ISSN 1608-9618
H/Inf (2008) 3

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How can legal professionals get human rights training?

The new HELP Programme website – http://www.coe.int/help – was launched in October 2007. It provides legal professionals with the tools and materials necessary for ensuring an appropriate level of training on the European Convention on Human Rights and the case-law of the European Court of Human Rights. *(See the article on the HELP Programme inside this issue of the Bulletin)*

Human rights information bulletin

No. 73, 1 November 2007 – 29 February 2008

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

Cover photo: © Getty images

This issue published April 2008. Date of next issue: September 2008. ISSN: 1608-9618 (print edition) and 1608-7372 (electronic edition). Internet address: http://www.coe.int/human_rights/.

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Protocol No. 12 was ratified by **Spain** on 13 February 2008.

[Note: This protocol provides for a general prohibition on discrimination. It guarantees that no one shall be discriminated against for any reason by any public authority.]

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

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was signed by **Italy** on 7 November 2007, **Ukraine** on 14 November 2007, **Denmark** on 20 December 2007 and **Iceland** on 4 February 2008.

Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008. It was signed by **Lithuania** on 12 February 2008 and ratified by **France** on 9 January 2008, **Bosnia and Herzegovina** on 11 January 2008, **Norway** on 17 January 2008, **Malta** on 30 January 2008 and **Portugal** on 27 February 2008.

France made the following reservations:

"In accordance with Article 31, paragraph 2, of the convention, the French Government declares that it will establish its jurisdiction on offences established in accordance with Article 20 of this convention and committed by its nationals outside the territory of the French Republic, only if the offences are also punishable under the legislation of the state where they have been committed, and if these offences are also the subject either of a complaint from the victim or his/her beneficiaries, or of an official denunciation from the authorities of the country where they have been committed.

In accordance with Article 31, paragraph 2, of the convention, the French Government declares that it will establish its jurisdiction on offences established by this convention and committed against one of its nationals outside the territory of the French Republic, only if the offences are the subject either of a complaint from the victim or of an official denunciation by the authorities of the country where they have been committed."

Malta made the following reservation:

"Regarding Article 31, paragraph 1, of the convention, Malta declares that it will apply the jurisdiction rules set out in sub-paragraph (d) only when the offence is committed by one of its nationals. Malta declares that it will not apply the jurisdiction rules set out in sub-paragraph (e) of this article."

Portugal made the following reservation:

"The Portuguese Republic declares that, with regard to the provisions contained in Article 31, paragraph 1, sub-paragraphs d) and e), of the convention, it reserves the right not to apply the provisions thereof established, considering that the Portuguese criminal law establishes more rigorous and encompassing jurisdiction rules than the ones established in the said provisions of Article 31."

See also the chapter on action against trafficking in human beings, page 84.

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 the present *Bulletin*, and do not engage the responsibility of the Court.

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

Court's case-load statistics (provisional) between 1 November 2007 and 29 February 2008:

- 589 (826) judgments delivered
- 497 (710) applications declared admissible, of which 457 (623) in a judgment on the merits and 40 (87) in a separate decision
- 9325 (9341) applications declared inadmissible
- 574 (622) applications struck off the list.

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

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

Advisory opinion of the Court

Under Article 47 (advisory opinions) of the European Convention on Human Rights, the Court was asked by the Council of Europe's executive arm, the Committee of Ministers, to give its opinion on certain legal questions concerning gender balance in the composition of the lists of candidates submitted for the election of judges to the Court.

The Court unanimously concluded that it is not compatible with the European Convention on Human Rights for a list of candidates for election to the post of judge at the Court to be rejected on the sole ground that there is no woman included in the proposed list.

It also called for exceptions to the principle that lists must contain a candidate of the under-represented sex to be defined as soon as possible.

This is the second time that the Court has received a request from the Committee of Ministers for an advisory opinion. The first request concerned the co-existence of the Convention on Human Rights of the Commonwealth of Independent States and the European Convention on Human Rights. On 2 June 2004 the Court delivered its decision on that question, in which it concluded unanimously that the request did not come within its advisory competence.

Background and questions

Under Article 22 §1 of the Convention, judges to the Court are elected from the various countries which have ratified the European Convention on Human Rights. They are elected by the Parliamentary Assembly of the Council of Europe on the basis of lists of three candidates put forward by the country concerned, under Article 22 §1 of the Convention. Under Article 21 §1, "judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence". The candidates do not have to be nationals of the country concerned, but in general they are.

In its Resolutions 1366 (2004) and 1426 (2005) the Assembly stipulates that it will not consider lists which do not include at least one candidate of each sex except when the candidates belong to the sex which is under-represented in the Court; the sex to which under 40% of the total number of judges belong. In effect that means that all-male lists are rejected.

As a consequence of this policy the all-male list of candidates submitted from Malta on 17 July 2006 was rejected by the Assembly. The Maltese Government objected, in particular stating that it had fulfilled its obligations under Article 21 §1 and that there was nothing in the Convention itself about gender balance. There was

considerable debate in the Assembly and elsewhere on the subject.

Against that background, on 17 July 2007, the Committee of Ministers asked the Court, under Article 47, to give an advisory opinion on the following two questions:

1 Can a list of candidates for the post of judge at the European Court of Human Rights, which satisfies the criteria listed in Article 21 of the Convention, be refused solely on the basis of gender-related issues?

2 Are Resolution 1366 (2004) and Resolution 1426 (2005) in breach of the Assembly's responsibilities under Article 22 of the Convention to consider a list, or a name on such list, on the basis of the criteria listed in Article 21 of the Convention?

Procedure

The request for an advisory opinion was assigned to the Grand Chamber of the Court.

Written comments were submitted by the Assembly and the governments of 13 countries (Austria, the Czech Republic, France, Georgia, Malta, Monaco, Portugal, Slovakia, Slovenia, Spain, Switzerland, Turkey and the United Kingdom). Thirty-seven governments also commented within the time-limit on whether their country had rules designed to ensure the presence of women (or, of the under-represented gender) within their supreme and/or constitutional courts.

The decision was given by a Grand Chamber of 17 judges.

Summary of the decision

The Court found that the first question concerned the rights and obligations of the Parliamentary Assembly in the procedure for electing judges, as derived from Article 22 in particular and from the Convention system in general. Accordingly, whatever its implications, it was of a legal character and as such fell within the scope of the Court's jurisdiction under Article 47 §1 of the Convention. The Court then considered that in view of its reply to the first question (below), it was not necessary to answer the second question.

In relation to the first question, the Court observed that there was nothing to prevent contracting parties from, for instance, attempting to achieve a certain balance between the sexes or between different branches of the legal profession on a particular list or within the Court. Nevertheless, while considerations of that kind were legitimate, they could not release the country concerned from its obligation to present a list of candidates each of whom fulfilled all the moral qualities and professional qualifications laid down in Article 21 §1. For the Court, it was vital to its authority and the quality of its decisions that it be made up of members of the highest legal and moral standing.

Furthermore, while it was clear that the Assembly was required to elect judges on the basis laid down by Article 22, it also had a certain latitude when it came to establishing the procedure for the election of judges, although it was bound first and foremost by Article 21.

It was obvious too that the Assembly might take account of additional criteria which it considered relevant for the purposes of choosing between the candidates put forward and might, as it had done in a bid to ensure transparency and foreseeability, incorporate those criteria in its resolutions and recommendations. Indeed, neither Article 22 nor the Convention system set any explicit limits on the criteria which could be employed by the Assembly in choosing between the candidates put forward.

The Court noted that the inclusion of a member of the under-represented sex was not the only criterion applied by the Assembly which was not explicitly laid down in Article 21 §1. The Assembly also required candidates to have "sufficient knowledge of at least one of the two official languages" of the Council of Europe. A sufficient knowledge of at least one of the official languages was necessary in order to make a useful contribution to the Court's work, given that the Court worked only in those two languages. The criterion relating to a candidate's sex lacked an implicit link with the general criteria concerning judges' qualifications laid down in Article 21 §1.

The Court observed that the criterion in question derived from a gender-equality policy which reflected the importance of equality between the sexes in contemporary society and the role played by the prohibition of discrimination and by positive discrimination measures in attaining that objective. There was far-reaching consensus as to the need to promote gender balance at national level and in the national and international public service, including the judiciary. Although only a minority of countries had adopted specific rules aimed at ensuring a certain balance between the sexes in the courts, a great many of them sought to promote such a balance through appropriate policies. The same trend could be observed in the international courts and was also reflected in the European Court of Human Right's own Rules of Court.

However, it was essential that such a policy did not make it more difficult for the countries which had ratified the Convention to put forward candidates who also satisfied all the requirements of Article 21 §1, which were to be given primary consideration. The principle of nominating candidates of the under-represented sex at the Court was generally accepted, but not without provision being made for derogations from the rule. The obligation was therefore one of means, not of outcome.

Such a situation might arise in particular for a country where the number of people working in the legal profession was small. Those states had not to be placed in a position where, in order to fulfil the criterion concerning the sex of candidates, they could only nominate candidates who satisfied the criteria of Article 21 §1 if they chose non-nationals. It would be unacceptable for a state to be forced to nominate non-national candidates solely to satisfy the criterion relating to a candidate's sex, which was not enshrined in the Convention. Furthermore, it would be liable to produce a situation where the elected candidate did not have the same knowledge of the legal system, language or indeed cultural and other traditions of the country concerned as a candidate from that country. Indeed, the main reason why one of the judges hearing a case had to be the "national judge" was precisely to ensure that the judges hearing the case were fully acquainted with the relevant domestic law of the country concerned and the context in which it was set. It would therefore be incompatible with the Convention to require a country to nominate a candidate of a different nationality solely to achieve gender balance.

Accordingly, although the aim of ensuring a certain mix in the composition of the lists of candidates was legitimate and generally accepted, it might not be pursued without provision being made for some exceptions designed to enable each country to choose national candidates who satisfied all the re-

quirements of Article 21 §1. The precise nature and scope of such exceptions still had to be defined.

The Court concluded that, in not allowing any exceptions to the rule that the under-represented sex must be represented, the current practice of the Assembly was not compatible with the Convention: where the country concerned had taken all the necessary and appropriate steps with a view to ensuring that the list contained a candidate of the under-represented sex, but without success, and especially where it had followed the Assembly's recommendations advocating an open and transparent procedure involving a call for candidates, the Assembly might not reject the list in question on the sole ground that no such candidate featured on it. Accordingly, exceptions to the principle that lists must contain a candidate of the under-represented sex should be defined as soon as possible.

Grand Chamber judgments

The Grand Chamber (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 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.

Kafkaris v. Cyprus

Articles 3, 5 §1, 14 (no violation), Article 7 (violation)

Judgment of 12 February 2008. Concerns: complaint that changes in prison regulations and domestic law meant that the applicant's prison sentence was retroactively increased from 20 years to an indefinite period.

Facts and complaints

The applicant is Panayiotis Agapiou Panayi, alias Kafkaris, a Cypriot national, who was born in 1946. He is currently serving a mandatory sentence of life imprisonment in Nicosia Central Prison.

The case concerns, in particular, the applicant's complaint that changes in prison regulations and domestic law meant that his prison sentence was retroactively increased from 20 years to an indefinite period.

On 9 March 1989 the applicant was found guilty by Limassol Assize Court on three counts of premeditated murder under the Criminal Code (Cap. 154). The next day he was sentenced to life imprisonment on each count. The applicant had planted and detonated a bomb in a car, killing its passengers, a man and his two young children, aged 11 and 13.

During the hearing before Limassol Assize Court concerning the sentencing of the applicant, the prosecution invited the court to examine the meaning of the term "life imprisonment" in the Criminal Code and, in particular, to clarify whether it entailed imprisonment of the convicted person for the rest of his life or just for a period of 20 years, as provided by the Prison (General) Regulations of 1981 and the Prison (General) (Amending) Regulations of 1987 (the Regulations), adopted under section 4 of the Prison Discipline Law (Cap 286).

Limassol Assize Court held that the term "life imprisonment" used in the Criminal Code meant imprisonment for the remainder of the life of the convicted person.

However, the day the applicant was admitted to prison, he was given written notice by the prison authorities that the date set for his release was 16 July 2002, subject to his good conduct and industry during detention. After committing a disciplinary offence, his release was postponed to 2 November 2002.

The applicant's appeal against his conviction was dismissed on 21 May 1990 by the Supreme Court.

On 9 October 1992 the Supreme Court declared the prison regulations in question to be unconstitutional and *ultra vires* and, on 3 May 1996, the Prison Law of 1996 was enacted, repealing and replacing the Prison Discipline Law. Section 12 of Prison Law of 1996 provided for the remission of sentences for good conduct or industry, except for life prisoners.

The applicant was not released on 2 November 2002. Consequently, on 8 January 2004, he submitted a *habeas corpus* application to the Supreme Court challenging the lawfulness of his detention, which was dismissed. He appealed unsuccessfully.

The application was lodged with the European Court of Human Rights on 3 June 2004 and was declared admissable on 11 April 2006. On 31 August 2006 the chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 30 fof the Convention. A public hearing took place at the Human Rights Building, Strasbourg, on 24 January 2007.

The applicant complained:

- that his mandatory life sentence amounted to an irreducible term of imprisonment;
- that his continuous detention beyond the date set for his release by the prison authorities was unlawful;
- that it had left him in a prolonged state of distress and uncertainty over his future;
- and that he had been subjected to an unforeseeable prolongation of his term of imprisonment from a definite 20-year sentence to an indeterminate term for the remainder of his life.

He relied on Articles 3, 5 and 7.

He further complained under Article 14 that, while most other inmates serving life sentences had been released having served their 20-year sentence, he remained the longest-serving life prisoner and, as a life prisoner, that he was excluded

from the possibility of any remission to his sentence under Section 12 of the Prison Law of 1996.

Decision of the Court

Article 3

The Court observed that the prospect of release for prisoners serving life sentences in Cyprus was limited; any adjustment of a life sentence being only within the president's discretion subject to the agreement of the attorney-general. However, the Court did not find that life sentences in Cyprus were irreducible with no possibility of release. Nine life prisoners were released in 1993 and another two in 1997 and 2005. All of those prisoners, apart from one, had been serving mandatory life sentences. In addition, a life prisoner could benefit from the relevant provisions at any time without having to serve a minimum period of imprisonment. The Court concluded that the applicant could not claim that he was deprived of any prospect of release and that his continued detention as such, even though long, constituted inhuman or degrading treatment. However, the Court was conscious of the shortcomings in the procedure currently in place and noted the recent steps taken by the government for the introduction of reforms.

The Court further found that, although the change in the applicable legislation and consequent frustration of his expectations of release must have caused the applicant some anxiety, it did not consider that, in the circumstances, it attained the level of severity required to fall within the scope of Article 3. It could not be said that the applicant could justifiably harbour genuine expectations that he would be released in November 2002. Apart from the clear sentence passed by the assize court in 1989, the relevant changes in domestic law happened within a period of approximately four years (1992-1996), about six years before the release date given by the prison authorities to the applicant came up. Therefore, any feelings of hope on the part of the applicant linked to the prospect of early release had to have diminished as it became clear, with the changes in domestic law, that he would be serving the life sentence passed on him by the assize court.

It was true that a life sentence such as the one imposed on and served by the applicant without a minimum term necessarily entailed anxiety and uncertainty related to prison life but that was inherent in the nature of the sentence imposed and, considering the prospects for release under the current system, did not warrant a conclusion of inhuman and degrading treatment. Accordingly, the Court found no violation of Article 3.

Article 5 §1

The Court observed that, in imposing the life sentence, the assize court had made it quite plain that the applicant had been sentenced to life imprisonment for the remainder of his life as provided by the criminal code and not for a period of 20 years. The Court considered therefore that the fact that the applicant was subsequently given notice by the prison authorities of a conditional release date could not, and did not, affect the sentence of life imprisonment passed or render his detention beyond 2 November 2002 unlawful. Finding that there was a clear and sufficient causal connection between the conviction and the applicant's continuing detention, the Court found no violation of Article 5 §1.

Article 5 §4

The Court held unanimously that the complaint under Article 5 §4 fell outside the scope of its examination.

Article 7

Quality of the law

The Court noted that the legal basis for the applicant's conviction and sentence was the criminal law applicable at the material time and that his sentence corresponded to that prescribed in the relevant provisions of the criminal code. It then examined whether domestic law at the material time determining what the "penalty" of life imprisonment actually entailed satisfied the requirements of accessibility and foreseeability.

Although at the time the applicant committed the offence it was clearly provided by the Criminal Code that the offence of premeditated murder carried the penalty of life imprisonment, it was equally clear that both the executive and the administrative authorities were working on the premise that that penalty was tantamount to 20 years' imprisonment. The prison authorities were applying the prison regulations, based on the Prison Discipline Law (Cap. 286), under which all prisoners, including life prisoners, were eligible for remission of their sentence on the ground of good conduct and industry. For those purposes, Regulation 2 defined life imprisonment as meaning imprisonment for 20 years. As admitted by the government, that was understood at the time by the executive and the administrative authorities, including the prison service, as imposing a maximum period of 20 years to be served by any person who had been sentenced to life imprisonment.

The Court concluded that, at the time the applicant committed the offence, Cypriot law taken as a whole was not formulated with sufficient precision, so as to enable the applicant to discern, even with appropriate advice, to a degree that was reasonable in the circumstances, the scope of the penalty of life imprisonment and the manner of its execution. Accordingly, there had been a violation of Article 7.

Retrospective imposition of a heavier penalty and changes in prison law

The Court did not accept the applicant's argument that a heavier penalty was retroactively imposed on him since, in view of the substantive provisions of the Criminal Code, it could not be said that at the relevant time the penalty of a life sentence could clearly be taken to have amounted to 20 years' imprisonment.

Concerning the change in prison law, the Court observed that the applicant, as a life prisoner, no longer had a right to have his sentence remitted. That matter related to the execution of the sentence as opposed to the "penalty" imposed on him, which remained that of life imprisonment.

Although the changes in prison legislation and in the conditions of release might have rendered the applicant's imprisonment effectively harsher, those changes could not be construed as imposing a heavier "penalty" than that imposed by the trial court. Issues relating to release policies, the manner of their implementation and the reasoning behind them were part of criminal policy to be determined at national level. Accordingly, there had been no violation of Article 7 concerning the alleged retrospective imposition of a heavier penalty with regard to the applicant's sentence and the changes in prison law exempting life prisoners from the possibility of remission of their sentence.

Article 14

Concerning the alleged discrimination between the applicant and other life prisoners released since 1993, the Court observed that the life prisoners referred to were all released following the commutation and remission of their sentences by the president of the republic in the exercise of his wide prerogative and discretionary power under Article 53 (4) of the constitution, which was applied on a case-to-case basis. Furthermore, in the applicant's case, Limassol Assize Court had expressly addressed the proper interpretation of a life sentence and passed a sentence of imprisonment for the remainder of the applicant's life. The Court concluded, particularly bearing in mind the wide variety of factors taken into account in the exercise of the president's discretionary powers, such as the nature of the offence and the public's confidence in the criminal justice system, it could not be said that the exercise of that discretion gave rise to an issue under Article 14.

Concerning the alleged discrimination between the applicant, as a life prisoner, and other prisoners, the Court considered that the applicant could not claim to be in an analogous or relevantly similar position to other prisoners who were not serving life sentences, given the nature of a life sentence.

The Court concluded, therefore, that there had not been a violation of Article 14 in conjunction with Articles 3, 5 and 7.

Judge Bratza expressed a concurring opinion; Judge Tulkens joined by Judges Cabral Barreto, Fura-Sandström and Spielmann expressed a partly dissenting opinion; Judge Loucaides joined by Judge Jočienė expressed a partly dissenting opinion, and Judge Borrego Borrego expressed a partly dissenting opinion.

D.H. and others v. the Czech Republic

Article 14 (read in conjunction with Article 2 of Protocol No. 1): violation

Judgment of 13 November 2007. Concerns: assignation of applicants to special schools as a result of their Roma origin.

Facts and complaints

The applicants, 18 Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region (Czech Republic), alleged that, as a result of their Roma origin, they were assigned to special schools.

Between 1996 and 1999 they were placed in special schools (*zvláštní školy*) for children with learning difficulties who were unable to follow the ordinary school curriculum. Under the law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests to measure the child's intellectual capacity carried out in an educational psychology centre, and required the consent of the child's legal representative.

Fourteen of the applicants sought a review of their situation by the Ostrava Education Authority (*školský úřad*) on the grounds that the tests were unreliable and their parents had not been sufficiently informed of the consequences of giving consent. The authority found that the placements had been made in accordance with the statutory rules.

Tweve of the applicants appealed to the constitutional court. They argued that their placement in special schools amounted to a general practice that had resulted in segregation and racial discrimination through the coexistence of two autonomous educational systems, namely special schools for the Roma and "ordinary" primary schools for the majority of the population. Their appeal was dismissed on 20 October 1999.

The application was lodged with the European Court of Human Rights on 18 April 2000 and declared partly admissible on 1 March 2005 following a hearing before a Chamber.

The applicants complained that, on account of their Roma origin, they had suffered discrimination in the enjoyment of their right to education.

On 7 February 2006 the Chamber held by six votes to one that there had been no violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

On 5 May 2006 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 3 July 2006 the panel of the Grand Chamber accepted that request.

The applicants and the government each filed written observations on the merits. In addition, third-party comments were received from various non-governmental organisations, namely the International Step by Step Association, the Roma Education Fund and the European Early Childhood Research Association; Interights and Human Rights Watch; Minority Rights Group International, the European Network Against Racism and the European Roma Information Office; and the Fédération internationale des ligues des droits de l'Homme (International Federation for Human Rights – FIDH), each of which had been given leave by the president to intervene in the written procedure (Article 36 §2 of the Convention and Rule 44 §2).

A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 17 January 2007.

Decision of the Court

Article 14 read in conjunction with Article 2 of Protocol No. 1

The chamber had held that there had been no violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No 1. In its view, the government had established that the system of special schools in the Czech Republic had not been introduced solely to cater for Roma children and that considerable efforts had been made in those schools to help certain categories of pupils to acquire a basic education. In that connection, the chamber had observed that the rules governing children's placement in special schools did not refer to the pupils' ethnic origin, but pursued the legitimate aim of adapting the education system to the needs, aptitudes and disabilities of the children.

The Grand Chamber began by noting that as a result of their turbulent history and constant uprooting the Roma had become a specific type of disadvantaged and vulnerable minority. They therefore required special protection, including in the sphere of education.

Presumption of indirect discrimination

The applicants maintained that by being placed in special schools they had, without objective and reasonable justification, been treated less favourably than non-Roma children in a comparable situation. In support of that claim they had submitted statistical data based on information provided by head teachers that showed that more than half the pupils in special schools in Ostrava were from the Roma community.

The Court noted that in the reports they had submitted in accordance with the Framework Convention for the Protection of National Minorities, the Czech authorities had accepted that in 1999 Roma pupils made up between 80% and 90% of the total number of pupils in some special schools and that in 2004 "large numbers" of Roma children were still being placed in special schools. Furthermore, according to a report published by ECRI (European Commission against Racism and Intolerance) in 2000, Roma children were "vastly overrepresented" in special schools.

The Court observed that, even if the exact percentage of Roma children in special schools at the relevant time remained difficult to establish, their number was disproportionately high and Roma pupils formed a majority of the pupils in special schools.

The evidence submitted by the applicants could be regarded as sufficiently reliable and significant to give rise to a strong presumption of indirect discrimination so that the burden of proof shifted to the government to show that the difference in the impact of the legislation was the result of objective factors unrelated to ethnic origin.

Objective and reasonable justification

The Court accepted that the Czech Republic's decision to retain the special-school system had been motivated by the desire to find a solution for children with special educational needs. However, it shared the disquiet of the other Council of Europe institutions who had expressed concerns about the more basic curriculum followed in these schools and, in particular, the segregation the system caused.

As regards the assessments, it was common ground that all the children examined had sat the same tests, irrespective of their ethnic origin. The Czech authorities had themselves acknowledged in 1999 that "Romany children with average or above-average intellect" were often placed in schools on the basis of the results of psychological tests and that the tests were conceived for the majority population and did not take Roma specifics into consideration.

The Court considered that there was a danger that the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them. In that connection, it observed, amongst other things, that ECRI had noted that the channelling of Roma children to special schools for those with learning difficulties was reportedly often "quasi-automatic" and needed to be examined to ensure that any testing used was "fair" and that the true abilities of each child were "properly evaluated" while the Council of Europe Commissioner for Human Rights had reported that Roma children were frequently placed in classes for children with special needs "without an adequate psychological or pedagogical assessment, the real criteria clearly being their ethnic origin". In those circumstances, the results of the tests could not serve as justification for the impugned difference in treatment.

As for parental consent, which the Czech Government had considered to be the decisive factor, the Court was not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent. In any event, in view of the fundamental importance of the prohibition of racial discrimination, the Grand Chamber considered that no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest.

In its conclusion, as was apparent from the documentation produced by ECRI and the report of the Commissioner for Human Rights of the Council of Europe, the Czech Republic was not alone in having encountered difficulties in providing schooling for Roma children: other European states had had similar difficulties. The Court was pleased to note that, unlike some countries, the Czech Republic had sought to tackle the problem. However, while recognising the efforts the Czech authorities had made to ensure that Roma children received schooling and the difficulties they had been confronted with, the Court was not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. In that connection, it noted with interest that new legislation in the Czech Republic had abolished special schools and provided for children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.

Since it had been established that the relevant Czech legislation at the relevant time had had a disproportionately prejudicial effect on the Roma community, the applicants as members of that community had necessarily suffered the same discriminatory treatment. Consequently, there had been a violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

Judges Zupančič, Jungwiert, Borrego Borrego and Šikuta expressed dissenting opinions.

Stoll v. Switzerland

Judgment of 10 December 2007. Concerns: compensation due to Holocaust victims for unclaimed assets.

Article 10 (no violation)

Facts and complaints

Martin Stoll, a Swiss national who lives in Zurich (Switzerland), is a journalist.

The case concerns the sentencing of the applicant to payment of a fine for having disclosed in the press a confidential report by the Swiss ambassador to the United States relating to the strategy to be adopted by the Swiss Government in the negotiations between, among others, the World Jewish Congress and Swiss banks on the subject of com-

pensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts.

In December 1996 Carlo Jagmetti, who was then Swiss ambassador to the United States, drew up a "strategy paper", classified as "confidential", in the course of negotiations between, among others, the World Jewish Congress and Swiss banks concerning compensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts.

The strategy paper was sent to the person in charge of the matter at the Federal Department of Foreign Affairs in Berne. Copies were sent to 19 other persons in the Swiss Government and the federal authorities and to the Swiss diplomatic missions in Tel Aviv, New York, London, Paris and Bonn. The applicant obtained a copy, probably as a result of a breach of official secrecy by a person whose identity remains unknown.

On 26 January 1997 the Zurich Sunday newspaper the *Sonntags-Zeitung* published, among other things, two articles by the applicant under the headings "Ambassador Jagmetti insults the Jews" and "The ambassador in bathrobe and climbing boots puts his foot in it". The next day the Zurich daily the *Tages-Anzeiger* reproduced extensive extracts from the strategy paper; subsequently, the newspaper the *Nouveau Quotidien* also published extracts from the report.

On 22 January 1999 the Zurich District Court sentenced the applicant to a fine of 800 Swiss francs (approximately 476 euros) for publishing "secret official deliberations" within the meaning of Article 293 of the Criminal Code. The appeals lodged by the applicant were dismissed at final instance by the Federal Court on 5 December 2000.

The Swiss Press Council, to which the case had been referred in the meantime by the Swiss Federal Council, accepted that publication had been legitimate given the importance of the public debate concerning the assets of Holocaust victims. However, in an opinion dated 4 March 1997, it found that by thus shortening the analysis and failing to place the report sufficiently in context, the applicant had irresponsibly made the ambassador's remarks appear sensational and shocking.

The applicant submitted that his conviction for publishing "secret official deliberations" had infringed his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 14 May 2001 and declared admissible on 3 May 2005.

In its Chamber judgment of 25 April 2006 the Court held, by four votes to three, that there had been a violation of Article 10. At the request of the Swiss Government, the case was referred to the Grand Chamber under Article 43 (referral to the Grand Chamber).

The Court granted the French and Slovakian Governments leave to take part in the proceedings as third-party interveners, in accordance with Article 36 §2 of the Convention (third party intervention) and Rule 61 §3 of the Rules of Court.

A public hearing was held on 7 February 2007.

Decision of the Court

Article 10

The Court considered that the applicant's conviction amounted to "interference" with the exercise of his right to freedom of expression. The interference was provided for by the Swiss Criminal Code and had pursued the legitimate aim of preventing the "disclosure of information received in confidence".

The main question to be examined by the Court, therefore, was whether the interference in question had been "necessary in a democratic society". In that connection the Court reiterated at the outset that Article 10 was applicable to the dissemination by journalists of confidential or secret information.

The Court noted that the issue of unclaimed assets had not only involved substantial financial interests, but had also had a significant moral dimension which meant that it was of interest even to the wider international community. Consequently, in assessing whether the measure taken by the Swiss authorities had been necessary, the Court would take account of how the public interests at stake had been weighed up: the interest of readers in being informed on a topical issue and the interest of the authorities in ensuring a positive and satisfactory outcome to the diplomatic negotiations being conducted.

The Court took the view that the applicant's articles had been capable of contributing to the public debate on the unclaimed assets, which were the subject of lively discussion in Switzerland at the time. The public therefore had an interest in publication of the articles.

As to the interests which the Swiss authorities sought to protect, the Court considered that it was vital to diplomatic services and the smooth functioning of international relations for diplomats to be able to exchange confidential or secret information. However, the confidentiality of diplomatic reports could not be protected at any price; in that connection, the content of the report and the potential threat posed by its publication had to be taken into account.

In the applicant's case the Court considered that the disclosure at that point in time of the extracts from the ambassador's report had been liable to have negative repercussions on the smooth progress of the negotiations in which Switzerland was engaged, on account not just of the ambassador's remarks themselves but of the way in which they had been presented by the applicant. Hence the disclosure – albeit partial – of the ambassador's report had been capable of undermining the climate of discretion necessary to the successful conduct of diplomatic relations in general and of having negative repercussions on the negotiations being conducted by Switzerland in particular. The Court therefore concluded that, given that they had been published at a particularly delicate juncture, Mr Stoll's articles had been liable to cause considerable damage to the interests of the Swiss authorities.

As to the applicant's conduct, the Court took the view that, as a journalist, he could not have been unaware that disclosure of the report was punishable under the Criminal Code. It further considered that the content of the applicant's articles had been clearly reductive and truncated and the vocabulary used had tended to suggest that the ambassador's remarks had been anti-Semitic. Hence, the applicant had, in capricious fashion, started a rumour which had undoubtedly contributed to the ambassador's resignation and which related directly to one of the very phenomena at the root of the unclaimed assets issue, namely the atrocities committed against the Jewish community during the Second World War. The Court reiterated the need to deal firmly with allegations and/or insinuations of that nature.

The Court noted that the way in which the impugned articles had

been edited, with sensationalist headings, seemed hardly fitting for a subject as important and serious as that of the unclaimed funds. It also observed the inaccurate nature of the articles, which were liable to mislead readers.

In these circumstances, and bearing in mind that one of the articles had been placed on the front page of a Swiss weekly newspaper with a large circulation, the Court shared the opinion of the Swiss Government and the Press Council that the applicant's chief intention had not been to inform the public on a topic of general interest but to make Ambassador Jagmetti's report the subject of needless scandal. The Court took the view that the truncated and reductive form of the articles in question, which was liable to mislead the reader as to the ambassador's personality and abilities, had considerably detracted from the importance of their contribution to the public debate protected by Article 10. Lastly, the Court considered that the fine imposed on the applicant had not been disproportionate to the aim pursued.

Accordingly, the Court held that there had been no violation of Article 10.

Judge Ziemele expressed a concurring opinion and Judge Zagrebelsky, joined by Judges Lorenzen, Fura-Sandström, Jaeger and Popović, expressed a dissenting opinion.

Saadi v. the United Kingdom

Judgment of 29 January 2008. Concerns: detention in a special facility for asylum seekers

Article 5 §1 (no violation); Article 5 §2 (violation)

Facts and complaints

The applicant, Shayan Baram Saadi, is an Iraqi Kurd, born in 1976, who now lives and works as a doctor in London.

The case concerned his detention for seven days in a special facility for asylum-seekers.

Mr Saadi, a member of the Iraqi Workers' Communist Party, fled from Iraq when, in the course of his duties as a hospital doctor, he treated and facilitated the escape of three fellow party members who had been injured in an attack.

He arrived at London Heathrow Airport on 30 December 2000 where he immediately claimed asylum. The immigration officer contacted Oakington Reception Centre, a new detention facility for asylum seekers considered unlikely to abscond and to whom a "fast-track" procedure could be applied.

As there was no available space at Oakington, the applicant was initially granted "temporary admission". He was taken into detention at Oakington on 2 January 2001.

The applicant was initially given a standard form which did not make clear that the reason for his detention was that the fast-track procedure was being applied to his asylum claim.

On 5 January 2001 the applicant's representative telephoned the Chief Immigration Officer and was told that the reason for the detention was that the applicant was an Iraqi who met the criteria to be detained at Oakington.

The applicant's asylum claim was initially refused on 8 January 2001 and he was formally refused leave to enter the United Kingdom. He was released the next day. He appealed against the Home Office decision and was subsequently granted asylum on 14 January 2003.

The applicant, together with three other Kurdish Iraqi detainees who had been held at Oakington, applied for permission for judicial review of their detention claiming that it was unlawful under domestic law and under Article 5 (right to liberty and security) of the European Convention on Human Rights. Both the Court of Appeal and the House of Lords held that the detention was lawful in domestic law. In connection with Article 5 they each held that the detention was to decide whether to authorise entry and that the detention did not have to be "necessary" to be compatible with Article 5. They further maintained that the detention was "to prevent unauthorised entry" and that the measure was not disproportionate. The House of Lords also found that, given the high number of interviews every day (up to 150), detention was necessary for the speed and efficiency of the system.

The applicant complained about his detention at Oakington and about the fact that he was given no reasons for it. He relied on Article 5 §§1 and 2 of the Convention.

The application was lodged with the European Court of Human Rights on 18 April 2003 and declared admissible on 27 September 2005.

In its Chamber judgment of 11 July 2006, the Court held, by four votes to three, that there had been no violation of Article 5 §1, and, unanimously, that there had been a violation of Article 5 §2 and that it was not necessary to consider separately the applicant's complaint under Article 14 (prohibition of discrimination).

On 10 October 2006 the applicant requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 11 December 2006 the panel of the Grand Chamber accepted that request.

Third-party comments were received jointly from the Centre for Advice on Individual Rights in Europe (the AIRE Centre), the European Council on Refugees and Exiles (ECRE) and Liberty and from the United Nations High Commissioner for Refugees (UNHCR), which had been given leave by the President to intervene in the written procedure, under Article 36 §2 of the Convention and Rule 44 §2 of the Rules of Court.

A public hearing took place in the Human Rights Building, Strasbourg, on 16 May 2007.

Decision of the Court

Article 5 §1

The Court noted that, while the general rule set out in Article 5 §1 was that everyone had the right to liberty, Article 5 §1 (f) provided an exception, permitting states to control the liberty of aliens in an immigration context. States were permitted to detain would-be immigrants who had applied for permission to enter, whether by way of asylum or not.

The Grand Chamber considered that, until a state had "authorised" entry, it was "unauthorised" and the detention of a person who wished to enter the country concerned and who needed but did not yet have authorisation to do so, could be to "prevent his effecting an unauthorised entry". It did not accept that, as soon as an asylum seeker had surrendered himself to the immigration authorities, he was seeking to effect an "authorised" entry, with the result that detention could not be justified under the first part of

Article 5 §1 (f). Article 5 §1 (f) did not permit detention only of a person shown to be trying to evade entry restrictions. Such an interpretation would be too narrow and was also inconsistent with Conclusion No. 44 of the Executive Committee of the United Nations High Commissioner for Refugees' Programme, the UNHCR's Guidelines and a recommendation on the subject from the Council of Europe's Committee of Ministers, all of which envisaged the detention of asylum seekers in certain circumstances, for example while identity checks were taking place or when elements on which an asylum claim were based had to be determined.

However, such detention had to be compatible with the overall purpose of Article 5, to safeguard the right to liberty and ensure that no-one should be dispossessed of his or her liberty in an arbitrary fashion.

To avoid being branded as arbitrary, detention had to be carried out in good faith; it had to be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention had to be appropriate, bearing in mind that the measure was applicable not to those who had committed criminal offences but to aliens who, often fearing for their lives, had fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued.

The Court observed that the national courts at three levels had found that the applicant's detention had a basis in national law, and the applicant did not disagree. The Court recalled that the purpose of the Oakington detention regime was to ensure the speedy resolution of some 13 000 of the approximately 84 000 asylum applications made in the United Kingdom per year at that time. In order to achieve that objective it was necessary to schedule up to 150 interviews a day and even small delays might disrupt the entire programme. The applicant was selected for detention on the basis that his case was suited for fast-track processing.

In those circumstances, the Court found that the national authorities acted in good faith in detaining the applicant. Indeed the policy behind the creation of the Oakington regime was generally to benefit asylum-seekers, by dealing with their claims expeditiously. Moreover, since the purpose of the deprivation of liberty was to enable the authorities quickly and efficiently to determine the applicant's claim to asylum, his detention was closely connected to the purpose of preventing unauthorised entry.

The Court further noted that the Oakington Centre was specifically adapted to hold asylum seekers and that various facilities, for recreation, religious observance, medical care and, importantly, legal assistance, were provided. While there was, undoubtedly, an interference with the applicant's liberty and comfort, he made no complaint regarding the conditions in which he was held.

Finally, as regards the length of the detention, the Court recalled that the applicant was held for seven days at Oakington, and released the day after his claim to asylum had been refused at first instance. That period of detention could not be said to have exceeded that reasonably required for the purpose pursued.

The Court concluded that, given the difficult administrative problems with which the United Kingdom was confronted during the period in question, with an escalating flow of huge numbers of asylum-seekers, it was not incompatible with Article 5 §1(f) to detain the applicant for seven days in suitable conditions to enable his claim to asylum to be processed speedily. Moreover, the provision of a more efficient system of determining large numbers of asylum claims rendered unnecessary recourse to a broader and more extensive use of detention powers. It followed that there had been no violation of Article 5 §1.

Article 5 §2

The Grand Chamber noted that the first time the applicant was told of the real reason for his detention was through his representative on 5 January 2001, when the applicant had already been in detention for 76 hours. Assuming that the giving of oral reasons to a representative met the requirements of Article 5 §2, the Grand Chamber agreed with the Chamber that a delay of 76 hours in providing reasons for detention was not compatible with the requirement that such reasons be given "promptly", in violation of Article 5 §2.

Judges Rozakis, Tulkens, Kovler, Hajiyev, Spielmann and Hirvelä expressed a joint partly dissenting opinion.

Saadi v. Italy

Article 3 (violation)

Judgment of 28 February 2008. Concerns: possible deportation of the applicant to Tunisia

Facts and complaints

The applicant, Nassim Saadi, is a Tunisian national who was born in 1974 and lives in Milan (Italy). He is the father of an eight-year-old child whose mother is an Italian national.

The application concerns the possible deportation of the applicant to Tunisia, where he claims to have been sentenced in 2005, in his absence, to 20 years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism.

In December 2001 the applicant was issued with an Italian residence permit, valid until October 2002, "for family reasons".

