Human rights information bulletin

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The Council of Europe **Campaign to Combat Violence against Women, including Domestic Violence** was launched in 2006.
It came to an end with a high-level closing conference held on 10 and 11 June 2008 in Strasbourg.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Contents

Commissioner for Human Rights

European Social Charter

Convention for the Prevention of Torture

European Commission against Racism and Intolerance (ECRI)

Framework Convention for the Protection of National Minorities

Action against trafficking in human beings

Campaign to combat violence against women, including domestic violence

Law and policy

Co-operation between the Council of Europe and the European Community

Human rights co-operation and awareness

Legal co-operation

Treaties and conventions

Signatures and ratifications

European Convention on Human Rights

Protocol Nos. 1, 4, 7 and 12 were ratified by **Andorra** on 6 May 2008.

Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was ratified by **Latvia** on 6 March 2008 and **Armenia** on 14 April 2008.

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 the **United Kingdom** on 5 May 2008.

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 March 2008 and 30 June 2008:

- 449 (476) judgments delivered
- 465 (498) applications declared admissible, of which 439 (471) in a judgment on the merits and 26 (27) in a separate decision
- 8483 (8517) applications declared inadmissible
- 570 (638) 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/

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.

N. v. the United Kingdom

Article 3 (no violation)

Judgment of 27 May 2008. Concerns: the applicant claimed that to return her to Uganda would cause her suffering and lead to her early death, which amounted to inhuman and degrading treatment.

Facts and complaints

The applicant, N., is a Ugandan national who was born in 1974 and lives in London. She has AIDS.

The case concerned N's allegation that her return to Uganda would cause her suffering and lead to her early death, because of her illness.

N. came to the United Kingdom on 28 March 1998 under an assumed name. She was seriously ill, and was admitted to hospital.

On 31 March 1998 solicitors lodged an asylum application on her behalf, claiming that she had been ill-treated and raped by the National Resistance Movement in Uganda and was in fear of her life and safety if she were returned.

By November 1998 the applicant was diagnosed as having two AIDS-defining illnesses, and as being extremely advanced from an HIV point of view; her CD4 count was 20 cells/mm³, reflecting considerable immunosuppression. The report stated that, without active treatment, her prognosis was "appalling" and put her life expectancy at less than 12 months should she be forced to return to Uganda, where there was "no prospect of her getting adequate therapy".

The United Kingdom Secretary of State refused the applicant's asylum claim on 28 March 2001, finding that her claims were not credible, that there was no evidence that the Ugandan authorities were interested in her, that treatment of AIDS in Uganda was comparable to any other African country, and that all the major anti-viral drugs were available in Uganda at highly subsidised prices. The applicant appealed.

On 10 July 2002 her appeal was dismissed concerning the asylum refusal, but allowed in relation to Article 3 of the Convention.

The Secretary of State appealed against the Article 3 finding, contending that all the AIDS drugs available under the National Health Service in the United Kingdom could also be obtained locally in Uganda, and most were also available at a reduced price through UN-funded projects and from bilateral AIDS donor funded programmes. The applicant's return would not, therefore, be to a "complete absence of medical treatment", and so would not subject her to "acute physical and mental suffering". The Immigration Appeal Tribunal allowed the appeal on 29 November 2002 and found: "Medical treatment is available in Uganda for the [applicant's] condition even though the Tribunal accept that the level of medical provision in Uganda falls below that in the United Kingdom".

The applicant appealed unsuccessfully to the Court of Appeal and the House of Lords.

The application was lodged with the European Court of Human Rights on 22 July 2005. On 22 May 2007 the Chamber relinquished jurisdiction in favour of the Grand Chamber, under Article 30 of the Convention. A hearing took place in public in the Human Rights Building, Strasbourg, on 26 September 2007.

Decision of the Court

Article 3

The Court resumed its case-law concerning expulsion cases where the applicant claimed to be at risk of suffering a violation of Article 3 on the grounds of ill-health, noting that it had not found such a violation since its judgment in *D. v. the United Kingdom* (application No. 30240/96) on 21 April 1997, where "very exceptional circumstances" and "compelling humanitarian considerations" were at stake. In the D. case the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.

The Court recalled that aliens who were subject to expulsion could not in principle claim any entitlement to remain in the territory of one of the states which had ratified the European Convention on Human Rights (a contracting state) in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state. The fact that the applicant's circumstances, including her or his life expectancy, would be significantly reduced if s/he were to be removed from the contracting state was not sufficient in itself to give rise to breach of Article 3. The decision to remove an alien who was suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness were inferior to those available in the contracting state might raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal were compelling, such as in the case *D.*.

Although many of the rights it contained had implications of a social or economic nature, the Convention was essentially directed at the protection of civil and political rights. Furthermore, inherent in the whole of the Convention was a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Advances in medical science, together with social and economic differences between countries, meant that the level of treatment available in the contracting state and the country of origin might vary considerably. Article 3 did not place an obligation on the contracting state to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the contracting states.

Finally, the Court observed that, although the applicant's case concerned the expulsion of a person with an HIV and AIDS-related condition, the same principles had to apply to the expulsion of any person afflicted with any serious, naturally occurring physical or mental illness which might cause suffering, pain and reduced life expectancy and require specialised medical treatment which might not be so readily available in the applicant's country of origin or which might be available only at substantial cost.

Although the applicant applied for, and was refused, asylum in the United Kingdom, she did not complain before the Court that her removal to Uganda would put her at risk of deliberate, politically motivated, ill-treatment. Her claim under Article 3 was based solely on her serious medical condition and the lack of sufficient treatment available for it in her home country.

In 1998 the applicant was diagnosed as having two AIDS defining illnesses and a high level of immunosuppression. As a result of the medical treatment she had received in the United Kingdom her condition was now stable. She was fit to travel and would remain fit as long as she continued to receive the basic treatment she needed. The evidence before the national courts indicated, however, that if the applicant were to be deprived of her current medication her condition would rapidly deteriorate and she would suffer ill-heath, discomfort, pain and death within a few years.

According to information collated by the World Health Organization, antiretroviral medication was available in Uganda, although, through lack of resources, it was received by only half of those in need. The applicant claimed that she would be unable to afford the treatment and that it would not be available to her in the rural area from which she came. It appeared that she had family members in Uganda, although she claimed that they would not be willing or able to care for her if she were seriously ill.

The United Kingdom authorities had provided the applicant with medical and social assistance at public expense during the nine-year period it had taken for her asylum application and claims under Articles 3 and 8 of the Convention to be determined by the domestic courts and the European Court. However, that did not in itself entail a duty on the part of the United Kingdom to continue to provide for her.

The Court accepted that the quality of the applicant's life, and her life expectancy, would be affected if she were returned to Uganda. Currently, however, the applicant was not critically ill. The rapidity of the deterioration which she would suffer and the extent to which she would be able to obtain access to medical treatment, support and care, including help from relatives, involved a certain degree of speculation, particularly in view of the constantly evolving situation as regards the treatment of HIV and AIDS worldwide.

Concluding that the applicant's case did not disclose "very exceptional circumstances", the Court found that the implementation of the decision to remove her to Uganda

would not give rise to a violation of Article 3.

Article 8

The Court held, by 14 votes to 3, that it was not necessary to examine the applicant's complaint under Article 8.

Judges Tulkens, Bonello and Speilmann expressed a joint dissenting opinion.

Burden v. the United Kingdom

Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (no violation)

Judgment of 29 April 2007. Concerns: the applicants complained that, when one of them dies, the survivor will face a heavy inheritance tax bill, unlike the survivor of a marriage or a civil partnership.

Facts and complaints

The case concerned two British nationals, Joyce and Sybil Burden, who were born in 1918 and 1925 respectively. They are unmarried sisters and live in Marlborough (the United Kingdom).

The applicants have lived together all their lives; for the last 30 years in a house built on land they inherited from their parents. Each sister has made a will leaving all her property to the other sister.

The sisters, both in their eighties, are concerned that, when one of them dies, the other will be forced to sell the house to pay inheritance tax. Under the 1984 Inheritance Tax Act, inheritance tax is charged at 40% on the value of a person's property. That rate applies to any amount in excess of 285 000 pounds sterling (GBP) (420 844 euros (EUR)) for transfers during the tax year 2006-2007 and GBP 300 000 (EUR 442 994) for 2007-2008.

Property passing from the deceased to his or her spouse or "civil partner" (a category introduced under the 2004 Civil Partnership Act for same-sex couples, which does not cover family members living together) is currently exempt from charge.

The application was lodged with the European Court of Human Rights on 29 March 2005. A hearing on the admissibility and merits took place in public in the Human Rights Building, Strasbourg, on 12 September 2006.

In its Chamber judgment of 12 December 2006, the Court held, by four votes to three, that there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

On 8 March 2007 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 23 May 2007 the panel of the Grand Chamber accepted that request.

Decision of the Court

Whether the applicants could claim to be victims of a violation of the Convention

The Grand Chamber agreed with the Chamber that, given the applicants' age, the wills they had made and the value of the property each owned, they had established that there was a real risk that, in the not too distant future, one of them would be required to pay substantial inheritance tax on the property inherited from her sister. In those circumstances, they could claim to be victims of the alleged discriminatory treatment.

Exhaustion of domestic remedies

The Grand Chamber rejected the United Kingdom Government's argument that the applicants had failed to make use of an available domestic remedy. According to the government, under the Human Rights Act, the applicants could have applied to a court for a declaration that the legislation in question was incompatible with the Convention, which would have given a discretionary power to the relevant government minister to take steps to amend the offending legal provision, either by a remedial order or by introducing a Bill in Parliament. The Grand Chamber agreed with the Chamber that it could not be excluded that at some time in the future the practice of amending legislation following a declaration of incompatibility with the Convention could be seen as a binding obligation. In those circumstances, except where an effective remedy necessitated the award of damages, applicants would be required first to exhaust that remedy before making an application to the Court. As that was not as yet the case, however, the Grand Chamber considered that the applicants had not failed to exhaust domestic remedies.

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

The Grand Chamber observed that the relationship between siblings was of a different nature to that between married couples and homosexual civil partners under the United Kingdom's Civil Partnership Act. One of the defining characteristics of a marriage or Civil Partnership Act union was that it was forbidden to close family members. The fact that the applicants had chosen to live together all their adult lives did not alter that essential difference between the two types of relationship.

Moreover, the Grand Chamber noted that it had already held that marriage conferred a special status on those who entered into it. The exercise of the right to marry was protected by Article 12 of the Convention and gave rise to social, personal and legal consequences.

Since the coming into force of the Civil Partnership Act in the United Kingdom, a homosexual couple also had the choice to enter into a legal relationship designed by Parliament to correspond as far as possible to marriage. As with marriage, the Grand Chamber considered that the legal consequences of civil partnership under the 2004 Act, which couples expressly and deliberately decided to incur, set those types of relationship apart from other forms of co-habitation. Rather than the length or the supportive nature of the relationship, what was determinative was the existence of a public undertaking, carrying with it a body of rights and obligations of a contractual nature. Just as there could be no analogy between married and Civil Partnership Act couples, on one hand, and heterosexual or homosexual couples who chose to live together but not to become husband and wife or civil partners, on the other hand, the absence of such a legally-binding agreement between the applicants rendered their relationship of co-habitation, despite its long duration, funda-

mentally different to that of a married or civil partnership couple.

That view was unaffected by the fact that different rules of succession had been adopted in the 47 European countries which were members of the Council of Europe. Different countries had similarly adopted different policies regarding inheritance tax exemptions to the various categories of survivor; states, in principle, remaining free to devise different rules in the field of taxation policy.

The Grand Chamber concluded that the applicants, as co-habiting sisters, could not be compared for the purposes of Article 14 to a married or Civil Partnership Act couple. It followed that there had been no discrimination and, therefore, no violation of Article 14 taken in conjunction with Article 1 of Protocol No.1.

Judges Bratza and Björgvinsson expressed concurring opinions, and Judges Zupancic and Borrego Borrego expressed dissenting opinions.

Hutten-Czapska v. Poland

Judgment of 28 April 2008. Concerns: the applicant complained that she could not use her property or charge adequate rent for its lease

Article 1 of Protocol No. 1 (violation)

The Court has unanimously decided to strike out the case in the light of a friendly settlement which promises both to resolve fundamental problems with Polish housing legislation – affecting some 100 000 property owners – and to provide redress for the applicant.

In its principal judgment in the case (19 June 2006), the Grand Chamber held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention concerning the fact that the applicant could not use her property or charge adequate rent for its lease. The Grand Chamber found that the violation was part of a systemic problem, the malfunctioning of Polish housing legislation. It called on Poland to find a remedy at national level which would allow homeowners to make a profit from their property while also ensuring the availability of accommodation for the less well-off. The Court further awarded the applicant 30 000 euros (EUR) for non-pecuniary damage and EUR 22 500 for costs and expenses, finding that the question of an award for pecuniary damage was not ready for decision.

The friendly settlement

Under the terms of the friendly settlement the Polish Government is to pay the applicant 240 000 Polish zlotys (PLN) for pecuniary damage and a further PLN 22 500 for costs and expenses.

The government also indicated various general measures taken or to be taken to resolve the underlying housing problem:

- A scheme providing state financial assistance for investment in social housing and social and protected accommodation;
- An amendment (the December 2006 amendment) enabling landlords to increase rent to cover the costs of property maintenance, to obtain a return on capital investment and to receive a "decent profit";
- A mechanism to monitor rent levels to ensure the transparency of rent increases;
- A Bill designed to partially refund loans taken out by homeowners for the renovation and/or thermo-modernisation of tenement buildings;
- Promotion of investment in housing in private and State-owned tenement buildings and social and protected accommodation; and,
- Further efforts to ensure landlords receive market-related rent.

The Polish Government also recognised their obligation to provide redress to other people in a similar situation to that of the applicant, considering that the above-mentioned Bill would provide an appropriate remedy.

Facts and complaints

Ms Hutten-Czapska, who is a French national of Polish origin, was born in 1931. She lived for a long time in Andrésy, France. At present, she lives in Poznan, Poland. She owns a house and a plot of land in Gdynia, Poland.

She is one of around 100 000 landlords in Poland affected by a restrictive system of rent control (from which some 600 000 to 900 000 tenants benefit), which originated in laws adopted under the former communist regime. The system imposed a number of restrictions on landlords' rights, in particular, setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit.

In 1994 a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. According to one calculation, rents covered only about 60% of the maintenance costs. Severe restrictions on the termination of leases were also in place.

The 1994 Act was replaced by a new Act in 2001, designed to improve the situation, which maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases.

The Polish Constitutional Court found that the rent-control scheme under both the 1994 Act and the 2001 Act was unconstitutional and that it had placed a disproportionate and excessive burden on landlords. The provisions in question were repealed.

From 10 October 2000 until 31 December 2004 the applicant was able to increase the rent she charged by about 10% to PLN 5.15 a square metre (approximately EUR 1.27).

On 1 January 2005 new provisions entered into force, which were later repealed as unconstitutional.

The applicant's property has now been vacated.

On 17 May 2006 the Constitutional Court declared unconstitutional a number of provisions of the 2001 Act. To implement that judgment, Parliament enacted amending legislation of 15 December 2006, which introduced, among other things, new provisions on rent increases.

On 11 September 2006 the Constitutional Court declared unconstitutional further provisions of the 2001 Act which limited municipalities' civil liability for failure to provide social accommodation to a tenant in respect of whom a landlord obtained an enforceable eviction order.

Laws on state funding for social accommodation and on the system for monitoring rent levels were in-

troduced on 8 December 2006 and 24 August 2007.

On 29 February 2008 the government submitted a Bill on Supporting Thermo-Modernisation and Renovations to Parliament.

The application was lodged with the European Court of Human Rights on 6 December 1994 and declared admissible on 16 September 2003.

A Chamber hearing on the merits took place on 27 January 2004 and, on 22 February 2005, the Chamber held that there had been a violation of Article 1 of Protocol No. 1 and considered that the violation originated in a systemic problem linked to the malfunctioning of Polish legislation.

On 19 May 2005 the government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 6 July 2005 the panel of the Grand Chamber accepted that request.

The Court's principal Grand Chamber judgment in the case was delivered on 19 June 2006.

Summary of the judgment

The Court noted that it could strike an application out of its list only if satisfied that the solution arrived at between the parties was based on "respect for human rights as defined in the Convention and the Protocols thereto". The Court reiterated that the applicant's case had been examined under the pilot-judgment procedure, which meant that it also had to examine the case in terms of general measures that needed to be taken in the interest of other potentially affected property owners.

It accepted that the friendly settlement reached between the parties addressed the general as well as the individual aspects of the finding of a violation of Article 1 of Protocol No. 1 made in the principal judgment. For example, the enactment of the December 2006 Amendment, the submission of the government's Bill to Parliament, and the government's commitment to continue the improvement of the housing situation and to secure to landlords a "decent profit" from rent, were clearly aimed at removing the restrictive aspects of the 2001 Act. The government had also recognised their obligation to provide redress to others in the same situation as the applicant.

In respect of the Bill, the Court observed that the relevant legislative process was under way and that the special scheme offering compensatory refunds to those affected by the rent-control legislation would be proposed later by the government.

In general, the government had demonstrated an active commitment to take measures aimed at resolving the systemic problem identified in the principal judgment.

As to the reparation afforded to the individual applicant, the Court noted that the applicant was to be paid an amount covering pecuniary damage and outstanding costs and expenses, her remaining Article 41 claims having been addressed in the Court's principal judgment.

Finding that the settlement was based on respect for human rights as defined in the Convention or its Protocols, the Court decided that the case should be struck out of the list.

Judge Zagrebelski joined by Judge Jaeger expressed a separate opinion, and Judge Ziemele expressed a concurring opinion.

Maslov v. Austria

Article 8 (violation)

Judgment of 23 June 2008. Concerns: the applicant complained of the exclusion order imposed on him and his subsequent deportation to Bulgaria.

Facts and complaints

Juri Maslov is a Bulgarian national who was born in 1984. He arrived in Austria in 1990 at the age of 6, spent the rest of his childhood and his adolescence there and speaks the language. He was a legal resident in Austria with his parents and brother and sister and obtained an unlimited settlement permit in March 1999. He is now living in Bulgaria.

The application concerned the 10-year exclusion order issued against Mr Maslov when he was 16 years old by the Vienna Federal Police Authority under section 36 of the 1997 Aliens Act. The measure became final when he reached his majority at the age of 18 and was still living with his parents.

The exclusion order was made following Mr Maslov's convictions by the Vienna Juvenile Court in September 1999 and then in May 2000 for offences committed when he was between 14 and 15 years old.

The applicant's first conviction resulted in an 18-month prison sentence, 13 months of which were suspended on probation, for a series of aggravated burglaries, extortion and assault. Mr Maslov was also instructed to start therapy for his drug addiction. The second conviction resulted in a 15-month prison sentence for a further series of aggravated burglaries. When determining the sentence the Juvenile Court considered the number of offences and Mr Maslov's rapid relapse into crime after his first conviction to be aggravating circumstances. As he had not undergone therapy for his drug addiction, the court revoked the suspension of the prison term imposed in respect of the first conviction.

Mr Maslov was released in May 2002, and ultimately deported to Bulgaria on 22 December 2003.

The application was lodged with the European Court of Human Rights on 20 December 2002 and declared partly admissible on 2 June 2005. The Court delivered a Chamber judgment in the case on 22 March 2007. It held, by four votes to three, that there had been a violation of Article 8 of the Convention and that the respondent state was to pay the applicant EUR 5 759.96 for costs and expenses.

On 20 June 2007 the government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 24 September 2007 the panel of the Grand Chamber accepted that request. A hearing was held in public at the Human Rights Building in Strasbourg on 6 February 2008.

Decision of the Court

Article 8

The Court considered that the imposition and enforcement of the exclusion order against the applicant had constituted an interference with his right to respect for his private and family life, that the interference had been in accordance

with the law and that it had pursued the legitimate aim of preventing disorder or crime.

The Court held that the 10-year exclusion order had not been necessary in a democratic society, having regard to the fundamental principles laid down in its case-law.

In the Court's view, the decisive feature of the case was the young age at which the applicant had committed the offences (he had been a minor at the time) and, with one exception, their non-violent nature. The majority of the offences had concerned breaking into vending machines, cars, shops or restaurants and stealing cash and goods. The one violent offence had consisted in pushing, kicking and bruising another boy. The acts of which the applicant was found guilty were acts of juvenile delinquency.

The Court considered that, where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration. Reintegration would not be achieved by severing family or social ties through expulsion, which must remain a means of last resort in the case of a juvenile offender. It saw little room for justifying the expulsion of a settled migrant on account of mostly non-violent offences committed when a minor.

After noting the length of time Mr Maslov had been legally resident in Austria, the Court examined his conduct from the time when he had committed his last offence up until he was actually deported. Of that period the applicant had spent two years and three and a half months in prison and had stayed a further one and a half years in Austria without reoffending. Knowing little about the applicant's conduct in prison – except that he had not benefited from early release – and not knowing to what extent his living circumstances had stabilised after his release, the Court considered that the time that had elapsed since the offences and the applicant's conduct during that period carried less weight as compared to the other applicable criteria, in particular the fact that the applicant had committed mostly non-violent offences when a minor.

The Court observed that the applicant had his main social, cultural, linguistic and family ties in Austria, where all his relatives lived, and noted that there were no proven ties with his country of origin.

Lastly, the limited duration of the exclusion order was not considered decisive in the present case. Having regard to the applicant's young age, a ten-year exclusion order banned him from living in Austria for almost as much time as he had spent there and for a decisive period of his life.

The Court found that the imposition of an exclusion order, even of a limited duration, was disproportionate to the legitimate aim pursued of preventing disorder or crime, and accordingly was contrary to Article 8.

Judge Steiner expressed a dissenting opinion.

Selected Chamber judgments

Budayeva and Others v. Russia

Judgment of 20 March 2008. Concerns: the authorities' failure to mitigate the consequences of mudslides put the applicants' lives at risk and was responsible for the death of Mr Budayev and the destruction of the applicants' homes.

Article 2 (violation), Articles 1 of Protocol No.1 and 13 (no violations)

Facts and complaints

The applicants, Khalimat Budayeva, Fatima Atmurzayeva, Raya Shogenova, Nina Khakhlova, Andrey Shishkin and Irina Shishkina, are Russian nationals who were born in 1961, 1963, 1953, 1955, 1958 and 1955, respectively. Except for Ms Shogenova, who lives in Nalchik, all the applicants live in the town of Tyrnauz, situated in the mountain district adjacent to Mount Elbrus in the Republic of Kabardino-Balkariya (Russia). Mudslides have been recorded in the area every year since 1937, especially in summer.

The case concerned, in particular, the applicants' allegations that the Russian authorities failed to heed warnings about the likelihood of a large-scale mudslide devastating Tyrnauz in July 2000, to warn the local population, to implement evacuation and emergency relief policies or, after the disaster, to carry out a judicial enquiry.

At about 11 p.m. on 18 July 2000 a flow of mud and debris hit the town of Tyrnauz and flooded part of the residential area. According to the applicants there was no advance warning and they all only just managed to escape. Fatima Atmurzayeva and her daughter, caught in the mud and debris while trying to escape, were injured and suffered severe friction burns. Once the mudslide struck, the alarm was raised through loudspeakers, but the applicants claimed that there were no rescue forces or any other emergency relief at the scene of the disaster. In the morning of 19 July 2000 the mud level fell and, as there were no barriers, police or emergency officers to stop them, certain residents, among them Khalimat Budayeva and her family, returned to their homes. They were not aware of any order to evacuate.

At 1 p.m. that day a second, more powerful, mudslide hit the town. Ms Budayeva and her eldest son managed to escape. Her younger son was rescued, but sustained serious cerebral and spinal injuries. Her husband, Vladimir Budayev, who had stayed behind to help his parents-in-law, was killed when the block of flats in which he and his family lived collapsed.

The town was subsequently hit by a succession of mudslides over a period lasting until 25 July 2000. Eight people were officially reported dead, although the applicants alleged that a further 19 people went missing.

All the applicants claimed that their homes and possessions were destroyed and that their living conditions and health had deteriorated since the disaster. Certain applicants had suffered from depression and had had to have psychiatric and/or neurological treatment.

According to the government, the mudslides' exceptional force could not have been predicted or stopped. Following the first wave of mud on 18 July 2000 the authorities ordered

an emergency evacuation of Tyrnauz. Police and local officials called at people's homes to inform them about the mudslide and to help evacuate the elderly and disabled. In addition, police vehicles equipped with loudspeakers drove round the town, calling on residents to evacuate. Those residents who returned to their homes did so in breach of the evacuation order. All necessary measures were taken to rescue victims, to resettle residents and to bring in emergency supplies.

On 3 August 2000 the Prosecutor's Office of the Elbrus District decided not to launch a criminal investigation into the disaster or into Mr Budayev's death, which was considered accidental.

Following a decision by the Government of the Republic of Kabardino-Balkariya on 12 August 2000, all the applicants were granted free replacement housing and an emergency allowance in the form of a lump-sum (13 200 roubles (RUB): equivalent at that time to EUR 530).

The applicants subsequently brought civil proceedings for compensation. Their claims were rejected on the grounds that the authorities had taken all reasonable measures to mitigate the risk of a mudslide. Furthermore, the courts found that the local population had indeed been informed of the risk of possible mudslides by the media.

The applicants disagreed with those conclusions. They accused the authorities of three major shortcomings in the functioning of the system for protection against natural hazards in Tyrnauz. Firstly, they alleged that the authorities failed to maintain mud-protection engineering facilities, notably to repair a mud-retention dam which had been damaged in 1999 and to clear a mud-retention collector which was blocked by leftover debris. Secondly, they complained about the lack of a public warning which would have helped to avoid casualties, injuries and mass panic. Finally, they complained that there was no enquiry to assess the effectiveness of the authorities' conduct before and during the mudslide.

In support of those accusations, the applicants submitted newspaper articles, including an interview with an expert who accused officials of "blatant irresponsibility"; witness statements from the applicants' family and neighbours who were also victims of the mudslide; and, official letters and documents which proved that no funds had been allocated in the Elbrus district budget for the repair work required after the 1999 mudslide and that, between 30 August 1999 and 7 July 2000, the authorities received a number of warnings about the imminent disaster from the Mountain Institute, a state agency responsible for monitoring weather hazards in high-altitude areas. In its warnings, the Institute recommended that the damaged mud-protection dam be repaired and that observation posts be set up to facilitate the evacuation of the population in the event of a mudslide. One of the last warnings referred to possible record losses and casualties if those measures were not carried out as a matter of urgency.

Decision of the Court

Article 2

Concerning the inadequate maintenance of mud-defence infrastructure and failure to set up a warning system

It was not in dispute that Tyrnauz was situated in an area prone to mudslides in the summer season and, given the defence schemes designed to protect the area, both parties could reasonably have assumed that a mudslide had been likely to occur in the summer of 2000. The parties disagreed, however, as to whether the authorities had known that the mudslide of July 2000 was going to cause devastation on a larger scale than usual.

The Court noted that in 1999 the authorities had received a number of warnings that should have made them aware of the increasing risks of a large-scale mudslide. Indeed, they were aware that any mudslide, regardless of its scale, could have had devastating consequences because of the defence infrastructure's state of disrepair. What needed to be done and its urgency had been made quite clear. No explanation was provided by the Russian Government as to why those recommendations had not been followed. Given the documents submitted by the applicants indicating that no funds had been allocated for recommended repair work, the Court could only conclude that the requests had not been given proper consideration by the relevant decision-making and budgetary bodies.

In such circumstances, the authorities should have acknowledged the likelihood of a mudslide and taken essential practical measures to ensure the safety of the local population such as warning the public and making prior arrangements for an emergency evacuation.

However, the applicants consistently maintained and the government confirmed that residents had not received any warning until the mudslide had actually arrived in the town on 18 July 2000. Furthermore, the witness statements submitted by the applicants corroborated the claim that there had been no sign of any evacuation order on 19 July 2000. Given that the government had not specified how an evacuation order had been publicised or otherwise enforced on that day, the Court could only assume that the population had not been adequately informed.

Moreover, despite persistent requests by the Mountain Institute, temporary observation posts in the mountains had not been set up, such that the authorities had no means to estimate the time, force or duration of the mudslide. They were therefore unable to give an advance warning or efficiently implement the evacuation order.

Finally, the government provided no information concerning other solutions which had been envisaged to ensure the safety of the local population such as a regulatory framework, land-planning policies or specific safety measures. Their submissions exclusively referred to the mud-retention dam and collector, which, as already established, had not been adequately maintained. The authorities had, in effect, taken no measures at all with regard to the mudslides until the day of the disaster.

The Court concluded that there had been no justification for the authorities' failure to implement land-planning and emergency relief policies in the hazardous area of Tyrnauz concerning the foreseeable risk to the lives of its residents, including all the applicants. Moreover, it found that the serious administrative flaws which had prevented the implementation of those policies had caused the death of Vladimir Budayev and injuries to his wife, to Fatima Atmurzayeva and members of their family. The Russian authorities had therefore failed in their duty to establish a legislative and administrative framework with which to provide effective deterrence against a threat to the right to life, in violation of Article 2.

Concerning the judicial response to the disaster

Within a week of the disaster the prosecutor's office had already decided to dispense with a criminal investigation into the circumstances of Vladimir Budayev's death. The inquest had been limited to the immediate causes of his death and had not examined questions of safety compliance or the authorities' responsibility. Nor had those questions been the subject of any criminal, administrative or technical enquiry. In particular, no action had ever been taken to verify the numerous allegations concerning the inadequate maintenance of the mud-defence infrastructure or the authorities' failure to set up a warning system.

The applicants' claims for damages had effectively been dismissed by the Russian courts for failing to demonstrate to what extent the state's negligence had caused damage exceeding what had been inevitable in a natural disaster. That question could, however, only have been answered by a complex expert investigation and the establishment of facts to which only the authorities had access. The applicants had therefore been required to provide proof which was beyond their reach.

In any event, the domestic courts had not made full use of their powers to establish the circumstances of the accident. In particular, they had not called witnesses or sought expert opinions. The courts' reluctance to establish the facts was not justified in view of the evidence produced by the applicants, especially as it included reports which suggested that the applicants' concerns were shared by certain officials.

The Court therefore concluded that the question of Russia's responsibility for the accident in Tyrnauz had never as such been investigated or examined by any judicial or administrative authority, in violation of Article 2.

Article 1 of Protocol No. 1

The parties agreed that the applicants had been the lawful owners of possessions which had been destroyed by the mudslides of July 2000. They also agreed that it was unclear to what extent proper maintenance of the defence infrastructure could have mitigated the exceptional force of those mudslides. It was not proven either that a warning system would have prevented the damage to the applicants' homes or possessions. The damage caused by the mudslides could not therefore be unequivocally attributed to state negligence.

Moreover, a state's obligation to protect private property could not be seen as synonymous with an obligation to compensate the full market value of a destroyed property. The terms of compensation, although considered by the applicants to be insufficient, had to be assessed in the light of all the other measures implemented by the authorities and of the complexity of the situation, the number of owners, and the economic, social and humanitarian issues inherent in providing disaster relief.

On that basis, the Court concluded that the housing compensation to which the applicants had been entitled had not been manifestly out of proportion to their lost accommodation. Given also the large number of victims and the scale of the emergency relief to be handled by the authorities, the upper limit of RUB 13 200 on compensation for household belongings appeared justified. Access to those benefits had also been direct and automatic and had not involved a contentious procedure or a need to prove the actual losses. The Court concluded that the conditions under which victims had been granted compensation had not imposed a disproportionate burden on the applicants. There had therefore been no violation of Article 1 of Protocol No. 1.

Article 13

The Court found that no separate issues arose under Article 13 in conjunction with Article 2 or 8.

In view of the findings under Article 1 of Protocol No. 1, the Court did not consider the Russian courts' refusal to award the applicants further damages unreasonable or arbitrary. It saw no other grounds to conclude that the civil proceedings had not constituted an effective remedy and therefore held that there had been no violation of Article 13 in conjunction with Article 1 of Protocol No. 1.

Article 8

The Court considered that it was unnecessary to examine separately the complaint under Article 8.

Shtukaturov v. Russia

Judgment of 27 March 2008. Concerns: the applicant alleged that he was deprived of his legal capacity without his knowledge and that he was unlawfully confined to a psychiatric hospital where he was unable to obtain a review of his status or meet his lawyer and he received medical treatment against his will.

Articles 6 § 1, 8, 5 § 1 and 5 § 4 (violations) and failure to comply with obligations under Article 34

Facts and complaints

The applicant, Pavel Vladimirovich Shtukaturov, is a Russian national who was born in 1982 and lives in St Petersburg. He has a history of mental illness and was declared officially disabled in 2003.

The case concerned the applicant's allegation, in particular, that he was deprived of his legal capacity without his knowledge and confined to a psychiatric hospital by his mother so that she could claim possession of property he had inherited from his grandmother.

On 3 August 2004 the applicant's mother asked Vasileostrovskiy District Court to deprive her son of his legal capacity. She claimed that he was incapable of leading an independent life and required a guardian. The applicant was not officially notified of those proceedings.

On 28 December 2004 the district court held a hearing. The applicant, not notified, did not attend. The case was examined in the presence of the district prosecutor and a representative of a psychiatric hospital where the applicant had been placed in July 2004. After 10 minutes' deliberations the district court declared the applicant legally incapable under Article 29 of the Civil Code. Article 29 provided for such a measure if a person could not understand the meaning of his actions or control them. The judgment relied on a psychiatric report of 12 November 2004 which, referring to the applicant's aggressive behaviour, negative attitude and "antisocial" lifestyle, concluded that he suffered from schizophrenia and was unable to understand his actions or control them. His mother

was appointed his guardian and, as such, was authorised by law to act on his behalf in all matters.

Subsequently, the applicant, having come across a copy of the December 2004 judgment at his mother's home, contacted a lawyer of the Mental Disability Advocacy Centre. On 2 November 2005 they met to discuss his case and draft an appeal. The lawyer considered that the applicant was fully capable of understanding complex legal issues and giving relevant instructions.

On 4 November 2005 the applicant's mother admitted the applicant to a psychiatric hospital. The applicant and his lawyer requested permission to meet, which was refused. The applicant did, however, manage to get a form to his lawyer which authorised the lodging of an application with the European Court on his behalf. From December 2005, the applicant was refused all contact with the outside world. He also alleged that he was treated with strong medication against his will.

On numerous occasions between December 2005 and January 2006, the applicant asked the guardianship and public health authorities, the district prosecutor and the head of the psychiatric hospital to be discharged from hospital, without success. His lawyer also made similar unsuccessful requests.

In the meantime, the applicant's lawyer appealed against the decision of December 2004. It was rejected without being examined on the ground that the applicant had no legal capacity and could only appeal through his official guardian, his mother, who opposed his release and any review of the decision of December 2004.

On 6 March 2006 the European Court applied an interim measure under Rule 39 of its Rules of Court in which it indicated to the Russian Government that the applicant and his lawyer should be provided with the necessary time and facilities to meet and prepare the case before the Court. However, the authorities refused to comply with that measure as Russian law did not consider the European Court's interim measures binding. They also stated that the applicant could not act without the consent of his mother and that his lawyer could not therefore be considered his lawful representative.

The applicant was ultimately discharged from hospital on 16 May 2006 but his mother apparently readmitted him in 2007.

As a legally incapable adult, the applicant is not allowed to work, marry, join associations, travel or sell or buy property.

Decision of the Court

Article 6 § 1

The Court reiterated that, in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation. However, the applicant, who appeared to have been a relatively autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity.

Given the consequences of those proceedings for the applicant's personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity. The Court therefore concluded that the decision of 28 December 2004, based purely on documentary evidence, had been unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1.

In the Court's opinion, the presence of a representative from the hospital and of the district prosecutor, who had remained passive throughout the 10-minute hearing, had not made the proceedings truly adversarial.

Furthermore, the applicant had not even been able to challenge the December 2004 judgment as his appeal had been rejected without examination.

The Court therefore concluded that the proceedings before Vasileostrovskiy District Court concerning the applicant's case had not been fair, in violation of Article 6 § 1.

Article 8

The Court noted that the interference with the applicant's private life had been very serious: it had resulted in him having become fully dependant on his official guardian in almost all areas of his life for an indefinite period. Nor could that interference be challenged other than through his guardian, who had opposed any attempts to discontinue the measure.

The Court recalled that it had already found the proceedings to deprive the applicant of his legal capacity as procedurally flawed. Indeed, it was particularly struck by the fact that the applicant's case had been decided after only one hearing lasting just 10 minutes.

The district court's reasoning had also been inadequate, as it had relied solely on the medical report of 12 November 2004, which had not analysed sufficiently the degree of the applicant's incapacity. That report had not covered the consequences of the applicant's illness on his social life, health and pecuniary interests or how exactly he had not been able to understand or control his actions.

In such cases, Russian legislation only made a distinction between full capacity and full incapacity of mentally ill persons. It made no allowances for borderline situations. The Court referred, in particular, to a Recommendation issued by the Council of Europe's Committee of Ministers which outlined a set of principles for the legal protection of incapable adults in which it recommended that legislation be more flexible by providing a "tailor-made" response to each individual case.

