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50 years of the Social Charter

Konstantin Gryshchenko, Ukrainian foreign minister and chair of the Committee of Ministers, speaking at the ceremony organised in Strasbourg to celebrate the 50th anniversary of the European Social Charter.

Human rights information bulletin

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

European Court of Human Rights

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

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

Court's case-load statistics (provisional) between 1 July and 31 October 2011:

- 427 (297) judgments delivered
- 410 (272) declared admissible, of which 404 (267) in a judgment on the merits and 6 (5) in a separate decision
- 18052 (17957) applications declared inadmissible
- 1134 (961) applications struck off the list

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

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

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

Grand Chamber judgments

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

Stummer v. Austria

Prisoner's non-affiliation to pension system for work performed in prison did not violate the Convention

Judgment of 7 July 2011; Application No. 37452/02

Principal facts

The applicant, Ernst Stummer, is an Austrian national who was born in 1938 and lives in Vienna. He spent many years of his life in prison, during which he worked for lengthy periods in the prison kitchen or the prison bakery. As a working prisoner, he was not affiliated to the old-age pension system under the General Social Security Act.

Mr Stummer's application for an early retirement pension was dismissed by the Workers' Pension Insurance Office (*Pensionsversicherungsanstalt der Arbeiter*) in March 1999, noting that he had failed to accumulate the minimum of 240 insurance months required for pension eligibility under domestic social law. He subsequently brought an action against the Pension Insurance Office, submitting that he had been working in prison for 28 years and that the number of months worked during that time should be counted as insurance months for the purpose of assessing his pension rights. In April 2001 the Vienna Labour and Social Court dismissed the claim.

The Vienna Court of Appeal dismissed his appeal in October 2001. According to the court, the fact that, following an amendment to the Execution of Sentences Act in 1993, prisoners were affiliated to the unemployment insurance scheme was not conclusive as regards the question of their affiliation to the old-age pension system, as Mr Stummer had argued. It further held in particular that it was not for the courts but for the legislator to decide whether or not to change the provisions relating to the social insurance of prisoners. In February

2002 the Supreme Court (*Oberster Gerichtshof*) dismissed Mr Stummer's appeal.

After his release from prison in January 2004 Mr Stummer received unemployment benefits for a few months and has since then received emergency relief payments under the Unemployment Insurance Act. According to his counsel's submissions at the hearing before the European Court of Human Rights in November 2010, Mr Stummer received some €720 per month, composed of €15.77 per day plus €167 per month in emergency relief payments and €87 as an allowance towards his rent expenses.

Complaints and procedure

Mr Stummer complained that the exemption of prison work from affiliation to the old-age pension system was discriminatory and deprived him of receiving pension benefits. He relied in substance on Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 to the Convention (protection of property). He further relied on Article 4 (prohibition of slavery and forced labour).

The application was lodged with the European Court of Human Rights on 14 October 2002 and declared admissible on 11 October 2007. On 18 March 2010 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, and on 3 November 2010 a public hearing was held in the Human Rights building in Strasbourg.

Decision of the Court

No violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) and no violation of Article 4 (prohibition of slavery and forced labour)

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

While the Court agreed with the Austrian Government that prison work differed from the work performed by regular employees, notably in that it served the primary aim of rehabilitation and resocialisation and that it was obligatory under Austrian law, the Court did not find that factor decisive. What mattered in Mr Stummer's case was the need to provide for old age. The Court found that in that respect Mr Stummer was in a relevantly similar situation to ordinary employees, yet he was treated differently in that he was not affiliated to the old-age pension system under the General Social Security Act.

The Court accepted that the aims of that difference in treatment relied on by the Austrian Government were legitimate ones. Namely, the Government argued that working prisoners often did not have the financial means to pay social security contributions and it would thus undermine the economic efficiency of the old-age pension system if periods for which no meaningful contributions had been made were counted as insurance periods, giving rise to pension entitlements. They further argued that the overall consistency of the old-age pension system had to be preserved. Therefore, periods of work in prison could not be counted as substitute periods compensating for times during which no contributions had been made, as Austrian social security law provided for that possibility only in a limited number of socially-accepted situations, such as child-raising, unemployment or military service.

As regards the question whether the difference in treatment was proportionate to the legitimate aims pursued, the Court observed that the issue of working prisoners' affiliation to the old-age pension system was closely linked to the state's general choice of economic and social policy. In that area, states enjoyed a wide margin of appreciation, being better placed to decide what was in the public interest, and the Court generally respected the legislature's policy choice unless it was without reasonable foundation. There was, further, no European consensus on social security for prisoners. While an absolute majority of Council of Europe member states provided prisoners with some kind of social security, only a small majority affiliated prisoners to their old-age pension system and some of them, like Austria, did so only by giving them the possibility of making voluntary contributions.[1]

The Court attached weight to the fact that at the time Mr Stummer worked as a prisoner without being affiliated to the old-age pension system, that is, between the 1960s and the 1990s, there had been no common ground regarding the affiliation of working prisoners to domestic social security systems. Only gradually were societies moving towards affiliation of prisoners to their social security systems in general and to their old-age pension systems in particular. While the 1987 European Prison Rules – a set of recommendations of the Committee of Ministers to member states of the Council of Europe as to the minimum standards to be applied in prisons – did not contain any provision in this regard, the 2006 Rules recommended to include prisoners who work as far as possible in national social security systems, without, however, referring specifically to old-age pension systems. Austrian law reflected that trend in that all prisoners were to be provided with health and accident care and in that working prisoners had been affiliated to the unemployment insurance scheme since January 1994.

It was further significant that Mr Stummer, while not entitled to an old-age pension, was not left without social cover. His current income, composed of emergency relief payments and social assistance in the form of a housing allowance, amounted to €720, almost reaching the level of a minimum pension, currently fixed at approximately €780 for a single person.

While Austria was required to keep the issue raised by Mr Stummer's case under review, the Court found that by not having affiliated

1. From the information available to the Court, including a survey on comparative law taking into account the national laws of 40 out of the 47 member states of the Council of Europe, it would appear that: 22 member states give prisoners access to the old-age pension system, namely Albania, Andorra, Azerbaijan, Croatia, Cyprus, the Czech Republic, Finland, France, Ireland, Italy, Latvia, Lithuania, Norway, Portugal, Russia, Slovakia, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom. In 12 member states prisoners are not covered by an old-age pension scheme, namely Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Georgia, Greece, Hungary, Malta, Montenegro, the Netherlands, Romania and Serbia. In a third group of member States, affiliation to the social security system (including old-age pension) depends on the type of work performed, mainly on whether it is work for outside employers / remunerated work or not. This is the case in Germany, Luxembourg, Poland, Spain and Sweden.

working prisoners to the old-age pension system to date, it had not exceeded the margin of appreciation afforded to it in that matter. There had accordingly been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

Article 4

Mr Stummer essentially argued that European standards had changed to such an extent that prison work without affiliation to the old-age pension system could no longer be regarded as "work required to be done in the ordinary course of detention", which was exempt from the term "slavery and forced labour" prohibited under Article 4. However, having regard to the lack of a European consensus on the issue of the affiliation of working prisoners to the old-age pension system, as noted above, the practice of the Council of Europe member states did not provide a basis for such an interpretation. There had accordingly been no violation of Article 4.

Separate opinions

Several judges expressed separate opinions, which can be consulted on HUDOC.

Bayatyan v. Armenia

Imprisonment of conscientious objector in Armenia for refusing to do military service violated his right to freedom of religion

Judgment of 7 July 2011; Application No. 23459/03

Principal facts

The applicant, Vahan Bayatyan, is an Armenian national, born in 1983. He is a Jehovah's Witness.

Declared fit for military service when he was 17 years old, Mr Bayatyan became eligible for the spring draft of 2001.

On 1 April 2001 he wrote to the General Prosecutor of Armenia, the Military Commissioner of Armenia and the Human Rights Commission of the National Assembly stating that, as a Christian, he could not do military service, but that he was prepared to do alternative civilian service.

Aged 18, he was summoned to appear for military service on 15 May 2001, but failed to turn up.

On 29 May 2001 the Commission for State and Legal Affairs of the National Assembly informed him that, since there was no law in Armenia on alternative service, he was obliged to serve in the army, because both the Armenian Constitution and the Military Liability Act required every fit man aged between 18 and 27 to do military service.

On 1 August 2001 criminal proceedings under Article 75 of the Criminal Code were brought against Mr Bayatyan for draft evasion.

In a judgment eventually upheld by the Court of Cassation in January 2003, Mr Bayatyan was convicted of draft evasion and sentenced to two-and-a-half years in prison. During his trial Mr Bayatyan asked again to do alternative civilian service, submitting that it would be more productive to do socially useful work than spend time in prison.

He was imprisoned and, in July 2003, he was released on parole, after having served about ten-and-a-half months of his sentence.

The Armenian Alternative Service Act, which provides for alternative civilian service for conscientious objectors, was passed on 17 December 2003 and entered into force on 1 July 2004.

Complaints and procedure

Mr Bayatyan complained about his conviction for draft evasion, despite his objections on religious grounds, relying on Article 9.

His application was lodged with the Court on 22 July 2003 and declared admissible on 12 December 2006.

In a judgment of 27 October 2009 the Chamber dealing with the case held that there had been no violation of Article 9. On 10 May 2010 the case was referred to the Grand Chamber at Mr Bayatyan's request. A public hearing was held in the Human Rights Building in Strasbourg on 24 November 2010.

Decision of the Court

Violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights

Article 9

Applicability

The Chamber, following the established case-law of the European Commission of Human Rights, had found that Article 9 had to be read in conjunction with Article 4 (prohibition of slavery and of forced or compulsory labour), which left the choice of recognising conscientious objection to each state which had ratified the European Convention on Human Rights. The Chamber had therefore found that Article 9 did not guarantee a right to refuse military service on conscientious grounds and was inapplicable in Mr Bayatyan's case.

However, the Grand Chamber reiterated that the Convention was a living instument which had to be interpreted in the light of prevailing conditions and ideas in democratic states. At the time when the alleged interference with the applicant's rights under Article 9 occurred, in 2002-03, only four Council of Europe member states apart from Armenia did not provide for the possibility of claiming conscientious objector status; although three of those had already incorporated the right to conscientious objection into their Constitutions but had yet to introduce implementing laws.

Almost all the member states which ever or still had compulsory military service introduced laws at various points recognising and implementing the right to conscientious objection. The earliest was the United Kingdom in 1916, followed by Denmark (1917), Sweden (1920), the Netherlands (1920-1923), Norway (1922), Finland (1931), Germany (1949), France and Luxembourg (1963), Belgium (1964), Italy (1972), Austria (1974), Portugal (1976) and Spain (1978).

A big wave of recognitions ensued in the late 1980s and the 1990s, when almost all the existing or future member states which had not yet done so introduced such a right into their legal systems. Those included: Poland (1988), the Czech Republic and Hungary (1989), Croatia (1990), Estonia, Moldova and Slovenia (1991), Cyprus, the former Federal Republic of Yugoslavia (which in 2006 divided into two member states: Serbia and Montenegro, both of which retained that right) and Ukraine (1992), Latvia (1993), the Slovak Republic and Switzerland (1995), Bosnia and

Herzegovina, Lithuania and Romania (1996), Georgia and Greece (1997), and Bulgaria (1998).

From the remaining member states, "the former Yugoslav Republic of Macedonia", which as early as 1992 had allowed for non-armed military service, introduced alternative civilian service in 2001. Russia and Albania, which in 1993 and 1998 respectively had constitutionally recognised the right to conscientious objection, introduced legislation in 2004 and 2003 respectively. Azerbaijan constitutionally recognised the right to conscientious objection in 1995. Conscientious objectors are not recognised in Turkey.

In most member states where conscientious objection was recognised and fully implemented, conscientious objector status could be claimed on the basis not only of religious beliefs but also of a relatively broad range of personal beliefs of a non-religious nature, except in Romania and Ukraine. In some member states the right to claim conscientious objector status only applied during peacetime, as in Poland, Belgium and Finland, while in others, like Montenegro and the Slovak Republic, the right to claim such status by definition applied only in time of mobilisation or war. Finally, some member states, like Finland, also allowed certain categories of conscientious objectors to be exempted from alternative service.

At the time of Mr Bayatyan's case, the overwhelming majority of Council of Europe member states had already recognised in law and practice the right to conscientious objection. Subsequently, Armenia also recognised that right. The laws of the member states – along with the relevant international agreements[2] – had therefore evolved so that, at the relevant time, there was already a virtual consensus on the question in Europe and beyond. It could not therefore be said that a shift in the interpretation of Article 9 in relation to events which occurred in 2002-2003 was not foreseeable.

The Grand Chamber concluded that Article 9 should no longer be read in conjunction with Article 4 § 3 (b). Consequently, the applicant's complaint was to be assessed solely under Article 9.

Article 9 did not explicitly refer to a right to conscientious objection. However, the Grand Chamber considered that opposition to military service – where it was motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or deeply and genuinely held religious or other beliefs – constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.

Mr Bayatyan was a member of the Jehovah's Witnesses, a religious group opposed to service, even unarmed, in the military. The Grand Chamber therefore had no reason to doubt that his objection to military service was motivated by his religious beliefs, which were genuinely held and in serious and insurmountable conflict with his obligation to perform military service. Accordingly, Article 9 was applicable to his case.

Compliance

The Grand Chamber considered that Mr Bayatyan's failure to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion.

The Grand Chamber left open the question of whether his conviction was lawful. It was based on laws which were accessible and clear. However, the Armenian authorities had also undertaken to adopt a law on alternative service and, in the meantime, to pardon conscientious objectors sentenced to prison terms.

The Grand Chamber did not find it necessary to rule on the Armenian Government's argument that there was a "legitimate aim" behind Mr Bayatyan's conviction; the protection of public order and, implicitly, the rights of others. However, the Government's arguments were unconvincing, especially given their pledge to introduce alternative civilian service and, implicitly, to refrain from convicting new conscientious objectors.

Concerning whether his conviction was "necessary in a democratic society" the Grand Chamber noted that almost all the 47 member states of the Council of Europe which ever or still had compulsory military service had introduced alternatives to military service. Accordingly, a state which had not done so had to give convincing and compelling reasons to justify any interference with a person's right to freedom of religion.

The Grand Chamber noted that Mr Bayatyan, as a Jehovah's Witness, wanted to be exempted from military service, not for personal benefit or convenience, but, because of his genuinely held religious convictions. Since no alternative civilian service was available in Armenia at the time, he had had no choice but to refuse to be drafted into the army to stay faithful to his convictions and, by doing so, risk criminal sanctions. Such a system failed to strike a fair balance between the interests of society as a whole and those of Mr Bayatyan. The Grand Chamber therefore considered that the imposition of a penalty on Mr Bayatyan, in circumstances where no allowances were made for his conscience and beliefs, could not be considered a measure necessary in a democratic society. Still less could it be seen as necessary, taking into account that there existed viable and effective alternatives capable of accommodating the competing interests, as demonstrated by the experience of the overwhelming majority of European states.

The Grand Chamber admitted that any system of compulsory military service imposed a heavy burden on citizens. However, it was acceptable if shared in an equitable manner and if exemptions from that duty were based on solid and convincing grounds, as in Mr Bayatyan's case.

The Grand Chamber reiterated that pluralism, tolerance and broad-mindedness were hallmarks of a democratic society. Democracy did not simply mean that the views of the majority had always to prevail; a balance had to be achieved which ensured the fair and proper treatment of minorities and avoided any abuse of a dominant position. Respect on the part of the state towards the beliefs of a minority religious group (like the Jehovah's

2. Since 1993 the United Nations Human Rights Committee has also recognised that a right to conscientious objection could be derived from the International Covenant on Civil and Political Rights. The Charter of Fundamental Rights of the European Union, which entered into force in 2009, explicitly recognised the right to conscientious objection. Within the Council of Europe, both the Parliamentary Assembly and the Committee of Ministers had also on several occasions called on member states which had not yet done so to recognise the right to conscientious objection. Furthermore, recognition of the right to conscientious objection had become a pre-condition for admission of new member states into the Council of Europe.

Witnesses) by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as the Government claimed, ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.

Mr Bayatyan's prosecution and conviction also happened at a time when the Armenian authorities had already officially pledged to introduce alternative service. Their commitment not to convict conscientious objectors during that period was also implicit in their undertaking to pardon all conscientious objectors sentenced to imprisonment. Hence, Mr Bayatyan's conviction for conscientious objection was in direct conflict with the official policy of reform and the legislative changes then being implemented in Armenia in line with its international commitment and could not be said to have been prompted by a pressing social need. In addition, the law on alternative service was adopted less than a year after Mr Bayatyan's final conviction. The fact that he was later released on parole did not affect the situation. Nor did the adoption of the new law have any impact on his case.

The Court therefore considered that Mr Bayatyan's conviction constituted an interference with his right to freedom of religion which was not necessary in a democratic society, in violation of Article 9.

Article 41

Under Article 41 (just satisfaction), the Court held that Armenia was to pay Mr Bayatyan €10 000 in respect of non-pecuniary damage and €10 000 in respect of costs and expenses.

Separate opinion

One judge expressed a dissenting opinion, which can be consulted on HUDOC.

Palomo Sánchez and others v. Spain

Trade unionists' dismissal for an offensive publication did not violate their freedom of expression

Judgment of 7 July 2011; Application Nos. 28955/06, 28957/06, 28959/06 and 28964/06

Principal facts

The applicants, Juan Manuel Palomo Sánchez, Francisco Antonio Fernández Olmo, Agustín Alvarez Lecegui and Francisco José María Blanco Balbas, are Spanish nationals who live in Barcelona. They worked as deliverymen for the company P. After having brought several sets of proceedings before the labour courts against their employer, in 2001 they set up a trade union and joined the union's executive committee.

The March 2002 issue of the union's monthly newsletter reported on a judgment of a Barcelona employment tribunal, which had partly upheld the applicants' claims, ordering the company P. to pay them certain sums in respect of salaries owed to them. The cover page of the newsletter displayed a caricature showing two employees of the company giving sexual favours to the director of human resources. Two articles, worded in vulgar language, criticised the fact that those two individuals had testified in favour of the company during the proceedings brought by the applicants. The newsletter was distributed among the workers and displayed on the notice board of the trade union on the company's premises.

On 3 June 2002 the applicants were dismissed for serious misconduct, namely for impugning the reputations of the employees and the human resources director criticised in the newsletter. The applicants challenged that decision before the courts. In a November 2002 judgment, the Employment Tribunal no. 17 of Barcelona dismissed their complaints, finding that the dismissals were justified in accordance with the relevant provisions of the Labour Regulations. It held that the cartoon and the two articles were offensive and impugned the dignity of the people concerned, and thus exceeded the limits of freedom of expression.

In May 2003 the High Court of Justice of Catalonia upheld the judgment in so far as it concerned the four applicants. It referred, in particular, to the limits imposed by the principle of good faith between parties to an employment contract and to the necessary balance that judicial decisions had to strike between a worker's contractual obligation and his freedom of expression.

An appeal on points of law by the applicants was dismissed by the Supreme Court on 11 March 2004. Their amparo appeal was declared inadmissible by the Constitutional Court on 11 January 2006, in particular on the grounds that the constitutional protection of freedom of expression did not extend to offensive or humiliating statements which were not necessary for others to form an opinion about the facts of which the applicants wished to complain.

Complaints and procedure

The applicants alleged that their dismissal, based on the content of the newsletter, had infringed their rights under Article 10, and that the real reason for their dismissal had been their trade-union activities, in violation of their right to freedom of assembly and association under Article 11.

The case originated in six applications,[3] which were lodged with the European Court of Human Rights on 13 July 2006. In its Chamber judgment of 8 December 2009, the Court held, by six votes to one, that the authorities had not exceeded their discretion in penalising the applicants and that there had been no violation of Article 10. It was also of the opinion that no separate question arose under Article 11. On 10 May 2010 the case was referred to the Grand Chamber at the applicants' request.

Decision of the Court

No violation of Article 10 (freedom of expression) of the European Convention on Human Rights read in the light of Article 11 (freedom of assembly and association)

Article 10

The Court noted that in the applicants' case the question of freedom of expression was closely related to that of freedom of association in a trade-union context. However, the complaint mainly concerned the applicants' dismissal for having, as members of the executive committee of a trade union, published and displayed the articles in question.

3. The applications of two of the original applicants were found inadmissible by the Court in its Chamber judgment of 8 December 2009.

Furthermore, the High Court of Justice of Catalonia had found the dismissal of two other union members unjustified because they had been on sick leave at the time of the publication and distribution of the newsletter, which confirmed that the applicants' trade union membership did not play a decisive role in their dismissal. The Court thus found it appropriate to examine the facts under Article 10, interpreted in the light of Article 11.

The principal question was whether Spain was required to guarantee respect for the applicants' freedom of expression by annulling their dismissal. The domestic courts had noted that freedom of expression in the context of labour relations was not unlimited, the specific features of those relations having to be taken into account. To arrive at the conclusion that the cartoon together with the articles had been offensive to the people concerned, the employment tribunal had carried out a detailed analysis of the disputed facts and the context in which the applicants had published the newsletter.

The Court saw no reason to call into question the domestic courts' findings that the content of the newsletter had been offensive and capable of harming the reputation of others. It underlined that a clear distinction had to be made between criticism and insult and that the latter might, in principle, justify sanctions. In that light, the Court took the view that the grounds given by the domestic courts had been consistent with the legitimate aim of protecting the reputation of the individuals targeted by the content in question, and that the domestic courts' conclusion that the applicants had overstepped the limits of admissible criticism in labour relations could not be regarded as unfounded or devoid of a reasonable basis in fact.

As to whether the sanction imposed on the applicants, namely their dismissal, was proportionate to the degree of seriousness of the content in question, the Court noted that the cartoon and the articles had been published in the newsletter of the trade union workplace branch to which the applicants belonged, in the context of a dispute between them and the company. However, they included accusations which were aimed not directly at the company but against two other employees and the human resources manager. The Court reiterated in that connection that the extent of acceptable criticism was narrower as regards private individuals than as regards politicians or civil servants acting in the exercise of their duties.

The Court did not share the Spanish Government's view that the content of the articles in question did not concern any matter of general interest. They had been published in the context of a labour dispute inside the company to which the applicants had presented certain demands. The debate had therefore not been a purely private one; it had at least been a matter of general interest for the workers of the company. However, such a matter could not justify the use of offensive cartoons or expressions, even in the context of labour relations. The remarks had not been instantaneous and ill-considered reactions in the context of a rapid and spontaneous oral exchange but written assertions, displayed publicly on the premises of the company.

After a detailed balancing of the competing interests, making extensive reference to the Spanish Constitutional Court's case-law concerning the right to freedom of expression in labour relations, the domestic courts had endorsed the penalties imposed by the employer and had found that the conduct in question had not directly fallen within the applicants' trade union activity but offended against the principle of good faith in labour relations. The Court agreed with the domestic courts that in order to be fruitful, labour relations had to be based on mutual trust. While that requirement did not imply an absolute duty of loyalty towards the employer or a duty of discretion to the point of subjecting the worker to the employer's interests, certain manifestations of the right to freedom of expression that might be legitimate in other contexts were not legitimate in that of labour relations. An attack on the respectability of individuals by using grossly insulting or offensive expressions in the professional environment was, on account of its disruptive effects, a particularly serious form of misconduct capable of justifying severe sanctions.

In those circumstances the Court found that the applicants' dismissal had not been a manifestly disproportionate or excessive sanction requiring the state to afford redress by annulling it or by replacing it with a more lenient measure. There had accordingly been no violation of Article 10, read in the light of Article 11.

Separate opinion

Certain judges expressed a joint dissenting opinion, which can be consulted on HUDOC.

Nejdet Şahin and Perihan Şahin v. Turkey

Discrepancy in case-law between two supreme courts of the same state does not breach Convention

Judgment of 7 July 2011; Application No. 13279/05

Principal facts

The applicants, Nejdet Şahin and Perihan Şahin, are Turkish nationals who were born in 1949 and 1950 respectively and live in Ankara.

The applicants' son, an army pilot, died on duty in May 2001 when the plane he was co-piloting crashed. He had been transporting troops involved in an anti-terrorist operation from Diyarbakır to Ankara.

Following their son's death, Mr and Mrs Şahin applied unsuccessfully to the Turkish Pension Fund Authority for a supplementary monthly pension payable under Section 21 of Law No. 3713, the Anti-Terrorism Act. They then challenged – before the Ankara Administrative Court – the Fund's refusal to grant them a supplementary pension.

On 1 April 2003 the Ankara Administrative Court rejected their appeal as being outside its jurisdiction, considering that it was a matter for the Supreme Military Administrative Court. Consequently, Mr and Mrs Şahin brought their case before the Supreme Military Administrative Court.

On 10 June 2004 the Supreme Military Administrative Court rejected their claim, noting that they had been awarded a monthly war disability pension as well as a lump sum equal to thirty times the highest salary of a public servant. It further noted that entitlement to the supplementary pension provided for under the Anti-Terrorism Act was restricted to agents of the state who were injured, disabled or killed as a direct result of an act of terrorism.

The mere fact that the applicants' son had been involved, through his work, in the fight against terrorism did not suffice to qualify him for the additional pension. In their case before the Supreme Military Administrative Court the applicants referred to four ordinary Administrative Court decisions concerning appeals lodged by the families of other soldiers who had died in the same accident as their son. In those decisions the courts had allowed the appeals, considering that the law in question did apply to their cases.

The applicants appealed unsuccessfully.

Complaints and procedure

The application was lodged with the European Court of Human Rights on 9 April 2005.

Relying on Article 6 §1, the applicants complained that the proceedings before the domestic courts had been unfair and that the possibility that the same fact could give rise to differing legal assessments from one court to another was in breach of the principles of equality before the law and consistency of the law.

In its Chamber judgment of 27 May 2010 the Court held, by six votes to one, that there had been no violation of Article 6 §1.

On 25 August 2010 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 4 October 2010 the panel of the Grand Chamber accepted that request.

Decision of the Court

No violation of Article 6 §1 (right to a fair trial) of the European Convention on Human Rights

Right to a fair trial (Article 6 §1)

The Court observed that the question before it concerned alleged differences between the judgments of two hierarchically unrelated, different and independent types of court, namely the ordinary administrative courts and the Supreme Military Administrative Court. While in several cases, in which the families of other soldiers who had died in the same accident as the applicants' son sought supplementary monthly pensions, the ordinary administrative courts had found in their favour, the Supreme Military Administrative Court had dismissed Mr and Mrs Şahin's related application.

Examining whether the two types of courts' judgments had been in conflict, the Court noted that they differed in the application of the law and not in respect of the facts. Thus, diametrically opposite conclusions had been reached by the two types of courts.

However, the mere fact of a conflict of case-law was not, in itself, sufficient to constitute a violation of Article 6.

In Turkey, ordinary administrative courts of general jurisdiction coexisted alongside a military administrative court with special jurisdiction. The conflicting judicial decisions had been taken in parallel by the two types of courts in cases raising essentially the same issues. In a legal system such as the Turkish one, in which several Supreme Courts operated without being subject to a common judicial hierarchy, the absence of a vertical review mechanism for their decisions was not, in itself, in breach of the Convention.

Achieving consistency of the law might take time in some cases, and periods of conflicting case-law might therefore be tolerated without undermining legal certainty. The Turkish Supreme Courts had the possibility of settling the divergences themselves, either by deciding to take the same approach or by respecting the boundaries of their areas of jurisdiction and refraining from intervening in the same area of law.

The Court emphasised that, just as it was not a court of last instance in respect of legal disputes before national courts, it was not its role to intervene simply because there have been conflicting national court decisions. The judgments in respect of the applicants had been duly reasoned and the interpretation by the Supreme Military Administrative Court had not been arbitrary, unreasonable or capable of affecting the fairness of the proceedings. Responsibility for the consistency of national courts' decisions lied primarily with the national courts and any intervention by the Court had to remain exceptional. Mr and Mrs Şahin's case required no such intervention.

Accordingly, the Court concluded that there had been no violation of Article 6 §1.

Separate opinion

Certain judges expressed a joint dissenting opinion, which may be consulted on HUDOC.

Al-Jedda v. the United Kingdom

Three-year internment of Iraqi civilian by British forces in Iraq violated the European Convention on Human Rights

Judgment of 7 July 2011; Application No. 27021/08

Principal facts

The applicant, Hilal Abdul-Razzaq Ali Al-Jedda, born in Iraq in 1957, is an Iraqi national who is currently living in Istanbul, Turkey.

Mr Al-Jedda played for the Iraqi basketball team until, following his refusal to join the ruling Ba'ath Party, he left Iraq in 1978 and lived in the United Arab Emirates and Pakistan. He moved to the United Kingdom in 1992, where he made a claim for asylum and was granted indefinite leave to remain. He was granted British nationality in June 2000.

In September 2004 Mr Al-Jedda and his four eldest children travelled from London to Iraq, via Dubai, where he was arrested and questioned by United Arab Emirates intelligence officers. He was released after 12 hours, permitting him and his children to continue their journey to Iraq, where they arrived on 28 September 2004. On 10 October 2004 United States soldiers, apparently acting on information provided by the British intelligence services, arrested Mr Al-Jedda at his sister's house in Baghdad. He was taken to Basrah in a British military aircraft and then to the Sha'aibah Divisional Temporary Detention Facility in Basrah City, a detention centre run by British forces. He was interned there for over three years until 30 December 2007.

At that time, the Iraqi Interim Government was in power and the Multi-National Force, including British forces, remained in Iraq at the request of the Government and with the United Nations Security Council's authorisation.

Mr Al-Jedda's internment was maintained by the British authorities as being necessary for imperative reasons of security in Iraq. He was believed to have been personally responsible for: recruiting terrorists outside Iraq to commit atrocities there; helping an identified terrorist explosives expert travel into Iraq; conspiring with that explosives expert to conduct attacks with improvised explosive devices against coalition forces near Fallujah and Baghdad; and conspiring with the explosives expert and members of an Islamist terrorist cell in the Gulf to smuggle high-tech detonation equipment into Iraq for use in attacks against coalition forces. The intelligence evidence supporting those allegations was not disclosed to him and no criminal charges were brought against him.

On 8 June 2005 Mr Al-Jedda brought a judicial review claim in the United Kingdom challenging the lawfulness of his continued detention and also the refusal of the United Kingdom Government to return him to the United Kingdom. The Government accepted that Mr Al-Jedda's detention did not fall within any of the permitted cases set out in Article 5 §1 of the Convention. However, it contended that Article 5 §1 did not apply, because the detention was authorised by United Nations Security Council Resolution 1546 and that, as a matter of international law, the effect of the Resolution was to displace Article 5.

The case was eventually decided by the House of Lords on 17 December 2007. The House of Lords, by a majority, rejected the United Kingdom Government's argument that the United Nations, and not the United Kingdom, was responsible for the internment under international law. The House of Lords also held, unanimously, that United Nations Security Council Resolution 1546 placed the United Kingdom under an obligation to intern individuals considered to threaten the security of Iraq and that, in accordance with Article 103 of the United Nations Charter, that obligation to the Security Council had to take primacy over the United Kingdom's obligation under the European Convention on Human Rights not to hold anyone in internment without charge.

On 14 December 2007 the Home Secretary signed an order depriving Mr Al-Jedda of British citizenship, claiming, among other things, that he had connections with violent Islamist groups, in Iraq and elsewhere, and had been responsible for recruiting terrorists outside Iraq and facilitating their travel and the smuggling of bomb parts into Iraq.

Mr Al-Jedda was released on 30 December 2007 and travelled to Turkey. He appealed unsuccessfully against the loss of his British citizenship. The Special Immigration Appeals Commission accepted on the basis of undisclosed evidence that he had helped a terrorist explosives expert travel to Iraq and conspired with him to smuggle explosives into Iraq and to attack coalition forces around Fallujah and Baghdad.

Complaints and procedure

The applicant complained that he was interned by United Kingdom armed forces in Iraq between 10 October 2004 and 30 December 2007, in breach of Article 5 §1. The application was lodged with the European Court of Human Rights on 3 June 2008. On 19 January 2010 the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber, and on 9 June 2010 a public hearing was held in the Human Rights Building in Strasbourg.

Decision of the Court

Violation of Article 5 §1 (right to liberty and security) of the European Convention on Human Rights

Article 5 §1

The Court referred to its well-established case-law that Article 5 §1 contained a list of situations in which it might be justifiable to deprive a person of her or his liberty and that the list did not include internment or preventive detention where there was no intention to bring criminal charges within a reasonable time. Indeed, the United Kingdom Government did not claim that Mr Al-Jedda's internment was compatible with Article 5 §1.

The Government maintained that his internment was attributable to the United Nations and not to the United Kingdom. The Court unanimously rejected that argument. It noted that, at the time of the invasion in March 2003 there was no Security Council resolution providing for the allocation of roles in Iraq if the existing regime was displaced. In May 2003 the United States and the United Kingdom, having displaced the previous regime, assumed control over the provision of security in Iraq; the United Nations was allocated a role in providing humanitarian relief, supporting the reconstruction of Iraq and helping in the formation of an Iraqi interim government, but had no role as regards security. The Court did not consider that subsequent Security Council resolutions altered that position. As the Security Council had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multi-National Force, Mr Al-Jedda's internment was not attributable to the United Nations. It took place within a detention facility in Basrah City, controlled exclusively by British forces. Mr Al-Jedda was therefore within the authority and control of the United Kingdom throughout. The Court therefore agreed with the majority of the House of Lords that Mr Al-Jedda's internment was attributable to the United Kingdom and that, while interned, he fell within the jurisdiction of the United Kingdom for the purposes of Article 1 of the Convention.

The Government's second argument was that United Nations Security Council Resolution 1546 created an obligation on the United Kingdom to use internment in Iraq and that, under Article 103 of the United Nations Charter,[4] that prevailed over the obligation not to use internment in Article 5 §1.

However, the Court noted that the United Nations was created, not just to maintain international peace and security, but also to "achieve international co-operation in ... promoting and encouraging respect for human rights and fundamental freedoms". Article 24 (2) of the Charter required the Security Council, in discharging its duties with respect to its primary responsibility for the maintenance of international peace and security, to "act in accordance with the Purposes and Principles of the United Nations". Against that background, the

4. Article 103 of the United Nations Charter states: "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Court considered that, in interpreting the Security Council's resolutions, there had to be a presumption that the Security Council did not intend to impose any obligation on member states to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court had therefore to choose the interpretation which was most in harmony with the requirements of the European Convention on Human Rights and which avoided any conflict of obligations. In the light of the United Nations' important role in promoting and encouraging respect for human rights, the Court considered that it was to be expected that clear and explicit language would be used were the Security Council to intend states to take particular measures which would conflict with their obligations under international human rights law.

The Court noted that internment was not explicitly referred to in Resolution 1546, which authorised the Multi-National Force "to take all necessary measures to contribute to the maintenance of security and stability in Iraq". Internment was listed in a letter from United States Secretary of State Colin Powell annexed to the resolution, as an example of the "broad range of tasks" which the Multi-National Force was ready to undertake. In the Court's view, the terminology of the resolution left open to the member states within the Multi-National Force the choice of the means to be used to contribute to the maintenance of security and stability in Iraq. Moreover, in the preamble to the resolution, the commitment of all forces to act in accordance with international law was noted, and the Convention was part of international law. In the absence of clear provision to the contrary, the presumption had to be that the Security Council intended states within the Multi-National Force to contribute to the maintenance of security in Iraq while complying with their obligations under international human rights law.

Furthermore, it was difficult to reconcile the argument that Resolution 1546 placed an obligation on member states to use internment with the objections repeatedly made by the United Nations Secretary General and the United Nations Assistance Mission for Iraq to the use of internment by the Multi-National Force. Under Resolution 1546 the United Nations Security Council mandated both the Secretary General, through his Special Representative, and the United Nations Assistance Mission for Iraq to "promote the protection of human rights ... in Iraq". In his quarterly reports throughout the period of Mr Al-Jedda's internment, the United Nations Secretary General repeatedly described the extent to which security internment was being used by the Multi-National Force as "a pressing human rights concern". The United Nations Assistance Mission for Iraq reported on the human rights situation every few months during the same period. It also repeatedly expressed concern at the large number of people being held in indefinite internment without judicial oversight.

In conclusion, the Court considered that Security Council Resolution 1546 authorised the United Kingdom to take measures to contribute to the maintenance of security and stability in Iraq. However, neither Resolution 1546 nor any other Security Council resolution explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge. In those circumstances, in the absence of a binding obligation to use internment, there was no conflict between the United Kingdom's obligations under the United Nations Charter and its obligations under Article 5 §1. Given that the provisions of Article 5 §1 were not displaced and none of the grounds for detention set out in Article 5 §1 applied, Mr Al-Jedda's detention was in violation of Article 5 §1.

Article 41

Under Article 41 (just satisfaction), the Court held that the United Kingdom was to pay the applicant €25 000 in respect of non-pecuniary damage and €40 000 in respect of costs and expenses.

Separate opinion

One judge expressed a dissenting opinion, which may be consulted on HUDOC.

Al-Skeini and others v. the United Kingdom

United Kingdom required to investigate deaths of six civilians killed in Iraq in 2003 in incidents involving British soldiers

Judgment of 7 July 2011; Application No. 55721/07

Principal facts

Background

On 20 March 2003 the United States of America, the United Kingdom and their coalition partners, through their armed forces, entered Iraq with the aim of displacing the Ba'ath regime then in power. On 1 May 2003 major combat operations were declared to be complete and the United States and the United Kingdom became occupying powers. They created the Coalition Provisional Authority (CPA) "to exercise powers of government temporarily". One of the powers of government exercised by the CPA was the provision of security in Iraq. The security role assumed by the occupying powers was recognised by the United Nations Security Council in Resolution 1483, adopted on 22 May 2003, which called upon them "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". The occupation came to an end on 28 June 2004, when full authority for governing Iraq passed to the Interim Iraqi Government from the CPA, which then ceased to exist.

During the period of the occupation, the United Kingdom had command of the military division – Multinational Division (South East) – which included the province of Al-Basrah, where the applicants' relatives died. From 1 May 2003 onwards the British forces in Al-Basrah took responsibility for maintaining security and supporting the civil administration. Among the United Kingdom's security tasks were: patrols, arrests, anti-terrorist operations, policing of civil demonstrations, protection of essential utilities and infrastructure and protecting police stations.

Individual cases

The applicants, six Iraqi nationals, are: Mazin Jum'Aa Gatteh Al-Skeini,

Fattema Zabun Dahesh, Hameed Abdul Rida Awaid Kareem, Fadil Fayay Muzban, Jabbar Kareem Ali and Colonel Daoud Mousa.

1 Mazin Jum'Aa Gatteh Al-Skeini is Hazim Jum'aa Gatteh Al-Skeini's brother (Hazim Al-Skeini), who was 23 when he died. Hazim Al-Skeini was shot dead in the Al-Majidiyah area of Basrah just before midnight on 4 August 2003 by a soldier in command of a British patrol.
In his witness statement, Mr Al-Skeini explained that, on 4 August 2003, members of his family had been in the village of Al-Majidiyah for a funeral ceremony; in Iraq it is customary for guns to be discharged at a funeral. He stated that he saw soldiers shoot and kill his brother and another man – both unarmed and only about ten metres away from the soldiers – for no apparent reason.
According to the British account of the incident, the patrol, approaching on foot and on a very dark night, heard heavy gunfire in Al-Majidiyah. They saw two Iraqi men in a street in the village, one of whom was about five metres from Sergeant A, who was leading the patrol. Sergeant A saw that he was armed and pointing a gun in his direction. In the dark, it was impossible to tell the position of the second man. Believing that his life and those of the other soldiers in the patrol were at immediate risk, Sergeant A opened fire on the two men without giving any verbal warning.
A charitable donation of 2 500 dollars from the British Army Goodwill Payment Committee was given to the tribe to which the two victims belonged, together with a letter explaining the circumstances of their deaths and acknowledging that they had not intended to attack anyone.
It was decided by UK commanding officers that the incident fell within the applicable Rules of Engagement.[5] As a result, it was also decided that no further investigation was required.

2 Fattema Zabun Dahesh, who has three young children and an elderly mother-in-law to support, is the widow of Muhammad Salim, who was shot and fatally wounded by a British soldier shortly after midnight on 6 November 2003.
Basing her evidence on eyewitness accounts, Ms Dahesh stated that, on 5 November 2003, during Ramadan, Mr Salim went to visit his brother-in-law at his home in Basrah. At about 11.30 p.m. British soldiers raided the house. They broke down the front door. One of the British soldiers came face-to-face with Mr Salim in the hall of the house and fired a shot at him, hitting him in the stomach. The British soldiers took him to the Czech military hospital, where he died on 7 November 2003.
According to the British account of the incident, the patrol had received information through one of their interpreters that a group of heavily-armed men had been seen entering the house. The order was given for a quick search-and-arrest operation. After the patrol failed to gain entry by knocking, the door was broken down. Sergeant C heard automatic gunfire from within the house. Two men armed with long-barrelled weapons rushed down the stairs towards him. There was no time to give a verbal warning. Sergeant C believed that his life was in immediate danger. He fired one shot at the leading man, Mr Salim, and hit him in the stomach.
The applicant's family subsequently informed the patrol that they were lawyers and were in dispute with another family of lawyers over the ownership of office premises, which had led to their being subjected to two armed attacks, one only 30 minutes before the patrol's forced entry. The commanding officer produced a report which concluded that the patrol had deliberately been provided with false intelligence by the other side in the feud.
Ms Dahesh received $2 000 from the British Army Goodwill Payment Committee, together with a letter setting out the circumstances of the killing.
It was decided that the incident fell within the Rules of Engagement and that no further investigation was required.

3 Hameed Abdul Rida Awaid Kareem is the widower of Hannan Mahaibas Sadde Shmailawi, who was shot and fatally wounded on 10 November 2003 at the Institute of Education in the Al-Maaqal area of Basrah, where he worked as a night porter and lived with his wife and family.
In his witness statement, Mr Kareem claimed that, at about 8 p.m. on 10 November 2003, he and his family were sitting round the dinner table when there was a sudden burst of machine-gunfire from outside the building. Bullets struck his wife in the head and ankles and one of his children on the arm. They were taken to hospital, where his child recovered, but his wife died.
According to the British account of the incident, Ms Shmailawi was shot during a fire-fight between a British patrol and a number of unknown gunmen. When the area was illuminated by parachute flares, at least three men with long-barrelled weapons were seen in open ground, two of whom were firing directly at the British soldiers.
It was decided that the incident fell within the Rules of Engagement and that no further investigation was required.

4 Fadil Fayay Muzban is the brother of Waleed Sayay Muzban, aged 43, who was shot and fatally injured on the night of 24 August 2003 by a British soldier in the Al-Maqaal area of Basrah.
Basing his evidence on eyewitness accounts, Mr Muzban stated that his brother was driving a minibus at about 8.30 p.m. on 24 August 2003 when it "came under a barrage of bullets", leaving his brother mortally wounded in the chest and stomach.
Lance Corporal S stated that he had ordered the driver of a suspicious-looking minibus – with curtains over its windows, being driven towards his patrol at slow speed with its headlights dipped – to stop. The driver (Mr Muzban) punched him in the chest and tried to grab his weapon, before accelerating away, swerving in the direction of members of the patrol. Lance Corporal S fired at the vehicle's tyres and it stopped about 100 metres from the patrol. The driver appeared to be reaching for a weapon. Lance Corporal S believed that his team was

5. The Rules of Engagement stipulated, among other things, that firearms be used only as a last resort, to protect human life, and that a challenge had to be given before firing unless it would increase the risk of death or injury to those under threat.

about to be fired on. He therefore fired a number of shots. The driver got out and was ordered to lie on the ground. The patrol checked the minibus for other armed men; it was empty. The driver had three bullet wounds in his back and hip. He was given first aid and then taken to the Czech military hospital where he died.
The Royal Military Police Special Investigation Branch (SIB) started an investigation on 29 August 2003. Material was collected from the scene of the shooting and statements were taken from the soldiers present, except Lance Corporal S, who had shot Mr Muzban. The commanding officers concluded that the case fell within the Rules of Engagement and successfully requested that the SIB investigation be terminated.
The deceased's family received $1 400 from the British Army Goodwill Payment Committee and a further $3 000 in compensation for the minibus.
Following Mr Muzban's application for judicial review (see below), the investigation was reopened some nine months later, and forensic tests were carried out. Prosecutors took depositions from the soldiers, including Lance Corporal S. The investigation was completed on 3 December 2004. An independent senior lawyer advised that there was no realistic prospect of establishing that Lance Corporal S had not fired in self-defence. The file was sent to the Attorney General, who decided not to exercise his jurisdiction to order a criminal prosecution.

5 Jabbar Kareem Ali is the father of Ahmed Jabbar Kareem Ali, who died on 8 May 2003, aged 15.
According to statements he made in the United Kingdom courts, Mr Ali searched for his son on 8 May 2003 when he did not return home at 1.30 p.m. as expected. He was told that his son and three other Iraqi youths had been arrested by British soldiers that morning, in the context of a crack-down on looting. They were allegedly beaten and forced into the Shatt Al-Arab river. His son could not swim and his body was found in the water on 10 May 2003.
The SIB opened an investigation. Four soldiers were tried for manslaughter at a court martial held between September 2005 and May 2006, but by that time another three soldiers suspected of involvement had gone absent without leave. It was the prosecution case that the soldiers had driven the four youths to the river and forced them in at gunpoint "to teach them a lesson" because they were suspected of looting. The soldiers were acquitted when the key prosecution witness, one of the other Iraqi youths forced into the water at the same time as Ahmed, was unable to identify them.
Mr Ali brought civil proceedings against the Ministry of Defence for damages in respect of his son's death. He received 115,000 pounds sterling on 15 December 2008 and a formal apology from the British Army.

6 Colonel Daoud Mousa was a colonel in the Basrah police force. His son, Baha Mousa, was aged 26 when he died in the custody of the British Army, three days after having been arrested by soldiers on 14 September 2003.
According to Colonel Mousa, early in the morning of 14 September 2003, he went to pick his son up from work at the Ibn Al-Haitham Hotel in Basrah. He found his son and six other hotel employees lying on the floor of the hotel lobby with their hands behind their heads. He was told it was a routine investigation that would be over in a couple of hours. On the third day after his son had been detained, members of the Royal Military Police informed Colonel Mousa that his son had been killed in custody at a British military base in Basrah. He was asked to identify the corpse. Baha Mousa's body and face were covered in blood and bruises; his nose was broken and part of the skin of his face had been torn away.
A hotel employee, who was arrested on 14 September 2003, testified that Iraqi detainees were hooded, forced to maintain stress positions, denied food and water and kicked and beaten in detention and that Baha Mousa was taken into another room, where he was heard screaming and moaning.
The SIB was immediately called in to investigate the death of Baha Mousa, who was found to have 93 identifiable injuries on his body and to have died of asphyxiation.
Colonel Mousa brought civil proceedings against the Ministry of Defence, which concluded in July 2008 with a formal and public acknowledgement of liability and the payment of £575 000 in compensation. In a written statement given in Parliament on 14 May 2008, the Secretary of State for Defence announced that there would be a public inquiry into the death of Baha Mousa. It has yet to deliver its report.

Legal proceedings

On 26 March 2004 the Secretary of State for Defence decided, in connection with the deaths of the relatives of all six applicants (among others): not to conduct independent inquiries into the deaths; not to accept liability for the deaths; and, not to pay just satisfaction. The applicants applied for judicial review.

On 14 December 2004 the Divisional Court accepted only Colonel Mousa's claim and rejected the claims of the first four applicants; the claim of the fifth was stayed. The court held that the state was normally only required to apply the Convention within its own territory. There were some exceptions to that rule, and the fact that Baha Mousa had been killed on a British military base brought him within such an exception. However, the United Kingdom was not required to apply the Convention in respect of the other applicants' relatives. The court found that there had been a breach of the investigative duty under Articles 2 and 3 of the Convention concerning Baha Mousa since, by July 2004, some 10 months after the killing, the results of the investigation were unknown and inconclusive.

All appeals to the Court of Appeal were dismissed on 21 December 2005, because the Court of Appeal did not find that the deaths, except that of Baha Mousa, fell within United Kingdom jurisdiction. The Court of Appeal commented, however, that, if international standards were to be observed, the Royal Military Police, including the SIB, had to be made fully operationally independent from the military chain of command when investigating the alleged killing of civilians by British forces.

On 13 June 2007 the majority of the House of Lords found that, except in respect of Baha Mousa, the United Kingdom did not have jurisdiction over the victims' deaths. The Secretary of State had already

accepted that Baha Mousa's death fell within the United Kingdom's jurisdiction under the Convention.

On 25 January 2008 the Ministry of Defence published the Aitken Report concerning six cases of alleged deliberate abuse and killing of Iraqi civilians, including the deaths of the fifth and sixth applicants' sons. The report criticised the lack of a more immediate, effective system for referring important information to those with the capacity to analyse it and delays in the time it had taken to resolve some of the cases.

Complaints and procedure

The applicants alleged that their relatives were within the jurisdiction of the United Kingdom under Article 1 (obligation to respect human rights) of the Convention when they were killed through the acts of the British armed forces. They complained under Article 2 (right to life) and, in the case of the sixth applicant Article 3 (prohibition of inhuman and or degrading treatment), about the failure to carry out a full and independent investigation into the circumstances of each death.

The application was lodged with the Court on 11 December 2007. On 19 January 2010 the Chamber relinquished jurisdiction in favour of the Grand Chamber, and on 9 June 2010 a public hearing was held in the Human Rights Building in Strasbourg.

Decision of the Court

The European Court of Human Rights held, unanimously, that:
in the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from 1 May 2003 to 28 June 2004, the United Kingdom had jurisdiction under Article 1 (obligation to respect human rights) of the European Convention on Human Rights in respect of civilians killed during security operations carried out by United Kingdom soldiers in Basrah;
and that there had been a failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants, in violation of Article 2 (right to life) of the Convention

Article 1

The principal issue in the case was whether the European Convention on Human Rights applied in respect of the killing of Iraqi civilians in Iraq by British soldiers between May and November 2003. The Court had to decide whether the applicants' relatives fell within the "jurisdiction" of the United Kingdom within the meaning of Article 1 of the Convention.