In October 2002 Mr Saadi, who was suspected, among other things, of international terrorism, was arrested and placed in pretrial detention. He was accused of conspiracy to commit acts of violence (including attacks with explosive devices) in states other than Italy with the intention of arousing widespread terror; he was also accused of falsifying documents and receiving stolen goods.

On 9 May 2005 Milan Assize Court reclassified the offence of international terrorism, amending it to criminal conspiracy. It found Mr Saadi guilty of that offence and of forgery and receiving, and sentenced him to four years and six months' imprisonment. It acquitted the applicant of aiding and abetting clandestine immigration. Both the prosecution and the applicant appealed. On the date of the adoption of the Grand Chamber's judgment the proceedings were pending in the Italian courts.

On 11 May 2005 a military court in Tunis sentenced the applicant in his absence to 20 years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism.

Mr Saadi was released on 4 August 2006. On 8 August 2006, however, the minister of the interior ordered

him to be deported to Tunisia, applying the provisions of the law of 27 July 2005 on "urgent measures to combat international terrorism". The minister observed that "it was apparent from the documents in the file" that the applicant had played an "active role" in an organisation responsible for providing logistical and financial support to persons belonging to fundamentalist Islamist cells in Italy and abroad. The applicant was therefore placed in the Milan temporary holding centre pending his deportation.

Mr Saadi made a request for political asylum, which was rejected on 14 September 2006. On the same day he lodged an application with the European Court of Human Rights. Under Rule 39 of the Rules of Court (interim measures), the Court asked the Italian Government to stay the applicant's expulsion until further notice.

The maximum time allowed for the applicant's detention with a view to expulsion expired on 7 October 2006 and he was released on that date. However, on 6 October 2006 a new deportation order had been issued against him to France (the country from which he had arrived in Italy), with the result that he was immediately taken back to the Milan temporary holding centre. The applicant applied for a residence permit and requested refugee status, without success.

On 3 November 2006 the applicant was released, as fresh information made it clear that it would not be possible to deport him to France.

On 29 May 2007 the Italian embassy in Tunis asked the Tunisian Government to provide a copy of the alleged judgment convicting the applicant in Tunisia, as well as diplomatic assurances that, if the applicant were to be deported to Tunisia, he would not be subjected to treatment contrary to Article 3 of the European Convention on Human Rights, that he would have the right to have the proceedings reopened and that he would receive a fair trial. In reply, the Tunisian Minister of Foreign Affairs twice sent a note verbale to the Italian Embassy in July 2007 stating that he "accepted the transfer to Tunisia of Tunisians imprisoned abroad once their identity had been confirmed", that Tunisian legislation guaranteed prisoners' rights and that Tunisia had acceded to "the relevant international treaties and conventions".

The application was lodged with the European Court of Human Rights on 14 September 2006.

The applicant alleged that enforcement of his deportation to Tunisia would expose him to the risk of being subjected to torture or inhuman and degrading treatment contrary to Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment). Relying on Article 6 (right to a fair trial), he further complained of a flagrant denial of justice he had allegedly suffered in Tunisia on account of being convicted in his absence and by a military court. Under Article 8 (right to respect for private and family life), he alleged that his deportation to Tunisia would deprive his partner and his son of his presence and support. Lastly, relying on Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), he complained that his expulsion was neither necessary to protect public order nor grounded on reasons of national security.

On 29 March 2007 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 30 of the Convention.

The President granted leave to the United Kingdom Government to intervene in the proceedings as a third party.

A public hearing took place in the Human Rights Building, Strasbourg, on 11 July 2007.

Decision of the Court

Article 3

The Court observed that it could not underestimate the danger of terrorism and noted that states were facing considerable difficulties in protecting their communities from terrorist violence. However, that should not call into question the absolute nature of Article 3.

Contrary to the argument of the United Kingdom as third-party intervener, supported by the Italian Government, the Court considered that it was not possible to weigh the risk that a person might be subjected to ill-treatment against his dangerousness to the community if not sent back. The prospect that he might pose a serious threat to the community did not diminish in any way the risk that he might suffer harm if deported.

As regards the arguments that such a risk had to be established by solid evidence where an individual was a threat to national security, the Court observed that such an approach was not compatible with the absolute nature of Article 3. It amounted to asserting that, in the absence of evidence meeting a higher standard, protection of national security justified accepting more readily a risk of ill-treatment for the individual. The Court reaffirmed that for a forcible expulsion to be in breach of the Convention it was necessary – and sufficient – for substantial grounds to have been shown for believing that there was a risk that the applicant would be subjected to ill-treatment in the receiving country.

The Court referred to reports by Amnesty International and Human Rights Watch which described a disturbing situation in Tunisia and which were corroborated by a report from the US State Department. These reports mentioned numerous and regular cases of torture inflicted on persons accused under the 2003 Prevention of Terrorism Act. The practices reported – said to be often inflicted on persons in police custody – included hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns. It was reported that allegations of torture and ill-treatment were not investigated by the competent Tunisian authorities, that they refused to follow up complaints and that they regularly used confessions obtained under duress to secure convictions. The Court did not doubt the reliability of those reports and noted that the Italian Government had not adduced any evidence capable of rebutting such assertions.

The Court noted that in Italy Mr Saadi had been accused of international terrorism and that his conviction in Tunisia had been confirmed by an Amnesty International statement in June 2007. The applicant therefore belonged to the group at risk of ill-treatment. That being so, the Court considered that there were substantial grounds for believing that there was a real risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia.

The Court further noted that the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government in May 2007. Referring to the notes verbales from the Tunisian Ministry of Foreign Affairs, the Court emphasised that the existence of domestic laws and accession to

treaties were not sufficient to ensure adequate protection against the risk of ill-treatment where, as in the applicant's case, reliable sources had reported practices manifestly contrary to the principles of the Convention. Furthermore, even if the Tunisian authorities had given the diplomatic assurances, that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment.

Consequently, the Court found that the decision to deport Mr Saadi to Tunisia would breach Article 3 if it were enforced.

Article 6, Article 8 and Article 1 of Protocol No. 7

Recalling its finding concerning Article 3 and having no reason to doubt that the Italian Government would comply with its Grand Chamber judgment, the Court considered that it was not necessary to decide the question whether, in the event of expulsion to Tunisia, there would also be violations of Article 6, Article 8 and Article 1 of Protocol No. 7.

Judge Zupančič expressed a concurring opinion, as did Judge Myjer, joined by Judge Zagrebelsky.

E.B. v. France

Article 14 (read in conjunction with Article 8): violation

Judgment of 22 January 2008. Concerns: refusal by the French authorities to grant the applicant's request to adopt a child, allegedly on account of her sexual orientation.

Facts and complaints

E.B. is a French national aged 45. She is a nursery school teacher and has been living with another woman, R., who is a psychologist, since 1990.

The application concerns the refusal by the French authorities to grant the applicant's request to adopt a child, allegedly on account of her sexual orientation.

In February 1998 the applicant applied to the Jura Social Services Department for authorisation to adopt a child. During the adoption procedure she mentioned her homosexuality and her stable relationship with R.

On the basis of the reports drawn up by a social worker and a psychologist, the adoption board made a recommendation in November 1998 that the application be rejected. Shortly afterwards the president of the council for the *département* of the Jura gave a decision refusing authorisation. Following an appeal by the applicant, the president of the council for the département confirmed his refusal in March 1999. The reasons given for both decisions were the lack of "identificational points of reference" due to the absence of a paternal image or reference and the ambiguous nature of the applicant's partner's commitment to the adoption plan.

The applicant lodged an application with Besançon Administrative Court, which set both decisions of the president of the council for the département aside on 24 February 2000. The *département* of the Jura appealed against the judgment. Nancy Administrative Court of Appeal set aside the Administrative Court's judgment on 21 December 2000. It held that the refusal to grant the applicant authorisation had not been based on her choice of lifestyle and had not therefore given rise to a breach of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

The applicant appealed on points of law, arguing in particular that her application to adopt had been rejected on account of her sexual orientation. In a judgment of 5 June 2002, the *Conseil d'Etat* dismissed E.B.'s appeal on the ground, among other things, that the Administrative Court of Appeal had not based its decision on a position of principle regarding the applicant's sexual orientation, but had had regard to the needs and interests of an adopted child.

The application was lodged with the European Court of Human Rights on 2 December 2002.

Relying on Article 14 of the Convention, taken in conjunction with Article 8, the applicant alleged that at every stage of her application for authorisation to adopt she had suffered discriminatory treatment that had been based on her sexual orientation and had interfered with her right to respect for her private life.

The FIDH (Fédération Internationale des ligues des Droits de l'Homme), the ILGA-Europe (the European Region of the International Lesbian and Gay Association), the APGL (Association des Parents et futurs Parents Gays et Lesbiens) and the BAAF (British Agencies for Adoption and Fostering) were given leave to take part in the proceedings before the Chamber as third party interveners under Article 36 §2 of the Convention (third party intervention) and Rule 44 §2 of the Rules of Court.

On 19 September 2006, under Article 30 of the Convention, the Chamber relinquished jurisdiction in favour of the Grand Chamber.

A public hearing took place in the Human Rights building, Strasbourg, on 14 March 2007.

Decision of the Court

Admissibility

The Court reiterated at the outset that whilst French law and Article 8 did not guarantee either the right to found a family or the right to adopt (which neither party contested), the concept of "private life" within the meaning of Article 8 was a broad one which encompassed a certain number of rights.

With regard to an allegation of discrimination on grounds of the applicant's homosexuality, the Court also reiterated that Article 14 (prohibition of discrimination) had no independent existence. The application of Article 14 did not necessarily presuppose the violation of Article 8. It was sufficient for the facts of the case to fall "within the ambit" of that article. This was the case here since French legislation expressly granted single persons the right to apply for authorisation to adopt and established a procedure to that end.

Consequently, the Court considered that the state, which had gone beyond its obligations under Article 8 in creating such a right, could not then take discriminatory measures when it came to applying it. The applicant alleged that, in the exercise of her right under the domestic law, she had been discriminated against on the ground of her sexual orientation, which was a concept covered by Article 14.

Article 14 of the Convention, taken in conjunction with Article 8, was

therefore applicable in the present case.

Article 14 in conjunction with Article 8

After drawing a parallel with a previous case, the Court pointed out that the domestic administrative authorities, and then the courts that heard the applicant's appeal, had based their decision to reject her application for authorisation to adopt on two main grounds: the lack of a paternal referent in the applicant's household, and the attitude of the applicant's declared partner.

The Court found that the attitude of the applicant's partner was not without interest or relevance in assessing the application. In the Court's view, it was legitimate for the authorities to ensure that all safeguards were in place before a child was taken into a family, particularly where not one but two adults were found to be living in the household. In the Court's opinion, that ground had nothing to do with any consideration relating to the applicant's sexual orientation.

With regard to the ground relied on by the domestic authorities relating to the lack of a paternal referent in the household, the Court considered that this did not necessarily raise a problem in itself. However, in the present case it was permissible to question the merits of such a ground as the application had been made by a single person and not a couple. In the Court's view, that ground might therefore have led to an arbitrary refusal and have served as a pretext for rejecting the applicant's application on grounds of her homosexuality, and the government had been unable to prove that use of that ground at domestic level had not been leading to discrimination. Regarding the systematic reference to the lack of a "paternal referent", the Court disputed not the desirability of addressing the issue, but the importance attached to it by the domestic authorities in the context of adoption by a single person.

The fact that the applicant's homosexuality had featured to such an extent in the reasoning of the domestic authorities was significant despite the fact that the courts had considered that the refusal to grant her authorisation had not been based on that. Besides their considerations regarding the applicant's "lifestyle", they had above all confirmed the decision of the president of the council for the *département* recommending that the application for authorisation be refused and giving as reasons the two impugned grounds: the wording of certain opinions revealed that the applicant's homosexuality or, at other times, her status as a single person had been a determining factor in refusing her authorisation whereas the law made express provision for the right of single persons to apply for authorisation to adopt.

The Court considered that the reference to the applicant's homosexuality had been, if not explicit, at least implicit; the influence of her homosexuality on the assessment of her application had not only been established but had also been a decisive factor leading to the decision to refuse her authorisation to adopt.

Accordingly, it considered that the applicant had suffered a difference in treatment. If the reasons advanced for such a difference in treatment were based solely on considerations regarding the applicant's sexual orientation this amounted to discrimination under the Convention. In any event, particularly convincing and weighty reasons had to be made out in order to justify such a difference in treatment regarding rights falling within the ambit of Article 8. There were no such reasons in the present case because French law allowed single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual. Furthermore, the Civil Code remained silent as to the necessity of a referent of the other sex and, moreover, the applicant presented – in the terms of the judgment of the *Conseil d'Etat* – "undoubted personal qualities and an aptitude for bringing up children".

The Court noted that the applicant's situation had been assessed overall by the domestic authorities, who had not based their decision on one ground alone but on "all" the factors, and considered that the two main grounds had to be examined concurrently. Consequently, the illegitimacy of one of the grounds (lack of a paternal referent) had the effect of contaminating the entire decision.

The Court concluded that the decision refusing the applicant authorisation was incompatible with the Convention and that there had been a violation of Article 14 of the Convention, taken in conjunction with Article 8.

Judges Lorenzen and Jebens expressed a concurring opinion, and Judges Costa, Türmen, Ugrekhelidze, Jočienė, as well as Judges Zupančič, Loucaides and Mularoni, expressed dissenting opinions.

Ramanauskas v. Lithuania

Judgment of 5 February 2008. Concerns: unfair conviction following alleged incitement by the state authorities to commit a criminal offence.

Article 6 §1 (violation)

Facts and complaints

Kęstas Ramanauskas is a Lithuanian national who was born in 1966 and lives in Kaišiadorys (Lithuania). He worked as a prosecutor in the Kaišiadorys region.

The applicant submitted that in late 1998 and early 1999 he had been approached by AZ, a person previously unknown to him, through VS, a private acquaintance. AZ – who, in fact, worked for a special anti-corruption police unit of the Ministry of Interior (STT) – offered the applicant a bribe of 3 000 US dollars (USD) in return for a promise to obtain the acquittal of a third person. The applicant having initially refused, AZ subsequently reiterated the offer a number of times before the applicant agreed.

The government submitted that VS and AZ had approached the applicant and negotiated the conditions for the bribe on their own initiative, before the authorities were informed.

On an unspecified date AZ informed the STT that the applicant had agreed to accept a bribe and, on 27 January 1999, the deputy prosecutor general authorised VS and AZ to simulate criminal acts of bribery.

On 28 January 1999 the applicant accepted USD 1 500 from AZ. On 11 February 1999 AZ paid the applicant a further USD 1 000.

The same day, the prosecutor general brought a criminal case against the applicant for accepting a

bribe, under the then Article 282 of the Criminal Code.

On 29 August 2000 the applicant was convicted of accepting a bribe of USD 2 500 from AZ and sentenced to 19 months and six days' imprisonment. VS was not examined during the trial.

The judgment was upheld on appeal and the applicant's cassation appeal was dismissed by the supreme court which found that the evidence corroborated the applicant's guilt, which he himself had acknowledged. Once his guilt had been established, the question of whether there had been any outside influence on his intention to commit the offence had become irrelevant.

On 31 January 2002 the applicant was released on licence and, in January 2003, his conviction was expunged.

The application was lodged with the European Court of Human Rights on 17 August 2001 and declared admissible on 26 April 2005.

The applicant complained that he was incited to commit a criminal offence by the state authorities and that, as a result, he was unfairly convicted of bribery. He further alleged that the principle of equality of arms and the rights of the defence had been infringed in that, during the trial, neither the courts nor the parties had had the opportunity to examine VS. He relied on Article 6.

On 19 September 2006 the Chamber to which the case had originally been assigned relinquished jurisdiction in favour of the Grand Chamber under Article 30 of the Convention.

A public hearing took place in the Human Rights building, Strasbourg on 28 March 2007.

Decision of the Court

Article 6 §1

The Court considered that the national authorities could not be exempted from their responsibility for the actions of police officers by simply arguing that, although carrying out police duties, the officers were acting "in a private capacity". It was particularly important that the authorities should have assumed responsibility, as the initial phase of the operation took place in the absence of any legal framework or judicial authorisation. Furthermore, by authorising VS and AZ to simulate acts of bribery and by exempting AZ from all criminal responsibility, the authorities legitimised the preliminary phase *ex post facto* and made use of its results.

Moreover, no satisfactory explanation had been provided as to what reasons or personal motives could have led AZ to approach the applicant on his own initiative without bringing the matter to the attention of his superiors, or why he was not prosecuted for his acts during that preliminary phase. On that point, the government simply referred to the fact that all the relevant documents had been destroyed.

The actions complained of by the applicant were therefore attributable to the authorities.

The actions of VS and AZ also went beyond the mere passive investigation of existing criminal activity: there was no evidence that the applicant had committed any offences beforehand, in particular corruption-related offences; all the meetings between the applicant and AZ took place on the latter's initiative; and, the applicant seemed to have been subjected to blatant prompting on the part of VS and AZ to perform criminal acts, although there was no objective evidence to suggest that he had been intending to engage in such activity.

The Court observed that, throughout the proceedings, the applicant maintained that he had been incited to commit the offence. Accordingly, the domestic authorities and courts should at the very least have undertaken a thorough examination of whether the prosecuting authorities had incited the commission of a criminal act. To that end, they should have established in particular the reasons why the operation had been mounted, the extent of the police's involvement in the offence and the nature of any incitement or pressure to which the applicant had been subjected. That was especially important having regard to the fact that VS was never called as a witness in the case since he could not be traced. The applicant should have had the opportunity to state his case on each of those points.

However, the domestic authorities denied that there had been any police incitement and took no steps at judicial level to carry out a serious examination of the applicant's allegations. More specifically, they did not make any attempt to clarify the role played by the protagonists in the applicant's case, despite the fact that the applicant's conviction was based on the evidence obtained as a result of the police incitement of which he complained.

The Court noted the supreme court's finding that, once the applicant's guilt had been established, the question whether there had been any outside influence on his intention to commit the offence became irrelevant. However, a confession to an offence committed as a result of incitement could not eradicate either the incitement or its effects.

The Court concluded that the actions of AZ and VS had the effect of inciting the applicant to commit the offence of which he was convicted and that there was no indication that the offence would have been committed without their intervention. There had therefore been a violation of Article 6 §1.

Article 6 §3 (d)

The Court did not consider it necessary to carry out a separate examination under Article 6 §3 (d) of the applicant's complaint that the proceedings were unfair.

Guja v. Moldova

Article 10 (violation)

Judgment of 12 February 2008. Concerns: the applicant's dismissal from his job for giving a newspaper two letters received by the prosecutor general's office.

Facts and complaints

The applicant is Iacob Guja who was born in 1970 and lives in Chişinău. He was Head of the Press Department of the Moldovan Prosecutor General's Office.

The case concerned his dismissal for giving a newspaper two letters received by the prosecutor general's office.

In January 2003 the President of Moldova, Vladimir Voronin, visited the Centre for Fighting Economic

Crime and Corruption where there was a discussion on the problem of public officials placing pressure on law-enforcement bodies about pending criminal proceedings. The president stressed the need to fight corruption and called on law enforcement officers to disregard undue pressure from public officials. The president's statement was widely reported in the media.

A few days later the applicant gave the national newspaper *Jurnal de Chişinău* two letters received by the prosecutor general's office, neither of which bore any sign of being confidential.

The first – sent to the prosecutor eneral by the Deputy Speaker of Parliament, Vadim Mişin, on 21 June 2002 – was written on the Parliament's official headed paper. It asked the prosecutor general to "get personally involved in the case" of four police officers charged with illegal detention and ill-treatment of detainees. Mr Mişin stated that the police officers, who had asked for protection from prosecution, were part of one of the "best teams" in the ministry of internal affairs (the ministry) and were being prevented from working normally "as a result of the efforts of the employees of the prosecutor general's office". He also asked in that context whether the "Vice Prosecutor General fights crime or the police".

The second letter – from a vice-minister in the Ministry, to a deputy prosecutor general – was written on official Ministry headed paper. It revealed that one of the police officers mentioned in the first letter had previously been sentenced only to a fine (which he was exempted from paying) and that he had been re-employed by the Ministry, despite being convicted, among other things, of illegal detention endangering life or health or causing physical suffering and abuse of power accompanied by acts of violence, use of firearm or torture.

On 31 January 2003 the *Jurnal de Chişinău* published an article entitled: "Vadim Mişin intimidates the prosecutors" describing the president's anti-corruption drive and noting that abuse of power had become a widespread problem in Moldova. The paper cited Mr Mişin's apparent attempts to protect the four police officers as an example, printing photographs of the two letters.

The applicant was subsequently asked by the prosecutor general to explain how the two letters had come to be published by the press.

On 14 February 2003 the applicant admitted having given the two letters to the newspaper, stating that he had acted in line with the president's anti-corruption drive, in order to create a positive image of the prosecutor's office, and that the letters were not confidential.

Prosecutor I.D., who was suspected of having given the applicant the letters, was later dismissed.

On 17 February 2003 the applicant informed the prosecutor general that the letters had not been obtained from I.D. He also expressed concern about I.D.'s dismissal.

On 3 March 2003 the applicant was dismissed on the grounds, among other things, that the letters had been secret and that he had failed to consult the heads of other departments of the prosecutor general's office before handing over the letters, in breach of the press department's internal regulations.

On 21 March 2003 the applicant brought an unsuccessful civil action against the Prosecutor General's Office seeking reinstatement, arguing, among other things, that the letters were not classified as secret and that he had not been obliged to consult other heads of department.

The newspaper unsuccessfully requested that a criminal investigation be brought into the alleged interference by Mr Mişin with an ongoing criminal investigation.

On 14 March 2003 the paper published a follow-up article, entitled "Mişin has launched a crackdown on prosecutors". It stated that the prosecutor general had bowed to pressure from Mr Mişin to identify and punish those responsible for disclosing his note to the press and that the prosecutor general's office had been guided by Mr Mişin and advisers to the president concerning who should be employed or dismissed. In the previous year alone, 30 experienced prosecutors had been dismissed from Chişinău Prosecutor's Office. The article also gave an account of the applicant's dismissal as a result of pressure from Mr Mişin, and reported that the prosecuto general's office had received numerous letters from Mr Mişin and other high-ranking public officials in connection with ongoing criminal investigations.

The application was lodged with the European Court of Human Rights on 30 March 2004. On 20 February 2007 the Chamber relinquished jurisdiction in favour of the Grand Chamber.

The applicant complained about his dismissal from the Prosecutor General's Office for divulging two documents which disclosed interference by a high-ranking politician in pending criminal proceedings. He relied on Article 10.

Decision of the Court

Article 10

The Court noted that neither Moldovan legislation nor the internal regulations of the prosecutor general's office contained any provision concerning the reporting of irregularities by employees. It appeared, therefore, that there was no authority other than the applicant's superiors to which he could have reported his concerns and no prescribed procedure for reporting such matters. It also appeared that the disclosure concerned the conduct of a Deputy Speaker of Parliament, who was a high-ranking official, and that, despite having been aware of the situation for some six months, the prosecutor general had shown no sign of having any intention to respond, instead giving the impression that he had succumbed to political pressure. The Court therefore considered that, in the circumstances of the applicant's case, external reporting, even to a newspaper, could be justified.

Having examined the note which Mr Mişin wrote to the Prosecutor General, the Court could not accept that it was intended to do no more than transmit the police officers' letter to a competent body. Moreover, in view of the context and of the language employed by Mr Mişin, it could not be excluded that the effect of the note was to put pressure on the prosecutor general's office, irrespective of the inclusion of the statement that the case was to be "examined in strict compliance with the law". Against that background, the Court noted that the President of Moldova had campaigned against the practice of interference by politicians with the criminal-justice system and that the Moldovan media had widely covered the subject. It also noted the reports of international non-governmental organisations (the International Commission of Jurists, Freedom House, and the Open Justice Initiative) which had expressed concern about the breakdown of separation of powers and the lack of judicial independence in Moldova. The Court found that the letters disclosed by the applicant had a bearing on issues such as the separation of powers, improper conduct by a high-ranking politi-

cian and the government's attitude towards police brutality. There was no doubt that those were very important matters in a democratic society which the public had a legitimate interest in being informed about and which fell within the scope of political debate.

The Court further noted that it was common ground that the letters disclosed by the applicant to the *Jurnal de Chişinău* were genuine.

The Court considered that the public interest in the provision of information about undue pressure and wrongdoing within the Prosecutor's Office was so important in a democratic society that it outweighed the interest in maintaining public confidence in the Prosecutor General's Office. Open discussion of topics of public concern was essential to democracy and it was of great importance for members of the public not to be discouraged from voicing their opinions on such matters.

The Court found no reason to believe that the applicant was motivated by a desire for personal advantage, held any personal grievance against his employer or Mr Mişin, or that there was any other ulterior motive for his actions. He had therefore acted in good faith, in accordance with the statements by the president on the fight against corruption and trading in influence, in order to provide a positive image of the prosecutor general's office.

Finally, the Court noted that the heaviest sanction possible (dismissal) was imposed on the applicant, which not only had negative repercussions on the applicant's career, but could also have had a serious chilling effect on other employees from the prosecutor's office and discourage them from reporting any misconduct. In view of the media coverage of the applicant's case, the sanction could also have had a chilling effect on other civil servants and employees.

Given the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the applicant's case, the Court concluded that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not "necessary in a democratic society", in violation of Article 10.

Arvanitaki-Roboti and others v. Greece, Kakamoukas and others v. Greece

Article 6 §1 (violation)

Judgment of 15 February 2008. The cases both concern the excessive length of the proceedings to which the applicants had been parties.

Facts and complaints

Arvanitaki-Roboti and others

The 91 applicants, all Greek nationals, are members of the National Health System (*Εθνικό Σύστημα Υγείας*) in their capacity as doctors, and are employed by the public hospital "O Evangelismos".

In April 1994 they brought proceedings before the administrative courts seeking to have set aside the hospital's refusal to pay them an allowance for overtime work, set at 1/65th of their basic salary. On 16 December 1999 Athens Administrative Court of Appeal set aside the disputed administrative decision.

Ruling on an appeal by the hospital, the Supreme Administrative Court, in a judgment of 6 February 2003, overturned the administrative court's decision on the ground that the ministerial decree on which the applicants based their claim had not been published in due form and was therefore without foundation.

Kakamoukas and others

The applicants are 58 Greek nationals.

On 7 April 1925 the Greek State expropriated an area of land measuring 534 892 square metres, located on the outskirts of the town of Salonika (Mikra district), for the purpose of building an airport. This area now falls within the jurisdiction of Kalamaria Town Council. An expropriation award was fixed, but the state refused to pay it. The airport was ultimately constructed elsewhere.

In 1967 the state went ahead with expropriation of the disputed plots of land, with a view to building housing for workers. As the decision did not fulfil a public-interest aim, however, it was revoked in 1972. That same year the land in question was designated for the construction of a sports centre and, in 1987, the Salonika prefect modified the development plan (*ρυμοτομικό σχέδιο*) for the area, which he designated as a "green area" and "sports and leisure zone".

The applicants or their descendants brought proceedings before the administrative courts seeking to have the encumbrance affecting their land removed. By three judgments, delivered on 20 October 1997, the Supreme Administrative Court granted their request, noting in particular that, having failed for a long time to proceed with the expropriation of the land in question in furtherance of the project provided for in the development plan, the authorities were duty bound to lift the encumbrance on the disputed properties.

On 30 September 1998 Kalamaria Town Council lodged a third-party appeal against the judgments by the Supreme Administrative Court, an appeal which was declared inadmissible on 28 November 2001.

In 1999 the minister for the environment and public works modified the urban development plan of Kalamaria municipality in order to designate the land in question as the site for a sports and leisure centre. On 9 September 1999 the applicants or their ascendants applied to the Supreme Administrative Court seeking to have the above-mentioned decision set aside. Those proceedings are still pending before the Supreme Administrative Court.

The application in *Arvanitaki-Roboti and others* was lodged with the European Court of Human Rights on 4 August 2003 and the application in *Kakamoukas and others* was lodged on 17 October 2002.

The applicants in both cases complained, in particular, of the excessive length of the proceedings to which they had been parties.

In a chamber judgment of 18 May 2006, in *Arvanitaki-Roboti and others*, the Court held, unanimously, that there had been a viola-

tion of Article 6 §1 on account of the length of the proceedings and declared inadmissible the applicants' complaints of unfairness and of a breach of their right of property. In respect of non-pecuniary damage, the Court awarded each applicant EUR 7 000 except for one, to whom it awarded EUR 6 895.

In a Chamber judgment of 22 June 2006, in *Kakamoukas and others*, the Court held, unanimously, that there had been a violation of Article 6 §1 on account of the length of the proceedings and decided, by five votes to two, to award each applicant EUR 5 000 or EUR 8 000, as applicable, in respect of the non-pecuniary damage sustained, as this damage was not sufficiently compensated by the finding of a violation of the Convention.

Both cases were referred to the Grand Chamber at the Greek Government's request under Article 43 (referral to the Grand Chamber).

A public hearing took place in the Human Rights Building, Strasbourg, on 7 March 2007.

Decision of the Court

Article 6 §1

Arvanitaki-Roboti and others

The Court noted that the Greek Government's request that the case be referred to the Grand Chamber concerned only the Chamber's conclusions as to the application of Article 41 of the Convention. It held, however, that the complaint alleging a violation of Article 6 §1 of the Convention must also be examined.

For the reasons set out by the Chamber, the Grand Chamber found that there had been a violation of Article 6 §1.

Kakamoukas and others

The Greek Government argued that the Chamber's judgment ought not to have considered the appeal lodged by Kalmaria Town Council on 30 September 1998. The Court considered that those proceedings could have had a direct impact on the applicants' right to freely enjoy their property.

Consequently, the Grand Chamber found, for the reasons set out by the Chamber, that the length of the disputed proceedings has been excessive and that there had therefore been a violation of Article 6 §1.

Article 41

The Court considered that where common proceedings had been found to be excessively long, it had to take account of the manner in which the number of participants in such proceedings could have influenced the level of distress, inconvenience and uncertainty affecting each of them. It noted that, of all the elements that could be taken into consideration in assessing the non-pecuniary damage sustained in the instant case, some entailed a reduction, others an increase, in the amount to be awarded.

On the one hand, the Court observed that although the financial stakes for the applicants in the impugned proceedings were merely implicit, rather than direct, it was nevertheless the case that the applicants in *Arvanitaki-Roboti and others* had already brought actions for damages before the administrative courts, seeking the payment of sums varying between EUR 15 000 and 20 000. The same was true in the case of *Kakamoukas and others*, where, according to the applicants' own evaluation, the value of their property which remained blocked amounted to about EUR 24 000 000. The Court therefore considered that the protracted nature of the proceedings was such as to exacerbate the prejudice sustained by them.

On the other hand, the Court noted, in particular, that the 91 applicants in the case of *Arvanitaki-Roboti and others* and the 58 applicants in the case of *Kakamoukas and others* had acted together in bringing the proceedings in issue before the administrative courts in order to challenge the lawfulness of administrative decisions. In consequence, it considered that the shared objective of the impugned proceedings in the two cases was such as to alleviate the inconvenience and uncertainty experienced on account of their delay.

Taking these factors into account, the Court considered that the extension of the impugned proceedings beyond a "reasonable time" had undoubtedly caused the applicants non-pecuniary damage which would justify an award. It also took into consideration the number of applicants, the nature of the violation found and the need to determine the amounts in such a way that the overall sum was compatible with its case-law and was reasonable in the light of what was at stake in the proceedings in question.

Accordingly, in respect of the non-pecuniary damage sustained, the Court awarded EUR 3 500 to each applicant in the case of *Arvanitaki-Roboti and others*, and EUR 2 500 or EUR 4 000, as applicable, to the applicants in *Kakamoukas and others*.

With regard to the costs and expenses in the case of *Arvanitaki-Roboti and others*, and for the reasons already indicated by the Chamber, the Court awarded the applicants EUR 1 500 jointly.

In each case, Judge Bratza, joined by Judge Rozakis, expressed a concurring opinion, and Judges Zupančič and Zagrebelsky expressed a partly dissenting opinion.

Dickson v. the United Kingdom

Judgment of 4 December 2007. Concerns: refusal of access to artificial insemination facilities.

Article 8 (violation), Article 12

Facts and complaints

The applicants, Kirk and Lorraine Dickson, are British nationals who were born in 1972 and 1958 respectively. Mr Dickson is in Dovergate Prison, Uttoxeter (United Kingdom) and Mrs Dickson lives in Hull (United Kingdom).

In 1994 Mr Dickson was convicted of murder and sentenced to life imprisonment with a tariff (the minimum period to be served) of 15 years. He has no children. In 1999 he met Lorraine via a prison pen-pal network while she was also imprisoned. In 2001 they married. Mrs Dickson already had three children from other relationships.

The couple requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given Mr Dickson's earliest release date and Mrs Dickson's age. The secretary of state refused their application, explaining his general policy, according to which requests for artificial insemination by prisoners could only be granted in "exceptional circumstances". The grounds given for refusal were: that the applicants' relationship had never been tested in the normal environment of daily life; that insufficient provision had been made for

the welfare of any child that might be conceived; that mother and child would have had only a limited support network; and, that the child's father would not be present for an important part of her or his childhood. It was also considered that there would be legitimate public concern that the punitive and deterrent elements of Mr Dickson's sentence were being circumvented if he were allowed to father a child by artificial insemination while in prison.

The applicants appealed unsuccessfully.

The application was lodged with the Court on 23 November 2004.

The applicants complained about the refusal of access to artificial insemination facilities, relying on Article 8 (right to respect for private and family life) and Article 12 (right to marry and found a family) of the Convention.

In its Chamber judgment of 18 April 2006, the Court declared the case admissible and held, by four votes to three, that there had been no violation of Articles 8 or 12.

On 13 September 2006 the panel of the Grand Chamber granted the applicants' request to have their case referred to the Grand Chamber under Article 43 (referral to the Grand Chamber). A hearing before the Grand Chamber was held on 10 January 2007.

Decision of the Court

Article 8

The Grand Chamber considered that Article 8 was applicable to the applicants' complaints in that the refusal of artificial insemination facilities concerned their private and family lives, which included the right to respect for their decision to become genetic parents.

The core issue was whether a fair balance had been struck between the competing public and private interests involved.

As to the applicants' interests, it was accepted domestically that artificial insemination remained the only realistic hope of the applicants, a couple since 1999 and married since 2001, of having a child together, given Ms Dickson's age and Mr Dickson's release date. The Grand Chamber considered it evident that the matter was of vital importance to the applicants.

While the inability to beget a child might be a consequence of imprisonment, it was not an inevitable one, it not being suggested that the grant of artificial insemination facilities would have involved any security issues or imposed any significant administrative or financial demands on the state.

The Grand Chamber then considered whether public confidence in the prison system would be undermined if the punitive and deterrent elements of a sentence would be circumvented by allowing prisoners guilty of certain serious offences to conceive children. Like the Chamber, it reiterated that there was no place under the Convention system, where tolerance and broad-mindedness were the acknowledged hallmarks of a democratic society, for automatic forfeiture of rights by prisoners based purely on what might offend public opinion. However, it could accept, as did the Chamber, that the maintaining of public confidence in the penal system had a role to play in the development of penal policy. However, and while accepting that punishment remained one of the aims of imprisonment, it underlined the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence.

The Grand Chamber was prepared to accept as legitimate, that the authorities, when developing and applying the policy in question, should concern themselves, as a matter of principle, with the welfare of any child: conception of a child was the very object of the exercise. Moreover, the state had obligations to ensure the effective protection of children. However, that could not go so far as to prevent parents from attempting to conceive a child in circumstances like those in the applicants' case, especially as Ms Dickson was at liberty and could have taken care of any child conceived until her husband was released.

The Grand Chamber reiterated that 30 of the states which had ratified the European Convention on Human Rights allowed for conjugal visits for prisoners (subject to a variety of different restrictions), a measure which could be seen as obviating the need for the authorities to provide additional facilities for artificial insemination. However, while the Court had expressed its approval for the evolution in several European countries towards conjugal visits, states were not required to make provision for such visits.

The Grand Chamber considered that the policy which applied to the applicants excluded any real weighing of the competing individual and public interests, and prevented the required assessment of the proportionality of a restriction, in any individual case. In particular, it placed an inordinately high "exceptionality" burden on the applicants when requesting artificial insemination facilities. In addition, there was no evidence that, when fixing the policy, the secretary of state sought to weigh the relevant competing individual and public interests or assess the proportionality of the restriction. Further, since the policy was not embodied in primary legislation, the various competing interests were never weighed, nor were issues of proportionality ever assessed, by parliament.

The Court therefore found that a fair balance had not been struck between the competing public and private interests involved, in violation of Article 8.

Article 12

The Grand Chamber considered, as did the Chamber, that no separate issue arose under Article 12.

Judge Sir Nicolas Bratza expressed a concurring opinion, and Judges Wildhaber, Zupančič, Jungwiert, Gyulumyan and Myjer expressed a joint dissenting opinion.

Selected Chamber judgments

Mocarska v. Poland

Judgment of 6 November 2007. Concerns: alleged unlawful detention in a psychiatric hospital.

Article 5 §1 (violation)

Facts and complaints

The applicant, Bożena Mocarska, is a Polish national who was born in 1965 and lives in Pruszków (Poland). She shared a flat with her sister and her sister's husband. She suffers from psychiatric problems.

In May 2005, following a knife attack on her sister, Ms Mocarska was arrested and charged with domestic violence and admitted to Warsaw Detention Centre. Her pre-trial detention was extended on numerous occasions on the ground that there was a reasonable suspicion that she had committed the offence and risked re-offending. In August 2005 the applicant's lawyer requested her release on account of her psychiatric condition and the fact that her prolonged detention had seriously affected her health. In September 2005, she was diagnosed as suffering from a delusional disorder and doctors recommended that she be placed in a psychiatric hospital. On 25 October 2005 Warsaw District Court discontinued the proceedings against her on the ground that she could not be held criminally responsible. However, she remained in the detention centre waiting for a placement in Pruszków Psychiatric Hospital to be recommended by a commission and a place to become available there. She was finally transferred on 30 June 2006 to that hospital.

Relying on Article 5 §1 (right to liberty and security), Ms Mocarska complained that she had been unlawfully detained in an ordinary remand centre for eight months pending her admission to a psychiatric hospital.

Decision of the Court

The Court declared the applicant's complaint concerning her detention from 25 October 2005 to 30 June 2006 admissible and the remainder of the application inadmissible. The Court found that an eight-month delay in the admission of the applicant to a psychiatric hospital and the resulting delay in her psychiatric treatment could not be regarded as acceptable. In the circumstances of the applicant's case, a reasonable balance had not been struck between her right to liberty and the risk that she represented to her family and others. Accordingly, the Court held unanimously that there had been a violation of Article 5 §1 concerning her detention between 25 October 2005 and 30 June 2006. The applicant made no claim for just satisfaction and her claim for costs and expenses was dismissed.

Khamidov v. Russia

Judgment of 15 November 2007. Concerns: occupation by the police of the applicant's property; claims for compensation; length of proceedings.

Articles 6 §1, 8 and 1 of Protocol No. 1 (violations)

Facts and complaints

The applicant, Khanbatay Abulkhanovich Khamidov, is a Russian national who was born in 1954 and lives in the village of Bratskoye (Chechnya).

Mr Khamidov and his brother, Dzhabrail Abulkhanovich Khamidov, own land in Bratskoye on which they each have a house and on which their family business (a bakery) is located, including industrial buildings, a mill and storage facilities.

