Human Rights Information Bulletin

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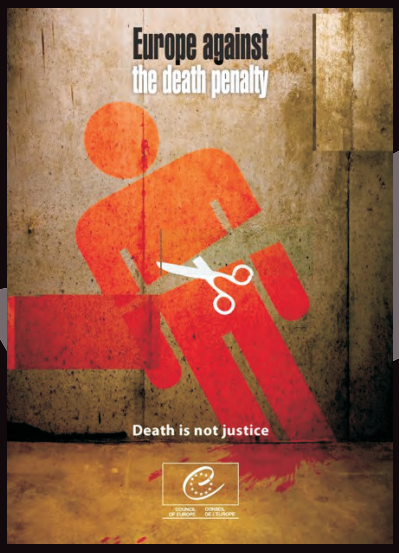
No. 75, July-October 2008

9-10 October 2008, Strasbourg
Conference "Enhancing the impact of the Framework Convention: past experience, present achievements and future challenges" celebrating the 10th anniversary of the Framework Convention for the protection of national minorities.



10 October 2008: European Day against the Death Penalty. This Day is held on 10 October of each year. As from October 2008, it is organised jointly with the European Union.

8-10 September 2008, Stockholm
A Seminar was organised on the theme "Towards European guidelines on child-friendly justice" in the framework of the Conference "Building a Europe for and with Children – Towards a strategy for 2009-2011".

60 YEARS ANS 2009

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Human rights information bulletin

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European Social Charter

The European Social Charter (revised) was ratified by **Bosnia and Herzegovina** on 7 October 2008.

Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was signed by **Spain** on 9 July 2008 and **Switzerland** on 8 September 2008, and ratified by **Montenegro** on 30 July 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 **Estonia** on 17 September 2008 and **Monaco** on 22 October 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 July and 31 October 2008:

- 479 (548) judgments delivered
- 458 (519) applications declared admissible, of which 438 (498) in a judgment on the merits and 20 (21) in a separate decision
- 9 943 (9 954) applications declared inadmissible
- 1 073 (1 091) 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.

Yumak and Sadak v. Turkey

Article 3 of Protocol No. 1 (no violation)

Judgment of 8 July 2008. Concerns: allegation that the electoral threshold of 10% interfered with the free expression of the opinion of the people.

Principal facts

Mehmet Yumak and Resul Sadak are Turkish nationals who were born in 1962 and 1959 respectively and live in Şırnak (Turkey).

The applicants complained that they had not been elected to Parliament in 2002 because of the electoral threshold of 10% imposed nationally.

The applicants stood in the parliamentary elections of November 2002 as candidates for the political party DEHAP (Democratic People's Party) in the province of Şırnak. As a result of the ballot, DEHAP obtained approximately 45.95% of the vote (47 449 votes) in Şırnak province, but did not secure 10% of the vote nationally. However, the applicants were not elected, in accordance with Section 33 of Law No. 2839 on the election of members of the National Assembly, which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast". Consequently, of the three parliamentary seats allotted to Şırnak province, two were filled by the AKP (Justice and Development Party), which obtained 14.05% of the vote (14 460 votes), and the third by an independent candidate, Mr Tatar, who obtained 9.69% of the vote (9 914 votes).

Of the 18 parties which had taken part in the elections, only two succeeded in passing the 10% threshold and thus obtaining seats in Parliament. One of them, which had polled 34.26% of the votes cast, won 66% of the seats, while the other obtained 33% of the seats, having polled 19.4% of the votes. Nine independent candidates were also elected.

The National Assembly which emerged from the elections was the least representative since the multi-party system was first introduced. The proportion of voters not represented reached approximately 45% and the abstention rate exceeded 20%. To explain this lack of representativeness, some commentators referred to the cumulative effect of a number of factors over and above the high national threshold, such as the protest-vote phenomenon linked to the economic and political crises forming the background to the elections.

In the parliamentary elections of July 2007, political parties used two electoral strategies to circumvent the national threshold, one being to take part in the poll under the banner of a different party, the other to put candidates forward as independents (to whom the threshold does not apply). Thus, 13 members of parliament were elected on behalf of another party and then resigned, rejoining their original party. There was also an increase in the number of independent candidates elected to Parliament.

Complaint

The applicants alleged that the electoral threshold of 10% imposed nationally for parliamentary elections interfered with the free expression of the opinion of the people in the choice of the legislature. They relied on Article 3 of Protocol No. 1 (right to free elections).

Procedure

The application was lodged with the European Court of Human Rights on 1 March 2003 and declared partly admissible on 9 May 2006. A hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 5 September 2006. In a Chamber judgment of 30 January 2007 the Court held by five votes to two that there had been no violation of Article 3 of Protocol No. 1.

On 9 July 2007 a request by the applicants for the case to be referred to the Grand Chamber under Article 43 of the Convention was accepted.

Minority Rights Group International, a non-governmental organisation based in London, was authorised to intervene in the written proceedings under Article 36 §2 of the Convention (third-party intervention).

A hearing was held in public in the Human Rights Building on 21 November 2007.

Judgment was given by the Grand Chamber of 17 judges.

Decision of the Court

The Court considered that the electoral threshold of 10% imposed nationally for the representation of political parties in Parliament constituted interference with the applicants' electoral rights. The threshold pursued the legitimate aim of avoiding excessive and debilitating parliamentary fragmentation and thus of strengthening governmental stability.

The Court observed that the national 10% threshold was the highest of all the thresholds applied in the member states of the Council of Europe. Only three other member states had opted for high thresholds (7% or 8%). A third of the states imposed a 5% threshold and 13 of them had chosen a lower figure.

The Court also attached importance to the views of the Council of Europe bodies which agreed that the level of the Turkish national threshold was exceptionally high and had called for it to be lowered.

It noted, however, that the effects of an electoral threshold could differ from one country to another and that the role played by thresholds varied in accordance with the level at which they were set and the party system in each country. A low threshold excluded only very small groupings, making it more difficult to form stable majorities, whereas in cases where the party system was highly fragmented a high threshold deprived a large proportion of voters of representation.

The variety of situations provided for in the member states' electoral legislation illustrated the diversity of the possible options. It also showed that the Court could not assess a particular threshold without taking into account the electoral system of which it formed a part, although it could accept that a threshold of about 5% corresponded more closely to the member states' common practice. However, any electoral system must be assessed in the light of the country's political evolution. The Court therefore considered that it should examine the correctives and other safeguards in place in the Turkish system in order to assess their effects.

As regards the possibility of standing as an independent candidate, the Court emphasised the irreplaceable contribution made by parties to political debate. It noted, however, that this method was not ineffective in practice, as the 2007 elections had shown, and that the fact that independents were not required to reach any threshold had greatly facilitated the adoption of that electoral strategy. The other possibility was to form an electoral coalition with other political groups, a strategy which had produced tangible results, particularly in the 1991 and 2007 elections.

Admittedly, since about 14.5 million votes had been cast in the November 2002 elections for candidates who were not elected to Parliament, these electoral strategies could have only a limited effect. However, the 2002 elections had taken place in a crisis climate with many different causes (economic and political crises, earthquakes), and the representation deficit observed after those elections could have been partly contextual in origin and not solely due to the high national threshold. The Court noted that this was the only occasion since 1983 when the proportion of votes for candidates not elected to Parliament had been so high.

Accordingly, the political parties affected by the threshold had managed in practice to develop strategies to attenuate some of its effects, although such strategies also ran counter to one of the threshold's declared aims, that of avoiding parliamentary fragmentation.

The Court also attached importance to the role of the Constitutional Court. Its efforts in seeking to prevent any excessive effects of the threshold by striking a balance between the principles of fair representation and governmental stability provided a guarantee designed to stop the threshold impairing the essence of the right enshrined in Article 3 of Protocol No. 1.

In conclusion, the Court considered that in general a 10% electoral threshold appeared excessive, and concurred with the views of the Council of Europe bodies which had recommended lowering it. Such a threshold compelled political parties to make use of stratagems which did not contribute to the transparency of the electoral process.

In the present case, however, the Court was not persuaded that, having regard to the specific political context of the elections in question, and to the correctives and

other safeguards which had limited its effects in practice, the impugned 10% threshold had had the effect of impairing the essence of the applicants' rights under Article 3 of Protocol No. 1. There had therefore been no violation of that provision.

Judges Tulkens, Vajić, Jaeger and Šikuta expressed a joint dissenting opinion.

Korbely v. Hungary

Article 7 (violation)

Judgment of 19 September 2008. Concerns: conviction in respect of an act which had not constituted a criminal offence at the time it was committed.

Principal facts

The case concerned an application brought by a Hungarian national, János Korbely, who was born in 1929 and lives in Szentendre (Hungary). The applicant is a retired military officer who was serving a sentence in Budapest Prison when the application was lodged.

In 1994 the Budapest Military Public Prosecutor's Office indicted the applicant for his participation in the quelling of a riot in Tata during the 1956 revolution. He was charged with having commanded, as captain, a 15-strong squad in an assignment, on 26 October 1956, to regain control of the Tata Police Department building, which had been taken over by insurgents, and with having shot, and ordered his men to shoot, at civilians. Several people died or were injured in the incident.

On 29 May 1995 the Military Bench of the Budapest Regional Court discontinued the criminal proceedings against the applicant, holding that the offences with which he was charged constituted homicide and incitement to homicide, rather than crimes against humanity, and that such offences, even if proven, were statute-barred. The prosecution appealed against that decision, which was quashed by the Supreme Court's appeal bench.

On 7 May 1998 the Military Bench of the Budapest Regional Court, after examining the case afresh, discontinued the criminal proceedings in a decision that was upheld by the Supreme Court's appeal bench on 5 November 1998. Those decisions were quashed following a review.

The applicant was eventually convicted of multiple homicide constituting a crime against humanity and was sentenced to five years' imprisonment. The judges relied on Article 3 (1) of the Geneva Convention of 1949. Mr Korbely began serving his sentence on 24 March 2003 and on 31 May 2005 he was conditionally released.

Complaints

Relying in particular on Article 7 (no punishment without law), the applicant submitted that he had been convicted in respect of an act which had not constituted a criminal offence at the time it was committed.

Procedure

The application was lodged with the European Court of Human Rights on 20 January 2002. On 3 May 2007 the Chamber to which the case had been allocated 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 4 July 2007.

Judgment was given by the Grand Chamber of 17 judges.

Decision of the Court

Article 7

Observing that the applicant's act, at the time it was committed, had constituted an offence defined with sufficient accessibility, the Court examined whether it had been foreseeable that the act in respect of which he had been convicted would be classified as a crime against humanity. It noted that in finding the applicant guilty, the Hungarian courts had essentially relied on common Article 3 of the Geneva Conventions, which – in the view of the Hungarian Constitutional Court – characterised the conduct referred to in that provision as "crimes against humanity".

The Court noted that murder within the meaning of common Article 3 could have provided a basis for a conviction for crimes against humanity committed in 1956. However, other elements also needed to be present for that classification to apply. Such additional requirements derived not from common Article 3 but from the international law elements inherent in the notion of crime against humanity at that time. The Court observed that the domestic courts had not determined whether the killing had met the additional criteria without which it could not be characterised as a crime against humanity. It thus concluded that it was open to question whether the constituent elements of a crime against humanity had been satisfied in the applicant's case.

In convicting the applicant, the Hungarian courts had found that Tamás Kaszás, who was killed in the incident in question, had been a non-combatant for the purposes of common Article 3, the protection of which extended notably to "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms".

Tamás Kaszás had been the leader of an armed group of insurgents who, after committing other violent acts, had taken control of the police building and seized the police officers' weapons. He had therefore taken an active part in the hostilities. The Court found it to be crucial that, according to the Hungarian courts' findings, Tamás Kaszás had been secretly carrying a handgun, a fact which he had not revealed when confronted with the applicant. Once it had become known that he was armed, he had not clearly signalled his intention to surrender. Instead, he had embarked on an animated quarrel with the applicant, and had then drawn his gun with unknown intentions. It was precisely in the course of that act that he had been shot. In the light of the commonly accepted international-law standards applicable at the time, the Court was not satisfied that Tamás Kaszás could be said to have laid down his arms within the meaning of common Article 3. Lastly, the Court did not accept the government's argument that the applicant's conviction had not been primarily based on his reaction to Tamás Kaszás's drawing his handgun, but on his having shot, and ordered others to shoot, at a group of civilians.

The Court therefore considered that Tamás Kaszás had not fallen within any of the categories of non-combatants protected by common Article 3. Consequently, that provision could not reasonably have

formed a basis for a conviction for crimes against humanity in the applicant's case in the light of the relevant international-law standards at the time. The Court concluded that there had been a violation of Article 7.

Article 6

In the light of its finding of a violation of Article 7, the Court did not consider it necessary to examine the applicant's complaint that the proceedings in his case had been unfair.

Judges Lorenzen, Tulkens, Zagrebelsky, Fura-Sandström and Popović expressed a joint dissenting opinion and Judge Loucaides a dissenting opinion.

Kovačić and Others v. Slovenia

Judgment of 3 October 2008. Concerns: alleged violation of Article 1 of Protocol No. 1 in the context of currency transactions.

Article 1 of Protocol No. 1; Article 14. Struck out of list.

Principal facts

The applicants are three Croatian nationals: Ivo Kovačić (now deceased), who was born in 1922 and lived in Zagreb; Marjan Mrkonjić, who was born in 1941 and lives in Zurich; and Dolores Golubović (now deceased), who was born in 1922 and lived in Karlovac (Croatia). Mr Kovačić's and Ms Golubović's applications have been taken up by their heirs with the Court's agreement.

The applications concern the freezing of the applicants' hard-currency savings accounts at the Zagreb office of a Slovenian bank, the Ljubljana Bank (Ljubljanska banka), prior to the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) in 1991.

The applicants and their relatives had previously deposited foreign currencies in savings accounts with the Ljubljana Bank's Zagreb office (in Croatia). Some of the applicants and their relatives also held term accounts which matured in the late 1980s and early 1990s. The system in operation at the time was that foreign-currency deposits at SFRY commercial banks were transferred to the National Bank of Yugoslavia in Belgrade (NBY). Foreign-currency accounts earned interest at rates of 10% or even higher and were guaranteed by the SFRY.

However, as an emergency response to the hyper-inflation suffered by the SFRY in the 1980s, the withdrawal of foreign currency was progressively restricted by legislation and in 1988 the Ljubljana Bank froze all its foreign-currency accounts. Almost all the applicants' attempts to withdraw the money from their accounts failed.

The applicants and the Croatian Government considered that since 1991, the year Slovenia and Croatia became independent, liability for the debts owed to the customers of the Croatian branch of the Ljubljana Bank should have been assumed by that bank or by the Slovenian State. Conversely, the Slovenian Government took the view that they should be divided among the successor states to the SFRY under the state succession arrangements.

On 29 June 2001 Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, "the former Yugoslav Republic of Macedonia" and Slovenia signed the Vienna Agreement on Succession Issues, which entered into force on 2 June 2004.

In 2004 the Parliamentary Assembly of the Council of Europe adopted Resolution 1410 (2004) concerning "Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977-1991". Among its suggestions, it considered that "the matter of compensation for so many thousands of individuals would best be solved politically, between the successor states ...".

In 2003, 42 account holders, including Mr Kovačić and Mr Mrkonjić, lodged applications in Croatia for the seizure and sale of real estate owned by the Ljubljana Bank there. This resulted in the Zagreb Main Branch's assets being liquidated. On 20 July 2005 Mr Kovačić and Mr Mrkonjić received payment of their savings deposits in full together with their legal costs.