The Court referred to its previous case-law in which it held that a state is normally required to apply the Convention only within its own territory. An extra-territorial act would fall within the state's jurisdiction under the Convention only in exceptional circumstances. One such exception established in the Court's case-law was when a state bound by the Convention exercised public powers on the territory of another state.

In today's case, following the removal from power of the Ba'ath regime and until the accession of the Iraqi Interim Government, the United Kingdom (together with the United States) assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in South East Iraq. In those exceptional circumstances, a jurisdictional link existed between the United Kingdom and individuals killed in the course of security operations carried out by British soldiers during the period May 2003 to June 2004. Since the applicants' relatives were killed in the course of United Kingdom security operations during that period, the United Kingdom was required to carry out an investigation into their deaths.

Article 2 (effective investigation)

The applicants complained that the United Kingdom Government had not fulfilled its duty to carry out an effective investigation into their relatives' deaths.

The Court referred to its previous case-law that the obligation to protect life required that there should be an effective official investigation when individuals had been killed as a result of the use of force by state agents.

The Court took into account the practical problems caused to the investigatory authorities by the fact that the United Kingdom was an occupying power in a foreign and hostile region in the immediate aftermath of invasion and war. Those practical problems included a breakdown in the civil infrastructure, leading to shortages of local pathologists and facilities for autopsies; the scope for linguistic and cultural misunderstandings between the occupiers and the local population; and the danger inherent in any activity in Iraq at that time. In those circumstances the procedural duty under Article 2 had to be applied realistically, to take account of specific problems faced by investigators.

Nonetheless, the fact that the United Kingdom was in occupation also entailed that, if any investigation into acts allegedly committed by British soldiers was to be effective, it was particularly important that the investigating authority was, and was seen to be, operationally independent of the military chain of command.

It was not at issue in the first, second and fourth applicants' cases that their relatives were shot by British soldiers, whose identities were known. The question was whether in each case the soldier fired in conformity with the Rules of Engagement. In respect of the third applicant, Article 2 required an investigation to determine the circumstances of the shooting, including whether appropriate steps were taken to safeguard civilians in the vicinity. As regards the fifth applicant's son, it needed to be determined whether British soldiers had, as alleged, beaten the boy and forced him into the river. In each case eye-witness testimony was crucial. It was therefore essential that, as quickly after the event as possible, the military witnesses, and in particular the alleged perpetrators, should have been questioned by an expert and fully independent investigator. Similarly, every effort should have been taken to identify Iraqi eye witnesses and to persuade them that they would not place themselves at risk by coming forward and giving information and that their evidence would be treated seriously and acted upon without delay.

It was clear that the investigations into the shooting of the first, second and third applicants' rela-

tives failed to meet the requirements of Article 2, since the investigation process remained entirely within the military chain of command and was limited to taking statements from the soldiers involved.

As regards the other applicants, although there was an SIB investigation into the death of the fourth applicant's brother and the fifth applicant's son, the Court did not consider that that was sufficient to comply with the requirements of Article 2, since (as the Court of Appeal also found) the SIB was not, during the relevant period, operationally independent from the military chain of command.

In contrast, a full, public inquiry was nearing completion into the circumstances of Baha Mousa's death. In the light of that inquiry, the sixth applicant was no longer a victim of any breach of the procedural obligation under Article 2.

In conclusion, the Court found a violation of Article 2 concerning the lack of an effective investigation into the deaths of the relatives of the first, second, third, fourth and fifth applicants.

Article 41

Under Article 41 (just satisfaction), the Court held that the United Kingdom was to pay the first five applicants €17 000 each, in respect of non-pecuniary damage; and €50 000 jointly, in respect of costs and expenses.

Separate opinions

Certain judges expressed separate opinions, which can be consulted on HUDOC.

Selected Chamber judgments

Georgel and Georgeta Stoicescu v. Romania

Romanian authorities failed to protect 71-year-old woman who was left disabled after being bitten by stray dogs

Judgment of 26 July 2011; Application No. 9718/03

Principal facts

The applicant Georgeta Stoicescu, now deceased, was a Romanian national born in 1929 who lived in Bucharest. Her husband and heir, Georgel Stoicescu, a Romanian national born in 1926 and living in Bucharest, continued her case following her death on 29 December 2007.

On 24 October 2000 Ms Stoicescu, then aged 71, was attacked, bitten and knocked to the ground by a pack of around seven stray dogs in front of her home in the Pajura neighbourhood, a residential area in Bucharest.

At the relevant time, the large numbers of stray dogs in Romanian cities was already a public health and safety issue. The international media had covered the issue since the mid-1990s. By 2000 there were some 200,000 stray dogs in Bucharest.

Following the attack, Ms Stoicescu was left with a head injury and a fractured thigh bone and needed to spend four days in hospital. After being discharged, she was prescribed medical treatment, but could not afford to pay for it. The couple were retired, with a monthly income in Romanian lei (ROL) equivalent to 80 euros. They claimed they had to live at subsistence level and that, as a result, Ms Stoicescu had lost weight. She started suffering from amnesia and shoulder and thigh pains and had difficulty walking. She also lived in a constant state of anxiety and never left home for fear of another attack. By 2003 she had become totally immobile. Her health continued to deteriorate such that, by 4 June 2003, she was declared disabled and granted free medical care.

On 10 January 2001 Ms Stoicescu, represented by her husband, claimed damages on the ground that, following the attack, she had become disabled. At the first hearing the court noted that she had not paid the statutory court fee and ordered her to pay ROL 6,145,000 (250 euros), four times her family's monthly income. She paid only ROL 500,000 (20 euros), borrowed from various acquaintances. On 6 March 2001 the court declared her civil action invalid for non-payment of the full court fee. The couple appealed.

In March 2001 the Mayor of Bucharest announced that stray dogs would be put down.

He stated that: in 2000, 22,000 people had needed medical care after being attacked by stray dogs; from the beginning of 2001 more than 6,000 people had been bitten by stray dogs; and, children and the elderly were most vulnerable to attack.

On 19 April 2001 Bucharest General Council issued Decision No. 82 and the Government adopted Emergency Decree No. 155/2001 –which entered into force on 13 December 2001 - which provided for stray dogs to be captured and neutered or put down.[6]

On appeal, on 19 June 2001, Bucharest County Court held that the Animal Control Agency (ACA), a public body, had not taken all necessary measures to protect the public and that the attack on Ms Stoicescu had put her life and health in danger, causing her physical and psychological suffering. Bucharest Mayor's Office was ordered to pay her non-pecuniary damages of ROL 10,000,000 (approximately 400 euros), which was 10% of the damages she had claimed.

Bucharest City Hall appealed successfully, claiming that it did not have legal capacity as the defendant because the ACA was under the authority of the Bucharest Municipal Council and not the Bucharest Mayor's Office.

On 28 June 2002 the applicant, represented by her husband, filed an unsuccessful civil action with Bucharest District Court requesting damages of ROL 50,000,000 (2,000 euros) from the ACA and Bucharest Municipal Council. Her appeal was also dismissed.

The problem of stray dogs has still to be resolved. According to the Prefect of Bucharest, 9,178 people were bitten by stray dogs in Bucharest in the first six months of 2009, including 1,678 children. According to an ACA report, 38% of the dogs they picked up from the streets of Bucharest in the first half of 2009 were infested with leptospirosis.[7]

On 27 April 2010 the prefect indicated that: there were 40,000-

6. The use of euthanasia was criticised by international public figures, such as the actress Brigitte Bardot, who, in 2001, donated some 100,000 Euros to the City of Bucharest to sterilise stray dogs rather than killing them.

100,000 stray dogs in Bucharest; in 2009 around 7,000 people had been bitten in Bucharest by stray dogs; and, in the first four months of 2010 more than 2,000 people had been bitten by stray dogs. He also announced that he had proposed a draft law allowing stray dogs to be put down in certain circumstances.

In January 2011, an elderly woman was bitten to death by stray dogs in the centre of Bucharest.

Complaints

Relying in particular on Article 8 of the Convention, Ms Stoicescu complained that she had been attacked by a pack of stray dogs because the local authorities had failed to take adequate measures to control stray dogs in Bucharest. Relying on Article 6 § 1, she also complained that her two civil actions for damages had been dismissed.

Decision of the Court

The Court held:

- By a majority, that there had been a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights; and,
- Unanimously, that there had been a violation of Article 6 § 1 (access to court) of the Convention.

Article 8

The Court noted that Ms Stoicescu was attacked, bitten and knocked to the ground by a pack of about seven stray dogs in a residential area of Bucharest and that she had undoubtedly suffered both physically and psychologically as a result of that attack and its consequences.

The Romanian authorities had extensive and detailed information on the problem of stray dogs, in particular the large number of strays in the city of Bucharest and the danger they posed to the public. The data available to the authorities also confirmed the regular occurrence of such attacks in Bucharest.

In 2001, after the attack on Ms Stoicescu, the authorities acknowledged that there was a particular problem with attacks by stray dogs; on 19 April 2001 they issued Decision No. 82 and subsequently Emergency Decree No. 155/2001.

The Court acknowledged that, even before the attack on Ms Stoicescu, regulations were in force in Romania providing a legal basis for the creation of specific structures to control stray dogs. Those regulations were also modified several times after the incident in 2000, mainly concerning the organisation and supervision of the structures in charge of controlling stray dogs and the way those dogs were treated after their capture. However, the Court noted that, despite those regulations, the situation remained critical, with several thousands people being injured by stray dogs in Bucharest alone. The Court agreed with the Romanian Government that responsibility for the general situation of stray dogs in Romania also lay with civil society. It was not for the Court to determine the best policy for dealing with such public safety problems. An impossible or disproportionate burden should not be imposed on the authorities without considering the operational choices which had to be made in terms of priorities and resources.

The Court noted that the judgment of 19 June 2001 addressed the merits of Ms Stoicescu's complaints. However, it was quashed for procedural reasons and her subsequent attempts to have a court decision providing her with appropriate redress also failed.

The Court observed that the Romanian Government had failed to identify any concrete measures taken by the authorities at the time of the incident to implement existing laws in order to tackle the serious problem posed by stray dogs. Neither had they indicated whether the regulations or practices at the time of the incident or adopted later were capable of providing appropriate redress to victims of attacks by stray dogs. In addition, the problem appeared not to have been resolved.

The Court therefore found that the inadequate measures taken by the Romanian authorities to deal with stray dogs in Ms Stoicescu's case, combined with their failure to provide her with appropriate redress for her injuries, was in violation of Article 8.

Article 6 § 1

The Court observed that, theoretically, Romanian law allowed Ms Stoicescu to bring judicial proceedings for compensation under the Civil Code. She did so. Despite her limited means, she had had to pay court fees to have her case heard, but, given the domestic law providing that court fees be calculated on a percentage of the claims, she had had to limit her claims before the domestic courts. Moreover, although Bucharest County Court ruled on 19 June 2001 that she was exempted from paying the court fee, the money she had paid was never returned to her.

The Court further noted that Ms Stoicescu did not obtain a final ruling on the merits of her civil claim because her case was repeatedly dismissed without examination, on the ground that she had failed to identify the local authority responsible for supervising the body in charge of stray dogs.

According to two Local Administration Acts, municipal councils were in charge of setting up services for stray dogs and the mayor's offices were responsible for implementing the councils' policies. In Ms Stoicescu's case, the stamp on the paper issued by the ACA had "Bucharest Mayor's Office" embossed on it. She could therefore have reasonably believed – and neither the relevant Romanian court nor the defendant authority had stated otherwise - that the Bucharest's Mayor Office had legal standing before a court in a matter concerning the ACA's activities and responsibilities.

The Court therefore found that shifting onto Ms Stoicescu the duty of identifying the authority against which she should bring her claim was a disproportionate requirement and failed to strike a fair balance between the public interest and her rights. Consequently, the Court found that she could not claim compensation in court for the attack and concluded that she did not have an effective right of access to a court, in violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay Mr Stoicescu 9,000 euros in respect of non-pecuniary damage and 20 euros in respect of costs and expenses.

Separate opinion

Judge López Guerra expressed a separate opinion which can be consulted on HUDOC.

7. Leptospirosis is an infectious disease transmissible to humans, which can cause meningitis, liver damage and renal failure.

Šneersone and Kampanella v. Italy

Court order to return young boy living with his mother in Latvia to his father in Italy in breach of the Convention

Judgment of 12 July 2011
Application No. 14737/09

Principal facts

The applicants, Jeļizaveta Šneersone and her son Marko Kampanella, are Latvian nationals who were born in 1973 and 2002 respectively and live in Riga. Marko was born in Italy the year before his parents separated. After the separation, in 2003, Ms Šneersone moved with Marko to a different residence. According to her, since Marko's birth, she has taken care of him and his father's involvement has been minimal.

In September 2004, the Rome Youth Court granted custody of Marko to his mother allowing his father to see him periodically. The father's appeal against that decision was rejected, as the court found that the mother was unlikely to take the child abroad without the father's agreement.

In June 2005, a judge authorised the issuing of a passport to Marko, and in February 2006 the court ordered his father to support him financially. Apparently, because of the failure of Marko's father to pay and Ms Šneersone's lack of resources, she and Marko left Italy for Latvia in April 2006.

On an unspecified date, upon the father's request, the Rome Youth Court granted sole custody of Marko to the father and held that the child had to live with his father.

In accordance with the Hague Convention concerning child abduction, the Italian Ministry of Justice asked the Latvian authorities to return Marko to Italy. The Latvian courts decided in 2007 that Marko's return to Italy would not be in his best interests. That decision was supported by the findings of a psychologist who concluded that separating Marko from his mother would inevitably negatively affect the child and might even provoke neurotic problems and illnesses.

In April 2008, upon a request from Marko's father, the Rome Youth Court ordered Marko's return to Italy on the basis of the 2003 European Council Regulation No. 2201/2003 concerning jurisdiction in matters of parental responsibility. In August that year, the Italian authorities asked Latvia to act upon the Rome Youth Court's decision and send Marko to Italy. Ms Šneersone's appeal was rejected by the Rome Court of Appeal which adopted its decision in written proceedings without hearing the parties but after taking into account their written observations. In July 2009, the bailiff of the Latvian court entrusted with the implementation of the decision ordering Marko's return aproached Marko's father inviting him to reestablish contact with his son. Apparently, the father has not reacted.

In October 2008, Latvia brought an action against Italy before the European Commission in connection with the return proceedings. It claimed in particular that Italy had respected neither the Regulations nor the decisions of the Latvian courts concerning Marko. The Commission issued a reasoned opinion, finding that Italy had not violated the Regulations nor the general principles of community law.

Complaints

Relying in particular on Article 8, Ms Šneersone and her son Marko Campanella complained that the Italian courts' decisions ordering Marko's return to Italy were contrary to his best interests and a violation of international and Latvian law, and that Ms Šneersone had not been present at the hearing of the Rome Youth Court.

Decision of the Court

The Court of Human Rights held, by a majority, that there had been:

A violation of Article 8 (right to protection of private and family life) of the European Convention on Human Rights.

Article 8

The Court recalled that it had previously developed, in the case of *Neulinger and Shuruk v. Switzerland,* a number of principles on the question of international abduction of children. It then noted that neither the Italian Government nor the applicants disputed that Marko's removal had been wrongful under the Hague Convention on international child abductions and that the Italian courts' decision to return him to Italy had the legitimate aim of protecting the right and freedoms of the child and his father. However, the Court observed that the Italian courts' decisions had provided little reasoning. Thus, despite the conclusions of the Latvian courts and the psychological reports drawn in respect of Marko, the Italian courts had not dealt with the risk that Marko's separation from his mother might leave him with neurotic problems or an illness. Neither had they paid any attention to the fact that Marko's father had not attempted to see his son since 2006. Further, the Italian courts had not tried to establish whether Marko's father's home was suitable for young children and had also imposed conditions, originally proposed by the father, according to which Marko's mother had to see her son for only a month every second year after a short initial period together. The Court held that those conditions were an inappropriate response to the psychological trauma that would inevitably follow a sudden and irreversible severance of the close ties between the mother and her child. Finally, the Italian courts had not considered any alternative solutions for ensuring contact between Marko and his father. Consequently, the Court concluded that there had been a violation of Article 8 as a result of the order to return Marko to Italy.

The Court noted that both Marko's father and mother had submitted, with the help of a lawyer, detailed written statements before the Italian courts. Therefore, the Court found that the proceedings had been fair and there had not been a violation of Article 8 on account of Ms Šneersone's absence from the hearing of the Rome Youth Court.

Other articles

The Court rejected the rest of the applicants' complaints.

Just satisfaction (Article 41)

The Court held that Italy was to pay Marko and his mother jointly 10 000 euros (EUR) in respect of non-pecuniary damage and 5 000 euros for costs and expenses.

Separate opinions

Judge Popović expressed a dissenting opinion the text of which can be found at the end of the judgment.

Wizerkaniuk v. Poland

Journalist wrongly convicted for publishing an interview with a politician without his consent

Judgment of 5 July 2011
Application No. 18990/05

Principal facts

The applicant, Jerzy Wizerkaniuk, is a Polish national who was born in 1952 and lives in Kościan (Poland). He was the editor-in-chief and a co-owner of a local newspaper, *Gazeta Kościańska*.

In February 2003, two journalists working for that newspaper interviewed a member of parliament. The interview, which took place in the parliamentarian's office, was tape-recorded and lasted for about two hours. Having seen the text of the interview before it was printed in the newspaper, the parliamentarian refused to authorise its publication.

About two months after the interview had taken place, the newspaper published parts of it, word for word as recorded on the tape. The text specified that the parliamentarian had refused to authorise the publication.

A few days later, following a complaint by the parliamentarian to the prosecutor, criminal proceedings were opened against Mr Wizerkaniuk on charges of publishing an interview without the authorisation of the person interviewed. The relevant law, the 1984 Press Act, provided for a criminal sanction if interviews were published without the interviewed person's consent. Mr Wizerkaniuk was found guilty as charged and sentenced to a fine, the courts having concluded that his actions had breached the parliamentarian's personal rights.

Mr Wizerkaniuk unsuccessfully challenged the constitutionality of the Press Act before the Polish Constitutional Court, despite the Prosecutor General, the Speaker of the Parliament and the Ombudsman all having submitted opinions to the fact that the law was incompatible with the Constitution. The Constitional Court did not consider civil law remedies, available after an infringment of personal rights was found, sufficient to provide effective redress in that respect.

In addition, it held that, if journalists chose to summarise the statements of an interviewed individual, they were not obliged to seek authorisation to publish them nor to inform the person who made them prior to publication. The court concluded that the legal requirement for authorisation before publication was a guarantee for readers that the statements purportedly made during interviews were authentic.

One Constitutional Court judge expressed a dissenting opinion to the effect that the authorisation requirement was in fact censorship which made it impossible for the reader to know what an interviewee had originally said. It was thus possible to dissuade journalists from asking uncomfortable questions for fear that the publication might be stopped. The imposition of a criminal sanction for publishing unauthorised interviews was therefore excessive and had a chilling effect on public debate, the dissenting judge concluded.

Complaints

Relying on Article 10, Mr Wizerkaniuk complained about his criminal conviction.

Decision of the Court

The Court held, unanimously, that there had been: A violation of Article 10 (freedom of expression and information) of the European Convention on Human Rights.

Admissibility

The Court noted that it had accepted in its earlier case-law that a complaint before the Polish Constitutional Court was an effective remedy for the purposes of the Convention. However, the Court observed that Mr Wizerkaniuk had lodged his application before the Constitutional Court only after he had brought his application before the Court. Consequently, the application was admissible before the Court.

Freedom of expression (Article 10)

The Polish courts had applied the relevant law, the 1984 Press Act, and as a result had convicted Mr Wizerkaniuk for publishing an interview without the prior consent of the interviewed individual. The Court emphasised that an obligation to verify that quotations were accurate was journalists' professional duty. However, it warned that the existence of a threat of criminal sanctions for journalists because of their work would inevitably have a chilling effect on the exercise of journalistic freedom of expression, which in turn would have a detrimental effect on society as a whole.

The Court then recalled that politicians, because of the role they assumed in society, had knowingly opened themselves to public scrutiny and therefore had to display a greater degree of tolerance to criticism than private individuals. Mr Wizerkaniuk had interviewed the parliamentarian about his political and business activities, a matter of general public interest which Mr Wizerkaniuk had been entitled to publicise and about which the local community had been entitled to be informed.

The Polish courts had imposed a criminal sanction on Mr Wizerkaniuk as an automatic punishment for publishing an interview without authorisation. The politician had not been obliged to give any reasons for refusing to authorise the publication of his interview. In addition, the criminal sanction had been entirely unrelated to the content of the article as the publication had not distorted in any way the words of the politician during the interview. The courts had not been required by domestic law to consider the fact that the interviewed person was a politician. The law had allowed interviewees to prevent journalists from publishing any interview they regarded as embarrassing or unflattering, regardless of how thruthful or accurate it was. Consequently, the law could have resulted in dissuading journalists from putting probing questions for fear that their interlocutors might later block the publication of the entire interview by refusing to grant an authorisation.

The Court had accepted in its earlier case-law that damages, awarded after an article had been published, to people whose private life rights had suffered as a result of publications, were an adequate remedy for such violations.

The Press Act had been published almost three decades ago, before the collapse of the communist system in Poland and at a time when all media had been subjected to preventive censorship. The Court found that the way the law had been applied in respect of Mr Wizerkaniuk, had not been compatible with freedom of expression in a democratic society. Finally, the Court acknowledged the unanimous agreement of the other legal au-

thorities in the country which had considered that the Press Act had been incompatible with the Constitution. It also found paradoxical the fact that the more accurately journalists presented a piece of information, by providing citations during interviews, the higher the risk they ran of being criminally prosecuted if no authorisation was obtained.

The Court concluded that the criminal sanctions imposed on Mr Wizerkaniuk had been in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Poland was to pay Mr Wizerkaniuk 256 euros in respect of pecuniary damage, 4 000 eurosin respect of non pecuniary damage and 4 100 euros for costs and expenses.

Separate opinions

Judges Bratza and Hirvelä expressed a joint concurring opinion, and Judges Garlicki and Vučinić expressed a separate joint concurring opinion, which can be consulted on HUDOC.

M. and C. v. Romania

Romanian authorities' investigation into sexual abuse of three-year old boy was inadequate

Judgment of 27 September 2011
Application No. 29032/04

Principal facts

The applicants are C.M. and her son, A.C., Romanian nationals who were born in 1965 and 1994 respectively and live in Saint-Priest, France. C.M. is a Jehovah's Witness.

In December 1994 C.M. filed for divorce from her son's father, D.C., on the grounds of his volatile and violent behaviour. She was granted full custody of their son in February 1995. In July 1995 she brought criminal proceedings against her ex-husband for hitting and threatening to kill her for which he was later convicted and sentenced to six months' imprisonment. The courts held in particular that C.M. lived in fear of her ex-husband and, as a result, repeatedly had to move home with her son. Criminal proceedings for aggressive behaviour were also brought against D.C. both by C.M.'s sister as well as the Jehova Witnesses Congregation.

On 14 July 1998 C.M. lodged a criminal complaint against her former husband, alleging that her son had told her that he had been sexually abused by his father during a visit on 4 July 1998. An investigation was launched during which witnesses were heard and medical and psychological reports were ordered and carried out. Two witnesses stated that they had been told by the boy that he had been sexually assaulted; that they had witnessed D.C.'s violent behaviour towards his ex-wife; and, that they had seen the boy undressing and touching other children. Two medical reports of July and August 1998 noted that the child had lesions in the anal area which could have been caused by a sexual assault. Both parties were heard and took a lie detector test. The father passed the test and was considered sincere when denying that he had sexually abused his son.

However, the mother failed on three out of the ten questions relating to whether she had set up or been involved in setting up the assault on her child. In June 1999 the child himself was heard by the police in the presence of his mother, a psychologist and lawyer and in June 2000 a psychologist's report noted that the child had permanent anxiety about his body which indicated possible repeated paternal sexual abuse. In March 2000 the prosecuting authorities decided not to indict D.C., as the witness statements had mainly been based on the word of a four-year old, who was unable to distinguish reality from fiction, and, of a mother who had failed a lie detector test and was involved in a conflict over child custody. That decision was then quashed in September 2000 and a further investigation was ordered with instructions to look into the medical and psychological reports which corroborated the accusation of sexual abuse. In July 2003 the prosecuting authorities, on the basis of the evidence already in the case file and used to take the decision of March 2000, again decided not to press charges. C.M.'s appeal was ultimately dismissed in March 2004.

On account of the criminal investigation pending against his father and at the request of his mother, A.C. was temporarily placed in care from August 1998 until October 1999. Both parents had weekly contact with the child. The measure was discontinued at the mother's request; they were immediately reunited and continue to live together. In the meantime, between January 1998 and October 2002, D.C. brought three sets of proceedings in which he applied for custody of his son. All three claims were dismissed, at first on account of his violent behaviour and the negative impact this could have on his son, and subsequently due to the conflict between the parents.

In May 2001 C.M. lodged a civil complaint seeking to limit her ex-husband's contact rights to two visits per month and only in her presence. Her complaint was dismissed at first-instance. The court considered that C.M., a Jehova's Witness, had been consistently determined to end any kind of relationship between her son and his father and that the real reason for this was that D.C. was no longer himself a member of the Jehova's Witnesses. It concluded that C.M. herself could have caused the injuries to her child in an attempt to set her ex-husband up. The courts also dismissed the complaint on appeal in February 2005. They found this time that D.C. had not been convicted of any unlawful behaviour, violent or otherwise, and that the evidence showed that meetings between D.C. and his son had been normal, the child being happy every time he saw his father.

In taking this decision the courts took into consideration both the interests of the child as well as the right of the divorced parent without custody to maintain personal ties.

Complaints

C.M. alleged, on her own and her son's behalf, that the Romanian authorities had failed to ensure adequate protection of her son, a minor, from alleged sexual abuse by his father. She also complained about the separation from her child due to his placement in care and her subsequent limited contact rights. The applicants relied in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life). Further relying on Article 6 (right to a fair trial) and Article 14 (prohibition of discrimination), C.M. also alleged that the civil proceedings she had brought on contact rights had been unfairly dismissed on account of her religious beliefs.

Decision of the Court

The Court held:

- By six votes to one, that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment – lack of effective investigation) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights on account of the Romanian authorities' failure in the case to establish and effectively apply a criminal-law system to punish all forms of sexual abuse;
- Unanimously, that there had been no violation of Article 8 of the Convention as concerned the separation of the boy from his mother and her limited contact rights; and,
- Unanimously, that there had been no violation of Article 14 taken together with Article 6 concerning the proceedings brought by the mother to limit the father's contact rights.

Articles 3 and 8

Whether A.C. had been given adequate protection from sexual abuse

First, the Court noted that the Romanian authorities had reacted diligently to C.M.'s request to protect her son from his father's alleged sexual abuse by temporarily placing him in care. Moreover, an investigation had been carried out involving all parties with witnesses being heard and expert medical and psychological reports and lie detector tests being ordered and carried out. The Romanian authorities had faced a difficult and sensitive task with conflicting versions of events and little direct evidence. The Court recognised the efforts made by the authorities in their work on the case, with the courts giving reasoned decisions to explain their position in detail. However, little had been done to actually test the credibility of the parties' or witnesses' versions of events. In particular, no attempt had been made to establish exactly why the child had had inappropriate behaviour towards other children, as witnessed by his carers. Moreover, in their final decision of July 2003 discontinuing the criminal proceedings brought against D.C., the prosecuting authorities had relied exclusively on the evidence already available without observing the further instructions to look into the accusations corroborated by medical and psychological reports. The domestic courts then dismissed C.M.'s complaint against that decision without paying any attention to the question raised by the courts themselves about D.C.'s violent behaviour. Similarly, the authorities could also be criticised for attaching little weight to the particular vulnerability and psychology of the young victim in the case, as shown in the psychologist's report of June 2000. Indeed, although the authorities suspected C.M.'s potential involvement in the abuse, they had failed to examine the possibility of opening a criminal investigation against her. Lastly, the investigation, pending before the prosecuting authorities for a year and ten months with no further evidence being produced in spite of specific instructions to do so, had been significantly delayed. The Court therefore held that the investigation into the case had fallen short of Romania's obligation to effectively apply the criminal-law system to punish all forms of sexual abuse, in violation of both Articles 3 and 8.

C.M.'s complaint about separation from her son and limited contact

The child had been placed in a care home at his mother's request and for a limited amount of time. Contact had been allowed with both parents on a regular basis. The Court therefore considered that the authorities had shown the degree of prudence and vigilance necessary in such a delicate and sensitive situation, and had not done so to the detriment of C.M.'s rights or the superior interests of the child. Consequently, there had been no violation of Article 8 as regards C.M.'s complaint.

Article 6 § 1 and Article 14

Although the first-instance court had touched upon the fact that C.M. was a Jehovah's witness, their judgment had not been final and there was no evidence that that angle had subsequently been endorsed in any way by the appellate courts. Indeed, the primary concern of the courts when examining the appeal had been the child's best interests, such as whether the meetings between the child and his father had been positive. Other considerations had been the policy of preserving the rights of the divorced parent without custody to maintain personal ties with the child. In sum, nothing in the case suggested that the Romanian courts could have decided differently had it not been for C.M.'s religion. Consequently, the Court held that there had been no violation of Articles 6 or 14.

Other complaints

Given the findings above, the Court found that there was no need to rule separately on the applicants' other complaints.

Article 41 (just satisfaction)

The Court held that Romania was to pay 13 000 euros in respect of non-pecuniary damage to A.C and 500 euros, jointly to both applicants, for costs and expenses.

Separate opinion

Judge Egbert Myjer expressed a separate opinion which can be consulted on HUDOC.

Ullens de Schooten and Rezabek v. Belgium

Highest Belgian courts refusal to refer questions to Court of Justice not in breach of the Convention

Judgment of 20 September 2011
Applications Nos. 3989/07 and 38353/07

Principal facts

The applicants, Fernand Ullens de Schooten and Ivan Rezabek, are Belgian nationals who live in Bonlez and Brussels (Belgium) respectively. They were directors of an accredited laboratory named Biorim which carried out clinical tests eligible for reimbursement by the National Sickness and Invalidity Insurance Institute (INAMI).

In the first case, brought by Mr Ullens de Schooten and Mr Rezabek, the laboratory was apparently searched on 21 November 1989 following a complaint from the Special Tax Inspectorate. Proceedings were brought against both applicants for, among other offences, forgery and failure to comply with Article 3 of Belgian Royal Decree No. 143 of 30 December 1982 (Article 3 of the decree), which only allowed people holding certain qualifications to operate laboratories carrying out clinical tests eligible for reimburse-

ment under the sickness and invalidity insurance scheme.

On 29 May 1996 the applicants were ordered to stand trial before Brussels Criminal Court for trying to deceive the authorities "responsible for monitoring implementation of the legislation on the operation of medical laboratories". A number of mutual insurance companies applied to join the proceedings as civil parties, seeking compensation on the ground that the applicants had engaged in fee sharing and had operated a clinical laboratory in breach of the provisions of Article 3 of the decree. The civil parties claimed 19 908 531 euros, the total amount paid to the laboratory between 1 January 1990 and 16 April 1992.

On 30 October 1998 the criminal court fined and sentenced the applicants, observing in particular that Mr Ullens de Schooten had run the laboratory from 1 January 1990 to 10 June 1997 in breach of Article 3 of the decree and had devised various means of circumventing the legislation. The court declared the civil parties' claims admissible. On 7 December 1999 Mr Ullens de Schooten lodged a complaint against Belgium with the European Commission, arguing that Article 3 of the decree was incompatible with the Treaty establishing the European Community (the Treaty).

On 17 July 2002 the European Commission confirmed that Article 3 of the decree was incompatible with Article 43 of the Treaty.

On 24 May 2005 Belgium amended Article 3, abolishing the requirement to have particular qualifications to operate a laboratory carrying out clinical tests eligible for reimbursement under the sickness and invalidity insurance scheme.

On 7 September 2000 Brussels Court of Appeal sentenced the applicants to five and three years' imprisonment respectively and ordered them to pay fines of 500,000 and 300,000 Belgian francs. It dismissed Mr Ullens de Schooten's argument that Article 3 of the decree had been incompatible with the Treaty.

On 23 November 2005 Mons Court of Appeal dealt with the civil claims, ordering the applicants to pay 1 859 200 to six mutual insurance companies.

The applicants lodged an appeal on points of law, submitting that the Court of Cassation should apply to the Court of Justice seeking a ruling on the issue of incompatibility and on the approach to be taken in the case.

On 14 June 2006 the Court of Cassation dismissed their appeal. Among other things, it considered that the Court of Justice had already found that the principle of *res judicata* – that a matter that has been adjudicated by a competent court cannot be pursued further by the same parties – took precedence over EU law.

In the second case, brought by Mr Ullens de Schooten, which originated in the same set of facts, the appeal to the courts against the suspension of accreditation affecting the laboratory and the applicants was apparently dismissed by the *Conseil d'Etat,* which refused to refer the questions raised by Mr Ullens de Schooten to the Court of Justice for a preliminary ruling. The *Conseil d'Etat,* observing that the laboratories referred to by Article 3 of the royal decree did not fall within the categories covered by Article 86 (1) of the Treaty, held that Article 86 was not applicable.

Complaints

In the first case, the applicants complained that the Court of Cassation had refused their request to obtain a preliminary ruling from the Court of Justice. In the second case, Mr Ullens de Schooten complained that the *Conseil d'Etat* had failed to consider the manifestly unlawful nature of Article 3 of the decree and had refused to refer the question to the Court of Justice for a preliminary ruling. The applicants relied on Article 6 § 1.

Decision of the Court

The Court held, unanimously, that there had been no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

Decision of the Court

Article 6 § 1 (right to a fair hearing)

The Court reiterated that the European Convention on Human Rights did not guarantee any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling. Nonetheless, it observed that Article 6 § 1 imposed an obligation on the national courts to give reasons for any decision refusing to refer a question, particularly where the applicable law permitted such a refusal only in exceptional circumstances. Accordingly, the Court had to be satisfied that any refusal brought before it was accompanied by such reasons.

In the context of the Treaty establishing the European Community (Article 234), that meant that the highest courts were obliged to give reasons for a refusal to refer, based on the exceptions in the case-law of the Court of Justice.

The Court observed that, where a question concerning the interpretation of the Treaty establishing the European Community was raised in proceedings before a national court or tribunal against whose decisions there was no judicial remedy (in today's case the Court of Cassation and the *Conseil d'Etat*), the court in question was obliged under Article 234 of the Treaty (Article 267 of the Treaty on the functioning of the EU) to refer the question to the Court of Justice for a preliminary ruling.

However, that obligation was not absolute, as was clear from the Court of Justice's *CILFIT* case-law. The national courts were not required to refer the question where they had established that it was "irrelevant" or that the EU provision in question had already been interpreted by the Court of Justice, or where the correct application of EU law was "so obvious as to leave no scope for any reasonable doubt".

In today's case, the *Conseil d'Etat*, like the Court of Cassation, had given reasons for its refusal, citing the exceptions under the *CILFIT* case-law. In the light of the reasons given by those two courts and having regard to the proceedings as a whole, the Court held that there had been no violation of the applicants' right to a fair hearing under Article 6 § 1.

Bah v. the United Kingdom

Not treating with priority a social housing request by an immigrant, whose son was conditionally allowed to stay in the United Kingdom, was justified

Judgment of 27 September 2011
Application No. 56328/07

Principal facts

The applicant, Husenatu Bah, is a Sierra Leonean national who lives in London (the United Kingdom). Having unsuccessfully claimed asylum in the United Kingdom following her arrival there in 2000, in 2005 she was granted indefinite leave to remain in the United Kingdom. Her son, born in 1994, joined her in London in 2007. He was allowed to enter and remain in the United Kingdom on the condition that he did not have recourse to public funds.

Shortly after her son arrived, Ms Bah was asked to leave the room she was renting, as her landlord was unwilling to accommodate her son. Ms Bah applied to the London Borough of Southwark for priority treatment in obtaining social housing. Individuals who become unintentionally homeless and have minor children are normally treated with priority by the local authority when deciding on the provision of social housing. However, because Ms Bah's son had only been granted leave to remain in the United Kingdom on the condition that he did not have recourse to public funds, he could not be taken into account in assessing whether she had a priority need for housing assistance. The local authority helped Ms Bah to find private sector accommodation outside the borough and she and her son were not homeless at any point. However, she had to pay a higher rent than she would have for a council flat and her son had to commute about four hours each day as his school was far away from where they lived. Some 17 months later, Ms Bah was offered a one-bedroom council flat in Southwark, which she accepted.

Complaints

Relying on Article 14 in conjunction with Article 8, Ms Bah complained that she had been discriminated against by not being treated with priority for social housing.

Decision of the Court

The Court held, unanimously, that there had been: no violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken in conjunction with Article 8 (protection of the right to private and family life).

Articles 8 and 14

The Court recalled that there is no right under Article 8 of the Convention to be provided with social housing. However, where a state decides to provide such a benefit, it must do so in a way that is not discriminatory.

Ms Bah's son had been allowed to enter and remain in the United Kingdom on the explicit condition that he would not use public funds. It had therefore been because of his conditional immigration status, and not because he was a Sierra Leone national, that his mother had been denied priority treatment under the housing legislation.

Given the shortage of social housing, it was legitimate for the national authorities to put in place criteria for its allocation, as long as the criteria were not arbitrary or discriminatory.

The relevant legislation had set out clearly which classes of people were eligible for social housing, including those who had to be considered with priority. Thus, people with a fixed right to be in the United Kingdom, refugees and those allowed to remain unconditionally were entitled both to housing and to housing assistance. Those whose right to stay in the United Kingdom was conditional were not.

There was nothing arbitrary in the denial of priority to Ms Bah. As she had brought her son to the United Kingdom fully aware of the condition attached to his presence there, she had effectively accepted that condition and consequently agreed not to have recourse to public funds in order to support her son.

Without underestimating the anxiety which she must have suffered as a result of being threatened with homelessness, the Court observed that she had never actually been homeless. The flat which she obtained had been secured with the assistance of the local authorities. In addition, even people who would have been treated with priority would have - in all likelihood - received social housing offers at approximately the same time as her. The Court concluded that the United Kingdom authorities had reasonably and objectively justified their refusal to treat Ms Bah with priority when providing social housing assistance. There had therefore not been a violation of Article 14 taken in conjunction with Article 8.

OAO Neftyanaya Kompaniya YUKOS v. Russia

European Court finds Russia did not misuse legal proceedings to destroy YUKOS - but its human rights were violated

Judgment of 20 September 2011
Application No. 14902/04

Principal facts

The applicant, OAO Neftyanaya kompaniya YUKOS, (YUKOS), was an oil company and one of Russia's largest and most successful businesses. Registered in Nefteyugansk, in the Khanty-Mansi Autonomous Region of Russia, it was fully state-owned until 1995-6, when it was privatised. In late 2002, YUKOS became the subject of a series of tax audits and tax proceedings, as a result of which it was found guilty of repeated tax fraud, in particular for using an illegal tax evasion scheme involving the creation of sham companies in 2000-2003. On 15 April 2004 proceedings were started against YUKOS concerning the 2000 tax year and it was prevented from disposing of certain assets pending the outcome of the case. On 26 May 2004 Moscow City Commercial Court ordered it to pay a total of 99,375,110,548 roubles (RUB) (approximately 2 847 497 802 euros) in taxes, interest and penalties. Its judgment became available on 28 May 2004. YUKOS appealed and the appeal proceedings began on 18 June 2004. On 29 June 2004 the appeal court dismissed the company's com-

plaints, including those about irregularities in the procedure and lack of time to prepare its defence.

On 7 July 2004 YUKOS filed an unsuccessful cassation appeal against the 26 May and 29 June 2004 judgments and simultaneously challenged those judgments by way of supervisory review before the Russian Supreme Commercial Court. YUKOS claimed, among other things, that the case against it was time-barred; according to Article 113 of the Russian Tax Code, a taxpayer was only liable to pay penalties for a tax offence for a period of three years, which ran from the day after the end of the relevant tax term. The Presidium of the Supreme Commercial Court (Presidium) sought an opinion from the Consitutional Court, which confirmed, on 14 July 2005, that the three-year time limit under Article 113 should apply. However, where a taxpayer had impeded tax supervision and inspections, the running of the time-limit stopped once the tax audit report had been produced. On the basis of that ruling, on 4 October 2005 the Presidium dismissed YUKOS's appeal, finding that the case was not time-barred, because YUKOS had actively impeded the relevant tax inspections and the Tax Ministry's tax audit report for 2000 had been served on YUKOS on 29 December 2003, that was, within three years. In April 2004 the Russian authorities also brought enforcement proceedings, as a result of which: YUKOS's assets located in Russia were attached, its domestic bank accounts partly frozen and the shares of its Russian subsidiaries seized. On 2 September 2004 the Tax Ministry found YUKOS had used essentially the same tax arrangement in 2001 as in 2000. On the ground that it had recently been found guilty of a similar offence, the penalty imposed was doubled.

Overall: for the 2001 tax year, YUKOS was ordered to pay RUB 132,539,253,849.78 (approximately 3 710 836 129 euros); for 2002, RUB 192,537,006,448.58 (around 4 344 549 434 euros); and, for 2003, RUB 155,140,099,967.37 (around 4 318 143 482 euros).

YUKOS was also required to pay bailiffs an enforcement fee, calculated as 7% of the total debt, the payment of which could not be suspended or rescheduled.

It was required to pay all those amounts within very short deadlines and it made numerous unsuccessful requests to increase the time available to pay.

On 20 July 2004 the Ministry of Justice announced the forthcoming sale of OAO Yuganskneftegaz, YUKOS's main production (and therefore most valuable) subsidiary.

On 19 December 2004, 76.79% of the shares in OAO Yuganskneftegaz were auctioned, to cover YUKOS's tax liability. Two days earlier, bailiffs had calculated YUKOS's consolidated debt as RUB 344,222,156,424.22 (9 210 844 560.93 euros).

YUKOS was declared insolvent on 4 August 2006 and liquidated on 12 November 2007.

Complaints

The application was lodged with the Court on 23 April 2004 and declared partly admissible on 29 January 2009. A Chamber hearing in the case was held on Thursday 4 March 2010.

YUKOS complained of irregularities in the proceedings concerning its tax liability for the 2000 tax year and about the unlawfulness and lack of proportionality of the 2000-2003 tax assessments and their subsequent enforcement. It maintained that the enforcement of its tax liability had been deliberately orchestrated to prevent it from repaying its debts; in particular, the seizure of its assets pending litigation had prevented it from repaying the debt. It also complained about the 7% enforcement fee; the short timelimit for voluntary compliance with the 2000-2003 tax assessments; and, the forced sale of OAO Yuganskneftegaz. YUKOS further argued that the courts' interpretation of the relevant laws had been selective and unique, since many other Russian companies had also used domestic tax havens. It submitted that the authorities had tolerated and even endorsed the "tax optimisation" techniques it had used. It further argued that the legislative framework had allowed it to use such techniques.

YUKOS relied on Article 6, Article 1 of Protocol No. 1 and Articles 1 (obligation to respect human rights), 13 (right to an effective remedy), 14, 18 and 7 (no punishment without law).

Under Article 41, YUKOS claimed: 81 billion euros and a daily interest payment of 29 577 848 euros for pecuniary damage, "no less than 100 000 euros" for non-pecuniary damage and 171 444.60 euros for costs and expenses.

Decision of the Court

In its judgment, which is not final and which does not deal with the question of the award of damages and costs, the Court held:

- By six votes to one, that the case was admissible;
- By six votes to one, that there had been a violation of Article 6 §§ 1 and 3 (b) (right to a fair trial) of the European Convention on Human Rights, concerning the 2000 tax assessment proceedings against YUKOS, because it had insufficient time to prepare its case before the lower courts;
- By four votes to three, that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention, concerning the 2000-2001 tax assessments, regarding the imposition and calculation of penalties;
- Unanimously, that there had been no violation of Article 1 of Protocol No. 1, concerning the rest of the 2000-2003 tax assessments;
- Unanimously, that there had been no violation of Article 14 (prohibition of discrimination), in conjunction with Article 1 of Protocol No. 1 concerning whether YUKOS had been treated differently from other companies;
- By five votes to two, that there had been a violation of Article 1 of Protocol No. 1, in that the enforcement proceedings were disproportionate;
- Unanimously, that there had been no violation of Article 18 (limitation on use of restriction on rights), in conjunction with Article 1 of Protocol No. 1, concerning whether the Russian authorities had misused the legal proceedings to destroy YUKOS and seize its assets; and,
- Unanimously, that the question of the application of Article 41 (just satisfaction) was not ready for decision.

Admissibility

The Court considered whether the case was inadmissible under Article 35 § 2 of the Convention, according to which it cannot deal with applications which are substantially the same as a matter which has already been submitted to another international body and which contain no relevant new information.

The Court found that the proceedings before the Permanent Court of Arbitration in the Hague brought by YUKOS's majority shareholders and proceedings brought under bilateral investment treaties by groups of YUKOS's minority shareholders were not "substantially the same" as today's case. The claimants in those arbitration proceedings were YUKOS's shareholders acting as investors, and not YUKOS itself, which at that time was still an independent legal entity. The Court further noted that today's case had been introduced and maintained by YUKOS in its own name. Consequently, the parties in those arbitration proceedings and in today's case were different and the two matters not "substantially the same" within the meaning of Article 35 § 2 (b). The Court therefore held, by six votes to one, that it was not barred from examining the merits of today's case.

Article 6 §§ 1 and 3 (b)

Concerning the 2000 tax assessment proceedings, the Court found a violation of Article 6 §§ 1 and 3 (b) because:

- YUKOS did not have sufficient time to study the case file (at least 43,000 pages) at first instance (four days); and,
- the short interval (21 days) between the end of the proceedings before the first instance court (the judgment became available on 28 May 2004) and the beginning of the appeal proceedings (18 June 2004), restricted YUKOS's ability to advance its arguments and, more generally, to prepare for the appeal hearings (by shortening the statutory time-limit by nine days).

However, it did not find: that the action against YUKOS was arbitrary or unfair; that arbitrary or unfair conduct restrictions had been imposed by the courts on YUKOS's counsel during the hearings; that Moscow City Court had given its judgment without studying the evidence; or, that YUKOS's access to a cassation appeal was unfairly restricted.

Article 1 of Protocol No. 1

2000-2001 tax assessments

Noting that the tax assessment proceedings against YUKOS were criminal in character, the Court recalled that only law could define a crime and its corresponding penalty and that laws had to be accessible and foreseeable. The decision of 14 July 2005 changed the applicable rules on the statutory time-bar by introducing an exception which affected the outcome of the 2000 tax assessment proceedings.

YUKOS's conviction under Article 122 of the Tax Code in the 2000 tax assessment proceedings also laid the basis for finding it liable for a repeat offence, which doubled the penalties due in the 2001 tax assessment proceedings.

The Court therefore found that there had been a violation of Article 1 of Protocol No. 1 regarding the imposition and calculation of the penalties concerning the 2000-2001 tax assessments for two reasons, the retroactive change in the rules on the applicable statutory time-limit and the consequent doubling of the penalties due for the 2001 tax year.

Other tax assessments 2000-2003

The Court observed that the rest of the 2000-2003 tax assessments were lawful, pursued a legitimate aim (securing the payment of taxes) and were a proportionate measure. They were not particularly high and nothing suggested that the rates of the fines or interest payments imposed an individual or disproportionate burden on YUKOS.

The Court therefore found no violation of Article 1 of Protocol No. 1 regarding the rest of the 2000-2003 tax assessments.

Enforcement proceedings

The Court noted that the enforcement of the debt resulting from the 2000-2003 tax assessments involved: the seizure of YUKOS's assets; an enforcement fee amounting to 7% of the total debt; and, the forced sale of OAO Yuganskneftegaz. Those measures constituted an interference with YUKOS's rights under Article 1 of Protocol No. 1.

Throughout the proceedings, the actions of the various authorities involved had had a lawful basis and the legal provisions in question were sufficiently precise and clear to meet Convention standards.

The Court noted that YUKOS was one of the largest taxpayers in Russia and that it had been suspected and subsequently found guilty of running a tax evasion scheme from 2000-2003. It seemed clear that YUKOS had had no cash funds in its domestic accounts to pay its tax debts immediately, and in view of the nature and scale of the debt, it was unlikely that any third party would have agreed to assist it with a loan or some form of security. Given the scale of the tax evasion, the sums involved for the years 2000-2003, the fact, under Russian law, that they were payable almost at once after the production of the respective execution writ, and taking into account the Court's previous findings regarding the fines for the years 2000 and 2001, it was questionable whether, at the time when the Russian authorities decided to seize and auction OAO Yuganskneftegaz, YUKOS was solvent within the meaning of section 3 of the Russian Insolvency (Bankruptcy) Act, which generally expected the solvent debtor to repay its debts "within three months of the date on which compliance should have occurred".

The crux of YUKOS's case was essentially the speed with which it was required to pay and the speed with which the auction had been carried out. The Court considered that the Russian authorities were obliged to take careful and explicit account of all relevant factors in the enforcement process, but that they had failed to do so. In particular, none of their various decisions mentioned or discussed in any detail possible alternative methods of enforcement. That was of the utmost importance when striking a balance between the interests concerned, given that the sums that were already owed by YUKOS in July 2004 made it rather obvious that choosing to auction OAO Yuganskneftegaz first was capable of dealing a fatal blow to YUKOS's ability to survive the tax claims and to stay in business.

The Court accepted that the bailiffs were bound to follow the applicable Russian legislation which might have limited the available options in the enforcement procedure.