In early October 1999 the Russian Government launched a counter-terrorist operation in the Chechen Republic and, fearing possible attacks, the applicant and his relatives left the village. On 13 October 1999 police units from Tambov moved onto the applicant's property.

The applicant and his family spent the winter of 1999 to 2000 in tents in a refugee camp in Znamenskoye (Chechnya), where living conditions were very poor. The applicant's 19-month-old nephew died of pneumonia while at that camp.

At the relevant time, the Chechen courts were inoperative so the applicant could not bring legal proceedings. From November 1999 to December 2000 he did, however, lodge numerous complaints with state bodies, including the military, prosecutors and other law-enforcement agencies, and administrative authorities, in which he sought eviction of the police units. He mainly received replies to inform him that his complaints had been forwarded on to other bodies. No effective measures were taken.

On 25 May 2000 a military commander of the Nadterechny District, at the applicant's request, ordered the police units to ensure that no damage would be caused to the applicant's property.

In January 2001, when the courts in Chechnya became operational again, the applicant brought proceedings in which he sought eviction of the police units. The Nadterechny District Court of Chechnya found in his favour in a judgment of 14 February 2001. That judgment came into force on 24 February 2001. Attempts to enforce that judgment were unsuccessful: when the Tula police units moved out, other police units from Kaluga moved in and the applicant was prevented from entering his property by trenches, check-points and barbed wire. The police units finally vacated the applicant's property on 14 June 2002.

In the meantime, the applicant brought proceedings against the Russian Ministry of the Interior, complaining that police units refused to comply with the judgment of 14 February 2001. He further sought compensation for the damage caused to his property and for non-pecuniary damage in respect of the appalling conditions in which he and his family had had to live in the refugee camp. In support of his claims he submitted evidence including documents which certified his title to the estate and the value of its industrial equipment, a copy of the judgment of 14 February 2001, copies from various public bodies acknowledging the occupation, evaluation

reports confirming the damage to his property, bailiffs' reports and estimates for the repair work needed.

On 23 January 2002 Zamoskvoretskiy District Court of Moscow rejected the applicant's claims for compensation as groundless. It found, in particular, that the applicant had failed to provide sufficient proof that the damage to his property had been the fault of the Ministry of the Interior. The applicant's subsequent appeal and requests for supervisory review were also dismissed.

The application was lodged with the European Court of Human Rights on 28 June 2001 and declared partly admissible on 23 October 2006.

Mr Khamidov complained, in particular, that his family's estate was occupied and damaged by federal police and that he was unable to obtain compensation. He further complained about his inability to bring the eviction claim before a court for a prolonged period of time, the delayed enforcement of the judgment in his favour, the unfairness of the proceedings for compensation and the absence of effective remedies. He relied on Articles 6, 8 and 13, and Article 1 of Protocol No. 1 (protection of property).

Decision of the Court

Article 8 and Article 1 of Protocol No. 1

The Court found that the applicant's house and that of his brother should be considered as his home.

The applicant had provided the Court with extensive evidence (certificates and reports) to prove that his estate had been damaged by police units whereas the government had only submitted certain unofficial written statements by police officers and a Bratskoye local councillor. The Court therefore found that it had sufficient grounds to consider it established that the applicant's estate had been damaged by police units and that there had therefore been an interference with the applicant's right to respect for his home and peaceful enjoyment of his possessions.

The Court found that that interference had been unlawful.

Concerning the period between 13 October 1999 and 23 February 2001, the Government had not submitted any document which had specifically authorised the police units' temporary occupation of the applicant's estate. The Court considered that sections 13 and 21 of the Law on Suppression of Terrorism, relied on by the government, had not been a sufficient legal basis for such a drastic interference as occupation for a prolonged period of time of an individual's housing and property.

In the period between 24 February 2001 and 14 June 2002, the interference was manifestly in breach of Russian law, given the judgment of 14 February 2001.

The Court further considered that the damage caused to the applicant's estate had had no basis in domestic law: the government had not submitted any decision, order or instruction which had authorised the police units to cause any such damage. Indeed, on 25 May 2000 a military commander had issued an order to preserve the applicant's property.

Accordingly, the Court held unanimously that there had been a violation of Article 8 and Article 1 of Protocol No. 1 as a result of the temporary occupation of the applicant's estate by police units of the Russian Ministry of the Interior, and a further violation of the same articles as a result of the damage caused to his estate.

Article 6 §1

The Court noted that it was clear under domestic law, notably Article 119 of the Code of Civil Procedure, that the applicant had only been allowed to file his eviction claim in the place where his estate was located, i.e. Chechnya. Furthermore, the Russian authorities had not made any effort to authorise the applicant to file a claim in another region of Russia. The applicant had therefore effectively been deprived, between October 1999 and January 2001 when the Chechen courts had been out of operation, of an opportunity to seek eviction of the police units. The Court therefore found that that had clearly constituted a limitation on the applicant's right of access to a court and held unanimously that there had been a violation of Article 6 §1.

The Court held unanimously that there had been another violation of Article 6 §1 on account of the non-enforcement for over 15 months of the judgment of 14 February 2001 in the applicant's favour.

The Court also held unanimously that there had been a further two violations of Article 6 §1 concerning the proceedings in 2002. Firstly, the domestic courts had only considered the applicant's compensation claim in respect of damage to his property and had failed to examine his claims in respect of compensation for occupation of his property and for non-pecuniary damage. The courts had referred to the claims as "groundless" but had given no explanation as to how they had come to that conclusion. The applicant had therefore been denied access to a court. Secondly, in those same proceedings, the courts had considered that it had not been proven that the applicant's estate had been occupied by police units, despite abundant evidence to the contrary and the findings in the judgment of 14 February 2001. In the Court's view, the unreasonableness of that conclusion was so striking that the decisions of the domestic courts in 2002 could only be described as grossly arbitrary. The applicant had therefore been denied a fair hearing concerning his claim for compensation in respect of damage caused to his estate.

Article 13

The Court observed that the applicant's complaints under Article 13 were essentially the same as those under Article 6 §1. Therefore, the Court did not consider it necessary to examine the complaints under Article 13.

Galstyan v. Armenia

Articles 6 §1, 6 §3, 11 and 2 of Protocol No. 7

Judgment of 15 November 2007. Concerns: applicant's sentence to three days' detention for taking part in a demonstration held on Mother's Day in April 2003.

Facts and complaints

The applicant, Arsham Galstyan, is an Armenian national who was born in 1958 and lives in Yerevan (Armenia).

Following the presidential elections in Armenia in February and March 2003, Mr Galstyan participated in a

series of protest rallies in Yerevan organised by the opposition.

The case concerned his sentence to three days' detention for taking part in a demonstration held on Mother's Day in April 2003. This is the first in a series of cases dealing with the imposition of administrative sanctions concerning participation in demonstrations or other minor offences in Armenia.

On 7 April 2003, on his way home from the demonstration, which had apparently been organised to protest against the government and the conduct of the elections and involved around 30 000 people (mostly women), he was arrested for "obstructing traffic and behaving in an anti-social way at a demonstration" and taken to Yerevan Central District Police Station for questioning. The applicant argued that he and most of the other men present did not participate in the demonstration; they were there to support and protect the women and prevent trouble breaking out.

At the police station he was charged with "minor hooliganism" under Article 172 of the Code of Administrative Offences (CAO). The police record was signed by the applicant. He also certified that he had been made aware of his rights under Article 267 of the CAO and added "I do not wish to have a lawyer".

The applicant alleged that he initially refused to sign that record and requested a lawyer, but that he had been kept at the police station for five-and-a-half hours, during which time police officers pressurised him to sign the record and to refuse legal assistance. At 11 p.m. that day he was taken to a judge at Kentron and Nork-Marash District Court of Yerevan, who examined the case.

According to the government, the applicant was kept at the police station for only two hours and taken to the judge at 7.30 p.m. The police explained to him his right to have a lawyer and the applicant signed the record voluntarily, without objections.

The judge, after a brief hearing, sentenced the applicant under Article 172 of the CAO to three days' administrative detention for "obstruction of street traffic" and "making a loud noise". According to the court records, the hearing was held in public with the participation of the judge, a clerk and the applicant.

The applicant alleged, and the government did not explicitly dispute, that the record of the hearing was drafted at some point after the hearing. In reality there was no clerk and the hearing was not recorded. The hearing lasted only about five minutes and was conducted in the judge's office. Only the judge and applicant (with the accompanying police officer) were present.

On 14 April 2003 the applicant applied to a local human rights NGO, "February 22nd", complaining that police officers had prompted him to sign a document refusing a lawyer. The NGO's request to have criminal proceedings brought against the police officers and judge was rejected by the Kentron and Nork-Marash District Prosecutor.

The application was lodged with the European Court of Human Rights on 1 August 2003.

Mr Galstyan complained that his sentence violated his right to freedom of assembly and freedom of expression. He also maintained that he did not have a fair and public hearing before an impartial tribunal, that he was not given time to prepare his defence and that he was tricked into refusing legal assistance.

He relied on Article 5 (right to liberty and security), Article 6 §1 (right to a fair trial), Article 10 (freedom of expression), Article 11 (freedom of association and assembly) and Article 2 of Protocol No. 7 (right of appeal in criminal matters).

Decision of the Court

Article 6 §1

Concerning the fairness of the applicant's trial, the Court considered that the fact that the only evidence in the proceedings was the witness testimony of an arresting police officer was not in itself contrary to Article 6, because the applicant – even if at a very brief hearing – was able to make submissions in defence of his position. Although none of the arresting police officers were called and examined in court, the applicant had made no such request.

Regarding the applicant's allegation that the trial judge was politically biased, the Court noted that, although the period surrounding the presidential election of 2003 was a period of increased political sensitivity, it was not possible to conclude from that alone that the trial judge was personally biased.

The Court also considered that there was insufficient evidence to conclude that the hearing in question was not held in public; the applicant cited only the alleged time and location of the hearing in support of his allegation.

There had therefore been no violation of Article 6 §1 concerning the applicant's right to a fair and public hearing before an impartial tribunal.

Article 6 §3 (b)

The Court considered that the mere fact that the applicant signed a paper in which he stated that he did not wish to have a lawyer did not mean that he did not need adequate time and facilities to prepare himself effectively for trial. Nor did the fact that the applicant did not lodge any specific requests during the short pretrial period necessarily imply that no further time was needed for him to be able – in adequate conditions – to properly assess the charge against him and consider his defence. Nothing suggested that his signing of the record pursued any other purpose than to confirm that he was familiar with it and aware of his rights and the charge against him.

The parties disagreed as regards the exact length of the pretrial period but, in any event, it was evident that that period was not longer than a few hours. The Court further noted that, during that time, the applicant was either in transit to the court or was being held at the police station without contact with the outside world. Furthermore, during his short stay at the police station, he was also questioned and searched. The Court doubted that the circumstances in which the applicant's trial was conducted enabled him to familiarise himself properly with and to assess adequately the charge and evidence against him, and to develop a viable legal strategy for his defence. The Court therefore concluded that there had been a violation of Article 6 §3 taken together with Article 6 §1.

Article 6 §3 (c)

The Court noted that all the materials before it indicated that the applicant expressly waived his right to be represented by a lawyer both before and during the court hearing. There was no evidence to support his allegation that he was "tricked" into refusing a lawyer. Noting that the applicant was accused of a minor offence and the maximum possible sentence could not have exceeded 15 days' detention, mandatory legal representation was not required in the interests of justice. Having concluded that it was the applicant's

own choice not to have a lawyer, the Court considered that the authorities could not be held responsible for the fact that he was not legally represented in the course of the administrative proceedings against him. There had therefore been no violation of Article 6 §§1 and 3 (c).

Article 11

The Court observed that the interference with the applicant's right of freedom of association was prescribed by law and pursued a legitimate aim, the prevention of disorder.

Concerning whether it was necessary in a democratic society, the Court recalled that freedom to take part in a peaceful assembly was of such importance that a person could not be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which had not been prohibited, so long as that person had not committed a reprehensible act on such an occasion.

The applicant was subjected to three days' deprivation of liberty for "obstruction of street traffic" and "making a loud noise". It was apparent from the police report that the street where the demonstration took place was packed with people and the government did not dispute that the traffic had been suspended by the traffic police prior to the start of the demonstration. Neither did the authorities make any attempt to disperse the participants on account of unlawful obstruction of traffic. It followed that the "obstruction of street traffic", of which the applicant was found guilty, amounted to his physical presence at a demonstration held on a street where traffic had already been suspended. As to the "loud noise" he had made, there was no suggestion that it involved any obscenity or incitement to violence. The Court, however, found it hard to imagine a huge political demonstration, at which people expressed their opinion, not generating a certain amount of noise. The Court concluded that the applicant was sanctioned merely for being present and proactive at the demonstration in question.

The Court observed that the very essence of the right to freedom of peaceful assembly was impaired, where a state, while not prohibiting a demonstration, imposed sanctions, especially such severe ones, on those participating who had done nothing reprehensible, as in the applicant's case.

The Court therefore concluded that the interference with the applicant's right to freedom of peaceful assembly was not "necessary in a democratic society", in violation of Article 11.

Article 2 of Protocol No. 7

The Court found that the review procedure prescribed by Article 294 of the CAO did not provide an individual with a clear and accessible right to appeal; it lacked any clearly-defined procedure or time-limits or consistent application in practice. There had therefore been a violation of Article 2 of Protocol No. 7.

Other articles

The Court held unanimously that there was no need to examine the applicant's complaint under Article 10 and his complaint under Article 5 was declared inadmissible.

Judges Fura-Sandström and Zupančič expressed a joint dissenting opinion.

Pfeifer v. Austria

Article 8 (violation)

Judgment of 15 November 2007. Concerns: the need to strike a fair balance between the protection of freedom of expression and the right of the applicant to have his reputation safeguarded.

Facts and complaints

The applicant, Karl Pfeifer, is an Austrian national who lives in Vienna. He is a freelance journalist. From 1992 to 1995 he was the editor of the official magazine of the Vienna Jewish community.

In February 1995 Mr Pfeifer published a commentary criticising in harsh terms a professor who had written an article alleging that the Jews had declared war on Germany in 1933, and which trivialised the crimes of the Nazi regime. The professor brought defamation proceedings against the applicant, who was ultimately acquitted in May 1998 when the courts found that his criticism constituted a value judgment which had a sufficient factual basis.

In April 2000, criminal proceedings under the National Socialism Prohibition Act were brought against the professor by the Public Prosecutor on account of his article. He committed suicide shortly before his trial.

In an article from June 2000, the weekly *Zur Zeit* referred to Mr Pfeifer's commentary, alleging that it had unleashed a manhunt which had eventually resulted in the death of the victim. The applicant brought unsuccessful defamation proceedings against the publishing company that owned *Zur Zeit*. While the first-instance court had found that the statement was defamatory, in October 2001 the appellate court found that it was a value judgment which was not excessive.

Meanwhile, in February 2001 the chief editor of *Zur Zeit* had addressed a letter to the subscribers asking them for financial support and claiming that a group of anti-fascists was trying to damage the weekly by means of disinformation in the media and by instituting criminal proceedings and civil actions. The letter stated again that Karl Pfeifer and a number of other people were members of a "hunting" association which had chased the professor to his death. The applicant brought a second set of defamation proceedings. His action was dismissed in August 2002, as the appellate court held that the principles and considerations set out in its previous judgment of October 2001 applied.

The application was lodged with the European Court of Human Rights on 7 April 2003.

Relying on Article 8 (right to respect for private and family life), Mr Pfeifer complained that the Austrian courts failed to protect his reputation against defamatory statements made by the chief editor of *Zur Zeit*.

Decision of the Court

Article 8

The Court held that a person's right to protection of his or her reputation was encompassed in Article 8 as being part of the right to respect for private life.

The Court reiterated that statements that shock or offend the

public or a particular person were indeed protected by the right to freedom of expression under Article 10 (freedom of expression). However, the statement here at issue went beyond that, claiming that the applicant had caused the professor's death by ultimately driving him to commit suicide. Although it was undisputed that the applicant had written a critical commentary on the professor's article in 1995 and that, years later, in 2000, the professor had been charged under the National Socialism Prohibition Act in relation to this article and had committed suicide, no proof had been offered for the alleged causal link between the applicant's article and the professor's death. By writing that, the chief editor's letter overstepped acceptable limits, because it in fact accused Mr Pfeifer of acts tantamount to criminal behaviour.

Even if the statement were to be understood as a value judgment, it lacked a sufficient factual basis. The use of the term member of a "hunting" association implied that the applicant was acting in co-operation with others with the aim of persecuting and attacking the professor. There was no indication, however, that Mr Pfeifer, who had merely written one article at the very beginning of a series of events and had not taken any further action thereafter, acted in such a manner or with such an intention. Moreover, it had to be noted that the commentary written by the applicant, for its part, had not transgressed the limits of acceptable criticism.

The Court was therefore not convinced that the reasons advanced by the domestic courts for protecting freedom of expression outweighed the right of the applicant to have his reputation safeguarded. There had accordingly been a violation of Article 8.

Judges Loucaides and Schäffer expressed dissenting opinions.

Driza v. Albania, Ramadhi and others v. Albania

Judgment of 13 November 2007. The cases concerned the non-enforcement of judgments and administrative decisions in restitution of property cases.

Articles 6 §1, 13 and 1 of Protocol No. 1 (violations)

Facts and complaints

In both cases the applicants took legal action to recover possession of property belonging to their fathers which had been taken by the authorities without payment of compensation.

Driza

The applicant, Ramazan Driza, is an Albanian national who was born in 1941 and lives in Tirana. In prewar Albania, his father owned a bakery in Tirana and a plot of land. In 1960 the Albanian authorities demolished the building and expropriated the land.

Following an application by the applicant under the Property Act, the authorities declared that the nationalisation of his father's property had been unlawful and allocated to the applicant, in compensation, two plots of land measuring 5 000 square metres (1 650 square metres and 3 350 square metres). That decision was upheld on 20 June 1996 by the Tirana Property Restitution and Compensation Commission. He was, however, unable to take possession of that land because it was occupied. On 2 June 1998 Tirana Court of Appeal upheld the validity of the Commission's decision. The court of appeal's decision was upheld on 17 December 1998 by the supreme court, whose judgment subsequently became final.

Judgments were later issued in supervisory-review proceedings (on 5 July 2001) and in a parallel set of proceedings (on 7 December 2000), which respectively annulled the applicant's title over both plots of land. He was also awarded compensation which, to date, he has not received.

According to the applicant, flats have been built on the larger plot of land which have been sold to, and are occupied by, the new owners. Temporary buildings have been constructed on the smaller plot of land.

Ramadhi and others

The applicants are six Albanian nationals, Shyqyri Ramadhi, Remzi Kapidani, Rabije Ramadhi, Xhemile Ramadhi (now deceased), Dilaver Ramadhi and Nakib Ramadhi. They are siblings, born in 1916, 1921, 1927, 1928, 1934 and 1943, who live in Kavaja and Durrës (Albania).

During the communist regime, several plots of land and two shops in the Kavaja region, which were owned by the applicants' father, were confiscated by the authorities without compensation.

Following an application by the applicants under the Property Act, the Kavaja Property Restitution and Compensation Commission upheld the applicants' title as joint owners of two shops and a plot measuring 15 500 square metres; 10 000 square metres was to be returned to them and it was ruled that they were entitled to compensation for the rest. The applicants took possession of that plot of land. However, they received no compensation.

The applicants subsequently lodged an application with Kavaja Land Commission, claiming property rights in respect of a plot of land of 30 500 square metres. The first three applicants were successful; the claims of the other three were rejected on the ground that they did not live in the relevant area. However, on 7 April 1999 the Land Commission declared the applicants' titles void. That decision was annulled on 4 February 2000 by Durrës District Court, which ordered the Commission to re-examine the case. On 8 January 2003, the Commission upheld the validity of the first three applicants' titles. However, the applicants maintained that their plots of land were nonetheless transferred to third parties by the local authorities.

The *Driza* application was lodged with the European Court of Human Rights on 4 September 2002 and the *Ramadhi and others* application was lodged with the Court on 9 October 2002.

Mr Driza complained of the unfairness of supervisory review proceedings and the quashing of a final judgment in his favour. He relied on Article 6 §1, Article 1 of Protocol No. 1 and Article 13.

The applicants in *Ramadhi and others* complained of the authorities' failure to enforce decisions in their favour; and three of them also complained that the domestic courts had discriminated against them on the ground of their place of

residence. They relied on Article 6 § 1, Article 13, Article 1 of Protocol No. 1 and Article 14 (prohibition of discrimination).

Decision of the Court

Article 6 §1

Driza

The Court considered that, in granting leave to have a final judgment reviewed and allowing the introduction of parallel sets of proceedings, the Albanian Supreme Court had set at naught an entire judicial process which had ended in a final and enforceable judicial decision. The Court also found that the supreme court was not impartial and, by failing to take the necessary measures to comply with the judgments of 17 December 1998 and 7 December 2000, the Albanian authorities had deprived the provisions of Article 6 §1 of all useful effect. The Court concluded that there had been a violation of Article 6 §1 in respect of the breach of the principle of legal certainty, the impartiality of the court and the non-enforcement of a final judgment.

Ramadhi and others

Concerning the enforcement of the Commission's decisions, the Court observed that, irrespective of whether the final decision to be executed took the form of a court judgment or a decision by an administrative authority, domestic law as well as the Convention provided that it was to be enforced. However, no steps had been taken to enforce the Commission's decisions in the applicants' favour. None of the property acts or any related domestic provision governed the enforcement of the Commission's decisions. In particular, the various property acts in Albania did not provide either for any statutory time-limit for appealing against such decisions before the domestic courts or for any specific remedy for their enforcement. The Court further noted that the property acts left the determination of the appropriate form and manner of compensation to the Albanian Council of Ministers, which was to define the detailed rules and methods for such compensation. To date no such measures had been adopted. The decisions in the applicants' favour had been unenforced for 12 and 11 years respectively and the government had not submitted any evidence that relevant measures were imminent.

The Court noted that the state authorities had also failed to enforce the District Court's judgment of 4 February 2000 as regards the first three applicants.

The Court therefore held that there had been a violation of Article 6 §1 concerning the failure to enforce the Commission's decision of 7 June 1995 and 20 September 1996, and the Kavaja District Court judgment of 4 February 2000 (in respect of the first three applicants).

Article 1 of Protocol No. 1

Driza

The Court noted that the failure of the authorities to enforce the judgments of 17 December 1998 and 7 December 2000 amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions. The Court recalled that lack of funds could not justify a failure to enforce a final and binding judgment debt owed by the state. Accordingly, there had been a violation of Article 1 of Protocol No. 1.

Ramadhi and others

The Court considered that the Albanian Government had not produced any convincing evidence to justify the failure of the domestic authorities over so many years to determine the final amount of the compensation due to the applicants or to return to the first three applicants a plot of land belonging to them which had since been allocated to third parties. There had therefore been a violation of Article 1 of Protocol No. 1 regarding compensation (all the applicants) and restitution (the first three applicants).

Article 13

Driza

The Court considered that the government had failed to establish an adequate procedure in relation to compensation claims. Moreover, it was unlikely that the government would put in place such a system imminently or soon enough to enable the settlement of the dispute related to the determination of the applicants' rights. Consequently there had been a violation of Article 13 concerning the complaint under Article 1 of Protocol No. 1.

Ramadhi and others

The Court held that there had been a violation of Article 13 in conjunction with Article 6 §1 in respect of the ineffectiveness of the remedies at the applicants' disposal to secure the enforcement of the Commission's decisions of 7 June 1995 and 20 September 1996.

Article 14

The Court observed that, in Ramadhi and others, the last three applicants failed to raise the issue of discrimination before the domestic courts; their complaint was therefore inadmissible.

Article 46

In both cases the Court noted shortcomings in the Albanian legal system, as a consequence of which, an entire category of individuals had been and still were being deprived of their right to the peaceful enjoyment of their property, stemming from the non-enforcement of court judgments awarding compensation under the Property Act. Indeed, there were already dozens of identical applications before the Court. The escalating number of applications was an aggravating factor as regards the state's responsibility under the Convention and also a threat for the future effectiveness of the Convention system, given that, in the Court's view, the legal vacuums detected in the applicants' cases might subsequently give rise to numerous other, well-founded applications.

The Court reiterated that, under Article 46, Albania had undertaken to abide by the final judgments of the Court, whose execution was supervised by the executive body of the Council of Europe (the Committee of Ministers). Consequently, where the Court found a violation, Albania had a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted regarding its legal system, to put an end to the violation found by the Court and to redress so far as possible its effects. Furthermore, once a deficiency in the legal system had been identified by the Court, the national authorities had the task, subject to supervision by the Committee of Ministers, of taking within a determined period of time – retrospectively if need be – the necessary measures, so that the Court did not have to repeat its finding of a violation in a long series of comparable cases.

The Court considered that Albania should, above all, introduce a remedy which secured genuinely ef-

fective redress for the violations identified in *Ramadhi and Others* as well as in all similar applications pending it.

The Court called on Albania to remove all obstacles to the award of compensation under the Property Act by ensuring the appropriate statutory, administrative and budgetary measures were taken. Those measures should include the adoption of property valuation plans in respect of those applicants entitled to receive compensation in kind and the designation of an adequate fund in respect of those applicants entitled to receive compensation in value, to make it possible for all claimants awarded compensation under the Property Act, to obtain speedily the sums or the land due to them. Such measures should be made available as a matter of urgency.

Dybeku v. Albania

Judgment of 18 December 2007. Concerns: complaint that detention conditions and medical treatment received in prison were not appropriate given the state of the applicant's health.

Article 3 (violation)

Facts and complaints

The applicant, Ilir Dybeku, is an Albanian national who was born in 1971 and is currently in Peqin High Security Prison (Albania).

From 1996 onwards the applicant has been suffering from chronic paranoid schizophrenia. For many years he has received in-patient treatment in various psychiatric hospitals in Albania.

On 23 August 2002 two children, aged 10 and 13, and another person died following an explosion in the flat of the applicant's sister's family; others were injured.

On 24 August 2002 criminal proceedings were brought against the applicant, who, on the same day, was arrested and charged with murder and illegal possession of explosives. He was placed in the pre-trial detention facility of Durrës Police Commissariat, where he shared a cell with an unspecified number of prisoners.

On 27 May 2003, on the basis of a medical report, which concluded that at the time of the offence the applicant was in remission, Durrës District Court ruled that he was able to stand trial. The court found him guilty and sentenced him to life imprisonment.

The applicant appealed unsuccessfully and his requests for new medical examinations were rejected as unnecessary by the domestic courts.

Since December 2003 the applicant has been in three different prisons: Tirana Prison no. 302, Tepelene Prison and Peqin Prison, where he has shared cells with inmates who were in good health and has been treated as an ordinary prisoner, despite his state of health.

According to the Albanian authorities, as it was impossible to provide the applicant with the medical treatment he needed, he was treated with drugs similar to those prescribed by his doctor. He received in-patient treatment in Tirana Prison Hospital only when his health worsened from 26 May 2004 to 2 June 2004 and from 1 December 2004 to 26 January 2005.

The applicant's father and lawyer lodged several complaints with the competent authorities against the prison hospital administration and the medical unit, alleging that they had been negligent in failing to prescribe adequate medical treatment and that the applicant's health had deteriorated because of the lack of medical treatment. Their complaints were dismissed.

Given the applicant's increasingly disturbed state of mind, on 7 January 2005 his lawyer brought proceedings asking for him to be released or transferred to a medical facility on the ground that his detention conditions were inappropriate, given his state of health, and put his life at risk. Based on recent medical reports, the applicant's counsel also asked for psychiatric examinations to be undertaken. Those requests were rejected.

The applicant's appeals were unsuccessful.

The application was lodged with the European Court of Human Rights on 25 September 2006.

The applicant alleged, in particular, that his detention conditions and the medical treatment he received in prison were not appropriate given his state of health. He also complained about the unfairness of the legal proceedings concerning his complaints. He relied on Articles 3 (prohibition of inhuman or degrading treatment) and 6 (right to a fair trial).

Decision of the Court

Article 3

The Court considered that the applicant's complaints about the inadequacy of his detention conditions and the inappropriate medical treatment he received while in prison should be examined under Article 3.

The Court observed that the parties agreed that the applicant was suffering from a chronic mental disorder, which involved psychotic episodes and feelings of paranoia. His condition had also deteriorated by the time he received in-patient treatment in Tirana Prison Hospital.

The Court also noted that all the complaints from the applicant's father and lawyer were disregarded. Indeed, the Court observed that the last assessment of the applicant's health dated back to 2002. The applicant's medical notes showed that he had repeatedly been prescribed the same treatment and that no detailed description had been given of the development of his illness.

The Court considered that the feeling of inferiority and powerlessness typical of those suffering from a mental disorder called for increased vigilance in reviewing whether the Convention had been complied with. While it was for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who were incapable of deciding for themselves, and for whom they were therefore responsible, such patients nevertheless remained under the protection of Article 3.

The Court accepted that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention might have exacerbated to a certain extent his feelings of distress, anguish and fear. The fact that the Albanian Government admitted that the applicant was treated like the other inmates, notwithstanding his particular state of health, showed a failure to comply with the Council of Europe's recommendations on dealing with prisoners with mental illnesses.

The Albanian Government had also failed either to submit detailed information about the material conditions of the applicant's detention or to show that those conditions were appropriate for a person with his history of mental disorder. Furthermore, the Court considered that the applicant's regular visits to the prison's hospital could not be viewed as a solution since the applicant was serving a sentence of life imprisonment.

Many of those shortcomings could have been remedied even in the absence of considerable financial means. In any event, a lack of resources could not in principle justify detention conditions so poor as to reach the threshold of severity for Article 3 to apply.

The Court took into account the cumulative effects of the entirely inappropriate conditions of detention to which the applicant was subjected, which clearly had a detrimental effect on his health and well-being. It also took note of the Council of Europe's Committee for the Prevention of Torture's findings in its latest reports concerning the detention conditions in Albanian prisons, particularly with regard to prisoners with mental illnesses, and its own case-law. It concluded that the nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on his health were therefore sufficient to be qualified as inhuman and degrading, in violation of Article 3.

Article 6

The Court held that the applicant's complaints under Article 6 were inadmissible.

Riad and Idiab v. Belgium

Articles 3 and 5 (violations)

Judgment of 24 January 2008. Concerns: conditions in which the applicants were detained in the transit zone of Brussels-National Airport following their unlawful entry into Belgian territory.

Facts and complaints

The applicants, Mohamad Riad and Abdelhadi Idiab, are Palestinian nationals who were born in 1980 and 1981 respectively and live in Lebanon.

They both arrived in Belgium at Brussels-National Airport on flights from Freetown (Sierra Leone), Mr Riad on 27 December 2002 and Mr Idiab on 24 December of the same year. They declared that they had left Lebanon, where their lives were in danger, had travelled via the Ivory Coast and Sierra Leone, and wished to go on to the United Kingdom where they intended to seek political asylum.

As neither applicant possessed a visa, they were refused entry into Belgium and as a result each of them was placed on the day of arrival in "Centre 127". They submitted applications for asylum, which were refused by the Aliens Office in decisions which were subsequently upheld by the Commissioner for Refugees and Stateless Persons.

Following an attempted collective break-out from Centre 127, the applicants were transferred on 22 January 2003 to the Closed Detention Centre for Illegal Aliens in Bruges. In the meantime the applicants' lawyer had lodged an application for their release, which the *chambre du conseil* of the Brussels Court of First Instance allowed on 20 January 2003. However, the applicants' detention continued pending their repatriation. The orders for their release were upheld on appeal, on 30 January 2003 in Mr Riad's case and on 3 February 2003 in Mr Idiab's case. Nevertheless, in both cases the applicants were transferred on the very same day to the transit zone of Brussels-National airport pending their removal from Belgium.

The applicants complained of the conditions in which they were detained in the transit zone. They asserted that it did not have bedrooms or beds and that they were housed in the mosque which is located there; that they went several days without being given anything to eat or drink and received food only from the cleaning staff or the company which ran the airport; that they were not able to wash themselves or launder their clothes; that they were repeatedly subjected to security checks by the airport police; that on a number of occasions they were taken to the cells and left there for several hours without being given anything to eat or drink, in an attempt to force them to leave the country voluntarily, before being taken back to the transit zone; and, that they were violently struck and beaten inside the mosque by certain members of the federal police.

On 14 February 2003, on an application by the applicants, the President of the Brussels Court of First Instance ordered the Belgian State to permit the applicants to leave the transit zone freely and without restriction, subject to a coercive fine of EUR 1 000 per hour of default, commencing with service of the order. On the following day the Aliens Office received the instruction to permit the applicants to leave the transit zone.

They accordingly left the transit zone on 15 February 2003, but, following an identity check soon after, they were served with an order to leave Belgian territory and were taken to the Merksplas Detention Centre for Illegal Aliens.

Mr Idiab and Mr Riad were repatriated under police escort on 5 and 8 March 2003 respectively, on flights to Beirut via Moscow.

The applications were lodged with the European Court of Human Rights on 6 August 2003 and declared admissible on 21 September 2006.

Relying on Articles 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private and family life), the applicants complained of the way they were treated in the transit zone and while being deported. They further complained, under Article 5 (right to liberty and security), about their detention in the transit zone and at Merksplas.

A public hearing took place in the Human Rights Building, Strasbourg, on 30 November 2006.

Decision of the Court

Article 5

The Court noted at the outset that a situation in which the Aliens Office was able, on two occasions, to maintain the applicants in detention in spite of the fact that the previous detention orders had been overturned and the applicants' release clearly ordered by final decisions raised serious concerns about the principle of lawfulness and the proper execution of judicial decisions. In this regard, the Court noted that the President of the Brussels Court of First Instance had drawn attention to the unlawfulness of the placement and continued detention of the applicants in

the airport transit zone and had noted that this was unacceptable and contrary to the rule of law. The Court observed that a similar conclusion regarding unlawfulness had previously been reached by the President of the Nivelles Court of First Instance and later by the Brussels Court of Appeal, the United Nations Human Rights Committee and the Panel of Federal Ombudsmen.

Accordingly, the Court considered that the transfer and detention in the transit zone had not represented a good-faith application of the immigration legislation, since it appeared that those actions had been manifestly contrary to the judgments of 30 January and 3 February 2003 and that the Aliens Office had knowingly exceeded its powers.

The Court also pointed out that, under its case-law, there had to be some relationship between, on the one hand, the ground of permitted deprivation of liberty relied on and, on the other, the place and conditions of detention. In that respect, it noted that it was clear from reports by the CPT (European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment) that the transit zone was not an appropriate place of residence. Yet, from 3 February 2003, the applicants had been left to their own devices in the transit zone, without any form of humanitarian or social assistance. In that respect, it was also relevant that the detention measures in question applied to foreign nationals who, in the applicants' case, had committed no offences other than those related to their residence status.

The Court also noted that the government had failed to explain the legal basis on which the transfer and detention in the transit zone had been conducted.

With regard to the placement in Merksplas, the Court noted that the orders of 14 February 2003 indicated clearly that, until such time as the applicants were repatriated, the state was to allow them to move about the territory freely, unless the Ministry decided to require them to stay in a specific location. Although the state clearly refused to proceed with enforcement of the repatriation decisions and hoped, in spite of previous failed attempts, that the applicants would leave of their own accord, it had continued to detain them under other decisions. The detention in Merksplas had therefore been imposed in total disregard for the previous orders. The Court had pointed out on several occasions that the implementation of final judicial decisions was essential in a state which respected the rule of law.

In conclusion, the Court considered that the applicants' detention after 3 February 2003 had not been lawful, in violation of Article 5 §1.

Article 3

The Court noted that when the applicants were taken to the transit zone, the Aliens Office, which was responsible for this transfer, had taken no measures to ensure that they would receive appropriate support.

The Court expressed surprise at the attitude of the Aliens Office, since it ran a centre in which the applicants could have been housed more appropriately on a short-term basis, namely the "INADS" centre. The Court noted the reports and observations of the UN Human Rights Committee, the Federal Ombudsmen and the CPT, which showed that those were not isolated acts on the part of that Office and substantiated the applicants' allegation that the purpose of the Aliens Office in abandoning them in the transit zone was to oblige them to leave the country of their own accord.

The Court considered that the transit zone was not an appropriate place for the period of detention which the applicants had been obliged to spend in it. By its very nature, it was a place intended to receive people for extremely short periods of time. The transit zone, the nature of which could arouse in detainees a feeling of solitude, had no external area for walking or taking physical exercise, no internal catering facilities, and no radio or television to ensure contact with the outside world; it was in no way adapted to the requirements of a stay of more than ten days.

The Court considered that the conditions of detention which the applicants had had to endure for more than ten days had indeed caused them considerable mental suffering, undermining their human dignity and arousing in them feelings of humiliation and debasement. In addition, the humiliation felt by the applicants had been exacerbated by the fact that, having obtained a decision ordering their release, they had been deprived of liberty in other premises. The applicants must also have felt humiliated by the obligation to live in a public place, without support.

In those circumstances, the Court considered that the fact of detaining the applicants for more than ten days in the premises in question had amounted to inhuman and degrading treatment, in violation of Article 3.

Article 8

The Court considered that no separate question arose under Article 8, as the events on which this complaint was based had already been examined in the context of Article 3.

Rumyana Ivanova v. Bulgaria

Judgment of 14 February 2008. Concerns: complaint about conviction for defamation.

Article 6 §§1 and 3 (d), Article 10 (no violation)

Facts and complaints

The applicant, Rumyana Dencheva Ivanova, is a Bulgarian national who lives in Sofia. She is a reporter for *24 Hours*, one of Bulgaria's leading daily newspapers.

Ms Ivanova complained about her conviction for defamation of Mr M.D., a well-known politician.

Following a serious banking crisis in the late 1990s, an act was introduced in 1997 to reform Bulgarian banking legislation, in particular as concerned non-performing and unsecured loans. The act stipulated that the Bulgarian National Bank should compile a list, to be published in a special bulletin, of all those clients with loans which had been overdue for more than six months. That list was presented to the National Assembly on 21 January 1998. The clients on the list were popularly referred to as "credit millionaires".

On 4 August 2001 *24 Hours* published an article written by Ms Ivanova which stated that Mr M.D. was on the national bank's official list of 21 January 1998 on account of his ownership of three companies: Maxcom Holding, FBK Maxcom and Maxcom OOD. The article suggested that Mr M.D. – a candidate at that time for the post

of deputy minister of finance – being mentioned on the list was cause for concern for the prime minister. The *24 Hours*' editor, informed by Mr M.D. that he was not a shareholder of the three Maxcom companies, published a rectified version of the article later the same day. On 6 August *24 Hours* also ran an additional article in which Mr M.D. denied any involvement with Maxcom or any other debtor company.

On 8 October 2001 Mr M.D. brought criminal proceedings against the applicant for libel, in breach of Articles 147 §1 and 148 §§1 (2) and 2 of the Bulgarian Criminal Code. In her defence, the applicant claimed that she had simply relayed information from members of parliament who had tipped her off about doubts concerning Mr M.D.'s candidacy. She had verified that information by contacting the Customs Administration Press Office, who had referred her to the full list of credit millionaires published on 22 January 1998 by *Trud*, another leading national newspaper. FBK Maxcom and Maxcom OOD were mentioned in the preface of that publication and, having checked an electronic law database, the applicant found that Mr M.D. had been a member of Vitaplant OOD, also on the debtor list.