The Court therefore concluded that the interference with the applicant's private life had been disproportionate to the legitimate aim pursued by the Russian Government of protecting the interests and health of others, in violation of Article 8.

Article 5 § 1

The government had not explained why the applicant's mother had asked for her son's hospitalisation on 4 November 2005. No medical records had been provided concerning the applicant's mental condition on his admission to hospital, to prove for example that he had been examined by specialist doctors. It appeared then that the decision to hospitalise the applicant had been based purely on the applicant's legal status, as defined 10 months earlier. The Court therefore considered that it had not been "reliably shown" that the applicant's mental condition had necessitated his confinement and concluded that his hospitalisation between 4 November 2005 and 16 May 2006 had not been "lawful", in violation of Article 5 § 1 (e).

Article 5 § 4

The applicant's hospitalisation had been requested by his mother and had therefore been regarded as "voluntary" under Russian domestic law. The courts had not been involved in deciding on the appli-

cant's hospitalisation at any time or in any way. Furthermore, Russian law did not provide for automatic judicial review of confinement in a psychiatric hospital in situations such as the applicant's. The applicant could not, in effect, pursue independently any legal remedy to challenge his continued detention as he had been deprived of his legal capacity.

Nor could the applicant bring legal proceedings through his mother who opposed his release. It was also unclear whether an inquiry by the prosecution authorities had concerned the "lawfulness" of the applicant's detention and, in any event, an inquiry could not be regarded as a judicial review satisfying the requirements of Article 5 § 4.

Given, in particular, that the courts had assessed the applicant's mental capacity 10 months before his admission to hospital, the Court found that the applicant's inability to obtain judicial review of his detention had amounted to a violation of Article 5 § 4.

Article 34

The Court was struck by the authorities' refusal to comply with the interim measure indicated to the Russian Government under Rule 39 of its Rules of Court. Although the applicant had eventually been released, met his lawyer and continued the proceedings before the Court, it had not in any way been connected with Russia having implemented the interim measure.

The Court concluded that, by having prevented the applicant for a long period of time from meeting his lawyer and communicating with him, as well as by failing to comply with the interim measure, the Russian Federation had prevented the applicant from complaining to the Court and had therefore failed to comply with its obligations under Article 34 to not hinder the right to individual petition.

Other articles

The Court noted that the applicant had not provided any evidence to prove that he had actually been treated with strong medication with unpleasant side-effects. Nor did he claim that his health had deteriorated as a result of such treatment. The Court therefore found that his allegations under Article 3 were unsubstantiated and rejected that part of the applicant's complaint.

The Court held unanimously that there was no need to examine separately the applicant's complaints under Articles 13 and 14.

C.G. and Others v. Bulgaria

Judgment of 24 April 2008. Concerns: C.G's deportation to Turkey.

Articles 8, 13 and 1 of Protocol No.7 (violations)

Facts and complaints

The applicants are: C.G., a Turkish national, born in 1968, and currently living in Turkey following his deportation from Bulgaria; and his wife and daughter, T.H.G. and T.C.G., both Bulgarian nationals, born in Bulgaria in 1968 and 1996 respectively and currently living in Plovdiv (Bulgaria).

The case concerned the applicants' complaint about C.G.'s deportation from Bulgaria to Turkey in June 2005.

C.G. settled in Bulgaria in 1992. He married T.H.G. in April 1996 and, shortly afterwards, was granted a permanent residence permit. Before his deportation he worked as driver for a company in Plovdiv.

On 8 June 2005 C.G.'s residence permit was withdrawn and a deportation order was issued stating that he posed a threat to national security. The decision, relying on the relevant provisions of the 1998 Aliens Act, referred to a classified report by Plovdiv Internal Affairs but gave no factual grounds for the deportation.

At 6.30 a.m. on 9 June 2005 C.G. was summoned to a police station in Plovdiv, where he was served with the order and detained with a view to his expulsion. He was deported to Turkey the same day, without being allowed to make contact with a lawyer or his wife and daughter.

C.G.'s appeal to the Minister of Internal Affairs was subsequently dismissed. In the ensuing judicial review proceedings, the Bulgarian courts also rejected C.G.'s applications concerning the unlawfulness of his expulsion. Their decisions were based on information contained in the Ministry of Internal Affairs' report, which stated that, following secret surveillance, it had been established that C.G. was involved in drug trafficking. On that basis, the courts refused to make any further enquiries into the facts of the applicant's case or examine any other evidence.

Since being deported, C.G. sees his wife and daughter a couple of times a year in Turkey. They keep in contact by telephone.

Decision of the Court

Article 8

The Court noted that C.G. had lawfully resided in Bulgaria until his deportation in 2005 and that, after that date, he had only been able to see his wife and daughter occasionally for brief periods of time. The deportation had therefore amounted to interference with the applicants' right to respect for their family life.

The Court further noted that, even where national security was at stake, deportation measures should be subjected to some form of adversarial proceedings before an independent authority or court which was competent to effectively scrutinise the reasons for those measures and to review the relevant evidence, if need be with appropriate limitations on the use of classified information.

It was particularly striking, however, that the decision to deport C.G. had given no factual grounds and had simply cited the relevant legal provisions concerning serious threats to national security. That conclusion had been based on unspecified information contained in a classified report. As C.G. had not been given even the slightest indication as to why he posed such a threat, he had not been able to present his case adequately in his appeal to the Minister of Internal Affairs or in the ensuing judicial review proceedings.

In the judicial review proceedings the Bulgarian courts' decision to deport C.G. had been purely formalistic. They had refused to examine evidence which would confirm or contest the allegations against the applicant and had relied solely on uncorroborated information in a classified report drawn up as a result of covert monitoring.

Moreover, Bulgarian law with regard to such monitoring did not provide the minimum guarantees required under Article 8 such as ensuring that the original written record of special surveillance was faithfully reproduced or laying down proper procedures for preserving the integrity of such data.

Indeed, in the applicants' case, the file contained no information as to whether the secret surveillance measures had been lawfully ordered and executed or whether that aspect was even considered by the courts in the judicial review proceedings.

Finally, it had transpired during the judicial review proceedings that the only basis for the assessment that C.G. had posed a threat to national security had been his alleged involvement in drug trafficking. The Court found that the allegations against C.G. – as grave as they might be – could not reasonably be considered to be capable of threatening Bulgaria's national security. The Bulgarian courts had not therefore subjected the allegations against C.G. to meaningful scrutiny.

Accordingly, the Court concluded that, despite having had the formal possibility of seeking judicial review of the deportation order, C.G. had not enjoyed the minimum degree of protection against arbitrariness. The interference with the applicants' family life had therefore not been in accordance with "the law", in violation of Article 8.

Article 13

The Court reiterated that the authorities had not properly scrutinised on what factual basis the decision to deport C.G. had been made or, indeed, whether it had been made for genuine reasons of national security. Furthermore, C.G. had initially been given no information as to why the authorities had made such an assessment of him and, subsequently, had not even been given a fair and reasonable opportunity of contesting the allegation against him. Moreover, the national courts had not given any consideration to the question of whether the interference with the applicants' family life had answered a pressing social need and had been proportionate to the legitimate aims pursued.

The Court therefore found that the judicial review proceedings had not constituted an effective remedy whereby the applicants could adequately argue their right to respect for their family life, in violation of Article 13.

Article 1 of Protocol No. 7

The Court reiterated that aliens, who were lawfully resident on the territory of a state which had ratified Protocol No. 7, benefitted from certain procedural safeguards in the event of their deportation such as knowing the reasons for their expulsion and having their case reviewed.

The Court recalled that C.G.'s expulsion had not been "in accordance with the law". Furthermore, the Bulgarian courts had refused to gather evidence to confirm the allegations against C.G. and their decision had been formalistic, resulting in C.G. not having been able to have his case heard or reviewed, as required under paragraph 1 (b) of Article 1 of Protocol No. 7.

Moreover, as C.G. had been expelled on the very day he had received his deportation order, he had only been able to challenge the measures against him once outside Bulgaria. Article 1 of Protocol No. 7 allowed for that situation but only in the event that expulsion was "necessary in the interests of public order" or "grounded on reasons of national security". The Court had already found that C.G.'s deportation had not been based on genuine national security reasons. Furthermore, there was nothing in the case file to suggest, and the government had not put forward any convincing argument, that it had truly been necessary to deport immediately C.G. in the interests of public order.

The Court therefore concluded that C.G. had not been given the opportunity to exercise his rights before having been expelled from Bulgaria, in violation of Article 1 of Protocol No. 7.

Dedovskiy and Others v. Russia

Articles 3 and 13 (violations) and a failure to comply with Article 38 § 1 (a)

Judgment of 15 May 2008. Concerns: complaint that a special squad subjected the applicants to ill-treatment at Chepets correctional colony and that the authorities failed to carry out an effective investigation into their allegations. Further complaint that they had no practical and effective access to claim compensation for that ill-treatment.

Facts and complaints

The applicants, Mikhail Vladimirovich Dedovskiy, Alexandr Mikhaylovich Matrosov, Viktor Viktorovich Vidin, Stanislav Lvovich Bukhman, Igor Anatolyevich Kolpakov, Dmitriy Vladimirovich Gorokhov and Aleksey Shamilyevich Pazleev, are Russian nationals who were born in 1969, 1968, 1978, 1974, 1975, 1980 and 1974, respectively.

The case concerned the applicants' allegation that, while serving a prison sentence at a correctional colony in Chepets (Russia), they were ill-treated by the Varyag squad, a special unit created to maintain order in detention facilities.

In April 2001 the squad was called into the Chepets correctional colony, allegedly to intimidate detainees who were being encouraged to be subversive by the leader of a criminal gang. The squad had instructions to maintain order by carrying out body searches of the detainees and searches of all quarters within the colony. The whole squad, except for its commander Mr B., wore balaclava helmets and camouflage uniforms with no indication of their rank and were armed with rubber truncheons.

According to the applicants, from 17-20 April 2001 the officers of the squad subjected them to repeated strip-searches and beatings with truncheons. The beatings took place indiscriminately: during the wake-up call, when they returned from work, in the canteen while they were eating, in their cells and the punishment ward. Certain applicants were made to squat and waddle to the canteen; others were beaten for replying too quietly to an officer's request.

The government acknowledged that a special squad had been in operation at the Chepets colony in April 2001. It submitted more than 60 reports compiled by the squad concerning the use of rubber truncheons against detainees. Four of those reports concerned incidents in which certain of the applicants had been beaten with truncheons: Mr Dedovskiy for disobeying an order to spread his arms and legs for a body search; Mr Kolpakov for refusing to give his name during a wake-up call; Mr Gorokhov for not reacting to an order to change his clothes; and, Mr Pazleev for refusing to leave his cell.

On 9 June 2001 the Perm Regional Prosecutor received 160 complaints of ill-treatment by the colony's detainees. A criminal investigation was launched the same day. In September 2001 the criminal proceedings in respect of most of the complaints were discontinued on the ground that the investigation had not obtained any "objective information" to confirm the detainees' allegations. Charges brought against Mr B. and his subordinates for excess of power were also discontinued due to lack of evidence. In that decision, it was notably found that, as the officers wore balaclavas and identical camouflage, they could not be identified and could not therefore have charges brought against them and that Mr B. had not actually beaten anyone himself. In February 2002 Cherdynskiy District Court of the Perm Region acquitted Mr B. of the remaining charge against him of professional misconduct. It found that there were no grounds to consider that he had not exercised appropriate control over the lawfulness of his subordinates' actions. Perm Regional Court later upheld that judgment, noting that Mr B. could not, and was not obliged to, control each of his officers' behaviour.

In the meantime, a special commission, made up of the Perm Regional Ombudsman and the director of the Perm Regional Human Rights Centre, visited the colony and found that there had been violations of the colony's regulations. In August and September 2001 a special inquiry was also carried out by Mr Shcherbanenko, Head of Department for supervision of compliance with laws in penitentiary institutions. The applicants claimed that his report criticised, in particular, the pre-trial investigation and the fact that the special squad had used truncheons unlawfully and worn balaclavas.

Despite repeated requests from the European Court, the Russian Government failed to submit a copy of Mr Shcherbanenko's report. It did submit copies of the applicants' medical records covering periods in the latter part of 2001 and 2002 to 2004.

Decision of the Court

Article 3

Concerning the alleged ill-treatment

The parties agreed that from 17-20 April 2001 the Varyag squad, all wearing balaclavas and identical camouflage except for its commander, Mr B., had operated in Chepets correctional colony where the applicants were being held.

It was also commonly acknowledged that the squad had used truncheons against the detainees. Reports concerning the use of truncheons had been submitted which referred specifically to four of the applicants. All the applicants had also described in detail where, when and for how long they had been ill-treated and had even identified the colony officials present. Moreover, those claims had not at any point been contested by the Russian Government.

The Court therefore found it to be established to the standard of proof required in Convention proceedings that all the applicants had been subjected to ill-treatment as alleged and that it was "beyond reasonable doubt" that four of the applicants had been hit, at least once, with truncheons.

The Court found that the squad's use of truncheons had had no basis in law. The Penitentiary Institutions Act permitted rubber truncheons to be used in certain situations such as: curtailing assaults; repressing mass disorder; and, apprehending those who persistently disobeyed or resisted officers. However, there was no evidence that the applicants had attacked officers or other detainees, the beatings had been individual, rather than collective, in nature, and, even though some applicants had allegedly disobeyed or resisted officers' orders, no attempt had been made to arrest them.

Nor did the Court consider it to have actually been necessary to beat the applicants with truncheons. The Court accepted that the officers might have needed to resort to physical force in order to make Mr Pazleev leave his cell or to search Mr Dedovskiy but found that it had been disproportionate and ineffective to hit them with a truncheon to make them obey. In such a situation, a truncheon blow had been a form of reprisal or corporal punishment. Such a disproportionate response was all the more striking concerning the reported beatings of Mr Kolpakov and Mr Gorokhov who had simply refused to state their name or change clothes.

The Court therefore concluded that the squad had resorted to deliberate and gratuitous violence and had intended to arouse in the applicants feelings of fear and humiliation, which would break their physical or moral resistance. The purpose of that treatment had been to debase the applicants and drive them into submission. The truncheon blows must have caused them intense mental and physical suffering and, in those circumstances, the Court found that the applicants had been subjected to torture, in violation of Article 3.

Concerning the alleged lack of an effective investigation

The Court reiterated that an investigation into an arguable claim of serious ill-treatment should be prompt, thorough and capable of identification and punishment of those responsible.

However, in the applicants' case criminal proceedings had only been brought one-and-a-half months after the events in question. No evidence was produced to show that the applicants had been medically examined following those events. The records submitted only referred to subsequent examinations. Indeed, the lack of any "objective" evidence – such as medical reports – had been given as a reason for discontinuing the proceedings in respect of most of the detainees' complaints.

The Court also considered that, by allowing the squad to cover their faces and not to wear any distinctive signs on their uniforms, the Russian authorities had knowingly made it impossible to have them identified by their victims. That ground was even given as the main reason for discontinuing the criminal proceedings against those officers. Nor had the reports on the use of rubber truncheons specified which officers had used their truncheon. The Court therefore found that the Russian authorities had deliberately created a situation in which any identification of the officers suspected of inflicting ill-treatment had been impossible.

Similarly, the domestic courts hindered any meaningful attempt to bring those responsible to account. There had been glaring contradictions in the findings of the domestic courts on the issue of Mr B.'s responsibility for the actions of his subordinates. The district court ac-

quitted Mr B. because he had exercised appropriate control over the lawfulness of their actions, whereas the Regional Court exonerated him on the ground that he had not been able, or obliged, to control his officers.

The Court therefore concluded that the investigation carried out into the applicants' allegations of ill-treatment had not been thorough, adequate or efficient, in further violation of Article 3.

Article 13

The Court recalled that, while Russian civil courts in theory had the capacity to make an independent assessment of a case, in practice the weight attached to a preceding criminal inquiry was so important that even the most convincing evidence to the contrary would be discarded and such a remedy would prove to be only theoretical and illusory. In the applicants' case the criminal proceedings had been discontinued and, consequently, any other remedy available to the applicants, including a claim for damages, had limited chances of success. The Court therefore concluded that the applicants had not had an effective remedy under domestic law to claim compensation for the ill-treatment they had suffered, in violation of Article 13.

Articles 34 and 38 (a)

The Court noted that, despite repeated requests, the government had refused to submit a copy of Mr Shcherbanenko's report to the Court. The Court considered that the evidence contained in that report was crucial to the establishment of the facts in the case and that the reasons given by the Russian Government for their refusal were inadequate.

Referring to the importance of a government's co-operation in Convention proceedings and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court found that, in failing to submit the requested report, the Russian Government had failed to meet their obligations under Article 38 § 1.

The Court considered that no separate issue arose under Article 34 as regards the failure to submit that report.

Gülmez v. Turkey

Articles 6 § 1 and 8 (violations)

Judgment of 20 May 2008. Concerns: allegedly unfair disciplinary proceedings and ensuing restriction on visiting rights.

Facts and complaints

The applicant, Ali Gülmez, is a Turkish national who was born in 1965 and is serving a prison sentence in Sincan F-type Prison in Ankara.

In March 2000 the applicant was placed in detention on remand on suspicion of murder, armed robbery and membership of an illegal organisation. During his detention on remand in 2001 six disciplinary sanctions were imposed on him for damaging prison property, chanting slogans and refusing to be searched. The case concerned the applicant's complaint about the unfairness of the disciplinary proceedings brought against him and the ensuing restriction on his visiting rights for approximately one year. He relied on Article 6 § 1 (right to a fair hearing) and Article 8 (right to respect for private and family life). Further relying on Article 3 (prohibition of inhuman or degrading treatment), he also complained about the conditions of his detention in Sincan Prison.

Decision of the Court

The Court noted that no public hearing had been held during the disciplinary proceedings against the applicant and his submissions in his defence had only been taken into account just before the Disciplinary Board had imposed the sanctions. Nor had the applicant been given the opportunity to defend himself through a lawyer before the courts which had examined his appeals. The Court therefore held unanimously that there had been a violation of Article 6 § 1.

It further noted that the relevant legal provisions on which the restrictions on the applicant's visiting rights had been based had not indicated in precise terms those acts which were punishable and their related penalties. The Court was therefore not convinced that those provisions, as they had been in force in 2001, had been sufficiently clear and detailed to appropriately protect a detainee from any wrongful interference with his or her right to family life. The Court therefore further held unanimously that there had been a violation of Article 8.

Mr Gülmez was awarded EUR 1 000 in respect of non-pecuniary damage and EUR 1 500 for costs and expenses. The remainder of the application under Article 3 was declared inadmissible.

Sampanis and Others v. Greece

Article 14 in conjuction with Article 2 of Protocol No. 1, and Article 13 (violations)

Judgment of 5 June 2008. Concerns: complaint that the applicants' children had suffered discrimination in the enjoyment of their right to education on account of their Roma origin.

Facts and complaints

The 11 applicants are all Greek nationals of Roma origin living at the Psari authorised residential site near Aspropyrgos (Greece).

The case concerns the authorities' failure to provide schooling for the applicants' children during the 2004-2005 school year and their subsequent placement in special classes, in an annexe to the main Aspropyrgos primary school building, a measure which the applicants claimed was related to their Roma origin.

On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enrol their minor children. Their action followed a press release issued in August 2004 by the Minister for Education in which he had stressed the importance of integrating Roma children into the national education system. There had also been, on 10 September 2004, a visit by the State Secretary for the educa-

tion of persons of Greek origin and intercultural education, accompanied by two Greek Helsinki Monitor representatives, to the Roma camps in Psari, for the purpose of ensuring enrolment of all school-age Roma children.

According to the applicants, the headteachers of two schools had refused to enrol their children on the ground that they had not received any instructions on this matter from the competent ministry. The headteachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enrol their children.

The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the headmistress of the tenth primary school of Aspropyrgos had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary school teachers from Aspropyrgos had visited the Psari Roma camp to inform and persuade the parents of minor children of the need to enrol them, but that action had been unsuccessful as the parents concerned had not enrolled their children for the current school year.

An informal meeting of the competent authorities was convened by the Director of Education for the Attica administrative district on 23 September 2004 in order to find a solution to the problem of overcrowding in the primary schools of Aspropyrgos to cater for further enrolments of Roma children. It was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes.

On 9 June 2005 on the initiative of the Association for co-ordination of organisations and communities for human rights of Roma in Greece (SOKARDE), 23 children of Roma origin, including the applicants' children, were enrolled for the school year 2005-2006. According to the government, the number of children came to 54.

In September and October 2005 from the first day of the school year, non-Roma parents protested about the admission to primary school of Roma children and blockaded the school, demanding that the Roma children be transferred to another building. The police had to intervene several times to maintain order and prevent illegal acts being committed against pupils of Roma origin.

On 25 October 2005 the applicants signed, according to them under pressure, a statement drafted by primary school teachers to the effect that they wanted their children to be transferred to a building separate from the school. Thus, from 31 October 2005, the applicants' children were given classes in another building and the blockade of the school was lifted.

Three preparatory classes were housed in prefabricated classrooms on land belonging to the municipality of Aspropyrgos. Following a fire in April 2007, the Roma children were transferred to a new primary school set up in Aspropyrgos in September 2007. However, on account of infrastructure problems, that school was not yet operational in October 2007.

Decision of the Court

Article 14 taken together with Article 2 of Protocol No. 1

The applicants argued that their children had been subjected, without any objective or reasonable justification, to treatment that was less favourable than that given to non-Roma children in a comparable situation and that this situation constituted discrimination contrary to the Convention.

Existence of evidence justifying a presumption of discrimination

The Court observed that it was not in dispute between the parties that the applicants' children had missed the school year 2004-2005 and that preparatory classes had been set up inside one of the primary schools in Aspropyrgos.

The Court noted that the creation of the three preparatory classes in question had not been planned until 2005, when the local authorities had had to address the question of schooling for Roma children living in the Psari camp. The government had not given any example prior to the facts of the case of special classes being created inside primary schools in Aspropyrgos, even though other Roma children had been enrolled there in the past.

In addition, as regards the composition of the preparatory classes, the Court noted that they were attended exclusively by Roma children.

The Court noted that even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the Greek authorities, it could nevertheless be presumed that those incidents influenced the decision to place pupils of Roma origin in an annexe to the primary school.

The Court considered that the evidence adduced by the applicants and other evidence in the case file could be regarded as sufficiently reliable and revealing to create a strong presumption of discrimination and that it was therefore for the government to show that this difference in treatment was the result of objective factors, unrelated to the ethnic origin of the persons concerned.

Existence of objective and reasonable justification

The Court observed that the material in the case file did not show that the applicants had met with an explicit refusal, on the part of the Aspropyrgos primary school authorities, to enrol their children for the school year 2004-2005.

The Court considered, however, that even supposing that the applicants had simply sought to obtain information on the conditions of enrolment of their children at primary school, there was no doubt that they had explicitly expressed to the competent school authority their wish to enrol their children. Given the Roma community's vulnerability, which made it necessary to pay particular attention to their needs, and considering that Article 14 required in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognised the particularity of the case and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available. The Court noted in this respect that Greek law recognised the specific nature of the Roma community's situation, by facilitating the school enrolment procedure for their children. In addition, domestic legislation provided for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, provided

birth certificates were then produced in due course.

This obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enrol them at primary school.

As regards the special classes, the Court considered that the competent authorities had not adopted a single, clear criterion in choosing which children to place in the preparatory classes. The government had not shown that any suitable tests were ever given to the children concerned in order to assess their capacities or potential learning difficulties.

In addition, the Court noted that the declared objective of the preparatory classes was for the pupils concerned to attain the right level so that they could enter ordinary classes in due course. However, the government had not cited any examples of pupils who, after being placed in a preparatory class – and there were over 50 of them – for two school years, were then admitted to the ordinary classes of the Aspropyrgos primary school. Moreover, the government did not mention any assessment tests that Roma children should have been periodically required to sit in order for the school authorities to assess, on the basis of objective data rather than approximate appraisal, their capacity to follow ordinary classes.

The Court stressed the importance of introducing a suitable system for assessing the capacities of children with learning needs, to monitor their progress, especially in the case of children from ethnic minorities, to provide for possible placement in special classes on the basis of non-discriminatory criteria. In addition, in view of the racist incidents provoked by the parents of non-Roma children, the setting-up of such a system would have given the applicants the feeling that their children had not been placed in preparatory classes for reasons of segregation. The Court, whilst admitting that it was not its role to rule on this issue of educational psychology, considered that this would have been of particular help in the integration of Roma pupils, not only into ordinary classes but into local society as a whole.

Moreover, the Court was not satisfied that the applicants, as members of an underprivileged and often uneducated community, had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building.

Reiterating the fundamental importance of the prohibition of racial discrimination, the Court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest.

The Court concluded that, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their placement in special preparatory classes – in an annexe to the main school building – ultimately resulted in discrimination against them. Accordingly, there had been a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 in respect of each of the applicants.

Article 13

The Court found that the Greek Government had not adduced evidence of any effective remedy that the applicants could have used in order to secure redress for the alleged violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1. Accordingly, there had been a violation of Article 13.

Yaremenko v. Ukraine

Article 3 (no violation); Article 3 and 6 §§ 1 and 3 (c) (violations)

Judgment of 12 June 2008. Concerns: the applicant complained that, following his arrest, he was ill-treated in police custody and that the authorities failed to carry out an adequate investigation into his allegations of ill-treatment.

Facts and complaints

The applicant, Oleksandr Volodymyrovych Yaremenko, is a Ukrainian national who was born in 1976 and is currently serving a life sentence in Zhytomyr prison (Ukraine) for murder.

The case concerned the applicant's complaints in particular that he was ill-treated in police custody and that the authorities failed to carry out an adequate investigation into his allegations of ill-treatment.

On 27 January 2001 Mr Yaremenko was arrested on suspicion of murdering a taxi driver and of several other crimes committed in 2001 and was placed in a cell at the Kyiv Kharkivsky District Police Department. The same day the applicant asked to be represented by Mr O. Kh.. This was allowed and the lawyer attended the initial questioning of the applicant. On 1 February 2001 the applicant was questioned with a view to establishing his possible involvement in the death of another taxi driver in the summer of 1998. The crime was classified as infliction of grievous bodily harm causing death, for which legal representation of a suspect was not obligatory. The applicant signed a waiver of his right to counsel. The applicant was then questioned and confessed that he and Mr S. had committed the 1998 crime. The same day that criminal case was transferred to the Kharkivsky Prosecutor's Office on the ground that the applicant's actions could be classified as murder.

On 2 February 2001 the applicant denied his involvement in the 1998 crime, in his lawyer's presence. The same day, the applicant signed a waiver in respect of his counsel, O. Kh., on the ground that the latter had prevented him from confessing to the 1998 crime. O. Kh. was removed from the applicant's case on 2 February 2001. He was told that he had breached professional ethics by advising his client to assert his innocence and retract part of his previous confession. In letter of March 2001, the applicant complained that he had signed the waiver in respect of O. Kh. under pressure from the police officers and the case investigator. Later on, O. Kh. was allowed to return to the case and on 8 June 2001 the applicant was questioned in the presence of O. Kh. The applicant repeatedly claimed that he was innocent of the 1998 crime and explained that he had been forced to confess by officers from the police department.

In November 2001 Kyiv Appellate Court convicted the applicant and

S. of the 1998 and 2001 crimes and sentenced them to life imprisonment. It disregarded their denials of their involvement in the 1998 crime on the ground that their confessions during pre-trial investigation were detailed and consistent. The Supreme Court of Ukraine upheld the judgment.

According to the applicant, on 1 February 2001 he was beaten with truncheons by police officers, who forced him to sign a waiver of his right to counsel and to confess to the 1998 crime. On 2 February 2001 the applicant informed his lawyer O. Kh. about those events. The lawyer advised him to assert his innocence and to complain about ill-treatment. On 13 February 2001 the applicant was transferred to a pre-trial detention centre. On arrival he was examined by a doctor and was found to be in good health. The applicant made no complaints of ill-treatment. The applicant's wife complained that her husband was ill-treated in order to extract confessions with regard to the 1998 crime, but the prosecutor decided not to bring criminal proceedings in respect of those allegations. The applicant also lodged a complaint against police officers and investigating prosecutor G.. However, the complaint was transferred to investigating prosecutor G. for examination in the context of the investigation into the criminal case against the applicant. Finally, the applicant's retraction of his confessions and his allegations of ill-treatment were found to be groundless.

Decision of the Court

Article 3

Concerning the alleged ill-treatment

The Court noted that no special medical examination had been conducted in respect of the ill-treatment allegations made by the applicant and his lawyer. There was no evidence that the applicant had actually been ill-treated. The Court considered that the circumstances surrounding the applicant's detention in the Kharkivsky District Police Department, in particular his abrupt retraction of the confession immediately after arrival of his lawyer, evoked some suspicion of physical or psychological pressure having been put on him at the beginning of February, even though the medical examination of 13 February had not established any sign of bodily harm. That medical examination, however, had not been specifically designed to verify the allegations of ill-treatment. It had been a routine examination, conducted 12 days after the alleged ill-treatment had taken place.

The Court therefore considered that on the basis of the evidence, it could not be established to the requisite standard of proof that the applicant had been ill-treated while in police custody. Accordingly, there had been no violation of Article 3.

Concerning the investigation

The Court considered that the investigation into the applicant's allegations of ill-treatment had had serious deficiencies. In particular, no timely and specific medical examination had been conducted on the applicant, despite the explicit request from his lawyer the day after the alleged ill-treatment had taken place. Following a complaint by the applicant's wife the prosecutor had decided not to bring criminal proceedings in respect of those allegations. No investigative actions had actually been taken, although, had the allegations of ill-treatment been considered seriously, information provided by the applicant's wife would have been sufficient for an independent investigator to identify the alleged perpetrators.

The Court further noted that the investigation into the applicant's allegations had lacked the requisite independence and objectivity. In particular, it was the prosecutor who had allegedly ill-treated the applicant who subsequently questioned him and the officers accused of the ill-treatment.

The Court concluded that the state authorities had failed to conduct an effective and independent investigation into the allegations of ill-treatment, in violation of Article 3.

Article 6 § 1 (fair hearing)

The Court noted that the applicant's lawyer had been dismissed from the case by the investigator after having advised his client to remain silent and not to testify against himself. It further considered that there had been serious reasons to suggest that the statement signed by the applicant had been obtained against the applicant's will.

Taking also into account that there had been no adequate investigation into the allegations by the applicant that the statement had been obtained by illicit means, the Court found its use at trial impinged on his right to silence and his right not to incriminate himself, in violation of Article 6 § 1.

Article 6 § 3 (c)

The Court noted that the applicant's conviction for the 1998 crime had been based mainly on his confession, which had been obtained by the investigators in the absence of a lawyer and which the applicant had retracted the very next day and then from March 2001 on.

The Court was struck by the fact that, as a result of the procedure adopted by the authorities, the applicant had been placed in a situation in which he had been coerced into waiving his right to counsel and incriminating himself.

The fact that the applicant had made confessions without a lawyer having been present and retracted them immediately in the lawyer's presence had demonstrated his vulnerability and the real need for appropriate legal assistance, which he had effectively been denied on 1 February 2001 owing to the way in which the police investigator had exercised his discretionary power concerning the classification of the investigated crime.

The Court considered that the manner, reasoning and alleged lack of legal grounds for the removal of lawyer O. Kh on 2 February 2001 had raised serious questions as to the fairness of the proceedings in their entirety. It therefore concluded that there had been a violation of Article 6 § 3 (c).

Abdullah Yilmaz v. Turkey

Article 2 (violation)

Judgment of 17 June 2008. Concerns: the applicant complained of the circumstances of his son's death.

Facts and complaints

The applicant, Abdullah Yılmaz, is a Turkish national who was born in 1953 and lives in Bursa (Turkey). He is the father of Maşallah Yılmaz, a 20-year-old who killed himself on 1 October 1999 while performing his compulsory military service.

On 1 October 1999 a unit of conscripts, to which Maşallah belonged, was placed under the orders of Expert Sergeant Murat Avcil (hereafter called "the sergeant"), a non-commissioned officer with a secondary-school certificate of education. He was 29 years old at the time and had already been put under arrest three times for acts of indiscipline. The unit had the job of clearing rubble from a trench in Yayla Tepe.

At about 7.30 a.m. the sergeant ordered Maşallah to make tea. Maşallah delayed in doing so and the sergeant reprimanded him. During the afternoon the sergeant again ordered him to make tea. This time he found he had made it too strong.

The following is an account of the events as attested to by numerous witnesses:

Sergeant Avcil started thumping and kicking Maşallah Yılmaz, in front of other conscripts and Expert Sergeant A.A., uttering insults as he did so until Maşallah Yılmaz lost consciousness. He then revived the young man by pouring water on his head before chasing him away and uttering curses at him. Later on he summoned him together with two other conscripts. He gave them some pieces of advice and then started insulting Maşallah again. About 10 minutes after that incident Maşallah appeared holding the barrel of his gun against his stomach and walking around in a state of distress. Rebelling against the sergeant, he threatened to kill himself. Fearing that Maşallah was about to attack him, Sergeant Avcil took hold of an assault rifle that was within his reach, loaded it and pointed it at Maşallah, who killed himself immediately afterwards.

The forensic examinations of the corpse concluded that death had been caused by a single bullet, fired at point-blank range and that a classic autopsy was not necessary.

Administrative investigations were conducted by a military board of inquiry and by the commanding officer of the garrison to which Maşallah Yılmaz belonged. It emerged from these that Maşallah had had problems linked to his sister's marital difficulties and that on the morning of 1 October he had informed Sergeant Avcil and a lieutenant of this. Both reports concluded that he had committed suicide while mentioning that this had been provoked by Sergeant Avcil's actions.

Two sets of criminal proceedings were brought against Sergeant Avcil. In a judgment of 7 December 1999 he was found guilty of assault occasioning bodily harm and sentenced to five months' imprisonment, suspended for good conduct.

The second set of proceedings, which had been brought to establish the circumstances of the death, were discontinued. The military prosecutor's office considered that there was no causal link between the suicide and the sergeant's actions. In his capacity as intervening party, the applicant objected to the decision to discontinue the proceedings. He referred to deficiencies in the investigation, particularly the failure to verify whether the gun that had fired the fatal shot had indeed been Maşallah's gun, the failure to take fingerprints from the gun and the lack of a definitive finding as to the distance from which the shot had been fired. The applicant's objection was dismissed on 10 January 2001.

Decision of the Court

Article 2

Having regard to all the circumstances of the death, particularly the consistent witness statements gathered during the investigations, the Court did not discern any reason to call into question the conclusion favoured by the Turkish authorities, namely, that the applicant had committed suicide.

Its task was therefore to determine whether the military authorities had known or should have known that there was a real risk that Maşallah Yılmaz would kill himself and, if so, whether they had done everything that could reasonably have been expected of them to prevent that risk, having regard to their obligation to protect from himself an individual placed under their control.

There was good reason to believe that until that tragic day of 1 October 1999 Maşallah Yılmaz had behaved normally and had never mentioned any cause for alarm to his superiors.

However, the Court referred to the explanation given by Sergeant Avcil, who acknowledged that he had asked Maşallah Yılmaz to make tea that morning because he had wanted to spare him heavier tasks on account of his fragile mental state, which, moreover, he had taken pains to point out to his lieutenant. The Court concluded that on 1 October 1999, at 10 a.m. at the latest, Maşallah's superiors, who had been apprised of the junior officer's situation, should have understood that his problems had taken on proportions going beyond ordinary family concerns.

The Court observed that in the afternoon, far from attempting to appease matters, Sergeant Avcil had made them worse by becoming increasingly violent, both physically and verbally, towards the young man. Expert Sergeant A.A., the only other ranking officer on the premises, had merely been a spectator to the incident, confining himself to criticising his peer's conduct.

The Court observed that, although it was not possible to analyse the seriousness or nature of the effect that those actions had had on Maşallah Yılmaz's mental state, it was certain that that effect had become irreversible because of an ultimate irresponsible act committed by Sergeant Avcil.

In that connection it pointed out that it did not see any reason to call into question the reports drawn up by the military board of inquiry or the garrison commanding officer according to which, notwithstanding the lack of intentional element, the tragedy had been "provoked" by Sergeant Avcil, or the factual observation that he had acted in full knowledge of the situation.

In the Court's view, all the circumstances of the case illustrated the clear inability of Sergeant Avcil to assume the responsibilities of an

army professional whose job was to protect the physical and mental integrity of conscripts placed under his orders.

Accordingly, in the Court's view the regulatory framework had proved deficient regarding Sergeant Avcil's professional ability to officer the unit, and regarding his duties and responsibilities when faced with delicate situations such as the one that had arisen here. The authorities could not therefore be deemed to have done everything in their power to protect the victim from the improper conduct of his superiors. Consequently, the Court concluded, unanimously, that there had been a violation of Article 2 and found that it was not necessary to give a separate ruling on the applicant's other complaints.

Judge Popović expressed a concurring opinion.

Meltex Ltd and Mesrop Movsesyan v. Armenia

Judgment of 17 June 2008. Concerns: the refusal of broadcasting licences on seven separate occasions. **Article 10 (violation)**

Facts and complaints

The applicants are Meltex Ltd, an independent broadcasting company established in 1995 with its registered office in Yerevan (Armenia), and its chairman, Mesrop Movsesyan, who was born in 1950 and lives in Yerevan.