Nonetheless, the bailiffs still had a decisive level of freedom of choice, concerning whether or not YUKOS stayed afloat. The Court did not find the choice of OAO Yuganskneftegaz entirely unreasonable, especially in view of the overall amount of the tax-related debt and the pending as well as probable claims against YUKOS. However, it considered that, before definitely deciding to sell the asset that was YUKOS's only hope of survival, the authorities should have given very serious consideration to other options, particularly as YUKOS's domestic assets had been attached by court order and were readily available and YUKOS did not seem to object or to have objected to their sale.

The Court further noted that the 7% enforcement fee was a fixed rate which the authorities apparently refused to reduce, and that it had to be paid even before YUKOS could begin repaying the main debt. In the circumstances of the case, the sum to be paid was completely out of proportion to the expected or actual amount of the enforcement expenses. Because of its rigid application, it contributed very seriously to YUKOS's demise.

The authorities were also unyieldingly inflexible as to the pace of the enforcement proceedings, acting very swiftly and constantly refusing to concede to YUKOS's demands for additional time. Such a lack of flexibility had a negative overall effect on the conduct of the enforcement proceedings against YUKOS.

Given the pace of the enforcement proceedings, the obligation to pay the full enforcement fee and the authorities' failure to take proper account of the consequences of their actions, the Court found that the Russian authorities had failed to strike a fair balance between the legitimate aims sought and the measures employed, in violation of Article 1 of Protocol No. 1.

Article 14

The Court reiterated that nothing in the case file suggested that YUKOS's tax arrangements during the years 2000-2003, taken in their entirety, including the use of fraudulently-registered trading companies, were known to the tax authorities or the national courts or that they had previously upheld them as lawful. It therefore could not be said that the authorities passively tolerated or actively endorsed them. YUKOS had failed to show that other Russian taxpayers used or continued to use the same or similar tax arrangements and that it was singled out. It was found to have employed a tax arrangement of considerable complexity, involving, among other things, the fraudulent use of trading companies registered in domestic tax havens. That was not simply the use of domestic tax havens, which might have been legal.

The Court therefore concluded that there had been no violation of Article 14, taken in conjunction with Article 1 of Protocol No. 1.

Article 18

The Court found that YUKOS's debt in the enforcement proceedings resulted from legitimate actions by the Russian Government to counter the company's tax evasion.

Noting, among other things, YUKOS's allegations that its prosecution was politically motivated, the Court accepted that the case had attracted massive public interest. However, apart from the violations found, there was no indication of any further issues or defects in the proceedings against YUKOS which would have enabled the Court to conclude that Russia had misused those proceedings to destroy YUKOS and take control of its assets.

The Court therefore found no violation of Article 18, taken in conjunction with Article 1 of Protocol No. 1, on account of the alleged disguised expropriation of YUKOS's property and the alleged intentional destruction of YUKOS itself.

Other Articles

The Court found that there was no need to examine the same facts separately under Articles 7 and 13.

Separate opinions

Judges Jebens expressed a partly dissenting opinion; and Judge Bushev expressed a partly dissenting opinion, joined in part by Judge Hajiyev. Those opinions can be consulted on HUDOC.

Ahorugeze v. Sweden

Extradition of genocide suspect would not breach the European Convention on Human Rights

Judgment of 27 October 2011
Application No. 37075/09

Principal facts

The applicant, Sylvere Ahorugeze, is a Rwandan national of Hutu ethnicity who was born in 1956 and lives in Denmark. He used to be the head of the Rwandan Civil Aviation Authority. In 2001, he moved to Denmark where he was granted refugee status. Some time after September 2007, the Rwandan authorities requested his extradition from Denmark on suspicion of involvement in genocide and crimes against humanity. As no evidence was presented in support, however, the Danish authorities did not respond to that request.

In July 2008, the Swedish police were informed by the Rwandan Embassy in Stockholm that Mr Ahorugeze had visited Sweden and that the Rwandan authorities were seeking his arrest. As a result, Sweden arrested him in compliance with an international alert and warrant of arrest.

In August 2008, the Rwandan prosecution service formally requested Mr Ahorugeze's extradition so that he could be prosecuted for genocide, murder, extermination and involvement with a criminal gang. They also presented assurances that he would be treated humanely, in accordance with internationally accepted standards.

A Swedish court authorised Mr Ahorugeze's detention on suspicion of genocide. Following the prosecutor's opinion favouring extradition, the Supreme Court concluded that there was no general legal obstacle to sending Mr Ahorugeze to Rwanda to stand trial on charges of genocide and crimes against humanity. The Supreme Court added that it assumed the Swedish Government would consider further information before it took its final decision whether to extradite.

In July 2009, the Swedish Government decided to extradite Mr Ahorugeze to Rwanda to be tried for genocide and crimes against humanity. It noted that the death penalty and life imprisonment in isolation had been abolished in 2007 and 2008 respectively. The prison conditions were acceptable, and Rwanda did not practice torture or other forms of ill-treatment. The Rwandan judicial system had improved over the last couple of years, including its witness protection programme and the possibility to interview witnesses living abroad.

On 15 July 2009, upon Mr Ahorugeze's request, the Court – applying the rule on interim measures of the Rules of Court - indicated to Sweden that his extradition should be suspended. Following the Court's request, the Swedish Government presented the assurances it had received from the Rwandan Minister of Justice confirming that Mr Ahorugeze would be tried fairly and treated correctly.

The Swedish Supreme Court released Mr Ahorugeze from detention on 27 July 2011.

Complaints

Relying on Article 3, Mr Ahorugeze complained that if extradited to Rwanda he would risk being tortured or otherwise ill-treated. He further argued that would not be able to get heart surgery in Rwanda and risked persecution because he was a Hutu. Under Article 6, he alleged that he would not get a fair trial in Rwanda.

Decision of the Court

The European Court of Human Rights held, unanimously, that there would be:

- No violation of Article 3 (prohibition of inhuman or degrading treatment or punishment), and
- No violation of Article 6 (right to a fair trial) of the European Convention on Human Rights, if the applicant were extradited to Rwanda.

Ill-treatment (Article 3)

While it appeared that Mr Ahorugeze had had heart surgery earlier, there had been no medical certificates suggesting that he would need another operation in the future. In any event, Mr Ahorugeze's condition was not so serious as to raise an issue on medical grounds under Article 3.

As to his claim that he risked persecution because he was a Hutu, there had been no information leading to the conclusion that Hutus generally were persecuted or ill-treated in Rwanda. Likewise, Mr Ahorugeze had not described any personal circumstances because of which he risked persecution as a Hutu.

The conditions in the prison in which he would be detained and, if convicted, would serve his sentence were satisfactory. In particular, the International Criminal Tribunal for Rwanda (in a case before it), the Netherlands Government (in its observations as a third party in the present case) and the Oslo District Court (in a case allowing the extradition to Rwanda in July 2011 of another genocide suspect) had confirmed that. The Special Court for Sierra Leone too had sent several convicted persons to serve their sentences in the same Rwandan prison which was to host Mr Ahorugeze.

Finally, there was nothing to suggest that he would be ill-treated in Rwanda. As of 2008, people transferred by other States to Rwanda to stand trial could not be sentenced to life imprisonment in isolation.

Consequently, Sweden would not breach the prohibition of ill-treatment under Article 3 of the Convention, if it extradited Mr Ahorugeze to Rwanda.

Fair trial (Article 6)

It was true that in 2008 and 2009 the International Criminal Tribunal for Rwanda (ICTR) and several countries had refused to transfer genocide suspects to Rwanda due to concerns that the suspects would not receive a fair trial. However, since then, Rwandan laws have been changed and legal practice has improved.

The central question therefore was whether Mr Ahorugeze would be able to call witnesses and have the Rwandan courts examine their testimony respecting the principle of equality of arms between defence and prosecution. Considering in detail the changes in legislation and practice, the Court concluded that the Rwandan courts were expected to act in a manner compatible with the Convention requirements for fair trial.

In addition, Mr Ahorugeze would be able to appoint a lawyer of his choice; he could also benefit from a lawyer paid by the state, and many Rwandan lawyers had accumulated professional experience longer than five years.

Referring to experience gathered by Dutch investigative teams and the Norwegian police during missions to Rwanda, the Court concluded that the Rwandan judiciary could not be considered to lack independence and impartiality.

Further, Mr Ahorugeze had not showed that he would be tried unfairly because he had testified for the defence in genocide trials in the past. Extradited genocide suspects were tried by the Rwandan High Court and Supreme Court, and not by the community-based gacaca tribunals set up in 2002 to deal with the enormous amount of cases by bringing genocide participants to trial and promoting national unity.

Finally, the ICTR had decided, for the first time in June 2011, to transfer an indicted genocide suspect – Uwinkindi - for trial in Rwanda. It had found that the issues, on the basis of which it had refused to transfer genocide suspects to Rwanda in 2008, had been resolved to a degree which made it confident that the accused would receive a fair trial in Rwanda in line with internatonal human rights standards.

Consequently, if extradited to stand trial in Rwanda, Mr Ahorugeze would not risk a flagrant denial of justice. There would, therefore, be no violation of Article 6 in that event.

The Court indicated to the Swedish Government not to extradite Mr Ahorugeze until this judgment became final.

Auad v. Bulgaria

Change necessary in Bulgarian law and practice on removal of aliens to countries where they risk ill-treatment

Judgment of 11 October 2011
Application No. 46390/10

Principal facts

The applicant, Ahmed Jamal Auad, is a stateless person of Palestinian origin, who was born in 1989 in Ain al-Hilweh, a Palestinian refugee camp near Saida, Lebanon, and currently lives in Sofia (Bulgaria). He arrived in Bulgaria in May 2009 and soon after claimed asylum. Accused of terrorism (notably being involved in more than ten assassinations), Mr Auad's expulsion to Lebanon was ordered in November 2009 on the grounds of national security. He was detained until May 2011, that is to say the maximum period (18 months) allowed under Bulgarian legislation pending deportation. Upon his release he remained in Sofia and was obliged to report daily to the local police station. In December 2009, he unsuccessfully challenged in court the order to expel him. The Bulgarian courts found in particular that the information gathered by the law enforcement authorities to justify his expulsion was sufficient. There was thus no need to carry out a full inquiry or to seek proof for it. The data set out in the proposal for expulsion made it possible to reasonably assume that Mr Auad's presence created a serious threat to national security.

The question of whether his life was under threat in the receiving country was irrelevant, as the expul-

sion order had complied with the legal requirements.

Mr Auad further challenged, again without success, his detention pending expulsion. The courts found that his detention had been ordered by a competent authority, in proper form and in line with the applicable Bulgarian law.

Complaints

Mr Auad alleges that if expelled to Lebanon he would be at risk of ill-treatment or death on account of his membership of Fatah, which is part of the Palestinian Liberation Organisation, and that his detention pending deportation was unjustified and excessively long. He relies in particular on Articles 3, 5 § 1 and 13.

Decision of the Court

The Court held, unanimously, that:

- there would be a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in the event that Mr Auad was expelled; and
- that, there had been violations of Articles 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention.

Risk of ill-treatment if expelled (Article 3)

The Court emphasised that while no right to political asylum existed under the Convention, and states could control the entry, stay and removal of aliens, they were obliged not to deport people to countries where they risked being ill-treated.

Consequently, considerations about whether Mr Auad was a threat to national security were not pertinent in the context of examining his expulsion to a country in which he claimed he risked ill-treatment. The relevant question for the Court was whether there were substantial grounds to believe that a real risk existed of Mr Auad being ill-treated or killed.

The Court then noted that the Bulgarian courts had not attempted to assess the question of risk; instead, they had confined their examination to whether the expulsion order was lawful. It was regrettable that the courts considered irrelevant the issue of the risk of ill-treatment in the receiving country.

The Court observed that in April 2011 the Secretary General of the United Nations had reported on violent clashes in the refugee camp from which Mr Auad had fled, and that the threat of violence inside Palestinian refugee camps continued. The Bulgarian Government had not provided information to dispel any doubts in that respect. Instead, it had advanced that the question of risk would at any rate have been examined by the authorities at the time of expulsion and that they would not have expelled Mr Auad had it been established that he risked ill-treatment.

Indeed, the Court was not persuaded that effective guarantees existed in Bulgaria against arbitrary deportation of people at risk of ill-treatment or that such a risk would have been assessed by the relevant authorities. It was not clear by reference to what standards and on the basis of what information the authorities would have made a determination, if any, of the risk faced by Mr Auad. Consequently, the legal framework had not provided adequate safeguards on that question. Given the irreversible potential damage which could result from an expulsion to a country of risk, the Court concluded that there would be a violation of Article 3 if Mr Auad were expelled to Lebanon.

Effective remedy against expulsion to risk countries (Article 13)

In cases in which people claimed they risked ill-treatment if expelled, in order for a remedy to be considered effective, the national authorities had to rigorously scrutinise the claim and automatically suspend expulsions. The Bulgarian courts had explicitly refused to deal with the question of risk and they had no power to suspend the enforcement of expulsion orders. Therefore, Mr Auad did not have an effective remedy in relation to his complaint related to the risk of ill-treatment, in violation of Article 13.

Detention pending expulsion (Article 5)

The Court found that there had been a violation of Article 5 § 1 because the grounds on which Mr Auad had been kept in detention, namely his pending deportation, had not remained valid for the whole period of his detention due to the Bulgarian authorities' failure to conduct the proceedings with due diligence.

Execution of this judgment (Article 46)

The Court noted that in view of the grave irreversible consequences of removal of aliens to countries where they might face ill-treatment, and of the apparent lack of sufficient safeguards in Bulgarian law in that respect, the law and practice had to change so as to ensure that: 1) when faced with claims of ill-treatment in the receiving state, the authorities examine the risk by looking at the general situation in the country and at the personal circumstances of the one to be expelled; 2) the destination country is always indicated and a change in destination could be appealed against; 3) there should be an automatic suspension of expulsion orders which are challenged; and 4) claims about serious risk of illtreatment are examined rigorously by the courts.

Just satisfaction (Article 41)

The Court held that Bulgaria was to pay Mr Auad 3 500 euros in respect of nonpecuniary damage and 1 200 euros for costs and expenses.

Graziani-Weiss v. Austria

Obligation for lawyer to act as unpaid legal guardian to a mentally ill person does not constitute forced labour

Judgment of 18 October 2011
Application No. 31950/06

Principal facts

The applicant, Wolfgang Graziani-Weiss, is an Austrian national who was born in 1963 and lives in Linz (Austria).

A practising lawyer, he was informed in July 2005 that the Austrian courts planned to appoint him as legal guardian (*Sachwalter*) to a mentally ill person, K.. According to the courts, neither the association of guardians (*Verein für Sachwalterschaft*) nor any known relative could take over guardianship of K..

Mr Graziani-Weiss submitted that he objected to the appointment on the ground that it would disturb his family life with his wife and two children and that, given his involvement in leading a church choir, he had no time to take on such a duty. He further argued that he was not

trained to deal with mental illness and that he would have to take out separate insurance cover which K. did not have the money to pay for.

Finding the reasons for his refusal insufficient, the courts appointed Mr Graziani-Weiss legal guardian of K. in September 2005. He was to deal with such matters as managing K.'s income and representing him before the courts and other authorities. The courts further held that helping weaker members of society was a civic duty and providing help on legal matters was part of practising lawyers' core professional duties.

He appealed, alleging that it was discriminatory to oblige practising lawyers and notaries to act as guardians as other people who have studied law – such as judges and public servants – have the same legal knowledge but are not under any such obligation. This appeal was dismissed. Ultimately, in March 2006, his extraordinary appeal on points of law to the Supreme Court was also dismissed as it found that the case did not raise an important question of law.

Complaints

Relying on Article 4, Mr Graziani-Weiss alleged that his being obliged to act as a legal guardian amounted to forced or compulsory labour. He also alleged, under Article 14, that the duty of practising lawyers or public notaries, but not other categories of persons with legal training, to act as guardians was discriminatory.

Decision of the Court

The Court held, unanimously, that there had been:

- No violation of Article 4 (prohibition of forced and compulsory labour) of the European Convention on Human Rights; and,
- No violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 4 of the Convention.

Article 4 (prohibition of forced and compulsory labour)

The Court observed that Mr Graziani-Weiss had to have been aware that he might be obliged to act as a guardian when he decided to become a practising lawyer and that this contained an element of prior consent. Indeed, representing someone before the courts and authorities and managing their property was not outside a practising lawyer's normal activities. Nor had Mr Graziani-Weiss claimed that acting as K.'s guardian placed an excessive burden on him: the number of cases in which he had to act as K.'s guardian were neither significant nor particularly time-consuming or complex. Moreover, it was acceptable that, in certain circumstances where the person concerned lacked sufficient means, guardians did not receive remuneration. In this context it had to be born in mind that practicing lawyers and public notaries had priviliges *vis-à-vis* other professional groups, such as the right to represent parties in certain kinds of court proceedings.The Court therefore concluded that the services Mr Graziani-Weiss had been required to take on had not constituted forced or compulsory labour. Accordingly, there had been no violation of Article 4.

Article 14 (prohibition of discrimination) taken in conjunction with Article 4

The Court reiterated that discrimination meant treating people in relevantly similar situations differently without an objective and reasonable justification. It accepted that the practice of appointing lawyers and public notaries as guardians, but not those who had legal training, amounted to a difference in treatment. However, there was a significant difference between the professional groups of practising lawyers, and the other categories of persons who had studied law or had legal training but were not working as practising lawyers. Practising lawyers have rights and duties which are governed by specific laws and regulations such as having to pass an examination and take out insurance against damage claims before practising. They are also subject to disciplinary law and exempt from the duty to be represented by counsel before courts where representation is normally mandatory. Limiting the duty to act as legal guardian to public notaries and practising lawyers was not therefore discriminatory as they were not in a relevantly similar situation to other persons with legal training. There had therefore been no violation of Article 14 in conjunction with Article 4.

Khelili v. Switzerland

A French woman classified as a "prostitute" for five years in Geneva police database violated her right to respect for private life

Judgment of 18 October 2011
Application No. 16188/07

Principal facts

The applicant, Sabrina Khelili, is a French national who was born in 1959 and lives in Saint Priest (France).

During a police check in Geneva in 1993, the police found Ms Khelili to be carrying calling cards which read: "Nice, pretty woman, late thirties, would like to meet a man to have a drink together or go out from time to time. Tel. no. ..." Following this discovery Ms Khelili alleged that the Geneva police entered her name in their records as a prostitute, despite her insistence that she had never been one. The police attested that they were basing their work on the cantonal law on data protection which authorised the police to manage records that might contain personal data for as long as was necessary to enable them to carry out their duties (namely to punish offences and prevent crimes and misdemeanours). In November 1993, as a preventive measure, the Federal Aliens Office issued a two-year ban on her residing in Switzerland.

In 2001 two criminal complaints of threatening and insulting behaviour were lodged against Ms Khelili. In 2003 she found out from a letter issued by the Geneva police that the word "prostitute" still figured in the police files. In May 2005 Ms Khelili was given a suspended sentence for 20 days for two additional complaints of insulting and abusive use of telecommunication installations lodged against her in 2002 and 2003. In July 2005 the chief of police certified that the word describing her profession in the police database had been replaced with "dressmaker". After having found out, in 2006, during a telephone conversation that the word "prostitute" still figured in the police computer files, Ms Khelili requested that the infor-

mation relating to prostitution be deleted from the police records. In 2006 the chief of police confirmed in a letter that that had been done. Ms Khelili also requested that data concerning criminal complaints of threatening and insulting behaviour lodged against her in 2001, which also included the word "prostitute", be deleted. That request was refused on the ground that such information had to be kept as a preventive measure, given her previous infringements.

Ms Khelili argued that maintaining that word in her files would make her day-today life more problematic, because such information would be communicated to her potential future employers.

Complaints

Ms Khelili complained that since the discovery of her calling cards by the Geneva police in 1993, she has continued to be described in the police computer records as a "prostitute" and that that word is maintained in her file related to two criminal complaints of threatening and insulting behaviour, in breach of Article 8 of the Convention.

Decision of the Court

The Court held, unanimously, that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

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

The Court agreed that in today's case, the interference with Ms Khelili's rights had a legal basis in domestic law. The Court also recognised that Ms Khelili's data was retained for the purpose of the prevention of disorder or crime and the protection of the rights of others.

However, the Court noted that the word "prostitute" as a profession had been deleted from the police database but that that word had not been corrected in connection with criminal proceedings relating to the complaints lodged against Ms Khelili. The Court reiterated that the word at issue could damage Ms Khelili's reputation and make her day-to-day life more problematic, given that the data contained in the police records might be transferred to the authorities. That was all the more significant because personal data was currently subject to automatic processing, thus considerably facilitating access to and the distribution of such data. Ms Khelili therefore had a considerable interest in having the word "prostitute" removed from the police records.

The Court took account, firstly, of the fact that the allegation of unlawful prostitution appeared to be very vague and general and that the link between Ms Khelili's conviction for threatening and insulting behaviour and retention of the word "prostitute" was not sufficiently close. It further noted the contradictory behaviour of the authorities; despite confirmation from the police that the word "prostitute" had been corrected, Ms Khelili learned that that word had been retained on the police computer records. Consequently, the Court concluded that the storage in the police records of allegedly false data concerning her private life had breached Ms Khelili's right to respect for her private life and considered that the retention of the word "prostitute" for years was neither justified nor necessary in a democratic society.

Article 41 (just satisfaction)

The Court ordered Switzerland to pay Ms Khelili 15 000 euros in respect of nonpecuniary damage and rejected the application in respect of costs and expenses.

Association Rhino and Others v. Switzerland

Dissolution of a squatters' association was disproportionate

Judgment of 11 October 2011
Application No. 48848/07

Principal facts

The applicant association was set up in Geneva in 1988; "Rhino" was an acronym for two alternative French slogans, translated as "Vacant buildings inhabited again" and "Let's carry on living in the buildings we occupy". According to its articles of association its aim was to provide members with affordable and community-based housing. To this end it unlawfully occupied buildings in which its members then squatted. As part of its activities the association had, since 1988, occupied several empty buildings, including 14 flats in three blocks which had for the most part been vacant for a long time.

Following the occupation of the flats, the owners requested the Principal Public Prosecutor of the Canton of Geneva to order the squatters' eviction. Three orders to that effect were issued on 10 November 1988.

However, the eviction orders were never enforced, notwithstanding a Federal Court judgment of 8 May 1991. This was in line with a local policy of tolerating the presence of squatters provided the owners did not have a building or renovation permit.

The occupied blocks of flats required renovation work to be carried out so that the owners could rent the flats out again. However, no application for building or renovation permits had been submitted.

From 1992 onwards the owners, who had given up seeking the squatters' eviction, made various unsuccessful attempts to negotiate the sale of the buildings or the conclusion of a long-term lease with the association.

In 2002 the owners applied for building permits with a view to renovating the buildings.

After various proceedings brought by the association and the squatters challenging the applications, final permits were granted on 27 September 2005. The Principal Public Prosecutor therefore ordered the occupied buildings to be vacated as work was scheduled to begin on 22 November 2005. On 4 April 2005, in parallel with the eviction proceedings, the owners of the occupied properties requested the Canton of Geneva Court of First Instance to order the dissolution of the association on the grounds that its aims were unlawful. The Court of First Instance granted the request and on 9 February 2006 ordered the dissolution of the association with immediate effect. Following an appeal, the Court of Justice of the Canton of Geneva upheld the dissolution order on 15 December 2006 but gave it retroactive effect. This had significant financial implications for the members of the association, which was deemed never to have existed.

On 29 January 2007 the association applied to the Federal Court, primarily seeking the setting-aside of the Court of Justice judgment. The

Federal Court upheld the Court of Justice ruling in two judgments of 10 May 2007.

On 23 July 2007 the owners recovered possession of their properties. The operation to evict the occupants with police assistance is the subject of another application currently pending before the Court.

Complaints

Relying on Article 11 (freedom of assembly and association), the applicants complained of the dissolution of their association.

Decision of the Court

The Court of held, unanimously, that there had been a violation of Article 11 (freedom of association) of the European Convention on Human Rights.

Article 11 (freedom of association)

The Swiss Government relied on two aims which they regarded as legitimate grounds for dissolving the association, namely the protection of the rights of others and the prevention of disorder. With regard to the protection of the rights of others, it was clear from the various sets of proceedings brought by the owners and from the facts of the case that the orders for the squatters' eviction had never been enforced. After the failure of these attempts to evict the squatters, the owners had requested that the association be dissolved. In the light of all the circumstances, however, the Court observed that the dissolution of the association, which was essentially a legal act, had not by itself put an end to the occupation of the buildings, judged to be unlawful. Hence, the Government could not claim that the measure in question had been aimed in a practical and effective manner at protecting the property owners' rights.

Likewise, the Court was not satisfied that the dissolution of the association had been necessary in order to prevent disorder, as the reason the occupants of the buildings had not been evicted was because the situation had been tolerated for a long time by the cantonal authorities.

The Court observed that, for a measure to be considered proportionate and necessary in a democratic society, no alternative measure must exist which achieved the same aim but was less restrictive of the fundamental right in question.

In the instant case the Government had not demonstrated sufficiently that the dissolution of the association had been the only available means of achieving the aims pursued.

Accordingly, the Court held that the reasons given by the Swiss courts to justify the interference in question had not been relevant and that the interference had been disproportionate to the aims pursued. There had therefore been a violation of Article 11.

Article 41 (just satisfaction)

The Court held that Switzerland was to pay the applicants 65 651 euros in respect of pecuniary damage and 21 949 euros in respect of costs and expenses.

Separate opinion

Judge Pinto de Albuquerque expressed a separate opinion which can be consulted on HUDOC.

Altuğ Taner Akçam v. Turkey

Turkish law means history professor lives in constant fear of prosecution for his views on the events of 1915 concerning the Armenian population

Judgment of 25 October 2011
Application No. 27520/07

Principal facts

The applicant, Altuğ Taner Akçam, is a Turkish and German national who was born in 1953 and lives in Ankara. A professor of history, he researches and publishes extensively on the historical events of 1915 concerning the Armenian population in the Ottoman Empire. The Republic of Turkey, one of the successor states of the Ottoman Empire, does not recognise the word "genocide" as an accurate description of events.

Affirming the Armenian issue as "genocide" is considered by some (especially extremist or ultranationalist groups) as a denigration of "Turkishness" (*Türklük*), which is a criminal offence punishable under Article 301 of the Turkish Criminal Code by a term of imprisonment of six months to two or three years. Amendments have been introduced following a number of controversial cases and criminal investigations brought against such prominent Turkish writers and journalists as Elif Şafak, Orhan Pamuk and Hrant Dink[8] for their opinions on the Armenian issue. Notably, in October 2005 Hrant Dink, editor of *AGOS*, a bilingual Turkish-Armenian newspaper, was convicted under Article 301 for denigrating "Turkishness". It was widely believed that because of the stigma attached to his criminal conviction, Mr Dink became the target of extremists and in January 2007 he was shot dead. The three major changes introduced to the text were: to replace "Turkishness" and "Republic" with "Turkish Nation" and "State of the Republic of Turkey"; to reduce the maximum length of imprisonment to be imposed on those found guilty under Article 301; and, most recently in 2008, to add a security clause, namely any investigation into the offence of denigrating "Turkishness" has to first be authorised by the Minister of Justice.

8. See *Dink v. Turkey* (application Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09), 14.09.2010.

On 6 October 2006 Mr Taner Akçam published an editorial opinion in *AGOS* criticising the prosecution of Hrant Dink. Following that, three criminal complaints were filed against him by extremists under Article 301 alleging that he had denigrated "Turkishness".

Following the first complaint, he was summoned to the local public prosecutor's office to submit a statement in his defence. The prosecutor in charge of the investigation subsequently decided not to prosecute on the ground that Mr Taner Akçam's views were protected under Article 10 of the European Convention. The investigations into the other two complaints were also terminated with decisions not to prosecute.

The Government submitted that it was unlikely that Mr Taner Akçam was at any risk of future prosecution on account of the recent safeguards introduced to Article 301, notably the fact that authorisation was now needed from the Ministry of Justice to launch an investigation. Accord-

ingly, between May 2008 (when this amendment was introduced) and November 2009, the Ministry of Justice received 1,025 requests for authorisation to bring criminal proceedings under Article 301 and granted such authorisation in 80 cases (about 8% of the total requests). Furthermore, Mr Taner Akçam had not been prevented from carrying out his research; on the contrary, he had even been given access to the State Archives. His books on the subject are also widely available in Turkey.

According to Mr Taner Akçam, however, the percentage of prior authorisations granted by the Ministry of Justice was much higher, and these cases mainly concerned the prosecution of journalists in freedom of expression cases. He submitted statistics from the Media Monitoring Desk of the Independent Communications Network for the period from July to September 2008 according to which a total of 116 people, 77 of whom were journalists, were prosecuted in 73 freedom of expression cases.

Mr Taner Akçam further claimed that the criminal complaints filed against him for his views had turned into a harassment campaign, with the media presenting him as a "traitor" and "German spy". He has also received hate mail including insults and death threats.

He further alleged that the tangible fear of prosecution had not only cast a shadow over his professional activities – he effectively stopped writing on the Armenian issue in June 2007 when he brought his application to this Court – but had caused him considerable stress and anxiety.

Complaints

Relying on Article 10 (freedom of expression), Mr Taner Akçam alleged that the Government could not guarantee that he would not face investigation and prosecution in the future for his views on the Armenian issue. He further alleged that, despite the amendment to Article 301 in May 2008 and the Government's reassurances, legal proceedings against those affirming the Armenian "genocide" had continued unabated. Moreover, the Government's policy on the Armenian issue had not in essence been changed and could not be predicted with any certainty in the future.

Decision of the Court

The Court held, unanimously, that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The Court found that there had been an "interference" with Mr Taner Akçam's right to freedom of expression. The criminal investigation launched against him and the Turkish criminal courts' standpoint on the Armenian issue in their application of Article 301 of the Criminal Code (any criticism of the official line on the issue in effect being sanctioned), as well as the public campaign against him, confirmed that there was a considerable risk of prosecution faced by persons who expressed "unfavourable" opinions on the subject and indicated that the threat hanging over Mr Taner Akçal was real. The measures adopted to provide safeguards against arbitrary or unjustified prosecutions under Article 301 had not been sufficient. The statistical data provided by the Government showed that there were still a significant number of investigations, and Mr Taner Akçam alleged that this number was even higher. Nor did the Government explain the subject matter or the nature of the cases in which the Ministry of Justice granted authorisation for such investigations. Moreover, the Court agreed with Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, in his report which stated that a system of prior authorisation by the Ministry of Justice in each individual case was not a lasting solution which could replace the integration of the relevant Convention standards into the Turkish legal system and practice.

Furthermore, in the Court's opinion, while the legislator's aim of protecting and preserving values and State institutions from public denigration could be accepted to a certain extent, the wording of Article 301 of the Criminal Code, as interpreted by the judiciary, was too wide and vague and did not enable individuals to regulate their conduct or to foresee the consequences of their acts. Despite the replacement of the term "Turkishness" by "the Turkish Nation", there was apparently no change in the interpretation of these concepts. For example, in the case *Dink v. Turkey* of 2010 the Court criticised the Court of Cassation for understanding them in the same way as before. Thus Article 301 constituted a continuing threat to the exercise of the right to freedom of expression. As was clear from the number of investigations and prosecutions brought under this Article, any opinion or idea that was considered offensive, shocking or disturbing could easily be made the target of a criminal investigation by public prosecutors. Indeed, the safeguards put in place to prevent the abusive application of Article 301 by the judiciary did not provide a guarantee of non-prosecution because any change of political will or of Government policy could affect the Ministry of Justice's interpretation of the law and open the way for arbitrary prosecutions.

In view of that lack of forseeability, the Court concluded that the interference with Mr Taner Akçam's freedom of expression had not been "prescribed by law", in violation of Article 10.

The Court held that the finding of a violation was sufficient just satisfaction under Article 41 in the circumstances of the case.

Valkov and Others v. Bulgaria

Cap on Bulgarian retirement pensions does not breach the Convention

Judgment of 25 October 2011
Application Nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05

Principal facts

The applicants are nine Bulgarian nationals who retired on various dates between 1979 and 2002. Before retiring, eight of them had worked as air force pilots or border police sappers; one of them did not specify what his employment had been other than referring to it as "hard physical labour".

Whenever the nominal monthly amount of the applicants' pensions exceeded the maximum amount of pension envisaged in law, their pensions were capped. The law which regulated the ceiling of pensions was, until the end of 1999, the Pensions Act of 1957 (namely section 47c of it) and, since the beginning of 2000, the Social Security Code of 1999 (namely paragraph 6 of its provisional and concluding provisions). In practice, the pensions capping worked as follows. In indi-

vidual decisions relating to each of the applicants, the National Social Security Institute calculated their monthly pensions under the general rules laid down first in the Act and then in the Code, and then capped the pensions by reference to the above-mentioned provisions. Whenever the pensions were updated or recalculated, the same process was repeated.

The result was that, during the period from 1999 to 2009, the applicants received pensions which, once capped, ranged between 160 Bulgarian levs (BGN) and BGN 700. In December 1997, the Prosecutor General challenged section 47c of the Act before the Constitutional Court, arguing that the section was unconstitutional. The Constitutional Court rejected the challenge in a judgment of July 1998. In February 2010 the same court refused to take up a similar challenge against paragraph 6 of the provisional and concluding provisions of the Code, referred to it by the Supreme Administrative Court.

Complaints

Relying on Article 1 of Protocol No. 1 to the Convention, and on Article 14, the applicants complained that the cap on their retirement pensions had breached their rights to protection of their property and not to be discriminated.

Decision of the Court

The Court held, by a majority, that there had been no violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights and No violation of Article 14 (prohibition of discrimination) of the Convention.

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

The Court observed that Article 1 of Protocol No. 1 does not guarantee, as such, the right to a pension of a particular amount. However, if the State provided for a pension as of right, then property interests were formed and they fell under the protection of the Convention. Consequently, if such a pension were to be reduced or discontinued, that could represent an interference with people's possessions that needed to be justified by the state in accordance with the Convention requirements.

The applicants did not dispute that the interference with their right had been lawful, both under national and Convention law.

However, they called into question the purpose of the pension cap. In particular, they argued that it had been introduced because of the perception that people in Bulgaria would not tolerate very high pensions and not, as the Government contended, in order to ensure the financial viability of the pension system.

The Court found that the cap pursued a legitimate aim in the public interest and had obviously resulted in savings for the Bulgarian pension system. The Constitutional Court, when deciding on the cap in 1998, had found that it reflected "the requirements of social justice". The regard for social considerations of the Bulgarian legislature and judiciary had been reasonably justified. According to World Bank and OECD studies, the pension systems of different countries varied and ceilings on public pensions were not a uniquely Bulgarian phenomenon. Thus, some States provided for pension rates which were strongly related to people's pre-retirement earnings, while in others the pensions had little, if any, connection to people's pre-retirement earnings. The system to follow in each country was a matter for the national authorities, which were better placed than an international court to evaluate local needs and conditions.

Examining whether the authorities had drawn a fair balance between the general public interest and the needs of the applicants, the Court observed that until 1996 pension contributions had been payable solely by employers, who had not been allowed to deduct them from employees' salaries. That continued to be the case for military personnel and civil servants. In addition, the contributions which the applicants had been paying had not had an exclusive link to their retirement pensions. That was so because of the unfunded, pay-as-you-go character of the first pillar of the Bulgarian pension system, to which the applicants were affiliated. Therefore, it was impossible to regard the payment of higher social security contributions, which the applicants had been paying, as a sufficient ground in itself for entitlement to matching pension benefits. In the applicants' case, the bulk of those contributions had been paid under a different economic regime when the pension fund had been an inseparable part of the general State budget.

The pension cap had been maintained at a time when the Bulgarian pension system underwent a comprehensive reform as part of the country's transition from a wholly state-owned and centrally planned economy to private property and a market economy.

Maintaining the cap could be seen as a transitional measure accompanying the overall transformation of the pension system. The Court had in the past recognised that States had a wide discretion when passing laws in the context of a change of political or economic regime.

Further, the applicants had had to endure a reasonable reduction and not a total loss of their pension entitlments. In fact, they had not suffered an actual decrease in the monthly payments they received, but simply had not seen a lifting of the cap that they had expected to take place at the end of 2003. The applicants, being top earners among more than two million Bulgarian pensioners, could not be regared as being made to bear an excessive and disproportionate burden as a result of the pension cap.

In addition, public pension schemes were based on the principle of solidarity between contributors and beneficiaries. Like other social security schemes, they were an expression of a society's solidarity with its vulnerable members and were thus not to be compared to private insurance schemes.

Finally, the amount of the cap had gradually changed, with the effect that the maximum amount of pension had increased over the years. The result was that, as a general trend, fewer pensioners were affected by the cap. Consequently, the Court concluded that the question of a cap on the maximum amount of pensions was a question for Bulgaria to regulate in its social security policy. There had therefore been no violation of Article 1 of Protocol 1.

Prohibition of discrimination (Article 14)

The Court noted the legitimate aim in the public interest pursued by the Bulgarian authorities with the pension cap. It also found that it was not its role to compare the applicants with pensioners such as the President or Vice-President of the Republic, to whom the pension cap did not apply; rather, that was a policy judgment which was reserved in principle for the national authorities.

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

Separate opinion

Judge Panova expressed a partly dissenting opinion which can be consulted on HUDOC.

Shesti Mai Engineering OOD and Others v. Bulgaria

Judgment of 20 September 2011
Application No. 17854/04

Principal facts

Two of the applicants, Krasimir Evtimov and his wife Kalina Stoycheva, are Bulgarian nationals, born in 1946 and 1953, respectively, and are owners of Shesti Mai Engineering OOD, a company based in Sofia, also among the applicants. The other applicants are: Georgi Mitev, Stefan Stefanov, Lilyana Galeva, Neli Alexandrova, Nikolina Amzina and Ivan Bozhilov, who are also Bulgarian nationals, born in 1955, 1956, 1945, 1960, 1947 and 1960, respectively, and live in Sofia; as well as three other companies, Motorengineering OOD, Nov Bryag OOD and Vitex AD, based, respectively, in Varna, Burgas and Gabrovo in Bulgaria. All the applicants were shareholders in Mezhdunaroden Tzentar po Firmeno Upravlenie AD ("MTFU"), a limited liability company dealing in professional training; Mr Evtimov was its executive director. The applicants complained about a judicial decision of July 1999 allowing a change of management of MTFU.

Complaints

They alleged that the new management then took control of MTFU's premises, evicting Mr Evtimov by force, and subsequently cancelled all existing shares, with the result that the applicants' shareholding was progressively wiped out and MTFU eventually stopped functioning. They also complained about the related judicial proceedings they had brought, alleging that domestic law provided no protection against the effects of the decision of July 1999. They relied on Article 1 of Protocol No. 1 (protection of property).

Decision of the court

The Court held, that there had been violation of Article 1 of Protocol No. 1.

Article 41 (just satisfaction)

The Court held that Bulgaria was to pay the applicants:

- between 500 euros and 12 100 euros to 11 of the applicants in respect of pecuniary damage;
- between 4 000 euros and 6 000 euros to seven of the applicants in respect of non-pecuniary damage;
- 9 309.32 euros jointly to all applicants in respect of costs and expenses.

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

Execution of the Court's judgments

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

The Convention (Article 46, paragraph 2) entrusts the Committee of Ministers with the supervision of the execution of the judgments of the European Court of Human Rights (the Court) 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 Committee of Ministers 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 Committee of Ministers, only a thematic selection of those appearing on the agenda of the **1120th** Human Rights (HR) meeting[9] (13-14 September 2011) is presented here.

Further information on the cases mentioned below 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. This site 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[10]).

Interim and final resolutions are accessible 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" in the left hand column)
- HUDOC database: http://hudoc.echr.coe.int/.

9. Meeting specially devoted to the supervision of the execution of judgments.
10. Replacing the Rules adopted in 2001.

1120th HR meeting – General information

During the 1120th meeting (13-14 September 2011), the CM started examining 279 new cases and considered draft final resolutions concluding, in 250 cases, that states had complied with the Court's judgments.

It is recalled that at the 1100th meeting (30 November-3 December 2010) the Deputies decided, under the Interlaken Declaration and Action Plan, to set up new working methods as from 1 January 2011 (see the proposals contained in document CM/Inf/DH (2010) 45, as amended, and document CM/Inf/DH (2010) 37).

The new twin-track supervision system was thus implemented and applied to all new cases.

In conformity with the decision taken in December 2010, cases pending before the Committee of Ministers for supervision of execution on 1 January 2011 were subject to transitional arrangements and proposals for their classification under standard or enhanced supervision were made for the DH meeting of September 2011, following bilateral consultations with the states concerned.

Main public information documents

CM/Inf/DH (2011) 36E

16 August 2011

- Cases concerning the non-enforcement in Albania of final domestic decisions relating to the right of applicants to restitution or compensation for property nationalised under the communist regime – General measures to comply with the European Court's judgments

CM/Inf/DH (2011) 37E

16 August 2011

- Moldovan and others (Nos. 1 and 2) and other similar cases against Romania – State of execution of the general measures and assessment of the action plan provided by the Romanian authorities on 15 June 2011 (DH-DD (2011) 503)

Both documents are available on the Internet.

Selection of decisions adopted

Following the entry into force of the new working methods, as from 1 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, however, the Committee of Ministers has adopted a special decision, containing its assessment of the situation. A selection of these decisions is presented below, according to the alphabetical order of the member state concerned.

Only the references of Interim Resolutions adopted – if any – are indicated below. All other relevant documents available – action plans and reports, memoranda, communications on behalf of the authorities, of the applicant parties and of NGOs – can be found on the website.

Driza and other similar cases v. Albania

33771/02, judgment of 13 November 2007, final on 2 June 2008

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).

The Deputies,

1 welcomed the various reforms envisaged by the Albanian authorities to simplify the legislative framework and set up a simple and clear compensation mechanism, and noted with interest the setting up of a standardised map and of an electronic database containing the cartographic information and the juridical status of each compensation claim;

2 invited the authorities to clarify the procedure which will be followed in order to calculate the overall cost of the compensation process and the provisional calendar;

3 encouraged the authorities to speed up the establishment of the Fund for compensation in kind and the finalisation of the process of first registration of properties throughout the territory of Albania, crucial for the security of property titles;

4 underlined also the importance of ensuring the existence of a judicial remedy in respect of administrative decisions on compensation claims and reiterated their request for information on the applicability and efficiency of the existing judicial remedies in the event of non-execution of final domestic judgments;

5 decided to declassify the memorandum (CM/Inf/DH (2011) 36) prepared by the Secretariat and requested the Albanian authorities to keep the Committee regularly informed on the implementation of the action plan, also in the light of the issues raised in the memorandum.

M.S.S. v. Belgium and Greece

Violations found against Greece

30696/09, judgment of 21 January 2011 – Grand Chamber

Degrading treatment suffered by the applicant, an Afghan national, on account first of the detention conditions at the holding centre next to the Athens International Airport in 2009 and then of the Greek authorities' inaction regarding the extreme material and psychological deprivation in which the applicant found himself for several months (violations 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 access to an effective

remedy (violation of Article 13 taken in conjunction with Article 3).

Violations found against Belgium

The applicant's expulsion to Greece, due to the automatic application of the "Dublin II" Regulation, by this knowingly exposing him to the risks arising from deficiencies in the asylum procedure in Greece and to detention conditions amounting to degrading treatment (violation of Article 3); lack of remedy in the domestic legislation whereby the applicant could 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 3 and of Article 13 combined with Article 3).

The Deputies,

1 noted with interest the information provided by the Belgian and the Greek authorities in their respective action plans in view of the execution of the present judgment, that were transmitted on 20 July 2011 within the deadline asked for by the Committee;

2 noted also that the asylum request introduced by the applicant is still under consideration in Belgium; invited the Belgian authorities, regarding the individual measures as well as, where appropriate, the general measures related to Article 13, to keep them informed of the outcome of this procedure;

3 welcomed the fact that Belgium has stopped transferring of asylum seekers for which Greece would in principle be responsible under Regulation (EC) No. 343/2003 of 18 February 2003 ("Dublin" Regulation);

4 noted with interest the measures presented by the Greek authorities in their action plan, as well as in the National Action Plan on Migration Management, and in particular the entry into force of law No. 3907/2011 "on the establishment of an Asylum Service and a First Reception Service", aimed at bringing the detention and living conditions of asylum seekers and the asylum procedure into conformity with the Court's conclusions in the present judgment; further noted the information presented during the meeting by the Greek authorities concerning short-term measures related to the improvement of conditions of detention;

5 invited the Greek authorities to keep the Secretariat regularly informed regarding any developments in the implementation of their action plan;

6 instructed the Secretariat to prepare a memorandum containing a detailed assessment of the action plans for their meeting of June 2012 at the latest.

Manios and other similar cases v. Greece; Vassilios Athanasiou and others v. Greece

70626/01, judgment of 11 March 2004, final on 11 June 2004
50973/08, judgment of 21 December 2010, final on 21 March 2011 (pilot judgment)
Interim Resolution CM/ResDH (2007) 74

Excessive length of proceedings before administrative courts and Council of State and lack of an effective remedy (violation of Articles 6§1 and 13).

The Deputies,

1 recalled the importance of timely compliance with the pilot judgment in the case of Vassilios Athanasiou and others;

2 strongly encouraged the Greek authorities to continue their efforts aimed at introducing an effective remedy for excessive length of proceedings before administrative courts in compliance with the principles laid down by the European Court within the time limit set by it (21 March 2012);

3 encouraged also the Greek authorities to find appropriate solutions in order to provide adequate and sufficient redress to all persons in the applicants' situation within this deadline;

4 decided to resume consideration of the issues raised by the pilot judgment in light of the action plan to be provided by the Greek authorities by 21 September 2011 at the latest.

A. B. and C. v. Ireland

25579/05, judgment of 16 December 2010 – Grand Chamber

Authorities' failure to their positive obligation to ensure the effective respect of the applicant's privacy, in the absence of any legislative or regulatory regime providing an accessible and effective procedure by which the applicant, who had a rare form of cancer, could have established whether she qualified for a lawful abortion in Ireland on the basis that her life was at risk (violation of Article 8).

The Deputies,

1 acknowledged the action plan submitted in this case and that as regards general measures, the Irish authorities intend to establish an expert group by November 2011 and to outline its terms of reference, membership and meeting schedule by the end of 2011;

2 underlined the importance of putting in place substantive measures to execute the judgment and invited the authorities to keep the Committee informed in relation to the steps taken under the timetable set out in the action plan.

Olaru and others and other similar cases v. The Republic of Moldova

476/07, judgment of 28 July 2009, final on 28 October 2009 (pilot judgment)

Structural problem of 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 Prot. No. 1).

The Deputies,

1 noted with satisfaction that the Acts providing a domestic remedy in case of excessive length of judicial and enforcement proceedings entered into force on 1 July 2011;

2 encouraged the authorities of the Republic of Moldova to to ensure that these Acts are applied in

conformity with the requirements of the Convention;

3 invited the authorities of the Republic of Moldova to provide further information to the Committee of Ministers on the progress made in the settlement of individual applications frozen by the European Court.

Kaprykowski and other similar cases v. Poland

23052/05, judgment of 3 February 2009, final on 3 May 2009

Inhuman and degrading treatment of the applicants in detention facilities mainly due to lack of adequate medical care, between 2001 and 2007, which were not adequate to their serious health or psychiatric problems (violations of Article 3); *Wenerski*: also censoring of the applicant's correspondence with the European Court of Human Rights in 2003 (violation of Article 8).

The Deputies,

1 recalled that on 26 February 2010 the Polish authorities submitted an action plan but that additional information was deemed necessary to allow a full assessment of the state of execution of the present judgments;

2 in this context, noted with interest the additional information presented during the meeting and the submission on 12 September 2011 of an updated action plan, which remains to be assessed.

Orchowski v. Poland; Sikorski Norbert v. Poland

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

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

The Deputies,

1 recalled that on 26 February 2010 the Polish authorities submitted an action plan but that additional information was deemed necessary to allow a full assessment of the measures envisaged;

2 noted with interest the submission of information by the authorities during the present meeting and the action report published on 12 September 2011, detailing significant measures taken by the authorities to reduce overcrowding in prisons and remand centres, which remain to be assessed;

3 observed already that the information presented does not appear to include information on the aggravating factors referred to in the European Court's judgments;

4 invited the authorities to complete the action report submitted with information on measures taken in relation to the aggravating factors identified by the European Court so that the status of execution of the cases can be fully assessed.

Moldovan and others (No. 2) and other similar cases v. Romania

41138/98, judgment of 12 July 2005, final on 30 November 2005

Cases concerning the consequences of racially motivated violence, between 1990 and 1993, against villagers of Roma origin: improper living conditions following the destruction of the applicants' houses; general discriminatory attitude of the authorities and repeated failure to put an end to the breaches of the applicants' rights, perpetuating their feelings of insecurity (violation of Articles 3, 6, 8, 13 and 14 combined with Articles 6 and 8); excessive length of judicial proceedings (violation of Article 6§1);

The Deputies,

1 took note with interest of the information document CM/Inf/DH (2011) 37 prepared by the Secretariat on the basis of the action plan provided by the Romanian authorities on 15 June 2011;

2 welcomed in particular the envisaged establishment of an interdepartmental working group placed under the chairmanship of the Deputy Vice-Minister responsible for the periodic reassessment of the situation with a view to identifying and adopting additional measures, if necessary;

3 noted with satisfaction that on 12 September 2011 the Romanian authorities submitted a revised action plan which appears to address some of the outstanding issues identified in information document CM/Inf/DH (2011) 37, but which still needs to be assessed;

4 invited the Romanian authorities to keep the Committee of Ministers informed regularly of the progress achieved in the implementation of the revised action plan;

5 decided to declassify the information document CM/Inf/DH (2011) 37.

Khashiyev and other similar cases v. the Russian Federation

57942/00, judgment of 24 February 2005, final on 6 July 2005

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 ECHR bodies, contrary to Article 38 ECHR, in several cases.