On 16 September 2002 Sofia District Court found the applicant guilty of slander and ordered her to pay an administrative fine of 500 new Bulgarian levs (BGN) (approximately 256 euros (EUR)), compensation and costs. That judgment was upheld on appeal on 19 May 2003. In those two decisions, the courts held that the applicant was only able to prove that Mr M. D. was on the official bad debtors' list through his connection with the company Vitaplant OOD, not through the Maxcom companies cited in the article. Alleging that Mr M.D. was a "credit millionaire" because of his indirect involvement in one company was quite different to stating that he fully owned three companies on the bad debtors' list. Those decisions also found, in general, that the applicant did not sufficiently verify her information prior to its publication and that, in her desire to publish news quickly and against best journalistic practice, she failed to consult trustworthy sources.

In the meantime, Mr M. D. withdrew his candidacy for the post of deputy minister of finance.

The application was lodged with the European Court of Human Rights on 14 November 2003.

Relying on Article 6 §§1 and 3 (d) and Article 10, Ms Ivanova complained that the proceedings against her were unfair and that her ensuing conviction for defamation infringed her right to freedom of expression.

Decision of the Court

Article 6 §§1 and 3 (d)

The Court noted that the applicant's complaint concerning Sofia District Court's failure to establish whether Mr M.D. had indirectly been a member of Vitaplant OOD had been rectified on appeal and, in any event, that had not made her statement concerning Mr M.D.'s ownership of the Maxcom companies any less defamatory.

Furthermore, the district court could not be criticised for failing to summon as a witness the member of parliament who had tipped off the applicant. The applicant had not identified that member of parliament and, according to the Court's settled case-law, it was the national courts' responsibility to assess whether it was appropriate to call a witness.

The decisions in the applicant's case had not therefore been arbitrary and, reiterating that it was primarily for the national authorities, notably the courts, to interpret and apply domestic law, the Court did not find that the proceedings against the applicant had been unfair. Accordingly, there had been no violation of 6 §§1 and 3 (d).

Article 10

Both parties agreed that the applicant's conviction for defamation had amounted to an interference with her right to freedom of expression. That interference, based on Articles 147 and 148 of the Criminal Code, had been "prescribed by law". The Court therefore went on to examine whether that interference had been "necessary in a democratic society" and corresponded to a "pressing social need".

The Court reiterated the vital role of the press as "public watchdog" and its duty in a democratic society to provide information on all matters of public interest. The article at issue had reported on a question of considerable public interest: the candidacy of a well known politician for the post of deputy minister of finance. Furthermore, as a politician and candidate for public office, Mr M.D. had inevitably and knowingly laid himself open to public scrutiny, in particular as regards his financial integrity.

However, Article 10 did not guarantee totally unrestricted freedom of expression. The exercise of that freedom carried with it "duties and responsibilities", particularly when someone's reputation was at stake. When applied to the press, those duties and responsibilities involved acting in good faith to provide accurate and reliable information in accordance with the ethics of journalism.

The statement in the applicant's article about Mr M.D. having been mentioned on an official debtors' list on account of his ownership of three specifically named companies had clearly been an allegation of fact and, as such, susceptible to proof. Indeed, the more serious the allegation, as in the case in question, the more solid the proof had to be, especially as those allegations had been published in a popular national daily newspaper with a wide circulation.

The Court saw no reason to question the findings of the domestic courts that the applicant had not provided sufficient proof that her statement was not defamatory and, in fact, that she had published facts which she had known or ought to have known to be dubious. Moreover, the applicant had phrased her statement in such a way as to leave no doubt that it had been her allegation, not that of the members of parliament who had tipped her off. The statement had also implied that the information had been directly based on the official list, not on any other publications, such as in Trud. The applicant had adopted the allegations as her own and had therefore been liable for their truthfulness.

There had been no special grounds to exempt the applicant from her obligation to verify her statements. Clearly Trud's publication, not an official report, and informal statements made by two Members of Parliament in a National Assembly lobby could not be relied upon unreservedly.

Although the article had been amended and then a response by Mr M.D. published, the article's original version had by that time been widely read and the damage to his reputation already done.

The Court was therefore satisfied that the reasons given by the Bulgarian courts for convicting the ap-

plicant had been relevant and sufficient and that the manner in which the case had been examined had shown full recognition of a conflict between, on the one hand, the right to impart information and, on the other, protection of the reputation or rights of others.

In view of the reasons given by the Bulgarian courts for convicting the applicant and of the relative lenience of her punishment, criminal liability having been waived in favour of the minimum administrative fine, the Court concluded that there had therefore been no violation of Article 10.

Hummatov v. Azerbaijan

Judgment of 29 November 2007. Concerns: applicant's complaints about inadequate medical treatment in prison and unfairness of criminal proceedings.

Articles 3, 6 §1, 13 (violations)

Facts and complaints

The applicant, Alakram Alakbar oglu Hummatov, is a stateless person who was born in 1948 in Azerbaijan and currently lives in The Hague (the Netherlands).

The case concerned Mr Hummatov's complaints about inadequate medical treatment in prison and the unfairness of criminal proceedings against him.

In 1988 the applicant became involved in politics and, in June 1993, he put forward a proposal, to which central government opposed, for political autonomy in certain parts of southern Azerbaijan, including Lenkoran. In August 1993 he and his supporters announced the creation of "Talysh-Mugan Autonomous Republic" ("*Talış-Muğan Muxtar Respublikası*"). The applicant was elected its "President". At the same time, he attempted to take charge of military units located in Lenkoran, as well as to depose and arrest certain regional public officials. Public disorder ensued and people were killed.

At the end of 1993 the applicant was arrested and detained on charges of, among other things, high treason and use of armed forces against the state. In February 1996 he was convicted as charged and sentenced to death. In February 1998, following the abolition of the death penalty in Azerbaijan, the applicant's sentence was commuted to life imprisonment.

From June 1996 the applicant was detained in the 5th Corpus of Bayil Prison, the equivalent of "death row" in Azerbaijan. He was detained in a cell with five other prisoners who were seriously ill with tuberculosis and who have all subsequently died. In February 1997 he started to complain of chest pain and suffered from severe weight loss. In April 1997 he was diagnosed with pulmonary tuberculosis. He was prescribed with anti-bacteriological medication but his condition severely deteriorated and, from March to May 2000, he was hospitalised.

In January 2001 the applicant was transferred to Gobustan High Security Prison where he continued to complain of breathlessness, headaches, coughing and chest pain and was prescribed similar medication as before. At his request he was frequently examined by doctors who declared his condition to be satisfactory. Hospital treatment was not considered necessary. He was prescribed various treatments, and, on one occasion, was advised to go on a special diet and take warm sitz baths.

The applicant alleged that he was not provided with adequate medical care given that he had a number of serious diseases, including tuberculosis, and that he depended on relatives to provide him with medication or to bribe the prison authorities to ensure his treatment.

At the applicant's request, the Medical Commission of the Azerbaijani National Committee of the Helsinki Citizens' Assembly drew up an independent medical opinion (the "HCA Opinion") based on the applicant's medical records. The report concluded that the applicant had received grossly inadequate medical treatment from 1996 to 2003.

Between 2001 and 2004 the applicant made numerous unsuccessful attempts, including three lawsuits against the ministry of internal affairs, to obtain compensation for the damage caused to his health.

In the meantime, Mr Hummatov's case, which received wide media coverage, was routinely mentioned in reports by international organisations, including the Council of Europe, which, in 2000, recognised him as a "political prisoner". Given Azerbaijan's undertaking to the Council of Europe to either release or re-try political prisoners, the Court of Appeal decided to grant the applicant's request for a new investigation and a public hearing.

More than 20 hearings took place in Gobustan Prison from January 2002 to July 2003. A number of hearings were postponed. Gobustan is a considerable distance from Baku and not served by public transport or easily accessible by other forms of transport. The applicant and independent observers submitted that no regular shuttle bus service was provided and access to hearings was severely restricted as permission had to be obtained first from the presiding judge and then the prison authorities. Observers who were granted access were subjected to a body search before entering the prison's courtroom.

In July 2003 the Court of Appeal upheld the applicant's conviction and again sentenced him to life imprisonment. Ultimately, the Supreme Court rejected the applicant's cassation appeal and dismissed his complaint about the lack of publicity of the appeal proceedings.

On 3 September 2004 the applicant was issued with a presidential pardon. He was released from prison on 5 September and, after requesting the termination of his Azerbaijani citizenship (according to the applicant, under duress), was immediately taken to the airport where he boarded a flight to the Netherlands.

According to medical examinations carried out in 2004 and 2005 in the Netherlands, Mr Hummatov was still suffering from pains in the chest, shortness of breath, coughing, headaches, dizziness and lack of concentration.

The applications were lodged with the European Court of Human Rights on 13 March 2003 and 31 March 2004. On 5 July 2005 the Court decided to join the applications. They were declared partly admissible on 18 May 2006.

Relying on Articles 3 and 13, Mr Hummatov alleged that the Azerbaijani authorities had knowingly and willingly contributed to a serious deterioration in his health

by denying him adequate medical treatment in prison. He also complained under Article 6 §1 that, in particular, the appeal proceedings had not been fair or public.

Decision of the Court

Article 3

The Court found that, given the facts of the applicant's case and statistics indicating that tuberculosis in Azerbaijani prisons was nearly 50 times higher than the national average, it was apparent that the applicant had contracted tuberculosis in Bayil Prison.

Accordingly, by the time of the Convention's entry into force in Azerbaijan on 15 April 2002, the applicant had already suffered for several years from a number of serious illnesses, including tuberculosis. The fact that he had continued to complain about those illness until his release in September 2004 indicated that he had still needed regular medical care after 15 April 2002, which was the period within the Court's competence.

The Court found that there was convincing evidence to raise serious doubts as to whether that medical care had been adequate. Firstly, it appeared that the applicant had only been attended to at his specific request and with significant delays. The applicant had mainly been treated for his symptoms; no comprehensive therapeutic strategy to cure his illnesses had been prescribed. Certain treatments prescribed had been difficult to follow through. For example, it was difficult to see how the sitz bath treatment had been possible in a prison where there had been no hot water and showers had only been allowed once a week. The diet had been equally difficult to adhere to as it had not been indicated what the diet should be or for how long. Secondly, the Court accepted the applicant's claims that he had often had to rely on his relatives to provide him with medication. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment issued a report in 2002 concerning the Azerbaijani prison system which corroborated such claims. Lastly, the Court considered the conclusions of the HCA Opinion, the only independent and comprehensive report available, to be credible. The government had not submitted any convincing report to contradict that opinion.

In conclusion, the Court found that the medical care provided to the applicant in Gobustan Prison in the period after 15 April 2002 had been inadequate and must have caused him considerable mental suffering which had diminished his human dignity and amounted to degrading treatment. Consequently, the Court held that there had been a violation of Article 3.

Article 13

The Court found that the government had not shown that, in the particular circumstances of the applicant's case, the applicant had been given an opportunity to have recourse to a remedy which had been available and effective both in law and in practice. It therefore held that there had been a violation of Article 13.

Article 6 §1

The Court noted that the government had not provided evidence to prove that the public and media had been informed about the time, including postponements, and place of the hearings before the Court of Appeal or been given instructions on how to reach Gobustan Prison.

Moreover, the Court accepted the claim that there had been no shuttle bus provided. The fact that it had been necessary to arrange costly means of transport and travel to a remote destination, as opposed to attending the Court of Appeal's courtroom in Baku, had clearly been a disincentive for those wishing to attend the applicant's trial. The strict rules concerning access to the hearings had been equally discouraging.

In sum, the court of appeal had failed to adopt adequate compensatory measures to counterbalance the detrimental effect of the closed area of Gobustan Prison on the public character of the applicant's trial.

The authorities had given no justification, such as a security risk, for such a lack of publicity.

The Court concluded that the applicant had not had a public hearing, in violation of Article 6 §1.

Ryakib Biryukov v. Russia

Article 6 §1 (violation)

Judgment of 17 January 2008. Concerns: failure to pronounce judgment publicly.

Facts and complaints

The applicant, Ryakib Biryukov, is a Russian national who was born in 1977 and lives in Togliatti (Russia). The case concerned the applicant's complaint that the reasoned judgment in his case, which concerned proceedings for damages against a hospital for malpractice, had not been "pronounced publicly".

Decision of the Court

The Court held unanimously that there had been a violation of Article 6 §1 (right to a fair hearing) in that the public had had no access to the reasoned judgment and that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Liu and Liu v. Russia

Article 5 §1 (no violation); Article 8 (violation)

Judgment of 6 December 2007. Concerns: refusal to grant residence permit; allegedly illegal detention and threat of deportation to China.

Facts and complaints

The applicants are Liu Jingcai, a Chinese national who was born in 1968, and his wife, Yulia Aleksandrovna Liu, a Russian national who was born in 1973. They have been married since 1994 and have a daughter and son, born in 1996 and 1999 respectively, who are both Russian nationals. Ms Liu and the two children have lived in Russia all their lives. The family live in Sovetskaya Gavan in the Khabarovsk region of Russia.

Mr Jingcai lived legally in Russia from 1994-6 and 2001 to August 2003 on the basis of renewable work permits.

The case concerned the refusal to grant him a residence permit. He is currently living under the threat of being deported from Russia and being separated from his family.

From November 2002 onwards he applied for a residence permit, but his application was eventually rejected by the Khabarovsk Department of Internal Affairs under section 7 (1) of the Foreign Nationals Act, without any reasons being given.

The applicants appealed unsuccessfully to the Russian courts. On 4 November 2004 Tsentralniy District Court of Khabarovsk found that The Department of Internal Affairs had received information from the Federal Security Service that Mr Jingcai posed a national security risk. However, that information was a state secret and could not be made public. There was no indication in the district court's judgment that it had had access to the classified information in question.

On 4 March 2005 a new application for a residence permit was rejected by The Department of Internal Affairs. The applicants' attempts to have that decision overturned failed.

On several occasions in 2003, 2004 and 2005 Mr Jingcai was administratively fined for living in Russia without a valid residence permit. However, the domestic courts reversed most of those decisions, finding them procedurally defective or time-barred.

On 21 November 2005 Sovetskaya Gavan Town Court held that Mr Jingcai had infringed the residence regulations and ordered his detention pending deportation. On the same day he was placed in a detention centre. He was released when the decision to detain him was quashed, on 13 December 2005, under the Administrative Offences Code, because reasons justifying his detention had not been provided. On 3 February 2006 the administrative proceedings against Mr Jingcai were discontinued as time-barred.

On 12 November 2005 the head of the Federal Migration Service ordered Mr Jingcai's deportation under section 25.10 of the Law on the Procedure for Entering and Leaving the Russian Federation. No further reasons were provided.

On 25 December 2006 Sovetskaya Gavan Town Court ordered Mr Jingcai's placement in a detention centre with a view to deporting him. The deportation order appears not to have been enforced. The applicant is currently living with his family in Russia.

The application was lodged with the European Court of Human Rights on 25 November 2005.

The applicants complained that Liu Jingcai's detention had been unlawful and that his deportation to China would damage their family life. They relied on Articles 8 and Article 5 §1.

Decision of the Court

Article 8

The Court found that the applicants' relationship amounted to family life and that the refusal to grant him a residence permit and his deportation order constituted interference with the applicants' right to respect for their family life and that it had a basis in domestic law, namely section 7 (1) of the Foreign Nationals Act and section 25.10 of the Entry Procedure Act.

However, the Court noted that the domestic courts were not in a position to assess effectively whether the decisions to reject Mr Jingcai's application for a residence permit were justified, because they were based on classified information.

The Court recognised that the use of confidential material might be unavoidable where national security was at stake. That did not mean, however, that the national authorities could be free from effective control by the domestic courts whenever they choose to assert that national security and terrorism were involved. There were ways to deal with legitimate security concerns about the nature and sources of intelligence information while providing the individual with a substantial measure of procedural justice.

The failure to disclose the relevant information to the courts deprived them of the power to assess whether the conclusion that Mr Jingcai constituted a danger to national security had a reasonable basis in the facts. It followed that the judicial scrutiny was limited in scope and did not provide sufficient safeguards against arbitrary exercise of the wide discretion conferred by domestic law on the Ministry of Internal Affairs in cases involving national security.

The Court concluded that the relevant provisions of the Foreign Nationals Act allowed the Ministry of Internal Affairs to refuse residence permits and to require a foreign national to leave the country on national security grounds without giving any reasons and without effective scrutiny by an independent authority.

The decisions ordering Mr Jingcai's detention were taken by the Federal Migration Service on the initiative of a local police department. Both agencies were part of the executive and took such decisions without hearing the foreign national concerned. It was not clear whether there was a possibility of appealing against those decisions to a court or other independent authority offering guarantees of an adversarial procedure and competent to review the reasons for the decisions and relevant evidence.

The Court further observed that the Administrative Offences Code provided for a different procedure for removal of foreign nationals unlawfully residing in Russia, with substantial procedural safeguards, in particular, the power to order administrative removal belonged exclusively to a judge and that order was subject to appeal to a higher court. It followed that Russian law establishes two parallel procedures for expulsion of foreign nationals whose residence in Russia had become unlawful. In one of those procedures deportation of a foreign national could be ordered by the executive without any form of independent review or adversarial proceedings, while the other procedure (administrative removal) provided for judicial scrutiny. Domestic law permitted the executive to choose between those procedures at their discretion. The enjoyment of procedural safeguards by a foreign national was therefore in the hands of the executive.

The Court concluded that Mr Jingcai's deportation was ordered on the basis of legal provisions (section 25.10 of the Entry Procedure Act) that did not give an adequate degree of protection against arbitrary interference. Accordingly, in the event of the deportation order against Mr Jingcai being enforced, there would be a violation of Article 8.

Article 5 §1

The Court considered whether the detention order of 21 November 2005 had constituted a lawful basis for the first applicant's detention until it was quashed on 13 December 2005.

The Court noted that the detention order of 21 November 2005 was quashed because the town court had not given reasons to justify the necessity of holding Mr Jingcai in custody. The Court considered that that flaw did not amount to a "gross or obvious irregularity". The town court had not acted in bad faith and had attempted to apply the relevant legislation correctly. The fact that certain flaws in the procedure were found on appeal did not in itself mean that the detention was unlawful. As it had not been established that Mr Jingcai's detention from 21 November to 13 December 2005 was unlawful, there had been no violation of Article 5 §1.

Other articles

The Court rejected the applicants' other complaints as inadmissible.

Kovach v. Ukraine

Article 3 of Protocol No. 1 (violation)

Judgment of 7 February 2008. Concerns: allegedly unfair election procedures.

Facts and complaints

The applicant, Mykola Mykolayovych Kovach, is a Ukrainian national who was born in 1967 and lives in Uzhgorod (Ukraine). He stood as a candidate in the 2002 parliamentary elections in a constituency in the Zakarpattya region.

The case concerned the applicant's complaint about the unfairness of the procedure of counting votes in his constituency. He relied on Article 3 of Protocol No. 1 (right to free elections).

Decision of the Court

The Court held, in particular, that the decision by an electoral commission to annul the vote in four electoral divisions had to be considered as arbitrary and not proportionate to any legitimate aim pleaded by the government. It therefore held unanimously that there had been a violation of Article 3 of Protocol No. 1 and awarded Mr Kovach 8 000 euros for non-pecuniary damage.

Chamber decision

Wolkenberg and others v. Poland, Witkowska-Tobola v. Poland

Article 1 of Protocol No. 1

Decision of 12 December 2007. Concerns: "Bug River cases"

The Court struck out 40 Polish cases, finding that Poland had successfully put in place an effective compensation scheme available to the nearly 80 000 people forced to abandon their properties between 1944 and 1953 in the eastern provinces of prewar Poland, the so-called "Bug River" cases (*sprawy zabużańskie*).

On 4 December 2007 in its decisions in the cases *Wolkenberg and others v. Poland*, application no. 50003/99 and *Witkowska-Tobola v. Poland*, no. 11208/02), the Court established that the new Bug River compensation scheme meets the requirement set out in its Grand Chamber judgment in the pilot case *Broniowski v. Poland* of 22 June 2004. Forty further Bug River cases were struck out and consideration of the remaining cases (about 230) will continue during 2008. This is the first time the Court has made use of the "pilot-judgment procedure", devised to deal with systemic problems.

In its Grand Chamber *Broniowski v. Poland* judgment, the Court held that Poland was to take steps to ensure Bug River claimants in general were properly compensated as well as finding that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights in the applicant's case.

In July 2005 the Polish Government passed a new law setting the ceiling for compensation for Bug River property at 20% of its original value and the Court is now satisfied that the new law and compensation scheme is effective in practice.

Preparation of the Court's annual report

The annual report of the European Court of Human Rights for 2007 is available online on the website. It will be published in book form by June 2008.

A short history of the annual report

In 2001 the need was felt for a more detailed annual record of the Court's organisation and activities than the traditional *Survey*. A more comprehensive report was therefore developed, identifying developments and trends in the Court's case-law. The Case-Law Information and Publications Division is responsible for gathering the relevant information from the various sectors of the Court, writing certain sections and finally publishing the report.

The report is a genuinely useful tool, easily and rapidly accessible for all those who are interested in the Court's case-law.

The Court's Annual Report 2007 is made up of various chapters:

- the history and development of the Convention system;
- the composition of the Court and the sections;
- the speech given by the President of the Court on the occa-

sion of the opening of the judicial year;

- the speech given by Louise Arbour, United Nations High Commissioner for Human Rights, on the same occasion;
- visits;
- activities of the Grand Chamber and sections;
- publication of the Court's case-law;
- a short survey of the main judgments and decisions delivered by the Court in 2007;
- a selection of judgments and decisions delivered during the year;
- cases accepted for referral to the Grand Chamber and cases in which jurisdiction was relinquished by a Chamber in favour of the Grand Chamber;
- statistical information.

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

Execution of the Court's judgments

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

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

The applicant's individual situation

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

The prevention of new violations

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

In view of the large number of cases reviewed by the CM, only a thematic selection of those appearing on the agendas of the 1013th Human Rights (HR) meeting[1] (3-5 December 2007) is presented here. Further information on the below-mentioned cases as well as on all the others is available from the Directorate General of Human Rights and Legal Affairs, as well as on the website of the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) at the following address: www.coe.int/Human_Rights/execution.

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

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

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

First annual report (2007) on supervision of execution of judgments of the European Court of Human Rights

The Committee of Ministers of the Council of Europe has just presented its first annual report on its supervision of the execution of the judgments of the European Court of Human Rights, covering the period January-December 2007.

This report has been adopted pursuant to the new rules adopted by the Committee in 2006 for the supervision of the execution of judgments and of the terms of friendly settlements.

The Permanent Representative of Slovakia (Ambassador Emil Kuchar) – the country which presently chairs the 47-member Organisation – and the Permanent Representative of Sweden (Ambassador Per Sjögren) – the country presently chairing the Committee of Ministers' Human Rights meetings, officially handed over the report to the President of the European Court of Human Rights (Jean-Paul Costa), the Secretary General (Terry Davis), the Human Rights Commissioner (Thomas Hammarberg) and the Parliamentary Assembly (represented on that occasion by its Secretary General, Mateo Sorinas) at a ceremony in Strasbourg on 25 March 2008.

The 264-page report contains an introduction by the 2007 Chairs of the Human Rights (HR) meetings, some remarks by the Director General of Human Rights and Legal Affairs, an overview of the procedure before the Committee of Ministers and a thematic overview of the main issues examined by the Committee in 2007 (Appendix 1). It also contains a number of statistics (Appendix 2) and information on different kinds of resolutions adopted (final resolutions in Appendix 3 and interim resolutions in Appendix 4) as well as information on memoranda and other relevant public documents prepared (Appendix 5).

The report in pdf format is available on both the websites mentioned above.

1013th HR meeting – general information

During the 1013th meeting (3-5 December 2007), the CM supervised payment of just satisfaction in some 882 cases. It also monitored, in some 275 cases, the adoption of individual measures to erase the consequences of violations (such as striking out convictions from criminal records, reopening domestic judicial proceedings, etc.) and, in some 1189 cases (sometimes grouped together), the adoption of general measures to prevent similar violations (e.g. constitutional and legislative reforms, changes of domestic case-law and administrative practice). The CM also started examining 231 new ECtHR judgments and considered draft final resolutions concluding, in 80 cases respectively, that states had complied with the ECtHR's judgments.

Main texts adopted

After examination of the cases on the agenda of the 1013th meeting, the Deputies have notably adopted the following texts.

Selection of decisions adopted

During the 1013rd meeting, the CM examined 3117 cases and adopted a decision for each of them. Whenever the CM concluded that the execution obligations had not yet been entirely fulfilled, it decided to resume consideration of the case(s) at a later meeting. In some cases, it also expressed its assessment of the situation in detail in the decision. A selection of these decisions is presented below, according to the (English) alphabetical order of the member state concerned.

Right of access to a court violated because of non-enforcement of a final domestic judgment from 1998 ordering the state to release old savings accounts in foreign currency; also violation of property rights (violations of Art. 6 §1 and 1, Prot. 1).

Jeličič against Bosnia and Herzegovina

Decision adopted at the 1013th meeting 41183/02, judgment of 31/10/2006, final on 31/01/2007

The Deputies,

1. noted with satisfaction that the legal obstacle preventing the enforcement of final domestic court decisions concerning "old" savings denominated in foreign currency has now been abrogated through the amendments made to the Old Foreign Currency Savings Act 2006;

2. encouraged the authorities of Bosnia and Herzegovina to provide further information on other general measures;

3. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of information to be provided on general measures.

Insufficient efforts seeking to reunite mother and child, abducted by the father, due to delays in the proceedings on application of the Hague Convention and in the enforcement of a decision ordering that the child should be returned to his mother (violation of Art. 8)

Karadžič against Croatia

Decision adopted at the 1013th meeting 35030/04, judgment of 15/12/2005, final on 15/03/2006

The Deputies,

1. noted with satisfaction the general measures already adopted by the Croatian authorities, namely the publication and dissemination of the European Court's judgment and the organisation of several seminars on the application of the 1980 Hague Convention;

2. also noted with interest the intention of the Croatian authorities to establish a special working group for the elaboration of a draft law on the application of the 1980 Hague Convention;

3. invited the Croatian authorities to continue to keep the Committee informed of the follow up given to this project;

4. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided concerning general measures requested in this case.

Violation of the right to respect for private and family life on account of the fact that the applicant's three children had been taken into public care on the sole ground that the family's economic and social conditions were not satisfactory (amongst others, because of the danger of eviction) (violation of Art. 8).

Havelka and others against the Czech Republic

Decision adopted at the 1013th meeting 23499/06, judgment of 21/06/2007, final on 21/09/2007

The Deputies,

1. noted the information provided by the Czech authorities, in particular on the current situation of the applicants as well as on the general measures required in this case;

2. underlined that the European Court has expressly stated in its judgment that the placement of the children in public care constituted a disproportionate measure in the particular circumstances of the case and noted, with concern, that the three minor applicants are still in public care, even though the situation is regularly reviewed by the District Court of Prague 10;

3. invited the Czech authorities to provide additional information in this respect and to continue their efforts to ensure full compliance with the judgment of the European Court;

4. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided on payment of just satisfaction, if necessary, and on individual and general measures, and to join it with the case of *Wallovà and Walla*.

Non-respect by a domestic court of a father's right to custody of and access to his child born out of wedlock in 1999 and placed in a foster home (violation of Art. 8).

Görgülü against Germany

Decision adopted at the 1013th meeting 74969/01, judgment of 26/02/2004, final on 26/05/2004, rectified on 24/05/2005

The Deputies,

1. noted with interest that following the last examination of this judgment at their 1007th meeting (15-17 October 2007) (HR), the German authorities have undertaken a range of measures, judicial and administrative in particular, to ensure that the applicant may enjoy his visiting rights in conformity with the European Court's judgment;

2. noted that, after the interruption of the visits in September and October 2007, it had been possible to resume contact between the applicant and his son and that three visits took place in November 2007;

3. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided on the implementation of the measures announced to secure the exercise of visiting rights by the applicant.

Scozzari and others against Italy

Placement of the applicant's children into the "Forteto" community and failure to preserve family bonds through visits (violation of Art. 8).

Decision adopted at the 1013th meeting
39221/98+, judgment of 13/07/2000 - Grand Chamber
Interim Resolutions ResDH (2001) 65 and ResDH (2001) 151

The Deputies,

1. agreed to close the aspect of the case concerning the placement of the minor applicant, in view of the efforts accomplished and assurances given by the Italian authorities, of the circumstances, currently different from those described by the European Court in its judgment of 13 July 2000, of the development of the child in the foster family and of the time which has elapsed since his initial placement;

2. welcomed the co-operation between the Belgian and Italian delegations and encouraged them to pursue it in order to evaluate the circumstances, making it possible to conclude that a resumption of contact between the applicant and her younger son has been made possible by the Italian authorities;

3. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of developments between now and then, and, according to them, to consider if possible a draft final resolution.

Luntre and others against Moldova and 19 other cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

Non-enforcement of final judgments delivered by domestic courts (violations of Art. 6 §1 and 1, Prot. No. 1).

Decision adopted at the 1013th meeting
2916/02, judgment of 15/06/2004, final on 15/09/2004

The Deputies,

1. concerning the questions related to the required general measures:

a) welcomed the positive responses given during the meeting by the authorities concerned to the questions raised during the Round Table (Strasbourg, 21-22 June 2007) on the failure to enforce domestic judicial decisions by the public authorities;

b) took note with interest of the joint programme launched by the European Commission and the Council of Europe for Moldova 2006-2009 (on increased independence, transparency and efficiency of the justice system), of which a major part is devoted to the issue of non-enforcement of domestic judicial decisions and invited the authorities to provide information on the programme's implementation;

c) invited the authorities to continue the reflection on other useful measures in order to rapidly solve the general problem of non-enforcement or delay in execution of domestic court decisions and to keep the Committee of Ministers informed of the outcome;

2. concerning the individual measures in the case of Popov, noted with satisfaction that the Supreme Court upheld the initial final decision by the judgment of 17 January 2007, and invited the Moldovan authorities to provide the necessary information on the implementation of this judgment;

3. decided to resume consideration of these cases at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on the payment of just satisfaction, if necessary, and at the latest at their 1028th meeting (3-5 June 2008) (HR) in the light of information to be provided on individual and general measures, if appropriate on the basis of a memorandum prepared by the secretariat.

Reigado Ramos against Portugal

Failure by the respondent state to take adequate and sufficient action to locate the mother and the child and to enforce the applicant's right of access to his child (violation of Art. 8).

Decision adopted at the 1013th meeting
73229/01, judgment of 22/11/2005, final on 22/02/2006

The Deputies,

1. took note of the positive developments since the beginning of 2007 and of the information provided by the Portuguese authorities on the follow up to the meeting of 20 June 2007 between the parents, in particular concerning the planned psychological examinations of the mother and the child;

2. invited the authorities of the respondent state to intensify their efforts to help the parties to reach an agreement regarding visiting rights and to provide the Committee with regular information on this subject;

3. decided to resume consideration of this case at their 1020th meeting (4-6 March 2008) (HR), in the light of further information awaited on individual measures;

4. decided to resume consideration of this case at their 1028th meeting (3-5 June 2008) (HR), in the light of further information also awaited on general measures.

Cases concerning the consequences of racially motivated violence against Roma between 1990 and 1993: improper living conditions following the destruction of the applicants' houses (violation of Art. 3 and 8); excessive length of judicial proceedings (violation of Art. 6 §1); discrimination based on the applicants' Roma ethnicity (violation of Art. 14, 3, 6 and 8).

Moldovan and others No. 2 against Romania and 3 other cases

Decision adopted at the 1013th meeting
41138/98+, judgment No. 1 of 05/07/2005, Friendly settlement
41138/98+, judgment No. 2 of 12/07/2005, final on 30/11/2005

The Deputies,

1. recalled the General Action Plan and the Community Development Programme adopted by the Romanian authorities to fulfil their undertakings in the *Moldovan and others case*, judgment No.1 (friendly settlement) and noted the information provided during the meeting;

2. observed that those undertakings may also serve as a basis for the supervision of the execution of the *Moldovan and others case*, judgment No. 2 (judgment on merits);

3. invited the authorities to provide further information on the progress of implementation of their undertakings and on the measures taken or envisaged to fulfil the additional obligations resulting from the *Kalanyos and Gergely* judgments;

4. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of the information to be provided concerning the payment of just satisfaction, if necessary;

5. decided to resume consideration of these cases at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of the assessment of the information submitted and further information to be provided on individual and general measures.

Non-enforcement by the administration of a final judicial decision of 2001 ordering the registration of the applicant's ownership in the land registry (violation of Art. 6 §1).

Pântea Elisabeta against Romania

Decision adopted at the 1013th meeting
5050/02, judgment of 15/06/2006, final on 15/09/2006
CM/Inf/DH (2007) 33

The Deputies,

1. noted with concern that more than a year after the judgment of the European Court became final, no information has been submitted by the Romanian authorities concerning the state of execution of the final domestic decision at issue in this case, namely the removal of a third party's name from the land registry;

2. also noted that additional information was expected so as to assess the need for additional general measures beyond the publication of the judgment of the European Court;

3. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;

4. decided to resume consideration of this item at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided concerning the execution of the final domestic decision as well as the analysis of the Romanian authorities of the reasons of the violation and further general measures taken or envisaged, if appropriate.

Non-enforcement by local authorities of domestic courts' decisions ordering the restitution of land property nationalised or lost during the communist period (violation of Art. 6 §1 and 1, Prot. No. 1).

Popescu Sabin against Romania and 16 other cases concerning the failure to enforce final judicial decisions ordering the restitution of property nationalised or lost during the communist period

Decision adopted at the 1013th meeting
48102/99, judgment of 02/03/04, final on 02/06/04, rectified on 05/07/2004
CM/Inf/DH (2007) 33

The Deputies,

1. noted with interest the information submitted by the Romanian authorities concerning the 2005 reform related to the restitution of properties and the control of the local authorities set up for this matter;

2. considered that clarification was necessary on how this reform would remedy the problem of non-execution of decisions ordering restitution of property raised in these cases;

3. considered, in addition, that an analysis by the Romanian authorities of the causes of the refusal to execute is needed in order to determine whether complementary measures are necessary;

4. also recalled in this context the conclusions of the Round Table on the non-enforcement of final domestic decisions held in June 2007 in Strasbourg, in which the Romanian authorities took part;

5. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided on payment of the just satisfaction, if necessary;

6. decided to resume consideration of this group of cases at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided on the

current situation of some of the applicants and the outstanding issues concerning general measures.

Ruianu against Romania
Schrepler against Romania

Decision adopted at the 1013th meeting
34647/97, judgment of 17/06/2003, final on 17/09/2003
22626/02, judgment of 15/03/2007, final on 15/06/2007
CM/Inf/DH (2007) 33

The Deputies,

1. noted with interest the information submitted by the Romanian authorities concerning the amendments introduced in the Code of Civil Procedure by Law No. 459 (entered into force on 01/01/2007) concerning the obligations and means at the disposal of bailiffs with respect to the execution of final domestic decisions;

2. invited the authorities to submit additional information in this respect, in particular the text of the relevant provisions;

3 also recalled in this context the conclusions of the Round Table on the non-enforcement of final domestic decisions held in June 2007 in Strasbourg, in which the Romanian authorities took part;

4. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;

5. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided on the situation of the applicant in the *Schrepler case* and on general measures.

Non-enforcement of final judicial decisions ordering private persons to demolish an illegally construed building or to pay sums of money (violation of Art. 6 §1).

Sacaleanu against Romania
Orha against Romania

Decision adopted at the 1013th meeting
73970/01, judgment of 06/09/2005, final on 06/12/2005
1486/02, judgment of 12/10/2006, final on 12/01/2007
CM/Inf/DH (2007) 33

The Deputies,

1. recalled the conclusions of the Round table on the non-enforcement of final domestic decisions, held in June 2007 in Strasbourg, in which the Romanian authorities took part;

2. invited the Romanian authorities to continue their reflection on measures to be taken to avoid new violations similar to those found in these cases and to submit an action plan in this respect;

3. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided on payment of the just satisfaction, if necessary;

4. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided concerning the Romanian authorities' assessment of the situation at the national level and on the measures taken or envisaged in order to ensure that the public institutions enforce without delay the final domestic decisions, in particular if those impose on them the obligation of payment of certain sums of money.

Late execution or non-execution by public institutions of the obligation to pay certain sums of money as established by final court decisions (violation of Art. 6 §1).

Strungariu against Romania
Mihaescu against Romania

Decision adopted at the 1013th meeting
23878/02, judgment of 29/09/2005, final on 29/12/2005
5060/02, judgment of 02/11/2006, final on 26/03/2007
CM/Inf/DH (2007) 33

The Deputies,

1. noted the information submitted by the Romanian authorities indicating that the National Agency for Public Servants had been informed of the obligations incumbent upon public authorities with respect to the enforcement of domestic judicial decisions;

2. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided concerning payment of the just satisfaction, if necessary;

3. decided to resume consideration of these items at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of further information to be provided concerning the authorities' assessment of the situation at national level as well as on complementary

Late enforcement of final judicial decisions ordering that the applicants be reinstated in their post within a public body (violation of Art. 6 §1).

general measures possibly taken or envisaged to prevent new, similar violations.

Excessive length of civil proceedings (violation of Art. 6 §1); absence of an effective remedy (violation of Art. 13).

Kormacheva against the Russian Federation and 31 other cases of length of civil proceedings and of lack of an effective remedy

Decision adopted at the 1013th meeting
53084/99, judgment of 29/01/2004, final on 14/06/2004, rectified on 29/04/2004

The Deputies, having considered the information provided by the Russian authorities on the preparation of a draft law by the Supreme Court of the Russian Federation to introduce a domestic remedy in case of excessive length of proceedings and enforcement proceedings,

1. welcomed the initiative taken by the Russian authorities and noted the intention of the Russian authorities to organise consultations with the secretariat with a view to ensuring that the reform is in accordance with the Convention's requirements;

2. recalled, however, the Committee of Ministers' constant position that the setting up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations;

3. consequently invited the Russian authorities to pursue their efforts to ensure reasonable length of domestic proceedings and improve material working conditions in Russian courts;

4. decided to resume consideration of these cases at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on payment of just satisfaction, if necessary, on the progress of this draft law as well as on individual and general measures.

Poor conditions of pre-trial detention facilities and in prison disciplinary cells, combined with lack of adequate medical care, amounting to inhuman and degrading treatment; restrictions of defence rights due to the authorities' refusal to examine the defence witnesses (violation of Art. 3, 6 §§1 and 3 (d)); Illicit pressure from the prison administration amounting to undue interference with the applicant's right of individual petition (violation of Art. 34).

Popov against the Russian Federation

Decision adopted at the 1013th meeting
26853/04, judgment of 13/07/2006, final on 11/12/2006

The Deputies,

1. noted the information provided by the Russian authorities on the progress of reopened proceedings in the applicant's case following the judgment of the European Court;

2. noted however with concern that the applicant is still in detention on remand pending his new trial on the sole ground of the gravity of charges;

3. took note of the information provided by the authorities on other individual measures required by the judgment, in particular of the applicant's refusal to undergo required medical examinations, as well as on general measures;

4. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of further possible information on individual and general measures.

Non-respect of final character of judicial decisions; quashing of final decisions by means of extraordinary proceedings instituted by state official (violation of Art. 6§1).