Ms Golubović did not bring proceedings in Croatia to recoup her foreign currency savings. However, in 2007 her heir brought an action in the Croatian courts for the recovery of her foreign-currency savings accounts plus interest. The proceedings are still pending in the Zagreb Municipal Court.

Complaints

The applicants complained of a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights in that they had been prevented by Slovenian law from withdrawing foreign currency which they had deposited with "the Ljubljana Bank – Zagreb Main Branch" before the dissolution of the SFRY. Mr Kovačić also complained that he had been a victim of discrimination in relation to the enjoyment of his property rights, contrary to Article 14 of the Convention.

Procedure

The applications were lodged with the European Court of Human Rights on 17 July 1998, 2 June 1997 and 24 December 1998 respectively.

The Croatian Government had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

A hearing on the admissibility and merits took place in public in the Human Rights Building, Strasbourg, on 9 October 2003. After the deliberations, which were held in private, the Court unanimously declared the applications admissible. In its Chamber judgment of 6 November 2006, the Court unanimously decided to strike out the case on the grounds that two of the applicants had received payment in full of their foreign-currency deposits and that it was still open to the third applicant to bring proceedings in Croatia.

The case was referred to the Grand Chamber in accordance with Article 43 of the Convention (referral to the Grand Chamber) at the applicants' request. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 November 2007. Judgment was given by the Grand Chamber of 17 judges.

Decision of the Court

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

It was noted as a preliminary point that the applicants, the respondent government and the intervening government had in effect requested

the Court to go into a number of issues pertaining to the circumstances of the break-up of the SFRY, its banking system and those of the successor states and the redistribution of liability for old foreign-currency savings among the successor states of the SFRY.

The Court observed at the outset that it had received applications against all of the SFRY successor States Parties to the Convention from applicants who had been affected by these matters. Several thousand such applications were currently pending. Even though such issues fell within the Court's jurisdiction as defined in Article 32 of the Convention, the Court could only subscribe to the view of the Parliamentary Assembly in Resolution 1410 (2004) that the matter of compensation for so many thousands of individuals had to be solved by agreement between the successor states. In that respect, the Court noted that several rounds of negotiations had already been held between the successor states, at different levels, with a view to reaching an agreement on the solution of the issues which remained unsettled. It called on the states concerned to proceed with these negotiations as a matter of urgency, with a view to reaching an early resolution of the problem.

The Court noted that it was common ground that Mr Kovačić's heirs and Mr Mrkonjić had received the full amount of their foreign-currency deposits plus accrued interest. As regards them, the matter had therefore been resolved.

The Court further noted the special circumstances of Mrs Golubović's case, which were the consequence of the break-up of the SFRY, its banking system and, ultimately, the redistribution of liability for old foreign-currency savings among the successor states of the SFRY. In such a context, the Court considered that claimants could reasonably be expected to seek redress in fora in one of the successor states where other claimants had been successful.

The Court noted in that respect that Mrs Golubović's heir had recently brought proceedings in Croatia with a view to recovering his late aunt's foreign-currency savings with interest. These proceedings are now pending before the Zagreb Municipal Court.

The Court found no justification for continuing with the examination of a case where proceedings were simultaneously pending in a court of a Contracting Party to recover foreign-currency deposits which were the very subject-matter of the application.

Being satisfied that respect for human rights as defined in the Convention and its Protocols did not require it to continue the examination of the applications, it decided to strike the cases out of the list.

The Court made no award for costs and expenses.

Judge Ress expressed a concurring opinion.

Selected Chamber judgments

Chember v. Russia

Articles 3 and 13 (violations)

Judgment of 3 July 2008. Concerns: the applicant complained that he was subjected to inhuman and degrading treatment and punishment during his military service.

Principal facts

The applicant, Yevgeniy Vitalyevich Chember, is a Russian national who was born in 1982 and lives in Shakhty (Russia). He was diagnosed with a second-degree disability in August 2001.

The case concerned Mr Chember's complaint that, during his military service, he was ordered to do excessive exercise which has left him disabled.

In December 2000 the applicant, declared fit, was called up to do two years' military service.

In February 2001 he was transferred to the 7th company of a military unit in Astrakhan (Russia). In March 2001, as punishment for not cleaning the barracks adequately, he was ordered by Junior Sergeant Ch., in the presence of Lieutenant D., to do 350 knee bends. He collapsed during the exercise and was taken to hospital. Diagnosed with a spinal injury, he can no longer walk properly and in June 2001 was discharged from military service on medical grounds.

The applicant's mother complained to the military authorities. A criminal inquiry was launched and statements were taken from the applicant's commanders and fellow servicemen, who confirmed his claim that he suffered from a recurrent knee problem and was treated on several occasions in the company's medical unit. In particular, Lieutenant D. stated that, due to the applicant's condition, he had exempted him from physical exercise and squad drill.

Following that inquiry, the Caspian Fleet Prosecutor's Office decided in May 2001 that no criminal proceedings would be brought against Lieutenant D. or Junior Sergeant Ch. as it found that no criminal offence had been committed. It referred, in particular, to the fact that all the servicemen of the applicant's company had been questioned and had stated that Private Chember had not been harassed and his superiors had never been guilty of abuse of power against him.

In April 2003 Shakhty Town Court dismissed the applicant's claim for damages on the ground that no finding of guilt had been established in the criminal inquiry. The applicant's appeal was dismissed for the same reasons.

In the meantime, the applicant's mother complained to a higher military prosecutor, who replied that her complaint could not be examined until such time as the town court returned the documents from the inquiry. The applicant has received no further information concerning that complaint.

The applicant's attempts to claim a military pension have been rejected as the authorities maintained that the applicant's disability was caused by a chronic condition from which he had suffered since childhood but with which he had first been diagnosed as a conscript. Therefore there was no proof that he had actually injured his spine during his military service.

Decision of the Court

Article 3

Concerning the ill-treatment

The Court reiterated that, even though challenging physical exercise might be part and parcel of military discipline, it should not endanger the health and well-being of conscripts or undermine their human dignity.

The Court noted that the applicant was subjected to forced physical exercise to the point of collapse and that the resulting injury had had long-term damage to his health. It was obvious from the statements made during the domestic inquiry that, despite having been fully aware of the applicant's specific health problems and having exempted him from physical exercise and squad drill, his commanders had forced him to do precisely the kind of exercise which had put great strain on his knees and spine. The severity of that punishment could not be accounted for by any disciplinary or military necessity. The Court therefore considered that that punishment had been deliberately calculated to cause the applicant intense physical suffering. Accordingly, it found that the applicant had been subjected to inhuman punishment, in violation of Article 3.

Concerning the inadequacy of the investigation

The Court found that the domestic inquiry had not been sufficiently thorough. No medical examination of the applicant had been commissioned and no reference had been made to any other medical document the applicant could have obtained. The only named witnesses mentioned in the decision of May 2001 had been the commanders against whom the applicant had made his complaint, Lieutenant D. and Junior Sergeant Ch. The other witnesses had not been identified by name or rank and even their exact number was uncertain. The government had submitted three servicemen's statements whereas the inquiry had referred to "all the servicemen of the 7th company", some 100 individuals. Indeed, those soldiers who could have been eyewitnesses to the alleged ill-treatment had not been questioned at all. Moreover, the applicant had not been heard in person and his version of events had not even been mentioned in the decision to not bring criminal proceedings. He had therefore not been able to formally claim the status of a victim or exercise his procedural rights.

Finally, the Court noted that the applicant had been caught up in a vicious circle of shifted responsibility where no domestic authority had reviewed or remedied the shortcomings of the inquiry. The town court, without an independent review, had simply based its judgment on the findings in the military authorities' decision. The supervising military prosecutor had then failed to respond to the complaint lodged by the applicant's mother as he considered that a response had no longer been necessary or required following the town court's judgment.

Given those shortcomings, the Court found that the Russian authorities' inquiry into the applicant's allegations of ill-treatment had not been thorough, adequate or efficient, in further violation of Article 3.

Article 13

The Court reiterated that the criminal investigation had been ineffective and that the effectiveness of any other remedy that might have existed had consequently been undermined. That was illustrated by the fact that the domestic courts, simply endorsing the investigator's opinion without having assessed the facts of the case, had dismissed the applicant's claim for damages.

The Court also noted a peculiar feature of Russian criminal law which had made the possibility of lodging a civil claim for damages conditional on the grounds on which the criminal proceedings had been discontinued. Therefore, the decision not to bring criminal proceedings against the applicant's commanders on the ground that no offence had been committed had debarred the applicant from suing the military staff for damages in a civil court.

The Court therefore concluded that the applicant had been denied an effective remedy in respect of his complaint of ill-treatment during his military service, in violation of Article 13.

Medvedyev and Others v. France

Judgment of 10 July 2008. Concerns: the applicants claimed to have been the victims of an arbitrary deprivation of liberty on account of being detained on board the Winner for 13 days under the surveillance of the French armed forces. They also complained that they had waited 15 to 16 days to be brought before "a judge or other officer authorised by law to exercise judicial power".

Article 5 §1 (violation); Article 5 § 3 (no violation)

Principal facts

The applicants are Oleksandr Medvedyev and Borys Bilenikin, Ukrainian nationals, Nicolae Balaban, Puiu Dodica, Nicu Stelian Manolache and Viorel Petcu, Romanian nationals, Georgios Boreas, a Greek national, and Sergio Cabrera Leon and Guillermo Luis Eduar Sage Martinez, Chilean nationals. They were crew members of the Winner, a cargo vessel flying the flag of Cambodia.

As part of an international operation against drug trafficking, the French authorities were informed that the ship was likely to be carrying significant quantities of narcotics. In consequence, the maritime authorities apprehended it on the high seas, in the waters off Cap Verde, then towed it to Brest harbour (France). The applicants claimed to have been the victims of an arbitrary deprivation of liberty on account of being detained on board the Winner for 13 days under the surveillance of the French armed forces, then in police custody – two days for some of them, three days for the others – on their arrival in Brest. Relying on Article 5 § 1 (right to liberty and security), they complained that that deprivation of liberty had been unlawful, particularly in the light of international law. Under Article 5 § 3 (right to liberty and security), they also complained that they had waited 15 to 16 days to be brought before "a judge or other officer authorised by law to exercise judicial power".

Decision of the Court

Article 5 § 1

The Court concluded that the applicants had not been deprived of their liberty in accordance with a procedure prescribed by law and consequently held, unanimously, that there had been a violation of Article 5 § 1.

Article 5 § 3

However, considering that the length of that deprivation of liberty had been justified by the "wholly exceptional circumstances" of the case, in particular the inevitable delay entailed by having the Winner tugged to France, the Court concluded, by four votes to three, that there had not been a violation of Article 5 § 3. It held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants, and awarded them EUR 5 000 jointly for costs and expenses. (The judgment is available only in French.)

I. v. Finland

Article 8 (violation)

Judgment of 17 July 2008. Concerns: the case concerned the applicant's allegation that, following certain remarks made at work at the beginning of 1992, she suspected that colleagues had unlawfully consulted her confidential patient records and that the district health authority had failed to provide adequate safeguards against unauthorised access of medical data.

Principal facts

The applicant, I., is a Finnish national who was born in 1960 and lives in Finland.

Between 1989 and 1994 the applicant worked on fixed-term contracts as a nurse in a public hospital. From 1987 onwards she consulted that hospital's polyclinic for infectious diseases as she had been diagnosed as HIV-positive.

The case concerned the applicant's allegation that, following certain remarks made at work at the beginning of 1992, she suspected that colleagues had unlawfully consulted her confidential patient records and that the district health authority had failed to provide adequate safeguards against unauthorised access of medical data. She relied on Article 8 (right to respect for private life), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy).

Decision of the Court

The Court held unanimously that there had been a violation of Article 8 on account of the domestic authorities' failure to protect, at the relevant time, the applicant's patient records against unauthorised access. The Court further held unanimously that there was no need to examine the complaints under Articles 6 and 13. The applicant was awarded EUR 5 771.80 in respect of pecuniary damage, EUR 8 000 in respect of non-pecuniary damage and EUR 20 000 for costs and expenses. (The judgment is available only in English.)

The Georgian Labour Party v. Georgia

Article 3 of Protocol No. 1 (no violation) on account of the introduction of a new system of voter registration;
Article 3 of Protocol No. 1 (no violation) on account of the composition of the electoral commissions at the relevant time;
Article 3 of Protocol No. 1 (violation) on account of the disfranchisement of the Khulo and Kobuleti voters;
Article 14 taken in conjunction with Article 3 of Protocol No. 1 (no violation)

Judgment of 8 July 2008. Concerns: the applicant party complained about the conduct of the parliamentary election on 28 March 2004. In particular, it challenged the rules on the composition of electoral rolls. The applicant party further complained that it was deprived of its chance to win parliamentary seats because the general election results were finalised without a vote having been held in two electoral districts.

Principal facts

The Georgian Labour Party is a political party based in Tbilisi.

On 2 November 2003 a general parliamentary election was held in Georgia. Its outcome was to be decided according to two voting systems, majority voting and proportional representation. The Georgian Labour Party obtained 12.04% of the votes cast under proportional representation, which corresponded to 20 of the 150 seats in Parliament reserved for candidates from party lists.

Demonstrators protesting that the elections had been rigged and calling for the resignation of Georgian President Eduard Shevardnadze disrupted the newly-elected Parliament's first session on 22 November 2003 (the so-called "Rose Revolution"). President Shevardnadze resigned and the Supreme Court of Georgia annulled the proportional representation results of the general election. It was subsequently decided to hold a presidential election on 4 January 2004 and a re-run of the parliamentary election was ultimately scheduled for 28 March 2004.

The Central Electoral Commission (CEC) adopted a number of decrees in December 2003 requiring voters to go to electoral precincts and fill out special forms in order to vote in the presidential election. The Georgian Labour Party and other opposition parties unsuccessfully challenged the lawfulness of those rules in court. The Georgian Labour Party fielded no candidate in the presidential election. The applicant party applied to the Supreme Court to have the election results annulled, but in vain.

For the parliamentary election, the CEC adopted another decree requiring electoral precincts to publish preliminary lists of voters and obliging voters to go there to check that their names were on the lists and make a request for any correction.

According to the applicant party, on the eve of the parliamentary election, the new President of Georgia, Mikhail Saakashvili, told the media that he would not allow the Labour Party to be included in the new Parliament.

Following various complaints filed with the CEC about voting irregularities in the general election on 28 March in the Kobuleti and Khulo

electoral districts in the Autonomous Republic of Ajaria, the CEC annulled the results for those two districts by an Ordinance of 2 April 2004. They gave no relevant and sufficient reasons for that decision. The CEC set 18 April 2004 as the date for a new vote. On the day, however, the polling stations in the Khulo and Kobuleti districts failed to open, which deprived around 60 000 people of their vote.

The same day, the CEC announced the results of the 28 March election; 1 498 012 votes had been cast and the applicant party had received 6.01% of the vote, which was not enough to clear the 7% threshold needed to obtain seats in Parliament.

The applicant's representative, as one of the 15 members of the CEC, had objected to the finalisation of the election results, arguing that the CEC could not lawfully end a national election without first having held an election in the Khulo and Kobuleti districts. The CEC chairperson had replied that the fact that the polling stations had not opened in those districts was the fault of the local authorities. The CEC accepted the election results by a majority vote.

The applicant party appealed unsuccessfully to the Supreme Court. Constitutional proceedings brought by the chairperson of the applicant party were also unsuccessful.