The Deputies,

1 took note of the information provided during the meeting on the bilateral consultations held by the

Secretariat with the authorities of the Russian Federation in the Chechen Republic in June 2011, during which the Secretariat had meetings with judges, prosecutors, investigators, victims and their representatives;

2 noting that questions were asked on specific cases[11] as well as on general measures, invited the Russian authorities to provide information on progress made;

3 recalled that they will continue to consider the situation at their 1128th meeting (November-December 2011) (DH), on the basis of a draft interim resolution to be prepared by the Secretariat.

11. Abuyeva and others, Isayeva, Khadisov and Tsechoyev, Sadykov, Bazorkina, Akhmadova and others.

Burdov (No. 2) v. the Russian Federation

33509/04, judgment of 15 January 2009, final on 4 May 2009 (pilot judgment)
Interim Resolution: CM/ResDH (2009) 43

Structural problem highlighted by the European Court, applying the pilot-judgment procedure: violation of the applicants' right to a court due to the structural problem of the social authorities' failure to enforce final judicial decisions in the applicant's favour, including decisions ordering to pay certain compensation and (violations of Article 6§1 and of Article 1 of Prot. No. 1); lack of an effective remedy in respect of the continued non-enforcement of the judgments in the applicant's favour (violation of Article 13).

The Deputies,

1 took note of the information provided by the Russian authorities on the progress made in the execution of the pilot judgment, in particular on the introduction of a domestic remedy in case of excessive length of enforcement procedures and on the settlement of individual applications frozen by the Court;

2 decided to resume consideration of this case at their 1128th meeting (November-December 2011) (DH) in the light of a draft Interim Resolution to be prepared by the Secretariat taking stock of the measures adopted.

EVT Company and other similar cases v. Serbia

3102/05, judgment of 21 June 2007, final on 21 September 2007

Failure or substantial delay by the administration in abiding by final judgments in commercial, civil and administrative matters, in family-related matters or in cases concerning socially-owned companies (mainly, violation of Article 6§1 and 1 of Prot. No. 1).

The Deputies,

1 noted with satisfaction the adoption and entry into force of the new Enforcement Act, aimed at facilitating the acceleration of enforcement proceedings and increasing their efficiency;

2 recalled that problems related to the non-enforcement of decisions rendered against socially owned companies remain a major issue of concern since the number of applications lodged with the European Court has been steadily increasing;

3 noted the action plan adopted in respect of employment-related debts owed by the socially-owned companies and confirmed by a final decision;

4 noted also that the task force which was established to identify specific measures required for the employment-related debts owed by socially owned companies and confirmed by a final decision has made a preliminary assessment of the aggregate amount of these debts and the number of final decisions involved;

5 encouraged the Serbian authorities to continue with their efforts to implement the action plan, and in particular to adopt, by the end of 2011, a decision on settlement of employment-related debts, which were confirmed by final decisions and owed by socially-owned companies;

6 encouraged the Serbian authorities to take other measures aimed at resolving the outstanding issues identified in the memorandum (CM/Inf/DH (2010) 25), in particular with regard to the enforcement of final demolition orders.

Hulki Güneş and other similar cases v. Turkey

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

Unfairness of criminal proceedings (final judgments of 1994-99) 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).

The Deputies,

1 noted once again Turkey's political commitment to take the necessary legislative measures for the execution of these judgments;

2 expressed, however, their concern that these judgments still remain to be executed despite the fact that the judgment in the case of Hulki Güneş became final in September 2003 and that no measure has been taken to allow the reopening of the proceedings in this case and in the other applicants' cases;

3 strongly urged Turkey to provide a clear response to the Committee of Ministers in time for the DH December meeting as to whether the draft law allowing the reopening of proceedings in the applicants' cases

is still pending before Parliament for adoption, and whether it will appear on the Order of Business of Parliament when it starts its session in October 2011.

Ulke v. Turkey

39437/98, judgment of 24 January 2006, final on 24 April 2006
Interim resolutions CM/ResDH (2007) 109 ; CM/ResDH (2009) 45

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 (substantial violation of Article 3).

The Deputies,

1 noted that two previous judgments convicting the applicant on account of persistent disobedience became time barred and could not therefore be executed;

2 expressed grave concern with regard to the fact that there was currently a valid arrest warrant against the applicant on account of a criminal investigation pending against him for desertion;

3 stressed that the European Court in its present judgment found that "the numerous criminal proceedings brought against the applicant, the cumulative effects of the ensuing criminal convictions and constant alternation between prosecution and imprisonment together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the aim of ensuring that he performs his military service";

4 expressed further their grave concern that this judgment still remains to be executed;

5 recalled that Turkey has stated on numerous occasions that legislative measures were required not only to prevent similar violations but also to prevent the continuous prosecutions and convictions of the applicant (see Interim Resolution (2007) 109);

6 strongly urged Turkey once more to take the necessary measures to execute this judgment;

7 insisted in this respect that Turkey inform the Committee of Ministers of the legislative measures required in time before the December DH meeting, including on their content and their time table for adoption;

8 decided to resume consideration of this item having in mind document CDDH (2008) 014 addendum II.

Kharchenko v. Ukraine

40107/02, judgment of 10 February 2011, final on 10 May 2011

Structural problem of violations of the right to liberty and security on account of unlawful detention on remand, absence of relevant and sufficient grounds for ordering and extending detention, lack of effective judicial remedies to obtain prompt and due examination of the lawfulness of detention on remand (violation of Articles 5§§1, 3 and 4); poor conditions in Kyiv pre-trial detention facility in 2001-2003 (violation of Article 3).

The Deputies,

1 noted the structural nature of the problem disclosed in the present case, which requires specific reforms to be rapidly carried out by the Ukrainian authorities;

2 stressed that the need for such reforms has already been highlighted by a large number of judgments in the Doronin group of cases;

3 stressed the importance of timely compliance with the present judgment and encouraged the Ukrainian authorities to present their strategy with a view to resolving this structural problem within the deadline set by the Court, namely by 10 November 2011.

Hirst (No. 2) v. the United Kingdom; Greens and M.T. v. the United Kingdom

Interim Resolution CM/ResDH (2009) 160

74025/01, judgment of 6 October 2005 – Grand Chamber
60041/08, judgment of 23 November 2010, final on 11 April 2011 (pilot judgment)

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

The Deputies,

1 recalled that the pilot judgment in Greens and M.T. against the United Kingdom became final on 11 April 2011 and that according to §115 of that judgment, the United Kingdom authorities had 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 No. 2 and Greens and M.T.;

2 noted that on 30 August 2011 the European Court granted a request from the United Kingdom authorities to extend that deadline to 6 months after the delivery of the Grand Chamber judgment in the case of Scoppola No. 3 against Italy;

3 decided to suspend its examination of these cases and to resume it after delivery of the Grand Chamber judgment in Scoppola No. 3 against Italy, and in the meantime invited the United Kingdom authorities to keep the Committee informed of any further developments.

Interim resolutions (extracts)

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted an interim resolution. This kind of resolution 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.

Interim Resolution CM/ResDH (2011) 184
Yuriy Nikolayevich Ivanov v. Ukraine; Zhovner and other similar cases v. Ukraine

40450/04, judgment of 15 October 2009, final on 15 January 2010 (pilot judgment)
56848/00, judgment of 29 June 2004, final on 29 September 2004
Interim Resolutions CM/ResDH (2008) 1; CM/ResDH (2009) 159; CM/ResDH (2010) 222

Structural problem of 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 Prot. No. 1).

In its resolution the Committee of Ministers [...]

Welcomed the adoption of the draft law (on guarantees of the state concerning the execution of court decisions) at the first reading in the Ukrainian Parliament;

Strongly encouraged Ukraine to bring the legislative process to an end without any further delay given that the deadline set by the Court has expired;

Called upon the Ukrainian authorities to ensure that the draft law in question meets the principles of the Convention as set out in the Court's case-law in order to constitute an appropriate response to the pilot judgment in the case of Yuriy Nikolayevich Ivanov including the allocation of appropriate budgetary means;

Urged the Ukrainian authorities to redouble their efforts to resolve without further delay the similar individual cases lodged with the Court prior to the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their implementation.

Selection of final resolutions (extracts)

Once the Committee of Ministers 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.

Resolution CM/ResDH (2011) 91
Frodl v. Austria

20201/04, judgment of 8 April 2010, final on 4 October 2010

Disproportionate disenfranchisement of a convicted prisoner, insofar as the applicable law did not require a discernible and sufficient link between this sanction and the conduct and circumstances of the individual concerned (violation of Article 3 of Protocol 1).

Individual measures

No further action seems to be required, since Mr Frodl, who was released on probation from prison on 12 June 2009, regained his right to vote on 12 December 2009.

General measures

An analysis of the case has been published in the *Newsletter Menschenrechte* (No. 2010/2, p. 117 f.) and in the *Österreichische Juristenzeitung* (ÖJZ 2010, p. 734 ff.). The case has also been analysed in a Circular Note which has been sent to all Federal Ministries, the Constitutional Court, the Administrative Court, the Supreme Court, the Asylum Court, Parliament, the governments of all nine Austrian Länder, the Liaison Office of the Länder with the federal authorities, all human rights coordinators at the federal ministries, all independent administrative panels of the Länder, as well as all directorates-general of the Federal Chancellery and has also been published on the homepage of the Prime Minister's Office (Federal Chancellery) at: http://www.bka.gv.at/site/3465/default.aspx).

By passing the Electoral Law Amendment Act (*Wahlrechtsänderungsgesetz* 2011) in June 2011 the Austrian Parliament has amended the electoral code (Federal

Gazette I No. 43/2011): in future no prisoner is automatically excluded from the right to vote, as the decision on disenfranchisement has to be taken by a judge (cf. §§34 and 35 of the judgment), who can exclude individuals from the right to vote if they have been sentenced with final effect to a term of imprisonment of more than one year, given that there is a link between the offence committed and issues relating to elections and democratic institutions or if they have been sentenced with final effect to a term of imprisonment of more than five years for criminal offences committed with intent (cf. §§34 and 35 of the judgment). An exhaustive list of offences linked to issues relating to elections and democratic institutions, which include High Treason and other assaults against the state, assaults against the supreme organs of the state, treason, assaults against the army, criminal offences related to elections and referenda has explicitly been incorporated into Article 22 National Assembly Election Act.

In their decision on disenfranchisement, judges will consider the particular circumstances of the individual case (cf. §§34 and 35 of the judgment) taking into account the European Convention on Human Rights and the Strasbourg Court's case-law.

As additional safeguard, a new provision (§446a) has been incorporated into the Code of Criminal Procedure of 1975, which stipulates that "disenfranchisement [...] [is to be] [...] decided [upon] in the criminal judgment" and that this decision, being taken on an equal footing with the sentence, "can be appealed against".

The amendment of the electoral code enters into force on 1 October 2011 and is applicable to elections on Federal Level (Parliamentary Elections, Election of the Federal President, Elections to the European Parliament, referenda (including petitionary and consultative referenda). In line with the Austrian constitution it will also apply to the elections of the Parliaments of the Länder, of community as well as district councils and – where this is foreseen in the constitutions of the Länder – elections of mayors. A copy of the Electoral Law Amendment Act, *Federal Law Gazette* I No. 43/2011, is enclosed.

Resolution CM/ResDH (2011) 98
Heglas v. the Czech Republic

Infringement of the applicant's right to respect for his private life in the course of a criminal investigation against him on account of acts, not provided by the law, carried out by the authorities in January and February 2000, notably by obtaining extracts from the list of his telephone calls and by recording one of his conversations by means of a body-planted listening device (violation of Article 8).

5935/02, judgment of 1 March 2007, final on 9 July 2007

Individual measures

The European Court found that the finding of the violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

Obtaining of lists of telephone calls in the course of criminal investigations

The European Court noted that subsequent to the facts at issue, the legal basis allowing the authorities to obtain lists of calls in the context of criminal investigations had been inserted in Article 88 of the Code of Criminal Procedure (which entered into force on 01 January 2002) (see §66 of the judgment).

Article 88 of the Code of Criminal Procedure states that, where it is necessary in order to clarify important facts in criminal proceedings, a judge can make an order granting access to telecommunication data. The order must be reasoned and given in writing (see §33 of the judgment).

Recording conversations by means of listening devices concealed on people's bodies

On 1 January 2002, Articles 158b and 158d of the Code of Criminal Procedure came into force, which set out the conditions for the use of monitoring devices (called "operative investigative means") by the police in the course of proceedings concerning intentional criminal offences. Accordingly, authorisation by a prosecutor is needed for audio and video surveillance of persons and objects; authorisation by a judge is needed if home or correspondence are affected. Authorisation can only be given for a limited period of six months (renewable once), and on the basis of a written application stating the facts of the alleged crime and, if known, data on the persons to be placed under surveillance. In case of emergency and provided that neither home nor correspondence are affected, police surveillance may start without authorisation, which must nevertheless be obtained within 48 hours; otherwise the recordings must be destroyed. Recordings may only be used as evidence in court proceedings if they are accompanied by documentary proof that they have been legally obtained, and if recordings turn out to be useless in criminal proceedings they must be destroyed. Conversations between an accused and his lawyer cannot be recorded. Furthermore, on 13 May 2004 the Supreme Prosecutor's Office published an interpretation advice (No. 2/2004) aimed at unifying the interpretation of the legal provisions concerning the use of recorded conversations as evidence in criminal proceedings.

Publication and dissemination

The European Court's judgment was translated and published on the website of the Ministry of Justice (www.justice.cz).

Resolution CM/ResDH (2011) 99
Reslová and other similar cases v. the Czech Republic

Authorities' failure to take adequate measures to ensure that the applicants' right of access to their children be determined by a judge and enforced (violations of Article 8), in some cases also excessive length of the civil proceedings related to the applicants' custody or visiting rights, in the light of the special diligence required in this

7550/04, judgment of 18 July 2006, final on 18 October 2006

type of case (violation of Article 6§1) and lack of an effective remedy (violation of Article 13).

Individual measures

The children of the applicants in the Koudelka, Křiž, Andělova and Mezl cases, have reached the age of majority. In the Reslová case the applicant's eldest child has reached majority. The applicant's visiting rights in respect of her second child were established by the national courts in 2007, after the judgment of the European Court. In the Zavřel case, the applicant's visiting rights were also established by the national courts in 2007, after the judgment of the European Court. In the Fiala case, the European Court's judgment did not call into question the custody rights in place at the time (§105 of the judgment).

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

General measures

Violations of Article 6§1 and Article 13

Measures concerning these violations are being examined in the context of the Bořánková group (41486/98).

Violation of Article 8

Legislative changes

Act No. 295/2008 amending the Code of Civil Procedure and the Act on Social and Legal Protection of Children entered into force on 1 October 2008. The amendments concerning in particular child custody proceedings, execution of court decisions concerning minors and co-operation of local authorities in execution proceedings, were adopted with a view to ensuring speedy decision-making in proceedings concerning children, developing the possibility of mediation and peaceful settlement of disputes between parents and underlining courts' obligation to seek the child's opinion.

Consequently, in matters concerning minor children (except in cases of domestic violence), courts may now stay proceedings for up to three months and order the parties to take part in out-of-court conciliation or mediation meetings or family therapy. These measures are now being applied and the courts have already delivered judgments endorsing parental agreements concluded in such out-of-court meetings.

By virtue of an interim measure, courts may also order placement of a child whose life or favourable development are threatened, in a "suitable environment" during the necessary period. Immediate execution of such an interim measure is ensured by the courts in co-operation with other authorities and appeals against interim measures have to be dealt with within 15 days. On 30 September 2008, the Ministry of Justice published an indicative list of institutions for child victims of parental conflicts, together with information on services provided and target groups.

The provisions of the Code of Civil Procedure on the execution of court decisions concerning minor children has been completely rewritten. The former initial phase, consisting of giving advice and requesting voluntary discharge of obligations, has become part of trial proceedings. Repeated fines, which have often proved ineffective in the past, should now be limited to cases in which this approach is useful, courts being required to substantiate it. Courts may also order parents not fulfiling their obligations to participate in out-of-court meetings or therapy or to set out a plan for an "adaptation regime" enabling gradual contacts, which should be accompanied by an expert opinion, in enforcement proceedings. If these measures appear unsuccessful, forced reunion of the parent with the child may be ordered.

Dissemination and training

The judgments of the European Court have been translated, published on the website of the Ministry of Justice (http://www.justice.cz/) and sent out to the authorities concerned (courts and child welfare authorities). Moreover, the Court's case-law in the field of family life as well as the amended rules of the Code of Civil Procedure are the regular subject of seminars held at the Judicial Academy and regional courts. A seminar for child-care judges was held in autumn 2008, a seminar for judges of district and regional courts on family law was held in January 2009. Another seminar on the amendments of the Code of Civil Procedure was organised for first-instance court judges in March 2009. Seminars for court officers and bailiffs concerning the execution of decisions involving minor children were held in April 2009.

Resolution CM/ResDH (2011) 102
Daoudi v. France

19576/08, judgment of 3 December 2009, final on 3 March 2010

Risk that the applicant, an Algerian national, convicted of preparing an act of terrorism and using a forged document, would be exposed to inhuman or degrading treatment if deported to Algeria (violation of Article 3).

Individual measures

As in the case of *Boutagni v. France* (No. 42360/08 of 18 November 2010), the deportation of the applicant was prevented by a decision of the National Court of Asylum (CNDA), on 31 July 2009 (cf. §28 of the *Daoudi* judgment).

Furthermore, as in the *Boutagni* judgment (§48), in which the Court found that "the Government's assertion that the applicant will not be returned to Morocco is sufficient for the Court to conclude that the latter is no longer at risk of being subjected to treatment contrary to Article 3 of the Convention", the French government has undertaken not to return the individual concerned to Algeria as long as circumstances require.

This is a sufficient measure for full compliance with the judgment of 3 December 2009, given that in any event, as the Court itself observed in the aforementioned *Boutagni* case, were the decision to return him to be enforced after all, "remedies remain open to the applicant under which his situation could be re-examined (§48)".

General measures

Dissemination

The Court's decision has been brought to the attention of the Private Office of the Interior Minister, the General Directorate of National Police and the legal department responsible for matters relating to deportations on public order grounds and the execution of expulsion orders.

Other general measures

In the government's view, no further general measure is necessary, given the particular nature of the circumstances which led to the finding of a violation. The government considers that the judgment has been executed.

Resolution CM/ResDH (2011) 102
Dubus S.A. v. France

Unfair hearing due to the lack of independence and impartiality of disciplinary proceedings initiated by the Banking Commission against the applicant company (violation of Article 6§1).

5242/04, judgment of 11 June 2009, final on 11 September 2009

Individual measures

The applicant did not claim pecuniary damages and the claim concerning non-pecuniary damages was rejected by the Court who considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damages. Therefore, from the government's point of view, no other individual measure ensues from the judgment.

General measures

Dissemination/publication

Publication and dissemination of this judgment present no practical benefits in relation to the Banking Commission, as the other general measures, described below, deal radically with the source of the violation found.

Nevertheless, the judgment at issue is an illustration of the Court's recent case-law on the subject of the impartiality of "courts" – besides of the Banking Commission – in respect of the separation of the functions of prosecution, investigation and sanction. It therefore deserved to be published, which was done with a letter of the Directorate of legal affairs of the Ministry of Finance dated 25 June 2009 (copy attached), which has been available on the Ministry's Intranet site since that date.

Other general measures

The merger of the banking and insurance licensing and supervisory authorities within a single authority (the Prudential Supervisory Authority), is the result of Order No. 2010-76 of 21 January 2010, which, *inter alia*, amends the Monetary and Financial Code (COMOFI). This merger gave the opportunity to take into account the requirements stemming in particular from the Dubus judgment.

The Order sets up a Sanctions Committee, which is responsible solely for imposing sanctions

The Court noted (§56) "the lack of precision of the texts which govern proceedings before the Banking Commission, as regards the composition and powers of the bodies required to exercise the different functions which are devolved to it". It was therefore appropriate to organise a separation between the body which establishes facts likely to constitute deficiencies and formulates the complaints and that which establishes deficiencies and sanctions them.

The architecture of the Prudential Supervisory Authority is thus distinguished from that of the Banking Commission. The articles of the Monetary and Financial Code stemming from the Order provide that "the Prudential Supervisory Authority shall comprise a College [of 16 members] and a Sanctions Committee [of 5 members]" (Article L 612-4 of the COMOFI). "The functions of a member of the Sanctions Committee are incompatible with those of a member of the College" (Article L 612-9 of the COMOFI).

The Sanctions Committee is chaired by a member of the Conseil d'Etat and comprises one judge from the Cour de Cassation and three persons qualified in the Authority's fields of responsibility.

The Order clarifies the division of powers between the different organs of the Prudential Supervisory Authority in sanctions proceedings

The Court found that no clear distinction emerged from the Monetary and Financial Code, or from any internal rule, between the functions of prosecution, investigation and sanction in the exercise of the judicial power of the Banking Commission (§57).

It pointed out in this respect that the role of the Secretary General aggravated this confusion (§60). The Secretary General was in fact in charge of the administrative function of supervision, but also played an active role in the opening of judicial proceedings leading to the sanction: the information that he supplied was used for the notification of complaints and he could also file observations in reply and was responsible for notifying the sanction decision.

The Order which sets up the Prudential Supervisory Authority precisely determined the division of powers during disciplinary proceedings, in order to comply with the European Court's requirements within three distinct bodies.

Clarification of the functions of the Secretary General

Appointed by an order of the Minister for Economic Affairs, the Secretary General manages the departments of the Authority. Like the secretaries general of other French administrative authorities, he is not part of the College of the Prudential Supervisory Authority. Pursuant to Article L 612-23 of the COMOFI, the Secretary General is responsible for the organisation of document-based and on-the-spot inspections.

The Secretary General of the Prudential Supervisory Authority may ask persons subject to his supervision for information and for documents, in any medium, and may obtain copies thereof, and may ask for any clarification or justification needed for the exercise of his role.

When an on-the-spot inspection is conducted, a report is drawn up. The draft report is drawn to the attention of the managers of the person undergoing the inspection, who may make their observations, which are included in the final report.

The College alone has the power to decide to open sanctions proceedings following the establishment of deficiencies during inspections

The College has administrative policing powers which are clearly defined in the COMOFI and separate from the sanctioning power pursuant to Articles from L. 612-30 to L. 612-37 of the COMOFI (warning, notice to remedy a state of affairs, approval of a recovery programme, appointment of a temporary administrator, etc).

It is also for the College to decide whether to open sanctions proceedings, on the basis of an inspection report. The Chairman of the College is responsible for notifying

complaints to the persons concerned and for forwarding notification thereof to the Sanctions Committee (Article L 612-38 of the COMOFI).

The Sanctions Committee has sole power to impose disciplinary sanctions and ensures compliance with the adversarial principle

The Sanctions Committee ensures compliance with the adversarial nature of the proceedings. It conducts communications with and summons to appear all persons subject to the notification of complaints. All persons summoned to appear have the right to be assisted or represented by counsel of their own choice. The Sanctions Committee may use the services of the Authority (registry) for the conduct of the proceedings.

The member of the College appointed by the formation of the College which decided to open sanctions proceedings is summoned to the hearing. He or she is present without the right to vote. The Sanctions Committee deliberates without the presence of the parties, the government commissioner, the member of the College and the departments of the Authority responsible for assisting or representing it.

In view of these elements, the government considers that the judgment has been executed.

Resolution CM/ResDH (2011) 103
Zervudacki v. France; X v. France

73947/01, judgment of 27 July 2006, final on 27 October 2006
20335/04, judgment of 2 November 2008, final on 20 February 2009

Unlawful detention of the applicants as from the expiry of police custody until their presentation before a judge (violations of Article 5§1); *Zervudacki*: also impossibility for the applicant to file a petition before a court on the lawfulness of her detention (violation of Article 5 §4).

Individual measures

The detention at issue is ended and the Court awarded the applicants just satisfaction in respect of the non-pecuniary damage suffered.

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

General measures

Subsequent to the events in these cases, the gap in the law caused by the absence of texts relating to the period of "*mise à disposition*" was filled by Law 2004-204 of 9 March 2004 "adapting the judicial system to the evolutions of criminality" determining, among other things, time-limits and procedures for detention between the end of the police custody and the actual presentation before the investigating judge.

Also, the Minister of Justice has issued an instruction to principal state prosecutors and presidents of courts of appeal on the consequences to be drawn from the European Court's judgment in the Zervudacki case (CRIMAP No. 06/2010 – D2, of 1 December 2006).

The instruction specifies that it follows from the Court's judgment that the right to eat, to rest and to wash should be effectively guaranteed to all persons brought before judicial authorities, when the length of the "*mise à disposition*" is substantial and therefore that they should establish "best practices" in this respect.

Relating to the possibility for persons deprived of their liberty to seek a rapid ruling on the lawfulness of their detention during this period, the instruction recalls the need to limit as strictly as possible the length of the "*mises à disposition*", specifying that only the fact of being effectively brought before the investigating judge or the criminal court is likely to meet the requirements of Article 5 §4 of the Convention.

Furthermore, the French authorities underline the fact that ordinary courts exercise effective control of the time-limit fixed by the law of 9 March 2004 in relation to the presentation before a judge of a person whose police detention has ended, and that failure to comply with the time-limit leads to the annulment of the proceedings and the freeing of the person concerned. Attention is particularly drawn, in this respect, to the constant jurisprudence of the criminal chamber of the Court of Cassation (Cass. crim. 16 September 2003, Cass. Crim. 26 October 2004, Cass. Crim. 6 December 2005, Cass. Crim. 16 February 201, Cass. Crim. 23 June 2011).

Resolution CM/ResDH(2011) 104
Mamère v. France

12697/03, judgment of 7 November 2006, final on 7 February 2007

Breach of the right to freedom of expression of the applicant, a politician, as he was convicted in criminal proceedings for defamation and ordered to pay a fine as well as damages for statements he made during a television programme aired on the state television channel France 2 in October 1999, statements in which he questioned the authorities' reaction to the Chernobyl nuclear accident (violation of Article 10).

Individual measures

The applicant submitted no claim for just satisfaction. Accordingly, the Court considered that no award should be made in this respect.

As regards other possible negative consequences of the violation, in particular the inclusion of the conviction in the applicant's criminal record, the French authorities indicated that, following the European Court's judgment, the applicant had the possibility to request the reexamination of the domestic decision at issue (Section 626-1 and following of the Code of Criminal Procedure) and that, beside these proceedings, there are two other means available to modify the applicant's criminal record, if he so wishes. These two means are set out in the Appendix to Committee of Ministers' Final Resolution CM/ResDH (2011) 57 adopted on 8 June 2011.

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

General measures

Concerning the Court's finding in respect of the reasons put forward by the domestic courts for convicting the applicant, the French authorities point out that measures have been taken to ensure extensive publication of this judgment as well as of other, similar judgments (see Final Resolution CM/ResDH(2011)57 mentioned above) with a view to ensuring that competent courts, directly

applying the Convention, may take them into account in practice.

The *Mamère* judgment was also published and commented on the intranet of the *Bureau du droit européen, international et constitutionnel* of the Directorate of Public Freedoms and Legal Affairs of the Ministry of the Interior.

With regard to the legal provision (5th paragraph of Section 35 of the 1881 Act on the Freedom of Press) which makes it impossible for persons prosecuted for defamation to free themselves from liability by proving the truth of the defamatory facts when those facts date back more than ten years, the French authorities indicated that this provision was declared contrary to the Constitution by a decision of the Constitutional Council No. 2011-131 QPC.[12]

The Constitutional Council specified that this declaration of unconstitutionality applies to all charges of defamation which had not arrived at a final judgment, by the date of the publication of the decision in the Official Journal of the French Republic – i.e. 20 May 2011.

Therefore, in application of this decision, the defence of truth concerning the defamatory fact may be invoked by all prosecuted persons, including when facts date back more than ten years.

12. Decision of the Constitutional Council No. 2011-131 QPC of 20 May 2011, Ms Térésa C. and others.

Resolution CM/ResDH(2011)105
Patsuria v. Georgia; Gigolashvili v. Georgia; Ramishvili and Kokhreidze v. Georgia

30779/04 (Patsuria), judgment of 6 November 2007, final on 6 February 2008;
18145/05 (Gigolashvili), judgment of 8 July 2008, final on 8 October 2008;
1704/06 (Ramishvili and Kokhreidze), judgment of 27 January 2009, final on 27 April 2009

Absence of "relevant" and "sufficient" grounds for placing and maintaining the applicant's detention on remand in 2004, especially in that the courts, essentially relying on the gravity of the charges, had failed to address the specific features of the case or to consider alternative non-custodial pre-trial measures, and had used a standard pre-printed form to extend his detention (violation of Article 5§3 in *Patsuria* case); unlawfulness of the applicant's remand in custody, owing to the lack of judicial authorisation (violation of Article 5§1.c in *Gigolashvili* and in *Ramishvili* and *Kokhreidze* cases); unfair nature of the supervision exercised by the judge ordering detention on remand and lack of a "prompt" reply on an appeal against unlawful detention (violation of Article 5§4 in Ramishvili and *Kokhreidze* case); inhuman and degrading treatment at Tbilisi Prison No. 5, also in respect to the applicants' placement in a metal cage guarded by special forces during the court hearing of 2 September 2005 (violations of Article 3 in *Ramishvili* and *Kokhreidze* case).

Individual measures

In the *Patsuria* and *Ramishvili* and *Kokhreidze* cases, the Court, deciding on equitable principles, awarded the applicants just satisfaction in respect of non-pecuniary damage, and this was paid within the time-limit set. In the *Gigolashvili* case, the applicant made no request for just satisfaction, and the Court consequently made no award to him in this respect.

The applicants were no longer in detention on remand when the Court delivered its judgments.

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

General measures

Violation of Article 5

Articles 5§1(c) and 5§3 – continued detention on remand without a "lawful" basis, detention and continued detention on remand on grounds which cannot be regarded as "relevant" or "sufficient" and use of a standard template text with pre-printed reasoning for a decision extending detention on remand

Since the facts called into question by the judgments, the Constitutional Court, in a judgment of 16 December 2003, declared Article 406 §4 of the Code of Criminal Procedure unconstitutional and incompatible with Article 5 §1 of the Convention, while deciding that annulment of the provision called into question was to be deferred until 25 September 2004 "to avoid the creation of difficulties for the investigative authorities". Subsequently, a new Code of Criminal Procedure (CCP) was adopted, which came into force on 01 October 2010, and which *inter alia* definitively repealed the provision at issue. Thus there are no longer two periods of detention on remand.

Article 206 of the new Code provides that the prosecutor must address to the judge a reasoned request for application for privation of liberty within 48 hours after an individual's arrest. The judge examines this request within 24 hours. The hearing is public, other than in exceptional cases which the Code provides. The prosecutor's request must contain the individual's personal details, the charge and any information or evidence on which that charge is based. After verifying the merits and the formal and procedural bases of the requested measure, the judge delivers a judgment for which reasons must be given. The judge may reject the measure requested by the prosecutor for appropriate reasons and apply another, less severe measure.

Lastly, Article 205 §2 of the new Code provides that the total period of detention on remand may not exceed nine months.

The new Article 198 §1 of the Code of Criminal Procedure provides that "a measure of detention on remand may only be applied if the objectives pursued cannot be achieved by a less severe measure". A reminder of this principle is given to prosecutors in paragraph 3 and to judges in paragraph 4 of this same article.

Article 5 §4 – unfair nature of the supervision exercised by the judge ordering detention on remand and lack of a "prompt" reply on an appeal against unlawful detention

Unfair nature of the supervision exercised by the judge

The violation found by the European Court in the case of *Ramishvili and Kokhreidze* was due to the chaotic conditions in which the hearing had taken place. On this subject see paragraphs 2.2 and 3 below.

"Prompt" reply

Pursuant to Article 207 of the new Code, judgments concerning privation of liberty may be the subject to single appeal to the investigations section of the Court of Appeal. That appeal may be lodged by the prosecutor

or by the accused within 48 hours after adoption of the judgment.

The judge of the investigations section of the Court of Appeal considers the appeal within 72 hours of its being lodged: if applicable, he or she issues a definitive inadmissibility judgment, without a hearing or, if the appeal is declared admissible, a hearing is held.

Violation of Article 3

In respect of detention conditions at Tbilisi Prison No. 5, including in the disciplinary cells

Tbilisi Prison No. 5 was demolished in 2008 and replaced by a new building, with a modern infrastructure.

The question of detention conditions in Georgia is being dealt with in the context of the Aliev case, application No. 522/04, judgment of 13 January 2009, final on 13 April 2009.

Prior to its examination of detention conditions, the European Court noted that the authorities had opted for the most severe of the existing disciplinary penalties, without considering the proportionality of this additional punitive measure.

On 1 October 2010, a new Code on Imprisonment came into force. A new set of Prison Rules was adopted by a decree of the Minister of Penitentiary, Probation and Legal Aid Issues on 30 May 2011.

Article 82 of the Code on Imprisonment lists the disciplinary sanctions which may be applied, which include a warning, a reprimand, restriction of the right to work, or the right to use permitted items, withdrawal of the possibility to receive parcels or transfer to a cell regime each for a period not exceeding six months, and placement in solitary confinement for a period not exceeding 20 days.

Article 81 §1 of the Code on Imprisonment provides that the disciplinary sanction applicable to a prisoner must be proportionate to the offence committed. According to the second paragraph of the same article, application of a disciplinary sanction is authorised only after disciplinary proceedings (investigation) intended to establish the facts.

The individual concerned has the right to be informed, in a language which he or she understands, of the disciplinary offence alleged, to have sufficient time to prepare his or her defence, to a hearing and to legal assistance, and to request the presence of and to question witnesses. If he or she does not understand the language of the proceedings, interpretation is provided free of charge.

An individual sentenced for a disciplinary offence has the right to lodge an appeal to a competent court against the decision to apply the disciplinary measure within 10 days following its adoption.

In respect of the conditions in which applicants appear in the courtroom

The practice of placing accused persons in metal cages guarded by special forces has been discontinued. In the context of the judicial reform begun in 2005, courts of first instance in Tbilisi (the Gldani-Nadzaladevi, Isani-Samgori, Didube-Chugureti, Krtsanisi-Mtatsminda and Vake-Saburtalo district courts) have been replaced by the Tbilisi City Court. The new court is located in a modern building.

With this reform, the practice of placing accused persons in metal cages guarded by law enforcement forces has been discontinued. A glazed area for prisoners has been created in every courtroom used for criminal cases.

Other general measures

The Patsuria judgment has been translated and was published in Georgia's *Official Gazette* No. 19 of 30 April 2008; the Gigolashvili judgment has been translated and was published in Georgia's *Official Gazette* No. 4 of 14 January 2009; and the Ramishvili and Kokhreidze judgment has been translated and was published in Georgia's *Official Gazette* No. 80 of 11 November 2009. The three judgments also appear in a journal entitled *The judgments of the European Court of Human Rights against Georgia*, published in 2010 by the Human Rights Centre of the Supreme Court of Georgia. This work is a collection of the judgments delivered by the European Court of Human Rights against Georgia between 2004 and 2010, and it has been distributed to domestic courts.

Domestic courts' attention has thus been drawn to the requirements of the Convention concerning detention on remand.

Furthermore, regular training courses are organised in the context of the adoption of the new Code of Criminal Procedure, and the case-law of the European Court on detention on remand is an integral part of the syllabus.

Resolution CM/ResDH (2011) 106
Kharitonashvili v. Georgia

41957/04, judgment of 10 February 2009, final on 10 May 2009

Excessive length of certain civil proceedings – more than eight years – regarding an eviction (violation of Article 6 §1).

Individual measures

The Court awarded the applicant just satisfaction in respect of non-pecuniary damages.

The Georgian authorities have indicated that the domestic proceedings are concluded. The Tbilisi court delivered its decision on 29 April 2008. The applicant lodged an appeal against this decision and the Court of appeal delivered its judgment on 11 November 2008. No appeal to the Court of Cassation was lodged against this judgment within the prescribed time-limit of ten days and the judgment is therefore final.

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

General measures

The violation found by the Court in this case is isolated: to date, the European Court has communicated no further application concerning the excessive length of proceedings to the Georgian Government.

It should nonetheless be noted that since the facts at the origin of this case, the law has been changed to make it possible to ensure that that civil proceedings are conducted in a well-organised way.

Legislative changes

The Code of Civil Procedure, as amended on 3 January 2008, lays down time-limits and procedures.

Civil courts consider eviction cases within a maximum of a month of introduction (Article 59 §3).

During the preparatory phase, the judge fixes a 14-day time-limit for the defendant to submit information; in complex cases, the limit is 21 days (Article 201 §1). Such delay may only be extended in circumstances provided in the Code, such as illness, the death of a relative or any other particular, objective circumstance which makes participation in the trial impossible against the will of the person concerned (Article 215 §3).

The judge may reject requests by parties which in his view run the risk of unduly prolonging the proceedings (Article 215 §3).

Consideration of a case may only be postponed in circumstances provided by law, i.e., to allow procedural acts such as the pursuit of a friendly settlement, the preparation of expert reports or on-the-spot visits, etc., and that only for a reasonable time determined by the judge on the basis of the parties' arguments and of the proceedings as a whole. Parties are under an obligation to help ensure that cases are examined within the time-limits set by law (Article 216 §1).

When courts request the production of documents or expert reports from physical or legal persons, they establish time-limits which take account of the individual circumstances of each case. Failure to respect such limits incurs a fine of 150 laris. The levying of the fine does not dispense the person responsible from producing the requested documentation. In case of further failure to deliver the material, the fine is tripled (Article 136).

Publication/dissemination of the European Court's judgments

The judgment of the European Court was translated and published in the *Official Gazette* No. 80, dated 11 November 2009.

The judgment also appears in a journal entitled *The judgments of the European Court of Human Rights against Georgia*, published in 2010 by the Human Rights Centre of the Supreme Court of Georgia. This work is a collection of the judgments delivered by the European Court of Human Rights against Georgia between 2004 and 2010, and it has been distributed to the domestic courts, whose awareness of the issue of length of proceedings has been raised.

Resolution CM/ResDH (2011) 108
"Iza" Ltd and Makrakhidze v. Georgia; "Amat-G" Ltd and Mebaghishvili v. Georgia; Kvitsiani v. Georgia

28537/02, judgment of 27 September 2005, final on 27 December 2005
2507/03, judgment of 27 September 2005, final on 15 February 2006
16277/07, judgment of 21 July 2009, final on 21 October 2009

Infringement of the applicant companies' right of access to a court on account of the administration's failure to enforce final domestic judgments ordering the payment of state debts (violation of Article 6 §1 and Article 1 of Protocol No. 1); lack of an effective remedy in this respect (violation of Article 13).

Individual measures

The just satisfaction awarded by the European Court in the cases of "Iza" Ltd and Makrakhidze and "Amat-G" Ltd and Mebaghishvili covers the entirety of the sums at issue in the unenforced domestic judgments.

In the case of Kivitsiani, the sums at issue in the domestic judgment had already been paid when the Court delivered its judgment.

The European Court awarded just satisfaction in respect of non-pecuniary damages to the applicants who requested it.

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

General measures

Violation of Article 6 §1 and of Article 1 of Protocol No. 1

Budgetary issues

As regards the budgetary inadequacies pinpointed by the Court in its judgments, the Georgian authorities have stated that this problem no longer exists, supplying statistics concerning first, the state budget allocated to the enforcement of domestic judicial decisions, and secondly, the amount committed to the enforcement of domestic judicial decisions by the National Bureau of Enforcement, as well as the number of decisions enforced.

Almost all debts (i.e., wages owed to individuals, compensation owed for damage, grants, medical treatment expenses and others) have been paid, and old enforceable decisions remaining unenforced are currently being enforced.

As a result of the Court's judgments, a special budget of ten million laris was voted in 2007 for the payment of state debt. Since 2008 an annual fund, called the "Government Fund", of 20 million laris has been voted with a view to reimbursing preceding years' debts and enforcing judicial decisions (including the payment of just satisfaction awarded by the European court in judgments against Georgia). This fund is attached to the Finance Ministry.

Reform and modernisation of the enforcement system

The administrative organs responsible for enforcement have been reformed, in particular by the creation, in October 2008 of the National Bureau of Enforcement (NBE) and the gradual establishment of a mixed bailiff system. Many measures have been taken to modernise these services and to heighten the professionalism of enforcement agents.

Enforcement procedures are governed at present by the Civil Code, the Code of Civil Procedure and the Enforcement Procedures Act of 16 April 1999, which has been amended several times, the latest modification having entered into force in December 2010.

Pursuant to Article 28 §5 of this Act the NBE, upon receiving a request for enforcement of a domestic judgement establishing a debt against the state, invites the public institution concerned and the Finance Ministry to discharge the judgment.

Violation of Article 13 of the Convention

Forcible execution of judicial decisions against the state

Articles 90-3 and 90-4 of the Act of 16 April 1999 provide that forcible execution procedures against public institutions or legal persons incorporated under public law are activated a month after the issue of the invitation mentioned above.

Forcible execution of cases in which the state is debtor is carried out where necessary by a permanent unit of the NBE called the "Special Department", whose functions are governed by the NBE regulations (legislative amendment of 7 December 2010). The special Department approaches the Finance Ministry with a request to make available a sum corresponding to the amount owed by the state from the Government Fund and to pay it to the creditor.

Compensation in the event of delayed enforcement

Article 411 of the Code of Civil Procedure provides compensation for damages in respect not only of actual financial loss but also of loss of income, and for compensation for loss of income to correspond to the amount which could have been obtained had contractual obligations been fulfilled.

Article 412 states that "Damages shall be paid only when the harm could have been foreseen by the party in default and there exists a causal link between the harmful action and the result".

Domestic courts decide on compensation.

Finally, the introduction of a legal obligation to pay default interest in the event of non-compliance with a judicial decision requiring the payment of sums of money is currently being studied.

Other general measures

In order that the case-law of the Court be taken into account by the administration and the courts, the three judgments of the European Court were translated and published: the judgment in "Iza" Ltd and Makrakhidze was published in the *Official Gazette* No. 13, dated 30 May 2006; that in "Amat-G" Ltd and Mebaghishvili in the *Official Gazette* No. 16, dated 12 June 2006 ; and that in Kivitsiani in the *Official Gazette* No.80, dated 11 November 2009.

The judgments also appear in a journal entitled *The judgments of the European Court of Human Rights against Georgia*, published in 2010 by the Human Rights Centre of the Supreme Court of Georgia. This work is a collection of judgments delivered by the European Court of Human Rights against Georgia between 2004 and 2010, and it has been distributed to the domestic courts whose awareness of the issue of implementation of domestic courts' judgments has been raised.

Resolution CM/ResDH (2011) 111
Niedzwiecki v. Germany; Okpisz v. Germany

58453/00 and 59140/00, judgments of 25 October 2005, final on 15 February 2006

Infringement of the right to privacy on account of the introduction of a new discriminatory provision denying child benefit to aliens with a less stable residence permit (violation of Article 14 in conjunction with Article 8).

Individual measures

The Court awarded the applicants just satisfaction in respect of pecuniary damage covering the child benefits in question.

It further held that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage sustained by Mr Niedzwiecki. It made no award in this respect in the case of Okpisz because no claim was made.

It is noted that the applicants are entitled to receive child benefits under the new legislation (see below). No further individual measure seems necessary in these cases.

General measures

Legislative amendments

On 6 July 2004 the Federal Constitutional Court held that Section 1 (3) of the Child Benefits Act, as effective from January 1994 until December 1995, had been incompatible with the right to equal treatment under Article 3 (1) of the German Basic Law. It invited the legislator to amend the Child Benefits Act by 1 January 2006.

The new law concerning entitlement of foreigners to child benefits entered into force retroactively on 1 January 2006 and eliminated the shortcomings found by the Court. Moreover, it contained provisions for all cases concerning decisions on child benefits taken between 1 January 1994 and 18 December 2006 and which have not yet become final.

Resolution CM/ResDH (2011) 118
Agga No. 3 and Agga No. 4 v. Greece

32186/02 and No. 33331/02, judgments of 13 June 2006, final on 13 October 2006

Unjustified interference with the applicant's right to manifest his religion on account of his criminal prosecution and convictions between 1997 and 2002 on the ground that in 1996 and in 1997 he had issued and signed messages in the capacity of Mufti, following his election by Muslims (violations of Article 9).

Individual measures

The applicant died in 2006. Under national law (Article 525 §1 in combination with Article 527 of the Code of Criminal Procedure) his heirs are entitled to request the reopening of the criminal proceedings following the European Court's judgments.

It is noted that the Court did not award any pecuniary damages, given that the applicant failed to show that he had paid any amount as a fine (§35 in both judgments). The European Court also considered that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage sustained.

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

General measures

These cases present similarities to that of Serif (judgment of 14 December 99, final on 14 March 2000) in which the supervision by the Committee was concluded by Final Resolution ResDH (2005) 88 adopted on 26 October 2005. The Committee took particularly into consideration the change of domestic case-law (especially by decisions and judgments of first-instance and appeal courts delivered in 2001 and 2002) interpreting

Article 175 of the Criminal Code in the light of the European Court's case-law. The Greek Government had considered that the measures taken would prevent similar violations.

The Court of Cassation did not give direct effect to the judgment of the European Court in the Serif case in the beginning of 2002, however, by the end of that year, fully endorsed the European Court's findings in its case-law.

In its judgment No. 1045/2002 the Court of Cassation held that "the simple issuing of messages of a religious content to people of the same Muslim religion, even if this is done under the invocation of the identity of muftis by a person that has not acquired it by law, does not constitute the crime of having usurped the functions of a minister of a "known religion". This action primarily makes it possible to exercise the right to manifest one's religion in public or in private, through worship and education, as has been pointed out by the European Court in the Serif judgment. This right is guaranteed by Article 13 of the Constitution and by Article 9 of the Convention, which prevails over any other provision of national law (Article 28 of the Constitution)".

In addition, the judgments of the European Court were translated and sent out to all the judges in the country between December 2006 and March 2007 together with a letter from the President of the Court of Cassation drawing attention to the reasoning and conclusions of the European Court. They were also sent to the Prosecutor General, who in turn sent them out to all Greek prosecutors.

Finally, in a letter dated 18 March 2010, the authorities indicated that according to the Ministry of Justice and the competent Prosecutors' offices (of Rodopi, Xanthi, Alexandroupoli and Oresteiada), no pending case regarding a violation of Article 175 of the Criminal Code (usurping of the functions of a minister of a "known religion") exists, either in a prosecution or in a hearing procedure.

Resolution CM/ResDH(2011)119
Sampanis and others v. Greece

32526/05, judgment of 5 June 2008, final on 5 September 2008

Failure to provide schooling for the applicants' children in 2004-05 and their subsequent placement in special preparatory classes in 2005. In particular, the Court concluded that, in spite of the authorities' willingness to provide education to 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 to secure redress in this respect (violation of Article 13).

Individual measures

The special preparatory classes annexed to the 10th primary school of Aspropyrgos were abolished.

The Greek authorities have taken measures in order to facilitate enrolment of the applicants' children in an ordinary school following the Court's judgment. In accordance with ministerial decision No. 10781/D4/2008, a new ordinary primary school (12th Primary School of Aspropyrgos) was established. The school, intended to receive both Roma and non-Roma pupils, covers among others the area where the Roma community of Aspropyrgos mainly resides. These measures were therefore aimed at providing schooling to the applicants' children in an ordinary school.

Following the Court's judgment, nearly all of the applicants' children have been enrolled with the 12th Elementary School of Aspropyrgos. They did not, however, attend the classes regularly. Three children reached the age when they were not obliged to attend school any longer. Moreover, the parents did not enrol four other children at the school, while one child has already graduated from another elementary school.

General measures

Concerning the violation of Article 14 in conjunction with Article 2 of Protocol No. 1

The Greek authorities provided extensive information in their consolidated action plan [DH-DD (2011) 52] , as well as additional information afterwards. This information is summarised below:

Measures concerning enrolment and schooling of Roma children

Special measures were taken to facilitate the enrolment of Roma pupils in primary schools. Unlike other pupils, Roma children are enrolled in the primary schools in a simplified procedure on the basis of a sole declaration and without the filing of certificates. The authorities issued a number of circulars providing instructions to the school administrations concerning the practicalities of the facilitated enrolment of Roma children and monitoring their regular attendance of classes (Nos F.1.T.Y./1073/117052/G1/23-9-2009, F.3/960/102679/G1/20-8-2010, 114893/G2/14-9-2010.

The Greek authorities have also taken a number of measures aimed at including Roma children in the national education and eliminating their discrimination in this field. These measures include, in particular, the introduction of a new education policy based on the French model of *Zones d'éducation prioritaire*. These zones, including in the Aspropyrgos area, aim at reinforcing the inclusion of the socially most vulnerable groups (Roma, migrants, etc.) by various actions and by means of education (Ministerial decision AF.821/3412P/157476/Z1/31-12/2010). The Dosta! awareness-raising campaign promoted by the Council of Europe and aiming at combating stereotypes and prejudice as regards the Roma people was also launched in Greece by the Ministry of Education in February 2011. The Greek campaign focuses on primary and secondary school.

Moreover, the authorities launched a specific programme as of school-year 2010-2011, aimed at active adhesion of Roma children to national education to be implemented by two major Greek universities. In accordance with this programme, the authorities have introduced special mediators fluent in Romani in order to assist Roma families with education of their children. The authorities appointed 15 school mediators in the Attica region, including one in the Aspropyrgos area. The Council of Europe is organising a number of training activities for them in the context of its European Training Programme for Roma Mediators (ROMED). In accordance with the programme "Education for Roma Children", the authorities also introduced social workers in charge of psychological support offered to Roma families. These social workers, among other duties, visit schools with Roma pupils and Roma camps in order to

identify Roma children who should attend the school and to encourage their parents to send them to the school. Teaching assistance has been made available to Roma children with learning difficulties through enhanced extra-curricular activities (additional courses and enhanced school activities), including in the Aspropyrgos area. The authorities have also provided special training courses on intercultural education for the school teachers. The Ministry of Education set up in the beginning of 2011 an Advisory Committee for the programme "Education for Roma Children" for the purpose of consulting on the relevant issues, as well as monitoring and evaluating the implementation and the progress of the programme Education for Roma Children. The Committee comprises representatives from the Council of Europe, the European Commission, the OSCE/ODIHR and other major stakeholders.