Ryabykh against the Russian Federation and 31 other cases concerning the quashing of final judgments through the supervisory review procedure

Decision adopted at the 1013th meeting
52854/99, judgment of 24/07/2003, final on 03/12/2003
CM/Inf/DH (2005) 20

The Deputies, having considered the law to reform the supervisory-review procedure recently adopted by the parliament:

1. welcomed the authorities' recent efforts, taken in response to the European Court's judgments and Interim Resolution ResDH (2006) 1, to reform the supervisory-review procedure;

2. noted with interest that the measures taken through both legislation and the development of judicial practice tend to ensure better respect of the Convention's requirements;

3. noted however that the present reform may need to be complemented by further steps to ensure full compliance with the Convention's requirements so as to eliminate the risk of new violations of the requirement of legal certainty in supervisory-review procedure and to increase the effectiveness of this procedure to remedy the violations of the Convention in a clear, predictable and timely manner;

4. therefore encouraged the authorities to pursue bilateral consultations with the secretariat in the near future with a view to identifying possible outstanding issues and prospects for further measures and/or reforms in this area;

5. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008)

(HR), in the light of information to be provided on the payment of the just satisfaction, if necessary and at the latest at their 1028th meeting (3-5 June 2008) (HR), possibly in the light of a draft interim resolution assessing the progress made in the adoption of general measures and identifying outstanding issues.

Tomić against Serbia

Decision adopted at the 1013th meeting 25959/06, judgment of 26/06/2007, final on 26/09/2007

The Deputies,

1. invited the Serbian authorities to further inform the Committee of the situation with respect to the applicant's continued access to her child as well as her possible request for reopening of the domestic proceedings;

2. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of further information to be provided on individual measures as well as on general measures which are being examined in the context of the case of V.A.M. (application No. 39177/05) at this meeting.

Excessive length of the process of execution of a final judgment granting the applicant custody of her daughter, lack of an effective remedy in this respect (violation of Art. 6 §1 and 13). Violation of the applicant's right to respect of her family life on account of the non-enforcement of the judgment (violation of Art. 8).

V.A.M. against Serbia

Decision adopted at the 1013th meeting 39177/05 judgment of 13/03/2007, final on 13/06/2007

The Deputies,

1. recalled that the European Court expressly stated that the Serbian authorities "shall [...], by appropriate means, enforce the interim access order of 23 July 1999 and bring to a conclusion, with particular diligence, the ongoing civil proceedings";

2. called upon the Serbian authorities to ensure that necessary measures are taken so the above request of the European Court is complied with rapidly;

3. took note of the information concerning a law adopted with the aim of introducing a remedy before the Constitutional Court for excessive length of proceedings;

4. decided to resume consideration of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on individual measures;

5. decided to resume consideration of this item at their 1028th meeting (3-5 June 2008) (HR), in the light of information to be provided on general measures, in particular on the effective application of the adopted Law on Constitutional Court in compliance with the Convention standards.

Excessive length of divorce and custody proceedings started in 1999 and still pending and lack of an effective remedy (violations of Art. 6 §1, 13 and 8). Further violation of right to respect of family life because of non-enforcement of an interim court order granting applicant access to her child (violation of Art. 8).

Bianchi against Switzerland

Decision adopted at the 1013th meeting 7548/04, judgment of 22/06/2006, final on 22/09/2006

The Deputies,

1. noted with satisfaction that the action taken to find the applicant's child had been successful and that the applicant and his child were now reunited;

2. agreed consequently that no further individual measure was required in this case;

3. decided to resume consideration of the only remaining general measure, namely in the light of the draft law concerning "the implementation of the conventions on the international abduction of children as well as the adoption and implementation of The Hague conventions for the protection of children and adults", at their 1020th meeting (4-6 March 2008) (HR).

Failure by the respondent state to take adequate and sufficient action to enforce the applicant's right to have his son (born in 1999) returned to Italy after abduction by the mother (violation of Art. 8).

A.D. against Turkey

Decision adopted at the 1013th meeting 29986/96 judgment of 22/12/2005, final on 22/03/2006

The Deputies,

1. took note of the information provided by the Turkish authorities concerning the proposed amendments to the criminal military code;

2. decided to resume consideration of this case at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of information to be provided on the progress achieved in the adoption of this draft law.

Detention of a military, imposed by a superior officer (lieutenant-colonel), i.e. not by an organ offering judicial guarantees, for disobeying military orders (violation of Art. 5 §1(a)).

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning: Greek-Cypriot missing persons and their relatives; home and property of displaced persons; living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus; rights of Turkish Cypriots living in the northern part of Cyprus.

Cyprus against Turkey

Decision adopted at the 1013th meeting
25781/94, judgment of 10/05/2001 - Grand Chamber
CM/Inf/DH (2007) 10rev4, CM/Inf/DH(2007)10/1rev, CM/Inf/DH (2007) 10/3rev, CM/Inf/DH (2007) 10/6
Interim Resolutions ResDH (2005) 44 and CM/ResDH (2007) 25

The Deputies,

On the issue of missing persons:

1. noted with satisfaction the progress achieved by the CMP as part of the Exhumation and Identification Programme and invited the Turkish authorities to continue to keep the Committee informed of the developments in this context;

2. noted also with great interest the information provided by the Turkish authorities on certain data which the families of missing persons can obtain when the remains of their relatives are returned and invited the authorities to provided additional information on this issue;

3. reiterated however their repeated invitation to the Turkish authorities to provide information on the additional measures required to ensure the effective investigations needed for the full execution of the Court's judgment;

On the issue of the property rights of the enclaved persons:

4 taking note with interest of the information provided by the Turkish authorities following their finding contained in the decision adopted at their 1007th meeting (October 2007), concerning the property rights of the enclaved persons, noted that several issues relating to the regulation of these rights and available remedies in this regard need to be clarified and accordingly invited the Turkish authorities to provide further information on these issues and in particular to submit a copy of the relevant provisions and decisions;

On the issue of property rights of displaced persons:

5. noted with interest the additional information provided by the Turkish authorities on the functioning of the Immovable Property Commission, established in the north of Cyprus and invited them to continue to keep the Committee informed on this subject;

6. also noted the information provided by the Turkish authorities on the important role played by the construction sector in the economic situation in the north of Cyprus;

7. noted, in addition, the information provided by the Cypriot authorities which was composed of press clippings from the Turkish Cypriot media concerning in particular the situation of the immovable properties situated in the north;

8. observed that the information provided by the Turkish authorities still does not answer the request repeatedly made by the Committee for detailed and concrete information as regards the changes and transfers of property at issue in the judgment and the measures taken to safeguard the property rights of displaced persons as these have been recognised in the judgment of the Court;

9. instructed the secretariat to update the information document CM/Inf/DH (2006) 6/5 revised, so as to clarify the questions relevant for the full execution of the judgment;

10. decided to resume consideration of this case at their 1020th meeting (4-6 March 2008) (HR).

Unfairness of proceedings, ill-treatment of the applicants while in police custody, (in the cases of *Hulki Günes* and *Göçmen*) lack of independence and impartiality of state security courts; (in the case of *Göçmen*) excessive length of proceedings; (in the cases of *Göçmen* and *Söylemez*) absence of an effective remedy (violation of Article 6 §1 and 6 §3, of Article 3 and of Article 13).

Hulki Günes against Turkey and two other cases

Decision adopted at the 1013th meeting
28490/95, judgment of 19/06/2003, final on 19/09/2003
Interim Resolutions ResDH (2005) 113 and CM/ResDH (2007) 26
72000/01 Göçmen, judgment of 17/10/2006, final on 17/01/2007
46661/99 Söylemez, judgment of 21/09/2006, final on 21/12/2006

The Deputies,

1. in the case of *Hulki Günes*, adopted Interim Resolution CM/ResDH (2007) 150 as it appears in the Volume of Resolutions;

2. decided to examine the implementation of the present judgments at each Human Rights meeting until the necessary urgent measures are adopted.

Institut de Prêtres français and others against Turkey

Decision adopted at the 1013th meeting
26308/95 judgment of 14/12/2000 - Friendly settlement - Interim Resolution ResDH (2003) 173

The Deputies,

1. invited the Turkish delegation to carry out bilateral contacts with the secretariat with a view to reaching a common understanding on the remaining outstanding issues;

2. decided to resume examination of this item at their 1020th meeting (4-6 March 2008) (HR).

Judicial decision revoking in 1994 the earlier recognition of the applicants' property rights to certain religious property, notably as the property was partly used for commercial purposes; also non recognition of the applicant's legal personality (complaints under Article 9 and 1, Prot. No. 1); undertakings, notably, to give the usufruct of the property to the priests in charge of the institution.

Loizidou against Turkey

Decision adopted at the 1013th meeting
15318/89, judgment of 18/12/1996 (merits)
Interim Resolutions DH (99) 680, DH (2000) 105, ResDH (2001) 80

The Deputies,

1. welcomed the fact that an offer has been made to the applicant by the Turkish authorities in response to the request repeatedly made by the Committee of Ministers;

2. took note with interest of the response by the applicant on the merits of this offer and invited the Turkish authorities to respond without undue delay and to keep the Committee informed on any development in this context;

3. decided to resume consideration of this case at their 1020th meeting (4-6 March 2008) (HR).

Continuous denial of access by the applicant to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).

Taskin and others; Öçkan and others; Okyay Ahmet and others against Turkey

Decision adopted at the 1013th meeting
46117/99 Taskin and others, judgment of 10/11/2004, final on 30/03/2005, rectified on 01/02/2005
46771/99 Öçkan and others, judgment of 28/03/2006, final on 13/09/2006
36220/97 Okyay Ahmet and others, judgment of 12/07/2005, final on 12/10/2005
Interim Resolution CM/ResDH (2007) 4

The Deputies,

considering the information submitted so far, decided to resume consideration of these cases at their 1020th meeting (4-6 March 2008) (HR) in the light of further information to be provided:

a) on individual measures, namely:

- in the cases of Taskin and others and Öçkan and others: the outcome of the proceedings in annulment of the new permit and the enforcement of the decision of the Izmir Administrative Court annulling the urban plan of the mining area;

- in the case of Ahmet Okyay and others: the installation without further delay of filter mechanisms in the power plants, as ordered by the domestic courts – see also Interim Resolution CM/ResDH (2007) 4;

b) on additional general measures, in particular in order to prevent more effectively the non-enforcement of domestic court decisions in the area of environmental law;

c) on the payment of just satisfaction in the case of *Öçkan and others*.

In the cases of *Taskin and others* and *Öçkan and others*: violation of the applicants' right to their private and family life due to decisions by the executive authorities to allow, in 2001-2002, the resumption and continuation of a gold-mining operation likely to cause harm to the environment (violation of Art. 8) and in this context also of their right of access to court because of the non-respect of a domestic court decisions ordering in 1996 the stay of production at the gold mine (violation of Art. 6).
In the case of *Okyay Ahmet and others*: government's non-compliance with domestic court decisions in 1996-1998 ordering suspension of activities of thermal power plants (operating under a joint venture with the government) polluting the environment (violation of Art. 6 §1).

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

Ülke against Turkey

Decision adopted at the 1013th meeting
39437/98, judgment of 24/01/2006, final on 24/04/2006
Interim Resolution CM/Res/DH (2007) 109

The Deputies,

1. noted that, since the adoption of Interim Resolution CM/ResDH (2007) 109 in October 2007, the applicant's situation is unchanged;

2. expressed concern that the applicant was still facing the risk of imprisonment on the basis of a previous conviction;

3. noted with interest that the draft law prepared aiming to prevent new violations of Article 3 similar to that found in the present case has now been transmitted to the prime minister's office;

4. called upon the Turkish authorities rapidly to provide the Committee with information concerning the adoption of this draft law;

5. decided to resume examination of this item at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on individual and general measures.

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

Xenides-Arestis against Turkey

Decision adopted at the 1013th meeting
46347/99, judgments of 22/12/2005, final on 22/03/2006 and of 07/12/2006, final on 23/05/2007 CM/Inf/DH (2007) 19

The Deputies,

1. recalled the two divergent interpretations put forward regarding what precisely was covered by the amount awarded in respect of pecuniary damage in the judgment of the European Court of 7 December 2006 on the application of Article 41;

2. took note with concern of the reticence of the Turkish authorities to pay this amount since they are not certain of what it covers;

3. moreover took note of the positions of the applicant and of the respondent state in this respect and of their intention not to request the interpretation of this judgment by the Court;

4. stressed, once again, that in any event and without prejudice to possible further clarifications, the amounts awarded by the Court are due according to the modalities indicated in this judgment and urged Turkey to pay these amounts without any delay;

5. agreed to resume consideration of the issues raised in this case at their 1020th meeting (4-6 March 2008) (HR).

Prosecutor's failure, in 2000, to his obligation to take adequate measures to protect the life of a journalist threatened by unknown persons, possibly including police officers; inefficient investigation into the journalist's subsequent death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy in respect of the inefficient investigation and in order to obtain compensation (violation of Art. 2, 3 and 13).

Gongadze against Ukraine

Decision adopted at the 1013th meeting
34056/02, judgment of 08/11/2005, final on 08/02/2006

The Deputies, having examined the information provided by the Ukrainian authorities,

1. noted with regret that the criminal proceedings against three officers who allegedly executed the kidnapping and murder of Mr Gongadze have been pending before the Kyiv City Court of Appeal since January 2006,

2. took note of the information provided on the progress of the ongoing investigation aimed at the identification of the persons who had ordered the kidnapping and murder of Mr Gongadze, in particular of the measures taken to speed up this investigation;

3. in this respect, noted that information is still awaited on the possible follow up given to the report of the ad hoc investigating committee submitted to the Parliament of Ukraine on 20 September 2005 on the murder of Mr Gongadze in which several state officials were specifically designated as having been involved in the kidnapping and murder of the journalist;

4. called upon the Ukrainian authorities to take rapidly necessary measures in order to bring the aforementioned court and investigating proceedings to a close in line with the Convention requirements;

5. decided to resume consideration of this case at their 1020th meeting (4-6 March 2008) (HR) in the light of new information to be provided on the progress of individual and general measures, if necessary, in the light of a draft interim resolution to be prepared by the secretariat.

Salov against Ukraine
Savinskiy against Ukraine

Decision adopted at the 1013th meeting
65518/01, judgment of 06/09/2005, final on 06/12/2005
6965/02, judgment of 28/02/2006, final on 28/05/2006

The Deputies,

1. welcomed the adoption, at first reading, of the draft amendments to the Law on the Judicial System of Ukraine and to the Law on the Status of Judges aimed at securing the independence of the judiciary, and noted in this respect with satisfaction the Venice Commission's conclusions that the fundamental provisions of both drafts are in line with the European standards and are a clear improvement compared to the present situation;

2. strongly encouraged the competent Ukrainian authorities to rapidly adopt the draft amendments at the second reading, taking into account observations and proposals made by the Venice Commission to the mentioned draft laws;

3. called upon the Ukrainian authorities to pursue efforts for the adoption of further, particularly legislative, measures necessary to prevent similar violations;

4. decided to resume consideration of these cases at the latest at their 1028th meeting (3-5 June 2008) (HR), in the light of the information to be provided on progress in the adoption of the measures.

Delay in the judicial review of the lawfulness of the applicant's arrest in 1999 (violation of Art. 5 §3), numerous violations of the applicant's right to a fair trial notably due to structural problems regarding judicial independence and impartiality and non-respect of requirements of legal certainty because of the use in 2000 of supervisory review to set aside a final procedural decision remitting the case for additional investigation (protest) (violation of Art. 6 §1); furthermore, a violation of freedom of expression in the *Salov* case because of a criminal conviction for interference with the citizens' right to vote as a result of the distribution of eight copies of a forged newspaper article in the context of the presidential election campaign in 1999 (violation of Art. 10).

Sovtransavto Holding against Ukraine and other cases concerning the quashing of final judgments through the supervisory review procedure (protest)

Decision adopted at the 1013th meeting
48553/99, judgment of 25/07/2002, final on 06/11/2002 and judgment of 02/10/2003, final on 24/03/2004 (Article 41)
Interim Resolution ResDH (2004) 14

The Deputies,

1. encouraged the competent Ukrainian authorities to hold bilateral consultations with the secretariat with a view to clarifying possible outstanding issues related to the reform of the supervisory-review procedure;

2. welcomed the adoption, at first reading, of the draft amendments to the Law on the Judicial System of Ukraine and to the Law on the Status of Judges aimed at securing the independence of the judiciary, and noted in this respect with satisfaction the Venice Commission's conclusions that the fundamental provisions of both drafts are in line with the European standards and are a clear improvement compared to the present situation;

3. strongly encouraged the competent Ukrainian authorities to rapidly adopt the draft amendments at the second reading, taking into account observations and proposals made by the Venice Commission to the mentioned draft laws;

4. noted that the adoption of other measures complementing this legislative reform, such as training of judges, awareness raising, and other legislative measures are being examined under the *Salov* group of cases;

5. decided to resume consideration of these cases at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on payment of the just satisfaction, if necessary, and at latest at their 1028 meeting (3-5 June 2008) (HR), in the light of information to be provided on individual and general measures and possibly on the basis of a draft final resolution.

Non-respect of final character of judgments, interference by the executive in pending court proceedings, unfairness of proceedings (violation of Art. 6§1), resulting violation of the applicants' property rights (violation of Art. 1, Prot. No. 1).

Failure or serious delay by administration in abiding by final domestic judgments; absence of effective remedy in relation to delays in the enforcement proceedings; violation of applicants' right to protection of their property violation of Article 6, paragraph 1, of Article 13 and of Article 1, Protocol 1)

Zhovner and 217 other cases against Ukraine concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

Decision adopted at the 1013th meeting
56848/00 Zhovner, judgment of 29/06/2004, final on 29/09/2004 and other cases
CM/Inf/DH (2007) 30 (revised in English only) and CM/Inf/DH (2007) 33

The Deputies,

1. recalled that these judgments revealed an important structural problem affecting the legal system of Ukraine and causing a growing number of applications before the European Court;

2. expressed concern that despite a number of legislative initiatives repeatedly brought to the attention of the Committee of Ministers, no substantial progress had been made so far in setting up or improving domestic procedures or the legislative framework;

3. therefore urged the Ukrainian authorities rapidly to adopt the draft laws previously announced before the Committee of Ministers, in particular the law on "the right to pre-trial and trial proceedings as well as enforcement of court decisions within a reasonable time";

4. noted however with particular interest the rapid measures taken in the educational sector to resolve the indebtedness problem so as to allow the honouring of outstanding debts, thus contributing to eliminating the need to lodge complaints to the European Court, and encouraged the Ukrainian authorities to take similar measures also in other sectors concerned;

5. thanked the Ukrainian authorities for information provided regarding measures taken to implement the Conclusions of the Round Table held in June 2007 in Strasbourg (CM/Inf/DH (2007) 33);

6. noted that further information on other aspects raised in the conclusions as well as on issues raised in the MemorandumCM/Inf/DH (2007) 30 revised and, in particular, with regard to further developments and the outcome of the sector-specific measures would be welcomed;

7. decided to resume consideration of these items at their 1020th meeting (4-6 March 2008) (HR), in the light of information to be provided on payment of the just satisfaction, if necessary, on individual measures as well as on the progress in the adoption of general measures, possibly on the basis of a draft interim resolution, together with an updated version of the memorandum mentioned above, taking stock of progress achieved and identifying outstanding issues.

Action of security forces in Northern Ireland in the 1980s and 1990s: shortcomings in investigation of deaths; lack of independence of investigating police officers; lack of public scrutiny and information to victims' families on reasons for decisions not to prosecute (procedural violations of Art. 2).

McKerr against the United Kingdom and other cases concerning the action of the security forces

Decision adopted at the 1013th meeting
28883/95, judgment of 04/05/2001, final on 04/08/2001
Interim Resolutions ResDH (2005) 20 and CM/ResDH (2007) 73
CM/Inf/DH (2006) 4 revised 2 and CM/Inf/DH (2006) 4 Addendum revised 3

The Deputies,

1. took note of the information provided by the authorities of the United Kingdom on both individual and general measures taken in these cases since the adoption of Interim Resolution CM/ResDH (2007) 73 in June 2007;

2. decided to resume examination of these cases at their 1020th meeting (4-6 March 2008) (HR), in the light of a memorandum to be prepared by the secretariat.

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 about the adequacy of measures undertaken or the 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 judgment.

An extract from the interim resolution adopted is presented below. The full text of the resolution is available on the website of the Depart-

ment for the Execution of Judgments of the European Court of Human Rights, the Committee of Ministers' website and the HUDOC database of the European Court of Human Rights.

Interim Resolution CM/ResDH (2007) 150 on the execution of the judgment of the European Court of Human Rights Hulki Günes against Turkey

adopted at the 1013th meeting
28490/95, Hulki Günes against Turkey, judgment of 19/06/2003, final on 19/09/2003, Interim Resolutions ResDH (2005) 113 and CM/ResDH (2007) 26)

Unfairness of criminal proceedings on account of the lack of independence and impartiality of the state security court (violation of Article 6 §1) and of the impossibility for the applicant to examine or to have examined the witnesses who testified against him (violation of Article 6 §1 and 3(d)) and inhuman and degrading treatment of the applicant while in police custody (violation of Article 3)

In this resolution, the Committee of Ministers notably: (...)

Reiterating that [...] the Court's judgment required the adoption of individual measures [...];

Noting however that [...] the Code of Criminal Procedure still excludes the reopening of the criminal proceedings in this case as in numerous other cases pending before the Committee for supervision of execution [...];

Recalling that the request for the reopening of proceedings lodged by the applicant had been rejected by domestic courts solely on the ground of this temporal limitation and without any assessment of the need for a new trial to remedy the specific violations found by the Court in the particular circumstances of the case;

[...];

Deeply deploring that, notwithstanding the Committee's two interim resolutions and the two letters from the Chair, no measures have yet been taken by the Turkish authorities, beyond the payment of just satisfaction, to grant the applicant, who is still serving his life sentence, adequate redress for the violations found;

Noting with grave concern that two similar cases, namely the cases of *Göçmen* and *Söylemez*, pending before the Committee also call for reopening of domestic proceedings because the applicants were deprived of their right to a fair trial and are still serving their prison sentences;

Stressing that failure to adopt the necessary measures in the present case prevents the possibility of reopening of proceedings in those cases;

Reiterating that a continuation of the present situation would amount to a manifest breach of Turkey's obligations under Article 46, paragraph 1, of the Convention;

FIRMLY RECALLED the obligation of the Turkish authorities under Article 46, paragraph 1, of the Convention to redress the violations found in respect of the applicant;

STRONGLY URGED the Turkish authorities to remove promptly the legal lacuna preventing the reopening of domestic proceedings in the applicant's case;

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

Selection of Final Resolutions (summaries)

Once the CM has ascertained that the necessary measures have been taken by the respondent state, it closes the case by a resolution in which it takes note of the overall measures taken to comply with the judgment. During the 1013th meeting, the CM adopted 23 final resolutions, (closing the examination of 80 cases), among which 12 took note of the adoption of new general measures. Examples of extracts or summaries from the resolutions adopted follow (for their full text, see the website of the Department for the Execution of judgments of the ECtHR, the Committee of Ministers' website or the HUDOC database).

Final Resolution CM/ResDH (2007) 152 - Treial against Estonia

adopted at the 1013th meeting
48129/99, judgment of 02/12/2003, final on 02/03/2004

Excessive length of certain civil proceedings (divorce and division of property) requiring special diligence (violation of Art. 6 §1)

Individual measures

The proceedings ended in May 2006.

General measures

Length of judicial proceedings: given that that there is no systematic problem concerning the length of proceedings in Estonia and that the Estonian courts give direct effect to the case-law of the ECtHR, publication and dissemination of the judgment of the ECtHR are sufficient measures to prevent new, similar violations. The judgment has been translated into

Estonian, disseminated to all domestic courts and prosecutors and published on the Internet.

Effective remedy: anyone may file a complaint before the administrative courts against delays in judicial proceedings or inaction by the courts. In doing so, he or she may rely on the relevant provisions of the constitution or of the ECHR as well as on the provisions of the code of administrative procedure and the case-law of the supreme court. It is possible during such proceedings to demand compensation for damage caused by such delays/inaction and the administrative courts have competence to order the payment of compensation.

Moreover, the new code of civil procedure, which entered into force on 1 January 2006, provides a special appeal for parties to cases in which a court adjourns the hearing without the consent of the parties for more than three months.

Breach of the applicant's right of access to a court on account of the forfeiture of his appeal on points of law, in application of Art. 583 of the code of criminal procedure, because he had not been exempted from surrendering to custody and had not surrendered to custody before the examination of his appeal on points of law (violation of Art. 6 §1).

Final Resolution CM/ResDH (2007) 153 - Khalfaoui against France

adopted at the 1013th meeting
34791/97, judgment of 14/12/ 1999, final on 14/03/2000

Individual measures

A new Law of 15/06/2000, strengthening the protection of the presumption of innocence and victims' rights, provides that "review of a final criminal court decision may be requested on behalf of any person found guilty of an offence where it emerges from a judgment delivered by the ECtHR that sentence was passed in a manner violating the provisions of the ECHR or of the protocols thereto, if the nature and the gravity of the violation found are such as to submit the sentenced person to prejudicial consequences that could not be remedied by the just satisfaction awarded on the basis of Article 41 of the ECHR". The same Law also provided that "As a transitional measure, applications for review (...) founded on a judgment delivered by the ECtHR prior to publication of this law in the *Official Gazette of the French Republic* may be made within one year following publication." The applicant did not avail himself of this possibility.

General measures

The abovementioned new law strengthening the protection of the presumption of innocence and victims' rights abrogated Articles 583 and 583-1 of the code of criminal procedure concerning the forfeiture of the right to appeal on points of law for a person given a custodial sentence of more than six months, for failure to surrender to custody or in the absence of an exemption from surrendering to custody.

This law entered into force on 16 June 2000.

Breach of the applicants' right of access to a court and thus of their right to a fair trial, on account of the declaration of inadmissibility *ipso jure* of their appeals by the court of cassation because they had not complied with an arrest warrant issued against them by decision of an appeal court against which they had lodged an appeal; the cases of *Poitrimol* and *Van Pelt* also concern the applicants' right to the assistance of a lawyer of their choice in appeal proceedings where the applicants themselves were not present (violation of Art. 6 §1)

Final Resolution CM/ResDH (2007) 154 - Poitrimol against France and three other cases regarding the right to a fair trial

adopted at the 1013th meeting
14032/88, Poitrimol*, judgment of 23/11/1993*
24767/94, Omar*, judgment of 29/07/1998*
25201/94, Guérin*, judgment of 29/07/1998*
31070/96, Van Pelt*, judgment of 23/05/2000, final on 23/08/2000*

Individual measures

Following the introduction, in 2000, of a law allowing for the review of criminal sentences having been found contrary to the ECHR, (Law No. 2000-516 of 15 June 2000), Mr Van Pelt requested a review of the proceedings pertaining to him. The other applicants did not avail themselves of this possibility.

General measures

The judgments were published and the case-law changed, putting the French law in conformity with the ECHR respectively in 1999 and in 2001. Following clarifications given by the ECtHR in the framework of a subsequent case (*Khalfaoui*, judgment of 14/12/1999, final on 14/03/2000), the law was amended in June 2000 and abrogated the provisions according to which the failure to surrender to custody at the latest the day before the appeal hearing in the court of cassation resulted in the right to appeal on points of law being forfeited.

Final Resolution CM/ResDH (2007) 155 - Intrieri against Italy

adopted at the 1013th meeting
16609/90, Interim Resolution DH (97) 50 of 28/01/1997

Excessive length of proceedings brought by the applicant against a judicial decision declaring her son eligible to be adopted and thereby suspending her parental rights and her contacts with the child (violation of Art. 8).

Individual measures

The proceedings at issue in this case had already ended when the violation of the ECHR was found. They did not lead to a final decision on the merits, as the applicant's son had in the meantime become of age. Subsequently, he returned to live with the applicant.

General measures

Awareness-raising measures have been adopted to prevent, as much as possible, new violations similar to that found in the present case.

Firstly, the Italian Supreme Judicial Council (C.S.M.) adopted, in July 2000, a resolution addressed to judges and managers of judicial bodies underlining the need to take any appropriate measure in order to prevent any unjustified delay in this sort of proceedings requiring special diligence.

The C.S.M also decided to include the subject of human rights and the ECtHR's case-law in the curricula of all initial training courses for junior judges, in the annual programme of in-service training and in that of decentralised training courses.

Furthermore, in May 2001, it promoted the organisation of seminars, both at national and local level, aimed at training persons working in the field of family law, and in particular the judges of the youth courts, on the requirements of the ECHR, as interpreted in the Strasbourg's case-law in this field.

As regards the more general problem of the functioning of judicial system in Italy, the government reaffirmed its commitment to prepare at the latest by 1 November 2008 a new effective strategy and to keep the CM regularly informed of the reflections concerning the strategy to be implemented and the progress made in this regard (see Resolutions (97) 336, (99) 437, (2000) 135, (2005) 114 and (2007) 2).

Final Resolution CM/ResDH (2007) 156 - Busuioc against Moldova and Savitchi against Moldova

adopted at the 1013th meeting
61513/00, judgment of 21/12/2004, final on 21/03/2005
11039/02, judgment of 11/10/2005, final on 11/01/2006

Civil conviction of journalists for defamation of civil servants (violation of Art. 10).

Individual measures

In both cases, the ECtHR awarded just satisfaction in respect of pecuniary and non-pecuniary damage, as well as all the costs incurred in connection with the convictions.

General measures

The violations found in the present cases arise from the fact that, when deciding on the allegations of defamation brought before them, the domestic courts did not distinguish correctly between facts and value judgments, as required by the well-established case-law under Article 10 of the ECHR. Consequently, a change in domestic courts' practice in this respect appears to be necessary.

To this end, and taking into account the direct effect afforded by the Moldovan authorities to judgments of the ECtHR, the judgments of the ECtHR have been translated, published and disseminated to all relevant authorities.

Furthermore, on 15-16 November 2005, the Moldovan Ministry of Justice organised, together with the Council of Europe, a seminar for Moldovan judges on the application of Article 10 of the ECHR. Moreover, out of the 23 civil cases in which the Supreme Court of Justice directly applied the case-law of the ECtHR in 2005, five cases concerned Article 10 of the ECHR.

Breach of the applicants' right to a fair hearing and to the peaceful enjoyment of possessions as a result of quashing a final judgment favourable to the applicant (case *Josan*) and of the adoption of a decision in favor of the counterpart rendering ineffective a final judgment favourable to the applicants (case *Macovei and others*) (violations of Article 6 §1 and Article 1 of Protocol No. 1).

Final Resolution CM/ResDH (2007) 157 - Josan and Macovei and others against Moldova

adopted at the 1013th meeting
37431/02, judgment of 21/03/2006, final on 21/06/2006
19253/03, and 25/04/2006, final on 25/07/2006

Individual measures

In the *Josan* case, the Supreme Court of Justice ordered the reopening of the case. When the European Court of Human Rights pronounced its judgment, these proceedings were still pending. The European Court granted the applicant just satisfaction in respect of pecuniary damage (covering the payment of 155 868 MDL plus interest) and non-pecuniary damage sustained as a consequence of the annulment.

In the *Macovei* case, the European Court granted the applicants just satisfaction in respect of the pecuniary damage (covering the pension arrears due) and non-pecuniary damage sustained.

General measures

These cases present similarities to the *Roșca* case (judgment of 22 March 2005, closed with Resolution CM/ResDH (2007) 56) for which the Moldovan authorities have already adopted the necessary general measures. The law in force at the material time has since been repealed by the new Code of Civil Procedure which entered into force on 12 June 2003. Under the new code, final judgments may no longer be annulled on the basis of an annulment lodged by the prosecutor general.

Different violations of detainees' rights under the system of pre-trial detention in force until the legislative reform of 01/01/00 (violations of Art. 5 §1, 5 §3, 5 §4 and 6 §1).

Final Resolution CM/ResDH (2007) 158 - Emil Hristov against Bulgaria and eight other cases concerning the system of pre-trial detention in force until the legislative reform of 1 January 2000

adopted at the 1013th meeting
52389/99, judgment of 20/10/2005, final on 20/01/2006

Individual measures

No individual measures over and above the payment of the just satisfaction were required in these cases. The applicants have been released or were no longer in pre-trial detention when the ECtHR delivered its judgments. In addition, the criminal proceedings in the *Ilijkov* case, which the ECtHR had held to be excessively long, came to an end in 1999.

General measures

Measures have already been taken in response to a number of violations were already in the context of the execution of the case *Assenov and others* (see Final Resolution (2000) 109), notably the reform of the Code of Criminal Procedure, which took effect on 1 January 2000. These reforms have subsequently been incorporated into the new Code of Criminal Procedure, which came into force on 29 April 2006.

As to the violations not covered by these reforms, the government considers that the direct effect of the case-law of the ECtHR, recognised by the Bulgarian courts, will lead to the prevention of similar violations in the future.

The government in particular expects the courts to ensure henceforth the adversarial nature of appeal proceedings concerning applications for release, even if this is not explicitly foreseen in the legislation.

To ensure that the courts concerned are adequately informed of the ECHR requirements, the Ministry of Justice has sent translated copies of the judgments to the presidents judges of the regional courts, asking them to draw the attention of all judges dealing with pre-trial detention matters to its content. Bulgarian translations of the judgments are also available on the Ministry of Justice website.

Internet:
– Website of the Department for the Execution of Judgments: http://www.coe.int/Human_Rights/execution/
– Website of the Committee of Ministers: http://www.coe.int/cm/

Committee of Ministers

The Council of Europe's decision-making body comprises the Foreign Affairs Ministers of all the member states, who are represented – outside the annual ministerial sessions – by their Deputies in Strasbourg, the Permanent Representatives to the Council of Europe.

It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.

Protection of children against sexual exploitation and abuse

Reply to Parliamentary Assembly Recommendation 1778 (2007) "Child victims: stamping out all forms of violence, exploitation and abuse"

Taking action to protect children as part of the programme Building a Europe for and with children

The Committee of Ministers wishes to stress the importance it attaches to this issue and its commitment to protect children from all forms of violence, exploitation and abuse. In the Council of Europe member states as a whole, around 155 million individuals are below the age of 18. It is a population that is particularly vulnerable, and often defenceless when subject to violence. The Council of Europe has long been concerned with the protection of children and the priority to be given to the protection of children was duly reflected in the Warsaw Action Plan, of which the relevant points are being implemented through diverse and concrete activities. One prime example of this commitment is the launching of the programme "Building a Europe for and with children" in April 2006.

The Committee of Ministers supports the call of the Parliamentary Assembly to member states to sign and ratify existing international and European legal instruments relating to the protection of children against all forms of violence, exploitation or abuse, as enumerated in the recommendation and Resolution 1530 (2007). The Committee of Ministers also recalls the case-law of the European Court of Human Rights concerning children's rights and in particular the right of children to be protected against violence, as well as national case-law implementing the European Convention on Human Rights and other international instruments.

Secret detentions involving Council of Europe member states

Reply to Parliamentary Assembly Recommendation 1801 (2007) "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report "

The Committee of Ministers has always underlined the need to promote democratic values and the respect of human rights in the fight against terrorism. Less than a year after the events in New York on 11 September 2001, the Committee adopted guidelines for member states on human rights and the fight against terrorism. In these guidelines, it reaffirmed states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights and, for the member states in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights. The guidelines have been widely disseminated and have served as an inspiration for discussions at international level. In 2005, the Committee of Ministers adopted and opened for signature the Council of Europe Convention on the pre-

vention of terrorism: a landmark treaty in this area.

The Committee of Ministers has taken due note of the reports by the Parliamentary Assembly which contain allegations of serious human rights violations. Moreover, these reports and those by the Secretary General mention certain lacunae in the internal laws of member states, which do not seem to offer sufficient protection against such violations. It recalls the existing obligations under the European Convention on Human Rights (ECHR), according to which prompt and effective investigations capable of leading to the identification and punishment of those responsible for any illegal acts is the most appropriate reaction to serious allegations of grave human rights violations. It also recalls that, according to the relevant case-law of the European Court of Human Rights, the responsibility of a state party for the material breach of the provisions of the Convention may not only result from direct action by its authorities, but also from failing to comply with their positive obligations to prevent human rights violations on their territory or to conduct an independent and impartial investigation into substantial allegations of such human rights violations.

The Committee of Ministers recalls the International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature on 6 February 2007, the entry into force of which would significantly contribute to combating the practice of enforced disappearances.

Rapid execution of judgments of the European Court of Human Rights

Recommendation CM/Rec (2008) 2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights

The need to reinforce domestic capacity to execute the Court's judgments

The Committee of Ministers, convinced that rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member states and to the long-term effectiveness of the European human rights protection system; recommends that member states:

- designate a co-ordinator – individual or body – for the execution of judgments at national level, with reference contacts in the relevant national authorities involved in the execution process.
- ensure, whether through their permanent representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;
- take the necessary steps to ensure that all judgments to be executed, as well as all related decisions and resolutions of the Committee of Ministers, are duly and rapidly disseminated, where necessary in translation, to the relevant actors in the execution process;
- identify, as early as possible, the measures which may be required in order to ensure rapid execution;
- facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at national level either generally or in response to a specific judgment, and to identify their respective competences;
- rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;
- take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case-law as well as with the relevant recommendations and practice of the Committee of Ministers;
- disseminate the vademecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;
- as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;
- where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at a high, possibly political, level.

The protection of human rights defenders and the promotion of their activities

Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities

The Committee of Ministers of the Council of Europe deplores the fact that human rights defenders, including journalists, are all too often victims of violations of their rights, threats and attacks, despite efforts at both national and international levels. It considers that human rights defenders merit special attention, as such violations may indicate the general situation of human rights in the state concerned or a deterioration thereof.

It pays tribute to their invaluable contribution for promoting and protecting human rights and fundamental freedoms and condemns all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors.

The Committee of Ministers calls on member states to create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights.

The Committee of Ministers calls on all Council of Europe bodies and institutions to pay special attention to issues concerning human rights defenders in their respective work. This shall include providing information and documentation, including on relevant case-law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders' participation in Council of Europe activities.

Slovakian chairmanship of the Committee of Ministers

Priorities for the Slovakian chairmanship of the Committee of Ministers

Priorities for the chairmanship

On 12 November 2007 Slovakia took over the chairmanship of the Committee of Ministers, which it will hold until May 2008. Slovakia's priorities for this period will be based around three broad themes:

Mr Ján Kubiš, Chairman-in-office of the Committee of Ministers

1. Promoting a citizens' Europe:

a. the Slovakian Chairmanship will emphasise the Council of Europe's need for openness, engagement, responsibility and efficiency as well as its need for solidarity with non-governmental organisations and civil society in relation to its activities and further development;

b. it will seek to implement the recommendations concerning the functioning of the Forum for the Future of Democracy and support the work of the Ad hoc Committee on e-democracy to develop a set of generic e-democracy tools and guidelines on the scope and implementation of e-democracy;

c. the Slovakian Chairmanship will support the early adoption of a draft convention on access to official documents.

2. A transparent and efficient Council of Europe;

a. in order to guarantee complementarity and synergy between the main European organisations, Slovakia will aim to further promote dialogue, exchange of experiences and good practices and to improve the co-ordination of activities;

b. the Slovakian chairmanship will support the ongoing work aimed at strengthening the system of human rights protection of the Council of Europe, in particular the European Court of Human Rights, the Council of Europe Commissioner for Human Rights, the European Committee for the Prevention of Torture and the European Commission against Racism and Intolerance.