Decision of the Court

The Court found that, in the present case, the applicant, as a political party, could validly claim victim status for the purposes of Article 34.

Article 3 of Protocol No. 1

Concerning the new system of voter registration

The Court considered that the proper management of electoral rolls was a precondition for a free and fair ballot. The effectiveness of the right to stand for election was undoubtedly contingent upon the fair exercise of the right to vote. A sufficiently close causal link therefore existed between the applicant party's right to stand in the repeat parliamentary election of 28 March 2004 and its complaint about the voter registration system prevailing at that time.

For the purposes of applying Article 3 of Protocol No. 1, any electoral legislation had to be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system could be justified in the context of another. In the present case, the electoral authorities had had the challenge of remedying manifest shortcomings in the electoral rolls within very tight deadlines, in a "post-revolutionary" political situation. Consequently, the unexpected change in the rules on voter registration one month before the repeat parliamentary election of 28 March 2004 was, in the very specific circumstances of the situation, a solution not open to criticism under Article 3 of Protocol No. 1.

As to whether or not the active system of voter registration, which partly shifted responsibility for the accuracy of electoral rolls from the authorities onto the voters, was compatible with the Contracting States' positive obligation to ensure the free expression of the opinion of the people, the Court considered that the Georgian State should be granted a wide margin of appreciation in that regard.

The Georgian State was not alone in opting for such a system of voter registration: several Western European democracies, in particular the United Kingdom and Portugal, also relied to a considerable extent on voters' individual declarations when compiling the national electoral rolls.

It followed that the active system of voter registration could not in itself amount to a breach of the applicant party's right to stand for election. In the particular circumstances of the present case, this system proved not to be the cause of the problem of ballot fraud but a reasonable attempt to remedy it, whilst not providing a perfect solution.

On balance, given the specific circumstances of the political situation in the Georgian State, there had been no violation of the applicant party's right to stand for election, as understood by Article 3 of Protocol No. 1, on account of the introduction on 27 February 2004 of the new voter registration system.

Concerning the composition of the electoral commissions

The applicant party's complaint under this head was mostly based on the argument that the composition of, and decision-making process within, the electoral commission amounted as such to a violation of Article 3 of Protocol No. 1.

Having examined the composition of the electoral commissions, the Court concluded that this composition at all levels indeed lacked sufficient checks and balances against the President's power and that the commissions could hardly enjoy independence from outside political pressure. However, in the absence of any proof of particular acts of abuse of power or electoral fraud committed within the electoral commissions to the applicant party's detriment, no breach of the latter's right to stand for election could be established.

There had accordingly been no violation of Article 3 of Protocol No. 1 in that respect.

Concerning the disfranchisement of the Khulo and Kobuleti voters

The Court considered that the Khulo and Kobuleti voters' inability to participate in the repeat parliamentary election held under the proportional system had to be questioned under the principle of universal suffrage. It therefore had to examine whether the state authorities had done everything that could reasonably have been expected of them in order to ensure the inclusion of Khulo and Kobuleti voters in the repeat parliamentary election prior to the final vote tally and whether there was arbitrariness or a lack of proportionality between the restriction in question and the legitimate aim pursued by the Georgian State. In doing so, the Court noted that it was not the applicant party's right to win the repeat parliamentary election which was at stake but its right to stand freely and effectively.

The CEC had not issued any act annulling the Ordinance of 2 April 2004 and officially cancelling the repeat election in Khulo and Kobuleti. If it had been truly impossible to enforce the Ordinance of 2 April 2004, it would have been more compatible with the fundamental principles of the rule of law for the CEC to cancel the scheduled polls in Khulo and Kobuleti in the form of a clear-cut, formal decision, on the basis of a relevant and sufficient justification for the disfranchisement of some 60 000 voters.

The Court observed that, contrary to its positive obligations under Article 3 of Protocol No. 1, the Georgian State had not attempted any further action aimed at including the Khulo and Kobuleti voters in the country-wide election after the failure to open polling stations on 18 April 2004.

Taking into account the importance of the principle of universal suffrage, the Court could not accept

that the legitimate interest of having a fresh Parliament elected "at a reasonable interval" was a sufficient justification for the Georgian State's inability or unwillingness to undertake further reasonable measures for the purpose of enfranchising 60 000 Ajarian voters.

The Court accordingly concluded that the CEC's decision of 2 April 2004 to annul the election results in the Khulo and Kobuleti electoral districts had not been made in a transparent and consistent manner. The CEC had not adduced relevant and sufficient reasons for its decision, nor had it provided adequate procedural safeguards against an abuse of power. Furthermore, without having recourse to any additional measures aimed at organising elections in the Khulo and Kobuleti districts after 18 April 2004, the CEC had taken a hasty decision to terminate the country-wide election without any valid justification. The exclusion of those two districts from the general election process had failed to comply with a number of rule of law requisites and resulted in what was effectively a disfranchisement of a significant section of the population

There had accordingly been a violation of the applicant party's right to stand for election under Article 3 of Protocol No. 1.

Article 14

In the light of all the material in its possession, the Court did not find any evidence which might arguably have suggested that either the challenged electoral mechanisms – the system for voter registration and the composition of electoral commissions – or the events which took place in Khulo and Kobuleti had been exclusively aimed at the applicant party and did not affect the other candidates standing for that election.

There had thus been no violation of Article 14, taken in conjunction with Article 3 of Protocol No. 1.

The partly dissenting opinions of Judges Mularoni and Popovic are appended to the judgment.

Vladimir Romanov v. Russia

Article 3 (violation) on account of the applicant having been severely beaten by prison warders;
Article 3 (violation) on account of the authorities' failure to investigate effectively the applicant's complaints of ill-treatment;
Article 6 § 1 taken together with Article 6 § 3(d) (violation)

Judgment of 24 July 2008. Concerns: the applicant alleged that he was severely beaten by prison warders in the detention facility where he was being held and that the authorities failed to carry out an effective investigation into his allegation. He also alleged that he was not given an adequate opportunity to confront, in particular, one of the witnesses for the prosecution at his trial.

Principal facts

The applicant, Vladimir Anatolyevich Romanov, is a Russian national who was born in 1973 and lived in Ivanovo (Russia) until his arrest in October 2000 on suspicion of robbery.

The case concerned, in particular, the applicant's allegation that he was severely beaten by prison warders and that the authorities failed to effectively investigate that allegation.

Mr Romanov was convicted of aggravated robbery on 9 January 2002 and sentenced to 11 years and three months' imprisonment, subsequently reduced to nine years and three months. The domestic courts based that decision, in particular, on two depositions made by the alleged victim of the robbery, Mr I., in April and May 2001 during the pre-trial investigation. Mr I. identified the applicant as one of the men who had attacked and robbed him in October 2000. Out of the country until 3 December 2001, he did not appear at the trial and his depositions were therefore read out on 29 November 2001.

According to the applicant, on 22 June 2001 prison warders of detention facility IZ-37/1 where he was being held entered his cell and, in order to force the inmates out, hit them with rubber truncheons. The warders continued to beat the applicant even when he had been forced into the corridor and fallen to the floor.

The applicant was immediately examined by the prison dermatologist who recorded linear bruising on his legs and back. Subsequently taken to the prison hospital, doctors noted that the applicant had sustained a chest injury caused by a blunt object. He also had an operation for a ruptured spleen.

Relying on a report of the incident drawn up by the detention facility on 23 June 2001, the government submitted that the warders had had to resort to force due to unrest in the applicant's cell which had risked turning into a generalised prison riot. It also relied on a written statement by the warder who had beaten the applicant: he testified that the applicant had been injured as a result of "selective application of special measures".

The detention facility's administration reported the incident to Ivanovo Regional Prosecutor's Office on 25 June 2001. The prosecutor's office issued a report of its inquiry on 3 July 2001 in which it refused to bring criminal proceedings against the warders as it considered their actions to have been lawful. The report found it established that injuries recorded on the applicant's feet, knees and back had been the result of his physically resisting the warders. The conclusions in that report were based mainly on testimonies given by the warders involved in the incident; inmates who had allegedly been present during the incident stated that they had not seen the beatings and the applicant's testimony was not considered credible.

The applicant subsequently brought judicial proceedings in which he sought compensation for the injuries he had sustained. The courts, citing the July 2001 report, found that the use of force against the applicant had been lawful but that the applicant had sustained serious life-threatening damage and that the detention facility had not had sufficient control over its warders. The applicant was therefore awarded 10 000 Russian roubles (RUB), (approximately EUR 330), later increased to RUB 30 000 (EUR 960).

Decision of the Court

Article 3

Concerning the alleged ill-treatment

The parties agreed that the applicant's injuries, as recorded in the medical reports by the prison dermatologist and hospital, had been caused on 22 June 2001 by the use of force by prison warders, namely that they had beaten him with rubber truncheons.

The Court accepted that the use of rubber truncheons in the applicant's case had had a legal basis under the Penitentiary Institutions Act and the Custody Act. It also accepted that use of force might, on occasions, be necessary to ensure prison security, maintain order or prevent crime in penitentiary facilities.

However, the Court did not see any reason why the use of rubber truncheons against the applicant had been necessary. Indeed, the warders' actions had been grossly disproportionate to what the applicant had been accused of: disobedience. The warders might admittedly have needed to resort to physical force in order to remove inmates from their cell but the Court was not convinced that hitting them with a truncheon had been conducive to achieving that aim.

Furthermore, the Court did not consider it established that the applicant had actively resisted the warders. It was peculiar that the detention facility's documents had simply mentioned that special measures had been applied to the applicant; he had not been listed as one of the instigators of or active participants in the incident. Mention of an active role by the applicant had first been made in the prosecutor's office decision of 3 July 2001. That discrepancy was not explained in the subsequent judicial proceedings as the domestic courts did not assess the extent of the applicant's participation in the incident.

Moreover, the report of 3 July 2001 which had referred to injuries to the applicant's feet had supported the applicant's submission that warders had continued hitting him even when he had been lying on the floor. The government had not challenged that submission and had not provided any plausible explanation as to how those injuries had occurred.

In conclusion, the Court considered that the use of rubber truncheons on the applicant had been a form of reprisal and, even worse, had continued even after the applicant had complied with the order to leave his cell and had fallen on the floor. That punitive violence had been deliberately intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. The applicant's injuries had to have caused him serious physical pain and intense mental suffering and had resulted in long-term damage to his health. The Court therefore held that the applicant had been subjected to treatment which could be described as torture, in violation of Article 3.

Concerning the alleged inadequacy of the prosecution's inquiry and the judicial proceedings

The Court observed that, in cases of wilful ill-treatment, a violation of Article 3 could not be remedied exclusively through an award of compensation to the victim because, if that were the case, it would be possible for the state to avoid the prosecution and punishment of those responsible and the general legal prohibition of torture and inhuman and degrading treatment would be ineffective in practice.

The Court therefore decided to assess the authorities' determination to prosecute those responsible for the applicant's ill-treatment.

As concerned the promptness of the investigation, it had taken the facility administration three days to inform the prosecution authorities about the incident, a delay which could have resulted in the loss of evidence.

As concerned the thoroughness, the inquiry decision of 3 July 2001 had relied on three medical reports drafted only by prison doctors which had provided limited medical information and had not included any explanation by the applicant regarding his complaints. Similarly, the inquiry's assessment of the evidence had been selective and inconsistent, its conclusions having been based mainly on the warders' testimonies, whose credibility should also have been questioned. Indeed, it was curious that it had been impossible to identify those inmates who had been eyewitnesses to the beatings and who could have provided relevant information on the incident. Nor had there at any point been any attempt to analyse the degree of force used by the warders and whether it had been necessary and proportionate in the circumstances. The prosecution had, without any independent evidence, found that the warders had lawfully assaulted the applicant due to his physical resistance.

Finally, the domestic courts had simply relied on the findings of the 3 July 2001 report; eyewitnesses to the incident, including the applicant himself and the warders who had beaten him, had never been questioned personally. The Court was particularly struck by the fact that the courts had awarded the applicant compensation due to the detention facility's mere lack of sufficient control over its warders.

In view of those failings, the Court considered that the Russian authorities' reaction to a grave incident of deliberate ill-treatment by its agents had been inadequate and inefficient and that the measures they had taken had failed to provide appropriate redress to the applicant, in further violation of Article 3.

Article 6 § 1 taken together with Article 6 § 3 (d)

The Court considered that Mr I.'s depositions during the pre-trial investigation and read out at trial had constituted virtually the sole direct and objective evidence on which the domestic courts had based its findings of the applicant's guilt.

In particular, Mr I.'s depositions had been read out at the trial hearing on 29 November 2001, that is to say just a few days before his presence at the hearing could have been ensured, on his return to Russia on 3 December 2001. In the Court's view, granting a five-day stay in proceedings in which the applicant had stood accused of a very serious offence and had risked a long term of imprisonment, would not have constituted an insurmountable hindrance to expediency requirements.

Furthermore, the applicant had not been provided with the opportunity to follow the manner in which Mr I. had been interrogated by the investigator in April and May 2001 or to have questions put to him. Nor had those statements been video-recorded.

Finding that there was no proper substitute for personal observation of a leading witness' oral evidence at trial, the Court concluded that the applicant had not had a proper and adequate opportunity to challenge Mr I.'s statements and consequently his trial had not been fair, in violation of Article 6 § 1 taken together with Article 6 § 3 (d).

Under Article 41 (just satisfaction), the Court awarded Mr Romanov 20 000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in English.)

Judges Spielmann and Malinverni expressed a joint concurring opinion, and Judge Malinivieri, joined by Judge Kovler, expressed a further concurring opinion.

Liberty & Other Organisations v. the United Kingdom

Article 8 (violation)

Judgment of 1 July 2008. Concerns: the applicants complained about the interception of their communications by an Electronic Test Facility operated by the British Ministry of Defence.

Principal facts

The applicants are Liberty, British Irish Rights Watch and the Irish Council for Civil Liberties, a British and two Irish civil liberties' organisations based in London and Dublin, respectively.

The case concerned the applicant organisations' allegation that, between 1990 and 1997, their telephone, facsimile, e-mail and data communications, including legally privileged and confidential information, were intercepted by an Electronic Test Facility operated by the British Ministry of Defence.

The applicants lodged complaints with the Interception of Communications Tribunal, the Director of Public Prosecutions and the Investigatory Powers Tribunal to challenge the lawfulness of the alleged interception of their communications, but to no avail. The local courts found, in particular, that there was no contravention to the Interception of Communications Act 1985.

Decision of the Court

Article 8

The Court recalled that it had previously found that the mere existence of legislation which allowed communications to be monitored secretly had entailed a surveillance threat for all those to whom the legislation might be applied. In the applicants' case, the Court therefore found that there had been an interference with their rights as guaranteed by Article 8.

Section 3(2) of the 1985 Act allowed the British authorities extremely broad discretion to intercept communications between the United Kingdom and an external receiver, namely the interception of "such external communications as described in the warrant".

Indeed, that discretion was virtually unlimited. Warrants under Section 3(2) of the 1985 Act covered very broad classes of communications. In their observations to the Court, the British Government accepted that, in principle, any person who sent or received any form of telecommunication outside the British Islands during the period in question could have had their communication intercepted under a Section 3(2) warrant. Furthermore, under the 1985 Act, the authorities had wide discretion to decide which communications, out of the total volume of those physically captured, were listened to or read.