The case concerned the applicants' complaint about being refused broadcasting licences on seven separate occasions.

In January 1991 Mr Movsesyan set up A1+, the first independent television company in Armenia and widely recognised as one of the few independent voices in Armenian television broadcasting. The content of its programmes included analysis of international and domestic news, advertising and various entertainment programmes. During the run-up to the 1995 presidential elections, A1+ refused to broadcast only Government propaganda and, as a result, its State broadcasting licence was suspended. Subsequently Mr Movsesyan set up Meltex Ltd and, within that structure, launched A1+ again. In January 1996 Meltex opened a school to train journalists, cameramen and technicians, who were later not only employed by Meltex but also by other television companies. In January 1997 Meltex was granted a five-year broadcasting licence.

From 2000 to 2001 legislative changes were introduced to television and radio broadcasting in Armenia. The Television and Radio Broadcasting Act, passed in October 2000, established the National Television and Radio Commission ("the NTRC"), a public body composed of nine members appointed by the President of Armenia, which was entrusted with the licensing and monitoring of private television and radio companies. The Broadcasting Act also introduced a new licensing procedure, whereby broadcasting licences were granted by the NTRC on the basis of calls for tenders.

In February 2002 the NTRC announced calls for tenders regarding various broadcasting frequencies, including band 37, the band on which Meltex operated. At a public hearing on 2 April 2002 the NRTC, according to a points-based vote, nominated Sharm Ltd the winning company. No other reasons were given for its decision.

On 3 April 2002 A1+ ceased to broadcast.

Between May and December 2003 Meltex participated in bids for seven other bands, each time unsuccessfully.

Mr Movsesyan wrote to the NTRC requesting reasons for the refusals of Meltex's bids. The NTRC repeatedly replied that it only made decisions as to which was the best company, following which it granted or refused broadcasting licences.

Meltex brought several sets of proceedings in which it sought to have those decisions annulled and complained about the NTRC's failure to give written reasons for its decisions to refuse broadcasting licences.

Ultimately, the Armenian courts dismissed Meltex's claims as unfounded, finding that the calls for tenders concerning those seven bands had been carried out in accordance with the law.

Decision of the Court

Article 10

The Court found that the NRTC's refusal of Meltex's bids for broadcasting licences had effectively amounted to an "interference" with their freedom to impart information and ideas.

The Court noted that the NTRC's decisions had been based on the Broadcasting Act and other complementary legal acts. Section 50 of that Act had defined precise criteria for the NTRC to make its choice, such as the applicant company's finances and technical resources, its staff's experience and whether it produced predominately in-house, Armenian programmes. However, the Broadcasting Act had not explicitly required at that time that the licensing body give reasons when applying those criteria. Therefore, the NTRC had simply announced the winning company without giving any reasons why that company had met the requisite criteria and not Meltex. Indeed, even though the NTRC had held hearings, no reasoned decisions had been publically announced. Meltex and the general public therefore had no way of knowing on what basis the NTRC had exercised its discretion to refuse a licence.

The Court considered that a procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression.

The Court recalled the guidelines adopted by the Council of Europe's Committee of Ministers in the domain of broadcasting regulation which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that "[a]ll decisions taken ... by the regulatory authorities ... be ... duly reasoned". Similarly, the Court pointed to a Resolution concerning Armenia by the Council of Europe's Parliamentary Assembly of 27 January 2004 which had concluded that "the vagueness of the law in force ha[d] resulted in the [NTRC] being given outright discretionary powers".

The Court therefore concluded that the interference with Meltex's freedom to impart information and ideas, namely having been refused a broadcasting licence on seven separate occasions, had not met the requirement of lawfulness under the

European Convention, in violation of Article 10.

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

The prevention of new violations

The obligation to abide by the judgments of the 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 notably 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 1020th and 1028th Human Rights (HR) meeting[1] (4-6 March and 3-5 June 2008) 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 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 on the CM website: 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, resolutions can more easily be 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

1020th and 1028th HR meetings – general information

During the 1020th and 1028th meeting (4-6 March and 3-5 June 2008), the CM supervised payment of just satisfaction respectively in some 845 and 858 cases. It also monitored, in some 259 and 512 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 1289 and 1613 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 185 and 377 new ECtHR judgments and considered draft final resolutions concluding, in 122 and 59 cases respectively, that states had complied with the ECtHR's judgments.

Main texts adopted

After examination of the cases on the agenda of the 1020th and 1028th meeting, the Deputies have notably adopted the following texts.

Information documents opened to public access

During the period concerned, the Committee of Ministers decided to render the following information documents public. They are available on the internet website of the Department for the execution of judgments (http://www.coe.int/T/E/Human_Rights/execution/) and on the internet website of the Committee of Ministers (http://www.coe.int/cm/).

Memorandum CM/Inf/DH(2008)7 rev

Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice [1020th meeting].

Memorandum CM/Inf/DH(2008)2

Cases concerning the action of security forces in Northern Ireland [1028th meeting].

Memorandum CM/Inf/DH(2008)26

Freedom of expression in Turkey: Progress achieved – Outstanding issues [1028th meeting].

Selection of decisions adopted (extracts)

During the 1020th and 1028th meetings, the CM examined 3152 and 3726 cases and adopted for each of them a decision, available on the CM website (http://www.coe.int/cm/). Whenever the CM concluded that the execution obligations had not been entirely fulfilled yet, it decided to resume consideration of the case(s) at a later meeting. In some cases, it also expressed 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.

54268/00, judgment of 18 November 2005, final on 30 March 2005
7352/03, judgment of 22 August 2006, final on 12 February 2007
1028th – next examination 1035th (control payment) and 1043rd (general measures)

Qufaj Co. Sh.p.k. against Albania
Beshiri and others against Albania

Non-enforcement of a final domestic decision ordering a municipality to compensate the applicant company for damage sustained following the refusal to grant a building permit (violation of Art. 6§1 – case Qufaj); Violation of the right to a fair trial and the right to protection of property due to the lack of enforcement of a final judicial decision of 2001 granting compensation to the applicants in respect of plots of land which had been nationalised (violations of Art. 6§1 and Art. 1, Prot. No. 1 – case Beshiri).

The Deputies,

1. noted with concern that the non-enforcement of final domestic judicial decisions in Albania is a systemic problem;

2. noted, with interest, in this respect that the Albanian authorities envisage the adoption of legislative measures to ensure the implementation of national judicial decisions, and in particular a reform of bailiff office;

3. noted that information has also been provided on general measures to remedy the violations of Article 1 of Protocol No. 1 in the Beshiri and others case;

4. invited the authorities to continue their efforts to define and take without delay all measures required in these cases; (...)

Galstyan against Armenia

Interference with the applicant's right of freedom of assembly due to his arrest and conviction to three days administrative detention for alleged offences committed while participating in a peaceful rally in connection with the 2003 presidential elections (violation of Art. 11). Unfairness of the criminal administrative proceedings at the basis of this conviction, as he did not have adequate time and facilities to prepare his defence (violation of Art. 6§3b combined with Art. 6§1) and violation of the right of appeal as no appeal was available under the law (violation of Art. 2 Prot. 7).

The Deputies,

1. noted with satisfaction that the revision of the law on freedom of assembly is in the process of preparation in co-operation with the Council of Europe;

2. encouraged the Armenian authorities to adopt rapidly amendments to the law on freedom of assembly in conformity with the requirements of the Convention and to set up effective and independent monitoring of the enforcement of the law;

3. invited the Armenian authorities rapidly to provide the Committee of Ministers with information on penalties potentially applicable to participants in a rally and recalled the European Court's case-law according to which in no circumstances should penalties be applied for mere participation in a rally which has not been prohibited;

4. recalled that individual measures are required in this case, in particular the erasure of any possible mention of the applicant's conviction in a criminal record; (…)

26986/03, judgment of 15 November 2007, final on 15 February 2008 1028th – next examination 1035th (control of payment) and 1043rd (individual and general measures)

Hummatov against Azerbaijan

Degrading treatment on account of the lack of adequate medical treatment (1996-2003) of the applicant's tuberculosis contracted while in prison (violation of Art. 3). Absence of effective remedies: the prison administration took no action in response to his complaints and a subsequent civil law suit was eventually discontinued under unsatisfactory circumstances (violation of Art. 13). Violation of the right to a public hearing as the applicant's appeal against his original conviction in 1996, under a new law of 2000, was heard in the isolated Gobustan High Security Prison without adequate compensatory measures to ensure effective access for the public (violation of Art. 6§1).

The Deputies,

1. took note of the information provided by the Azerbaijani authorities during the meeting which remains to be assessed;

2. invited the Azerbaijani authorities rapidly to inform the Committee of Ministers of further measures taken or envisaged to ensure prisoners' access to appropriate medical care; to guarantee an effective remedy in law and in practice to complain of the lack of adequate medical treatment and to ensure fair trials within the meaning of Article 6 of the Convention;

3. encouraged the intensification of bilateral contacts between the Azerbaijani authorities and the Secretariat in this respect; (…)

9852/03, judgment of 29 November 2007, judgment of 29 February 2008 1028th – next examination 1035th (control of payment) and 1043rd (individual and general measures)

Mammadov (Jalaloglu), against Azerbaijan

Torture inflicted on the applicant, Secretary General of the Democratic Party of Azerbaijan at the material time, while he was in police custody in October 2003 (violation of Art. 3); lack of an effective investigation into the applicant's allegations of ill-treatment (violation of Art. 3) and absence of a critical and effective review of the decision not to prosecute (violation of Art. 13).

The Deputies,

1. noted with satisfaction that following the judgment of the European Court, an investigation had been opened about the torture inflicted on the applicant;

2. invited the Azerbaijani authorities to keep the Committee of Ministers informed of the development of the investigation in this case and recalled in this respect that to comply with the requirements of the Convention, such an investigation should be effective, conducted with reasonable speed and adequate public scrutiny and capable of leading to the identification and punishment of those responsible;

3. noted with satisfaction that the Court's judgment had been published and widely disseminated and that a broad programme of training for law enforcement staff as well as prosecutors and judges is under way;

4. invited the Azerbaijani authorities rapidly to inform the Committee on any further measures taken, in the light of the relevant recommendations of the CPT to ensure, first respect of the prohibition of torture, inhuman or degrading treatment or punishment and secondly effective investigations in case of allegations of ill-treatment; (…)

34445/04, judgment of11 January 2007, final on11 April 2007 1028th – next examination 1035th (control of payment) and 1043rd (individual and general measures)

50049/99, judgment of 24 May 2007, final on 24 August 2007
1028th – next examination 1035th (assessment of possibility of closing examination)

Da Luz Domingues Ferreira against Belgium

Breach of the right to a fair trial (violation of Art. 6§1): refusal of the Liege Court of Appeal in 1998 to reopen in absentia proceedings because of formal deficiencies in the opposition lodged, although the notification of the in absentia judgment to the applicant (at the time detained in Germany) had not been accompanied by any appeal instructions.

The Deputies,

1. welcomed the reopening of the criminal proceedings at issue in this case, by a judgment delivered on 9 April 2008 by the *Cour de Cassation,* following the judgment of the European Court, under the Law of 1 April 2007 modifying the Code of Criminal Investigation to allow reopening of criminal proceedings;

2. considered, in view of the nature of the violation found, that the reopening of the proceedings constitutes in this case an appropriate way of redressing the applicant's situation;

3. also noted with interest the information provided at the meeting on the general measures, which need to be assessed in detail; (…)

62540/00, judgment of 28 June 2007, final on 30 January 2008
1028th – next examination 1035th (control of payment) and 1043rd

Association for European Integration and Human Rights and Ekimdzhiev against Bulgaria

Lack of safeguards against abuse of secret surveillance measures taken under the Bulgarian law of 1997 on special surveillance means: even if the authorisation of measures is subjected to substantial safeguards, this is not so as regards the implementation of the measures and the persons concerned have no right at any stage to be informed (violation of Art. 8). Absence of any effective remedy (violation of Article 13).

The Deputies,

1. noted with interest the information provided by the Bulgarian authorities on the ongoing work to amend the legal framework governing the use of secret surveillance;

2. noted the systemic character of the violations found by the European Court in this case since they are due to the very existence of a surveillance system exposing anyone in the country to secret monitoring, without the necessary safeguards and without any notification at any time;

3. invited the Bulgarian authorities to provide rapidly additional information in particular on the progress of the legislative reform, including copies of the draft amendments, and on the time-frame for its adoption; (…)

59489/00, judgment of 20 Otober 2005, final on 20 January 2006
59491/00, judgment of 19 January 2006, final on 19 April 2006
CM/Inf/DH(2007)8
1028th – next examination 1043rd

United Macedonian Organisation Ilinden – Pirin and others against Bulgaria
United Macedonian Organisation Ilinden and others against Bulgaria

Infringement of the freedom of association of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – dissolution of their political party and refusal to register their association, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Article 11 and Article 13).

The Deputies,

1. recalled the Committee of Ministers' decision adopted at their 1007th meeting (15-17 October 2007) (DH);

2. underlined that the outstanding issues regarding individual measures, in particular those related to certain grounds relied upon to reject the last registration request of UMO Ilinden-Pirin, and invited the Bulgarian authorities to continue to examine possible solutions in co-operation with the Secretariat;

3. noted in this respect that the applicants indicated their intention to lodge a new request for registration and invited the Bulgarian authorities to keep the Committee of Ministers informed of developments in this matter;

4. took note of the applicants' complaints in the case of *UMO Ilinden-Pirin* concerning investigations carried out in respect of a number of their members and the answers provided by the Bulgarian authorities on this subject;

5. took note with interest of various training activities relating to freedom of association and freedom of assembly organised by the Bulgarian authorities with the participation of the Council of Europe, with the aim of raising the awareness of the competent authorities concerning the requirements of the Convention and the judgments of the European Court in these fields;

6. noted that additional awareness-raising activities are under way and encouraged the Bulgarian authorities to pursue their efforts, in co-operation with the Council of Europe, in this respect; (…)

United Macedonian Organisation Ilinden and Ivanov against Bulgaria
Ivanov and others against Bulgaria

44079/98, judgment of 20 October 2005, final on 15 February 2006
46336/99, judgment of 24 November 2005, final on 24 February 2006
1028th – next examination 1043rd

Infringement of the freedom of assembly of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – prohibition of their meetings between 1998 and 2003, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims; lack of effective remedies to complain against the prohibitions of their meetings (violations of Article 11 and 13).

The Deputies,

1. noted with interest the different training activities relating to freedom of association and freedom of assembly organised by the authorities with the participation of the Council of Europe, aiming at raising the awareness of the competent authorities of the requirements of the Convention and of the judgments of the European Court in this field;

2. took note of the information provided by the Bulgarian authorities on the state of progress of the draft law amending the Law on Meetings and Marches and invited the authorities to provide a copy of this draft law, as well as an estimated time-frame for its adoption;

3. also invited the Bulgarian authorities to continue to keep the Committee of Ministers informed of the applicants' present situation concerning the exercise of their freedom of assembly; (...)

Velikova against Bulgaria and 10 other cases

41488/98, judgment of 18 May 2000, final on 04 October 00
Interim Resolution CM/Res/DH(2007)107
1028th – next examination 1043rd

Death and ill-treatment while in police custody, excessive use of force when arresting suspects and lack of an effective investigation into alleged abuses (violation of Articles 2 and/or 3 and 13), failure to provide timely medical care in police detention (violation of Article 2), unlawful detention (violation of Article 5§1), unlawful destruction by the police of property (violation of Article 1 of Prot. No. 1) and excessive length of proceedings engaged against the state to obtain compensation for the alleged ill-treatment (Violation of Art 6§1). All events relate to the period 1993-1999.

The Deputies,

1. recalled Interim Resolution CM/ResDH(2007)107 adopted at their 1007th meeting (October 2007)(DH), in which the Committee called upon the government of the respondent state rapidly to adopt all outstanding measures and to regularly inform it about this issue;

2. noted with interest the detailed information provided by the Bulgarian authorities in the majority of these cases concerning the examination by the investigative organs of the possibility of carrying out new investigations;

3. invited the Bulgarian authorities to provide additional information in this respect, in particular as regards cases in which the investigative organs concluded that it was not necessary to carry out new investigations, as well as to provide information on the most recent cases;

4. invited the Bulgarian authorities also to provide information on general measures, in particular on measures to improve human rights training for police officers and to ensure the independence of investigations and the effective implementation of procedural guarantees during detention on remand; (...)

Havelka and others against Czech Republic
Wallovà and Walla against Czech Republic

23499/06, judgment of 21 June 2007, final on 21 September 2007
23848/04, judgment of 26 October 2006, final on 26 March 2007
1020th – next examination 1028th (control of payment) and 1035th (individual and general measures)

Violation of the applicants' right to respect for their private and family life on account of the fact that their children had been taken into care on the sole ground that the family's economic and social conditions were not satisfactory (violation of Article 8).

The Deputies,

1. recalled that in these cases the European Court found that the placement of the children in public care motivated only by material and economic grounds constituted a disproportionate measure with respect to Article 8 of the Convention;

2. noted with concern that in the Havelka case the three minor applicants are still in public care and that in the Wallova and Walla case the two youngest children are still with a foster-family;

3. noted however that the Czech authorities had undertaken concrete steps with a view to restoring the family ties between the applicants and their children and invited the authorities to pursue their efforts in this respect;

4. also noted that the Czech authorities would soon provide information on the general measures required in these cases; (...)

74969/01, judgment of 26 February 2004, final on 26 May 2004, rectified on 24 May 2005
1028th – next examination 1035th (draft final resolution)

Görgülü against Germany

Disrespect 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 Article 8).

The Deputies,

1. noted with satisfaction that thanks to the action plan implemented by the German authorities regular contacts between the applicant and his son were resumed in November 2007 and, as a consequence of their positive development, the applicant was granted custody by way of a temporary court order on 11 February 2008; the son has been living in the applicant's family ever since and he is adjusting well to his new family environment;

2. noted consequently that no further individual measure is required in this case and that the general measures have already been taken; (...)

30595/02, judgment of 30 June 2005, final on 30 November 2005
1020th – next examination 1035th

Bove against Italy

Failure to take adequate measures to enforce court decisions ordering a progressive resumption of contacts between father and daughter (violation of Article 8).

The Deputies,

1. noted that in March 2006, the Naples Appeal Court re-examined the applicant's situation, ordering the suspension of the contacts between the father and his child as well as mediation between the parents to allow a possible re-establishment of contacts between the applicant and his daughter;

2. noted that this mediation has developed positively for more than a year;

3. noted that this mediation has now been interrupted because of the refusal of the child's mother to continue to participate;

4. took note of the information provided by the authorities on the possibilities at national level allowing them and the applicant to react to this situation and invited them to provide further information in this respect; (...)

9190/03, judgment of 4 October 2005, final on 4 January 2006

Becciev against Moldova

Poor conditions of detention on remand between 2003 and 2005 amounting to degrading treatment (substantive violations of Article 3); insufficient grounds for the detention (violation of Article 5§3); failure to ensure a prompt examination of the lawfulness of the detention (violation of Article 5§4); domestic court's refusal to hear a witness for the defence (violation of Article 5§4).

12066/02, judgment of 19 June 2007, final on 19 September 2007
1020th – next examination 1028th (individual measures in Ciorap case) and 1035th (general measures)

Ciorap against Moldova and 3 other cases

Degrading treatment on account of the poor detention conditions and force-feeding of the applicant in detention, amounting to torture (violations of Art. 3); refusal by the Supreme Court to examine the applicant's complaint regarding the force-feeding, on the ground that he had not paid court fees, in breach of his right to access to court (violation of Art. 6§1); interference with the applicant's right to respect correspondence and to meet visitors in condition of privacy in detention (violations of Art. 8).

The Deputies,

1. noted with interest the information provided by the authorities on the closure of the criminal proceedings in the case of Holomiov;

2. took note of the fact that the applicant in the case of Ciorap is still in detention in the prison No. 13 (former No. 3) of Chişinau and consequently invited the authorities to provide accurate information on his current conditions of detention, and in particular, to indicate how they differ from those incriminated by the Court in its judgment;

3. as regards the issue of detention conditions, encouraged the Moldovan authorities to continue their efforts fully to comply with the judgments of the European Court, particularly in the light of the relevant recommendations of the CPT; (...)

45701/99, judgment of 13 December 2001, final on 27 March – Interim Resolution ResDH(2006)12
952/03, judgment of 27 February 2007, final on 29 May 2007
1028th – next examination 1035th

Metropolitan Church of Bessarabia and others against Moldova
Biserica Adevărat Ortodoxă din Moldova and others against Moldova

Failure of the government to recognise the applicant Church and absence of effective domestic remedy in this respect (violation of Articles 9 and 13).

The Deputies,

1. took note of the additional information provided by the Moldovan authorities on the outstanding questions regarding general measures, including the first concrete example of registration of a religious denomination according to the new system;

2. noted however the need to clarify a number of aspects, in particular related to the rights of religious groups or denominations which do not fulfil the requirements set by the new law to obtain their registration;

3. recalled, as regards the various complaints raised by the applicants, that some explanations had been provided by the Moldovan authorities, but certain questions would need

further clarification, in particular concerning the domestic remedies available to the applicants;	4. encouraged the initiative rapidly to organise meetings between the Secretariat and the Moldovan authorities with a view to clarifying the outstanding issues in time for the Deputies' next Human Rights meeting; (…)	
Broniowski against Poland *Lack of an effective mechanism to implement the applicant's right to compensation for property abandoned as a result of boundary changes in the aftermath of the Second World War (violation of Article 1, Prot. No. 1). The parties reached a friendly settlement whereby the payment of a lump sum would constitute the final settlement of the case.* The Deputies, 1. took note with satisfaction of the information provided by the Polish authorities regarding the full implementation of the new compensation mechanism for claimants concerned by property abandoned in the territories beyond the Bug River;	2. took note, in this context, of the finding of the Court in two decisions of 4 December 2007 concerning similar cases, according to which: – the maximal level of compensation provided for by the new law of 2005 is in conformity with the requirements of the Convention; – the procedures for compensation made available to the claimants in question under this law, function efficiently at present; 3. noted furthermore that on the basis of this finding the Court has begun the process of striking out the clone cases on its list, has already struck out 42 such cases and nothing put into question the continuation of this process; (…)	**31443/96, judgment of 22 June 2004 – Grand Chamber and of 28 September 2005 – Friendly Settlement (article 41) Interim Resolution ResDH(2005)58 1020th – next examination 1028th (draft final resolution)**
Podbielski against Poland and 165 other cases **Kudła against Poland and 25 other cases** *Excessive length of proceedings before civil and labour courts (violation of Article 6§1 – Podbielski group) and criminal proceedings (Kudla group); lack of effective remedy (violation of Article 13).* The Deputies, 1. noted with satisfaction the high-level meetings that the Secretariat has had recently with the Polish authorities in Warsaw and the	general measures envisaged and/or taken following the adoption of Interim Resolution CM/ResDH(2007)28 of 4 April 2007; 2. invited the Polish authorities to adopt the reforms announced to reduce the backlog of cases and accelerate judicial proceedings; 3. noted with interest the draft amendment to the Act of 17 June 2004 introducing a remedy against excessive length of criminal proceedings at pre-trial stage and invited the authorities to adopt it without delay; (…)	**30210/96, judgment of 26 October 2000 – Grand Chamber – CM/Inf/DH(2004)31 Interim Resolution ResDH(2007)28 1020th – next examination 1028th (control of payment) and 1035th (individual and general measures)**
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 Article 8).* The Deputies, 1. took note of the positive developments since the beginning of 2007, which have continued in 2008 with regard to the meetings held between the parents and their agreement to organise a meeting between the father and his child in a neutral place and in the presence of social counsellors;	2. invited the authorities of the respondent state to continue their efforts with a view to bringing the parties to reach an agreement, if appropriate, regarding the applicant's visiting rights, as required by the judgment of the European Court, and to provide the Committee with information in this respect; 3. took note of the intention of the competent authorities to develop out-of-court means to solve conflict situations concerning parental authority; 4. invited the authorities to submit information on the adequacy and effectiveness of the available means, legal and other, relevant to parental authority issues; (…)	**73229/01, judgment of 22 November 2005, final on 22 February 2006 1028th – next examination 1035th (individual measures) and 1043rd (general measures)**
Rotaru against Romania *Lack of sufficient legal safeguards concerning the storage and use, by the intelligence service, of personal data (violation of Article 8); lack of an effective remedy in this respect (violation of Article 13); failure of a court to rule on one of the applicant's complaints (violation of Article 6§1).*	The Deputies, 1. underlined that the judgment of the European Court in this case became final more than eight years ago; 2. recalled that the Committee of Ministers, while noting that a wide-ranging legislative reform related to the national security and the activities of the Romanian intelligence service	**28341/95, judgment of 4 May 2000 – Grand Chamber, Interim Resolution ResDH(2005)57 1028th – next examination 1035th (general measures)**

is under way, had already several times underlined the necessity to adopt rapidly the measures required by this judgment (see in particular Interim Resolution ResDH(2005)57);

3. also recalled that the Romanian authorities had been invited to submit a more specific and concrete analysis of the provisions contained in the different draft laws, which may in their view respond to the criticism made by the Court concerning the system of gathering and storing of information by the secret service;

4. noted with interest the information submitted by the Romanian authorities at the meeting, relating both to the content of the current reform and to the additional measures intended to overcome the uncertainty surrounding the timetable for its adoption and to ensure, in the meantime, that no similar violation can occur;

5. considered that this information still requires deeper assessment and encouraged the Romanian authorities in the meantime to continue their efforts in this direction; noted with interest, in this context, the bilateral consultations between the Romanian authorities and the Secretariat, which took place in Bucharest (March 2008) and in Strasbourg (May 2008); (...)

57001/00, judgment of 21 July 2005, final on 30 November 2005
1020th – next examination 1028th (control of payment) and 1035th (individual and general measures)

Străin and others against Romania and 37 other cases

Failure to restore nationalised buildings to their owners or to compensate them, following the sale of the buildings by the state to third persons (violation of Article 1, Prot. No. 1).

The Deputies,

1. recalled that the questions raised in these cases concern an important systemic problem, related among other things to the failure to restore or compensate nationalised property sold by the state to third parties, which it is important to remedy as soon as possible to avoid a large number of new, similar violations;

2. noted that the information provided very recently by the Romanian authorities concerning the compensation mechanism set up in this respect and the measures taken to improve the functioning of the compensation fund *Proprietatea* still needs to be evaluated;

3. underlined that information has still to be provided on the issue of compensation for prejudice resulting from the prolonged absence of compensation of persons deprived of their property despite final judgments ordering its return, which is not covered by the current mechanism;

4. considered that additional information is required and noted with interest in this context that bilateral consultations between the Romanian authorities and the Secretariat, in particular concerning the outstanding issues in these cases, will take place in March 2008, in Bucharest; (...)

55723/00, judgment of 9 June 2005, final on 30 November 2005
53157/99+, judgment of 26 October 2006, final on 26 March 2007
CM/Inf/DH(2007)7
1028th – next examination 1035th (control of payment and memorandum)

Fadeyeva against Russian Federation
Ledyayeva, Dobrokhotova, Zolotareva and Romashina against Russian Federation

Non-respect of the positive obligation to protect the private life and home of the applicant living in a sanitary zone around a plant polluting the environment above maximum level allowed by domestic law (violation of Article 8).

The Deputies,

1. took note of the information provided during the meeting by the Russian authorities on the general legal and regulatory framework of the protection from industrial pollution, as well as on the environmental situation around the Severstal steel plant;

2. considered that this detailed information is yet to be assessed;

3. encouraged the Russian authorities to speed up the adoption of the Environmental Code and invited them to provide the Secretariat with the draft;

4. invited the Russian authorities to envisage holding consultations, possibly in Cherepovets, with the participation of competent authorities, experts and the Secretariat, on the issue of general measures adopted or yet to be taken to comply with the Court's judgments; (...)

57942/00+, judgment of 24 February 2005, final on 6 July 2005, rectified on 1 September 2005
CM/Inf/DH(2006)32 revision 2
1020th – next examination 1035th (in the light of further information on the progress of the internal investigations and on the basis of an updated Memorandum)

Khashiyev and Akayeva against Russian Federation and 8 other cases

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2001: state responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the applicants' relatives due to the attitude of the investigating authorities (violation of Articles 2, 3, 5, 8, 13 and of Article 1 Prot. 1).

The Deputies,

1. took note of the information provided by the Russian authorities with regard to the domestic investigations required by the judgments of the European Court and of the fact that these investigations come now within the jurisdiction of the Investigating Committee recently established with the *Prokuratura* of the Russian Federation;

2. recalled in this respect that to comply with the requirements of the Convention, such investigations should be effective and should be conducted with reasonable speed and adequate public scrutiny;
3. encouraged the Russian authorities to organise bilateral consultations between the Secretariat and the competent Russian authorities with view to ensuring that these investigations fully comply with the above requirements;

4. recalled that the Russian authorities had previously provided extensive information on general measures taken or envisaged to prevent new, similar violations, in particular with regard to the issues raised in Memorandum CM/Inf/DH(2006)32 revised 2; (...)

Popov against Russian Federation

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 Article 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 Article 34).

The Deputies,
1. recalled that, following the European Court's judgment, the proceedings at issue had been reopened by the decision of the Supreme Court of 29 September 2007 and that the case had been transferred to the district court of Preobragenskiy in Moscow;

2. took note of the fact that, on 27 December 2007, this court, as a result of the new trial, had found the applicant guilty while considerably reducing the sentence previously imposed on him, and that accordingly the applicant was released on 11 January 2008;

3. decided to continue, within the framework of general measures, the examination of issues related to access to medical care in detention and, in this purpose, to join this case to the Kalashnikov group of cases, in which similar problems are raised;

4. recalled in this respect that the Russian authorities have already provided information on general measures being assessed by the Secretariat and took note of further information provided by the Russian authorities at the meeting; (...)

26853/04, judgment of 13 July 2006, final on 11 December 2006
1020th – next examination 1035th (general measures)

Timofeyev against Russian Federation and 97 other cases

Violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Article 6§1 and of Article 1, Prot. No. 1).

The Deputies, referring to the previous decisions adopted in this group of cases,

1. welcomed the realisation by the Russian authorities, at high level, that these structural problems at the origin of the violations found by the Court demanded rapid solutions and welcomed in this respect the significant efforts made by the competent authorities of the Russian Federation;
2. took note with interest of the recent comprehensive information provided on the general measures envisaged or under adoption with a view to resolving the complex structural problems underlying the violations found by the Court; (...)

58263/00, judgment of 23 October 2003, final on 23 January 2004
CM/Inf/DH(2006)19 revised 2 and CM/Inf/DH(2006)45, CM/Inf/DH(2006)19 revised 3
1020th – next examination 1028th (possible examination of draft interim resolution)

V.A.M. against Serbia

Excessive length of divorce and custody proceedings started in 1999 and still pending and lack of an effective remedy (violations of Article 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 Article 8).

The Deputies,

1. noted that the applicant's access rights granted by the 1999 interim order had now been confirmed by a judgment given in December 2007 and final as of May 2008;

2. noted that the applicant had started proceedings for enforcement of her access rights in accordance with this final judgment;
3. urged the Serbian authorities to ensure that all necessary measures are taken to enable that the enforcement procedure is carried out expeditiously;
4. took note of the remedy introduced for excessive length of proceedings in the Constitutional Court Act, which provides that the Constitutional Court is empowered to assess whether or not the right to a trial within reasonable time has been violated;
5. invited the Serbian authorities to provide information on the effectiveness of this remedy;

39177/05, judgment of 13 March 2007, final on 13 June 2007
1028th – next examination 1035th (individual measures) and 1043rd (general measures)

6. took note of the information provided concerning the measures taken to eliminate excessive length of proceedings;

7. noted that information is awaited on further developments with regard to the measures envisaged to eliminate the excessive length of proceedings as well as to ensure effective enforcement of court decisions; (...)

25781/94, judgment of 10 May 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, CM/Inf/DH(2008)6/5
Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25
1028th – next examination 1035th (issues of missing persons, property rights and displaced persons, property rights of the enclaved persons)

Cyprus against Turkey

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.

The Deputies,

On the issue of missing persons:

1. took note with interest of the information provided on the progress achieved by the CMP in the framework of the Exhumation and Identification Programme and invited the Turkish authorities to continue to keep the Committee informed of this subject;

2. underlined the importance of the preservation of data and material items obtained within the framework of this Programme;

3. recalled that in the Interim Resolution CM/ResDH(2007)25, adopted in April 2007, the Committee called upon Turkey to provide information on additional measures required to ensure the effective investigations called for by the Court's judgment;

4. noted with regret that, to date, no information has been provided in this respect and urged the Turkish authorities to respond to the Committee's demands;

On the issue of property rights of displaced persons:

6. noted with regret that no information has been provided on recent developments in the functioning of the "Immovable Property Commission" established in the northern part of Cyprus and trusted that the Turkish authorities will submit information on this subject in time for the next examination of this issue;

7. deplored that, despite the concerns expressed time and time again by the Committee in this context (see in particular Interim Resolution CM/ResDH(2007)25), no response has been provided either to the questions relevant to the execution of the judgment of the Court as they were specified and clarified in the information document CM/Inf/DH(2008)6/5; urged the Turkish authorities to respond on this issue without further delay; (...)

28490/95, judgment of 19 June 2003, final on 19 September 2003
Interim Resolution ResDH(2005)113 and CM/ResDH(2007)26 and CM/ResDH(2007)150
72000/01 Göçmen, judgment of 17 October 2006, final on 17 January 2007
46661/99 Söylemez, judgment of 21 September 2006, final on 21 December 2006
1028th – next examination 1035th

Hulki Güneş against Turkey and 2 other cases

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

The Deputies,

1. deeply deplored that the Turkish authorities have not responded to any of the interim resolutions adopted, in particular that of December 2007 (CM/ResDH(2007)150), calling upon them to redress the violations found in respect of the applicant and strongly urging them to remove the legal lacuna preventing the reopening of domestic proceedings in the case of Hulki Güneş;

2. stressed once again that the continuation of the present situation would amount to a manifest breach of Turkey's obligation under Article 46, paragraph 1, of the Convention;

3. reiterated their grave concern that the said legal lacuna also prevents the reopening of proceedings at issue in the cases of Göçmen and Söylemez;

4. strongly urged the Turkish authorities to respond to the Committee's demands; (...)

22678/93, judgment of 9 June 1998, final on 9 June 1998
Interim Resolution ResDH(2001)106 and ResDH(2004)38; CM/Inf/DH(2003)43
1028th – next examination 1035th (control of payment) and 1043rd (individual and general measures)

Inçal against Turkey and 82 other cases (73 finding of violations and 9 Friendly Settlements with engagements from Turkish government)

Unjustified interferences with the applicants' freedom of expression (conviction for publication of articles and books or the preparation of messages addressed to a public audience); lack of independence and impartiality of state security courts (violations of Articles 10 and 6).

The Deputies,

1. welcomed the Circular of the Ministry of Justice issued in May 2008, addressed to judges and prosecutors highlighting the relevance of the case-law of the European Court and Article 90 of the Turkish Constitution providing supremacy of the European Convention on Human Rights over the domestic law;

2. noted the information provided by the Turkish authorities concerning a number of domestic court decisions of acquittal given with a mere reference to Article 10 of the European Convention;

3. reiterated in this respect that the examples provided do not allow the conclusion that the criteria used by the European Court, such as "incitement to violence" or "public interest", are consistently applied by the Turkish judges and prosecutors, in particular in the decisions of high courts;

4. invited the Turkish authorities to provide further information on the evolution of domestic case-law, in particular that of high courts, in line with the Convention's requirements as set out in the Court's judgments;

5. further invited the Turkish authorities to continue their efforts to ensure that all consequences of the violations for the applicants are erased; (...)

Loizidou against Turkey

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

The Deputies,

1. noted with interest the applicant's latest comments on the offer she received from the Turkish authorities concerning her property situated in the northern part of Cyprus;

2. found that this offer still raises questions which need to be clarified, as regards *inter alia* the reasons against restitution of the property at issue; (...)

15318/89, judgment of 18 December 1996 (merits)
Interim Resolutions DH(99)680, DH(2000)105, ResDH(2001)80
1028th – next examination 1035th

Taşkın and others against Turkey and 3 other cases

In cases Taşkın and others, Öçkan and others, and Lemke: 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 case Okyay 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).

The Deputies, considering the information submitted at the meeting by the Turkish authorities,

1. invited the authorities, in the cases of *Taşkın and others*, *Öçkan and others,* and *Lemke*, to take all necessary individual measures, taking into account:

– the outcome of the proceedings engaged for the annulment of the new operation permit of the gold mine, and stressing in this context the importance of bringing these pending proceedings to a rapid conclusion,

– the consequences flowing from the annulment of the urban plan for the area when the gold mine is located;

2. noted with satisfaction the information submitted in the case of *Ahmet Okyay and others* that all remaining filter mechanisms are now installed and function properly;

3. as far as general measures are concerned, noted the information provided by the Turkish authorities regarding the new provision of the Environmental Law which ensures the involvement of persons, such as inhabitants of relevant areas, civil society institutions etc, in the decision-making process on the environmental issues and the recently introduced criminal liability for discharge of hazardous substances, but also noted that the Turkish authorities will consider in co-operation with the Secretariat the necessity of further general measures; (...)