3. Respect for and promotion of core values: human rights, rule of law and democracy.

a. the Slovakian Chairmanship will strive to ensure the fulfillment of commitments relating to shared values and standards which Council of Europe member states have signed up for;

b. it will lead efforts in the fight against discrimination, racism, anti-Semitism, xenophobia, extreme nationalism and chauvinism, and will promote the truth about the Holocaust;

c. Slovakia will pursue the objective of a peaceful, secure and socially responsible Europe and the development of mutually beneficial co-operation, at European and international level;

d. it will support both the strengthening of security and stability in the western Balkans and eastern Europe, and the further deepening of the European integration process;

e. the Slovakian Chairmanship will support the full use of all assistance and co-operation programmes of the Council of Europe that would change Belarus' attitude with respect to meeting the criteria for membership;

f. it will take advantage of the 10th anniversary of the entry into force of the Framework Convention for the Protection of National Minoritiesto to support the continuation and development of the activities for the protection of minorities and the fight against racism and intolerance as well as against social exclusion.

The Slovakian Chairmanship will end in May 2008. Over the next six months, Slovakia will organise a number of conferences and seminars, in Bratislava and elsewhere. Some of the major events to be noted:

- 8th Conference of European Health Ministers: "People on the move: human rights and challenges to health systems" (22 – 23 November, Bratislava)
- Conference on crimes committed by children and against children: "Children and antisocial action" (29 November, Bratislava)
- International educational seminar: "From sport to knowledge" (2 - 3 April, Piešťany)
- Conference: "Education and training of Roma children and youth" (8 - 9 April, Bratislava)
- Conference: "Citizens at the centre of the local democracy" (April, Piešťany)

Statement by Ján Kubiš, Chairman-in-office of the Committee of Ministers on International Human Rights Day, 10 December 2007

International Human Rights Day

"On this solemn day, aiming to promote human rights protection all over the globe, I would like to underline that human rights and fundamental freedoms form the basis for tolerant and peaceful societies. Their promotion and protection belong to the core values, upon which the Council of Europe is built. It is our common responsibility to strive for their effective realisation because there is no future without full respect for human rights.

We will focus our attention on the protection of the rights of persons belonging to minorities, and we must spare no efforts to ensure that these rights are firmly secured.

The Framework Convention for the Protection of National Minorities is an important legal text that has contributed greatly, since its entry into force 10 years ago, to maintaining democratic stability on the European continent. Europe can be proud of this achievement, but must be vigilant that it is not eroded.

Groups such as Roma and Travellers, living as minorities in almost all Council of Europe member states, continue to face discrimination, prejudice and hostile attitudes in many states. Their social and living conditions (access to housing, education, employment, health care, etc.) show that their human rights are not always fully secured in practice. The Council of Europe member states have a duty to address this challenge and the Slovakian Chairmanship will pay particular attention to measures that could improve the situation of Roma and Travellers."

Statement by Ján Kubiš, Chairman-in-office of the Committee of Ministers on International Holocaust Remembrance Day 2008

International Holocaust Remembrance Day

Meeting in Strasbourg in 2002, the European Ministers of Education decided to set up a "Day of Remembrance of the Holocaust and for the prevention of crimes against humanity". This day has since been celebrated on 27 January every year and the idea has also been taken up by the United Nations, which has declared it an international day of remembrance.

On the occasion of the International Holocaust Remembrance Day 2008, Ján Kubiš, Minister of Foreign Affairs of Slovakia and Chairman-in-office of the Council of Europe's Committee of Ministers, re-affirmed the commitment of his country to continue to combat all forms of racial, ethnic, religious and political intolerance and discrimination. Recalling that it was the horrors of the Second World War that led to the Council of Europe being founded, Mr Kubiš underlined the Organisation's fundamental role in fighting the phenomena that led to these atrocities.

For these reasons, the Slovakian Chairmanship of the Committee of Ministers intends to intensify co-operation between the Council of Europe and the Task Force for International Co-operation on Holocaust Education, Re-

membrance and Research (ITF). A ceremony in honour of the Holocaust victims was held at the Council of Europe on International Holocaust Remembrance Day.

Co-operation between the Council of Europe and the European Union

Visit by Dimitrij Rupel, the Foreign Minister of Slovenia, to the Council of Europe, 30 January 2008

As part of the dialogue and co-operation between the Council of Europe and the European Union, Dimitrij Rupel, the Foreign Minister of Slovenia, visited Strasbourg on 30 January 2008 to present the main themes of Slovenia's EU presidency to the Ministers' Deputies.

Mr Rupel drew attention to:

- the ratification of the Lisbon Treaty, which will allow the EU to become a signatory to the European Convention on Human Rights;
- the European future for the western Balkans, for which the Council of Europe has made an important contribution, especially in Kosovo;
- the dialogue between cultures, religions and traditions, underlining the major importance of the White Book on inter-cultural dialogue currently being prepared by the Council of Europe.

"It is clear that the Council of Europe and the European Union are good partners. The Slovenian Presidency will work hard on the enhancement of the co-operation between the two institutions, in line with our presidency's slogan 'Si.nergy for Europe,'" Mr Rupel concluded.

The Deputies noted with satisfaction the concrete intentions for co-operation with the Council of Europe and specific areas in which it could develop.

A Memorandum of Understanding was agreed in Spring 2007 between the Council of Europe and the European Union, with the aim of promoting dialogue and co-operation between the two organisations.

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

Parliamentary Assembly

"The members of our Assembly directly represent 800 million citizens. 800 million people with different cultures, different nationalities, a wide range of political views and religious beliefs, but who are united by common values. Values that are embodied in the Council of Europe's standards and principles. Values that can strengthen social cohesion in our societies and further peace and stability on our continent.

The Council of Europe is a vital international organisation with a remarkably active and concerned Parliamentary Assembly. This is our capital, our richness, in which we should invest for the peace and welfare of Europe."

Lluís Maria de Puig, President of the Assembly

Evolution of human rights

Developments as regards the future status of Kosovo

Resolution 1595 and Recommendation 1822, adopted on 22 January 2008 (Docs 11472 and 11498)

The Parliamentary Assembly considers the solution of the Kosovo status process as a fundamental element for ensuring peace and long-term stability in Europe. Determining the future status of Kosovo is a highly sensitive political issue, which includes legal and human rights aspects, with serious regional and wider international implications and it is a challenge for the international community. The Assembly also underlines the pressing need to ensure the full implementation of standards in the field of democracy, rule of law and human rights for all people in Kosovo, regardless of their ethnic origin.

In Resolutions 1453 (2005) and 1533 (2007) on the current situation in Kosovo, the Assembly affirmed the importance of reaching a mutually-accepted solution to the status issue. However, the Assembly is keen to stress that the undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspective of European integration: it affects its economic recovery; it has a negative impact on the consolidation of a fully responsible and accountable political leadership and hampers the full implementation of the "Standards for Kosovo"; as well as individual access to the European Court of Human Rights.

The President of the Parliamentary Assembly urges all parties to maintain peace in Kosovo

Response by Lluís Maria de Puig to Kosovo's unilateral declaration of independence on 17 February 2008

In reaction to Kosovo's unilateral declaration of independence, Lluís Maria de Puig, President of the Council of Europe Parliamentary Assembly, called on all parties to keep their pledge to preserve peace and dialogue in all circumstances and to refrain from any incitement to violence as well as to fully comply with Council of Europe standards with respect to human rights, the rule of law, the rights of national minorities and the treatment of refugees, displaced and stateless persons.

"Whatever its status, Kosovo should be an area which is safe for all those who live in it, regardless of their ethnic origin, and in which the values of democracy, tolerance and multicul-

turalism are shared by its population and institutions," he said.

Mr Lluís Maria de Puig, President of the Parliamentary Assembly

"I regret that the two sides have been unable to reach a compromise on the status of Kosovo – as the Assembly has repeatedly called for," he said.

Recalling the texts adopted by PACE on 22 January, Mr de Puig stressed the need for Kosovo to be an area where Council of Europe instruments such as the European Convention on Human Rights, the European Anti-Torture Convention and the Framework Convention for the Protection of National Minorities are fully applicable and their respective control mechanisms fully operational.

On the subject of the EU's attitude to Kosovo's unilateral declaration of independence, the President invited EU member states, who are also members of the Council of Europe, to agree on a single position.

United Nations Security Council and European Union blacklists

Recommendation 1824 and Resolution 1597, adopted on 23 January 2008 (Doc. 11454)

The Parliamentary Assembly reaffirms its position that terrorism can and must be fought effectively with means that respect and preserve human rights and the rule of law.

It considers that international bodies such as the United Nations and the European Union should set an example for states in this respect, given the lofty goals laid down in their founding instruments and the credibility they need in order to attain those goals.

Targeted sanctions against individuals or specific groups ("blacklists") imposed by the United Nations Security Council (UNSC) and the Council of the European Union (EU) are, in principle, preferable to general sanctions imposed on states. General sanctions often have dire consequences for vulnerable population groups in the countries concerned, and generally not for their leadership, whilst targeted sanctions hurt only those alleged to be personally responsible for certain wrongdoings.

At the same time, targeted sanctions (such as travel restrictions and freezing of assets) have a direct impact on individual human rights such as personal liberty and the protection of property. Whilst it is not at all clear and still being debated whether such sanctions have a criminal, administrative or civil character, their imposition must, under the European Convention on Human Rights (ECHR) as well as the International Covenant on Civil and Political Rights, respect certain minimum standards of procedural protection and legal certainty.

The Assembly reminds all member states of the Council of Europe that they have signed and ratified the European Convention on Human Rights and its protocols and have therefore committed themselves to uphold its principles, and this also applies to the implementation of sanctions imposed by the United Nations and the European Union.

Video surveillance of public areas

Resolution 1604 and Recommendation 1830, adopted on 25 January 2008 (Doc. 11478)

The Parliamentary Assembly notes that video surveillance is an increasingly widespread phenomenon in public places.

Rapidly evolving technology and a growing feeling of insecurity in the general population have gradually increased public acceptance of video surveillance as a useful tool in the context of crime prevention and detection.

Whilst welcoming the increasingly efficient use of new technologies to protect public order and security in Europe, the Assembly remains concerned by the fact that video surveillance may impinge on human rights such as the protection of privacy and data protection. In the light of, in particular, Article 8 of the European Convention on Human Rights (the Convention) which guarantees the right to respect for private life, video surveillance should remain an exceptional measure prescribed by law and only in cases where it is necessary in a democratic society to protect the interests of na-

tional security or public safety, or for the prevention or detection of disorder or crime.

Situation of human rights in member and observer states

Honouring of obligations and commitments by Georgia

Resolution 1603, adopted on 24 January 2008 (Doc. 11502)

Mr Mikheil Saakachvili, President of Georgia

Whilst welcoming the broad reform agenda of the authorities, the Assembly considers that specific measures need to be taken in order to accelerate the political reforms that will eventually transform Georgia into a stable and prosperous European democracy.

President Saakashvili should now do his utmost to strengthen democratic freedoms in Georgia, institute checks and balances and seek consensus. Georgia should also continue to seek a peaceful and democratic settlement of the conflicts in Abkhazia and South Ossetia.

Japan considers moratorium on the death penalty

Japanese MPs propose a moratorium on executions

Lluís Maria de Puig, the President of the Council of Europe Parliamentary Assembly (PACE), has warmly welcomed the proposal by a cross-party group of Japanese MPs for a four-year moratorium on executions.

"Death is not justice, but the sudden, secretive hangings carried out in Japan are particularly chilling, and a suspension of this grisly procedure is long overdue. I urge the Japanese Diet to adopt this proposal," said the President.

"In January, our Assembly again called for such a moratorium by Japan, which holds observer status with the Council of Europe. Our experience with our member states tells us that parliamentary pressure can play a major role in changing public opinion."

No executions are carried out in any of the 47 member states of the Council of Europe.

Situation of children living in post-conflict zones in the Balkans

Resolution 1587, adopted on 23 November 2007 (Doc. 11353)

The Parliamentary Assembly considers that the situation of children living in post-conflict zones in the Balkans has to be seen in the light of: children's right to survival and development, which is not limited to purely physical and material aspects; the principle of children's best interests, on which any action on their behalf must be based; the principle of non-discrimination; and the principle of children's participation, namely their right to express their own opinions freely, and to have those opinions given due weight, in accordance with their age and maturity.

The Assembly notes that children from minority or socially-excluded groups, such as Roma, Egyptians and Ashkali, as well as displaced children in particular, are victims of trafficking, prostitution and forced labour, or are forced into begging. One consequence of family poverty is an increase in the number of children living in institutions, where again a large number come from minorities.

It urges the countries concerned to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), adopted in May 2005, without further delay.

Finally, the Assembly emphasises that children are also agents for change and should be given the necessary conditions and tools to help establish democracy and peace.

Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe, created to promote awareness of and true respect for human rights in the 47 member states of the Council of Europe.

Mandate

According to his mandate, the Commissioner's main objective is to raise the standards of human rights protection.

For this, he carries out visits to member states for a comprehensive evaluation of their human rights situation. During the visits, he meets the highest representatives of government, parliament and the judiciary, as well as leading members of human rights protection institutions and civil society. After the visits, a report is released containing both an analysis of human rights practices and detailed recommendations about possible ways of improvement. The reports are presented to the Council of Europe's Committee of Ministers and the Parliamentary Assembly. They are published and widely circulated in policy-making and non-governmental organisations as well as in the media.

The Commissioner also provides advice and information on specific issues to help enforce human rights standards and promote awareness-raising activities through seminars and events on various themes.

He co-operates closely with national and international human rights bodies, such as ombudsmen and national institutions, which are well placed to bring human rights protection closer to people.

Country visits

Official visits

Ireland, 26-30 November 2007

During the visit, the Commissioner assessed a broad range of human rights issues, focusing mainly on children's rights, juvenile justice, migrants' and women's rights, treatment of asylum seekers and the situation of Travellers.

Mr Hammarberg also visited various institutions in Dublin and Cork, such as facilities for youth offenders, an accommodation centre for asylum seekers, a women's shelter, a psychiatric establishment and Travellers' halting sites. He met members of the Irish Government, including the Taoiseach (Head of Government), Bertie Ahern, as well as parliamentarians, the chief justice of the supreme court, the president of the high court, the attorney general, the commissioner of An Garda Síochána and the lord mayors of Dublin and Cork. Mr Hammarberg's agenda also included meetings with the Irish Human Rights Commission, the Ombudsman for Children, the Equality Authority and representatives from civil society.

The Commissioner welcomed the plan of a referendum to include the rights of the child on the constitution. According to him, it is essential to establish that the principle of the best interests of children must be a primary consideration in all decision making affecting children.

Thomas Hammarberg and Bertie Ahern, the Irish Taoiseach.

On juvenile justice, Thomas Hammarberg expressed his satisfaction about the plans of the Irish government to close Saint Patrick's prison and encouraged further efforts to develop alternatives to imprisonment in the youth justice system.

The Commissioner also underlined the importance of adopting a total ban of corporal punishment, encouraging the Irish government to follow the examples of other European countries in this field.

Moreover, Thomas Hammarberg stressed the need to find a solution to the excessive length of stay of some asylum seekers, including children, in reception centres, affirming that the uncertain conditions in which they are kept "may be a cause of strong distress."

San Marino, 24-25 January 2008

The Commissioner's visit focused mainly on national human rights structures, issues related to citizenship, as well as measures against discrimination.

The Commissioner for Human Rights was received by the captain's regent (head of state) and held meetings with the minister of foreign affairs, the minister of the interior, the minister of justice, the minister of labour, representatives from the judiciary, and the bureau of parliament. He also met representatives from civil society and visited institutions and sites of human rights relevance such as the San Marino prison, police stations, the neuro-psychiatric service of the hospital and an institute for people with disabilities.

"The former Yugoslav Republic of Macedonia", 25 - 29 February 2008

Mr Hammarberg's agenda covered major human rights issues, including the functioning of the police and the judiciary, treatment and conditions in places of detention, women's rights and the situation of the Roma minority in the country.

He also visited various institutions – such as places of detention and police stations, educational institutions, psychiatric establishments – and Roma communities in Tetovo, Kumanovo, Demir Kapija and Demir Hisar.

Furthermore, the Commissioner held meetings with the president and prime minister, as well as relevant ministers including the ministers of foreign affairs, justice and the interior. Further talks were held with the speaker of parliament and parliamentary committees, as well as with the prosecutor general and top executives of the judiciary. Mr Hammarberg also met the ombudsman and representatives from civil society.

In his preliminary findings at the press conference concluding the visit, the Commissioner noted the impressive pace of recent legislative reform and called for increased efforts to secure effective implementation in practice.

Mr Hammarberg visits "the former Yugoslav Republic of Macedonia".

Contact visits

Norway, 16 November 2007

The Commissioner carried out a visit to Norway where he held meetings with national authorities, in particular the minister of justice and state secretaries from the office of the prime minister and the ministry of foreign affairs. The Commissioner's agenda focused on prison conditions, trafficking in human beings, national action plans for human rights and the execution of judgments of the European Court of Human Rights.

In addition, Thomas Hammarberg took part in a conference on "Human rights protection for

vulnerable groups of people" in Oslo organised by the Ombudsman of Norway. The Commissioner's intervention focused on the possibilities to further strengthen human rights protection in Norway and improve the living conditions of vulnerable people.

Commissioner Hammarberg discussed the human rights situation in the United Kingdom with British authorities and non-governmental organisations during a four-day visit to London. Discussions focused on counter-terrorism, immigration and children's rights.

During the visit, the Commissioner met several ministers (including the minister for human rights), parliamentarians and ombudsmen as well as members of the newly-established Equality and Human Rights Commission.

United Kingdom, 5-8 February 2008

Over the course of this visit, Mr Hammarberg discussed the human rights situation in Bulgaria with national authorities and non-governmental organisations. Particular attention was paid to the following issues: children's rights, the rights of disabled people, problems related to the judiciary, minorities and anti-discrimination policies.

Bulgaria, 14-15 February 2008

Meetings organised by the Office of the Commissioner

First meeting of Focal Points of National Human Rights Structures

Commissioner Hammarberg held a meeting with representatives of National Human Rights Structures (NHRS), specifically nominated for the purpose of the co-operation with the Commissioner's Office.

Participants discussed practical examples concerning the role that NHRS may have in helping the execution of judgments of the European Court of Human Rights. In addition, they designed a programme of activities that the network will carry out over the next few years in order to foster the effective implementation of European human rights standards.

This meeting was the first step in implementing the systematic co-operation between the Commissioner and NHRS that was agreed upon at the Athens Round Table in April 2007.

Strasbourg, 6-7 November 2007

International colloquy on the prevention of torture in Europe

Ombudspersons, heads of national human rights institutions as well as NGO and IGO representatives gathered to participate in this event which was organised jointly by the Commissioner and the Ombudsman of the French Republic.

The colloquy focused on European and UN requirements concerning the implementation of national prevention mechanisms, as envisaged by the Optional Protocol to the Convention against Torture, as well as on the possible national responses and their interaction with the existing national institutions.

Currently, only 17 of the 47 Council of Europe member states have ratified the optional protocol, and seven of these countries have set up a national mechanism.

Paris, 18 January 2008

Reports presented to the Ministers' Deputies of the Council of Europe

In this report, the positive steps undertaken by the Austrian authorities to improve the protection and promotion of human rights were underlined and the ongoing constitutional reform process as an opportunity to clearly codify all fundamental rights was welcomed. However, the need for further improvements was observed and a number of recommendations, focusing mainly on freedom of expression, protection against discrimination, the treatment of asylum seekers and the monitoring of police behaviour were made.

On 12 December 2007 Mr Hammarberg presented his report on the human rights situation in Austria.

In addition, the Commissioner suggested that Austria should retain the constitutional status of the European Convention on Human Rights in the constitution and called for children's rights to be included in the codification of fundamental rights. Moreover, he recommended that the independence of the Human Rights Advisory Board should be strengthened.

On 20 February 2008, Thomas Hammarberg presented his human rights assessment report on Bosnia and Herzegovina.

In this report, whilst underlining that the authorities have ratified key European and international human rights treaties and adopted legislation and action plans in important areas, Mr Hammarberg highlighted the need for further efforts to ensure concrete implementation of the reforms. His recommendations focus on internally-displaced persons and minority returnees, Roma, children, poverty and social exclusion.

The Commissioner recommended swift action to establish the office of the ombudsman at state level. While he noted progress in the judiciary with regard to independence and professionalism, Mr Hammarberg expressed concern about the huge backlog of cases in the courts. According to him, there is an urgent need for an action plan to remedy this problem.

On 20 February 2008, the Ministers' Deputies also considered the Commissioner's report on the overall human rights situation in Azerbaijan.

In the report, Mr Hammarberg welcomed the progress made since the country's independence, especially efforts to improve the administration of justice and to remedy the difficult conditions of internally displaced persons. However, he noted that allegations of torture during the investigative period still persist. The Commissioner expressed concerns over the practice of arbitrary arrests, particularly of opposition members or journalists. He recommended specific actions such as appropriate human rights training for police officers and robust measures to investigate all allegations of abuse in order to avoid impunity.

Other events

Conference on Roma women's rights

Stockholm, 3 December 2007

This conference was organised jointly by the Council of Europe, the Swedish Ministry of Integration and Gender Equality and the European Union Agency for Fundamental Rights, at the request of the Romani Women's Networks. The Commissioner's speech focused on the need to emphasise the positive impact of Roma women's participation in social and political spheres and he highlighted the example of Katarina Taikon, whose campaigns have helped to foster better understanding and protection of Roma culture in Sweden.

Conference on support services for women victims of violence

Strasbourg, 6 December 2007

This conference was organised as part of the Council of Europe campaign "Stop domestic violence against women". In his speech, the Commissioner declared that stopping violence against women requires clear and enforceable legislation, training and information campaigns. "Most governments have now picked up the principles, but some are far behind in implementation", he stated, adding that support services must respond fully to victims' needs. Mr Hammarberg said that providing services is essential but it cannot eliminate the need to establish an ethical consensus that violence against women is unacceptable. It is particularly important that leading politicians, male and female, demonstrate that this is a priority issue and that there should be zero tolerance towards domestic violence.

Exchange of views with the European Committee of Social Rights of the Council of Europe

Strasbourg, 4 February 2008

Mr Hammarberg underlined that the indivisibility of civil, political and social rights should be reaffirmed, in particular during this year, which marks the 60th anniversary of the Universal Declaration of Human Rights. He stressed that recognition of indivisibility of rights should be translated into the ratification of the revised European Social Charter and the acceptance of the collective complaints procedure. A number of issues of common interest were also discussed, namely the justiciability of

social rights and the need to harmonise European Union norms with the Council of Europe standards in this field.

Declaration by the Council of Europe Committee of Ministers

Strasbourg, 6 February 2008

Further to this declaration, the Commissioner has been designated as the main regional mechanism to strengthen the protection of human rights defenders and to promote their activities.

The declaration foresees, *inter alia*, a more active role of the Commissioner in this field, recognising the efforts already made in protecting human rights defenders across Europe.

Communication and information activities

Viewpoints

The Commissioner's communication and information work mainly consisted of interviews, public relations activities, publication and dissemination of fortnightly viewpoints.

A number of viewpoints have been published on the Commissioner's website about the protection against torture, human rights violations during anti-terror campaigns, domestic violence against children, violence against women, migrants' rights, respect of children's opinions, police violence and life sentences.

Earlier viewpoints are now available as a single publication – *Human rights in Europe: Mission Unaccomplished.*

All of these texts are available at: http://commissioner.coe.int

Speeches and statements

European Day of Action for Journalists Rights, Brussels, 5 November 2007

In a speech delivered on 5 November 2007 at the International Federation of Journalists in Brussels on European Day of Action for Journalists Rights, Mr Hammarberg stressed that even in the Europe of today, freedom of expression was not fully protected and called for a decriminalisation of defamation. "It is a major problem that defamation is still criminalised in several parts of Europe" he said. He further declared that the mere existence of criminal defamation laws could intimidate journalists and cause self-censorship.

The Commissioner emphasised the positive role that self-regulatory mechanisms within the media could play in ensuring more ethical journalism and he underlined that, although media problems are more acute in transition countries, state and business domination over the media sector is widespread, making it essential to discuss this issue throughout Europe.

Universal Children's Day, Warsaw, 20 November 2007

On 20 November 2007, on Universal Children's Day, Thomas Hammarberg called for "a culture of greater receptivity and respect for children's views" during a lecture in Warsaw about child participation.The Commissioner underlined that children have the right to be heard and adults should listen to their views. Child participation, which is a right recognised by the Convention on the Rights of the Child, should take place at every stage of life, in family, in schools as well as in the community. According to him, children's capacity to freely express their views is a precondition for their development.

The lecture, the first of a cycle of three, was dedicated to Janusz Korczak, considered as one of the fathers of children's rights, and took place in a former orphanage, created by Mr Korczak before the Second World War.

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

European Social Charter

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

Signatures and ratifications

To date, 43 member states of the Council of Europe have signed the revised European Social Charter. The remaining four member states have signed the 1961 charter. Thirty-nine states have ratified either of the two instruments (24 for the revised charter and 15 for the 1961 charter).

About the charter

Guaranteed rights

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

National reports

The states parties submit a yearly report indicating how they implement the charter in law and in practice.

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

Complaints procedure

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

European Committee of Social Rights (ECSR)

Following Mrs Ersiliagrazia Spatafor's resignation, the Committee of Ministers, at its 1016th session on 30 January 2008, elected Mrs Annalisa Ciampi, from Italy, as a member of the ECSR, with immediate effect for a term of office which will expire on 31 December 2010.

On 4 February 2008, on its 227th session, the ECSR invited the Commissioner for Human Rights of the Council of Europe, Mr Thomas Hammarberg to an exchange of views.

The Commissioner underlined the importance he attached to the charter and to the work of the committee. He does not miss an opportunity to refer to the charter and to the ECSR case-law during his assessment visits to Council of Europe member states and in his public statements and viewpoints, in particular when discussing the right to housing, corporal punishment of children, Roma rights and the rights of disabled.

Significant meetings

Seminar as part of the action plan of the Council of Europe 3rd Summit

This meeting aimed to increase the visibility of the European Social Charter and, at political level, to encourage the authorities to move from the 1961 charter, to which Greece is party, to the revised charter and in particular to accept articles 5 and 6 (freedom to organise and right to collective bargaining).

Athens (Greece), 6 November 2007

Bosnia and Herzegovina, Montenegro and Serbia have signed the revised European Social Charter, but have not yet ratified it.
The objective of these seminars was to strengthen the dialogue with these three states in order to promote fundamental social rights and to raise awareness of the charter among the relevant actors (public authorities, parliament, judges, civil society) with a view to ratification.

Belgrade (Serbia), 20 November 2007
Podgorica (Montenegro), 22 November 2007
Sarajevo (Bosnia and Herzegovina), 28-29 November 2007

This meeting provided the opportunity for increasing co-operation with the Slovakian authorities, which are preparing the ratification of the revised European Social Charter and to raise awareness of participants from ministries and NGOs regarding additional protocol providing for a system of collective complaints which might be ratified by Slovakia.

Bratislava (Slovakia), 12 February 2008

Meeting on non-accepted provisions of the European Social Charter

Five years after the ratification of the revised charter by Finland, representatives of relevant ministries took stock of the provisions which have not yet been accepted by this state, concerning both existing legislation and practice. On this occasion, the Ministry for Foreign Affairs also organised an exchange of views with academics and representatives from civil society.

Helsinki (Finland), 15-16 November 2007

Major awareness-raising activity

A seminar on the implementation of the revised European Social Charter in Portugal was organised on 8 January 2008 in Lisbon. The debates focused on defending economic and social rights, the evolution of such rights, cases of non-compliance with the charter and the new reporting system.

Lisbon (Portugal), 8 January 2008

Collective complaints: latest developments

Follow up to collective complaints

In the collective complaint World Organisation against Torture (OMCT) v. Portugal (No. 34/2006), it was alleged that Portuguese domestic law did not explicitly nor effectively prohibit all corporal punishment of children.

The European Committee of Social Rights had concluded that there was a violation of Article 17 (right of children and young persons to social, legal and economic protection) of the revised European Social Charter.

In September 2007, the Portuguese Government amended the Penal Code to prohibit the corporal punishment of children (Article 152 "Domestic violence")

Decisions on the merits

Two decisions on the merits were published:

- the complaint lodged against Finland by the Federation of Finnish Enterprises (No. 35/2006) alleged that Finnish legislation violated the right to organise since it contained stricter provisions for enterprises not belonging to an employers' organisation than for those which do belong to such an organisation.
- the complaint lodged against Portugal by the European Council of Police Trade Unions (CESP) (No. 37/2006) alleged that the Portuguese State had not observed the democratic rules of collective bargaining.

The European Committee of Social Rights concluded that there was no violation of the revised European Social Charter in the aforementioned two complaints.

For more detailed information, see the collective complaints page of the European Social Charter's website:

http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/List_of_collective_complaints/default.asp#TopOfPage

Decisions on admissibility

On 3 December 2007, the collective complaint International Helsinki Federation for Human Rights (IHF) v. Bulgaria (No. 44/2007) was declared admissible by the ECSR.

It relates to Article 13 §1 (right to social and medical assistance) read alone or in conjunction with Article E (non-discrimination) of the revised European Social Charter. It is alleged that Bulgarian legislation as from 1 January 2008 no longer ensures the right to adequate social assistance to unemployed persons without adequate resources. This will particularly affect Roma and women.

On 5 February 2008 the collective complaint European Roma Rights Centre v. Bulgaria (No. 46/2007) was declared admissible by the ECSR.

It relates to Article 11 (right to health) and to Article 13 (right to social and medical assistance) of the revised European Social Charter. It is alleged that legislation excludes a large number of Roma persons from health insurance coverage, that government policies do not adequately address the specific risks affecting Roma communities, and that there is widespread discriminatory practices on the part of health care practitioners against Roma in the provision of health services.

New collective complaints

One new complaint was registered on 4 February 2008:

Defence for Children International v. the Netherlands (No. 47/2008).

It is alleged that Dutch legislation deprives children residing illegally in the Netherlands of the right to housing (Article 31) and consequently of a series of additional rights laid down in Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the revised European Social Charter.

Publications

The revised European Social Charter has been published in Slovakian (it also exists in English, French, Albanian, Armenian, Azeri, Bosnian, Croatian, Dutch, Estonian German, Italian, Norwegian, Polish, Portuguese, Romanian, Russian, Slovenian and Spanish).

The Social Charter at a glance has been published in Macedonian and Slovakian (it also exists in English, French, Albanian, Azeri, Bosnian, Croatian, Dutch, Georgian, German, Hungarian, Italian, Polish, Romanian, Russian, Slovenian, Spanish and Turkish).

Internet: http://www.coe.int/t/e/human_rights/esc/

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.

European Committee for the Prevention of Torture (CPT)

The CPT was set up under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The secretariat of the CPT forms part of the Council of Europe's Directorate General of Human Rights and Legal Affairs. The CPT's members are elected by the Committee of Ministers of the Council of Europe from a variety of backgrounds: lawyers, doctors – including psychiatrists – prison and police experts, etc.

The CPT's 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.

The CPT may formulate recommendations to strengthen, if necessary, the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment.

Periodic visits

Serbia
19-29 November 2007

This visit was the CPT's second periodic visit to Serbia and provided an opportunity to review the action taken by the Serbian authorities to improve the treatment of persons detained by the police and the practical operation of the safeguards in place. In addition, the delegation examined in detail the treatment and regime of prisoners held in the closed, high-security and remand sections of three prisons in Belgrade, Požarevac and Sremska Mitrovica. The delegation also carried out a follow-up visit to Serbia's only prison hospital.

The delegation examined the situation of psychiatric patients at the Specialised Neuro-Psychiatric Hospital in Kovin. In addition, the delegation visited – for the first time in Serbia – an establishment for persons with learning disabilities, the Special Institution for Children and Juveniles in Stamnica.

Over the course of the visit, the CPT delegation held consultations with Dušan Petrović, Minister of Justice, Tomica Milosavljević, Minister of Health, Rasim Ljalić, Minister of Labour and Social Welfare, Ljubinko Nikolić, Assistant to the Minister of Interior, and Gordana Stojanović, Deputy Public Prosecutor, as well as with senior officials from relevant ministries, the Agency of Human Rights and Minority Rights, and the Security and Information Agency. It also met Saša Janković, the Serbian Ombudsman, and held discussions with members of non-governmental and international organisations active in areas of concern to the CPT.

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

United Kingdom, 2-6 December 2007

The main objective of the visit was to examine the treatment and conditions of detention of two persons convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY), who are serving their sentences at Frankland and Shotts Prisons.[1] The delegation also visited Paddington Green High Security Police Station in London.

Over the course of the visit, the CPT delegation held discussions with the United Kingdom authorities on a number of issues including: the safeguards to be applied and conditions of detention to be offered in the event of prolonged police custody; diplomatic assurances and related memoranda of understanding in the context of deportation procedures; the use of force and means of restraint during the deportation of immigration detainees; the use of means of restraint on children in detention; and overcrowding in prisons in England and Wales. In this context, the delegation met State Minister of Justice David Hanson, Interim Chair of the Youth Justice Board Graham Robb and senior officials from the Foreign and Commonwealth Office, the Home Office and the Ministry of Justice.

The delegation also met representatives from the Children's Rights Alliance for England, Liberty, and the National Society for the Prevention of Cruelty to Children.

1. This specific monitoring activity of the CPT is a result of an exchange of letters between the ICTY and the CPT dated 7 and 24 November 2000 and the Agreement between the United Nations and the United Kingdom Government of 11 March 2004.

Latvia, 27 November-7 December 2007

This was the CPT's fourth visit to Latvia.

The CPT delegation reviewed the measures taken by the Latvian authorities following the recommendations made by the committee after its previous visits. Particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and to conditions of detention in police "short-term isolators". The delegation also examined in detail various issues related to prisons, in particular the situation of juvenile and female prisoners as well as the regime and security measures applied to life-sentenced prisoners. In addition, the delegation visited a psychiatric hospital and a social welfare institution, where it examined the treatment and living conditions of patients/residents and the legal safeguards in the context of admission procedures.

Over the course of the visit, the delegation held consultations with Gaidis Bērziņš, Minister of Justice, Iveta Purne, Minister of Welfare, Aivars Straume, State Secretary of the Ministry of Interior, Visvaldis Puķīte, Head of the Latvian Prison Administration, and Juris Bundulis, Under Secretary of State of the Ministry of Health, as well as with other senior officials of the ministries concerned. It also met Romāns Apsītis, Ombudsman of Latvia, and 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 Latvian authorities.

Ukraine 5-10 December 2007

The main purpose of the visit was to examine the situation of foreign nationals detained under aliens legislation, and to review progress made in this area in the light of the recommendations contained in the CPT's report on its previous visit to Ukraine in 2005. Over the course of the visit, the delegation focused on detention facilities under the authority of the State Border Service. It also visited several establishments subordinated to the Ministry of Internal Affairs and used for holding administrative detainees.

During the visit, the delegation held consultations with senior officials of the State Border Service, the Ministry of Internal Affairs and the State Department on Enforcement of Sentences, as well as with representatives of other ministries and agencies. Meetings were also held with the UNHCR Regional Representation in Kyiv and members of non-governmental organisations.

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

Portugal 14-25 January 2008

This was the CPT's seventh visit to Portugal.

The CPT delegation reviewed the measures taken by the Portuguese authorities to implement the recommendations made by the committee following its previous visits. Particular attention was paid to the treatment of persons deprived of their liberty by the police. The delegation also examined in detail various issues concerning prisons, including the treatment of high-security prisoners and drug-related matters. In addition, the delegation visited two psychiatric hospitals, where it focused on the living conditions as well as the legal safeguards afforded to patients in the context of the invol-

untary admission procedure and of consent to treatment.

The delegation held consultations with José Conde Rodrigues, Deputy State Secretary of the Ministry of Justice, José Magalhães, Deputy State Secretary of the Ministry of Interior, Maria do Céu Soares Machado, High Commissioner for Health, and Rui Sá Gomes, Head of the Portuguese Prison Service, as well as with other senior officials from the relevant ministries. It also met Jorge Noronha e Silveira, Deputy Ombudsman, and representatives of non-governmental organisations active in areas of concern to the CPT.

The delegation also interviewed remand prisoners at Lisbon Central Prison and the Judicial Police Prison in Lisbon.

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

Denmark
11-20 February 2008

This was the CPT's fourth visit to Denmark.

The CPT delegation reviewed the measures taken by the Danish authorities to implement the recommendations made by the committee following its previous visits. The delegation examined in detail various issues concerning detention by the police, as well as the detention of asylum seekers and other foreigners in the Ellebæk Establishment. As regards prisons, particular attention was paid to the treatment of maximum-security prisoners. In the Herstedvester Establishment, the delegation focused on the treatment of sexual offenders who were receiving, or had been offered, anti-hormone therapy, as well as on the situation of prisoners from Greenland. In addition, the delegation visited two psychiatric establishments, where it examined in particular the legal safeguards afforded to patients in the context of the use of restraint. The delegation also visited two secure institutions for minors and juveniles.

The delegation held consultations with Ms Lene Espersen, Minister of Justice. It also met Mr Lars Hjortnæs, Deputy Permanent Secretary of State of the Ministry of Justice; Mr Mogens Hendriksen and Mr Hans-Viggo Jensen, Deputy National Commissioners from the Danish National Police; Mr William Rentz-Mann, Director-General of the Danish Prison and Probation Service, and Ms Annette Gjerris, Director General of the Psychiatry Department of the Regional Council of the Capital Region of Denmark. The delegation also met Mr Hans Gammeltoft-Hansen, the Parliamentary Ombudsman. In addition, it held meetings 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 Danish authorities.

Reports to governments folllowing visits

After each visit, the CPT draws up a report which sets out its findings and includes recommendations and other advice, on the basis of which a dialogue is developed with the state concerned. The committee's visit report is, in principle, confidential; however, almost all states choose to allow the report to be published.

Moldova
Publication on
7 November 2007

Preliminary observations on the fourth periodic visit in September 2007

Particular attention was paid to the treatment of persons detained by the police and to the practical operation of safeguards against ill-treatment. The committee's delegation stressed the need for a more proactive approach from prosecutors, judges and senior police officers to make sure that no case of ill-treatment goes unnoticed and that the perpetrators of such acts are punished.

The CPT delegation also examined in detail various issues related to prisons, including the treatment provided to prisoners suffering from tuberculosis and the situation of life-sentenced prisoners. In addition, it visited Penitentiary Establishment No. 13 in Chişinău in order to examine the manner in which staff had handled recent mass disobedience by inmates.

In addition, the delegation visited Chişinău Clinical Psychiatric Hospital and, for the first time in Moldova, a social care home for persons with psychiatric/mental disorders in Cocieri. As regards the latter establishment, particular concerns were expressed with respect to the numerous allegations of ill-treatment of residents by staff and the high number of deaths of residents in recent years.

The preliminary observations are published with the agreement of the Moldovan authorities.

France
Publication on
10 December 2007

Report on the visit in September-October 2006 together with the French Government's response

During the visit, the delegation reviewed the steps taken by the French authorities following several recommendations made by the CPT after its previous visits (conditions in police custody and in aliens' administrative detention, deportation procedures, etc.). The delegation also examined in detail the implementation in practice of the most recent procedures and safeguards adopted in the context of counter-terrorism operations. It examined several specific detention regimes, as well as medical and psychiatric care for detainees (in particular those provided by several regional medical and psychology departments and at Moulins-Yzeure Hospital). It also visited, for the first time, a jointly-managed (public-private) remand prison at Seysses, as well as a Closed Educational Centre for Minors at Mont de Marsan. In their response, the French authorities provided information on the steps being taken to address the issues raised by the CPT.

Denmark
Publication on
12 December 2007

Response by the Danish authorities to the CPT's report on its 2002 visit

The Danish Government has requested the publication of this response to the report of the CPT on its visit from 28 January to 4 February 2002 to Denmark. This report set out in document CPT/Inf (2002) 18 which is available on the CPT's website.