Under Section 6 of the 1985 Act, the Secretary of State was obliged to "make such arrangements as he consider[ed] necessary" to ensure a safeguard against abuse of power in the selection process for the examination, dissemination and storage of intercepted material. Although during the relevant period there had been internal regulations, manuals and instructions to provide for procedures to protect against abuse of power, and although the Commissioner appointed under the 1985 Act to oversee its workings had reported each year that the "arrangements" were satisfactory, the nature of those "arrangements" had not been contained in legislation or otherwise made available to the public.

Lastly, the Court noted the British Government's concern that the publication of information regarding those arrangements during the period in question might have damaged the efficiency of the intelligence-gathering system or given rise to a security risk. However, in the United Kingdom, extensive extracts from the Interception of Communications Code of Practice were now in the public domain, which suggested that it was possible for the state to make public certain details about the operation of a scheme of external surveillance without compromising national security.

In conclusion, the Court considered that the domestic law at the relevant time had not indicated with sufficient clarity, so as to provide adequate protection against abuse of power, the scope or manner of exercise of the very wide discretion conferred on the state to intercept and examine external communications. In particular, it had not set out in a form accessible to the public any indication of the procedure to be followed for examining, sharing, storing and destroying intercepted material.

The interference with the applicants' rights had not therefore been "in accordance with the law", in violation of Article 8.

Article 13

The Court did not consider it necessary to examine separately the complaint under Article 13.

Under Article 41 (just satisfaction) of the Convention, the Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage caused to the applicants, and awarded them 7 500 euros (EUR) for costs and expenses. (The judgment is available only in English.)

Kononov v. Latvia

Article 7 (violation)

Judgment of 24 July 2008. Concerns: the applicant complained that the acts of which he had been accused did not, at the time of their commission, constitute an offence under either domestic or international law.

Principal facts

Vasiliy Kononov was born in 1923. He was a Latvian national until 12 April 2000, when he was granted Russian nationality.

The case concerned Mr Kononov's prosecution for war crimes he allegedly committed in 1944. At the time the territory of Latvia was under German occupation.

In 1942 the applicant was called up as a soldier in the Soviet Army. In 1943 he was parachuted into Belarus territory (also under German occupation at the time) near the Latvian border, where he joined a Soviet commando unit composed of members of the "Red Partisans".

According to the facts as definitively established by the competent Latvian courts, on 27 May 1944 the

applicant led a unit of armed Red Partisans wearing German uniforms to avoid arousing suspicion in a punitive expedition on the village of Mazie Bati, certain of whose inhabitants were suspected of having betrayed and turned into the Germans another group of Red Partisans. The applicant's men burst into and searched six houses. After finding rifles and grenades supplied by the German military administration in each of the houses, the Partisans executed the six heads of family concerned. They also wounded two women. They then set fire to two houses and four people perished in the flames. In all, nine villagers were killed: six men and three women, one in the final stages of pregnancy.

According to the applicant, the victims of the attack were collaborators who had delivered a group of 12 Partisans (including two women and a small child) into the hands of the Germans some three months earlier. The applicant said that his unit had been instructed to capture those responsible so that they could be brought to trial. He had not personally led the operation or entered the village.

In January 1998 the Centre for the Documentation of the Consequences of Totalitarianism (Totalitarisma seku dokumentešanas centrs) launched a criminal investigation into the events of 27 May 1944. It considered that the applicant could have committed war crimes under Article 68-3 of the former Latvian Criminal Code. Article 68-3 stipulated that those found guilty of war crimes were liable to between three and 15 years' imprisonment or life imprisonment. Article 6-1 permitted the retrospective application of the criminal law with respect to war crimes and Article 45-1 provided that the prosecution of such crimes was not subject to statutory limitation.

On 2 August 1998 the applicant was charged with war crimes and on 10 October 1998 placed in pre-trial detention. He entered a not guilty plea.

The Riga Regional Court found him guilty and imposed an immediate six-year custodial sentence.

That judgment was quashed, however, on 25 April 2000 on the ground that various issues remained unresolved, including whether Mazie Bati had in fact been within "occupied territory" and whether the applicant and his victims could be classified as "combatants" and "non-combatants" respectively. The applicant was released from detention.

On 17 May 2001, following a fresh preliminary investigation, the applicant was again charged with an offence under Article 68-3.

On 3 October 2003 the Latgale Regional Court acquitted him of the war-crimes charges, but found him guilty of banditry. It accepted that the deaths of the men from Mazie Bati could be regarded as necessary and justified in military terms, but found that there was no justification for the killing of the three women or the burning down of the village buildings. The applicant and his men had committed an act of banditry and the applicant, as the commanding officer, was responsible for the actions of his unit. However, since banditry did not fall into the category of offences exempt from statutory limitation, the Regional Court relieved the applicant of criminal liability.

On 30 April 2004, the Criminal Affairs Division of the Supreme Court allowed an appeal from the prosecution and quashed that judgment, again finding the applicant guilty of war crimes under Article 68-3. Noting that he was aged, infirm and harmless, it imposed an immediate custodial sentence of one year and eight months. The applicant lodged an unsuccessful appeal on points of law.

Decision of the Court

Article 7

It was not the Court's task to rule on the applicant's individual criminal responsibility, but to consider, from the standpoint of Article 7 § 1, whether on 27 May 1944 his acts constituted offences that were defined with sufficient accessibility and foreseeability by domestic law or international law.

The Criminal Affairs Division of the Supreme Court had characterised the applicant's acts by reference to three international instruments. However, two of these had come into existence after 1944 and did not contain any provisions affording them retrospective effect and in any event Article 7 § 1 precluded the retrospective application of an international treaty to characterise an act or omission as criminal. Only the Hague Convention of 1907 concerning the law and customs of war on land (or, more precisely, the appended Regulations) existed and was in force at the time the alleged offences were committed. Neither the USSR nor Latvia had signed that Convention, which was not, therefore, formally applicable to the armed conflict in question. However, the text of that Convention merely reproduced the fundamental customary rules that were firmly recognised by the community of nations at the time. The Court therefore presumed that the applicant, as a "combatant" within the meaning of international law, must have been aware of the rules.

The Court noted that the decisions of the domestic courts were almost completely silent on the question whether the applicant was personally and directly implicated in the events of Mazie Bati. The only genuine accusation made against him by the Latvian courts was that he had led the unit which carried out the punitive expedition on 27 May 1944. The Court therefore had to determine whether that operation could, in itself, reasonably be regarded as having contravened the laws and customs of war as codified by the Hague Convention of 1907.

In that connection, the Court noted that even though the operation had not been carried out in a combat situation, it had nevertheless taken place in a war zone near the front in a village that had seen skirmishes between the Red Partisans and the German army and in a region occupied by Nazi Germany and its army, where a Latvian auxiliary police in the service of the Germans, armed "trustworthy men" and others employed to denounce members of the Red Partisans were all active.

While there was nothing to indicate that the six men killed on 27 May 1944 were members of the Latvian auxiliary police, they had received rifles and grenades from the Germans. Following, in particular, the killing by the Wehrmacht of a group of Red Partisans who had been betrayed by the Mazie Bati villagers after taking refuge on their territory, the applicant and the other Red Partisans had legitimate grounds for considering the villagers concerned as collaborators of the German Army. Accordingly, the Court was not satisfied that the six men killed could reasonably be regarded as "civilians" and noted that that notion was not defined by the Hague Convention of 1907. In characterising the victims as "civilians", the Criminal Affairs Division had relied on a provision in another instrument which provided that any person not belonging to one of the predefined categories of combat-

ants or in respect of whom there was a doubt on that point was presumed a "civilian". However, that instrument, which was adopted more than 30 years after the events in question, could not be applied retrospectively and there was no reason to consider that such a presumption was already recognised in customary law in 1944.

The Court noted, further, that the operation of 27 May 1944 had been selective in character, as it was carried out against six specific, identified men who were strongly suspected of having collaborated with the Nazi occupier. The Partisans had searched their homes, and it was only after finding rifles and grenades supplied by the Germans – tangible evidence of their collaboration – that they had carried out the executions. Conversely, all the villagers were spared.

The Court noted that the Latvian courts had omitted in their decisions to carry out a detailed and sufficiently thorough analysis of the Regulations appended to the Hague Convention of 1907, but had simply referred to certain of its articles without explaining how they came into play in the applicant's case. In particular, the Criminal Affairs Division had cited three articles of the Regulations in question which made it illegal "to kill or wound treacherously individuals belonging to the hostile nation or army", prohibited attacks on "towns, villages, dwellings, or buildings which are undefended" and required certain fundamental rights to be respected. The instant case concerned a targeted military operation consisting in the selective execution of armed collaborators of the Nazi enemy who were suspected on legitimate grounds of constituting a threat to the Red Partisans and whose acts had already caused the deaths of their comrades. That operation was scarcely any different from those carried out at the same period by the armed forces of the Allied powers or by local Resistance members in many European countries occupied by Nazi Germany.

Finally, the Court considered that it had not been adequately demonstrated that the attack on 27 May 1944 was per se contrary to the laws and customs of war as codified by the Regulations appended to the Hague Convention of 1907. Accordingly, in view of the summary nature of the reasoning of the Latvian courts, it concluded that there was no plausible legal basis in international law on which to convict the applicant for leading the unit responsible for the operation.

As regards the three women killed at Mazie Bati, the Court could only regret the overly general and summary nature of the domestic courts' reasoning, which did not allow any definite answers to be given to two fundamental questions, namely whether and to what extent the women had participated in the betrayal of the group of Red Partisans, and whether their execution had been planned by the Red Partisans from the start or whether the members of the unit had acted beyond their authority.

The Court considered that there were two possible explanations for what happened. The first was that the three women concerned had played a role in the betrayal and that their execution had been planned from the start. The government had not refuted the applicant's assertion that the three women had kept watch while the men had gone to the neighbouring village to alert the German garrison to the Partisans' presence. If that account was true, the Court was bound to conclude that the three women were also guilty of abusing their status of "civilians" by providing genuine, concrete assistance to the six men from Mazie Bati who collaborated with the Nazi occupier. In such circumstances, the Court's finding with respect to the men who were executed during the operation on 27 May 1944 was in general equally applicable to the three women.

The second explanation was that the women's deaths had not initially been planned by the applicant's men and their commanding officers and that their deaths resulted from an abuse of authority. The Court considered that neither such abuse of authority nor the military operation in which it took place could reasonably be regarded as a violation of the laws and customs of war as codified in the Hague Regulations. Under this scenario, the Court accepted that the acts committed by the members of the unit against the three women concerned could prima facie constitute offences under the general law, which, as such, had to be examined by reference to the domestic law applicable at the material time.

On the assumption that the deaths of the three women from Mazie Bati were the result of an abuse of authority by the Red Partisans, the Court notes that, as with the six men, the decisions of the Latvian courts contained no indication of the exact degree of implication of the applicant in their execution. Thus, it had never been alleged that he himself had killed the women or that he had ordered or incited his comrades to do so.

In any event, the Court considered that even if the applicant's conviction was based on domestic law, it was manifestly contrary to the requirements of Article 7 as, even supposing that he had committed one or more offences under the general law in 1944, their prosecution had been definitively statute barred since 1954 and it would be contrary to the principle of foreseeability to punish him for these offences almost half a century after the expiry of the limitation period.

Consequently, the Court considered that the applicant could not reasonably have foreseen on 27 May 1944 that his acts amounted to a war crime under the international rules governing conduct in war applicable at the time. There was, therefore, no plausible legal basis in international law on which to convict him of such an offence and even supposing that the applicant had committed one or more offences under domestic law, by 2004 domestic law could no longer serve as a basis for his conviction either, in violation of Article 7.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant, by four votes to three, 30 000 euros (EUR) in respect of non-pecuniary damage. (The judgment, done in French, is also available in English.)

Judge Myjer expressed a concurring opinion. Judges Fura-Sandström, David Thor Björgvinsson and Ziemele expressed a joint dissenting opinion and Judge David Thor Björgvinsson a dissenting opinion.

Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria

Judgment of 31 July 2008. Concerns: the applicants complained about the Austrian authorities' refusal to recognise the Jehova's Witnesses. The applicants also complained about the excessive length of the proceedings concerning their request for recognition as a religious society.

Article 9 (violation);
Article 14 read in conjunction with Article 9 (violation);
Article 6 (violation);
Article 13 (no violation)

Principal facts

The applicants are four Austrian nationals, Franz Aigner, Kurt Binder, Karl Kopetzky and Johann Renolder who were born in 1927, 1935, 1927 and 1930 respectively and live in Vienna and the Religionsgemeinschaft der Zeugen Jehovas (Jehovah's Witnesses religious community), the fifth largest religious community in Austria.

The case concerned, in particular, the Austrian authorities' refusal to grant the Jehova's Witnesses legal personality for approximately 20 years.

On 25 September 1978 the first four applicants made a request to the Federal Minister for Education and Arts, under the 1874 Legal Recognition of Religious Societies Act, to have the Jehova's Witnesses' recognised as a religious society and granted legal personality.

The Ministry refused to grant that request on the ground that, under the 1874 Recognition Act, they had no right to obtain a formal decision.

Following complex legal proceedings in which the domestic courts declined jurisdiction, on 4 October 1995 the Constitutional Court found that the applicants had the right to have a decision, be it positive or negative, concerning their request to be recognised as a religious society.

On 21 July 1997 the Minister for Education and Cultural Affairs dismissed the applicants' request, finding that the Jehovah's Witnesses could not be recognised as a religious society because their internal organisation was not clear and they had a negative attitude to the state and its institutions, notably as regards their refusal to do military service, to participate in local community life and elections or to have certain types of medical treatment such as blood transfusions. The Constitutional Court subsequently quashed that decision on the grounds that it was arbitrary and violated the principle of equality, the Minister not having carried out a proper investigation or submitted a case file on which the applicants could comment.

On 20 July 1998, an Act having been passed in January 1998 on the Legal Status of Registered Religious Communities, the Jehova's Witnesses were granted legal personality as a religious community. From that point, the Jehova's Witnesses religious community had legal standing before the Austrian courts and authorities and was allowed to acquire and manage assets in its own name, establish places of worship and disseminate its beliefs.

The applicants nonetheless brought a second set of proceedings still requesting recognition as a religious society. Their request was dismissed on 1 December 1998 as the Federal Minister found that, pursuant to the 1998 Religious Communities Act, a religious community could only be registered as a religious society if it had already existed for a minimum of ten years. The applicants' complaint about that decision was ultimately dismissed in October 2004 on the ground that a ten-year qualifying period was in conformity with the Constitution.

Decision of the Court

Article 9

The Court noted that the period between the submission of the applicants' request for recognition as a religious society and the granting of legal personality was substantial, some 20 years, and that, during that period, the Jehova's Witnesses had had no legal personality in Austria. It therefore considered that there had been an interference with the applicants' right to freedom of religion. That interference, based on Section 2 of the 1874 Recognition Act which required religious denominations to be recognised by the relevant federal minister, had been "prescribed by law" and pursued the "legitimate aim" of protecting public order and safety.

The Court reiterated that the right of a religious community to an autonomous existence was indispensable for pluralism in a democratic society. Even the creation of auxiliary associations with legal personality could not compensate for the authorities' prolonged failure to grant legal personality. The government not having provided any "relevant" and "sufficient" reasons to justify that failure, the Court concluded that the interference had gone beyond any "necessary" restriction on the applicants' freedom of religion. There had therefore been a violation of Article 9.

Article 14 read in conjunction with Article 9

The Court observed that under Austrian law religious societies enjoyed privileged treatment in many areas, notably taxation. In view of those privileges, it was up to the authorities to remain neutral and to give all religious groups a fair opportunity to apply for a specific status, using established criteria in a non-discriminatory manner.

