effective investigation into Carlo Giuliani's death. Relying on Article 3, they further argued that the failure to render immediate assistance to Carlo Giuliani after he had fallen down, and the fact that a jeep had driven over his body, had contributed to his death and amounted to inhuman treatment. They also complained under Articles 6 and 13 that the investigation had been ineffective. Lastly, they alleged that the Italian Government had acted in breach of Article 38 by failing to provide information to the Court or submitting inaccurate information.

Decision of the Court

Article 2 (right to life)

Use of lethal force

The Court – which had had the opportunity to view video footage and photographs of the incident giving rise to the case – noted that the officer who had fired the shots had been confronted with a group of demonstrators conducting an unlawful and very violent attack on the vehicle in which he was stranded. In the Court's view, he had acted in the honest belief that his own life and physical integrity and those of his colleagues were in danger from the attack to which they were being subjected. Moreover, it was clear from the evidence at the Court's disposal that the *carabiniere* had given a warning while holding his weapon in a clearly visible manner, and that he had fired the shots only when the attack had not ceased. In those circumstances, the use of a potentially lethal means of defence such as the firing of shots had been justified.

It was not necessary for the Court to examine the well-foundedness of the theory – disputed by the applicants – that the bullet had been deflected. The Court simply observed (on the basis of the conclusions of the Genoa investigating judge and the images viewed by it) that the officer could only fire, in order to defend himself, into the narrow space between the spare wheel and the roof of the jeep. The fact that a shot fired into that space risked causing injury to one of the assailants, or even killing him, as had sadly been the case, did not in itself mean that the defensive action had been excessive or disproportionate.

The Court therefore concluded that the use of force by the *carabiniere* concerned had been absolutely necessary within the meaning of the Convention and that there had been no violation of Article 2 in that regard.

Whether Italy had taken the necessary legislative, administrative and regulatory measures to reduce as far as possible the adverse

consequences of the use of force.

The Court noted first of all that the wording of the provisions governing the use of force in the applicants' case (Articles 52 and 53 of the Criminal Code), although not identical to that of Article 2 of the Convention, nevertheless echoed it, and that the difference in wording could be overcome by the interpretation of the domestic courts (the Court referred in that connection to the relevant domestic case-law).

It went on to examine the argument that the law-enforcement agencies should have been issued with non-lethal weapons, but found that such discussions were not relevant in the applicants' case, in which the death had occurred during a sudden and violent attack which posed an imminent and serious threat to the lives of three *carabinieri*. There was no basis in the Convention for concluding that law-enforcement officers should not be entitled to have lethal weapons at their disposal to counter such attacks.

Lastly, the Court noted the applicants' allegation that some *carabinieri* had used non-regulation weapons (metal batons) against the rioters, but saw no connection with the death of Carlo Giuliani.

Accordingly, there had been no violation of Article 2 with regard to that complaint.

Organisation of the public-order operations[8]

The Court observed that the attack on the jeep had taken place at a time of relative calm following a long day of clashes, when the detachment of *carabinieri* had withdrawn in order to rest, regroup and allow the injured officers to board the jeeps: it could not have been predicted that an attack of such violence would take place in that precise location and in those circumstances. Furthermore, the Government had deployed 18 000 officers, who either belonged to specialised units or (like the *carabiniere* who fired the shot which struck Carlo Giuliani) had received special training. Likewise, the Court did not criticise the decisions taken by the *carabinieri* immediately prior to the attack on the jeep (such as allowing the injured officers to take cover in non-armoured vehicles). Finally, there was no evidence that the assistance rendered to Carlo Giuliani had been inadequate or delayed or that the jeep had driven over his body intentionally; in any event, as was clear from the autopsy report, the damage to the brain had been so severe that it resulted in death within a few minutes.

Accordingly, the Italian authorities had not failed in their obligation to do all that could reasonably be expected of them to provide the level of safeguards required during operations potentially involving the use of lethal force. The Court found that there had been no violation of Article 2 in this respect either.

Alleged lack of an effective investigation into the death

The information obtained by the domestic investigation had provided the Court with sufficient evidence to satisfy it that Italy's responsibility could not be engaged in any respect in connection with the death of Carlo Giuliani (see above). The investigation had therefore been sufficiently effective to enable it to be determined whether the use of lethal force had been justified and whether the organisation and planning of the policing operations had been compatible with the obligation to protect life.

The Court nevertheless had to examine three questions.

Firstly, it had to determine whether the applicants had had sufficient access to the investigation to "safeguard their legitimate interests". In that connection it noted in particular that, although the applicants had not been able to apply to join the proceedings as civil parties, Italian law had afforded them, in their capacity as injured parties, rights and powers which they had exercised during the investigation. While it was true that they had been unable to appoint an expert of their choosing and secure the latter's attendance at the forensic examinations, Article 2 did not require that the victim's relatives be afforded that possibility. Furthermore, the applicants had not furnished evidence of serious failings in the autopsy and, in any case, the cause of Carlo Giuliani's death (the bullet fired by the *carabiniere*) was clear. Admittedly, the parties disagreed as to whether the bullet had been deflected by another object. However, the Court pointed out that this issue was not crucial as the use of force would have been justified even if that theory had been dismissed. The Court further observed that the authorisation to cremate Carlo Giuliani's body, which made any further forensic tests impossible, had been granted at the applicants' request.

Secondly, the Court had to be satisfied that those in charge of the investigation had been independent from those implicated in the events. The main issue in that regard concerned the appointment in the course of the domestic investigation of an expert who had preconceived ideas, having published an article in which he openly defended the view that the officer concerned had acted in self-defence. However, the expert in question had been just one member of a four-person team, who had been appointed by the prosecuting authorities (and was therefore not acting as a neutral and impartial auxiliary of the judge), and whose involvement had been largely confined to carrying out technical tests for the purposes of the ballistics report. Accordingly, his presence was not capable in itself of compromising the impartiality of the investigation.

Lastly, the Court had to determine whether the proceedings had been conducted with the promptness required by the Court's case-law. As the domestic investigation had lasted for approximately one year and four months after Carlo Giuliani's death, that requirement had been satisfied.

The Court concluded that there had likewise been no violation of Article 2 with regard to the investigation.

Article 3 (prohibition of inhuman or degrading treatment)

As the Court had already examined the facts on which the applicants based this complaint from the standpoint of Article 2, there was no reason to re-examine them under Article 3.

Article 6 (right to a fair hearing) and Article 13 (right to an effective remedy)

The applicants argued that, in view of the inconsistent and incomplete findings of the investigation, the case had required more detailed

8. The Court stressed that the present application did not concern the organisation of the public-order operations during the G8 as a whole, but was confined to examining whether, in the organisation and planning of that event, failings had occurred which could be linked directly to the death of Carlo Giuliani.

examination within a framework of genuine adversarial proceedings. In the Court's view, that issue fell to be examined under Article 13 alone.[9] It pointed to its finding that an effective domestic investigation compatible with Article 2 had been conducted into the circumstances of Carlo Giuliani's death. That investigation had been capable of leading to the identification and punishment of those responsible. Although the applicants had not been able to apply to join the proceedings as civil parties (since the criminal judge concluded that no punishable offence had been committed), they had nevertheless been able to exercise the powers afforded to injured parties under Italian law. Finally, it had been open to them to bring a civil action for compensation.

The applicants had therefore had effective remedies available to them in respect of their complaint under Article 2. Accordingly, there had been no violation of Article 13.

Article 38 (adversarial examination of the case)

The Court took the view that, even though the information provided to it by the Italian authorities was not exhaustive on some points, the incomplete nature of that information had not prevented it from examining the case.

There had therefore been no violation of Article 38.

Separate opinions

Three joint partly dissenting opinions are annexed to the judgment (joint partly dissenting opinion of Judges Rozakis, Tulkens, Zupančič, Gyulumyan, Ziemele, Kalaydjieva and Karakaş; joint partly dissenting opinion of Judges Tulkens, Zupančič, Gyulumyan and Karakaş; and joint partly dissenting opinion of Judges Tulkens, Zupančič, Ziemele and Kalaydjieva).

Sabeh El Leil v. France

Judgment of 29 June 2011. The case concerned the complaint of an ex-employee of the Kuwaiti embassy in Paris, that he had been deprived of access to a court to sue his employer for having dismissed him from his job in 2000.

An accountant, fired from an embassy in Paris, could not contest his dismissal, in breach of the Convention.
The Court held, unanimously, that there had been: aviolation of Article 6§1 (right of access to a court).

Principal facts

The applicant, Farouk Sabeh El Leil, is a French national. He was employed as an accountant in the Kuwaiti embassy in Paris (the Embassy) as of 25 August 1980 and for an indefinite duration. He was promoted to head accountant in 1985.

In March 2000, the Embassy terminated Mr Sabeh El Leil's contract on economic grounds, citing in particular the restructuring of all Embassy's departments. Mr Sabeh El Leil appealed before the Paris Employment Tribunal, which awarded him, in a November 2000 judgment, damages equivalent to 82 224.60 euros. Disagreeing with the amount of the award, Mr Sabeh El Leil appealed. The Paris Court of Appeals set aside the judgment awarding compensation. In particular, it found Mr Sabeh El Leil's claim inadmissible because the State of Kuwait enjoyed jurisdictional immunity on the basis of which it was not subject to court actions against it in France.

Complaints

Mr Sabeh El Leil complained that he had been deprived of his right of access to a court in violation of Article 6§1 of the Convention, as a result of the French courts' finding that his employer enjoyed jurisdictional immunity.

Decision of the Court

Admissibility

The Court recalled that States had to be given an opportunity to redress human rights breaches at home before having to defend their position before an international court. Mr Sabeh El Leil had argued before the French courts that the jurisdictional immunity of the State of Kuwait could not be triggered, because he had not officially acted on behalf of the State of Kuwait or exercised a function in the interest of the public diplomatic service. Consequently, Mr Sabeh El Leil had raised before the domestic courts the substance of his complaint about not having had access to a court, and therefore that complaint was admissible before the Court too.

Access to a court (Article 6§1)

Referring to its previous case-law, the Court noted that Mr Sabeh El Leil had also requested compensation for dismissal without genuine or serious cause and that his duties in the embassy could not justify restrictions on his access to a court based on objective grounds in the State's interest. Article 6 § 1 was thus applicable in his case.

The Court then observed that the concept of State immunity stemmed from international law which aimed at promoting good relations between States through respect of the other State's sovereignty. However, the application of absolute State immunity had been clearly weakened for a number of years, in particular with the adoption of the 2004 UN Convention on Jurisdictional Immunities of States and their Property. That convention had created a significant exception in respect of State immunity through the introduction of the principle that immunity did not apply to employment contracts between States and staff of its diplomatic missions abroad, except in a limited number of situations to which the case of Mr Sabeh El Leil did not belong. The applicant, who had not been a diplomatic or consular agent of Kuwait, nor a national of that State, had not been covered by any of the exceptions enumerated in the 2004 Convention. In particular, he had not been employed to officially act on behalf of the State of Kuwait, and it had not been established that there was any risk of interference with the security interests of the State of Kuwait.

9. Article 6 applies only to the determination of "civil rights and obligations" or of "criminal" charges against the applicant or applicants. In the applicants' case, since they did not face criminal charges, only the civil limb could possibly apply. Under Italian law, the applicants did not have the possibility of applying to join the criminal proceedings against the *carabiniere* as civil parties; the Court therefore considered it more appropriate to examine their complaints under Article 13.

The Court further noted that, while France had not yet ratified the Convention on Jurisdictional Immunities of States and their Property, it had signed that convention in 2007 and ratification was pending before the French Parliament. In addition, the Court emphasised that the 2004 Convention was part of customary law, and as such it applied even to countries which had not ratified it, including France.

On the other hand, Mr Sabeh El Leil had been hired and worked as an accountant until his dismissal in 2000 on economic grounds. Two documents issued concerning him, an official note of 1985 promoting him to head accountant and a certificate of 2000, only referred to him as an accountant, without mentioning any other role or function that might have been assigned to him. While the domestic courts had referred to certain additional responsibilities that Mr Sabeh El Leil had supposedly assumed, they had not specified why they had found that, through those activities, he was officially acting on behalf of the State of Kuwait.

The Court concluded that the French courts had dismissed the complaint of Mr Sabeh El Leil without giving relevant and sufficient reasons, thus impairing the very essence of his right of access to a court, in violation of Article 6 § 1.

Article 41 (Just satisfaction)

The Court held, by sixteen votes to one, that France was to pay Mr Sabeh El Leil 60 000 euros in respect of all kind of damage and 16 768 euros for costs and expenses.

Selected Chamber judgments

Kiyutin v. Russia

The refusal of a residence permit to a foreigner because he was HIV-positive was discriminatory
The Court held, unanimously, that there had been:
– A violation of Article 14 (prohibition of discrimination) , taken in conjunction with Article 8 (protection of home and family life).

Judgment of 10 March 2011. The case concerned the refusal of the Russian authorities to grant the applicant, an Uzbek national, a residence permit because he tested positive for HIV.

Principal facts

The applicant, Viktor Kiyutin, is a national of Uzbekistan who was born in 1971 in the then USSR (United Soviet Socialist Republics) and has lived since 2003 in the Oryol region of Russia. Mr Kiyutin married a Russian national in July 2003 and had a daughter with her the following year.

In the meantime, Mr Kiyutin applied for a residence permit and was asked to undergo a medical examination during which he tested positive for HIV. His application for residence was refused by reference to a legal provision preventing the issuing of a residence permit to HIV-positive foreigners. He challenged the refusal in court, claiming that the authorities should have taken into account his state of health and his family ties in Russia. The Russian courts rejected his appeals, citing the same legal provision.

Complaints

Relying in particular on Articles 8 and 14, Mr Kiyutin complained that the refusal to grant him a residence permit had disrupted his family life. The Court decided to examine the case under Article 14 taken in conjunction with Article 8.

Decision of the Court

Article 14

The Court noted at the outset that the right of a foreigner to enter or settle in a given country was not guaranteed by the Convention. Whereas Mr Kiyutin had been married lawfully in Russia, there was no obligation under the Convention to respect the choice of married couples as to where they would like to live. However, since he had established a family in Russia, his situation had to be considered under Article 8. Accordingly, Article 14 was applicable in conjunction with Article 8 and Russia was under a legal obligation to exercise immigration control in a non-discriminatory manner. Although Article 14 did not list explicitly health or any medical condition among the grounds on which discrimination was prohibited, the Court considered that HIV infection was covered under the "any other status" clause.

Being the spouse of a Russian national and the father of a Russian child, Mr Kiyutin had been in an analogous situation to that of other foreign nationals seeking to obtain a family-based residence permit in Russia. He had been treated differently because of a legal provision, which provided that any application for a residence permit had to be refused if the foreigner could not show that he or she was not HIV-positive.

The Court emphasised that people living with HIV represented a vulnerable group in society which had been discriminated against in many ways in the past, be it due to common misconceptions about the spreading of the disease, or to prejudices linked to the way of life believed to be at its origin. Consequently, if a restriction on fundamental rights applied to such a particularly vulnerable group, then the State's margin of appreciation was substantially narrower and there had to be very weighty reasons for the restrictions in question.

Only six of the 47 member states of the Council of Europe, out of 47, required negative HIV results as a pre-condition for granting a residence permit. Only three European States provided for deportation of foreigners who were HIV-positive. Consequently, the exclusion of HIV-positive people from residence did not reflect an established European consensus on the issue and there was little support for that policy among the Council of Europe member states.

The Court accepted that travel restrictions might be effective in protecting public health but only against highly contagious desease with a short incubation period such as cholera or yellow fever, or – more recently – the severe acute respiratory syndrome (SARS) or "bird flu" (H5N1). However, the mere presence of an HIV-positive individual in the country was not in itself a threat to public health, especially considering that the methods for HIV transmission remained the same irrespective of the duration of people's stay in Russia or their nationality. In addition, HIV-related travel restrictions were not imposed on tourists or short-terms visitors, nor on Russian nationals leaving and returning to Russia. Therefore, there was no justification for such a selective enforcement of restric-

tions, when it could not be concluded that those other categories of people were less likely to engage in unsafe behaviour than settled migrants. And in addition, the tests would not identify all HIV-positive foreigners if newly infected people were tested during the period when the virus did not manifest itself.

The Court then observed that, while potentially there could be a risk of HIV-positive foreigners becoming a serious financial burden on the public health-care system, that was not a valid consideration in Mr Kiyutin's case, given that in Russia, non-Russian nationals had no entitlement to free medical assistance, except emergency treatment, and had to pay themselves for all medical services.

The Court finally noted that the exclusion of residence of foreigners who were HIV-positive was explicitly provided for in a blanket and indiscriminate fashion in Russian law, which also envisaged the deportation of non-nationals who had been found to be HIV-positive. There was no room for an individualised assessment based on the facts of a particular case and the domestic migration authorities and courts did not consider themselves bound by the Constitutional Court's conclusion that temporary residence permits could be issued on humanitarian grounds.

The Court held that Mr Kiyutin had been a victim of discrimination on account of his health status, in violation of Article 14 taken together with Article 8.

Article 41 (just satisfaction)

Under Article 41, the Court held that Russia was to pay the applicant 15 000 euros in respect of pecuniary damage, 350 euros for costs and expenses.

Vistiņš and Perepjolkins v. Latvia

Judgment of 8 March 2011. The case concerned the expropriation of large plots of land in the middle of the 1990s as part of the enlargement of the Autonomous Commercial Port of Riga. This expropriation was based on a special law creating an exception to the ordinary rules governing expropriation.

The rights of former owners of land expropriated to allow for extension of the Port of Riga were not violated
The Court found:
– By a majority, no violation of Article 1 of Protocol 1 (protection of property);
– Unanimously, no violation of Article 14 (prohibition of discrimination) of the Convention taken together with Article 1 of Protocol No. 1.

Principal facts

The applicants, Jānis Vistiņš and Genādijs Perepjolkins, are two Latvian nationals. By deeds of gift *inter vivos* signed in 1994 they became the owners of land amounting to several tens of thousands of square metres on the island of Kundziņsala. This island is part of Riga and mainly consists of port facilities. The land had been unlawfully expropriated by the Soviet Union after 1940 and those who had offered it to Mr Vistiņš and Mr Perepjolkins (in consideration for services rendered) had recovered its ownership in the context of "denationalisation" at the beginning of the 1990s. The purely indicative value of the land, cited on the deeds of gift for calculation of the property tax, was 500 or 1 000 Latvian lati (LVL) per plot of land (about 705 and 1410 euros).

In July 1994 Mr Vistiņš and Mr Perepjolkins were entered in the land register as owners of the plots of land. Apart from the notary's tax of LVL 0.25, they were not required to pay any tax in respect of the gifts described above.

On 15 August 1995 the Council of Ministers adopted Regulations on establishing the limits of the Port of Riga, which included the land belonging to Mr Vistiņš and Mr Perepjolkins within the perimeter of the Port. This inclusion was confirmed by the Law of 6 November 1996 on the Autonomous Commercial Port of Riga. This law also subjected all of the private land situated within the port's boundaries to an easement, in exchange for compensation.

In January 1996 the Centre for Property Valuation at the State Lands Authority, to which Mr Vistiņš and Mr Perepjolkins had applied, assessed the value ("cadastral value") of Mr Vistiņš's land at LVL 564 410 (about 900 000 euros) and that of Mr Perepjolkins at more than LVL 3.12 million in total (about 5.01 million euros). In 1997 the Port Authority applied in turn to the Property Valuation Centre, asking it to calculate the amount of compensation that would be due in the event of expropriation of the land. That assessment was carried out following the Supreme Council's decision on the arrangements for the entry into force of the General Expropriation Act of 1923, which imposed a ceiling on expropriation compensation for plots of land such as those concerned by this case, based on their cadastral value on 22 July 1940 multiplied by a conversion coefficient. Accordingly, on 12 June 1997 the expropriation compensation that would theoretically be due to Mr Vistiņš and Mr Perepjolkins was assessed at LVL 548.26 (about 850 euros) and LVL 8,616.87 (about 13 500 euros) respectively.

By a regulation of 5 August 1997, the Council of Ministers ordered the expropriation of the land in question. By a special law of 30 October 1997 Parliament confirmed the expropriation and ordered that Mr Vistiņš and Mr Perepjolkins be paid compensation equal to the amounts indicated by the Valuation Centre (about 850 euros and 13 500 euros). Those amounts were paid into accounts that had been opened in each of the applicants' names at the Latvian Land and Mortgage Bank. However, Mr Vistiņš and Mr Perepjolkins did not withdraw those amounts.

At the end of 1998 the Riga land registers court ordered that the ownership rights to the expropriated land be transferred to the State and the relevant entry made in the land register.

Mr Vistiņš and Mr Perepjolkins brought actions in the courts seeking to obtain arrears of rent payments for use of their land by the Riga Autonomous Port since 1994. At the close of those proceedings in 1999 they were awarded the equivalent of about 85 000 euros and 593 150 euros respectively.

In January 1999 Mr Vistiņš and Mr Perepjolkins issued a writ against the Ministry of Transport, requesting that the registration of the State's ownership in the land registers be cancelled, and that they be re-entered in the land registers as the owners of the land. They alleged that the expropriation proceedings provided for in the General Expropriation Act, which laid down, among other things, negotiation of the amount of compensation and the possibility of judicial review in the event of a dispute as to that amount, had not been complied with. On 29 March 2000 the Riga Regional Court dismissed their request on the ground that the

expropriation of their land had not been based on the General Expropriation Act but on the special law of 30 October 1997. On 28 September 2000 the Civil Division of the Supreme Court upheld that decision on appeal, as did the Cassation Division of the Supreme Court on 20 December 2000, ruling on an appeal on points of law.

During 1999 supplementary tax assessment proceedings were brought against Mr Vistiņš and Mr Perepjolkins in respect of the property tax for the plots of land in question, but they were ultimately not required to pay anything in this respect.

Since 2000 the State has rented the land in question to a private transport company.

Complaints

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, Mr Vistiņš and Mr Genādijs Perepjolkins complained about the conditions in which their land had been expropriated, arguing, in particular, that they had been deprived of their property in breach of national law. Relying also on Article 14 of the Convention, (prohibition of discrimination), they complained that they had been discriminated against on the ground of their "property".

Decision of the Court

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

The Court had to satisfy itself that the expropriation met three essential requirements.

In the first place, the expropriation had to have been conducted "subject to the conditions provided for by law". As the Latvian courts had noted, the normal expropriation procedure in Latvia at the material time had been fixed by the 1923 General Act, but the case of Mr Vistiņš and Mr Perepjolkins had been governed by the special law of 1997, which created an exception to the standard expropriation procedure. Admittedly, prior to the enactment of the special law, Mr Vistiņš and Mr Perepjolkins could have expected that any expropriation would take place in accordance with the criteria laid down by the 1923 Act, but that was not in itself sufficient to challenge the lawfulness of the special provisions enacted in their case. In addition, the Court accepted the Latvian Government's argument that the expropriation of land in the applicants' case was part of the process of denationalisation following the restoration of Latvia's independence (the Legislature itself had noted this point). It was precisely in that sphere that an extraordinary law could set out special rules for one or several individuals without necessarily infringing the requirement of lawfulness: Parliament must in effect enjoy a particularly wide margin of appreciation in order to correct, on the grounds of equity and social justice, shortcomings or injustices created during denationalisation. The Court saw nothing unreasonable or manifestly contrary to the fundamental objectives of Article 1 of Protocol No. 1 in the special law of 30 October 1997, and the expropriation of the land belonging to Mr Vistiņš and Mr Genāijs Perepjolkins had therefore been conducted "subject to the conditions provided for by law".

Secondly, the expropriation must have been "in the public interest". The Court also found that this was the case here, in so far as the measure imposed on Mr Vistiņš and Mr Genāijs Perepjolkins had sought to optimise management of the facilities of the Autonomous Port of Riga, a question of transport policy and, more generally, of the country's economic policy.

Thirdly and lastly, a "fair balance" must have been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights – which in the applicants' case concerned the amount of expropriation compensation. In that respect, the Court reiterated that it could not substitute itself for the Latvian courts in determining the basis on which they were to decide the amount of compensation. Admittedly, it found that there was an extremely large disproportion between the current cadastral value of the land and that – taken into account in determining the amount of expropriation – of the land in 1940, the first being about 350 times greater than the second. It was evident, however, that that considerable increase in the value of the land had resulted from development of the port facilities located on it and a total change in the strategic importance of the land over several decades, objective factors to which neither Mr Vistiņš, Mr Perepjolkins nor the former owners had contributed. The Court further noted that Mr Vistiņš and Mr Perepjolkins had acquired the land in question free of charge and had owned it for only three years, without making any investments or paying any related taxes. The Latvian authorities had therefore been justified in not reimbursing Mr Vistiņš and Mr Perepjolkins for the full market value of the expropriated assets. The Court also noted that Mr Vistiņš and Mr Perepjolkins had received about 85 000 euros and 593 150 in respect of rent arrears for their land. Although those sums had been paid on a legal basis that was completely distinct from the expropriation, it remained the case that they had profited from a "windfall effect" and, if the situation was considered as a whole, the amounts paid in respect of compensation (about 850 euros and 13 500 euros) did not appear disproportionate. The Court further noted that Mr Vistiņš and Mr Perepjolkins had enjoyed sufficient procedural guarantees and that this case was comparable to that of 23 plots of land occupied by Riga airport, which had been previously been expropriated in the same way.

The Court concluded, by six votes to one, that there had been no violation of Article 1 of Protocol No. 1.

Article 14 (prohibition of discrimination)

Discrimination is treating differently, without an objective and reasonable justification, people in relevantly similar situations.

The Court entertained serious doubts that the situation in which Mr Vistiņš and Mr Perepjolkins found themselves was comparable to that of other owners of immovable property. Even had it been, given the public interest pursued by the expropriation and the margin of appreciation enjoyed by Latvia on account of the denationalisation process, the Court considered that the difference in the way Mr Vistiņš and Mr Perepjolkins had been treated had had an objective and reasonable justification (see the developments concerning Article 1 of Protocol No. 1).

The Court therefore concluded, unanimously, that there had been no violation of Article 14.

Separate opinion

Judge Casadevall expressed a separate opinion, which is annexed to the judgment.

RTBF v. Belgium

Judgment of 29 March 2011. The case concerned an interim injunction ordered by an urgent-applications judge against the Belgian French-language broadcasting corporation RTBF, preventing the broadcasting of a programme – partly about the rights of patients vis-à-vis doctors –, until the final decision in a dispute between a doctor named in the programme and the RTBF.

Interim ban on TV programme was in breach of Belgian broadcaster's freedom of expression
The Court held, unanimously, that there had been:
– A violation of Articles 6§1 (access to court) and
– Article 10 (freedom of expression) of the Convention.

Principal facts

The applicant company, the RTBF, is a public broadcasting corporation serving the French-speaking community in Belgium. For many years it has been broadcasting a monthly news and investigation programme called "*Au nom de la loi*" (in the name of the law), which deals with judicial issues in a general sense. The programme scheduled for 24 October 2001 contained footage concerning medical risks and more generally the rights of patients and their communication and information problems. It was decided to use, as an example, complaints made by patients of doctor D.B., a neurosurgeon. A year earlier, national and regional newspapers in Belgium had reported on criticisms by various patients on whom he had operated. At the time those reports had not met with any reaction on his part. For the programme in question, doctor D.B. refused any televised interview but agreed to reply, on several occasions and for a few hours at a time, in the presence of his lawyers, to questions from RTBF journalists.

On 3 October 2001 doctor D.B. summoned the applicant company to appear before the President of the Brussels Court of First Instance, sitting in urgent proceedings, seeking an injunction against the programme. On 24 October 2001 the President of that court granted an interim injunction preventing the RTBF from broadcasting the programme pending a decision on the merits, subject to a fine of two million Belgian francs per broadcast. The footage in the programme originally dealing with alleged medical malpractice by Doctor D.B. was replaced by a debate between a journalist and the producer in which the applicant company commented at length on the broadcast ban. On 5 November 2001 the RTBF appealed against the injunction.

On 6 November 2001 doctor D.B. brought proceedings on the merits against the RTBF, concerning the same subject-matter as that of his urgent application. The case was adjourned and was still pending when the RTBF lodged its application with the European Court of Human Rights.

The Court of Appeal, ruling on an urgent appeal of 21 December 2001, decided that Article 25 of the Constitution (on freedom of the press) was not applicable because it concerned print media and not audiovisual media. It found that a restriction on the exercise of freedom of expression was not prohibited by the Constitution or by the European Convention on Human Rights provided it had a basis in law, which was the case, as the urgent-applications judge had been entitled to order preventive restrictions on freedom of expression in "flagrant cases of violation of the rights of others". It took the view that the statement presenting the programme suggested that it might impugn doctor D.B.'s honour and reputation, and interfere with his private life. In a second judgment the Court of Appeal declared the RTBF's appeal unfounded, finding in particular that the programme focussed on five very different operations, without it being proven that they were representative, that only one lawsuit had been brought against the doctor, that no patient's experience was presented, that the applicant company had not taken into account the manner in which the average viewer was likely to perceive the information, and that the RTBF could not justify its position by relying on the public's interest in being informed and protected.

An appeal on points of law by the applicant company was dismissed on 2 June 2006. The Court of Cassation upheld the findings of the Court of Appeal concerning the relevant provisions of the Constitution, and found that the Constitution, the Convention and the Judicial Code, according to its own settled case-law, authorised the restrictions provided for under Article 10§2 of the Convention, and that they were sufficiently precise to enable any person, seeking appropriate legal advice if necessary, to foresee the legal consequences of his or her acts. In rejecting the second limb of the applicant company's appeal – alleging a violation of Article 10 of the Convention – the court held that the RTBF should have relied on a violation of Article 584 of the Judicial Code to criticise the Court of Appeal's assessment.

Complaints

Relying on Article 6§1 (right of access to a court), the applicant company complained about the refusal by the Court of Cassation to take into consideration the second limb of its appeal concerning its freedom of expression. Under Article 10 (freedom of expression), it complained about the interim injunction preventing the broadcasting of one of its television programmes.

Decision of the Court

Article 6§1

The Court reiterated that there was now widespread consensus within the member states of the Council of Europe on the applicability of Article 6 safeguards to interim measures, as the interim proceedings and proceedings on the merits concerned, in many cases, the same "civil rights and obligations" within the meaning of Article 6. In the present case the injunction of 24 October 2001 had pursued the same purpose as the proceedings on the merits – to prevent the broadcasting of the offending programme –, concerned the same right to freedom of expression and to impart information through the press, and was immediately enforceable. In addition, when the present application was lodged the proceedings on the merits were still pending. Article 6 was thus applicable.

The fact that the applicant company had had access to the Court of Cassation did not in itself necessarily mean that the degree of access afforded under the legislation was sufficient to secure its "right to a court". The rule applied by the Court of Cassation to declare inadmissible the second limb of the RTBF's appeal was a jurisprudential construction not derived from any particular statutory provision but extrapolated from the specific nature of the role of the Court of Cassation, its review being limited to ensuring compliance with the

law. The case-law in this connection was, moreover, not constant, as the Court of Cassation had on occasion heard appeals against urgent-application rulings even though they made no mention of a violation of Article 584 of the Judicial Code.

The Court took the view that the Court of Cassation had not been unable to determine the legal basis on which it was entitled to review the decision of the urgent-applications judge, and that in the second limb of the applicant company's appeal detailed argument had been given for a violation of Article 10 of the Convention. The excessive formalism shown by the Court of Cassation had thus been in breach of Article 6§1.

Article 10

The Court observed that the RTBF had exhausted all remedies in respect of the urgent-application proceedings, up to and including the appeal on points of law. The proceedings on the merits brought by doctor D.B. would not, in any event, have enabled the company to obtain redress for the damage caused by the injunction. The applicant company had thus fulfilled the requirement to exhaust domestic remedies.

The injunction, until a decision on the merits, preventing the broadcasting of footage in a television programme concerning topical judicial issues, constituted interference by the public authorities in the RTBF's freedom of expression. The Court had to ascertain whether that interference had a legal basis and it reiterated that a norm could not be regarded as a "law" within the meaning of Article 10 § 2 unless it was formulated with sufficient precision to enable the citizen, if need be with appropriate advice, to foresee the consequences of a given action. Whilst Article 10 did not, as such, prohibit prior restraints on broadcasting, such restraints required a particularly strict legal framework, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse, for news was a perishable commodity and to delay its publication, even for a short period, might well deprive it of all its interest. In ascertaining whether the interference at issue had a legal basis, the Court observed that the Belgian Constitution authorised the punishment of offences committed in the exercise of freedom of expression only once they had been committed and not before. As to the Judicial Code and the Civil Code, they did not clarify the type of restrictions authorised, nor their purpose, duration, scope or control. More specifically, whilst they permitted the intervention of the urgent-applications judge, there was some discrepancy in the case-law as to the possibility of preventive intervention by that judge. In Belgian law there was thus no clear and constant case-law that could have enabled the applicant company to foresee, to a reasonable degree, the possible consequences of the broadcasting of the programme in question.

The Court observed that, without precise and specific regulation of preventive restrictions on freedom of expression, many individuals fearing attacks against them in television programmes – announced in advance – might apply to the urgent-applications judge, who would apply different solutions to their cases and this would not be conducive to preserving the essence of the freedom of imparting information. In addition, whilst the Court, by not preventing states from requiring the licensing of broadcasters, accepted the principle of affording them different treatment to that of the print media, the application by the Court of Cassation of different provisions of the Constitution, depending on whether print media or audiovisual media were concerned, appeared artificial and did not provide a strict legal framework for prior restraint on broadcasting, especially as Belgian case-law did not settle the question of the meaning to be given to the notion of "censorship" as prohibited by the Constitution.

In conclusion, the legislative framework, together with the case-law of the Belgian courts, as applied to the applicant company, did not fulfil the condition of foreseeability required by the Convention. There had thus been a violation of Article 10. Having regard to that finding, the Court did not consider it necessary to verify compliance with the other requirements of paragraph 2 of Article 10.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Belgium was to pay the applicant 42 014.40 euros in respect of costs and expenses.

M. v. Switzerland

Refusal to renew expatriate citizen's passport to force him to return to Switzerland for criminal investigation was not a disproportionate measure
The Court, unanimously, that there had been: No violation of Article 8 (right to respect for private and family life).

Judgment of 26 April 2011. The case concerned the Swiss authorities' refusal to issue a new passport to a Swiss national living in Thailand, in order to oblige him to return to Switzerland for a criminal investigation, and the effects of that measure on his private and family life.

Principal facts

The applicant, Mr M., is a Swiss national who was born in 1942 and has lived in Thailand for a number of years. He lives with a Thai national, who already had three children and had another two with Mr M., in 2005 and 2009. Switzerland pays him an invalidity pension.

In October 2004 he applied to the Swiss Embassy in Bangkok to renew his passport, to enable him to marry his partner. His application was forwarded to the Federal Police Office (Fedpol) in Switzerland, which found that Mr M. was wanted for fraud. In conformity with the Federal Law on identity documents of Swiss nationals, Fedpol contacted the public prosecutor's office, which opposed the renewal of the passport. Only a "*laissez-passer*" permitting his direct return to Switzerland could be issued. In response to Mr M.'s protests, the public prosecutor informed him that he did not rule out issuing an international arrest warrant against him if he did not return to Switzerland. By decision of 1 April 2005, Fedpol formally rejected Mr M.'s passport application after examining his arguments in detail. It justified that decision by the need to guarantee the proper conduct of the criminal proceedings, and added that the medical certificates produced by Mr M. attesting that he could not travel by plane did not prove that he could not travel by some other means.

Mr M. took various steps to challenge that decision. On 15 April 2005 he challenged it before the Federal Department of Justice and

Police. On 26 July 2005 that appeal was rejected. The decision explained, among other things, why, in view of the offence with which he was charged, the refusal to issue him with a passport to oblige him to submit to a criminal investigation was a proportionate measure (and less harsh than an international arrest warrant), why questioning him in person in Switzerland was more appropriate in his case than issuing instructions for him to be questioned in Bangkok, and why the – relatively old – medical certificates Mr M. had produced did not prove that it was impossible for him to travel by any means at all. On 11 April 2006 the Federal Court rejected an administrative-law appeal lodged by Mr M., based largely on the same arguments as those used by the lower court.

When he subsequently tried to register his children, Mr M. was told by the Swiss Embassy in Bangkok that in order to register them he had to present his passport. He made a new application for a passport, but to no avail.

Complaints

Relying in particular on Article 8, Mr M. complained about the Swiss authorities' refusal to issue him with a new passport and the repercussions of that decision on his private and family life. Among other things, he complained that it made it impossible for him to marry in Thailand or to register his children born out of wedlock or his future wife's children with the Swiss embassy, which would enable him to claim child benefits in addition to his invalidity pension, and also that it prevented him from being admitted to hospital for surgery.

Decision of the Court

An interference with the right to respect for private and family life such as that caused by the refusal to renew Mr M.'s passport (making it impossible for him to marry or register his children in Thailand) was acceptable under Article 8 only if certain conditions were fulfilled. First, it must be in accordance with the law and pursue a legitimate aim. This was certainly the case here, as the measure had been taken in conformity with the Federal Law on identity documents of Swiss nationals, with the aim of guaranteeing the proper conduct of criminal proceedings. It also had to be "necessary in a democratic society", i.e. answer a "pressing social need" and be proportionate to the legitimate aim pursued. On this key question the Court made the following observations.

Mr M. must have been aware that he was under investigation for fraud, a criminal offence under Swiss law. By refusing to return to Switzerland he was intentionally avoiding prosecution. That was why the competent authorities, applying the law, had preferred not to renew Mr M.'s passport, in order to make him return to Switzerland.

The Court pointed out that it was in the first place for the national authorities to apply domestic law and that the States enjoyed a wide margin of appreciation in deciding whether or not to prosecute a person suspected of having committed a crime and what investigation and prosecution measures should be taken.

In Mr M.'s case the Swiss authorities had stated the reasons for their decisions, explaining why Mr M.'s presence in Switzerland was necessary for the proper conduct of the criminal proceedings, and showing with relevant arguments that the medical certificates produced by Mr M. showed no compelling reasons why he should be unable to travel to Switzerland by one means or another.

Furthermore, the action the Swiss authorities had taken was less harsh than other steps they could equally well have taken to oblige Mr M. to co-operate with the criminal investigation. Issuing an international arrest warrant with an extradition request, for example, could have led to his detention for some time in Thailand.

In the light of the detailed decisions of the Swiss authorities and considering the importance, in the public interest, of bringing criminals to justice, the Court found that in Mr M.'s case the refusal to issue a new passport was acceptable for the purposes of Article 8, and that there had been no violation of that provision.

Republican Party of Russia v. Russia

Judgment of 12 April 2011. The case concerned the party's complaint of the authorities' interference with its internal functioning and its dissolution in 2007 by a court decision.

Dissolution of Russian opposition party was unjustified

The Court held,
– by a majority, that there had been a violation of Article 11 (freedom of assembly and association) on account of the authorities' refusal to amend information about the Republican Party in the State register and,
– unanimously, that there had been a violation of Article 11 on account of the party's dissolution.

Principal facts

The applicant is the Republican Party of Russia, which was created in November 1990 by the consolidation of the Democratic Wing of the USSR Communist Party and its subsequent secession from that party. In August 2002, it was registered as a party by the Ministry of Justice of the Russian Federation. Its articles of association listed among its aims the development of civil society in Russia and the promotion of the unity and territorial integrity of the country as well as of the peaceful coexistence of its multi-ethnic population.

In December 2005, an extraordinary general conference of the party elected its management bodies, whose chairmen became *ex officio* representatives of the party, and it decided to change its address and to create several regional branches. The party subsequently requested the Ministry of Justice to amend the corresponding information in the State register of legal entities. The Ministry refused to do this, in January and early April 2006, arguing that the party had not shown that the general conference had been held in accordance with the law and with its articles of association. In particular, it held that the documents submitted by the party contained a number of omissions which made it impossible to establish whether the regional conferences nominating candidates for the general conference had been quorate and thus whether the general conference had been legitimate.

The applicant party challenged the refusal before a court, arguing in particular that the Ministry of Justice was not authorised to verify whether the party's conferences were legitimate, as domestic law required such verification only before the registration of a new party or when the articles of association were amended, and that in any event the general conference had been convened in accordance with domestic law and the party's articles of association. It claimed that the refusal to amend the register violated its freedom of association and hindered its activities. The Ministry's decision not to register

the amendments was upheld by the district court and, in December 2006, by the Moscow City Court. The court, referring to a provision of the Non-Profit Organisations Act which had entered into force on 16 April 2006, held in particular that a political party requesting to amend the information contained in the Register was to produce the same documents as required for the registration of a party.

In a separate set of proceedings, the Ministry of Justice conducted an inspection of the applicant party's activities and asked the Supreme Court of the Russian Federation to dissolve the party, claiming that it had fewer than 50 000 members and fewer than 45 regional branches with more than 500 members, in breach of the Political Parties Act. The Supreme Court ordered the party's dissolution in March 2007, finding in particular that a number of the party's regional branches had been dissolved by court decisions, therefore their members could not be taken into account, and eight regional branches had fewer than 500 members. The applicant party appealed, submitting in particular that the court had refused to admit evidence submitted by it, namely documents confirming the number of party members, and that the Ministry's inspection had been arbitrary, as domestic law did not establish a procedure for it. On 31 May 2007, the Appellate Collegium of the Supreme Court upheld the first-instance judgment.

Complaints

Relying in particular on Article 11, the applicant party complained of the refusal to amend the information about it contained in the State register, which allegedly disrupted its activities, and of its dissolution.

Decision of the Court

Article 11 (refusal to amend the State register)

The Court accepted the applicant party's argument that the Ministry of Justice's refusal to register its *ex officio* representatives adversely affected its activities, which amounted to an interference with its rights under Article 11.

As regards the question of whether that interference had been "prescribed by law", the Court observed that domestic law was not precise as to the procedure to be followed where amendments were to be made to the State register. The relevant provisions did not specify which documents were to be submitted by a political party for registration of amendments. The Court was further struck by the fact that, to justify the requirement to submit the same set of documents as for the registration of a newly established political party, and the powers of the registration authority to refuse registration if those documents were incomplete or flawed, the domestic courts had relied on a provision of the Non-Profit Organisation Act which only entered into force after the Ministry's refusal to amend the register. Given that no other legal document or provision establishing the procedure for amending the Register had been referred to in the domestic proceedings, the Court considered that the measures taken by the registration authority in this case had lacked a sufficiently clear legal basis.

While that finding would in itself be sufficient to find a violation of Article 11, the Court further pointed out that it could not agree with the Government's argument that the interference with the applicant's freedom of association had been "necessary in a democratic society", namely in order to protect the right of the applicant party's members. States might be justified in interfering with an association's internal organisation in cases of, in particular, serious and prolonged internal conflict. However, in the absence of any complaints from the applicant party's members concerning the organisation of its conferences, the irregularities in the election of its delegates had not justified the State's severe intereference with its internal functioning. There had accordingly been a violation of Article 11 as regards the refusal to amend the State register.

Article 11 (the party's dissolution)

The Court was prepared to accept that the requirements of minimum membership and regional representation, and the party's dissolution for failure to comply with them, were intended to protect national security, prevent disorder and guarantee the rights of others, and therefore pursued legitimate aims for the purpose of Article 11.

Noting the Government's argument that after having been dissolved, the applicant party would have had the opportunity to reorganise itself into a public association, the Court underlined that in other cases it had already found it unacceptable that an association should be forced to take a legal shape its founders and members did not seek. A reorganisation into a public association would moreover have deprived the applicant party of an opportunity to stand for election, as in Russia political parties were the only actors in the political process capable of nominating candidates for election at the federal and regional levels. It would therefore have been essential for the applicant party to retain the status of a political party.

While a number of member states of the Council of Europe had minimum membership requirements for political parties, the minimum requirements applied in Russia were the highest in Europe, and the domestic law regulating those requirements had been changed frequently over the last few years. The Court was not convinced by the argument, advanced in particular in the explanatory notes to the relevant provisions in domestic law, that limiting the number of political parties was necessary to avoid disproportionate expenditure from the public budget, noting that under domestic law only those parties that had taken part in the elections and obtained more than 3% of the votes cast were entitled to public financing.

Nor was the Court persuaded that the minimum membership requirements were necessary to avoid excessive parliamentary fragmentation, as that aim was achieved in Russia in particular by a 7% electoral threshold and by the rule that only those parties that had seats in the State Duma or had submitted a certain number of signatures could nominate candidates for elections. In response to the argument that only those associations which represented the interests of considerable parts of society should be eligible for political party status, the Court underlined that small minority groups also had to have an opportunity to establish political parties and participate in elections with the aim of obtaining parliamentary representation. It noted that the obligation to bring the number of their members in line with the frequently changing domestic law, coupled with regular checks on the membership situation, had imposed a disproportionate burden on political parties in Russia. Such frequent changes to the electoral legislation could be perceived, rightly or wrongly, as an attempt to manipulate electoral laws to the advantage of the party in power.

As regards the requirement for a political party to have a sufficient number of regional branches with more than 500 members, the breach of which had been the second reason advanced for the applicant party's dissolution, the Russian Government had argued that its rationale was to prevent the establishment and participation in elections of regional parties, which were a threat to the territorial integrity of the country. While the Court accepted that there had likely been a special interest upon the collapse of the Soviet Union and at the onset of democratic reform to take measures to secure stability, the Government had not provided an explanation of why concerns had recently emerged regarding regional political parties.

In the Court's view, there would be means of protecting Russia's laws, institutions and national security other than a sweeping ban on the establishment of regional parties. The applicant party had existed and participated in elections since 1990. It had never advocated regional interests or separatist views, indeed one of its aims had been promotion of the country's unity. In this light, the applicant party's dissolution had been disproportionate to the aims pursued, in violation of Article 11.

Article 41 (just satisfaction)

The Court held that Russia was to pay the applicant party 6 950 euros in respect of costs and expenses.

Separate opinion

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

R.R. v. Poland

Judgment of 26 May 2011. The case concerned a pregnant mother-of-two – carrying a child thought to be suffering from a severe genetic abnormality – who was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Her child was born with Turner syndrome.[10]

"Inhuman treatment" of mother denied timely access to an amniocentesis whose baby was born severely disabled
The Court held, by six votes to one, that there had been:
– A violation of Article 3 (prohibition of inhuman or degrading treatment); and
– A violation of Article 8 (right to respect for private and family life) of the Convention.

Principal facts

The applicant, R.R., is a Polish national who was born in 1973 and lives in Poland.

On 20 February 2002, R.R., who was 18 weeks pregnant, had an ultrasound scan, following which her family doctor, Dr S.B, told her that he could not rule out the possibility that the foetus was malformed. She told him she wished to have an abortion if his suspicion proved true. She was married with two children at the time. Two further scans confirmed that her foetus was probably malformed and recommended that she have an amniocentesis.

R.R. then saw a specialist in clinical genetics who recommended that she ask for a formal referral from Dr S.B. to have the amniocentesis carried out in a public hospital in Łódź. Dr S.B. refused.

In the first week of March 2002 R.R. and her husband asked Dr S.B., while he was on night duty at hospital T., to terminate her pregnancy. He refused.

On 11 March 2002 R.R. was admitted to hospital T. and told that a decision on termination could not be taken there and that it would put her life at risk.

On 14 March 2002, immediately after being discharged from hospital T., R.R. travelled 150 kilometres to a university hospital in Kraków, to which she had been referred by hospital T. The doctor she consulted criticised her for considering an abortion and refused to authorise genetic tests. She was also informed that the hospital refused to carry out abortions and that no abortions had been performed there for the last 150 years. She stayed in the hospital for three days and had another scan, with inconclusive results. She maintained that medical staff made degrading remarks about her and kept her in the hospital without explanation, only to conduct tests unrelated to her concerns (for a possible inflammatory condition of the foetus). She was discharged on 16 March 2002. Her discharge record and medical certificate stated that the foetus had developmental abnormalities.

On 21 March 2002 a further scan confirmed that the foetus was malformed.

She had an amniocentesis on 26 March 2002, in the 23rd week of pregnancy, reporting to the hospital as an emergency patient, without a valid doctor's referral (which she had tried and failed to obtain). She was told that she had to wait two weeks for the results. On 29 March 2002 she submitted a written request to hospital T. for an abortion under the 1993 Family Planning Act, which stipulates that an abortion on the grounds of foetal abnormality can only be performed before the foetus is considered capable of independent life, normally thought to be in the 24th week of pregnancy.

On 3 April 2002 she returned to hospital T. and was told that the consultant could not see her because he was ill.

On 9 April 2002 she received the results of the genetic tests which confirmed that her child had Turner syndrome. She renewed her request for an abortion the same day. The doctors in hospital T. refused because the legal time limit for abortion had passed.

On 11 July 2002 she gave birth to a girl with Turner syndrome. R.R.'s husband left her after the baby was born.

The applicant asked for criminal proceedings to be brought against the doctors responsible for failing to peform timely prenatal tests. On 2 February 2004, the competent court found that no criminal offence had been committed because doctors were not "public servants".

On May 11 2004 she brought civil proceedings against the doctors and hospitals concerned and claimed compensation from Dr S.B. in relation to a newspaper article published in November 2003 in which he had disclosed personal details

10. Turner syndrome – A genetic condition, affecting around one in every 2,500 girls, in which the sufferer does not have the usual pair of two X chromosomes. They are also usually shorter than average and infertile. Other health problems can include kidney and heart abnormalities, high blood pressure, obesity, diabetes mellitus, cataract, thyroid problems, and arthritis. Some sufferers may also have learning difficulties.

about her health and accused her and her husband of being irresponsible parents.