The Greek authorities also set up three educational centres for the purpose of education of adults "Institute for the Continuing Training of Adults", "Centres for Adults Training" and "School for Parents". People with Roma background may participate after they reach 15 years of age.

Finally, the Greek authorities have regularly provided information on measures taken to improve facilities and conditions of work for the 12th Primary School of Aspropyrgos, whilst noting that issues concerning the functioning of this school are presently being considered by the Court in the context of a new application (application No. 59608/09, communicated to the authorities on 11 April 2011).

Concerning the violation of Article 13 regarding the authorities' failure to enroll the applicants' children

The Greek authorities indicated that acts or omissions of the school authorities are in fact administrative acts. These administrative acts may be challenged in administrative proceedings (administrative court of appeals at first instance, Council of the State at second). In the present case, the Court found a violation on account of the absence of an effective remedy because the authorities were unable to provide case-law in a similar context. The authorities indicate that such ad hoc case-law does not exist yet. However the domestic courts have clearly decided in a number of decisions issued since the Court's judgment that the administrative court of appeals was competent to examine applications requesting quashing of administrative acts taken in implementation of educational legislation (e.g. school authorities' decisions that order change of school environment for certain students, due to their behaviour; decision for non-enrollment following interruption of studies; decision for not accepting student to a certain level of high school, following qualifying tests).

Resolution CM/ResDH (2011) 122
F.C.B. and other similar cases v. Italy

12151/86, judgment of 28 August 1991
Resolution DH (93) 6 and Interim Resolution ResDH (2002) 30

Unfairness of criminal proceedings by which the applicants were sentenced *in absentia* to several years' imprisonment although it had not been shown that the applicants had willfully absconded or renounced to their right to attend the hearings (violations of Articles 6 §1 and 6 §3).

Individual measures

F.C.B

The applicant, an Italian national, was convicted *in absentia* in 1984 and sentenced to 24 years' imprisonment.

In March 1993, the Committee of Ministers adopted Resolution DH (93) 6, putting an end to the examination of the case on the basis of information provided concerning the general measures taken to avoid new, similar violations. However, in 1999, the Committee decided to resume the examination of this case, the Italian authorities having requested the extradition of the applicant from Greece with a view to enforcing the conviction at issue. In September 2000, the Italian authorities dropped their request. In 2004 the applicant, who had meanwhile returned to Italy, was arrested for other offences. The Italian authorities issued an enforcement order in respect of the conviction at issue in the present case.

In 2004 the applicant contested the lawfulness of his imprisonment by means of an objection to enforcement ("*incidente d'esecuzione*") before the Milan Assizes Court of Appeal, which dismissed his appeal. Upon appeal by the applicant, the Court of Cassation, in a judgment of 22 September 2005, quashed the decision of the appellate court, to which it referred the case back. In doing so the Court of Cassation was careful to specify to the appellate court that, given the supranational value of the provisions of the European Convention, it should determine whether this was of a nature to prevent the enforcement in national law of a sentence pronounced in unfair proceedings, or whether on the other hand the value of the *res judicata* should prevail in the absence of an appropriate means of redress. The appeal court dismissed again the applicant's motion concerning the illegality of his imprisonment. Seised once more by the applicant, the Court of Cassation dismissed his appeal (judgment of 15 November 2006) on the grounds that the applicant should rather have submitted an application for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termine*) pursuant to the new Article 175 of the Code of Criminal Procedure (CPP).

In August 2007 the applicant lodged a new application before the European Court, complaining that he had been deprived of his freedom and that, moreover, as a result of proceedings found to be unfair by the European Court. He also complained of the dismissal of his "*incidente d'esecuzione*" and the national authorities' failure either to free him or to seise the Constitutional Court of the matter.

The European Court declared the application inadmissible on 25 November 2008 on grounds of non-exhaustion of internal remedies (Cat Berro, application No. 34192/07). It noted that, following to the Court of Cassation's judgment of 15 November 2006 (see under general measures), the applicant had had the possibility to lodge an application for suspension of the time-limit for appeal against sentence under Article 175 CPP, as amended by Act No. 60 of 22 April 2005. In these circumstances, as well as in the light of the Court of Cassation's case-law, the European Court considered that "the possible application for suspension of the time-limit for appeal against sentence was not deemed to fail or not to guarantee the applicant, with a sufficient degree of legal cer-

tainty, the opportunity to go before a court and defend himself in a new set of proceedings".

Ay Ali

The applicant, a Swedish national, was convicted *in absentia* and sentenced to 20 years' imprisonment. The judgment became final in 1999. In 2000, the applicant was arrested in Lithuania under the terms of an international arrest warrant issued by the Italian authorities and extradited to Italy.

On 16 November 2000 the applicant applied for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termini*). This was denied by the final judgment by the Court of Cassation of 4 December 2003. Following the judgment of the European Court on 14 December 2006, the applicant applied again to the Verona Tribunal for the suspension of time-limit for appeal against sentence (*istanza di rimessione in termini*) and for being freed, on the basis of Articles 670 and 175 of the CPP. The court decided to accept the request for suspension of time-limit for appeal against sentence to lodge an appeal, as provided by Article 175 of the CPP, and meanwhile freed the applicant. In conformity with the court's decision, he lodged an appeal.

Hu

The applicant, a Chinese national, was sentenced *in absentia* to 19 years' imprisonment. The judgment became final in 1998.

In 2003 the applicant was arrested at Amsterdam airport under an international arrest warrant issued by the Italian authorities. The Netherlands authorities then rejected the application for extradition on the ground that the applicant had not had the opportunity to defend himself. The applicant was then freed (25 November 2003) and resides in the Netherlands.

No application for suspension of the time-limit for appeal against sentence under Article 175 CPP to lodge a late appeal against the *in absentia* conviction has been received by the competent court (Turin court) so far.

Pittito

The applicant, an Italian national, was convicted *in absentia* and sentenced to 21 years' imprisonment. The judgment became final in 1999.

The applicant was arrested in Spain in 2000 under an international arrest warrant issued by Italy, and was extradited. On 8 August 2007, following an order of the Milan tribunal accepting an application for the suspension of time-limit for appeal against a conviction imposed *in absentia*, the Milan Appeal Court ordered the applicant's release on condition that he remained in Milan and reported daily to the appropriate police station.

On 30 July 2001 the applicant lodged a motion for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termine*) which was dismissed. The applicant then introduced before the Court of Milan a new application for the suspension of time-limit for appeal, as provided in Article 175 of the Code of Criminal Procedure as amended in the meantime. The court decided to accept it on 19 July 2007. The applicant appealed against his conviction *in absentia* on 23 November 2007.

Zunic

The applicant, a national of Bosnia and Herzegovina, was convicted *in absentia* and sentenced to 10 years' imprisonment and a fine. The judgment became final in 1999.

In 2002 the applicant was arrested in Croatia under the terms of an international arrest warrant issued by the Italian authorities and extradited to Italy.

The applicant has brought several appeals against his conviction, including, on 13 February 2004, an *incidente d'esecuzione* (objection to enforcement) and on 13 May 2005, an application for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termini*), but these were all rejected. In 2006, the applicant issued a further objection to enforcement, which was denied by the Florence Appeal Court. The applicant seised the Court of Cassation which, in March 2007, decided to annul the enforcement order related to his conviction and ordered his release. The applicant was freed and is subject to no obligation based on his conviction. The competent court (the Court of Lucca) indicated that the applicant had not applied for suspension of the time-limit for appeal pursuant to Article 175 CPP, as modified in 2005.

In the light of the foregoing, no further individual measure was considered necessary by the Committee of Ministers in these cases.

General measures

Legislative measures

In 1989, Italy adopted a new Code of Criminal Procedure improving the guarantees in case of *in absentia* proceedings (see Resolution DH (93) 6).

In 2004, in its chamber judgment in the *Sejdovic* case (10 November 2004), the European Court found the improvement brought about by the reform of 1989 insufficient. Some months later Italy amended Article 175 of the CPP (Legislative Decree No. 17 of 21 February 2005, confirmed by Act No. 60 of 22 April 2005), to determine the requirements of the remedy referred of the application for suspension of the time-limit for appeal against sentence (*istanza di rimessione in termini*). Thus it is possible to appeal against judgments rendered *in absentia* at first instance even if the normal deadlines have expired.

Under the new provisions, the time-limit for appeal against a judgment issued *in absentia* is reopened upon request of the accused. There are two exceptions to this rule: where the accused has had "effective knowledge" of the proceedings against him or of the judgment, and when he/she has wilfully decided not to appear or to appeal. Moreover, the basic deadline has been extended from ten to thirty days counting from the date upon which the accused is delivered to the Italian authorities. In its Grand Chamber judgment in the *Sejdovic* case on 1 March 2005 – after the entry into force of the new law – the European Court considered that it was premature, in the absence of any domestic case-law, to pronounce itself on this reform (§§123-124). A bill further reforming *in absentia* conviction (draft law AC 2664) fell following the dissolution of the Italian Parliament in February 2008.

In its inadmissibility decision concerning a new application from one of the applicants (F.C.B.), the European Court assessed the reform of *in absentia* proceedings as described above. The Court considered that the wording of the new Article 175 CPP appears to have filled the gaps it found in the past (see the above-mentioned decision *Cat Berro*).

The European Court also recalled that, according to its constant case-law, an accused convicted *in absentia*, who was not given the possibility of appearing in court or defending himself, is not entitled to have his conviction erased. But he is entitled to a have a fresh judicial

determination, after having been heard, on the merits of the accusations against him. Therefore, the Court concluded that the provision at issue combined with the Court of Cassation's case-law on the subject (see judgment No. 32678, *Somogy*, below) constitute an adequate remedy to guarantee with sufficient legal certainty an opportunity to those convicted *in absentia* to go before a court and defend themselves in new proceedings.

Jurisprudential measures

By the combined application of Article 175 CPP and of the Court of Cassation's case-law it is now possible to re-examine a judgment having the status of *res judicata* which led to an *in absentia* conviction sanctioned as unfair by the European Court. According to the Court of Cassation (judgment No. 32678 of 12 July 2006, *Somogy*, judgment No. 4395 of 15 November 2006, *Cat Berro*), an application for suspension of the time-limit for appeal against sentence (*istanza di rimessione in termini*) is the appropriate means for the re-opening of such proceedings. To this purpose, the Court affirmed that, when a final judgment of the European Court sanctions a violation of Article 6 of the Convention, the national judge cannot dismiss an application for suspension of the time-limit for appeal against sentence on the ground of arguments excluding the unfairness of the proceedings or the fact that the judgment is final in the domestic legal order. In order to achieve this, the Court of Cassation reaffirmed the direct effect of the Convention and of the case-law of the European Court in Italian law, not least in respect of domestic judgments having the status of *res judicata*. It thus affirmed the retroactive application of Article 175 of the CPP.

The case-law of the Court of Cassation has been applied by the Verona Tribunal in the *Ay Ali* case (order No. 202/08 of 12 March 2008), thereby showing that it seems possible to rely directly on the direct effect of the Convention to resolve these cases. By reference to decisions Nos. 3600 (*Dorigo*) and 32678 (*Somogy*) of the Court of Cassation, the Tribunal held that the direct applicability in the internal legal order of the European Court's judgment finding the violation of Article 6 means that the applicant had the right to ask for the re-opening of the procedure or for the revision of the judgment; as a consequence of this right the conviction was not definitive and thus unenforceable, and the detention was illegal. The Tribunal indicated that the remedy at the applicant's disposal in the domestic legal order is the suspension of time-limit for appeal against sentence as provided by Article 175 CPP. It noted that in the event of retroactive application, the thirty days available for applying run as from the date in which the European Court's judgment becomes final.

Resolution CM/ResDH (2011) 123
Bocellari and Rizza and other similar cases v. Italy

399/02, judgment of 13 November 2007, final on 2 June 2008

Breach of the applicants' right to fair trial as they were prevented from requesting a public hearing in proceedings for the application of preventive measures against them in 1997, 1999 and in 2002 (violation of Article 6 §1).

Individual measures

The Court held that the finding of the violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. As regards pecuniary damages, the Court found no causal link between the violation and the damages claimed (cases of Leone and Bongiorno and others). It should be noted that the applicants did participate in the proceedings following those at issue, which resulted in the confiscation of many assets; in particular they took part in hearings in 1999 (*Bocellari and Rizza*), in 1997 (*Perre*), in 2002 (*Leone*) and in 2003 (*Bongiorno and others*) with the participation of the public prosecutor. In addition, two levels of jurisdiction decided on the merits of each case. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

In decision No. 93/2010 of 12 March 2010 the Constitutional Court – quoting the judgments of the European Court in the cases of *Bocellari and Rizza*, *Perre* and *Bongiorno* – declared Articles 4 of Act No. 1423/1956 and 2ter of Act No. 575/1965 constitutionally illegitimate "as they do not allow that, upon request of the interested persons, proceedings on the application of preventive measures are carried out in public hearings before first-instance courts and courts of appeal". In line with the conclusions of the European Court (see the judgment in *Bocellari and Rizza*, §37), the Constitutional Court specified that the judge "keeps the power to order that the hearing is totally or only partially carried out without the presence of the public, if the specificities of the concrete case so require [...]" (see judgment of the Constitutional Court, part on the merits, §10).

Henceforth, following the decision of the Constitutional Court, the applicants in this kind of proceedings have the opportunity to request a public hearing.

A summary of the judgments has been published in Italian in the database of the Court of Cassation on the European Court (www.italgiure.giustizia.it). This website is widely used by all those who practice law in Italy, civil servants, lawyers, prosecutors and judges alike. The judgments have been sent out to the competent authorities.

Resolution CM/ResDH(2011)135
Prencipe v. Monaco

43376/06, judgment of 16 July 2009, final on 16 October 2009

Excessive length of the applicant's detention on remand, from 7 January 2004 to 13 December 2007, on account of the lack of sufficient grounds justifying the detention to be prolonged (violation of Article 5§3).

Individual measures

The applicant was released on 13 December 2007. The European Court, finding that the applicant had undeniably suffered as a result of the excessive length of her pre-trial detention, awarded her just satisfaction in respect of the non-pecuniary damage suffered.

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

General measures

With a view to making the judicial authorities aware of the need to take account of the principles of the Convention and the case-law of the European Court with regard to pre-trial detention, the judgment was published and widely disseminated to the relevant courts. The Monegasque authorities have indicated that the relevant judicial authorities, which are responsible for the direct application of the Convention, are giving particular attention to this problem.

The authorities pointed out that Section 194 of the Code of Criminal Procedure was modified by Law No. 1343 of 26 December 2007, which limits the duration of pre-trial detention. With a view to guaranteeing the effectiveness of these legislative changes in practice,, statistics have been drawn up showing the number of people held in pre-trial detention in any one year and the duration of their pre-trial detention, during the period of three years since the adoption of the law.

In 2008 37 people were held in pre-trial detention for an average duration of approximately four months. In 2009 29 people were held in pre-trial detention for an average duration of approximately three months. Finally in 2010, 15 people were held in pre-trial detention for an average duration of approximately two months.

There has therefore been a gradual but clear drop in the number of people held in pre-trial detention and in the average duration of such detention. According to the authorities, this data proves the effectiveness of the new provisions concerning the duration of pre-trial detention.

Resolution CM/ResDH(2011)129
Zarb Adami v. Malta

Sexual discrimination, in 1997, due to the practice of enrolling many more men than women on the jurors' list although the law in force neither provided nor justified such difference of treatment (violation of Article 14 in conjunction with Article 4 §3 d).

17209/02, judgment of 20 June 2006, final on 20 September 2006

Individual measures

The applicant was exempted from jury service in April 2005 under Article 604 (1) of the Maltese Criminal Code. The European Court held that the finding of a violation in itself constituted sufficient just satisfaction for any non-pecuniary damage sustained.

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

General measures

The European Court noted in its judgment that in 1997 the number of men (7 503) enrolled on the list of jurors was three times that of women (2 494) (§77) but that since 1997 an administrative process had been set in motion to bring the number of women registered as jurors in line with that of men. As a result, in 2004, 6 344 women and 10 195 men were enrolled on the list of jurors (§79).

The Maltese authorities provided an update on the progress of the administrative measure, which has enlarged the pool of persons from which jurors can be selected with a more balanced representation between the sexes. The figures represented demonstrate that there has been a steady increase in the number of women sitting on juries.

All judgments of the European Court against Malta are automatically sent out to competent authorities and are publicly available via the website of the Ministry of Justice and Home affairs which provides a direct link to the European Court's website (www.mjha.gov.mt/ministry/links.html).

Resolution CM/ResDH (2011) 136
Garzičić v. Montenegro

Lack of access to the Supreme Court which rejected the applicant's appeal on points of law as it considered that the court fees she had paid did not correspond to the established value of the claim (violation of Article 6 §1).

17931/07, judgment of 21 September 2010, final on 21 December 2010

Individual measures

Reopening of domestic proceedings

The Supreme Court of Montenegro reopened the proceedings upon the request for appeal on points of law which was lodged by the applicant to the Supreme Court as an extraordinary legal remedy. The case was immediately put into procedure and the Supreme Court adopted its decision on the same day when the reopening of the procedure of appeal on points of law was allowed – on 23 December 2010. No further individual measures are necessary.

General measures

Changes in the case-law

Even before the procedure at the Court was finished, the Supreme Court of Montenegro adopted the judgment which changes its case-law. The case-law, namely, was such that the admissibility of the request for the appeal on points of law, as an extraordinary legal remedy used before the Supreme Court, was assessed on the basis of the amount of the paid court fee if the value of the matter of dispute was not properly established in the first instance civil procedure. By its recent judgment the Supreme Court of Montenegro fully harmonised its case-law with the position of the European Court and adopted the legal position that in such situations every request for appeal on points of law is to be considered admissible. This new legal position was applied in all the cases where the Supreme Court of Montenegro has the power to decide in the procedure upon appeal on points of law.

Publication and dissemination

The Court's judgment in the Garzičić v. Montenegro case published in the official Gazette of Montenegro 7/2011 of 28 January 2011. The judgment was also included into the printed collection of the selected judgments of the European Court of Human Rights II prepared by the Representative of Montenegro before the Court. This publication was disseminated to every judge and prosecutor in Montenegro as well as to other lawyers in public and local administration.

Resolution CM/ResDH (2011) 137
Doerga v. Netherlands

50210/99, judgment of 27 April 2004, final on 27 July 2004

Interception of telephone conversations of the applicant – a prisoner – in 1995 in the absence of clear and detailed legal rules (violation of Article 8)

Individual measures

The recordings and the transcripts were destroyed and are thus no longer in the possession of the Netherlands authorities. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

Following the European Court's judgment, new provisions were introduced concerning the monitoring and recording of detainees' contacts with the outside world by law of 7 April 2005. These provisions were elaborated further by Regulation of 23 September 2010, concerning the monitoring of prisoners' telephone conversations in judicial institutions (*Besluit van 23 september 2010, houdende wijziging van het Reglement justitiële jeugdinrichtingen, Reglement verpleging ter beschikking gestelden en de Penitentiare maatregel, in verband met regels over het bewaren en verstrekken van opgenomen telefoongesprekken (Besluit toezicht telefoongesprekken in justitiële inrichtingen)).* This regulation entered into force on 1 January 2011.

The regulation created clear and detailed rules for detainees to be informed of the recording of telephone conversations, special conditions on the matter of professional secret holders, the maximum period for retaining records, and rules on the possibility of providing these records to other (investigating) authorities. According to Article III of the Regulation (amending the Prison Rules and inserting a new Article (23a), recordings of telephone calls shall be kept for a period not exceeding eight months and shall be erased after the expiry of this period. Inmates will be informed that telephone calls are recorded. Recordings of telephone calls will be given only to third parties who are entitled to hear them in the performance of duties pursuant to law. A recording may be given to third parties only in connection with the maintenance of order or security, the protection of public order or national security, the prevention or investigation of criminal offences or the protection of victims of indictable offences or others involved.

Resolution CM/ResDH (2011) 142
Chruściński v. Poland

22755/04, judgment of 6 November 2007, final on 6 February 2008

Violation of the principle of equality of arms and of the adversarial principle in proceedings concerning the lawfulness of the applicant's detention on remand (violations of Article 5 §4).

Individual measures

In December 2004 the applicant and his lawyer were able to acquaint themselves with the case-file. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

On 3 June 2008, after the present judgment, the Constitutional Court delivered a judgment (case No. 42/07), in which it declared Section 156 §5 of the Code of Criminal Procedure contrary to the Constitution insofar as it authorised denial of access to material which forms the basis of a prosecutor's motion to impose or prolong detention on remand. The Constitutional Court invited Parliament to amend the existing law to avoid any arbitrariness in applying it and, as interim measure, directed that it should be interpreted in such a way that accused persons concerned by a prosecutor's motion to impose or prolong detention on remand should be allowed to consult material constituting grounds for such motion.

Following the judgment of the Constitutional Court, the Code of Criminal Procedure was amended. A new Article 156§5a now governs the right to access case-files in proceedings concerning detention on remand. According to this article, in the course of preparatory proceedings, the accused and his defence have access to the evidence referred to in a motion to apply or prolong detention on remand; the prosecutor can only refuse this access in certain limited circumstances, for example in order to protect the victim's life. The amendment came into force on 28 August 2009.

The judgment of the European Court has been published on the website of the Ministry of Justice. The Ministry of Justice referred the judgment to the State Public Prosecutor Office with request to disseminate it among public prosecutors.

Resolution CM/ResDH (2011) 138
Zwiazek Nauczycielstwa Polskiego v. Poland

42049/98, judgment of 21 September 2004, final on 2 February 2005

Violation of the right of access to a court, in 1996, following the Supreme Court's restrictive interpretation of the provisions of law concerning the restitution of property to the Catholic Church (Article 6 §1).

Individual measures

Before the European Court the applicant association claimed compensation in respect of damage which allegedly resulted from its loss of opportunity to secure a

judicial determination of its claims. The European Court, whilst noting that the first-instance court, in its judgment of 15 December 1995, had assessed the outlays to be reimbursed to the applicant association at 546 133 PLZ,[13] stated that it could not speculate as to what would have been the final outcome of the judicial proceedings had the appeal court assumed jurisdiction. In this situation, the European Court awarded the applicant association just satisfaction in the amount of 10000 EUR in respect non-pecuniary damage, considering that it had suffered a loss of opportunity in that it could not obtain a ruling on the merits of its claim.

In the circumstances, no further individual measure appears necessary.

General measures

The violation in this case was linked to a specific historical problem of restoration of property expropriated from the Catholic Church under the Communist regime and the terms of Polish legislation in the 1989 Law on the relations between the state and the Catholic Church in Poland. The law addressed, *inter alia*, the regularisation of property issues created by expropriations carried out in the past against the Church. The property commissions established by that law were intended to settle all property claims arising from the expropriations and could accept relevant applications until the end of 1992, after which, they ceased to exist. All expropriation issues are now governed by the Real Estate Management Act of 1997. Accordingly, no legislative reforms are required in order to prevent similar violations.

The judgment of the European Court has been published on the website of the Ministry of Justice, www.ms.gov.pl, and sent out to the judges of the Civil Chamber of the Supreme Court and to the presidents of the appeal courts.

13. An amount equivalent at that time to approximately FRF 273 066 (see paragraph 10 of the judgment).

Resolution CM/ResDH (2011) 143
Panasenko v. Portugal; Bogumil v. Portugal; Czekalla v. Portugal

10418/03, judgment of 22 June 2008, final on 22 October 2008
35228/03, judgment of 7 October 2008, final on 6 April 2009
38830/97, judgment of 10 October 2002, final on 10 January 2003

Breach of the applicants' right to a fair trial as the competent domestic courts failed to comply with their positive obligation to ensure the applicants' concrete and effective right to defence (violations of Article 6 §§1 and 3c).

Individual measures

In all cases the European Court awarded just satisfaction in respect of non-pecuniary damages.

In the *Panasenko* case the European Court considered that when an individual, as in the present case, has been convicted in proceedings vitiated by failures to comply with the requirements of Article 6 of the Convention, a new trial or reopening of proceedings at the applicant's request represents in principle an appropriate means of providing redress for the violation found. However, the specific reparatory measures to be taken [...] depend on the particular circumstances of the case and must be defined in the light of the judgment rendered by the Court, taking due account of the case-law. In the present case, concerning only the absence of legal assistance to the applicant, which had the consequence of preventing him from acceding to the Supreme Court, the examination of his appeal by that latter jurisdiction could represent an adequate means to redress the violation found (§78 of the judgment).

It is to be noted that Act No. 48/2007, amending the Code of Criminal Procedure, permits re-examination of domestic judgments, even those having the status of *res judicata*, following a judgment of the European Court finding a violation (Article 449). Under Article 450, the public prosecutor, as well as others including the person convicted, is entitled to ask for re-examination without any time-limit.

In the *Bogumil* case the applicant was transferred to a prison in Poland in June 2005 and freed in December 2005.

In the *Czekalla* case the applicant was transferred to a German prison in June 2000 and in March 2001 conditionally released.

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

General measures

In 2002 the Portuguese Constitutional Court declared Section 412 of the Code of Criminal Procedure unconstitutional, inasmuch as the way it was interpreted in the Czekalla case led to dismissal of the appeal on formal grounds without the possibility of rectifying the omission.

All judgments have been translated into Portuguese and made available on the Internet site of the Cabinet of Documentation and Comparative Law, www.gddc.pt, which comes under the Prosecutor General of the Republic. They have also been broadly disseminated to the Judicial Service Commission and to the Bar, as well as included in the training activities for judges in the framework of the ongoing training on the case-law of the European Court.

Resolution CM/ResDH (2011) 150
Shofman v. the Russian Federation

74826/01, judgment of 24 November 2005, final on 24 February 2006

Impossibility for the applicant in 1997 to challenge the legal presumption of his paternity on the basis of DNA tests, as such claims were only possible within one year after the birth, which had occurred in 1995 (violation of Article 8).

Individual measures

The European Court granted the applicant just satisfaction in respect of non-pecuniary damage sustained.

On 7 February 2007 the Zheleznodorozhniy District Court of Novosibirsk cancelled its previous decision of 16 November 2000 in the applicant's case on the ground of newly discovered circumstances. The applicant's

claim challenging his paternity in respect of his former wife's child was granted by the same court on 21 March 2007 and the birth register was modified accordingly.

In May and June 2007 a justice of peace, at the applicant's request, applied other consequences resulting from the outcome of the proceedings on challenging the applicant's paternity.

Consequently, no further individual measure appears to be necessary.

General measures

The European Court noted in its judgment that the new Family Code in force since 1 March 1996 sets no time-limit for disclaiming paternity. However, the violation in this case was because the new Code did not contain transitional provisions, this issue being clarified on 25 October 1996 by the Plenary Supreme Court of the Russian Federation in its Resolution No. 9. The Resolution provided that the Code of 1969 should continue to be applied in respect of children born before the entry into force of the new Code (see §§19-21 of the judgment).

By a letter of the Supreme Court of the Russian Federation, the judgment of the European Court was disseminated amongst the Regional Courts of general jurisdiction. Accordingly, the Russian authorities consider that dissemination of the judgment by the Supreme Court to all lower courts constitutes sufficient indication that Resolution No. 9 should be systematically ruled out and that the domestic law is applied in conformity with the requirements of the Convention.

The judgment of the European Court was also published in the *Bulletin of the European Court* (Russian version).

Resolution CM/ResDH (2011) 158
Kučera v. the Slovak Republic; Haris v. the Slovak Republic

48666/99, judgment of 17 July 2007, final on 17 October 2007
14893/02, judgment of 6 September 2007, final on 6 December 2007

Failure to examine promptly the applicants' requests for release from detention on remand, lodged in 2001 (Haris) and in 1998 (Kučera) (violations of Article 5 §4); in Kučera case also: excessive length of the detention on remand (1997-99) (violation of Article 5 §3); disproportionate interference in the applicant's right to respect for his home due to the forcible entry of four armed and masked policemen into his apartment on 17 December 1997 in order to serve the applicant and his wife with a notice of indictment for extortion and to escort them to the police investigator (violation of Article 8); refusal to allow the applicant to meet with his wife over a period of thirteen months during his detention on remand, found not "necessary in a democratic society" (violation of Article 8).

Individual measures

In the *Haris* case, the applicant was released and made no claim for just satisfaction before the European Court. In the *Kučera* case, the applicant was released, the European Court awarded just satisfaction in respect of non-pecuniary damage. Consequently, no other measure was considered necessary by the Committee of Ministers.

General measures

Violations of Article 5 §4 due to the lack of prompt examination

The European Court noted that the delays in examining the applicants' requests for release were due, among other things, to the domestic courts' failure to secure service of their decisions promptly; procedural flaws which resulted in decisions being quashed by higher courts; the unjustified length of time spent in examining complaints and the failure to pronounce decisions publicly.

Since the time of the facts in these cases, new legislation has come into force which addresses this. Section 2 (6) of the Code of Criminal Procedure (301/2005) provides that the authorities are obliged to give priority to detention cases and deal with them promptly. Under Section 79 (3) of the Code of Criminal Procedure, a detainee is entitled to apply for release at any time. Where the public prosecutor dismisses such an application, he shall immediately submit it to a competent judge, who shall rule on the application without delay. There is now case-law from the Slovak Constitutional Court interpreting obligations under the Code of Criminal Procedure and the Constitution in the light of the Convention case-law.

Furthermore, since the violations occurred, a remedy under Article 127 of the Constitution became available on 01 January 2002, enabling individuals to lodge a constitutional complaint that their rights made under the Convention have been violated. Under Article 127, the Constitutional Court has the power to award financial compensation and to order an authority to take necessary action (see §41 of the *Haris* judgment). There is case-law of the Constitutional Court from 2003 onwards finding that domestic courts to have violated rights under the Convention and Constitution, on account of their failure to deal promptly with requests for release from detention (see, *inter alia*, IV US 216/07 of 17 June 2008).

Violation of Article 5 §3 in the case of Kučera

The European Court held that the reasons on which the domestic courts relied were neither relevant nor sufficient to justify the overall length of the applicant's detention on remand.

Since the time of the facts in this case, new legislation came into force which addresses this violation. Section 76 (1) of the Code of Criminal Procedure (301/2005) provides that detention in pre-trial proceedings can only last for "a necessary period of time". Under Section 79 (1), as soon as grounds for detention cease to apply, the detainee must be released. There is considerable case-law from the Slovak Constitutional Court from 2002 onwards which, referring to the European Court's interpretation of the Convention, states that reasonable suspicion of the commission of a criminal offence may only be a temporary ground for detention in the initial stage of a case. Prolonged detention requires further, significant reasons for detention and the authorities must proceed with special diligence when dealing with detention issues (see *inter alia,* III. US 295/05, IV. US 253/05, III. US 199/05). This reasoning is also evident in the case-law of the Supreme Court, which cites judgments of the European Court in its decisions (see, *inter alia*, decision No. Ntv I-20/02 of 10 January 2003).

In addition, in situations where domestic courts fail to provide relevant and sufficient reasoning for continued detention, the individual concerned may lodge a constitutional complaint under Article 127 of the Constitution

(see above). There is case-law of the Constitutional Court from 2005 onward finding domestic courts to have failed to provide relevant and sufficient reasons for continued detention, ordering the release of the persons concerned and awarding them financial compensation (see, *inter alia*, IV US 181/07 of 10 January 2008).

Violations of Article 8 in the case of Kučera

As regards the right of respect for one's home, the European Court noted that the Police Corps Act of 1993 contains certain guarantees to avoid the abuse of authority in similar circumstances. However, these failed to prevent the violation in the present case (§122 of the judgment). With regard to the forced entry by police into the applicant's home, the authorities note that this was an isolated incident. The police authorities have been notified of the judgment and requested to ensure that such an incident never happens again.

In relation to the refusal to allow the applicant to meet with his wife while in detention, the authorities also note that this was an isolated incident. Now, Articles 19 (1) and (2) of the Detention on Remand Act (221/2006) state that a person in custody is entitled to a visit of at least one hour every three weeks. More frequent visits may be permitted. The relevant authorities were familiarised with the judgment of the European Court. Under Article 59 of the Detention on Remand Act, a prosecutor supervises the observance of the relevant law and regulations in custodial institutions and in accordance with the Prosecution Act (153/2001) may, by written order, cancel or discontinue any contrary practice. Under section 31 §1 of the Prosecution Act, a prosecutor may review the legality of procedures or decisions adopted by state authorities or domestic courts on the basis of a request, and is entitled to undertake steps to remedy any existing violation of domestic law, provided no other authority is specifically authorised to do so under legislation. If the above remedy fails to provide sufficient redress, the detained person may lodge a constitutional complaint under Article 127 of the Constitution (see above).

Publication, dissemination and training

The judgments in the *Kučera* and *Haris* cases were translated and published in *Justičná Revue,* No. 10/2007 and No. 12/2007 respectively. On 21 December 2007, the Haris judgment was sent out to all regional courts and to the Supreme Court by a circular letter from the Minister of Justice. The presidents of regional courts and the President of the Criminal Division of the Supreme Court have been asked to notify the judgment to all judges in regional and district courts, as well as those in the Supreme Court dealing with criminal cases. On 24 July 2008, the *Kučera* judgment was sent out to all regional courts and the Police Presidium by a letter from the Agent of the Slovak Republic before the European Court. The presidents of all the regional courts and the Police have been requested to notify the judgments to all courts within their jurisdiction and all district police officers.

In October 2009 the Office of the Agent of the Slovak Republic before the European Court of Human Rights, in co-operation with the General Prosecution Office, organised a seminar for public prosecutors on Article 5 of the Convention and the execution of European Court judgments against Slovakia.

Resolution CM/ResDH (2011) 168
Paşa and Erkan Erol v. Turkey

Authorities' failure to take all safety measures around a mined military zone in May 1995, thereby causing severe injury to a 9-year old child and exposing him to risk of death (substantial violation of Article 2).

51358/99, judgment of 12 December 2006, final on 23 May 2007

Individual measures

The European Court awarded an overall amount in just satisfaction in respect of pecuniary and non-pecuniary damages. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

Turkey is a party to the Ottawa Convention, which came into force in Turkey on 1 March 2004. Under the Convention, Turkey has the obligation to clear mined areas by 2014. Since 1996, a number of three-year moratoria have been put into place providing for prohibition of production, sale and transfer of anti-personnel landmines and systematic mine clearance began in 1998. The government periodically informs the United Nations about the total number of anti-personnel mines destroyed and preparations for the destruction of remaining mines according to its obligations under the Ottawa Convention. A military installation was put into place in July 2007 for further mine clearance operations. This installation has been operational since 8 November 2007. Until 16 November 2009, 1 822 886 stockpiled anti-personnel mines were separated, selected and destroyed in the installation. The remaining stockpiled anti-personnel mines were planned to be destroyed by November 2010.

On 17 June 2009 the Law on the Destruction of Anti-Personnel Land Mines on the Syrian Border entered into force. In this connection, an area of 31 893 square mertes in Şanlıurfa, and an area of 38 500 square metres in Kilis were demined.

Meanwhile, given that mine clearance efforts under the Ottawa Convention are expected to continue until 2014, the Committee of Ministers has enquired about any additional measures taken or envisaged by the Turkish authorities to enhance safety measures. In response, the authorities indicated on 6 March 2008 that they had put in place additional measures to place clear and adequate signs around mined zones in line with international standards. Local authorities continuously issue warnings to inhabitants near such zones. Finally, an awareness project is under way in co-ordination with the Ministry of Education for training teachers, students and inhabitants of districts in order to issue warnings on risk of mines.

The judgment of the European Court was published and sent out to all the authorities concerned.

Resolution CM/ResDH (2011) 171
S.C. v. the United Kingdom

60958/00, judgment of 15 June 2004, final on 10 November 2004

Violation of the applicant's right to a fair trial insofar as the criminal proceedings against him in the Crown Court in 1999 did not fully take into account his age – 11 years old – and his low level of intellectual ability (violation of Article 6 §1).

Individual measures

Following the European Court's judgment in June 2004, the applicant had the possibility to apply to the Criminal Cases Review Commission to seek referral of his case to the Court of Appeal. The applicant applied to the Criminal Cases Review Commission in 2005. Further information on the Criminal Cases Review Commission can be found at www.ccrc.gov.uk.

The Committee of Ministers considers that no further individual measure is necessary.

General measures

On 16 February 2000 the Lord Chief Justice issued a Practice Direction on the Trial of Children and Young Persons in the Crown Court which advised, *inter alia*, that there should be seating on the same level, wigs and gowns should be removed, no uniforms in court, frequent breaks, seating family with the defendant, easy communication with legal representatives, most of the media observing only through CCTV, and no members of the public in the courtroom.

In April 2007, the Lord Chief Justice issued a revised Practice Direction setting out the overarching principles that the Crown Court and Magistrates' courts should apply when dealing with vulnerable defendants, including juveniles. These included steps to be taken to ensure that the defendant understands what is happening and is able to follow court proceedings, and that the trial should be conducted in language that is simple and clear that the defendant can understand. The Practice Direction also includes guidance on support for vulnerable defendants.

Section 47 of the Police and Justice Act 2006 amended the Youth Justice and Criminal Evidence Act 1999 to provide that certain vulnerable defendants, including juveniles may, with the agreement of the court, give evidence to the court as a witness from outside the court room using a live link. This provision came into force on 15 January 2007.

The judgment of the European Court was published in the *European Human Rights Reports* at (2005) 40 EHRR 10.

Resolution CM/ResDH (2011) 172
Martin v. the United Kingdom

40426/98 judgment of 24 October 2006, final on 24 January 2007

Unfairness of certain army court-martial proceedings held in April 1995 against a civilian, insofar as his concerns about the independence and impartiality of the court-martial were objectively justified. The applicant, as a family member residing with a member of the armed forces, was subject to military law and in May 1995 he was sentenced to life imprisonment (violation of Article 6 §1).

Individual measures

The applicant claimed no just satisfaction in respect of non-pecuniary or pecuniary damage. He is serving a sentence of life imprisonment in HMP Wakefield, England. He has fully exercised the appeal options from the original court-martial conviction i.e. appeal to the Courts-Martial Appeal Court and thereafter the House of Lords (now the Supreme Court).

Section 34 (1) (b) of the Courts-Martial (Appeals) Act 1968 provides that, "if it appears to the Secretary of State, upon consideration of matters appearing to him not have been brought to the notice of the court-martial at the trial, to be expedient that the finding of the court-martial should be considered or re-considered by the Appeal Court ... [he] may refer the finding to the Court". No referral has been made by the Secretary of State under this provision and the applicant has not requested the Secretary of State to do so.

General measures

Independence and impartiality of the tribunal

The European Court noted that the essential safeguards lacking in the Findlay case (Application No. 22107/93, judgment of 25 February 1997), with respect to the functions and powers of the convening officers and the lack of independence of the members of the tribunal from the convening officers, were also lacking in the present case. The same legislative and regulatory scheme applied to both cases. The Findlay case was closed by the Committee of Ministers' Resolution DH (98) 11. That resolution noted, *inter alia*, the entry into force of the Armed Forces Act 1996 which abolished the post of convening officer, split the functions of that post between other authorities, and provided that a judge advocate be a member of a court-martial.

The Armed Forces Act 2006 has also subsequently been introduced, which creates a single system of service law for all of the services and under the provisions of which a standing court-martial is established (see below).

Determination of criminal charges against civilians by military courts

The Armed Forces Act 2006 provides that certain civilians, when outside the United Kingdom, such as dependants of members of the armed forces living with them, are tried by the Service Civilian Court or by the standing court-martial. The Service Civilian Court has a more limited jurisdiction than the court-martial: currently it may only sit outside the British Isles and it is precluded from dealing with the most serious service offences, for example, criminal offences that could not be dealt with by a Magistrates' court or Youth Court in England and Wales. A right of appeal lies from the Service Civilian Court to the court-martial.

For both the Service Civilian Court and the court-martial the judge advocate is a civilian judge. In the Service Civilian Court, the only civilian member is the judge advocate. In the court-martial, there are, additionally, lay members whose main function – like that of a jury in the English Crown Court – is to decide on guilt or innocence. The 2006 Act enables the court-martial to be

constituted, when it deals with civilians, so that it contains no military lay members. Where the defendant is a civilian, all the members of the court will also be civilians, unless there are considered to be compelling reasons sufficient to justify within Article 6 of the Convention one or more military members.

Any appeal from the court-martial by a civilian defendant is to the Court-Martial Appeal Court which is composed entirely of civilian judges of the Court of Appeal. Any further appeal will be to the Supreme Court which is also composed entirely of civilian judges.

The judgment of the European Court was published in *European Human Rights Reports* at (2002) 34 EHRR 53 and disseminated to the relevant domestic authorities.

Resolution CM/ResDH (2011) 175
I. v. the United Kingdom; Christine Goodwin v. the United Kingdom

25680/94, judgment of 11 July 2002 – Grand Chamber
28957/95, judgment of 11 July 2002 – Grand Chamber

Authorities' failure to comply with their positive obligation to ensure the right of the applicants (post-operative, male-to-female transsexuals) to respect for their private life, in particular due to the lack of legal recognition given to their gender re-assignment (violations of Article 8), as well as the impossibility for them to marry a person of the sex opposite to their re-assigned gender (violations of Article 12).

Individual measures

Following the passage of the Gender Recognition Act 2004 and since the Gender Recognition Panel began working in April 2005 (see General Measures section below), it has been possible for the applicants to apply for legal recognition of their acquired gender.

The Court considered in both cases that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants.

The Committee of Ministers considers that no further individual measures are required.

General measures

The Gender Recognition Act 2004 ("the Act"), which came into force on 4 April 2005, allows transsexual people who have taken decisive steps to live fully and permanently in their acquired gender to gain legal recognition in that gender. The Gender Recognition Panel established under this Act is responsible for determining applications for legal recognition of acquired gender. Successful applicants are issued with a Gender Recognition Certificate. Further information on the Gender Recognition Panel can be found at www.grp.gov.uk.

Under section 9 of the Act, individuals who have been granted legal recognition of their acquired gender by the Gender Recognition Panel are granted this recognition for all purposes. Accordingly, they are entitled to marry a person of the gender opposite to their acquired gender.

Resolution CM/ResDH (2011) 176
Dickson v. the United Kingdom

44362/04, judgment of 4 December 2007 – Grand Chamber

Violation of the right to respect for life of the applicant – a prisoner serving a life sentence since 1994 – and his wife due to the Home Secretary's refusal to grant their request for access to artificial insemination (violation of Article 8).

Individual measures

The European Court noted that on 19 December 2006, the applicant was transferred to an open prison and would in principle be eligible for unescorted home leave. The United Kingdom Government indicated that Mr Dickson had had three periods of unescorted home leave between 11 December 2007 and 22 February 2008. He will continue to be eligible for such periods as long as he keeps to the conditions of the licence and there is no change to the risk assessment in his case. On 19 August 2008, the applicants' lawyer confirmed that, in these circumstances, the Dicksons no longer required access to assisted conception.

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

General measures

The policy on assessing applications for permission to access assisted conception facilities by prisoners has been amended. The policy, which takes the form of a non-exhaustive list of criteria, is issued to all new applicants and/or any other person who wishes to see it. The provision included in the old policy that applications will only be granted in very exceptional circumstances has been removed. It has been indicated that, in compliance with the judgment, the Secretary of State will apply a proportionality test when taking a decision and balance the individual circumstances of the applicant against the criteria in the policy and the public interest. Decisions made under the policy may be challenged in judicial review proceedings.

The authorities consider that, taking into account the Secretary of State's obligation under Section 6 of the Human Rights Act to respect rights protected by the Convention, the new policy can be applied in a manner which ensures a fair balance between public and private interests, as identified by the European Court in the judgment. It may further be noted that any application of the policy which does not strike this balance would be subject to judicial review.

The judgment of the European Court was published at: *European Human Rights Reports* (2008 46 EHRR 41), *Family Court Reports* [2007] 3.F.C.R.877, *Family Law Journal* [2008] *Fam. Law* 211, *New Law Journal* (2007) 157 NLJ 1766 and *The Times Law Reports* (*The Times*, 21 December 2007).

Resolution CM/ResDH (2011) 177
Peck v. the United Kingdom

44647/98 judgment of 28 January 2003, final on 28 April 2003

Violation of the applicant's right to respect for his private life as a result of the disclosure of pictures of him in the media, in 1995, by a local council without sufficient safeguards (violation of Article 8) and lack of an effective remedy in this respect (violation of Article 13). These pictures had been filmed by a closed-circuit television camera installed in the street for the prevention of crime and had been disclosed without the applicant's consent or by masking his identity.

Individual measures

The applicant was awarded by the Court non-pecuniary damages in excess of his claim. Further, the applicant's complaints before the Broadcasting Standards Commission (BSC) and the Independent Television Commission (ITC) were upheld and the decisions were published (§25-26 of the judgment). The applicant also made a number of media appearances in order to speak out against the publication of his photographs (§23). In light of this, and the fact that the applicant has made no other specific claim to the Committee of Ministers, no further individual measures were considered necessary by the Committee of Ministers.

General measures

The Human Rights Act 1998 contains general provisions regarding substantive and procedural rights according to which primary and subordinate legislation shall be read and given effect in accordance with the Convention.

Specific provisions are contained in the Data Protection Act 1998 (DPA) and the Information Commissioner's CCTV Code of Practice 2008. The DPA provides the statutory basis for systemic legal control of CCTV surveillance over public areas, setting legally enforceable standards for the collection and processing of images relating to individuals. It empowers the Information Commissioner to issue a Code of Practice setting out the measures that represent good practice and compliance with the DPA. The Information Commissioner has the power to enforce compliance with the DPA including imposing monetary penalties for serious breaches.

The current CCTV Code of Practice (published in 2008) superseded the previous version (first published in 2000) and was revised to take account of changes in law, technology and use of CCTV. It now addresses the requirements of the HRA and in particular Article 8 of the European Convention and the judgment of the European Court in the Peck case. In addition to previous provisions such as those limiting retention and restricting disclosure of images to third parties it has been strengthened in significant areas. It now requires a systematic justification for the use of CCTV, improved quality of images and clear restrictions on the monitoring and recording of conversations in public spaces.

As regards the violation of Article 13, the Human Rights Act 1998 provides an effective remedy (see Bubbins against the United Kingdom, Resolution CM/ResDH (2007) 101).

The judgment of the European Court was published in European Human Rights Reports at (2006) 26 EHRR 41. Advice to CCTV managers was added to the Home Office's "Crime Reduction" website (http://www.crimereduction.homeoffice.gov.uk/regions/regions00.htm) and was also provided to the national CCTV user group for dissemination to its members.

Resolution CM/ResDH (2011) 180
Hashman and Harrup v. the United Kingdom

25594/94, judgment of 25 November 1999 – Grand Chamber

Infringement "not prescribed by law" of the applicants' right to freedom of expression, insofar as the notion of "behaviour contra bonos mores", on which were based the "binding-over" orders issued in 1993 against the applicant for disrupting a fox-hunt, was too vague (violation of Article 10).

Individual measures

The one-year binding-over order imposed on the applicants expired in September 1994. Consequently, no other individual measure was considered necessary by the Committee of Ministers.

General measures

In response to the judgment, and pending a full review of binding-over orders, interim measures were taken in the form of guidance issued to prosecutors via the "Crown Prosecution Service Casework Bulletin No. 6 of 2000". This stipulated that prosecutors should not ask courts to consider binding-over orders unless there is evidence of past conduct which, if repeated, is likely to cause a breach of the peace. In addition, the guidance also suggested that courts could be encouraged to ensure that the behaviour to be avoided was made quite clear in the order. Another interim measure was taken by issuing a document in March 2003 which recommended that courts issuing binding-over orders should not distribute requirements such as "to keep the peace" or "to be of good behaviour", but rather the individual concerned be bound over to do or refrain from performing specific activities.

After widespread consultation in December 2006 and input from the Criminal Procedures Rules Committee, Amendment No.15 to the Consolidated Criminal Practice Direction was issued (available at http://www.hmcourts-service.gov.uk/cms/pds.htm). The amended Practice Direction specifies that courts should no longer bind an individual over "to be of good behaviour", and instead the court should identify the specific conduct or activity from which the individual should refrain (§ III.31.3 of the Practice Direction). The details of the conduct or activities from which the individual should refrain should be specified by the court in a written order served on all relevant parties (§ III.31.4).

As regards the possibility of making representations to the court before a binding-over order is imposed, the amended Practice Direction stipulates that the court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms (§III.31.5). When fixing the amount of the recognisance, courts should also hear representation as to the individual's financial circumstances (§III.31.11).

Lastly, before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings (§III.31.13).

The judgment of the European Court has been published in several law reports, including at (2000) 30 EHRR 241; [2000] Crim LR 185; [1999] EHRLR 342; Times LR, 1 October 1998.

Resolution CM/ResDH (2011) 181
Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom

11002/05, judgment of 27 February 2007, final on 27 May 2007

Violation of freedom of association resulting from the legal impossibility for a trade union to expel one of its members on account of his membership of a political party advocating views radically incompatible with those of the trade union (violation of Article 11).

Individual measures

The individual measures required in this case are linked to the general measures (see below). The applicant trade union may now reassess the situation of the member. Consequently, no other individual measure is considered necessary by the Committee of Ministers.

General measures

The United Kingdom took measures to amend the Trade Union and Labour Relations (Consolidation) Act 1992 by amending section 174 and related provisions. All requisite amendments were made via the Employment Act 2008 which received Royal Assent on 13 November 2008. Section 19 of the Act amends section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 to permit the expulsion of an individual from a trade union on grounds of their membership of a political party, so long as:

- membership of that political party is contrary to a rule or an objective (provided the objective is reasonably practicable to ascertain) of the trade union;
- the decision to expel is taken fairly and in accordance with union rules;
- and the individual does not lose his livelihood or suffer other exceptional hardship by reason of not being or ceasing to be a member of the trade union.