That duty to remain neutral and impartial also raised delicate questions when imposing a qualifying period on a religious association which had legal personality before it could obtain a more consolidated status as a public-law body.

The Court accepted that making a religious community wait for ten years before granting it the status of a religious society could be necessary in exceptional circumstances such as in the case of newly established and unknown religious groups. However, it hardly appeared justified in respect of religious groups which were well-established both nationally and internationally and therefore familiar to the relevant authorities, as was the case with the Jehovah's Witnesses. In respect of such a religious group, the authorities should have been able to verify within a considerably shorter period whether the requirements of the relevant legislation had been fulfilled.

Indeed, the Court noted the example submitted by the applicants of The Coptic Orthodox Church which had been recognised in 2003 as a religious society although, having been established in Austria since 1976, it had only been registered as a religious community in 1998. In contrast, the Jehova's Witnesses had existed in Austria for considerably longer but still only had the status of a religious community. That showed that Austria did not consider it essential for its policy in the field to apply the same ten-year qualifying period to all.

Accordingly, the Court concluded that that difference in treatment had not been based on any "objec-

tive and reasonable justification", in violation of Article 14 taken in conjunction with Article 9.

Article 6

As concerned the first set of proceedings, the Court found that the period to be taken into consideration had started on 4 October 1995 when the Constitutional Court had found that the applicants had a right to have a decision concerning their request to be recognised as a religious society. The proceedings had ended on 29 July 1998 when legal personality had been granted. In the Court's view those proceedings had been complex, as the domestic authorities had had to decide on the applicants' case on the basis of a change in the Constitutional Court's case-law and new legislation. In those circumstances, the Court did not find that the first set of proceedings having lasted approximately two years and ten months had been excessive and therefore held that there had been no violation of Article 6 § 1.

However, the Court found that the second set of proceedings, which had lasted almost five years and 11 months, had had two periods of inactivity, one of which had not been explained by the government. The second set of proceedings had not therefore complied with the reasonable time requirement, in violation of Article 6 § 1.

Article 13

The Court observed that on the whole the applicants had successfully used the remedies available under the Federal Constitution and had eventually obtained redress at domestic level for their complaint. In particular, the Constitutional Court, in its decision of 4 October 1995, had resolved the conflict of jurisdiction between the two highest courts. After having been granted recognition as a religious community on 20 July 1998, the applicants had again applied to the Constitutional Court and had been able to challenge particular provisions of that act. It followed that there had been no violation of Article 13.

Under Article 41 (just satisfaction), the Court awarded the applicants 10 000 euros (EUR) in respect of non-pecuniary damage and EUR 42 000 for costs and expenses. (The judgment is available only in English.)

Judge Steiner expressed a partly dissenting opinion.

Cuc Pascu v. Romania

Article 10 (no violation)

Judgment of 16 September 2008. Concerns: the applicant complained about his conviction for insults and defamation after publishing an article in which he accused the Dean of the Faculty of Medicine of Oradea University, also a Member of Parliament, of fraud and plagiarism, describing him among other things as a "crook" and a "little law-breaking doctor".

Principal facts

The applicant, Florian Cuc Pascu, is a Romanian national who was born in 1961 and lives in Oradea (Romania).

A journalist by profession, he was convicted in February 2002 for insults and defamation after publishing an article in which he accused the Dean of the Faculty of Medicine of Oradea University, also a Member of Parliament, of fraud and plagiarism, describing him among other things as a "crook" and a "little law-breaking doctor". He was fined EUR 640 and ordered, jointly with the newspaper in which the article was published, to pay EUR 2 239 in damages. The applicant relied on Article 10 (freedom of expression) of the Convention.

Decision of the Court

The Court found that the applicant had not succeeded in proving the veracity of his statements before the Romanian courts, despite the opportunity for him to do so during the domestic proceedings. Given the lack of factual basis and his position as a journalist, the applicant should have demonstrated the greatest rigour and exercised particular caution before publishing the offending article. He had not even verified the content of the article before its publication, even though the information came from a third party. Moreover, as regards the insulting remarks used by the applicant, the Court found that he could not be regarded as having had recourse to "a degree of exaggeration" or "provocation" that was permitted by journalistic freedom. The Court, taking the view that the reasons given in support of the applicant's conviction had been sufficient and relevant, found that the interference with his freedom of expression had been "necessary in a democratic society". Accordingly, it held unanimously that there had been no violation of Article 10. (The judgment is available only in French.)

Bogumil v. Portugal

Article 3 and 6 § 1 (violations);
Article 8 (non violation)

Judgment of 7 October 2008. Concerns: the applicant alleged that he had not received genuine legal assistance during the criminal proceedings against him. Moreover, he complained that he had sustained serious physical duress on account of the surgery performed on him.

Principal facts

The applicant, Adam Bogumil, is a Polish national who was born in 1971. When the application was lodged he was being held in Lisbon Prison.

In November 2002, when the applicant arrived at Lisbon airport from Rio de Janeiro (Brazil), he was searched by customs officers, who found several packets of cocaine hidden in his shoes. The applicant informed them that he had swallowed a further packet, which was in his stomach. He was taken to hospital and underwent surgery to remove the packet from his body. Charges were brought against him for drug trafficking, and he was placed in pre-trial detention. During the initial phase of the proceedings, the applicant was assisted

by a trainee lawyer. In January 2003, in view of the harshness of the applicant's potential sentence, a new lawyer, who was supposed to be more experienced, was assigned to the case. However, he only acted in the proceedings to request his discharge three days before the trial. A new duty lawyer was assigned on the very day the trial began and only had five hours to study the case file. In September 2003 the Lisbon Criminal Court convicted him on the charges, sentenced him to four years and ten months' imprisonment and ordered his exclusion from Portugal. Relying on Article 6 (right to a fair trial), the applicant alleged that he had not received genuine legal assistance during the criminal proceedings against him. Moreover, relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life), he complained that he had sustained serious physical duress on account of the surgery performed on him.

Decision of the Court

Concerning the complaint about the lack of legal assistance, the Court found that the circumstances of the present case required the domestic court, rather than remaining passive, to ensure concrete and effective respect for the applicant's defence rights, which it failed to do. Accordingly, it held unanimously that there had been a violation of Article 6 §§ 1 and 3 (c) taken together.

As regards the alleged physical duress against the applicant on account of the surgery, the Court did not find it established, the evidence being insufficient, that the applicant had given his consent or that he had refused and had been forced to undergo the operation. The Court considered that the operation had been required for therapeutic reasons and had not been carried out for the purpose of collecting evidence, as the applicant risked dying from intoxication. It was a straightforward operation and the applicant had received constant supervision and an adequate medical follow-up. As to the effects of the operation on the applicant's health, the Court did not find it established, having regard to the evidence in the case file, that the ailments from which the applicant claimed to have been suffering since then were related to the operation. Consequently, the Court considered that the operation had not been such as to constitute inhuman or degrading treatment and found that there had been no violation of Article 3. Lastly, considering that a fair balance had been struck between the public interest in protecting the applicant's health and his right to protection against physical or psychological duress, the Court further found that there had been no violation of Article 8.

The Court awarded Mr Bogumil EUR 3 000 in respect of non-pecuniary damage. (The judgment is available only in French.)

Moiseyev v. Russia

Judgment of 9 October 2008. Concerns: the case concerned, in particular, the applicant's complaint about the conditions of his detention on remand in Lefortovo Prison, of transport between Lefortovo and Moscow City Court and of confinement at that court.

Article 3 (3 violations);
Article 5 §§ 3 and 4 (violation);
Article 6 § 1 (violation);
Article 6 §§ 1 and 3 (b) and (c) (violation);
Article 7 (no violation);
Article 8 (2 violations)

Principal facts

The applicant, Valentin Ivanovich Moiseyev, is a Russian national who was born in 1946 and lives in Moscow. Mr Moiseyev was arrested in July 1998 and, accused of having disclosed classified information to a South Korean intelligence agent, was charged with high treason. He was convicted as charged by Moscow City Court in August 2001. That decision was upheld by the Supreme Court in January 2002.

The case concerned, in particular, the applicant's complaint about the conditions of his detention on remand in Lefortovo Prison, of transport between Lefortovo and Moscow City Court and of confinement at that court. He relied on Article 3 (prohibition of inhuman or degrading treatment). He then invoked Article 5 §§ 3 and 4 (right to liberty and security). He further complained under Article 6 §§ 1, 3 (b) and (c) (right to a fair trial within a reasonable time) about the unfairness and excessive length of the criminal proceedings against him. He also alleged under Article 7 (no punishment without law) that his conviction had been based on unforeseeable and retrospective application of the law, there having been no statutory list of state secrets at the time he had allegedly committed high treason. Finally, relying on Article 8 (right to respect for private and family life and correspondence), he complained of unjustified restrictions on family visits and his correspondence.

Decision of the Court

The Court found that the fact that the applicant had had to live, sleep and use the toilet in poorly lit and ventilated cells for almost four years, without any possibility for adequate outdoor exercise, must have caused him distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It noted that the tiny cell had no partition or separation between the living area and the lavatory, which had not been equipped with any kind of flush, and that the applicant had had to apply medicine for his treatment for haemorrhoids. The Court held unanimously that there had been a violation of Article 3 on account of the conditions of the applicant's detention in Lefortovo remand prison.

The Court also noted that the applicant had been transported to the court hearings more than 150 times in standard-issue prison vans which had sometimes been filled beyond their designed capacity. In the Court's view, given that he had to remain in that confined space for several hours, these cramped conditions must have caused him intense physical suffering, which would have been further aggravated by the absence of adequate ventilation and lighting, and unreliable heating. The Court concluded unanimously that there had been a violation of Article 3 on account of the conditions of the applicant's transport between the remand prison and the courthouse.

Moreover, the Court observed that on more than 150 days the applicant had been detained in the convoy cells, destined for detention of a very limited duration, located on the premises of the Moscow City Court. He had remained in cramped conditions for several hours a day and occasionally for as long as eight to ten hours. Although this detention was not continuous, it alternated with his detention in the remand prison and transport in conditions which the Court has

already found above to have been inhuman and degrading. Taking into account the cumulative effect of the applicant's detention in the extremely small cells of the convoy premises at the Moscow City Court without ventilation, food, drink or free access to a toilet, the Court held unanimously that there had been a further violation of Article 3 on account of the conditions of the applicant's confinement at the Moscow City Court.

The Court held unanimously that there had been a violation of Article 5 § 3 on account of Mr Moiseyev's pre-trial detention which lasted over two years and six months, and a violation of Article 5 § 4 on account of the Supreme Court's failure to examine, or belated examination of, appeals against decisions rejecting requests for release.

Turning to Moiseyev's trial, the Court held unanimously that there had been a violation of Article 6 § 1 on account of the lack of independence and impartiality of the Moscow City Court, and the excessive length of the criminal proceedings, which had lasted three years and six months. The Court found that the prosecuting authority had had unrestricted control in the matter of visits by counsel to the applicant and had been able to peruse the documents exchanged between them, which had the effect of giving the prosecution advance knowledge of the defence strategy and placed the applicant at a disadvantage vis-à-vis his opponent. The Court further found that access by the applicant and his defence team to the case file and their own notes – which had been kept in a special secret department of the detention facility and the Moscow City Court – had been so curtailed that these measures had effectively prevented them from using the information contained in them, since they had had to rely solely on their recollections. Finally, the Court considered that the suffering and frustration which the applicant must have felt on account of the inhuman conditions of transport and confinement had impaired his faculty for concentration and intense mental application in the hours immediately preceding the court hearings, when his ability to instruct his counsel effectively and to consult with them had been of primordial importance. The cumulative effect of the conditions at hand and inadequacy of the available facilities had excluded any possibility for the applicant's advance preparation of his defence, especially taking into account that he could not consult the case file or his notes in his cell. The overall effect of these difficulties, taken as a whole, had so restricted the rights of the defence that the principle of a fair trial, as set out in Article 6, had been contravened. Therefore, the Court held that there had been a violation of Article 6 §§ 1 and 3 (b) and (c). Lastly, the Court held unanimously that there had been no violation of Article 7.

Finally, the Court held unanimously that Article 8 had been breached on account of unjustified restrictions on both the applicant's family visits and correspondence.

The Court awarded Mr Moiseyev EUR 25 000 in respect of non-pecuniary damage and EUR 3 973 for costs and expenses. (The judgment is available only in English.)

Petrina v. Romania

Article 8 (violation)

Judgment of 14 October 2008. Concerns: the applicant complained that his right to respect for his honour and his good name had been violated.

Principal facts

The applicant, Liviu Petrina, is a Romanian national who was born in 1940 and lives in Bucharest. He is a politician.

In October 1997, during a television programme about a bill concerning access to information stored in the archives of the former State security services ("the Securitate"), C.I., a journalist with the satirical weekly Catavencu, affirmed that the applicant had collaborated with the Securitate. The same journalist published an article in the satirical weekly in November 1997, taking his allegations further. In January 1998 another article on the same subject, containing similar allegations, was published in Catavencu by another journalist, M.D. The applicant lodged two sets of criminal proceedings against C.I. and M.D. for insult and defamation. The two journalists were acquitted, among other things because their remarks had been "general and indeterminate", and the applicant's civil claims were dismissed. A certificate issued in 2004 by the national research council for the archives of the State Security Department "Securitate" stated that the applicant was not among the people listed as having collaborated with the Securitate.

Following the acquittal of C.I. and M.D. by the domestic courts, the applicant complained that his right to respect for his honour and his good name had been violated. He relied on Article 8 (right to respect for private and family life).

Decision of the Court

The Court considered that the subject of the debate in issue – the enactment of legislation making it possible to divulge the names of former Securitate collaborators, a subject which received considerable media coverage and was closely followed by the general public – was a highly important one for Romanian society. Collaboration by politicians with that organisation was a highly sensitive social and moral issue in the Romanian historical context.

However, the Court found that in spite of the satirical character of the weekly Catavencu, the articles in question had been bound to offend the applicant, as there was no evidence that he had ever belonged to that organisation. It also noted that the message contained in the articles was clear and direct, with no ironic or humorous note whatsoever.

The Court did not believe that the "measure of exaggeration" or "provocation" journalists were allowed in the context of press freedom could be seen in the articles in question. It found that reality had been misrepresented, with no factual basis. The journalists' allegations had overstepped the bounds of the acceptable, accusing the applicant of having belonged to a group that used repression and terror to serve the old regime as a political police instrument. Moreover, there had been no legislative framework at the relevant time allowing the public access to Securitate files, a state of affairs for which the applicant could not be held responsible.

Accordingly, the Court was not convinced that the reasons given by the domestic courts to protect freedom

of expression were sufficient to take precedence over the applicant's reputation. It accordingly found unanimously that there had been a violation of Article 8 and awarded Mr Petrina EUR 5 000 in respect of non-pecuniary damage. (The judgment is available only in French.)

Leroy v. France

Judgment of 2 October 2008. Concerns: Mr Leroy complained about his conviction for complicity in condoning terrorism. In addition, he complained that the proceedings in the Court of Cassation had been unfair.

Article 6 § 1 (violation); Article 10 (no violation)

Principal facts

The applicant, Denis Leroy, is a French national who was born in 1966 and lives in Bayonne (France). He is a cartoonist, and works in this capacity for various local publications, including the Basque weekly newspaper Ekaitza, which has its head office in Bayonne.

The case concerned the applicant's conviction for complicity in condoning terrorism, following the publication of a drawing which concerned the attacks of 11 September 2001.