On 19 October 2005 Kraków Regional Court awarded the applicant 10 000 Polish zlotys (PLN) against S.B. concerning his statement to the press, but dismissed all the other claims she had lodged against the doctors and hospitals responsible for dealing with her case.

R.R. appealed to Kraków Court of Appeal, which dismissed her appeal on 28 July 2006.

On 11 July 2008 the Supreme Court allowed her cassation appeal, held that R.R. had suffered stress, anxiety and humiliation as a result of the way her case had been handled and remitted the case.

On 30 October 2008 Kraków Court of Appeal awarded R.R. PLN 20 000 because Dr S.B. had failed to refer her for genetic tests in time. It also ordered Dr S.B. to pay her PLN 30 000 concerning his statement to the press. It found the hospitals liable for the negligent acts of their employees and that the doctors had also failed to make any record of their refusals and the grounds for them, in contravention of section 39 of the Medical Profession Act. The court awarded the applicant PLN 5 000 against hospital T. and PLN 10 000 against Kraków University Hospital.

Complaints

R.R complained that she was denied access to the prenatal genetic tests to which she was entitled when pregnant due to doctors' lack of proper counselling, procrastination and confusion. She therefore missed the time-limit for a legal abortion and subsequently gave birth to a baby suffering from Turner syndrome. She relies on Articles 3, 8 and 13 (right to an effective remedy).

Third-party comments were received from the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, from the International Federation of Gynaecology and Obstetrics and from the International Reproductive and Sexual Health Law Programme, University of Toronto, Canada.

Decision of the Court

Article 3

The Court noted that R.R. had received insufficient compensation (PLN 35 000) from the Polish courts in relation to the issues raised before the European Court of Human Rights. It therefore considered that she had not lost her status as a victim.

The Court also considered that it had not been necessary for the applicant to lodge a constitutional complaint.

The Court observed that the scan carried out in the 18th week of the applicant's pregnancy confirmed the likelihood that the foetus was affected with an unidentified malformation. Following that scan R.R. feared that the foetus was affected with a genetic disorder and, in the light of the results of subsequent scans, her fears could not be said to have been without foundation. She tried repeatedly (and failed) to obtain access to genetic tests which would have provided her with information confirming or dispelling her fears. For weeks she was made to believe that she would undergo the necessary tests. She was repeatedly sent to various doctors, clinics and hospitals far from her home and even hospitalised for several days for no clear clinical purpose. The Court found that the determination of whether the applicant should have had access to genetic tests, as recommended by doctors, was marred by procrastination, confusion and lack of proper counselling and information.

Ultimately she only obtained admission to a hospital in Łódź by means of subterfuge where she finally had the tests conducted in the 23rd week of her pregnancy.

It was not in dispute that it was possible only by means of genetic tests to establish whether the initial diagnosis was correct and it had not been argued, let alone shown, that at the relevant time genetic tests were unavailable for lack of equipment, medical expertise or funding.

Under the 1993 Act, the State was obliged to ensure unimpeded access to prenatal information and testing, particularly where there was a possible genetic disorder or development problem. There were various unequivocal legal provisions in force at the relevant time which specified the State's obligations towards pregnant women regarding their access to information about their health and that of the foetus.

However, there was no indication that the legal obligations of the State and of the medical staff regarding R.R.'s rights as a patient were taken into consideration by the people and institutions dealing with her requests to have access to genetic tests. The Court noted that she was in a very vulnerable position. Like any other pregnant woman in her situation, she was deeply distressed about the possibility that her foetus could be malformed and it was therefore natural that she wanted to obtain as much information as possible in order to decide what to do. As a result of the procrastination of medical professionals, she had had to endure weeks of painful uncertainty concerning the health of the foetus, her own and her family's future and the prospect of raising a child suffering from an incurable illness. She suffered acute anguish through having to think about how she and her family would be able to ensure the child's welfare, happiness and appropriate long-term medical care. Her concerns were not properly acknowledged and addressed by the health professionals dealing with her case. Six weeks elapsed between the first relevant ultrasound scan and the results of the amniocentisis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired.

Her suffering, both before the results of the tests became known and after that date, could be said to have been aggravated by the fact that she was legally entitled to the diagnostic services requested and that those services were at all times available.

It was a matter of great regret that she was so shabbily treated by the doctors dealing with her case. The Court could only agree with the Polish Supreme Court's view that the applicant had been humiliated. There had therefore been a violation of Article 3.

Article 8

The Court noted that, while states had a broad margin of appreciation regarding the circumstances in which an abortion would be permitted, once that decision had been taken, there had to be a coherent legal framework in place to allow the different legitimate interests involved to be adequately taken into account in accordance with the Convention.

The Court reiterated that prohibition of the termination of pregnancies sought for reasons of health and/or well-being amounted to an interference with the applicants' right to respect for their private lives. A pregnant woman should at least have a chance to be heard in person and to have her views considered. The competent body or person should also issue written grounds for its decision.

The Court noted that the 1993 Act specified situations in which abortion was allowed. A doctor who terminated a pregnancy in breach of the conditions specified in that Act was guilty of a criminal offence punishable by up to three years' imprisonment. The Court reiterated that the legal restrictions on abortion in Poland, taken together with the risk of their incurring criminal responsibility under Article 156§1 of the Criminal Code, could well have a chilling effect on doctors when deciding whether the requirements of legal abortion had been met in an individual case. The Court considered that provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate that "chilling effect".

In R.R's case, what was at stake was essentially timely access to a medical diagnostic service that would, in turn, make it possible to determine whether or not the conditions for lawful abortion had been met.

In the context of pregnancy, the effective access to relevant information on the mother's and foetus' health, where legislation allowed for abortion in certain situations, was directly relevant for the exercise of personal autonomy.

The difficulties R.R. experienced seemed to have been caused, in part, by reticence on the part of certain doctors involved to issue a referral, and also by a certain organisational and administrative confusion in Poland's health system.

The Court stressed that, as Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus' health be made available to pregnant women.

In R.R.'s case, however, there had been a six week wait between the first relevant scan and the receipt of the amniocentesis results. It was important to note too that the Supreme Court had criticised the conduct of the medical professionals who had been involved in R.R.'s case and the procrastination shown in deciding whether to give her a referral for genetic tests. As a result, she was unable to obtain a diagnosis of the foetus' condition, established with the requisite certainty, by genetic tests within the time-limit, for abortion to remain a lawful option for her. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that an effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

The Court considered that it had not been demonstrated that Polish law contained any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion.

The Court reiterated that effective implementation of the relevant part of the 1993 Act would necessitate ensuring that pregnant women had access to diagnostic services which would show whether or not the foetus was damaged - services which were available.

The Court also noted that legislation in many other European countries specified the conditions governing effective access to a lawful abortion and established procedures to implement those laws.

The Court concluded that the Polish authorities had failed to comply with their obligations to ensure the effective respect of R.R.'s private life and that there had therefore been a violation of Article 8.

Article 13

The Court held unanimously that no separate issue arose under Article 13.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay the applicant 45 000 euros in respect of non-pecuniary damage and 15 000 euros in respect of costs and expenses.

Khodorkovskiy v. Russia

Russian businessman Mikhail Khodorkovskiy's detention in breach of the Convention
The Court held, unanimously, that there had been:
– No violation of Article 3 (prohibition of inhuman or degrading treatment) as regards the conditions of Mikhail Khodorkovskiy's detention in the remand prison between 25 October 2003 and 8 August 2005;
– two violations of Article 3 as regards the conditions in which he was kept in court and in the remand prison after 8 August 2005;
– One violation of Article 5§1 (b) (lawfulness of detention for non-compliance with a lawful order) as regards his apprehension on 25 October 2003;
– No violation of Article 5§1 (c) (lawfulness of detention of a criminal suspect) as regards the lawfulness of his detention pending investigation;
– One violation of Article 5§3 (length of detention) as regards the length of his continuous detention pending investigation and trial;
– Four violations of Article 5§4 (judicial review of the lawfulness of pre-conviction detention) as regards procedural flaws related to his detention; and
– No violation of Article 18 (limitation of rights for improper purposes) as regards the claim that his prosecution was politically motivated.

Judgment of 31 May 2011. The case concerned the arrest and detention for several years of one of the then richest people in Russia on charges of economic crimes.

Principal facts

The applicant, Mikhail Khodorkovskiy, is a Russian national who was born in 1963. He is currently serving a sentence of imprisonment and in parallel he is detained in connection with a second criminal case against him.

Before his arrest in October 2003, Mr Khodorkovskiy was one of the richest people in Russia. A businessman, he was the major shareholder in *Yukos*, a large oil company liquidated in 2007. He also controlled several other mining, industrial and financial companies. Around 2002, Mr Khodorkovskiy became involved in politics. In addition to financing opposition political parties, he openly criticised Russian internal policy at the time calling it anti-democratic.

Summoned on 23 October 2003 to appear the next day as a witness in a criminal case in Moscow, Mr Khodorkovskiy was unable to attend due to a business trip in Eastern Russia, of which he informed the investigating authorities. In the early morning of 25 October 2003, a group of armed law-enforcement officers approached his plane at a Novosibirsk airport, apprehended him and flew him to Moscow.

Mr Khodorkovskiy was interviewed at 11 a.m. on 25 October, initially as a witness. He was then charged in connection with a number of economic crimes. The charges were presented in a 35-page document and read out to him at 2.20 p.m. the same day. About seven hours later, he was detained by the court which referred in the detention order to the seriousness of the crimes of which he was accused, and the possibility that he influence witnesses, destroy evidence or commit further crimes if released. The court did not specify the period for which Mr Khodorkovskiy was detained.

On 17 December 2003, the prosecution asked the court – in an over 300-page-long document – to extend Mr Khodorkovskiy's detention. His lawyers did not receive a copy of that request before the hearing.

Between 23 December 2003 and 24 March 2005, the Russian courts extended Mr Khodorkovskiy's detention seven times. To justify his continuous detention, they used mostly the same reasons as those mentioned in the initial detention order, and on two occasions, gave no reasons at all. It did not appear that the judges considered alternatives to keeping him in detention.

In addition, the first two detention orders were handed down in hearings held in private during which the courts failed to indicate for how long his detention was being extended. Also, during those hearings, Mr Khodorkovskiy could only communicate with his lawyers in the presence of a convoy officer and through the bars of a cage in which he was placed in court. Further, one of the hearings was held without him or his lawyers, and his application for release of 16 June 2004 was not considered. Mr Khodorkovskiy appealed against the court orders extending his detention, unsuccessfully; the courts heard those appeals at various intervals ranging between five days and a month and nine days.

On 11 November 2003, one of Mr Khodorkovskiy's lawyers visited him in prison. As she was leaving, prison guards searched her. They seized a written note with ideas about the case and a draft of the legal position in the case of Platon Lebedev, who was a co-accused ex-top manager in the *Yukos* group. The Russian Government considered that the note had been transmitted by Mr Khodorkovskiy to his lawyer illegally and had thus not been covered by lawyer-client privilege; the courts accepted the note into the case file as proof of Mr Khodorkovskiy's intention to exert pressure on witnesses. Mr Khodorkovskiy, on the other hand, insisted that his lawyer had been searched unlawfully and in blatant violation of lawyer-client privilege.

Pending his trial, Mr Khodorkovskiy was detained in two different remand prisons in Moscow, and he complained about the conditions there. In particular, he claimed that the cells were overcrowded, at times too cold or too hot, that he never had access to fresh air, that the toilet facilities in his cell were humiliating, that he could only wash once a week and could not be visited by independent observers nor be examined by his doctors. During the trial, he was placed in a cage and was always handcuffed to a convoy officer when leaving it.

On 31 May 2005, Mr Khodorkovskiy was found guilty as charged. He was sentenced to spend eight years in prison and was sent to serve his sentence in the Chita Region.

Complaints

Relying on Articles 3, 5, and 18, Mr Khodorkovskiy complained that he was detained unlawfully and for too long in appalling conditions and that the charges against him had been politically motivated.

Decision of the Court

Article 3 (conditions of detention and in court)

The Court found that the conditions in which Mr Khodorkovskiy had been detained between the day of his apprehension and 8 August 2005 had not breached the Convention. While the ventilation had been poor and he had had no privacy when using the toilet, in exchange for a fee he had paid he had exercised in the prison fitness room, had taken additional showers and had received food and medicine from his relatives during that period.

However, Mr Khodorkovskiy had been kept in inhuman and degrading conditions between 8 August and 9 October 2005. In particular, he had had less than 4 square metres of personal space in his cell, and the sanitary conditions had been appalling. There had therefore been a violation of Article 3.

The Court found a further violation of Article 3 as Mr Khodorkovskiy had been humiliated by the security arrangements in the court room during the hearings. He had been accused of non-violent crimes, had no criminal record, and there had been no evidence that he was predisposed to violence. Despite that, he had been kept in the cage throughout the trial, exposed to the public at large, which had humiliated him, at least in his own eyes, and aroused in him feelings of inferiority.

Article 5§1 (b) (apprehension)

Mr Khodorkovskiy had missed the questioning as a witness to which he had been summoned on 23 October 2003. That, however, could

not justify taking him forcefully to Moscow in a manner more appropriate for dealing with dangerous criminals than witnesses. Further, only hours after the start of his questioning as a witness on 25 October 2005, Mr Khodorkovskiy had become an accused when 35-page-long charges of criminal offences had been brought against him and a 9-page-long request for his detention had been filed with the court.

The speed with which the investigating authorities had acted suggested that they had been prepared for such a development and had wanted Mr Khodorkovskiy as a defendant and not as a simple witness. Therefore, his apprehension had been unlawful as it had been made with a purpose different from the one expressed.

There had therefore been a violation of Article 5§1 (b).

Article 5§1 (c) (further procedure-related complaints)

The Court found no violation of Article 5§1 (c) despite the fact the first two detention hearings had taken place in private, and the detention orders issued then had not specified the period for which Mr Khodorkovskiy had had to be detained. While it had been regrettable that no time limit had been mentioned in those detention orders, Mr Khodorkovskiy had been well represented legally and could have easily established the maximum period of detention allowed in such cases in Russian law.

Article 5§3 (length of detention and lawyer's note seizure)

The Court found that Mr Khodorkovskiy's initial detention could have been justified given the potential risks he had posed as one of the richest people in Russia who had been, even if unofficially, politically influential. However, his detention had been extended without justification on two occasions – on 20 May 2004 and 8 June 2004.

In addition, the Russian courts should have considered applying to him alternative means of restraint, other than detention.

Last, but not least, the note seized from his lawyer had been written by the lawyer, during her interview with Mr Khodorkovskiy and concerned his criminal case. Therefore, it should have been treated as privileged material in principle. No Russian law prohibited a lawyer from taking notes during meetings with clients, nor clients from dictating instructions to their lawyers or studying material prepared by them. The search of the applicant's lawyer had not been justified in the circumstances. However, the Russian courts had disregarded the fact that the note had been obtained in violation of the lawyer-client privilege and had relied on it while extending Mr Khodorkovskiy's detention.

The Court concluded that, therefore, Mr Khodorkovskiy's continued detention had not been justified, in violation of Article 5§3.

Article 5§4 (procedural flaws in detention proceedings)

The Court found four separate violations of Article 5§4, because of the reasons indicated below.

Firstly, in the context of the 23 December 2003 detention hearing, Mr Khodorkovskiy's lawyers had received rather late the 300-page long detention request by the prosecution and had not been able to communicate freely with their client. That had placed Mr Khodorkovskiy at a disadvantage compared with the prosecution.

Secondly, the detention hearing of 20 May 2004, during which Mr Khodorkovskiy's detention had been extended for up to six months, had taken place in his and in his lawyers' absence. Therefore, he had not been able to plead his case, not even via his lawyers.

Thirdly, the Russian courts had not considered Mr Khodorkovskiy's application for release of 16 June 2004.

Lastly, the courts had examined Mr Khodorkovskiy's appeal against detention one month and nine days after it had been brought on 2 April 2004, which had been too late.

Article 18 (allegation of authorities' political motivation)

The Court observed that while Mr Khodorkovskiy's case might raise some suspicion as to what the real intent of the Russian authorities might have been for prosecuting him, claims of political motivation behind prosecution required incontestable proof, which had not been presented.

The fact that Mr Khodorkovskiy's political opponents or business competitors might have benefited from his detention should not have been an obstacle for the authorities to prosecute him if there were serious charges against him. Political status did not guarantee immunity. Otherwise, anyone in Mr Khodorkovskiy's position would be able to make similar allegations, and in reality it would be impossible to prosecute such people. The Court, persuaded that the charges against Mr Khodorkovskiy had amounted to a "reasonable suspicion" and hence had been compatible with the Convention, held that there had been no violation of Article 18 in conjunction with Article 5.

Article 41 (just satisfaction)

Under Article 41, the Court held that Russia was to pay Mr Khodorkovskiy 10 000 euros in respect of non-pecuniary damage, and 14 543 euros for costs and expenses.

Article 46 (measures to implement the judgment)

The Court dismissed Mr Khodorkovskiy's request for indication of specific measures to the Russian Government about how to implement the judgment, and held that the supervision of such measures was up to the Committee of Ministers of the Council of Europe.

Mosley v. the United Kingdom

The European Convention on Human Rights does not require media to give prior notice of intended publications to those who feature in them.
The Court held, unanimously, that there had been:
– No violation of Article 8 (right to protection of private and family life).

Judgment of 10 May 2011. The case concerned a complaint that the United Kingdom failed to impose a legal duty on newspapers to notify the subjects of intended publications in advance to give them an opportunity to prevent such publications by seeking an interim court injunction.

Principal facts

The applicant, Max Rufus Mosley, is a British national who was born in 1940 and lives in Monaco. He is is the former president of the International Automobile Federation, a non-profit association that represents the interests of motoring organisations and car users worldwide and is also the governing body for Formula One. In March 2008, the Sunday newspaper News of the World published on its front page an article entitled "F1 boss has sick Nazi orgy with 5 hookers". Several pages inside the newspaper were also devoted to the story which included still photographs taken from video footage secretly recorded by one of the participants in the sexual activities.

An edited extract of the video, in addition to still images, were also published on the newspaper's website and reproduced elsewhere on the internet.

On 4 April 2008, Mr Mosley brought legal proceedings against the newspaper claiming damages for breach of confidence and invasion of privacy. In addition, he sought an injunction to restrain the News of the World from making available on its website the edited video footage.

On 9 April 2008, the High Court refused to grant the injunction because the material was no longer private as it had been published extensively in print and on the Internet. In subsequent privacy proceedings before the High Court, the court found that the images did not carry any Nazi connotations. Consequently there was no public interest and thus no justification for publishing that article and accompanying images, which had breached Mr Mosley's right to privacy. The court ruled that News of the World had to pay to Mr Mosley 60 000 GBP in damages.

Complaints

Relying on Article 8 (right to private life) and Article 13 (right to an effective remedy), Mr Mosley complained that, despite the monetary compensation awarded to him by the courts, he remained a victim of Article 8 of the Convention as a result of the absence of a legal duty on the News of the World to notify him in advance of their intention to publish material concerning him thus giving him the opportunity to ask a court for an interim injunction and prevent the material's publication.

Decision of the Court

Admissibility

Victim status

The British Government considered that Mr Mosley was no longer a victim of a Convention violation given, in particular, that he had been compensated by the newspaper as ordered by the UK courts: 60 000 GBP in damages and 420 000 GBP for legal costs.

Mr Mosley insisted that he had remained a victim of a violation by the UK of his right to privacy, as the damages awarded were unable to restore his privacy to him after millions of people in the world had seen the embarrassing material in which he featured.

The Court found that no sum of money awarded after disclosure of the material which had caused Mr Mosley humiliation could be a remedy for his specific complaint that no legal requirement existed in the UK obliging the media to give advance warning to a person of a publication related to their private life.

Consequently, Mr Mosley could claim to still be a victim of a Convention violation.

Exhaustion of domestic remedies

The Government claimed that Mr Mosley had not exhausted a number of domestic remedies before taking his complaint before the Court. In particular, they argued that he had not appealed against the UK judge's ruling on exemplary damages, that he could have pursued an account of profits claim as opposed to a claim for damages as he had done, and that he had failed to complain under the Data Protection Act about the unauthorised processing of his personal information and to seek rectification or destruction of his personal data.

Mr Mosley considered the proposed remedies irrelevant to his complaint.

The Court found that none of the remedies relied upon by the Government could have addressed Mr Mosley's specific complaint about the absence of a UK law requiring prenotification of the publication of the article which had interfered with his right to respect for his private life.

Private life

The Court noted that the UK courts had found no Nazi element in Mr Mosley's sexual activities and had therefore concluded that there had been no public interest in, and therefore justification for, the publication of the articles and images. In addition, the newspaper had not appealed against the judgment. The Court therefore considered that the publications in question had resulted in a flagrant and unjustified invasion of Mr Mosley's private life. Given that Mr Mosley had achieved a finding in his favour before the domestic court, the Court's own assessment concerned the balancing act to be conducted between the right to privacy and the right to freedom of expression not in the circumstances of the applicant's particular case but in relation to the UK legal system.

It was clear that the UK authorities had been obliged under the Convention not only to refrain from interfering with Mr Mosley's private life, but also to take measures to ensure his effective enjoyment of that right. The question which remained to be answered was whether a legally binding prenotification rule was required.

The Court observed that it had implicitly accepted in its earlier case-law that damages obtained following a defamatory publication provided an adequate remedy for right-to-private-life breaches arising out of newspaper publications of private information.

It then recalled that states enjoyed a certain margin of appreciation in respect of the measures they put in place to protect people's right to private life. Notwithstanding the potential merits of Mr Mosley's individual case, given that a prenotification requirement would

inevitably affect political reporting and serious journalism, in addition to the sensationalist reporting at issue in Mr Mosley's case, the Court stressed that any restriction on journalism required careful scrutiny.

In the United Kingdom, the right to private life had been protected with a number of measures: there was a system of self-regulation of the press; people could claim damages in civil court proceedings; and, if individuals were aware of an intended publication touching upon their private life, they could seek an interim injunction preventing publication of the material. In addition, in the context of private life and freedom of expression, a parliamentary inquiry on privacy issues had been recently held in the UK with the participation of various interested parties, including Mr Mosley himself, and the ensuing report had rejected the need for a pre-notification requirement.

The Court further noted that Mr Mosley had not referred to a single jurisdiction in which a pre-notification requirement as such existed, nor had he indicated any international legal texts requiring states to adopt such a requirement. Last and not least, the current UK system fully corresponded to the resolutions of the Parliamentary Assembly of the Council of Europe on media and privacy.

As to the clarity of any pre-notification requirement, the Court was of the view that the concept of "private life" was sufficiently well understood for newspapers and reporters to be able to identify when a publication could infringe the right to respect for private life. It further considered that a satisfactory definition of those subject to the obligation could be found. However, any pre-notification obligation would have to allow for an exception if public interest was at stake. Thus, a newspaper could opt not to notify an individual if it believed that it could subsequently defend its decision on the basis of the public interest in the information published. The Court observed in that regard that a narrowly defined public interest exception would increase the chilling effect of any pre-notification duty. In Mr Mosley's case, given that the News of the World had believed that the sexual activities they were disclosing had had Nazi overtones, hence were of public interest, they could have chosen not to notify Mr Mosley, even if a legal pre-notification requirement had been in place. Alternatively, a newspaper could choose, in any future case to which a pre-notification requirement was applied, to run the same risk and decline to notify, preferring instead to pay a subsequent fine. The Court emphasised that any pre-notification requirement would only be as strong as the sanctions imposed for failing to observe it; however, particular care had to be taken when examining constraints which might operate as a form of censorship prior to publication. Although punitive fines and criminal sanctions could be effective in encouraging pre-notification, that would have a chilling effect on journalism, even political and investigative reporting, both of which attracted a high level of protection under the Convention. That ran the risk of being incompatible with the Convention requirements of freedom of expression. The Court concluded by recognising that the private lives of those in the public eye had become a highly lucrative commodity for certain sectors of the media. The publication of news about such people contributed to the range of information available to the public.

Although the dissemination of that information was generally for the purposes of entertainment rather than education, it undoubtedly benefitted from the protection of Article 10. The Article 10 protection afforded to publications might cede to the requirements of Article 8 where the information was of a private and intimate nature and there was no public interest in its dissemination.

However, looking beyond the facts of Mr Mosley's case, and having regard to the chilling effect to which a pre-notification requirement risked giving rise, to the doubts about its effectiveness and to the wide margin of appreciation afforded to the UK in that area, the Court concluded that Article 8 did not require a legally binding pre-notification requirement. Therefore, its absence in UK law had not breached Article 8.

Association 21 December 1989 and Others v. Romania

Judgment of 24 May 2011. The case stemmed from the crackdown on anti-government demonstrations in Romania in December 1989. Two applicants, whose son lost his life in those circumstances, complained about the ineffectiveness of the investigation. Another applicant, president of an association for the defence of the interests of participants and victims of those events, argued among other things that he had been subjected to unlawful surveillance.

The Court noted that its finding of a violation of Article 2 on account of the lack of an effective investigation related to a wide-scale problem, given that many hundreds of people were involved as injured parties in the impugned criminal proceedings. In addition, more than a hundred applications similar to today's case were pending before the Court. It added that general measures at domestic level would unquestionably be necessary in the context of the execution of today's judgment.

Crackdown on Romanian demonstrations in 1989: lack of effective investigation and use of secret surveillance
The Court held, unanimously, that there had been:
– a violation of Article 2 (right to life) on account of the lack of an effective investigation into the death of the son of applicants Elena and Nicolae Vlase; and
– a violation of Article 8 (right to respect for private life and correspondence) on account of secret surveillance measures against the applicant Teodor Măriş.

Principal facts

The applicants are the "21 December 1989 Association", registered in Bucharest; its president, Teodor Măriş, a Romanian national who was born in 1962 and lives in Bucharest; and Elena Vlase and her husband Nicolae Vlase, two Romanian nationals who live in Braşov (Romania). They were, or represent, participants, injured victims or relatives of those who died in the crackdown on anti-government demonstrations in December 1989, around the time when the then Head of State, Nicolae Ceauşescu, was overthrown. According to indications from the Romanian authorities in 2008, over 1 200 people died, over 5 000 were injured and several thousand were unlawfully deprived

of their liberty and subjected to ill-treatment during those events.

In the 1990s various investigations into the events were opened by military prosecutors. The main one, under file No. 97/P/1990, began in July 1990. On 20 September 1995 the proceedings were discontinued, mainly on the ground that the criminal responsibility for the deaths and injuries caused in Bucharest, before 22 December 1989, by military personnel of the Defence Ministry, Interior Ministry and State Security Service (*Securitate*), lay exclusively with those who had ordered the use of firearms, namely the then Head of State and his defence and interior ministers, and the head of the *Securitate* – all of whom had already been convicted or had died. On 7 December 2004 the military prosecution division at the High Court of Cassation and Justice quashed that decision as unlawful and ill-founded. On the same day the military prosecution division ordered the indictment of 102 people, mainly officers of the army, the police and the *Securitate*, for murder, genocide, complicity in and instigation of and participation in those offences, between 21 and 30 December 1989. 16 civilians, including a former Romanian president and former head of the Romanian intelligence service, were also indicted. Subsequently, a number of other criminal investigations were joined under file No. 97/P/1990.

It can be seen from a letter sent in June 2008 by the military prosecutor's office to the applicant association that in the period 2005 to 2007, 6 370 people were interviewed in this case, and that 1 100 ballistic examinations, over 10 000 investigative acts and 1 000 on-site enquiries were conducted. The letter also mentioned delays in the investigation and referred to certain causes, including: the fact that the necessary investigative acts had not been carried out immediately after the homicides and ill-treatment in question, the repetitive steps to have the case transferred from one prosecutor to another, the lack of prompt communication to the injured parties of the discontinuance decisions, and the "lack of co-operation" on the part of the institutions involved in the December 1989 crackdown. The letter adds that delays were also caused by the Constitutional Court's decision of 16 July 2007 transferring from the military to public prosecutors the competence to continue the investigation in case No. 97/P/1990. On 15 January 2008 the case was thus transferred to the public prosecutor's office at the High Court of Cassation and Justice.

Investigation into the death of Nicuşor Vlase, the son of applicants Elena and Nicolae Vlase

The investigation into Nicuşor's death was first conducted by the military prosecutor's office of Braşov. After being given the opportunity to see their son's body, on which they noticed signs of violence, with the gunshot wound still bleeding, Elena and Nicolae Vlase immediately expressed their doubts about the version that their son had been killed in Braşov on 23 December 1989. In their view he must have died later. Between 1991 and 2008 they sent numerous submissions and complaints to the prosecutor's office and other authorities, requesting that those who had killed their son be identified and punished. In a decision of 28 December 1994, which was not notified to Elena and Nicolae Vlase, the military prosecutor's office of Braşov discontinued the proceedings. It was not until 9 July 1999 that the military prosecutor informed the applicants that the investigation concerning the death of their son "during the events of December 1989" had been discontinued on account of an "error of fact, which ruled out any criminal responsibility". On an appeal by Elena Vlase that decision was set aside in August 1999. The applicants reiterated their complaints on numerous occasions. In January 2006 the investigation was joined to case No. 97/P/1990. In letters of October 2008 and January 2009 in response to a complaint from Elena Vlase about the length of the investigation, the National Legal Service Council indicated its finding that from 1994 to 2001 and 2002 to 2005, no investigative act had been taken to identify those responsible for the death of her son, but that the prosecutors were not subject to disciplinary measures on account of delays. The Council added, however, that the investigation had been resumed after December 2004. The applicants sought compensation from the institutions they held responsible for the death of their son and for impeding the corresponding investigation.

The case of Teodor Mărieş and the association of which he is president

Mr Mărieş played an active role in the demonstrations from 21 December 1989 onwards. He was part of the crowd that was rammed by the armoured vehicles and came under fire from the security forces. On 22 and 23 December 1989 he was one of the demonstrators who managed to enter the headquarters of the Communist Party's Central Committee and the premises of the national TV station. He took part in demonstrations until 1990, requesting that responsibilities for the killings in December 1989 be established. Mr Mărieş subsequently refused to obtain a "revolutionary's certificate", but the authorities clearly confirmed that he had taken part in the events leading to the fall of the totalitarian regime.

Teodor Mărieş has alleged that, as President of the applicant association, he has been subjected to secret measures of surveillance, in particular phone tapping. Mr Mărieş submitted two intelligence notes of June and December 1990 concerning him, and one report from the Romanian Intelligence Service (SRI) of November 1990. He obtained copies of those documents in 2006. They provide numerous details, in particular about Mr Mărieş' private life. From 1998 onwards the applicant association requested the SRI to inform it of the warrants on the basis of which the alleged illegal phone tapping had been carried out. The SRI replied that it could not grant that request, as that was prohibited by legislation on national security and on its activity. In the course of 2009 three other organisations with jurisdiction in matters of national security informed Mr Mărieş that he had not been under their surveillance or that they had no information on the matter.

Applicants' access to investigation files

In October 2009 copies of all the investigation documents, together with audio and video recordings in file No. 97/P/1990, except for those that were confidential, were given to the applicant association. By a decision of the Government in February and March 2010, certain information relating to official secrets held by the Ministry of Defence was declassified and other documents were thus made available to the applicants. In their submission they

now have access to almost all the documents from the file except for the decisions of the Council of Ministers.

Draft law on an amnesty for acts committed by servicemen

In 2008 a draft law on an amnesty for acts committed by military personnel in December 1989 was transmitted to military prosecutors for their opinion.

Complaints

Relying on Article 2 (right to life), Mr and Mrs Vlase complained of the lack of an effective investigation into their son's death. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Mărieş complained of the lack of an effective investigation into the ill-treatment which he said had been inflicted on him during the demonstrations of December 1989. Relying on Articles 8 (right to respect for private life and correspondence), he further complained, in his own name and on behalf of the applicant association, that he had been subjected to secret surveillance measures as a form of pressure by the authorities in connection with his activities as president of an association campaigning for an effective investigation into the events of December 1989. The applicants further relied on one or more of the following Articles in their complaints concerning the lack of an investigation: Article 6 (right to a fair hearing within a reasonable time), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 34 (right of individual application).

Decision of the Court

The Court found that only the complaints under Articles 2 and 8 were admissible (Article 35, admissibility conditions). In addition, its findings with regard to those Articles – or on the inadmissibility of the other complaints – made it pointless to examine the complaints under Articles 6, 13, 14 and 34. It further observed that the association had not maintained its initial complaint as regards the alleged use of secret surveillance (Article 37).

The Court thus had to examine on the merits only those questions concerning the effectiveness of the investigation into the death of M and Mrs Vlase's son (Article 2) and concerning the alleged secret surveillance of Mr Mărieş (Article 8).

Article 2 (investigation into death of Mr and Mrs Vlase's son)

Article 2 required that an effective investigation be conducted when individuals had been killed by the use of force, especially by agents of the State. The circumstances of the killings had to be examined promptly, comprehensively and impartially, in order to identify and punish those responsible.

As regards the death of Mr and Mrs Vlase's son, the Court noted that an investigation procedure had been pending for over 20 years. As the European Convention on Human Rights had not entered into force in respect of Romania until 20 June 1994 the Court could examine that investigation only in relation to the period subsequent to that date.

The Court observed that in 1994 the case was pending before the military prosecutors of Braşov. Those prosecutors were, on the same basis as the majority of the defendants, who included high-ranking army officers still in office, military personnel bound by the principle of subordination to hierarchy. It further observed that, as the National Legal Service Council had confirmed by two letters of October 2008 and January 2009, between 1994 and 2001, then between 2002 and 2005 (for ten years in total), no investigative act concerning the death of the applicants' son had been performed, apparently without justification. Similarly, in a letter of 2008 the military prosecution division at the High Court of Cassation and Justice had pointed to delays and had drawn up a list of causes, which included a lack of prompt notification to the injured parties of the discontinuance decisions, or a "lack of co-operation" on the part of the institutions involved in the December 1989 crackdown. In that connection, the Court observed that the deliberate withholding of evidence cast doubt on the actual capacity of the investigations to establish the facts. Similarly, the "secret" or "absolute secret" classification of essential information from the investigation was not justified.

The Court further pointed to the obligation to associate the victim's relatives with the proceedings. It noted that no justification had been given for the total failure to give Mr and Mrs Vlase any information about the investigation until July 1999, despite their numerous requests. More specifically, neither the discontinuance decision of 28 December 1994 nor its grounds had been notified to them. Even after that date, the notification given to them was confined to summary information in December 2003 and repetitive answers from the National Legal Service Council in October 2008 and January 2009. It was only in February-March 2010 that essential information from the investigation, previously covered by a "secret" or "absolute secret" classification, had been made available to the applicants or any other injured party.

The Court did not underestimate the undeniable complexity of the case, which, since the proceedings had been joined under file No. 97/P/1990 in January 2006, also involved the establishment of those responsible for the general armed repression that took place in the last days of 1989 in various Romanian towns and cities. It took the view, however, that the political and social issues referred to by the Romanian authorities in their arguments could not in themselves justify either the length of the investigation or the manner in which it had been conducted over a significant period of time, without those concerned or the public being informed of its progress. On the contrary, its importance for Romanian society should have encouraged the authorities to deal with the case promptly and without needless delays, in order to avoid any appearance of impunity for certain acts.

The Court emphasised the importance of the right of the victims and of their families and dependants to ascertain the truth about the circumstances of events involving a large-scale violation of rights as fundamental as the right to life, entailing the right to an effective judicial investigation and possibly the right to compensation. For that reason, in the case of a widespread use of lethal force against the civilian population during the anti-government demonstrations that preceded the transition from a totalitarian to a more democratic regime, the Court could not regard an investigation as effective when it was concluded by the effect of a time-bar on criminal responsibility, in a situation where it was the authorities themselves that had remained inactive. Moreover, as the Court had already indicated, an amnesty was generally incompatible with the States' duty to investigate acts of torture and to combat impunity for international crimes. The same could be said for pardons.

In those circumstances there had been a violation of Article 2 in respect of Mr and Mrs Vlase.

Article 8 (alleged secret surveillance of Mr Mărieș)

M. Mărieș produced two intelligence notes and a summary report concerning him that had been drawn up in 1990. This confirmed that he had indeed been subject to surveillance measures in 1990. Those documents had been kept by the Romanian intelligence services at least until 2006, when he had obtained copies. The Court observed that it had examined Romanian legislation concerning secret surveillance measures related to national security for the first time in 2000.[11] It had then concluded that the Romanian system for gathering and archiving information did not provide the safeguards necessary for the protection of individuals' private lives. The domestic law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The Committee of Ministers of the Council of Europe [12] had issued an Interim Resolution[13] calling for those shortcomings to be remedied rapidly and fully, but despite that measure, among others, the execution of the Court's judgment was still pending to date. In addition, as the Court had also found in 2007 [14], despite amendments in 2003 and 2006 to the Code of Criminal Procedure, it still appeared possible for surveillance measures to be ordered in cases of presumed breaches of national security according to the procedure provided for under law no. 51/1991, which had not been repealed.

The absence of sufficient guarantees in domestic law had thus had the result that the information gathered in 1990 by the intelligence services on Mr Mărieș was still kept by them 16 years later, in 2006. Moreover, with the lack of safeguards in the relevant domestic law, Mr Mărieș ran a serious risk of having his telephone calls intercepted.

There had therefore been a violation of Article 8 in respect of Mr Mărieș.

Article 46 (binding force and execution of judgments)

The Court noted that its finding of a violation of Article 2 on account of the lack of an effective investigation related to a wide-scale problem, given that many hundreds of people were involved as injured parties in the impugned criminal proceedings. In addition, more than a hundred applications similar to today's case were pending before the Court. They could give rise in the future to new judgments finding a violation of the Convention.

The Court pointed out, among other things, that in principle Romania remained free, subject to monitoring by the Committee of Ministers of the Council of Europe, to choose the means by which it would discharge its legal obligation under Article 46. It found, however, that general measures at domestic level would unquestionably be necessary in the context of the execution of the present judgment. It found that Romania would have to put an end to the situation that had led to the finding of a violation of Article 2 in respect of Mr and Mrs Vlase, on account of the right of the numerous persons affected to have an effective investigation – a right that was not extinguished by the time-bar on criminal responsibility – and also having regard to the importance for Romanian society to know the truth about the events of December 1989. Romania thus had to provide appropriate redress in order to fulfil the requirements of Article 46, taking into account the principles of the Court's case-law in such matters.

In those circumstances, the Court did not find it necessary to adjourn the examination of similar cases pending before it while waiting for Romania to take the necessary measures. The fact of continuing to examine similar cases would regularly remind Romania of it obligation arising from the present judgment.

Article 41 (just satisfaction)

By way of just satisfaction, the Court awarded Mr and Mrs Vlase 15 000 euros each and M. Mărieș 6 000 euros, in respect of non-pecuniary damage. Romania also had to pay a total of 20 000 euros for costs and expenses.

Editorial Board of Pravoye Delo and Shtekel v. Ukraine

Ukrainian newspaper's staff sanctioned wrongly for a publication of material obtained from the Internet
The Court held, unanimously, that there had been:
– Two violations of Article 10 (right to freedom of expression and information).

Judgment of 5 May 2011. The case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet.

Principal facts

The applicants are the Editorial Board and the editor-in-chief of Ukrainian newspaper Pravoye Delo. At the time, the newspaper published articles on political and social questions three times a week, frequently reproducing material obtained from various public sources due to a lack of funds.

In September 2003, Pravoye Delo published an anonymous letter, allegedly written by an employee of the Security Service of Ukraine, which had been downloaded from a news website. The letter contained allegations that senior officials of the Odessa Regional Department of the Security Service had been engaging in corrupt and otherwise criminal activities, including in connection with organised criminal groups. The newspaper provided reference to the source of the information and also published a comment by the editorial board which indicated that the information in the letter might be false and invited comments and other related information from all sources. A month later, the president of the national Thai Boxing Federation, who featured in the letter as a member of a criminal group, brought proceedings for defamation against both applicants. In particular, he complained that the allegations about him were untrue and had damaged his dignity and reputation.

11. *Rotaru v. Romania*, Grand Chamber, 04.05.2000.
12. Under Article 46 of the Convention, the Committee of Ministers is responsible for monitoring the execution of the Court's judgments.
13. Document ResDH(2005)57.
14. *Dumitru Popescu v. Romania (No. 2)*, 26.04.2007.

In May 2004, the court ruled against the editorial board and editor-in-chief of Pravoye Delo and ordered them to publish a retraction of a part of the publication containing particularly strong accusations in respect of the Boxing Federation president. In addition, the court ordered them to pay jointly around 2 394 euros as compensation for the damage caused to the president by the publication, and ordered separately the newspaper's editor-in-chief to publish an official apology for having allowed the publication in question.

The applicants appealed unsuccessfully. However, in July 2006, the Boxing Federation president and the applicants reached a friendly settlement as a result of which they did not have to pay him the compensation awarded by the courts, apart from the costs and expense related to the court proceedings. The applicants also undertook to publish promotional and information material as requested by the Federation president until the amount of compensation they had been ordered to pay was reached. In 2008, the applicants discontinued the publishing of Pravoye Delo.

Complaints

Relying on Article 10, the applicants complained that their right to freedom of expression had been breached as a result of the sanctions imposed on them by the courts because of the publication in question.

Decision of the Court

Article 10

Apology ordered by courts

The applicants had published a letter alleging – without providing any proof - that a public figure, the president of the national Thai Boxing Federation, had been a member of a criminal group and had coordinated and sponsored murders. Ukrainian law at the time had only provided that defamed individuals could ask for a retraction of the defammatory material and for compensation for damage. Both of those measures had been applied in respect of the applicants.

However, the courts had ordered the editor-in-chief to also publish an official apology in the newspaper, which had not existed in national law. In addition, the national judges had found in their subsequent practice that an obligation to apologise imposed by a court following a publication was against the Ukrainian Constitutional guarantee of freedom of expression.

Consequently, the Court held that the order to the editor-in-chief to apologise had not been done in accordance with the law, and had, therefore, been in violation of Article 10.

Lack of safeguards for usage of Internet material

The publication in question had been a literal reproduction of material downloaded from a publicly accessible Internet newspaper. It had referred to the source of the information and had contained in addition comments by the editorial board clearly distancing the newspaper from the content of the material.

Ukrainian law, and in particular the Press Act, absolved journalists from civil responsibility for reproducing material published elsewhere in the press. The Court noted that this had been its own consistent approach in respect of journalists' freedom to disseminate statements made by others.

However, the Ukrainian courts had found that no immunity from liability existed for journalists in cases in which the source of the material came from Internet publications not registered in accordance with the Ukrainian Press Act. At the same time, no domestic rules had existed on State registration of Internet media.

The Court, having had regard to the important role the Internet played for media activities generally, and for the exercise of the freedom of expression, found that the absence of legal regulation allowing journalists to use information obtained from the Internet without fear of being sanctioned, was an obstacle to the press exercising their vital function of a "public watchdog".

In addition, under Ukrainian law, journalists might be exempt from the payment of compensation if they had acted in good faith, had checked the information and had not disseminated the untrue information intentionally. The applicants had raised all these arguments in their defence yet it had been ignored by the national courts.

The Court concluded that, in the absence of clarity in domestic law in respect of journalists using information obtained from the Internet, the applicants could not have foreseen the consequences of their action. Therefore, the Convention requirement that any limitation to freedom of expression had to have a basis in law, which was clear, accessible and foreseeable, was not met.

There had, therefore, been a violation of Article 10 because of the lack of adequate safeguards for journalists using information obtained from the Internet.

Article 41 (just satisfaction)

Under Article 41, the Court held that Ukraine was to pay the applicants 6 000 euros in respect of non-pecuniary damage.

Negrepontis-Giannisis v. Greece

Unjustified refusal to recognise the adoption of an adult by his uncle, a monk.
The Court held, unanimously, that there had been:
– A violation of Article 8 (right to respect for private and family life), A violation of Article 8 in conjunction with Article 14 (prohibition of discrimination),
– A violation of Article 6 (right to a fair hearing) and
– A violation of Article 1 of Protocol No. 1 to the Convention (protection of property).

Judgment of 3 May 2011. The case concerned the full adoption of the applicant by his uncle, a monk.

Principal facts

The applicant, Nikolaos Negrepontis-Giannisis, is a Greek national who was born in 1964 and lives in Athens.

In 1984, when he was a student living at the home of his uncle, Michaïl Negrepontis -Giannisis, an Orthodox bishop, in the United States, he and his uncle initiated proceedings for his uncle to adopt him. A Michigan court made the adoption order the same year.

The applicant returned to Greece in 1985. His adoptive father returned in 1996 and died in 1998 in Athens.

On 24 December 1999 the Athens Court of First Instance, following an application by the applicant, held that American adoption order was not contrary to public policy or *contra bonos mores* (immoral) and declared it final and legally enforceable in Greece.

Following this judgment the applicant (whose surname at the time was simply Giannisis) began proceedings to change his name and obtained a positive decision from the prefect of Athens on 4 August 2001, allowing him to add his adoptive father's surname (Negrepontis) to his original surname.

In 2000 and 2001 members of the Negrepontis family brought court proceedings challenging the recognition of the adoption. On 25 April 2002 Athens Court of First Instance rejected the application, holding that Greek law did not prohibit adoption by a monk. However, the Court of Appeal overturned that decision on 18 December 2003 on the grounds that monks were prohibited from carrying out legal acts, such as adoption, which related to secular activities, as it was incompatible with monastic life and contrary to the principles of Greek public policy. On 22 February 2006 a division of the Court of Cassation dismissed an appeal on points of law lodged by Mr Negrepontis-Giannisis, stressing that the adoption order had implications in terms of inheritance rights. It referred to the full Court of Cassation the question whether adoption by a monk was contrary to Greek public policy. In a judgment of 15 May 2008 the full Court of Cassation answered that question in the affirmative, basing its decision on canon law texts from the seventh and ninth centuries. The ruling was adopted by 16 votes to eight, with the dissenting judges expressing the view that there was no provision in Greek law which barred monks from adopting.

Complaints

Relying on Articles 6, 8 and 14 of the Convention and Article 1 of Protocol No. 1, Mr Negrepontis-Giannisis complained of the refusal by the Greek authorities to recognise the order for his adoption made in the United States.

Decision of the Court

Article 8

The refusal to recognise the adoption in Greece had amounted to interference with Mr Negrepontis-Giannisis's right to respect for his private and family life. Such interference was unacceptable under the Convention unless it was "in accordance with the law", pursued one or more "legitimate aims" within the meaning of Article 8§2 and was "necessary in a democratic society" in order to achieve them. The key issue in Mr Negrepontis-Giannisis's case concerned the last of those three criteria.

The Court observed that the texts on which the Court of Cassation, sitting as a full court, had relied were all ecclesiastical in nature and dated back to the seventh and ninth centuries. However, national legislation had been passed in 1982 recognising the right of monks to marry and there was no domestic legislation refusing them the right to adopt.

In today's case, the adoption order had been obtained in 1984, when the applicant was already of age. It was valid for 24 years, and the adoptive father had expressed his wish to have a legitimate son who would inherit his property.

Accordingly, the Court was of the view that the refusal to implement in Greece to the adoption order in respect of Mr Negrepontis-Giannisis had not met any pressing social need and had not been proportionate to the aim pursued. There had therefore been a breach of Article 8.

Article 8 in conjunction with Article 14

The Court reiterated that a difference in treatment – such as the difference in the treatment of Mr Negrepontis-Giannisis, as an adopted child, compared with a biological child – was discriminatory if it had no objective and reasonable justification. The Court observed that, since 1982, monks had been allowed to marry and found a family and that the law laying down that rule had been enacted before the applicant's adoption in 1984. Hence, a biological child born to Mr Negrepontis at the time the applicant was adopted could not have been deprived of his or her filial rights. In view of this unjustified difference in treatment, there had been a violation of Article 8 taken in conjunction with Article 14.

Article 6§1

Bearing in mind the texts on which the Greek Court of Cassation had relied in refusing to recognise the adoption and the Court's conclusions under Article 8, the Court also found a violation of Article 6§1.

Article 1 of Protocol No. 1

The Court took the view that the decision of the Greek courts, which had resulted in the applicant's being deprived of his status as heir, amounted to interference with his right to the peaceful enjoyment of his possessions, in violation of Article 1 of Protocol No. 1.

Article 41

The Court considered that the question of the application of Article 41 was not ready for decision and reserved it for a later date.

Shimovolos v. Russia

Judgment of 21 June 2011. The case concerned the registration of a human rights activist in a secret surveillance security database and the tracking of his movements and his arrest.

Human rights activist detained arbitrarily following registration of his name in a surveillance database.
The Court held, unanimously, that there had been:
– A violation of Articles 5§1 (right to liberty and security) and a violation of Article 8 (right to respect for private life).

Principal facts

The applicant, Sergey Shimovolos, is a Russian national who was born in 1969 and lives in Nizhniy Novgorod (Russia). He is the head of the Nizhniy Novgorod Human Rights Union.

The Interior Department of Transport registered his name in a surveillance database which contained information about people percieved by the authorties as "potential extremists", such as, in particular, skinheads and human rights activists. Whenever someone listed in that database bought a train or plane ticket, the Interior Department of Transport was automatically notified.