46117/99 Taşkın and others, judgment of 10 November 2004, final on 30 March 2005, rectified le 1 February 2005
46771/99 Öçkan and others, judgment of 28 March 2006, final on 13 September 2006
36220/97 Okyay Ahmet and others, judgment of 12 July 2005, final on 12 October 2005 – Interim Resolution CM/ResDH(2007)4
17381/02 Lemke, judgment of 5 June 2007, final on 5 September 2007
1020th – next examination 1028th (individual and general measures)

Ülke against Turkey

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 Article 3).

The Deputies,

1. recalled Interim Resolution CM/ResDH(2007)109 adopted in October 2007, in which the Committee urged the Turkish authorities "to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention";

2. reiterated their grave concern that, since the adoption of the interim resolution, the applicant's situation is unchanged and that he is still facing the risk of imprisonment on the basis of a previous conviction;

39437/98, judgment of 24 January 2006, final on 24 April 2006
Interim Resolution CM/ResDH(2007)109
1028th – next examination 1035th (individual and general measures)

3. called upon the Turkish authorities to take without further delay the necessary measures identified in the Interim Resolution; (...)

46347/99, judgment of 22 December 2005, final on 22 March 2006 and of 7 December 2006, final on 23 May 2007; CM/Inf/DH(2007)19
1028th – next examination 1035th

Xenides-Arestis against Turkey

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

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. noted in this respect the clarifications supplied by the judgment of Demades v. Turkey of 22 April 2008 whilst emphasising that this judgment is not yet final;

3. reaffirmed that in any event the amounts awarded by the Court have been due since 23 August 2007 and called upon Turkey to pay these amounts without further delay; (...)

Decision adopted at the 1028th meeting
48553/99, judgment of 25 July 2002, final on 6 November 2002 and judgment of 2 October 2003, final on 24 March 2004 (article 41), Interim Resolution ResDH(2004)14
1028th – next examination 1035th (control of payment) and 1043rd meeting (general measures)

Sovtransavto Holding against Ukraine and other cases

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

The Deputies,

1. recalled Interim Resolution ResDH(2004)14 in which the Committee of Ministers welcomed the abolishment of the supervisory review procedure in Ukraine;

2. noted in this respect that the European Court has found the new appeal procedure to be in compliance with the Convention, in particular as it did not, unlike the supervisory review procedure, undermine the principle of legal certainty;

3. decided consequently to close the examination of this aspect;

4. noted however with concern that no progress had been achieved with regard to the reform of the judicial system aimed at enhancing its independence and impartiality since the adoption in April 2007 at their first reading of the draft amendments to the Law "On the Judicial System of Ukraine" and to the Law "On the Status of Judges";

5. consequently, urged the competent Ukrainian authorities to adopt these draft amendments as a matter of priority; (...)

28883/95, judgment of 4 May 2001, final on 4 August 2001
Interim Resolutions ResDH(2005)20 and CM/ResDH(2007)73
CM/Inf/DH(2006)4 revised 2, CM/Inf/DH(2006)4 Addendum revised 3 and CM/Inf/DH(2008)2
1020th – next examination 1028th (individual and general measures)

McKerr against the United-Kingdom and 5 other cases

Action of security forces in Northern Ireland in the 1980's and 1990's: 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 Article 2).

The Deputies,

1. took note of the information provided by the United Kingdom authorities, in particular on the report of the Police Ombudsman and the relevant recommendations contained therein, as well as the work carried out so far by the Historical Enquiries Team (HET);

2. invited the United Kingdom authorities to inform the Committee of Ministers of their response to the report of the Police Ombudsman and the concrete results obtained by the HET and by the Police Ombudsman as regards the progress made in the investigation of historical cases;

3. decided, in the light of the progress achieved, to close the examination of the issues related to the fact that the inquest proceedings did not commence promptly and were not pursued with reasonable expedition;

4. recalled Interim Resolution CM/ResDH(2007)73 in which the Committee urged the United Kingdom authorities to take without further delay all necessary investigative steps in these cases in order to achieve concrete and visible progress;

5. decided to declassify the memorandum CM/Inf/DH(2008)2; (...)

Interim resolutions (extracts)

During the period concerned, the Committee of Ministers encouraged by different means the adoption of many reforms and also adopted two interim resolutions. This kind of resolutions may notably provide information on adopted interim measures and planned further reforms, it may encourage the authorities of the state concerned to make further progress in the adoption of relevant execution measures, or provide indications on the measures to be

taken. Interim Resolutions may also express the Committee of Ministers' concern as to adequacy of measures undertaken or failure to provide relevant information on measures undertaken, they may urge states to comply with their obligation to respect the Convention and to abide by the judgments of the Court or even conclude that the respondent state has not complied with the Court's judgment.

An extract from these Interim Resolutions adopted is presented below. The full text of the resolutions is available on the website of the Department for the Execution of Judgments of the European Court of human Rights, the Committee of Ministers' website and the HUDOC database of the European Court of Human Rights.

Interim Resolution CM/ResDH(2008)1 – Execution of the judgments of the European Court of Human Rights in 232 cases against Ukraine relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy

Adopted at the 1020th meeting
56848/00, Zhovner against Ukraine, judgment of 29 June 2004, final on 29 September 2004

Failure or serious delay by the Administration or state companies (including in case of bankruptcy and liquidation) in abiding by final domestic judgments mainly ordering payments; absence of effective remedies to secure compliance; violation of applicants' right to protection of their property (violations of Articles 6§1, 13 and 1, Prot. No. 1).

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

STRONGLY URGES all Ukrainian authorities concerned to comply without further delay with their obligation under the Convention to enforce those domestic judgments where this has not been done;

EXPRESSES PARTICULAR CONCERN that notwithstanding a number of legislative and other important initiatives, which have been repeatedly brought to the attention of the Committee of Ministers, little progress has been made so far in resolving the structural problem of non-execution of domestic judicial decisions;

STRONGLY ENCOURAGES the Ukrainian authorities to enhance their political commitment in order to achieve tangible results and to make it a high political priority to abide by their obligations under the Convention and by the Court's judgments, to ensure full and timely execution of the domestic courts' decision;

CALLS UPON the Ukrainian authorities to set up an effective national policy, co-ordinated at the highest governmental level, with a view to effectively implementing the package of measures announced and other measures which may be necessary to tackle the problem at issue;

URGES the Ukrainian authorities to adopt as a matter of priority the draft laws that were announced before the Committee of Ministers, in particular the law *On Amendments to Certain Legal Acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time)*;

ENCOURAGES the authorities, pending the adoption of the draft laws announced, to consider the adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- to consider the adoption of measures similar to those taken in the education sector in other sectors which raise similar problems;
- to take measures to ensure effective management and control over state entities and enterprises to avoid debts arising to employees;
- to ensure in practice the effective liability of civil servants for non-enforcement;
- to award compensation for delays in enforcement of domestic judicial decisions directly on the basis of the Convention's provisions and the Court's case-law as provided by the Law on enforcement of judgments and the application of the case-law of the European Court;

INVITES the Ukrainian authorities to consider, in addition to the measures announced, appropriate solutions in the following areas:

- to improve budgetary planning, particularly by ensuring compatibility between the budgetary laws and the state's payment obligations;
- to ensure the existence of specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations; and
- to ensure the existence of an effective procedure and funds for the execution of domestic courts' judgments delivered against the state;

INVITES the competent Ukrainian authorities to ensure wide dissemination of this Interim Resolution to the government, the parliament and the judiciary;

DECIDES to resume consideration of the present issues in the context of the Court's judgments concerned at the latest at the 1035th meeting (16-18 September 2008) (DH).

Adopted at the 1028th meeting
34056/02, Gongadze against Ukraine, judgment of 8 November 2005, final on 8 February 2006)

Interim Resolution CM/ResDH(2008)35 on the execution of the judgment of the European Court of Human Rights in the case of Gongadze against Ukraine

Prosecutor's failure, in 2000, to honour 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 Articles 2, 3 and 13).

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

URGES the authorities of the respondent state to take with reasonable expedition all necessary investigative steps to achieve concrete and visible progress in identifying instigators and organisers of the murder of the applicant's husband and bringing them to justice;

INVITES the respondent state to keep the Committee regularly informed of the measures taken and the result achieved, in particular as regards verification of the relevant tape recordings;

General measures

Stressing the importance of securing independent investigations in all cases in which Article 2 of the Convention might be at issue;

Noting in this respect the information provided by the Ukrainian authorities on the measures taken with a view to better guaranteeing the independence and effectiveness of investigations in Ukraine, in particular on reform of the prosecution system which is to be carried out,

ENGOURAGES the Ukrainian authorities to intensify their efforts to strengthen the independence of investigative bodies, in particular, the prosecution service, thus contributing to better guaranteeing the effectiveness of investigations in Ukraine;

INVITES the Ukrainian authorities to keep the Committee informed about the measures taken or envisaged in this respect;

DECIDES to resume consideration of this case, as regards outstanding individual measures, at each of its Human Rights meetings and as regards general measures at intervals not longer than six months.

Selection of Final Resolutions (extracts)

Once the CM has ascertained that the necessary measures have been taken by the respondent state, it closes the case by a Resolution in which it takes note of the overall measures taken to comply with the judgment. During the 1020th and 1028th meetings, the CM adopted 33 and 33 final resolutions, (closing the examination of 122 and 59 cases), among which 55 took note of the adoption of new general measures. Some examples of extracts or summaries from the Resolutions adopted follow, in their chronological order (see for their full text the website of the Department for the Execution of judgments of the ECtHR, the website of the CM or the HUDOC database).

Final Resolutions adopted at 1020th meeting

6562/03, Judgment of 11 January 2007, final on 11 April 2007

CM/ResDH(2008)2 – Mkrtchyan against Armenia

Breach of the applicant's freedom of association and assembly on account of the fact that the relevant law was not formulated precisely enough to enable the applicant to foresee that he would be sentenced to a fine for having participated in a demonstration in 2002 (violation of Article 11).

General measures

After the facts at the origin of this case on 28 April 2004, the Armenian Parliament adopted a law regulating the procedure for holding assemblies, rallies, street processions and demonstrations.

The judgment of the European Court was translated into Armenian and published in the *Official Gazette of the Republic of Armenia* (No. 46(570)), as well as on the official website of the Ministry of Justice of the Republic of Armenia (www.moj.am), and mentioned on the website of the news agency of the Republic of Armenia (www.panorama.am).

CM/ResDH(2008)3 – Association Ekin against France

39288/98, Judgment of 17 July 2001, final on 17 October 2001

Infringement of the freedom of expression of the applicant (a Basque association) on account of a ban on one of its books in 1988 on the basis of a provision which empowered the Minister of the Interior to ban the publication of foreign publications (violation of Article 10). Excessive length of certain proceedings before administrative courts (violation of Article 6§1)

Individual measures

By a judgment of 9 July 1997 the Conseil d'Etat quashed the Minister of the Interior's Decree of 29 April 1988 banning the circulation, distribution and sale of the book published by the applicant.

General measures

Violation of Article 10 of the Convention:

The judgment of the European Court was published in several Administrative Law Reviews (...).

In a judgment of 7 February 2003, the *Conseil d'Etat* held that the provisions of Decree of 6 May 1939 which allow for a general and absolute ban of circulation and distribution of a foreign publication without stating the reasons why such an ban could be pronounced, were contrary to Article 10 of the Convention; the *Conseil d'Etat* enjoined the Prime Minister to repealed the Decree of 6 May 1939 (C.E. 7 February 2003 GISTI app. No. 243634).

The Decree of 6 May 1939 was finally repealed by Decree No. 2004-1044 of 04 October 2004 (...).

Violation of Article 6§1 of the Convention:

The issue of length of proceedings before administrative courts was examined separately in the framework, in particular, of the case of *SAPL* (judgment of 18 December 2001, final on 18 March 2002) which led to the adoption of Resolution ResDH(2005)63 (...).

CM/ResDH(2008)5 – Bayle and Carabasse against France

45840/99, judgment of 25 September 2003, final on 25 December 2003
59765/00, judgment of 18 January 2005, final on 18 April 2005

Lack of access to a court in 1998and 1999 on account of the striking of the applicants' appeal on points of law from the roll of the Court of Cassation for not complying with the pecuniary order made by the Court of Appeal, without examining the applicants' situation effectively or completely (violation of Article 6§1).

Individual measures

- **Bayle** case

Following the European Court's judgment, the applicant applied to the First President of the *Cour de Cassation* in order to reinstate the appeal on the roll. This has been accepted. Hence, it has been possible to begin the proceedings anew, before the 1st Civil Chamber of the *Cour de Cassation*.

- **Carabasse** case

The applicant died in 2003 and his widow and two daughters applied to resume the proceedings before the *Cour de Cassation* as his heirs. However, because the applicant had been inactive for two years, the other party to the proceedings asked the First President to declare that these proceedings had lapsed. No appeal is possible in this respect (§33 of the judgment). This is why the applicant's heirs were obliged to pay the damages owing under the terms of the pecuniary sentence given at appeal (nearly 200 000 euros) by the judgment which could not be contested because of the violation of the Convention.

It is not possible, under French law, to have this case re-examined or reopened, following the judgment of the European Court.

Nevertheless, two elements lead to the conclusion that no individual measure is necessary. First, the proceedings at issue resulted in establishing certain rights to the benefit of a third party of good faith (a person to whom Mr Carabasse had been ordered to pay damages), who deserves protection according to the principle of legal certainty. Secondly, the applicant heirs made no request at the stage of the execution of the European Court's judgment.

General measures

In these cases, the European Court did not call Article 1009-1 of the New Code of Civil Procedure into question, but rather its implementation by the judge.

These cases present similarities to that of *Annoni di Gussola and others v. France* (judgment of 14 November 2000), in which the Court had already found a similar violation. In this case, general measures had been taken as from January 2001, in particular the publication of the judgment with a view to facilitating its direct application in national case-law[3].

However, similar violations occurred after the adoption of these measures, including in the *Bayle* case, as well as in more recent judgments, in particular *Cour v. France* (judgment of 3 October 2006 – application for restoration of the appeals to the roll denied in February 2002)

3. Final Resolution CM/ResDH(2007)37 adopted on 20 April 2007 by the Committee of Ministers, in view of its decision taken at its 760th meeting (23 July 2001).

and *Ong v. France* (judgment of 14 November 2006 – application for restoration of the appeals to the roll denied in June 2002), the following complementary measures were adopted:

- The particular attention of the First President of the *Cour de Cassation*, who is the authority competent to strike out a case from the roll, has been drawn to this judgment through a note disseminating the judgments delivered by the European Court, sent by the Ministry of Justice. He is in a position to apply the relevant national provisions in the light of the requirements of the Convention.
- Furthermore, in view of the fact that the decision to strike out a case from the roll is always delivered following advice of the Prosecutor General, the Carabasse judgment was transmitted to the Prosecutor General of the *Cour de Cassation* (as well as to the Prosecutors General of the Bourges and Orleans Courts of Appeal), so that they can deliver their advice on the issue taking due account of the requirements of the Convention. (...)

51279/99, judgment of 25 June 2002, final on 25 September 2002

CM/ResDH(2008)8 – Colombani and others against France

Infringement of the freedom of expression of the applicants (the daily newspaper Le Monde, its director and a journalist) on account of their conviction, in 1998, for insulting a foreign Head of State in application of the Law on the Freedom of the Press, which did not allow for "exceptio veritatis" defence (violation of Art. 10).

Individual measures

The sum awarded to the applicants by the Court for pecuniary damage covers the fines imposed on the applicants, the compensation awarded to the King of Morocco and the costs of reporting the decision of the domestic courts in the newspaper *Le Monde*.

Having regard to the criminal nature of the conviction, the applicants had the possibility of requesting the reopening of the proceedings before domestic courts, in application of Article 626-1 of the Code of Criminal Procedure.

General measures

In a first instance, the judgment of the European Court was published and/or commented in several French Law reviews (...).

Subsequently, Law No. 2004-204 of 9 March 2004 adapting the criminal justice system to changes in criminality repealed Article 36 of the Law 29 July 1881 on the Freedom of the Press.

34000/96, judgment of 3 October 2000, final on 3 January 2001

CM/ResDH(2008)9 – Du Roy et Malaurie against France

Infringement of the freedom of expression of journalists, because of their conviction in 1996 on the basis of Article 2 of the Law of 2 July 1931 for "publishing information regarding civil action in criminal proceedings" (violation of Article 10).

Individual measures (...)

General measures

The judgment of the European Court of Human Rights was published (...).

In two successive judgments, the criminal chamber of the *Cour de Cassation* held that Article 2 of the Law of 2 July 1931 "because it takes the form of general and absolute prohibition, creates an interference in freedom of expression which is not necessary to protect the legitimate interests enumerated at Article 10.2 of the Convention on Human Rights and Fundamental Freedoms; that being incompatible with these provisions, they cannot serve as a ground for a criminal conviction" (*Cour de Cassation*, judgments of 16 January 2001 and 27 March 2001).

Article 2 of the Law of 2 July 1931 no longer applies in French Law.

48215/99, judgment of 26 March 2002, final on 26 June 2002

CM/ResDH(2008)10 – Lutz against France

Excessive length of certain civil proceedings before administrative courts (violation Article 6§1) as well as absence of an effective remedy in practice or in law to complain of a breach of the right to be heard within a reasonable time (violation of Article 13).

Individual measures

(...) Acceleration of the domestic proceedings has been requested when the case was examined by the Committee of Ministers.

General measures

Effective national remedy in practice or in law to complain of a breach of the right to be heard within a reasonable time,

In its judgment of 26 March 2002, the European Court of Human Rights found that when Mr Lutz lodged his application before it, neither of the judgments delivered by the Paris administrative Court (Magiera, 24 June 1999, Levy, 30 September 1999) establishing administrative courts' responsibility for the length of certain proceedings could be considered as

constituting an effective remedy, in practice or in law, within the meaning of Article 13 of the Convention.

However, after the facts of the present case, by judgment of 11 July 2001, the Administrative Court of Appeal granted compensation in respect of damage suffered on account of a violation of the requirements of Article 6§1, of the Convention (Paris administrative Court of appeal, Magiera). The *Conseil d'Etat* (*assemblée du contentieux*) dismissed an appeal on a point of law lodged by the Minister of Justice on the grounds of Article 6§1, and Article 13 of the Convention and the general principles governing administrative responsibility, and confirmed that administrative courts could be held responsible for excessive length of certain proceedings (C.E. Ass. 28 June 2002, *Minister of Justice v. Magiera*).

In its judgment of *Broca and Texier-Micault* (21 October 2003, final on 23 January 2004), the European Court noted that the judgment of 28 June 2002 delivered by the *Conseil d'Etat* had been published in numerous publications (...).

The European Court found accordingly that the *Magiera* judgment had acquired sufficient legal certainty and could not be ignored by the public as from 1 January 2003 and therefore as from this date it should be exhausted by applicants for the purpose of Article 35§1, of the Convention.

The Administrative Code of Justice was modified by decree of 28 July 2005 No. 2005-911 ; Article R 311-17 now provides that "the *Conseil d'Etat* has jurisdiction in first and final instance (...) for actions against the state for excessive length of proceedings before Administrative courts".

Thus an effective remedy exists in French law, in practice as in law, to complain about excessive length of certain proceedings before administrative courts.

Length of proceedings before administrative courts

A first series of measures was adopted in 1995 to reduce the length of proceedings before administrative courts in general and the *Conseil d'Etat* in particular: see Final Resolution DH(95)254 in the *Beaumartin* case.

Further measures have subsequently been adopted: see Resolution ResDH(2005)63 (...).

CM/ResDH(2008)12 – Raffi against France and 30 other cases

11760/02, judgment of 28 March 2006, final on 13 September 2006

Excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before administrative courts and lack of an effective remedy (violations of Articles 6, paragraph 1, and 13).

Individual measures (...)

These proceedings have now been ended: (...)

General measures

1) Excessive length of proceedings (violations of Article 6, paragraph 1)

First, these cases present similarities with another group of cases, the examination of which was closed by Resolution ResDH(2005)63 (...). Several general measures adopted by the French authorities are presented in detail in this Resolution, in particular the adoption of Law No. 2002-1138 of 9 September 2002 (recruitment of staff, creation of new courts and budgetary resources) and of procedural measures to enable administrative courts both to reduce their backlogs more quickly and reduce the flow of incoming cases.

Second, following, complementary, measures have been adopted more recently.

Article R 112-2 of the Code of Administrative Justice, as worded following a Decree of 9 December 2005, provides that any party considering that proceedings before an administrative tribunal or court of appeal are excessively lengthy may seize the Head of the Standing Inspectorate of Administrative Courts (*mission permanente d'inspection des juridictions administratives*), who may make recommendations to redress the situation.

The Head of the Standing Inspectorate also receives copies of all administrative or judicial decisions allocating compensation for damages caused by the excessive length of proceedings before administrative courts. If he considers it appropriate, he may bring any shortcoming in the provision of justice to the attention to the attention of court presidents.

As an example, in the *Lechelle* case, in view of the fact that the Court stressed that the authorities should have been particularly diligent, the Court's judgment was transmitted to the Head of the Standing Inspectorate to be disseminated to all authorities (in particular judicial) concerned.

Finally, concerning the particular diligence required by the Court for labour disputes among others, excerpts from the *Le Bechennec* judgment were published, together with a commentary, in a widely-read national legal journal. (...). The Administrative and Labour Courts, which are competent for labour disputes and grant direct effect to the Convention and the Court's case-law, have all the elements to take this requirement of particular diligence into account. Furthermore, the general public has also been informed of the requirements of the Convention.

2) Effective remedy (violations of Article 13)

Such an effective remedy now exists; it has been first recognised in case-law and then inserted in the law (see Final Resolution CM/ResDH(2008)10, adopted in the case of *Lutz v. France* (application No. 48215/99)).

29507/95, judgment of 25 January 2000

CM/ResDH(2008)13 – Slimane-Kaïd against France and 5 other cases

Unfair criminal proceedings before the Cour de Cassation due to failure to communicate to the parties part or all the report of the judge rapporteur (conseiller rapporteur) or of the conclusions of the advocate-general with the result that the parties could not reply to them (violation of Article 6§1); presence of the advocate-general at the deliberations of the criminal chamber of the Cour de Cassation (violation of Article 6§1) and excessive length of certain criminal proceedings (violation of Article 6§1).

Individual measures

Section 626-1 of the Code of Criminal Procedure 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 European Court of Human Rights that the sentence was passed in a manner violating the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms or of the protocols thereto, if the nature and the gravity of the violation found are such as to subject the sentenced person to prejudicial consequences that could not be remedied by the just satisfaction awarded on the basis of Article 41 of the Convention".

The applicants might have availed themselves of this possibility, if they so wished.

General measures

The *Cour de Cassation* has changed the way in which it investigates and determines matters submitted to it.

Advisory reports drafted by the judge rapporteur (*conseiller rapporteur)*, which set out the legal questions raised by cases, are communicated with the file to both the prosecution and the parties.

Opinions on decisions and draft judgments drawn up for consideration by the Bench are communicated neither to the Advocates General nor to the parties.

Advocates General no longer take part in preparatory conferences or in the deliberations of the Bench.

In addition, it may be recalled that parties' Counsel are informed before the hearing of the general tenor of the Advocate General's conclusions and may reply orally or by memorandum, and that this practice has been stated by the European Court of Human Rights, in its judgments in *Reinhardt and Slimane-Kaïd* (31 March 1998) and *Slimane-Kaïd* (25 January 2000) to be of a nature to provide the parties with the opportunity to be duly informed of these conclusions and to comment upon them under adequate conditions.

These measures have made it possible to end the disequilibrium found by the European Court in respect of the investigation and decision procedures followed before the *Cour de Cassation*.

35683/97, judgment of 30 January 2001, final on 5 September 2001 Interim Resolution (2005)1

CM/ResDH(2008)14 – Vaudelle against France

Unfair criminal proceedings leading to the conviction in 1995 of an individual under temporary guardianship (curatelle), in absentia and without his guardian having been informed of these prosecutions (violation of Article 6).

Individual measures

In the criminal proceedings at issue, the applicant was sentenced in 1995, first, to twelve months' imprisonment including a suspended sentence of eight months, and to eighteen months probation, and second, to the payment of damages.

The applicant served his prison sentence.

The applicant, who was represented by a lawyer for the proceedings before the European Court, requested no just satisfaction for the pecuniary damage sustained to get reimbursement of the damages he was ordered to pay following the unfair proceedings.

Furthermore, it was possible to request the re-examination of the criminal conviction at issue, following the judgment of the European Court (Article L626-1 ff of the Code of Criminal Procedure). According to Article L626-2, this possibility was open to "the convicted person, or in cases of incapacity, his legal representative". Recourse to this procedure was however not properly conducted in this case; the applicant's son requested the re-examination but he was no longer the applicants guardian.

No other request has been made.

General measures

1) Legislative measures

Law No. 2007-308, modifying the legal protection of adults, was passed on 5 March 2007 (...). It adds a new chapter to the Code of Criminal Procedure (Volume IV, Chapter XXVII), concerning the conduct of pre-trial investigations and the trial of adults who are subject to legal protection (wards). This section of the Code of Criminal Procedure is applicable to

anyone who is of age, concerning whom it is established during the proceedings that he/she is a ward as defined in Volume I, Chapter XI of the Civil Code and includes, among others, those in a situation similar to the applicant's. Such people benefit from the following provisions (...).

2) Transitional measures previously adopted

In anticipation of the adoption of this law, the *Vaudelle* judgment was published so that courts, through direct application of the Convention, are in a position to avoid new, similar violations. The judgment was published in several widely read law journals (...).

CM/ResDH(2008)15 – Shamsa against Poland

45355/99 and 45357/99, judgment of 27 November 2003, final on 27 February 2004

Lack of precision and predictability of the legal basis for keeping the applicants, Libyan nationals, in detention in the transit zone at Warsaw airport between 25 August 1997 and 03 October 1997, beyond the statutory time-limit (violation of Article 5§1).

Individual measures (...)

General measures

Since 1 September 2003, proceedings concerning the detention of aliens against whom a deportation order has been issued are governed by the new Law on Aliens enacted on 13 June 2003. This law provides among other things that the initial detention may not exceed 90 days. This period may be extended up to one year. Placement in detention and its extension must be based on a judicial decision, which is subject to appeal in accordance with the provisions of the Code of Criminal Procedure. The new law also provides for the award of compensation to foreigners who have been detained illegally.

The judgment of the European Court was published (...). Moreover, the presidents of courts of appeal and prosecutors at appeal courts sent it out to all judges of criminal courts and prosecutors under their administrative jurisdiction.

Finally, the judgment was also sent out to officials of the frontier police and questions relating to this judgment are raised during seminars organised for these officials in the framework of their vocational training.

CM/ResDH(2008)16 – Partidul Comuniștilor (Nepecerişti) and Ungureanu against Romania

46626/99, judgment of 3 February 2005, final on 6 July 2005

Refusal, in 1996, to register a political party on account of its political programme, in spite of the fact that it did not call for the use of violence, uprising or any other form of rejection of democratic principles (violation of Article 11).

Individual measures

Following the publication of the judgment of the European Court in the *Official Gazette* on 24 November 2005, the second applicant requested and obtained the revision of the 1996 court decision rejecting his application for the registration of the political group.

On 9 February 2006 the Bucharest Tribunal admitted the request for revision, ordered the applicant's registration as a political party and set a new a six-month time-limit for the applicant party to allow it to fulfil the conditions imposed by the new legislation for the registration of political parties, notwithstanding the fact that the possibility provided by the new legislation to allow such a time-limit had already expired. This decision became final on 28 June 2006.

As a result the government considers that the applicant party has been given a fair chance, similar to that given to all other parties, to meet the new, more strict registration requirements.

General measures

The law on political parties has changed since the facts of the case. The main problem resided, however, not in the requirements of the law itself but in the interpretation it was given. This analysis is not changed by the intervening legislative changes. In this respect, the Romanian authorities have confirmed the publication of the European Court's judgment in the *Official Gazette*, as well as its communication to the Superior Council of Magistracy, the Bucharest Court of Appeal and to the Bucharest Regional Court, which is the competent body to decide on the registration of political parties.

In view of the direct effect given to the Convention and to the judgments of the European Court, these measures appeared most appropriate in the circumstances. As evidenced by the revision of the decision at issue in this case, the practice concerning the registration of parties has also changed and appears today in line with the Convention's requirements.

CM/ResDH(2008)18 – Grinberg against Russian Federation, Zakharov against Russian Federation

23472/03 and 14881/03, judgments of 21 July 2005 and 5 October 2006, final on 21 October 2005 and 5 January 2007

Disproportionate interferences with the applicants' freedom of expression on account of them having been found guilty in defamation in 2002 and 2003, under civil law, following an article criticising a political candidate and a complaint about the irregularities in the conduct of the town

council head sent by way of private correspondence to the competent State official (violation of Article 10).

Individual measures (...)

General measures

On 24 February 2005 the Plenum of the Supreme Court of the Russian Federation issued a Decree No. 3 providing guidelines to lower courts on the application of Article 152 of the Civil Code regarding defamation in the light of Article 10 of the Convention.

The Supreme Court particularly insisted on the necessity for judges to distinguish between statements of fact susceptible of proof and value judgments, opinions or convictions which do not fall within the scope of the Article (point 9 of the aforementioned Decree). The Supreme Court also drew the lower courts' attention to the fact that political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate. It also concerns public officials who must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary to ensure transparency and the responsible exercise of their functions. In doing so, the Supreme Court referred to the Declaration on freedom of political debate in the media adopted by the Committee of Ministers of the Council of Europe on 12 February 2004 (*idem*).

The Supreme Court then held that if an individual refers to relevant authorities in order to inform them of a crime being committed or prepared or of other facts, which have not been confirmed at the end of an inquiry or a checking, this mere fact cannot in itself entail this person's liability pursuant to Article 152 of the Civil Code. This is due to the fact that, in this type of cases, the person concerned has exercised his or her constitutional right to refer to relevant authorities, which have the obligation to check factual allegations but not to spread false information that may affect the honour of or the respect for a person. The only case which may give rise to judicial proceedings is a recognised abuse of right (point 10 of the aforementioned Decree).

The *Grinberg* judgment was published (...).

60776/00, judgment of 7 October 2004, final on 7 January 2005

CM/ResDH(2008)19 – Poleshchuk against Russian Federation

Interference with the applicant's right of individual petition due to the refusal by penitentiary authorities to forward his letters to the ECtHR in 1999, which refusal was allegedly grounded on the applicant's previous failure to submit to domestic courts the complaint made in his letters (violation of Article 34).

Individual measures

The European Court noted that, from 2000 to 2004, the applicant's correspondence with the Court had not given cause for concern. As to the previous refusals of the penitentiary authorities, an investigation was carried out by a commission of the Yaroslavl Regional Prosecutor's Office in June 2002. The investigators found that the only reason for not forwarding them was that the applicant did not have money to pay for the stamps. The lack of money was due to the applicant's refusal to accept a working position available at the material time on account of its low remuneration.

In this respect, the Russian authorities specified that according to the Internal Rules of the pre-trial detention centres approved by the Ministry of Justice Decree No. 184 of 14 October 2005, if the detainees do not have enough money to pay for their letters, in particular to the European Court of Human Rights, these letters are to be sent at the expense of the pre-trial detention centre concerned (point 98 of the Rules). However, as far as the correspondence with the European Court of the persons serving their sentences is concerned, Article 91 of the Code on Enforcement of Sentences provides that such correspondence has to be sent at their expense because these persons have an obligation to have a professional activity (Article 103 of the same Code).

General measures

The Russian authorities indicated that the violation was due to the fact that there was no procedure at that time for dispatching letters to the European Court. Since then the unhindered right of detainees to send applications to the European Court was provided both by law and regulation.

Certain general measures were adopted after the facts of the case and have already been noted in the Court's judgment. First, the Chief Penitentiary Directorate of the Ministry of Justice issued a circular letter on 23 October 2001 to its territorial bodies prohibiting the hindering of the dispatch of applications sent by detainees to the European Court. On 22 February 2002, the Directorate designated officials authorised to monitor the unhindered dispatch of applications to the European Court from penitentiary institutions. Secondly, the Deputy Prosecutor General issued a circular letter of 29 March 2002 to regional prosecutors inviting them to take measures to ensure the unhindered exercise of the detainees' right of

individual petition and to point out violations of this right to the General Prosecutor.

Moreover, following the present judgment, the Chief Penitentiary Directorate issued a new circular letter on 14 February 2005 to its territorial bodies prohibiting the hindering of the dispatch of detainees' applications to the European Court and published the Russian translation of the present judgment in the Bulletin of the penitentiary system.

These instructions implemented the general principles provided in existing texts allowing detainees to send applications to the European Court (Articles 12 and 91 of the Code on the Enforcement of Sentences and Article 21 of the Federal Law of 15 July 1995 on detention of indicted persons accused of having committed a felony).

Finally, in its later judgment of 7 June 2007, case of *Nurmagomedov v. Russia*, the European Court welcomed the legislative amendments and administrative regulations adopted by the Russian authorities with a view to exempting correspondence with the Court from censorship and securing the uninhibited exercise of the right of individual petition by applicants and prospective applicants held in penitentiary institutions (§55 of the judgment).

CM/ResDH(2008)22 – Indra against the Slovak Republic

46845/99, judgment of 1 February 2005, final on 1 May 2005

Lack of fair hearing before an impartial tribunal in that one of the judges who had taken part in proceedings in 1984 concerning the applicant's dismissal from work, also took part in proceedings in 1996 concerning the applicant's rehabilitation (violation of Article 6§1).

Individual measures

The amendment to the Code of Civil Procedure providing reopening of domestic proceedings on the basis of a judgment of the European Court entered into force on 1 September 2005. Under Section 228§1(d), of this Code, a party to proceedings may ask for reopening if the European Court has found a violation, the consequences of which have not been duly remedied by the award of just satisfaction. Under Section 230§1, a request for proceedings to be reopened is to be filed within three months from the moment, when the person filing the request learned about the reason for reopening, or from the moment when he or she could have availed himself or herself of this reason (subjective time limit). Under Section 230§2, in the case referred to in Section 228§1(d), a request for reopening of the proceedings may also be lodged after the expiry of three years from the moment when the domestic judgment became final (objective time limit set for other cases than that referred to in Section 228§1(d)).

According to the transitional provisions, the applicant in this case might have applied for reopening up until 30 November 2005, i.e. three months after the day the amendment to the Code of Civil Procedure entered into force.

General measures

It seems that national legislation is sufficiently clear concerning the disqualification of judges. Given the direct effect given to the Convention and the case-law of the European Court in the Slovak Republic and the fact that this is the first violation of this kind against the Slovak Republic, publication and dissemination of the Court's judgment should be sufficient in this case.

The judgment was published (...) and sent out to all regional courts with a circular letter from the Minister of Justice. Presidents of regional courts have been asked to inform all regional and district court judges under their jurisdiction of the judgment in order to avoid possible similar violations.

CM/ResDH(2008)24 – Monnat against Switzerland

73604/01, judgment of 21 September 2006, final on 21 December 2006

Violation of the right to freedom of expression of the applicant, a journalist, due to embargo measures taken in 2001 against a television documentary he made, which deals with Swiss history during the Second World War (violation of Article 10).

Individual measures

In its judgment the European Court considered that the finding of a violation constituted sufficient redress for the non-pecuniary damage sustained.

Before this judgment became final, *Télévision suisse romande* (TSR) broadcast the applicant's film on 12 November 2006, at 8.30 p.m. (...); there is no more obstacle to the distribution of this film which is, in particular, accessible online (http://archives.tsr.ch/search).

The applicant did not ask for the reopening of the proceedings he could have asked for once the judgment became final.

General measures

By letter of 21 September 2006, the Government Agent transmitted the Court's judgment to the Federal Tribunal, the Federal Office of Communication and to the Independent Complaints Authority.

The full judgment has been published in (...).

Having regard to the direct effect granted by the domestic courts to the case-law of the European Court of Human Rights, the govern-

ment is of the opinion that these measures of publication and dissemination will avoid the repetition of the violation found in the present case.

Final Resolutions adopted at the 1028th meeting

39288/98, judgment of 17 July 2001, final on 17 October 2001

CM/ResDH(2008)37 – Van Rossem against Belgium

Infringement of the applicant's right to respect for his home due to searches carried out in 1990 in his home and on the premises of several companies of which he was a director (violation of Article 8).

Individual measures

Many of the documents seized were included in the case file. Some of them were returned to the applicant or the legal entity which was the target of the seizure. The accountancy documents of the Publimax company (one of the companies of which the applicant was director) were returned to the "trustee" (*curateur*). Only the uncollected documents were destroyed.

On 20 January 2006, the Belgian authorities wrote to the applicant's lawyer to ask whether he had further demands with a view to the *restitution in integrum* following the European Court's judgment. No follow-up was given to this request by the applicant.

General measures

It may be noted from the judgment of the European Court that the origin of the violation is not the law itself, but its implementation in the applicant's case.