The judgment was published in the *Industrial Relations Law Reports* [2007] IRLR 361, *The Times Law Reports* (2007) 9 March 2007, *Butterworths Human Rights Cases* 22 BHRC 140, and *All England Reports* [2007] All ER (D) 348 (February).

Resolution CM/ResDH (2011) 183
Wilson, the National Union of Journalists and others, Palmer, Wyeth and the National Union of Rail, Maritime and Transport Workers and Doolan and others v. the United Kingdom

30668/96, 30671/96 and 30678/96, judgment of 2 July 2002, final on 2 October 2002

Failure of the state in its positive obligation to secure freedom of association, by permitting employers to use financial incentives to induce employees to surrender important union rights (violation of Article 11 as regards both the individual and the trade union applicants).

Individual measures

The European Court awarded each individual applicant just satisfaction in respect of non-pecuniary damage.

Consequently, no other individual measure was considered necessary by the Committee of Ministers (see general measures below).

General measures

The Employment Relations Act 2004 was enacted on 16 September 2004. Part III of the Act, which came into force on 01 October 2004, deals with inducement and detriments in respect of membership of independent trade unions. It provides, *inter alia*, that workers have a right not to have an offer made to them for the sole or main purpose of inducing them to renounce union membership or activities. In the event that such an offer is made to a worker, the worker (or the former worker) may bring a complaint before an employment tribunal.

The judgment of the European Court was published in the *European Human Rights Reports* at (2002) 35 EHRR 523; *Industrial Relations Law Reports* at [2002] *IRLR* 568; and appeared in *The Times Law Reports* on 5 July 2002.

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 – the United Kingdom presents its priorities

The United Kingdom is proud to be assuming the Chairmanship of the Committee of Ministers of the Council of Europe from 7 November 2011. As a founder member of the organisation and the first country to ratify the European Convention on Human Rights, the United Kingdom takes the responsibility of the Chairmanship, which it last held in 1993, very seriously. We see it as an opportunity for the United Kingdom to play a leading role in the vital work of the Council of Europe in promoting human rights, democracy and rule of law across the continent. The overarching theme of our Chairmanship will be the promotion and protection of human rights. We will have a particular focus on developing practical measures in the following areas:

1. **Reform of the European Court of Human Rights and strengthening implementation of the European Convention on Human Rights**

The Court is an essential part of the system for protecting human rights across Europe. But it is struggling with its huge, growing backlog of applications – now 155 000. This is undermining the Court's efficiency and authority.

Reform is more urgent than ever before: we cannot wait any longer before taking concrete and effective action. The United Kingdom will give this issue the highest political importance. The entry into force of Protocol 14 in 2010 had a positive effect but it is insufficient.

We must learn from that and ensure that this time we are sufficiently forward looking and agree effective and enduring solutions. The UK Chairmanship will seek consensus on a package of measures in the following areas, agreed at Interlaken and Izmir:

- a set of efficiency measures, which will enable the Court to focus quickly, efficiently and transparently on the most important cases that require its attention;
- strengthening the implementation of the Convention at national level, to ensure that national courts and authorities are able to assume their primary role in protecting human rights;
- measures to strengthen subsidiarity – new rules or procedures to help ensure that the Court plays a subsidiary role where member states are fulfilling their obligations under the Convention;
- improving the procedures for nominating suitably qualified judges to the Court, and ensuring that the Court's case-law is clear and consistent.

The United Kingdom will aim for a package of measures to be agreed by means of a Declara-

tion at a Ministerial conference in the United Kingdom on reform of the Court. Further details of this conference will be presented in due course. The Declaration will provide the basis of a Decision of the Committee of Ministers to be adopted at its annual meeting on 14 May 2012.

In accordance with the deadline set by the Interlaken declaration, the package should include proposals for reform which require amendment of the Convention. In addition we will aim to provide the Court with political support from the Committee of Ministers for the measures it is already taking to prioritise and better manage its workload, and to provide a wide margin of appreciation to member states' authorities in its judgments.

In response to the call in the Izmir High level Conference on the future of the European Court of Human Rights to pursue "long term strategic reflections on the future role of the court", the United Kingdom hosted a conference at Wilton Park on a "2020 Vision for the European Court of Human Rights" on 17-19 November 2011.

2. **Supporting Secretary General Thorbjørn Jagland's programme of reform of the organisation**

The United Kingdom will actively support Secretary General Thorbjørn Jagland's programme of reforms of the Council of Europe. We will work towards implementation of measures which will help to deliver more focused, streamlined and effective organisation and a more efficient use of resources.

3. **Strengthening the rule of law**

The United Kingdom chairmanship attaches great importance to strengthening the rule of law in Europe. The United Kingdom will host a meeting of the Venice Commission and member state representatives to discuss the recently adopted Venice Commission report on the Rule of Law. The United Kingdom chairmanship will present the conclusions of the meeting to the Committee of Ministers, thereby providing an opportunity for their concrete follow up.

4. **Internet governance, including freedom of expression on the Internet**

The United Kingdom strongly supports an open internet, not only in terms of access and content but also freedom of expression. Our Chairmanship will work towards the adoption of the Council of Europe Internet governance strategy by the Committee of Ministers. We will also give impetus to the principles that the Council of Europe has developed to uphold freedom of expression on the internet and provide support to other initiatives, to ensure that all member states live up to their international obligations in this area.

5. **Combating discrimination on the grounds of sexual orientation and gender identity**

Too many people still suffer outdated prejudices, discrimination and violence because of their sexual orientation or gender identity. The United Kingdom Chairmanship will work to maintain the momentum generated by the Council of Europe recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, and will work with the Secretariat on their implementation. We will encourage steps to end acts of violence, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity.

6. **Streamlining the Council of Europe's activities in support of local and regional democracy**

The United Kingdom Chairmanship will work towards a more effective and efficient role for the Council of Europe in supporting local and regional democracy. The United Kingdom supports the Council of Europe's significant programme of activities in this area, including monitoring and sharing of expertise, but wants to see it streamlined and more carefully targeted as a result of the work being led by the Spanish Deputy Prime Minister, Manuel Chaves.

Our aim is to reach agreement on the creation of a Single Programme of Council of Europe activity on local and regional democracy during our Chairmanship. The activities of the numerous actors in the field of local and regional democracy should be streamlined into a single coherent programme of work, overseen by the Committee of Ministers. This will provide greater value for money, and enable a targeted and focussed approach, eliminating the potential for duplication and inefficiency and delivering the outcomes member states want. The Single Programme will have one pooled budget and will be supported by a single unified Secretariat.

Meeting of the Ministers' Deputies

At their meeting on 12 October 2011, the Ministers' Deputies adopted a decision expressing their serious concern about the conviction of Ms Yulia Tymochenko in Ukraine. While underlining the importance they attach to pursuing effective co-operation with Ukraine, in particular regarding the functioning of democratic institutions and the rule of law, the Deputies requested the Secretary General of the Council of Europe to raise these issues with the Ukrainian authorities and to report back to them at their next meeting.

A few days before the fiftieth anniversary of the signing of the European Social Charter, the Deputies also adopted a Declaration through which they solemnly reaffirmed the paramount role of the Charter in guaranteeing and promoting social rights in Europe.

Furthermore, the Deputies held an exchange of views with the President of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in relation with the first general report on GRETA's activities

Chairman of Committee of Ministers calls for eradication of death penalty worldwide

On the occasion of the European and World Day against the Death Penalty, marked on 10 October each year, Kostyantyn Gryshchenko, Chairman of the Committee of Ministers of the Council of Europe, published the following statement: "The international drive to put an end to the death penalty resulted in its abolishment in the 47 member states of the Council of Europe and in many nations worldwide. At the same time, capital punishment, unfortunately, continues to be applied in some countries, including in one European country.

As the ultimate denial of human rights, the death penalty degrades the civilised principles of justice and contradicts the principles of the Universal Declaration of Human Rights and the European Convention on Human Rights.

In my capacity as Chairman of the Committee of Ministers, I reiterate the Council of Europe's determination to continue to act for the complete eradication of the death penalty, by appealing to all countries where such a practice still exists to abandon it without delay. No cause can justify that human life is taken away.

Ukraine Foreign Minister calls for strengthened relations with "Europe's immediate neighbours"

Addressing the Assembly for the last time as Chairman of the Committee of Ministers, Kostyantyn Gryshchenko welcomed democratic movements in the southern Mediterranean and stressed the Council of Europe's readiness to help the region in its transition to democracy. "I hope that action plans with those countries where discussions are most advanced will be finalised soon so that these countries can rapidly benefit from the Organisation's expertise," he said.

Referring to the situation in Belarus, Mr Gryshchenko underlined that the Organisation will only back a rapprochement on the basis of respect for European values and principles. "This means, as a first measure, releasing the individuals imprisoned following the presidential elections and secondly, placing a moratorium on the death penalty," the Minister said.

Mr Gryshchenko also underscored the Council of Europe's determination to combat all forms of racism and intolerance. In this respect, he announced that the Committee of Ministers will decide in the coming weeks on the follow-up to the "Living Together" report published in Istanbul last May.

OSCE and Council of Europe leaders discussed joint efforts to fight terrorism and human trafficking, promote minority rights and support democratic transition processes in the Southern Mediterranean

The OSCE Chairperson-in-Office, Lithuanian Foreign Minister Audronius Ažubalis, and OSCE Secretary General Lamberto Zannier met the Council of Europe's Chairperson of the Committee of Ministers, Ukraine's Minister for Foreign Affairs Kostyantyn Gryshchenko, and Council of Europe Secretary General Thorbjørn Jagland in New York. The meeting is the 20th between the OSCE and the Council of Europe in the "2+2" format that brings together the two organisations' Chairs and Secretaries General. The participants strongly condemned the terrorist attacks in Ankara and Siirt in Turkey, underlining that terrorism is an assault on the common values of the two organisations. They called for increased co-operation between the OSCE and the Council of Europe in the fight against terrorism, while respecting human rights, fundamental freedoms and the rule of law.

Council of Europe launches Action Plan for Ukraine 2011-2014

The Council of Europe launched a three-year action plan on 16 September in Kyiv to support Ukraine's European agenda for reform in the areas of human rights, the rule of law and democracy. The Council of Europe Secretary General, Thorbjørn Jagland, and the Minister for Foreign Affairs of Ukraine, Kostyantyn Gryshchenko, opened the launch conference. "The positive results of ambitious reforms will ultimately benefit the citizens of Ukraine, the country's institutions, and the society as a whole," they said ahead of the launch.

Declarations by the Committee of Ministers and its Chairperson

50th anniversary of the European Social Charter

Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.

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.

Wave of anti-Gypsyism in Bulgaria: statement by PACE's legal affairs committee

The Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly has adopted the following statement:

"The Committee on Legal Affairs and Human Rights is gravely concerned at the recent country-wide eruption of racist hatred and threats directed against the Roma in Bulgaria. Many Roma fear for their children's and their own safety.

The committee calls on the Bulgarian authorities at all levels to do their utmost to protect this vulnerable minority from attack and urges them to strongly condemn and prosecute acts of anti-Gypsyism. They must, in particular, react firmly to racist discourse by public officials and tackle hate speech vis-à-vis the Roma. Corruption and crime must be fought regardless of the ethnic origin of the perpetrators."

Terrorism must be considered a crime against humanity, says PACE President

Strasbourg, 3 October

"Terrorism remains the greatest threat to the universal values of human rights. It must be considered a crime against humanity," the PACE President Mevlüt Cavusoglu said in his opening speech of the PACE October session in Strasbourg, recalling the the massacre at Utoeya island youth camp, the bombing in Oslo and a recent bomb explosion in Ankara.

"At the same time, our response must be based on human rights, democracy and the rule of law. That is why the report to be presented to us this week by Dick Marty is so important – it stresses that secret service and intelligence agencies must be held accountable for human rights violations such as torture, abduction or renditions and not shielded from scrutiny by unjustified resort to the doctrine of state secrets." He added that, in the long term, one of the most efficient tools to combat extremism and intolerance was intercultural and interreligious dialogue.

"Tomorrow we will decide on the request by the Palestinian National Council to become a Partner for Democracy. This request comes as a logical development, as the Assembly has been co-operating closely with Palestinian representatives for years. I am confident that granting Partner for Democracy status to the Palestinian National Council will not only strengthen co-operation between the Palestinians and the Council of Europe but also help implementation of democratic reforms in the Palestinian territories. In this connection, the address of Mr. Mahmoud Abbas on Thursday will be a very important moment for our Assembly," the President stressed.

"The revolutionary changes in Europe's close neighbourhood, in particular in Tunisia, Egypt and Libya, as well as ongoing protests in Syria are a serious challenge for us. I consider that the Assembly is successful in pursuing a strategy of bringing non-member states closer to the Council of Europe and to our standards. We

will observe elections in Tunisia and Morocco, and after having granted the "Partnership for Democracy" to the Parliament of Morocco," Mr. Cavusoglu said.

PACE rapporteur praises "clear progress" for IDPs in the North Caucasus

Strasbourg, 26 September

"I was impressed by the progress made by the Russian Federal and local authorities in the North Caucasus in terms of construction and security in favour of the general population and IDPs," said Nikolaos Dendias (Greece, EPP/CD), rapporteur of the Migration Committee of the Parliamentary Assembly, ending a five-day visit to Moscow and the Republics of North Ossetia-Alania, Chechnya and Ingushetia as part of a fact-finding visit for his report on the "Situation of IDPs and returnees in the North Caucasus region".

"I was expecting to see an area in trouble and without security, but I found a region where there is clear progress. In Chechnya alone, the past decade has seen more than 323 000 IDPs return to their homes. Over 40 000 families have received compensation for destroyed property, amounting to 14 billion roubles. While these figures are impressive, this does not mean that efforts should not be continued."

"There still remain serious concerns as regards access to legal status, residence registration, adequate housing or employment for IDPs. The IDPs who remain in temporary accommodation centres or hostels in the three republics are among the most vulnerable persons, most of whom have no capacity to return or even to cope on their own."

"I am glad that the governments of the three republics understand the problems that need to be attended to, and they have promised to rectify these. It is clear that not all problems can be fixed overnight, but more transparency and improved communication is needed to ease the many anxieties still prevailing today among the remaining IDP communities."

Serbia remains on the right track, effective implementation of reforms now to be secured

Strasbourg, 27 September

"We welcome Serbia's recent achievements and the adoption of an impressive number of laws that bring Serbia closer to European standards," said Davit Harutyunyan (Armenia, EDG) and Indrek Saar (Estonia, SOC), monitoring co-rapporteurs of the Parliamentary Assembly, at the end of a visit to Serbia from 19-22 September 2011.

"The recent adoption of the laws on the election of parliamentarians and funding of political activities, full co-operation with the International Criminal Tribunal for the former Yugoslavia and the consolidation of the independent regulatory bodies are all important steps towards Serbia's fulfillment of its obligations and commitments to the Council of Europe," the co-rapporteurs said.

"Despite this positive trend, a number of essential issues still remain unsolved. Serbia must ensure the setting-up of proper monitoring mechanisms to oversee the implementation of these newly adopted laws and sanction any violation. The reform of the judiciary must be pursued. The review of the cases of 800 non-elected judges and 150 prosecutors has to be completed in a transparent and fair manner. This is a pre-condition to efficiently combat corruption. We also want to stress that the media strategy under preparation and additional laws should secure freedom of the media, protect journalists and their working environment, and ensure the transparency of ownership of the media."

"We remain concerned by the situation of the Roma community, which has, despite steps taken by the authorities, insufficient access to education, housing and social rights and faces multiple discrimination. The adoption of a law on temporary and permanent residence is becoming urgent."

"While the authorities are expecting a positive opinion from the European Commission to obtain candidacy status and start negotiations for joining the European Union, we encourage Serbia to continue the drafting and implementation of the necessary reforms in consultation with the Council of Europe and international organisations to strengthen democracy, the rule of law and human rights," added the co-rapporteurs.

The PACE Monitoring Committee will discuss the report at its meeting on 15 December 2011 with a view to presenting it at the January 2012 part-session.

PACE grants "Partner for democracy" status to the Palestinian National Council

Strasbourg, 4 October

The Parliamentary Assembly of the Council of Europe voted to grant "Partner for democracy" status to the Palestinian National Council – only the second time such status has been accorded.

Presenting the report at the debate, Tiny Kox (Netherlands, UEL) said the status "created new opportunities for the Palestinian people" and could be seen as part of the Arab Spring. The Speaker of the Palestinian National Council Salim Al-Za'noon hailed the decision as "historic" and said it could contribute to establishing peace in the region.

A six-member delegation of Palestinian elected representatives will be able to speak in the Assembly and most of its committees, and propose subjects for debate, but cannot vote.

In return, the Palestinian National Council – in a letter from its Speaker – has pledged to pursue the values upheld by the Council of Europe, hold free and fair elections and work towards abolishing the death penalty, among other commitments.

The Assembly will monitor other key issues such as concluding negotiations for a government of national unity, and making the Palestinian National Council a democratically-elected body. Other points include refraining from violence, rejecting terrorism, recognising the right of Israel to exist and freeing the soldier Gilad Shalit. The Assembly will review progress on these points within two years.

In June this year, the Parliament of Morocco became the first to be granted the new status, which is intended for parliaments from regions neighbouring the Council of Europe who wish to benefit from the Assembly's experience of democracy-building and to debate common challenges.

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

Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial 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:

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

– thematic reporting and advising on human rights systematic implementation;

– awareness-raising activities.

Country monitoring

The Commissioner carries out visits to all member states to monitor and evaluate the human rights situation. In the course of such visits, he meets with the highest representatives of government, parliament, and the judiciary, as well as civil society and national human rights structures. He also talks to ordinary people with human rights concerns, and visits places of human rights relevance, including prisons, psychiatric hospitals, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups. Following each visit, a report or a letter may be addressed to the authorities of the country concerned containing an assessment of the human rights situation and recommendations on how to overcome possible shortcomings in law and practice. The Commissioner also has the right to intervene as a third party in the proceedings of the European Court of Human Rights, either by submitting written information or by taking part in its hearings.

Visits

Slovakia, 26-27 September 2011

The Commissioner visited Slovakia from 26 to 27 September 2011 to discuss issues relating to the human rights of Roma, persons with disabilities and national minorities. He met with several members of the government as well as the Office of the Plenipotentiary of the Slovak Government for Roma Communities, members of the Slovak delegation to the Parliamentary Assembly of the Council of Europe, the Public Defender of Rights and representatives of the Slovak National Centre for Human Rights and NGOs. In addition, the Commissioner travelled to Plavecký Štvrtok, where he visited the local Roma settlement and nearby school and met with the Mayor.

The Commissioner underlined the need to combat anti-Gypsyism in public and political discourse and to address segregation in housing and education. Further subject areas addressed included hate crimes and police misconduct targeting Roma, sterilisation of Roma women, and the placement of Roma children in state care institutions.

As regards the human rights of persons with disabilities, he focused in particular on the right to live independently and be included in the community, including progress towards deinstitutionalisation, the right to education in an inclusive environment, and issues related to legal capacity, including the establishment of a system for supported decision-making for people with intellectual disabilities.

The Commissioner also discussed issues relating to the protection and promotion of national minority languages and the balance between the promotion of the state language and the linguistic rights of national minorities.

Turkey, 10-14 October 2011

From 10 to 14 October 2011 the Commissioner carried out a visit to Turkey focusing on issues concerning the independence and impartiality of judges and prosecutors, excessively lengthy pre-trial detention and judicial proceedings. He encouraged the government to step up its efforts and give effect to the judicial reform strategy it launched in 2009 in order to redress the structural shortcomings and fully align justice in Turkey with the Council of Europe standards and the Court's case-law.

The Commissioner visited, among other places, the D-type prison in Diyarbakır and underlined that the excessive length of pre-trial detention in Turkey is a chronic, serious problem that adversely affects the personal liberty of thousands of persons. He stressed that this issue requires not only legislative changes but above all attitude changes of prosecutors and judges who appear to approve this practice rather too easily.

The Commissioner welcomed the abolition of state security courts but remained seriously concerned by the establishment and operation of the assize courts with special powers, competent to deal with cases of organised crime and terrorism.

Republic of Moldova, 19-21 October 2011

From 19 to 21 October 2011 Mr Hammarberg visited the Republic of Moldova, focusing on non-discrimination and promotion of tolerance in society, as well as human rights issues related to the events of April 2009. He welcomed a strong commitment by the relevant governmental institutions to promulgate the anti-discrimination law, despite strong opposition by certain groups. He stressed that a prompt adoption of a comprehensive anti-discrimination legislation would be an important step towards a more effective protection of the rights of the vulnerable groups in the Republic of Moldova; it should be accompanied by an education and public awareness campaign to ensure efficient implementation of the legislation in question.

The Commissioner also took stock of the measures taken in connection with the events of April 2009 and recommendations contained in his previous report on the Republic of Moldova, particularly those related to combating ill-treatment and impunity by the police. He noted the steps undertaken by the government in this direction, such as the establishment of the special anti-torture units within the Prosecutor General's Office. At the same time, he underlined that more resolute action was needed in order to investigate and bring to justice all those responsible for the serious violations of human rights perpetrated in the period of the April 2009 protests.

Finally, the Commissioner took note of the government's intention to initiate a comprehensive reform of the justice system, which is widely regarded as an important step towards strengthening the rule of law and respect for human rights in the country.

Reports and continuous dialogue

The reports mentioned in this section are all available on the Commissioner's website, together with comments from the relevant authorities.

Georgia

On 5 July 2011 Thomas Hammarberg released a report following his visit to Georgia from 18 to 20 April 2011 focusing on the level of protection of human rights in the justice system. He welcomed the significant efforts made to reinforce the independence of the judiciary, but underlined that further efforts were needed to safeguard it from undue interference. He recommended additional measures to prevent political influence on the High Council of Justice and to protect the individual independence of judges.

He added that particular attention should be paid to the plea-bargaining procedure, extensively applied in criminal cases in Georgia. Effective and adequate judicial control was needed, so that the safeguards provided for by the legislation are fully implemented in practice.

Turkey

On 12 July 2011 the Commissioner published a report on freedom of expression and freedom of the media in Turkey, following up his visit there from 27 to 29 April 2011. He drew attention to the very large number of judgments of the European Court of Human Rights finding violations of freedom of expression by Turkey. He considered that the Turkish authorities had not sufficiently addressed the underlying causes of these violations.

The Commissioner was particularly concerned about the number of intimidation attempts, attacks and murders perpetrated against journalists and human rights defenders. Recalling in particular the judgment of the European Court of Human Rights in the Hrant Dink case, the Commissioner urged the Turkish authorities to increase their efforts to protect journalists from and conduct effective investigations into such acts in order to eradicate impunity.

The Commissioner considered that the practice of blocking websites in Turkey went beyond what is necessary in a democratic society, and encouraged the authorities to bring the Internet Act and its application fully in line with Council of Europe standards.

Finally, he observed that the specificities of the media landscape in Turkey rendered the editorial independence of newspapers and broadcast media particularly fragile. He expressed his concerns about the frequent violations of labour rights of media professionals and their precarious working conditions, and stressed that this situation made it all the more important for the authorities to exercise the utmost caution in order to avoid chilling effects.

Russian Federation

On 6 September 2011 the Commissioner published a report following his visit to the Russian Federation from 12 to 21 May 2011, when he visited four republics in the North Caucasus Federal District: Kabardino-Balkaria, North Ossetia-Alania, the Chechen Republic and Ingushetia. Despite efforts to improve the quality of life of the people living in this troubled region, the situation therein continues to present major challenges for the protection of human rights.

The Commissioner underlined that counter-terrorism measures should be carried out in full compliance with human rights standards. He welcomed the efforts aimed at promoting reconciliation and reintegrating into society, e.g. through education and employment opportunities, those who have abandoned the course of armed insurgency. Further efforts must also be made to dismantle the links between corruption, organised crime and terrorism and to prevent their nefarious influence from spreading in society.

The Commissioner expressed deep concern about the persistence of allegations relating to abductions, disappearances and ill-treatment of persons deprived of their liberty in the North Caucasus and underlined the persisting problem of impunity for serious human rights violations.

The Commissioner found that human rights defenders continued to face serious obstacles in their work and significant risks, and highlighted the importance of ensuring that persons and organisations engaging in human rights monitoring are able to work freely and without undue impediments. He paid tribute to the Human Rights Centre "Memorial" and other human rights organisations for their continued commitment to fulfilling their mission in the region, despite the risks and challenges involved.

On 9 September 2011 the Commissioner released a letter addressed to the Government of the Russian Federation, with his observations on the right to freedom of assembly. The letter followed up on discussions the Commissioner had during his visit to Russia from 12 to 21 May 2011.

The Commissioner advised the authorities to review the legal framework with a view to including effective, foreseeable and clearly defined procedures which relate to the resolution of any disagreements which may arise in the context of simultaneous assemblies. He also recommended that provisions on spontaneous assemblies be introduced in the legal framework, recalling that the ability to organise such events would be important when a delay might weaken the message.

Italy

On 7 September 2011 the Commissioner published a report following his visit to Italy from 26 to 27 May 2011. The report covers the protection of the human rights of Roma and Sinti and of migrants, including asylum seekers, particularly as a result of recent migration flows from Northern Africa.

The Commissioner called on the Italian authorities to act in accordance with international standards in the field of housing and evictions, and to bring the situation fully into line with the revised European Social Charter. He stressed the need for the Italian authorities to address the situation of the many stateless Roma who came to Italy from the former Yugoslavia decades ago, and their descendants. More generally, the Commissioner called for a national strategy for the social inclusion of Roma and Sinti in Italy which would support the efforts of regional and local actors in this field; as an interim step, he suggested the establishment of a task force at national level which would provide such support.

Concerning the protection of the human rights of migrants, including asylum seekers, the Commissioner noted that increasing arrivals from Northern Africa have exposed a dire need for Italy and Europe to do more to ensure that the rights of these persons are respected when it comes to both their rescue at sea and their reception and integration. Any practices which may result in migrants being sent to places where they are at risk of ill treatment or onward refoulement must be avoided. Reception conditions and access to asylum should also be improved, notably by extending the capacity of the housing schemes administered by the publicly-funded network of local authorities and non-profit organisations.

Ireland

On 15 September 2011 the Commissioner published a report following his visit to Ireland from 1 to 2 June 2011 focusing on the human rights of vulnerable groups in times of austerity budgets. Noting administrative reforms under way to make government less costly, the Commissioner stressed the importance of national human rights structures and called on the authorities to protect their independence and effectiveness, and to refrain from adopting budget cuts and staff reductions which would limit the capacity and effectiveness of these institutions.

He further noted the robust legal and institutional framework in place to combat discrimination, racism and xenophobia. However, he remained concerned that still no legislative change had taken place to ensure that transgender persons enjoy accurate legal recognition. Welcoming the ongoing discussion on the recognition of the Traveller community as an ethnic minority group, the Commissioner urged the authorities to strengthen efforts to promote their integration, in particular by ensuring quality education, political participation and representation.

Regarding the area of mental health, Mr Hammarberg urged the authorities to step up their efforts as pledged and invest in community care as well as to ensure that people with disabilities are not adversely affected by the budget crisis, in particular in terms of healthcare and social services.

He also expressed his concern about allegations of neglect and abuse of older people residing in privatised care homes and encouraged the authorities to conduct their investigations into such allegations also with a view to strengthening the protection of residents of care homes in the future. He stressed the importance of ensuring that social protection systems, health care, housing policies and also anti-discrimination legislation including in the labour market, are suitable for older people.

Lastly, Mr Hammarberg urged the Irish authorities to improve and simplify the asylum and immigration system, ensuring transparent, speedy decision-making subject to judicial review, and taking into account internationally agreed principles, such as the right to respect for family life and the best interests of the child. In this context, the Commissioner welcomed the increased care for separated asylum-seeking children and reiterated his recommendation to assign a guardian to each separated child to enhance protection.

Serbia

On 22 September 2011 the Commissioner published a report following his visit to Serbia from 12 to 15 June 2011 focusing on post-war justice and reconciliation, the fight against discrimination and freedom of the media, access to public information and personal data protection. He emphasised the need for adequate reparation to all victims for the gross human rights violations they suffered during the war. He also urged Serbia to improve the witness protection system and to promptly investigate and prosecute any threats and intimidation of witnesses.

The Commissioner stressed that the prompt and just resolution of the pending issues arising out of forced displacement due to the 1991-1999 wars is crucial for the development of social cohesion and human rights in Serbia. He called for further co-operation between the countries in the region to resolve these important issues.

The Commissioner on his visit to Serbia

The Commissioner welcomed the strengthening of the Serbian legal and institutional framework against discrimination and racism, as well as the measures taken in recent years to counter hate crimes, notably those committed by extremist groups. Nevertheless, he urged the authorities to give priority to the prosecution of hate crimes and to undertake a comprehensive review of the court sentencing policies in these cases.

As regards Roma, he underlined that more and systematised efforts should be made to enhance protection and inclusion, in particular in the sectors of employment, education, housing and healthcare.

The Commissioner remained concerned about widespread homophobia and urged the authorities to intensify their efforts to fight violence and discrimination against LGBT persons, including by having the criminal provisions concerning hate crimes more vigorously implemented by courts.

Concerning the rights of persons with disabilities, the Commissioner expressed his concern about the lack of progress in the process of deinstitutionalisation of adults with mental disabilities and the reported abuse of the legal capacity proceedings, often by close family members. He called on the authorities to take all necessary measures, including legislative ones, to effectively resolve these problems.

Mr Hammarberg commended the authorities' prompt reactions to recent attacks on journalists, but remained seriously concerned by the impunity regarding past cases of killings of journalists and called for effective investigations into all these violent incidents. He further stressed that defamation should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided.

Azerbaijan

On 29 September 2011 the Commissioner published his observations on the human rights situation in Azerbaijan concerning the freedoms of expression, association and assembly, as a follow up to his June 2010 report. These observations were published together with the written comments of the Azerbaijani authorities.

He noted with regret that most of the recommendations he had made as regards these areas have not been implemented. In some cases, steps taken by the authorities have even run counter to Azerbaijan's human rights obligations. The Commissioner mentioned in particular persistent practices of unjustified or selective criminal prosecution of journalists or critical opinion makers. He also expressed concerns about information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely in Azerbaijan. The Commissioner was also particularly worried about the recent demolition of a building where several human rights organisations were located.

Another source of concern related to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011. The Commissioner noted that several persons were detained on grounds of violating public order, and that six opposition activists were sentenced for participating in "actions causing disturbance of public order", following trials whose conformity with human rights standards has been called into question.

The Commissioner therefore called upon the Azerbaijani authorities to take decisive measures to address the shortcomings highlighted in his report and observations.

Thematic reporting 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.

Media freedom lectures

During the sixth and last Media Freedom Lecture, held on 7 July 2011, at a side-event of an OSCE conference in Vienna (Austria), Mr Hammarberg emphasised that the European Court of Human Rights has confirmed, time and again, that member states have an obligation under the European Convention on Human Rights to protect and promote media pluralism. He added that states do not always live up to this human rights obligation and he saw a need for a strong commitment by authorities to the human rights obligation to promote and protect media pluralism, including on the Internet.

Summit of Mayors on Roma

On 22 September 2011 the Commissioner addressed the Summit of Mayors on Roma, organised by the Congress of Local and Regional Authorities in Strasbourg.

Mr Hammerberg speaking at the Summit of Mayors on Roma

He pointed out that pervasive anti-Roma rhetoric underpinned obstacles to Roma inclusion.

He said that anti-Roma statements by local politicians which have been commonplace in several countries in Europe, are detrimental to efforts to promote the inclusion of Roma in society. The Commissioner stressed that local efforts for Roma inclusion must bring all the stakeholders together from the beginning. This is easier when Roma are already participants in the political process and represented in local assemblies.

5th Warsaw Seminar on human rights

On 29 September 2011 the Commissioner addressed the 5th Warsaw Seminar on human rights, organised by the Polish authorities in Warsaw. He made a keynote speech on the human rights of older persons and pointed out that the demographic trend of aging populations had huge implications for European societies. The size and age of the working population as well as old-age pension and care systems will all be subject to important changes. The Commissioner pointed out that institutional care for older persons varied greatly among member states. There was a need to monitor the conditions in institutions for the elderly much more thoroughly through independent complaints and inspection systems.

Anna Politkovskaya

On 5 October 2011 in Strasbourg, during an open discussion in memory of Anna Politkovskaya, the Commissioner presented an issue paper on the protection of journalists from violence, about what can be done to strengthen the right of journalists to carry out their work under safe conditions. Dunja Mijatović, OSCE Representative on Freedom of the Media and author of the issue paper, participated in this event, together with Sergey Sokolov, Deputy Editor of Novaya Gazeta.

Human rights comment

By means of his communication tool, the Human Rights Comment, the Commissioner published several articles on current significant human rights issues, such as: European media and anti-Gypsy stereotypes, judgments issued by the European Court, criminalisation of women wearing the burqa, protection of transpersons from discrimination, the protection of stateless persons, methods for assessing the age of migrant children, excessive use of pre-trial detention, global war on terror, CIA secret detention and torture, human rights defenders in Belarus, homophobic and transphobic messages in schools and the protection of journalists.

Third-party intervention before the European Court of Human Rights

With the entry into force of Protocol No. 14 to the European Convention on Human Rights, the Commissioner has the right to intervene proprio motu as third party in the Court's proceedings.

On 18 October 2011, Mr Hammarberg submitted written observations to the European Court of Human Rights on a case concerning the treatment of a person with disability in Romania. He considered that in exceptional circumstances, NGOs should be allowed to lodge applications with the Court on behalf of victims, even in the absence of specific authorisation. According to him, the important role of NGOs in shedding light on human rights violations experienced by vulnerable persons and in facilitating their access to justice must be officially recognised. This would be fully in line with the principle of effectiveness in which the Convention is grounded.

This third party intervention by the Commissioner is the first submitted on his own initiative since the entry into force of Protocol No. 14 to the Convention on 1 June 2010.

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

The Republic of Cyprus has accepted additional articles of the Revised Social Charter:

Article 2 (paragraphs 3 and 6), Article 4 (paragraph 5), Article 7 (paragraph 7), Article 8 (paragraph 5), Article 22 (part B), Article 27 (paragraph 2), Article 25 and Article 29.

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.

An overview of the state of ratifications of the European Social Charter is appended to this bulletin.

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.

Collective Complaints

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

Main events organised by the Council of Europe

Committee of Ministers

At the 1123rd meeting of the Ministers' Deputies, on 12 October 2011, the Committee of Ministers adopted a Declaration reaffirming the importance of respecting social rights, especially in times of economic difficulties and for individuals belonging to vulnerable groups.

The Declaration calls on member states that have not yet ratified the Revised Social Charter and those which have not yet accepted the collective complaints procedure to consider doing so, and invites all member states and relevant bodies of the Council of Europe to increase their efforts to raise awareness of the Charter at national level, amongst legal practitioners, academics and social partners as well as to inform the general public.

Furthermore the Committee of Ministers decided to hold an annual exchange of views with the President of the European Committee of Social Rights.

Parliamentary Assembly

The sub-Committee of the Assembly on the European Social Charter and Employment held an enlarged meeting on non-discrimination on 6 October 2011.

Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, stressed that socio-economic rights are human rights, and that in the current crisis it was even more important to protect social rights. The groups most affected by austerity measures are children, especially in single parent families, the elderly and the disabled.

Mr Luis Jimena Quesada, President of the European Committee of Social Rights, said that the "Parliamentary Assembly could not only strengthen the co-operation between its various committees and the Committee of Social Rights, but also play a substantial role at national level in the consolidation of the protection of social rights and the monitoring of decisions and conclusions of the Committee. It could also use the Charter and the case-law of the Committee as a contribution to the drafting of its texts on social rights, and encourage national parliaments to incorporate the rights and principles enshrined in the Charter in their legislation.

Mr Rudo Kawczynski, President of the European Roma and Travellers Forum (ERTF), and Mr Oliver Lewis, Executive Director of the Mental Disability Advocacy Centre (MDAC), emphasised the need to promote the system of collective complaints so that states accept this procedure which is complementary to the system of individual appeals to the European Court of Human Rights. They both firmly maintain that this protocol which provides for a system of collective complaints, thus enabling all citizens, without any discrimination, to defend their rights to employment, education, health, housing and welfare services, is a means of settling problems encountered by many people.

Governmental Committee of Social Charter

On 19 October 2011, the Governmental Committee adopted a statement reaffirming its commitment to reinforce social rights; it pledges to review its Rules of procedure and its working methods in order to improve the efficiency of the follow up of the application of the Charter.

INGO Conference at ENA

The Conference of the Council of Europe international non-governmental organisations held a Round Table entitled "Human Rights in times of crisis: the contribution of the European Social Charter" at the *Ecole Nationale d'Administration* (ENA) in Strasbourg, on October 17, coinciding with the International Day for the Eradication of Poverty.

Emphasis was placed on Articles 30 and 31 of the Revised Social Charter which concern the right to protection against poverty and social exclusion and the right to housing, as well as the role and responsibility of NGOs in implementing the Charter and in achieving justiciability of social rights by means of collective complaints.

The President of the European Committee of Social Rights concluded by stressing that "the crisis must not become an excuse to reduce the scope of the Social Charter, that is to say, that the protection of social rights must not deteriorate. On the contrary, the Charter should be seen as an antidote to the violation of fundamental individual values such as dignity, equality, autonomy and solidarity".

Brainstorming

On 18 October, a "brainstorming" on the ratification of the collective complaints procedure brought together politicians, academics, and

NGO leaders who have thought about how to persuade states to accept this procedure.

The Protocol providing for a system of collective complaints is a tool that enables dialogue between governments and policy makers on the one hand and civil society, trade unions and social partners on the other hand.

It has a preventive function: general decisions arising from complaints can prevent the emergence of social conflicts and lengthy legal proceedings at national level and individual applications at European level. By implementing the rights enshrined in the Charter, it contributes to social cohesion by ensuring respect for social rights and dignity of individuals and groups.

Official ceremony, 18 October, Strasbourg

During the ceremony, on 18 October, Thorbjørn Jagland, Secretary General of the Council of Europe announced the acceptance of additional provisions of the Revised Charter by the Republic of Cyprus.

He then cited major events in history from the emergence of Solidarnoscz in Poland in 1980 to the recent popular uprisings in the Arab world which illustrate the aspiration of people to freedom and social justice.

In the present time of global economic crisis, the human rights enshrined in the Social Charter must be guaranteed, irrespective of budget austerity. "Protecting social rights is not a policy choice. It is a moral obligation."

Mr Mevlüt Cavuşoğlu, President of the Parliamentary Assembly, highlighted the ongoing efforts of the Assembly for states to comply with their commitments by ratifying the Charter and to comply with the decisions of the European Committee of Social Rights. The Assembly also encourages national parliaments to incorporate the rights and principles contained in the Charter and to consider the Committee's jurisprudence in the development of their laws.

Mr Sergiy Tigipko, vice Prime Minister and Minister for Social Policy of Ukraine underlined the importance for States which have not yet accepted the collective complaints procedure to do so and for unions and NGOs to become more involved in this procedure, which has already proven to be effective despite the low number of States Parties.

Mr Luis Jimena Quesada welcomed the support expressed by the principal bodies of the Council of Europe and hoped for an improvement in cross-fertilisation with the European Court of Human Rights and internal monitoring bodies as well as for greater synergy with the European Union and with UN organs such as the ILO, the High Commissioner for Refugees and the Committee on Economic, Social and Cultural Rights.

Main events organised by external actors

Joint Conference in Paris, 23 September

The Council of Europe, the European Economic and Social Committee and the French Economic, Social and Environmental Council held a Joint Conference entitled "The Council of Europe's Social Charter, 50 years on: What next?"

Following statements on the implementation of the Charters - that of the Council of Europe and the European Union - and the results achieved, participants considered how these complementary instruments could be improved in order to strengthen social rights. The three organisers adopted a joint initiative: from now on a Joint Conference will be held on an annual basis to assess the implementation of the Charters of social rights and to work effectively in synergy in order to reinforce the social rights of the citizens of Greater Europe.

Conference in Zagreb, 11 November

A conference entitled "50 Years of the European Social Charter: accomplishments and social challenges for Croatia and Europe", organised by Pragma, a Croatian NGO, under the auspices and in presence of the President of the Republic of Croatia, Ivo Josipovic, and the Ministry of Economy, Labour and Entrepreneurship, aimed at illustrating the role played by the Charter in Croatia in improving social rights. In the current economic crisis, social problems persist, but Croatia which is on the verge of entering the European Union and intends ratifying the Revised Charter, is prepared to make a great effort to implement the Charter.

Other events in the framework of the 50th anniversary of the Social Charter, were held by the following organisers:

- the European Youth Centre in Strasbourg, 14-18 September,
- the Ministry of Social Policy in Kyiv, Ukraine, 29 September,
- the Ministry of Health and Solidarity in Paris, 17-21 October and 13 December,
- the faculty of Political Science at the University of Eastern Piedmont in Turin (Italy), where the Social Charter was opened for signature on 18 October 1961,
- Kocaeli University in Istanbul (Turkey), 24-26 October,
- the Ministry of Solidarity and Social Security in Lisbon, 7 December,
- the Public Defender of Georgia in the framework of Denmark's Georgia Programme 2010-2013 "Promotion of judicial reform, human and minority rights", 15 December.

For further information on these events:

http://www.coe.int/t/dghl/monitoring/socialcharter/default_EN.asp?

In addition, at the meeting of its Executive Committee on 19-20 October, the European Trade Union Confederation (ETUC) adopted a Declaration on the 50th anniversary of the European Social Charter:

http://www.etuc.org/a/9150

Collective complaints: latest developments

Decisions on the merits

Two decisions on the merits became public.

European Roma Rights Centre (ERRC) v. Portugal, No. 61/2010

The complainant organisation alleged that the situation in Portugal was in violation of Articles 16, 30, 31, alone or in conjunction with Article E of the Revised Charter, for failure to ensure the provision of adequate and integrated housing solutions for Roma.

The ERRC considers that re-housing programmes have failed to integrate Roma and in fact, have often resulted in spatial segregation and inadequately sized dwellings in areas with poor infrastructure and limited or no access to public services. It considers that the approach of the government to the housing situation of Roma points to, at least, indirect discriminatory practices, which keep Roma excluded and marginalised through residential segregation and substandard quality re-housing.

In its decision the Committee concluded unanimously that there was violation of Article E (non discrimination) taken in conjunction with Articles 31§1 (adequate housing), Article 16 (the right of the family to social, legal and economic protection) and Article 30 (right to protection against poverty and social exclusion).

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

This complaint concerns the eviction and expulsion of Roma from their homes and from France during the summer of 2010.

In its decision on the merits of 28 June 2011 on Complaint No. 63/2010 by the Centre on Housing Rights and Evictions (COHRE) against France, the European Committee of Social Rights concluded unanimously that:

- The forced evictions of Roma of Romanian and Bulgarian origin in the summer of 2010 constitute a violation of Article E (non discrimination) taken in conjunction with Article 31§2 (Right to housing – reduction of homelessness)

The application of the circular of 5 August 2010 – which stipulated that "within 3 months, 300 unlawful sites must be cleared, with priority given to those occupied by Roma. It is therefore the responsibility of the prefect of each departement to organise the systematic dismantling of the unlawful sites, particularly those occupied by Roma" – led to the forced eviction of Roma of Romanian and Bulgarian origin which amounted to directly discriminatory treatment based on the ethnic origin of the persons concerned. These evictions took place against a background of constraint, in the form of the threat of immediate expulsion from France.

The circular of 5 August 2010 was replaced by a circular of 13 September 2010, no longer targeting Roma sites explicitly. The latter however states that the actions resulting from, *inter alia*, the circular of 5 August 2010 must continue. The government has not denied that before it was withdrawn, the circular of August 2010 applied to the evictions that took place in the summer of 2010, the consequences of which continue to affect the rights of the Roma concerned.

- The de facto collective expulsion of Roma of Bulgarian and Romanian origin from France during the summer 2010 constitutes a violation of Article E (non discrimination) taken

in conjunction with Article 19§8 (guarantees concerning deportation)

The circular of 5 August 2010 explicitly established a sort of inseparable link between forced evictions and expulsions by describing the operational steps to be taken in terms of "priority to illegal sites occupied by Roma", including "the eviction from illegal settlements and the immediate removal of foreign nationals unlawfully in the country".

Moreover, according to the circular of 5 August 2010, a threat to public order resulted from the mere existence of unlawful Roma camps. This does not constitute an adequate justification in terms of protection of public order.

The "voluntary" returns were disguised forms of forced collective expulsions, given that:

– The returns in question were "accepted" under the constraint of forced eviction and the real threat of expulsion from France.

– The willingness to accept financial assistance of €300 per adult and €100 per child as an incentive to leave the territory reveals a "situation of destitution or extreme uncertainty" in which the absence of economic freedom poses a threat to the effective enjoyment of the political freedom to come and go as one chooses.

Any waiver of the right not to be subjected to racial discrimination is unacceptable because such a waiver would be counter to an important public interest. Since the Roma of Romanian and Bulgarian origin consented to repatriation under constraint and against a background of racial discrimination, they cannot be assumed to have waived their right to freedom of movement and their right of residence under Article 19§8 of the Revised Charter.

At the 1125th meeting of the Ministers' Deputies on 9 November 2011, the Committee of Ministers took note of the report including the decision on the merits of the European Committee of Social Rights and decided to make it public immediately. The Committee of Ministers decided to resume consideration of this item at one of its forthcoming meetings and invited France to report on the measures taken or foreseen in order to deal with the situation described in the complaint and to report on cooperation with other countries concerned.

For further information and the press reviews on these two complaints:

http://www.coe.int/t/dghl/monitoring/socialcharter/default_EN.asp?

Decisions on admissibility

On 13 September 2011, two complaints were declared admissible by the European Committee of Social Rights:

- Médecins du Monde - International v. France, No. 67/2011
- European Council of Police Trade Unions (CESP) v. France, No. 68/2011

The allegations of the complainant organisations appear in Bulletin No. 83.

Registration of collective complaints

Two complaints were registered.

Syndicat de Défense des Fonctionnaires v. France, No. 73/2011

This complaint concerns the situation of so-called "redeployed" civil servants, employed by France Télécom and La Poste, who have remained at the grades of the former Post and Telecommunications service. The complainant trade union alleges failure to acknowledge discrimination, breach of the right to information, denial of the right to career development and of the right to social security for this category of employee within the abovementioned companies, in violation of Articles 2 (the right to just conditions of work), 12 (the right to social security), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and E (non discrimination) of the Revised Social Charter.

Fellesforbundet for Sjøfolk (FFFS) v. Norway, No. 74/2011

This complaint concerns the compulsory retirement of seamen in Norway. The complainant trade union considers that the upper age limit of 62 years in the Norwegian Seamen's Act in reality implies an unjustified work ban and is thus a discriminatory withdrawal of seamen's rights to work as seamen, in breach of Articles 1 §§ 1 and 2 (Right to work) and 24 (Right to protection in case of dismissal), read alone or in conjunction with Article E (non discrimination) of the Charter.

For more information on the collective complaints:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

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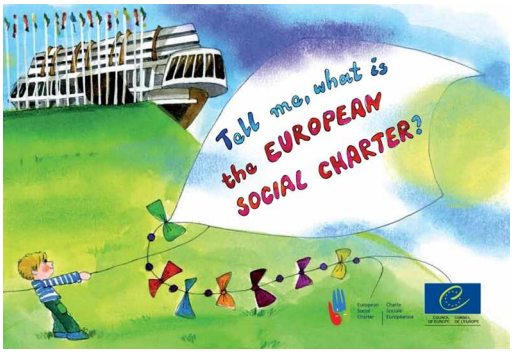
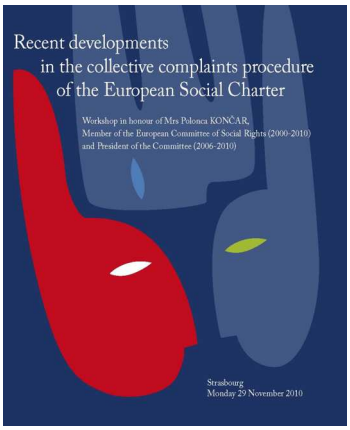
- Article « *Il diritto all'abitazione nella Carta sociale europea : a proposito di una recente condanna dell'Italia da parte del Comitato europeo dei diritti sociali* », G. Guiglia, in: *AIC – Associazione italiana dei costituzionalisti*, n° 3/2011, 19/07/2011
- Article « *L'eguaglianza tra donne e uomini nella Carta sociale europea* » G. Guiglia, in: *AIC – Associazione italiana dei costituzionalisti*, n° 4/2011, 11/10/2011

Internal publications

- Brochure *"The Social Charter at a glance"*, new format and updated text in German, Italian, Romanian and Russian
- Leaflet 1961–2011 – 50th anniversary of the European Social Charter in German, Italian and Russian
- A special issue of the electronic newsletter on the events organised in the framework of the 50th anniversary of the Social Charter (No.6) was published in October 2011
- *"Tell me, what is the European Social Charter?"*, comic strip for children



- Recent developments in the collective complaints procedure of the European Social Charter – Proceedings of the Workshop in honour of Mrs Polonca Končar, member of the European Committee of Social Rights (2000-2010) and President of the Committee (2006-2010)



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

50th anniversary of the European Social Charter

Interview with Régis Brillat, Executive Secretary of the European Committee of Social Rights

Journalist: Régis Brillat, as Executive Secretary of the European Committee of Social Rights of the Council of Europe, you are the right person to tell us about the European Social Charter.