Thus in May 2007, when Mr Shimovolos got on a train to travel to Samara in connection with a EU-Russia summit and a protest march organised there, three police officers checked his identity papers and asked him about the reason for his travel. His identity documents were checked twice more during his travel.

When Mr Shimovolos got off the train in Samara, the police stopped him, checked his identity yet again and threatened him that force would be used if he did not follow them to the police station. He was kept at the police station between about 12h15 and 13h00 on 14 May 2007. The police questioned him about the purpose of his trip and his acquaintances in Samara. The police report drawn up in connection with his questioning indicated that he had been stopped and taken to the police station in order to prevent him from commiting administrative or criminal offences, after information had been received that Mr Shimovolos intended to take part in an opposition rally and might be carrying extremist literature. At the police station, Mr Shimovolos denied involvement in any extremist activities. It was clear that he did not carry extremist literature because he did not have any luggage.

Sergey Shimovolos complained to the prosecution about his questioning by the police.

The prosecutor refused, on three occasions, to open criminal proceedings against the police officers finding that their actions had been lawful.

Mr Shimovolos's brought unsuccessful civil actions before the courts, in May 2007 and in December 2008 respectively, complaining about his arrest and one-hour detention, as well as about the registration of his name in the surveillance database, and that he had been frequently stopped and his identity checked without a reason.

Complaints

Relying on Articles 5 and 8, Mr Shomovolos complained that his arrest had been unlawful and that his name had been registered in the surveillance database as a result of which the police had collected personal data about him.

Decision of the Court

Right to liberty and security (Article 5)

The Court observed that Mr Shimovolos had been taken to the police station under threat of force and had not been free to leave without permission. Therefore, he had been deprived of his liberty on 14 May 2007, even though it was for not longer than 45 minutes.

The police had not suspected Mr Shivolos of having committed an offence. Instead, he had been arrested, according to the Government submissions, in order to prevent him from commiting offences of an extremist nature. It appeared that he had been stopped, questioned and escorted to the police station in Samara because his name had been registered in the surveillance database. The only reason for that registration had been his involvement as a human rights activist.

The Court recalled that the Convention, and in particular Article 5§1 (c), did not allow detention, as a general policy of prevention, of people who were perceived by the authorities, rightly or wrongly, to be dangerous or likely to offend. The Government's explanation that Mr Shimvolos could commit "offences of an extremist nature" was not specific enough to be acceptable under the Convention. The only specific suspicion against him had been that he might have been carrying extremist literature, yet no evidence had been provided to support that suspicion. Apparently, the Court noted with concern, the suspicion had been based on the mere fact that Mr Shimovolos was a member of human rights organisations.

The Court emphasised that membership of human rights institutions could not justify a person's arrest. Consequently, Mr Shivolos had been arrested arbitrarily, in violation of Article 5§1.

Right to respect for private life (article 8)

The Court noted that, by collecting and storing data about the movements of Mr Shimvolos by train or air, the Russian authorities had interfered with his private life. In order for that interference to be justified, the Court recalled, minimum safeguards had to be set out in statute law to avoid abuse. The database in which Mr Shimvolos' name had been registered had been created on the basis of a ministerial order which had not been published and was not accessible to the public. Therefore, people could not know why individuals were registered in it, for how long information was being kept about them, what type of information was included, how the information was stored and used and who had control over that.

As a result, the scope and manner of collecting and using the data in the surveillance database had been neither clear, nor foreseeable, contrary to the requirements of the Convention and in violation of Article 8.

Other articles

The Court held that no separate issue arose under any other Article of the Convention.

Just satisfaction (Article 41)

Mr Shimvolos had not asked for just satisfaction, and so the Court did not award him any sum on that account.

Adamov v. Switzerland

The detention in Switzerland of the former Russian energy minister was lawful .
The Court held, by a majority, that there had been:
– no violation of Article 5§1 (right to liberty and security).

Judgment of 21 June 2011. The case concerned the detention in Switzerland of a former Russian energy minister, who was arrested while he was in Bern visiting his daughter and on business.

Principal facts

The applicant, Yevgeni Adamov, is a Russian national who was born in 1939 and lives in Moscow.

In 2004 criminal proceedings were opened against him in the United States on a charge of misappropriating funds that had been provided to Russia by the USA when he was the Russian Minister for Nuclear Energy.

On 11 February 2005 he obtained a four-month Swiss visa that he had applied for expressly in order to visit his daughter, who was living in Bern.

On 21 February 2002 criminal proceedings were opened in Switzerland against Mr Adamov's daughter for money laundering. The suspicions mainly concerned sums of money that she had allegedly received from her father. Through his daughter's lawyer Mr Adamov had said that he was prepared to be questioned in Switzerland by the investigating judge and indicated the period in which he intended, in any event, to be in Switzerland. The investigating judge informed the representative of Mr Adamov's daughter that there were two possible dates for the interview in that period: 1 or 2 May 2005. After arriving in Switzerland on 20 April 2005 Mr Adamov expressed a preference for 2 May and asked the investigating judge to confirm the date. The judge immediately issued a summons that was served at the private home of Mr Adamov's daughter in Bern, with a copy addressed to her lawyer.

On 28 April 2005 the Swiss investigating judge contacted a public prosecutor in Pennsylvania to find out any information that might be useful in the proceedings against Mr Adamov's daughter. On 29 April 2005 the US Department of Justice sent the Swiss Federal Office of Justice a request for the provisional arrest of Mr Adamov pursuant to the extradition treaty of 14 November 1990 between Switzerland and the USA. On the same day the Federal Office of Justice issued an urgent order for Mr Adamov's arrest that was sent to the investigating judge.

On 2 May 2005 Mr Adamov appeared before the investigating judge to give evidence in the proceedings against his daughter. In response to a question he stated that he was visiting Switzerland for both private and business reasons. After the hearing the investigating judge notified him that he was under arrest and he was immediately taken by the police to Bern prison. On 3 May 2005 the Federal Office of Justice issued an order of provisional detention for purposes of extradition, and it was served on Mr Adamov the next day.

On 17 May 2005 Russia also applied for his extradition.

On the same day Mr Adamov lodged an appeal with the Federal Criminal Court.

In an article written in prison and published on 6 June 2005 in the Russian newspaper *Izwestija*, Mr Adamov said that he had gone to Switzerland to follow up two business projects, one concerning the export of energy from Russia, the other technological co-operation.

The US authorities drafted a formal extradition request dated 2 June, but not filed with the Swiss authorities until 24 and 27 June 2005.

On 9 June 2005 the Federal Criminal Court upheld Mr Adamov's appeal and lifted the extradition arrest order against him. It took the view that he had gone to Switzerland to give evidence as a witness in criminal proceedings and that it was therefore legally prohibited to restrict his liberty by virtue of the "safe-conduct" clause. According to that rule, any person habitually living abroad and entering any State accepting the rule, in this case Switzerland, in order to appear on summons in a criminal case, for example as a witness like Mr Adamov, cannot be prosecuted or detained in respect of acts committed before their arrival in the country.[15]

On 17 June the Federal Office of Justice appealed against this decision in the Federal Court. On 14 July 2005 that court overturned the decision of the Federal Criminal Court. Taking the view that Mr Adamov had been visiting Switzerland for private purposes (to see his daughter) and for business, and not to give evidence as a witness in criminal proceedings, it held that it was not appropriate to apply the "safe conduct" clause and that he could thus be detained.

Mr Adamov was held in custody until 30 December 2005 and then finally extradited to Russia pursuant to an administrative decision of the Federal Court, which found that priority had to be given to the Russian extradition request, as the applicant was a Russian national and stood accused of committing criminal acts in that country.

On 6 December 2007 the Federal Criminal Court dismissed a request for compensation for the alleged unlawfulness of Mr Adamov's detention.

Complaints

Relying in particular on Article 5§1, Mr Adamov complained that his detention with a view to his extradition had been unlawful, as the Swiss authorities had wrongly refused to grant him the benefit of the "safe conduct" clause. He added that even if the clause in question had not been regarded as applicable to his situation, the Swiss authorities' trickery had in itself been contrary to the principle of good faith.

Decision of the Court

The Court noted that Mr Adamov had been taken into custody for extradition purposes, this being covered by Article 5§1 (f). The fact that he had been detained with a view to extradition to the United States but was finally extradited to Russia did not make any difference (this not being related to a finding as to whether the detention was lawful).

As to the question whether Mr Adamov could rely on the "safe conduct" clause, the Court observed that he had not travelled to Switzerland specially to testify in the criminal proceedings against his daughter. On the contrary, he had

15. This clause is included in international instruments (see Article 12 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959) and national legislation (see section 73 of the Swiss Federal Law on International Assistance in Criminal Matters of 20 March 1981) in order to avoid disguised extraditions.

clearly indicated in his statement of 2 May 2005 to the investigating judge of the Canton of Bern that he had freely chosen to go to Switzerland to visit his daughter and for business. That version had been corroborated by his article that was published in the newspaper *Izwestija*. In addition, no summons to appear before the Swiss authorities had been served on him in his State of residence, as required by the relevant national and international provisions for the safe conduct clause to be engaged. The summons to appear on 2 May 2005 had been served on him by the investigating judge at the private home of his daughter, at a time when Mr Adamov was already in Switzerland. The Court thus accepted the Swiss Government's argument that Mr Adamov, who frequently travelled outside Russia and had access to lawyers, must have been aware of the risks he was taking by going abroad, especially as criminal proceedings had been brought against him in the United States. It did not appear that, when he had agreed to give evidence to the investigating judge, he had himself raised the question of safe-conduct protection. By agreeing to go to Switzerland without relying on the safeguards provided for in the relevant international mutual assistance instruments, he had knowingly renounced the benefit of the immunity that arose from the safe-conduct clause.

As regards Mr Adamov's argument that the Swiss authorities had resorted to trickery with the aim of depriving him of immunity, the Court observed that it was on the basis of the information that Mr Adamov was travelling to Switzerland for private and business reasons and that he was prepared to give evidence in the case concerning his daughter that the investigating judge had summoned him for 2 May 2005, one of the days originally proposed by the applicant himself. The judge had not therefore tricked him into coming to Switzerland. In addition, the Court took the view that by informing the US authorities – in connection with the proceedings concerning his daughter – that Mr Adamov was in Switzerland, the Swiss authorities had not shown any bad faith against him: they had simply acted in compliance with the co-operation agreements that the two States had entered into to combat cross-border crime.

In conclusion, Mr Adamov's detention, which had been based on a valid arrest order issued for the purposes of inter-State co-operation to combat cross-border crime, had not infringed the safe-conduct clause or contravened the principle of good faith. The Court thus held, by four votes to three, that Article 5§1 had not been breached.

Separate opinion

Judges Tulkens, Sajó and Pinto de Albuquerque expressed a joint dissenting opinion, which is annexed to the judgment.

Nunez v. Norway

Judgment of 28 June 2011. The case concerned a complaint of a national of the Dominican Republic that an order to expel her from Norway would separate her from her small children living in Norway.

If Norway expelled the foreign mother of two young children it would violate the Convention. he Court held, by a majority, that there would be: – A violation of Article 8 (right to protection of private and family life), if the applicant were expelled from Norway.

Principal facts

The applicant, Mirtha Ledy de Leon Nunez, is a Dominican national who was born in 1974 and lives in Oslo (Norway).

She first arrived in Norway in January 1996. Fined for shop-lifting, she was deported from Norway in March 1996 with a two-year ban on her re-entry into the country. Four months later, she returned to Norway with a different passport bearing different names. In October the same year she married a Norwegian national and applied for a residence permit stating that she had never visited Norway before and had no previous criminal convictions.

Ms Nunez was granted first a work permit and then, in 2000, a settlement permit.

Having split up with her husband, she started living with a national of the Dominican Republic in 2001 and together they had two daughters born respectively in 2002 and 2003.

In December 2001, while Ms Nunez was working at a hairdressing saloon, the police apprehended her, acting upon a tip off that she had previously been in Norway under a different name. Ms Nunez confessed to having used the second passport deliberately in order to live in Norway despite the prohibition imposed by the authorities in 1996.

In April 2005, the Directorate of Immigration revoked her permits and decided that she should be expelled and prohibited from re-entry for two years. In the meantime, in October 2005, Ms Nunez and the father of her children separated. She was then given responsibility for the daily care of the children until, in May 2007, it was transferred to the father who was also granted sole parental responsibility until final judgment. Ms Nunez unsuccessfully challenged in court her deportation order, the Supreme Court having delivered in April 2009 the final judgment upholding the decision to expel her and ban her from Norwegian territory for two years.

Complaints

Relying on Article 8, Ms Nunez complained that the order to deport her from Norway, which also precluded her re-entry for a period of two years, was in breach of her right to family life as it would result in separating her from her small children.

Decision of the Court

Family life (Article 8)

The Court recalled that the Convention did not impose a general obligation on States to respect immigrants' choice of country of residence and to authorise family reunion. Thus, States' obligations to admit on their territory relatives of people residing there varied according to the personal circumstances of the individuals concerned. Expulsion, too, was not as such contrary to the Convention.

Ms Nunez had breached the two-year ban on her re-entry into Norway by returning there four months after she had been expelled. She had intentionally given misleading information about her identity, previous stay in Norway and earlier convictions, and had thus managed to obtain residence and work permits to which she had not been entitled.

She had therefore lived and worked in Norway unlawfully since she had re-entered the country and, therefore, had not been able to reasonably expect to remain lawfully there.

Until her first entry into Norway, she had lived all her life in the

Dominican Republic, and she had had two children born out of her relationship with another national of the Dominican Republic. Consequently, her links with her home country had remained strong and could not be outweighed by the links she had formed in Norway through unlawful stay and without any legitimate expectation to remain there.

Examinining Ms Nunez's children best interest, however, the Court noted that Ms Nunez had been the one who had primarily cared for them since their birth until 2007 when their father had been granted custody. Further, in accordance with the domestic courts' decision, the children would have remained in Norway where they had lived all their life and where their father, a settled immigrant, lived. In addition, the children had certainly suffered as a result of their parents' separation, and from having been moved from their mother's home to that of their father, and of the threat of their mother being expelled. It would be difficult for them to understand the reasons if they were to be separated from their mother. Moreover, although Ms Nunez had admitted to the police in December 2001 that she had entered Norway unlawfully, the authorities had ordered her expulsion almost four years later, which could not be seen as swift and efficient immigration control. In view of the children's long-lasting and strong bond to their mother, the decision granting their custody to their father, the stress they had experienced and the long time it had taken the authorities to decide to expel Ms Nunez and ban her from re-entry into the country, the Court concluded that – in the concrete and exceptional circumstances of her case - if Ms Nunez were expelled and prohibited from entering the country for two years, it would have an excessively negative impact on her children. Therefore, the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and Ms Nunez's need to remain in Norway in order to continue to have contact with her children, in violation of Article 8.

The Court indicated to the Norwegian Government that it would be desirable not to expel Ms Nunez during the period when the judgment was not yet final.

Separate opinions

Judge Jebens expressed a concurring opinion and judges Mijović and De Gaetano expressed a joint dissenting opinion, which can be found at the end of the judgment.

Anatoliy Ponomaryov and Vitaliy Ponomaryov v. Bulgaria

Two Russian boys living in Bulgaria should not have been asked to pay school fees for their secondary education.
The Court held, unanimously, that there had been:
– A violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1.

Judgment of 21 June 2011. The case concerned the requirement that two Russian boys, living in Bulgaria with their mother who was married to a Bulgarian, pay school fees for their secondary education, unlike Bulgarian nationals and aliens with permanent residence permits.

Principal facts

The applicants, Anatoliy and Vitaliy Ponomaryovy, are two Russian nationals who were born respectively in 1986 and 1988 in the Kazakh Soviet Socialist Republic, and live in Pazardzhik, Bulgaria.

After the divorce of their parents, Anatoliy and Vitaliy followed their mother to Bulgaria where she married a Bulgarian national and where the family settled in 1994. The mother obtained a permanent residence permit because of her marriage and Anatoliy and Vitaliy were entitled to live in Bulgaria because of their mother. The boys attended primary and secondary schools in Pazardzhik and speak fluent Bulgarian. In 2005, when Anatoliy was in his final year of secondary education and Vitaliy in his penultimate year, they were ordered to pay school fees of 800 euros and 2 600 euros respectively; if they did not pay, they were told they would not be able to go to school and would not be given a certificate for having completed the school year. The school authorities justified the orders with a 2004 ministerial decision and with the relevant Bulgarian legislation, the 1991 National Education Act, which stipulated that foreigners who did not have permanent residence permits would have to pay fees for their secondary education.

Anatoliy and Vitaliy appealed unsuccessfully before the courts. Apparently, their schools did not in practice prevent them from attending classes, yet Anatoliy's secondary school diploma was issued about two years after it was due.

Complaints

Relying on Article 14 in conjunction with Article 2 of protocol No 1 to the Convention, the applicants complained that they had been discriminated against because, unlike Bulgarian nationals and aliens having permanent residence permits, they had been required to pay fees for part of their secondary education.

Decision of the Court

Applicability of Article 14

The Court noted that the prohibition of discrimination under the European Convention on Human Rights applied to all rights which the State had decided to provide under the Convention and its Protocols. Where States subsidised particular educational establishments, they had to ensure effective access to them. As that was an inherent part of the right to education under Article 2 of Protocol No 1, Article 14 applied. Given that Anatoliy and Vitaliy had been secondary school students who, unlike like other such students, had to pay fees to study, they had been clearly treated less favourably than others in a relevantly similar situation.

Prohibition of discrimination

The Court emphasised that its role was not to decide whether States were allowed to charge fees for education, but only whether, once a State had voluntarily decided to provide free education, it could exclude a group of people without justification.

It was true that education was an expensive and complex activity. Given that State resources were inevitably limited, States had to strike a balance between the educational needs of people and States' limited capacity to meet those needs.

At the same time, education enjoyed direct protection under the Convention, as part of Protocol No. 1. It was not only beneficial for individuals but also for society as a whole which needed to integrate

minorities if it were to be pluralistic and democratic.

In general terms, States were free to ask for fees for university education, which was optional. On the other hand, they had to ensure accessible primary education providing basic literacy and numeracy. Mindful of the fact that more and more countries were moving towards putting the notion of "knowledge-based" society in practice, the Court observed that secondary education was of ever-growing importance for individual development and society as a whole.

Anatoliy and Vitaliy Ponomaryovy had been living lawfully in Bulgaria. The authorities had had no objection to them remaining in the country nor had they ever seriously intended to deport them. In addition, at the time Anatoliy and Vitaliy had taken steps to obtain permanent residence permits. They had not attempted to abuse the Bulgarian educational system in any way, given that they had ended up living and studying in Bulgaria because they had followed their mother who had married there. They were fully integrated into Bulgarian society and spoke fluent Bulgarian.

The Bulgarian authorities had not taken any of the above elements into account when deciding to impose school fees on the boys. Indeed, the relevant law did not allow for an exemption from the payment of school fees.

Consequently, the Court found that there had been a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1 as there had been no justification for the school fees imposed on Anatoliy and Vitaliy Ponomaryovy.

Article 41 (just satisfaction)

The Court held that Bulgaria was to pay 2 000 euros to Anatoliy Ponomaryov and Vitaliy Ponomaryov each in respect of non-pecuniary damage, and 2 000 euros for costs and expenses.

Krušković v. Croatia

Judgment of 21 June 2011. This is the first case concerning recognition of paternity of a father who had lost legal capacity.

Father deprived of legal capacity left in legal void as concerned his paternity rights.
The Court held, unanimously, that there had been:
– A violation of Article 8 (right to respect for private and family life).

Principal facts

The applicant, Branko Krušković, is a Croatian national who was born in 1966 and lives in Jurdani (Croatia). In Feburary 2003 Mr Krušković, suffering from personality disorders following long-term drug abuse, was deprived of legal capacity on the recommendation of a psychiatrist. His mother was first appointed his legal guardian, then in September 2006 his father and, after that, an employee of the Opatija Social Welfare Centre.

In August 2007 he made a statement at the Rijeka birth registry that he was the father of a baby girl, born in June the same year. He did this with the mother's consent. He was subsequently registered as the child's father on her birth certificate.

Informed that Mr Krušković no longer had legal capacity, the registry brought proceedings to annul the registration. In October 2007 the domestic courts ordered that the child's birth certificate be amended as a person who no longer had legal capacity did not have the right to recognise a child before the law. Proceedings brought by the welfare centre to establish paternity are currently still pending before the domestic courts.

Complaints

Relying in particular on Article 8 (right to respect for private and family life) of the Convention, Mr Krušković complained about being denied the right to be registered as the father of his biological child, born out of wedlock.

Decision of the Court

Article 8 (right to private and family life)

It was impossible for Mr Krušković to have his paternity recognised under domestic law – either via a statement to the registry or via proceedings before the national courts – as he had lost legal capacity. The relevant authorities could have invited his legal guardian at the time to consent to the recognition of paternity. This was not, however, done. Nor did the welfare centre, on whom Mr Krušković was entirely dependent, take any steps to assist him in his attempts to have his paternity recognised.

The only possibility for Mr Krušković to have paternity established was through civil proceedings which had to be brought by the welfare centre and in which he only had the status of defendant, even though it was actually him who wanted his paternity recognised. Indeed, there was no legal obligation under national law for the social services to bring such proceedings at all and no time-limit fixed. In the two and a half years between the moment when Mr Krušković had made his statement to the registry and the launching of the proceedings before the national courts to establish paternity, he had therefore been left in a legal void; his claim was ignored for no apparent reason. The Court could not accept that this was in the best interests of either the father, who had a vital interest in establishing the biological truth about an important aspect of his private life, or of the child to be informed about her personal identity. The Court therefore held that there had been a violation of Article 8.

Article 41 (just satisfaction)

The Court held that Croatia was to pay Mr Krušković 1 800 euros in respect of non-pecuniary damage and 100 euros for costs and expenses.

Execution of the Court's judgments

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

The Convention (Article 46, paragraph 2) entrusts the Committee of Ministers (CM) with the supervision of the execution of the European Court of Human Rights' (the Court) judgments and, since 1 June 2010, decisions acknowledging friendly settlements under Article 39. The measures to be adopted by the respondent State in order to comply with this obligation vary from case to case in accordance with the conclusions contained in the judgments and the undertakings contained in friendly settlements.

The applicant's individual situation

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

The prevention of new violations

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

In view of the large number of cases reviewed by the CM, only a thematic selection of those appearing on the agenda of the **1100th**, **1108th** and **1115th** Human Rights (HR) meetings[1] (30 November - 3 December 2010, 8-10 March 2011 and 7-8 June 2011) is presented here.

Further information on the below mentioned cases as well as on all the others is available, in particular, on the website of the Department for the Execution of Judgments of the European Court of Human Rights (www.coe.int/execution). This website presents, *inter alia*, the state of progress of the adoption of the execution measures required, including the decisions taken at HR meetings as well as the information submitted by states in action plans and action reports or the comments submitted by the applicants or NGOs (see the Rules for the application of Article 46§2 of the Convention, as amended in 2006[2]).

Interim and Final Resolutions are accessible through www.echr.coe.int on the Hudoc database: select "Resolutions" on the left of the screen and search by application number and/or by the name of the case, and/or by the Resolution serial number (use this option in particular for resolutions referring to grouped cases).

- Website of the Department for the Execution of Judgments: http://www.coe.int/execution/
- Website of the Committee of Ministers: http://www.coe.int/cm/ (select "Human Rights meetings" on the left hand column

1. Meeting specially devoted to the supervision of the execution of judgments.
2. Replacing the Rules adopted in 2001.

1100th, 1108th et 1115th HR meetings – General Information

During the **1100th** (30 November – 3 December 2010), **1108th** (8-10 March 2011) and the **1115th** meetings (7-8 June 2011), the CM started examining respectively 464 (1100th meeting), 553 (1108th meeting) and 478 (1115th meeting) new cases and considered draft final resolutions concluding, in 150 (1100th meeting), 110 (1108th meeting) and 131 (1115th meeting) cases, that states had complied with the European Court's judgments.

New Working methods (adopted at the 1100th meeting)

At the 1100th meeting, the Committee of Ministers adopted the following decision:

The Deputies,

1. recalling the decision adopted by the Committee of Ministers at its 120th Session approving the Interlaken Declaration and Action Plan, and instructing the Deputies to intensify their efforts to increase the efficiency and the transparency of the supervision of execution and to complete this work by December 2010;

2. approved the proposals contained in document CM/Inf/DH(2010)45 as amended in the paragraphs appended, and recalled document CM/Inf/DH(2010)37;

3. decided to implement the new, twin-track supervision system with effect from 1 January 2011 taking into account the transitional provisions set out below;

4. decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;

5. decided that action plans and action reports, together with relevant information provided by applicants, non-governmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;

6. decided that all new cases transmitted for supervision after 1 January 2011 will be examined under the new system;

7. decided that all cases pending before the Committee of Ministers for supervision of execution on 1st January 2011 will be subject to transitional arrangements and instructed the Execution Department to provide, to the extent possible in time for their DH meeting in March 2011 and in any event, at the latest for their DH meeting of September 2011, proposals for their classification following bilateral consultations with the states concerned;

8. decided that any cases not yet included in one or other of the supervision tracks will be placed on a specific list and until their classification, will be dealt with under the standard procedure;

9. decided that the practical modalities of supervision of the execution of European Court's judgments and decisions under the twin-track approach would be evaluated specifically at the DH December meeting in 2011;

10. decided to declassify document CM/Inf/DH(2010)45, as amended.

Main public information documents

The information documents listed below, issued at the 1100th, 1108th and 1115th meeting, are available on the internet website of the Department for the execution of judgments (htttp://www.coe.int/execution/) and on the internet website of the Committee of Ministers (http://www.coe.int/cm/).

CM/Inf/DH(2010)47

Supervision of the execution of the judgments in the case of *D.H. and others against Czech Republic*, judgment of 13/11/2007 - Grand Chamber - document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL).

CM/Inf/DH(2010)46

Supervision of the execution of the judgments in the case of *Oršuš and others against Croatia* - document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL).

CM/Inf/DH(2010)45 final

Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – outstanding issues concerning the practical modalities of the implementation of the new twin track supervision system - document prepared by the Department for the Execution of Judgments of the European Court

of Human Rights (DG-HL) and finalised after the 1100th meeting (December 2010) (DH) of the Ministers' Deputies.

CM/Inf/DH(2011)6E

Memorandum – *Sejdic and Finci* - 27996/06 Sejdić and Finci, judgment of 22/12/2009 – Grand Chamber.

CM/Inf/DH(2011)26E

Group of cases *Bragadireanu against Romania* - 23 cases concerning conditions of detention in prisons and police detention facilities - memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights.

CM/Inf/DH(2011)29

Measures to improve the supervision of the execution of the judgments and decisions of the European Court of Human Rights. Summary of current reflections on implementation of the new working methods.

CM/Inf/DH(2011)25revE

Barbu Anghelescu Group against Romania - 15 cases concerning ill-treatment inflicted on the applicants by members of the police and the ineffectiveness of the investigations into these events - memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights.

CM/Inf/DH(2011)24revE

Group of cases *Nachova against Bulgaria* - cases concerning mainly the excessive use of firearms during police operations - memorandum prepared by the Department for the Execution of Judgments and Decisions of the European Court of Human Rights.

CM/Inf/DH(2011)23E

Velikova group against Bulgaria - 18 cases concerning mainly deaths or ill-treatment which had occurred under the responsibility of the law enforcement agencies - memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights.

CM/Inf/DH(2011)22revE

S. and Marper against the United Kingdom (Applications No. 30562/04 and 305666/04 of 04/12/08, Grand Chamber) - memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights.

Main cases examined

Selection of decisions adopted

Following the entry into force of the new working methods, as from the 1st January 2011, all cases are placed on the agenda of each DH meeting of the Committee of Ministers without the need for any individualised decision to this effect until all execution obligations have been fulfilled.

In some cases, the Committee of Ministers adopted, however, a special decision, containing its assessment of the situation. A selection of these decisions is presented below, according to the (English) alphabetical order of the Member state concerned.

Decisions adopted by the CM are furthermore available on the CM's website.

44023/02, judgment of 8 December 2009, final on 8 March 2010
DH-DD(2011)313Erev, DH-DD(2011)314Erev, DH-DD(2011)434Erev

Caka and other similar cases v. Albania

Unfairness of criminal proceedings due notably to the failure to secure the appearance at the applicants' trials of certain witnesses. The domestic courts' failure to have due regard to testimonies given in the applicant's favor (violation of Article 6§1 combined with Article 6§3 (d)); the lack of an identification parade of persons and items and the lack of convincing evidence in the domestic court's judgments justifying the applicant's conviction (violation of Article 6§1) and failure to remedy irregularities at the applicants' trial, which occurred at the investigation stage and which were related to the identification of the suspects (violation of article 6§1).

(June 2011)

The Deputies,

1. recalled that the applicants were sentenced to prison in criminal proceedings found to be unfair by the European Court and noted that currently only the applicant Lika has been released on parole until the end of his sentence, while the applicants Caka and Berhani are detained and the applicant Laska, temporarily released on parole, must return to prison;

2. recalled that the European Court found that the most appropriate form of redress would be a trial *de novo* or the reopening of the proceedings – if requested by the applicants – in due course and in accordance with the requirements of Article 6 of the Convention;

3. noted with satisfaction that, pending legislative changes announced by the authorities during the previous examination of these issues, the Constitutional Court, in its decision No. 20 of 1/06/2011 in the case of Xheraj, considered that Articles 10 and 450 (a) of the Code of Criminal Procedure provide a legal basis for reopening criminal proceedings following a judgment of the European Court of Human Rights, and remitted the case before the Supreme Court to decide on its reopening;

4. consequently, emphasising the urgency of remedying the situation of the applicants, invited the respondent state to keep the Committee informed on the follow-up of the case-law of the Constitutional Court by the Supreme Court in the cases pending before the Committee of which it is or will be seized.

Driza and other similar cases v. Albania

33771/02, judgment of 13/11/2007, final on 02/06/2008
CM/Inf/DH(2010)20

Non-enforcement of final court and administrative decisions relating to restitution or compensation in respect of property nationalised under the communist regime (violations of Article 6§1 and Article 1 of Protocol No. 1); lack of an effective remedy, the authorities having failed to take the necessary measures either to set up the appropriate bodies to settle certain disputes relating to restitution or compensation or to provide the means of enforcing decisions actually taken (violation of Article 13 in conjunction with Article 6§1 and Article 1 of Protocol No. 1); breach of the principle of legal certainty because a final judgment of 1998 granting compensation was subsequently quashed twice by the Supreme Court, once in parallel proceedings and once by means of supervisory review; lack of impartiality of the Supreme Court due to the role of its president in the supervisory review proceedings and because a number of judges had to decide a matter on which they had already expressed their opinions, and even justify their earlier positions (violations of Article 6§1 - Driza).

(December 2010)

The Deputies,

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

2. noted with interest the preliminary action plan and action report presented by the Albanian authorities, containing proposals made by the inter-ministerial committee which has the specific task of identifying a comprehensive strategy to address these questions;

3. stressed however the crucial importance of urgently addressing the situation criticised by the rulings of the European Court, generating many similar violations; and therefore encouraged the authorities to adopt without further delay a comprehensive action plan, based on a comprehensive and coherent strategy accompanied by a detailed calendar for its implementation;

4. decided to resume consideration of these items at their 1108th meeting (March 2011) (DH), in the light of a comprehensive action plan/action report to be provided by the Albanian authorities on the general measures.

Xheraj v. Albania

37959/02, judgment of 29 July 2008, final on 1 December 2008
DH-DD(2011)131

Unjustified infringement of the principle of legal certainty: quashing in 1999 of a final judgment acquitting the applicant of charges of murder and reopening of the case, without substantial and compelling grounds, as the prosecutor could have appealed within the period prescribed by law (violation of Article 6§1).

(December 2010)

The Deputies:

1. deeply regretted the inactivity of the authorities with regard to executing the present judgment, which has already been final for two years, and underlined the fact that the applicant continues to suffer from the consequences of the quashing of his final acquittal;

2. noted in this respect that the authorities have expressed their willingness to amend the Code of Criminal Procedure within six months to allow the reopening of criminal proceedings; also noted that the applicant has lodged a new application with the Constitutional Court, which is currently pending;

3. underlined in this context the urgency of rapidly obtaining confirmation of the applicant's acquittal, the deletion of the conviction from his criminal record and the withdrawal of the extradition request concerning him in Italy, in conformity with the European Court's ruling;

4. therefore urged the respondent state to act without delay, and to provide the Committee with information on the results obtained, for consideration at its next DH meeting;

5. also encouraged the authorities to provide information on general measures taken or envisaged to prevent similar violations;

6. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH) in the light of information to be provided on urgent individual measures and on the general measures.

(March 2011)

The Deputies,

1. took note of the revised action plan submitted by the Albanian authorities on 25 February 2011;

2. noted with satisfaction that the Constitutional Court ordered the deferment of the applicant's conviction pending its decision on the merits of the case and that the Albanian authorities have withdrawn the extradition request concerning the applicant in Italy;

3. recalled however the need to obtain confirmation of the applicant's acquittal and the deletion of the conviction from his criminal record in conformity with the European Court's judgment;

4. invited the authorities to keep the Committee informed on the outcome of the proceedings before the Constitutional Court and recalled that information is also awaited on the adoption of the general measures.

(Fatullayev) 40984/07, judgment of 22 April 2010, final on 4 October 2010
(Mahumudov) 5877/04, judgment of 18 December 2008, final on 18 March 2009
DH-DD(2011)55, DH-DD(2010)560E, DH-DD(2011)136, DH-DD(2011)157, DH-DD(2011)169E, DH-DD(2010)598E, DH-DD(2011)137, DH- DD(2010)604E, DH-DD(2011)299E, DH-DD(2011)431E

Fatullayev v. Azerbaijan
Mahmudov and Agazade v. Azerbaijan

Serious infringements of a journalist's right to freedom of expression, on account of his sentencing to imprisonment in 2007, first for defamation and then for threat of terrorism and incitement to ethnic hostility, insofar as the imposition of a prison sentence for a press offence is compatible with freedom of expression only in exceptional circumstances and there was no such circumstance in the present case. The application of the anti-terrorist provisions was wholly arbitrary, moreover (violations of Article 10); violation of the right to a fair hearing: the criminal case for defamation was heard by the same judge who had previously examined a civil action concerning the same allegations and involving the assessment of similar evidentiary material (violation of Article 6§1), also violation of the right to presumption of innocence on account of statements made by the Prosecutor General before the applicant's conviction (violation of Article 6§2).

(December 2010)

The Deputies,

1. recalling that under Article 46 of the Convention, the respondent state is required under the supervision of the Committee of Ministers to choose the general measures and/or, if appropriate, individual measures to be adopted within its domestic legal order to put an end to violations found by the Court and as far as possible to erase their consequences;

2. recalled in this context that the Court considered that amongst the means available to the state to fulfil its obligation under Article 46 it should ensure the immediate release of the applicant;

3. noted with satisfaction that the convictions criticised by the European Court were annulled by the Supreme Court on 11 November 2010, thus making it possible in principle for the applicant to be released;

4. noted nonetheless with concern that the applicant is still in custody and that there are a number of questions concerning the erasure of the consequences of his unjustified detention since his arrest on 20 April 2007;

5. called on the competent Azerbaijani authorities to examine rapidly the questions which were raised during the meeting, and in particular to explore all possible means of ending the applicant's detention including, if necessary by alternative, non-custodial measures;

6. invited the Azerbaijani authorities, in close collaboration with the Secretariat, to provide the said information needed to allow an in-depth examination of the case at the latest at their 1108th meeting (March 2011) (DH).

(March 2011)

The Deputies,

1. recalled that at their 1100th meeting the Azerbaijani authorities were invited to provide detailed information on the applicant's situation and on points of law, in order to allow an in-depth examination of the case at the present meeting;

2. took note of the bilateral meeting between the Secretariat and the Azerbaijani Government Agent held on 14 January 2011 and the subsequent CM/Inf/DH(2011)7 summarising the outstanding questions;

3. noted with concern that in its decision 12 (102) – 3(a)/2010 of 11 November 2010, the Supreme Court confirmed the applicant's sentence of imprisonment for defamation on the basis of a judicial decision dating back to 2006, notwithstanding the reasoning of the Court in the Fatullayev judgment itself;

4. regretted that no updated and detailed information on the current applicant's situation and on the means the Azerbaijani authorities intend to use to erase the consequences of his previous unjustified detentions were made available in due time for this meeting and noted the information and explanations given by the Azerbaijani Delegation at the meeting;

5. noted with serious concern that the applicant remains detained despite the decision of the Committee of Ministers at its 1100th meeting (November- December 2010) (DH) that the Azerbaijani authorities explore all possible means of ending his detention, including if necessary by alternative non-custodial measures;

6. called upon the Azerbaijani authorities to provide, further to the information given, a clear and comprehensive account of the time the applicant spent in detention since April

2007 and the legal basis for the different periods to identify the period of unjustified detention in order to ensure redress in this respect, including all possibilities to ensure the applicant's immediate release;

7. noted also with concern that the just satisfaction has been transferred to a frozen account;

8. recalled that the European Court considered, in other cases, that the compensation fixed pursuant to Article 41, in particular for non-pecuniary damage, and due by virtue of a judgment of the Court should be exempt from attachment and strongly invited the Azerbaijani authorities to reconsider their position in view of this principle;

9. called upon the Azerbaijani authorities to remove without further delay all obstacles to the implementation of the Court's judgment;

10. decided to examine the issues concerning individual and general measures raised by this case at their 1115th meeting (June 2011) (DH).

(June 2011)

The Deputies,

1. welcomed the release of Mr Fatullayev following the Decree of the President of the Republic of Azerbaijan of 26 May 2011 pardoning 90 persons including the applicant;

2. instructed the Secretariat to review, in consultation with the authorities of Azerbaijan, any outstanding issues related to individual measures, in the case of Fatullayev, including payment of the just satisfaction;

3. as regards the general measures required to address the violations found by the Court in this group of cases, noted with interest the information provided during the meeting regarding the decriminalisation of defamation and invited the authorities to provide detailed information in this respect including how the requirements of the Convention and the case-law of the Court have been taken into account;

4. once more invited the Azerbaijani authorities to provide an action plan on all the measures called for by this group of cases.

M.S.S. v. Belgium and Greece

30696/09, judgment of 21 January 2011 – Grand Chamber
DH-DD(2011)305F, DH-DD(2011)348F, CPT/Inf (2011)10

Degrading treatment due to the detention conditions in Greece (violation of Article 3). Situation incompatible with Article 3 on account of the applicant's living conditions due to the Greek authorities' inaction for the situation in which he had found himself (violation of Article 3). Shortcomings in the Greek authorities' examination of the applicant's asylum request and of the risk he faced of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy (violation of Article 13 taken in conjunction with Article 3). Regarding Belgium, the transfer of the applicant to Greece under the Dublin II Regulation exposed him to the risks arising from deficiencies in the asylum procedure in Greece (violation of Article 3). The applicant's expulsion, knowingly brought about by the Belgian authorities, exposed him to detention and living conditions in Greece that amounted to degrading treatment (violation of Article 3). The applicant did not have at his disposal a domestic remedy whereby he might obtain both the suspension of the measure at issue and a thorough and rigorous examination of the complaints arising under Article 3 (violation of Article 13 in conjunction with Article 3).

(March 2011)

The Deputies,

1.noted the information provided by the Greek authorities on the urgent individual measures according to which the President of the Legal Council of the State (Government Agent) has contacted the relevant departments (departments in charge of immigration and of asylum) with a request to locate the applicant, to verify his current situation and in particular his conditions of stay, and to examine the developments regarding his asylum request;

2. urged the Greek authorities to proceed with an examination of the merits of the applicant's asylum request that meets the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant.

(June 2011)

The Deputies,

1. took note of the steps taken by the Greek authorities to locate the applicant on Greek territory and to inform him, through his representative, that they are willing to examine his asylum request as a priority and that accommodation is at his disposal;

2. noted however that the Belgian authorities have confirmed that the applicant has lodged an asylum request in Belgium which was transmitted to the General Commissioner for Refugees and Stateless Persons on 21 March 2011 and that this request is currently under examination;

3. noted with interest the information provided during the meeting by the Belgian and the Greek authorities on general measures already taken and envisaged;

4. in particular in the light of the important questions of general character raised by the present judgment, urged the Belgian and Greek authorities to provide, by 21 July 2011 at the

latest, their respective action plans outlining the individual and general measures taken and envisaged with a view to the judgment's execution.

27996/06, judgment of 22 December 2009 - Grand Chamber
CM/Inf/DH(2011)6, DH-DD(2010)108E, DH-DD(2011)403, DH-DD(2010)307E

Sejdic and Finci v. Bosnia and Herzegovina

Discriminatory infringement of the right of the applicants, who declared themselves to be a Rom and a Jew respectively, to free elections and to the general prohibition of discrimination in that it was impossible for them to stand for election to the upper chamber and to the Presidency of the country, the constitution reserving this right for only those persons who declared themselves to belong to one of the three constituent peoples (Bosniacs, Croats and Serbs) (violation of Article 14 in conjunction with Article 3 of Protocol No. 1 concerning legislative elections; violation of Article 1 of Protocol No. 12 concerning elections to the Presidency).

(December 2010)

The Deputies,

1. recalled that in the present judgment, delivered on 22 December 2009, the Court found discrimination against persons belonging to groups other than the constituent peoples in Bosnia and Herzegovina in their right to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina;

2. recalled that since its 1078th meeting (March 2010), the Committee has urged Bosnia and Herzegovina to adopt general measures to implement the judgment;

3. deeply regretted that the elections took place in Bosnia and Herzegovina on 3 October 2010 under rules found to be discriminatory by the European Court, and thus in contravention of the present judgment;

4. deplored that no political consensus has been reached on the content of the constitutional and legislative amendments necessary to execute the present judgment;

5. strongly urged as a matter of priority the authorities and political leaders of Bosnia and Herzegovina to work in a constructive manner to bring the country's Constitution and its Electoral Code in line with this judgment and the Convention;

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

7. invited the authorities of Bosnia and Herzegovina to continue informing the Committee of developments regarding the measures to be taken, in particular to indicate the procedural steps that need to be taken to implement this judgment and of any progress made in this respect, as well as to provide a description of the proposals under consideration, including points on which a consensus exists and those on which no such consensus has yet been reached;

8. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided on general measures.

(March 2011)

The Deputies,

1. noted with concern that, although there is a strong political will and commitment of all political parties participating in the Parliament of Bosnia and Herzegovina for implementation of the judgment, no political consensus has yet been reached on the content of the constitutional and legislative amendments necessary to execute the present judgment despite the Committee's repeated calls since its 1078th meeting (March 2010);

2. reiterated their call on the authorities and political leaders of Bosnia and Herzegovina to work in a constructive manner with the aim of bringing the country's Constitution and its electoral legislation in line with this judgment and the Convention;

3. invited once again the authorities of Bosnia and Herzegovina to take into account the relevant opinions of the Venice Commission in this regard;

4. regretted that, despite their invitation issued at their 1100th meeting (November/December 2010), no information has been provided on developments regarding the procedural steps taken to implement this judgment as well as the different proposals made in this respect;

5. invited the authorities of Bosnia and Herzegovina to inform the Committee of developments regarding the procedural steps taken to implement this judgment and the different proposals made by stakeholders in this respect, including the proposals on which a consensus has been reached and on which no consensus has yet been reached;

6. decided to declassify the memorandum CM/Inf/DH(2011)6.

(June 2011)

The Deputies,

1. took note of the information provided by the authorities of the respondent state in response to the questions raised by the Committee of Ministers at its 1108th meeting (March 2011) (DH);

2. noted with concern that no consensus has been reached among different political stakeholders to bring the country's Constitution and its electoral legislation in line with this

judgment and the Convention; 3. regretted that no progress has been made in the execution of this judgment following the elections held in October 2010;

4. reiterated their call on the authorities and political leaders of Bosnia and Herzegovina to take the necessary measures rapidly to bring the country's Constitution and its electoral legislation in line with the present judgment;

5. instructed the Secretariat, should the respondent state fail to make any concrete progress in the execution of this judgment, to prepare a draft interim resolution conveying the Committee of Ministers' concerns for consideration at the 1128th meeting (November-December 2011) (DH).

Nachova and Hristova and other similar cases v. Bulgaria

43577/98, judgment of 6 July 2005 - Grand Chamber
DH-DD(2011)256, CM/Inf/DH(2011)24rev, DH-DD(2011)298

Death of Roma conscripts in 1996 due to use of excessive force during arrest (violation of Article 2) and lack of an effective investigation into their death (violation of Article 2) failure by the authorities to investigate whether or not possible racist motives may have played a role in the events (violation of Article 14 taken in conjunction with Article 2).

(June 2011)

The Deputies,

1. took note of the measures taken by the Bulgarian authorities for the execution of these judgments presented in the information document CM/Inf/DH(2011)24rev and in the action report submitted by the authorities on 2 March 2011;

2. noted with satisfaction the adoption by the Bulgarian Parliament of an amendment to the Criminal Code introducing aggravated qualifications for murder and bodily harm committed with racist or xenophobic motives;

3. noted that this amendment appears to be a sufficient measure with regard to the duty to investigate whether or not possible racist motives played a role in an excessive use of force during arrest, insofar as it would oblige the investigation authorities to examine this issue in order to establish the correct qualification of the facts;

4. noted that a number of outstanding issues remain, in particular concerning the compliance of the legislative and administrative framework governing the use of firearms by the police and the military police with the requirements of Articles 2 and 3 of the Convention;

5. invited the Bulgarian authorities to adopt, as soon as possible, the necessary legislative amendments in this respect (see the information document CM/Inf/DH(2011)24rev, §§17-19 and 25);

6. invited the Bulgarian authorities to provide additional information on the training of the members of the police and the military police on the requirements of the Convention concerning the application of the provisions governing the use of firearms;

7. invited the Bulgarian authorities to provide information concerning the individual measures in the cases of Vlaevi, Vachkovi, Karandja and Vasil Sashov Petrov;

8. decided to declassify the information document CM/Inf/DH(2011)24rev.

Oršuš and others v. Croatia

15766/03, judgment of 16/03/2010 - Grand Chamber
CM/Inf/DH(2010)46

Discrimination against the applicants – Roma children - in the enjoyment of their right to education due to the absence of objective and reasonable justification to their placement in Roma-only classes between 1996 and 2007 based on their inadequate command of the Croatian language (violation of Article 14 in conjunction with Article 2 of Protocol No. 1); excessive length of proceedings before the Constitutional Court (2002 – 2007) in respect of the applicants' complaints (violation of Article 6§1).

(December 2010)

The Deputies,

1. noted that the Croatian authorities have submitted an action plan outlining a number of general measures and providing a clear timetable for their implementation;

2. noted with interest that this action plan, which is summarised in Memorandum CM/Inf/DH(2010)46, includes a number of positive elements aimed at providing safeguards against discrimination against Roma in primary education in Croatia;

3. decided to declassify the Memorandum CM/Inf/DH(2010)46;

4. invited the Croatian authorities to provide the Committee with further information on the outstanding issues identified in the Memorandum and on the developments regarding the measures to be taken;

5. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided on general measures.

25965/04, judgment of 7 January 2010, final on 10 May 2010
DH-DD(2010)376E, DH-DD(2010)411E, DH-DD(2010)372E, DH-DD(2011)335, DH-DD(2011)336

Rantsev v. Cyprus and the Russian Federation

Failure by the Cypriot authorities to conduct an effective investigation into the death of the applicant's daughter in 2001 (violation of Article 2, procedural aspect); failure by the Cypriot authorities in their positive obligation to set up an appropriate legislative and administrative framework to combat the trafficking and exploitation resulting by the "artist's" visa system and police failure to take adequate specific measures to protect the applicant's daughter (violation of Article 4). Failure by the Russian authorities to conduct an effective investigation into the recruitment of the applicant's daughter in Russia by traffickers (violation of Article 4, procedural aspect). Arbitrary and unlawful deprivation of liberty of the applicant's daughter on account of the Cypriot police's decision to release her into the custody of her manager, at his apartment (violation of Article 5§1).

(December 2010)

The Deputies,

1. took note of the information provided by the Cypriot and Russian authorities on the progress of the domestic investigations carried out by both states;

2. stressed again the evident importance of close co-operation between Cypriot and Russian authorities in this respect with a view to ensuring that an effective investigation is carried out to identify and punish those responsible;

3. encouraged the Cypriot and Russian authorities to continue their co-operation in this respect;

4. emphasised the importance of ensuring that the applicant is informed of all developments in the domestic investigations and in a position to exercise any rights he may have in this respect;

5. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided by the authorities of both states on the progress of domestic investigations and in the light of the assessment of general measures.

(June 2011)

The Deputies,

1. recalled that an effective investigation must, *inter alia*, be prompt and carried out with reasonable expedition and involve the next-of-kin to the extent necessary to safeguard his legitimate interests;

2. noted the information provided by the Cypriot authorities on the progress of their domestic investigation, in particular that it is expected to be concluded within a few months and a report presented to the Attorney General of Cyprus;

3. noted the information provided by the Russian authorities on the progress of their domestic investigation, in particular the need to receive rapidly the requested legal assistance from the Cypriot investigators to facilitate a prompt and fully effective investigation into the circumstances of Ms Rantseva's death and the allegations of human trafficking;

4. encouraged the Cypriot authorities' efforts to provide such legal assistance to the Russian investigators as soon as possible, independently of the completion of the investigation, and stressed again the critical importance of close co-operation between the Cypriot and Russian authorities;

5. invited both the Cypriot and Russian authorities to keep the Committee updated on the progress of both investigations.