Thus, as early as 20 December 2004 the College of Prosecutors General was asked to send the judgment out to King's Prosecutors and investigating magistrates, in order to guarantee its immediate implementation in practice. Pursuant this request the judgment was sent out to the King's Prosecutors at the offices of Antwerp, Brussels, Ghent, Liège and Mons as well as to investigating judges.

Furthermore, the *Van Rossem* judgment was published and commented (...);

The Government considers that, given the direct effect given to the Convention in Belgian Law, the measures adopted will prevent new, similar violations.

56243/00, judgment of 14 October 2003, final on 14 January 2004

CM/ResDH(2008)38 – Chaineux against France and 2 other cases

Excessive length of proceedings related to civil rights and obligations before labour courts (violations of Article 6, paragraph 1).

Individual measures (...)

General measures

Specific measures have been taken to deal with the issue of length of civil proceedings before the *conseils de prud'hommes* (first-instance labour courts): the composition of the *conseils de prud'hommes* was modified by a decree of 2 May 2002 (entry into force December 2002). The number of staff is the same, but the judges have been reallocated to the different sections of the *conseils de prud'hommes* to take into account the evolution of the different types of dispute: a reduction of the numbers of *conseillers* in the agricultural and industrial sections was made to take into account a decrease in their activity and the other sections have had their means increased where needed.

There has therefore been a decrease in the average time required to reach a judgment before the *conseils de prud'hommes* (12 months in 2005) (see statistics in the *Bulletin d'information statistique du Ministère de la Justice, « Infostat justice »*, No. 86, March 2006 and in general on the website of the Ministry of Justice (...)).

Moreover, the measures taken to remedy to the length of civil proceedings in general (see the case of *C.R.* and other cases of length of civil proceedings CM/ResDH(2008)39), have benefited labour courts. In particular, the Social Chamber of the Courts of appeal of Aix en Provence and Douai, which had a particularly heavy workload, have benefited from an increase in budget and staff.

42407/98, judgment of 23 September 2003, final on 23 December 2003

CM/ResDH(2008)39 – C.R. against France and 9 other cases

Excessive length of certain civil proceedings (violations of Article 6, paragraph 1) and absence of an effective remedy to complain about it (violation of Article 13 in one case).

Individual measures

No measure was necessary in the cases where the proceedings at issue were closed.

The Committee of Ministers requested the acceleration of the proceedings which were still pending when the Court delivered its judgments.

In the C.R. case, at the stage of the execution of the European Court's judgment, the applicant complained several times that the proceedings were still pending. The Ministry of Justice has twice called the Appeal Court's attention to the need to close the proceedings as quickly as possible following the finding of a violation by

the European Court and the Committee of Ministers' request to accelerate them. The proceedings went on with the required promptness. On 24 February 2005, the case was referred by the *Cour de Cassation* to the Court of Appeal, which delivered its judgment on 24 May 2005.

In the C.D. case, the proceedings at issue are closed. The judgment delivered by the Chambéry Court of appeal on 24 January 2001 became final following two decisions of the *Cour de Cassation* of 7 July 2003 and 8 July 2003.

General measures

The Committee of Ministers took stock of the measures below in a decision of 25 April 2005 (922nd DH meeting).

1) Violations of Article 6§1

The five-year orientation and programming law for Justice (*loi quinquennale d'orientation et de programmation pour la justice,* LOPJ) was adopted on 9 September 2002, to reach several objectives, principally to improve the effectiveness of justice in particular by reducing the length of civil and criminal cases.

First, this implies a large increase in court staff. Between 1998 and 2002 more than 2 400 new posts had already been created in the judicial services. The LOPJ amplified this trend, the creation of 4 450 supplementary posts having been programmed between 2002 and 2007 (950 magistrates and 3 500 state employees and agents of the judicial services), with the objective *inter alia* to reduce the time taken by courts to deliver judgments, in civil as well as in criminal cases, and to absorb backlogs. In 2004 only, 709 additional posts, including 150 magistrates and 380 court clerks were created. Since then, the recruitment of magistrates has considerably increased, exceeding 300 posts a year. The trend is similar for clerks of court and senior clerks of court.

Moreover, "objective-setting contracts" were signed with certain pilot sites (Douai and Aix-en-Provence courts of appeal): in return for additional staff and financial means, the courts have undertaken to reduce considerably the time taken to deliver judgments.

What is more, new quarterly statistics are now compiled to identify any anomaly as quickly as possible. These precise figures, now available 5-6 weeks after the end of each quarter (period of reference), include the number of new cases, the number of closed cases, the backlog of cases at the beginning of the period and the average time taken by the closed cases.

Finally, it should be recalled that specific measures had also been taken to limit the length of proceedings before the *Cour de Cassation* (*Hermant* case, final Resolution ResDH(2003)88) and before the Aix-en-Provence Court of Appeal (*Bozza* case, final Resolution ResDH(2002)63).

2) Violation of Article 13 (Lutz case)

The European Court recalled that in the Nouhaud case (judgment of 9 July 2002) it had considered that an application for compensation under Article L 781-1 of the Code of Judicial Organisation had, since the facts at the origin of the present case, acquired sufficient legal certainty to be considered an effective remedy.

CM/ResDH(2008)40 – Frette against France

36515/97, judgment of 26 February 2002, final on 26 May 2002

Infringement to the right to a fair trial in proceedings before the Conseil d'Etat due to the fact that the applicant, who was unrepresented and had not been notified of the hearing, could not acquaint himself with the Government Commissioner's submissions or establish the general tenor of those submissions and thus have the opportunity to submit a memorandum in reply (violation of Article 6§1).

Individual measures (...)

General measures

Several measures have been adopted to ensure the adversarial character of proceedings before the *Conseil d'Etat* for unrepresented parties.

Since 1 January 2001, according to Article R. 712-1 of the Code of Administrative Justice, any party, represented or unrepresented, is notified of the date of the hearing. Unrepresented applicants thus informed may attend the hearing and have therefore the possibility to hear the Government Commissioner's submissions and submit a memorandum for the deliberations in reply, if they so wish. This notification allows the party to make contact with the Government Commissioner in order to receive the general tenor of his submissions.

In a memorandum of 23 November 2001, the President of the judicial department of the *Conseil d'Etat* reminded to the Government Commissioners that an unrepresented applicant must receive the same information as that given to Counsel (members of the specific bars of the *Conseil d'Etat* and the *Cour de Cassation*).

The Government Commissioner's submissions are therefore communicated to unrepresented applicants when they ask for it.

63000/00, judgment of 18 December 2003, final on 18 March 2004

CM/ResDH(2008)42 – Skondrianos against Greece and 2 other cases

Violations of the applicants' right of access to a court due to the dismissal by the Court of Cassation of their appeals on points of law against their criminal convictions, on the ground that they had failed to establish that they had surrendered to custody pursuant to those convictions (violations of Article 6, paragraph 1, of the Convention); violation of the applicant's right to an adversarial trial (violation of Article 6, paragraph 1).

Individual measures

Following the judgments of the European Court, the applicants were entitled to request that their cases be reopened before the Court of Cassation in accordance with Article 525§1(5) of the Code of Criminal Procedure (CCP).

General measures

1) As regards the first violation of Article 6, paragraph 1 (common in all cases):

a) Interim measures

The Court of Cassation, after the facts of the *Skondrianos* case, established in its case-law that the conditions contained in Article 508§1 of the Code of Criminal Procedure should be examined *in concreto*, taking into consideration the gravity of the offence and the penalty imposed, so that a fair balance may be struck between the provisions of the law and the individual's right of access to a court under Article 6, paragraph 1, of the Convention, which has a supra-statutory force in Greek law (Court of Cassation, Plenary, judgment 14/2001 and Court of Cassation, Fifth Chamber, judgment 1320/2003).

b) Legislative measures

Parliament passed Law 3346/2005 (in force since 17 June 2005) which abrogated Article 508 of the Code of Criminal Procedure, in conformity with the European Court's case-law.

2) As regards the second violation of Article 6, paragraph 1, in the case of Skondrianos:

Similar violations should be avoided through direct effect of the Convention in Greek law (as confirmed by the case-law of the Court of Cassation mentioned above) and the publication and dissemination of the European Court's judgment (see below).

The European Court's judgment in the case of Skondrianos was translated and published with a commentary (...). Moreover, all the judgments of the European Court were promptly translated and disseminated to all competent judicial authorities and were published on the State Legal Council's website on the State Legal Council (www.nsk.gr).

40905/98, judgment of 8 June 2004, final on 8 September 2004

CM/ResDH(2008)44 – Hafsteinsdóttir against Iceland

Unlawful detention of the applicant who was arrested on several occasions between 1988 and 1997 for drunkenness and disorderly conduct on the basis of rules which were not sufficiently precise and accessible as regards the duration of the detention and the scope and the manner of exercise of the police's discretion (violation of Article 5§1).

Individual measures (...)

General measures

The Code of Criminal Procedure in force at the time of the violation was repealed and a new Code of Criminal Procedure (No. 19/1991) entered into force on 1 July 1992. The provisions concerning arrest in the interests of public peace and order were subsequently removed from the Code of Criminal Procedure and included in the new Police Act (No. 90/1997) which entered into force on 1 July 1997. According to this Act, the police now have the power to arrest and detain a person for as long as necessary in case of drunken and disorderly conduct. According to the Administrative Procedures Act (No. 37/1993), which also applies to decisions taken by police officers, the public authorities may never apply more stringent measures than necessary to attain the lawful purpose sought. These provisions have furthermore been incorporated in the Regulation on the Legal Status of Arrested Persons and on Police Investigations (No. 395/1997) as well as in the General Rules of 1998 and other rules issued by the Reykjavik Police Commissioner.

The judgment of the European Court was published and sent out to the various authorities concerned.

77924/01, 77955/01 and 77962/01, judgments of 23 March 2006, final on 3 July 2006

CM/ResDH(2008)45 – Albanese, Campagnano and Vitiello against Italy

Violations of applicants' rights throughout proceedings to establish their bankruptcy and/or after the closure of the bankruptcy proceedings, such as the unnecessary suspension of their electoral rights for five years, the setting of limits to their personal capacity and absence of a remedy to complain of those limits (violations of Article 3 of Protocol No. 1, of Articles 8 and 13).

Individual measures

No individual measure is necessary as the restrictions on the applicants were lifted by the recent reform of 2006 described below.

General measures

Legislative Decree No. 5/2006, adopted in January 2006 has resolved the questions raised in the Court's judgments in these cases. Article 152 of this decree has repealed the provisions concerning the suspension of electoral rights and Article 47 has removed the restriction on personal capacity (for further details see Interim Resolution CM/ResDH(2007)27 (...)).

CM/ResDH(2008)48 – N.F. against Italy

37119/97, judgment of 2 August 2001, final on 12 December 2001

Unlawful interference with the freedom of association of a judge, on account of the disciplinary sanction imposed upon him in 1994, for having belonged to a masonic lodge until 1992 while the legal basis of the sanctions was not sufficiently clear, precise and predictable (violation of Article 11).

Individual measures

In 2003, the Supreme Judicial Board, noting that Italian law did not allow reopening or re-examination of disciplinary proceedings, decided to add the European Court's judgment to the applicant's professional file. Concerning other possible negative consequences of the finding of violation of the European Convention on the applicant's career, it appears that the refusal to grant him promotion in 2000 was declared void by the Regional Administrative court. Following this decision, the Supreme Judicial Board approved the advancement of the applicant's career as from October 2000, based on a detailed evaluation of the applicant's professional competencies. Consequently, no further individual measure is required.

General measures

New guidance was adopted in 1993 which sets out clearly the incompatibility of the exercise of the functions of judge with the membership of the freemasons.

The European Court's judgment was brought to the attention of the competent judicial authorities and also published in Italian (...).

CM/ResDH(2008)51 – Rojas Morales against Italy

39676/98, judgment of 16 November 2000, final on 16 February 2001

Lack of impartiality of a first-instance criminal court in 1996 because of the judges' previous involvement in proceedings against a co-accused of the applicant and during which the responsibility of the applicant had been assessed (violation of Article 6, paragraph 1).

Individual measures

The European Court awarded as just satisfaction a sum of about 5 000 euros in respect of "genuine loss of opportunity" and "certain moral harm". Regarding the applicant's situation, he will complete his sentence in 2012. Accordingly it does not appear that the violation found by the European Court was caused by procedural errors or defects of sufficient gravity to cast a serious doubt on the outcome of the domestic criminal proceedings. Thus the conditions required by Recommendation Rec(2000)2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court do not appear to have been met in this case. Furthermore, the Italian authorities have indicated that the applicant has never manifested any request for reopening of the criminal proceedings at issue, or brought any other form of action before the national courts on the basis of the European Court's findings, even after the recent jurisprudential developments (see Court of Cassation judgment No. 2800 of 1 December 2006, which allowed the Committee of Ministers to adopt final Resolution CM/Res(2007)831, closing the *Dorigo* case).

General measures

The problems at the origin of this judgment cannot reoccur in Italy: the Constitutional Court, in its judgment No. 371 of 1996, declared the unconstitutionality of Article 34, paragraph 2, of the Code of Criminal Procedure, since it did not provide the exclusion from a trial of a judge who had already taken part in proceedings to assess the guilt or otherwise of the same accused. This constitutional decision is set out in a footnote linked to the relevant article of the Code.

The European Court's judgment has been sent out to all criminal courts and published (...).

CM/ResDH(2008)52 – Saggio against Italy

41879/98, judgment of 25 October 2001, final on 25 January 2002

Lack of an effective remedy whereby the applicant might complain against a company under extraordinary administration, to obtain the payment of salary arrears due to him and to challenge the acts of the liquidators. Under the law applicable at the material time, a remedy was only applicable after the final liquidation balance sheet and the scheme for distribution had been established (violation of Article 13).

Individual measures

The applicant was deprived of an effective remedy for a part of the "extraordinary administration" procedure. Thereafter, according to the information provided by the government in February 2005, after the deposition of the final liquidation balance sheet and the scheme for

distribution, accomplished on 13 October 1999, the applicant, had not lodged – although it had been possible for him to do it – a complaint in order to contest the scheme for distribution. As the applicant lodged no complaint, the final liquidation balance sheet and the scheme for distribution became incontestable as far as he was concerned, in accordance with national law.

General measures

Law (No. 95 of 1979) which was at the basis of the violation was amended by legislative decree No. 270 of 8 August 1999, in force since August 1999. This decree introduced a new regulation in "extraordinary administration" proceedings and in particular allows any creditor to challenge the action of a liquidator before domestic courts (Article 17).

The judgment was published (…) and brought to the attention of the Italian judicial authorities.

39221/98 and 41963/98, judgment of 13 July 2000, Grand Chamber

CM/ResDH(2008)53 – Scozzari and Giunta against Italy

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

Individual measures

1) As to placement in the *Il Forteto* community:

After the European Court delivered its judgment, the following developments took place. In July 2001 the Florence Children's Court entrusted the custody of the children to a foster-couple. This couple lived within the *Il Forteto* community (the legal status of which is an agricultural co-operative) and exercised individual responsibility and "exclusive and direct" custody in respect of the children. The Italian authorities emphasised the fact that the former community leaders who had been convicted of offences played no further role in bringing up the children and exercised no activity in contact with them. The Italian authorities undertook to ensure strict respect of these requirements.

In 2001 the Florence Children's Court also remedied the absence of a time-limit for the placement by issuing a three-year placement order, subsequently extended to September 2005. This was appealed in February 2006. While awaiting the decision of the Court of Appeal, the Florence Children's Court issued a further extension of the placement of the younger child, the elder having reached the age of majority. In a decision of 26 March 2008, the Court of Appeal affirmed the above-mentioned placement until September 2009. The younger child, who will attain his majority in 2012, is still in care with the above-mentioned married couple, who are members of *Il Forteto*.

The Deputies agreed to close the aspect of the case concerning the placement of the minor applicant, in view of the efforts made 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 the initial placement.

2) As to the meetings between the applicant and her children:

Following the European Court's judgment, the social service officials criticised in the case were replaced. In addition, new Children's Court judges were assigned to the case. The Florence Children's Court is closely following the development of the mother/children relationship pursuant to Italy's obligations under the judgment.

During the period of nearly eight years in which the Committee of Minister supervised the execution of this judgment, the question of meetings between the mother and her children was central to their concerns. During those years, the Committee closely followed the developments, which are described in detail in the public agenda notes of the 1020th DH meeting (March 2008) (…).

In that context, the Committee welcomed the co-operation between the Belgian and Italian delegations concerning the contacts between the mother and her minor son and encouraged them to continue in their co-operation with a view to assessing the circumstances permitting the conclusion that the resumption of contacts has been made possible by the Italian authorities.

The Deputies noted the new efforts made by the Italian authorities with respect to the question of the resumption of contacts between the applicant and her minor son, and noted the Italian authorities' undertaking to pursue their commitment in that respect. Moreover, they welcomed the on-going co-operation between the Belgian and Italian authorities to establish an appropriate framework for the progressive resumption of contacts between the applicant and her minor son on the basis of the relevant decisions of the Italian courts, and encouraged them strongly to continue in that direction on a bilateral basis. In the light of these developments, the Deputies also decided to close this aspect of the case. Moreover, in the above-mentioned decision of March 2008, the Florence Court of

Appeal authorised the continuation of meetings, with a presence as discrete as possible of the social services. These services were also given the task of determining how the meetings could progressively take place in a more flexible way.

General measures

1) Strengthening the supervision of care measures:

The supervision of care measures has been strengthened. In particular, a new law, (Law 149/2003) entered into effect, which regulates adoption and state guardianship. Under this law, placement orders must indicate how the person given responsibility over a child is to exercise that responsibility, and how the parents and other members of the nuclear family are to maintain their links with the minor child. Placement orders must also lay down the duration of the placement, which must be fixed in regard of all measures aimed at reintegration with the family of origin. The social service department responsible for the placement must inform the judge of any significant event and must facilitate the minor's relations with, and return to its family of origin. A 2003 Opinion by the Supreme Judicial Board (CSM) noted that the reinforced supervisory system established by Law 149/2003 is generally satisfactory.

The CSM also requires that where children are placed with carers who have criminal records, youth magistrates must:

a) exercise special attentiveness and vigilance,

b) duly justify their decisions on this point,

c) examine carefully the advisability of making such placements continuous, and

d) take due account of the legitimate concerns of those concerned.

2) Other measures taken:

Moreover, seminars have been organised to raise the awareness of youth magistrates and social workers of the requirements of the Convention as interpreted by the Strasbourg case-law in respect of family law.

The European Court's judgment has been translated and published (...).

CM/ResDH(2008)55 – Walston (No. 1) against Norway

37372/97, judgment of 3 June 2003, final on 3 September 2003

Violation of the principle of equality of arms in that, in 1996, in the context of certain civil proceedings, the High Court omitted to transmit to the applicants or their lawyer a copy of their opponents' observations submitted pending appeal and that the Supreme Court, before which the applicants lodged a complaint, took no action in respect of this omission (violation of Article 6§1).

Individual measures

The Court stated that it could not speculate on what the outcome of the domestic proceedings would have been had the fair hearing guarantees of Article 6§1 of the Convention been respected in those proceedings; the Court therefore rejected the applicants' claim for pecuniary damage.

On 2 March 2004, the applicants asked for the reopening of the domestic proceedings, in application of Article 407(7) of the Code of civil proceedings. On 19 September 2004, the Supreme Court turned down their request out of consideration, in particular, for legal certainty of the private person who is the owner of the real estate. Moreover, the Supreme Court stated that the issue of the case would have been the same, had the violation of the Convention not occurred. Therefore, no further question arises regarding damage for loss of opportunity.

General measures

The judgment of the European Court of Human Rights has been taken into account in two decisions by the Supreme Court of Norway, decisions dated 25 September 2003 and 1 December 2003 respectively, making it clear that a change in case-law, in conformity with the Convention, has taken place.

In addition, the judgment of the European Court of Human Rights was included in a circular published by the Judicial Administration ("Domstoladministrasjonen") which is distributed on a regular basis to all courts in Norway (see *Lovblikk No. 2* dated 10 March 2004).

CM/ResDH(2008)57 – Moreno Gómez against Spain

4143/02, judgment of 16 November 2004, final on 16 February 2005

Failure of the authorities in their obligation to take action to deal with night-time disturbances (by night clubs) near the applicant's home (violation of Article 8).

Individual measures

In 1996, the City Council designated the applicant's neighbourhood as an "acoustically saturated zone", and therefore no new establishment could be opened that would contribute further to this saturation. In 1997 however, the Council issued a license for the opening of another discotheque, in the applicant's building, but this decision was declared invalid by the Supreme Court in 2001.

General measures

Both Spanish national and regional legislation provide protection against noise pollution. Since 1997 there has been an increasing number of cases condemning noise pollution in all autonomous communities in Spain, and especially in the Autonomous Community of Valencia. The cases have involved both civil and criminal liability, including sanctions such as imprisonment, severe fines and prohibition of the economic activity in question. The legal framework is thus very advanced and Spanish courts have been very active in this field.

Moreover, the judgment of the European Court was published in Spanish (...) and sent out to all relevant authorities, not least to the Superior Court of Justice of Valencia and to the City of Valencia.

7548/04, judgment of 22 June 2006, final on 22 September 2006

CM/ResDH(2008)58 – Bianchi against Switzerland

Failure by Swiss authorities to take adequate and sufficient action to enforce the applicant's right to have his son (born in 1999) returned to him, in Italy, after his abduction to Switzerland by the mother in 2003 (violation of Article 8).

Individual measures

Towards the end of 2007 the Italian police and judicial authorities, acting in co-operation with the Swiss authorities, succeeded in finding the secret hiding place of L.H. and her children, including the applicant's son, in Mozambique. On 26 October 2007 the mother was expelled from Mozambique for being in possession of forged travel documents and not having a residence permit. She was accompanied, with her children, to Italy, and after being detained there, she returned to Switzerland. The applicant and his son are now together. In the light of these developments, no further individual measure is necessary in this case.

General measures

The judgment of the European Court was sent out to the authorities directly concerned and brought to the attention of the Cantons via a circular. It was also published (...) and was mentioned in the yearly report of the Federal Council on the activities of Switzerland in the Council of Europe in 2006.

Beyond those measures, which are sufficient given the very isolated and specific nature of this case, the Swiss government has taken the further initiative to lay before Parliament a draft federal law (...), aimed at improving the handling of civil aspects of cases of international child abduction. This draft law provides: accelerating return procedures by conferring competence on a single cantonal court and removing other legal procedures at cantonal level; giving preference to the conclusion of friendly settlements in conflicts between parents; combining decisions on return with enforceable measures; and requiring cantons to designate a single authority in charge of enforcement. The draft law also provides that the parties should whenever possible be heard by the court and that the child or children should be heard in an appropriate manner. Lastly, the court is required, to the extent this is necessary, to work with the competent authorities of the state in which the child habitually resided immediately before being abducted. The law was adopted by the Swiss Parliament on 21 December 2007 and enters into force on 1 July 2009.

20652/92, judgment of 20 February 2003, final on 9 July 2003

CM/ResDH(2008)59 – Djavit An against Turkey

Breach of the applicant's right to freedom of peaceful assembly on account of refusals by competent authorities to allow the applicant, who is a co-ordinator of the "Movement for an Independent and Federal Cyprus", to cross the "green line" and participate in bi-communal meetings between 1992 and 1998 (violation of Article 11); absence of an effective remedy in this respect (violation of Article 13).

Individual measures

The Turkish authorities indicated that the applicant is no longer prevented from going to the southern part of Cyprus to take part in meetings between the two communities or other peaceful meetings. A list has been provided showing that the applicant crossed the "green line" from the north to the south and back several times a month during the period 27 April 2003-31 May 2004.

General measures

1) Breach of the right to freedom of assembly

The Turkish authorities provided copies of several decisions of the "Council of Ministers of the TRNC", adopted following the judgment of the European Court in the present case, in order to provide a legal basis regulating the crossing of the "green line" in both directions (decisions Nos. E-762-2003, E-770-2003, E-851-2003, T-816-2004, T-818-2004, T-819-2004). Under the terms of decision No. E-762-2003 the crossing from the north to the south is carried out after presentation of an identity card or a passport and the computerised record of the passage of persons and vehicles. Each person may carry personal effects. According to the amendments to the provisions of items 1 of letters A and B of this decision, introduced in May and June 2004, children under 11 are no longer obliged to present identity cards to cross in either direc-

tion (decisions Nos. T-816-2004 and T-820-2004). Moreover, the provisions requiring passage on a day-trip basis with the return before midnight (letter A, i.5 and letter B, i.5a of the decision No. E-762-2003 and Article 5 of the decision No.T-818-2004) were repealed by a decision of the "Council of Ministers of the TRNC" No. T-820-2004.

2) Lack of an effective remedy

The Turkish authorities indicated that the existence of a right of effective remedy against illegal interference in the possibility of crossing the "green line" was now established. In this respect they referred to a judgment of 16 May 2003 in the case No. YIM 103/98 in which the "High Administrative Court" decided in circumstances similar to those of the present case (the applicants in that case wished to fly to London in March 1998, to participate in a bi-communal meeting) to cancel the authorities' refusal to authorise their departure. The "High Administrative Court" considered that such a refusal violated the fundamental rights of these persons and was contrary to domestic law. The delegation added that following this judgment the persons in question may lodge an application for compensation with a district court. In addition, the Turkish authorities specified that this precedent case would make it possible for the "High Administrative Court" to decide on similar complaints in future in due time. Finally, the authorities indicated that since the opening of the checkpoints between the northern and the southern parts of the island in April 2003, no similar complaint has been lodged with the "High Administrative Court".

3) Publication and dissemination

The judgment of the European Court was published in Turkish translation (...). By letter of 1 June 2005 the "Ministry of Foreign Affairs of the TRNC" asked the "Ministry of the Interior" to send the European Court's judgment out to the authorities competent to control the crossing in both directions.

CM/ResDH(2008)60 – Doğan and others against Turkey

Violation of the right to respect for the applicants' home (Violations of Article 8), following their displacement, due to continuous denial of access to their property in South-East Turkey since 1994 on security grounds (Violations of Article 1 of Protocol No. 1) and lack of an effective remedy in respect thereof (Violations of Article 13).

Individual measures

In its judgment of 13 July 2006 concerning the just satisfaction, the Court considered that the ability of the applicants to return to their village of Boydaş in South-East Turkey and compensation to be granted for the loss sustained by them during the period in which they were denied access to their homes and land would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of the Convention. However, it appeared from the parties' submissions that the applicants were no longer willing to return to their homes and land and to start a new life in Boydaş (see §26 of the judgment). Thus, the Court considered that the compensation for the pecuniary loss in question would be the most appropriate just satisfaction for the applicants (§§48–49 of the judgment) and awarded certain sums in this respect). Therefore, no further individual measure appear to be necessary.

General measures

1. Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism (Law No. 5233 adopted on 17 July 2004, amended by Law No. 5442 of 28 December 2005) and relevant Regulations:

8803/02, judgment of 29 June 2004, final on 10 November 2004, rectified on 18 November 2004, and judgment (just satisfaction) of 13 July 2006, final on 23 October 2006

a) The scope of the Law and Regulation: The law provides an alternative possibility to obtain, directly from the administration, compensation for pecuniary damages caused to natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period from 1987 to 2005 (several provisions of the law were amended by Law No. 5442 of 28 December 2005, in particular its time-frame was extended for one year) with a possibility of judicial review of decisions taken in this respect.

The law does not cover the damages settled by the state by other means, damages compensated by the judgments of the Court, damages resulting from social and economical reasons or damages sustained by those leaving their residences voluntarily (reasons not related to concerns of security), damages caused by intentional acts and damages of those who were convicted under Articles 1, 3 and 4 of the Anti-terrorism Law or of aiding and abetting terrorist organisations. On 20 October 2004 the *Regulation on the Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism* entered into force, which lays down the rules governing the functioning of "damage assessment and compensation commissions" and their working methods. The Regulation further lays down the rules relating to methods of determining the amounts of compensation to be awarded.

b) The work carried out by the Damage Assessment and Compensation Commissions: The commissions are composed of six experts on finance, public works and settlement, agricul-

ture, sanitation, industry and commerce, as well as a lawyer appointed by the Administrative Board of the Bar Association. There are 76 commissions established in 76 provinces. The Turkish authorities have also submitted the following documents relevant to the work carried out by the commissions: (...)

c) Information on the work carried out by the Commissions: Between April 2006 and January 2008 the Turkish authorities regularly have kept the Committee informed of the figures (latest as of February 2008) in relation to the applications lodged with the Compensation Commissions by virtue of Law No. 5233: (...)

2. Project carried out concerning the situation of displaced persons:

The Turkish authorities submitted an outline of a project carried out by the Institute of Population Studies at the University of Hacettepe in Ankara. The project concerns issues related to the internally displaced persons (IDP) from south and south-east of Turkey who left their villages after 1980s. The aim of the project is to determine the following points, which will assist the Turkish Government to improve the situation of IDPs in Turkey: (...)

3. The effectiveness of the new remedy acknowledged by the Court

(decision of 12 January 2006 in *İçyer v. Turkey*, Application No.18888/02): In this case the applicant complained of the authorities' refusal to allow him to return to his home and land in the south-east of Turkey. The European Court observed that:

– the compensation commissions established with the entry into force of the Law on Compensation seemed to be operational in 76 provinces in Turkey;
– there were already 170 000 persons seeking a remedy before these commissions;
– it appears from a substantial number of sample decisions furnished by the government that persons who have sustained damage in cases of denial of access to property, damage to their property or death or injury can successfully claim compensation by using the remedy offered by the Compensation Law.

Referring to its findings in the case of *Doğan and others*, the Court noted that where it points to structural or general deficiencies in national law or practice it is incumbent on the respondent government to review, and where necessary, set up effective remedies to avoid repetitive cases being brought before it. Once such a defect has been identified, it falls to the national authorities, under the supervision of the Committee of Ministers to take, retroactively if appropriate, the necessary remedial measures.

Noting that in the case of *Doğan and others* it has already identified the presence of a structural problem with regard to internally displaced persons and indicated possible measures to be taken to put an end to this systematic situation in Turkey, the Court concluded that the Turkish government have taken several measures, including enacting the Compensation Law, and may therefore be deemed to have fulfilled the duty to review the systemic situation at issue and to introduce an effective remedy. Accordingly, the Court rejected the applicant's complaints on the ground of non-exhaustion of domestic remedies.

36141/97, judgment of 23 September 2003, final on 23 December 2003

CM/ResDH(2008)61 – Sophia Guðrún Hansen against Turkey

Failure of the Turkish authorities to take necessary and adequate measures to enforce court decisions granting the applicant, an Icelandic national, visiting rights to her daughters between 1992 and 2000(violation of Article 8).

Individual measures

The visiting rights became unenforceable once the applicant's daughters reached the age of eighteen (in June 1999 and October 2000) as they were then considered adults under Turkish law.

General measures

Legislative measures taken:

a) On 9 January 2003 Law No. 4787 on the *Establishment of Family Law Courts* came into force. Under this law, all matters related to family law are dealt with by Family Courts. Judges in these courts are appointed among those specialising in family law. The Ministry of Justice ensures that a pedagogue, a psychologist or a social worker be appointed to every family court.

b) *Effective enforcement of access or visiting rights*: Article 25 of the Code of Enforcement and Execution of Court Decisions and Bankruptcy Procedures, relating to enforcement of access rights, provides that the enforcement officer issues an enforcement order requiring access to be given within seven days. Article 25 (a) further provides that in the enforcement order the enforcement officer specifies that access must not be hindered and that failure to comply will constitute a criminal offence and any person who fails to comply with access arrangements specified in the enforcement order shall be liable to prosecution under Article 341. Following the amendments made to Article 341 on 17 July 2003 the term of imprisonment has been increased from

1-3 months to 2-6 months, upon complaint by the person entitled to have access. This sentence may not be reduced or converted into a fine according to Article 352 (b). An additional paragraph has been added to Article 25 with the amendments of 17 July 2003 which now provides that a social worker, a pedagogue, a psychologist or a child development officer shall be present during the enforcement of court decisions concerning access rights.

Other measures:

a) As an efficient response to similar situations as in the *Hansen* case, the Turkish authorities referred to a recent case concerning the abduction of 12-year-old Ayla Löfvig from Sweden by her father to Elazığ, Turkey (see Written Question No. 462 of 21 January 2005 by Mr Lindblad concerning the right to return of Ayla Löfving). The Committee of Ministers had previously been informed by the Turkish authorities that they had taken legal action, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, in order to find Ayla and secure her return to her home. The whereabouts of the child and her father had been identified and the public prosecutor had decided to initiate legal proceedings in the Elazığ Family Court. In addition, Ayla's mother had been able to have daily telephone contact with her daughter at certain hours. Following the intervention of the Turkish authorities, the travel restrictions for Ayla were lifted and she returned to Sweden with her mother.

b) The judgment of the European Court was translated and published (...).

CM/ResDH(2008)62 – Y.F. against Turkey

24209/94, judgment of 22 July 2003, final on 22 October 2003

Violation of the right to respect for private life in that the applicant's wife was unlawfully forced to undergo a gynaecological examination after having been taken into police custody in 1993 (violation of Article 8).

Individual measures

No individual measures required in this case.

General measures

Article 75 of the new Code of Criminal Procedure was amended on 25 May 2005. It now provides that the physical examination of or the taking of body samples from, an accused or a suspect shall require the decision of a judge or a court following a request lodged by a public prosecutor or a victim or a decision taken by a judge or a court. The request should be presented within twenty-four hours to a judge or to a court which should approve it within twenty-four hours. An objection may be lodged against a decision ordering physical examination. Physical examinations and the taking of body samples shall be carried out by doctors or competent medical personnel. The new Code came into force on 1 June 2005.

Article 287 of the new Criminal Code provides that any person who orders a gynaecological examination to be conducted or who performs such an examination on an individual without due authorisation will be liable to imprisonment for a term of 3 months to one year.

The Regulations on Arrests, Detentions and Interrogations were amended in January 2004. They now provide that medical examination of detainees shall only be carried out by a forensic doctor and that security forces shall only be present on the premises if the forensic doctor so requests for security reasons.

The Court's judgment was published (...).

CM/ResDH(2008)64 – Hunt against Ukraine

31111/04, judgment of 7 December 2006, final on 7 March 2007

Violation of the applicant's right to respect for his family life due to the deprivation, in 2003, of his parental rights in respect of his natural son as a result of proceedings that he was unable to attend since he had not been allowed to enter Ukraine (violation of Article 8).

Individual measures (...)

On 18 June 2007, the applicant's lawyer informed the Secretariat that the applicant would not request the reopening of the proceedings.

(...) the Ukrainian authorities indicated that, according to domestic family law (Article 169 of the Family Code), the applicant also had and still has the right to initiate proceedings seeking restoration of his parental rights.

General measures

1) As regards deprivation of parental rights.

On 30 March 2007 the Plenary of the Supreme Court of Ukraine issued a Resolution No. 3 containing guidelines for courts when considering cases on adoption and of deprivation and restoration of parental rights with a view to ensuring coherent and correct treatment of custody cases.

The resolution provides *inter alia* that deprivation of parental rights is a measure of last resort aiming at influencing those who fail to comply with their parental duties. Accordingly courts must decide to apply this measure only after fully, comprehensively and objectively establishing the circumstances of the case, in particular as regards the parents' treatment to the child.

Procedural aspects of the proceedings regarding deprivation of parental rights are

governed by the general provisions of the Code of Civil Procedure, setting forth the obligation to notify the date of the hearing to the parties to the proceedings before considering a case. Before starting to consider a case, the trial court is bound to establish who is present at the hearing, whether any absentees have been duly notified and what are the reasons for their absence, etc. The court may summons absentees if it considers it necessary to hear them in person. However, failure to appear in the absence of valid reasons is not an obstacle to consideration of a case.

2) Dissemination and publication of the judgment.

Given the direct effect of the Convention and of the European Court's judgments in Ukraine, courts are expected to bring their practice in line with the judgment at issue. For this purpose, on 27 March 2007, the judgment was sent to all competent authorities together with letters inviting them to take account of the findings of the European Court in their daily practice, i.e. to the Supreme Court of Ukraine and the Ministry of Internal Affairs.

The judgment was translated into Ukrainian and published (...).

72269/01, judgment of 8 November 2005, final on 8 February 2006

CM/ResDH(2008)65 – Strizhak against Ukraine

Breach of the applicant's right to a fair trial due to the domestic authorities' failure to inform him of the date and time of hearings in 2000 (violation of Article 6§1).

Individual measures

Following the Court's judgment, the Supreme Court of Ukraine allowed the applicant's request for reopening of proceedings under exceptional circumstances, quashed the decision of the Dnipropetrovsk Regional Court of 2 June 2000 and remitted the case for fresh consideration by the Court of Appeal of Dnipropetrovsk Region.

On 29 May 2007, a hearing was held before the Court of Appeal of Dnipropetrovsk Region. The applicant and his representative were heard and presented their arguments before the court. The Court of Appeal of Dnipropetrovsk Region rejected the applicant's claim.

General measures

1) Traceability of summonses:

The new Code of Civil Procedure in force since 1 September 2005 ("the CCP") provides a single procedure for delivery of all kinds of summonses – either subpoenas or judicial notifications – that is, by registered letter with acknowledgment of receipt or by messenger. In both cases, acknowledgement of the receipt of the subpoena or notification shall be obtained from the recipient in writing.