On 11 September 2001 the applicant submitted to Ekaitza's editorial team a drawing representing the attack on the twin towers of the World Trade Centre, with a caption which parodied the advertising slogan of a famous brand: "We have all dreamt of it... Hamas did it". The drawing was published in the newspaper on 13 September 2001. In its next issue, the newspaper published extracts from letters and emails received in reaction to the drawing.

Following publication of the drawing, the Bayonne public prosecutor brought proceedings against the applicant and the newspaper's publishing director on charges of complicity in condoning terrorism and condoning terrorism.

In January 2002 the court convicted them of these charges and ordered them to pay a fine of EUR 1 500 each, to publish the judgment at their own expense in Ekaitza and two other newspapers and to pay costs. In September 2002 the Pau Court of Appeal upheld the judgment of the first-instance court. In particular, it held that "by making a direct allusion to the massive attacks on Manhattan, by attributing these attacks to a well-known terrorist organisation and by idealising this lethal project through the use of the verb 'to dream', [thus] unequivocally praising an act of death, the cartoonist justifies the use of terrorism, identifies himself through his use of the first person plural ("We") with this method of destruction, which is presented as the culmination of a dream and, finally, indirectly encourages the potential reader to evaluate positively the successful commission of a criminal act."

The Court of Cassation dismissed the main part of an appeal on points of law lodged by the applicant.

Decision of the Court

Article 10

The Court considered that the applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. This interference was prescribed by French law and pursued several legitimate aims, having regard to the sensitive nature of the fight against terrorism, namely the maintenance of public safely and the prevention of disorder and crime. It remained to be determined whether this interference was "necessary in a democratic society".

The Court noted at the outset that the tragic events of 11 September 2001, which were at the origin of the impugned expression, had given rise to global chaos, and that the issues raised on that occasion were subject to discussion as a matter of public interest.

The applicant complained that the French courts had denied his real intention, which was governed by political and activist expression, namely that of communicating his anti-Americanism through a satirical image and illustrating the decline of American imperialism. The Court, however, considered that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the caption which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims.

Although the domestic courts had not taken the applicant's intentions into account, they had examined whether the context of the case and the public interest justified the possible use of a measure of provocation or exaggeration. In this respect, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. He submitted his drawing on the day of the attacks and it was published on 13 September, with no precautions on his part as to the language used. In the Court's opinion, this factor – the date of publication – was such as to increase the applicant's responsibility in his account of, and even support for, a tragic event, whether considered from an artistic or a journalistic perspective. In addition, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region.

Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been "relevant and sufficient".

In conclusion, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, the Court found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued. Accordingly, there had not been a violation of Article 10.

Article 6 § 1

Reiterating its constant case-law on this matter, the Court concluded that there had been a violation of Article 6 § 1 on account of the failure to communicate to the applicant the report by the reporting judge. The Court further held that it

was not necessary to examine separately the complaint alleging a failure to provide information as to the date of the hearing before the Court of Cassation.

Kuznetsov and Others v. Russia

Article 11 (violation)

Judgment of 23 October 2008. Concerns: The case concerned the applicant's complaint about his subsequent fine for: sending the picket notice too late; obstructing the passageway to the court building; and, distributing publications which alleged that the Regional Court was corrupt and called for the dismissal of its President.

Principal facts

The applicant, Sergey Vladimirovich Kuznetsov, is a Russian national who was born in 1957 and lives in Yekaterinburg (Russia).

On 25 March 2003 Mr Kuznetsov and a few others held a picket in front of the Sverdlovsk Regional Court to attract public attention to violations of the right of access to a court. The applicant having notified the authorities of the picket eight days beforehand, the police were ordered to maintain public order and traffic safety during the event. The case concerned the applicant's complaint about his subsequent fine for: sending the picket notice too late; obstructing the passageway to the court building; and, distributing publications which alleged that the Regional Court was corrupt and called for the dismissal of its President. He relied on Articles 10 (freedom of expression) and 11 (freedom of assembly and association).

Decision of the Court

Firstly, the Court noted that the applicant had submitted the picket notice eight days, instead of ten days as stipulated in the applicable regulations, before the event. It considered, however, that to be a merely formal breach of a time-limit. Moreover, that two-day difference did not prevent the authorities from making the necessary preparations for the picket. Secondly, no complaints had been received from visitors, judges or court employees about the alleged obstruction of entry to the courthouse and the applicant had co-operated with the authorities when asked to move. Thirdly, however insulting the President of the Regional Court might have considered the publications distributed by the applicant during the picket and the call for his dismissal, that documentation had not contained any defamatory statements, incitement to violence or rejection of democratic principles. The Court therefore concluded that the Russian authorities had not provided "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of expression and assembly and held unanimously that there had been a violation of Article 11 interpreted in the light of Article 10. Mr Kuznetsov was awarded EUR 1 500 in respect of non-pecuniary damage. (The judgment is available only in English.)

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 agenda of the 1035th Human Rights (HR) meeting[1] (16-17 September 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 website of the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL).

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

1035th HR meeting – General Information

During the 1035th meeting (16-17 September 2008), the CM supervised payment of just satisfaction respectively in some 984 cases. It also monitored, in some 255 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 3 997

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 361 new ECtHR judgments and considered draft final resolutions concluding, in 111 cases respectively, that states had complied with the ECtHR's judgments.

Main texts adopted at the 1035th meeting

After examination of the cases on the agenda of the 1035th meeting, the Deputies have notably adopted the following texts.

Selection of decisions adopted

During the 1035th meeting, the CM examined 5 990 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 in detail in the decision its assessment of the situation. A selection of these decisions is presented below, according to the (English) alphabetical order of the member state concerned.

41153/06, judgment of 18 December 2007, final on 2 June 2008

Dybeku against Albania

Ill-treatment suffered by the applicant since 2003 as a result of detention conditions which are not adequate to his health problems (violation of Article 3).

The Deputies,

1. took note of the information provided by the Albanian authorities during the meeting on the measures taken in relation to the applicant's detention conditions and his transfer to Kruja prison, where he will be able to benefit from specialised medical treatment;

2. stressed that in its judgment the European Court stated that necessary measures to secure appropriate conditions of detention and adequate medical treatment, particularly for prisoners who need special care owing to their state of health, should be taken as a matter of urgency and recalled the common principles and standards set out in the Committee of Ministers' Recommendation No. R (87) 3 on the European Prison Rules, as revised and updated by Recommendation Rec (2006) 2;

3. in this context, welcomed the authorities commitment to publish the report that will be given by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following their visit to Albania in June 2008;

4. welcomed the commitment made by the Albanian authorities to adopt the necessary general measures, and invited them to keep the Committee informed in this respect,

5. decided to resume consideration of this case:

– at their 1043rd meeting (2-4 December 2008) (DH), in light of the further information to be provided on the payment of just satisfaction, if necessary,

– at the latest at their first DH meeting of 2009, in the light of further information to be provided on the individual and general measures.

12643/02, judgment of 21 September 2006, final on 21 December 2006

Moser against Austria

Violation by a domestic court of a mother's right to custody of her child, born in 2000, by placing the child with foster parents eight days after birth and transferring custody to the Youth Welfare Office without exploring alternative solutions (violation of Article 8); violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Article 6§1).

The Deputies decided to resume consideration of this item,

1. at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on individual measures;

2. at the latest at their first DH meeting in 2009, in the light of further information to be provided on general measures.

33138/06, judgment of 17 January 2008, final on 17 April 2008
29660/03, judgment of 8 November 2007, final on 31 March 2008

Pilčić and Štitić against Croatia

Inhuman and/or degrading treatment on account of the lack of adequate medical treatment with respect to the health conditions of the first applicant during his detention, since July 2003, and on account of the poor detention conditions of the second applicant from September 2004 to November 2005 and from March to June 2006 (Violations of Article 3). Also, in the Štitić case, lack of effective remedy in respect of the poor detention conditions (violation of Article 13).

The Deputies,

1. noted with interest the information provided by the Croatian authorities on the current health condition of the applicant in the *Pilčić* case and on the measures taken with a view to conducting the required surgery;

2. decided to resume consideration of these cases at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on the above issue as well as, if necessary, on the payment of just satisfaction in the *Pilčić* case, and to join them with the *Cenbauer* case in order to examine the general measures.

Gregoriou against Cyprus and 20 other similar cases

62242/00, judgment of 25 March 2003, final on 9 July 2003

Excessive length of proceedings before civil courts; lack of an effective domestic remedy (violations of Articles 6§1 and 13).

The Deputies,

1. noted that a significant number of similar cases are pending before the European Court;

2. in view of the systemic nature of the problem of excessive length of proceedings, urged the Cypriot authorities to take all necessary remedial action;

3. took note with interest of the research being undertaken by the Supreme Court on the causes of excessive length of proceedings and the draft law for effective remedies against excessive length of procedure in civil cases, which remains to be assessed;

4. welcomed the authorities' commitment to consider the possibility of introducing an equivalent remedy for criminal proceedings, in light of the Committee of Ministers' Recommendation Rec (2004) 6 to member states on the improvement of domestic remedies;

5. decided to resume consideration of these cases:

– at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on payment of the just satisfaction, if necessary;

– at the latest at their first DH meeting in 2009, in the light of further information to be provided on the general measures and the individual measures, if necessary.

D.H. and Others against the Czech Republic

57325/00, judgment of 13 November 2007 – Grand Chamber

Discrimination in the enjoyment of the right to education due to the applicants' assignment to special schools between 1996 and 1999 on account of their Roma origin (Violation of Article 14 in conjunction with Article 2 of Protocol No. 1). Discrimination of the applicants, on the basis of their Roma origin, in the enjoyment of their right to education from 1996 to 1999 on account of their placement in special schools designated for mentally disabled children and lack of opportunity to receive education in "normal" or special primary schools (violation of Article 14 in conjunction with Article 2 of Protocol No. 2).

The Deputies,

1. took note with interest of the detailed information submitted by the Delegation of the Czech Republic on the comprehensive measures envisaged to address the issue of inclusion of Roma children in the education system in a non-discriminatory way;

2. invited the Czech authorities to submit the announced action plan in due time and keep the Committee of Ministers informed of the progress in taking general measures;

3. decided to resume consideration of this case:

– at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on payment of the just satisfaction, if necessary;

– at the latest at their second DH meeting of 2009 to consider further information on general measures.

Makaratzis against Greece and 6 other similar cases

50385/99, judgment of 20 December 2004 – Grand Chamber

Use of potentially lethal force by the police during a car pursuit in the absence of an adequate legislative and administrative framework governing the proper use of firearms (violation of positive obligation pursuant to Article 2 to protect life); ill-treatment of victims while under the control of the police (violation of Article 3); absence of effective investigation in this regard (procedural violations of Articles 2 and 3); failure to investigate whether or not racist motives on the side of the police may have played a role in some cases (violation of Article 14 combined with Article 3).

The Deputies,

1. took note with interest of the considerable number of measures adopted by the Greek authorities, including very recently, in order to avoid similar violations;

2. noted also the detailed information they provided in the majority of these cases concerning the possibility of carrying out new investigations of the facts complained of and the additional clarification given in this respect at the meeting, which remain to be assessed;

3. decided to resume consideration of these cases at the latest at their first DH meeting in 2009.

64705/01, judgment of 29 March 2006 – Grand Chamber

Mostacciuolo Giuseppe (No. 1) against Italy and 26 other similar cases

Excessive length of civil proceedings, aggravated by the inadequate and insufficient character of the domestic remedy (Pinto law) in view of the inadequate amount of the compensation awarded and its late payment (violation of Article 6§1).

The Deputies,

1. took note with interest of the information provided by Italian authorities on the recent Court of Cassation case-law which, since the judgments it delivered in 2004, continues to apply the criteria set by the European Court to determine the level of the compensation to be awarded in proceedings brought under the law No. 89/2001 (Pinto Act);

2. took note of the information provided by the Italian authorities on the abolition of certain procedural fees related to the proceedings at issue;

3. recalled that a compensatory remedy must be accompanied by adequate arrangements so that domestic decisions awarding compensation are executed within the statutory six month limit and encouraged the Italian authorities to take rapidly the necessary measures to this effect;

4. invited the Italian authorities to provide information on the payments of compensation awarded at national level to the applicants;

5. decided to resume consideration of these cases at the latest at their first DH meeting of 2009, on the basis of further information awaited on individual and general measures.

3456/05, judgment of 4 October 2005, final on 4 January 2006

Sarban against Moldova and 10 other similar cases

Violations related to the applicants' arrest without reasonable suspicion of them having committed an offence and their placement in detention without a court decision (violations of Article 5§1); to their detention on remand and its extension without relevant and sufficient grounds and violation of their right to be released pending trial (violations of Article 5§3); failure to ensure a prompt examination of the lawfulness of the detention and failure to respect the principle of equality of arms (violations of Article 5§4); poor detention conditions, lack of medical assistance in detention and lack of investigation into allegations of intimidation (violations of Article 3); violation of the right to an individual petition (violation of Article 34).

The Deputies,

1. noted the systemic character of violations found by the Court, in particular regarding the lack of sufficient and relevant reasons for decisions concerning detention on remand and its extension;

2. took note of the information communicated by the authorities on different measures adopted by the authorities with a view to guaranteeing the respect of the requirements of Article 5 of the Convention by the relevant national authorities;

3. invited the authorities to provide information on measures taken and/or envisaged with a view to preventing new violations of the right to individual petition;

4. decided to resume consideration of these cases at the latest at their first DH meeting in 2009, in the light of information to be provided on individual measures in the *Stepuleac* case, on additional information on general measures, and on the basis of a possible memorandum to be prepared by the Secretariat.

45701/99, judgment of 13 December 2001, final on 27 March 2002 – Interim Resolution ResDH (2006) 12
952/03, judgment of 27 February 2007, final on 27 May 2007

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, recalling the decision adopted at their 1028th meeting (3-5 June 2008) (DH),

1. took note of the preliminary conclusions provided by the Secretariat following the bilateral meetings held with the relevant Moldovan authorities in Chisinau on 8 and 9 September 2008;

2. invited the Secretariat to draft a memorandum paying particular attention to the issues related to the development of the activity of the directorate of religious affairs and to the protection granted by Moldovan legislation to religious groupings or denominations which are not registered under the new law;

3. decided to resume consideration of these items at their 1043rd meeting (2-4 December 2008) (DH), in the light of the conclusions of the memorandum.

25792/94, judgment of 11 July 2000
Interim Resolution CM/ResDH (2007) 75

Trzaska against Poland and 88 other similar cases

Excessive length of pre-trial detention and deficiencies of the procedure for review of the lawfulness of pre-trial detention (violation of Articles 5§3 and 5§4).

The Deputies,

1. noted with interest the general measures taken and envisaged following the adoption of Interim Resolution CM/ResDH (2007) 75 of 6 June 2007, in particular the draft amendment to the Code of Criminal Procedure, the awareness raising measures and the creation of a working group within the Ministry of Justice to assess the trend concerning the length of detention on remand;

2. noted, however, with concern that it appears that there is still no effective domestic mechanism allowing the evaluation of the trend regarding the length of detention on remand and that the number of pending cases and of new applications lodged before the European Court on the length of detention on remand does not really seem to be reducing;

3. encouraged the authorities to intensify their efforts to reduce the excessive length of detention on remand;

4. decided to resume consideration of these items:

– at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on payment of the just satisfaction, if necessary,

– at the latest at their second DH meeting in 2009, in the light of information to be provided on additional general measures and on individual measures, if need be.