57325/00, judgment of 1 November 2007 – Grand Chamber
CM/Inf/DH(2010)47, DH-DD(2011)165E, DH-DD(2010)586, DH-DD(2011)308, DH-DD(2011)439

D.H. and Others v. Czech Republic

Discrimination of the applicants – Roma children – in the enjoyment of their right to education, owing to their assignment between 1996 and 1999 to special schools intended for pupils displaying mental disabilities, without any objective and reasonable justification (violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

(December 2010)

The Deputies,

1. noted with satisfaction that the Czech authorities have confirmed that the National Action Plan on Inclusive Education (the "NAPIV") setting out the key measures proposed by the Czech authorities to execute the judgment is now definitively adopted and its implementation has begun;

2. encouraged the Czech authorities to follow the implementation of the NAPIV without delay, particularly concerning measures to address the situation of pupils improperly placed in practical schools (*zakladni skoly prakticke*) to ensure that they are able to transfer to the mainstream education system;

3. decided to declassify the Memorandum CM/Inf/DH(2010)47;

4. invited the Czech authorities to provide the Committee with further information on the outstanding issues identified in Memorandum and on progress achieved in the implementation of the Action plan;

5. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided on general measures.

(June 2011)

The Deputies,

1. noted the confirmation of the Czech authorities that the action plan (particularly the NAPIV) is ongoing and is currently in a preparatory phase, with its implementation phase due to begin in 2013;

2. noted also the information provided during the meeting on the entry into force in September 2011 of two Ministerial Decrees, that remains to be assessed (see DH-DD(2011)439);

3. noting with concern that considerable progress remains to be achieved on the ground, stressed the importance of the Czech authorities' intensifying and if possible, speeding up the implementation of their action plan;

4. called upon the Czech authorities to provide precise information on the current state of implementation of the Action plan, on the timetable of future steps and on concrete results achieved particularly in the perspective of the next school year and the outstanding questions identified in memorandum CM/Inf/DH(2010)47.

Klaus and Yuri Kiladze v. Georgia

Unjustified interference with the applicants' right to peaceful enjoyment of their possessions, as it was impossible for them to make good their claims for compensation arising from their status, acknowledged in 1997, as victims of Soviet political oppression, insofar as the implementing texts for the law of 1997 under which the terms of such compensation could be settled had not been adopted, owing to the state's inertia (violation of Article 1 of Protocol No. 1).

7975/06, judgment of 2 February 2010, final on 2 May 2010
DH-DD(2011)300; DH-DD(2011)303F

(December 2010)

The Deputies,

1. recalling that all respondent states have the legal obligation not just to pay any sum awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general measures and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects;

2. as far as general measures are concerned, recalling that in this case it was noted already in the judgment of the Court that the structural problem revealed by the case was clearly capable of generating a great number of applications to the Court and that the necessary legislative, administrative and budgetary measures should thus rapidly be taken in order to ensure that persons falling under Article 9 of the Law of 11 December 1997 may effectively benefit from the right guaranteed by this provision;

3. noted with interest the information provided by the Georgian authorities with respect to the latest developments in this case, in particular the round table organised in Strasbourg on 8 November 2010 and the action plan under preparation following this meeting;

4. decided to resume the examination of this item, and in particular the issues relating to the general measures and the action plan, at the latest at their 1108th meeting (March 2011) (DH).

(June 2011)

The Deputies,

1. took note, with satisfaction, of the action plan submitted by the Georgian authorities according to which in April two draft laws were being discussed before Parliament with implementation by the Tbilisi court expected to begin in May 2011: the first amending the law of 11/12/1997 on the Status as a Victim of Political Repression, in order to provide for compensation for victims; the second one amending the Code of Administrative Proceedings in order to organise the practical modalities of granting such compensation;

2. also took note with satisfaction of the subsequent information (adoption on 19/04/2011 of the amendment to the law of 11/12/1997 and publication in the Official Journal of 18 May 2011) showing that the action plan is being implemented within the foreseen timeframe;

3. decided therefore to transfer this case for examination under the standard supervision procedure.

Surmeli v. Germany
Rumpf v. Germany

Excessive length of certain civil proceedings (violation of Article 6§1) and lack of an effective remedy in this respect (violation of Article 13). The Court applied the pilot-judgment procedure in the case of Rumpf.

(Surmeli) 75529/01, judgment of 8 June 2006 - Grand Chamber
DH-DD(2011)88
(Rumpf) 46344/06, judgment of 20 September 2010, final on 2 December 2010
DH-DD(2011)140

(June 2011)

The Deputies,

1. observed that the legislative process to provide an effective remedy for excessive length of proceedings was still ongoing before the German Parliament;

2. invited the German authorities to keep them regularly informed on the progress of adoption of an effective remedy and to bring the legislative process to an end before the expiry of the deadline set by the European Court (i.e. 2 December 2011).

35151/05, judgment of 11/10/2007, final on 11/01/2008

Bekir-Ousta and others and other similar cases v. Greece

Violation of the freedom of association of the applicants, associations founded by persons of Muslim origin in Western Thrace, owing to the authorities' refusal to register those associations (the Bekir-Ousta and Others case and the Emin and Others case) or their dissolution (the Tourkiki Enosi Xanthis and Others case) in 2005-2006 on the ground that their object was to promote the idea that an ethnic minority, as opposed to a religious minority, existed in Greece, a ground which in the eyes of the European Court of Human Rights could not constitute a threat to a democratic society (violation of Article 11). In addition, in the Tourkiki Enosi Xanthis case, excessive length of the civil proceedings relating to the dissolution of the association (violation of Article 6§1).

(December 2010)

The Deputies,

1. took note of the bilateral consultations that took place between the Greek authorities and the Secretariat in Athens on 2 and 3 November 2010 with a view to discussing in particular the execution of these three judgments of the European Court;

2. took note of the latest developments concerning the national procedures relating to the registration of the three associations concerned which were initiated following the European Court's judgment, namely that appeals in cassation had been lodged against the national decisions in the Bekir-Ousta and Tourkiki Enosi Xanthis cases and that the hearing in the Tourkiki Enosi Xanthis case has been scheduled for 7/10/2011, whilst the date of the hearing in the Bekir-Ousta case has not yet been fixed;

3. noted, in this respect, that under national law, in the context of civil proceedings, the request for a hearing date to be fixed, or for the acceleration of the examination of a case is made on the applicants' initiative;

4. recalled that the applications submitted by the applicants before the Greek courts have faced, until now, procedural obstacles having prevented their examination on the merits;

5. noted however that according to the information provided by the Greek authorities, the recent case-law of the Court of Cassation could lead to an examination on the merits of the applicants' request;

6. also noted the updated information provided by the Greek authorities that between January 2008 and October 2010, 32 out of 33 requests for the registration of associations whose title includes the adjective "minority" or indicates in some way that it is of minority origin, were accepted;

7. recalled the firm commitment of the Greek authorities to implementing fully and completely the judgments under consideration without excluding any avenue in that respect;

8. decided to resume examination of these items in the light of developments before the Court of Cassation and at the latest at their 1128th meeting (December 2011) (DH).

(Manios and other similar cases) 70626/01, judgment of 11 March 2004, final on 11 June 2004
Interim Resolution CM/ResDH(2007)74
(Vassilios Athanasiou and Others) 50973/08, judgment of 21 December 2010, final on 21 March 2011
DH-DD(2011)349E

Manios and other similar cases v. Greece Vassilios Athanasiou and Others v. Greece

Excessive length of proceedings before administrative courts and lack of an effective remedy (violation of Articles 6§1 and 13). The Court applied the pilot-judgment procedure in the case of Vassilios Athanasiou and others.

(June 2011)

The Deputies,

1. took note of the information provided by the authorities on the legislative measures adopted to accelerate procedures before administrative courts, as well as on the legislative process to adopt an effective remedy for excessive length of judicial proceedings taking into account the judgment in Vassilios Athanasiou and others;

2. recalled that the remedy or the combination of remedies must comply with the principles set by the Court and must also apply to proceedings before the Council of State;

3. stressed the importance of timely compliance with the pilot judgment and called upon the competent Greek authorities to give priority to finding appropriate solutions in order to provide adequate and sufficient redress to all persons in the applicants' situation, within the time limit set by the Court (i.e. by 21/03/2012);

4. invited the Greek authorities to keep the Committee regularly informed on the measures envisaged for the execution of this pilot judgment.

32526/05, judgment of 05/06/2008, final on 05/09/2008

Sampanis and others v. Greece

Lack of schooling for the applicants' children in 2004-2005 and their subsequent placement in special preparatory classes in 2005. In particular, the Court concluded that, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their assignment to special preparatory classes – housed in an annex to the main school building – ultimately resulted in discrimination against them (violation of Article 14 in conjunction with Article 2 of Protocol No. 1); absence of an effective remedy in that regard (violation of Article 13).

(December 2010)

The Deputies,

1. recalled that, at their 1072nd meeting (December 2009), they had noted with interest the information provided by the Greek authorities on the individual measures taken to allow the schooling of the applicants' children in ordinary classes, as well as on general measures aimed at including Roma children in the education system in a non-discriminatory manner;

2. took note of the information provided recently by the Greek authorities as well as of the additional information presented at the meeting on individual and general measures;

3. welcomed the information provided by the Greek authorities about the recent developments further to the launching in 2010, by the Ministry of Education, of a new programme regarding *Active inclusion of Roma children in national education* which provides for Roma Mediators and Social Workers as well as support classes for Roma children and enhanced schooling activities, including in the Roma settlements;

4. encouraged the Greek authorities to accelerate the procedure of implementation of this programme;

5. noted with satisfaction the information given by the Greek authorities to the effect that they will provide the Committee of Ministers with a consolidated action plan containing all the information already provided as well as updated information on the progress of the program;

6. decided to resume consideration of this item at the latest at their 1115th meeting (June 2011) (DH), in the light of the consolidated action plan to be provided by the Greek authorities.

Olaru and others and other similar cases v. Moldova

476/07, judgment of 28/07/2009, final on 28/10/2009

Violations of the applicants' right of access to a court and right to peaceful enjoyment of their possessions on account of the state's failure to enforce final domestic judgments awarding them housing rights or monetary compensation in lieu of housing (violations of Article 6 and Article 1 of Protocol No. 1).

(December 2010)

The Deputies,

1. took note of the progress made in the settlement of individual applications which were lodged with the Court before the delivery of the pilot judgment;

2. encouraged the Moldovan authorities to intensify their efforts to bring to an end the process of settlement of these applications within the new deadline set by the Court;

3. noted that draft laws have been prepared introducing a remedy for non-enforcement or unreasonably delayed enforcement of domestic judicial decisions;

4. regretted that these draft laws have still not been adopted and called upon the Moldovan authorities to give priority to the adoption of a domestic remedy as required by the pilot judgment;

5. noted in this context that there are still approximately 400 unenforced domestic judgments granting social housing rights which might give rise to a substantial risk of repetitive applications to the Court;

6. strongly encouraged the Moldovan authorities, pending the adoption of the abovementioned reform, to explore other possible solutions aimed at providing adequate and sufficient redress to those who have obtained judgments granting social housing rights to prevent the risk of repetitive applications;

7. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH) to assess the progress made in implementing the abovementioned measures.

(March 2011)

The Deputies,

1. noted with satisfaction that the draft laws providing a general remedy in case of excessive length of judicial and enforcement proceedings had been approved by the government and sent to Parliament for adoption;

2. recalled that the new deadline set by the European Court for the adoption of a domestic remedy would expire on 15 April 2011;

3. strongly encouraged the Moldovan authorities to adopt these draft laws as a matter of priority and in any event before the expiry of the deadline set by the Court.

(June 2011)

The Deputies,

1. noted that according to the information given by the Moldovan authorities during the meeting, the draft laws providing a general remedy in cases of excessive length of judicial and enforcement proceedings had been adopted and would be published and would enter into force within a few weeks;

2. invited the Moldovan authorities to provide information to the Committee of Ministers on the settlement of individual applications frozen by the European Court.

57001/00, judgment of 21/07/2005, final on 30/11/2005

Străin and others, and other similar cases v. Romania

Failure to restore nationalised buildings to their owners or to compensate them, following the sale of the buildings by the state to third persons (violation of Article 1 of Protocol No. 1). Excessively lengthy judicial proceedings, quashing final court decisions and the failure of the domestic courts to address decisive arguments brought by the applicants (violations of Article 6).

(December 2010)

The Deputies,

1. recalled that the questions raised in these cases concern a large-scale systemic problem, due to the dysfunctions of the Romanian system of restitution or compensation in respect of property nationalised during the Communist period;

2. recalled that this finding has been confirmed by the European Court in several judgments in which it stated that the respondent state must guarantee, by appropriate legal and administrative measures, the effective implementation of the right to restitution, be it in kind or by award of compensation;

3. also noted that, on 12 October 2010, the Court delivered a pilot judgment, which is not yet final, in the Maria Atanasiu and others case, stating that the Romanian state must take such measures of redress within 18 months from the date on which the judgment becomes final and decided to adjourn the examination of all similar applications during that period;

4. recalled in this context that the Romanian authorities submitted an action plan for the execution of these judgments, in February 2010, as well as supplementary information, in September 2010;

5. noted with interest among the measures taken the creation of a working group the task of which is to propose amendments to the legislation to render the restitution and compensation process more effective; noted in this respect that the Court stated in the pilot judgment that among other things "setting a cap on compensation awards and paying them in instalments over a longer period might also help to strike a fair balance between the interests of former owners and the general interest of the community" (§235 of the judgment);

6. called on the Romanian authorities to set urgently a provisional calendar for the implementation of the various stages specified in the action plan and to keep the Committee informed of the progress made and in particular with the legal reforms envisaged;

7. underlined in addition that in order to be able to assess the relevance of the measures proposed by the authorities, it is important to have a precise and comprehensive report on the progress of the compensation process for owners whose property rights have been prejudiced and on the number of claimants yet to be compensated; invited the authorities to supplement the information already submitted on this issue;

8. recalled, moreover, that information is also awaited on the current situation of a number of applicants;

9. decided to resume consideration of these items at their 1108th meeting (March 2011) (DH), in the light of additional information to be provided on general and individual measures.

(June 2011)

The Deputies,

1.recalled that the questions raised in these cases concern a large-scale systemic problem, due to the dysfunctions of the Romanian system of restitution or compensation in respect of property nationalised during the Communist period;

2.recalled the decision taken at the 1100th meeting (November-December 2010) (DH), in which they called on the Romanian authorities urgently to set a provisional calendar for the implementation of the various stages specified in the action plan for the execution of these judgments and submit some additional information;

3.welcomed the high-level Round Table organised in Bucharest on 17 February 2011 by the Romanian authorities and by the Council of Europe in co-operation with the Human Rights Trust Fund on the issue of the general measures required for the execution of judgments of the European Court concerning the restitution of properties nationalised under communist regimes; noted with interest the conclusions of the Round Table as regards the good practices to be followed in this field;

4.recalled that in conformity with the pilot judgment delivered by the Court in the case of Maria Atanasiu and others, the Romanian state must, by 12 July 2012 put in place general measures to guarantee the effective implementation of the right to restitution, be it in kind or by award of compensation;

5.in this context, insisted on their request to the Romanian authorities urgently to set a provisional calendar for the stages specified in the action plan and to submit quickly the additional information indicated in the Committee's decision of December 2010, if possible through a revised action plan.

Kamaliyevy v. Russian Federation

52812/07, judgment of 03/06/2010, final on 03/09/2010

Failure by the Russian authorities to comply with an interim measure adopted by the European Court indicating that the applicant should not be deported to Uzbekistan until it had given a ruling on the case (violation of Article 34).

(December 2010)

The Deputies,

1. recalled that in the present judgment the European Court found a violation of Article 34 of the Convention, on account of the failure to comply with the interim measure indicated by the European Court to the Russian authorities not to deport the first applicant to Uzbekistan;

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

3. took note with interest of the information provided by the Russian authorities during the meeting on the measures taken to ensure compliance with interim measures indicated by the European Court, in particular as regards the wide dissemination of the judgment and other practical arrangements made, such as designating officials whose working hours coincide with the working hours of the Court, and setting up a special procedure for immediate notification of relevant authorities;

4. decided to resume consideration of this item at the 1108th meeting (March 2011) (DH), in the light of the assessment of the information provided by the Russian authorities as well as of further information, if any, to be provided by the Russian authorities.

Khashiyev and other similar cases v. Russian Federation

57942/00, judgment of 24 February 2005, final on 6 July 2005
CM/Inf/DH(2006)32rev2, CM/Inf/DH(2008)33, CM/Inf/DH(2008)33add, CM/Inf/DH(2010)26, DD-DH(2011)130E, DH-DD(2010)384E, DH-DD(2010)291E, DH-DD(2010)587E, DH-DD(2011)410E, DH-DD(2011)422E

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2004: liability of the state for homicides, disappearances, ill-treatment, illegal searches and destruction of property; failure in the duty to take measures to protect the right to life; failure to investigate the abuses properly, and absence of effective remedies; ill-treatment inflicted on the applicants' relatives owing to the attitude of the investigating authorities (violation of Articles 2, 3, 5, 8 and 13, and of Article 1 of Protocol No. 1). Lack of co-operation with the European Convention on Human Rights bodies, contrary to Article 38 of the European Convention, in several cases.

(June 2011)

The Deputies,

1. recalled states' obligation to carry out an effective investigation to secure the effective implementation of domestic laws protecting the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility;

2. recalled further that such investigation must be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results;

3. noted with regret that the information provided by the Russian authorities has not yet demonstrated the effectiveness of the measures adopted so far for conducting investigations in line with the Convention's requirements;

4. expressed deep concern at the lack of any conclusive results in the investigations, in particular in those cases in which members of the security forces may have been involved;

5. decided to grant the Russian authorities' request for confidentiality of the document DH-DD(2011)129E;

6. decided to reassess the situation at the latest at their 1128th meeting (November-December 2011) (DH), on the basis of a draft interim resolution to be prepared by the Secretariat.

Mikheyev and other similar cases v. Russian Federation

77617/01, judgment of 26/01/2006, final on 26/04/2006

Torture or inhuman and degrading treatment inflicted on the applicants while in police custody during the period 1998-2004, and failure to investigate this effectively (violations of Article 3); lack of an effective remedy in this regard (violation of Article 13).

(December 2010)

The Deputies,

1. took note with interest of the modifications in the legislation and administrative practice made by the Russian authorities since the events described in the judgments of the European Court;

2. noted however that notwithstanding these modifications, there are still issues requiring further general measures to ensure effective protection against torture and ill-treatment;

3. noted in this respect with satisfaction that the Russian authorities are currently engaged in a comprehensive reform of the Ministry of the Interior and that on 27 October 2010 a draft law on this subject was submitted to Parliament by the President of the Russian Federation;

4. encouraged the Russian authorities to seize fully the opportunity offered by the ongoing comprehensive reform to ensure that the legal and regulatory framework for police activities contains all necessary safeguards against police arbitrariness and abuses similar to those found by the Court in its judgments;

5. emphasised in this context the need for effective implementation of the requirements of the Convention in the domestic legal order, in particular those related to the safeguards applicable to any form of privation of liberty and effective investigation of alleged abuses, to prevent new, similar applications before the Court;

6. decided to resume consideration of these items at their 1108th meeting (March 2011) (DH), in the light of further information to be provided by the authorities on individual and general measures.

28490/95, judgment of 19 June 2003, final on 19 September 2003
Interim Resolutions ResDH(2005)113; CM/ResDH(2007)26; CM/ResDH(2007)150 and DD(2005)148, DD(2005)494, CM/Inf/DH(2009)5

Hulki Gunes and other similar cases v. Turkey

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

(December 2010)

The Deputies,

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

2. noted the willingness of the Turkish government to ensure the adoption of the necessary legislative changes for the execution of these judgments before the general elections of June 2011;

3. reiterated their call to the Turkish authorities to bring the legislative process to a conclusion without further delay;

4. decided to resume consideration of these items at their 1108th meeting (March 2011) (DH), in the light of information to be provided.

(March 2011)

The Deputies,

1. recalled that at its 1100th meeting (November-December 2010) the Committee took note of "the willingness of the Turkish government to ensure the adoption of the necessary legislative changes for the execution of these judgments before the general elections of June 2011";

2. regretted that it was still not possible for the Turkish authorities to give effect to this intention;

3. stressed once again the urgency and priority of the adoption of the measures necessary for the execution of these judgments;

4. reiterated their call on the Turkish authorities to bring the legislative process enabling the reopening of proceedings in the applicants' cases to an end without further delay after the elections;

5. invited the Turkish authorities to keep them informed of developments regarding the adoption of the legislative amendments.

39437/98, judgment of 24 January 2006, final on 24 April 2006
Interim resolutions CM/ResDH(2007)109; CM/ResDH(2009)45, DD(2010)107

Ulke v. Turkey

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

(December 2010)

The Deputies,

1. noted that the Turkish authorities stated that the execution of this judgment raised certain difficulties since it required legislative amendments concerning military service;

2. noted further that the Turkish authorities are in the process of preparing legislative amendments aiming at remedying the applicant's situation;

3. stressed once again the urgency and priority of the adoption of the measures necessary for the execution of the judgment;

4. invited the Turkish authorities to clarify whether the applicant is still being searched for by the authorities to serve his previous sentences;

5. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of information to be provided by the authorities on the development of the legislative process.

(March 2011)

The Deputies,

1. once again stressed the urgency and priority of the adoption of the measures necessary for the execution of the judgment;

2. recalled that, at their 1100th meeting (November-December 2010), the Turkish

authorities stated that they were in the process of preparing legislative amendments aiming at remedying the applicant's situation and that the Committee invited the Turkish authorities to provide information on the development of this legislative process;

3. urged once again the Turkish authorities to clarify at the latest for the 1115th meeting (June 2011) (DH) whether the applicant was still being searched for by the authorities to serve his previous sentences;

4. noted with concern that no information has been provided concerning these questions;

5. reiterated their call on the Turkish authorities to provide tangible information on the questions raised by the Committee.

(June 2011)

The Deputies,

1. took note of the information provided by the Turkish authorities during the meeting that the applicant in this case is not deprived of his liberty;

2. regretted, however, that no information has been provided regarding as to whether the applicant is still being searched for or not;

3. urged the Turkish authorities to provide information to the Committee without any further delay as to the applicant's situation;

4. reiterated that legislative measures are required to prevent similar violations;

5. strongly invited the Turkish authorities to give priority to the adoption of the necessary legislative measures without any further delay after the general elections of June 2011.

Al-Saadoon and Mufdhi v. the United Kingdom

61498/08, judgment of 2 March 2010, final on 4 October 2010
DH-DD(2011)356E

Transfer of the applicants, Iraqi nationals, by the British authorities (in Iraq) to the Iraqi authorities on 31/12/2008 to stand trial for war crimes, punishable with sentences including death penalty: the British authorities' actions and inaction had subjected the applicants, at least since May 2006, to fear of their execution by the Iraqi authorities, thus causing mental anguish of such a nature and severity as to constitute inhuman treatment (violation of Article 3). Non-compliance with the right to an effective domestic remedy and the right to individual petition before the European Court in so far as the European Court had indicated before the transfer on 30/12/2008, that the applicants should be maintained in detention by the British authorities and that the failure to do so rendered ineffective both the appeal to the House of Lords and the petition before the European Court itself (violations of Articles 34 and 13).

(December 2010)

The Deputies,

1. recalled the Council of Europe's unequivocal condemnation of the death penalty and the conclusion of the European Court that the number of states who have ratified Protocol 13 "together with the consistent State practice in observing the moratorium on capital punishment are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances" and against this background "the Court does not consider that the wording of the second sentence of Article 2§1 continues to act as a bar to its interpreting the words "inhuman or degrading treatment or punishment" in Article 3 as including the death penalty";

2. recalled that in its judgment, the European Court found, under Article 46 of the Convention, that respect for their obligations under Article 3 of the Convention requires the government of the United Kingdom to seek to put an end to the applicants' suffering as soon as possible by taking all possible steps to obtain an assurance from the Iraqi authorities that the applicants will not be subjected to the death penalty;

3. noted with concern from the information provided by the United Kingdom authorities, that the applicants, who are charged with murder, are currently detained by the Iraqi High Tribunal and face the risk of the death penalty;

4. recalled in this respect that from the date that the European Court's judgment became final until now, the United Kingdom authorities took all possible steps to seek assurances from the Iraqi High Tribunal and the President and Prime Minister of Iraq that the death penalty would not be imposed on the applicants and that the United Kingdom authorities are in continued contact with the Iraqi authorities and representatives from the Iraqi High Tribunal;

5. expressed deep concern, however, that the applicants are faced with the risk of the death penalty and that the Iraqi authorities have so far not given any assurances to the United Kingdom authorities that the death penalty will not be applied;

6. called upon the United Kingdom authorities to take all further possible steps to obtain assurances from the Iraqi authorities that the applicants will not be subjected to the death penalty;

7. invited the United Kingdom authorities to keep the Committee informed of all developments, both in relation to their contacts with

the Iraqi authorities and the current situation of the applicants and the progress of their trial;

8. declared the Committee's resolve to ensure, with all means available to the Organisation, the compliance by the United Kingdom with its obligations under this judgment;

9. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH) in the light of further information to be provided by the United Kingdom.

(March 2011)

The Deputies,

1. recalled that in its judgment, the European Court found under Article 46 of the Convention that respect for their obligations under Article 3 of the Convention requires the government of the United Kingdom to seek to put an end to the applicants' suffering as soon as possible by taking all possible steps to obtain an assurance from the Iraqi authorities that the applicants will not be subjected to the death penalty;

2. recalled that the European Court also found that it is not open to a contracting state to enter into an agreement with another state which conflicts with its obligations under the Convention and that this principle carries all the more force in the present case given the absolute and fundamental nature of the right not to be subjected to the death penalty and the grave and irreversible harm risked by the applicants;

3. noted that the Judge for the Iraqi High Tribunal (IHT) (3rd Felony Trial Panel) and eleven other persons have requested visas to travel to London to interview a number of United Kingdom-based witnesses;

4. welcomed the fact that the United Kingdom authorities had indicated to the IHT that before examining any request for assistance, they would need credible assurances that the death penalty would not be applied; that the President of the Public Prosecution service has provided a signed letter stating that the charges against the applicants carry a maximum penalty of 15 years' imprisonment;

5. welcomed the intention of the United Kingdom authorities to check that the assurances given in this letter effectively guarantee that the applicants no longer face the risk of the death penalty and encouraged them to pursue their efforts by undertaking, if appropriate, any other possible measure to secure such guarantee;

6. invited the United Kingdom authorities to keep the Committee fully informed of all developments, both in relation to their contacts with the Iraqi authorities and the current situation of the applicants and the progress of their trial.

(June 2011)

The Deputies,

1. recalled that the applicants were acquitted by the Iraqi High Tribunal on 27 April 2011 and noted that on 17 May 2011 the Prosecutor appealed the acquittal but did not request application of the death penalty;

2. took note with satisfaction of the information provided by the United Kingdom authorities that the Prosecutor's appeal was rejected on 4 June 2011 and the applicants' acquittal was upheld;

3. noted that there does not appear to be any prospect of a further appeal but that until 27 April 2012, the court may reopen the investigation against the applicants, should new evidence come to light;

4. also welcomed the statement from the United Kingdom authorities that they consider the applicants are no longer at risk of the death penalty and their confirmation that when the Iraqi authorities requested legal assistance, the United Kingdom authorities informed them that credible assurances would be needed that the death penalty would not be imposed;

5. noted that the United Kingdom authorities anticipate receiving a written copy of the relevant verdict and that steps to release the applicants are currently under way;

6. invited the United Kingdom authorities to continue to keep the Committee fully informed of all developments on the current situation of the applicants.

(Hirst No. 2) 74025/01, judgment of 6 October 2005 - Grand Chamber DH-DD(2011)139, Interim Resolution CM/ResDH(2009)160 (Greens and M.T.)60041/08, judgment of 23 November 2010, final on 11 April 2011

Hirst No. 2 v. the United Kingdom Greens and M.T. v. the United Kingdom

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

(December 2010)

The Deputies:

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

2. recalled that at its meeting in December 2009, the Committee of Ministers adopted Interim Resolution CM/ResDH(2009)160, in which it urged rapid adoption of the general measures by the Respondent State;

3. noted that despite this, the United Kingdom general election was held on 6 May 2010 with the blanket ban on the right of convicted prisoners in custody to vote still in place;

4. recalled that in such circumstances the risk of repetitive applications identified by the Committee has materialised, as stated by the European Court in the pilot judgment, Greens and M.T. against the United Kingdom (60041/08 and 60054/08, judgment of 24/11/2010 not yet final), with over 2 500 clone applications received by the European Court;

5. noted that the United Kingdom authorities have confirmed that they will present draft legislation to implement the judgment in the near future as announced on 3 November by the Prime Minister to the United Kingdom Parliament;

6. expressed hope that the elections scheduled for 2011 in Scotland, Wales and Northern Ireland can be performed in a way that complies with the Convention;

7. called upon the United Kingdom authorities to present an action plan for implementation of the judgment which includes a clear timetable for the adoption of the measures envisaged, without further delay;

8. decided to resume consideration of this item at their 1108th meeting (March 2011) (DH), in the light of further information to be provided by the authorities on general measures.

(June 2011)

The Deputies,

1. recalled that in the Hirst (No. 2) judgment, final on 6 October 2005, the Court found that the general, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote, fell outside any acceptable margin of appreciation and was incompatible with Article 3 of Protocol No. 1 to the Convention;

2. recalled that at their 1108th meeting (March 2011), the Deputies noted that on 22 February 2011 the United Kingdom government had requested a referral to the Grand Chamber of the pilot judgment Greens and M.T. and decided consequently to resume consideration of the questions raised by the judgment once the referral request had been considered;

3. noted that the request for a referral to the Grand Chamber in Greens and M.T. was refused by the panel of the Grand Chamber on 11 April 2011, and that the pilot judgment subsequently became final on that date;

4. noted further that, according to §115 of the pilot judgment, the United Kingdom authorities have until 11 October 2011 to introduce legislative proposals with a view to the enactment of an electoral law to achieve compliance with the Court's judgments in Hirst and Greens and M.T. according to any time-scale determined by the Committee of Ministers;

5. consequently invited the United Kingdom authorities to present an action plan to this effect without delay.

Interim resolutions (extracts)

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

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

Interim Resolution CM/ResDH(2010)222 Yuriy Nikolayevich Ivanov against Ukraine

40450/04, judgment of 15/10/2009, final on 15/01/2010

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

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

Strongly urged once again the Ukrainian authorities at the highest political level to hold to their commitment to resolving the problem of non-enforcement of domestic judicial

decisions and to adopt as a matter of priority the specific reforms in Ukraine's legislation and administrative practice required by the pilot judgment;

Firmly invited the Ukrainian authorities to enhance their efforts in resolving the similar individual cases lodged with the Court before the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their subsequent implementation.

Decided to resume consideration of these cases at their 1108th meeting (March 2011) (DH), in the light of information to be provided by the authorities on the measures taken to comply with the judgments.

Interim Resolution CM/ResDH(2010)223 concerning the excessive length of judicial proceedings in 84 cases against Bulgaria

Cases mainly concerning the excessive length of the criminal proceedings instituted against the applicants between 1986 and 1999 (violations of Aricle 6§1); several cases also relate to the lack of an effective remedy at the applicants' disposal against the excessive length of the proceedings (violations of Article 13).

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

Called upon the Bulgarian authorities to provide for acceleration as much as possible of the proceedings pending in these cases, in order to bring them to an end as soon as possible, and to inform it of the progress of proceedings in the two aforementioned cases;

(...) Encouraged the Bulgarian authorities to pursue their efforts in following up the reforms introduced, in order to consolidate their positive effects, in particular as regards the situation in the district courts located in regional centres;

Called on the authorities to continue to monitor the effects of these reforms as it proceeds, with a view to adopting, if appropriate, any further measure necessary to ensure its effectiveness, and to keep the Committee informed of the developments in this regard;

(...) Invited the Bulgarian authorities to complete as soon as possible the reform undertaken in order to introduce a remedy whereby compensation may be granted for prejudice caused by excessive length of judicial proceedings, and to keep the Committee informed of its progress and of any other measure that may be envisaged in this field;

Decided to resume its examination of progress made at the latest:

- by the end of 2011, with regard to the question of effective remedy;
- by mid-2012, with regard to the question of the excessive length of judicial proceedings.

DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135 ; ResDH(2005)114 ; CM/ResDH(2007)2 ; CM/ResDH(2009)42)

Interim Resolution CM/ResDH(2010)224 concerning the excessive length of judicial proceedings in Italy

Ceteroni and other similar cases: Excessive length of judicial proceedings in civil, criminal and administrative matters (violation of Article 6§1).
Luordo and other similar cases: Disproportionate restrictions of the applicants' rights due to excessively long bankruptcy proceedings (violation of the rights: to property – Article 1 of the Protocol 1; of access to a court – Article 6§1; to freedom of movement – Article 2 of the Protocol 2; to respect for correspondence – Article 8; to an effective remedy – Article 13).

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

Urged the Italian authorities at the highest level strongly to hold to their political commitment to resolving the problem of the excessive length of judicial proceedings and to take all necessary technical and budgetary measures accordingly;

Firmly invited the Italian authorities to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up urgently an effective strategy and to present it to the Committee, together with up-to-date data and statistics.

Interim Resolution CM/ResDH(2010)225 Concerning 78 cases against the Slovak Republic concerning excessive length of civil proceedings

Cases mainly concern the excessive length of civil proceedings initiated between 1990 and 2000 and closed, in most of the cases, between 1999 and 2004 (violations of Article 6§1). The Jakub case and some others also concern the lack of an effective remedy against undue length of proceedings (violations of Article 13).

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

Invited the Slovak authorities to do their utmost to expedite the proceedings still pending before the Slovak courts, so that they may be concluded rapidly, and to keep the Committee informed of their progress;

Encouraged the Slovak authorities to persevere in their efforts to solve the general problem of excessive length of civil proceedings and to consolidate the promising downward trend

currently observed in the average length of proceedings;

Invited the authorities to continue keeping the Committee informed of developments in the matter, especially as regards the impact of the measures and the trend in the average length of proceedings;

Invited the authorities furthermore to provide the Committee with additional information enabling it to satisfy itself that the domestic remedy against length of proceedings functions in accordance with the criteria laid down by the Court;

Decided to resume consideration of these cases at its 1108th DH meeting (March 2011).

Selection of Final Resolutions (extracts)

Once the CM has ascertained that the necessary measures have been taken by the respondent state, it closes the case by a Resolution in which it takes note of the overall measures taken to comply with the judgment. Some examples of extracts from the Resolutions adopted follow, in their chronological/ order (see for their full text the website of the Department for the Execution of judgments of the European Court, the website of the CM or the HUDOC database):

Resolution CM/ResDH(2010)154 Malek and Schmidt v. Austria

60553/00 and 513/05, judgments of 12/06/2003 and 17/07/2008, final on 12/09/2003 and 17/10/2008

Excessive length of disciplinary proceedings against the applicants (lawyers) before Austrian disciplinary authorities and courts: in the Malek case the proceedings began in September 1993 and ended in April 2000, and in the Schmidt case, the period taken into consideration by the European Court began in June 1996 and ended in July 2004 (violation of Article 6§1).

Individual measures

The proceedings are closed. In addition, the European Court awarded just satisfaction in respect of non-pecuniary damages sustained by the applicants.

General measures

1) Length of proceedings before disciplinary authorities and courts: The cases present similarities to that of W.R. (see Final Resolution ResDH(2000)141, adopted on 18/12/2000), closed after the dissemination of the European Court's judgment to the competent authorities. After the judgment in the Malek case, on 29/01/2004, the Lower Austria Bar Chamber communicated new guidelines for accelerating disciplinary proceedings to all disciplinary counselors and indicating that compliance with these guidelines is supervised by the President and the Vice-President of the Disciplinary Council of the Lower Austria Bar Chamber. According to these guidelines, the disciplinary authorities may refrain from seeking evidence that is not attainable for legal or factual reasons for an unforeseeable or indefinite period, or whose production has been repeatedly and unsuccessfully sought, after the expiry of a certain deadline set down in each individual case. The Austrian authorities indicated that the disciplinary procedures of the Lower Austria Bar were usually handled swiftly and that the adoption of the new guidelines represented an additional safeguard against new violations similar to that found in the present cases.

2) Length of proceedings before the Constitutional Court: The Constitutional Court's 2007 Activity Report (published on 09/04/2008, available online at http://www.vfgh.gv.at/cms/vfgh-site/attachments/8/0/9/CH0011/CMS1207730706100/taetigkeitsbericht_2007.pdf) provided statistics showing that the average length of proceedings between 1998 and 2007 was less than nine months. The duration of the proceedings in the Schmidt case therefore seems to constitute an isolated incident resulting from the particular circumstances of the case. Given the direct effect of the Convention in Austria, publication and dissemination of the judgment should be sufficient to raise the authorities' awareness of the Convention's requirements.

3) Publication and dissemination: The judgment in the Schmidt case has been published in German in the *Newsletter* of the Austrian Institute for Human Rights (NL 2008, p. 219, NL 08/4/11, available online at http://www.menschenrechte.ac.at/docs/08_4/08_4_11). On 4/08/2008 it was sent out to the Constitutional Court, to the Vienna Bar Association, the Federation of the Austrian Bar Association, and the Ministry of Justice.

Resolution CM/ResDH(2010)157 Liivik v. Estonia

12157/05, judgment of 25/06/2009, final on 25/09/2009

Violation of the principle "no punishment without law" on account of the conviction in 2004 of the applicant - Director General of the Estonian Privatisation Agency – to two years imprisonment on the basis of an excessively vague provision criminalising "misuse of official position" under Article 161 of the Criminal Code (violation of Article 7).

Individual measures

According to Article 366 of the Code of Criminal Procedure, a person whose conviction by Estonian Courts has been held by the European Court to be in violation with the provisions of the Convention is entitled to apply to the Supreme Court for re-opening of the proceedings. In this case, the Estonian Supreme Court decided to accept the applicant's application to re-open his criminal case on 23/11/2009. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The legislative provision at issue, Article 161 of the Criminal Code, which was replaced by Article 289 of the new Criminal Code, was definitively repealed in 2007 by a legislative amendment. In the explanatory memorandum prepared by the Ministry of Justice concerning the repeal of this Article, it was stated that the vague wording of this Article was in contradiction with the general principle of legal certainty and the principle of *nulla poena sine lege*. In the explanatory memorandum reference was especially made to the interpretation of Article 7§1 of the Convention by the European Court of Human Rights, according to which the necessary elements of a criminal offence had to be clearly defined in law. The judgment has been translated into Estonian and placed on the website of the Council of Europe Information Centre in Tallinn (www.coe.ee).

2192/03 and 38241/04, judgments of 11/07/2006 and 29/05/2008, final on 11/10/2006 and 29/08/2008

Resolution CM/ResDH(2010)158 Harkmann and Bergmann v. Estonia

Violation of the applicants' right to be brought promptly before a judge after their arrest respectively in 2002 and 2004: in the Harkmann case, the applicant, declared to be a fugitive, was brought before a judge 15 days after his arrest, and in the Bergmann case, the first opportunity the applicant had to present personally arguments for his release was 26 days after his arrest (violation of Article 5§3). The Harkmann case also concerns the absence of an enforceable right to compensation for unlawful detention (violation of Article 5§5).

Individual measures

In the case of Harkmann, the applicant was released on 17/12/2002. In the case of Bergmann, in December 2004 the applicant was sentenced to three years' and six months' imprisonment, less the time already spent in custody. The applicant has now served his sentence and thus is no longer detained. In both cases, the Court awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicants. Consequently, no other individual measure seems to be necessary.

General measures

a) Violation of Article 5, paragraph 3: The Estonian authorities have taken legislative measures with respect to the violation of Article 5, paragraph 3 of the Convention. In particular, the new Criminal Procedure Code entered into force on 01/07/2004. According to Article 131 paragraph 4 of this code, an investigating judge may issue an arrest warrant for the purpose of arresting a person who has been declared a fugitive. In this case, not later than on the second day following the date of apprehension of the fugitive, the arrested person shall be taken to the investigating judge for interrogation. According to paragraph 5 of the same provision, if there are no grounds for arrest, the person shall be released immediately.

In addition, the Estonian authorities indicated that in accordance with the provisions of Article 21 of the Estonian Constitution and Article 34, paragraph 1, point 6 and Article 35, paragraph 2 of the Criminal Procedure Code, any detained person is entitled personally to present a court with arguments for his or her release. Pursuant to Article 217, paragraph 1, point 8 of this Code, the Estonian prosecutors have an obligation to bring the arrested person within 48 hours before an investigating judge, who will then examine the reasons for his or her detention or release.

b) Violation of Article 5, paragraph 5: The Estonian authorities have also taken legislative measures with respect to the violation of Article 5, paragraph 5, of the Convention. In particular, the amendments to the State Liability Act entered into force on 18/11/2006. According to Article 7§2 of this act, a distinct right to compensation is provided for unlawful activities of a public authority if the European Court found a violation of the Convention in a particular case. Such right for compensation is also provided for applicants who have filed an application with the Court in a matter in which the Court has already found a violation before, or for persons who has the right to file such an application.

The Estonian authorities indicated that the persons detained unlawfully may receive compensation on the basis of this law. The provisions of the State Liability Act and its amendments may be invoked before the Estonian courts in case of unlawful detention under the new Criminal Procedure Code or under Article 5, paragraph 3 of the Convention, which is an integral part of Estonian law.

The Estonian authorities further indicated that a person who was detained unlawfully may

claim compensation according to the provisions of Unjust Privation of Liberty (Compensation) Act. These provisions can be invoked before the Estonian courts in case of violation of Articles 131 and 217 of the new Code of Criminal Procedure. Since the detention in the present cases would be considered unlawful under the new Criminal Procedure Code, it appears that such detention would qualify for compensation under the Unjust Privation of Liberty (Compensation) Act.

c) Publication and dissemination: The judgments of the Court have been translated into Estonian and published on the website of the Council of Europe Information Office in Tallinn (www.coe.ee). They have been widely distributed, including to courts and prosecutors.

Resolution CM/ResDH(2010)160 Mokrani v. France

52206/99, judgment of 1507/2003, final on 15/10/2003

Disproportionate interference with the applicant's right to respect for his private and family life in the event of enforcement of the deportation order issued against him in 1995 following his conviction for drug trafficking, given, in particular, the strength of this personal links with France (notably, the applicant has a child and is in a stable relationship) (violation of Article 8 if the deportation order were to be enforced).

Individual measures

Pursuant to the information provided by the French authorities, a compulsory residence order was issued in respect of the applicant on 30/10/2003, depriving the expulsion measure of any legal effect. The applicant is also entitled to work under the conditions set by a circular issued by the Minister of Solidarity, Health and Social Protection dated 23/01/1990. Besides, according to the applicant's lawyer, the applicant lodged a claim to annul the expulsion order. In this respect, the French authorities pointed out that, taking into account the guarantees granted by the law dated 26/11/2003, he was entitled to obtain this annulment as well as a regular residence permit. In any event, the French authorities undertook not to implement the expulsion order.

In the light of this information, no further individual measure was considered necessary by the Committee of Ministers.

General measures

Article L.521-3 of the Foreigners' Entrance and Stay and Asylum Right Code provides reinforced protection of foreigners who might be in the same situation as the applicant, against a potential expulsion order.

Besides, prior to the delivery of an expulsion order, the administrative authorities (the prefect or the Ministry of the Interior) carries out an individual examination of each case so as to assess the impact of the measure on the private and family life of the concerned person and to watch over the respect of Article 8 of the Convention. Then, in the context of the monitoring undertaken of the lawfulness of administrative expulsion orders, the administrative courts examine the conformity of these measures with the Convention, by annulling of expulsion orders which surpass the need to defend public order with regard to the seriousness of the breach of private and family life.

Resolution CM/ResDH(2010)161 Aoulmi v. France

50278/99, judgment of 17/01/2006, final on 17/04/2006

Hindrance of the applicant's right of individual application as a result of non-respect by the defending state of the interim measure – the suspension of the applicant's extradition - indicated by the Court in 1999 under Rule 39 of the Rules of Court (violation of Artice 34).

Individual measures

The European Court awarded just satisfaction to the applicant in respect of the non-pecuniary damage sustained.

However, the Court dismissed the claims introduced by the applicant pursuant to Articles 3 and 8. The applicant argued that his expulsion to Algeria might be risky due to the unavailability of the required treatment for his hepatitis in Algeria, where he could not benefit from any social insurance, and to the "harki" activities of his father which made him fear relation by islamists. Although the Court was aware he was suffering from a serious disease, it held that, in the light of the information provided at the time when the case was still under examination, especially of the most recent information on the applicant's health, it could not consider that the risk of the incompatibilty of the circumstances of his explusion to Algeria with Article 3 and 6 was sufficiently real. As to the arguments related to the story of his family as well as to the current situation in Algeria, the Court considered that the repercussions implied by these elements were too distant to hold that the applicant, who had never been to Algeria and did not suggest that he was personally involved in political activities, might face treatment contrary to Article 3.

Eventually, concerning the applicant's allegations under Article 8, the Court held that, despite the applicant's strong personal relationship with France, the Court of appeal of Lyon could legitimately consider that, in the

light of the behaviour of the applicant and the seriousness of the charges against him, a sentence to permanent expulsion from French territory was necessary in the interest of preventing disorder or crime. The measure was therefore proportional to the aim pursued.

General measures

The French authorities stated that, since the European Court's judgment in the case of Mamatkulov and Askarov against Turkey (Application No. 46827/99 and 46951/99, judgment of 04/02/2005), they had been fully aware of the importance the Court attached to the enforcement of interim measures indicated. They indicated that the facts of the Aoulmi case took place prior to the adoption of this ruling, and that, since then, the French government had complied with each request from the Court to suspend enforcement of measures against applicants.

The European Court's judgment was issued (together with a commentary referring to the Mamatkulov and Askarov judgment) in the legal information bulletin of the Ministry of the Interior (May/June 2006). This is disseminated through the intranet site of the Ministry which is accessible to all agents of the Ministry as well as to *préfectures*. The judgment has also been circulated to concerned authorities.

59450/00, judgment of 04/07/2006, final on 04/07/2006

Resolution CM/ResDH(2010)162 Ramirez Sanchez v. France

Lack of effective remedy to challenge the decisions to prolong the applicant's detention in solitary confinement from 1994 until 2002 (violation of Article 13).

Individual measures

The Court found a violation of Article 13 of the Convention for a period from August 1994 to October 17, 2002, due to the absence of a domestic remedy to contest the measures extending solitary confinement taken against the applicant during that period (§ 166 of the judgment). The Court also noted that, by a decision of 30/07/2003, the Council of State had established that a measure of solitary confinement could be brought before the administrative judge which, where appropriate, may order the annulment in the context of an *ultra vires* appeal (§ 164 of the judgment, see also "General measures", below). The Court further noted that the measure of solitary confinement ended on 06/01/2006. The French authorities also confirm that the payment of just satisfaction was made under conditions accepted by the applicant.

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

General measures

By a decision of 30/07/2003, the Council of State has accepted the possibility to appeal against a solitary confinement measure before an administrative judge which, in such a case, may order the annulment in the context of an *ultra vires* appeal "considering the seriousness of its impact on detention conditions" (judgment of 30/07/2003 in the case of the Minister of Justice versus Remli).

The regime of solitary confinement was reviewed by two decrees modifying the Code of Criminal Procedure (respectively Decree No. 2006-338 related to prisoners' solitary confinement, and Decree No. 2006-337 related to decisions taken by the Prison Administration, which both came into force on 1 June 2006). The prison staff have been provided with detailed information on the new applicable rules through a circular issued by the Directorate of the Prison Administration (JUSK0640117C dated 24 May 2006) and benefited from appropriate trainings.

It should be noted that in a later judgment, Khider against France (judgment of 09/07/2009, final on 09/10/2009), the Court expressly held that the applicant in that case had an "effective remedy" to contest the measures of solitary confinement within the meaning of Article 13 of the Convention (§ 140 of the judgment).

Finally, Article 92 of Law No. 2009-1436 dated 24 November 2009, known as the Prison Act, introduced into the legislative part of the Code of Criminal Procedure an Article 726-1, which deals with solitary confinement of administrative nature.

Decisions of administrative solitary confinement and of its potential prolongation are now considered as "individual administrative acts" likely to be subject of an *ultra vires* appeal or an urgent application before administrative courts. It may also be noted that the normative framework, set up by the Prison Act and the aforementioned decrees dated 21 March 2006, grants the prisoner additional guarantees in the context of the proceedings for placement in solitary confinement or the prolongation of the measure, including: the possibility for the prisoner to be assisted or represented by a lawyer, if applicable under legal aid, and to acquaint oneself with his file; the obligation to reason the decision; the possibility to submit observations before the Judge competent for the supervision of the sentences; etc. Moreover, pursuant to the administrative practice of ordinary law, the decision shall be notified to the prisoner together with information related

to appeals and deadlines for appealing, whether in the decision itself or in a notification form the prisoner is required to sign.

The European Court's judgment was circulated to concerned courts and services, and published on the intranet site of the Ministry of Justice, together with comments.