According to the CCP, a summons may also be handed over directly in court, and in case of postponement of a hearing, one may be informed on receipt (handed over in person with a signature in acknowledgement) of the time and place of the next hearing.

Participants in proceedings as well as witnesses, experts, specialists and interpreters may be informed or summonsed by telegram, fax or by other means which attest to reception of notification or subpoena.

According to the CCP, the court shall postpone consideration of a case if, *inter alia*, a party or a participant fails to appear and no information is available to the effect that the summons has been served.

2) Translation, publication and dissemination of the European Court's judgment:

The judgment was translated into Ukrainian and (...).

The Ukrainian authorities indicated that on 28 April 2007 the judgment of the European Court together with a letter from their hierarchy was sent to the Supreme Court of Ukraine drawing its attention to the judges' obligations arising from the findings of the European Court.

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.

118th Session of the Committee of Ministers

118th Session of the Committee of Ministers (Strasbourg, 7 May 2008)

The Committee of Ministers of the Council of Europe meeting for their 118th Session under the chairmanship of Mr Ján Kubiš, Minister of Foreign Affairs of Slovakia, reviewed the Council of Europe's contribution to common stability and security in Europe and took a number of decisions on future orientations.

The Ministers reiterated the crucial political role of the Council of Europe in building a Europe without dividing lines based on the common values of human rights, democracy and the rule of law, as well as on the member states' obligation to respect all their commitments, thus enabling the fulfillment of the Council of Europe statutory mandate.

Consolidation of the Council of Europe system of human rights protection

The Ministers stressed the indispensable role of the European Convention on Human Rights (ECHR) and the need to actively pursue the work to enhance the effectiveness of the Convention's control system.

An important way of improving protection of human rights is to ensure that the Convention is effectively implemented at the national level, thereby contributing to a reduction in the workload of the European Court of Human Rights. The Ministers invited all member states to draw on the examples contained in the comprehensive report on the follow-up to their "Declaration on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" of 2006. They welcomed the valuable efforts of the Commissioner for Human Rights to promote further progress in this respect.

In addition to the recent adoption of a recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments, this follow-up work has identified many examples of good practice in the implementation of five earlier Recommendations which seek to enhance the implementation of the Convention at national level and thereby reduce the workload of the Court.

In this context, the Ministers welcomed the "Seminar on the role of government agents in ensuring effective human rights protection" organised by the Slovak Chairmanship in Bratislava on 3-4 April as well as the initiative of the Swedish Chairmanship to convene a Colloquy "Towards stronger implementation of the ECHR at national level", held in Stockholm on

9-10 June. They asked their Deputies to consider how to promote further measures to enhance implementation of the Convention in the light of the results of these meetings.

Reflection should be intensified on practical proposals for the supervision of execution of the Court's judgments in situations of slow or negligent execution, as well as on the developing practice of the Court and the Committee of Ministers on the so-called pilot judgments.

The Ministers felt compelled to note that four years after its adoption Protocol No. 14 has still not entered into force. The Ministers once again underlined that the measures aimed at improving the ECHR system and in particular those contained in Protocol No.14, should be implemented in the nearest future.

The Human Rights Trust Fund, established by the Council of Europe, Norway and the Council of Europe Development Bank on 14 March 2008 to support projects for furthering the implementation of the European Convention on Human Rights at the national level, was welcomed by the Ministers. They also noted that the interim report on the European Programme for Human Rights Education for Legal Professionals (the "HELP" programme), showed positive results.

Follow-up to other priorities resulting from the Warsaw Summit

The Ministers reaffirmed the importance they attach to continued efforts as regards the complete implementation of the Warsaw Summit decisions and the achievement of the main aims of the Statute.

Strengthening democracy, good governance and the rule of law in member states

The development of Europe as a zone of free and fair elections is of fundamental importance for the promotion of the principles of democracy, good governance and the rule of law. In this context, the Ministers highlighted the valuable contribution provided by the pre-electoral assistance of the Council of Europe to countries concerned through, in particular:

- joint programmes and action plans;
- the expertise of the European Commission for Democracy through Law (Venice Commission);
- enhancing the capacities of the media to ensure free, independent and unbiased coverage of the pre-election campaign and of the elections themselves;
- training programmes and advice to electoral commissions and their members.

The Ministers called for increased attention by the Council of Europe to this area of co-operation with member states in need of such assistance as well as intensified co-operation with other organisations.

Co-operation between the Council of Europe and other international and regional organisations

The Ministers instructed their deputies to continue their efforts with regard to co-operation with other organisations at the global, European and regional levels. As to the Council of Europe's relations with the United Nations, they noted with satisfaction the developing co-operation. In the framework of the global efforts regarding the universal abolition of the death penalty, they stated their determination to support once again the adoption of a resolution on a moratorium on the use of the death penalty at the 64th Session of the UN General Assembly.

Promoting respect for freedom of expression with regard to Internet filters

Recommendation Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters

The Committee of Ministers recommends that member states adopt common standards and strategies with regard to Internet filters to promote the full exercise and enjoyment of the right to freedom of expression and information and related rights and freedoms in the European Convention on Human Rights, in particular by:

- taking measures with regard to Internet filters in line with the guidelines set out in the appendix to this recommendation;
- bringing these guidelines to the attention of all relevant private and public sector stakeholders, in particular those who design, use (install, activate, deactivate and implement) and monitor Internet filters, and to civil society, so that they may contribute to their implementation.

Independence and functions of regulatory broadcasting authorities

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector

The Committee of Ministers, bearing in mind Article 10 of the European Convention on Human Rights, guaranteeing the right to freedom of expression, affirms that the "culture of independence" should be preserved and, where they are in place, independent broadcasting regulatory authorities in member states need to be effective, transparent and accountable.

It declares its firm attachment to the objectives of the independent functioning of broadcasting regulatory authorities in member states and calls on member states to:

- implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector;
- provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference;
- disseminate widely the present declaration and, in particular, bring it to the attention of the relevant authorities, the media and broadcasting regulatory authorities in particular, as well as to that of other interested professional and business players.

Swedish chairmanship of the Committee of Ministers

Sweden takes over the chairmanship of the Committee of Ministers

The Ministers for Foreign Affairs of Council of Europe member states hold the Chairmanship of the Committee of Ministers, the executive body of the Council of Europe, on a rotating basis in alphabetical order, for a six-month term.

As Slovenia held the chairmanship of the European Union from January to June 2008, its chairmanship of the Committee of Ministers has been delayed in favour of Sweden, the next country on the list.

Mr Carl Bildt, Chairman-in-office of the Committee of Ministers

Priorities for the Swedish Chairmanship of the Committee of Ministers

During six months from 7 May, Sweden will chair the Committee of Ministers of the Council of Europe. Sweden will give priority to promoting the realisation of the core objective of the Council of Europe – to make human rights, democracy and rule of law real.

Through special conferences, Sweden will take initiatives for stronger implementation of the European Convention on Human Rights at national level, systematic work for implementation of human rights, a new strategy for the rights of the child and strengthening the realisation of the rights of disabled persons.

Other Swedish priorities are to intensify the work of the Council of Europe for promotion of democracy and to make full use of the Council of Europe's potential for strengthening the rule of law. Sweden supports the preparations of the Forum for the Future of Democracy in Madrid, and will also contribute actively to a conference on judicial reforms in the South Caucasus.

Sweden will seek to further develop the relations of the Council of Europe with the European Union and international organisations, as well as continue reforms for transparency and efficiency in the Council of Europe.

Calendar of major events in the field of human rights

- 8-10 September, Stockholm. High-level conference in Stockholm: "Building a Europe for and with Children – Towards a Strategy for 2009-2011"
- 6-7 October, London. Conference on International Courts and Tribunals
- 6 October, Sweden. Seminar on human rights implementation on local and regional level. Organised by the Swedish Association of Local Authorities and Regions in co-operation with the Congress and the Commissioner for Human Rights
- 9-10 October, Strasbourg. Forum on Civic Partnership for Citizenship and Human Rights Education

- 6-7 November, Stockholm. Conference on Systematic Work for Human Rights Implementation.

Action against trafficking in human beings

Trafficking in human beings: monitoring body established

The Committee of Ministers debated current and future action by the Council of Europe against trafficking in human beings and decided on rules on the election procedure of the members of the Group of Experts on Action against Trafficking in Human Beings (GRETA). This group of independent experts will monitor implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention focuses on the protection of victims of trafficking in human beings, whilst also aiming to prevent trafficking and to prosecute traffickers.

To this end, GRETA will regularly draw up reports evaluating the measures taken by the Parties to the Convention, including the European Communities. These reports will be based on country visits as well as dialogue with government authorities, members of parliament, civil society organisations and the victims themselves.

To date, the Council of Europe Convention on Action against Trafficking in Human Beings has been ratified by 17 member states and signed by a further 21. It entered into force on 1 February 2008.

Member states agree on the need to actively pursue Council of Europe activities against trafficking and have highlighted a number of national measures. The Committee also calls on the states which had not yet signed and ratified the Convention to do so and stresses the importance of effective implementation. In addition, an annual discussion on the implementation of the Convention and other Council of Europe action against trafficking in human beings will be held by the Committee.

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

Parliamentary Assembly

"The Parliamentary Assembly of the Council of Europe is the political manifestation of national parliaments' desire to help to build Europe. By bringing together the Presidents of Parliament of the Council of Europe's 47 member states, it hopes to promote dialogue, focusing on the common values on which the Council of Europe is founded, and hence to bring parliaments ever closer to the public."

Lluís Maria de Puig, President of the Parliamentary Assembly (PACE)

Evolution of human rights

Encouraging the participation of women in public life, politics and economic life

Resolution 1615 and Recommendation 1838, adopted on 24 June 2008 (Doc. 11612 and 11621)

The Assembly invites member states to take practical measures to empower women in our modern, multicultural society and to extend their rights, in particular by allowing them to take part fully in public life, politics and economic life through the introduction of positive measures (quotas and other mechanisms). PACE asserts that states must protect women against violations of their rights, including those carried out in the name of religion. It also suggests that the Council of Europe hold a European regional conference to prepare for the fifth United Nations World Conference on Women.

The Rapporteur of the Committee of Equal Opportunities for Women and Men, Ingrida Circene (Latvia, EPP/CD), urges member states to do everything within their power to counter cultural and religious relativism where women's rights are concerned, combat discrimination and put an end to sexist violence.

PACE seeks dialogue with China over democracy and human rights

Resolution 1621, adopted on 26 June 2008 (Doc. 11654)

The Parliamentary Assembly invites the Chinese authorities and parliament to engage in political dialogue to promote parliamentary democracy, the rule of law and respect for human rights in the country – and holds out the prospect of observer status for the parliament if there is "appreciable progress" in these fields.

PACE notes that China has made tremendous progress with its economy, its stable foreign policy and its key role as a mediator, but points to the lack of basic freedoms: "Chinese citizens are still at risk for voicing their views, for criticising the government, for posting articles on the internet or giving interviews to foreign journalists." Abusive and arbitrary detention, torture and harrassment of human rights activists is common, and the death penalty continues to be applied.

PACE further notes that the Olympic Games are "a unique opportunity" for China to demonstrate to the world its determination to improve its record, but high expectations of progress have not so far been met.

On Tibet, the Assembly condemns the violent repression of recent demonstrations but calls for continued dialogue, stressing that the recent informal talks between Chinese authorities and the Dalai Lama's envoys were encouraging.

Combating domestic violence: a PACE committee calls for a framework convention

José Mendes Bota calls for a framework convention combating domestic violence

In his introductory memorandum, José Mendes Bota (Portugal, EPP/CD), Rapporteur for PACE Committee on Equal Opportunities for Women and Men, with the support of Council of Europe Secretary General Terry Davis, asserts that it is overwhelmingly important for the Council of Europe to prepare a framework convention covering the severest and most widespread forms of violence against women in Europe.

The memorandum, approved by the committee, invites the Council of Europe to draft a legal instrument to help ensure that women are protected against domestic violence, the perpetrators are prosecuted and preventive measures are taken to combat domestic violence, sexual assaults (including rape and "marital rape"), harassment, forced marriages, "crimes of honour" and female genital mutilation.

The rapporteur stresses in the memorandum that the involvement of national parliaments in

José Mendes Bota, Rapporteur of the Parliamentary Assembly

the campaign has helped to bring about legislative changes in several member states and that numerous measures to raise awareness have been taken in parliaments. He adds, however, that the minimum legislative standards for combating domestic violence have by no means been attained. The mobilisation must continue.

Situation of human rights in Europe

Abuse of the criminal justice system in Belarus

Resolution 1606 and Recommendation 1832, adopted on 15 April 2008 (Doc. 11464)

The Parliamentary Assembly, recalling its previous work regarding Belarus [...], deeply regrets the numerous politically motivated abuses of the criminal justice system that have taken place in recent years and are still taking place in the Republic of Belarus. The Assembly welcomes the recent release of a large number of political prisoners, but regrets all the more the Belarusian authorities' persistent refusal to release Aleksandr Kozulin and the bringing of fresh criminal proceedings against opposition activists.

The Assembly is confident that the Republic of Belarus will one day join the family of European states upholding human rights and the rule of law, and that justice will be done, *inter alia* by compensating victims and punishing perpetrators of human rights abuses.

Meanwhile, the Assembly urges the Parliament of the Republic of Belarus to repeal Law No. 71-3 of 15 December 2005 (the so-called "anti-revolution law"), and in particular Article 193-1 of the Criminal Code, criminalising activities of non-registered associations and urgently introduce a moratorium on executions and abolish the death penalty.

Functioning of democratic institutions in Armenia

Resolution 1609, adopted on 17 April 2008 (Doc. 11579)

On 19 February 2008 a presidential election took place in Armenia. Although the ad hoc committee which observed this election considered that it was "administered mostly in line with Council of Europe standards", it found a number of violations and shortcomings.

The Assembly deplores the clashes between the police and the protesters and the escalation of violence on 1 March 2008 which resulted in 10 deaths and about 200 people being injured. The exact circumstances that led to the tragic events of 1 March, as well as the manner in which they were handled by the authorities, including the imposition of a state of emergency in Yerevan from 1 to 20 March 2008 and the alleged excessive use of force by the police, are issues of considerable controversy and should be the subject of a credible independent investigation.

A few days before the expiry of the state of emergency, on 17 March 2008, following a proposal by the government, the National Assem-

bly, in an extraordinary session, adopted a series of amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations which considerably limit the right of freedom of assembly and give great discretionary powers to the authorities to prohibit political rallies and demonstrations. They thus run counter to European standards, as enshrined, *inter alia*, in Article 11 of the European Convention on Human Rights, and are in breach of Armenia's obligations and commitments as a member state of the Council of Europe. In a joint draft opinion, the Council of Europe's European Commission for Democracy through Law (Venice Commission) and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) also considered these amendments to be unacceptable. The Assembly welcomes the intention expressed by the newly elected president in his inaugural speech to bring the law on conducting meetings, assemblies, rallies and demonstrations into full compliance with the European standards and to encourage further co-operation with the Venice Commission on this matter.

Progress in Armenia insufficient; full compliance expected by January 2009

Resolution 1620, adopted on 25 June 2008 (Doc. 11656)

Despite the political will expressed by the Armenian authorities to meet the requirements outlined in Resolution 1609 (2008) on the functioning of democratic institutions in Armenia, the Assembly takes the view that "progress is at present insufficient". It regrets "the delay in implementing concrete measures" to overcome the political crisis that broke out after the presidential election on 19 February, while acknowledging that "the time given to the Armenian authorities was short".

According to the Assembly, "the detention and conviction of opposition supporters in relation to the events of 1 March 2008 will be a point of contention that will continue to strain the relations between opposition and authorities and could hinder the conduct of a constructive dialogue on the reforms needed for Armenia". PACE therefore "urges the Armenian authorities to consider all legal means available to them, including amnesty, pardons and dismissal of charges with respect to all persons detained or sentenced by a court in relation to the events of 1 and 2 March 2008".

PACE points out that "freedom of assembly should be guaranteed in practice". Moreover, it welcomes the constitution, within the National Assembly, of an ad hoc committee "to conduct an inquiry into the events of 1 and 2 March 2008 as well as the causes that led to them". This Committee has "the possibility to invite national and international experts to participate in its work, which should increase the credibility of its investigations".

PACE President reminds Turkey of the right to freedom of association

Lluís Maria de Puig, President of the Parliamentary Assembly

Lluís Maria de Puig reminds Turkey of the right to freedom of association following the prohibition of a gay association

The President of the Parliamentary Assembly, Lluís Maria de Puig, has expressed his profound concern after the banning of Turkey's only gay rights association, recently ordered by a Turkish court.

"The arguments put forward by the prosecutor, reportedly leading to the closure of the association Lambda Istanbul whose activities were held to infringe the laws on public morality, are puzzling to me," said Mr de Puig.

"Freedom of expression and freedom of association are enshrined in the European Convention on Human Rights, which Turkey has ratified as a member of the Council of Europe. Thus any person, whether lesbian, gay, bisexual or transgender, has the right to freedom of expression and freedom of assembly, without discrimination. It rests with the authorities to ensure that everyone can exercise these rights," the President stated.

Deterioration of human rights situation in Azerbaijan ahead of election

Resolution 1614, adopted on 24 June 2008 (Doc. 11627)

The Parliamentary Assembly expresses great concern at the "deteriorating" human rights situation in Azerbaijan, undermining any efforts being made by the authorities to meet basic democratic standards in the forthcoming Presidential election.

The Assembly has spelt out a "road-map" of urgent steps to be taken ahead of the 15 October election, including: ensuring balanced election commissions and an efficient complaints procedure; providing free broadcast time and print space in state media under equal conditions for political parties and blocs; and guaranteeing in practice the opposition's right to hold public rallies.

It considers restrictions on freedom of expression – including harrassment and intimidation of opposition journalists – and limits on freedom of assembly and association "inadmissible in a Council of Europe member state", and declares that the issue of political prisoners has not been resolved.

As regards the follow-up to the issue of alleged political prisoners, the Assembly calls for the immediate release of opposition journalists Ganimat Zahidov, Sakit Zahidov and Eynulla Fatullayev. It also calls upon the Azerbaijani authorities to consider the release of Natiq Efendiyev, Rasim Alekperov, Ruslan Bashirli, Akif Huseynov and Telman Ismayilov on humanitarian grounds.

Conference

Parliamentary Conference on specific challenges facing European democracies

Resolution 1617 and Recommendation 1839, adopted on 25 June 2008 (Doc. 11623 and 11653). Resolution 1618 and Recommendation 1840, adopted on 25 June 2008 (Doc. 11625)

The Parliamentary Assembly held a Parliamentary Conference on specific challenges facing European democracies – the case of diversity and migration and measures to improve the democratic participation of migrants, on 24 June 2008. This Conference was organised to allow civil society and other actors, including Council of Europe bodies, to have an input into the Parliamentary debate on the same issue which took place on 25 June as part of the State of Democracy in Europe debate.

Two reports were prepared for the Parliamentary Conference and the Parliamentary Debate. The first report, "Specific challenges facing European democracies – the case of diversity and migration", was prepared by the Political Affairs Committee of the Parliamentary Assembly (Rapporteur: Mr A. Gross, Switzerland, SOC) and the second report, "Measures to improve the democratic participation of migrants", was prepared by the Committee on Migration, Refugees and Population (Rapporteur: Mr J. Greenway, United Kingdom, EDG).

The Assembly calls on member states to encourage integration as a facilitator for democratic participation and to facilitate access to nationality, including dual nationality.

According to reliable estimates, 8.8% of Europe's total population are migrants, and this figure is increasing. In this context, the Assembly stresses the need to strike the right balance between respect for diversity and the need for integration for the proper functioning of democracy.

The Assembly also calls on member states to grant the right to vote and to stand in local and regional elections to migrants who have been resident for a period of 5 years or less, who should, at the same time, be encouraged to learn the language of the host country.

Internet: http://assembly.coe.int

Commissioner for Human Rights

The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation.

Terms of reference

According to its 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 the human rights situation. During the visits, he meets with the highest representatives of government, parliament, the judiciary, as well as leading members of human rights protection institutions and the 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 public and widely circulated in the policy-making and non-governmental organisations as well as 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.

In the end, 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

France, 20-23 May 2008

Thomas Hammarberg carried out a visit to France to assess a broad range of human rights issues including prison conditions, precautionary detention (*rétention de sûreté*), juvenile justice, migrants' rights as well as Roma and Travellers protection.

Additionally, he discussed the proposal to establish a Defender of Fundamental Rights (a new Ombudsman) and the consequences of such establishment *vis-à-vis* existing mechanisms. He raised the question of the overall system of human rights protection in France, the need to reinforce independent police control mechanisms and the protection of human rights defenders.

During the visit, the Commissioner met with Justice Minister Rachida Dati, Immigration Minister Brice Hortefeux, Housing Minister Christine Boutin and Human Rights Secretary of State Rama Yade. His agenda also included meetings with the National Consultative Commission for Human Rights, the Médiateur, the Ombudsman for children, and representatives of civil society.

The Commissioner visited two prisons (Meyzieu and Fresnes), an educative centre for juveniles and several Roma and Travellers settlements around Strasbourg.

He also followed up on his January visit to the detention centre for migrants in Roissy to discuss measures undertaken to guarantee respect for the rights of asylum-seekers and irregular migrants.

Montenegro, 2-6 June 2008

During the visit, priority was given to freedom of expression of the media, human rights defenders and non-governmental organisations, an effective functioning judiciary, the fight against corruption, impunity and the unresolved situation of refugees and displaced persons in the country.

Mr Hammarberg visits Montenegro.

Other areas highlighted in the Commissioner's talks with the country's top officials included the situation of national minorities, in particular the Roma population, detention and imprisonment, police abuse and effective complaints mechanisms, rights of persons with disabilities and national human rights mechanisms including the Ombudsman.

Besides the capital city, the Commissioner's delegation visited a series of institutions covering the whole country. The assessment included visits to mental health institutions, a shelter for women victims of domestic violence, police stations, pre-trial detention centres and the country's main prison as well as the refugee community in Berane. A special visit to Konik provided the Commissioner with first hand information on the concerns of both the resident and refugee Roma population residing there.

The Commissioner held detailed discussions with the President, the Prime Minister and the Ministers of justice, interior, human and minority rights as well as foreign affairs. Further talks were held with the Speaker of the Parliament, the parliamentary committee on human rights and other parliamentarians. Further talks included the Ombudsman, the Supreme Court President, the Prosecutor General and the National Anti-Trafficking Co-ordinator.

Before concluding the visit, the Commissioner shared his preliminary impressions with the Prime Minister, and discussed ways to increase the level of involvement and dialogue between the government and civil society in the development of strategies and policies in the sphere of human rights. Recognising the considerable efforts which have been made in upgrading the legislative and institutional framework in Montenegro, the Commissioner emphasised finally the necessity to ensure effective implementation of standards and turn them in to practice.

Contact visits

Slovak Republic, 7-10 April 2008

The main purpose of Mr Hammarberg's visit was to establish personal contact with the authorities and strengthen the ongoing dialogue concerning human rights questions and concerns with the authorities as well as with members of civil society.

During the visit, the Commissioner focused on certain priority issues, namely the situation of Roma communities and of illegal migrants as well as the recently adopted law concerning freedom of the media, (still under discussion in Parliament at the time of the Commissioner's visit). To obtain information regarding these topics, not only did Mr Hammarberg hold meetings with Slovak authorities in Bratislava, but he also visited a Roma settlement in Plavecky Stvrtok and travelled to Kosice (the Eastern border) to take stock of the conditions of detention for irregular migrants.

Poland, 29-31 May 2008

The Commissioner visited Warsaw for a three-day contact visit to discuss human rights priorities and the implementation of the recommendation from his 2007 memorandum. He mainly focused on the government's execution of the European Court of Human Rights judgments, prison conditions, judicial appointments and anti-discrimination issues.

During the visit, the Commissioner met with the Ministers for Foreign Affairs, Justice, and the Interior. He also had separate meetings with the Polish Inter-Ministerial Committee for Matters Concerning the European Court of Human Rights, the National Judicial Council, and the Central Board of the Prison Service.

Mr Hammarberg visited a detention centre in central Warsaw, followed by a meeting with the Central Board of the Prison Service. Discussions with the various Ministries touched upon the issues of prison overcrowding, re-trial de-

tention, lengthy court proceedings and discrimination.

Thomas Hammarberg carried out a contact visit to Kaliningrad and St Petersburg, where he met with local authorities and representatives of the international community as well as of non-governmental organisations.

Russian Federation, 30 June-1 July 2008

Other visits

In the aftermath of the post-election violence in Armenia, Thomas Hammarberg carried out a three-day visit in Yerevan in order to favour an effective protection of fundamental human rights.

During his visit, the Commissioner met, among others, President Robert Kocharyan, Prime Minister and President-elect Serghz Sargsyan, former President and candidate Levon Ter-Petrossyan, Parliament Speaker Tigran Torosyan, the Chairman of the Constitutional Court, the Human Rights Defender Mr Armen Harutyunyan, as well as representatives of international organisations, diplomats and representatives of civil society.

He also visited prisons, police stations and hospitals to meet people affected by the events.

Armenia, 12-13 March 2008

One purpose of this visit was to review progress in the Chechen Republic, which has been a region of major interest and concern for this institution since its creation in 1999. The Commissioner went to Grozny and Shatoy, visited places of detention including ORB-2 and the Grozny pre-trial detention centre (SIZO), hospitals, rehabilitation centres, schools and the University. He also visited various sites of major reconstruction effort and held talks with President Ramzan Kadyrov, the President of the Supreme Court, the acting prosecutor of the Republic, the Ombudsman and a large group of NGOs.

The Commissioner received converging information of a radical reduction in disappearances and allegations of torture and he noted an increased sense of security as well as continued large-scale reconstruction of the city's infrastructure. These welcomed developments, the ways of ensuring their irreversibility and how to make them contribute to longer term stability were discussed.

From Grozny, the Commissioner proceeded to make brief visits to the neighbouring Republics of Ingushetia and Dagestan, in order to establish contacts and get a sense of the main challenges, including of the lasting consequences of the conflicts in Chechnya, their polarising effect and the management of their humanitarian consequences, notably the internally displaced persons (IDP). In Nazran, he visited an orphanage and had a long working session with President Murad Ziazikov, members of the Government, the Ombudsman, and the public prosecutor. In Makhachkala, he paid respect to the memory of an assassinated journalist Gadzi Abashilov, then met with President Mukhu Aliyev, members of the Government, the Ombudsman, and the public prosecutor.

Back in Moscow, the Commissioner had meetings with President Vladimir Putin, President-elect Dimitry Medvedev, Foreign Minister Lavrov and Minister of Health and Social Development Mrs Golikova. The circle of interlocutors also included: Member of Parliament Kosachev; Mrs. Pamfilova, chair of the Presidential human rights council; federal Ombudsman Lukin: Prosecutor General Chaika and Deputy Minister of Justice Savenkov and the state agent Mrs Milinchuk. The Commissioner also met with representatives of non-governmental human rights organisations for an update on their situation and major concerns.

The Commissioner also raised a number of more general topics of common interest: the abolition of the death penalty, the ratification of Protocol 14 to the ECHR, ways of strengthening the national institutional system for the prevention, promotion and protection of human rights, notably through the judiciary, the Ombudsman institutions and an ongoing and transparent dialogue with the civil society.

Russian Federation, 18-26 April 2008

During the visit, the Commissioner met with government officials and authorities as well as non governmental organisations.

Discussions focused on a number of human rights issues relating to the protection of human rights of asylum-seekers, refugees and immigrants, the rights of the child and juvenile justice. Thomas Hammarberg particularly addressed access to asylum and fast track proc-

United Kingdom, 31 March-2 April 2008

esses, as well as looking at the conditions of detention of asylum-seekers.

He paid special attention to the detention of children and families and visited the Colnbrook and Yarl's Wood Immigration Removal Centres. The Commissioner also visited the Oakhill Secure Training Centre and the Young Offenders' Institution in Huntercombe, where he met with young offenders, senior management and staff members.

Based on this visit and the earlier one in February 2008, three thematic memoranda on asylum and immigration, corporal punishment and juvenile justice are forthcoming.

Denmark, 11-12 June 2008

Commissioner Hammarberg visited Denmark to discuss the implementation of the recommendations set out in his memorandum to the Danish Government of 11 July 2007 as well as other recent human rights developments in the country.

During the visit, the Commissioner was informed of the following positive developments in the implementation of his recommendations:

- decreased recourse to solitary confinement in prisons;
- plans for setting up a new correctional facility in Greenland;
- expected reform of the police complaints mechanisms;
- new criminal law provisions which have rendered torture an aggravating circumstance for certain offences;
- new non-discrimination Act, entering into force in January 2009, with a wider scope and more effective sanctions in comparison with the current one.

Government's new agreement on asylum-seekers which seeks to offer families with special needs the possibility to live outside reception centres.

The Commissioner and Mr Per Stig Møller Minister of Foreign Affairs of Denmark.

The Commissioner's discussions also related to investigations into alleged rendition flights through Denmark and Greenland as well as possible future use of diplomatic assurances in returning terrorist suspects. The Danish authorities have set up an interministerial working group to investigate alleged renditions. As regards diplomatic assurances, the Commissioner's position is that they should not be used to return suspected terrorists to countries known for their practice of torture.

Italy, 19-20 June 2008

During this visit, Mr Hammarberg discussed major human rights concerns stemming from the "security package", adopted by the new Government in May, with state authorities, including the Minister of Interior, non-governmental and international organisations.

The Commissioner's agenda mainly focused on the new government's policies on migration and the situation of Roma and Sinti. During the visit, the Commissioner also met Roma and Sinti representatives and went to Casilino 900, a Roma settlement In Rome. "It is important that politicians guarantee fundamental rights to Roma people and discourage any tendency of discrimination and scapegoating", he said.

He also held meetings with the President of the National Association of Magistrates, the Head of the European Commission Representation to Italy, as well as representatives of international organisations and civil society.

Mr Thomas Hammarberg visited the Casilino 900 Roma settlement, in Rome.

Meetings organised by the Office of the Commissioner for Human Rights

Training programme 2008-2009 for national human rights structures

(Co-financed by the European Union and the Commissioner for Human Rights)

This Joint European Union – Council of Europe Programme "Setting up an active network of independent non judicial human rights structures", or "Peer-to-Peer Project", aims to empower national human rights structures (i.e. ombudsmen and national institutions) to help prevent and find solutions to human rights violations more effectively at a domestic level. Through a series of workshops, where international legal norms are explained and participants discuss their respective experiences to implement these norms, specialised staff members of the national structures can strengthen their own human rights competences and increase their awareness of the possibilities for action at domestic level and for co-operation with international mechanisms.

The Peer-to-Peer Project consists of a work programme to be implemented by the Office of the Commissioner for Human Rights in 2008 and 2009 in partnership with the Centre on Human Rights and the Rights of Peoples of the University of Padua, and the Humanitarian and Political Science "Strategy" Centre in St Petersburg.

So far, three workshops have been organised in 2008.

- Workshop on "the Rights of persons deprived of their liberty: The role of national human rights structures which are OPCAT mechanisms and of those which are not", Padua, Italy, 9-10 April 2008
- Workshop on "Complaints against the police – their handling by the national human rights structures", Pushkin, near St. Petersburg, Russian Federation, 20-21 May 2008
- Workshop on "Protecting the human rights of irregular migrants: the role of nationalhuman rights structures", Padua, Italy, 17-19 June 2008

Experts workshop on police complaints mechanisms

Strasbourg, 26-27 May 2008

The participants included representatives of complaints mechanisms, the police, the prosecutor, government authorities, intergovernmental and non-governmental organisations as well as academic experts.

The aim of this workshop was to share experiences from current mechanisms and procedures in member states to assess their independence, effectiveness and transparency and to discuss the challenges encountered by police oversight bodies. As a follow-up to the workshop, the Commissioner will issue a recommendation on the theme.

Reports

Armenia

On 20 March Thomas Hammarberg released his report on the special visit he carried out to Armenia from 12 to 15 March 2008. In this document, the Commissioner calls on national authorities to lift the State of Emergency and carry out a credible inquiry to clarify the violent events which occurred during the confrontations in Yerevan on 1 March. The purpose of the visit was to monitor the overall human rights situation and the impact of the State of Emergency.

On 30 April, the Commissioner presented three new reports on the human rights situation based on the information gathered during his official visits.

Armenia

This report is based on an official visit from 7 to 11 October 2007. In this document, the Commissioner underlines that while the legal framework in the country has been considerably improved and the reform of the Constitution is a step in the right direction, the problem lies in the implementation of these reforms and of human rights standards.

The report focuses mainly on the functioning of the judiciary, conditions of detention, cases of torture and ill-treatment, freedom of expression, as well as social and economic rights.

The Commissioner stresses that the system of justice still does not work appropriately and that judges must demonstrate more independence in the exercise of their duties.

Following on from the open dialogue with all stakeholders during the Commissioner's visit, this report should serve as a tool for progression, future co-operation and follow-up.

Ireland

Based on a week-long visit from 26 to 30 November 2007, the human rights assessment report on Ireland focuses on children's rights, treatment of asylum-seekers, juvenile justice, anti-terrorism measures, discrimination and women's rights. The Commissioner welcomes the proposal to incorporate the best interests of the child in the Irish Constitution. He also underlines the importance of adopting a total ban on corporal punishment and expresses concerns about the high number of children missing from accommodation centres for separated children.

The report outlines certain shortcomings in the proposed Immigration, Residence and Protection Bill which may lead to unfair treatment of asylum-seekers and undocumented migrants. On juvenile justice, the Commissioner expressed his satisfaction regarding the planned closure of St. Patrick's Institution and encouraged further efforts to develop alternatives to the imprisonment of juveniles.

San Marino

Based on an official visit from 23 to 25 January 2008, this report reflects what the Commissioner deems to be priorities for the further protection and promotion of human rights in San Marino. These include the ratification of certain international documents, the establishment of an Ombudsman Institution, the adoption of general legislation against discrimination, the introduction of a higher age of criminal responsibility (14 instead of 12).

Albania

On 18 June 2008, Thomas Hammarberg presented his assessment report following his visit to the Republic of Albania in October 2007. In this document, he underlined the positive steps undertaken by the Albanian authorities to improve the protection of human rights. However, he expressed concerns about some still existing structural problems.

Mr Hammarberg made some recommendations on the functioning of the judiciary, police behaviour, conditions of detention, minority rights, protection against discrimination, rights of disabled persons, children's and women's rights, trafficking in human beings. Finally, he called on the national authorities to decriminalise defamation to ensure real media freedom so as to effectively fulfil their duty as a public watchdog.

Other events

Conference on Youth Justice

Cork, 4 April 2008

Speaking on "Youth Justice based on child Rights Norms", Mr Hammarberg insisted on the necessity to implement international standards on juvenile justice at a national level. He raised his concerns about the growing tendency to treat young offenders as adult criminals and underlined that children who breach the law were often also victims.

European Conference on Roma education

Bratislava, 9 April 2008

In his speech, the Commissioner said that discrimination against the Roma in the field of education continues unabated on our continent, preventing them from participating effectively in the social and political life of their home country. Drawing the attention of Council of Europe member states on the need to develop comprehensive action plans for human rights, he also stressed the importance to act promptly to fill the existing, serious gaps in protecting Roma rights.

On this occasion, Thomas Hammarberg reiterated his determination to keep this issue as one of his priorities.

International conference to mark the 60th Anniversary of the Universal Declaration of Human Rights and the 10th Anniversary of the Ombudsman of Ukraine

Ukraine, 14 April 2008

The Council of Europe Commissioner for Human Rights gave a speech at the National Parliament. He focused on the modern challenges faced by European countries, in particular Ukraine, in the field of human rights. Mr Hammarberg also highlighted the recommendations published in his assessment report on Ukraine in October 2007 and emphasised the important role that Ombudsmen can play in protecting individuals.

Commissioner Hammarberg also held discussions with Prime Minister Yulia Tymoshenko on major human rights issues in Ukraine.

Conference on the rights of lesbian, gay, bisexual and transgender persons (LGBT)

Brussels, 17 April 2008

The Commissioner raised several concerns regarding the effective respect of LGBT persons' rights, in particular to be protected from hate crimes and discrimination based on sexual orientation and gender identity. He also stressed the freedom of assembly when peaceful Gay Pride Marches are organised: they should not be obstructed by national and local authorities.

In a video message to a meeting organised by The Alliance of Liberals and Democrats for Europe (ALDE) in the European Parliament in Brussels, he referred to widespread discrimination against LGBT persons and the need for comprehensive inclusive anti-discrimination legislation. "Regulations and laws should list all grounds for discrimination including sexual orientation which is not always the case." He also stressed the importance of the Yogyakarta Principles, a worldwide lawyers' initiative which analyses international human rights law through a LGBT persons' prism, and their relevance for future respect for human rights for all.

Colloquy on the effectiveness of the European Convention on Human Rights at national level

Stockholm, 9-10 June 2008

Organised under the Swedish Chairmanship of the Committee of Ministers of the Council of Europe on 9-10 June in Stockholm, this event brought together around 150 representatives of governments, the Court and other bodies of the Council of Europe, as well as representatives of international governmental and non-governmental organisations.