Armenia
Publication on
13 December 2007

Report on the periodic visit in April 2006, together with the Armenian authorities' response

In the light of the information gathered during the visit, the CPT has maintained its assessment that persons deprived of their liberty by the police in Armenia run a significant risk of being ill-treated. The committee has called upon the Armenian authorities to deliver, from the highest political level, a strong message to all police staff that the ill-treatment of detained persons is illegal and will be dealt with severely. Furthermore, the committee has made several recommendations aimed at strengthening the formal safeguards against ill-treatment and at improving screening for injuries and police complaints procedures. At the same time, the CPT has welcomed the ongoing refurbishment programme concerning police holding areas.

No allegations of ill-treatment by staff were received at Vanadzor Prison. However, several such allegations were received at the Nubarashen Prison's unit for life-sentenced prisoners, as well as at Goris Prison. At Abovyan Prison, the delegation heard a few isolated allegations of physical ill-treatment. The CPT has recommended that staff working at the above-mentioned prisons be given a clear message that the physical ill-treatment of inmates is not acceptable and will be dealt with severely. The CPT has noted the measures taken to put in place a new legal framework for imprisonment, as well as the considerable decrease in the prison population and the government's extensive programme of refurbishment of prisons. However, the committee has expressed concern about the insufficient progress towards providing purposeful activities to prisoners, including life-sentenced prisoners. As regards prison health care, there has been some progress since the 2002 visit, in particular with respect to the detection and treatment of tuberculosis.

At Sevan Psychiatric Hospital, most of the patients interviewed by the delegation spoke positively of the attitude of healthcare staff. However, patients were accommodated in cramped, austere and impersonal dormitories. Furthermore, the psychiatric treatment was based almost exclusively on pharmacotherapy; the range of other therapeutic options was underdeveloped. The 2006 visit provided the first opportunity for the CPT to assess the legal safeguards applicable to civil hospitalisation under the new Law on Psychiatric Assistance. It became clear that these new safeguards were not yet well known or effectively applied by staff at Sevan Psychiatric Hospital.

In their response, the Armenian authorities provide information on the steps being taken to address the issues raised by the CPT. For example, recent amendments to the code of criminal procedure make it clear that the period of police custody runs from the moment a person is deprived of his/her liberty by the police, and that the legal safeguards against ill-treatment apply as from that moment. The response also contains detailed information about legal developments within the prison system, as well as on the efforts being made to expand and modernise prisons. Regarding psychiatric establishments, the Armenian authorities provide information on the ongoing refurbishment of Sevan Psychiatric Hospital and on the progress of therapeutic and rehabilitative activities in that establishment.

Switzerland
Publication on
7 January 2008

Preliminary observations on the visit in September and October 2007

During its visit to Switzerland in September and October 2007, the CPT delegation followed up a number of issues examined during previous visits, in particular the fundamental safeguards against ill-treatment offered to persons in police custody and the situation of persons deprived of their liberty under aliens legislation. With regard to prisons, particular attention was paid to the conditions of detention of persons against whom a compulsory placement measure or institutional therapeutic measures had been ordered, as well as to conditions in the security units. The delegation also examined the situation of juveniles and young adults in education centres.

Netherlands
Publication on
5 February 2008

Report on the periodic visit in June 2007

The CPT considers that the boats *Kalmar* and *Stockholm*, used for detaining irregular migrants, are unsuitable for prolonged detention and should be taken out of service at the earliest opportunity. By contrast, the conditions in the Rotterdam Airport Expulsion Centre were found to be adequate.

The CPT visited the high-security terrorist departments at De Schie and Vught Prisons. It has recommended that placement in such departments be based upon a comprehensive, individual risk assessment. Furthermore, every placement in a terrorist department should be regularly reviewed, based upon criteria clearly laid down in law. In addition, the CPT has concerns about the very restrictive regime in these departments, which may, in certain cases, lead to *de facto* isolation of a prisoner.

With respect to the De Hartelborgt Youth Detention Centre, the CPT has recommended various improvements concerning care, treatment and the disciplinary regime. Amongst other things, an individualised pedagogical or treatment plan should be drawn up for each resident, collective sanctions should not be permitted and the use of so-called "time out" should be regulated.

The CPT continues to have concerns about certain fundamental safeguards during police custody. In particular, criminal suspects are still not entitled to access to a lawyer during the initial period of detention (of up to six hours) by the police for examination purposes.

As regards Aruba, last visited in 1994, the CPT has recommended that the authorities adopt a vigorous policy to combat police ill-treatment, and that periods of detention on police premises be substantially reduced. The CPT has welcomed the action recently taken by the Aruban authorities to improve the material conditions in police stations, such as in Oranjestad, and recommends that efforts be made to ensure that minimum standards for police detention are sustained.

For immigration detainees, the CPT has recommended, among other measures, an improvement in material conditions, regime activities and access to medical care for persons detained at the Centro pa detencion di illegalnan.

KIA Prison is the subject of numerous recommendations concerning, *inter alia*, inter-prisoner violence. Furthermore, an increase in constructive activities for prisoners and an improvement in the provision of health care, in particular psychiatric and psychological care, are essential requirements.

In the course of the visit to the Netherlands Antilles, several allegations of physical ill-treatment by the police were received. The CPT has recommended the adoption of a vigorous policy to combat police ill-treatment. Prolonged detention on police premises is criticised once again, and the conditions of detention in certain police stations, such as Kralendijk, were found to be unacceptable. The Netherlands Antilles authorities have undertaken a programme of refurbishment.

As regards the immigration detention centre, Illegalen Barakken, the committee has made a number of recommendations with regard to material conditions, the lack of activities and the need to provide at least one hour of outdoor exercise every day.

Bon Futuro Prison was found to be clearly dangerous and unsafe for both prisoners and staff. Measures have been identified which aim to eradicate ill-treatment by staff and prevent inter-prisoner violence. The CPT has recommended in particular that members of the emergency response team should be adequately selected, trained and supervised. In addition, a broad range of recommendations have been made concerning staffing levels, material conditions and access to meaningful activities and to health care.

As regards the remand prison on the island of Bonaire, the CPT has recommended urgent action to provide inmates with organised health care, an appropriate regime of activities and access to outdoor exercise.

Greece
Publication on
8 February 2008

Report on an ad hoc visit in February 2007, together with the authorities' response

Over the course of the ad hoc visit, the CPT reviewed the treatment of persons detained by law enforcement officials and examined the conditions of detention in police and border guard stations, coast guard posts and in special facilities for illegal migrants in order to evaluate progress made since the CPT's last visit to Greece, in 2005. The CPT also paid a targeted visit to Korydallos Men's Prison in order to examine the conditions of detention in the segregation units and to assess developments in relation to the prison's health care service.

"The former Yugoslav Republic of Macedonia"
Publication on
13 February 2008

Report on the sixth visit in May 2006,[2] together with the authorities'response

A considerable number of persons – including juveniles – interviewed during the visit alleged that they had been ill-treated by law enforcement officials; in particular, there were repeated allegations concerning officers from the Special Mobile Police Units (known as "Alfa"). The findings highlighted, once again, the need for the authorities to deliver a clear message that the ill-treatment of detained persons is illegal and will be dealt with severely. Furthermore, the committee made several recommendations aimed at strengthening the safeguards against ill-treatment and improving the effectiveness of police complaints procedures.

The report states that credible allegations were received of ill-treatment by staff at Idrizovo and Skopje Prisons. The CPT recommended that a clear message be delivered to staff in these prisons that physical ill-treatment of inmates is not acceptable and will be dealt with severely. It also recommended that concrete measures to eradicate such ill-treatment be taken, including through improved management and supervisory mechanisms. Furthermore, the CPT recommended that the authorities put an end to the use of chains to restrain vulnerable inmates at Skopje Prison.

More generally, the CPT's findings highlight poor management and supervision in prisons, inadequate staffing levels and a lack of appropriate training for staff. The CPT recommended that a thorough review of the prison health-care services be undertaken, including as regards the treatment of prisoners with mental health problems. As regards material conditions, the CPT found that they were very poor in some accommodation units in Idrizovo Prison, and the committee recommended that urgent measures be taken to render this prison safe and hygienic. Further recommendations were made by the committee which were aimed at ensuring acceptable material conditions in all prisons. The findings prompted the CPT to recommend that the Ministry of Justice produced a comprehensive strategic plan for the recovery of the prison system, including the urgent need to re-locate the educational-correctional institution.

The CPT noted the important reforms under way in the area of mental health, in particular through the de-institutionalisation of psychiatry and efforts to support psychiatric care in the communuity. However, with respect to Demir Hisar Psychiatric Hospital, the CPT received numerous allegations of ill-treatment of patients by staff and recommended that the authorities should take appropriate measures to put an end to ill-treatment. Furthermore, the CPT stressed that the chaining of patients to their beds was totally unacceptable, recommending that all chains be removed from the hospital and that appropriate procedures and safeguards be adopted for patients who have to be physically restrained. It also made recommendations concerning low staffing levels, poor material conditions and safeguards for the placement of patients in hospital.

At Demir Kapija Special Institution for mentally disabled persons, a number of structural improvements since the previous visit in 2002 were noted. However, concerns remain with regard in particular to inter-resident violence and staffing levels.

In their response, the national authorities draw attention to instructions submitted to all police stations regarding the treatment of detained persons and the safeguards they should be granted. Information is also given about the plans for upgrading and expanding prisons. Regarding psychiatric establishments, the government refers to the newly adopted mental health law and provides detailed information on the measures taken to improve material conditions, increase staffing levels and ensure better supervision at Demir Hisar Psychiatric Hospital. Confirmation is provided that chains are no longer used in psychiatric hospitals. The response also provides information on measures taken at Demir Kapija institution to reduce incidents of violence and improve staffing levels.

2. A further ad hoc visit to "the former Yugoslav Republic of Macedonia" was carried out in October 2007.

Report on the periodic visit in February 2006, together with the Slovenian authorities' response

Slovenia
Publication on
15 February 2008

The majority of the persons interviewed during the visit indicated that they had been treated by the police in a correct manner. Nevertheless, a few allegations of physical ill-treatment by police officers were received, which concerned mainly the time of apprehension and, less frequently, subsequent questioning. The CPT has recommended that the Slovenian authorities remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions. The report also criticises the practice of restraining detained persons in a hyper-extended position with hand and ankle cuffs linked together behind the back.

As regards prisons, most inmates interviewed by the delegation considered that prison staff treated them correctly. However, the CPT delegation received several allegations of physical ill-treatment by staff at Koper and Ljubljana prisons. Furthermore, the CPT was concerned by the lack of progress as regards remand prisoners' conditions of detention. Overcrowding continued to be an issue in the remand section at Ljubljana Prison, and remand prisoners were not offered anything which remotely resembled a programme of activities. Conditions at Ig Prison were in general satisfactory, and they were of a good standard at Koper Prison and Radece Re-education Centre, an establishment for young persons.

No allegations of ill-treatment were received at the Fužine Home for Elderly Persons in Ljubljana. The CPT was impressed by the commitment of staff to providing the best possible care. Further, living conditions were of a high standard. As regards treatment, the CPT has recommended an increase in the range of therapeutic, rehabilitative and recreational activities, which will require more qualified staff.

In their response, the Slovenian authorities provide information on the measures being taken to address the concerns raised in the CPT's report.

Report on the visit in February 2005, together with the San Marino Government's response

San Marino
Publication on
26 February 2008

During the visit, the delegation followed up the recommendations made by the CPT after the visits in 1992 and 1999, in particular as regards the conditions of detention at San Marino Prison and the safeguards offered to persons detained by law enforcement agencies. Furthermore, it examined in detail the procedures for involuntary hospitalisation and "obligatory medical treatment" (TSO) of psychiatric patients. For the first time in San Marino, the delegation also visited two homes for the elderly. In their response, the San Marino authorities provided information on the steps being taken to address the issues raised by the CPT.

Report on the periodic visit in September 2006, together with the Bulgarian authorities'responses

Bulgaria
Publication on
28 February 2008

The majority of the persons met by the CPT delegation who were, or had recently been, detained by the police, indicated that they had been correctly treated. However, a significant number of the persons interviewed did make allegations of physical ill-treatment at the time of their apprehension and/or subsequent questioning by police officers. The Bulgarian authorities have taken steps in recent years to address the problem of ill-treatment by the police, including the adoption of new legislation and a code of ethics for police staff, and the stepping up of police training and supervision. At the same time, it is clear that continued determined action is needed to combat this phenomenon. The CPT has made recommendations aimed, in particular, at improving screening for injuries and reporting them to the competent authorities, as well as strengthening the formal safeguards against ill-treatment.

As regards investigation detention facilities (IDFs), the CPT delegation noted a positive trend towards reducing the number of persons held for lengthy periods of time. However, the situation remained problematic in other respects, in particular at the IDF in Plovdiv, which was seriously overcrowded and continued to lack outdoor exercise facilities. Similar deficiencies were observed at the detention facilities in Pleven, Sliven and Slivnitsa. In response to a recommendation by the CPT that Plovdiv IDF be transferred without delay to an appropriate facility, the Bulgarian authorities have launched a procedure for the construction of a new IDF.

The CPT delegation did not hear any allegations of deliberate physical ill-treatment of prisoners by staff at either Sofia or Sliven Pris-

ons. However, there were indications that inter-prisoner violence was on the rise. The overcrowding prevailing in the prison system clearly did little to defuse tensions and rendered staff control more difficult. The committee has called upon the Bulgarian authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison. Furthermore, the CPT has recommended that the authorities strive to increase purposeful activities for prisoners, both sentenced and on remand.

The follow-up visit to Karlukovo State Psychiatric Hospital revealed that some efforts had been made to implement the recommendations made in the report on the CPT's 2002 visit. As regards Byala State Psychiatric Hospital, material conditions displayed a number of deficiencies, and the committee has recommended that a refurbishment should be carried out without delay and that steps should be taken to improve the food provided to patients. In their responses, the Bulgarian authorities provide information on the measures being taken to address the concerns raised in the CPT's report.

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

European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is an independent human rights monitoring body specialising in issues related to combating racism and racial discrimination in the 47 member states of the Council of Europe.

ECRI's statutory activities are:

– country-by-country monitoring,
– working on general themes,
– maintaining links with civil society.

Country-by-country monitoring

As part of this work, ECRI closely examines the situation of racism and intolerance in each of the member states of the Council of Europe. Based on the analysis that it undertakes, ECRI draws up, in the form of country reports, suggestions and proposals addressed to governments on how to overcome the problems of racism and intolerance identified in each country.

At the beginning of 2008, ECRI completed its third round of country-by-country monitoring work and started a new monitoring cycle. Fourth round country-by-country reports will focus on the issue of implementation. They will examine how ECRI's main recommendations from previous reports have been followed up and implemented. They will also include an evaluation of policies as well as the analysis of new developments since the last report. A process of interim follow up has also been introduced, which will take place no later than two years following the publication of each report.

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

On 12 February 2008 ECRI published four new reports on Andorra, Latvia, the Netherlands and Ukraine. In these reports, ECRI recognised both positive developments and continuing grounds for concern in all four countries.

In **Andorra**, a new criminal code came into force, providing for the racist motivation of a criminal offence to be regarded as an aggravating circumstance and prohibiting incitement to racial hatred as well as racist organisations. However, Andorra has not yet ratified Protocol No. 12 to the European Convention on Human Rights and does not have a detailed and comprehensive body of civil and administrative law prohibiting racial discrimination in all areas.

In **Latvia**, a clear prohibition of racial discrimination was included in the labour code and efforts have been made to increase the number of non-citizens being granted Latvian citizenship, either by encouraging or facilitating naturalisation. Nevertheless, a number of problems remain concerning the full integration of the Russian-speaking population. The number of racially-motivated attacks targeting visible minorities has been increasing and the use of racist discourse, by some politicians and in the media, remains a problem.

In the **Netherlands**, work is under way for the establishment of a network of professional local anti-discrimination bureaux throughout

the country, with the aim of improving the protection provided to victims of racism and racial discrimination and the monitoring of these phenomena. However, the tone of Dutch political and public debate on integration and other issues relevant to ethnic minorities has experienced a dramatic deterioration. The criminal justice system, and notably the police, still needs to enhance its role in monitoring and countering racially motivated offences.

In **Ukraine**, the Committee for Nationalities and Religion became fully operational with, among other tasks, combating racism and racial discrimination. However, criminal legislation against racially motivated crimes has not been strengthened and the authorities have not yet adopted a comprehensive body of civil and administrative anti-discrimination laws. There have been very few prosecutions against people who make anti-Semitic statements or publish anti-Semitic literature. Members of the Roma community still face many inequalities in areas such as education, employment and housing.

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

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. As part of this work, ECRI adopts general policy recommendations addressed to the governments of member states, intended to serve as guidelines for policy makers.

General policy recommendations

ECRI has adopted, to date, 11 general policy recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; and combating racism and racial discrimination in policing.

In March 2007, ECRI decided that General Policy Recommendation No. 12 would be devoted to combating racism and racial discrimination in the field of sport, further to observing an increase in this phenomenon as part of its country monitoring work. It also decided to issue a declaration on combating racism and racial discrimination in football for Euro 2008.

Relations with civil society

This aspect of ECRI's programme aims at spreading ECRI's anti-racism message as widely as possible among the general public and making its work known in relevant spheres at international, national and local level. In 2002 ECRI adopted a programme of action to consolidate this aspect of its work which involves, among other things, organising round tables in member states and strengthening co-operation with other interested parties such as NGOs, the media, and the youth sector.

Seminar with national specialised bodies to combat racism and racial discrimination: the relationship between integration and the fight against racism and racial discrimination

On 28 and 29 February 2008, ECRI held a seminar with national specialised bodies to combat racism and racial discrimination on the relationship between integration and the fight against racism and racial discrimination.

The aim of the seminar was to make national specialised bodies aware of the risks and opportunities of current integration policies and how they can actively influence them to ensure that non-discrimination is at the heart of these policies.

The first part of the seminar was dedicated to the main concepts and challenges related to integration and the existing legal and political framework in this field. The second part of the seminar concentrated on integration in specific policy areas, namely education, employment and participation in public life, and how these could be promoted and/or implemented by national specialised bodies to combat racism and racial discrimination.

Publications

- **Third Report on Andorra**, 12 February 2008
- **Third Report on Latvia**, 12 February 2008
- **Third Report on the Netherlands**, 12 February 2008
- **Third Report on Ukraine**, 12 February 2008

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

Equality between women and men

Since 1979 the Council of Europe has been promoting European co-operation to achieve real gender equality. The Steering Committee for Equality between Women and Men (CDEG) is responsible for co-ordinating these activities.

Standard-setting initiative

Recommendation CM/Rec (2007) 17 of the Committee of Ministers on Gender Equality Standards and Mechanisms: a new instrument at the disposal of member states for achieving *de facto* gender equality.

In 2003 the results of the Committee of Ministers' monitoring of compliance with commitments by member states on the theme "equality between women and men" showed that although *de jure* gender equality had been attained, *de facto* gender equality was far from being a reality, despite the progress that has been made. In the light of these results, the Committee of Ministers requested that a recommendation on minimum standards of equality between women and men, including national gender equality mechanisms, should be drafted; and in 2004 it instructed the Steering Committee for Equality between Women and Men (CDEG) to examine the feasibility of drafting such a recommendation. The CDEG subsequently entrusted this task to a group of specialists.

At the end of the two-year mandate (2005-2006) the work of this group of specialists resulted in Recommendation CM/Rec (2007) 17 on Gender Equality Standards and Mechanisms, which was adopted by the Committee of Ministers on 21 November 2007.

This recommendation is an additional response by the Council of Europe to assist member states to continue and to step up their efforts to achieve *de facto* gender equality. It can be considered as a "gender equality constitution" because it takes into account all fields and all aspects of life as well as existing principles and standards. Consequently, governments can monitor if the *de jure* and *de facto* measures which they have taken for attaining gender equality are sufficient and, if necessary, take other measures or reinforce existing measures to achieve effective gender equality in all fields and all aspects of life.

The recommendation starts by proposing six general standards which should be adopted in all legal and political measures:

- Gender equality as a principle of human rights and as a government responsibility.
- Gender equality as a concern and as a responsibility of society as a whole.
- Commitment, transparency and accountability in the achievement of gender equality.
- Ratification of relevant treaties and implementation of all relevant international legal instruments.
- Adoption and effective enforcement of gender equality legislation and integration of a gender perspective into legislation in all areas.
- Elimination of sexism from language and promotion of language that reflects the principle of gender equality.

These general standards are followed up by standards in specific areas relating to women's and men's participation in private and family life, economic life, public and political life and the possibility of reconciling these different aspects of life. They also cover matters relating to the exercise of fundamental rights of the person such as education and culture, social protection, health, etc. Obstacles to the achievement of gender equality (such as violence against women, trafficking in human beings or the place of women in conflict and post-conflict situations, etc.) which are an offence to women's dignity and a violation of their human rights are also addressed.

In order to be efficiently and effectively implemented, all these measures should be accompanied and supported by mechanisms, strategies

and tools and to this end, the recommendation outlines those which are considered as indispensable. It focuses on:

- establishing or reinforcing gender equality national mechanisms with effective power and efficient means of action;
- implementing specific action to remedy situations of discrimination and inequality of which women are victims;
- using strategies such as gender mainstreaming, including gender budgeting, to take into account the specific needs of women and men in legislation, policies and measures;
- drafting studies and instruments for evaluating the situation of women and men and measuring the progress achieved;
- establishing co-operation and partnerships with a large number of social actors. This is seen as an absolute necessity for the success of gender equality policies.

Thanks to this new instrument, the Council of Europe can pursue its pioneering role of promoting gender equality as an integral part of human rights and a fundamental criterion of democracy.

Financing for gender equality

52nd session of the Commission on the Status of Women (CSW) (New York, 25 February-7 March 2008)

At the 52nd session of the Commission on the Status of Women (CSW), devoted to the theme Financing for gender equality and empowerment of women, the Gender Equality and Anti-Trafficking Division and the Permanent Representation of Azerbaijan to the United Nations co-organised a side-event entitled Gender Equality Standards and Mechanisms in Europe: Financing and Effective Functioning (27 February 2008).

This side-event was chaired by Ms Hijran Huseynova, Head of the State Committee for Family, Women and Children Affairs of Azerbaijan, and was opened by the Permanent Representative of Azerbaijan to the United Nations, Ambassador Agshin Mehdiyev, and the Deputy Secretary General of the Council of Europe, Ms Maud de Boer Buquicchio. The following panellists participated in the debate:

- the General Secretary for Gender Equality for the Ministry of the Interior of Greece, Ms Eugenia Tsoumani;
- a member of the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe, Ms Carina Hägg (Sweden);
- the Director of the Institute for Gender Equality of Belgium, Mr Michel Pasteel.

This side event provided the opportunity to disseminate and publicise the new Recommendation CM/Rec (2007) 17 of the Committee of Ministers on Gender Equality Standards and Mechanisms.

Council of Europe Campaign to Combat Violence against Women, including Domestic Violence

In 2007, the Council of Europe launched its Campaign to Combat Violence against Women, including Domestic Violence. Many activities have since been implemented under all three campaign dimensions: governmental, parliamentary, and local and regional. As a result of the campaign's three-tier approach, activities reach out to decision makers at various levels of society and involve many different actors.

Intergovernmental activities have mainly focused on furthering the knowledge base on current developments and good practices in preventing and combating violence against women. To this end, five intergovernmental regional seminars have been organised which are based on the core objectives and messages of the campaign, as laid out in the campaign blueprint: legal and policy measures, support and protection of victims, data collection and awareness raising. The main issues presented and discussed are available on the campaign website.

Apart from devoting regional seminars to specific aspects of preventing and combating violence against women, the Council of Europe is studying the issue of minimum standards for support services and initiatives to collect administrative data on violence against women in more detail.

With the help of a carefully designed questionnaire and an analysis of replies and other available material, a study on minimum standards for services for women victims of violence is

currently being developed. The preliminary findings of this study were presented at a Council of Europe Conference on Support Services for Women Victims of Violence, held on 6-7 December 2007 in Strasbourg. Ninety participants, including government and non-governmental representatives, from 38 Council of Europe member states discussed the benefits of defining minimum standards, what they should encompass and how they should be applied. As a follow up to the conference, participants were invited to submit their opinion on the proposed standards during an online consultation held in January 2008. The response to this participatory approach led to a significant re-shaping of the standards. A final version of the study will be published in April 2008.

Another study that is currently being carried out concerns the question of possible guidelines on collecting administrative-based data on violence against women in order to set up administrative data systems that go beyond the internal recording needs of statutory agencies such as the police, the judiciary, public health and social welfare services. This study will be available in April/May 2008.

As the body overseeing implementation of the campaign, the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, has held its fifth meeting. This meeting was mainly devoted to drafting the task force's final activity report, which will contain its conclusions and assessment of measures and actions taken at national level to combat violence against women, including domestic violence, as well as recommendations for future Council of Europe action in this field.

Looking forward

In order to gather all focal points (governmental representatives responsible for ensuring the campaign's implementation at national level) for a third and last time, a Meeting of National Focal Points of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence will be held on 21 and 22 April 2008 in Strasbourg. It will provide a forum for presenting final reports on national action carried out within the framework of the Council of Europe campaign. It will also be an opportunity to exchange good practices and effective measures at national level to combat violence against women. In preparation of the meeting and for consideration by the Task Force to Combat Violence against Women, including Domestic Violence, the focal points are invited to submit final reports on national campaign action.

Further information on planned activities for all three dimensions of the campaign and much more can be found on the website.

The campaign will come to an end with a high-level closing conference held on 10 and 11 June 2008 in Strasbourg. On this occasion, the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, will present its final activity report. As the final campaign outcome, it will show the way forward to eliminating violence against women.

Internet: http://www.coe.int/equality/
http://www.coe.int/stopviolence/

Action against trafficking in human beings

Trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and the integrity of the human being. In 2005, to fight this modern form of slavery, the Council of Europe adopted a comprehensive treaty aimed at preventing trafficking, protecting victims and prosecuting traffickers. The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) entered into force on 2 February 2008.

Entry into force of the Convention on Action against Trafficking in Human Beings [CETS No. 197]

The convention entered into force on 1 February 2008 in Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and Slovakia.

It has since been ratified (situation as at 29 February 2008) by a further five countries and will enter into force in Bosnia and Herzegovina, France, Malta and Norway on 1 May 2008 and in Portugal on 1 June 2008.

Twenty-three other member states have signed but not yet ratified the convention.

The entry into force marks the end of the Council of Europe Campaign to Combat Trafficking in Human Beings, which was launched in 2006 under the slogan "Human beings - not for sale". The main aims of this campaign were:

- to raise awareness of the problem of trafficking in human beings as well as possible solutions to it among governments, parliamentarians, local and regional authorities, NGOs and civil society, and
- to promote the widest possible signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

At the core of the campaign was a series of regional information and awareness-raising seminars:

- Bucharest, 4-5 April 2006: Prevention, Protection and Prosecution
- Riga, 21-22 September 2006: Prevention, Protection and Prosecution
- Rome, 19-20 October 2006: Prevention, Protection and Prosecution
- Oslo, 1-2 November 2006: Prevention, Protection and Prosecution
- Athens, 5-6 December 2006: Prevention, Protection and Prosecution
- Nicosia, 15-16 February, 2007: Prevention, Protection and Prosecution
- Berlin, 19-20 April 2007: Measures to Protect and Promote the Rights of Victims
- Yerevan, 5-6 September 2007: Measures to Prevent, Protect and Prosecute
- Paris, 27-28 September 2007: Criminal and Procedural Measures
- Belgrade, 18-19 October 2007: Measures to Protect and Promote the Rights of Victims
- London, 10-11 December 2007: Measures to Protect and Promote the Rights of Victims

A total of 41 member states participated in one or more of these seminars which aimed to highlight the measures which can be taken to prevent this new form of slavery, to protect the human rights of victims and to prosecute the traffickers and their accomplices. The seminars were attended on average by between 100 and 150 participants and included representatives from governments, national parliaments and non-governmental organisations. The proceedings of the seminars are available on the anti-trafficking website: www.coe.int/trafficking.

In addition, the Council of Europe prepared a study entitled "Trafficking in human beings: Internet recruitment" on the misuse of the Internet for the recruitment of victims of trafficking in human beings and a seminar on this subject was organised in Strasbourg on 7-8 June 2007. This study and the proceedings of the seminar are also available on the website.

One of the last activities to be carried out as part of the campaign was a conference on the convention's monitoring mechanism (Strasbourg, 8-9 November 2007), organised in preparation for the entry into force of the convention. Council of Europe member states, observer states, international governmental and non-governmental organisations were invited to participate in this event which aimed to familiarise them with the convention's monitoring mechanism: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties. The proceedings of this conference are available on the website.

Setting up the monitoring mechanism of the convention

Experience proves that, in areas where independent human rights monitoring mechanisms exist, as is the case in the fields of torture and minorities for example, they have high credibility. The independent monitoring mechanism of the Convention on Action against Trafficking in Human Beings, as foreseen by the convention, is seen as one of its main strengths. Chapter VII – Monitoring Mechanism (articles 36, 37 and 38) lays down the provisions aimed at ensuring the effective implementation of the convention by the parties. Article 37 (2) stipulates that the Committee of the Parties should meet within a period of one year following the entry into force of the convention in order to elect the members of GRETA. Activities in 2008 will therefore focus on making the necessary preparations for this meeting.

For up-to-date information on the convention, including the chart of signatures and ratifications, please consult our website: www.coe.int/trafficking

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

Media and information society

Constant developments in the information society present the Council of Europe with the challenge of defending and maintaining its fundamental principles in new environments. While pursuing its efforts in "traditional" media and their roles in the process of democracy, the Steering Committee on Media and New Communication Services (CDMC) also works on freedom of expression in the complex context of new communications services.

Texts and instruments

As a result of the work of the CDMC and its groups of specialists, a number of texts were prepared and submitted to the Committee of Ministers for adoption.

Media coverage of election campaigns: a challenge for democracy

During elections, the editorial independence of the media becomes particularly important if democracy is to prevail. The coverage of elections by the media (including written press, broadcast media as well as online media) should be fair, balanced and impartial. Public service media have a particular responsibility as they have to provide information as well as broadcast political messages. Regulatory authorities have an essential role here.

Therefore, the Council of Europe recommends that the governments of member states should examine ways of ensuring respect for the principles of election campaign coverage by the media. This should include non-interference by the authorities, protection against attacks, intimidation and all kind of pressure on the media as well as transparency regarding ownership of the media by public authorities, the right of reply and other remedies, and opinion polls. Member states should ensure that these principles are applied by all media which provide coverage of election campaigns.

Revised Recommendation on measures concerning media coverage of election campaigns, adopted on 7 November 2007

For an affordable, free, safe, continuous and diverse access to the Internet

In order to respond to users' legitimate expectations that Internet services should be accessible, affordable, safe, reliable and continuous, the Council of Europe recommends that member states should promote the public service value of the Internet. The Internet has become an essential tool in daily life, allowing people to exercise their human rights and take part in public life and democratic processes as well as encouraging expression, creativity and the exchange of information and ideas. It promotes the exercise and enjoyment of certain rights but can also put them in danger (for example the right to private life, human dignity and even the right to life).

The adopted text invites governments to define the roles and responsibilities of the main stakeholders – the public and private sectors and civil society. In particular, it encourages the private sector to be aware of its changing ethical responsibilities. Policies that are developed should aim at protecting human rights, pluralism, cultural diversity and democracy. It calls on member states to enable a greater number of people to have access to the Internet and to support freedom of expression and information online, whilst seeking to ensure that its content can be enriched by all different regions, countries and social groups in order to achieve real pluralism of content.

The document encourages member states to engage in international legal co-operation in order to reinforce security and protect international law on the Internet. To this end, it encourages governments to sign and ratify the Council of Europe Convention on Cybercrime and the Convention on the Protection of Chil-

Recommendation on measures to promote the public service value of the Internet, adopted on 7 November 2007

dren against Sexual Exploitation and Sexual Abuse.

The Council of Europe brought the message included in this recommendation to the World Internet Governance Forum, which took place in Rio de Janeiro from 12 to 15 November 2007, at which it organised a workshop dedicated to the public service value of the Internet.

Declaration on the allocation and management of the digital dividend and public interest, adopted on 20 February 2008

The digital dividend is a public asset

In a growing number of countries, radio and television programmes are broadcast digitally rather than using analogue. A result of this switchover is the "digital dividend", which is the share of the frequencies no longer used. These frequencies can be used for other services and could provide an important resource with a potentially high commercial value for governments that may wish to let or sell them to telephone networks or use them for the transmission of other commercial services.

It is important for democratic societies that a wide variety of independent and autonomous media can exist together, permitting the diversity of ideas and opinions to be reflected, and protecting media pluralism, cultural diversity, social cohesion, democratic participation, consumer protection and privacy.

All efforts must be undertaken to ensure effective and fair access for all to new communication services, education and knowledge, especially with a view to preventing digital exclusion and to narrowing or, ideally, bridging the digital divide.

Furthermore, the digital dividend is an excellent opportunity to meet the rapidly growing demand for new services and new technological developments such as broadband applications or mobile multimedia.

In terms of future decisions, the 47 members states of the Council of Europe have made it clear that they wish to acknowledge the public nature of the digital dividend and have stressed the need for it to be managed in the public interest. The Council of Europe underlines the aim and fundamental role of public service media in the new digital environment – promoting the values of democratic societies – and wishes it to be duly taken into account.

Declaration on protecting the dignity, security and privacy of children on the Internet, adopted on 20 February 2008.

Protecting children on the Internet

More and more children and young people are making use of the many possibilities offered by the Internet for educational and entertainment purposes and are also using it as a means of communication. However, by offering a free and openly accessible space, the Internet has its risks. The representatives of the Council of Europe who attended the Internet Governance Forum in Rio de Janeiro in November 2007 discussed the worrying issue of the permanence of content put on the Internet by users and how this content can be used later, often without the knowledge of the original users. People are often unaware that content that they post on the Internet will remain there. In that respect, children are particularly at risk as their online activities can expose them to criminal activities such as solicitation for sexual purposes or otherwise illegal or harmful activities such as discrimination, bullying, stalking and other forms of harassment.

Furthermore, there is an emerging tendency for certain types of institutions, such as educational establishments and prospective employers, to seek information about children and young people when deciding on important issues concerning their future.

The Council of Europe is already working on the risks of the Internet for children. Convinced that the well-being and best interests of children are fundamental values shared by all member states which must be promoted without discrimination, it invites the member states to explore the feasibility of removing or deleting certain types of content, including its traces, within a reasonably short period of time.

Media literacy, particularly online media literacy, is considered to be particularly important by the Council of Europe and work has been undertaken in that direction.

Internet Governance Forum (IGF)

Rio de Janeiro (Brazil), 12-15 November 2007

Some 2 000 representatives from 100 countries, drawn from government, the private sector, expert groups and NGOs, attended the second Internet Governance Forum (IGF) held between 12 and 15 November in Rio de Janeiro (Brazil). The Deputy Secretary General of the Council of Europe, Maud de Boer-Buquicchio, took part in the Forum together with several other Council of Europe experts and addressed the participants as part of the opening cere-

mony. The IGF focused on the following broad themes: access, openness, diversity, security and emerging issues.

The Council of Europe contributed substantially to the substance of the forum by putting forward its views on the benefits and challenges of the Internet for economic growth and social development. It underlined the public service value of the Internet and the importance of users' rights, in particular freedom of expression and safety. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was central to the Organisation's contribution.

Besides an important written contribution – *Building a free and safe Internet* – the Council of Europe organised and co-organised eight workshops on the following themes:

- freedom of expression as a security issue;
- protecting children on the Internet;
- public participation in Internet governance: challenges, good practices and proposed solutions;
- the Council of Europe Convention on Cybercrime;
- "quality" and the Internet: using and trusting Internet content;
- legislative responses to cyber-threats;
- content regulation and the duty of states to protect fundamental rights;
- the public service value of the Internet.

Wild Web Woods – Play and avoid dangers on the Internet

Internet literacy

The Internet has hugely influenced our society and our lives and it is increasingly important to use it safely, competently and responsibly.

As part of its Internet literacy programme and to mark Safer Internet Day 2008, the Council of Europe launched a video game, *Through the Wild Web Woods*. Presented as a fairytale, the game teaches children (and adults!) how to surf the Internet and avoid dangers. The game is available online in 13 languages.

Co-operation and assistance

As part of a European Union/Council of Europe joint programme for Ukraine and the South Caucasus, the Media and Information Society Division organised a series of activities concerning the media in Armenia, Georgia and Ukraine.

Armenia

Yerevan, 14 November 2007

Conference on "Media and elections, the democratic responsibility of the media"

The conference was the first in a series of activities aimed at improving the professionalism of the Armenian media in covering the 2008 presidential elections. It aimed to give a platform to representatives from the media, politics and civil society in Armenia in order to discuss the role and responsibilities of the media in a democratic society, and in particular during elections, in the light of the relevant Council of Europe standards. The 30 participants met in order to exchange views on whether this role is satisfactorily fulfilled by the media in Armenia, to identify possible shortcomings and to consider steps to be taken to improve the situation. As a "kick-off" to the remaining, mainly practical training on media professionalism, the conference aimed to raise awareness on these activities and provide an opportunity to identify potential problems which the Armenian media may encounter, so that they could form part of future training sessions.

Tsakhkadzor, 16-17 November, Alaverdi, 20-21 November, Jermuk, 23-24 November 2007

Training seminars for managers, senior journalists and other media professionals on election coverage

These two-day training sessions aimed at improving the work of media professionals (senior journalists, managers and editors) in the run-up to the 2008 Armenian Presidential elections and to raise their awareness of the relevant Council of Europe standards. A total of 68 participants, mostly representing print and audiovisual media, were first given training on the democratic responsibility of the media at election time with a focus on the principles that should guide journalists during the coverage of elections and election campaigns.

The participants were asked to debate the "real issues", which enabled them to highlight key public concerns and the needs of the voters as well as the main legal and ethical dilemmas faced by journalists during elections. Follow-up sessions focused on editorial development and innovative ways of covering election campaigns.

Yerevan, 13-14 November 2007

Workshop on election coverage by the media for the managers and journalists of the public TV of Armenia

The objective of this two-day workshop was to give PTV executives and journalists clear standards for covering elections, specifically the presidential election. The programme comprised various technical modules designed by the EBU. The 19 participants then had the opportunity to discuss audiences' perceptions of television news, analyse real examples and train with practical exercises.

Yerevan, 20-21 December 2007

Training seminar for journalists on election coverage

This seminar focused on improving the standard of election coverage and putting the focus more on voters and issues which dominate their agenda, the consequences of politics and law making, seeking solutions to society's main problems, engaging the voters in election coverage, and seeking interactivity between voters, politicians and politics. Sixteen professionals participated in the programme which comprised short lectures, concrete examples of election coverage from the Danish Broadcasting Corporation, debates and practical assignments. The participants were active and committed and very open to new ideas and to the democratic demands of election reporting as formulated by the Council of Europe.

A final assessment seminar on the quality of the media coverage during the elections will be held after the elections, in March 2008.

As a follow up and support to the improvements sought, a practical handbook on professional media coverage of elections will be drafted and published in Armenian in April 2008.

Georgia

Tbilisi, 19-20 December 2007

Practical tools for news coverage

The objective of this workshop was to give executives from Public Broadcasting of Georgia clear standards for covering elections, specifically the presidential election scheduled for January 2008. During the two days of training, the 12 participants took an active part in group discussions, practical exercises and report writing and had the opportunity to analyse and compare examples drawn from programmes of members of the EBU, the co-organiser of this workshop.