Resolution CM/ResDH(2010)163 FC Mretebi v. Georgia

38736/04, judgment of 31/07/2007, final on 31/01/2008, rectifies on 24/01/2008

Infringement of the right of access to a court and, accordingly, of the right to a fair hearing owing to the fact that the applicant, the Football Club Mretebi, was unable to continue proceedings for damages because the Supreme Court had refused to grant its request for exemption from court fees (violation of Article 6§1).

Individual measures

The applicant did not request just satisfaction for non-pecuniary damage. The Court rejected the applicant's claim for pecuniary damage on the ground that it could not speculate about the outcome of the domestic proceedings had they been in conformity with Article 6§1. The Court stated that, having regard to its finding in this case, and without prejudice to other possible measures remedying the unjustified denial of the applicant's right of access to the court of cassation, it considered that the most appropriate form of redress would be to have the applicant's points-of-law appeal of 5/01/2004 examined by the Supreme Court, in accordance with the requirements of Article 6§1, should the applicant so request.

On 14/03/2008 the applicant's representatives filed a request with the Supreme Court to review the applicant's cassation appeal of 5/01/2004. On 21/07/2008, the Supreme Court, sitting in camera, dismissed the applicant club's request for re-examination as it did not refer to any grounds for re-examination provided in Articles 422 (request to render a final decision null and void) and 423 (re-examination of a final decision on the basis of newly discovered circumstances) of the Code of Civil Procedure, the only two domestic legal avenues for such an action.

On 4/05/2010, amendments to the Code of Civil Procedure were adopted which provide in particular that a judgment of the European Court finding a violation of the Convention is a new circumstance and thus constitutes grounds for reopening proceedings. Where reopening proves impossible in the interest of third parties in good faith, the competent court may award compensation to the applicant party (...)

These amendments entered into force on 15/05/2010.

In addition, having regard to the conclusions of the Court in this judgment, the legislator introduced transitory provisions provided that physical or legal persons (including the applicant club) having already been refused reopening of proceedings, may introduce fresh requests within one month following the entry into force of the new amendments (...)

The Georgian authorities indicated that the applicant club did not avail itself of this right.

Lastly in 2009, the applicant club lodged a new application to the European Court, relying on Articles 6, 13 and 46 of the Convention.

General measures

It appears from the Court's judgment that provisions concerning exemption of court fees have changed. The provisions currently in force are as follows:

According to Article 37 of the Code of Civil Procedure, court fees are composed of the state fee and the costs incurred for purposes of the proceedings.
Article 39 which sets the amount of the state fee has been modified and these amounts have been increased. Article 47 deals with "Exemption of payment of court fees by the Judge" and provides in particular that "With due regard to the financial situation of the party concerned, the judge may exempt that party in whole or in part from court fees to be paid to the state budget, if that party can prove its inability to pay the court fees and if it provides relevant evidence. The judge shall give a reasoned decision. Lastly, Article 48 provides that "with due regard to the financial situation of the party concerned, and if the party provides relevant evidence, the judge may extend the time-limit for payment or reduce the amount of court fees to be paid to the state budget."

Resolution CM/ResDH(2010)164 Gorelishvili v. Georgia

12979/04, judgment of 05/06/2007, final on 05/09/2007

Unjustified interference with the right to the freedom of expression of the applicant, a journalist, owing to her libel conviction in 2003 for having published an article on a political figure's financial situation, without the law or the courts taking account of the due distinction between statements of fact and value judgments, or accepting as a defence her good faith as to the truth of the statements of fact, but requiring their truth to be proven (violation of Article 10).

Individual measures

No claim for pecuniary damage was made. The European Court however considered that the

applicant must have suffered some non-pecuniary damage for which the finding of a violation would not constitute sufficient compensation and therefore awarded the applicant a sum under this head.

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

General measures

1) Legislative changes: The European Court stated that the Georgian law on defamation at the material time had led to the decision of the Supreme Court. In particular, Article 18 of the Civil Code made no distinction between value-judgments and statements of fact, referring uniformly to "information" (*cnobebi*), and required the truth of any such "information" to be proved by the respondent party. Such an indiscriminate approach to the assessment of speech is, in the eyes of the Court, *per se* incompatible with freedom of opinion, a fundamental element of Article 10.

Since the facts of the present case, Article 18 of the Civil Code has been amended. It is no longer required of the respondent party to establish proof of the information communicated. Article 18 of the Civil Code deals with the right to reply in the media and request for compensation in respect of non-pecuniary and pecuniary damages for infringements of honour, dignity, private life, personal security and reputation.

The law of 24/06/2004 concerning freedom of speech and expression replaced the law on press and media, in force at the material time.

This law defines defamation as "a statement containing false facts harmful to an individual, his/her name or reputation" (Chapter 1, Article 1e). The law further specifies that "any person, except public agents, enjoys freedom of expression which means a) absolute freedom of opinion, b) freedom of speech and of political debate" (Chapter 1, Article 3, 2).

Chapter IV of the law concerns defamation and makes a distinction between defamation towards a private individual and a public personality. It specifies that it is for the defendant to prove that a fact is erroneous and that he/she has suffered prejudice as a result of its publication. Concerning defamation towards a public personality, the civil responsibility of the defendant is engaged if the plaintiff proves that the defendant knew that the fact was erroneous. The defendant's civil responsibility is not engaged if the publication of the erroneous statement is the result of the plaintiff's gross negligence.

Article 15 of the law provides for the cases where the defendant enjoys partial or conditional exemption of liability. This applies to a person having stated an erroneous fact if:

a) he/she took reasonable steps to ascertain the truth of the facts but could not avoid a mistake and subsequently took measures to restore the reputation of the person offended;

b) his or her aim is to protect a legitimate public interest and the interest protected exceeds the damage inflicted;

c) the statement was made with the agreement of the plaintiff;

d) the statement constitutes a proportionate response to the statement made by the plaintiff against him or her;

e) the statement is a description lawful and accurate of an event which attracts the public attention.

Article 16 of the law provides that no one can be held responsible of defamation if he/she did not know or could not know that the defamatory statements were/would be spread.

Finally, Article 2 of the law provides that the "law may be interpreted in accordance with the Constitution of Georgia and the international obligations of Georgia, in particular the European Convention of Human Rights".

2) Publication/dissemination of the judgment of the European Court: The judgment, translated into Georgian, was published in the Official Gazette No. 54, dated 12/11/07. It is available on the website of the Ministry of Justice of Georgia http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=103. In addition it was distributed to various state bodies and in particular the Supreme Court.

3) Direct effect of the Convention and the Court's case-law in Georgian law: The Georgian authorities underline that, when dealing with cases concerning freedom of expression, domestic courts refer to the Convention and the Court's case-law. Thus, in the case of Z. against K., in which the applicant Z. was complaining of the dismissal of his compensation request for defamation by the Tbilisi first instance and appeal courts, the civil chamber of the Supreme Court held by judgment of 23/07/2009 that the first-instance and appeal courts had rightly found that the statements in question constituted an opinion on a question of public interest. The Supreme Court recalled that "the interpretation of the law concerning freedom of speech and expression should be made in conformity with the international obligations of Georgia, including the European Convention on Human Rights and the case-law of the European Court of Human Rights", and after analysing the necessity in a democratic society of a possible restriction to the freedom of expression in the case, as well as the limits of an "acceptable critic", the Supreme Court

confirmed that there had been no defamation in the case.

Resolution CM/ResDH(2010)171 Lykourezos v. Greece

33554/03, judgment of 15/06/2006, final on 15/09/2006

Infringement of the right to free elections due to applicant's forfeiture of his parliamentary seat (a lawyer of the Athens Bar) following a decision of the Special Supreme Court, applying immediately during current parliamentary, a constitutional revision disqualifying those engaging in professional activities from sitting as MPs (violation of Article 3 of Protocol No. 1).

Individual measures

The European Court awarded the applicant just satisfaction in respect of pecuniary damage and costs and expenses. The applicant's claim for a larger sum in respect of pecuniary damages was dismissed by the Court, which noted that following the loss of the parliamentary seat the applicant resumed his professional activities and received the resultant fees. In addition, the applicant had not shown that the total of the fees in question was less than that of the parliamentary allowances that he did indeed lose during the period in question.

General measures

In 2008, the paragraph prohibiting the exercise of other professional activities by members of Parliament was abrogated (*Official Journal*-A-102/2.6.2008). Article 57, paragraph 1.e of the Constitution, as amended, provides that a special law could define certain professional activities, the exercise of which could be prohibited to members of Parliament.

Resolution CM/ResDH(2010)173 Grande Oriente d'Italia di Palazzo Giustiniani and Grande Oriente d'Italia di Palazzo Giustiniani No. 2 v. Italy

35972/97, judgment of 02/08/2001, final on 12/12/2001 and 26740/02, judgment of 31/05/2007, final on 31/08/2007

Unjustified interference with the freedom of association of the applicant, an Italian Masonic association, due to a 1996 regional law of the Marche region obliging candidates to public office to declare that they are not members of the association (Case No. 35972/97, violation of Article 11); lack of objective and reasonable justification for the difference of treatment introduced by a 1978 regional law of the Friuli Venezia Giulia region in that it required among members of non-secret associations, only members of Masonic associations to declare their membership when applying for certain posts in the regional government (case No. 26740/02, violation of Article 14 in conjunction with Article 11).

Individual measures

In both cases the European Court considered that the finding of the violation constituted in itself sufficient just satisfaction with respect to non-pecuniary damages. Following the abrogation of the provisions at the origin of the violations (see below), the applicant association and its members are no longer subject to restrictions considered by the Court to be contrary to the Convention.

General measures

Following the violations found by the Court, legislative changes took place. In particular, as regards Case No. 35972/97, the Regional Council of Marche approved, on 01/12/2005, Law No. 27/2005 (which entered into force on 08/12/2005), which abolished, in Article 5§2 of Law No. 34/1996, the obligation for candidates to public office in the Region to declare that they are not freemasons. The new law provides the exclusion from public office in the Region only for persons belonging to secret societies, banned under Article 18 of the Constitution, if such membership has been established by a decision having the force of *resiudicata*.

In case No. 26740/02, Regional Law No. 2 of 23/01/2008 amended article 7bis ante of Law No. 75 of 23/06/1978, which was at the basis of the violation found by the European Court. This article no longer makes reference to Masonic associations.

Both judgments have been published in the database of the Court of Cassation on the case-law of the European Court of Human Rights (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike.

Resolution CM/ResDH(2010)175 Gulijev v. Lithuania

10425/03, judgment of 16/12/2008, final on 16/03/2009

Unjustified interference with the applicant's right to respect for his private and family life resulting from the rejection of his request for renewal of his temporary residence permit, upheld by the administrative courts in 2002, and his subsequent expulsion and prohibition from re-entering the country, where his wife and children lived. These measures had been taken on the sole ground of a secret report by the State Security Department qualifying the applicant as a potential threat to national security and order (violation of Article 8).

Individual measures

On 22 May 2009 of the Migration Department of Lithuania decided to remove the data

concerning the applicant from the national list of aliens prohibited from entering Lithuanian Republic territory. Consequently the applicant may now enter the Republic of Lithuania whenever he wishes and is entitled to apply to the migration department for a temporary residence permit in accordance with the common procedure provided in the Law on the Legal Status of Aliens. According to the information submitted by the Lithuanian authorities the applicant, his wife and their two children are currently residing in Austria. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The Lithuanian authorities consider that that the violation in this case was purely due to a wrongful application and interpretation of domestic law, since despite Article 57§3 of the Law on Administrative Proceedings which makes it illegal to take into account as evidence a document classified as "secret", the expulsion of the applicant was based on a "secret" document drafted by the State Security Department, to which the applicant had no access during the expulsion proceedings. In addition, in a decision of 15/05/2007, the Constitutional Court, when interpreting Article 57§3 of the Law on Administrative Proceedings, considered clearly that "no court decision can be based entirely on information classified as secret and which is unknown to the parties in the case". The authorities are of the opinion in this respect that the violation found in this case is isolated and does not require the national law to be amended.

The European Court's judgment has been translated into Lithuanian and placed on the official Internet site of the Ministry of Justice. The Government Agent has informed all relevant institutions and domestic courts about the judgment in writing.

2345/02, judgment of 05/07/2005, final on 05/10/2005

Resolution CM/ResDH(2010)177 Said v. the Netherlands

Risk of ill-treatment in case of expulsion of the applicant to Eritrea; problem in assessing the credibility of the applicant's declarations (violation of Article 3).

Individual measures

The European Court made no award for just satisfaction in the absence of a sufficiently specified claim by the applicant.

The applicant was granted asylum in September 2005. On 14 October 2010 the applicant was granted a permanent residence permit. In addition, the Netherlands authorities gave assurances that they will apply the guidelines concerning the implementation of the Aliens Act in conformity with Article 3 of the Convention (see below under General Measures) in their future decisions concerning the applicant's asylum status.

General measures

The Netherlands authorities stated that, when reviewing administrative decisions on asylum, domestic courts decide *ex nunc* on the basis of information available at the relevant time, deciding also on the admissibility of the new facts or circumstances alleged by the person concerned. New facts and circumstances may also be adduced in a renewed asylum application if the first application is denied.
Furthermore, the authorities stated that, following the Court's judgment, the Implementation Guidelines for the Aliens Act 2000 were modified. A specific chapter on refugees from Eritrea was added, ensuring among other things that Eritrean deserters and conscientious objectors are more readily considered eligible for a residence permit.
The judgment was published in several legal journals in the Netherlands (*NJCM-Bulletin* 2005, pp. 831-843; *EHRC* 2005, pp. 920-928, No. 93; *NJB* 2005, p. 2099, No. 40; and *AB* 2005/368).

52391/99, judgment of 15/05/2007, Grand Chamber

Resolution CM/ResDH(2010)178 Ramsahai v. the Netherlands

Failure to conduct an effective and independent investigation into a killing by the police in 1998 (violation of Article 2).

Individual measures

The Court awarded just satisfaction in respect of the non-material damage incurred. On the basis of the evidence adduced before the Court, the Chamber established the circumstances of the victim's death. These circumstances were not contested before the Grand Chamber. In its assessment of the facts, the Court held that the police officers' use of force was no more than absolutely necessary and that the shooting of the victim had not violated Article 2. Consequently, it appears that a further investigation at the domestic level would probably not produce a different result. In these circumstances, no other individual measure apart from payment of just satisfaction seems necessary.

General measures

The Netherlands authorities have taken a number of measures following the Chamber judgment in this case (see §§ 258 and 267 of the

Grand Chamber judgment). These measures can be summarised as follows:

1) Inadequacy of investigation: The instruction of the Board of Prosecutors General mentioned above includes provisions (Articles 17 and 19) regarding measures to be taken when use of firearms by police officers result in casualties. These comprise the following points: the officers involved should immediately report the incident to their superiors who must record it in writing, and the head of the police should communicate this information within 48 hours to the public prosecutor. The superior should inform the officer concerned of the measure taken regarding his/her report. In addition, the speedier involvement of the State Criminal Investigation Department will avert any collusion.

2) Lack of independence of investigation: The duty system of the State Criminal Investigation Department was improved following a decision of the Amsterdam Court of Appeal of 23/06/2004 in order to ensure the department's quick arrival at the place of incident. As a consequence, the State Criminal Investigation Department today reaches the scene of incident on average within an hour or an hour and a half after an incident is reported. Furthermore, following the Chamber judgment in this case, the Board of Prosecutors General issued a new Instruction on 26/07/2006 the action to be taken in the event of use of force by a (police) officer. This Instruction applies to all officials vested with police powers and covers situations involving allegations of violations of Articles 2 and 3 of the Convention. Whenever an incident has taken place to which the Instruction applies, the investigation will be carried out by the State Criminal Investigation Department. The regional police force should immediately report the incident to the department. The duty officer of the Department will also proceed to the scene of the incident as quickly as possible. The local police should take all necessary urgent measures, such as cordoning off the area concerned, caring for any casualties and taking down the names of any witnesses. They are not themselves to carry out any investigations unless and to the extent that their involvement is unavoidable. All investigations that cannot be carried out by the Department will be conducted by the Internal Investigations Bureau of the police region concerned or by members of a neighbouring police force (§§260-264 of the judgment).

Lastly, the judgment was published in two legal journals in the Netherlands (*NJB* 2007/27 pp. 1678-1679 and *AB* 2007/77; *NJCM* 2007, pp. 1179-1195; *EHRC* 2007/83, pp. 780-799; and *NJ* 2007/618).

Resolution CM/ResDH(2010)180 Cotleț v. Romania

38565/97, judgment of 03/06/2003, final on 03/09/2003

Interference with the correspondence of the applicant, detained, with the former Commission of Human Rights and the European Court. The interference was not foreseen by law, *inter alia,* because of the absence of evidence of publication of a governmental decree on secrecy of correspondence, allegedly adopted in 1997, and because of the authorities' failure to respect their positive obligation to ensure the applicant access to the material necessary for correspondence with the European Court (paper, envelopes and stamps) (violations of Article 8); unlawful and unacceptable pressure, up to 2000, to prevent the applicant from pursuing his application before the European Court (violation of Article 34).

Individual measures

The European Court awarded the applicant just satisfaction in respect of pecuniary and non-pecuniary damage and costs and expenses. In the circumstances of the case, no other individual measure appears necessary.

General measures

Legislative measures: The government initially referred to the measures that had been taken to avoid new, similar violations following the judgment of the European Court in the case of Petra, as set out in Resolution CM/ResDH(2007)92 (in particular, the Emergency Ordinance No. 56/2003 regarding the rights of persons serving prison sentences, approved by the Parliament on 7 October 2003).

At the same time, the government indicated that after the judgment of the European Court in the present case, the director of the National Prisons Administration issued several circular letters instructing the prison staff under their direction to respect the confidentiality of prisoners' correspondence and petitions and to take various measures for the effective exercise of these rights (e.g. daily access of the prisoners to mail boxes, remittal of the correspondence and reply to petitions under signature, access of the mail service providers inside prisons to collect the prisoners' correspondence). These measures were initially based on the order of the Ministry of Justice No. 2036/C and, subsequently, on the Emergency Ordinance.

Subsequently, the government indicated that Emergency Ordinance No. 56/2003 was repealed by Law No. 275/2006 on the execution of sentences, published in the *Official Journal* No. 627 of 20 July 2006. Law No. 275/2006 guarantees convicted prisoners and remand prisoners the confidentiality of their correspondence and petitions. Under this Law and its implementing regulations, enacted by the

government's decree No. 1897 of 21 December 2006 and published in the *Official Journal* No. 24 of 16 January 2007, the prison administration is obliged to notify the prisoners of their rights and obligations.

Under Law No. 275/2006, prisoners' correspondence may be opened (but not read) in the presence of the prisoner, in order to prevent the smuggling in of dangerous substances and objects. Interception, allowed only if there are strong indications that an offence has been committed, may be ordered only by the detention judge, who must show cause. The prisoner whose correspondence has been intercepted is promptly informed thereof. Lastly, such restrictions cannot be imposed on the correspondence with prisoners' legal counsel, human rights NGOs or international courts and organisations.

Moreover, under Law No. 275/2006, the measures previously ordered by the National Prisons Administration to ensure the effective exercise of the right to correspondence and petition (see above) become legally binding. At the same time, this Law guarantees destitute prisoners the right to receive free materials for their correspondence and petitions from the prison's administration.

Finally, Law No. 275/2006 provides that prisoners may apply to the detention judge for review of measures taken by the prison administration affecting the exercise of their rights. If the detention judge dismisses the complaint, prisoners may appeal their decision before the court of first instance under the jurisdiction of which the prison is placed.

Publication and dissemination: The translation of the judgment of the European Court was published in the Official Journal No. 422 of 19 May 2005 and on the website of the High Court of cassation and justice (http://www.scj.ro/decizii_strasbourg.asp). In addition, the judgment was sent to all the prison units under the National Prison Administration.

Respectively: 71907/01 and 8691/02, judgments of 05/04/2007, final on 05/07/2007; 15394/02, judgment of 05/04/2007, final on 24/09/2007, rectified on 14/12/2007; 26733/02, judgment of 29/11/2007, final on 29/02/2008

Resolution CM/ResDH(2010)184 Kavakçı, Sılay, Ilıcak and Sobacı v. Turkey

Temporary disproportionate restrictions on the applicants' political rights following the dissolution of their party, the Fazilet by the Constitutional Court in 201 (the party was considered to have become the centre of anti-secular activities); the restrictions were imposed on the basis of broad constitutional provisions without any assessment of the real need of them (violation of Article 3 Protocol No. 1).

Individual measures

The restrictions imposed on the applicants by the Constitutional Court in 2001, which consist of a ban from becoming founder members, ordinary members, leaders or auditors of any other political party expired in 2006 and they were lifted. Thus, no other individual measure appears to be necessary.

General measures

Article 69§6 of the Turkish Constitution called into question in these cases was amended in 2001 (see §27 of the judgment). In its current version, Article 69§6 specifies the circumstances under which actions or statements of members of a political party may be attributed to the party. The amended provisions now contains the following sentence: "A political party shall be deemed to have become the centre of activities [against Constitutional principles of independence of the state, of human rights, of equality and of the rule of law, of sovereignty of the nation, of democracy and secularism] only when such activities are carried out intensively by the members of that party or condoned implicitly or explicitly by the grand assembly, chairmanship or the central decision-making or administrative organs of that party or by the group's general meeting or group executive board at the Turkish Grand National Assembly or when these activities are carried out in co-ordination with the abovementioned party organs directly".

Furthermore, a new paragraph has been added to Article 69, which now provides sanctions less stringent than closure of a party, a measure which would automatically lead to political restrictions imposed on its members whose actions and/or statements had been attributed to that party.

The European Court noted with satisfaction these amendments and stated that "the political restrictions on an individual would, without a doubt, take place much less frequently and political rights would be reinforced" (see §48 of Kavakçı judgment, §35 of Sılay judgment, §38 Ilıcak judgment and §34 of Sobacı judgment).

28212/95, judgment of 26/09/2002, final on 26/12/2002

Resolution CM/ResDH(2010)186 Benjamin and Wilson v. United Kingdom

Absence of right to bring proceedings for review of lawfulness of detention on mental health grounds after expiry of tariff period of "technical lifers" (violation of Article 5§4).

Individual measures

The first applicant was convicted in 1983, his tariff expired in 1989. In October 1993 he was

made a technical lifer. In 2001 the MHRT recommended his discharge from hospital. The Secretary of State accepted the recommendation and he was released on 09/01/2001.

The second applicant was sentenced in 1977; his tariff expired in 1984. In June 1993, he was made a technical lifer. In January 2009 he was discharged from hospital and released after a decision of the First-Tier Tribunal (Mental Health) (FTT), the successor to the MHRT.

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

General measures

The United Kingdom passed section 295 of the Criminal Justice Act 2003 which inserts a new section 74(5A) of the Mental Health Act 1983. The technical lifer scheme was abolished on 02/04/2005. It is no longer possible for new life sentence prisoners to be treated as "technical lifers".

The amended section 74 applies to all life sentence prisoners who have been transferred from prison to hospital and who are currently detained in hospital. Their detention in hospital is subject to review by the FTT under the Mental Health Act 1983. If the FTT finds that they no longer meet the criteria for detention in a hospital, it makes a recommendation under Section 74 of the Mental Health Act that they are entitled to be absolutely or conditionally discharged from hospital. If not released at this point, they will be returned to prison unless the Tribunal has recommended that they remain in hospital (for other medical reasons). In either case (return to prison or remaining in hospital), provided they have served their tariff, their detention is subject to review by the Parole Board as for any prisoner and the Parole Board can order their release on life licence.

Issues concerning the Parole Board have been examined in the context of the supervision of the execution of Stafford against the United Kingdom *(*Application No. 46295/99). As a result of the legislative amendments introduced in the Criminal Justice Act 2003 the Parole Board is now competent to rule on the release of both life sentence prisoners and transferred prisoners who remain in hospital; the Secretary of State is not free to depart from its decisions.

The judgment of the European Court was published in *European Human Rights Reports* (2003) 36 EHRR 1.

Resolution CM/ResDH(2010)187 B. and L. v. United Kingdom

36536/02, judgment of 13/09/2005, final on 12/12/2005

Prohibition of marriage between a father-in-law and his daughter-in-law in 2002 due to legislation prohibiting marriage between parents-in-law and their children-in-law unless both their former spouses have died (violation of Article 12).

Individual measure

There is no longer any prohibition against the applicants' marrying (see general measures). Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

On 5/4/2004, as part of its review of family law, the government in Scotland announced its intention to remove the remaining restrictions on marriage between a person and the parent of his or her former spouse. On 21/11/2005, before the judgment became final, the United Kingdom government responded to it in a ministerial statement, setting out its intention to amend the Marriage Act 1949. The offending provisions have since been repealed in all areas of the United Kingdom.

- *England and Wales,* the Marriage Act 1949 was amended so as to remove the prohibition of marriage between fathers-in-law and daughters-in-law. This was done by way of a remedial Order under section 10 of the Human Rights Act 1998 (the Marriage Act 1949 (Remedial) Order 2007, S.I. 2007/438). The order came into force on 01/03/2007 (see: http://www.opsi.gov.uk/SI/si2007/20070438.htm).
- *Scotland,* the Family Law (Scotland) Act 2006 came into force on 04/05/2006. Section 1 of the Act amends the Marriage (Scotland) Act 1977 to remove this prohibition.
- *Northern Ireland*, the prohibition was lifted by the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, S.I. 2006 No. 1945 (N.I.14), made by the Privy Council on 19/07/2006.

The judgment of the European Court was published in: (2006) 42 *European Human Rights Reports* 11 [2005] 3 *Family Court Reports* 353; [2006] 1 *Family Law Reports* 3 and *The Times* on 05/10/2005, as well as being available on Her Majesty's Court Service website: http://www.hmcourts-service.gov.uk.

Resolution CM/ResDH(2011)3 M.C. v. Bulgaria

39272/98, judgment of 4 December 2003, final on 4 March 2004

Failure in the state's positive obligations to provide effective protection of women against rape: excessive burden of proof on victim;

inadequate account taken of special vulnerability of young persons and the special psychological factors involved in rape cases; delays in investigation (violation of Articles 3 and 8).

Individual measures

The applicant's lawyer informed the Committee of Ministers that his client did not wish to have the domestic proceedings in her case reopened. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

The judgment was published on the internet site of the Ministry of Justice www.mjeli.government.bg and also in the second issue of the new quarterly journal *European Law and Integration*, which is published by the Ministry of Justice in 1000 copies and distributed to magistrates and academics. The text of the judgment, with comments, has also been published in the *Bulletin of the Ministry of Justice* which is widely disseminated to representatives of the judiciary.

The Legislation Council at the Ministry of Justice delivered a report, according to which it would not be necessary to modify the Criminal Code in execution of this judgment, since the expected results could be reached by drawing up instructions for investigatory bodies. Following this conclusion, in 2005 the National Investigation Office prepared and broadly disseminated methodological instructions on the investigation of rape to all regional investigating services. Furthermore, a circular letter specifying the concrete obligations for investigating authorities in such cases was also issued on 16/10/2007 by the Director of the National Police in the Ministry of Interior and addressed to the directors of all police services throughout the country. The letter indicated that evidence concerning the psychological state of victims of rape should be collected, in particular when they are minors. The full text of the judgment of the European Court in Bulgarian was also sent to the investigating bodies competent to investigate such cases.

15100/06, judgment of 21 February 2008, final on 29 September 2008

Resolution CM/ResDH(2011)11 Pyrgiotakis v. Greece

Unfairness of the applicant's trial in that his criminal conviction for drug trafficking essentially originated in the conduct of one of the police officers involved in the case, who had acted as a decoy and prompted criminal activity that would not have occurred otherwise (violation of Article 6§1).

Individual measures

In the proceedings at issue the applicant was sentenced to 10 years' imprisonment and a fine.

Following the European Court's judgment, the applicant asked for the re-opening of his trial and suspension of his sentence (Articles 525§1.5 and 529 of the Code of Criminal Procedure). In judgment 1381/2008, the Court of Cassation accepted the applicant's request, revoked judgment 64/2005 of the Court of Appeal of Crete that had found him guilty and had sentenced him to prison and referred the case to the Athens Court of Appeal, which examined the case afresh. All charges against the applicant were dismissed (judgment 47/2010).

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

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

General measures

The Court's findings have been endorsed in national case-law: it is held that, in conformity with Article 6 of the Convention, the conviction of an accused should not arise solely from the conduct of a police officer involved in the case (acting as agent provocateur), otherwise the requirements of a fair trial are not met (Court of Cassation 193/2009). Furthermore, this conviction should be based on additional, strong evidence, and not only on the testimony of the police officers involved (Court of Cassation 100/2007, Corfu Court of Appeal 29/2007).

Furthermore, the European Court's judgment was published and sent out in Greek by the Ministry of Justice to all the relevant judicial authorities of criminal courts, including the prosecutors. The judgment has also been published in Greek on the official website of the Legal Council of the State (www.nsk.gr).

75101/01, judgment of 30 November 2006, final on 28 February 2007

Resolution CM/ResDH(2011)18 Grecu v. Romania

Impossibility for the applicant to contest, before a competent and independent court, an order by the prosecutor, in 1985, and to obtain the restitution of seized currencies; unfairness of the criminal proceedings and violation of the right to a double degree of criminal jurisdiction (violations of Articles 6§1 and 2§1, Protocol No. 7).

Individual measures

The European Court awarded the applicant just satisfaction in respect of pecuniary and non-

pecuniary damage and costs and expenses. Furthermore, under Article 408 of the Code of Criminal Procedure, it was open to the applicant to apply for the reopening of the proceedings within one year as of the date upon which the European Court's judgment became final. Such a course of action would have secured the applicant an opportunity to have his request for judicial review of the prosecutor's order heard in accordance with the rules set forth by the amendments brought to the Code of Criminal Procedure in 2003 (see *infra*, under "General measures"). According to the information at the authorities' disposal, no such request had been made.

Consequently, no other individual measure appears necessary.

General measures

a) Violation of Article 6, paragraph 1

Under the relevant new provisions of the Code of Criminal Procedure (Article 278), in force since 1 January 2004, any person whose legitimate interests are affected by a prosecutor's decision not to open or to discontinue criminal proceedings has a right to seek judicial review thereof. The courts shall examine the lawfulness and the merits of the disputed order based on all elements in the case file and any piece of new written evidence adduced before it (Article 278^1, paragraph 4). If the complaint is well-founded and the existing evidence allows the determination of the charges, the court shall give a judgment on the merits. Where further investigations are necessary, the court annuls the prosecutor's order and refers the case back to the prosecutor's office to resume the investigation.

Thus, under the new statutory provisions which set the procedure to be followed, the domestic courts have full jurisdiction when it comes to the judicial review of prosecutors' orders. As regards the procedural guarantees afforded, Article 278^1, paragraph 4 limits admissible new evidence to written evidence. However, given the direct effect of the Convention and the European Court's case-law in Romanian law, it may be assumed that the domestic courts will be guided in their interpretation of the domestic law by the requirements resulting from the European Court's judgment as to their obligation to safeguard the rights of the defence in such proceedings. In order to raise awareness of such requirements, the Romanian translation of the judgment was published on the website of the Superior Council of Magistracy (www.csm1909.ro/csm/index.php?cmd=9503) and the judgment is also available on the website of the High Court of cassation and justice (www.scj.ro/decizii_strasbourg.asp).

b) Violation of Article 2, paragraph 1 of Protocol No. 7

Furthermore, the new statutory provisions mentioned above guarantee the right of appeal to a higher court in such proceedings. Thus, appeal lies against a judgment at first instance which upholds the prosecutor's order or refers the case back to the prosecutor's office.

Resolution CM/ResDH(2011)39
Meltex and Mesrop Movsesyan v. Armenia

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

Unlawful interference with the applicant company's right to freedom of expression on account of the refusal by the National Television and Radio Commission (NTRC), on seven occasions in 2002 and 2003, to deliver the applicant a broadcasting licence in the context of different tender calls. The refusals were not required by law to be motivated and the system did thus not provide adequate guarantees against arbitrariness (violation of Article 10).

Individual measures

A call for new licensing tenders for digital broadcasting on 25 national and local frequencies was announced on 20 July 2010. The applicant company took part in a tender for one frequency (competition No. 11). The results of the licensing tender "On winners in the 11th competition" are set out in Decree No. 96-A of the National Television and Radio Commission, dated 16 December 2010. The applicant company did not win the tender. Nothing prevents it from contesting the results of the licensing tender in the courts of the Republic of Armenia.

General measures

The Law on Amendments and Additions to the Television and Radio Broadcasting Act was adopted on 10 June 2010.

The provision of the TV and Radio Broadcasting Act concerning reasoning of decisions of the NTRC, Article 49(3), reads as follows: "The National Commission shall decide the winner of the competition on the basis of the results of the point-based vote. The decision of the National Commission shall be properly substantiated and reasoned."

In order to alleviate any misunderstanding of the obligation on the NTRC to reason all types of decisions, the Government Agent made the following official statement: "Article 49(3) of the TV and Radio Broadcasting Act should be interpreted in accordance with Article 10 of the Convention, and in the light of the Meltex judgment, in a way that a single decision of the Commission provides a full and proper substantiation and reasoning of the results of the points-based vote, including both in

respect of the winner of the competition, as well as of all of its other participants."

Moreover, the judgment of the Court has been translated into Armenian and published in relevant official publications, both print and electronic, of the Republic of Armenia. The text is available, *inter alia*, on the official websites of the Ministry of Justice of Armenia, www.moj.am, and of the judiciary of the Republic of Armenia, www.court.am. The Armenian text of the judgment has also been sent to the National Television and Radio Commission and to the Court of Cassation of the Republic of Armenia.

It is therefore expected that any future decision of the NTRC will be taken in conformity with the European Convention of Human Rights and the case-law of the European Court of Human Rights.

36549/03, judgment of 28 June 2007, final on 28 September 2007

Resolution CM/ResDH(2011)40 Harutyunyan v. Armenia

Breach of the right to a fair trial on account of the use of statements obtained under duress when convicting in 1999, the applicant, a serviceman in the army, for murder of another serviceman to 10 years' imprisonment (violation of Article 6§1).

Individual measures

Individual measure in favour of the applicant

The applicant was detained from 17/04/1999 to 22/12/2003 and was released on parole.

On 25/12/2007, the applicant lodged a request for reopening with the Court of Cassation. In this process, the applicant's lawyer had to challenge, before the Constitutional Court, the constitutionality of the provisions of the Code of Criminal Procedure concerning the reopening of proceedings. As a result, these provisions were amended on 26/12/2008.

Further to the adoption of these amendments, the applicant lodged a new request for reopening with the Court of Syunik Marz. After a number of adjournments because the applicant or his lawyer were not able to participate in the hearing, the hearing was held on 22/03/2010. The Court of Syunik Marz found Mr. Harutyunyan guilty of premeditated murder, sentenced him to ten years' imprisonment, but noted that he had already served this sentence. Thus the applicant remains free.

No other individual measure was considered necessary by the Committee of Ministers.

Measures of general impact adopted in the framework of this case to allow individual measure

Provisions on the reopening of criminal proceedings had to be modified. They now read as follows:

Article 426.4 of the Code of Criminal Procedure provides that "a judicial act may be reviewed after a final judgment or decision of an international court, the jurisdiction of which the Republic of Armenia has accepted, finding an infringement of a person's rights protected by an international agreement to which Republic of Armenia is party".

An appeal for review of a judicial act on the grounds of a new circumstance may be submitted within three months following the notification to the persons concerned of the final judgment or decision of an international court the jurisdiction of which the Republic of Armenia has accepted (Article 426.4.3).

The following have the right to submit an appeal for review of judicial acts in the event of newly discovered or new circumstances, as provided under Article 426.2:

- parties to the case to which the circumstance is related, except for criminal prosecution bodies;
- those who, at the moment of the adoption by the Constitutional Court of the decision on the matter at issue, are in a position to exercise that right in accordance with the requirements (time-limits) of the Republic of Armenia Law "On the Constitutional Court" and the Convention, or who had been deprived of the possibility to have their case examined by the Constitutional Court by virtue of sections 3 or 5 of Article 32 of the said Law;
- those who, at the moment of adoption of the relevant decision by an international court the jurisdiction of which the Republic of Armenia has accepted, have the right to appeal to the international court in accordance with the requirements (time-limits) of the relevant international agreement;
- the Prosecutor General of the Republic of Armenia and his deputies. (...)

On the basis of a newly discovered or new circumstance, a judicial act of the Court of first instance is reviewed by the Court of Appeal, a judicial act of the Court of Appeal and Court of Cassation is reviewed by the Court of Cassation (Article 426.1.2).

According to Article 426.8.3 the Court delivers the decision about refusal to initiate review proceedings within 10 days upon receiving an application. The decision regarding refusal to initiate review proceedings can be contested according to the respective regulation of the Code, i.e. Article 426.9 which states that a judicial act of the Court of Appeal can be contested before the Court of Cassation.

General measures

The European Court's judgment has been translated and published in the *Official Bulletin* of the Republic of Armenia No. 65 of 12/12/2007, on the official website of the Office of the Prosecutor of the Republic of Armenia (www.moj.am) as well as on the official website of the Prosecutor's office of the Republic of Armenia (www.genproc.am), and on the official website of the Judiciary of the Republic of Armenia (www.court.am). The text of the judgment in Armenian has been sent to the Constitutional Court, the Court of Cassation, the Courts of Appeal, all first-instance courts of general jurisdiction, the Human Rights Defender's Office, the Office of Public Prosecutor, the Police, the Standing Committee on State and Legal Affairs and the Standing Committee on Protection of Human Rights and Public Affairs of the National Assembly.

A study of the European Court of Human Rights case-law, and of the Harutyunyan case in particular, is included in the training curriculum of the Police Academy, the Prosecutors` School, and the Judicial School.

The Armenian Government expects that the case-law of the European Court of Human Rights will be taken into account by domestic authorities.

It has also to be recalled that Article 105 of the Code of Criminal Procedure, which concerns "facts inadmissible as evidence", states that "in criminal procedure it is illegal to use as evidence or as a basis for an accusation facts obtained: by force, threat, fraud, violation of dignity, as well with the use of other illegal actions, (...) by violation of the investigatory or other essential court proceedings. (...) Any violation of the constitutional rights, freedom of a person and citizen, or of any requirements of this Code in the form of restriction or elimination of the rights guaranteed by law to the persons involved in the case, that influenced or could have influenced the reliability of the facts, shall be considered an essential violation in the process of obtaining evidence (...)".

Conformity of judicial proceedings with Article 105 of the Code of Criminal Procedure is controlled by the domestic courts.

However, the government underlined that no similar case has had to be decided by the domestic courts since the European Court's judgment in the Harutyunyan case and that this is why no particular example of case-law can be mentioned concerning "facts obtained by force or threat".

Resolution CM/ResDH(2011)44 Suljagić v. Bosnia and Herzegovina

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

Violation of the applicant's right to the peaceful enjoyment of his possessions as a result of the deficient implementation of the domestic legislation on "old" foreign currency savings (foreign currency savings deposited prior to the dissolution of the Socialist Federative Republic of Yugoslavia) (violation of Article 1 of Protocol No. 1). The problem was systematic thus the pilot-judgment procedure was applied.

Individual measures

No other individual measure apart from the payment of just satisfaction was considered necessary by the Committee of Ministers.

General measures

The authorities of Bosnia and Herzegovina have taken the following measures in order to execute this pilot judgment:

1) The Federation issued government bonds intended for the repayment of the "old" foreign currency savings, which have been covered by verification certificates. The Federation government took decisions ordering the first issue of those bonds on 21/10/2009 and the second issue on 24/03/2010. Those decisions have been published in the Federation *Official Gazette,* Nos. 67/2009 and 17/2010.

2) The Federation government also took a decision ordering the payment of the outstanding installments due on 27/03/2009 and 27/09/2009. The decision was published in the Federation *Official Gazette* No. 17/2010. These installments concerned the payment of interest on the bonds. The actual payment of the installments took place on 16/07/2010.

3) The relevant deadlines have been extended to enable those who have not yet obtained a verification certificate in respect of their "old" foreign savings to obtain it. The deadline has been extended in Republika Srpska to 31/12/2010, in the Federation to 03/08/2010 and in the Brčko District to 15/10/2010. The respective decisions have been published in the official gazettes of both entities and the Brčko District.

4) On 29/04/2010 the Federation government adopted a decision to the effect that the Federation should pay default interest at the statutory rate in the event of late payment of any forthcoming installment.

5) The Court's judgment has been translated into all official languages of Bosnia and Herzegovina and published in the *Official Gazette* of Bosnia and Herzegovina No. 17/10 of 08/03/2010 and on the Internet page of the Government Agent (http://www.mhrr.gov.ba/ured_zastupnika/Default.aspx). The judgment was also forwarded to a number of relevant judicial and governmental authorities.

In view of the foregoing measures taken by the authorities of the respondent state, on 16/11/2010 the Court decided to close the pilot-judgment procedure applied in respect of the applications concerning "old" foreign currency savings in the present case (see decision in the case of Zadrić, Application No. 18804/04).

27966/06, judgment of 6 November 2007, final on 6 February 2008

Resolution CM/ResDH(2011)45 Šobota-Gajić v. Bosnia and Herzegovina

Violation of the applicant's right to respect for her family life in that for six years the authorities failed to take all reasonable measures to facilitate her reunion with her son despite several domestic decisions in her favour (violation of Article 8).

Individual measures

The judgment awarding custody to the applicant was executed and she was reunited with her son on 22/01/2007. In addition, the Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

General measures

The authorities of the respondent state have taken a number of measures aimed at preventing similar violations.

1) Legislative measures: The 2002 Family Act of Republika Srpska (the entity of the respondent state in which the events at issue took place) now authorises courts to give interim orders during the course of proceedings related to custody and maintenance. Consequently, social care centres are no longer authorised to give such orders.

The 2003 Enforcement Procedure Act of Republika Srpska provides that a child should be returned voluntarily by the person obliged to comply with an enforcement order within three days after the receipt of such decision. The domestic courts will impose fines if such decisions are not complied with. If necessary, the courts will also request assistance from the custody authorities. In any event, the courts have an obligation to protect the child's interests during the enforcement of a custody order. As a last resort, the child will be taken forcibly if the fines imposed do not secure his or her return.

In cases where a child is abducted following the enforcement of a custody decision, the 2003 Enforcement Procedure Act of Republika Srpska provides for repeated enforcement of one and the same order, if less than 60 days have elapsed before the child has been abducted.

The abduction of a child also falls within the ambit of the 2005 Domestic Violence Act of Republika Srpska. When confronted with a situation similar to the facts of the present case, the police, public prosecutors, custody authorities and courts are now obliged to provide protection for the victims and to examine these cases as a matter of priority. Police officers are under an obligation to draw up a report presenting the facts of the case and send it within 24 hours to the competent public prosecutor and the Social Care Centre. In addition, public prosecutors are under an obligation to take the required steps without any delay and notify the competent court thereon. The competent court is obliged to make a decision without any delay, in any event not later than 3 days.

2) Publication and dissemination: The Court's judgment was published in the *Official Gazette of Bosnia and Herzegovina* and posted on the website of the Office of the Government Agent (www.mhrr.gov.ba/UredZastupnika). The Office of the Government Agent wrote to administrative bodies and courts involved in the present case and informed them of the violation found. This information was also sent to other authorities, including the Minister of Health and Social Security, the Office of the Legal Representative, the Prime Minister in Republika Srpska, the Prime Minister in the Federation of Bosnia and Herzegovina and the Constitutional Court and the Chairman of the Council of Ministers in Bosnia and Herzegovina.

44079/98, judgment of 20 October 2005, final on 15 February 2006
46336/99, judgment of 24 November 2005, final on 24 February 2006

Resolution CM/ResDH(2011)46 United Macedonian Organisation Ilinden and Ivanov and Ivanov and Others v. Bulgaria

Infringements of the freedom of assembly of organisations seeking "recognition of the Macedonian minority in Bulgaria"; prohibition of meetings of those organisations between 1998 and 2003 on national security grounds (alleged separatist ideas), although they had not advocated the use of violence or other means contrary to democratic principles in order to attain their objectives. Lack of effective remedies to complain about the prohibition of their meetings (violations of Articles 11 and 13).

Individual measures

1) Meetings in 2006-2008: The Bulgarian authorities informed the Committee of Ministers that in 2006 only 2 out of 10 requests for organisation of meetings had been rejected. They consider that the two requests in question were rejected on grounds which are compatible with the requirements of the Convention. The police ensured the security of

the participants and the public order at the authorised meetings.

In 2007, the applicants complained before the Committee of the ban by the Governor of the Blagoevgrad region of a commemorative meeting they organised for 22/04/2007. The Committee noted this ban with concern as it was based on grounds already incriminated by the European Court, but noted in this respect with satisfaction that the meeting in question had nevertheless taken place, in particular following the intervention of the Government Agent (see the decision adopted by the Committee at the 997th meeting, June 2007). However, the applicants disputed the fact that meeting in question had taken place, claiming that they had encountered various problems related to the transportation of the participants, complaining of the behaviour of the police and the fact that they had not been authorised to carry out certain actions (play music, make speeches, lay wreaths or raise flags). They lodged a new application with the European Court with regard to these facts (application No. 48284/07, the statement of facts is available on Hudoc).

2) Meetings in 2008-2010: In 2008, the Bulgarian authorities indicated that the United Macedonian Organisation Ilinden – PIRIN (hereafter "UMO Ilinden – PIRIN") had declared itself satisfied, in certain publications on its website, with the organisation of two commemorative meetings which took place in April and in May 2008. The authorities specified that the presence of a great number of police officers, which was criticised by the applicants, was necessary to ensure the protection of the participants in these meetings against possible violent counter-demonstrations. The authorities observed that the absence of such a protection was criticised by the European Court in the judgment in UMO Ilinden and Ivanov (see §115 of the judgment).

The Bulgarian authorities submitted further information indicating that more than 20 officially notified events organised by UMO Ilinden and UMO Ilinden – PIRIN took place during the period 01/01/2009 -15/08/2010. Only two events were not authorised during this period (in May and in September 2009), according to the authorities on grounds which are compatible with the Convention. In addition, the authorities specified that, even though the municipalities were not informed of a certain number of other events, the applicants were not prevented from proceeding with their organisation.

They indicated that the second application currently pending before the European Court (see application No. 37586/04, the statement of facts is available on Hudoc) concerns alleged bans or the manner in which the applicants' meetings took place between March 2004 and September 2009 and that no complaint had been submitted by the applicants before the Committee since 2007.

In addition, the authorities consider that the awareness-raising measures described below, as well as the measures concerning the effectiveness of the domestic remedies in the field of freedom of peaceful meetings are also expected to further consolidate the positive trend already observed as regards the applicants' meetings.

General measures

1) Organisation of peaceful meetings: The authorities recalled that following the judgment in Stankov and UMO Ilinden of 2001 (Final Resolution ResDH(2004)78), a copy of the judgment translated into Bulgarian and accompanied by a circular letter was sent to the mayors of the towns of Petrich and Sandanski, directly concerned by this case. As the violations found in the present cases also concern other towns, the judgments of the European Court were also sent to the mayors of Sofia and Blagoevgrad, to draw their attention to the requirements of the Convention and to ensure that domestic law is interpreted in conformity with it.

The judgments were also sent to the district courts of the cities cited above, as well as to the competent prosecutors and to the directors of the National Security Service, of the Police Directorate of Sofia and of the Directorate of the Interior of Blagoevgrad. The dissemination of the judgments in these cases was made by a letter drawing the authorities' attention to the main conclusion of the European Court in these cases, as well as to the fact that this communication was made within the framework of the adoption of the general measures for the execution of the European Court's judgments.

In addition, following the present judgments, several training activities have been organised. A seminar for judges and prosecutors on freedom of association and assembly with the participation of the Council of Europe was organised by the National Institute of Justice in October 2007. Another seminar on this subject, for judges, prosecutors, representatives of the Ombudsman's Office, lawyers and NGOs was organised in December 2007 by the Ministry of Justice and the Department for execution of judgments. Yet another training activity for mayors and police chiefs took place in May 2008. Another seminar for judges and prosecutors was organised by the National Institute of Justice in June 2008. In October 2008 a group of judges from the Supreme Court of Cassation, of

prosecutors and of representatives of the Government Agent's Office paid a study visit to the Council of Europe during which they participated in a working seminar.

The government undertook to continue to organise awareness-raising activities in the field of application of Article 11 of the Convention (see final resolution CM/ResDH(2009)120 adopted in the case of UMO Ilinden-PIRIN and others against Bulgaria).

2) Effective remedies: The violation found by the European Court was due to the fact that according to the Meetings and Marches Act as it stood at the relevant time, the mayoral ban of a meeting was appealable before a body that no longer existed (the Executive Committee of the People's Council). The Act was amended in 2010 and the relevant provisions entered into force in March 2010. According to the amended provisions, organisers of meetings and demonstrations to take place outdoors must inform the mayor of the district concerned 48 hours in advance. The mayor may ban a meeting for the reasons set out in the law, no later than 24 hours after the notification by the organisers. The mayor's decision may be appealed before the competent administrative court, which must give its decision, which is final, within 24 hours.

Thus, the 2010 amendments to the Meeting and Marches Act removed the reference to a review body that had ceased to exist, which was creating confusion as to the procedure to be followed.