Rotaru against Romania

28341/95, judgment of 4 May 2000 – Grand Chamber, Interim Resolution ResDH (2005) 57

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 a wide-ranging legislative reform related among other things to the activities of the Romanian intelligence service had been under way for several years;

3. underlined, however, that the Committee of Ministers had already several times stressed the necessity rapidly to adopt concrete measures in order to avoid new, similar violations (see in particular Interim Resolution ResDH (2005) 57);

4. noted in this respect with interest the information submitted by the Romanian authorities during bilateral consultations in July 2008 and at the present meeting, concerning in particular the adoption of an Emergency Ordinance No. 24/2008 related to the archives of the former secret service and the current legislative framework regulating the protection of personal data;

5. decided to resume consideration of this case at their 1043rd meeting (2-4 December 2008) (DH), in the light of the assessment of the information submitted by the Romanian authorities as well as of further information to be provided on general measures.

Străin and Others against Romania and 51 other similar cases

57001/00, judgment of 21 July 2005, final on 30 November 2005

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, Protocol No. 1).

The Deputies,

1. recalled that the questions raised in these cases concern an important systemic problem, related particularly to the failure to restore or compensate nationalised property, sold subsequently 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 with interest the information provided by the Romanian authorities on the functioning of the restitution/compensation mechanism and on measures adopted with a view to its improvement, in particular the creation of a new possibility of monetary compensation;

3. noted that the recent information, in particular the submissions of NGOs under Rule 9§2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, still needs to be assessed;

4. recalled furthermore that information has still to be provided by the Romanian authorities 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;

5. decided consequently to resume consideration of these items at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on payment of the just satisfaction, if necessary, and at the latest at their first DH meeting in 2009, in the light of further information to be provided, on both individual and general measures.

57942/00, judgment of 24 February 2005, final on 6 July 2005, rectified on 1 September 2005
CM/Inf/DH (2006) 32 revised 2, CM/Inf/DH (2008) 33

Khashiyev and Akayeva against the Russian Federation and 12 other similar cases

Violations resulting from the 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 Protocol No. 1). Non-compliance with the obligation to co-operate with the ECHR organs contrary to Article 38 of the ECHR in several cases.

The Deputies, having considered the Memorandum CM/Inf/DH (2008) 33 on "the actions of the Russian security forces in the Chechen Republic: general measures to comply with the judgments of the European Court – Part one" prepared by the Secretariat,

1. recalled that the European Court's judgments revealed important general problems which must be addressed by the authorities;

2. noted with satisfaction the positive developments in the adoption of general measures required by the judgments of the European Court;

3. noted however that one of the general problems relates to the effectiveness of domestic investigations and stressed that this issue should be addressed as a matter of priority in order to ensure rapid adoption of the individual and general measures required by the European Court's judgments;

4. encouraged the Russian authorities to organise bilateral consultations between the Secretariat and the competent Russian authorities with a view to examining all issues raised in the Memorandum CM/Inf/DH (2008) 33, to identify possible solutions and to inform the Committee of a time-frame for bilateral consultations;

5. stressed anew the fundamental importance of the obligation imposed by Article 38§1 (a) of the Convention and urged the Russian authorities to explore to the fullest possible extent the mechanisms provided by their national legislation and the Convention in order to establish a coherent procedure for submitting the necessary information to the European Court;

6. decided to declassify the Memorandum;

7. decided to resume consideration of these cases at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on general and individual measures and of the second part of the Memorandum to be prepared by the Secretariat.

42086/05, judgment of 6 December 2007, final on 2 June 2008

Liu and Liu against the Russian Federation

Risk of interference with the applicants' family life in case of implementation of an enforceable deportation order against the first applicant, issued by the Federal immigration authorities of Russia in 2005, without any independent review or adversarial proceedings (violation of Article 8).

The Deputies,

1. took note of the information provided by the Russian authorities at the meeting on the first applicant's current situation, in particular of the fact that the deportation order had been repealed and the first applicant had presently the right to apply for a residence permit;

2. took note of the measures taken by the authorities to ensure that the new proceedings concerning the first applicant's application for a residence permit comply with the Convention requirements and the findings of the European Court;

3. decided to resume examination of this case at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on the first applicant's situation and, if necessary, on the payment of the just satisfaction, and to joint it at the same meeting with the *Bolat* case for examination of general measures in the light of the assessment by the Secretariat of the information provided by the authorities and of further possible information.

25781/94, judgment of 10 May 2001 – Grand Chamber
CM/Inf/DH (2008) 6, 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

Cyprus against Turkey

14 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 (violation of Articles 2, 5 and 3); home and property of displaced persons (violation of Articles 8, 1 Protocol No. 1 and 13); living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Articles 9, 10, 1 Protocol No. 1, 2 Protocol No. 1, 3, 8 and 13); rights of Turkish Cypriots living in the northern part of Cyprus (violation of Article 6).

The Deputies,

On the issue of missing persons:

1. reiterated their evident interest for the work by the CMP;

2. considering the limits of the CMP's mandate, reaffirmed the need for the Turkish authorities

to take additional measures to ensure that the effective investigations required by the judgment are carried out, and urged them to provide without further delay information on the concrete means envisaged to achieve this result;

On the issue of the property rights of enclaved persons:

3. took note with great interest of the information provided by the Turkish authorities on this issue and invited them to send this information in writing, together with any relevant text and decision, to the Committee of Ministers in time to allow a thorough debate at the next meeting;

On the issue of the property rights of displaced persons:

4. took note of the information provided by the Turkish delegation concerning the possibilities offered by exchange of property as a means of redress in cases before the "Immovable Properties Commission", but nonetheless noted, once more, with regret, that no information has been provided on 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, and reiterated their insistent invitation to the Turkish authorities to reply to these questions without further delay;

5. decided to resume consideration of this case at their 1043rd meeting (2-4 December 2008) (DH).

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, Protocol No. 1).

The Deputies,

1. noted with interest the additional explanations provided by the Turkish authorities on the offer made to the applicant;

2. considered however that this offer still raises important questions which need to be clarified, in particular concerning why the restitution could not be envisaged in the present case;

3. decided to resume consideration of this case at their 1043rd meeting (2-4 December 2008) (DH), in the light of additional information to be provided by the Turkish authorities on this issue.

15318/89, judgment of 18 December 1996 (merits), Interim Resolutions DH (99) 680, DH (2000) 105, ResDH (2001) 80

Xenides-Arestis against Turkey

Violation of the right to respect for the 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, Protocol No. 1).

The Deputies,

1. recalled that the amounts awarded in the judgment of the Court of 7 December 2006 under Article 41 have been due since 23 August 2007 and called upon Turkey to pay these amounts, as well as the default interest due, without further delay;

2. decided to resume consideration of the examination of the issues raised in this case at their 1043rd meeting (2-4 December 2008) (DH), if necessary, on the basis of a draft interim resolution.

46347/99, judgments of 22 December 2005, final on 22 March 2006 and of 7 December 2006, final on 23 May 2007 CM/Inf/DH (2007) 19

Hulki Güneş against Turkey and 2 other similar cases

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

The Deputies,

1. recalled that the Turkish authorities have still 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. reiterated with grave concern that the said legal lacuna also prevents the reopening of proceedings at issue in the cases of *Göçmen* and *Söylemez*;

3. noted that, if the present situation persisted, it would amount to a manifest breach of Turkey's obligation under Article 46, paragraph 1, of the Convention;

4. once again strongly urged the Turkish authorities to respond to the Committee's demands;

5. decided to resume consideration of these cases at their 1043rd meeting (2-4 December 2008) (DH);

6. decided also to examine these cases at each regular meeting of the Committee of Ministers should the Turkish authorities fail to provide any tangible information on the measures they envisage taking at the 1043rd meeting (2-4 December 2008) (DH).

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

46827/99, judgment of 4 February 2005 – Grand Chamber

Mamatkulov and Askarov against Turkey and another similar case

Failure to comply with an interim measure ordered by the ECtHR, thus hindering the effective exercise of the right of petition to the ECtHR: the applicants' expulsion to Uzbekistan in 1999, in spite of the ECtHR's order to suspend it, prevented the ECtHR from effectively examining their complaints that they risked being tortured in Uzbekistan and that the extradition proceedings in Turkey had been unfair, as well as the criminal proceedings against them in Uzbekistan, which led to their conviction to 20 and 11 years' imprisonment respectively (violation of Article 34).

The Deputies,

1. stressed the fundamental importance of complying with the interim measures indicated by the Court under Rule 39 of the "Rules of Court";

2. took note of information submitted by the Turkish authorities that the judgment of *Mamatkulov and Askarov* had been translated and distributed to the relevant administrative authorities to prevent similar violations in the future and that, except in the case of *Mostafa and Others*, the authorities had, ever since, complied with each and every interim measure indicated by the European Court under Rule 39;

3. invited nonetheless the Turkish authorities to provide further information on additional measures envisaged to prevent similar violations in the future;

4. noted with interest the information with respect to the initiatives taken by the Turkish ambassador in Uzbekistan to contact the families of the applicants in order to ensure that they obtain declarations signed by the applicants authorising certain persons to receive the just satisfaction amounts in the *Mamatkulov and Askarov* case;

5. noted the information that the applicants' families faced serious difficulties in obtaining such declarations due to the security restrictions imposed by the Uzbek prison authorities;

6. encouraged the Turkish authorities to continue their efforts in this regard;

7. decided to resume consideration of these items at their 1043rd meeting (2-4 December 2008) (DH) in the light of information to be provided on payment of just satisfaction in the case of *Mamatkulov and Askarov*, and to join to it the case of *Mostafa and Others* in order to examine the general measures.

Interim Resolution ResDH (2005) 43, CM/Inf/DH (2006) 24 revised 2

Aksoy against Turkey and 243 other similar cases

Violations resulting from actions of the security forces, in particular in the southeast of Turkey, mainly in the 1990s (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces); subsequent lack of effective investigations into the alleged abuses (violations of Articles 2, 3, 5, 8 and 13 and of Article 1 of Protocol No. 1). In several cases, failure to co-operate with the ECHR organs as required under Article 38 ECHR.

The Deputies,

1. adopted Interim Resolution CM/ResDH (2008) 69 as it appears in the Volume of Resolutions;

2. decided to resume consideration of these cases, as regards outstanding general measures, at the latest at their third DH meeting in 2009.

38187/97, judgment of 31 March 2005, final on 12 October 2005

Adalı against Turkey

Lack of an effective investigation into the death of the applicant's husband, who was shot in 1996 (violation of Articles 2 and 13) and interference with the applicant's freedom of association on account of a refusal of permission to cross from northern part of Cyprus to the southern part to attend a bi-communal meeting in 1997 (violation of Article 11).

The Deputies,

1. took note of the latest information provided concerning the individual measures, in particular the additional investigation into the killing of the applicant's husband, as well as the general measures;

2. decided to resume consideration of this case at their 1043rd meeting (2-4 December 2008) (DH) in order to assess this information.

38595/97, judgment of 22 November 2005, final on 22 February 2006

Kakoulli against Turkey

Killing in 1996 of the applicant's husband and father by soldiers on guard duty along the ceasefire line in Cyprus and lack of an effective and impartial investigation into this killing (Violation of Article 2).

The Deputies,

1. took note of the latest information provided concerning in particular the investigation into the killing of the applicant's relative and the instructions governing the use of firearms;

2. invited the authorities rapidly to provide the necessary clarification on the individual measures adopted and decided to resume

consideration of this issue at their 1043rd meeting (2-4 December 2008) (DH);

3. invited the authorities to provide additional clarification on the general measures and decided to resume consideration of this issue at the latest at their first DH meeting in 2009.

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 (substantive 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;

3. recalled the European Court's finding in this case that the possibility that the applicant is liable to prosecution for the rest of his life amounted almost to "civil death" which was incompatible with the punishment regime of a democratic society within the meaning of Article 3;

4. urged the Turkish authorities to take without further delay the necessary measures identified in the Interim Resolution;

5. decided, in accordance with the Interim Resolution mentioned above, to resume examination of this case at their 1043rd meeting (2-4 December 2008) (DH).

39437/98, judgment of 24 January 2006, final on 24 April 2006

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).

The Deputies,

1. took note of the information provided by the Ukrainian authorities, in particular of the fact that negotiations are currently under way with a view to organising a technical expert examination of the tape recordings which may lead to the identification of instigators and organisers of the murder of the applicant's husband;

2. invited the Ukrainian authorities to keep the Committee informed of the progress of these negotiations so as to ensure, if necessary, that an alternative solution may rapidly be found, as far as the required technical expertise is concerned;

3. decided to resume consideration of this case at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on the progress in the investigation, in particular in the light of the progress of the negotiations concerning the technical expertise, and on outstanding general measures.

34056/02, judgment of 8 November 2005, final on 8 February 2006 Interim Reoslution CM/ResDH (2008) 35

A. against the United Kingdom

Failure of the state to protect the applicant, a 9-year-old child, from treatment or punishment contrary to Article 3 by his stepfather, who was acquitted in 1994 of criminal charges brought against him after he raised the defence of reasonable chastisement (violation of Article 3).

The Deputies, having considered the Memorandum (CM/Inf/DH (2008) 34) prepared by the Secretariat,

1. noted with satisfaction the changes in the legislative framework made following this judgment and the wide range of accompanying awareness-raising measures;

2. took note that a judicial review in Northern Ireland is pending concerning the compatibility of the new provisions with the European Convention and invited the United Kingdom authorities to keep the Committee of Ministers informed on its progress;

3. decided to declassify the above-mentioned Memorandum;

4. decided to resume consideration of this case in the light of the results of the ongoing judicial review and at the latest at their second DH meeting of 2009.

25599/94, judgment of 23 September 1998 Interim Resolution ResDH (2004) 39 CM/Inf/DH (2005) 8, CM/Inf/DH (2006) 29 and CM/Inf/DH (2008) 34

Interim resolutions

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

21987/93, Aksoy against Turkey, judgment of 18 December 1996, final on 18 December 1996 Interim Resolution ResDH (2005) 43, CM/Inf/DH (2006) 24 revision 2

Interim Resolution CM/ResDH (2008) 69 – Execution of the judgments of the European Court of Human Rights Actions of the security forces in Turkey Progress achieved and outstanding issues

Violations resulting from actions of the security forces, in particular in the southeast of Turkey, mainly in the 1990s (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces); subsequent lack of effective investigations into the alleged abuses (violations of Articles 2, 3, 5, 8 and 13 and of Article 1 of Protocol No. 1). In several cases, failure to co-operate with the Convention organs as required under Article 38.

In this Resolution, the Committee has recalled the reforms adopted by Turkey in response to its two previous Interim Resolutions of 1999 and 2002, which highlighted the need for comprehensive general measures to prevent new similar violations. The Committee has specifically examined the measures taken by Turkey since its last Interim Resolution adopted in 2005 and has decided to close the examination of a number of issues, as the necessary measures have been taken, in particular: improvement of procedural safeguards in police custody; improvement of professional training of members of security forces; giving direct effect to the Convention requirements; efficient implementation of the "Law on Compensation of the Losses Resulting from Terrorism and from the measures taken against terrorism" and training of judges and prosecutors.

In relation to the establishment of enhanced accountability of members of security forces, the Committee has noted that Turkish law has remained ambiguous as to whether or not an administrative authorisation is required to prosecute members of security forces for allegations of serious crimes other than torture and ill-treatment. The Committee has urged the Turkish authorities to remove this ambiguity so that members of security forces of all ranks could be prosecuted without an administrative authorisation.