Ukraine

19-21 and 21-23 November 2007

Workshop on documentaries for the market for the managers and journalists of the National Television and Radio of Ukraine (NTU)

The workshops were were organised following a request by the NTU and were designed to improve participants' understanding of the various elements that make a well-written and well-produced documentary. They enabled a total of 45 film directors, editors and documentary-makers to learn and compare modern European documentaries and new techniques, to meet others and to exchange experiences. The training comprised five specialised modules related to documentaries, and their impact will be included in a production documenting the changes currently taking place in Ukraine and within its democracy.

Seminar for the staff of the National Television and Radio Broadcasting Council of Ukraine

20 November 2007

This seminar was designed for the staff of the National Television and Radio Broadcasting Council of Ukraine in order to help improve its capacity and transparency.

The 30 participants were given an overview of the European standards concerning regulatory bodies with regard to content monitoring and were able to discuss to what extent the Ukrainian regulator conforms to these standards. In the light of practical examples and of principles applied in France, the Netherlands and Hungary, they discussed the problems and the absence of appropriate legal regulations that they face in Ukraine.

Seminar on corruption in the media: Ukraine's realities and Poland's experience

Kyiv, 28 November 2007

The aim of this seminar was to discuss problems related to corruption in the media in Ukraine and the negative impact that corruption in the media has on civil society. It was attended by 40 representatives from regional media from all over Ukraine, Kyiv-based media and NGOs.

Journalists coming from the most prestigious Polish media presented the Polish experience with regard to overcoming corruption within the media and fruitful discussions followed about mechanisms for overcoming problems of corruption and its importance for society.

The seminar also helped participants to understand the importance of journalists' awareness in the process of fighting corruption.

Seminar on regulating online media in Ukraine and Europe

Kyiv, 12 December 2007

The objectives of this seminar were to enable the 30 representatives of online media, NGOs, Internet business organisations, information agencies and journalists to discuss the regulation of online media in Ukraine, the relevant Council of Europe standards and practical experiences of regulating online media from other European countries. It was organised together with Internews Ukraine and the National Commission on Freedom of Speech and Development of the Information Sphere.

The experts presented the Council of Europe standards. They stressed the potential dangers for freedom of expression if a registration requirement for online media (currently under discussion in Ukraine) was introduced and made reference to Council of Europe standards and the case-law of the European Court of Human Rights. This led to an overall consensus among participants that a registration requirement should not be introduced.

Seminar for judges on media coverage of judicial proceedings

Zaporizhia, 18 December 2007

The seminar was designed to familiarise the participants with the standards of the European Convention on Human Rights and the case-law of the European Court of Human Rights on freedom of expression and information. The training course was attended by 33 judges from appeal courts and district courts in the Zaporizhia region who discussed journalists' access to trials, respect for the principle of presumption of innocence and protection of judges' reputations. They also received assistance for a dialogue between judges and journalists from the region and one of the outcomes of this was an agreement on the presence of the press in courtrooms and on providing information concerning judicial proceedings.

Seminar for journalists on media coverage of trials

Zaporizhia, 19 December 2007

This seminar was the counterpart for of the previous seminar for judges and was for press professionals from the Zaporizhia region. It had the same objectives and covered the same topics with a view to achieving co-operation on a commonly understood basis and on principles that would be accepted by all parties. It was attended by 32 chief editors and journalists from both newspapers and radio stations.

Serbia

As part of a joint programme with the European Union on supporting the promotion of freedom of expression and information and freedom of the media, according to the Council of Europe and European Union standards, the Media and Information Society Division organised a series of activities concerning the media.

Belgrade, 8-9 November 2007

Seminar on freedom of expression and the right to privacy

The objective of this seminar was to discuss the general principles of freedom of expression and information and the right to privacy in a democratic society under the European Convention on Human Rights.

The protection of privacy and personal data and the right to use one's image and voice, the right of the public to be informed and strategies for balancing freedom of expression and information in the media and the right to privacy were all covered in the seminar, along with an examination and comparison of the experiences of other European countries. It was attended by 30 judges, lawyers and journalists.

The journalists' attention was drawn to their professional responsibilities, the profession's need to restore the public's confidence in the media and to balance public interest in freedom of expression with the legitimate expectation of privacy of individuals and respect for their human dignity.

Belgrade, 17 December 2007

Seminar on ethical standards and self-regulation of the media

This seminar aimed to present ethical professional standards which should be applied to the work of journalists and, as the law does not suffice, the training also emphasised the need to develop mechanisms of self-regulation in the media which, together with a respect for a professional code of conduct, could improve public confidence in the media and provide better quality information.

The 20 journalists, editors and media professionals who attended were able to improve their knowledge of the role and importance of ethical standards in modern Europe, using examples from a neighbouring country (Bosnia and Herzegovina)and analysing Serbian practices.

Montenegro

Podgorica, 28 November 2007

Seminar on the transformation of public service broadcasting in Montenegro

The objectives of the seminar, which was co-organised with the OSCE, were to present the Council of Europe and European Union standards on public service broadcasting, practical experiences of changeover from state to independent public service broadcasting and best practices from other European countries.

The 50 participants from the Ministry of Culture, the Media Council, the RTCG (public service broadcaster), media professionals, journalists, representatives from other international organisations and NGOs also discussed major achievements and challenges for the changeover to public service broadcasting in Montenegro.

Looking forward

Living together

At its sixth meeting in November 2007, the CDMC launched a new project entitled Living Together. The aim of the project is to prepare a reference tool on the Council of Europe standards which concern the contribution of the media to living peacefully and harmoniously together in a democratic society. Topics that will be explored include the role of media in promoting social cohesion, understanding, tol-

erance, dialogue and democratic participation of individuals.

The reference tool will target the widest possible audience – policy makers, governments, educators, media professionals, non-governmental organisations, various communities, young people, etc. The text will be informative, yet easy to read and understand. A book edition is due to be published in 2009 and an online version supplemented by other web-based sources is also envisaged.

Recourse for the media against attacks on their freedom

In June 2007 the Committee of Ministers gave the CDMC the mandate of examining and making recommendations on media complaints procedures and media complaints bodies established in member states, taking into account any difficulties faced by individuals and groups affected by statements in the media to obtain redress through these mechanisms. On the basis of the study and of an analysis of good practices, a recommendation will be finalised in 2008.

Fight against terrorism and freedom of expression and information

Since September 2001, in order to fight terrorism, a number of states have created legal instruments which may have a negative impact on freedom of expression and information and on freedom of the media. Therefore, the CDMC decided to launch a thematic study examining developments in national legislations and, if needed, to engage in further action on the subject by hearings with and concrete proposals to the Committee of Ministers.

Neighbouring rights of broadcasting organisations

The work done by of the World Intellectual Property Organisation (WIPO) on an international treaty on this subject has been deadlocked for a few years now but there is consensus among European states on the need for such an instrument. Professional organisations have asked the Council of Europe to explore the possibility of preparing a draft convention with a view to better protecting the neighbouring rights of broadcasting organisations, for example when facing the growing problem of piracy and keeping in mind the desire to protect European culture.

This subject is not new to the Council of Europe given the standard-setting instruments it has already prepared, in particular the 1994 European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite [CETS No. 153] and the 2001 European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access [CETS No. 178].

The CDMC has consequently resumed working on the subject and, if it appears justified, will prepare a draft convention.

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

Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities is the first ever legally binding multilateral instrument devoted to protecting national minorities. It clearly states that protecting national minorities forms an integral part of the international protection of human rights.

Second monitoring cycle

Second cycle state reports were received from **Poland** (8 November 2007) and **Bulgaria** (23 November 2007).

Follow-up meetings on the implementation of the Framework Convention for the Protection of National Minorities were organised in **Armenia** on 13 November, the **Slovak Republic** on 7 December and **Romania** on 14 December.

The Advisory Committee for the Protection of National Minorities adopted second opinions on **Sweden** on 8 November and **Azerbaijan** on 9 November.

Switzerland

Switzerland submitted its second state report in January 2007. Following its visit, the Advisory Committee adopted its own report (which is called an opinion) on 29 February 2008. The opinion has been sent to the Swiss Government for comments. The Committee of Ministers will then adopt conclusions and recommendations concerning Switzerland.

A delegation from the Advisory Committee visited Switzerland from 19 to 21 November 2007. It was the second visit to Switzerland, following that of 2002. The visit facilitated the Advisory Committee's monitoring of the implementation of the treaty in Switzerland.

The delegation mainly discussed the legal and factual position of the linguistic minorities, including in the trilingual canton of Graubünden and in the bilingual cantons of Bern, Fribourg and Wallis. The situation of the Jewish community and of Travellers was also addressed, bearing in mind that both groups can rely on the protection offered by the framework convention. The visit focused in particular on the situation of Travellers and the current situation concerning transit sites and stopping places, with an on-the-spot visit to the stopping place in Buech near Bern followed by a round-table discussion in Fribourg on the same topic.

The delegation held meetings in Bern with representatives from the ministry of foreign affairs, members of parliament and representatives from various offices from the federal administration. The delegation also met several non-governmental associations which represent minorities and/or promote their language and culture, as well as human rights NGOs. A session was devoted to the linguistic situation and main issues faced by the multilingual cantons, which was attended by representatives from the authorities and civil society. A decentralised round table was held in Fribourg to discuss the situation of Travellers in this canton, in the presence of the Prefect of the Sarine District and representatives from different municipalities.

Lithuania

A delegation from the Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities visited Lithuania from 19 to 22 November 2007. This was the Advisory Committee's second visit to this country and its aim was to facilitate the monitoring of the implementation of this treaty in Lithuania.

Issues relating to the effective participation of persons belonging to national minorities in public affairs and socio-economic life were raised. In this respect, integration of disadvantaged groups into society and relevant programmes in the field of employment, housing, health and education were discussed. The delegation also examined issues relating to education in/of minority languages in schools and the use of minority languages in contacts with administrative authorities. The legislative framework pertaining to the protection of national minorities was also considered by the delegation. In addition, the delegation visited localities inhabited by persons belonging to national minorities – Nemenčinė and Kirtimai.

The delegation held meetings in Vilnius with representatives of the relevant ministries, members of parliament and representatives of other bodies and departments, such as the State Commission for the Lithuanian Language. Meetings with the Office of the Equal Opportunities Ombudsperson and the Parliament Ombudsperson were organised and the delegation also met the Council of National Communities, which represents the various national minorities living in Lithuania. The delegation also held meetings with minority non-governmental associations as well as human rights NGOs.

Lithuania submitted its second state report in November 2006. Following its visit, the Advisory Committee adopted its own report (opinion) on 28 February 2008, which has been sent to the Lithuanian Government for their comments. The Committee of Ministers will then adopt conclusions and recommendations concerning Lithuania.

First monitoring cycle

Montenegro

A delegation from the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Montenegro from 5 to 8 December as part of its monitoring of the implementation of the convention by Montenegro. In addition to Podgorica, the delegation visited Bijelo Polje, Berane, Rozaje and Tuzi.

This visit took place less than two months after the adoption of the new Constitution of Montenegro: the resulting legislative framework for the protection of national minorities together with its effective implementation were at the centre of the discussions.

The delegation had meetings with the representatives of all relevant ministries, as well as with the constitutional court, the ombudsman's office and the parliament. In addition to contacts with public officials, the delegation also met persons belonging to national minorities and human rights NGOs.

Montenegro submitted its first state report in July 2007. Following its visit, the Advisory Committee adopted its own report (opinion) on 28 February 2008, which has been sent to the Montenegrin Government for comments. The Committee of Ministers will then adopt conclusions and recommendations concerning Montenegro.

Publications

The Secretariat of the Framework Convention for the Protection of National Minorities produced the 4th edition of the *Collected Texts* (ISBN 978-92-871-6382-0).

The aim of the collection is to provide a user-friendly compilation of the basic texts concerning the framework convention. In addition to the framework convention and its explanatory memorandum, the collection contains texts pertaining to the monitoring mechanism in general and the Advisory Committee in particular. It further provides the state of signatures and ratifications as well as declarations and reservations. It also contains a list of state reports received and opinions of the Advisory Committee adopted under both the first and second monitoring cycles.

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

Human rights co-operation and awareness

Bilateral and multilateral human rights co-operation and awareness programmes are being implemented by the Directorate General of Human Rights and Legal Affairs of the Council of Europe. They are intended to assist member states to fulfil their commitments in the human rights field.

Training and awareness-raising activities

Since 1993 the Council of Europe and the European Commission have established Joint Programmes for countries in Central and Eastern Europe. They consist of a series of activities agreed between the European Commission and the Council of Europe, in consultation with the governments of the concerned countries, designed to facilitate and support legal and institutional reform. Training courses, expert reports and advice to governments, conferences, workshops, seminars and publication dissemination are all usual working methods.

Programme "Development of a reliable and functioning prison system respecting fundamental rights and standards and enhancing of regional co-operation in the western Balkans"

Cascade seminar on European human rights standards for operational and managerial prison staff

Zagreb, Croatia, 22-23 January 2008

This seminar targeted participants from Croatia who were trained by national trainers who had themselves been previously trained on European human rights standards in a prior training-of-trainers session within the project. The participants were familiarised with the ECHR, ECtHR case-law and CPT standards.

Round table to present the "guidelines on governmental and independent inspection mechanisms of prisons"

Zagreb, Croatia, 24 January 2008

The participants of this round table were from the ministry of justice, the Helsinki Committee, prison administration, ombudsmen, the CPT, the judiciary and prison governors. The aim was to present the guidelines on inspections and monitoring of prisons, thereby contributing to the development and consolidation of governmental and independent inspection mechanisms.

Training-of-trainers course on human rights in prison

Skopje, "the former Yugoslav Republic of Macedonia", 29-31 January 2008

This training seminar aimed to increase the knowledge of operational and managerial prison staff on specific articles of the ECHR, in particular Articles 2, 3, 5 and 8.

Round tables on "Presentation of the guidelines on inspection and monitoring of prisons"

Skopje, "the former Yugoslav Republic of Macedonia", 28 January 2008, Pristina, Kosovo-UMNIK, 1 February 2008, Tirana, Albania, 8 February 2008

The discussions at these round tables focused on the strengthening of the domestic mechanisms of inspection and monitoring of prisons with a view to implementing relevant recommendations of the CPT and take the measures necessary to comply with ECtHR judgments. The participants included MPs, the general directors of the respective prison authorities, representatives from the judiciary, representatives from prison liaison offices in the ministries of

justice, representatives of the prosecutor's office, ombudsmen, government representatives and representatives of local NGOs active in programmes with prisons.

Training-of-trainers session on substantive European human rights standards and methodological aspects for prison management staff

Montenegro, February 2008

A training-of-trainers session was organised for future trainers among the management staff of the Penitentiary Administration of Montenegro. The session focused on Articles 2, 3, 5 and 8 of the ECHR.

Round table to present governmental guidelines and independent inspection mechanisms to the participants and prepare for their implementation

Montenegro, February 2008

A round table was organised on the guidelines prepared by the main expert in the EC/COE joint programme entitled "Development of a reliable and functioning prison system respecting fundamental rights and standards and enhancing of regional co-operation in the western Balkans", in co-operation with the Penitentiary Administration of Montenegro. Representatives of the penitentiary administration, the ministry of justice, the courts and the ombudsman's office attended the round table.

Pilot cascade training seminars with prison staff

Vushtri, Kosovo-UNMIK, 4-5 February and Tirana, Albania, 11-12 February 2008

These training seminars for operational and managerial prison staff, in particular on Articles 2, 3, 5 and 8 of the ECHR, aimed at disseminating the knowledge that the local trainers had acquired during the training-of-trainers sessions. The trainers were assisted by a Council of Europe expert who took part in the seminars and gave them guidance on fulfilling their role as trainers.

Programme "Fostering a Culture of Human Rights for Ukraine and South Caucasus"

Training-of-trainers seminar for national ECHR trainers of prosecutors

Yerevan, Armenia, 4-6 December 2007

The objective of this seminar was to develop a national pool of qualified ECHR experts. The seminar focused on Articles 3, 5 and 6 of the ECHR but also provided an overall overview of the ECHR's substantive provisions as well as relevant ECtHR case-law and case-law in the Council of Europe member states. Methodological aspects for making an effective presentation to fellow prosecutors were also highlighted. The national trainers for prosecutors will proceed to train their peers in the regions of Armenia via cascade seminars in 2008. The seminar was organised in co-operation with the office of the prosecutor general.

Seminars for judicial and prosecutorial staff

Tbilisi, Georgia, 26 November – 19 December 2007

A series of five seminars for judicial and prosecutorial staff on the ECHR were organised in co-operation with the Tinatin Tsereteli Institute of State and Law. The seminars highlighted the ECHR's substantive provisions and their domestic application in criminal and civil proceedings as well as relevant ECtHR case-law and case-law in the Council of Europe member states.

Seminar on domestic application of the ECHR

Baku, Azerbaijan, 4-7 December 2007

An in-depth seminar on the domestic application of the ECHR for judge candidates currently in the selection process.

Fourth series of four cascade seminars on the ECHR

Ukraine, 5-14 December 2007

The fourth series of four cascade seminars on the ECHR for prosecutors from the regions of Ukraine (Lugansk, Mykolayiv, Odessa, Lviv) were organised in co-operation with the office of the prosecutor general and the Association of Prosecutors of Ukraine (http://www.uap.org.ua) with the assistance of the national pool of qualified experts trained by the Council of Europe. The seminars highlighted the ECHR's substantive provisions and their domestic application in criminal proceedings, as well as relevant ECtHR case-law.

Seminar for the staff of the government agent's office on the ECHR

Tbilisi, Georgia, 10-11 December 2007

This seminar was aimed at enhancing the capacity of the office to represent Georgia before the ECtHR, to contribute to the execution of the ECtHR judgments and to identify legislation raising matters of ECHR compatibility.

Workshop on the establishment of the national prevention mechanism under the Optional Protocol to the Convention against Torture

Yerevan, Armenia, 11-12 December

A workshop on the establishment of the national prevention mechanism under the Optional Protocol to the Convention against Torture (OPCAT) was organised with the co-operation of the Human Rights Defender's Office in Armenia. The aim was to discuss draft amendments to national laws in accordance with the OPCAT made by a group of national experts.

Study visit of lawyers from the offices of the ombudsman institutions of Georgia and Azerbaijan to the Council of Europe

Strasbourg, 17-19 December 2007

The aim of this visit was to allow participants to familiarise themselves with the Council of Europe's main human rights treaties and mechanisms which are relevant to the work of non-judicial mechanisms for the protection of human rights ,such as ombudsman institutions. It included meetings with staff of the Directorate General of Human Rights and Legal Affairs of the Council of Europe and the Registry of the ECtHR.

Training seminar for the staff of the Office of the Government Agent of Azerbaijan on the ECHR

Baku, Azerbaijan, 19 December 2007

This training seminar was aimed at enhancing the capacity of the office to represent Azerbaijan before the ECtHR, to contribute to the execution of ECtHR judgments and to identify legislation raising matters of ECHR compatibility. The participants were representatives from the office of the government agent, the supreme court, the court of appeal, the prosecutor's office and ministers.

Training seminar for Georgian law enforcement officials

Tbilisi, Georgia, 22-24 January 2008

A training seminar for Georgian law enforcement officials was organised in co-operation with the Police Academy of Georgia. During the train-the-trainers course participants were trained on theoretical issues of human rights and ethics in policing, on developing a tailor-made strategy to ensure human rights protection during interviews, and on principles of adult learning.

Fifth series of four cascade seminars for prosecutors on the European Convention on Human Rights

Ukraine, February 2008

These seminars were organised in co-operation with the office of the prosecutor general and the Association of Prosecutors of Ukraine (http://www.uap.org.ua) with the assistance of a national pool of qualified experts trained by the Council of Europe. The seminars highlighted the ECHR's substantive provisions and their domestic application in criminal proceedings as well as relevant ECtHR standard-setting case-law.

Third series of two cascade seminars for judges on the European Convention on Human Rights

Ukraine, February 2008

The third series of two cascade seminars for judges on the ECHR were held in regions of Ukraine. These seminars were organised in co-operation with the Academy of Judges of Ukraine with the assistance of a national pool of qualified experts trained by the Council of Europe. The seminars highlighted the ECHR's substantive provisions and their domestic application in criminal, civil and administrative proceedings as well as relevant standard-setting case-law of the ECtHR.

Programme entitled "Enhancing the capacity of legal professionals and law enforcement officials in Russia to apply the ECHR in domestic legal proceedings and practices"

Training of prosecutors' trainers on the ECHR

St Petersburg, Russian Federation, 21-23 November 2007

National prosecutors' trainers, who will pass knowledge on to their colleagues at subsequent cascade training seminars, were trained on the ECHR. Prohibition of torture, inhuman and degrading treatment or punishment; the prosecutor and the obligation to investigate; the prosecutor and gathering of evidence (including anonymous witnesses, terrorism and organised crime) and the right to a fair hearing were among the topics discussed.

Awareness-raising seminar on Council of Europe human rights standards

Rostov-on-Don, Russian Federation, 16-17 November and 14-15 December

These two awareness-raising seminars on Council of Europe human rights standards for Russian NGOs focused on the right to life, the prohibition of torture and the right to liberty and security of person.

Training and awareness-raising activities for judges, prosecutors and lawyers

Cascade training seminars for judges and prosecutors

Ohrid, "the former Yugoslav Republic of Macedonia", 5-6 November and 12-13 November 2007

Two cascade training seminars for judges and prosecutors were organised with the co-operation of the Academy for Training of Judges and Prosecutors. National trainers trained their peers on Article 3 and 6 of the ECHR.

Training seminar for judges of the supreme court and the constitutional court on the ECHR

Podgorica, Republic of Montenegro, 8-9 November 2007

This activity, organised for judges of the Supreme Court and the Constitutional Court of the Republic of Montenegro, focused on the access of the individual to the European Court of Human Rights (ECtHR) and the relationship between domestic legislation and the ECHR.

Study visit for human rights prosecutors' trainers from Azerbaijan

Strasbourg, 12-15 November 2007

This visit was organised for 13 prosecutors' trainers from Azerbaijan in order to familiarise them with the main Council of Europe human rights treaties, and in particular the role and contribution of prosecutors in ensuring effective protection of human rights.

Training seminar for Chechen police officers, judges, prosecutors and human rights NGOs on "Human Rights protection in pre-trial detention"

Golitsyno, Russian Federation, 21-22 November 2007

This seminar aimed to familiarise participants with existing European human rights standards regarding the right to liberty and personal security, including the standards of the CPT, the prohibition of ill-treatment and the procedural obligations in respect of ill-treatment and disappearances under the ECHR and the CPT. This activity was part of the 2007 Programme of Co-operation Activities of the Council of Europe and the Russian Federation in respect of Chechnya.

In-depth seminar for judges and prosecutors on the ECHR

Chisinau, Moldova, 22-23 November 2007

An in-depth seminar on Article 6 of the ECHR for national judges and prosecutors organised in co-operation with the National Institute of Justice. The seminar focused on non-enforcement of judgments (Article 6 § 1 of the ECHR and Article 1 of Protocol No. 1) and the ECtHR's case-law on the principle of equality of arms, the right to adversarial proceedings and the right to an independent and impartial tribunal with lectures provided by a lawyer from the Court's Registry and a trainer from the International Department of the National School of Magistrates of France.

Training seminar for future lawyers' trainers on the ECHR

Tirana, Albania, 26-27 November 2007

This training seminar was organised for a selected group of future lawyers' trainers on Articles 2, 3 and 5 of the ECHR. The admissibility criteria of the ECtHR were also presented.

Seminar for judges and prosecutors on Articles 5 and 6 of the ECHR

Strasbourg, 27-28 November 2007

Follow-up meeting on the situation of persons in pre-trial detention, as well as of sentenced women and life-prisoners in the Russian Federation. This activity was part of a continued process of dialogue with the Russian authorities and was aimed at reviewing Russian legislation concerning pre-trial detention, as well as the detention of prisoners and prisoners serving life sentences, in the light of relevant European standards.

Train-the-trainers course for Albanian lawyers

Tirana, Albania, 23-24 January 2008

This session was the second of a series of two training sessions aimed at improving the knowledge of Albanian lawyers on specific articles of the ECHR and to teach them about the role and function of the Committee of Ministers, in particular for supervising the execution of ECtHR judgments. During the training, presentations were made and interactive workshops organised to strengthen the lawyers' professional skills.

Training seminar for future judges and prosecutors' trainers on the ECHR

Tirana, Albania, 20–21 February 2008

The third training session for future judges and prosecutors' trainers on the methodology of Articles 9, 10 and 11 of the ECHR was organised in Tirana. The judges and prosecutors, selected to be future trainers, had graduated from the Albanian School of Magistrates and were involved as lecturers in public and private law faculties in Albania and in previous training sessions with the Council of Europe.

In-depth seminar on the ECHR

Montenegro, January 2008

A two-day in-depth seminar was organised for five judges' trainers and five prosecutors' trainers in co-operation with the Judicial Training Centre (JTC). The seminar focused on Articles 2, 3 and 6 of the ECHR. This course was part of a training scheme agreed with the JTC to enable the judges' trainers to pursue cascaded training and to assist with the creation of a pool of prosecutors' trainers for the first time since the JTC became responsible for the training of prosecutors.

Training and awareness-raising activities for police officers

Round table and seminar on police ethics and human rights

Chisinau and Cumrat, Moldova, 6-9 November

A round table and seminar on ethics and human rights as instruments of preventing torture and inhuman treatment by police officers was organised following a request by the ministry of the interior. The aim was to familiarise the authorities with the applicable international and national legal instruments and to give the authorities an opportunity to react to the comments of the CPT concerning police practice.

Training session for Albanian law enforcement officials

Tirana, Albania 13-15 November 2007

A training session organised in co-operation with the Albanian Police Academy. Police officers from all over Albania were trained on human rights with a special focus on domestic violence. The lecturers from Northern Ireland, Latvia, the Netherlands and Germany made presentations on the issues and involved the participants through group work and case studies. This session was the second in a series of two; the first was held in Durres in September 2007.

Training session for police officers with particular focus on human rights and investigative interviewing

Danilovgrad, Montenegro, 5-7 December 2007

This third session aimed to raise awareness among national law enforcement officials on the ECHR. The provisions of the ECHR which are relevant to police activities were examined, such as the presumption of innocence, the principle of non-discrimination, and procedural rights during search, detention and interview.

Training session on human rights with focus on domestic violence and child protection

Tirana, Albania, 12- 14 February 2008

A training session for Albanian police officers on human rights with a focus on domestic violence and child protection was organised for police officers from all over Albania. The seminar was organised in co-operation with the Albanian Centre on Human Rights (ACHR) and the Police Academy of Albania.

Seminar on human rights protection in pre-trial detention

Moscow, Russian Federation, 20-21 November 2007

This seminar was organised for Chechen police officers and representatives of human rights NGOs on human rights protection in pre-trial detention as part of the programme of co-operation activities of the Council of Europe and the Russian Federation in the Chechen Republic in 2007. International experts made presentations on Article 3 and 5 of the ECtHR, procedural obligations for investigating allegations of torture, disappearances, the work of the CPT, safeguards against ill-treatment, and the CPT's public statements about Russia/ Chechnya.

Awareness-raising activities in the field of the media

Workshop for the members of the National Commission on Radio and Television on the monitoring of broadcasters during election campaigns

Yerevan, Armenia, 29 January 2008

This workshop was part of the Council of Europe Action Plan for assisting Armenia in the run-up to the February 2008 presidential elections. As part of this Action Plan the Council of Europe had already organised a conference on "Media and elections: the democratic responsibility of the media", several training seminars for journalists on the professional coverage of election campaigns and the publication of a practical handbook on elections for journalists in November and December 2007. For the workshop, international and national experts on broadcasting regulation and monitoring exchanged best practices with representatives from the Armenian broadcasting regulator, the National Commission on Radio and Television (NCRT), to assist the NCRT with improving their monitoring of the Armenian broadcasters' election coverage.

Seminar on media freedoms and self-regulation

Zlatibor, Serbia, 13-14 February 2008

The objective of this seminar was to inform journalists about European standards in the field of self-regulation and media freedoms in general, to summarise the ECHR provisions and case-law on media freedoms and Serbian legislation and practices. The conclusion of the seminar was that journalists should respect privacy and integrity and apply professional standards in their work. Participants agreed that this kind of training would be useful for journalists to better understand their rights and responsibilities and to improve the quality of their work. The seminar was the second seminar on the same topics organised within the Joint Initiative between the European Agency for Reconstruction and the Council of Europe to promote freedom of expression and information and freedom of the media in Serbia.

Other activities

Human Rights Moot Court competition for lawyers of the Ombudsperson Institution in Kosovo (OIK)

Pristina, Kosovo (OIK), 8-9 November 2007

This competition was organised for the OIK lawyers. Four participating teams argued a fictitious case relating to ECHR. All teams were required to argue both for the "applicant's" and "government's" side. Their performances were assessed by a panel of three "judges".

Study visit to the Swedish ombudsmen against discrimination

Stockholm, Sweden, 19-23 November 2007

Three lawyers from the Ombudsperson Institution of Kosovo visited different offices of ombudsmen against discrimination in Sweden. The lawyers studied the work of the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination on the Grounds of Sexual Orientation.

Training seminar on "Overview of European and international human rights and democracy standards"

Vilnius, Lithuania, 24-25 November 2007

Training seminar for Belarus civil society representatives aimed at increasing participants' knowledge of human rights work and improving their capacity to engage actively in human rights standards in Belarus. The participants were provided with general information on basic principles of human rights, on the UN and Council of Europe systems of human rights protection, as well as on the role and functioning of human rights NGOs.

Anti-discrimination training

Pristina, Kosovo, 29-30 November 2007

A two-day training session for the lawyers of the Ombudsperson Institution of Kosovo was prepared and provided by three experts from the Slovenian Ombudsman Office. Its aim was to raise participants' awareness and sensitivity towards discrimination issues.

Study visit for a delegation from the Armenian Prison Administration of Justice and Prison Service

Dresden, Germany, 3-7 December 2007

A five-day study visit to examine remand in custody and prison management was organised in Dresden, Germany, for a six-member delegation from the Ministry of Justice of Armenia and its prison service. The participants visited prisons and had meetings with the Central Prison Administration of Saxony and with prison governors and other staff in all the prisons visited.

Training seminar on the European Prison Rules and selection and training of prison staff

Bila Tserkva, Ukraine, 13-14 December 2007

A two-day seminar organised in co-operation with the State Department for the Execution of Sanctions of Ukraine and the Training Centre for Prison Staff in Bila Tserkva. The participants familiarised themselves with the standards contained in the European Prison Rules regarding selection and training of prisons staff and best practices of the countries represented by the Council of Europe experts.

Two-day training on monitoring of places of deprivation of liberty for lawyers of the Human Rights Defender Institution in Armenia and NGOs

Yerevan, Armenia, 29-30 January 2008

A two-day training session was organised on monitoring of places of deprivation of liberty for lawyers of the Human Rights Defender Institution in Armenia and NGOs. This training was part of the Council of Europe's ongoing efforts to strengthen the capacity of the ombudsman institution of Armenia to act as a national mechanism under the Optional Protocol to the United Nations Convention against Torture. The lawyers of the Human Rights Defender Institution in Armenia and civil society representatives were trained on international and European standards on prevention of ill-treatment, as well as on techniques of inspection of places of deprivation of liberty. International and local experts took part in this event

Training seminar for lawyers of the Office of Public Defender

Tbilisi, Georgia, 20-21 February 2008

A training seminar on Articles 1,2,3 of the ECHR was organised for lawyers of the Office of Public Defender as part of the project "Enhancing the capacity of Public Defender of Georgia", funded by the Danish Ministry of Foreign Affairs and implemented by the Council of Europe. Twenty-five lawyers participated in the training, eight of them members of regional offices of the public defender institution. ECHR training materials were made available in English and Georgian. This training was the first of a series of intensive training sessions on the ECHR which are envisaged under the project.

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

HELP Programme

The European Programme for Human Rights Education for Legal Professionals (the HELP Programme) is an exciting project run by the Council of Europe which takes an interactive approach to professional human rights training. Here, Hermine Masmeyer, Programme Manager, explains more about how the programme works and what it offers.

What is the HELP Programme?

The HELP Programme provides materials and tools for training on the European Convention on Human Rights (ECHR). The materials have been developed to be used in the training of the judiciary and may also be of interest to other legal professionals working in the field of human rights. It is not intended that the HELP Programme itself will organise training activities, but it should ensure that appropriate training can be fully integrated into the curricula of the training structures for judges and prosecutors.

The programme was created following discussions with member states about their needs for training of judges and prosecutors on the ECHR and the case-law of the European Court of Human Rights. It emerged that the level of human rights training was very different among the member states and that integration of the ECHR in professional training was still in its early stages in some of them. In addition, two main practical issues were identified during these discussions:

- The quantity of judgments produced by the Court means that it is hard to keep up with the large amount of its case-law.
- Language. A large number of judges and prosecutors cannot read English or French well enough to understand the Court's judgments.

Three working groups were set up to concentrate on these practical issues for the programme.

- The first group created a standard curriculum which gives an overview of all relevant fields of law and topics that should be included in the initial and/or permanent training of judges and prosecutors.
- The second group is developing training materials on the contents of the ECHR and the Court's case-law.
- The third group has produced a manual on training of trainers, including materials on training techniques and learning methods. It provides theoretical information on the principles of educating and training adults and more practical information about how to apply the theory and how to organise a training event. Often, it is judges and other legal professionals who have to train their colleagues, not professional trainers, and this is why this manual has been developed.

The programme was launched in March 2006 and the website went online in October 2007.

Who is the programme for?

The HELP Programme is primarily aimed at judges, prosecutors and trainers of judges and prosecutors. Practically, all the tools are truly relevant for all legal professionals, and we encourage them to use the various different tools now available free of charge on the website.

Can you tell us more about the website?

The materials developed by the working groups are available on the website. The website has made the programme much more interactive. Users can build a course, download texts, adapt, change or translate them and upload them into the system, as well as add material to what is already available.

The website also has forums, a database of experts, a calendar of events, and latest news.

The target groups – judges, prosecutors and trainers – have access to all parts of the site. However, all users can access and use the training materials and e-learning programmes.

What are the most recent developments?

The first e-learning courses have recently been added to the website. At present, four e-learning courses have been developed, based on Grand Chamber judgments of the European Court of Human Rights. The courses demonstrate methods of analysing the relevant facts and legal issues in a judgment. The courses have been developed for human rights trainers but would also be of interest to legal professionals. They help the learner to acquire a deeper understanding of the reasoning of the Court and be aware of other possible ways to reason (for example by analysing concurring and dissenting opinions). Each course ends with a section called "having fun with argument", in which the facts of the case are slightly altered, in order to discuss whether or not the outcome of the case would change. This means the course is not merely about memorising and understanding the judgment but also about developing the skill of reasoning and being able to apply the underlying principles to other situations.

The courses are interactive and contain quizzes and assignments. A trainer can do the courses online on an individual basis or download all elements of the courses and use them in a traditional class room setting.

The content and technology of the courses are currently being tested and we expect the results at the end of May 2008.

What has been the reaction to the HELP Programme so far?

The reaction has been very positive so far and the website has received lots of visits. The HELP team has visited member states to present the programme and the website to the target groups, and this always receives very positive feedback.

The vast majority of Council of Europe member states are using and developing the documents on the website according to their own needs. For example, Turkey has already made plans to translate all of the materials into Turkish.

We are also pleased with the positive reaction from other users, such as universities. They are already used to using online resources so they are very interested in the website.

What languages are the materials available in?

All documents are available in French, English, German, Serbian and Russian. Users can also translate the materials and upload them back onto the system and in this way they will be accessible to more people. The English used is common parlance in order to make these documents easier to read for people whose mother tongue is not English.

What are the plans for the future development of the site and the programme?

The HELP team will be visiting more member states to present the programme and the materials and give workshops and seminars on how to train in order to increase awareness of what the HELP Programme offers.

We hope that the users will translate and add new material to the website and that more experts will add themselves to the HELP database so that it will become a truly interactive resource that meets the needs of judges, prosecutors and trainers across all the member states.

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

Legal co-operation

European Committee on Crime Problems

Set up in 1958, the European Committee on Crime Problems (CDPC) is entrusted by the Committee of Ministers with the responsibility for overseeing and co-ordinating the Council of Europe's activities in the field of crime prevention and crime control. It identifies priorities for intergovernmental legal co-operation, makes proposals to the Committee of Ministers on activities in the fields of criminal law and procedure, criminology and penology, and implements these activities.

Vienna, 19-21 November 2007

The 14th Conference of Directors of Prison Administration (CDAP) took place in Vienna under the authority of the European Committee on Crime Problems. It was organised jointly with the Austrian Ministry of Justice.

The Conference was attended by about 150 Directors General of Prison Administration, representatives of the ministries of justice, international governmental and non-governmental organisations active in the field, as well as professionals and researchers. Discussions covered issues related to:

- managing prisons in an increasingly complex environment;
- management of vulnerable groups of prisoners (women, juveniles, foreigners, the elderly and people suffering from mental illness);
- management of prisoners detained for offences related to terrorism or organised crime.

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

Venice Commission

The European Commission for Democracy through Law, or Venice Commission, is the Council of Europe's advisory body on constitutional matters. Its work aims to uphold the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law – fundamental tenets of the Council of Europe.

National human rights institutions

Together with the North South Centre of the Council of Europe and the Commissioner for Human Rights, the Venice Commission organised the Lisbon Forum 2007 on "National Human Rights Institutions – the Cornerstone of the Protection and Promotion of Human Rights". In particular, the Venice Commission contributed to the debate on the relations between these institutions (ombudspersons and national human rights commissions) and constitutional and ordinary courts.

Lisbon, 16-17 November 2007

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

European human rights institutes

Through their research and teaching activities, European human rights institutes play an important part in the development of human rights awareness.

The January Human Rights Information Bulletin *contains information on a selection of these human rights institutes, which is provided by the institutes themselves and is presented in the language in which it was drafted. The following information could not be included in January's edition and is an addition to the list.*

Serbia

The Belgrade Centre for Human Rights

Beogradska 54, 11000 Beograd, Serbia; Telephone/fax:+381 (0)11 2435 825

Email: bgcentar@bgcentar.org.yu; Website: http://www.bgcentar.org.yu/

Overview

The Belgrade Centre for Human Rights is a non-partisan, non-political and non-profit association for citizens who are concerned with the advancement of theory and practice of human rights. The experts who contribute to the work of the centre come from various professions and backgrounds – jurists, attorneys, sociologists, economists, writers, teachers, students and entrepreneurs. They support the mission of the centre with their knowledge, experience and enthusiasm.

The Belgrade Centre was established in 1995 and has since then been recognised as one of the most important and most influential non-governmental organisations in Serbia and Montenegro.

Library

The centre offers a virtual library which has a number of reports and documents relating to international and national law and human rights. The site also contains documents and decisions from international organisations such as the United Nations and the European Court of Human Rights and links to the relevant treaty databases.

Education

The Belgrade Centre's main area of activity is education for young experts in human rights protection. Concerned that the subject of human rights is not adequately covered in the curriculum of the region's university law school, the Belgrade Centre has established, along with its regional partners, several courses on human rights. The courses take place every year and aim to educate young experts and experienced professionals in this field. The Belgrade Centre also regularly holds short seminars, lectures, round tables and scientific gatherings.

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ISSN 1608-9618