28261/06, judgment of 15 January 2009, final on 5 June 2009
3572/06, judgment of 22 October 2009, final on 1 March 2010

Resolution CM/ResDH(2011)48 Ćosić and Paulić v. Croatia

Disproportionate interference with the applicants' right to respect for their home in that the domestic courts ordered them to vacate flats owned by the state, in breach of any procedural safeguards in proceedings for their eviction (violations of Article 8).

Individual measures

In the Ćosić case, the Ministry of Defence decided not to institute enforcement proceedings to compel the applicant to vacate her flat. Under a decision on the sale of flats owned by the Republic of Croatia and managed by the Ministry of Defence adopted by the government on 02/04/2009 (published in the *Official Gazette*, No. 43/09), the applicant could apply to buy the flat at issue at the latest by 08/04/2010, thus enjoying a right of pre-emption.

In the Paulić case, the applicant submitted no claim for just satisfaction. The authorities withdrew their enforcement motion in this case.

The Municipal Court in Požega subsequently terminated the eviction proceedings on 30/11/2010. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

In order to prevent similar violations, on 22/12/2010 the Croatian Constitutional Court rendered a binding decision (No. U-III-46/2007) and found *expressis verbis* that any interference with the right to peaceful enjoyment of possession should comply with the principles of rule of law, public interest and proportionality. In this respect, the Constitutional Court stressed the obligation of domestic courts to implement the Convention. Since this change of case-law is binding on all courts in the country, it is expected that this measure should be adequate to prevent similar violations.

In view of the direct effect of the Convention in Croatia, publication of the Court's judgments and their dissemination to the relevant courts should contribute to preventing similar violations. In this context it should be noted that the Court's judgments have been translated into Croatian and published on the website of the Ministry of Justice (www.mprh.hr). They have been sent out to the Constitutional Court, Supreme Court, Ministry of Defence and to the domestic courts involved in the cases. The judgments are also published in a journal concerning the Court's case-law.

74644/01, judgment of 7 March 2006, final on 7 June 2006

Resolution CM/ResDH(2011)63 Donadze v. Georgia

Unfair civil proceedings on account of the lack of effective examination of the applicant's arguments by the domestic courts in 2000 (violation of Article 6§1).

Individual measures

The European Court awarded the applicant just satisfaction covering, on an equitable basis, the global damages sustained and the applicant expressed no further request for specific individual measures before the Committee of Ministers.

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

General measures

With a view to avoiding the occurrence of new violations similar to those found in the present case, the Georgian authorities have taken the following measures:

Publication and dissemination of the European Court's case-law

The European Court's judgment was translated into Georgian and published in the *Official Gazette* of Georgia, No. 28 of 29/05/2007. It is also to be found in *Judgments of the European Court of Human Rights against Georgia* published by the Human Rights Centre of the Supreme Court. This book contains the judgments delivered against Georgia between 2004 and 2010 and has been issued to domestic courts. Courts' attention has thus been drawn to the requirements of the Convention concerning the reasoning of judicial decisions.

Amendment of the Code of Civil Procedure (CPC) to reinforce the obligation to provide reasoned judgments

The CPC was amended on 13 July 2006 and 13 July 2007; several provisions have been adapted to insist in more detail on the importance of providing reasoned judgments.

The CPC provides that the conduct of proceedings should be based on the adversarial principle and that decisions delivered by courts should be reasoned, under penalty of annulment.

Adversarial principle: Article 4 CPC provides that parties to a trial have the same rights and the same opportunity to argue their own claims and to contest the arguments, claims and evidence presented by the other party. Article 5 CPC affirms the principle of the equality of all citizens before the law in the following terms: "Justice is dispensed by a competent court on the basis of the principle of the equality of all citizens before the law."

Reasoning of judicial decisions: Article 284-6 CPC provides that within 14 days from the public reading of a judgment, the court prepares a reasoned decision to be transmitted to the parties (legislative amendment of 13 July 2006).

The reasoning of the judgments of appeal courts is supervised by the Court of Cassation which may strike down judgments adopted in violation of the law and refer cases back for fresh examination by the appellate court, either in the same formation or another formation (Article 412 CPC).

A judgment is considered to have been adopted in violation of the law if:

- it is not legally well reasoned;
- its reasoning is so incomplete that it is impossible to assess the legal grounds for its adoption (Article 394 CPC as amended in 2006 and 2007).

Case-law of the Supreme Court

The Supreme Court has been called upon to apply these principles in disputes similar to that in the Donadze case, that is, between private individuals and public establishments and concerning issues related to labour law.

In a judgment of 24 October 2007, the Supreme Court struck down a judgment by the Civil Chamber of the Tbilisi Appeal Court dismissing a request to annul the dismissal of 13 administrative employees of the Union of Georgian Cooperatives, on the ground that the Appeal Court's reasoning was so incomplete that it had proved impossible to assess the legal grounds for its adoption.

In a judgment of 13 May 2008: S.G. against Georgian Public Television, the Supreme Court partially struck down a decision of the Civil Chamber of the Tbilisi Appeal Court refusing the appellant's request to be reinstated to his professional position. It referred the case back to the same formation of the appellate court, noting that it had failed to conduct a complete, objective and impartial examination of the evidence adduced and that its reasoning had been so incomplete that it had been impossible to assess the legal grounds for its adoption.

Resolution CM/ResDH(2011)73 Dălban and other similar cases v. Romania

Disproportionate convictions (non respect of defenses of truth and good faith, excessive sanctions involving deprivation of liberty and additional penalties in the form of loss of certain civil rights) of journalists for defamation of public officials between 1994 and 1997 (violations of Article 10). In one case, suspension of the applicant's parental rights automatically included in additional penalties although his conviction was totally unrelated to questions linked with parental authority (violation of Article 8); also lack of remedies in this respect as the loss of parental rights was automatic and prescribed by legislation in the case of prison sentences (violation also of Article 13). The case of Băcanu and SC "R" SA also concerned the unfairness of criminal proceedings and the dismissal of the applicants' requests for leave to adduce evidence without giving relevant reasons (violation of Article 6§1 and 3 (d)).

28114/95, judgment of 28 September 1999 – Grand Chamber

Individual measures

1) Dălban: The applicant died on 13 March 1998. By the time the European Court gave its judgment, his conviction had been overturned by the Supreme Court of Justice, following an extraordinary appeal lodged by the Prosecutor General. Under Article 41, the European Court awarded the applicant's widow just satisfaction in respect of non-pecuniary damage.

2) Cumpănă and Mazăre: The European Court noted that on the 22 November 1996, the applicants were granted a presidential pardon which exempted them from serving their prison terms and terminated the ban on the exercise

of some of their civil rights. As regards the one-year ban on the exercise of their profession imposed as security measure, the European Court found that it had not been enforced, since the applicants continued working as journalists after their conviction. Subsequently, the authorities indicated that the convictions had been expunged from the applicants' criminal records on the expiry of the statutory time-limit for rehabilitation.

Apart from their criminal convictions, the applicants were ordered to pay civil damages to the injured party and sought to recover the corresponding amount together with other heads of damage under Article 41. In dismissing the applicants' claim for pecuniary damage, the European Court relied on its findings that their convictions could have been regarded as "necessary in a democratic society" had the criminal sanctions and additional prohibitions not been manifestly disproportionate (paragraph 129). As regards non-pecuniary damage, the European Court considered that the finding of a violation constituted in itself sufficient just satisfaction.

3) Sabou and Pîrcălab: As regards the first applicant, the European Court noted that after being imprisoned from 20 august to 5 October 1998, he was granted a suspension of the execution of his prison sentence. A presidential pardon granted on 2 February 1999 exempted him from serving the remainder of his sentence and ended the ban on the exercise of his parental rights. The convictions were expunged from the applicants' criminal records on the expiry of the statutory time-limit for rehabilitation.

The European Court awarded the applicants just satisfaction in respect of pecuniary damage, corresponding to the amount of the civil damages the applicants were obliged to pay to the civil party in the proceedings at issue, non-pecuniary damage and costs and expenses.

4) Barb: The European Court awarded the applicant just satisfaction in respect of pecuniary and non-pecuniary damage and costs and expenses. It was open to the applicant to request the reopening of the criminal proceedings at issue, in conformity with Article 408 of the Code of Criminal Procedure. According to the information at the authorities' disposal, no such requested had been made. In any event, the applicant's conviction was expunged from his criminal record following the repeal of Articles 205 and 206 of the Criminal Code (see *infra* under "General measures").

5) Băcanu and SC "R" SA: In the proceedings at issue, criminal sanctions were inflicted only on Mr. Băcanu, author of the article in question. As publishing company, the applicant SC "R" SA was held jointly liable in tort for the amount of the civil damages. The European Court awarded them jointly just satisfaction in respect of pecuniary and non-pecuniary damage.

As to the criminal conviction, it was open to Mr. Băcanu to request the reopening of the proceedings, in conformity with Article 408[1] of the Code of Criminal Procedure. According to the information at the authorities' disposal, no such request had been made. In any event, the conviction was expunged from the first applicant's criminal record following the repeal of Articles 205 and 206 of the Criminal Code (see *infra* under "General measures").

In the circumstances presented above, no further individual measure was considered necessary by the Committee of Ministers.

General measures

a) Violations of Article 10

1) Legislative measures:

Following the European Court's judgments in the first three cases, Emergency Regulation No. 58/2002 and Law No. 160/2005 abolished prison sentences for insult and defamation respectively. Subsequently, Law No. 278/2006, which entered into force on 11 August 2006, repealed Articles 205 to 207 of the Criminal Code and, as a consequence, both insult and defamation were decriminalised. In January 2007, however, the Constitutional Court found the decriminalisation of insult and defamation to be unconstitutional.

The Constitutional Court's decision generated some uncertainty as to its effects on the decriminalisation of insult and defamation. In order to clarify this issue, the Prosecutor General lodged an appeal in the interest of the law (*recurs in interesul legii*) with the High Court of Cassation and Justice. In its ruling of 18 October 2010, the High Court of Cassation and Justice confirmed that notwithstanding the Constitutional Court's decision, insult and defamation are no longer criminal offences. Under Article 414, paragraph 3 of the Code of Criminal Procedure, this ruling is henceforth binding for all domestic courts.

Lastly, as a result of the decriminalisation of insult and defamation, the ban on the exercise of certain rights under Articles 71 and 64 of the Criminal Code and the security measures provided therein can no longer be imposed in similar cases.

2) Publication and dissemination: Translations into Romanian of the European Court's judgments in all these cases were published in the *Official Journal* in 2000, 2005 and 2009. Several conferences, training courses and seminars for judges and public prosecutors

have been organised since 2001, specifically dealing with issues related to the freedom of expression, as guaranteed under Article 10. These measures were aimed at raising awareness of the European Court's case-law and at ensuring that the relevant domestic law is construed in accordance with the principles set by the European Court.

The authorities provided examples of court decisions given in 2003 – 2004, which show that the domestic courts, often by reference to the European Court's case-law, acquitted defendants of charges of insult and defamation, not least in view of their intention to make public information and ideas on issues of public interest.

b) Violation of Articles 8 and 13

The European Court found that under Article 71 of the Criminal Code, the ban on the exercise of parental rights provided by Article 64 of the Criminal Code automatically applied as a consequence of the imposition of a prison sentence.

Article 71 of the Criminal Code was amended by Law No. 278/2006. According to the provisions currently in force it shall be for the courts to ban or not the exercise of parental rights. When exercising their power, courts must take into account the nature and seriousness of the offence, the circumstances of the cause, the personality of the offender and the best interest of the child. The imposition of such a ban is subject to appellate courts' review within the ordinary framework of appeals.

As regards the bans on the exercise of parental rights applied prior to the European Court's judgment in the case of Sabou and Pîrcălab and still in force, the government indicated that it is open to the affected persons to apply for judicial review in the light of the criteria set out by Article 71 as currently in force, by way of an objection to the execution to be lodged under Article 461 d) of the Code of Criminal Procedure. The government recalled that in the case of Iordache against Romania (No. 6817/02, judgment of 14/10/2008, final on 14/01/2009), the European Court found that this procedure constitutes an effective remedy in respect of continuing violations arising from the automatic application of the ban under the previous law (paragraph 60 of the judgment).

c) Violation of Article 6, paragraphs 1 and 3 (d)

For the authorities, the violation found by the European Court in the case stems from the failure of the domestic courts to observe the legal provisions compelling them to take all relevant and instrumental evidence and give reasoned decisions when dismissing requests of the parties for leave to adduce evidence (Article 67 of the Code of Criminal Procedure). Recalling that the judgment was translated and published in *Official Journal* No. 0484 of 13 July 2009, the government considers that, in view of the direct effect of the Convention and of the case-law of the European Court in Romanian law, the requirements of Article 6, paragraph 1 and 3 (d) resulting from this judgment will be taken into account by the domestic courts and that, consequently, similar violations will be prevented.

Resolution CM/ResDH(2011)83 Liberty and others v. the United Kingdom

58243/00, judgment of 1 July 2008, final on 1 October 2008

Violation of the right to respect for the applicants' private life, in particular their correspondence, due to the unforeseeable character of the legislation in force between 1990 and 1997 which conferred on the authorities wide discretion to monitor certain electronic communications (violation of Article 8). Both applicants were non-governmental organisations working in the field of human rights and established in Ireland and the United Kingdom.

Individual measures

Any correspondence intercepted between 1990 and 1997 is now held under the new legislative regime, the Regulation of Investigatory Powers Act 2000 (RIPA) and the Interception of Communications Code of Practice enacted under RIPA (see General Measures below). Consequently, no further individual measure was considered necessary by the Committee of Ministers.

General measures

The Interception of Communications Act 1985 was replaced by the Regulation of Investigatory Powers Act 2000 (RIPA) which provides new regulations for the interception of communications. The European Court has since found in Kennedy against the United Kingdom (Application No. 26839/05) that under RIPA the interception of communications are in conformity with Article 8 (§170). The Court considered that "that the [new] domestic law on interception of internal communications together with the clarifications brought by the publication of the [Interception of Communications] Code [of Practice] indicate with sufficient clarity the procedures for the authorisation and processing of interception warrants as well as the processing, communicating and destruction of intercepted material collected. The Court further observes that there is no evidence of any significant shortcomings in the application and operation of the surveillance regime" (§169).

The European Court's judgment was sent out to the competent authorities by a circular of 24 June 2009. The judgment was published in the *All England Law Reports* ([2008] All ER (D) 09 Jul) and the *Times Law Reports* (11/07/2009).

25904/07, judgment of 17 July 2008, final on 6 August 2008

Resolution CM/ResDH(2011)84 NA. v. the United Kingdom

Risk that the applicant might be subjected to torture or degrading or inhuman treatment in his country of origin, Sri Lanka, if the removal directions taken against him in June 2007 were to be enforced (violation of Article 3).

Individual measures

The United Kingdom authorities provided information on 14 October 2008, confirming that the removal directions would not be applied to the applicant. The applicant was granted six months leave to remain on a discretionary basis.

General measures

The United Kingdom Border Agency has updated its Operational Guidance Note on Sri Lanka (OGN v7.0) of August 2008 to refer to the European Court's judgment, highlighting the key points (http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/).

The United Kingdom authorities confirmed that internal guidance was provided to caseworkers within the UK Border Agency who are responsible for considering applications on humanitarian grounds by Sri Lankan Tamils, including those applicants with previous Rule 39 measures, to do so in accordance with the Court's judgment. The domestic courts in the United Kingdom, acting in accordance with the Human Rights Act 1998, are bound to take into account the European Court's judgment when determining similar cases in the future.

The judgment of the European Court has been widely reported including publication in the *New Law Journal* (N.L.J. 2008, 158(7338), 1322-1323); and *The Times*, 28/07/2008.

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 – Ukraine presents its priorities

Ukraine took over the chairmanship of the Committee of Ministers of the Council of Europe on 11 May 2011 for a six-month period. It will ensure that the goals and priorities of the Council of Europe will continue to be pursued, in particular the strengthening of democracy, respect for the rule of law and protection of human rights. Ukraine intends to initiate practical steps in order to advance in the implementation of the main priorities of the Council of Europe and strengthen the Organisation's political role. Within the framework of its Chairmanship, Ukraine will focus on the following priorities:

1. **Protection of Children's rights**: The Ukrainian Chairmanship intends to strengthen the co-ordinating role of the Council of Europe in implementing regional and national initiatives of member states with regard to the protection of children's rights, with an emphasis on the implementation of existing programmes and decisions of the Organisation as well as the development of new priorities.
2. **Human rights and the rule of law in the context of democracy and stability in Europe:** The Council of Europe created an efficient system of human rights protection. As a second priority of its Chairmanship, Ukraine will give special attention to the prevention of violations. The international conference on "The role of prevention in promoting and protecting human rights" to be organised in Kyiv on 20-21 September, will be a practical contribution of the Ukrainian Chairmanship to this end.
3. **Strengthening and developing local democracy:** Strengthening democratic processes at local and regional level in Europe, by ensuring effective implementation of the principles of local self-government in European countries, using the potential of the Council of Europe as a standard setting. Organisation in this area constitutes a further priority for the Ukrainian Chairmanship. The 17th session of the Council of Europe Conference of Ministers responsible for Local and Regional Government will be held on 3-4 November in Kyiv under the Ukrainian Chairmanship.

To promote continuity within the Council of Europe, prior to assuming the chairmanship, Ukraine had held consultations with the United Kingdom and Albania as forthcoming chairs. As a result, for the first time ever three consecutive chairmanships of the Committee of Ministers will work along the same lines in pursuing the goals of reform of the Council of Europe, thus setting a new practice in the *modus operandi* of the organisation.

Council of Europe adopts new convention to prevent and combat violence against women

The Committee of Ministers adopted on 7 April 2011 the text of a new Council of Europe Convention on preventing and combating violence against women and domestic violence.

This new landmark Council of Europe treaty is the first legally binding instrument in the world creating a comprehensive legal framework to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. The Convention also establishes an international mechanism to monitor its implementation at national level. The Convention which is also open to accession by non-European countries, was open for signature in Istanbul on 11 May 2011 on the occasion of the Council of Europe Committee of Ministers gathering Ministers of Foreign Affairs from 47 member states.

Signature of the new Council of Europe Convention to prevent and combat violence against women by Mr Ahmet Davutoğlu Minister for Foreign Affairs, Turkey

The Council of Europe calls on European governments to strengthen measures to promote the rights and full participation of people with disabilities in society

On 30 and 31 May 2011, the Council of Europe organised a conference in Odessa which highlighted best practice in seeking to improve the quality of life of people with disabilities and their integration and active participation in society and to strengthen equal opportunities and non-discrimination. The conference, which was organised as part of the Ukrainian chairmanship of the Committee of Ministers of the Council of Europe in conjunction with the Ukrainian Ministry of Social Affairs and the National Assembly of People with Disabilities, aimed to support Ukraine in implementing an effective policy on disability, but also to contribute to the 2nd component of the Council of Europe Disability Action Plan (2006-2015).

Declarations by the Committee of Ministers and its Chairperson

2011 International Day for the Elimination of Racial Discrimination

Statement by Ahmet Davutoğlu, Minister for Foreign Affairs of Turkey, former Chairman of the Committee of Ministers, 18 March 2011

"In today's increasingly diverse Europe, we must never forget the fundamental principle that all human beings are born free and equal in dignity and rights," declared Ahmet Davutoğlu, former Chairman of the Committee of Ministers of the Council of Europe, on the International Day for the Elimination of Racial Discrimination on 21 March. "Now more than ever, as we respond to the challenges of our changing societies, there is a need to fight all forms of racism and xenophobia." The Council of Europe is determined to pursue its work, through all the means at its disposal, notably the European Court of Human Rights, the European Commission against Racism and Intolerance, the Commissioner for Human Rights, to ensure that no one is subjected to discrimination or exposed to hatred because of their race, colour, sex, language, religion, origin or other motives," he added.

121st Session of the Committee of Ministers (Istanbul, 10-11 May)

Declaration by Ahmet DAVUTOĞLU, outgoing Chair of the Committee of Ministers, and Kostyantyn GRYSHCHENKO, incoming Chair of the Committee of Ministers

At the close of the 121st Session of the Committee of Ministers of the Council of Europe, the outgoing and incoming Chairs of the Committee of Ministers issued the following statement:

The Ministers for Foreign Affairs of 47 member states of the Council of Europe, gathered in Istanbul on 11 May 2011 to review their common achievements and to address together the challenges that our democratic societies face. During 62 years of continued intergovernmental co-operation, the Council of Europe has gradually extended throughout its member states and beyond the benefit of common legal instruments and expertise. The European Convention on Human Rights, under which all member states agree to have their compliance

in this field judged by an international court, has remained the cornerstone of those instruments. Our Organisation's constant objective, as confirmed in 2005 by the Warsaw Summit, has been to achieve unity and stability on our continent based on the values of human rights, democracy and the rule of law.

Our achievements in various fields reflect our capacity to address political issues. They show the added value of common action on the basis of principles and standards. The establishment of a death penalty free zone in Europe attests this. So does the opening for signature today of the Convention on Preventing and Combating Violence against Women and Domestic Violence as well as the successful work in the field of protecting children and promoting their rights.

Today's meeting also took place at a time of momentous changes in Europe's immediate neighbourhood. In North Africa and the Middle East, popular movements are voicing a legitimate demand for democracy and social justice. We express our hope that these events will give birth to peaceful, stable and democratic societies.

There can be no lasting peace and stability without respect for the values which are the foundation of the Council of Europe. These values however can never be taken for granted. Everyday reality in European societies has witnessed considerable progress and undeniable achievements, but also emerging tensions. Some effects of globalisation and economic recession feed a sense of insecurity, tempting societies to turn in on themselves. Rhetoric of hatred, intolerance, and exclusion undermine the foundations of democracy, the principles of equal rights and equal dignity for all individuals. Vulnerable groups find themselves stigmatised. Terrorism, organised crime, corruption, human trafficking and drug trafficking are a threat to security and the rule of law.

We remain concerned that persisting unresolved conflicts affecting certain parts of our continent put at risk the security, unity and democratic stability of member states and deprive populations concerned of their fundamental human rights and freedoms. We reaffirm our support for the respect for the principles of international law set out in the United Nations Charter, the CSCE Helsinki Final Act and other relevant texts.

We are confident that Europe will respond effectively to these challenges and has the means and democratic maturity to succeed. We will do our utmost to strengthen the social fabric of our societies and ensure that the values enshrined in the European Convention on Human Rights are enjoyed by all.

We therefore affirm that the Council of Europe's political mission is as relevant as ever and that we must step up its action to build a stable Europe without dividing lines, united by our values of human rights, democracy and the rule of law.

We consider that, with its pan-European membership, its legally binding instruments, political commitments, effective joint monitoring, and expertise in assisting the democratic functioning of its member states, the Council of Europe is the appropriate political forum for our continent to develop and implement common responses to the challenges facing us.

That is why the reform of the Organisation is of particular importance and we firmly support the efforts to give a new impetus to its work and to optimise its political potential and relevance for the citizens of Europe.

We recommit ourselves to ensuring rule of law in every member state and creating an effective pan-European common legal space based on the Council of Europe's standards and principles.

We reaffirm our determination to continue promoting and strengthening democracy throughout the continent.

We will 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.

We believe that the European Convention on Human Rights and its supervisory mechanism represent the foundation upon which our action in this field must be built and we reaffirm our unwavering attachment to this system. We are determined to guarantee the long-term effectiveness of the European Court of Human Rights and the convention system through substantial reforms based on the con-

clusions adopted in Interlaken and followed-up in Izmir.

We are committed to the rapid conclusion of the negotiations on accession by the European Union to the Convention, thus completing the construction of a coherent area of protection of human rights across Europe. We take note of the progress made and call on all Parties to conclude as soon as possible the work on the draft accession agreement.

We consider that intercultural dialogue, education, mutual respect and understanding – within and beyond our borders – are key responses to intolerance and effective tools for building sustainable peace. We take note with thanks of the contribution of the report "Living together – Combining diversity and freedom in 21st century Europe", prepared by the Group of Eminent Persons, towards strengthening our societies through shared values and the active participation of all individuals, without discrimination. To this end, we ask the Ministers' Deputies to examine the report of the Group of Eminent Persons.

We believe that Europe's stability and security will benefit from sharing our values with neighbouring regions. We invite the Deputies, on the basis of the Secretary General's proposals and through the bodies of the Council of Europe, to actively develop co-operation with third countries seeking our support for the transition to democracy. We also call to reinforce synergies with the other international organisations, including the partnership with the European Union, in areas of common interest.

Through this Declaration we affirm our political commitment to the Council of Europe and its mission. We remain convinced that in a period of challenge and change it is only by being true to our common values that we will contribute to peace, democracy and prosperity for our people.

Conferences

International conference in Kyiv on combating violence against children

Organised on 24 and 25 May in Kyiv, in the context of the Ukrainian Chairmanship of the Council of Europe Committee of Ministers, the conference is part of a series of Council of Europe actions to promote – with the support of governments and other partners – zero tolerance to violence against children.

The Kyiv conference aims at collecting good practices in implementing integrated national strategies to safeguard children's rights and eliminate violence against children.

Discussions will focus on:

1. preventing violence through the development of support services and improving national child care standards and policies;
2. addressing violence through cross-sectoral co-ordination and co-operation at regional and local level;
3. counselling, reporting, complaint and referral systems for child victims, witnesses and perpetrators of violence, including: reintegration and rehabilitation programmes; child-sensitive procedures and access to justice; combating child prostitution and child pornography.

The Conference was opened by Serhii Tihipko, Vice Prime Minister and Minister for Social Policy of Ukraine, Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, Marta Santos Pais, Special Representative of the United Nations Secretary General on Violence against Children, Nina Karpachova, Human Rights Commissioner of Ukraine, Steven Allen, Regional Director of UNICEF and Ambassador José Manuel Pinto Teixeira, Head of the Delegation of the European Union to Ukraine.

Council of Europe conference adopts the "Izmir Declaration" on the future of the European Court of Human Rights

The high-level conference organised on 26 and 27 April in Izmir by the Turkish Chairmanship of the Committee of Ministers of the Council of Europe today concluded its work with the adoption of the "Izmir Declaration" on the future of the European Court of Human Rights.

Major step towards following up and maintaining the momentum of the process of reform of the supervisory machinery set up by the European Convention on Human Rights, process launched by the Interlaken Conference, the Izmir Conference pursued three main goals

arising from the need to ensure the effectiveness of this machinery:

1 to make an assessment as of today of the impact of Protocol No. 14;
2 to take stock of what has been achieved by the reform process launched in Interlaken;
3 following a thorough reflection, lend impetus for pursuing that reform.

The Izmir Declaration, the Concluding remarks of the Turkish Chairmanship and additional information is available on the conference website.

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

The over-indebtedness of states is a danger to democracy and human rights

At the end of a debate on the over-indebtedness of states and its consequences for democracy and for citizens, parliamentarians called on European governments to devise "graduated strategies for public debt stabilisation and subsequent reduction". At the same time, member states should ensure that they "contain the erosion in living standards and citizen's socio-economic rights", by endeavouring to spread the effects of austerity measures fairly across the population and to spare vulnerable groups the weight of adjustments.

Following the conclusions of the rapporteur Pieter Omtzigt on this matter, the Assembly also emphasised the importance of ensuring "full transparency of state accounts in order to uphold democracy". In this context, parliamentarians expressed concern that member states had been forced to guarantee each other's sovereign debt, as had been the case, for example, for Iceland and Greece. They warned that inter-state guarantees increased systemic risk in Europe, as one state's default could lead to a chain reaction which would damage public finances. They therefore called on member states to "prepare plans for a gradual scaling down of such guarantees".

Human rights must be at the heart of the fight against poverty

In a resolution adopted on the basis of a report by Luca Volontè, the PACE called on member states to base their poverty reduction strategies on human rights by ensuring, in particular, that people and communities who experience poverty have access to not only social rights but also civil, political, economic and cultural rights.

The Assembly called on member states "to commit to ending child poverty and extreme poverty by 2025" through a range of measures, such as increased investment in education with a view to raising the level of qualification of young people, full access to employment opportunities, adequate medical assistance and housing, without discrimination, and the right to fair remuneration through the provision of an adequate minimum wage.

People who experience poverty should have some way of making their voice heard; the Assembly therefore encouraged member states to consider developing new forms of governance and participation to promote social inclusion for all. The parliamentarians also called for the strengthening of social cohesion – through volunteering – and family cohesion to prevent the intergenerational transmission of poverty.

PACE also invited national parliaments to promote the signature, ratification and application of Council of Europe instruments for the

protection of social rights, in particular the revised Social Charter (Article 30 of which enshrines the right to protection against poverty and social exclusion), and the European Convention on Social Security.

In the recommendation it adopted, PACE also proposed the establishment of non-bureaucratic institutions to which people living in poverty could have access, for example a poverty ombudsman.

In the framework of its biennial debate on human and social rights, the Assembly decided to return to the question of combating poverty in 2013 and to monitor the progress made.

PACE rapporteur welcomes acquittal of Oleg Orlov, human rights defender in Russia

Mailis Reps, the rapporteur of the PACE on the situation of human rights defenders, has expressed satisfaction following the acquittal of prominent human rights lawyer Oleg Orlov, the head of the Human Rights Centre "Memorial" in the Russian Federation.

"I warmly welcome the acquittal of Oleg Orlov. It is a step in the direction of ensuring respect for the rule of law and a sign that Russian courts are willing and able to interpret the right to freedom of expression in accordance with the European Convention on Human Rights. However, we should not forget that the circumstances of the killing of Natalia Estemirova have not yet been elucidated, and that human rights defenders in Chechnya continue to be threatened and hindered in exercising their activities."

Oleg Orlov was indicted in June 2010 on charges of criminal slander for his statement suggesting that Ramzan Kadyrov, Chechnya's leader, bore "responsibility" for the brutal murder of Natalia Estemirova, a human rights defender and previous head of "Memorial". According to the decision of Khamovniki District Court of Moscow on 14 June 2011, Oleg Orlov had only expressed his opinion and had not deliberately made false claims about Kadyrov.

Fighting sexual violence against children: the necessity to involve parliamentarians

"Sexual violence against children is a complex, sensitive, widespread phenomenon which can only be addressed if all social and political forces join their efforts," said Gagik Baghdasaryan in Yerevan representing PACE at a regional seminar on the rights of the most vulnerable children jointly organised by the Inter-Parliamentary Union and UNICEF.

"I am convinced that national parliaments are amongst the key players at national level when it comes to strengthening legislation and implementing higher standards of child protection", he added. In this respect, he recalled that PACE has developed the parliamentary dimension of the Council of Europe ONE in FIVE Campaign to stop sexual violence against children with a view to associating national parliaments with the campaign.

José Mendes Bota calls for European Parliament support on domestic violence

The Chairperson of the Parliamentary Assembly's Committee on Equal Opportunities has urged the European Parliament to help ensure that European Union member states – and the EU itself – sign up to and ratify the new Council of Europe convention on violence against women and domestic violence.

Speaking to the European Parliament Committee on Women's Rights and Gender Equality, José Mendes Bota said that further efforts were needed to ensure that the groundbreaking convention quickly enters into force, as it has the potential to change the lives of millions of women in Europe and elsewhere.

Mr Mendes Bota explained that the convention will oblige signatory countries to make combating violence against women and fighting discrimination a reality, and stressed that it contained minimum standards which can be further built upon.

However, he also urged Council of Europe and EU member states to keep national derogations to a minimum in order to avoid "à la carte" implementation of its provisions.

Council of Europe member states should help to resettle asylum seekers and refugees arriving on Europe's southern shores

Council of Europe member states should accept, as a priority, the relocation and resettlement of asylum seekers and refugees from countries "under strain" on Europe's southern shores, PACE said.

In a resolution based on a report by Christopher Chope, the Assembly said all European governments had a moral duty to assist Malta, Italy and other countries dealing with the thousands of "boat people" who have arrived from North Africa in recent months: "Fair sharing of responsibility for resettlement is essential." Help should also be given with border controls, the interception of boats and rescue at sea, infrastructure for reception centres and assistance with screening, as well as facilitating returns, the parliamentarians said.

In a separate resolution on interception and rescue at sea, based on a report by Arcadio Díaz Tejera, the Assembly said surveillance of Europe's southern shores had become a regional priority. "Member states have both a moral and legal obligation to save persons in distress," the parliamentarians said, calling for a rigorous application of international law.

What parliaments can do to uphold human rights

PACE set out in detail what national parliaments of Council of Europe member states can do to ensure compliance with international human rights standards.

Approving a report by Christos Pourgourides, the Assembly said parliaments should set up committees to check draft laws for their "human rights compatibility", propose new laws where needed and monitor governments' compliance with international standards – especially judgments of the European Court of Human Rights.

The parliamentarians pointed to "positive examples" of parliamentary structures in the United Kingdom, the Netherlands, Germany, Finland and Romania.

Approving a separate report by Carina Ohlsson, PACE also said parliaments had an important role in protecting social rights, especially those enshrined in the Council of Europe's revised Social Charter.

A Council of Europe framework convention for the protection of youth rights

In a recommendation adopted on the basis of a report by Elvira Kovács, PACE asked the Committee of Ministers to instruct the relevant intergovernmental bodies "to study the possibility of drafting a framework convention on the rights of young people", which would be based on ten principles.

These principles, which are appended to the recommendation, relate to the protection and promotion of young people's rights in the spheres of education and training, employment, housing, health, culture and sport, and participation in community life and democratic processes. They also concern non-discrimination, communication on youth policies and the effective implementation of national and international provisions applicable to young people.

Situation in member states

Parliamentary Assembly's 2011 Human Rights Prize awarded to the Russian NGO Committee against Torture

On 11 April 2011, the Parliamentary Assembly of the Council of Europe decided to award the 2011 Human Rights Prize to the Russian NGO Committee against Torture *(Komitet Protiv Pytok)*, in recognition of its key role in assisting victims of serious human rights abuses.

This is the second time the 10 000-euro biennial Prize, which honours "outstanding civil society action in the defence of human rights in Europe", has been awarded.

A panel including leading figures from the world of human rights recommended the NGO from among ten individuals and organisations nominated for the prize, praising its "effective independent investigations" alongside official

state investigations, especially in the Chechen Republic.

"By ensuring that perpetrators are brought to justice, the Committee has contributed to the reinforcement of the Rule of Law and has made an important contribution to the fight against impunity," the panel said.

Parliamentary Assembly 2011 Human Rights Award ceremony. Igor Kalyapin, Chair, Committee Against Torture (left), and Mevlüt Cavusoglu, President of the Parliamentary Assembly (right).

The Prize, consisting of a plaque and a diploma as well as the winning sum, will be awarded at a ceremony in Strasbourg during the Assembly's June 2011 session to coincide with a special debate held every two years on "the state of human rights in Europe".

The winner of the first Prize in 2009 was British Irish Rights Watch, an NGO which has been monitoring the human rights dimension of the conflict in Northern Ireland since 1990.

Nominations for the third edition of the prize, proposed by at least five sponsors, must reach the Secretary General of the Parliamentary Assembly by 30 September 2012. They should provide details of the nominee's activities in defence of human rights and specify why they can be considered to be outstanding.

Election of judges to the European Court of Human Rights

Sitting in plenary session, the Assembly elected:

- Erik Møse, a judge of the European Court of Human Rights in respect of Norway for a term of office of 9 years starting on 1 September 2011.
- Helen Keller, a judge of the European Court of Human Rights in respect of Switzerland for a term of office of 9 years starting on 4 October 2011.
- André Potocki, a judge of the European Court of Human Rights in respect of France for a term of office of 9 years starting on 4 November 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.

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

Malta, 23-25 March 2011

The Commissioner visited Malta from 23 to 25 March 2011 to discuss issues relating to the protection of human rights of migrants, including asylum-seekers. On this occasion, he met with the Permanent Secretary of the Ministry of Justice and Home Affairs, the Refugee Commissioner, as well as the Ombudsman, the Commissioner at the National Commission for the Promotion of Equality and with representatives of international and non-governmental organisations. He also visited the migrants detention centre in Safi and the open centres accommodating migrants in Marsa and Hal-Far.

Commissioner Hammarberg underlined that the human rights challenges posed by irregular migration in the central Mediterranean can only be met through mutually-reinforcing efforts by Malta and other European countries. He emphasised that current events in Libya should prompt more solidarity at a European level, including support for the necessary reforms in the Maltese system of reception and integration of migrants (see below, "Reports").

Spain, 4-6 April 2011

From 4 to 6 April 2011, the Commissioner carried out a visit to Spain focusing on the protection of the human rights of Roma. During the visit, he held meetings with the Secretary of State for Social Policy, the Acting Ombudsperson, the Director of the Roma Cultural Centre, the Chairperson of the Council for the Promotion of Equality and Non-discrimination due to Racial or Ethnic Origin, as well as members of the National Council of the Roma people. He also had an exchange with representatives of civil society, local authorities and police officers.

With the support of the Fundación Secretariado Gitano and the Institute for Relocation in the Madrid region, the Commissioner visited

several settlements and neighbourhoods where Roma encounter harsh living conditions (see below, "Reports").

Commissioner's visit to Spain, Roma settlement in Madrid

Slovenia, 7-8 April 2011

The Commissioner visited Slovenia from 7 to 8 April 2011 on the invitation of the Slovenian Government to participate in the celebration of the International Day of Roma on 8 April in the Roma settlement, Kamenci. During this mission, he discussed the protection of the human rights of Roma and the situation of the "erased" persons. On this occasion, he met with the Slovenian authorities, the Human Rights Ombudsman, as well as representatives of non-governmental organisations (see below, "Reports").

Georgia, 18-20 April 2011

The Commissioner visited Georgia from 18 to 20 April 2011 to assess the level of protection of human rights in the justice system in this country. In the course of his visit, he met several members of the government as well as the Public Defender (Ombudsman), a number of judges, lawyers and representatives of civil society and the international community. In addition, the Commissioner went to penitentiary establishments in Rustavi where he met several prisoners.

During the visit, the Commissioner noted the reforms undertaken in the area of criminal justice, including the introduction of a new Code of Criminal Procedure. However, citing the lengthy terms of imprisonment in cases of relatively minor crimes, he expressed concerns about the proportionality of sentences.

While the Commissioner acknowledged the significant progress made in reducing the risks of ill-treatment by police officers, he stressed that the authorities should ensure accountability in all cases of acts of violence and disproportionate use of force by law enforcement officials.

Russian Federation, 12-21 May 2011

In the course of his visit to the Russian Federation from 12 to 21 May 2011, the Commissioner held discussions on the most serious human rights problems concerning the North Caucasus Federal District with representatives of the Investigating Committee of the Russian Federation and with local authorities, as well as non-governmental organisations.

The Commissioner noted that despite various steps to promote socio-economic development, fight corruption and address unemployment, the situation in the North Caucasus remains highly complex and continues to present major challenges for the protection of human rights.

The Commissioner paid particular attention to the persisting problem of impunity for serious human rights violations, and sought to formulate recommendations with a view to ensuring that those responsible for such violations are brought to justice. In addition, he focused on counter-terrorism measures, the persisting occurrence of abductions, disappearances and ill-treatment, and the situation of human rights defenders.

Italy, 26-27 May 2011

From 26 to 27 May 2011, the Commissioner visited Italy, where he focused on the protection of human rights of Roma, Sinti and migrants, including asylum seekers. During his visit, he held several meetings, notably with the Secretary of State of the Presidence of the Council of Ministers, the Secretary of State of the Ministry of Interior, and the Prefect of Milan. He also held discussions with representatives of intergovernmental and non-governmental organisations. While in Milan, he visited an unauthorised settlement of Romanian Roma and a regular settlement inhabited by Italian Roma.

Serbia, 12-15 June 2011

Commissioner Hammarberg visited Serbia from 12 to 15 June 2011 to discuss issues relating to post-war justice and reconciliation, the fight against discrimination and freedom of the media. During the visit the Commissioner held discussions with the national authorities, the Commissioner for Protection of Equality, the Commissioner for Refugees, the Ombudsman of Serbia and the Commissioner for Data Protection and Access to Information, as well as

with international and non-governmental organisations.

He visited a collective centre for displaced persons in Belgrade and underlined the need to find durable solutions for persons still living in collective centres in Serbia. In this context, he welcomed the Serbian government's willingness to promote the establishment of a regional trust fund management mechanism within the Council of Europe Development Bank to address issues related to forced displacement.

As for the Roma, he noted that progress had been made with regard to access of this community to health care and education, but that additional efforts were needed to enhance their protection, in particular with regard to access to personal identity documents and adequate housing.

While acknowledging the progress made with regard to the protection of the human rights of persons with disabilities, he stressed that the authorities need to effectively tackle and resolve problems such as the segregation of disabled university students, the abuse of legal capacity procedures, and obstacles to physical access to institutions.

The Commissioner noted that media freedom had often been threatened in Serbia, through attacks against, and in some cases even murders of journalists. He welcomed the ongoing public consultations on the government's new media policy aiming at enhancing transparency of media outlets' ownership.

Reports and continuous dialogue

Report published following a visit to the Czech Republic

On 3 March 2011, Commissioner Hammarberg published a report following his visit to the Czech Republic from 17 to 19 November 2010 focusing on action against discrimination, racism and extremism, and protection of the human rights of Roma. He invited the authorities to take measures to effectively address and eliminate racist and stigmatising speech against Roma in politics and the media. In addition, he recommended that the authorities put in place a coherent system of social housing and strengthen their efforts to promote local partnerships aimed at desegregating Roma localities and improving living conditions. He further recommended that the Czech Republic ratify Protocol No. 12 to the European Convention on Human Rights and extend protection against hate crimes by ensuring that all grounds on which these crimes are committed are equally covered.

Report published following a visit to Bosnia and Herzegovina 27-30 November 2010

On 29 March 2011, the Commissioner published a report following his visit to Bosnia and Herzegovina from 27 to 30 November 2010 focusing on the fight against discrimination, the human rights of people displaced by the war, asylum seekers and stateless persons, and post-war justice and reconciliation.

In this report, the Commissioner welcomed the adoption of an anti-discrimination law and the creation of a unified Human Rights Ombudsperson's Office at the state level. He also called on the authorities to find durable solutions for the Roma who have been forcibly displaced from Kosovo[1] and who have been living in Bosnia and Herzegovina for many years. He urged the authorities to take additional measures to facilitate access to citizenship by Roma, especially children.

The Commissioner called upon the authorities to identify rapidly durable solutions for seven thousand persons living in collective centres, and to take all necessary measures to enable IDPs and returnees to enjoy fully, and without discrimination, their rights to healthcare, social care and pension rights. The Commissioner also recommended that the authorities continue their efforts to resolve the cases of 10 000 persons still missing due to the war.

Finally, he recommended that the authorities address the cases of the 220 police officers who were decertified in the late 1990s, take effective measures to protect the impartiality and independence of judicial institutions, and adopt measures to improve the protection of lesbian, gay, bisexual and transgender persons.

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo

Letter addressed to the Turkish Minister of Education on the recommendation made to the Turkish authorities in 2009 which addressed certain shortcomings in providing access to education for migrant children

On 20 April, the Commissioner published a letter addressed to the Turkish Minister of Education, Ms Nimet Çubukçu. In this letter, he referred to the recommendation he had made to the Turkish authorities in 2009 to address certain shortcomings in providing access to education for migrant children. While welcoming a number of positive steps taken by the Turkish authorities in this regard, the Commissioner noted that migrant children or their legal guardians were still required to have a work or residence permit in order for those children to receive education. The Commissioner expressed concern that this would effectively hinder the education of migrant children in an irregular situation, contrary to Turkey's international obligations. He also encouraged the Turkish authorities to remove the legal obstacles preventing children of Armenian migrant families from attending private schools of the Armenian minority in Turkey. The reply of the Turkish Minister of Education is available on the Commissioner's website.

Report published following the Commissioner's visit to Armenia, 18-21 January 2011.

On 9 May 2011, the Commissioner published a report following his visit to Armenia from 18 to 21 January 2011 focusing on human rights issues related to the March 2008 events, fundamental freedoms (including freedom of expression, freedom of assembly and freedom of association) and the human rights situation in the army. The Commissioner urged the authorities to complete the investigation of the ten deaths that occurred during the March 2008 events and to examine the question of command responsibility in this context. He further encouraged system-wide reforms of the police, security services and other law enforcement bodies, and noted that the establishment of an independent complaints mechanism would significantly contribute to improving public trust in law enforcement structures and to combating impunity.

The Commissioner also urged the Armenian authorities to review the Law on Television and Radio, giving due consideration to the proposals submitted by the Ombudsman and civil society. While welcoming progress regarding the implementation of the right to freedom of peaceful assembly, the Commissioner stressed that any unlawful and disproportionate impediments on peaceful rallies, including those criticising the authorities, should be discontinued.

On the human rights situation in the army, the Commissioner expressed serious concern about the frequent reports of abuses in the Armenian army, and stressed the need to enhance the role of independent human rights monitoring mechanisms.

Letter addressed to the Spanish Minister of Health, Social Policy and Equality of Spain following the Commissioner's visit to Spain, 4-5 April 2011

On 1 June 2011, the Commissioner published a letter addressed to Ms Leire Pajin, Minister of Health, Social Policy and Equality of Spain. The letter followed up on the Commissioner's visit to Spain from 4 to 5 April 2011. In the letter, he welcomed several good practices regarding the integration of Roma being developed at local and national levels in Spain. He also highlighted the remaining gaps regarding the protection of the human rights of Roma, such as the difficulties in access to the labour market. He urged the authorities to ensure decent living conditions, quality health care and education for all Roma. Finally, he called on the Spanish authorities to adopt a number of measures to tackle anti-Roma prejudices, and to promote the Roma culture, languages and tradition. The reply from the Spanish Minister is available on the Commissioner's website.

Letter addressed to the Prime Minister of Slovenia following a visit, 7-8 April 2011 focusing on the human rights of Roma

On 7 June 2011, the Commissioner published a letter to the Prime Minister of Slovenia, Mr Borut Pahor, following his visit to Slovenia from 7 to 8 April 2011 focusing on the human rights of Roma and the situation of the "erased" persons. He pointed out that despite the progress made in promoting Roma inclusion, serious problems remained as regards the housing situation of some Roma communities, in particular in the southeast region of the country. In this regard, he encouraged increased co-operation and exchanges of good practices between different municipalities. Regarding education, the Commissioner underlined that immediate measures were needed to decrease the drop-out rate of Roma pupils. He stressed that the increased inclusion in pre-school education is a good initial step towards resolving this problem.

The Commissioner also expressed his appreciation for the determination of the authorities in finding a solution for the situation of the "erased" and suggested to the Slovenian government to initiate discussions aimed at creating reparation mechanisms for such persons that would fully take into account the circumstances of each individual case. The reply from

the Slovenian Prime Minister is available on the Commissioner's website.

Report following the Commissioner's visit to Malta

On 9 June 2011, Commissioner Hammarberg published a report following his visit to Malta from 23 to 25 March 2011. The report focused on the protection of the human rights of migrants, including asylum seekers, and examined in particular their situation with respect to reception, access to international protection and the availability of durable solutions for migrants' relocation, resettlement or integration into society.

The Commissioner noted that recent progress in securing relocation and resettlement of migrants from Malta to other countries should be matched by similar efforts in Malta to establish viable, long-term avenues for local integration. He also underlined that racist and xenophobic tendencies and discrimination should be combated more forcefully. A robust public information strategy to favour migrants' local integration should also be developed, targeting civil society, education institutions and the labour market and including a strong focus on equality and non-discrimination.

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.

Series of media freedom lectures

On 1 March 2011, the Commissioner launched in Brussels the first of a series of media freedom lectures. During the lecture and discussion, it was pointed out that strengthening ethical journalism and human rights protection go hand in hand. It was noted that there was a need to reinvigorate ethical journalism, e.g. through collective professional efforts such as the Ethical Journalism Initiative of the International Federation of Journalists. On the same date, an Issue Paper on the subject was posted on the Commissioner's website.

The second Media Freedom Lecture, relating to access to official documents, took place on Word Press Freedom Day (3 May) at the Council of Europe Office in Brussels. On this occasion, the Commissioner recalled the international standards on this topic, such as the Council of Europe Convention on Access to Official Documents. He encouraged the creation of a mechanism which would monitor the implementation of the right to access to official documents and mentioned that in some countries the same ombudsperson deals with access to information and data protection.

The third Media Freedom Lecture focused on the protection of journalists from violence and was held on 7 June 2011, at a side event of an OSCE conference in Vilnius, Lithuania. The Commissioner stressed that journalists must be protected against attacks and harassment. In cases where a journalist is murdered there is a necessity to bring to justice the one who pulled the trigger but also to investigate, prosecute, judge and punish the ones who planned and financed the crime.

On 10 June 2011, the fourth and fifth Media Freedom Lectures – respectively, on public service media and social media - took place in London, hosted by the freedom of expression organisation "Article 19". During the lecture on public service media, the speakers argued for a human rights approach to public service media, implying that policies and legislation on public service media should be informed by international human rights standards. Douwe Korff, Professor of international human rights law at London Metropolitan University, presented the lecture on social media; he pointed out that social media has empowered political activism and strengthened freedom of expression, and that some governments are increasingly trying to control it. He also recalled that any measure taken by governments affecting social media needs to be in full compliance with human rights law: there needs to be a sufficient legal basis for such a measure, it needs to pursue a legitimate aim and has to be necessary in a democratic society.

Meeting on the rights of persons with mental disabilities

On 11 March 2011 Commissioner Hammarberg held a meeting in Strasbourg on the rights of persons with mental disabilities. This event brought together experts in disability law and the human rights of persons with mental disabilities. On this occasion, key areas for further action in the field were identified: issues relating to the exercise of legal capacity; rights to independent living/de-institutionalisation; participation in political life, in particular voting rights; and the role of national human rights structures in the promotion and protection of the human rights of persons with mental disabilities.