Régis Brillat: The European Social Charter is an international treaty, through which states promise to respect fundamental rights that concern all individuals in their daily life: housing, health, education, employment, social protection and non-discrimination. The Charter also establishes a supervisory mechanism, based at the Council of Europe, Strasbourg, whose aim is to guarantee that states respect their undertakings by implementing the rights set out in the Charter.

J: Why are these rights not simply in the same category as human rights?

RB: These rights are similar to human rights, they are human rights, they are fundamental rights; but you are right, they do not appear in the European Convention on Human Rights, which is the principal achievement of the Council of Europe. Originally, when this

Régis Brillat, Executive Secretary of the European Committee of Social Rights, Council of Europe

Convention was drawn up, the Council of Europe's aim was to bring together in this text all the rights which are found in the Universal Declaration of 1948, the international catalogue of fundamental rights. However, states very quickly established the difference between "civil and political" rights, which were integrated into the Convention on Human Rights and fall within the jurisdiction of the European Court of Human Rights in Strasbourg, and on the other hand, "economic and social" rights, that were not integrated into the Convention on Human Rights but into the Social Charter that we are talking about today.

J: If a citizen of a member state of the Council of Europe considers their social rights flouted, for example, in terms of housing, what is the procedure?

RB: There is no right of individual petition as there is with the European Convention on Human Rights, which allows any individual to submit a case to the European Court of Human Rights. The only possibility of bringing a complaint under the Social Charter is what we call the collective complaints procedure, which is not open to individuals. It is a collective procedure open to unions, employers' organisations and some non-governmental organisations. So, if individuals consider that their rights are not respected in light of the Social Charter, they can join together with other people concerned and refer the matter to a non-governmental organisation or union that will initiate a procedure before the European Committee of Social Rights, not as a petition on behalf of an individual but as a general complaint.

J: Looking at the current economic reforms in the context of economic crisis in Europe, do social rights face bigger threats than before?

RB: There are several types of social rights. There are social rights which can be immediately enforced: freedom of association. Then, there are social rights that are a lot more complicated and onerous to implement for states. Naturally, in a time of economic crisis, there is the idea that these rights are threatened because there is a significant cost. On the other hand, in a time of economic crisis, these rights are even more important because with the economic crisis comes a social crisis and the non-respect of social rights leads to an aggravation of individual situations. What is important is to find a solution to this situation and to understand that by respecting social rights we are also contributing to at least reducing the effects of the social crisis, and also perhaps of getting out of it, by building societies in which the values of the Social Charter are better respected.

J: Are we on the right track in Europe?

RB: Of course, I am very optimistic. Of course there are difficulties. We are aware of the social problems that exist, situations of unemployment, social exclusion, poverty, discrimination, which are obviously serious problems in many European societies. But the Social Charter and the European Convention on Human Rights are international reference texts which serve as a guideline to states, not by giving them already made solutions, but by providing them with a certain number of tools, principles and values that are devised to allow each state to find its own solutions.

J: In terms of social rights, who are the bad and good European states?

RB: All states that have ratified the European Social Charter have difficulties in implementing a certain number of rights, and these difficulties can vary according to state, by European region, but also in time according to the phases of evolution. There are, however, a certain number of difficulties that we could define as recurring, which are based essentially on questions of discrimination; discrimination for different reasons, and particularly discrimination in the workplace which is extremely frequent. But fortunately, states are progressively respecting their obligations and there have been many improvements which result from the work of the Council of Europe in the supervision of the implementation of the Social Charter.

J: What happens if a state does not respect its obligations?

RB: Firstly, if the Council of Europe considers that a state does not respect its obligations in terms of the Social Charter, this information is made public. The information is known to everyone. It is known to the media who diffuse this information - publicity is an extremely important force because the difficulty encountered by a state in implementing the Social Charter does not remain only known to insiders. Fortunately, the Social Charter is becoming increasingly known in Europe and this type of information attracts a lot of attention on a national level. There is also a procedure before the Committee of Ministers of the Council of Europe whose task is to guarantee that states put an end to violations of the Social Charter once they are identified. This procedure is working better and better. The Committee of Ministers is paying more attention to what is happening regarding the Social Charter and, there again, we see improvements in countries, giving good reason to be optimistic for the future.

J: Concerning the right to housing, can we present an overview of this right for all the member states of the Council of Europe?

RB: It is very ambitious to present an overview of all 47 member states of the Council of Europe. I must clarify, firstly, that among these states, 43 have ratified the Social Charter. However, in the system of the Social Charter, the acceptance of different rights is optional. What I mean is that a state, at the time of ratification, selects rights that it agrees to implement; and the right to housing, which is covered by Article 31 of the revised Social Charter, is accepted by a minority of states. Consequently, supervising the effectiveness of this right is not yet carried out for all the member states of the Council of Europe. What we can say is that national situations vary according to the states. Currently, the Committee has received some complaints, especially in the cases of France, Italy, Greece, Bulgaria. So for some states, the Committee has more information and has proceeded to carry out detailed studies which reveal a number of breaches in the application of the right. This is also the downside: because these states have accepted, not only to be bound by Article 31 which guarantees the right to housing, but also the collective complaints procedure, which currently only 14 states have accepted.

J: Do you expect the 50th anniversary to increase awareness of the Social Charter?

RB: Yes, if course, it is one of the main aims of the 50th anniversary. The 50th anniversary is the occasion to celebrate everything that has been achieved in the last 50 years. But it is also the opportunity to look towards the future, and what is

important regarding the Social Charter is that this treaty be known, certainly by the deciders on a

national and regional level, by social partners and that it be taken into account in their everyday work. The European Convention on Human Rights is very well known which means that parliaments and national judges always take it into consideration in their everyday work. And this is the same objective we are striving to achieve with the Social Charter: it is to be considered as a reference text, a basic text so that in every member state that has ratified it, which we hope will soon be all the member states, this text becomes the basis according to which new laws are elaborated and the implementation of existing laws is improved, equally in all regions. Judges should apply this text in order to avoid complaints in the implementation of the Social Charter being brought to the European Committee of Social Rights in Strasbourg. This is what we call, in complex legal terms, the principle of subsidiarity, meaning that the implementation of a treaty and the respect of treaties is firstly decided and applied at national level. The celebration of the 50th anniversary is also the occasion to have future projects; and our future project is to follow the road that will bring social, civil and political rights closer together. Originally, the idea was that all rights have the same value, are interdependent, are bound to each other and that they should all have their place in the same treaty with the same guarantees for citizens. We have not yet achieved our goal but the anniversary is an excellent occasion to make progress, and this remains our long-term objective.

The video of this interview is available at the following address: http://webtv.coe.int/index.php?VODID=195&subtitles=&language=FR

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

Latvia

Visit from 5 to 15 September 2011

The CPT's delegation reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after previous visits to the country. In this connection, particular attention was paid to the safeguards against ill-treatment offered to persons deprived of their liberty by the police as well as to conditions of detention in police stations. The delegation also examined various issues related to prisons, including the activities offered to prisoners, health care services, and the regime and security measures applied to life-sentenced prisoners. In addition, the delegation looked into the treatment of patients at a psychiatric clinic, and of residents at a social care home.

In the course of the visit, the delegation had consultations with Aigars Štokenbergs, Minister of Justice and Acting Minister of the Interior, Leonīds Jefremovs, Acting Head of the Prison Administration, Viktors Elksnis, Deputy State Secretary of the Ministry of the Interior, and Ringolds Beinarovičs, State Secretary of the Ministry of Welfare, as well as with senior officials from the aforementioned ministries and the Ministry of Health. Discussions were also held with Juris Jansons, Ombudsman of Latvia, and representatives of NGOs active in areas of concern to the CPT.

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

Malta

Visit from 26 to 30 September 2011

The main objective of the visit was to examine the current situation in the prison system, having regard to the recommendations made by the Committee after its 2008 visit to Malta. For this purpose, the CPT's delegation visited Corradino Correctional Facility. Conditions in the detention centres for immigrants at Lyster and Safi Barracks were also reviewed, and the delegation paid a brief visit to Mount Carmel Psychiatric Hospital, in order to interview patients in the forensic ward and the ward for immigration detainees.

The delegation held consultations with Mario Debattista, Permanent Secretary of the Ministry for Justice and Home Affairs, John Rizzo, Police Commissioner, and Mario Guido Friggieri, Commissioner for Refugees, as well as with other senior officials from the Ministry for Justice and Home Affairs.

The delegation also met Peter Grech, Attorney General, the Chairpersons and members of the Board of Visitors of the Prisons and the Board of Visitors for Detained Persons, the Head of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Malta and representatives of non-governmental organisations active in areas of interest to the CPT.

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

Switzerland

Visit from 10 to 20 October 2011

The CPT's delegation reviewed the steps taken by the Swiss authorities following the recommendations made by the Committee after previous visits. In particular, the delegation re-examined the implementation of fundamental safeguards against police ill-treatment following the entry into force of the unified Code of Criminal Procedure. In the area of prisons, particular attention was paid to the situation of inmates suffering from psychiatric disorders and persons subject to preventive detention ("Verwahrung") or to institutional therapeutic measures ("stationäre therapeutische Massnahmen"). In this context, the delegation also visited a forensic psychiatric clinic.

In the course of the visit, the delegation met Simonetta Sommaruga, Federal Councillor, Head of the Federal Department of Justice and Police, Michael Leupold, Director of the Federal Office of Justice, as well as other senior officials from various Federal Departments. It also met Martin Graf, Cantonal Councillor, Head of the Directorate of Justice and the Interior of the Canton of Zurich and other senior officials of the cantons visited, as well as representatives of the Conference of Directors of the Cantonal Justice and Police Departments.

Further, the delegation held consultations with representatives of the National Commission for the Prevention of Torture established as national preventive mechanism under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Discussions were also held with members of non-governmental organisations active in areas of interest to the CPT.

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

Netherlands

Visit from 10 to 21 October 2011

During the visit, the CPT's delegation reviewed the situation of persons subjected to a TBS measure (i.e. a measure providing for involuntary psychiatric treatment in a special hospital) as well as the treatment of irregular migrants held in detention centres for aliens. It also examined for the first time the situation of the so-called "VRIS" prisoners (sentenced foreigners awaiting deportation) and the expulsion procedures in place. The delegation also reviewed the treatment of persons in police custody, including the safeguards applicable to them.

In the course of the visit, the CPT's delegation held consultations with Ivo Willem Opstelten, Minister of Security and Justice, and Fredrik Teeven, State Secretary of Security and Justice. It also met senior officials from the Ministry of Security and Justice, the Ministry of the Interior and Kingdom Relations, the Ministry of Defence, and the Ministry of Health, Welfare and Sport. Further meetings were held with representatives of various national inspectorates (IST, IGZ) and monitoring (CITT) and advisory committees (RSJ).

The delegation also had discussions with Alex Brenninkmeijer, National Ombudsman, and 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 Netherlands authorities.

Reports to governments following visits

Armenia

Report on the visit to Armenia (May 2010)

The CPT published the report on its periodic visit to Armenia in May 2010, together with the response of the Armenian Government. These documents have been made public at the request of the Armenian authorities.

During the visit, the CPT's delegation heard a significant number of allegations of police ill-treatment. In its report, the Committee recommends that a firm message of "zero tolerance" of ill-treatment be delivered to all police officers. Further training on advanced crime investigation methods should be developed and safeguards against ill-treatment (such as the rights of notification of custody, of access to a lawyer and of access to a doctor) reinforced. The Committee has also recommended that increased emphasis be placed on the structural independence of the Special Investigation Service (SIS).

In the prison field, the overwhelming majority of prisoners indicated that they were being treated in a correct manner by prison staff. However, the delegation heard a few allegations of physical ill-treatment by staff at Nubarashen Prison. The delegation's observations during the visit shed light on several key areas of concern, in particular: prison overcrowding, impoverished programmes of activities for prisoners, allegations of corrupt practices by prison staff and public officials associated with the prison system, and the reliance on an informal prison hierarchy to maintain good order in penitentiary establishments. Further, the situation of life-sentenced prisoners remained unsatisfactory. The report contains a series of specific recommendations aimed at remedying these problems.

As regards psychiatric and social care institutions, the CPT has noted that new regulations on the use of means of restraint have been adopted by the Ministry of Health. That said, almost no improvements were observed with respect to the provision of psychiatric care and the implementation of legal safeguards for involuntary hospitalisation of civil psychiatric patients; several previous recommendations have had to be reiterated. Further, the Committee has made a number of recommendations to improve living conditions in the various institutions visited.

In their response, the Armenian authorities provide information on steps taken or envisaged to implement the CPT's recommendations. Particular reference is made to police and criminal procedure reforms, improved police training and action taken against police officers in case of professional misconduct. The Armenian authorities also inform the Committee of urgent measures being taken to combat prison overcrowding, including by placing increased emphasis on alternatives to imprisonment and by making early release mechanisms more efficient. Further, the building of new prisons, within the framework of a recent "prison infrastructure reform programme", is expected to decrease overcrowding, improve conditions of detention of various categories of inmate and reduce the risks of inter-prisoner intimidation. The Armenian authorities also provide information on measures taken to improve living conditions in the psychiatric and social care institutions visited.

Kosovo

Report on the visit to Kosovo (8 - 15 June 2010)

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) today published a report on its most recent visit to Kosovo[6] (8 to 15 June 2010), together with the response of the United Nations Interim Administration Mission in Kosovo (UNMIK). Both documents have been made public at the request of UNMIK.

The aim of the visit was to review progress on the treatment and conditions of detention of prisoners and other detainees, following recommendations made after the Committee's first visit in 2007. The delegation visited Dubrava Prison, several pre-trial detention centres and various police stations. It also examined the situation of persons deprived of their liberty in psychiatric and social welfare establishments.

6. 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.

In its response, UNMIK outlines measures taken by the relevant authorities to implement the recommendations made by the Committee.

Talks in Russia

5 September 2011

Representatives of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) held talks last week in Russia with the federal authorities. The discussions were focused on the findings made by the CPT during its April-May 2011 visit to the North Caucasian region, in particular concerning the activities of law enforcement agencies and investigations into possible ill-treatment by members of those agencies.

On 30 August 2011, the CPT's representatives met the Minister of the Interior of the Russian Federation, Rashid Nurgaliyev, and senior federal officials of the Interior Ministry in Moscow. The Ministers of the Interior for the Chechen Republic and the Republic of North Ossetia-Alania and the acting Interior Minister for the Republic of Dagestan participated in this meeting by videoconference. Later the same day, a meeting was held with the Chairman of the Investigative Committee of the Russian Federation, Alexander Bastrykin, together with the Heads of the Investigation Departments of the Chechen Republic and the Republics of Dagestan and North Ossetia-Alania.

On 2 September, the CPT's representatives met, in Yessentuki, Deputy Prime Minister Alexander Khloponin, Plenipotentiary Representative of the President of the Russian Federation in the North Caucasian Federal District. They discussed with him the CPT's findings during the April-May 2011 visit to the North Caucasian region and sought his support for the implementation of several of the Committee's recommendations.

During the meetings there was a frank and detailed discussion of the issues involved, and all parties expressed the wish to increase co-operation on matters falling within the CPT's mandate.

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

European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI) is an independent human rights monitoring body specialised in issues related to combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance. ECRI's statutory activities are: country-by-country monitoring work; work on general themes; relations with civil society.

Country-by-country monitoring

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

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

At the beginning of 2008, ECRI started a fourth 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 13 September 2011, ECRI published its fourth report on Lithuania, in which it noted both positive developments and some issues of concern, such as the continuing absence of a law on national minorities and the situation of the Roma. The Criminal Code was amended in 2009 to help combat racism more effectively. The Law on Equal Treatment now protects against discrimination also on grounds of national origin and language; the burden of proof is shared. Pedagogues have been hired in the Vilnius area to assist Roma children. It is no longer possible to detain asylum-seekers who have illegally entered Lithuania or overstayed. The State Border Guard Service co-operates with the UNHCR and the Red Cross Society to train border guards, have lawyers visit entry points and reception facilities and provide information on asylum. However, many instances of discrimination and incitement to hatred still go unpunished. In practice, it is almost impossible for NGOs to represent victims of discrimination in court. Prominent political figures have made statements showing little sensitivity towards the need to fight racism and intolerance. There is little co-ordination between the different minority/anti-discrimination and Roma integration programmes. The latter have produced few tangible results. The newly established department of minorities is understaffed and its budget has been greatly reduced. Persons granted subsidiary protection do not have a right to social assistance, except during their one-year stay at the reception centre.

Except for certain categories specified by law, they only benefit from emergency medical care.

The publication of ECRI's 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.

Moreover, ECRI carried out contact visits to Andorra, Denmark and Sweden in early autumn 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 19 September 2011, ECRI published its most recent General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma.

This General Policy Recommendation calls for action to stop the segregation of Roma children at schools and integrate them with pupils from the majority population, to provide access to decent housing that is not segregated, to ensure that Roma are not evicted without notice or opportunity for rehousing, and for steps to be taken to legalise long-standing Roma sites built in breach of town planning regulations.

It calls for Roma to have secure access to quality health care and for segregation in hospitals to end, and says discrimination in the health sector must be prosecuted and punished. There should be no obstacles to Roma exercising traditional trades, and Roma should be consulted to find alternatives, for instance through micro-loans or tax breaks. All Roma children should be registered at birth and given identity documents.

Governments should encourage Roma victims of violence and crime – including misconduct by the police - to lodge complaints, and the media should avoid inflammatory reporting.

The recommendation also urges equal provision in public services such as water, sanitation, electricity, refuse removal and transport for Roma communities concentrated in certain neighbourhoods. It asks governments to ensure that freedom of movement legislation does not discriminate against the Roma and that their culture is protected and promoted amongst the majority population.

ECRI moreover 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 13 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; and combating racism and racial discrimination in the field of sport.

ECRI's round table in Georgia

Tbilisi, 12 October 2011

On 12 October 2011, ECRI organised a national round table in Tbilisi, in co-operation with the Public Defender of Georgia and with the support of UNDP.

Participants discussed the follow-up given to the recommendations contained in ECRI's 2010 report on Georgia concerning a number of themes divided into four sessions: the general situation in the country; the legislative and institutional framework for combating racial discrimination; preventing and effectively responding to racism; and integration.

The round table brought together representatives of the authorities, including from the Parliament and the justice system, academia, NGOs, trade unions and religious representatives. Among the speakers were David Bakradze, Speaker of Parliament of Georgia, George Tugushi, Public Defender, and Jamie McGoldrick, Resident Representative of UNDP.

Publications

- ECRI Report on Lithuania, 13 September 2011
- ECRI General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, 19 September 2011

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

Protecting national minorities

The Framework Convention for the Protection of National Minorities provides for a monitoring system to evaluate how the treaty is implemented in States 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.

Second monitoring cycle

Opinion in respect of Lithuania

The second cycle Advisory Committee opinion in respect of **Lithuania** was made public on 4 July 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."

Third Monitoring Cycle

State reports

The state report on **Ireland** was received on 18 July, and the state report on **Lithuania** was received on 21 September.

Advisory Committee country visits

A delegation of the Advisory Committee visited **Romania** from 17-21 October, the Russian Federation from 11-16 September, and Albania from 5-8 September.

Opinion in respect of Norway

The second cycle Advisory Committee opinion in respect of **Norway** was made public on 31 August together with the government comments.

Summary of the Opinion

Norway has continued its constructive attitude towards the Framework Convention and its monitoring system, and has followed an overall inclusive and positive approach with regard to its personal scope of application.

The Norwegian Government has launched several initiatives aiming to strengthen protection against discrimination. The office of the Equality and Anti-Discrimination Ombudsperson was set up in 2006 and the Anti-discrimination Act was amended in 2009 to increase the role of employers in combating discrimination in the workplace.

An Action Plan (2009-2012) for Equality and Prevention of Ethnic Discrimination has been developed and an innovative project to promote the social inclusion of the Roma in different spheres of life has been established.

During the last few years, the authorities have also produced several reports on Norway's general approach towards integration, migration and minority issues, which could be used as material for a thorough analysis of the Norwegian policy in these fields.

A Commission for Romani/Taters was established in 2009 in order to remedy the injustices committed against these groups under the past policies of assimilation. Nevertheless, some difficulties regarding access to individual compensation continue to be reported.

Despite these positive developments and the general climate of dialogue existing in Norwegian society, there are still some manifestations of intolerance by the media and on the Internet. Some manifestations of intolerance, in particular from children and youngsters, towards Jews, have also been reported. Furthermore, the Roma and the Romani/Taters are often faced with difficulties during their seasonal travels, especially in their access to commercial camping sites who deny them access. In this context, hostile attitudes on the part of the police force are also frequently reported.

Despite the measures taken to revitalise and to promote the Kven culture and language, such as the standardisation of the Kven language, its situation seems still precarious.

Issues for immediate action: Take more resolute measures to promote tolerance, mutual respect and social cohesion in Norwegian society, and to ensure a regular inclusive review of such measures; take the necessary measures in order for the media to comply fully with their rules of ethical conduct, with all due regard for media independence;

Take effective measures to enable persons belonging to the Roma and Romani/Taters minorities who have been victims of the forced assimilation policy in the past to exercise their rights; take all possible measures without delay, including a more proactive attitude, such as using the public archives and other documentary evidence in order to enable all persons concerned to be identified according to their own particular cultural origin; set up a national scheme for awarding appropriate financial compensation, in close consultation with the persons concerned;

Continue the efforts to revitalise the Kven language and to provide the additional resources which the Kven Institute needs in order to finalise the standardisation of the Kven language within a reasonable timeframe; additional measures should be taken to develop the teaching of the Kven language for children of pre-school age.

Opinion in respect of Slovenia

The third cycle Advisory Committee opinion in respect of **Slovenia** was made public on 28 October together with the government comments.

Summary of the Opinion

Significant developments have occurred in Slovenia since the second cycle of monitoring with regard to the protection of minority rights as well as community relations and the spirit of tolerance in general.

Important programmes have been launched to tackle some of the root-causes of the problems facing the Roma, particularly in the areas of education and housing. The adoption in 2007 of the Act on the Roma Community in Slovenia provides a more solid legal basis for the development of long-term action to improve the situation of the Roma. Their situation in the area of housing remains nonetheless very precarious, in particular in the region of Dolenjska, where many Roma settlements have no access to running water or electricity. Substantial improvements are also required in the area of education and in access to employment and to

health care. The opportunities for Roma to take part effectively in public affairs remain insufficient both at local and at central level. The Roma Community Council must be representative if it is to play a significant role.
The amendment, in 2010, of the Act Regulating the Legal Status of Citizens of Former Yugoslavia living in the Republic of Slovenia puts an end to long-standing violations of the rights of many of the persons who were "erased" from permanent residents registers in 1992. This law, coupled with a number of other initiatives taken by the authorities concerning these persons, represents an important signal for society that it is not only legitimate but also important for social cohesion to improve the integration of persons from the successor states of the former Yugoslavia in Slovenia and to value the languages and culture of persons belonging to nations of the former Yugoslavia living in Slovenia (hereinafter referred to as "persons belonging to the new national communities").
Substantial improvements are needed to ensure effective protection against discrimination, and in particular, access to effective remedies for potential victims of discrimination.
Prejudices against some groups, in particular Roma and "persons belonging to the new national communities", continue to be disseminated through some media and in the political arena.
Local authorities are sometimes reluctant to implement laws and policies in relation to Roma and incidents of demonstrations of hostility against them have taken place at the local level.
Although Slovenia has continued to provide support to the preservation and promotion of the culture and languages of the Hungarian and Italian minorities, budgetary cuts are foreseen for the years to come. It is essential to ensure that these cuts do not have a disproportionately negative impact on activities of persons belonging to national minorities. Additionally, there is a need for more fundamental, regular support and increased consultation of minority representatives in the allocation process of funds.
Effectiveness of the participation of representatives of the Hungarian and Italian minorities in public affairs at national level could be significantly improved by a consultation at the right moment, in particular during law-making processes.
Issues for immediate action: Take, as a matter of priority, all measures to ensure that effective remedies are available to potential victims of discrimination; intensify actions to raise awareness of discrimination-related issues in society, including in the judiciary and law enforcement agencies;
Ensure that Roma representatives are able to take part in public affairs at local level in all the municipalities in which they live in substantial numbers; take further steps to provide elected Roma councillors with all the support they need to carry out their tasks effectively, including adequate training; ensure that the Roma Community Council adequately represents the diversity of groups within the Roma community;
Ensure effective involvement of minority representatives in discussions on any administrative change that could have an impact on minority protection; in particular, take measures to guarantee that the protection of persons belonging to national minorities will not diminish as a result of the creation of the municipality of Ankaran/Ancarano.

Committee of Ministers' resolutions

- Cyprus (3rd), adopted on 21 September.
- Croatia (3rd) , Hungary (3rd), Kosovo (2nd), and the Slovak Republic (3rd), adopted on 6 July.

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

Action against trafficking in human beings

While other international instruments already exist in the area of combating human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings is the first comprehensive European treaty in this field. The main added value of the Convention is its human rights perspective and focus on victim protection. The convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being. It provides for the setting-up of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is currently the only independent human rights mechanism monitoring the implementation of a binding international instrument imposing strict legal obligations on countries in the field of action against trafficking in human beings.

First general report on GRETA's activities

On 1 September 2011 GRETA published the first general report of its activities, covering the period from February 2009 to July 2011. The report provides information on the procedural and organisational framework for GRETA's activities and its working methods.

The first evaluation round (2010-13) was initiated by addressing, in February 2010, a questionnaire to the first 10 countries which became Parties to the Convention (Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, the Republic of Moldova, Romania, and the Slovak Republic). Following the reception of the replies to the questionnaire, GRETA carried out country visits to these countries, with a view to supplementing the information provided in the replies to the questionnaire and preparing evaluation reports. The visits allowed for direct meetings with the relevant actors (governmental and non-governmental) and were an occasion for GRETA to visit facilities where assistance and protection are provided to victims of trafficking.

The evaluation of the second group of 10 Parties to the Convention (Armenia, Bosnia and Herzegovina, France, Latvia, Malta, Montenegro, Norway, Poland, Portugal and the United Kingdom) was launched in February 2011.

The first general report also draws attention to the establishment of working relations with other relevant actors. The report stresses that to enhance the effectiveness of international action against trafficking in human beings, it is necessary to increase co-ordination by international organisations in the different types of activities carried out and to strengthen partnerships with a view to achieving greater complementarity and synergies. This should involve making full use of the particular area of competence and expertise of each organisation, maximising their comparative advantages and resulting in a more efficient use of increasingly limited resources. Unnecessary duplication of monitoring operations might lead to inconsistent or contradictory conclusions with detrimental effects on the monitoring process: "forum shopping" and relinquishment of peer pressure. Furthermore, it may create confusion as to the binding or non-binding nature of the obligations of states in the field of trafficking in human beings, and is likely to generate monitoring fatigue on the part of national authorities.

The Convention

As at 1 December 2011 the Convention has been ratified by 34 Council of Europe member states and signed by a further nine.

GRETA expresses the hope that the area of application of the Convention will be further expanded to include all Council of Europe member states as well as non-member states and the European Union, as allowed under the convention.

The members of the Group of Experts on Action against Trafficking in Human Beings

Country-by-country monitoring

GRETA's evaluation reports contain an analysis of the situation in each country regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with problems identified. The reports are drawn up in a co-operative spirit and are intended to assist states in their efforts. As a first step, GRETA examines a draft report on each country and sends it to the relevant government for comments. These comments are taken into account by GRETA when establishing its final report. The final report and conclusions by GRETA, together with eventual final comments by the authorities, are made public. On the basis of GRETA's reports, the second, political, pillar of the monitoring mechanism set up by the Convention, the Committee of the Parties, may adopt recommendations concerning the measures to be taken to implement GRETA's conclusions.

In June 2011 GRETA adopted final evaluation reports concerning Austria, Cyprus and the Slovak Republic, which were published in September 2011. In these reports, GRETA assesses how states implement their obligations under the Convention and to what extent they follow a human rights-based and victim-centred approach to combating trafficking in human beings. GRETA emphasises the obligation of states to respect, fulfil and protect human rights, including by ensuring compliance by non-state actors, in accordance with the duty of due diligence. The human rights-based approach entails that a state that fails to fulfil these obligations may be held accountable for violations of the European Convention on Human Rights. This has been confirmed by the European Court on Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that trafficking in human beings "within the meaning of Article 3 (a) of the Palermo Protocol and Article 4 (a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights" (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims, or potential victims, as well as a procedural obligation to investigate trafficking.

In its reports GRETA stresses the need for states to also address trafficking in human beings as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments and including the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

GRETA considers that the human rights-based approach to action against trafficking in human beings entails transparency and accountability on the part of states and requires them to set up a comprehensive framework for the prevention of human trafficking, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further,

measures to prevent trafficking in human beings should be taken in the field of socio-economic, labour and migration policies. In addition, a human rights-based approach to human trafficking requires the adoption of a national policy and action plans, the co-ordination of the efforts of all relevant actors, the systematic training of relevant professionals, further research and data collection, and the provision of adequate funding for the implementation of all these measures.

Country reports

Austria

In its report on Austria GRETA notes the significant measures taken by the Austrian authorities to combat trafficking in human beings. These measures have included the setting up of a co-ordinating body to combat trafficking in human beings and efforts to raise public awareness and train professionals. Moreover, special procedures to prevent trafficking for the purpose of domestic servitude in diplomatic households have been introduced.

However, certain aspects of the action against human trafficking in Austria fall short of the comprehensive approach prescribed by the Convention. Thus there are geographical differences in the approach to the fight against trafficking, resulting in an unequal provision of assistance to victims. GRETA considers that there is need for a reinforcement of the co-ordination between the Federal Government and the governments of the *Länder*. Further, the authorities should continue supporting research on the nature and extent of trafficking in human being, in particular for the purpose of labour exploitation.

GRETA also considers that the Austrian authorities should pay more attention to certain categories of victims of trafficking. Irregular migrants are a group vulnerable to trafficking and therefore GRETA asks the authorities to enforce an effective identification system and to ensure that potential victims of trafficking amongst foreign nationals detained by the police benefit from assistance and protection.

As far as children are concerned, GRETA urges the Austrian authorities to develop a nation-wide system for the identification of child victims of trafficking and to provide them with emergency assistance as well as medium and long term support programmes tailored to their needs.

GRETA also asks the Austrian authorities to conduct a thorough and comprehensive assessment of the effectiveness of the criminal law provisions concerning trafficking in human beings so as to improve the conviction rate for human trafficking offences.

Cyprus

In its report on Cyprus GRETA notes the important steps taken by the authorities to combat trafficking in human beings, including the adoption of a comprehensive anti-trafficking law and the abolition of the so-called "artiste visas", which favoured trafficking of women for the purpose of sexual exploitation.

However, there has not been a single conviction for the criminal offence of trafficking in human beings and no victims have received compensation. GRETA stresses the need to take specific measures to discourage demand for the services of trafficked persons and to address the lack of convictions for the crime of trafficking in human beings. The Cypriot authorities should step up the proactive investigation of potential cases of human trafficking in sectors such as entertainment, tourism, agriculture and domestic work, including through close monitoring of the application of the visa regimes for performing artists. As trafficking for the purpose of labour exploitation is reportedly on the increase, the authorities should conceive measures to address this phenomenon, such as alerting potential migrant workers about the risks of human trafficking and stepping up police and labour inspections.

In addition, GRETA strongly encourages the Cypriot authorities to pursue plans to develop a specific national action plan for child victims of trafficking.

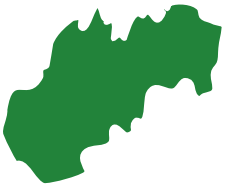
The proper identification of victims is of paramount importance in order to protect and assist them. GRETA considers that the Cypriot authorities should step up their efforts to provide specialised training to professionals in contact with potential victims of trafficking, such as law enforcement officers, border guards, labour inspectors and social welfare officers. GRETA also urges the Cypriot authorities to review the identification system for victims of THB and invites them to consider establishing a national referral mechanism focusing on the victim's needs and covering all

aspects of the identification and assistance process, including protection and redress.

GRETA is concerned that the definition of "victim of TBH" requires the victim to have sustained damage or financial loss directly caused by the offence of trafficking in human beings.

GRETA therefore urges the Cypriot authorities to ensure that no conditions of damage or loss are required in order for a person to qualify as a victim of trafficking and to benefit from assistance and protection measures.

Slovak Republic



In its report on the Slovak Republic GRETA welcomes the creation of Expert Group for Combating Trafficking in Human Beings, a multidisciplinary entity composed of relevant public bodies and non-governmental organisations, and the adoption and implementation of multiannual National Action Plans. Further, the budget allocated for measures to assist victims of trafficking has increased considerably (from €49 790 in 2007 to €220 200 in 2010).

However, GRETA considers that the Slovak authorities should strengthen the institutional framework for action against trafficking in order to achieve a more active and effective involvement of all governmental bodies with responsibilities relevant to prevention of trafficking in human beings and protecting the rights of victims.

As regards prevention, the Slovak authorities have taken measures to raise public awareness and train relevant professionals on trafficking in human beings, in co-operation with non-governmental and international organisations. That said, GRETA stresses the need for developing the aspect of prevention of trafficking in human beings by targeting information and awareness-raising measures to specific groups vulnerable to trafficking, stepping up the research, and reinforcing economic and social measures to the benefit of potential victims of trafficking.

Moreover, GRETA considers that the identification of victims of trafficking, including child victims, should be improved, in particular by setting up of a coherent national mechanism for this purpose and adopting a proactive approach to the identification of victims. GRETA urges the Slovak authorities to introduce a comprehensive data collection mechanism that would make it possible to share information among the main actors as well as identify the most appropriate measures to be taken with regard to groups affected by trafficking and forms of trafficking.

GRETA notes that action against human trafficking seems to be carried out predominantly from a criminal law and immigration law perspective. Not a single victim of trafficking has so far received compensation. The Slovak authorities should therefore take further steps to ensure that the human-rights based and victim-centered approach underpinning the convention is fully reflected in the country's anti-trafficking framework.

Recommendations

On the basis of GRETA's reports, on 26 September 2011 the Committee of the Parties adopted recommendations addressed to Austria, Cyprus and the Slovak Republic, which introduce a "political" dimension into the dialogues with the Parties and provide support to GRETA's conclusions.

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

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.

Freedom of association

At its last plenary session (14-15 October 2011), the Venice Commission adopted two opinions related to freedom of association.

In both opinions the Venice Commission recalls that the way in which the national legislation enshrines freedom of association and its practical application by the authorities reveals the state of the democracy of the country concerned. Consequently, any restriction of this right, protected under Article 22 of the ICCPR and Article 11 of the ECHR, must meet strict tests of justification.

Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations in Azerbaijan

One opinion, requested by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, concerned the compatibility with human rights standards of the legislation on non-governmental organisations in Azerbaijan.

The Venice Commission found problematic aspects of the 2009 Amended Law on NGOs and the 2011 Decree, such as the registration of NGOs including branches and representatives of international NGOs, the requirements relating to the content of the NGOs' charters and the liability and dissolution of NGOs.

The Venice Commission reiterates that the Republic of Azerbaijan, as Party to the ECHR and the ICCPR, should take steps to give effect to the civil and political rights it has undertaken to ensure to all individuals within its territory. This requirement is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the state.

Opinion on the compatibility with universal human rights standards of Article 193.1 of the Criminal Code of Belarus on the rights of non-registered associations

The other opinion, requested by the Political Affairs Committee of the Parliamentary Assembly, concerned the compatibility with universal human rights standards of Article 193.1 of the Criminal Code of Belarus on the rights of non-registered associations.

The Venice Commission assessed Article 193.1 in light of the right to join or not to join an association, the rights of non-registered associations and the freedom of expression and or association.

It analysed whether criminalising the legitimate social mobilisation of freedom of association, activities of human rights defenders albeit members of non-registered associations and social protest or criticism of political authorities with fines or imprisonment can be considered as legitimate under international standards.

In the opinion of the Venice Commission, penalising actions connected with the organisation or management of an association on the sole ground that the association concerned has

not passed the state registration, as Article 193.1 of the Criminal Code, does not meet the strict criteria provided for under Articles 22.2 I and 19.2 CCPR and 11.2 and 10.2 ECHR. This would make the activities of a non-registered association in fact impossible and, consequently, restrict the right to freedom of association in its essence.

Moreover, taking into account the deteriorating situation of human rights defenders in Belarus, particularly in recent months, along with the evolution of the legal framework in Belarus with regard to NGOs in the last decade, the adoption of Article 193.1 appears to serve the purpose of criminalising social protest and to legalise government response to social unrest. An arbitrary use of the existing legal framework to criminalise civil society efforts in trying to have an impact on its own conditions and future is unacceptable from the standpoint of democratic principles and human rights.

Freedom of assembly

At its last plenary session (14-15 October 2011), the Venice Commission adopted two opinions related to freedom of assembly.

Opinion on the amendments to the law on assembly and manifestations of Georgia, adopted by the parliament of Georgia on 1 July 2011

One opinion concerned the amendments to the law on assembly and manifestations of Georgia, adopted by the parliament of Georgia on 1 July 2011. The Venice Commission considers that these amendments represent a significant improvement of the possibility of exercising the freedom of assembly in Georgia. Several significant recommendations contained in the Venice Commission's previous opinion have been followed by the Georgian authorities. The Venice Commission welcomes in particular the introduction of an explicit reference to the principles of legality, proportionality and necessity in a democratic society and the introduction of the presumption in favour of holding assemblies.

There remain, however, some important issues (notably the impossibility to hold spontaneous assemblies) which the authorities should address.

Opinion on the Draft Law on Freedom of Assembly of Ukraine

The other opinion, was a joint ODIHR-Venice Commission Opinion on the "Draft Law on Freedom of Assembly of Ukraine prepared at the request of the Chairman of the Ukrainian Commission for Strengthening Democracy and the Rule of Law" (a body constituted under the President of Ukraine).

The Venice Commission and the OSCE/ODIHR are of the view that, in many respects, the Draft Law draws upon and reflects the principles enunciated in international standards and the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly.

Nevertheless, further improvements are still needed in order to ensure coherence and clarity of the Draft Law and to limit the potential for misinterpretation. The main issues which, according to the Opinion, would need further consideration concern: definitions, such as that of spontaneous assembly, issues related to the prior notification of an assembly, the extent of possible limitations on freedom of assembly and the need to put the relevant provision of the draft in full conformity with criteria established by the applicable international standard (in particular the ECHR), the responsibility of assembly organisers and their co-operation with the competent authorities, obligations of competent authorities when deciding on restrictions, the possibility for anyone to freely record the actions of law-enforcement officials during assemblies, etc.

Guidelines for Peaceful Assembly

In both cases, the Venice Commission based itself on the Guidelines for Peaceful Assembly jointly adopted by the Commission with the OSCE/ODIHR (2nd edition, 2010), and stressed two main ideas. Firstly, the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be "practical and effective" not "theoretical or illusory".

Secondly, the effective guarantee of the right to freedom of assembly depends on the manner in which the legislation is implemented. The presumption in favour of assemblies will need to become a part of the legal culture and influence the use by the executive authorities and by the law-enforcement agencies of the discretionary powers which the amendments confer upon them.

Freedom of conscience and religion

Opinion on the draft Law of on Freedoms of Conscience and Religion of Armenia

A Joint ODIHR-Venice Commission Opinion on the draft Law of on Freedoms of Conscience and Religion of Armenia, as well as draft amendments and supplements to the Criminal Code, Administrative Offences Code, and the Law on the Relations between the Republic of Armenia and the Holy Armenian Apostolic Church closed a cycle of several opinions on this subject.

The Venice Commission and the OSCE/ODIHR are of the view that the 2011 Draft Law represents a marked improvement compared to both the Current Law, and previous draft laws from 2009 and 2010. However, issues related to the requirements to be fulfilled for introducing limitations to the freedom to manifest religion or belief, the definition of proselytism and religious associations, the specific conditions provided by the draft for the registration and operation of religious organisations, religious associations and religious groups, the liquidation of religious organisations, would need further improvement and should be carefully considered.

Ombudsman

Opinion on the Draft Law on the Protector of Human Rights and Freedoms of Montenegro

The Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, requested an opinion on the Draft Law on the Protector of Human Rights and Freedoms of Montenegro. According to the Venice Commission, the new law contains several positive provisions aiming to ensure the independence of the Human Rights Protector of Montenegro. This includes aspects linked to the financial independence of this institution, the presentation of an Annual Report of Activities at the Parliament. It is welcomed, *inter alia*, that the Protector is endowed with specific competences in the field of prevention of torture and inhuman or degrading treatment or punishment and in the field of combating discrimination, etc.

However, the need for constitutional amendments in order to strengthen the independence of the Human Rights Protector remains important, mainly concerning the issue of the appointment of the Protector. The dismissal of the Human Rights Protector should also be regulated at the constitutional level and in a detailed manner by the Law on the Protector.

Conferences

The Venice Commission organised two conferences in the field of Human Rights.

Ukraine

From 15 to 17 September 2011, in Kyiv, a Conference was held in co-operation with the Constitutional Court of Ukraine, on "The protection of human rights by bodies of constitutional justice: possibilities and problems of individual access" in the framework of the Ukrainian Chairmanship of the Committee of Ministers of the Council of Europe.

Uzbekistan

On 15 September 2011 in Tashkent the Venice Commission, in co-operation with the Research Centre to the Supreme Court of the Republic of Uzbekistan, organised a round table for judges to present the experience of some European countries in implementing some aspects of habeas corpus in their legal systems.

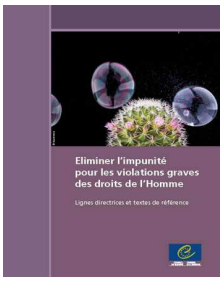
Internet: http://venice.coe.int/

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.

European Day against the Death Penalty



To mark the fifth European Day against the Death Penalty and the World Day against the Death Penalty on 10 October 2011, Thorbjørn Jagland, Secretary General of the Council of Europe, and Catherine Ashton, European Union High Representative for Foreign Affairs and Security Policy, made a joint declaration reaffirming the united opposition of the Council of Europe and the European Union to the death penalty and their commitment to its worldwide abolition. On the same occasion, the Chairman of the Committee of Ministers of the Council of Europe, Kostyantyn Gryshchenko, reiterated the Council of Europe's determination to continue to act for the complete eradication of the death penalty, by appealing to all countries where such a practice still exists to abandon it without delay.

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

The Steering Committee on Human Rights (CDDH) held an extraordinary meeting from 12 to 14 October to discuss the draft legal instruments for the accession of the European Union to the European Convention on Human Rights. The instruments consist of a draft Agreement on the accession of the EU to the Convention, of a draft rule to be added to the rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, and of a draft explanatory report to the Agreement. These instruments had been elaborated by the Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH-UE) together with the European Commission.

At the conclusion of the extraordinary meeting, it appeared that, given the political implications of some of the pending problems, they could not be solved at this stage by the CDDH itself or by the CDDH-UE. For this reason, the CDDH agreed to transmit a report (with the draft legal instruments attached) on the state of discussions to the Committee of Ministers for consideration and further guidance. The report will be on the agenda of the Committee of Ministers on 16 November 2011.

National procedures for the selection of candidates for the post of judge at the Court

The Ad hoc Working Group on national procedures for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC) held its first meeting from 7-9 September 2011. On the basis of a questionnaire submitted to all member states, the Group elaborated a document consisting of three parts, the first relating to the criteria for composing lists of candidates, the second to the features of a procedure that would be fair, transparent and consistent and the third to the question of how to attract potentially suitable applicants. The Group also held an exchange of views with the Secretary of the Advisory Panel of Experts on candidates for election as judge to the Court, set up by Resolution CM/Res(2010)26.

Simplified procedure for amendment of certain provisions of the ECHR

The Committee of experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS) held its third meeting from 19-21 October 2011. At this meeting, the Committee in particular examined the possible national and/or international legal problems affecting the feasibility of certain possible modalities for the introduction of a simplified amendment procedure. The Committee examined the different modalities for introducing a simplified amendment procedure, namely the choice between a Statute and a new provision in the Convention and, should a Statute be chosen, the disposition of the provisions of Section II of the Convention and the choice of legal instrument. Furthemore, it examined the issues or matters not found in the Convention, notably interim measures, the pilot judgment procedure and unilateral declarations and continued its study of the possible modalities of the simplified amendment procedure itself.

Internet : http://coe.int/CDDH

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

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.

Bosnia and Herzegovina

"Enhancing recruitment procedures and training of staff for the state prison of Bosnia and Herzegovina"

In September 2011, the Council of Europe co-signed a funding letter with the USA Department of States accepting a generous voluntary contribution of US$1 100 088 earmarked for a new project in Bosnia and Herzegovina, entitled "Enhancing recruitment procedures and training of staff for the state prison of Bosnia and Herzegovina". The aim of this project is to support the current efforts of the Government of Bosnia and Herzegovina to select, hire and train personnel for the new state prison upon its completion. The state prison is expected to be built and operational by 2013, by which time prison staff should be hired and trained with proper procedures put into place. This will include working with Ministries of Justice and their Departments for Execution of Criminal Sanctions. The project will be divided into four phases: the inception phase and three implementation phases. The inception phase will concentrate on fine tuning the work plan in consultation with all stakeholders involved, especially the Project Implementation Unit of the Ministry of Justice of Bosnia and Herzegovina and preparation for a launching conference which aims to secure the full agreement and commitment of all stakeholders. Implementation will begin with the preparation of the strategic documents and reference materials, such as a strategy for recruitment and selection of staff and their training for the state prison, in accordance with European standards and practices and the expected development of the state prison capacities. Implementation will then continue with the recruitment of prison staff by national authorities and the training of all categories of operational and managerial staff of the state prison.

Georgia

Denmark's Georgia Programme 2010-2013: promotion of judicial reform, human and minority rights in Georgia in accordance with Council of Europe standards

The Council of Europe, in partnership with the European Centre for Minority Issues (ECMI), started implementing the "Promotion of judicial reforms, human and minority rights of Georgia" project in July 2010. During the last four months (1 July – 31 October 2011), the project teams have worked on modernising the judicial and penitentiary systems, as well as strengthening state and independent institu-

tions and mechanisms for protection of human and minority rights in the country.

Within the framework of the component focusing on improving the capacity of the judiciary and penitentiary systems of Georgia, the project addressed the issues of the proper implementation of the new Criminal Procedure Code (CPC) in line with European standards and the improvement of the quality of trainings by judicial training institutions. Skills of acting judges, candidate judges (students of the High School of Justice) and judges' legal assistants on applying ECHR standards, particularly relevant to their work, have been enhanced through series of training sessions, dissemination of the relevant case-law of the European Court of Human Rights (specifically translated for this purpose), as well as a study visit to the Council of Europe, including the Court. A series of training seminars for more than 120 criminal law judges took place.

Activities of the sub-component on "Improving the capacity of the penitentiary system" continued to focus on drafting the strategy paper on penitentiary system health care. The draft document aims to ensure equivalence of care between, respectively the prison health care system and the civil sector health care system. A training for criminal law lawyers focused on reinforcing and implementing European prison standards on imprisonment in Georgia and increasing the level of the knowledge of the changes introduced by the Code of Imprisonment, which entered into force in 2010. In addition, a preparatory meeting took place for trainers on the probation field. A pool of trainers of the Penitentiary and Probation Training Centre in the probation field was set up and will conduct training sessions on "Implementation of parole in accordance with European standards" for all probation officers in the country during December 2011 – February 2012.

The project assisted in strengthening the capacity of the Public Defender's Office (PDO) to fulfill its mandate and to identify and assist in redressing the human rights violations in light of the Paris Principles relating to the status of National Human Rights Institutions. The operational capacity of the PDO was reinforced through the training of staff, provision of support in its reporting capacity and increasing public awareness on the PDO's work and mandate. Training needs assessment was carried out for the staff of the PDO which should facilitate the identification of areas where intervention is needed.

Republic of Moldova

The Joint Programme between the European Union and the Council of Europe "Democracy Support in the Republic of Moldova"

The Justice and Legal Co-operation Department continued to implement four components of the joint project between the European Union and the Council of Europe entitled the "Democracy Support Programme in the Republic of Moldova". Following the achievements of this project and requests from national authorities, it was extended over a period of six months, until the end of 2011.

Between July and October 2011 most efforts were focused on assisting the national Ministry of Justice (MoJ) in the process of drawing up the Strategy for Justice Sector Reform for the period 2011-2016 (SJSR). The MoJ set up several sectoral working groups (on the judiciary, criminal procedure, public prosecutors' service etc.) including one responsible for co-ordination and the drawing up of the SJSR. After receiving a request for assistance from the MoJ and in order to facilitate the accomplishment of working groups' tasks, the Democracy Support Programme organised expert participation, information exchange and other support activities.

For example, a conference was organised on the co-ordination and strategy of the reform of the justice sector, in which the Council of Europe participated with two experts with a shared experience of Romania and Georgia in the area of justice reforms. A session of public consultations on the draft SJSR was organised with the participation of the leadership of the MoJ, European experts, representatives of the Council of Europe Office and the European Union Delegation in the Republic of Moldova, along with representatives of various judicial bodies, law enforcement agencies, civil society organisations, development partners and representatives of academia. An international conference on the "Role of the Civil Society in the implementation of the SJSR" was held on 14 October 2011, in co-operation with the MoJ and the Union of Jurists in the Republic of Moldova. As a result of these and other activities, the draft

SJSR and such important elements as its implementation action plan, co-ordination and monitoring mechanisms, financing etc. were thoroughly assessed by European experts and advice was provided in order to improve the concept and content of the document. The SJSR was approved in October by the government and presented to Parliament for discussion and adoption as a law.

Another area of important progress under the Democracy Support Programme concerned the refurbishment of the most important preliminary detention facility of Chisinau municipality. The project, in co-operation with the Ministry of Internal Affairs (MIA) of the Republic of Moldova, finalised the package of technical documentation related to refurbishment, which shall guarantee Chisinau Central Police Station the possibility of ensuring detention conditions in compliance with CPT standards in this facility upon completion of the works. A tender for selection of the service provider on a competitive basis was conducted. The reconstruction works started in October and the inauguration of the newly refurbished premises is planned following completion of the works in December 2011. In parallel, the project continued its capacity building assistance to the MIA and police academy through training sessions (on riot control, mental resilience, community policing, public relations and co-operation with the media) and publications etc.