The Commissioner's speech focused on the concrete steps he has already taken to help member States develop a more effective protection of human rights at domestic level. In particular, Commissioner Hammarberg emphasised the importance of the principle of subsidiarity and highlighted his role as a facilitator in promoting activities of specific assistance to member states to prevent violations and correcting situations of non compliance with the European Convention. He also underlined the usefulness that his support and training of National Human Rights Structures can have in better implementing the Council of Europe norms.

Council of Europe initiative against corporal punishment

Zagreb, 15 June 2008

Unable to attend in person, the Commissioner recorded a video message which was broadcast at the launching of this event. In his message, the Commissioner welcomed this essential initiative and indicated that the moment has come to protect children adequately from any form of violence including at home. Convinced that the tools developed for this initiative could be used broadly, the Commissioner called on Europe to "raise [your] hands against smacking".

Communication and information work

The communication and information work continued to focus mainly on interviews[1], press releases, public relations activities, publication and dissemination of the fortnightly Viewpoints.

Viewpoints

A number of Viewpoints have been published on the Commissioner's website about gender pay gap, rights of asylum-seekers, access to education for Roma children, human rights

1. Interviews and opinions have been published by major international and national newspapers, news agencies, radios and televisions, amongst which the BBC Radios and TV, the International Herald Tribune, the Guardian, the Independent, Le Monde, Libération, Radio France Internationale, France 2, Swedish Educational Broadcasting Corporation, La Repubblica, Il Corriere della Sera, El País, Ansa, New Europe and Euronews.

mechanisms, rights of the elderly persons, respect of sexual orientation, personal data protection, right to a nationality or corruption in the justice system.

The earlier viewpoints are available as a single publication *Human rights in Europe: No place for complacency.*

All these texts are also available on the Commissioner's website: http://www.commissioner.coe.int

Issue Paper

The Commissioner published an issue paper on *Housing rights: the duty to ensure housing for all*. This document examines the housing crisis facing several groups of people in Europe. It outlines the housing rights which have been accepted by countries within the Council of Europe and draws attention to significant initiatives and projects where people define and assert their housing rights. The issue paper concludes with a set of recommendations for the promotion of housing rights, understood as a key element for the enjoyment of all other human rights.

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. 39 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)

At its 1022nd session on 26 March 2008, the Ministers' Deputies adopted the revised form for reports submitted in pursuance of the 1961 European Social Charter and the 1988 Additional Protocol (CM(2008)31, and the revised form for reports submitted in pursuance of the European Social Charter (revised) (CM(2008)32).

At their 1031st session on 2 July 2008, the Ministers' Deputies adopted the procedure for filling the five seats of the European Committee of Social Rights falling vacant on 31 December 2008, the terms for these seat beginning on 1 January 2009 and ending on 31 December 2014.

On 3 March 2008, at its 228th session, the ECSR an exchange of views took place with Mr Ian Harden, Secretary General of the European Ombudsman's Office.

Mr Harden gave a detailed presentation of the role and functioning of the European Ombudsman institution. The main types of complaints

brought before the European Ombudsman relate to lack of transparency (access to documents, etc.) and the role and the activities of the various EU bodies and agencies such as for example the Commission, the European Investment Bank and the Anti-Fraud Office. Furthermore, the European Ombudsman maintains an important co-ordinating role in relation to the national ombudsmen. In this context Mr Harden wishes to make not only the European Ombudsman institution, but also the whole network of ombudsmen aware of the Charter and the conclusions and decisions of the ECSR.

At its following session on 31 March 2008, Mr Jean-Paul Costa, President of the European court of Human Rights was invited by the ECSR

Mr Costa stressed that it was necessary to strengthen the synergy between the human rights mechanisms of the Council of Europe and he expressed his willingness to work actively for a more systematic exchange of information between the Committee and the Court in order that the Court in the future would rely more on the Charter and the case-law of the Committee.

Significant meetings

Seminar in the framework of the Action Plan of the Council of Europe 3rd Summit

Skopje ("The former Yugloslav Republic of Macedonia") 17-18 March 2008

The aim of this seminar was to support the process of ratification of the Revised Social Charter and the collective complaints protocol and to assist in the drafting of the reports, as well as to explain the case-law of the ECSR.

Belgrade (Serbia), 20 November 2007 Podgorica (Montenegro, 22 November 2007 Sarajevo (Bosnia and Herzegovina), 28-29 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.

Zagreb (Croatia) 22 April 2008

The primary objective of the seminar was to foster the signing and subsequent ratification of the Revised Charter. It also aimed at raising awareness on the implementation of the Charter and to discuss the collective complaints procedure. The ongoing complaint lodged by Interights against Croatia generated a lot of interest.

Meeting on non-accepted provisions of the European Social Charter

Helsinki (Finland), 15-16 November 2007

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.

The trade unions representatives expressed their concern about the ongoing reforms – particularly on health and pensions, and on the lack of political will of the authorities to ratify the Revised Charter.

The representatives of ministries stressed that the EU accession negotiations were currently the priority of the Government, but a working group was keeping on examining the provisions of the Revised Charter and was considering starting the signature/ratification procedure.

Riga (Latvia), 23-24 April 2008

This meeting gave an opportunity to strengthen co-operation with Latvian authorities which are preparing the ratification of the Revised Social Charter (signed in 2007) and also to discuss with social partners and representatives of NGOs the rights guaranteed by the Revised Charter and its supervisory mechanisms

Joint programe between the Council of Eurpe and the European Union "Ukraine and South Caucasus – Fostering a culture of Human Rights"

Following the meeting held in October 2007, this Seminar brought together representatives of different ministries and social partners involved in the drafting of the first report on the application of the Revised Charter which is due to be submitted in October 2008.

On the basis of the draft prepared, detailed discussions took place on the provisions to be reported on, on ECSR case-law and on the new form for reports, in order to improve the quality of this first report.

Kiev (Ukraine) 6-7 May 2008

Collective complaints: latest developments

Decisions on the merits

Three decisions on the merits were published.

The complaint lodged against France by the European Council of Police Trade Unions (CESP) (No 38/2006) alleged that the French legislation did not allow the Operational Command Corps of the National Police Force, which is classified as an A-grade body within the national civil service, to receive compensation for the overtime worked as a result of antigovernmental demonstrations held in France in the first half of 2006.

The ECSR concluded that there was a violation of Article 4§2 because the functions of senior officers and commanders do not always equate to planning and management tasks.

The complaint lodged against France by the International Movement ATD-Fourth World (No 33/2006) alleged violations of the right to housing of persons in extreme poverty.

The European Committee of Social Rights concluded that there was a violation:

- of Article 31§2 of the Revised Charter on the grounds of the eviction procedures and their implementation;
- of Article 31§3:

i. on the grounds of a shortage of affordable housing

ii. on the grounds of the arrangements for allocating social housing to the poorest members of the community and of the inadequacy of the means of appeal in the event of excessively long waits for housing;

- of Article 31, taken in conjunction with Article E on the grounds of the deficient implementation of the legislation on stopping places for Travellers;
- of Article 30, taken in conjunction with Article E, because of the lack of co-ordinated approach to promote the effective access to housing to persons being or risking to find themselves in a situation of social exclusion or poverty.

The complaint lodged against France by the European Federation of National Organisations working with the Homeless (FEANTSA) (No 39/2006) alleged that the manner in which legislation related to housing is implemented in France resulted in a situation of non conformity with Article 31 (right to housing).

The ECSR concluded that there was a violation:

- of Article 31§1 of the Revised Charter on the grounds of insufficient progress as regards the eradication of substandard housing and lack of proper amenities of a large number of households;
- of Article 31§2 on the grounds of unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families, as well as on the grounds that measures currently in place to reduct the number of homeless are insufficient, both in quantitative and qualitative terms;
- of Article 31§3 on the grounds of insufficient supply of social housing accessible to low-income groups and of the malfunctioning of the social housing allocation system, as well as the related remedies;
- of Article 31§3, taken in conjunction with Article E on the grounds of the deficient implementation of legislation stopping places for Travellers.

Decision on the admissibility

On 1 April 2008, the collective complaint **International Centre for the Legal protection of Human Rights (INTERIGHTS) v. Croatia** (No. 45/2007) was declared admissible by the ECSR.

This complaint relates to Article 11 (right to health), Article 16 (right of the family to social, legal and economic protection) and Article 17 (right of children and young persons to social, legal and economic protection) of the European Social Charter. It is alleged that Croatian schools do not provide comprehensive or adequate sexual and reproductive health education for children and young people.

New collective complaints

Four collective complaints were registered:

European Roma Rights Centre (ERRC) v. Bulgaria (No. 48/2008): 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 Social Charter. It is alleged that Bulgarian legislation as from 1 January 2008, will no longer ensure the right to adequate social assistance to unemployed persons without adequate resources. This will notably affect Roma and women.

International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece (No. 49/2008): it relates to Article 16 of the Social Charter (right of the family to social, legal and economic protection) read alone or conjunction with the non discrimination clause in the Preamble of the Charter. It is alleged that the Greek Government continues to forcibly evict Roma without providing suitable alternative accomodation.

Confédération française démocratique du travail (CFDT) v. France (No. 50/2008): it relates to Article 4 (right to a fair remuneration), Article 12 (right to social security), Article 18 (right to engage in a gainful occupation in the territory of other Parties) and Article 19 (right of migrant workers and their families to protection and assistance) read alone or in conjunction with Article E of the Revised Social Charter It is alleged that the rules governing the integration of civilians working for the French forces based in Germany into the French administration, following the dissolution of these forces are not in conformity with the rights laid down in the above-mentioned Articles.

European Roma Rights Centre (ERRC) v. France (No. 51/2008): it relates to Article 16 (right of the family to social, legal and economic protection), 19 (right to migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) read alone or in conjunction with Article E of the Revised Social Charter. It is alleged that Travellers in France are victims of injustice and of lack of security.

For more detailed information, see the website:

http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/List_of_collective_complaints/default.asp#TopOfPage

Publications

The European Social Charter (revised) exists in English, French, Albanian, Armenian, Azeri, Bosnian, Croatian, Dutch, Estonian German, Italian, Norwegian, Polish, Portuguese, Romanian, Russian, Slovakian, Slovenian and Spanish).

The Social Charter at a glance has been published in Latvian (exists also in English, French, Albanian, Azeri, Bosnian, Croatian, Dutch, Georgian, German, Hungarian, Italian, Macedonian, Polish, Romanian, Russian, Slovakian, 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

Armenia, 15-17 March 2008

The main purpose of the visit, which began on 15 March 2008, was to examine the treatment of persons detained in relation to events which followed the recent Presidential election in Armenia. The delegation interviewed some 80 persons held at Nubarashen, Vardashen and Yerevan-Kentron Prisons, the Temporary holding facility of the National Security Service and the Holding Centre of Yerevan City Police Department. In addition, the delegation visited the Main Department for Combating Organised Crime and Kentron District Police Division in Yerevan.

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

Czech Republic, 25 March – 2 April 2008

One of the main objectives of the visit was to examine the application of the measure of surgical castration to persons sentenced to "protective treatment".

The delegation also paid a follow-up visit to Section E of Valdice Prison, which accommodates persons sentenced to life imprisonment as well as "troublesome" or "dangerous" high security prisoners. The aim of the visit was to review the treatment and conditions of detention of these prisoners, in the light of the recommendations made by the CPT after its previous visit to the Czech Republic in 2006.

At the end of the visit the delegation presented its preliminary conclusions to the Czech authorities.

Russion Federation (North Caucasian Region), 27 March – 4 April 2008

It was the CPT's tenth visit to this part of the Federation since the year 2000.

During the visit, the CPT delegation examined for the first time the treatment of persons deprived of their liberty in the Republic of Kabardino-Balkaria; it also returned to the Republic of Ingushetia.

In Kabardino-Balkaria, the CPT delegation had discussions with representatives of the Republican Presidential Administration, Government and Parliament. In Ingushetia, the delegation had talks with senior officials of the Federal Security Service (FSB) at the Service's Headquarters in Magas. In both Republics, the delegation met senior representatives of the Federal Service for the Execution of Sentences (FSIN).

The delegation held meetings with the Prosecutor of Kabardino-Balkaria, Oleg Zharikov, and the Prosecutor of Ingushetia, Yuri Turygin, as well as with representatives of the Investigation Departments of the Investigation Committee, under the Russian Prosecutor General's Office, in both Republics. Further, the delegation visited the Republican Forensic Medical Bureaux in Nalchik and Nazran.

In addition, the delegation had consultations with NGO representatives from "Memorial" Human Rights Centre, Human Rights Watch and Russian Justice Initiative, as well as with defence lawyers.

During subsequent talks chaired by the Deputy Minister of Justice, Nikolay Savchenko, the CPT delegation provided the Russian authorities with its preliminary observations.

Finland, 20-30 April 2008

The CPT delegation reviewed the measures taken by the Finnish authorities to implement the recommendations made by the Committee after previous visits. The delegation examined, in particular, the safeguards offered to persons detained by the police, and the situation of remand prisoners in police detention facilities and of foreign nationals held under aliens legislation. As regards prisons, special attention was paid to the phenomenon of inter-prisoner violence and intimidation as well as to the situation of prisoners held in high security and closed units. In addition, the delegation visited a state psychiatric hospital for forensic patients and civil patients considered dangerous or otherwise challenging and, for the first time in Finland, a psychiatric unit for adolescent intensive care.

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

Lithuania, 21-30 April 2008

The CPT delegation reviewed the measures taken by the Lithuanian authorities to implement the recommendations made by the CPT after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police detention facilities. The delegation also examined in detail various issues related to prisons, including the situation of juvenile and life-sentenced prisoners. Further, for the first time in Lithuania, the delegation visited a forensic psychiatric hospital and a social welfare institution.

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

Cyprus, 12-19 May 2008

The CPT delegation examined the treatment of persons detained by the police (including immigration detainees) and the effectiveness of the formal safeguards against ill-treatment which are available to such persons. It also reviewed developments at Nicosia Central Prisons and Athalassa Psychiatric Hospital, and visited the Nea Eleousa Institution for persons with severe mental retardation.

Malta, 20-26 May 2008

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

In the course of the visit, the delegation held consultations with Mr Carmelo Mifsud Bonnici, Minister of Justice and Home Affairs, as well as with senior officials from this Ministry and the Ministry for Social Policy, the Malta Police Force and the Detention Service.

Albania 16-20 June 2008

The main objective of the visit was to review progress made as regards the implementation of the recommendations made by the CPT following its May/June 2005 and March 2006 visits to Albania. Particular attention was paid to the treatment of persons detained by the

police and conditions of detention in remand prisons and pre-trial detention centres.

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

Report on the visit in May 2007 together with the Turkish Government's response

Turkey
Publication on 6 March 2008

During that visit, the CPT delegation went to Imrali High-Security Closed Prison and examined the treatment of the establishment's sole inmate, Abdullah Öcalan.

The delegation looked into what action had been taken to implement the recommendations made after earlier CPT visits as regards the prisoner's conditions of detention, and reviewed the situation concerning access to Imrali Island for his family members and lawyers.

The state of the prisoner's health was also examined. As regards more particularly the recent allegations of intoxication by heavy metals, this question is the subject of an Addendum to the visit report.

Report on the ad hoc visit in May 2004 together with the Latvian authorities' response

Latvia
Publication on 23 March 2008

These documents have been made public at the request of the Latvian Government.

The main purpose of the visit was to review the measures taken by the Latvian authorities to implement the recommendations made by the CPT after its 2002 visit. Particular attention was paid to the treatment of persons detained by the police and conditions of detention in police establishments and prisons. The CPT delegation also examined the regime and security measures applied to life-sentenced prisoners.

Report on the visit in December 2004 together with the response of the Cypriot authorities

Cyprus
Publication on 15 April 2008

These documents have been made public at the request of the Cypriot Government.

The report reviews the situation of persons detained by the police, including immigration detainees. The information gathered during the visit indicated that physical ill-treatment by the police remained a problem in Cyprus. The CPT made a series of recommendations designed to address that issue.

Despite efforts being made to upgrade conditions of detention in police facilities, certain deficiencies were observed in establishments visited and were the subject of recommendations. The CPT also expressed serious concern about the practice of holding persons, in particular immigration detainees, for prolonged periods in police detention facilities.

Having re-examined the situation at Nicosia Central Prisons, the CPT made a number of recommendations concerning prison overcrowding, material conditions, regime activities offered to prisoners, medical screening of prisoners and the treatment of mentally ill prisoners, among other issues.

The report also covers the situation at Athalassa Psychiatric Hospital, where it was noted that living conditions for patients had improved since the CPT's previous visit in 2000. Recommendations were made aimed at diversifying therapeutic programmes and increasing the number of medical and other qualified treatment staff.

For the first time in Cyprus, the CPT also visited two places accommodating children in the care of the authorities. The situation in these establishments was found to be generally satisfactory.

In their responses, the Cypriot authorities provide information on measures taken which address concerns raised in the CPT's report, including the adoption in 2005 of the Law on the Rights of Arrested and Detained Persons, as well as the refurbishment of police cells and of certain sections of Nicosia Central Prisons.

Finland
Publication on 10 June 2008

Preliminary observations on the fourth periodic visit in April 2008

The CPT's fourth periodic visit to Finland, provided an opportunity to assess the progress made since the previous periodic visit in 2003. The CPT delegation examined, in particular, the safeguards offered to persons detained by the police, and the situation of remand prisoners held in police detention facilities and of foreign nationals held under aliens legislation. The delegation stressed again that remand prisoners should not be held in police cells, and requested the Finnish authorities to provide detailed information about the steps envisaged to eliminate this practice. The delegation also noted that persons deprived of their liberty under aliens legislation were still sometimes held in police establishments. The Finnish authorities were requested to consider the possibility of opening a second holding facility for aliens such as the one visited in Metsälä, which on the whole offered adequate conditions.

The CPT's delegation also examined in detail various issues related to prisons, in particular the phenomenon of inter-prisoner violence and intimidation as well as the situation of prisoners held in high security and closed units. Despite significant efforts to combat inter-prisoner violence/intimidation, it appeared that the most vulnerable prisoners were still not provided with an appropriate regime in a safe environment. The delegation also stressed that more could and should be done to ensure that prisoners held in conditions of high security or control enjoy a relatively relaxed regime within the confines of their units.

As regards Vantaa Prison, the delegation was impressed by the high quality of the prisoner accommodation; however, the original concept of a modern remand prison offering a variety of regimes while taking into account the interests of justice was compromised by overcrowding. The delegation took note of the refurbishment work carried out at Riihimäki and Helsinki Prisons. That said, the delegation was concerned to learn that Helsinki Prison was the only establishment not to be included in the future national investment plan aimed at reducing the number of "slopping out" cells. The delegation requested the Finnish authorities to reconsider their position on this matter.

In addition, the delegation visited a state psychiatric hospital for forensic patients and civil patients considered dangerous or otherwise challenging (Vanha Vaasa Hospital) and, for the first time in Finland, a psychiatric unit for adolescent intensive care (EVA Unit in Pitkäniemi). As regards the latter establishment, the delegation noted with concern that some of the juvenile patients were prevented from going outdoors, on occasion for weeks on end. Further, at the Vanha Vaasa Hospital, there appeared to be an excessive reliance on seclusion. The delegation requested the Finnish authorities to draw up a detailed action plan to reduce significantly recourse to seclusion at the above-mentioned establishment.

The preliminary observations are published with the agreement of the Finnish authorities.

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

In the framework of this work, ECRI closely examines the situation concerning racism and intolerance in each of the member States of the Council of Europe. Following its analyses, ECRI draws up suggestions and proposals addressed to governments as to how the problems of racism and intolerance identified in each country might be overcome, in the form of a country report.

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

On 29 April 2008, ECRI published five new reports examining racism, xenophobia, antisemitism and intolerance in Liechtenstein, Malta, Moldova, San Marino and Serbia. ECRI recognises that positive developments have occurred in all five of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern.

In **Liechtenstein**, the Government adopted a five-year National Action Plan to Combat and Prevent Racism. Many different measures have been taken to train officials and to raise awareness among the general public about the need to combat racism and racial violence. But despite measures taken by the authorities, Muslims still face some obstacles in practising their religion and children of immigrant background are still faced with disadvantages in access to education.

In **Malta**, the legal and institutional framework against racism and racial discrimination has been strengthened and primary anti-discrimination legislation covering different areas of life has been introduced. But irregular migrants, asylum seekers, persons with humanitarian protection and refugees remain vulnerable to racial discrimination in accessing different services and to exploitation on the labour market. The legal provisions against racist expressions and racially-motivated offences are not yet fully applied.

"The Maltese government stated that ECRI's report showed disregard of Malta's vital national interests and disrespect towards its democratic institutions. It regretted that such a blatantly biased and superficial report could

not serve any constructive purpose." (Phrases included in this article following a specific request from the Permanent Representative of Malta to the Council of Europe).

In **Moldova**, new legislation was introduced, outlawing extremist activity in fields related to racism and intolerance. The new Labour Code adopted in 2003 contains anti-discrimination provisions. However there is a problem of inadequate implementation of the existing law in many fields which are of importance to combating racism and racial discrimination. At the same time, no comprehensive body of civil and administrative anti-discrimination legislation has been adopted.

In **San Marino**, a number of initiatives have been taken to raise awareness of issues of racism and racial discrimination among the general public, notably in the framework of the Council of Europe's "All Different All Equal" campaign. Opportunities for teachers to acquire competencies in the field of intercultural education and for pupils to increase their knowledge of human rights have been increased. However, comprehensive civil and administrative legislation prohibiting discrimination in all fields of life still remains to be adopted.

Serbia has taken a number of measures to combat racism and intolerance and is a party to Protocol No.12 to the European Convention on Human Rights which contains a general non-discrimination clause. But although a bill on discrimination has been drafted, Serbia has not yet enacted exhaustive provisions against racial discrimination in the area of civil and administrative law. The Criminal Code is still too seldom applied to persons who commit racist offences.

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.

At the beginning of 2008, ECRI completed its third round of country-by-country monitoring work and started a new monitoring cycle. The fourth round country monitoring reports focus mainly on the implementation of the main recommendations addressed to governments in the third round reports. They examine whether, and in what ways, ECRI's recommendations have been put into practice by the authorities and with what degree of effectiveness. They include an evaluation of policies as well as the analysis of new developments since the last report. Most importantly, ECRI introduced a new follow-up mechanism asking member States – two years after the publication of the report – to provide information on the implementation of specific recommendations for which priority implementation was requested in the report.

In spring 2008, ECRI carried out the first contact visits of its fourth round of country monitoring, to Bulgaria, Hungary and Norway, as part of the process of preparing the monitoring reports on these countries. The aim of ECRI's contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the respective countries, prior to the elaboration of the country reports. The visits provide an opportunity for ECRI's Rapporteurs to meet officials from ministries and national public authorities, as well as representatives of NGOs and anyone concerned with issues falling within ECRI's remit.

Work on general themes

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

General Policy Recommendations

ECRI has adopted to date eleven 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; combating racism on the Internet; combating racism while fighting terrorism; combating antisemitism; combating racism and racial discrimination in and through school education; and combating racism and racial discrimination in policing.

ECRI continued to work on the drafting of its future General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sports. At its 46th plenary meeting held in June 2008, it decided that the draft text would be the subject of a written consultation of relevant actors before its adoption by ECRI, foreseen in December 2008.

ECRI Declaration on the occasion of EURO 2008 "Unite against racism"

On 13 May 2008, during the run-up to the EURO 2008 football championship, ECRI published a Declaration entitled "Unite against racism", which stresses the importance of combating racism and racial discrimination in football, by governments, sports organisations and the population as a whole, and proposes concrete measures to this end. ECRI presented this Declaration at a press conference in Paris, in the presence of ECRI's Chair, Ms Eva Smith-Asmussen, and of the famous international football player, Mr Lilian Thuram.Work on integration from the perspective of non-discrimination

Work on integration from the perspective of non-discrimination

At its 45th plenary meeting (March 2008), ECRI held a general exchange of views concerning its position on some issues relating to integration from the perspective of non-discrimination. A working group was set up to examine these issues in more detail and formulate proposals for possible ECRI work on this theme. At its 46th plenary meeting (June 2008), ECRI decided to task the group with producing a draft internal ECRI document containing guidelines on how to examine integration measures in its country monitoring work.

Relations with civil society

This aspect of ECRI's programme aims at spreading ECRI's anti-racist 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.

ECRI's Round Table in Latvia

On 19 May 2008, ECRI held a Round Table in Riga, Latvia. The main themes of this round table were: ECRI's Third Report on Latvia (published on 12 February 2008); towards an integrated society in Latvia; implementing anti-discrimination laws and responding to racist incidents in Latvia.

Publications

- **Annual Report on ECRI's Activities, covering the period from 1 January to 31 December 2007**, April 2008

- **Third Report on Liechtenstein**, 29 April 2008
- **Third Report on Malta**, 29 April 2008
- **Third Report on Moldova**, 29 April 2008
- **Third Report on San Marino**, 29 April 2008
- **Report on Serbia**, 29 April 2008
- **ECRI Declaration on the occasion of EURO 2008 "Unite against racism"**, 13 May 2008

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

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.

Ten years of protecting national minorities and regional or minority languages

Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, and Mr Dušan Čaplovič, Deputy Prime Minister in the Slovak Government opened a Conference in Strasbourg on 11 March under the auspices of the Slovak Presidency of the Committee of Ministers. This significant event marked the 10th anniversary of the entry into force of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages on 1 February and 1 March 1998 respectively.

The conference reviewed the experience accumulated over the last 10 years and also provided an opportunity to reflect on the role of the international and domestic institutions which implement both conventions. It examined the impact of these conventions on national policies, legislation and practice regarding the protection of minorities and their languages.

First monitoring cycle

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Latvia from 9-13 June in the context of the monitoring of the implementation of the Framework Convention by this country.

Latvia

Note: Latvia submitted its first State Report under the Framework Convention in October 2006. Following its visit, the Advisory Committee is expected to adopt its own report (called Opinion) in October 2008, which will be sent to the Latvian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Latvia.

Second monitoring cycle

Submission of State Reports

The second cycle State Report in respect of **Serbia** was received on 4 March.

A follow-up meeting on the implementation of the Framework Convention for the Protection of National Minorities was organised in **Norway** on 17 June.

Austria

The Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Austria was made public on 11 June.

Summary of the Opinion:

"Austria has taken a number of measures to advance the implementation of the principles of the Framework Convention. The legal and institutional frameworks to combat discrimination have developed significantly. There is a

need to ensure the accessibility and effectiveness of existing legal remedies.

The ongoing efforts to tackle racism and xenophobia should be pursued and expanded, notably through wider data collection on racially-motivated violence.

Persons belonging to the Roma minority continue to be at a disadvantage in various fields. More resolute policies and programmes have to be devised and implemented to promote their effective participation, notably in the fields of education, employment and housing.

The Constitutional Court's decision of 13 December 2001 on bilingual signposting in Carinthia is still not implemented, which raises serious concerns regarding the rule of law and could jeopardise harmonious relations. Obstacles also persist with regard to the effective implementation of the legislation on the use of minority languages in relations with the administration in Carinthia and Burgenland.

While efforts have been made to increase minority participation in the media, there is still room for improvement in the field of radio and television broadcasting.

Further steps should be taken in relation to consultative mechanisms to enhance effective participation of minorities in decision-making."

Sweden

The Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Sweden was made public by this country.

Summary of the Opinion:

"Minority protection is well developed in Sweden. Over the last years, Sweden has taken a number of valuable measures to advance the protection of national minorities. It has developed its institutional capacity to combat discrimination of Roma and other minorities and important public support is given to Finnish and Sami language radio programmes and to other cultural initiatives. Furthermore, a commitment to improve minority protection was made in the National Action Plan for Human Rights (2006-2009) which includes a reference to the Framework Convention's monitoring findings. A large majority of the Swedish population considers that persons belonging to ethnic minorities enrich their society and encourage firmer measures to combat discrimination. In addition, Swedish society is increasingly self-critical with regard to xenophobic attitudes.

Despite these and other commendable initiatives, the development of minority policies and legislation has been complicated by such factors as frequent shifts in institutional responsibilities, limited commitment by certain local authorities as well as lack of adequate data on national minorities.

While legislation on the use of minority languages covers the five northern municipalities, valuable proposals to expand the scope of these guarantees have met with delays and need to be followed up as a matter of priority.

In education, the authorities have undertaken commendable reviews of textbooks and launched web-based initiatives devoted to minority languages. However, the availability of minority language teaching remains too limited in the public education system, and there is a need for the authorities to strengthen the pertinent regulations and bolster support for bilingual education.

In northern Sweden, legal uncertainty over land rights continues to negatively impact on the Sami population. While the Sami Parliament has an important place in enhancing participation, its role could be further increased."

Spain

The Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Spain was made public on 2 April.

Summary of the Opinion:

"Since the adoption of the Advisory Committee's first Opinion in November 2003, Spanish authorities have introduced a number of measures which have improved the implementation of the Framework Convention. Steps have been taken to strengthen Spain's legislative provisions for combating discrimination and numerous initiatives have been launched, at national and regional levels, to improve access to education, social services and the labour market for Roma and other disadvantaged groups. Spain's high degree of decentralisation, which is currently deepening through a process of statutory reforms, has facilitated the promotion of cultural identities and diversity as the Autonomous Communities exercise broader powers in many fields.

State and regional authorities are giving increasing attention to the protection and promotion of Roma identity and culture and to the need to involve Roma actively in the prepara-

tion and implementation of policies that are likely to affect them.

Problems persist, however, in the implementation of existing legislation for combating discrimination. Roma still face particular difficulties and discrimination in their access to employment, education, housing, health and social services. Efforts to collect ethnically-disaggregated data need to be expanded in order to diagnose and remedy this situation adequately. Further training is needed for police, prosecutors and judges regarding the problems of racism and racially-motivated crime, bearing in mind that the relevant criminal law provisions are rarely invoked.

There is a need to raise awareness among the general public about the cultures of all groups living in Spain and to foster intercultural dialogue. Recent pronouncements in favour of promoting Roma identity and culture need to be consolidated in concrete achievements. Roma presence in the media remains negligible and further efforts are needed to ensure their effective participation in elected bodies at local, regional and national levels."

Opinions on Albania and Ukraine

The Advisory Committee adopted second cycle opinions on **Albania** (29 May) and **Ukraine** (30 May).

Albania

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Albania from 3-7 March in the context of the monitoring of the implementation of the Framework Convention by this country.

Note: Albania submitted its second State Report under the Framework Convention in May 2007. Following its visit, the Advisory Committee adopted its own report (called Opinion) in May 2008, which has been sent to the Albanian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Albania.

Bosnia and Herzegovina

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Bosnia and Herzegovina from 25-28 March in the context of the monitoring of the implementation of the Framework Convention by this country.

Note: Bosnia and Herzegovina submitted its second State Report under the Framework Convention in August 2007. Following its visit, the Advisory Committee is expected to adopt its own report (called Opinion) in October 2008, which will be sent to the Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Bosnia and Herzegovina.

Ukraine

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Ukraine from 6-10 April in the context of the monitoring of the implementation of the Framework Convention by this country.

Note: Ukraine submitted its second State Report under the Framework Convention in June 2006. Following its visit, the Advisory Committee adopted its own report (called Opinion) in May 2008, which has been sent to the Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Ukraine.

Resolution on Austria, Sweden and Spain

The Committee of Ministers adopted a resolution on the protection of national minorities in **Austria** and **Sweden** (11 June) and on **Spain** (2 April). These resolutions contain conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

The resolutions are largely based on the corresponding Opinions of the Advisory Committee on the Framework Convention. The detailed Opinions of the Advisory Committee of independent experts, together with the comments by the government of Austria, Sweden and Spain, are also available on line.

Advisory Committee – Appointment of 9 ordinary members

On 21 May, the Deputies appointed as ordinary members of the Advisory Committee on the Framework Convention for a four-year term commencing on 1 June 2008 and expiring on 31 May 2012, the nine experts named below:

- Mr Giorgi Meladze in respect of Georgia;
- Mrs Marieke Sanders-Ten Holte in respect of the Netherlands;
- Mr Rainer Hofmann in respect of Germany;
- Mr Gaspar Biró in respect of Hungary;
- Mr Tonio Ellul in respect of Malta;
- Mrs Iulia Motoc in respect of Romania;
- Mrs Iryna Kresina in respect of Ukraine;
- Mr Zdzislaw W. Galicki in respect of Poland;
- Mrs Barbara Wilson in respect of Switzerland.

Publications

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its 6th Activity Report, covering the period 1 June 2006 – 31 May 2008, at its 32nd plenary on 28 May 2008. The Report is available on line.

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

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.

Council of Europe Convention on Action against Trafficking in Human beings

The *Council of Europe Convention on Action against Human Beings* [CETS No. 197] entered into force on 1 February 2008. Chapter VII contains provisions which aim to ensure the effective implementation of the Convention by the Parties and stipulates that its monitoring mechanism must be in place one year after its entry into force.

The monitoring system foreseen by the Convention, which is undoubtedly one of its main strengths, consists of two pillars:

- the Group of Experts on Action against Trafficking in Human Beings (GRETA), a technical body, composed of independent and highly qualified experts, and
- the Committee of the Parties, a more political body, composed of the representatives in the Committee of Ministers of the parties to the Convention and of representatives of parties non-members of the Council of Europe.

GRETA is responsible for monitoring implementation of the Convention by the parties. It will regularly publish reports evaluating the measures taken by the parties and those parties which do not fully respect the measures contained in the Convention will be required to step up their action.

The Committee of the Parties may also, on the basis of GRETA's report and conclusions, make recommendations to a Party concerning the measures to be taken to follow up GRETA's conclusions.

The monitoring procedure

Article 38 of the Convention details the functioning of the monitoring procedure and the interaction between GRETA and the Committee of the Parties.

The evaluation procedure will be divided into cycles. At the beginning of each cycle GRETA will autonomously define the provisions to be monitored and determine the most appropriate means to carry out the evaluation. This is likely to commence by requesting the Parties to complete a questionnaire which would then be followed up with additional requests for information. If GRETA considers it necessary it may also request information from civil society and/or organise country visits in order to obtain more information.

When GRETA has received all the necessary information it will prepare its draft report which will be sent to the Party concerned for comments. When the comments have been received GRETA will prepare its final report and conclusions which will be sent at the same time to the Party concerned and the Committee of the Parties. GRETA's final report together with the Party's comments will be made public and is not subject to modification by the Committee of the Parties.

The Committee of the Parties may adopt recommendations indicating the measures to be

taken by the Party concerned to implement GRETA's conclusions, if necessary setting a date for submitting information on their implementation, and promoting co-operation to ensure the proper implementation of the Convention.

Election procedure of the members of GRETA

On 11 June, the Committee of Ministers of the Council of Europe adopted a Resolution establishing the election procedure of the members of the Group of Experts on Action against Trafficking in Human Beings (GRETA). This is an important first step in the setting up of the independent mechanism.

The procedure aims to guarantee the election of 10 to 15 experts who will be independent and impartial in their evaluation of the implementation of the Convention by the parties. In addition it aims to ensure a multidisciplinary expertise, a gender and geographical balance as well as representation of the main legal systems.

The rules stipulate that the GRETA members must have recognised competence in the fields of human rights, of assistance and protection of victims or of action against trafficking in human beings, or professional experience in the areas covered by the Convention. They must serve in their individual capacity, be independent and impartial, and be available to serve GRETA effectively.

The governments of the 17 states party to the Convention (Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Malta, Moldova, Norway, Portugal, Romania and Slovakia) have been invited to submit to the Secretary General of the Council of Europe by 1 October 2008 the names and the curricula vitae of at least two candidates. States are required to ensure that their national selection procedure leading to the nomination of candidates for GRETA is either in accordance with published national guidelines or is otherwise transparent and designed to lead to the nomination of the most qualified candidates. In addition and in order to ensure a gender balance among the members of GRETA, each state party is required to take all the necessary and appropriate steps with a view to nominating at least one man and one woman.

In accordance with the Convention, the Committee of the Parties will then proceed with the election of a minimum of 10 and a maximum of 15 experts in accordance with the procedure laid down in the Resolution.

These elections will take place at the latest on 31 January 2009. The term of office of the members of GRETA shall be four years, renewable once.

The full text of the Resolution and information concerning the Council of Europe's activities to combat trafficking in human beings are available on the website: www.coe.int/trafficking

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

Campaign to combat violence against women, including domestic violence

In 2006, 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.

Closing conference, Strasbourg 10-11 June 2008

The *Campaign to Combat Violence against Women, including Domestic Violence*, came to an end with a high-level closing conference held 10 and 11 June 2008 in Strasbourg. Attended by the Secretary General, the Deputy Secretary General as well as ministers, parliamentarians and representatives of local and regional authorities, this conference marked the end of a campaign which united governments, parliaments and local and regional authorities in their efforts to combat violence against women, including domestic violence. Over the course of more than a year and a half, the three main actors – governments, parliaments and local and regional authorities – have heeded the call for action and have contributed to the success of the campaign by sparking and supporting many initiatives in law, policies and practice with the aim of stopping violence against women.