Commissioner's opinion on national structures for promoting equality

On 21 March 2011, the Commissioner issued his Opinion on national structures for promoting equality. Through an analysis of the legislative framework and practice in member states, as well as specific recommendations, this Opinion aims to assist member states in enacting equal treatment legislation, establishing independent and effective equality bodies and enabling these structures to discharge their functions in an independent and effective manner.

International Roma Day, 8 April

On International Roma Day (8 April), the Commissioner's webpage on good practices was launched. Good practices for the protection of human rights developed in member states can serve as a source of inspiration to other countries; with this aim in mind, the Commissioner invited member states to contribute examples from their countries. The first descriptions of good practice made available relate to the protection of the human rights of Roma and come from Finland, Latvia, Slovenia and Spain.

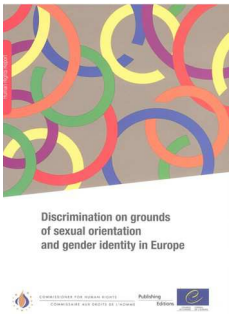
Issue Paper published entitled "Adoption and children: a human rights perspective"

On 28 April 2011, the Commissioner published an Issue Paper entitled "Adoption and children: a human rights perspective". In his recommendations, the Commissioner called on member states to review national child protection systems and ensure that their control mechanisms prevent and address instances of abuse of adopted children.

Exhange of views between Commissioner and members of the subcommittee on Human Rights of the European Parliament

On 9 June 2011, the Commissioner participated in an exchange of views with members of the Subcommittee on Human Rights of the European Parliament. He highlighted some areas of particular concern, notably the human rights of Roma, the humanitarian crisis in the Southern Mediterranean, the social consequences of austerity budgets and the impact of these measures on the most vulnerable members of society, and questions related to freedom of the media. In the subsequent discussion, the Commissioner replied to a number of questions asked by MEPs relating to the co-operation between the European Union and the Council of Europe, the situation of Roma in Europe, children's rights and rights of people with disabilities.

On 23 June 2011, the Commissioner launched a report on the subject of discrimination on grounds of sexual orientation and gender identity in Europe. The report, based on two years of socio-legal research, gives a broad overview of the human rights situation of lesbian, gay, bisexual and transgender (LGBT) persons in Europe. It identifies serious flaws as well as positive developments in member states. The six thematic chapters focus on access to civil and political as well as social, economic and cultural rights and the obstacles LGBT persons face in enjoying these human rights. The report contains 36 conclusions with recommendations for further action by member states. Representatives of the 47 member states, national human rights structures and NGOs attended the launch meeting in Strasbourg, during which the main results of the study were presented.



Exhibition on the life and human rights work of Nobel Peace Prize Winner

The exhibition "Alarm and Hope" on the life and human rights work of Nobel Peace Prize winner Andrei Sakharov travelled to Moldova, Portugal, the Russian Federation and the United Kingdom (Scotland). In Russia, the exhibition was displayed at the international conference entitled "Andrei Sakharov: Alarm and Hope 2011" dedicated to the 90th anniversary of the birth of Andrei Sakharov. In Scotland, the exhibition was displayed until the second half of July 2011 in the framework of the programme "Human Rights in Russia Past and Present" organised by the Scotland-Russia Institute.

Several articles on current and important human rights issues

By means of his communication tool, the Human Rights Comment, the Commissioner published several articles on current significant human rights issues, such as: the overuse of the European Arrest Warrant, the right to vote of persons with disabilities, the right to

vote of prisoners, social networks, sexual abuse of children, human rights defenders in Belarus, the plight of African migrants in the Mediterranean, austerity budgets in Europe, and anti-Roma rhetoric.

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

European Social Charter

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

Signatures and ratifications

On 20 May 2011, Austria ratified the Revised Social Charter.

To date 43 member states have ratified the Charter: 31 are bound by the Revised Charter and 12 by the 1961 Charter.

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

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).

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.

Events marking the 50th anniversary of the European Social Charter

In the framework of the 50th Anniversary, a visual identity was created to represent the Social Charter

It illustrates three faces which unite to form a hand, as a symbol of unity, solidarity and co-operation. The hand may also be seen as offering protection and as being a vector of control. This reflects what the Charter is about and what the European Committee of Social Rights is seeking to achieve – the implementation of human social rights through the efforts of the States Parties to this instrument, and subject to compliance within a legal framework monitored by an independent body of a judicial nature.

Various events are being organised all along the year 2011 to commemorate the 50th anniversary of the adoption of the European Social Charter.

Further to the Seminar in Helsinki in February (see Bulletin No. 82), the following events took place:

- a Seminar in Kirov (Russia) on 30 March, on the Social Charter and the protection of children and young people, organised by the Centre for Social Pedagogy of Kirov;
- the 5th Andalusian Forum on Social Rights in Sevilla (Spain) on 27 and 28 April, organised in collaboration with the Academic Network of the European Social Charter;
- a Seminar of experts in Strasbourg on 9 May organised by the International Institute of Human Rights entitled "Réflexions autour d'une jurisprudence de la Charte sociale européenne";
- an academic Seminar on the occasion of the "Journée des Doctorants" in La Rochelle (France) on 10 June on the theme "the 50th Anniversary of the European Social Charter" organised by the University of Law, Political Science and Management;
- a Ceremony to mark the 50th Anniversary of the Social Charter and the 10th Anniversary of its ratification by Lithuania organised by the Ministry of Social Security and Employment in Vilnius (Lithuania) on 21 June;

Other events commemorating the opening of the signature of the Social Charter on 18 October 1961 are planned, in particular:

- a Youth meeting on the access to social rights for all young people in the framework of the programme "Enter!", in Strasbourg (EYC), 14-18 September;
- an international Conference organised by the Economic, Social and Environmental Council, of France, in Paris on 23 September;
- a Round Table entitled "Les droits de l'homme dans le contexte de crise: l'apport de la Charte sociale européenne" organised by the Conference of INGOs of the Council of Europe, in Strasbourg (ENA) on 23 September;
- a Celebration of the 50th anniversary of the Social Charter organised by the Ukrainian Ministry of Social Policy, in Kyiv (Ukraine) on 30 September;
- a Celebration of the 50th anniversary of the 1961 European Social Charter and the 15th anniversary of the Revised Charter organised by the Sub-Committee on the Social Charter and Employment of the Parliamentary Assembly, in Strasbourg on 6 October;
- Exhibitions with video presentations and commentaries, organised by the Ministry for Health and solidarity in Paris, 17-21 October;
- a Round Table on the ratification of the procedure of collective complaints organised by the Department of the European Social Charter, followed by an official Celebration in Strasbourg on 18 October;
- a Symposium on social rights organised by the University of Kocaeli, in Istanbul (Turkey) on 25 October;
- a Conference organised by PRAGMA, a national NGO, in Zagreb (Croatia on 11 November 2011.

Collective complaints: latest developments

Complaints against France concerning working time and remuneration of overtime work in the framework of the annual working days system

Further to complaints examined by the European Committee of Social Rights – lodged by the *Confédération française de l'Encadrement "CFE-CGC"*, No. 9/2000 and 16/2003 and by the *Confédération générale du Travail (CGT),* No. 55/2009 – the *Cour de Cassation* issued a decision which was both long-awaited and widely commented in general-interest media and in legal publications (see in particular "*Entretien avec Jean-François Akandji-Kombé"* in *Semaine Juridique* No. 28, 12 July 2011).

The *Cour de Cassation* held that the annual working days system should be subject to limits on daily and weekly working time for the managers concerned.

Furthermore, it held that should such limits not be respected, the employees concerned could claim payment for overtime.

Decisions on the merits

One decision on the merits became public.

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

The CESP claimed that the new regulations introduced by the French government on 27 February 2008 (Decree No. 2008-199 modifying Article 3 of Decree No. 2000-194 of 3 March 2000), laying down the conditions for the granting of a payment for extra services to operational members of the national police force, were in breach of Article 4§2 (right to a fair remuneration) of the Revised Charter, because it establishes – regardless of the grade and step – a fixed compensation system.

The Committee concluded:

- unanimously, that there was a violation of Article 4§2 of the Revised Charter because the regulations applicable to ordinary members of "the supervision and enforcement corps" since 1 January 2008 makes the financial compensation for their overtime work payable at a flat rate, thus preventing those concerned from benefiting from a higher than normal rate of remuneration;
- furthermore, it concluded unanimously that there was no violation of Article 4§2 of the Revised Charter, arising from the rules applicable since 15 April 2008 to members of the national police command corps performing intermediate management duties, because the special bonus they receive as compensation for overtime work is such as to comply with Article 4§2 of the Revised Charter which requires overtime work to be compensated at a higher rate than the normal wage rate.

Decisions on admissibility

Three decisions were declared admissble:

On 10 May 2011, the European Committee of Social Rights declared admissible the Complaint: European Roma and Travellers Forum (ERTF) v. France (No. 64/2011) related to Travellers.

On 30 June 2011, the Committee declared admissible two complaints against Greece which were lodged by the same complainant organisations.

General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece (complaints Nos. 65/2011 and 66/2011).

The allegations of the complainant organisations appear in Bulletin No. 82.

Registration of collective complaints

Six complaints were registred.

Médecins du Monde – International v. *France*, No. 67/2011

The complaint was registered on 19 April 2011. According to the complainant organisation the rights of Roma living in France with regard to housing, education for their children, social protection and health care are not respected, in breach of Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate 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.

***European Council of Police Trade Unions (CESP) v. France*, No. 68/2011**

The complaint was registered on 18 May 2011. The complainant organisation alleges that the new regulations concerning working conditions for police officers, as from 1 April 2008, removing payment for overtime worked or compensatory time off (Decree No. 2000-194 of 3 March 2000 modified by Decree No. 2008-340 of 15 April 2008, General Rules of Application of the National Police of 6 June 2006 modified by ministerial Decree NOR IOCC0804409A of 15 April 2008 and Directive NOR INTC0800092C of 17 April 2008), is in breach of Article 4§2 (right to a fair remuneration) of the Revised Charter.

***Defence for Children International (DCI) v. Belgium*, No. 69/2011**

The complaint was registered on 21 June 2011. The complainant organisation alleges that foreign children living accompanied or not, either as illegal residents or asylum seekers in Belgium, are currently excluded from social assistance in breach of Articles 7§10 (Special protection against physical and moral dangers), 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the European Social Charter (revised).

***Association of Care Giving Relatives and Friends v. Finland*, No. 70/2011**

The complaint was registered on 6 July 2011. It concerns the situation of family and friend caregivers in Finland. The complainant organisation alleges that the system of financial support for family and friend caregivers is not equal, as it varies according to their place of residence in Finland. The complainant organisation invokes Article 23 (right of elderly persons to social protection) of the Revised Social Charter).

***Association of Care Giving Relatives and Friends v. Finland*, No. 71/2011**

The complaint was registered on 6 July 2011. The complainant organisation alleges that by failing to lay down rules with regard to the cost of caring for the elderly in municipal nursing homes, Finland is in breach of provisions of Articles 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 16 (right to appropriate social, legal and economic protection for the family) and 23 (right of elderly persons to social protection) of the Revised Social Charter.

***International Federation for Human Rights* (FIDH) v. *Greece*, No. 72/2011**

The complaint was registered on 8 July 2011. It concerns the effects of massive environmental pollution on the health of persons living near the Asopos river and in proximity to the industrial zone of Inofyta, located 50 km north of Athens. The complainant organisation alleges that the state has not taken adequate measures to eliminate or reduce these dangerous effects and to ensure the right to health protection, in violation of Article 11 (right to health) of the Social Charter.

For more information on the collective complaints: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

Bibliography

- *« Réparer des privations de propriété (occasionnés sous le régime communiste) sans en créer d'autres – Comité européen des droits sociaux, Fédération européenne des associations nationales travaillant avec les sans-abri (FEANTSA) c. Slovénie, 8 décembre 2009 »* BERNARD Nicolas dans *Revue Trimestrielle des Droits de l'Homme*, 22e année, n° 85, janvier 2011
- *« Réflexions sur l'efficacité de la Charte sociale européenne : à propos de la décision du Comité européen des droits sociaux du 23 juin 2010 »* AKANDJI-KOMBE Jean-François dans *Revue du Droit du Travail*, n° 4, avril 2011
- *« Le Comité européen des Droits sociaux, un laboratoire d'idées sociales méconnu »* MARGUENAUD Jean-Pierre et MOULY Jean dans *Revue du Droit Public et de la Science Politique en France et à l'Etranger*, n° 3, mai 2011
- *« Les forfaits-jours et la Charte sociale européenne »*

MORAND Michel dans *La Semaine Juridique – Edition Sociale*, n° 19, 10 mai 2011

- « Défense et illustration du forfait-jours »
  FAVENNEC-HERY Françoise dans *Semaine sociale Lamy*, 30 mai 2011, n° 1494
- *« Le forfait en jours n'est pas sorti de la zone de turbulence – A propos de l'arrêt du 29 juin 2011 »*
  AKANDJI-KOMBE Jean-François dans *La Semaine Juridique – Edition Sociale*, n° 28, 12 juillet 2011

Internal publications

- *Conclusions XIX-3 (2010) of the European Committee of Social Rights – 1961 Social Charter*, Council of Europe Publishing, 2011, ISBN 978-92-871-7151-1, 264 p.
- *Conclusions 2010 of the European Committee of Social Rights – Revised European Social Charter*, Volume 1, Council of Europe Publishing, 2011, ISBN 978-92-871-7147-4, 338 p.
- *Conclusions 2010 of the European Committee of Social Rights – Revised European Social Charter*, Volume 2, Council of Europe Publishing, 2011, ISBN 978-92-871-7149-8, 310 p.
- Posters *"Social rights – human rights in everyday life"*, in A1 and A2 formats
- Brochure *"The Social Charter at a glance"*, new format and text updated
- Leaflet "1961-2011 – 50th anniversary of the European Social Charter"

The next issue of the electronic newsletter on the activities of the European Committee of Social Rights, (No. 6) will be published in October 2011: http://www.coe.int/t/dghl/monitoring/socialcharter/Newsletter/Newsletter_en.asp

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

Convention for the Prevention of Torture

Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Co-operation with national authorities is at the heart of the Convention, given that its aim is to protect persons deprived of their liberty rather than to condemn states for abuses.

The European Committee for the Prevention of Torture (CPT) was set up under the Convention and its task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority. Apart from periodic visits, the Committee also organises visits which it considers necessary (ad hoc visits). The number of ad hoc visits is constantly increasing and now exceeds that of periodic visits.

Periodic visits

Bosnia and Herzegovina

Visit from 5 to 15 April 2011

The visit provided an opportunity to assess the progress made since the periodic visit in March 2007 and the ad hoc visit in May 2009. The CPT's delegation paid particular attention to the treatment of persons deprived of their liberty by law enforcement officials and to the operation in practice of the legal safeguards in place. It examined various issues related to prisons, notably as regards inmates on remand, prisoners placed in high security units and disciplinary procedures. The delegation also looked into the treatment of patients at a psychiatric hospital, and of residents at a social care home.

In the course of the visit, the CPT's delegation held consultations with Bariša Čolak, State Minister of Justice, and Stanislav Čado and Džerard Selman, the Ministers of Interior and Justice of the Republika Srpska, as well as with senior officials from relevant State and Entity Ministries. It also met the State Ombudsman and the Chief Prosecutor of the Republika Srpska, and held discussions with members of non-governmental and international organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the authorities of Bosnia and Herzegovina.

Norway

Visit from 18 to 27 May 2011

The visit was the Committee's fifth periodic visit to Norway.

The delegation followed up a number of issues examined during previous visits, including the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and the conditions of detention of immigration detainees. The delegation also examined in detail the situation of persons subject to preventive detention (forvaring) and of juveniles held in prison establishments. Further, for the first time in Norway, the delegation visited a prison for women.

In the course of the visit, the delegation had consultations with Terje Moland Pedersen, State Secretary of the Ministry of Justice and

the Police, and Tone-Helen Toften, State Secretary of the Ministry of Health and Care Services, as well as with senior officials from the aforementioned ministries and the Ministry of Children, Equality and Social Inclusion. Further, the delegation met with Arne Fliflet, Parliamentary Ombudsman, and Reidar Hjermann, Ombudsman for Children. The delegation also held meetings with representatives of the Norwegian Centre for Human Rights, the Norwegian Bar Association, and non-governmental organisations active in areas of concern to the CPT.

Moldova

Visit from 1 to 10 June 2011

The visit was the Committee's fifth periodic visit to Moldova.

The CPT's delegation assessed progress made since previous visits and the extent to which the Committee's recommendations have been implemented in the areas of police custody, imprisonment and involuntary placement in psychiatric hospitals. Further, it visited for the first time a temporary placement centre for foreigners and a psychoneurological home for minors.

In the course of the visit, the delegation met Oleg Efrim, Minister of Justice, Iurie Cheptănaru, Deputy Minister of Internal Affairs, Gheorghe Țurcanu, Deputy Minister of Health and Vadim Pistrinciuc, Deputy Minister of Labour, Social Protection and Family, as well as other senior officials from these ministries, including Vadim Cojocaru, Head of the Directorate of Penitentiary Institutions. The delegation also held in-depth discussions with Andrei Pântea, First Deputy Prosecutor General, and Ion Caracuian, Head of the Anti-Torture Division of the Prosecution Service, as well as with prosecutors handling cases involving allegations of ill-treatment. Further, it held consultations with Anatolie Munteanu, Parliamentary Advocate, Head of the Human Rights Centre and the Consultative Council for the Prevention of Torture. Meetings were also held with United Nations representatives 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 Moldovan authorities.

Spain

Visit from 31 May to 17 June 2011

The visit was the CPT's sixth periodic visit to that country.

During the visit, the CPT's delegation reviewed the treatment of persons detained by various police services (including the Policía Nacional, the Guardia Civil, the Ertzaintza and the Mossos d'Esquadra). Particular attention was given to the application in practice of safeguards against ill-treatment and the situation of persons held in "incommunicado" detention. The delegation also visited a number of prisons, focusing on various categories of prisoners, notably those in disciplinary segregation and in special departments. Further, the use of mechanical restraints in prisons was reassessed. The treatment of persons held in foreigner detention centres was also examined.

In the course of the visit, the CPT's delegation held consultations, at the central level, with the Secretary of State for Security, Antonio Camacho Vizcaino, the President of the Audiencia Nacional, Angel Juanes Peces, the Prosecutor-General, Candido Conde-Pumpido, the Director General of the National Police and Guardia Civil Francisco Javier Velazquez Lopez, and the Director General of Penitentiary Institutions, Mercedes Gallizo Llamas. It also met with representatives of the General Council of the Judiciary of Spain.

In Catalonia, the delegation met with representatives of the Generalitat de Catalunya, notably the Conseller of the Interior, Felip Puig I Godes, the Consellera of Justice, Pilar Fernández I Bozal, the Director General of Prisons, Ramon Parés Galés, the Director General of Community Sanctions and Juvenile Justice, Quim Clavaguera I Villa, the Director General of the Mossos-d'Esquadra, Manel Prat I Peláez, and the Secretary General of the Department of Interior, Xavier Gibert I Espier.

The delegation also met with the Catalan Ombudsman, Mr Rafael Ribo I Masso, as well as with representatives of the Spanish and Basque Ombudsmen. Further, it held discussions with representatives of non-governmental organisations active in areas of concern to the CPT.

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

Ad hoc visits

North Caucasian region of the Russian Federation

Visit from 27 April to 7 May 2011

A delegation of the CPT has recently completed a ten-day ad hoc visit to the North Caucasian region of the Russian Federation. The visit, which began on 27 April 2011, was the CPT's 12th visit to this part of the Russian Federation since the year 2000.

In the course of the visit, the delegation examined the treatment of persons deprived of their liberty by law enforcement agencies in the Republic of Dagestan, the Chechen Republic and the Republic of North Ossetia-Alania. In this context, the carrying out of investigations vis-à-vis allegations or information indicative of ill-treatment of detained persons by law enforcement officials was discussed with the relevant authorities in the region. The delegation also reviewed conditions of detention in the main pre-trial establishments (SIZOs) in each of the three Republics.

Further, in the context of allegations of the unlawful detention of persons, the delegation visited the Headquarters of the Special Purpose Police Unit (OMON) of the Ministry of Internal Affairs for the Chechen Republic, located in Grozny at 227, Bohdan Khmelnytsky Street.

During the visit, the CPT's delegation held discussions with the Head of the Republic of Dagestan, Magomedsalam Magomedov. Further, the delegation met the Minister of Internal Affairs of the Republic of Dagestan, Abdurashid Magomedov, and the Minister of Internal Affairs of the Chechen Republic, Ruslan Alkhanov, as well as the Acting Minister of Internal Affairs of the Republic of North Ossetia-Alania, Kazbek Bekmurzov. The delegation also had the opportunity to meet the leadership of the Prosecution Service, Investigative Committee and Directorate of the Federal Service for the Execution of Punishments (FSIN) in each of the three Republics, and met doctors from the Bureaux of Forensic Medicine in the Republic of Dagestan and the Chechen Republic.

The delegation also met representatives of various non-governmental organisations active in areas of interest to the CPT.

The issues examined by the CPT's delegation during the visit are the subject of an ongoing dialogue with the federal authorities of Russia. At a meeting in Moscow on 6 May 2011 with the Deputy Minister of Justice of the Russian Federation, Alexander Smirnov, the CPT's delegation provided its preliminary observations as regards conditions of detention in the SIZOs visited. The delegation also met the Chairman of the Council of the President of the Russian Federation on Development of Civil Society and Human Rights, Mikhail Fedotov. High-level talks will be organised shortly to discuss the delegation's findings as regards law enforcement agencies and investigations into possible ill-treatment.

Reports to governments following visits

Moldova

Report on the visit to Moldova (21 – 27 July 2010)

The CPT has published the report on its most recent visit to Moldova, which took place from 21 to 27 July 2010, together with the response of the Moldovan Government. Both documents have been made public with the agreement of the Moldovan authorities.

The initial objective of the visit was to re-examine the situation in prison and police establishments in the Transnistrian region of the Republic of Moldova. However, on the spot, the delegation was not allowed to speak to remand prisoners in private. Such a restriction contradicts one of the fundamental characteristics of the preventive mechanism embodied by the CPT; consequently, the delegation interrupted its visit to the region. The CPT indicates in the report that it is prepared to resume the visit as soon as the power to interview all categories of detained persons in private is again guaranteed, as had been the case during the Committee's previous visits to the region. In their response, the Moldovan authorities state that they are ready to take action to ensure that any future visits to the region take place without restrictions.

The delegation visited Penitentiary establishments Nos. 8 and 12 in Bender, which both operate under the authority of the Moldovan Ministry of Justice but are located in an area controlled by the Transnistrian de facto authorities. In its report, the CPT recommends that the Moldovan authorities pursue their

strategy to combat inter-prisoner violence and intimidation, in particular at Penitentiary establishment No. 12 where the delegation found that prison staff had been exploiting the informal prisoner hierarchy to impose order. The delegation also found, at Penitentiary establishment No. 8, that the problems arising from the decision of the de facto municipal authorities some years ago to cut the establishment's access to the water and electricity mains, and to disconnect it from the city's sewage disposal system, have not been fully resolved; the CPT calls upon the Moldovan authorities to develop an effective negotiation strategy with the de facto authorities so that the penitentiary establishments in Bender return to as near normality as possible. In their response, the Moldovan authorities provide detailed information on steps taken and envisaged to fight against violence and intimidation in prison, including at Penitentiary establishment No. 12, and indicate that the supply of basic services to Bender penitentiary establishments will be constantly monitored by the competent bodies of the Republic of Moldova.

The delegation also re-examined the treatment of persons detained by the police. Several detained persons met indicated that the behaviour of police officers had considerably improved as compared with only a few years ago. Moreover, the dismissal of a number of police officers and related criminal investigations following the events of April 2009 had apparently had a major deterrent effect. However, the delegation did gather information about a number of cases of alleged police ill-treatment, some of a very serious nature. In response to the Committee's recommendations, the Moldovan authorities state that detailed action plans have been drawn up to improve professional training for the police and reinforce procedural safeguards against ill-treatment. The Moldovan authorities also indicate that police staff have received a clear message of "zero tolerance" of ill-treatment and that an Anti-Torture Division has been set up within the Prosecution Service.

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

Spain

Report on fifth visit to Spain (September - October 2007)

In the course of the visit, the CPT's delegation examined the treatment of persons detained by various national and (autonomous) regional law enforcement agencies. The Committee's report refers to several allegations received of ill-treatment during the incommunicado detention of persons suspected of acts of terrorism, and makes specific recommendations aimed at preventing such ill-treatment. More generally, the CPT recommends once again that steps be taken to guarantee effective access to a lawyer as from the outset of police custody. In their response, the Spanish authorities refer to a number of measures to improve the safeguards in place concerning incommunicado detention; for example, to prohibit its application to minors, to video-record all detentions, to improve the quality of medical monitoring and to ensure that custody registers are more comprehensive. They also state their intention to speed up access to a lawyer during ordinary police custody.

The report comments on the conditions of detention in a number of prisons in the Basque country, Catalonia and the Madrid area, with a particular focus on prisoners in disciplinary segregation and in special departments. The report is especially critical of the resort to the use of mechanical restraints in prisons, notably in Catalonia. The authorities' response states that both the central and Catalan prison administrations have adopted new instructions on the use of restraints; those from Catalonia expressly prohibit the use of the so-called "superman" restraint position referred to in the CPT's report.

The report also makes a number of recommendations aimed at improving the conditions of detention at Barajas International Airport for persons not admitted to Spanish territory, and also addresses the treatment of foreign unaccompanied minors at a facility in the Canary Islands.

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

Turkey

Report on fifth periodic visit to Turkey (4 -17 June 2009)

In the course of the visit, the CPT's delegation interviewed a large number of persons detained in various police or gendarmerie establishments and remand prisons throughout Turkey and gained the distinct impression that the downward trend seen in recent years in both the incidence and the severity of ill-treatment by law enforcement officials was continuing. Nevertheless, a number of credible allegations of recent physical ill-treatment were received, which concerned mainly excessive use of force during apprehension. In response to a specific recommendation made by the Committee in this regard, the Turkish authorities have issued a circular to all central and provincial police units, *inter alia,* emphasising the need to avoid ill-treatment and excessive use of force.

Particular attention was paid during the visit to the conditions under which immigration detainees were held. In this connection, major shortcomings were found by the delegation in several of the detention centres visited, in particular at Ağrı and Edirne (e.g. severe overcrowding, dilapidated conditions, limited access to natural light, poor hygiene, lack of outdoor exercise, etc.). As regards the legal situation of immigration detainees, it became evident that they were being detained without benefiting from basic legal safeguards. Shortly after the visit, the Turkish authorities informed the CPT that the unit for male adult detainees at Edirne had been withdrawn from service. In their response to the visit report, the authorities have provided additional information concerning the measures being taken to improve the situation of immigration detainees. In particular, they refer to plans to construct several regional detention centres for foreigners, to replace many of the establishments currently in use.

Hardly any allegations of physical ill-treatment of prisoners by staff were received in most of the prison establishments visited by the CPT's delegation. Konya E-type Prison constituted an exception to this favourable situation; the delegation heard several allegations of physical ill-treatment by staff and it also gained the impression that inter-prisoner violence was a rather frequent occurrence in this establishment. As regards conditions of detention, many of the prisons visited were overcrowded, barely coping with the ever-increasing prison population. Further, the possibilities for organised activities (such as work, education, vocational training or sports) were limited for the vast majority of prisoners, including juveniles. In the report, the CPT has also expressed serious concern about the inadequate provision of health care to prisoners and a dramatic shortage of doctors in prisons. In their response, the Turkish authorities provide information on various measures taken to implement the recommendations made by the Committee on the issues described above.

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

Estonia

Report on third periodic visit to Estonia (May 2007)

In the course of the 2007 visit, the CPT's delegation reviewed the measures taken by the Estonian authorities to implement recommendations made by the Committee after its previous visits. Particular attention was paid to the treatment of persons detained by the police (including during the disturbances that took place in Tallinn at the end of April 2007), as well as to the conditions of detention in police arrest houses and prisons. The delegation also examined the treatment and living conditions of psychiatric patients and social care home residents.

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

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

Lithuania

Report on its most recent visit to Lithuania (14 -18 June 2010)

One of the main objectives of the visit was to examine the measures taken by the Lithuanian authorities to implement the recommendations made by the CPT after its 2008 visit to Kaunas Juvenile Remand Prison. The Committee's delegation observed that the material conditions of detention in the establishment had considerably improved, but that much

remained to be done with regard to the activities offered to remand prisoners.

The visit also provided an opportunity to review the manner in which detained persons are treated by the police; the observations made during the visit tend to confirm the positive trend in this area already noted by the CPT in 2008. However, the delegation found that little progress had been made as regards safeguards against ill-treatment and conditions of detention in police establishments.

Another issue addressed by the CPT's delegation was the alleged existence some years ago on Lithuanian territory of secret detention facilities operated by the Central Intelligence Agency (CIA) of the United States of America. The delegation looked into the conduct of the pre-trial investigation which had been launched in relation to this matter and also visited two facilities that had been identified in this context.

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

Georgia

Report of the CPT's most recent visit to Georgia (February 2010)

In its response, the Georgian Government describes the measures being taken to improve the situation in the light of the recommendations made by the CPT. For example, the Georgian authorities state that a Medical Department has been set up at the Ministry of Corrections and Legal Assistance with a view to preparing the transfer of responsibility for prison health-care to the Ministry of Labour, Health and Social Affairs by 2013.

The Georgian authorities also indicate in their response that the Asatiani Psychiatric Institute will be closed down by 1 July 2011, and patients allocated to various other psychiatric institutions offering satisfactory living conditions.

The report on the CPT's visit in February 2010 was published in September 2010.

The response of the Georgian authorities is available on the Committee's website.

Public statement

Public statement concerning Greece

The CPT issued a public statement concerning Greece on 15 March 2011.

The CPT's public statement is made under Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

This is the sixth time the CPT has made a public statement since it was set up in 1989.

Azerbaijani law professor to lead European anti-torture watchdog

14 March 2011

The CPT has elected Lətif Hüseynov from Azerbaijan as its new President on 14 March 2011. Mr Hüseynov is Professor of Public International Law at Baku State University.

Vladimir Ortakov from "the former Yugoslav Republic of Macedonia" has been elected as the CPT's 1st Vice-President. He is a Psychiatric Consultant at the Clinical Hospital Sistina, Skopje.

Haritini Dipla, from Greece and Professor of International Law at the University of Athens, has been re-elected as the CPT's 2nd Vice-President.

These three members of the CPT constitute the Committee's Bureau.

Mauro Palma from Italy, who has headed the CPT over the last four years, did not seek re-election as his membership of the CPT expires in December 2011. For the same reason, the former 1st Vice-President, Pétur Hauksson from Iceland, did not seek re-election. Both remain members of the CPT up to 19 December 2011.

The CPT has unlimited access to all places of detention (including prisons and juvenile detention centres, police stations; holding centres for immigration detainees and psychiatric hospitals) in the 47 member States of the Council of Europe, to see how persons deprived of their liberty are treated.

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.

ECRI's annual report

16 June 2011

On 16 June 2011, ECRI published an annual report of its activities covering the period from 1 January 2010. The report examines the main trends in 2010 in the field of racism, racial discrimination, xenophobia, antisemitism and intolerance in Europe. It finds that racism is no longer limited to the fringes of society and that mainstream politicians are increasingly using xenophobic and anti-Muslim arguments and calling referenda targeting non-citizens and religious minorities. The report states that legal means alone do not seem sufficient to counter this trend and that more needs to be done.

The report also highlights deplorable events that marked the beginning and end of the year and involved the victimisation of migrants from Sub-Saharan Africa and inter-ethnic clashes fomented by ultranationalists. It calls on law enforcement authorities to take resolute action against racially motivated crime.

It welcomes the fact that the vast majority of states now criminalise hate speech, but says that authorities need to apply the laws more rigorously and make potential victims better aware of their rights. It also encourages a vigorous debate of the underlying issues.

It highlights the growing wave of anti-Gypsyism, one of the most acute problems facing Europe today, and welcomes moves to create better conditions for Roma communities.

The report also warns that attacks on multiculturalism could lead to fragmented societies, and calls on governments to up their efforts to promote intercultural dialogue. The report finds that the answer to the current debate on multiculturalism is strict adherence to a common set of principles, including non-discrimination and tolerance.

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 31 May 2011, ECRI published three reports of its fourth round of country monitoring, on Azerbaijan, Cyprus and Serbia. The reports note improvements in certain areas in all three Council of Europe member States, but also detail continuing grounds for concern.

In its report on Azerbaijan, ECRI notes that to simplify administrative procedures affecting migrant workers, a State Migration Service has been established and a one-stop service point for migrants has been set up. The authorities are also drawing up a Migration Code to consolidate the relevant legislation. Measures have been taken to improve refugees' access to social rights and the authorities have begun working to remedy problems faced by stateless persons. Significant efforts have been made in recent years to improve the living conditions of displaced persons, as well as their access to other social rights. The authorities have also taken steps towards improving access to health care for persons belonging to vulnerable groups.

At the same time, some restrictive provisions and practices with respect to religious communities have been tightened and religious communities whose applications for re-registration are still pending are exposed to arbitrary treatment. There are reports of abuse by law-enforcement officials against members of minority groups and there should be an independent mechanism for dealing with complaints against the police.

The rate of recognition of refugees is extremely low and no subsidiary form of protection is recognised in Azerbaijani law, leaving many persons who need it in a precarious situation. Migrant workers remain vulnerable to illegal employment practices and serious forms of abuse. Further measures are needed to remedy the difficulties faced by displaced persons in daily life. Finally, anti-discrimination legislation remains little known and rarely used, and the application of provisions of the Criminal Code regarding national security and the prohibition of ethnic hostility remains a concern.

In its report on Cyprus, ECRI notes that Cyprus has established a comprehensive legal framework for safeguarding equality and combating discrimination. The Independent Authority for the Investigation of Complaints and Allegations concerning the police has been set up and the Observatory against Violence records and analyses episodes of violence in schools and assesses incidents of a racist nature.

Measures in favour of Turkish Cypriots have been taken, including a law adopted in 2006 allowing Turkish Cypriot residents to vote and be elected in parliamentary, municipal and community elections and to vote in presidential elections.

However, Cyprus still lacks an integration policy and pursues a restrictive immigration policy, particularly concerning the granting of long-term residence status. Legislation is being prepared to combat irregular migration through "sham marriages" before they even take place. There is a rise in prominence of extremist anti-immigration groups and certain ultra-nationalist websites disseminate hate speech. The Polemidia housing settlement for Roma constitutes de facto segregation from the majority population and the children are denied their right to education.

Despite some improvements in the asylum system, access to employment for asylum seekers is restricted to specific unskilled sectors. Legal aid is only available at the appeal stage against negative asylum decisions and very few meet the conditions to obtain it.

In its report on Serbia, ECRI notes that the Serbian authorities have adopted a law against discrimination and created a Commissioner for the Protection of Equality entrusted with monitoring compliance therewith. A Strategy for the Improvement of the Status of Roma, which includes measures in the areas of education, employment, displaced persons, personal documents, social insurance and social care, as well as healthcare, was adopted in 2009. The Ministry of Human and Minority Rights, established in 2008, is in charge of co-ordinating and monitoring the 13-step action plan established under the Strategy, as well as the application of the law against discrimination.

The Law on Churches and Religious Communities continues to discriminate between "tradi-

tional" and non-traditional churches and religious communities. Moreover, previously recognised minority religious communities have to re-register in what has been described as an invasive and burdensome procedure. The practice of courts regarding racist crime is problematic as there are few prosecutions and the sentences meted out are usually low, mainly consisting in very small fines.

Roma continue to face high unemployment levels, discrimination in education and sub-standard living conditions. There have been evictions without prior consultation in and around Belgrade. The health situation of many Roma remains worrying and many of them lack identity papers. Very few measures have been taken to provide employment in the Preševo, Bujanovac and Medveda region where the majority of ethnic Albanians live; more than 70% of economically active people are unemployed there.

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 Iceland, Latvia, Luxembourg, Montenegro and Ukraine in spring 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

On 24 June 2011, ECRI adopted its most recent General Policy Recommendation No. 13 on combating anti-gypsyism and discrimination against Roma. This General Policy Recommendation proposes a comprehensive range of measures which the governments of the 47 member States of the Council of Europe can adopt to fight anti-Gypsyism and discrimination against Roma. These measures cover fields such as access to education, housing, health care, employment, public services, birth certificates and identity documents. The General Policy Recommendation also refers to steps which governments can take to combat anti-gypsyism in public discourse, including in the media, and tackle racist crimes and police misconduct against Roma. Furthermore, it urges governments to ensure the promotion and protection of Roma culture.

ECRI continued work on its future General Policy Recommendation on combating racism and racial discrimination in employment, which has so far focused on the implementation of international standards and identifying good practices.

For reference, ECRI has adopted to date thirteen 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 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, combating racism and racial discrimination in the field of sport and combating anti-Gypsyism and discrimination against Roma.

Seminar with national Specialised Bodies entrusted with combating racism and racial discrimination: their work in the field of employment

26- 27 May 2011

On 26-27 May 2011, ECRI held a seminar for member states' independent authorities combating racism and discrimination on grounds of ethnic origin, colour, citizenship, religion and language (national Specialised Bodies), concerning their work in the field of employment. This seminar brought together representatives of national Specialised Bodies, members of ECRI, representatives of national Ombudspersons, NGOs and international organisations, as well as national experts.

Participants examined racism and discrimination in employment based on grounds of "ethnic origin", colour, citizenship religion and language, with a view to exploring the latest legislative developments at national and European level and the lacunae of the normative framework in the field; identifying any problems of implementation of the corresponding standards; allowing national Specialised Bodies to share their relevant experience and good practices.

ECRI's round table in France

Paris, 26 April 2011

On 26 April 2011, ECRI organised a national round table in Paris on combating racism and racial discrimination in France, organised jointly with the Human Rights Consultative National Commission (*Commission nationale consultative des droits de l'homme*, CNCDH) and the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité de chances* HALDE). This round table brought together representatives of the authorities, including the Parliament, the Senate and the justice system, academia, as well as NGOs and trade unions. Among the speakers were Pierre-Richard Prosper, Vice-President of the UN Committee for the Elimination of Racial Discrimination (CERD) and Régis de Gouttes, Member of CERD.

The participants discussed the follow-up given to the recommendations contained in ECRI's 2010 report on France concerning the following themes: racism and xenophobia in public discourse; the fight against racist expression propagated via the Internet; the fight against racism and discrimination against Muslims; monitoring racism and racial discrimination; the fight against racism and discrimination against Roma and Travellers and the legislative and institutional framework of the fight against racial discrimination in France.

Publications

- Annual report on ECRI's activities covering the period from 1 January to 31 December 2010, 16 June 2011, CRI(2011)36
- ECRI Report on Azerbaijan, 31 May 2011, CRI(2011)19
- ECRI Report on Cyprus, 31 May 2011, CRI(2011)20
- ECRI Report on Serbia, 31 May 2011, CRI(2011)21

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.

First monitoring cycle

Opinion in respect of Latvia

The first cycle Advisory Committee opinion in respect of **Latvia** was made public on 30 March together with the government comments.

Summary of the Opinion

"Following the receipt of the initial State Report of Latvia on 11 October 2006 (due on October 2006), the Advisory Committee commenced the examination of the State Report at its 32nd meeting, held from 26 to 30 May 2008. In the context of this examination, a delegation of the Advisory Committee visited Latvia from 9-13 June 2008, in order to seek further information on the implementation of the Framework Convention from representatives of the government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on Latvia at its 33rd meeting on 9 October 2008.

The Advisory Committee notes with satisfaction the efforts made by the Latvian authorities in recent years to promote the integration of society. It welcomes the steps taken to improve the legal and institutional framework for protection against discrimination and racism and expects that the monitoring of the actual situation in this field will receive increased attention in the future. While acknowledging the efforts made by the government to support preservation of the national minorities' specific cultures and identities, the Advisory Committee takes note with concern of the significant reduction, in recent years, of state financial support for the organisations of national minorities.

The Advisory Committee welcomes the inclusion of "non-citizens" identifying themselves with a national minority in the personal scope of application of the Framework Convention. It regrets however, as regards the extent of the rights available to "non-citizens" under the Framework Convention, that these persons are excluded from the protection of key provisions of the Framework Convention, in particular those relating to effective participation in public life, notably through active and passive electoral rights at the local level. Given the very large number of persons concerned and the specific context of Latvia and its minorities, the Advisory Committee strongly encourages the authorities to reconsider this approach and to ensure that no disproportionate restrictions are applied to these persons' access to the protection offered by the Framework Convention.

The Advisory Committee is concerned that persons belonging to Latvia's minorities cannot benefit from important provisions of the Framework Convention relating to the use of their minority languages, in dealings with the administrative authorities, notwithstanding the existing real need. This situation is not in conformity with the provisions of the Framework Convention. In addition, the Advisory Committee is concerned that Latvian legislation does not permit the use of minority languages alongside Latvian in local topographical indications. More generally, while acknowledging the legitimate

aim of protecting and strengthening Latvian as the State language, the Advisory Committee considers that all due attention should be paid to the effective enjoyment of the right of persons belonging to national minorities to freely use their minority languages.
The Advisory Committee considers that it is essential to avoid language-based discrimination of persons belonging to national minorities in the labour market, and calls upon the authorities to avoid applying disproportionate language proficiency requirements to access certain posts in the public sphere. Furthermore, it is deeply concerned by the increasingly frequent application of such requirements, especially with regard to private sphere occupations, as well as by the authorities' overall approach to the monitoring of the implementation of the language-related rules. The Advisory Committee encourages Latvia to favour a more constructive approach in this sphere, in particular through measures aimed to improve the accessibility of quality Latvian language teaching for those concerned. More generally, the effective participation of persons belonging to national minorities in social and economic life should receive increased attention. The situation of the Roma, who continue to face difficulties in employment, education and access to services, should be adequately addressed as a matter of urgency.
Difficulties have also been noted in the field of education. While recognising positive examples of quality education available to persons belonging to national minorities in certain municipalities, the Advisory Committee notes with regret a disturbing trend in this field. For example, as a result of specific legislative measures, the share of minority languages as the language of instruction has been significantly reduced in recent years. Difficulties are also reported as regards the availability of qualified teaching staff for bilingual education and of adequate educational materials. The obligation to use Latvian in the context of the secondary school final examination and the plan to introduce compulsory and exclusive use of Latvian in state funded private universities that have been using minority languages as languages of instruction, are a source of concern, as reported by national minorities, notably the Russians.
Shortcomings relating to the effective participation of persons belonging to national minorities in the decision-making process need to be addressed. The participation through the Council for Minority Participation or equivalent structures should be strengthened and made more efficient. A governmental structure in charge of national minority issues should be maintained, with an increased decision-making role on minority-related issues. The access of "non-citizens" identifying themselves with a national minority, to public affairs, should be improved as a matter of priority. All the necessary steps should be taken, including at the legislative level, to provide them with electoral rights at the local level.
In spite of the efforts made to accelerate the naturalisation process and notwithstanding progress noted in this regard, the number of "non-citizens" remains particularly high and the lack of citizenship continues to have a detrimental impact on the enjoyment of full and effective equality and social integration. The large number of 'non-citizen' children is a matter of deep concern. Particular efforts are needed in order to promote conditions more conducive to a genuine motivation for naturalisation. The Advisory Committee urges Latvia to address this situation as a matter of priority, to identify its underlying causes and to take all the necessary measures to promote naturalisation."

Committee of Ministers Resolutions

- Resolution CM/ResCMN(2011)6 on the implementation of the Framework Convention for the Protection of National Minorities by Latvia (30 March).

Second monitoring cycle

Opinion in respect of Lithuania

The second cycle Advisory Committee opinion in respect of **Lithuania** was made public on 30 March together with the government comments.

Summary of the Opinion

"Since the adoption of the Advisory Committee's first Opinion in February 2003, the Lithuanian authorities have taken further steps to improve the implementation of the Framework Convention and have maintained their inclusive approach to its personal scope of application.

The legal and institutional framework pertaining to the implementation of the Framework Convention has been strengthened by the adoption of important legislation in the field of education and anti-discrimination. A new draft law on national minorities as well as the follow-up to the Constitutional Court's decision on certain provisions of the law on citizenship are currently being discussed by the Parliament. The mandate of the Equal Opportunities Ombudsperson has been enlarged and a Prime Minister's Advisor on minority issues appointed. Problems remain, however, in the

implementation of provisions of the Framework Convention, in particular concerning the use of minority languages in the public sphere. Legal uncertainty persists due to diverging provisions in the Law on National Minorities and the Law on the State language. The language-related exception to the prohibition of direct discrimination in the anti-discrimination law remains a source of serious concern.
Shortcomings are still reported with regard to the financial resources available to public minority schools. Furthermore, there is a shortage of textbooks and adequately qualified teachers.

A climate of tolerance and understanding between persons belonging to national minorities and the majority continues to prevail in Lithuania. The State has given increased attention to the monitoring and combating of racism, anti-Semitism and intolerance, in particular in the media, including the Internet. However, instances of intolerance and hostility towards persons belonging to certain groups continue to be reported. Roma face prejudice and obstacles in accessing housing, employment, health care and education."

Opinion in respect of Ukraine

The second cycle Advisory Committee opinion in respect of **Ukraine** was made public on 30 March together with the government comments.

Summary of the Opinion

"Since the adoption of the Advisory Committee's first Opinion in March 2002, some steps have been taken by the Ukrainian authorities to bring about legislative reforms pertaining to minority protection, with limited results to date. Ukraine continues to provide state funding for cultural initiatives of national minorities in various fields. Efforts have also been made to promote inter-cultural dialogue and reinforce the general climate of tolerance. Some commendable measures have been taken by the authorities to address the needs of persons belonging to the formerly deported peoples, such as the granting of Ukrainian citizenship.
A number of problems continue to hamper the implementation of some provisions of the Framework Convention. Language quotas to promote the use of the State language in radio and television broadcasting have had an adverse effect on programmes in minority languages. The threshold of such quotas and their possible application to private broadcasters raises issues of compatibility with the Framework Convention. In the area of cinematography, recent language restrictions have been imposed and may have a disproportionate effect on the production and broadcasting of films in minority languages.
The Advisory Committee noted with concern that final examinations in secondary education and entrance examination to higher education institutions will have to be conducted in Ukrainian only. This reform will also apply to students who have studied in schools with minority language instruction. There remains a lack of qualified teachers and textbooks in minority languages. Increased attention should also be paid to ensure equal access of persons belonging to the Roma minority to quality education.
The various reforms promoting the use of the State language, although warranted, may lead to undue limitations of the rights and opportunities of persons belonging to national minorities. It is therefore essential that their effects be carefully considered.
No comprehensive anti-discrimination legislation has yet been developed and there remains a lack of reliable statistics in this field. There is continuous reluctance to introduce special measures as a means to achieve full and effective equality of persons belonging to disadvantaged minorities.
There has been an alarming increase in the number of racially-motivated crimes in recent years and more efforts should be made by the authorities to investigate and prosecute their perpetrators. Inter-ethnic tensions have also increased in Crimea.
The new electoral system of 2004 significantly reduced possibilities for persons belonging to national minorities to be represented in elected bodies. Although the Council of All-Ukrainian associations of national minorities now enjoys stronger independence, there is scope for improvement in the overall consultation process of national minorities on issues affecting them. More efforts should be made to provide for effective consultation of Roma organisations.
Problems relating to land claims by the Crimean Tatars persist. Compensation received is often inadequate and no legal norms on property and land restitution have been adopted so far."

Committee of Ministers Resolutions

- Resolution CM/ResCMN(2011)11 on the implementation of the Framework Convention for the Protection of National Minorities by Portugal (16 June).
- Resolution CM/ResCMN(2011)7 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia (30 March).

- Resolution CM/ResCMN(2011)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine (30 March).

Advisory Committee follow-up visit

The Bosnian authorities and the Council of Europe organised a follow-up seminar on 16-17 June to discuss how the findings of the Framework Convention were being implemented in **Bosnia and Herzegovina.**

Third Monitoring Cycle

State Reports

The State Report on **Ireland** was received on 18 July, the State Report on **Sweden** was received on 1 June, and the State Report on **Romania** was received on 16 May.

Advisory Committee country visits

A delegation of the Advisory Committee visited **Norway** from 2-5 May, the **Czech Republic** from 11-15 April, **Austria** from 14-18 March, and the **United Kingdom** from 7-11 March in the context of the monitoring of the implementation of this convention.

Advisory Committee Opinions of the third monitoring cycle

The Opinion on **Austria** was adopted on 28 June, the opinions on the **United Kingdom** and **Norway** were adopted on 30 June, and the opinion on the **Czech Republic** was adopted on 1 July, the Opinion on "**the former Yugoslav Republic of Macedonia**" was adopted on 30 March, the opinions on **Denmark** and **Slovenia** were adopted on 31 March, and the opinion on **Estonia** was adopted on 1 April under the third cycle of monitoring the implementation of this convention in States Parties. They are restricted for the time-being. These four opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

Opinion in respect of Italy

The third cycle Advisory Committee opinion in respect of **Italy** was made public on 30 May together with the government comments.