A workshop on the community policing curriculum of the police academy "Stefan cel Mare" was organised in Chisinau in September. During the workshop, Council of Europe experts and the representatives of the police academy "Stefan cel Mare" held discussions on the concept of community policing (leadership, strategic framework, police accountability), its relevance to the civil society, the introduction of competency-based police education and the teaching of community policing in higher education institutions. Additionally, the Council of Europe experts provided their opinion on the reflection of community policing principles in the current curriculum of the police academy. Topics raised included the roles of uniformed officers in relation to community policing principles, methods of improving police officers' work according to these principles, and ways of motivating police officers to work for the police service. A follow-up Training-of-Trainers session on the teaching of community policing principles was organised in co-operation with the police academy "Stefan cel Mare". During the training, experts from the London Metropolitan Police discussed theory, best practices and methodology issues with teachers from the police academy and officers from the Ministry of Internal Affairs. One of the results was an outline for future cascade training sessions within the continuous training programme of the Academy.

In total more than twenty activities were carried out during the reporting period (to be consulted on www.jp.coe.int and www.coe.md).

Turkey

The Joint Programme between the European Union and the Council of Europe entitled "Strengthening the Court Management System (phase II)"

The Joint Programme between the European Union and the Council of Europe entitled "Strengthening the Court Management System (phase II), whose implementation began in May 2011, was officially launched with a project opening ceremony on 26 September 2011 hosted by the Minister of Justice of Turkey, Mr Sadullah Ergin.

The programme's budget is €5 500 000 and it will be implemented until May 2013. The primary objective of the programme is to support the development of an independent, accessible, and efficient judiciary in Turkey. The programme will facilitate the development and establishment of a modern court administration system by introducing new court management practices in twenty pilot courts. The project builds upon the results achieved in the five pilot courts targeted by the preceding Joint Programme "Support to the Court Management System in Turkey" implemented by the Council of Europe in 2008-2009, which initially targeted five pilot courts. If the pilots prove to be successful, it is expected that the new court management system will be applied in all of the courts in Turkey. The project is implemented in close co-operation with the Ministry of Justice of Turkey. Project partners include the High Council of Judges and Prosecutors, the Union of Turkish Bar Associations and the Turkish Justice Academy. A first awareness-raising meeting with the targeted pilot court houses, as

well as a number of meetings with the major stakeholders, confirmed the strong interest of the Turkish authorities and their support for the programme.

By the end of 2011 the completion of the first round of assessments in the new twenty pilot courts is envisaged as well as an evaluation of the results of the implementation of the court management system in the pilots targeted by the 2008-2009 programme. The results of the two evaluations will allow the project team to prepare a road-map for commencing the implementation of the new court management system in the twenty pilot courthouses. Work has also began on the amendment of the relevant national laws, which is a necessary step in strengthening the sustainability of the new practices.

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 by the project were established and the first Working Group on the training programme and its curricula and materials clarified the selection criteria for 50 trainers who are to be trained under the Training-of-Trainers programme, and identified the training materials and resources available.

Among the resources available were a considerable number of cases brought before the European Court of Human Rights concerning military justice in Turkey. A number of cases concerning the military of other member states of the Council of Europe were in the process of being translated into Turkish, while many others were already translated. Draft agendas were approved for both of the Training-of-Trainers sessions on the Council of Europe and the European Court of Human Rights, and the European Convention on Human Rights and training methodology. The outlines for the training courses and relevant case studies and scenarios were prepared in accordance with the training programme. Trainers who would deliver the training to the future national trainers were also identified.

The Working Group completed its work in June. The list of trainers to be trained was agreed in October 2011 and the first Training-of-Trainers session was held in the same month. The experts of the Working Group also acted as presenters, linking the programme and the materials which they had defined with their own presentations; a presentation devoted to methodology was introduced in the session.

The second Working Group launched the analysis of the military justice systems. The approach to the work was determined and tasks were assigned to the different members of the group. The Ministry of National Defence prepared presentations providing a full overview of the current system from the operational and administrative points of view. A needs assessment was developed on the basis of this information, as well as on the information 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 was carried out after the determination of needs in the current system in light of the European Convention on Human Rights and its case-law and was presented at the most recent meeting.

A launching event marked the start of the first Training-of-Trainers session in October. The ceremony was attended by the Minister of National Defence, the Ambassador of the European Union to Turkey and other prominent personalities.

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 Council of Europe has enjoyed an excellent co-operation with the Ministry of Justice of Turkey, the High Council of Judges and Prosecutors, the Constitutional Court, the Court of Cassation and the Council of State in the implementation of the project (also called the "High Courts project").

Three study visits were organised in June-September 2011. Now that they have been running for over a year, the study visits have demonstrated to be successful in developing aware-

ness and providing an opportunity for exchange of information and experience for the Turkish judges. For most of them, this was their first visit to the Court of Justice of the European Union (ECJ) and they thus discovered the Court's organisation, administration and procedures, understood its role within the EU system which Turkey has applied to join and were able to compare it with the European Court of Human Rights after the visit to Strasbourg.

The visits helped to raise awareness among the judges of the Turkish High Courts of the EU institutions. The comprehensive presentations in Brussels provided them with first-hand information on the functioning of the EU system in general and the Commission and Parliament in particular. The most important result of the study visits was the dissemination and exchange of information and experience between the Turkish judges and their colleagues in the respective European institutions.

It is expected that this exchange of information and discussions will help strengthen the institutional capacity for implementing European standards and showed that regular contact between the Turkish high courts and European institutions is necessary in order to avoid misunderstandings and misinterpretations in the future. The Constitutional Court (CC) and other Turkish High Courts have been encouraged to establish and maintain more effective communication channels in Europe in the forthcoming period.

During the summer break, an external mid-term evaluation of the project covering the period of February 2010 – June 2011 was carried out. The beneficiaries were informed that the necessity for a mid-term evaluation came up in order to assess to what extent the application of the knowledge acquired by the project activities is reflected in the judgments and daily work of the High Court's judges. The preliminary findings of the mid-term evaluation were discussed with the beneficiary organisations and they were informed about the necessary steps to be taken in order to increase the project's impact.

A new component of the project includes a six-months placement within the European Court's Registry for 6 judges of the CC which began on 7 November 2011.

In the framework of the High Courts project's extension, an additional component to support the CC of Turkey in introducing the review of individual applications, which is foreseen to start in September 2012, has also been included. This initiative was taken upon the request of the President of the CC following its reform in order to deal with the first individual applications from September 2012.

The Joint Programme between the European Union and the Council of Europe entitled "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey"

Within the framework of the EU-Council of Europe Joint Programme on "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey", the DGI – Human Rights and Rule of Law and Council of Europe Projects Office in Ankara organised three study visits to the Prison Staff Training Centres (PSTCs) in Ankara, Erzurum and Istanbul, with the participation of a Council of Europe Consultant and 16 trainers from the new PSTCs. The objective of the visits was to familiarise the new PSTCs with the training curriculum of those with greater experience, to assess the needs of the new PSTCs and to draft an advanced training programme for trainers from the new PSTCs. As a result of the visit, the gaps between the new and older centres in terms of training curriculum were identified and an advanced training programme for the new PSTCs was developed.

Another important series of activities organised within this period was the seminar for Enforcement Judges in charge of processing prisoner complaints and the seminars for Prison Monitoring Boards in charge of external civilian monitoring of prisons. These two-day seminars took place in four different cities in Turkey, with the participation of three Council of Europe Consultants, 100 Enforcement Judges and 150 members of prison monitoring boards. As a result of the seminars, participants were informed of the European and international standards in the field of prison monitoring and addressing prisoner complaints. Workshop sessions held during the seminars helped participants to identify problems with the current mechanisms for prisoner complaints and civilian monitoring of prisons in Turkey, and to propose strategies for their solutions. The participants were very pleased with the initiative and expressed their wishes for continued activities addressing similar issues.

Ukraine

The Joint Programme between the European Union and the Council of Europe entitled "Transparency and Efficiency of the Judicial System of Ukraine" (TEJSU)

The Ukrainian Chairmanship of the Committee of Ministers of the Council of Europe (May-November 2011) provided a relevant context for the co-operation work carried out in Ukraine, including those activities organised under the project. The project contributed to a round table on "The Role of the Supreme Courts in Human Rights Protection at National Level" in Kyiv on 22 September 2011 organised by the Supreme Court of Ukraine, and attended, *inter alia*, by the delegations of the Supreme Courts and other high-level courts of 24 countries. The Director General of Human Rights and Legal Affairs of the Council of Europe Mr Philippe Boillat emphasised the importance of developing a uniform practice of domestic application of the ECHR, as well as of the compliance of the national legislation to the norms of the Convention. The round table was concluded by the adoption of Conclusions in which the principle of subsidiarity of the ECHR supervisory mechanism was underlined, and the focus was made on the protection of human rights at national level.

Within the framework of the Ukrainian Chairmanship, the project also organised, on 1 July 2011, an international conference on "The application of the European Court's case-law in the Legal System of Ukraine" with the participation of the President of the Court, bringing together judges, lawyers, prosecutors and law enforcement officials.

Support was provided to the authorities as regards the draft of the Criminal Procedure Code (CPC) which will be an important cornerstone of the reform of criminal justice system in Ukraine. Prior to starting the assessment of the draft, the project engaged in a meaningful dialogue with the Council of Europe, including representatives of the European Court of Human Rights and of the Department for the Execution of Judgments of the European Court of Human Rights. All parties agreed that there was a need to develop a modern adversarial criminal procedure in Ukraine. In November and December 2011, the Council of Europe discussed with the authorities the expertise and the incorporation of its recommendations in the final draft. The authorities emphasised their expectations to have the new CPC adopted in the first reading before the end of 2011.

The project prepared two opinions, together with the Venice Commission, on the draft legislation on the amendments to the "Draft Law on the judiciary and the status of judges of Ukraine" and on the draft law on the Bar, which were adopted at the 88th Plenary Session of the Venice Commission (14-15 October 2011).

The project has sought to increase the capacity and the level of professional skills of judges as regards the methodology of the interpretation of legal acts, the application of the legislation against corruption, on legal aid, judicial statistics, documents' flow in the courts, and on combating racism and intolerance. An in-depth report entitled "Human rights training needs assessment in Ukraine" was prepared with a view to assessing these needs with regard to the ECHR, including the case-law of the Court.

With a view to providing institutional support to the National School of Judges, the group of Ukrainian judges visited the Council of Europe, including the Court, and was able to learn of recent developments in the case-law of the Court and the findings of the monitoring bodies of the Council of Europe. Such dialogue and exchange of experience was also the aim of the visit by the members of the High Qualification Commission of Judges and the National School of Judges of Ukraine to the National Council of the Judiciary, the School of Judiciary and Public Prosecution of Poland. The Polish officials demonstrated the methodology and practical implications of their work based on best European practices to their peers from Ukraine. These exchanges have a positive impact and they contribute not only to exchange of experience, but also to an active networking and formation of horizontal ties between peers.

The electronic edition of the legal review entitled "The European Court of Human Rights Court practice" was published and presented in Strasbourg, in the framework of the Ukrainian Chairmanship of the Committee of Ministers. It includes, *inter alia*, translations of the Court's case-law into Ukrainian, comments by leading Ukrainian and international experts concerning the issues of the application of the ECHR at national level, as well as academic research.

The project has also prepared to support the computerisation of all courts in the Chernivtsi region of Ukraine as an efficiency enhancing measure. This is the last phase of the IT support by the project to the judicial system of Ukraine. The previous phases included the provision of equipment necessary to establish a proper connection between the central authorities and the local courts, the creation of modern internal networks in the 403 courts throughout Ukraine and maintenance of the Unified Registry of Court Decisions. The project also provided equipment for computer classes to seven regional offices of the National School of Judges.

Multilateral

Strengthening professional training on the European Convention on Human Rights (ECHR) - 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). It is financed by the Council of Europe's Human Rights Trust Fund. The objective of the HELP II Programme is to integrate the ECHR in the initial and continuous training for judges and prosecutors and to develop training materials and tools. The project assists national training institutions for judges and prosecutors (NTI) in developing their curricula and incorporating the standards of the ECHR. In particular, it ensures the full availability of tools and materials needed for professional training on the ECHR in national languages, by updating and expanding the HELP website (http://www.coe-help.org).

A new, updated and completely reformatted version of this website has been developed and is online since 28 November 2011. Among its characteristics are a more flexible layout, allowing easier and more user-friendly access to materials, an improved design, an increased use of pictures and videos, and the introduction of a web-conference platform. Interested parties can self-enroll by simply completing a form. The website is expected to increase its online community and consequently enhance the scope of the user forums and enable a more proactive debate and discussion on human rights training issues.

The website will incorporate some pages with a presentation of all NTI for judges and prosecutors who are partners in the project, focusing on the organisational structure, history and activities of each institute, and on the incorporation of ECHR training in the curricula of their training activities. Other pages will cover relevant national jurisprudence concerning the implementation and application of the ECHR.

Pilot distance-learning courses are being organised, and made available to groups of judges, bearing particularly in mind the requirements of target countries with a high number of magistrates. The first course will focus on human rights and family law and its first application will be aimed at a group of Ukrainian judges, with professional experience in family law (juvenile or civil courts), selected by the National School of Judges of Ukraine. A working group of internationally recognised experts has been made responsible for the preparation of the curriculum and the selection of updated materials. A kick-off meeting, to present the initiative, is scheduled, in Kyiv. The National School of Judges of Ukraine will assign the same value and importance to the course as to similar national courses of continuing professional training for judges. The same model will be used in another pilot course, starting in January 2012, for a multilateral group of judges, from different countries, selected by the International Association of Youth and Family Judges and Magistrates (IAYFJM), to stimulate the sharing of experience throughout different countries.

Training-for-trainers courses are also provided by the project. In synergy with other projects, the HELP website with its methodology materials and substantive resources have been systematically presented and used as a tool in many other training activities organised by the Council of Europe.

The expansion of the European Human Rights Training Network is a priority for the project. New countries have been invited to participate, in particular Bulgaria and Turkey. As a result, the National Institute of Justice of Bulgaria and the Judicial Academy of Turkey have joined the HELP programme. At the same time, other institutions and associations of the target countries, directly or indirectly involved in the

training of legal professionals, such as centres for judicial studies, judges' and prosecutors' associations, bar associations and human rights NGOs, have also been invited to join the project.

The Joint Programme between the European Union and the Council of Europe entitled "Enhancing Judicial Reform in the Eastern Partnership countries"

The Joint Project entitled "Enhancing Judicial Reform in the Eastern Partnership (EaP) Countries", financed by the European Union and implemented by the Council of Europe, was launched in March 2011. Its first tangible output is the Report of the Working Group on Independent Judicial Systems. This 110-page document in English and Russian, which covers the issues of Judicial Self-Governing Bodies and Judges' Career, was presented on 14 October 2011 in Strasbourg. The report provides an overview of the state of implementation of European standards on an independent judiciary in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. It focuses on the role of judicial self-governing bodies in ensuring the independence of the judiciary and on issues related to the appointment, career, ethics and disciplinary liability of judges. The report points to the main challenges the countries face in increasing the compliance of domestic laws and practice with the relevant European standards and provides targeted country and regional recommendations on how to meet such challenges.

The first meeting of the first sub-group of Working group 2 "Professional Judicial Systems" gathered representatives of national Ministries of Justice and Bar Associations from Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The sub-group's mandate is to review national laws and practice as regards the role of the Bar, access to the legal profession, training of lawyers and ethical issues and disciplinary proceedings against lawyers. The group is also in charge of making recommendations to increase the compliance of national legislation and practice with European standards, which will be subsequently presented and discussed with the national authorities. This is the first time that representatives of the Civil Society Forum have joined project activities.

Sub-group 2.2. of the Working group on "Professional Judicial Systems" discussed the training of judges in the Eap countries as the key element to ensuring a professional judicial system and securing the right to fair trial guaranteed under Article 6 of the ECHR. The topics discussed covered the training curricula of judiciary schools, access to the profession of judge and the continuous training of judges. The participation of representatives of NGOs from the respective countries appointed for participation by the EaP Civil Society Forum added a critical element to the discussion, and it is expected that their input will contribute to making the recommendations of the Working Group more targeted.

The report on Professional Judicial Systems will be prepared and published in the first quarter of 2012 and will be widely disseminated.

The Joint Programme between the European Union and the Council of Europe entitled "Reinforcing the Fight against Ill-Treatment and Impunity"

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) was launched after the completion of the previous Joint Programme entitled "Combating Ill-Treatment and Impunity". The follow-up project continues to cover Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. It includes a new element of combating ill-treatment in pre-trial detention facilities and penitentiary institutions.

The results of the previous project included:

- Legislation, structures and procedural framework were analysed and recommendations were formulated as regards the investigation of complaints of ill-treatment by law enforcement officials. Internal regulatory documents instructing to use Article 3 of the European Convention on Human Rights and the standards developed in the case-law of the European Court on Human Rights were adopted by the Offices of the Prosecutors General in Ukraine and Armenia, the Ministry of Justice in Georgia and the Ministries of Interior in all beneficiary countries; an Action Plan to Combat Torture and Ill-treatment was adopted in Georgia.

- The capacity of more than 7 000 judges, prosecutors, investigators, lawyers, law enforcement officials and human rights NGOs to apply ECHR standards in their daily work was developed through training.
- The number of domestic court verdicts based on the ECHR increased, and the prosecutorial practices also increasingly referred to the ECHR standards.
- Guidelines on "European standards for the effective investigation of ill-treatment" and a brochure on "Rights of detainees and obligations of law enforcement officials: 11 key questions and answers" were published in national languages, translated and disseminated in all five countries.

However, the problem itself, that is ill-treatment by law enforcement officers, has remained deeply rooted and continued sustainable efforts are needed to eradicate it and to institute a policy of zero tolerance. The project has not so far resulted in the establishment of fully independent investigative mechanisms, and structural changes have proven to be a difficult task in the long-term.

The follow-up project addresses these issues in a targeted manner, developing further the productive partnership with national authorities and other stakeholders established in the course of the previous project, and expanding the expertise accumulated.

After launching the follow-up project, missions of the Council of Europe Secretariat were organised in Georgia, the Republic of Moldova and Ukraine which confirmed the good level of co-operation with the authorities and their interest in continuing co-operation in this sensitive area. A number of agreements have been reached on further improvement of regulatory framework and training campaign, as well as on following results of the training and monitoring the judicial and prosecutorial practices as regards their conformity with the recommendations of the Country Reports. The project has started research and preparation of the statistical review of judicial cases on ill-treatment inflicted by police officials for the period of 2009-2011 in all five countries, with a breakdown for each year, including all such cases considered in the courts of all instances and the courts' decisions (convictions; acquittals, administrative liability). A stock-taking analysis of the implementation of the recommendations of the Country Reports has also started. In November 2011, the project will start the training campaign, and after the above-mentioned statistics and stock-taking analysis are finished, series of round tables and missions by international experts will take place.

The Joint Programme between the European Union and the Council of Europe entitled "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 (NHRS), including the transfer of international know-how to the staff of independent National Prevention Mechanisms (NPMs).

The organisation of Peer to Peer II Project events continued at full speed in the summer and early autumn of 2011. As regards NPMs, the very first inter-NPM thematic meeting was held on 12 July on the theme of "monitoring deportation flights". This meeting, which was held in London brought together the NPMs of France, Germany, Spain and Switzerland, as well as the hosting UK NPM. These NPMs highlighted that they had only started monitoring deportation flights and shared the challenges that they faced with their NPM peers and CPT experts. They underlined that it would be useful to have a fuller workshop on monitoring the deportation process once more countries had started monitoring deportations under their respective NPM mandates and that it would be helpful to establish contacts with Frontex, to engage in dialogue, co-operation and possible joint monitoring in this respect. The European NPM Project intends to hold two such meetings between January and June 2012 to address these issues and to follow-up the results from this first inter-NPM thematic meeting on monitoring flight deportations.

October proved a particularly intensive period in terms of NPM events. First, an inter-NPM onsite exchange of experience was hosted by the staff of the Albanian NPM with the attendance of their colleagues from Slovenia and the former Yugoslav Republic of Macedonia. This was a fruitful experience between the three NPMs and a full debriefing report was shared with the whole of the NPM community. There

were concrete follow-up recommendations as to the development of the three NPMs' monitoring methodologies and, subject to funding, these will be realised in 2012, including rotating the thematic detention focus, with the same participants of the inter-NPM onsite. It was noteworthy that, although the NPMs had complete discretion as to the formulation of the agenda of the onsite, they followed the official European NPM Project onsite agenda formula almost identically, underlining the usefulness of the exercise on a multi-lateral as well as a trilateral basis.

Round table discussions were held on 18 October with the Ukrainian Ombudsperson's office, Ukrainian civil society and the Ukrainian authorities respectively on the one hand, and the European NPM Project partners on the other. The purpose of this interactive meeting was to offer to interested national stakeholders involved in discussions concerning the establishment of the Ukrainian NPM, an occasion to meet and discuss the current situation of the NPM, the different operating models of NPMs and future options with members of the European NPM Network and international experts in the field of torture prevention: the European Committee for the Prevention of Torture (CPT), the United Nations Sub-Committee on the Prevention of Torture (SPT) and specialised NGOs such as the Association for the Prevention of Torture (APT). The ultimate aim was to discuss the prospects of eventually setting up an OPCAT-compliant NPM in Ukraine. The sudden decision to create an NPM in Ukraine by Presidential decree changed the context of these meetings in Ukraine, though the initiative to discuss the technical and policy-oriented questions linked to the establishment of an NPM had initially been taken by the Ukrainian Ombudsperson's office, which invited a small team from the Council of Europe National Human Rights Structures Unit to come to Kyiv for consultative discussions. The status and functioning of the Ukrainian NPM will still require some consideration and co-operation between the stakeholders involved. One of the outputs of the meeting was a proposal to use the Commission as a constituent assembly. It could then propose legislation and amendments to the President, rather than operate immediately as a fully fledged NPM. It was recommended that Ukraine use the Commission to make a formal proposal for an effective NPM structure to be created. The Council of Europe underlined its readiness to work with interested individuals in helping to prepare the way for the establishment of an NPM in a year, drawing on the reservoir of expertise that the commission could provide.

Shortly after the talks in Kyiv, the 6th NPM Thematic Workshop was held in Baku, from 20 to 21 October 2011, on "the Protection of persons belonging to particularly vulnerable groups in places of deprivation of liberty". Hosted by the Commissioner for Human Rights of the Republic of Azerbaijan (the NPM of Azerbaijan) within the framework of the European NPM Project, this sixth thematic workshop for the attention of specialised staff from 16 NPMs from the European NPM Network, brought them together with SPT, CPT, APT and specialised thematic experts to discuss best practice, methodologies and challenges encountered when monitoring places of detention, and the risk of ill-treatment faced by vulnerable groups in detention during an NPM visit. National and international perspectives and experiences were shared on key issues and ill-treatment risk areas affecting vulnerable groups in detention such as women, children/juveniles, "dangerous" prisoners; long term prisoners (including lifers); minorities; LGBT persons and those suffering from disabilities. For the second time, a small number of members of Russian Public Monitoring Committees of places of detention (PMCs) attended as observers and shared their perspectives and experiences in this area with the European NPM Network.

Finally, the last NPM activity under the period covered by this Human Rights Information Bulletin was an onsite exchange of experiences, held from 24 to 27 October 2011, hosted by the NPM of Armenia, with experts of the UN SPT and Council of Europe CPT providing constructive feedback on the working methodology of the host institution. This four-day, intensive meeting was the fifth onsite Exchange of Experiences held with a hosting member of the European NPM Network since the start of the European NPM Project. It involved 24 participants from the NPM of Armenia and associated experts working together with members of the SPT, the CPT, APT (NGO) and the European NPM Project Team. On the first day of the meeting the general working methods of the Armenian NPM in the light of the OPCAT prescriptions were discussed and examined. The meeting also featured joint preparation for a common onsite visiting exercise on the second day to two places of deprivation of liberty (two prisons),

during which the participants split into small groups and the international experts "shadowed" their respective monitoring teams. On the third and fourth days the international and national NPM experts jointly discussed in plenary their observations on the overall working methods.

As regards the NHRS Network of the Council of Europe, its 5th Thematic Workshop was held from 28 to 29 September 2011 in Sarajevo, hosted by the Ombudsmen of Bosnia and Herzegovina, on the theme of the "Role of NHRSs in the protection against, and prevention of, all forms of discrimination". The participants reviewed relevant international legal instruments and campaigns, as well as examples of NHRS action against discrimination in Council of Europe member states. A debriefing paper reflecting the discussions was prepared and later published on the NHRS website.

Post-Interlaken involvement of NHRSs

Hosted by the Spanish Senate and the Spanish Defender of the People (Ombudsman), very significant discussions, in a round table format, took place between the NHRS of the Council of Europe member states as regards the European Human Rights protection system, in Madrid from 21 to 22 September 2011. The precise topic was how the NHRSs could be helpful in supporting the so called post-Interlaken process, i.e. how they could contribute to a reduction of manifestly ill-founded petitions submitted to the European Court of Human Rights. The underlying idea was to explore whether NHRSs could disseminate information about the Court eligibility criteria and pass on practical information from the Court about what a Court process can be expected to bring, for example in terms of compensation, in cases which are won. The participants also discussed how NHRSs could assist in the implementation of Court decisions and whether they could engage in Human Rights education. The premise of this discussion was that effective Human Rights education will lead to fewer violations of human rights (which is an end in itself) and, as a logical consequence of this, a reduction of petitions submitted to the Court. The discussions were frank, with good examples presented of NHRS activity in the above roles, but also with due recognition of the risks and challenges faced by NHRSs engaged in, or considering, such new responsibilities.

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 preventive 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, saw all of its four regional needs assessment conferences held between July and October 2011 (in Perm, Barnaul, Moscow and Pyatigorsk respectively). At these events the main capacity building needs of the existing 77 PMCs were determined and by the end of October a first draft proposal for a full PMC Project, with numerous capacity-building activities for PMCs, was already disseminated to the PMCs for their review. The draft proposal was prepared following a careful analysis of the results of the four needs assessment conferences and it contains, apart from training activities, proposals for twinning partnerships with members of the European National Preventive Mechanisms Network and a structure for an active public relations strategy in support of the various activities to be conducted by the members of a future Russian PMC Network, to be established within the framework of the PMC Project.

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

Information society, media 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

4th meeting of the Expert Committee on New Media (MC-NM)

Strasbourg, 20-21 September

The Committee finalised two draft Recommendations to be submitted to the Steering Committee on Media and New Communication Services (CDMC), on the protection of freedom of expression and the right to private life with regard to social networking services and on the protection of freedom of expression and information and the right to private life with regard to search engines.

Reaching the end of its second mandate, it also took stock of the work accomplished after two years of operation when major standard setting texts on media were finalised, thus paving the way to further work in the field (e.g. the Committee of Ministers recommendation to member states on a new notion of media).

4th meeting of the Ad Hoc advisory group on cross-border internet (MC-S-CI)

Paris, 14-15 October

After two years of existence and reaching the end of its second mandate (31/12/2011), the MC-S-CI took stock of the work accomplished. Seven new standard setting texts were finalised and the Conference on Internet freedom (18-19 April 2011) was a considerable success. The Council of Europe has played a pioneering role in Internet governance through delivering on values of openness and stakeholder participation and offering policy input in Internet governance dialogue. Therefore, steps should be taken to maintain this momentum by moving towards a new and different phase of activities. Turned towards the future, the MC-S-CI made proposals for further work on cross border Internet to the Steering Committee on the Media and New Communication Services (CDMC). It suggested that the Council of Europe could work on the promotion of the principles on Internet governance (adopted on 23 September by the Committee of Ministers), reinforce its working methodology of multi-stakeholder participation and deepen analysis on challenges to cross-border Internet traffic.

Main events

Internet Governance Forum

Nairobi, 27-30 September 2011

In 2011 again, the Council of Europe played a significant role in the Internet Governance Forum with participation of its Deputy Secretary general, Maud de Boer-Buquicchio, members of the Secretariat, experts from various steering committees and the organisation of a number of workshops and active participation in others. Supported by the "Message from Belgrade", prepared at the 4th meeting of the European Dialogue on Internet Governance (EuroDIG), in Belgrade in May, the Council of Europe pursued its efforts to put human rights at the forefront of the various aspects of Internet governance.

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

European human rights institutes

Through their research and teaching activities, the institutes play an important part in the development of human rights awareness.

The following, non-exhaustive list gives an outline of the resources of various human rights institutes and their activities in 2008. The information, provided by the institutes, is presented in the language in which it was drafted.

Austria/Autriche

European Training and Research Centre for Human Rights and Democracy

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Internet: www.etc-graz.at

Publications

Human Rights Report of the City of Graz 2010. Human Rights Advisory Board of the City of Graz, Graz 2011.

European Yearbook on Human Rights 2011. Edited by Wolfgang Benedek, Wolfram Karl, Anja Mihr and Manfred Nowak. NWV, Vienna/ Graz 2011.

Wolfgang Benedek, Eva Bravc, Lisa Heschl, Evelin Hlina, Nora Scheucher: *Baseline Study zur Menschenrechtsbildung an österreichischen Universitäten und Hochschulen* (forthcoming).

Eva Bravc, Ingrid Nicoletti, Simone Philipp, Klaus Starl (2011): *MENSCHEN.RECHTE.BILDUNG - Eine qualitative Evaluation von Menschenrechtsbildung in allgemeinbildenden höheren Schulen.* European Training and Research Centre for Human Rights and Democracy, Graz.

Isabella Meier, Simone Philipp, Klaus Starl (2011): *Nothing Compares to You, Who Compares to Me? Mehrdimensionalitäten bei Mehrfachdiskriminierung.*

ETC Occasional Paper No. 27: Eva Bravc, Ingrid Nicoletti, Simone Philipp, Klaus Starl (2011), *MENSCHEN.RECHTE.BILDUNG - Eine qualitative Evaluation von Menschenrechtsbildung in allgemeinbildenden höheren Schulen*

ETC Occasional Paper No. 26: Mira Nausner, Klaus Starl (2011), *Cities' Expectations from a Common Anti-Racism Indicator Model. Results from the ECCAR-ADIX Survey*

ETC Occasional Paper No. 25: Klaus Starl, Jennifer Pinno (2010), *Challenges in the Development of Local Equality Indicators – A Human-Rights-Centred Model. Commitment 2 of the Ten-Point Plan of Action*

HUMAN SECURITY PERSPECTIVES Journal 7/ 2010, Issue 1: *Human Security 2010 - The Way Forward*

HUMAN SECURITY PERSPECTIVES Journal 1/ 2011: *Special Focus: Sustainable Peacebuilding*

Human Rights Education to the general public (rights holders)

Lecture Series, university course, human rights debate club and summer academy:

Every year the ETC organizes an interdisciplinary lecture series (with ECTS credits) on "Un-

derstanding Human Rights" open to students of all faculties and all other interested persons, which is based on the ETC's manual "Understanding Human Rights" and in addition the university course "Introduction to Human Rights Education" and a debate club on human rights issues at least once per year. The International Summer Academy on Human Rights and Human Security usually takes place in July; information on topics and application is available on-line at www.etc-graz.at starting from January.

Public lectures, events, workshops and panel discussions on various topics

School programmes: The ETC regularly holds workshops and seminars in schools for secondary level classes. The topics mostly sought-after by students and teachers are anti-racist human rights education, civil courage, right-wing extremism, freedom of speech, strategies against hate speech and basic rules of democracy.

Human rights on-line platform kennedeinerechte.at: The Human Rights Council of the City of Graz launched a website to promote human rights, made by young people for young people. The project, now in its second year, was designed and is conducted by the ETC which is the Office of the Human Rights Council.

Online game on discrimination DAS BOOT IST VOLL: The ETC developed the game DAS BOOT IST VOLL, which is based on the classic "Monopoly" and refers to economic and labour market processes. The learning effect of the game is based on sensitizing the players to the inequality of societal conditions by experiencing different starting conditions and (partly multiple) discrimination. The game is available at www.das-boot-ist-voll.at, and additional "playing workshops" are offered to schools, multipliers and public libraries.

Campaign THAT'S RIGHT! ECHR 1950 - 2010: Starting on Human Rights Day 2009, the ETC conducts a poster and postcard campaign on occasion of the 60th anniversary of the European Convention on Human Rights. The 24 themes juxtapose hate speech with articles of the ECHR thus showing that each slogan does not only scratch on human dignity but might also violate the law. The materials include a travelling exhibition, a handbook and didactical hints for teachers and are offered in combination with workshops. The materials are available on www.etc-graz.at

Professional Trainings (duty bearers)

Trainings for the judiciary: Since 2003, the ETC conducts different trainings and seminars for future and sitting judges on the topics of non-discrimination, human and fundamental rights, social rights, court interpreting. As the police seminars, these training are organised as an obligatory part of the curriculum for the aspirants and a facultative offer for all.

Police trainings: In 2011, the police in-service training seminars on "State and Human Rights" were continued; the newly developed seminar on "Racism and Police Work" for police pre-service training was implemented for the students of the police courses 2010 at and in cooperation with the Styrian Police Academy.

Teacher trainings: The focus of the teacher trainings held by the ETC is on internet seminars, introduction to human rights education based on the manual, human rights city walks, right to education, freedom of speech etc.

Research

Fundamental Rights in the European Union – FRALEX

From 2007 to 2011, the ETC and its partners, NEKI (Legal Defence Bureau for National and Ethnic Minorities) for Hungary and VIA IURIS (Center for Public Advocacy) for Slovakia, contributed legal expertise on fundamental rights protection in Hungary and Slovakia and elaborated studies and reports on, inter alia, homophobia, child trafficking ,data protection measures, the impact of the Race Equality Directive, the rights of irregular immigrants in voluntary and involuntary return procedures, access to justice in civil cases, mental health and fundamental rights and various bulletins and flash reports.

Fundamental Rights in the European Union – FRANET

Starting from summer 2011, the ETC contributes to the Fundamental Rights Agency data collection and research services on fundamental rights issues to facilitate the FRA's comparative analyses on EU level.

The multidisciplinary research network of the FRA is composed of National Focal Points (NFPs) in each EU Member State and Croatia, which provide the FRA with socio-legal data on fundamental rights issues. FRANET replaced the former FRALEX and RAXEN networks in July 2011. The first study within the FRANET project was the Member States' contribution to the FRA's Annual Report 2011, the Austrian contribution of which was compiled by the ETC which is the National Focal Point for Austria.

Locating Intersectional Discrimination – LID:

The project inquires into the concepts of intersectionality and intersectional discrimination in theory and legal practice. 'Intersectionality' basically denotes the fact that each person is comprised of several interconnected features (such as age, gender, ethnic origin); 'intersectional discrimination' as compared to singular or other forms of multiple discrimination denotes discrimination based on such specific combinations (intersections) of personal features. It aims at clarifying crucial theoretical implications of the concept of intersectional discrimination and its recognition in anti-discrimination law. Upon that, the project aims at assessing the practical (legal) relevance of the concept of intersectional discrimination.

A Right to Human Rights Education:

The peer research project in a framework of the Federal Ministry of Education programme evaluated the implementation of human rights education in grammar schools with regard to the UN World Programme on Human Rights Education.

Baseline Study on the Situation of Human Rights Education on Austrian Universities

The study on behalf of the Federal Ministry on Science and Research evaluates the practice of tertiary human rights education with regard to the UN World Programme on Human Rights Education, collects good practices and gives recommendations.

Library: The library is open to the public every day from 10 to 16 and contains over 2500 publications on human rights, human rights education, human security, democracy and anti-discrimination.

Consulting: Being the Office of the Human Rights Council of the City of Graz the ETC is involved in a number of activities at local and provincial level, including the development of a human rights education strategy for the city, the monitoring of the implementation of the Styrian provincial "Charter of Diversity" and others.

Other activities

Austrian Institute for Human Rights

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E-mail: office@menschenrechte.ac.at (Secretariat)/newsletter@menschenrechte.ac.at (newsletter)
Website: http://www.menschenrechte.ac.at/

Newsletter Menschenrechte, a publication in the German language which is published six times a year, giving precise and timely information about recent decisions of the European Court of Human Rights, the European Court of Justice, the Austrian Supreme Court as well as the Constitutional Court and the Administrative Court. The *Newsletter Menschenrechte* has been published, since 2010, by the Jan Sramek Verlag (Vienna) and has a print run of 400 copies per issue.

European Yearbook on Human Rights, published together with the Ludwig Boltzmann Institute for Human Rights (Vienna) and the European Training and Research Centre for Human Rights and Democracy (Graz).

Menschenrechte konkret (*Human Rights in the Practice*), a scientific series aimed at giving the broad public an insight into current human rights issues. In March 2011, volume 3 appeared under the title "Discrimination – Violation of Basic Law or Trivial Offence? The Austrian Law on Equal Protection in the Daily Practice". It traces back to a symposium run by the Austrian Human Rights Institute in April 2010 where experts dealing with equality issues presented an overview of the situation. Volume 4, published in August 2011, contains a lecture of the former president of the European Court of Human Rights, Professor emeritus Luzius Wildhaber, on the highly current topic "The European Court of Human Rights – overloaded, overloading or just right?" (*Der Menschenrechtsgerichtshof für Europa – überlastet, überlastend oder gerade richtig?*).

Österreichische Rechtsprechung zur Europäischen Menschenrechtskonvention (The Jurisprudence of Austrian Supreme Instances with Respect to the European Convention on Human Rights), an academic contribution, published yearly in the Journal for Public Law (*Zeitschrift für öffentliches Recht – ZÖR*). It

Publications

contains a review of selected decisions, passed by the Supreme Court as well as the Constitutional and the Administrative Court in 2010 on the basis of the European Convention on Human Rights.

Events

On 4 and 5 March and 17 and 18 June 2011, respectively, the Austrian Human Rights Institute run a seminar "Austrian and European Aliens Law" (*österreichisches und europäisches Fremdenrecht*). It focussed, *inter alia*, on the legal situation of aliens under the entry and the residence laws as well as the citizenship law. The seminar is meanwhile "a must" for persons working for the consulting service for migrants.

Members of the Austrian Human Rights Institute

Projects

The Austrian Institute for Human Rights is participating in projects run upon initiative of the Austrian Association of judges. Its aim is to improve and to consolidate the knowledge of trainee judges of the rights guaranteed by the European Convention on Human Rights. The main topics of the annual meeting in 2011 were, *inter alia*, the complaints procedure before the European Court of Human Rights, the implementation of the latter's judgments in Austria, freedom of opinion and the role of interpreters in court proceedings.
Since this year, the Institute participates in the "Round table for Human Rights" of the city of Salzburg, which had declared itself "city of human rights" (*Menschenrechtsstadt*) in 2010.

Documentation

The Institute's homepage provides visitors with a freely accessible archive, comprising all the volumes of the *Newsletter Menschenrechte* (containing Strasbourg case-law in abridged form, starting from 1992) as well as the titles of its library. Additionally, as a special service for interested people, a list of all the judgments of the European Court of Human Rights against the Republic of Austria between 2000 and 2010 has been put on the homepage. Potential complainants have also access to useful information on how to bring complaints before the European Court of Human Rights. Since 2010, actual decisions of the Supreme Court, the Constitutional Court and the Administrative Court, dealing with special human rights aspects, have been published on the institute's homepage. An overview of the current human rights literature and legislation concerning Austria is also available to the public via the internet.

Library

The collection of volumes in the field of human and fundamental rights comprises approximately 2 300 titles and 33 periodic journals.

Legal advice

We are a platform for anyone who seeks legal advice concerning alleged violations of his/her human rights, especially of those guaranteed by the European Convention on Human Rights. This service is available also via the internet and is free of charge.

National correspondent for human rights

The Institute collects information on the development of human rights in Austria (jurisprudence, laws, bibliography) and publishes it in written form and on its homepage (see above).

Traineeship

A traineeship programme gives students of the Faculty of Law of the University of Salzburg an insight into human rights and invites them to do their own research work.

Bulgaria/Bulgarie

Bulgarian Lawyers for Human Rights Foundaiton

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Bulgarian Lawyers for Human Rights Foundation /BLHR/ is a nonprofit organization which mission is to contribute to the promotion and press for the enforcement of international human rights standards in Bulgaria through activities in three major directions:

- **Strategic litigation** before national and international tribunals and specialized legal advice in international standards for the protection of human rights. Many of the cases represented before the ECtHR in Strasbourg by BLHR have led to substantial changes in the domestic law or influenced the practice of the national institutions;
- **Elaboration of general measures for execution of judgments** of the ECtHR, delivered against Bulgaria, and **monitoring, research and analysis on compliance of the national legislation and practice** with the constitutional and international human rights standards. We have been submitting proposals for general measures to the relevant authorities and have been initiating public discussions on the necessary and appropriate steps to be taken in order to achieve better compliance of the national law and practice with the human rights standards;
- **Publications and other informational and educational activities** on international instruments and standards and their application in the field of human rights and protection against discrimination, targeting the legal community, magistrates, law enforcement officials and administration. During the last 15 years BLHR translated in Bulgarian language numerous publications in the field of human rights, decisions of the ECtHR, published more than 40 issues of the Human Rights quarterly magazine and presently is issuing Human Rights monthly bulletin which presents in Bulgarian language summaries of the ECtHR judgments against Bulgaria and other countries as well as jurisprudence of the Court of EU on human rights matters. BLHR also organises trainings for students, lawyers, magistrates, public official and police officers.

Finland/Finlande

Institute for Human Rights

Åbo Akademi University, Gezeliusgatan 2, 20500 Turku/Åbo
Tel.: 358-2-215 3446
Fax: 358-2-232 8606
http://www.abo.fi/humanrights

Main services for the public

These include:

- Human rights library
- Depository library for the Council of Europe
- United Nations depository library
- Bibliographic reference database for human rights literature (FINDOC)
- Database for Finnish case-law pertaining to human rights (DOMBASE)

Main programmes and courses in 2011

Master's Degree Programme in International Human Rights Law

A two-year programme, open for applicants holding a law degree or another bachelor's degree with subjects relevant to the legal protection of human rights.

***Intensive Course on Justiciability of Economic, Social and Cultural Rights*, 16–20 May 2011**

An intensive course for post-graduate students, practitioners and policy-makers, offering the participants an opportunity to develop specialist-level knowledge in the field of economic, social and cultural rights, with a particular focus on justiciability at the national, regional and international level. Arranged jointly with the Chair in Human Rights Law, Stellenbosch University Law Faculty (South Africa) and the Norwegian Centre for Human Rights, University of Oslo.

***Advanced Course on the International Protection of Human Rights*, 15–26 August 2011**

An intensive course for post-graduate students and practitioners with a good knowledge of human rights law, focusing on the regional systems for the protection of human rights in the light of contemporary problems and relevant case law.

Doctoral dissertations in 2011

Doctoral dissertation by Mr Sisay Alemahu Yeshanew, who defended successfully his doctoral thesis 'The Justiciability of Economic, Social and Cultural Rights in the African Regional Human Rights System: Theories, Laws, Practices and Prospects', 5 April 2011.

Doctoral dissertation by Mr Sabelo Gumedze, who defended successfully his doctoral thesis, 'The Peace and Security Council of the African Union: Its Relationship with the United Nations, the African Union and Sub-Regional Mechanisms', 18 November 2011.

Forthcoming courses, seminars, etc.

- *Nordic Research Training Course on Methods in Human Rights Research*, 19-23 March 2012 (applications closed in November 2011).
- *Master's Degree Programme in International Human Rights Law, Autumn 2012 - Spring 2014*, application deadline 15 February 2012.
- *Advanced Course on the International Protection of Human Rights*, 20-31 August 2012, application deadline in early April 2012.
- *Intensive Course on Justiciability of Economic, Social and Cultural Rights,* 12-16 November 2012, application deadline in August 2012.

France

Institut de formation en droits de l'homme du barreau de Paris

Adresse postale : 57 Avenue Bugeaud – 75116 Paris, France
Tel. +33/(0)1 55.73.30.70
Fax. +33/(0)1 45.05.21.54
Courriel : chpettiti@pettiti.com

L'Institut des droits de l'homme du barreau de Paris, créé en 1978, a pour activité principale la formation des avocats français et étrangers au droit international des droits de l'homme. Les formations sont également accessibles à des juristes non avocats. L'Institut organise des sessions de formation avec le concours des Ecoles de formation des Barreaux, et des conférences et séminaires avec d'autres associations, ONG, universités et organisme internationaux.

Conferences, colloques, formation et activités

- L'Institut a assuré la formation des élèves avocats sur le thème de la Convention européenne des droits de l'homme à l'Ecole de formation professionnelle des barreaux de la cour d'appel de Versailles, en 2011.
- L'Institut a organisé, avec le patronage du Conseil de l'Europe, du ministère français des Sports, et l'UNESCO, un colloque restreint sur le thème « droit fondamentaux du sport et dopage » au mois de janvier 2011.
- L'Institut a participé au jury et à la remise du 16e prix international des droits de l'homme Ludovic Trarieux, au mois de novembre 2011 à Bruxelles, avec l'Institut des droits des droits de l'homme des avocats européens et de l'Institut des droits de l'hommes du barreau de Bruxelles. Ce prix remis à un avocat tous les ans, a été décerné cette année à Me Fethi TERBIL (Libye). Il est décerné en concours avec plusieurs Institut des droits de l'homme de barreaux européens.
- L'Institut a participé à la formation du master II contentieux européen de l'Université PARIS II, sur la Convention européenne des droits de l'homme.
- L'Institut a organisé avec le CREDHO, au mois de novembre 2011, une journée de formation sur les arrêts de la Cour européenne des droits de l'homme concernant la France en 2009 et 2010.
- L'Institut a co-organisé avec l'Association Accord ad hoc international médiation un colloque sur « la médiation un nouveau droit de l'homme » au mois de juin 2011 à Cannes.

Publications 2010

Avec l'Institut des droit de l'homme des avocats européens, a été publié le Rapport annuel de l'Observatoire mondial des violations des droits de la défense et des droits des avocats

dans le monde : « 120 avocats assassinés, emprisonnés, persécutés dans le monde ».

Portugal

Bureau de documentation et de droit comparé de l'office du procureur général de la République

Gabinete de Documentação e Direito Comparado,
Procuradoria-Geral da República,
Rua do Vale do Pereiro, n.º 2, 1269-113 Lisboa
http://www.gddc.pt/
Tel. 00 351 21 382 03 52
Fax. 00 351 382 03 01

Parmi ses nombreuses activités, le Bureau organise depuis 2003-2004, des stages (non rémunérés), collectifs et individuels, à des jeunes diplomés ou en fin d'études.

L'ensemble des activités du Bureau, ainsi que les textes d'instruments juridiques les plus importants issus d'organisations internationales telles que les Nations Unies, le Conseil de l'Europe et l'Union européenne sont disponibles sur le site internet du Bureau.

Site internet du bureau

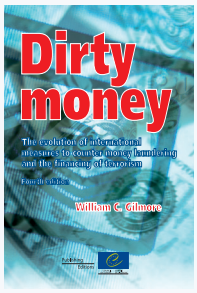
Sur la page « Le Portugal et les droits de l'homme » (http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos-tedh.html) figure la liste des arrêts où le Portugal a été condamné par la Cour européenne des droits de l'homme et le Comité des droits de l'homme des Nations Unies. Dans cette page se trouvent également nombre de documents relatifs aux reformes de la Cour européenne dont les processus d'Interlaken et d'Izmir.

De nombreux matériaux relatifs aux droits de l'homme, issus d'organisations internationales, ont été traduits vers le Portugais. Ainsi, dans la collection « Fiches d'informations sur les droits de l'homme » (fact-sheet), de nouveaux titres ont été publiés tels que les deux volumes du nouveau recueil d'instruments internationaux relatifs aux droits de l'homme en Portugais..

Enfin, un Manuel relatif au mandat d'arrêt européen destiné aux magistrats est disponible sur la page relative à la coopération judiciaire internationale: http://mandado.gddc.pt/final.html.

Le Bureau attache une importance particulière aux questions afférentes à la coopération judiciaire internationale, en particulier dans le domaine pénal.

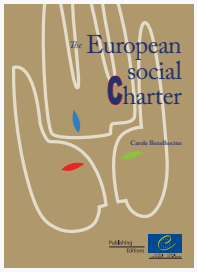
Recent titles



Dirty money - The evolution of international measures to counter money laundering and the financing of terrorism (4th edition) (2011)

ISBN 978-92-871-7069-9, € 39/US$ 78

Anti-money laundering and countering the financing of terrorism (AML/CFT) continues to be a dynamic subject area. Dirty money has again been revised and expanded to keep pace with international developments over recent years, and this is the fourth edition. This book, as with the previous editions, is designed for a wide audience, not only actors in national AML/CFT systems in both the public and private sectors, but also all those who simply wish to be better informed about how the international community continues to fight these truly global threats.



The European Social Charter (2011)

ISBN 978-92-871-7131-3, €9/US$18

The 50th anniversary of the European Social Charter offers the opportunity to draw up a comprehensive and informative summary of one of the Council of Europe's fundamental treaties. This complete yet accessible publication provides an overview of an essential text for the defence of human rights in Europe and elsewhere.

The Council of Europe: Protecting the rights of Roma – Factsheets (2011)

Format 10 x 21 cm, 14 sheets, 25 pages

Key to the process of integration of the Roma people is the education of both Roma and non-Roma. Knowledge about the history and culture of the Roma nation, which numerically is the largest minority in Europe, is still very low. The factsheets aim at filling this gap in order to bring the different cultures closer together. They also present the activities of the Council of Europe to protect the rights of Roma.

The factsheets can also be downloaded:
http://www.coe.int/AboutCoe/media/interface/publications/roms_en.pdf

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