Governments have launched national campaigns, short and long-term, using the Council of Europe Campaign material and many innovative ways to spread the message of the Campaign "Stop domestic violence against women". Many have also reviewed their institutional and legislative framework to combat violence against women, thus embarking on the important task of improving the plight of women victims of violence. Information on their national action in support of the campaign was presented at a Meeting of National Focal Points of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, held on 21 and 22 April 2008 in Strasbourg. Governmental representatives responsible for ensuring the campaign's implementation at national level presented final reports and exchanged good practices and effective measures to combat violence against women.

Task Force to Combat Violence against Women, including Domestic Violence

All measures to prevent and combat violence against women, taken at international and national levels, were assessed by the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence, the body overseeing implementation of the campaign. In addition to the assessment of measures and actions taken at national level to combat violence against women, its tasks included the development of recommendations for future Council of Europe action in this field.

The assessment and recommendations are contained in the Final Activity Report of the Task Force, which the Task Force finalised during its seventh and last meeting held 1-4 April 2008. While the full report will be available in September 2008, its proposals for future action in this field – the main campaign outcome – were presented to participants at the closing conference. Showing the way forward in eliminating violence against women, they revealed that while many good initiatives and measures have

been taken before and during the Campaign, much more remains to be done. The Task Force therefore recommended a set of measures in many different fields that member states are invited to take to prevent and combat violence against women, including domestic violence. They also recommended the Council of Europe start the process of drafting a legally binding instrument on violence against women, establish a European Special Rapporteur on violence against women and set up an observatory to collect information on cases in which women have been murdered.

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

Law and policy

Intergovernmental co-operation in the human rights field

One of the Council of Europe's vital tasks in the field of human rights is the creation of legal policies and instruments. In this, the Steering Committee for Human Rights (CDDH) plays an important role. The CDDH is the principal intergovernmental organ answerable to the Committee of Ministers in this area, and to its different committees.

"Towards stronger implementation of the European Convention on Human Rights at national level" colloquy

The Swedish Presidency of the Committee of Ministers of the Council of Europe, in collaboration with the secretariat of the Steering Committee for Human Rights (CDDH), organised a colloquy on the "stronger implementation of the European Convention on Human Rights at national level" (Stockholm, 9-10 June 2008). This event gathered representatives of member states' governments, the Parliamentary Assembly, the Registry of the Court, other bodies of the Council of Europe working in favour of human rights, and civil society. In particular, the colloquy enabled an examination of the means to reinforce, at the national level, the implementation of the European Convention on Human Rights, emphasising the improvement of national remedy procedures, the enhancement of the effect of the Court's case-law, and the assistance to be provided to member States in implementing the Convention. The CDDH will soon be called upon to examine several priority aspects which arise from the colloquy, such as the possibility of drawing up more specific recommendations on effective domestic remedies – in particular as regards excessive length of domestic proceedings, ways of enhancing the *erga omnes* effect of the Court's Judgments, or the possibility of developing the Court's non-contentious jurisdiction – especially as regards advisory opinions. The proceedings of the colloquy will be available in October 2008.

Convention on Access to Official Documents

During its 66th meeting in March 2008, the CDDH has in particular adopted the Draft Convention of the Council of Europe on Access to Official Documents, a legal instrument which aims to enshrine in the European region the right of everyone to have access, on request, to documents produced or held by public authorities, which in particular encourages enlightened participation of citizens in matters of public interest and the transparency of administrations. The Draft Convention has been addressed to the Parliamentary Assembly of the Council of Europe for opinion and should be submitted to the Committee of Ministers for adoption in October 2008. It will become the first legally binding international instrument which recognises a general right of access to official documents.

Other work in progress

Among the CDDH's different works in progress, the preparation of Draft Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures must be mentioned, as well as the furthering of its work on sustained action to ensure the effectiveness of the implementation of the Convention at the national and European levels, in parallel to the preparation of the Stockholm Colloquy. In particular, a CDDH reflection group continues examining the recommendations of the Group of Wise Persons' Report (November 2006), recalling the fact that Protocol No 14. to the Convention has still not entered into force.

The Directorate General for Human Rights and Legal Affairs, in conjunction with the Government of the Netherlands, is currently organising a conference entitled: "Human Rights in culturally diverse societies: challenges and perspectives", which will take place on 12 and 13 November 2008 in The Hague. This conference will contribute to the strategy developed in the Council of Europe White Paper on Intercultural Dialogue, adopted on 7 May. It will provide an opportunity for exchanges of views between civil society in a broad sense (such as academics, NGOs and opinion leaders) and government experts. The aim of the conference will be to go beyond the topics which were the subject of two reports on "hate speech" and the wearing of religious symbols in public areas, adopted by the CDDH in the framework of its activities on "human rights in a multicultural society", but will nonetheless not exclude the possibility of re-examining them in order to shed light on certain aspects which might have been overlooked or insufficiently explored. These reports have been reworked into manuals with a view to making them more accessible and will be launched at the conference. The conference will also prove useful for assessing the advisability of a declaration or other legal or political instruments of the Committee of Ministers in this field.

Internet: http://www.coe.int/t/e/human_rights/cddh/

Co-operation between the Council of Europe and the European Community

Co-operation Agreement with the European Union Agency for Fundamental Rights

The Council of Europe and the European Union Agency for Fundamental Rights today signed a co-operation agreement which is intended to reinforce complementarity and avoid unnecessary duplication in the field of human rights protection in Europe.

The agreement, which was signed in Strasbourg by Terry Davis, the Secretary General the Council of Europe and Janez Lenarčič, the Slovenian State Secretary for European Union Affairs on behalf of the EU, will also provide opportunities for joint activities to promote human rights.

This co-operation agreement is an important step towards a coherent and effective system of fundamental rights protection for Europe, based on common standards. The primary task of the Council of Europe is to develop and promote its human rights standards and to oversee the respect of human rights its 47 member states including the 27 EU countries. The Vienna-based Agency for Fundamental Rights will focus its work on the human rights aspects of EU law and its implementation by EU member states and by EU institutions.

Text of the Agreement

THE EUROPEAN COMMUNITY, hereinafter referred to as "the Community", of the one part, and THE COUNCIL OF EUROPE, of the other part, hereinafter together referred to as "the Parties",

WHEREAS, on 15 February 2007, the Council of the European Union adopted Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (hereinafter referred to as "the Agency"),

WHEREAS the objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights,

WHEREAS the Agency is to refer in carrying out its tasks to fundamental rights within the meaning of Article 6(2) of the Treaty on European Union, including the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

WHEREAS the Council of Europe has acquired extensive experience and expertise in intergovernmental co-operation and assistance activities in the field of human rights, having also established several human rights monitoring and control mechanisms, as well as the Council of Europe Commissioner for Human Rights,

WHEREAS, in pursuing its activities, the Agency is to take account, where appropriate, of activities already carried out by the Council of Europe,

WHEREAS, in order to avoid duplication and to ensure complementarity and added value, the Agency is to co-ordinate its activities with those of the Council of Europe, particularly with regard to its Annual Work Programme and to co-operation with civil society;

WHEREAS close links should now be established between the Agency and the Council of Europe in accordance with Article 9 of Regulation (EC) No. 168/2007;

WHEREAS the Representatives of the Member States of the European Union, meeting within the European Council on 16 and 17 December 2004, agreed that the Agency will play a major role in enhancing the coherence and consistency of the EU Human Rights Policy,

WHEREAS the Guidelines on the relations between the Council of Europe and the European Union, adopted at the Third Council of Europe Summit of Heads of State and Government (Warsaw, 16-17 May 2005), refer to the Agency as an opportunity to further increase co-operation with the Council of Europe and to contribute to greater coherence and enhanced complementarity,

WHEREAS the Memorandum of Understanding between the Council of Europe and the European Union concluded in 23 May 2007 contains a general framework for co-operation in the area of human rights and fundamental freedoms and highlights the role of the Council of Europe as the benchmark for human rights, the rule of law and democracy in Europe;

WHEREAS, in accordance with the Memorandum of Understanding, the Agency respects the unity, validity and effectiveness of the instruments used by the Council of Europe to monitor the protection of human rights in its member states;

WHEREAS it is for the Council of Europe to appoint an independent person to sit on the Agency's Management Board and on its Executive Board,

HAVE AGREED AS FOLLOWS:

I. Use of terms

1. For the purposes of this Agreement:

- (a) the term "Council of Europe intergovernmental committees" shall mean any committee or body set up by the Committee of Ministers, or with its authorisation, by virtue of Articles 15(a), 16 or 17 of the Council of Europe Statute;
- (b) the term "Council of Europe's human rights monitoring committees" shall mean the European Committee of Social Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission against Racism and Intolerance, the Committee of Experts of the European Charter for Regional or Minority Languages, the Advisory Committee of the Framework Convention for the Protection of National Minorities and any other such independent bodies that the Council of Europe might set up in the future;
- (c) the term "Agency" shall comprise the bodies referred to in Article 11 of Regulation (EC) No. 168/2007 within their respective areas of competence.

II. General co-operation framework

2. This Agreement establishes a co-operation framework between the Agency and the Council of Europe in order to avoid duplication and ensure complementarity and added value.

3. Regular contacts shall be established at the appropriate level between the Agency and the Council of Europe. The Director of the Agency and the Council of Europe Secretariat shall each appoint a contact person to deal specifically with matters relating to their co-operation.

4. As a general rule, Council of Europe Secretariat representatives shall be invited by the Agency's Executive Board to attend meetings of the Agency's Management Board as observers. This shall not extend to particular agenda items for which, on account of their internal nature, such attendance would not be justified. Such representatives may also be invited to other meetings organised by the Agency's Management Board, including those referred to in Article 6(1) of Regulation (EC) No. 168/2007.

5. Representatives of the Agency shall be invited to attend as observers in meetings of those Council of Europe intergovernmental committees in which the Agency has expressed an interest. Upon invitation by the relevant committee, representatives of the Agency may attend meetings or exchanges of views organised by Council of Europe human rights monitoring committees or committees set up under partial agreements as observers. Representatives of the Agency may also be invited to participate in exchanges of views organised by the Committee of Ministers of the Council of Europe.

6. Co-operation shall cover the whole range of the Agency's activities, both present and future.

III. Exchange of information and data

7. Without prejudice to the rules on data protection in force for the Agency and Council of Europe respectively, the Agency and the Council of Europe shall provide each other

with information and data collected in the course of their activities, including access to online information. Information and data thus provided may be used by the Agency and the Council of Europe in the course of their respective activities. These provisions do not extend to confidential data and activities produced or undertaken.

8. The Agency shall take due account of the judgments and decisions of the European Court of Human Rights concerning the areas of activity of the Agency and, where relevant, of findings, reports and activities in the human rights field of the Council of Europe's human rights monitoring and intergovernmental committees, as well as those of the Council of Europe's Commissioner for Human Rights.

9. Whenever the Agency uses information taken from Council of Europe sources, it shall indicate the origin and reference thereof. The Council of Europe shall proceed in the same way when using information taken from Agency sources.

10. The Agency and the Council of Europe shall ensure, by means of their networks, the widest possible dissemination of the results of their respective activities on a reciprocal basis.

11. The Agency and the Council of Europe shall ensure regular exchanges of information about activities proposed, under way or completed.

IV. Methods of co-operation

12. Regular consultations shall be held between the Agency and the Council of Europe Secretariat, with the aim of co-ordinating the Agency's activities, in particular in carrying out research and scientific surveys as well as drafting conclusions, opinions and reports, with those of the Council of Europe in order to ensure complementarity and the best possible use of available resources.

13. Such consultations shall notably concern:

- a) the preparation of the Agency's Annual Work Programme;
- b) the preparation of the Agency's Annual Report on fundamental rights issues covered by the areas of the Agency's activity;
- c) co-operation with civil society, in particular association of the Council of Europe with the establishment and functioning of the Agency's Fundamental Rights Platform.

14. On the basis of such consultations, it may be agreed that the Agency and the Council of Europe shall conduct joint and/or complementary activities on subjects of common interest, such as the organisation of conferences or workshops, data collection and analysis or the setting up of shared information sources or products.

15. Co-operation between the Agency and the Council of Europe may be further promoted through grants awarded by the Agency to the Council of Europe. The 2004 Framework Administrative Agreement between the European Commission and the Council of Europe on the application of the financial checks clause to operations administered by the Council of Europe and financed or co financed by the European Community shall apply.

16. Temporary exchanges of staff between the Agency and the Council of Europe may be effected by agreement between the Secretary General of the Council of Europe and the Director of the Agency insofar as the relevant applicable staff regulations allow.

V. Appointment by the Council of Europe of an independent person to sit on the Agency's Management and Executive Boards

17. The Committee of Ministers of the Council of Europe shall appoint an independent person to sit on the Management and Executive Boards of the Agency, together with an alternate member. The Council of Europe appointees shall have appropriate experience in the management of public or private sector organisations and knowledge in the field of fundamental rights.

18. The Council of Europe shall notify the Agency and the European Commission of the appointments made.

19. The person appointed by the Council of Europe to the Management Board shall be invited to participate in the meetings of the Executive Board. His or her views shall be duly taken into account, especially to ensure complementarity and added value between the activities of the Agency and those of the Council of Europe. He or she shall have a right to vote in the Executive Board as regards the preparation of decisions of the Management Board on which he or she may vote in accordance with Article 12(8) of Regulation (EC) No. 168/2007.

VI. General and final provisions

20. Nothing in this Agreement may be interpreted as preventing the Parties from pursuing their respective activities.

21. This Agreement abrogates and replaces the Agreement of 10 February 1999 between the European Community and the Council of Europe for the purpose of establishing, in accordance

with Article 7(3) of Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close co-operation between the Centre and the Council of Europe.

22. This Agreement shall enter into force upon signature by the duly authorised representatives of the Parties.

23. This Agreement may be modified by mutual agreement between the Parties. The Parties shall evaluate the implementation of this Agreement not later than 31 December 2013 with a view to revising it if necessary.

Done at ....

For the European Community

For the Council of Europe.

Internet: http://www.coe.int/t/e/human_rights/cddh/

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.

ECHR training and awareness-raising activities

Training seminar for lawyers on Articles 3, 5 and 6 of the ECHR

A three-day training seminar was organised for a group of young lawyers in Ohrid. The trainers trained the lawyers on selected articles of the ECHR.

Ohrid, The "former Yugoslav Republic of Macedonia", 27-29 June 2008

Cascade training seminars for judges and prosecutors

Two cascade training seminars for judges and prosecutors were organised thanks to a generous voluntary contribution made by the Government of Ireland earmarked for the Council of Europe's training activities in Serbia in the field of human rights. The trainers trained judges and prosecutors on selected articles of the ECHR.

Serbia, Valjevo, 20 June 2008 and Belgrade, 27 June 2008

Series of training seminars for lawyers on the ECHR

Two training seminars for lawyers were organised in Belgrade for two groups of lawyers from several Serbian cities. The first group was specialised in criminal law and the second one was specialised in civil law. The seminars were an introduction to the ECHR and to the procedure before the ECtHR. Trainers trained lawyers on the admissibility criteria and on how to submit an application before the ECtHR.

Belgrade, Serbia, 17-20 June 2008

Thematic seminar for lawyers on Article 6(1) of the ECHR and on Article 1 of Protocol 1 to the ECHR

A thematic seminar for lawyers on Article 6(1) of the ECHR and on Article 1 of Protocol 1 to the ECHR was held. The seminar was organised in co-operation with the Ukrainian Advocates' Association (http://www.uaa.org.ua), and it focused on the right to property under the ECHR and relevant standard-setting case-law of the ECtHR and the case-law in Council of Europe member states.

Kyiv, Ukraine, 22-23 May 2008

Cascade training seminars for lawyers and public attorneys

Four two-day cascade training seminars were organised for lawyers and public attorneys on the application of the ECHR in various cities in Bosnia and Herzegovina. They focused on the procedure before the Constitutional Court of BiH and the ECtHR and on Articles 3, 6 and 8 of the ECHR and on Article 1 of Protocol 1 to the ECHR.

Bosnia and Herzegovina, Mostar, 15-16 May 2008

Training seminar on Articles 3 and 5 of the ECHR

A training seminar for relevant ministries on the rights of prisoners and persons in custody as guaranteed by the Human rights standards was held. A cascade training seminar was organised for relevant ministries. This activity focused on Articles 3 and 5 of the ECHR.

Sarajevo, Bosnia and Herzegovina, 19-20 May 2008

Vilnius, Lithuania, 17-18 May 2008

Training seminar on "The right to a fair trial"

The training seminar was held for Belarusian lawyers and human rights defenders aimed at increasing the participants' knowledge of human rights work and at improving their capacity to engage actively in human rights standards in Belarus. The participants were provided with general information on the right to a fair trial, with a view to the forthcoming parliamentary elections in Belarus to be held in October 2008.

Chisinau, Moldova, 18-19 April 2008 and 16-17 May 2008

Thematic seminars for lawyers

Two thematic seminars for lawyers were organised in co-operation with the Public Association Lawyers for Human Rights. The objectives of the seminars were to highlight Articles 3, 5 and 6 of the ECHR and Article 1 of the Protocol 1 to the ECHR as well as the relevant case-law of the ECtHR and the case-law in Council of Europe member states.

Yerevan, Armenia, April-May 2008

Series of five cascade seminars on the ECHR for prosecutors from regions of Armenia

A series of five cascade seminars on the ECHR for prosecutors from regions of Armenia were held. The seminars were organised in co-operation with the Office of the Prosecutor General of Armenia (http://www.genproc.am) under the Council of Europe/EC Joint Programme entitled "Fostering a Culture of Human Rights" 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 the standard-setting case-law of the ECtHR and of the case-law in Council of Europe member states.

Strasbourg, 28-30 April 2008

Study visit for future judges and prosecutors' trainers from Albania

A study visit was organised for 13 judges and prosecutors, graduates from the Albanian School of Magistrate and selected to be future trainers during three previous training sessions held in Albania, within the framework of the programme" Training Course for Future Judges and Prosecutors' Trainers". The study visit focused on the recent developments related to the case-law of the ECtHR and other Council of Europe institutions and bodies. The participants attended the Grand Chamber hearing session in the case of Leger v. France. At the end of the visit, the participants received certificates from the local trainer on ECHR. Lastly, the participants were informed that the next planned activities would be series of cascade seminars, during which they would train their peers.

Yerevan, Armenia, 25-26 April 2008

In-depth seminar for lawyers on Articles 5 and 6 of the ECHR

The objective of the seminar organised in co-operation with the Chamber of Advocates of Armenia (http://www.pastaban.am) was to gain an in-depth insight into Articles 5 and 6 of the ECHR as well as into the relevant case-law of the ECtHR and the case-law in Council of Europe member states.

Tirana, Albania, 21-22 April 2008 and Durres, Albania, 26-27 May 2008

Cascade training seminars for lawyers

Two cascade training seminars for lawyers were organised with the co-operation of the Albanian National Chamber of Advocates. The national lawyers-trainers trained their peers practicing in the cities of Tirana, Durres, Lushnje and Berat on Articles 2, 3, 5, 6, 9 and 10 of the ECHR.

Chisinau, Moldova, 17-18 April 2008

In-depth seminar for national ECHR trainers of judges and prosecutors on Articles 3 and 5 of the ECHR

An in-depth seminar for national ECHR trainers of judges and prosecutors on Articles 3 and 5 of the ECHR was held. The objective of the seminar, organised in co-operation with the National Institute of Justice of Moldova, was to highlight Articles 3 and 5 of the ECHR as well as the relevant case-law of the ECtHR and the case-law in Council of Europe member states.

Cheboksary, Russian Federation, 14-15 April 2008

Training for Russian lawyers on domestic application of the ECHR

The seminar gathered 40 lawyers from the Republic of Chuvashia, the first time such an event was organised in that part of Russia. The seminar triggered a large interest among the participants, signalling the need for more activities to be organised in the Chuvashian Republic. The activity was organised within the framework of the European Commission/ Council of Europe Joint Programme entitled "Enhancing the Capacity of Legal Professionals

and Law Enforcement Officials in Russia to apply the ECHR Standards in Domestic Legal Proceedings and Practices".

Training-of-trainers seminar for national ECHR trainers of prosecutors

Tbilisi, Georgia, 10-12 April 2008

A "training of trainers" seminar for national ECHR trainers of prosecutors was held. The objective of the seminar organised in co-operation with the Office of the Prosecutor General of Georgia (http://www.pog.gov.ge/en) under the European Commission/Council of Europe Joint Programme "Fostering a Culture of Human Rights" 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 overview of the ECHR substantive provisions as well as of the relevant case-law of the ECtHR and the case-law in Council of Europe member states. Methodological aspects for making effective presentations to prosecutors were also highlighted. The national trainers for prosecutors will then train prosecutors from regions of Georgia through cascade seminars.

Seminar on the role of government agents in ensuring effective human rights protection

Bratislava, Slovakia, 3-4 April 2008

Government agents, who are responsible for representing and defending member states before the ECtHR, contribute in many ways to the effective protection of human rights, not only in Strasbourg. They can play a key role in ensuring that the rights set out in the ECHR are fully implemented in their own countries, in line with the subsidiarity principle enshrined in the Convention. The government agents' important role in enhancing the protection of human rights in Europe was the topic of a seminar on the "Role of government agents in ensuring effective human rights protection", organised by the Council of Europe and the Slovak Chairmanship of the Committee of Ministers and gathering government agents from 47 member states. The aim of the seminar was to examine the role of government agents in representing their member states before the Court, their possible contribution towards the execution of its judgments, the dissemination of its case-law, and the role they can play to ensure that national legislation is compatible with the Convention. The seminar was opened by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, Jean Paul Costa, President of the European Court of Human Rights, and Stefan Harabin, Deputy Prime Minister and Minister of Justice of the Slovak Republic.

Seminar for the Public Defender (Ombudsman) of Georgia on Article 8 and Workshop on monitoring and investigation

Tbilisi, Georgia, 28-29 March 2008

A training seminar on Article 8 of the ECHR and a Workshop on Monitoring and Investigation were organised for lawyers within the framework of the project entitled "Enhancing the capacity of Public Defender of Georgia", funded by the Danish Ministry of Foreign Affairs and implemented by the Council of Europe, at the Office of Public Defender on 28-29 March 2008 in Tbilisi. The training was the second of a series of intensive training sessions on the ECHR, while the workshop was the first out of series of different workshops that are envisaged under the project. 30 lawyers in total participated in the training, six of which were members of the regional offices of the Public Defender institution. ECHR training material as well as information documents prepared by experts were made available in English and in Georgian.

Training seminar for representatives of civil society in the Russian Federation on "The Application of the ECHR on a Domestic Level: Focus on the Right to Freedom of Peaceful Assembly and Freedom of Association guaranteed under Article 11 of the ECHR"

Irkutsk, Russian Federation, 27-28 March 2008

The activity was conceived as the follow-up activity of an awareness-raising seminar on Council of Europe human rights standards for Russian NGOs. The seminar, which focused on the right to freedom of peaceful assembly and freedom of association guaranteed under Article 11 of the ECHR, was organised within the framework of the European Commission/ Council of Europe Joint Programme entitled "Enhancing the Capacity of Legal Professionals and Law Enforcement Officials in Russia to apply the ECHR in Domestic Legal Proceedings and Practices".

Nizhniy Novgorod, Russian Federation, 10-13 March 2008; 15-17 April 2008; 13-15 May 2008

Training-of-trainers seminars for Russian judges on the ECHR

Training-of-Trainers seminars on the application of the ECHR were organised in Nizhniy Novgorod, Russian Federation. The seminars gathered judges from various regions of the country and aimed to improve the knowledge on the ECHR and to identify potential local trainers that would train their peers in the cascade series to be implemented in subsequent phases of the project. The three activities occurred within the framework of the European Commission/Council of Europe Joint Programme entitled "Enhancing the Capacity of Legal Professionals and Law Enforcement Officials in Russia to apply the ECHR in Domestic Legal Proceedings and Practices".

Ukraine, March-May 2008

Series of 8 cascade seminars on the ECHR for judges and prosecutors

Two series of cascade seminars on the ECHR – 8 for judges and 8 for prosecutors – were held in regions of Ukraine. The seminars were organised in co-operation with the Academy of Judges of Ukraine (http://aj.court.gov.ua) and with the Association of Prosecutors of the Ukraine under the Council of Europe/EC Joint Programme entitled "Fostering a Culture of Human Rights" 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 the standard-setting case-law of the ECtHR and the case-law in Council of Europe member states.

Training and awareness-raising activities in the field of media

Georgia, May-June 2008

Seminars on media professionalism in Georgia

Four seminars on media professionalism took place in Georgia in May and June. The events, organised in co-operation with the NGO Civic Development Institute, targeted journalists and managers working in media outlets based outside Tbilisi. They aimed at increasing the level of professionalism with a focus on medias' obligations, and not only rights, and raising awareness on the need for establishing self-regulation behaviours, rules and structures. Participants committed themselves to design, draft and implement a Georgian Charter of Journalists.

Kharkiv, Ukraine, 10-11 April 2008

Training seminars for judges and journalists on "Media Coverage of Judicial Proceedings"

The purpose of the seminars was to have discussions on the accession of journalists to the Court, on the principle of the presumption of innocence and on the protection of judges' reputation. Participants in the seminar supported the idea of the introduction of press secretaries in the courts, informing journalists of judicial proceedings and providing journalists access to the court.

Mykolaiv, Ukraine, 12-13 March 2008

Regional seminar on European standards for journalists: Ukraine's realities and the experiences of Poland and the Czech Republic

The purpose of the seminar was to discuss Ukrainian problems related to the corruption in media, the weak position of journalists in Ukraine, particularly on a regional level as well as to present an overview of the Polish and Czech experiences with regard to the increase in corruption in the media. The conclusion of the seminar was that corruption in media has a negative impact on civil society. The Council of Europe experts stressed that the codes of editorial conduct are good anti-corruption tools.

Kyiv, Ukraine, 3 March 2008

Seminar "Media Development in Europe and Ukraine: Milestones of Current Agenda"

The purpose of the seminar was to discuss the European media policy: main goals of the Council of Europe and the European Commission in this field and challenges for the future, including the digital policy of the European Commission and the future of public television, as well as to assist Ukraine in preparing the priorities in the media for the near future. The conference was followed by the publication of the discussions which took place during the conference and the list of the main priorities for Ukraine in the media.

Training and awareness-raising activities for police officers

Training seminar on European human rights standards with focus on policing

A training seminar on European human rights with focus on policing was organised in co-operation with the Albanian Centre for Human Rights, for 25 Albanian law enforcement officials from all over Albania. This activity was aimed at enhancing the capacity of the Albanian law enforcement officers to apply the European human rights standards with regard to police work.

Tirana, Albania, 27-29 May 2008

Training-of-trainers course for law enforcement officials

A training course concentrating on police and human rights with particular focus on investigative interviewing was organised for law enforcement officials in the framework of the Joint Programme between the European Commission/Council of Europe and Joint programme entitled "Fostering a Culture of Human Rights".

Sheki, Azerbaijan, 22-24 May 2008

Seminar for judges on the application of the ECHR in the legal system of the Chechen Republic

A seminar for Chechen judges was organised in co-operation with the Russian Human Rights Commissioner's Office within the framework of the Programme of Co-operation between the Council of Europe and the Russian Federation for the Chechen Republic. The seminar focused on Articles 2, 3, 5, 6, 8 and 13 of the ECHR and also provided an overview of the ECHR substantive provisions as well as of the relevant case-law of the ECtHR and case-law in Council of Europe member states.

Moscow, Russian Federation, 22-23 May 2008

Seminar on human rights standards for high-ranking law enforcement officers from the Chechen Republic

A seminar on human rights standards for high-ranking law enforcement officers from the Chechen Republic was organised in co-operation with the Economy, Policy and Law Research Centre of Moscow. This meeting was organised within the framework of the Programme of Co-operation between the Council of Europe and the Russian Federation for the Chechen Republic.

Moscow, Russian Federation, 17-18 April 2008

Training seminar on human rights, with focus on hate crime, xenophobia and policing in a multi-ethnic society

A training seminar for Ukrainian law enforcement officials on human rights with focus on hate crime, xenophobia and policing in a multi-ethnic society was organised in co-operation with the Kharkiv Institute for Sociological Researches. 25 law enforcement officials from all over Ukraine were trained in workshops and during case-studies and lectured on policing ethnic minorities.

Sudak, Ukraine, 8-10 April 2008

Seminar for law enforcement officials on European human rights standards with focus on policing

25 Armenian senior law enforcement officials were trained on selected articles of the ECHR. The participants learned about the European Code of Police Ethics and the issue of police accountability and community policing. The activity was organised in co-operation with the Ministry of the Interior of the Republic of Armenia within the framework of the Joint Programme between the European Commission/Council of Europe entitled "Fostering a Culture of Human Rights for Ukraine and the South Caucasus".

Yerevan, Armenia, 1-3 April 2008

Training course on Article 11 of the ECHR

A training course on Article 11 of the ECHR was organised in co-operation with the Police Academy of Danilovgrad. During this activity, 22 high-ranking police officers were trained by British experts on the concept of crowd control.

Danilovgrad, Montenegro, 4-6 March 2008

Training and awareness-raising activities in the field of prisons

Pskov, Russian Federation, 17-18 June 2008

Conference on "the penitentiary system of the Russian Federation in the light of European standards"

The Conference was attended by representatives of the Duma, the Presidential Administration, the Supreme Court and the General Prosecutor's Office, the Federal Service for the Execution of Sanctions and the Ministry of Justice of the Russian Federation. The aim was to discuss the reasons for overcrowding in prisons and especially in pre-trial detention facilities, as well as the possible solutions to be sought with the help of all the above agencies. The conference agreed on elements for a common inter-institutional policy at national and local level, in order to effectively reduce overcrowding. Sources of verification will be the prison statistical data and the court and prosecution statistics.

Budva, Montenegro, 19 March 2008

Closing conference to discuss training curricula and programmes in the Western Balkans

The conference marked the completion of the European Commission/Council of Europe Joint Programme Project "development for a reliable and functioning prison system respecting fundamental rights and standards, and enhancing of regional co-operation in the Western Balkans". The conference was attended by the Minister of Justice of Montenegro, representatives of the EC Delegation in Montenegro and Serbia and the OSCE Montenegro as well as by representatives from the prison authorities of the beneficiary countries, Council of Europe experts and members of the Secretariat. The conference gave rise to an exchange of experiences and good practices between the beneficiary countries on a range of questions related to prison reform and development and the outcome and results of the project.

Skopje, "The former Yugoslav Republic of Macedonia", 6 March 2008

Evaluation Conference

The Council of Europe, in collaboration with the Department for the Execution of Sanctions of the Ministry of Justice of "The former Yugoslav Republic of Macedonia", held an evaluation conference and presented the results achieved after just 15 months of the implementation of the Joint Programme between the European Agency for Reconstruction and the Council of Europe on technical assistance to the penitentiary reform in "the former Yugoslav Republic of Macedonia". The conference was attended by the Minister of Justice and the Special Representative of the European Union and Head of the Delegation of the European Commission in Skopje, all the Council of Europe consultants engaged in the project, all the local trainers' teams, the Council of Europe project team, local NGOs and IGO and other guests. The project was aimed at promoting the reform of the prison system, in particular strengthening its capacity and supporting its reform towards a greater compliance with common European democratic values and standards, focusing on the development and delivery of a comprehensive training programme in order to enhance the professionalism at all levels and categories of staff, design and implement positive regimes of activities for inmates, with special focus on juveniles' needs and programmes for the resettlement of offenders, enhancement of the health care system, development of the legal framework.

Tallinn, Estonie, 3-6 March 2008

Study visit to Estonia

The study visit was organised within the context of the European Commission/Council of Europe 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". The activity targeted participants from Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia" and Kosovo[1] who had previously been trained on European rights standards during seminars within the same project. The Estonian prison system was explained to the participants through presentations on the development and reforms of the system, the inspection and monitoring system and the treatment of vulnerable groups of prisoners. The participants visited prisons in Tallinn, Harku and Tartu.

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Training and awareness-raising activities on human rights for civil society representatives

Course in European human rights law for students from the "European Humanities University" in exile in Vilnius

An intensive five-day course for undergraduate Belarus students of the EHU focusing on the main guarantees of the ECHR was organised. The teaching team from the University of Glasgow involved a senior academic and six students who are specialised in European human rights law.

Vilnius, Lithuania, 12-16 May 2008

Workshop on "NGOs' active role in the proceedings before the ECHR, substantive and procedural relevant issues" for lawyers active in human rights

Training seminar for representatives of the Georgian civil society aimed at increasing the participants' knowledge of human rights and improving their capacity to engage actively in human rights in Georgian courts and the Strasbourg Court. The participants were provided with general information on the basic principles of the ECHR and the Council of Europe systems of human rights protection, as well as on the role and functioning of human rights NGOs.

Telavi, (Kakheti region), Georgia, 5-6 May 2008

Workshop on "lodging an application with the ECtHR and Third Party Intervention" for lawyers and NGOs

The seminar was organised for lawyers and NGOs to familiarise them with European human rights standards and in particular the ECHR and to strengthen their ability to use the Convention in their daily work.

Chisinau, Moldova, 10-11 April 2008

Study visit for lawyers and human rights defenders from Belarus

The aim of the visit was to allow participants to familiarise themselves with the Council of Europe's main human rights treaties and mechanisms, relevant to the work of lawyers and human rights defenders, given the specific position of the Constitution of Belarus *vis-à-vis* the guarantees offered by Council of Europe instruments. It included meetings with the staff of the Directorate General of Human Rights and Legal Affairs of the Council of Europe and the Registry of the ECtHR.

Strasbourg, Council of Europe 3-6 March 2008

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

Legal co-operation

Treaties and conventions – Signatures and ratifications

European Convention on the Adoption of Children (revised)

The European Convention on the adoption of children (revised) was formally adopted by the Committee of Ministers during its 118th Ministerial session on 7 May 2008.

This revised Convention updates the 1967 Convention on the adoption of children in line with the case-law of the European Court of Human Rights and takes into account social changes over the last 40 years, meeting the requirements of modernity. As it deals with national adoption, the revised Convention is complementary to the Hague Convention of 1993 on the Protection of Children and Co-operation in Respect of Inter-country Adoption.

The aim of the revised Convention is to harmonise the substantive law of the member states by setting minimum rules on adoption. It takes into account the provisions of the United Nations Convention on the Rights of the Child of 1989, the case-law of the European Court of Human Rights and the European Convention on the exercise of children's rights (ETS No. 160).

In particular, the revised Convention:

- reasserts in Article 4(1) the principle of best interests of the child as stipulated in the United Nations Convention on the Rights of the Child;
- requires the consent to adoption of the child considered by law as having sufficient understanding and in all cases when older than 14 (Article 5);
- stipulates that, as far as possible, the child should be consulted and his or her views and wishes should be taken into account having regard to his or her degree of maturity (Article 6);
- establishes that an adoption may be revoked or annulled only by decision of the competent authority guided by the best interests of the child which shall always be the paramount consideration (Article 14);
- highlights the importance for the competent authority to take an individualised decision striking the best possible balance between the right of the child to know his or her origins and the right of his or her parents of origin not to disclose their identity (Article 22 (3)).

The Council of Europe is determined to promote the wide signature and ratification of this important legal instrument by its member states and to ensure its rapid entry into force. The Convention will be opened for signature on the occasion of the hand-over of the Swedish chairmanship of the Committee of Ministers to Spain on 27 November 2008. A Conference on adoption is foreseen in 2009 to encourage further the accession to the revised Convention as well as its effective implementation.

European Committee on Legal Co-operation

Set up under the direct authority of the Committee of Ministers, the European Committee on Legal Co-operation has, since 1963, been responsible for many areas of the legal activities of the Council of Europe.

The achievements of the CDCJ are to be found, in particular, in the large number of Treaties and Recommendations which it has prepared for the Committee of Ministers. The CDCJ meets at the headquarters of the Council of Europe in Strasbourg (France). The governments of all member states may appoint members, entitled to vote on various matters discussed by the CDCJ.

European Conference: "The ever-growing challenge of medical liability: national and European responses"

Strasbourg, 2-3 June 2008

The European Conference entitled: "The ever-growing challenge of medical liability: national and European responses" took place in Strasbourg under the authority of the European Committee on Legal Co-operation, on 2-3 June 2008.

This interdisciplinary event gathered eminent scientific and academic experts, distinguished professionals from the medical, legal and insurance services, senior civil servants as well as representatives from civil society.

The conference provided an unprecedented opportunity to provide a clear picture of medical liability issues in Europe and to compare the variety of ways in which Council of Europe member states have approached the problem. Issues such as the legal approach to medical liability, existing remedies in Council of Europe member states, and the role and responsibility of the private and public sectors for financing medical liability claims, the individual's access to the judiciary and compensation for medical malpractice were addressed and discussions enabled to collect information, share experiences and examine ways of improving relevant standards in member states.

International Colloquy: "International Family Mediation, an Asset for Europe"

Strasbourg, 26-27 June 2008

An international colloquy entitled "International Family Mediation, an Asset for Europe" was organised on 26-27 June 2008, in Strasbourg, by the Council of Europe and the French association RESCIF. It marked the tenth anniversary of the Committee of Ministers Recommendation (98)1 on family mediation, and indicated, more importantly, the need for the Council of Europe's work in drafting a recommendation on international family mediation.

Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/

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