Summary of the Opinion

"Italy has continued to support the preservation and the development of the linguistic and cultural identity of persons belonging to linguistic minorities. Well-established systems of protection are in place and bilingualism is guaranteed in areas such as the Autonomous Province of Bolzano - South Tyrol and the Aosta Valley. Several other regions or provinces, such as the Friuli Venezia Giulia region, have adopted regional laws for the protection of linguistic minorities. In addition, improvements have been noted in the functioning of institutional structures set up to support the implementation of the new legislation,

The implementation of legal guarantees existing in this field has nevertheless been negatively affected by substantial financial cuts and the delayed transfer of funds by the central government, as well as insufficient commitment by certain authorities. The impact of austerity measures on the preservation of their identity is, for persons belonging to linguistic minorities, in particular the numerically-smaller ones, a serious source of concern.

While certain measures have been taken by some authorities, the situation of the Roma and Sinti has seriously deteriorated and remains a source of deep concern. In the absence of specific legislation at national level and of a comprehensive strategy for their protection, these persons continue to face poverty, hostility and systematic discrimination in most sectors. Although only very few Roma and Sinti share a nomadic lifestyle, they continue to be placed in 'camps for nomads', which perpetuates their segregation and marginalisation. The approach of the authorities to the problems faced by the Roma and Sinti, marked by the use of emergency orders and punitive rather than constructive measures, is not in line with the principles of the Framework Convention. Certain measures taken in the last few years, including the population 'census' conducted in 2008 in the 'camps for nomads', are particularly problematic from the human rights' perspective.

In recent years, Italian society has experienced a

particularly worrying increase in racist and xenophobic attitudes, including extreme violence in some cases, towards persons belonging to vulnerable groups such as the Roma and Sinti, migrants, asylum-seekers and refugees. Such hostile attitudes are sometimes found also at institutional level and they are increasingly present in political discourse and the media, as well as on the Internet and during sport events. Frequent cases of abuse and violence committed against persons belonging to these vulnerable groups by law enforcement officers are a source of deep concern. This requires urgent, firm and effective action on behalf of the authorities at all levels."

Opinion in respect of Armenia

The third cycle Advisory Committee opinion in respect of **Armenia** was made public on 20 April together with the government comments.

Summary of the Opinion

"Since the adoption of the Advisory Committee's second Opinion in May 2006, Armenia has taken a number of measures to advance the implementation of the Framework Convention. The authorities continue to show an inclusive approach concerning the scope of application of the Framework Convention and co-operate with all national minority communities living on its territory. A general climate of tolerance and understanding between national minorities and the majority prevails in the country.

The Department for Ethnic Minorities and Religious Affairs and the Co-ordinating Council for National and Cultural Organisations of National Minorities continue to play an active role in raising awareness on issues affecting national minorities and in seeking to resolve outstanding issues.

Problems remain, however, in the implementation of some of the provisions of the Framework Convention. In particular, the formulation and the mandatory nature of the answers to questions on nationality/ethnicity and language contained in the proposed questionnaire for the population census planned for 2011 raise problems as regards the right of persons belonging to national minorities to choose to be treated or not to be treated as such. No comprehensive anti-discrimination legislation has yet been adopted and there remains a lack of reliable statistics in this field. The plans for the reform of local self-government in Armenia may have a negative impact on the right of persons belonging to national minorities to participate effectively in public affairs at local level."

Opinion in respect of Finland

The third cycle Advisory Committee opinion in respect of **Finland** was made public on 13 April together with the government comments.

Summary of the Opinion

"Finland has continued its constructive attitude towards the Framework Convention and its monitoring system, and has followed an overall inclusive and pragmatic approach with regards to its personal scope of application. The Finnish Government has launched several legislative as well as institutional reform initiatives aiming at strengthening protection against discrimination. An 'Equality Committee' has been set up to make Finnish equality legislation more consistently applicable to all sectors of life, including as regards instances of multiple discrimination. A proposal for a National Policy on Roma has been developed which, if adopted, will constitute the first nation-wide policy programme to promote the social inclusion and equal treatment of the Roma in different spheres of life. A Sami Cultural Centre is currently being built in Inari and is expected to be opened in 2012.

No progress has been made towards a solution to the dispute regarding land rights of the Sami people and general perceptions of the issue remain fundamentally different between parties. The Advisory Committee is deeply concerned that negotiations appear blocked without any clear platform for their continuation. Incidents of racism and xenophobia continue to be reported, particularly via the Internet. Some children belonging to minorities are still bullied in schools as some resistance against the increasing diversity of Finnish society persists.

Reports point to insufficient follow-up of racist crimes by the police and prosecution services, as well as the lack of progress regarding the recruitment of more minority representatives into the police force. There are continued and serious shortcomings as regards the implementation of the Language Act and the Sami Language Act as too few public officials have the adequate language skills to allow Swedish speakers outside the Swedish language area and Sami in the Sami Homeland to use their languages in official contacts with local administrative authorities. The availability of minority language media is still insufficient, particularly as regards the Sami, Russian and Romani language print media.

National minorities must be granted appropriate representation and sufficient influence within the various consultation mechanisms to enable them to participate more effectively in the decision-making processes which affect them. The Russian-speaking community still lacks a separate consultation mechanism that could facilitate an ongoing and constructive dialogue between this fast growing group and the

relevant government structures. Despite continued efforts towards enhanced participation of Roma in social and economic life, no notable improvements have been made in the area of formal employment where the Roma, as well as other minorities, are still greatly under-represented."

Committee of Ministers Resolutions

- Resolution CM/ResCMN(2011)10 on the implementation of the Framework Convention for the Protection of National Minorities by Germany (16 June)

Election of experts to the list of experts eligible to serve on the Advisory Committee

- Resolution CM/ResCMN(2011)9 – Election of an expert to the list of experts eligible to serve on the Advisory Committee in respect of the **Czech Republic** (Adopted by the Committee of Ministers on 25 May): Helena Hofmannová
- Resolution CM/ResCMN(2011)5 – Election of an expert to the list of experts eligible to serve on the Advisory Committee in respect of **Denmark** (Adopted by the Committee of Ministers on 16 March): Tove H. Malloy

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

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.

Belarus – official warning against Belarusian Helsinki Committee

On 9 March 2011 the Chairperson of the Political Affairs Committee of the Parliamentary Assembly requested the Venice Commission to assess the compatibility with international human rights standards of the warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee.

Opinion CDL-AD (2011) 026, adopted by the Venice Commission at its 87th plenary session, 17-18 June 2011

Background

The Ministry of Justice of the Republic of Belarus issued a written warning to the Belarusian Helsinki Committee (BHC) on 12 January 2011, the day after the BHC had sent a communication to the UN Special Rapporteur. In its statement, the BHC said, *inter alia*, that about 700 arrested persons in the aftermath of presidential elections were not allowed to meet their advocates in private. The warning stated that the said communication was "an attempt to discredit the Republic of Belarus in the eyes of the international community".

Conclusions of the Commission

As the Venice Commission stated in its opinion on a warning directed by the Ministry of Justice to the Belarusian Association of Journalists,[1] Belarus as a party to the ICCPR is under legally binding obligations to respect and protect fundamental civil and political rights such as freedom of expression (Article 19), freedom of association (Article 22) and all other rights laid down in the Covenant.

As a candidate country for membership of the Council of Europe and an associate member of the Venice Commission, the European Convention case-law is a relevant frame of reference to assess if the contested conduct by Belarus public authorities is in conformity with European human rights standards and the international human rights treaties that Belarus has ratified.[2]

The rights to freedom of expression and of association are of paramount importance in any democratic society and any restriction of these must meet a strict test of justification.[3]

By contesting the BHC communication to the Special Rapporteur and its content and by

1. CDL-AD(2010)053rev
2. See Opinion No. 573/2010
3. See §105, CDL-AD (2010)053 rev

trying to interfere in the organisation and activities of the association, the Ministry of Justice's warning has infringed the right of association and of expression of the BHC.

The Venice Commission considers that the grounds invoked to justify issuing the warning directed at the BHC do not stem from a pressing social need in a democratic society. They are disproportionate and the reasons adduced are neither relevant nor sufficient.

Hence, in the opinion of the Venice Commission, the Warning of the Ministry of Justice constitutes a violation of Articles 19 and 22 of the ICCPR and 10 and 11 of the European Convention on Human Rights.

Moreover, the Venice Commission considers that the chilling effect of the warning directed against the BHC, jeopardises not only the registered statute of the BHC but also affects the status of all human rights defenders in the Republic of Belarus. More generally, it puts an unlawful threat on public criticism and political debate on human rights.

The Venice Commission recalls that the international human rights obligations of the Republic of Belarus not only demand that the authorities respect the rights of dissident voices but also that they protect civil society organisations and their members in doing their duty of promoting universal human rights standards.

Internet: http://venice.coe.int/

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.

Fighting impunity for serious human rights violations

The Committee of Ministers adopted on 31 March 2011 new guidelines on the eradication of impunity for serious human rights violations. The guidelines, which concentrate on the accountability of perpetrators for serious human rights violations, aim at giving European governments guidance on the fight against impunity. They mainly focus on the extensive case-law that the European Court of Human Rights has developed on this issue, in particular by imposing on member states of the Council of Europe the obligation to investigate those human rights violations and to hold their perpetrators to account, as well as to provide an effective remedy for the victims of those violations.

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

The informal working group established by the Steering Committee on Human Rights (CDDH) 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 three further meetings. It reported on progress and outstanding issues on the occasion of the CDDH's 72nd meeting (29 March – 1 April). At its last meeting in June, the informal group held a second exchange of views with representatives of civil society. The group finalised its work by submitting to the CDDH a draft accession agreement, together with its explanatory report, and a draft Rule to be added to the Rules of the Committee of Ministers for the supervision of the execution of judgments and of friendly settlements. The CDDH will consider the results of the informal working group with a view to their submission to the Committee of Ministers for adoption at an extraordinary meeting from 12 to 14 October.

Sexual Orientation and Gender Identity

The Council of Europe Publishing launched in July 2011 a comprehensive compilation of the standards adopted by the Council of Europe in protecting and promoting the human rights of lesbian, gay, bisexual and transgender persons, including Recommendation CM/Rec (2010) 5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, and its explanatory memorandum.

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

Information society, Medias and Data Protection

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 – traditional 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 primary importance. The Council of Europe is addressing these issues boldly with innovative and participative working methods. Fundamental rights apply online as well as offline. The objective is to secure a maximum of rights and freedoms, subject to minimum restriction, whilst guaranteeing a level of security to which people are entitled.

Meetings of Steering Committee, expert committees and groups of specialists

3rd meeting of the Ad hoc Advisory Group on Public Service Media Governance (MC-S-PG)

Strasbourg 21-22 March

The Group pursued work started in 2010 on the governance of public service media in the changing context of the information society. Fundamental changes in the media reinforce public service media's vital role in supporting such non-commercial objectives as social progress, public interest and ability to engage with democratic processes, intercultural understanding, gender balance and societal integration. This can be achieved through a varied and high-quality mix of content and services adhering to the highest professional standards.

This work will translate to a Recommendation of the Committee of Ministers to the member States, expected to be adopted in the second half of the year.

3rd meeting of the Expert Committee on New Media (MC-NM)

Strasbourg 28-29 March

The Committee pursued important work on a new notion of media that should be the base for a series of standards related to most of the developments in the field of media.

Developments in information and communication technologies and their application to mass communication have led to significant changes in the media ecosystem, understood in broad terms to encompass all actors and issues whose interaction allows the media to function and to fulfil their role in society. With these changes, the functioning and existence of traditional media actors, as well as their economic models and professional standards, are being complemented or replaced by other actors. New actors have assumed functions in the production and distribution process of media services which, until recently, had been performed only (or mostly) by traditional media organisations; this includes content aggregators, application designers and users who are also producers of content. A number of "intermediaries" or "auxiliaries", often stemming from the information and communication sector, including those serving at the outset as mere hosts or conduits (e.g. infrastructure, network or platform operators), are essential for digital media's outreach and people's access to them. Services provided by these new actors have become essential pathfinders to information, at times turning the intermediaries or auxiliaries into gatekeepers or into players who assume an active role in

mass communication editorial processes. Such services have complemented or partly replaced traditional media actors. The roles of each actor can easily change or evolve fluidly and seamlessly. Further, some have developed services or applications which have put them in a dominant position on a national or even at a global level.

The work undertaken by the MC-NM will translate in a Recommendation of the Committee of Ministers to the member states, expected to be adopted in the second half of 2011.

14th meeting of the Steering Committee on Media and New Communication Services (CDMC)

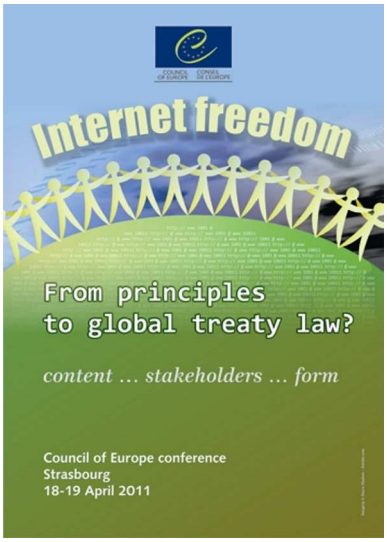
Strasbourg, 14-17 June

The Steering Committee on Media and New Communication Services (CDMC) met in Strasbourg from 14 to 17 June. Important texts were finalised on a new notion of media, on Internet governance principles, on the protection and promotion of Internet's universality, integrity and openness, on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings, on the protection of freedom of expression and access to information and freedom of assembly and association with regards to privately operated Internet platforms and online service providers and on public service media governance. These texts will be submitted to the Committee of Ministers for adoption. Further to these texts, the CDMC concentrated its discussions in paving the way to the transition that will see the birth of a new Steering Committee, as from 2012.

Main events

Internet Freedom Conference – From Principles to Global Treaty Law? Content, Stakeholders, Form

Strasbourg, 18-19 April 2011



The Council of Europe held a Conference on Internet Freedom on 18 and 19 April 2011 in Strasbourg.

Over 150 participants representing Council of Europe member and non-member states, and members of the business and technical communities, as well as civil society activists from both Europe and beyond, had fruitful discussions on Internet freedom and the normative frameworks that are needed to support it internationally. The Internet's sustainability was considered a sine qua non condition for Internet freedom and the participants examined principles for Internet governance. Reflection on the global nature of the Internet and the legal constructs that could support it internationally, as well as on the role of stakeholders, should continue.

EuroDIG 2011

Fourth European Dialogue on Internet Governance, Belgrade, 30-31 May

The fourth European Dialogue on Internet Governance conference, EuroDIG 2011, brought together more than 500 participants from the private sector, governments, international organisations, youth, media, civil society and the academic and technical communities to discuss public policy issues and challenges related to the Internet. It was opened by the Prime Minister of the Serbian Government, Mirko Cvetković. Its overarching message was "Multistakeholder dialogue on Internet governance must be further strengthened". Among the important topics were the need to protect privacy on the Internet, the protection of critical resources of the Internet in Europe, the need for programmes to assist vulnerable and marginalised groups in the context of Internet, standards for defining privacy, greater inclusion of individuals in processes of Internet development, ethics and corporate responsibility,

new business models on the Internet, literacy, crime on the Internet, as well as the presence of languages other than English on the global network.

The EuroDIG 2011 was hosted by the Digital Agenda Administration of the Republic of Serbia and organised by the Council of Europe, the Swiss Federal Office of Communications (OFCOM), Diplo Foundation, the *European Broadcasting Union* (EBU), with the support of the Serbian National Register of Internet Domain Names (RNIDS), the Republic Agency for Electronic Communications (RATEL), EUnet, the research centre 'Petnica', together with other organisations. It was sponsored by: Telenor, Huawei, Microsoft, Google, Switch, VeriSign, EUnet, ICANN, Ericsson, Affilias, RNIDS, USAID and IREX.

Data protection

Convention 108 and Advisory Committee

The dynamic created on the occasion of the **30th anniversary of the Convention** for the protection of individuals with regard to automatic processing of personal data (Convention 108) and relating to **the modernisation** of this Convention has punctuated the work of the Bureau of the Advisory Committee on Convention 108. The Committee met for its 23rd meeting (22-24 March 2011) and for its 24th meeting (28-30 June 2011). Both meetings enabled the analysis of the excellent result of **the public consultation** on the modernisation of Convention 108 (in a final document of over 400 pages, more than fifty responses were compiled, coming from around the world, state actors as well as from other stakeholders – NGOs, academics and private companies – or people responding on their behalf) and the definition of **preliminary orientations** on some key issues. The Bureau has also discussed the role of the Advisory Committee established by Convention 108 as well as the revision of two Recommendations of the Committee of Ministers: Recommendation (89)2 on the protection of personal data used for employment purposes as well as Recommendation (87)15 regulating the use of personal data in the police sector.

Main events

Data protection and privacy topics were addressed during the **Conference on "Internet Freedom – from principles to global treaty law?"**, organised in Strasbourg by the Council of Europe from 18 to 19 April 2011 as well as during the 4th meeting of the European Dialogue on Internet Governance: EuroDIG (Belgrade, 30 and 31 May 2011).

The **International Conference of Budapest** on Data Protection which took place on 16-17 June under the Hungarian Presidency of the Council of the European Union, gave the opportunity to many participants to discuss key topics in the following fields: the review of legal frameworks and new principles, effectiveness of the protection and new technologies, awareness and literacy of the users as well as the need of compatible global standards.

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

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

The Joint Programme between the European Union and the Council of Europe entitled "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.

This phase opened new opportunities for the Ministry of Justice to propose amendments to the work plan in the framework of the objectives and expected results of the project. Thus, at its request, the project provided expertise in new areas such as the changes to the Judicial Code, the draft law "On Justice Fees", the draft law "On Collective Claims", as well as the current system of notification of judgments, which was judged by the European Court of Human Rights not to be in conformity with the European Convention on Human Rights.

The Ministry of Justice also supported the extension of the project in 2012. A new result on the improvement of the registry of civil acts and the notaries' system is expected to appear in the project's revised logframe, following an evaluation held at the end of June 2011.

A sub-project within the project entitled "Pilot Training Programme", which was concluded at the end of June, focused on the initial training programme of the future School of Advocates. This work has now been completed (for details, see the previous edition of the Human Rights Information Bulletin No. 81).

Two study visits were organised in the framework of the project: in March 2011, for the Judicial Department to The Hague, The Netherlands, to study the training of judicial clerks (which is currently non-existent in Armenia) and in April 2011, for the Chamber of Advocates to Hamburg, Germany, to study the training of "*Fachanwälte*" and notaries.

Georgia

"Promotion of Judicial Reform, Human and Minority Rights in Georgia in accordance with Council of Europe Standards"

The objective of the three-year project, funded by the Danish Ministry of Foreign Affairs and implemented by the Council of Europe, is to promote judicial reform and human and minority rights in Georgia. This entails monitoring the implementation of the ongoing reforms and national regulatory framework of the country in the judicial and penitentiary sector, examining them vis-à-vis the Council of Europe standards, providing targeted support

for the implementation of the particular aspects of the reforms (*inter alia,* developing a strategy plan on the reform of the penitentiary health care system and primary medical health care policy, establishing a framework for a dialogue between civil society organisation and local governments, etc.) and capacity strengthening of the key partner and beneficiary organisations (Ministries, training institutions, and independent national bodies) and their staff (in particular increasing the awareness and knowledge of the European Convention on Human Rights, Social Charter, Framework Convention for the Protection of Minority Rights, European Prison Rules and other European instruments/standards).

During the first year of its implementation, the project has been most efficient in capacity and skill building work with the partner institutions. This has been an integral part for all three components of the project: justice reform, enhancing the capacity of the Public Defenders Office, and strengthening the state capacity and public consultations on minority issues. The training evaluations confirm that the trainees' knowledge has significantly improved (this concerns initial and in-service training for judges and judges' assistants, prosecutors on the European Convention on Human Rights; training sessions on the new Criminal Procedure Code and the Code of Imprisonment for judges, prosecutors, and penitentiary personnel; European Convention on Human Rights, Social Charter and topical NPM training sessions for the staff of the Public Defender's Office; topical training sessions provided for the State Inter Agency Commission responsible for minority and civil integration issues etc.. Training of Trainers strengthened the capacity of the Justice Training Centre and Penitentiary and Probation Training Centre (PPTC): pools of trainers were established in these institutions and new training methodology and materials were developed for further cascade training. A number of new training courses are in the pipeline and will be introduced in certain areas. For example, the PPTC will pilot a course on the implementation of parole by Probation Services etc..

Continued efforts are also being made on increasing the compatibility of the national regulatory framework within European standards. Within the framework of the preparation of a comprehenisive prison health care policy, the project supported the exchange of best practice with the French penitentiary system and will review the draft strategy on prison health care, which is going to be adopted in autumn 2011.

Moldova

European Union/Council of Europe "Democracy Support Programme in the Republic of Moldova"

Within the framework of the joint project between the European Union and the Council of Europe entitled the "Democracy Support Programme in the Republic of Moldova", the Legal and Human Capacity Building Department continues to render assistance to the Moldovan Government, judicial and law enforcement authorities in regard to: 1) assessment of existing and proposed legislation with regard to its compliance with European standards, with a focus on the judiciary, prosecution service and police, 2) ensuring accountability for human rights violations, 3) safeguarding pre-trial guarantees and 4) support to the Centre for Human Rights of Moldova (Ombudsman institution).

The project gathered momentum between March and June 2011, with important activities being carried out in co-operation with the Moldovan Ombudsman institution, Probation Service, National Institute of Justice, etc.. The Ministry of Justice of the Republic of Moldova started consultations on the draft Strategy for Justice Sector Reform 2011-2015. The project contributed to the process of drawing up the draft Strategy. It will also provide an expert assessment of its concept, structure and concrete provisions. The ultimate objective is the establishment of an independent, efficient and coordinated justice system, accountable to Moldovan citizens and aligned with Council of Europe and EU standards and good practices related to justice administration and the guaranteeing of the rule of law. In July-August 2011 the project will assist the Ministry of Justice in organising expert meetings and public debates on the draft Strategy, in order to fine-tune it before submission to the Government.

At the request of the Prosecutor General of the Republic of Moldova, the project provided recommendations on the new Code of Ethics for Prosecutors, in the framework of the ongoing

reform of the PPS. The written assessment was drawn up by Mr Jorge Dias Duarte, prosecutor from Portugal. The representatives of the Directorate General of Human Rights and Legal Affairs participated in the round table discussions on the draft Code of Ethics on 1 April 2011. As a result of these activities, the draft Code was substantially improved by its authors and its revised version was submitted to the project for further consultation. The President of the Superior Council of Prosecutors, the authority which is supposed to adopt the act, requested further assistance on the fine-tuning of the draft Code in accordance with the Council of Europe recommendations of judicial ethics. Such an activity, intended to produce the final version of the Code, will be carried out by the project in July 2011.

On 6-8 June 2011, three Council of Europe consultants (representing Greece, Germany and Luxembourg) undertook a mission on probation matters to the Republic of Moldova. The purpose of this mission was twofold: a) to create a comprehensive report on the probation system in Moldova for the purpose of assessing the compliance with European standards of Moldovan law on probation and the efficiency of the current implementation of the probation system and b) to carry out a 1-day seminar for Moldovan staff of the Probation Service, police officers and staff from the Moldovan Ombudsman on issues related to probation.

Within the programme of the assessment visit, the Council of Europe experts visited offices of the Probation Service, the Department of Penitentiary Institutions, the Sector Court in Botanica district of Chisinau, the Supreme Court of Justice, the General Prosecutors' Office, the Institute for Penal Reform, the Centre for Human Rights (Moldovan Ombudsman) and other stakeholders. During the meetings with judges, prosecutors, probation counsellors etc., all these professionals underlined that the Moldovan Law on probation is functional but its practical implementation up until now has not been sufficiently effective. The experts produced an assessment report in which the findings of the visit were described, a legal assessment of the Moldovan Law on probation as to its compliance with the revised Council of Europe Probation Rules was made and a number of proposals were put forward for improving the legal and institutional framework of the probation service in Moldova, in order to promote the efficient implementation of said law. The assessment report was discussed during a round table with national authorities and may, in the near future, serve the basis for a separate joint project with the focus on development of the probation system of Moldova.

On 19 April 2011 the project organised, in cooperation with the Moldovan Police Academy, a Conference on the Ministry of Internal Affairs and police reform. It was attended by high ranking Moldovan officials, including the Prime Minister, the Minister of Internal Affairs, representatives of numerous international organisations and Council of Europe experts.

During the conference the main aspects of the reform of the Ministry of Internal Affairs and its subordinate divisions were discussed and a comparative analysis of the principles, stages and different aspects of reforming the MIA was made, through presentations on lessons learned and best practices of the Council of Europe countries in this field. The representatives of the Moldovan MIA and Police Academy have prepared detailed presentations on different aspects of the reform. Among these the following aspects should be noted: conditions that generate the reform of the Ministry of Internal Affairs; identification, general description and analysis of the principles and paths of the reform of the Ministry of Internal Affairs and its subordinate subdivisions; economic, legal and social considerations for the delimitation of police status; determination of evaluation criteria for the activity of internal affairs institutions; some issues regarding the need for transferral of the judicial police functions to the Ministry of Justice etc.. The participants formulated concrete proposals and recommendations on the principles, stages and different aspects of reforming the MIA.

The project published 2000 copies of a manual including the "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment" and "CPT standards". This manual is used in all relevant training sessions of the project involving judges, prosecutors, police officers etc..

Project's cascade seminars for policemen on combating ill-treatment and impunity continued in May-June 2011. Six national trainers (police officers and members of the teaching staff of the Police Academy previously trained by Council of Europe experts) conducted cascade seminars for some 450 policemen all around the country. The topics of the seminars were focused mainly on the material aspects of Article 3 of the European Convention on Human Rights. An important part of the semi-

nars referred to fundamental guarantees against ill-treatment and their importance for the criminal investigation of corresponding cases. Other presentations referred to the Moldovan legal system of prevention and combating ill-treatment and police impunity, the European Court jurisprudence on Article 3 concerning Moldova, as well as CPT findings on ill-treatment and impunity in Moldova.

Other training-related activities carried out within the Democracy Support Programme included: two in-depth seminars on riot control for law enforcement officials (4-5 April and 4-5 May 2011, 50 participants), a workshop on the relationship between media and law enforcement agencies (20-21 June, 2011, 25 participants), a workshop on project design and the priority projects for capacity building of the Ministry of Internal Affairs (21-24 June 2011, 15 participants), a study visit for officials from the Moldovan Police Academy and the Ministry of Internal Affairs to the Netherlands (27-30 June, 6 participants), twenty cascade seminars on the use of alternatives to pre-trial detention and imprisonment (10 March – 31 May 2011, 460 participants: 214 judges and 246 prosecutors), a seminar for judges and prosecutors (National Institute of Justice trainers) on the methodology of professional training (16-20 May 2011, 30 participants), training for the staff of the Moldovan Ombudsman institution on fundamental human rights - Article 9-10 of the European Convention on Human Rights (4-5 April 2011, 20 participants), a visit to a psychiatric institution of the Republic of Moldova and a training session on "Protection of persons with mental disabilities" (3-4 May 2011, 15 participants), a study visit on the rights of persons with mental disabilities for the representatives of the Moldovan Centre for Human Rights in Athens, Greece (1-4 June 2011, 9 participants) and a workshop on freedom of assembly for the Moldovan Ombudsman institution (20 June 2011, 15 participants).

At the same time, in order to improve institutional capacity of its beneficiaries and to support the development of their international co-operation, the project ensured participation of Moldovan official delegations in Council of Europe high level conferences and meetings on justice-related matters. Among them:

- Participation of the delegation of the Ministry of Justice and the Superior Council of Magistracy in the Opening of the European Court Judicial Year 2011 and a co-ordination meeting with representatives of the Directorate General of Human Rights and Legal Affairs on the priorities of the new Government of the Republic of Moldova in the field of justice (27-28 January 2011, Strasbourg, France).
- Participation of the delegation of the Department of Penitentiary Institutions in the seminar "Improving Detention Conditions through Effective Monitoring and Standard-Setting" (17-18 March 2011, Antalya, Turkey). The seminar considered the scope and content of future Council of Europe activities in the field of prisons. Particular emphasis was placed on the role, both present and future, of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- Participation of representatives of the Governmental Agent and of the Ministry of Foreign Affairs and European Integration in the High Level Conference on the Future of the European Court of Human Rights, organised within the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe (26-27 April 2011, Izmir, Turkey).
- Participation of Children's Ombudsman from the Centre for Human Rights of Moldova in the International Conference on "Combating Violence against Children: from Isolated Actions to Integrated Strategies" (24-25 May 2011, Kyiv, Ukraine).

Russian Federation

The Joint Programme between the European Union and the Council of Europe entitled "Introduction of the appeal in the Russian judicial system"

The EU/Council of Europe Joint Project entitled "Introduction of the appeal in the Russian judicial system" began in December 2010, and is due to last until June 2013. The project aims to assist the Russian authorities in implementing, monitoring and assessing the recent reform of the appeal in civil and criminal matters and to ensure that legislation and practice are in conformity with European standards. Given the forthcoming entry into force of civil appeal provisions, the project will focus in particular on the improvement of the organisa-

tional and human resources capacity (including by elaborating appropriate training methodology) to implement the reform. In April, the needs assessment report was drawn up. It includes an analysis of the current Russian system of review of court decisions and of the novelties introduced by the new legislation. It also includes an overview of the European standards defined by the case-law of the European Court and European comparative best practices in the field of civil and criminal appeals. Three Working Groups were set up in May. They are entrusted with work on the necessary recommendations for regulatory amendments, organisational and structural changes as regards court organisation, civil appeal and criminal appeal procedure. They will develop the measures of implementation, training methodology and materials necessary for the implementation of the appeal reform. The Working Groups are composed of Russian and international experts, representatives of the State Legal Department of the President of the Russian Federation and the Supreme Court of the Russian Federation.

Turkey

The Joint Programme between the European Union and the Council of Europe entitled "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 operating fully in January 2011.

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 clarified the selection criteria for 50 trainers to be trained under the training-of-trainers programme and identified the training materials and resources available.

The considerable number of cases brought to the European Court of Human Rights concerning military justice in Turkey was one of the key points which were brought to the attention of the working group. A number of cases concerning the military of other member states of the Council of Europe were identified as already having been translated into Turkish while many others were subsequently translated. The outlines for the training courses and relevant case studies and scenarios were prepared in accordance with the training programme. Trainers who would deliver training to the future national trainers were also identified.

The second Working Group launched the analysis of the military justice systems. The approach of the work was determined and tasks were assigned to the different members of the group. The Ministry of National Defence prepared presentations giving a full overview of the current system from the operational and administrative points of view. A needs assessment is currently being prepared on the basis of this information and that which was collected by the Justice Academy, the body responsible for the training of military judges and prosecutors. A thorough study of the military justice systems in Europe will be carried out after a needs analysis of the current system in light of the European Convention on Human Rights and its case-law. The organisation of a launching event is scheduled for autumn 2011.

The Joint Programme between the European Union and the Council of Europe entitled "Enhancing the Role of the Supreme Judicial Authorities in Respect of European Standards"

The Joint Programme (JP) between the European Union and the Council of Europe entitled "Enhancing the Role of the Supreme Judicial Authorities in Respect of European Standards" was launched in February 2010. The JP targets judges and lawyers from Turkish high judicial authorities such as the Court of Cassation, the Constitutional Court and the High Council of Judges and Prosecutors. The project activities (mainly study visits and conferences) aim to reinforce the participants' knowledge of European standards, institutions and the potential fields of co-operation which would be referred to and used by them in their daily work. In particular, the participants enhanced their understanding of the functioning of the EU decision and policy-making machinery and established professional contacts with the EU professionals who work in the same field. The visit to the Supreme Court of The Netherlands offered a

rich content on how to manage the workload of a supreme court linked to EU law and cope with the continuous need for transformation in the face of demanding challenges. The meetings with judges and lawyers of the European Court of Justice in Luxembourg allowed the participants to learn about the internal organisation and the proceedings before the Court. 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 and the Consultative Councils of European Judges and Prosecutors.

Three conferences were organised in March-April 2011 for the judges of the high courts on important topics: 1) The Conference on "Court Management in High Courts and Possible Solutions to Workload" was organised in Ankara on 23-24 March 2011 with the participation of around 170 members, reporter judges and prosecutors from all beneficiary courts. 2) The Conference on "Performance Evaluation of Judiciary" was organised in Ankara on 25 March 2011 at the premises of the High Council of Judges and Prosecutors. 3) The Conference on "Individual application to the Constitutional Court as an effective domestic remedy to be exhausted within the meaning of the European Convention on Human Rights" was organised on 31 March - 1 April 2011 with the participation of 70 members, reporter judges and prosecutors from the beneficiary courts. These activities allowed all parties involved to better understand each other's work and institutional mandate, and the interpretation of national legislation in line with European standards. It is expected that there will be a spillover effect and that the outputs will be disseminated to the whole judiciary in the country via the decisions of the high courts. Nonetheless, precisely how and when the judgments issued by the supreme judicial authorities of Turkey will begin to reflect the knowledge acquired during the project activities remains to be seen. A mid-term evaluation of the project has been commissioned for this purpose.

Ukraine

The Joint Programme between the European Union and the Council of Europe entitled "Transparency and Efficiency of the Judicial System of Ukraine" (JP TEJSU)

On 24 - 25 March 2011, together with the USAID UROL project, the TEJSU organised a conference entitled "Constitutional aspects of the judicial reform in Ukraine", which took place at Lviv University. It brought together more than 140 guests and speakers from different Council of Europe member states and the United States. The conference aimed at identifying and discussing those fields in which the Ukrainian constitution had a direct influence on the reforms of the judiciary. These discussions were held in light of the newly-adopted Ukrainian law on the judiciary, the status of judges and the Ukrainian constitution. National experts gave an insight into the problem of reforming the judiciary within the limits described by the current constitution. International experts from Germany, Spain and the United States presented the solutions found in their countries and discussed parallel solutions for the Ukrainian judiciary.

Since March 2011, training sessions organised at the project's recipients' requests, addressed a large number of topics such as the automated court information system in Ukraine's commercial courts, the implementation of the Automated Court Document Flow System, legislative drafting, the methodology of the interpretation of legal acts, the application of the legislation against corruption - both European and Ukrainian experience, and alternative dispute resolution.

The project continued its support of the legislative improvements in the area of judicial reform through its Legal Advice Group. At the request of the Verkhovna Rada's (Parliament) Committee on the Judiciary, the topic of disciplinary responsibility of judges was discussed and a list of recommendations for the improvement of the Ukrainian legislation in relation to the disciplinary liability of judges was provided. It is expected that the recommendations will be taken into account in due course for further improvements to the Law on the Judiciary and the Status of Judges.

With the view to further improving the system of court financing, the project organised a peer-to-peer activity in Germany and Estonia aimed at representatives of Ukrainian institutions, in particular the Supreme Court of

Ukraine, the High Administrative Court, the High Specialised Court of Ukraine for Civil and Criminal Cases, the Council of Judges and the State Court Administration. The participants were introduced to the general principles of the budget process of Germany, the work of the PEBBY system, the principles of preparation, negotiation, implementation and monitoring of the budgets for the courts. The recent reforms in the Estonian court system and the Estonian experience in the financing of the judiciary, the link between resources and statistics and the different opportunities for savings in the judiciary were also discussed.

The project team also continued to assist all beneficiaries through institutional support to overcome differences and to facilitate a dialogue in legal topics related to judicial independence and the quality of the Ukrainian courts' decisions. In particular, a round table was organised to discuss Opinion No.11 (2008) of the Consultative Council of European Judges (CCJE) on the quality of judicial decisions, as well as Opinion No.12 (2009) of the CCJE and Opinion No.4 (2009) of the Consultative Council of European Prosecutors (CCPE) on the relations between judges and prosecutors.

The JP TEJSU was extended until 31 December 2011.

Support for Prison Reform in Ukraine

In March 2011 the Council of Europe launched a new project entitled "Support for Prison Reform in Ukraine" with the general objective of strengthening the prison system in Ukraine based on the rule of law and respects for fundamental rights and European democratic values and standards. The two-year project was made possible thanks to the financial contribution from the Swedish Government, through the Swedish International Development Co-operation Agency (SIDA).

In the project's inception phase, meetings and on-site visits were carried out in Ukraine with the purpose of becoming better acquainted with recent developments and analysing the needs of the sector, primarily in the main areas of probation, the use of alternative sanctions, prison management and health-care in prisons. The needs assessment was carried out by three international consultants who shared their initial findings and proposals with the key actors of the penitentiary system during the first Stakeholders' Platform meeting which was held in Kyiv on 20 May 2011.

Based on the needs assessment and the discussions and conclusions reached with the stakeholders about the main orientations and priorities of the project, the final project design will be defined in co-operation with the Ukrainian partners by the end of the inception phase. The 18-month implementation phase will start in October 2011 with activities which should contribute to: improving and strengthening the functioning of the probation service, promoting greater use of alternative sanctions, introducing programmes to help increase the prospects of successful reintegration of prisoners, as well as developing the professional skills and management capacities of prison staff. Human rights and promotion of health care in prisons will form inherent elements of all the planned capacity building activities.

Multilateral

The European Programme for Human Rights Education for Legal Professionals: the HELP II Programme

The HELP II Programme was launched in 2010 as a follow-up to the European Programme for Human Rights Education for Legal Professionals (the HELP Programme). The objective of the HELP II Programme has been to integrate the European Convention on Human Rights in the initial and continuous training for judges and prosecutors and to develop training materials and tools. The project focused on promoting the domestic application of the European Convention on Human Rights by judges and prosecutors through capacity building of national training institutions as regards European Convention on Human Rights training. The project has resulted in the exchange of experience among all twelve beneficiary countries as regards the state of integration of human rights into the training programmes of their national training institutions and in the development of new training materials, such as case studies, E-learning courses and course outlines available on the project's website: http://www.coehelp.org

The resources of this website provided a crucial platform for improving the training capacity of

these institutions and they were used in all training activities organised throughout the Council of Europe member states.

In addition to the previous training materials developed under the project, the key recent judgments of the European Court of Human Rights were translated and published in Armenia, Azerbaijan, Georgia, Moldova, the Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine and distributed to legal professionals through national training institutions, Associations of Judges, Government Agent Offices, Ministries of Justice, and Bar Associations or NGOs.

The Joint Programme between the European Union and the Council of Europe entitled "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 training and capacity-building phase and ended on 30 June 2011 after a series of regional events.

Round table discussions and a series of expert meetings on the Country Reports as regards effective investigations of ill-treatment were organised in Armenia, Azerbaijan and Moldova. In the majority of the five beneficiary countries of the project, there have been investigations and judicial cases with convictions of law enforcement officers on ill-treatment cases, in line with European standards. In short, combating ill-treatment is progressing and, even though it is still very far from satisfactory and ill-treatment practices continue, the process of improvement has begun, the political will has been formed and the key professional groups, including judges and prosecutors, have been trained on European standards.

In Ukraine in particular, instructive letters were adopted by the Deputy Prosecutor General and the Minister of the Interior, addressed respectively to all managing prosecutors and interior staff, as regards combating and preventing ill-treatment and its effective investigation. According to the Ukrainian legislation, these letters have a normative status as a source of internal rules and regulations. They are important from the viewpoint of establishing an internal regulatory framework, raising awareness and creating a climate of intolerance towards ill-treatment and impunity.

In Armenia, the Prosecutor General issued an Instruction containing a number of measures for preventing violations of Article 3 of the European Convention on Human Rights and other international instruments against torture and ill-treatment. In Azerbaijan, the authorities were in the process of preparing legislative amendments related to torture prevention which would be introduced in line with the recommendations of the project's Country Report. In Georgia, the Inter-Agency Co-ordination Council against Torture adopted a three-year Action Plan (for 2011-2013) in February 2011 based on the strategy against torture in line with the Country Report's recommendations, and worked under this Action Plan. In Moldova, the newly-established Division on Combating Torture in the Office of the Prosecutor General intensified its work and processed 95 criminal cases of torture and ill-treatment.

During the Final Steering Committee Meeting of the project in Kyiv, Ukraine, on 23 June 2011, the national delegations from five beneficiary countries discussed the impact of the current project and the necessity of the continuation of the activities for reinforcing the progress made. They all emphasised the importance of long-term efforts to combat ill-treatment and impunity and expressed their full support to the continuation of the project activities during the follow-up Joint Programme between the European Union and the Council of Europe entitled "Reinforcing the Fight against Ill-treatment and Impunity" (1 July 2011 – 31 December 2013). In particular, the new element of combating ill-treatment in pre-trial detention facilities and penitentiary institutions, was considered as very important.

The Joint Programme between the European Union and the Council of Europe entitled "Enhancing judicial reform in the Eastern Partnership countries"

A new 30-month project entitled "Enhancing judicial reform in the Eastern Partnership countries" is currently being implemented by the Legal and Human Rights Capacity Building Department with a view to improving the implementation of European standards on independence, professionalism and efficiency of the judiciary in Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus. The project, which is 95% funded by the European Union,

intends to provide a multilateral forum in which two objectives are fulfilled: the identification of gaps between national legislation and practice and European standards, and the sharing of best practices and recommendations to address those gaps. In its initial phase, the project focused on the identification of the most problematic issues as regards the judiciary in the countries concerned, in close co-operation with the national authorities (Ministries of Justice, Supreme Courts, judicial self-governing judicial bodies, Bar Associations and training centres for judges). Issues relating to the mandate, competencies and functioning of judicial self-governing bodies are currently being examined by specialised working groups made up of representatives from the six beneficiary countries.

Multilateral meeting on improving detention conditions and health care in prisons

A Multilateral meeting on "Improving detention conditions and health care in prisons" took place in Strasbourg on 24-25 May 2011. Representatives of the Prison Administrations and prison medical staff from eleven countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, the "former Yugoslav Republic of Macedonia", Georgia, Moldova, Montenegro, Russia, Serbia and Ukraine) became acquainted with the standards of the Council of Europe and the CPT regarding detention conditions, the provision of health care in prisons and medical ethics and best practices in Europe.

Through presentations by the Council of Europe Secretariat the participants also became acquainted with standard-setting in the field of prisons, the role of the CPT in the monitoring of prisons and recent case-law of the European Court of Human Rights regarding detention conditions and health care in prisons. A brief presentation was also made on "The European National Preventive Mechanism (NPM) Project".

European Union/ Council of Europe Joint Programme: "Peer to Peer - II Targeted Project: promoting independent national non-judicial mechanisms for the protection of human rights, especially for the prevention of torture"

The main objective of the Peer to Peer - II Joint Programme between the European Union and the Council of Europe (1 October 2010 – 29 February 2012) is to help avoid, put an end to or compensate for human rights violations through work with the National Human Rights Structures (NHRSs), including the transfer of international know-how to the staff of newly-established independent NPMs. This spring and early summer 2011 saw two NHRS and two NPM thematic workshops respectively, as well as the establishment, and introduction to the European NPM Network, of an Independent Medical Advisory Panel under the European NPM Project. Finally, an NPM Onsite Exchange of Experiences between the whole of the Albanian NPM, various international experts in the field of torture prevention and the European NPM Project team took place in Tirana from 28 June-1 July, making March to June 2011 the Joint Programme's most active four-month period to date.

The 3rd NHRS thematic workshop, held in Tallinn from 6 to 7 April 2011, examined the Role of National Human Rights Structures in the Protection and Promotion of the Rights of Children in Care", be that in foster families or institutions. The questions discussed ranged from the decision of placement in care (including options and alternatives), the protection of the child while in care and the assistance to be given after care. The 4th NHRS thematic workshop was held in Kyiv from 24 to 25 May 2011 on the role of National Human Rights Structures in protecting and promoting the rights of persons with physical disabilities. This workshop discussed universal design, the participation of people with disabilities in political and public life, as well as means of supervision and redress in case of violations of these rights, as provided by various international human rights treaties or by related human rights standards.

The 4th NPM Thematic Workshop, on "Security and dignity in places of deprivation of liberty", was held on 14-15 March 2011 in Paris, France. The workshop was divided into four working sessions that explored different aspects concerning the NPMs' role in monitoring how the difficult balance between the establishment of security measures in places of detention and the protection and promotion of the inherent dignity of those deprived of their liberty can be struck.

On 14 June 2011, an introductory half-day seminar hosted by the Estonian Chancellor of Justice (the NPM of Estonia), was held in Tallinn

on "Introduction to the European NPM Project's Independent Medical Advisory Panel (IMAP)". Three members of the IMAP presented the medical panel to specialised staff from the European NPM Network and discussed how to make best use of the IMAP. As a result, Operational Guidelines for the interrelations between NPMs and the IMAP were agreed upon. These guidelines outline the purpose, function and mode of communication between the NPMs and the European NPM Project IMAP members on medical queries on issues of a systemic nature upon which NPMs may wish to receive advice.

The 5th NPM Thematic Workshop, on "Collecting and checking information during an NPM visit", was held on the two subsequent days in the same venue, with the same hosts and participants. Methods for collecting and checking information before and during an NPM visit were discussed, including the collection of information from registers, staff, files, through detainee interviews and through observation. Emphasis was placed on police settings and pre-trial settings and the workshop included exercises to map out the stages in checking information during a mock visit to a remand prison, on corroboration of alleged incidences of physical ill-treatment by police prior to entry to the prison and on constructing a picture of risk patterns and drawing conclusions. For the first time a member of a Russian PMC from the Kaliningrad Region and representatives of the Civic Chamber of the Russian Federation and of the Russian specialist NGO "Moscow Centre for Prison Reform" attended this NPM workshop as observers and shared their insight and experience with the European NPM Network.

In reaction to requests voiced during various previous NPM meetings, an Independent Medical Advisory Panel (IMAP) was set up on 1 March 2011 under the European NPM Project. Composed of individual medical doctors who together cover a wide range of expertise linked to torture prevention, the IMAP will respond to medical queries by European NPMs. The eight members of the IMAP will act collectively, but in their individual capacities. Both the questions put to the IMAP and summaries of its advice will be brought to the knowledge of the European NPM Network by way of the European NPM Newsletter.

Ever-increasing interest from Council of Europe member states to participate in NHRS and NPM workshops confirm the high level of expertise present, and the high quality of discussions held in these workshops. Various NHRS and NPM materials are translated into English and Russian and at times also into other languages, spreading the good practices and lessons learnt at the workshops. In addition, the Regular Selective Information Flow (RSIF – an electronic newsletter) gives an overview in English and Russian of activities of the Council of Europe and in particular of relevant findings of its monitoring bodies – especially the European Court of Human Rights. By the end of June 2011, 16 issues of the European NPM Newsletter had been circulated electronically to the European NPM Network and to a wider, interested community. It informs the NPMs, the international instances, academia and the public at large of the activities of the NPM network, including those under the European NPM Project, and provides updates regarding the establishment of legislative bases and the functioning of NPMs in Europe.

Bilateral

Russian PMC Pre Project

The Russian Public Monitoring Committee (PMC) Pre Project, which was launched on 13 May 2011, explores the feasibility of a multi-annual full scale co-operation project between the Council of Europe and the Russian Federation to support the Russian PMCs by building their capacity for carrying out independent preventative visits to places of deprivation of liberty in the Russian Federation.

The Pre Project, which is carried out in close co-operation with the Federal Ombudsman of the Russian Federation, includes four regional needs assessment conferences (to be held in Perm, Barnaoul, the Moscow Region and Pyatigorsk respectively), at which the main capacity building needs of the existing 75 PMCs are to be established. Subsequently a careful analysis of the results of the conferences will be made, upon which a proposal for a full-scale multi-annual PMC Project is expected to be presented. The necessary expertise on substance will be drawn from the European National Preventive Mechanisms against torture (NPM) Project.

Additional NHRS and NPM activities

Hosted by the Greek Ombudsman, a consultation meeting with NHRSs about Council of Europe activities in the field of migration was held in Athens from 5 to 6 May 2011. The meeting produced recommendations and proposals to the Council of Europe with regard to future activities related to migration. Within the framework of the Council of Europe 2010-2013 co-operation programme with Georgia, entitled "Promotion of Judicial Reform, Human and Minority Rights and funded by Denmark, a training seminar for staff of the Georgian National Prevention Mechanism was held in Tbilisi from 27 to 28 June 2011, on the execution of healthcare monitoring in prisons.

Inter-continental co-operation

A colloquium co-organised between the Council of Europe and the UNHCR, comparing the case-law of the Inter-American Court of Human Rights, the case-law of the African Court on Human and Peoples' Rights, and the case-law of the European Court of Human Rights as regards asylum, was held from 15 to 16 June 2011 in Strasbourg. The participants, derived from the three courts as well as from civil society, considered the meeting very useful and entered a preliminary agreement to organise a similar event again in 2012.

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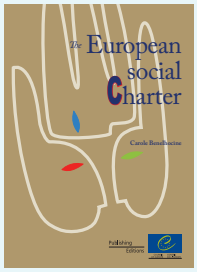

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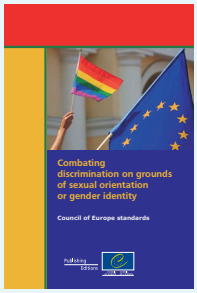

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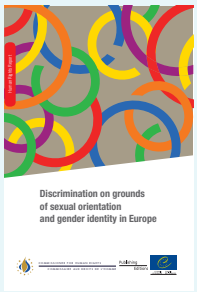

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