The Committee has also strongly encouraged the Turkish authorities to actively pursue their "zero tolerance" policy aimed at total eradication of torture and other forms of ill-treatment, as well as their efforts to ensure that the domestic authorities carry out effective investigations into alleged abuses by members of security forces. The Committee has therefore urged the Turkish authorities to provide detailed statistical information regarding the number of investigations, acquittals and convictions into alleged abuses with a view to demonstrating the positive impact of the measures taken so far.

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 1035th meeting, the CM adopted 29 **Final Resolutions**, (closing the examination of 111 cases), among which 54 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).

Resolution CM/ResDH (2008) 70 – Kounov against Bulgaria

Unfair criminal trial on account of the unjustified refusal by the Supreme Court of Cassation, in 2002, to re-examine the case of the applicant, who had been convicted in absentia in 1999 because he had not received any official information as to the accusations against him or the date of his trial (violation of Article 6§1).

24379/02, judgment of 23 May 2006, final on 23 August 2006

Individual measures

The European Court recalled its case-law according to which when a person in a situation similar to the applicant's in this case has been convicted despite a violation of his right to participate in proceedings, new proceedings or reopening of the same proceedings represent in principle an appropriate means for redressing the violation found (§59 of the judgment).

Following the European Court's judgment, the Prosecutor General requested reopening of the proceedings in accordance with Article 422 of the Code of Criminal Procedure. In a decision of 10 April 2007, the Supreme Court of Cassation upheld this request. It annulled the applicant's conviction and sent the case to the competent court for a new examination. It should further be noted that the applicant has served the entire sentence of four years' imprisonment imposed in the proceedings criticised by the European Court. In case of acquittal, reduction of sentence or discharge of the accused, there is a possibility for the applicant to request compensation for having been detained on the basis of a conviction pronounced in his absence, relying on the Act on Responsibility of the state for damage caused to individuals by its acts.

General measures

Since 2000, domestic law provides the possibility for a person sentenced *in absentia* to request the reopening of the proceedings, provided that he or she had not been aware of the criminal proceedings (Article 362a of the Code of Criminal Procedure of 1974, incorporated into the new Code of Criminal Procedure of 2006, §423). According to the prevailing practice of the Supreme Court of Cassation, the accused must be notified personally of the trial and the charges against him to establish that he is aware of the proceedings.

In addition, a bench of the Supreme Court of Cassation, different from that which refused the reopening of the applicant's trial in the present case, granted the applicant's request concerning the reopening of another trial *in absentia* against him, finding that the fact of being questioned by the police on the relevant facts (the interrogation of 1998 concerned a number of burglaries for which the applicant was sentenced in two different proceedings) was not sufficient ground for assuming he was aware of the proceedings.

In these circumstances, the violation found does not appear to reveal any structural problem concerning the guaranties of a fair trial in cases of conviction *in absentia*. For this reason, and having regard to the development of the direct effect given by Bulgarian courts to the Convention and to the Court's case-law, the publication and dissemination of the European Court's judgment to the Supreme Court of Cassation appear to be sufficient measures for execution.

The judgment of the European Court was published on the website of the Ministry of Justice www.mjeli.government.bg and was sent on 2 October 2007 to the Supreme Court of Cassation.

Resolution CM/ResDH (2008) 71 – Meftah and Others against France and 25 other similar cases

Breach of the right to a fair trial before the criminal chamber or the social chambers of the Cour de cassation, due to the failure to communicate, in whole or in part, the report of the reporting judge (conseiller rapporteur) and/or the conclusions of the counsel for the prosecution (avocat général) to parties not represented by counsel, who as a consequence could not reply (violation of Article 6§1). Some of these cases also concern the presence of the avocat général at the deliberations before the Cour de cassation (violation of Article 6§1).

32911/96, judgment of 26 July 2002, final on 26 July 2002

Individual measures

Cases concerning proceedings before the criminal chamber of the Cour de Cassation

Article 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, had they so wished.

Cases concerning proceedings before the social chamber of the Cour de cassation

In the cases relevant to the civil proceedings before the social chamber of the Cour de cassation (*Joye* application No. 5949/02, *M.B.* application No. 65935/01, *Mourgues* application No. 18592/03, *Marion* application No. 30408/02 and *Menher* application No. 60546/00), the Court considered that the finding of a violation constituted in itself sufficient just satisfaction for the alleged non-pecuniary damage.

As regards pecuniary damage, in the cases of *Joye*, *M.B.* and *Mourgues* the Court found no causal relationship between the finding of a violation and any pecuniary damage. In the case of *Menher,* the applicant presented no request in respect of pecuniary damage.

Finally, in the *Marion* case, the Court held that it could not speculate on the conclusions the social chamber of the Cour de cassation would have came to, had Article 6 paragraph 1 not been infringed. During the examination of his case before the Committee of Ministers, the applicant made no request; therefore, no other individual measure was deemed necessary.

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 reporting judge (*conseiller rapporteur*), which set out the legal questions raised by the case, are communicated with the file to both the public prosecutor and the parties.

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

Avocats généraux no longer take part in preparatory conferences or in the deliberations of the Bench.

Since 1 February 2003, in cases in which legal representation is not compulsory, the principle is that the parties not represented by counsel, can access to information on the basis of a procedure that sets them on equal terms with represented parties.

A consultation service was set up within the Cour de cassation enabling parties and/or their counsel to consult documents concerning the proceedings (reports or briefs prepared by the designated reporting judge for their case by appointment). Appointments may be made by telephone and the reception service has been instructed to inform parties without counsel how to consult the documents either in person or through a representative.

This system has recently been developed in order to respond to the requirements of parties, particularly those not resident in the vicinity of the capital. Since 1 December 2006, appellants submitting personal memorials receive written acknowledgement of receipt, indicating in addition that they will be informed of the date of deposit of the reporting judge's report. When the report is deposited, appellants are informed by letter that they may receive a copy by post upon request to the registry.

Finally, parties not represented by counsel are informed of the meaning of the conclusions of the Attorney General by the prosecution before the hearing. In the same letter, they are informed that they may send supplementary observations to the registrar of the Cour de cassation.

The procedure is organised so as to allow applicants not represented by counsel to receive the information they wish, irrespective of their place of residence, thus eliminating the imbalance found by the Court relating to investigation and judgment procedure before the Cour de cassation.

37251/04, judgment of 5 December 2006, final on 5 March 2007

Resolution CM/ResDH (2008) 72 – Csikós against Hungary

Violation of the applicant's right to a fair trial due to a judgment increasing his sentence, delivered in appeal proceedings in 2004, at an in camera session in the absence of both the applicant and his lawyer (violation of Article 6§1 in connection with Article 6§3(c)).

Individual measures

The Court recalled its case-law to the effect that where an individual has been convicted by a court in proceedings which did not meet the Convention's requirement of fairness, a retrial, reopening or review of the case, if requested, represents in principle an appropriate way of redressing the violation.

According to the information provided by the Hungarian authorities, the present case was reopened before the Eger District Court.

General measures

The Court noted that on 26 May 2005 the Constitutional Court annulled Section 360(1) of the new Code of Criminal Procedure, which contained the legal provision permitting in camera sessions to be held on appeal.

The new provision which replaced Section 360(1), entered into force on 1 April 2006 (Act No. 951 of 2006). This provision specifies cases in which in camera sessions may

be held. The authorities stated that if a sentence is to be made more severe at appeal, a public session or hearing must be held. The attendance of the accused and his defence counsel is guaranteed at such public session or hearing.

The Court's judgment has been published on the website of the Ministry of Justice and Law Enforcement (www.irm.gov.hu).

Resolution CM/ResDH (2008) 73 – Gajcsi against Hungary

Unlawful extension of the applicant's compulsory treatment in a psychiatric hospital (between 1999 and 2003) due to the national authorities' failure to establish the applicant's "dangerousness", contrary to what was prescribed by the national legislation (violation of Article 5§1).

Individual measures

The applicant was released from hospital on 24 April 2003.

General measures

Having regard to the direct effect accorded to the Convention and the judgments of the Court in Hungarian law, it appears that wide dissemination and publication of the Court's judgment can avoid similar violations in the future. In this regard, that the Court's judgment was published on the website of the Ministry of Justice and Law Enforcement (www.irm.gov.hu).

34503/03, judgment of 3 October 2006, final on 3 January 2007)

Resolution CM/ResDH (2008) 74 – Osváth against Hungary

Lack of adversarial proceedings when the applicant's pre-trial detention was extended, between June and December 2001, in that he was never served in advance with copies of the prosecution applications (violation of Article 5§4).

Individual measures

The applicant was released in March 2002.

General measures

1) Legislative measures

The old Code of Criminal Procedure in force at the material time did not require that prosecution motions to extend detention during the investigation must be served on the defendant.

Law 2006/LI modified the provisions of the Code of Criminal Procedure of 2003 concerning this issue.

According to the new provisions, a preliminary session shall be held in the presence of the parties to the investigation proceedings if the decision is to be made on placement in pre-trial detention. As far as prolongation of the pre-trial detention is concerned, the investigating judge examines such motions at a hearing attended by the defendant and his defence counsel if this is warranted by the availability of a new fact not mentioned in the preceding decisions on pre-trial detention. Before the hearing, the investigating judge transmits the prosecutor's motion to the defendant and his defence counsel. The prosecutor may not bring such motions once the indictment has been filed.

If a public prosecutor's motion to extend detention on remand invokes no new circumstance, the investigating judge may decide on the question without a hearing, on the basis of the files. In such cases the judge transmits the prosecutor's motion, together with his decision, to the defendant and his defence counsel.

2) Publication and dissemination

The judgment of the Court was published on the website of the Ministry of Justice and Law Enforcement (www.irm.gov.hu) and in the human rights quarterly *Acta Humana*. The Ministry of Justice and Law Enforcement has also sent a copy of the judgment to the National Judicial Council and the Prosecutor's Office for dissemination to appropriate judges and prosecutors.

20723/02, judgment of 5 July 2005, final on 5 October 2005)

Resolution CM/ResDH (2008) 75 – Abbatiello, Federici, Maugeri, Scassera against Italy

Violations of the applicants' rights throughout the bankruptcy proceedings and/or after the bankruptcy was closed, such as unlawful suspension of their voting rights, restrictions imposed on their personal capacity and lack of an effective remedy against these restrictions (violations of Articles 8 and 13 and of Article 3 of Protocol No. 1).

Individual measures

The Court did not award the applicants just satisfaction. No further individual measure is necessary, the restrictions imposed having been lifted by the 2006 reform (see below).

General measures

Legislative Decree No. 5/2006, adopted in January 2006 resolved the questions raised in the European Court's judgments in these cases. Indeed, the decree brought about a number of

39638/04, judgment of 20 September 2007, final on 20 December 2007
13404/04, judgment of 13 November 2007, final on 13 February 2008
13611/04, judgment of 31 July 2007, final on 31 October 2007
43458/04, judgment of 20 September 2007, final on 20 December 2007

modifications to remedy the violations found, in particular:

- *Respect for correspondence* (Article 48 of the Decree): The bankrupt now receives all his correspondence and is obliged to transmit to the liquidator only communications concerning the bankruptcy proceedings, whereas beforehand all letters were diverted directly to the liquidator;
- *Freedom of movement* (Article 49): The only obligation now remaining to the bankrupt is to inform the competent authorities of any change of residence, whereas formerly he could not leave his residence without authorisation;
- *Personal disqualifications* (Article 47): The public bankruptcy register has been abolished;
- *Suspension of electoral rights* (Article 152): The relevant provisions have been repealed;
- *Complaints against acts or omissions of liquidators and magistrates (Article 26 and 36 of the Decree)*: The new rule, which abolished preventive supervision of correspondence, should also resolve the problem found by the Court concerning remedies. In any event, the new reform has improved remedies in that decisions must be given rapidly and in that omissions by the liquidator may be challenged;
- *Right to a trial within a reasonable time*: According to information already provided by the government in the course of consideration of the cases of length of judicial proceedings, the recent reform of bankruptcy law has modified many specific rules governing bankruptcy to avoid opening proceedings where possible or otherwise to accelerate them by simplifying them and introducing deadlines and more efficient mechanisms.

For further details see Interim Resolution CM/ResDH (2007) 27 "Bankruptcy proceedings in Italy: progress achieved and problems remaining in the execution of the judgments of the European Court of Human Rights", adopted by the Committee of Ministers on 4 April 2007.

33202/96, judgment of 28 May 2002, final on 28 May 2002

Resolution CM/ResDH (2008) 76 – Beyeler against Italy

Breach of the applicant's right to respect of his property, as he had to bear a disproportionate and excessive burden on account of the conditions under which, in 1988, the respondent state exercised its pre-emptive right to a painting the applicant had acquired in 1997 (violation of Article 1 of Protocol No. 1).

Individual measures

The Court considered that the nature of the violation found did not allow restitutio in integrum. It therefore awarded the applicant just satisfaction in respect of the pecuniary damage sustained.

General measures

Given the isolated nature of the violation, the publication and dissemination of the judgment are sufficient to prevent new, similar violations. The judgment was published, in Italian, in *Il foro italiano*, 2000 No. 3.

43924/02, judgment of 23 January 2007, final on 23 April 2007

Resolution CM/ResDH (2008) 77 – De Almeida Azevedo against Portugal

Non respect of the freedom of expression of a politician in relation with criminal libel proceedings (violation of Article 10).

Individual measures

The European Court awarded just satisfaction, which included a reimbursement of the 4 000 euros paid in damages. The Portuguese authorities indicated that the conviction had been removed from the applicant's criminal record (4 December 2007).

General measures

Given the direct effect of the European Convention in Portugal, publication and dissemination of the European Court's judgment to all competent courts should be sufficient to avoid similar violations. In this context, it should be noted that the European Court's judgment has been translated and distributed to the Superior Judicial Council, the body which manages the judiciary. It is also available on the Internet site of the Cabinet of Documentation and Comparative Law (www.gddc.pt), which comes under the Prosecutor General of the Republic.

Moreover, freedom of expression has been dealt with in university courses, seminars and continuous training courses organised by Legal Studies Centre (Coimbra) in 2007 and 2008.

61302/00, judgment of 24 May 2005, final on 24 August 2005)

Resolution CM/ResDH (2008) 78 – Buzescu against Romania

Unfairness of certain proceedings whereby the applicant contested the annulment by the Romanian Union of Lawyers (UAR), in 1996, of a previous decision reinstating him as a

member of the Constanța Bar Association (violation of Article 6§1). Disproportionate interference with the applicant's property rights as a result of the annulment of his reinstatement as a lawyer, involving the loss of his clients (violation of Article 1 of Protocol No. 1).

Individual measures

On 14 February 2004 the Council of the UAR decided to set aside its 1996 decision. The applicant has been permanently registered as a lawyer and member of the Bucharest Bar since 1 December 2004 (http://www.baroul-bucuresti.ro/q_av_ro.asp). In addition, the European Court awarded him just satisfaction on an equitable basis in respect of the pecuniary and non-pecuniary damage incurred.

General measures

The competence of the Council of the UAR to examine the lawfulness of Bar decisions and to annul them on grounds of illegality has been explicitly regulated by the amendment of the Legal Profession Act (Law No. 51/1995) on 6 March 2001.

The judgment of the European Court was translated and published in the *Official Journal*. It was also included in a study, *Case-law against Romania 2005-2006*, published in co-operation with the Information Office of the Council of Europe. In May 2005 the Constanța Bar Association, Bucharest Bar Association and Romanian Union of Lawyers were informed of the content of the judgment and asked to disseminate it to all Bar Associations. It seems that the situation criticised by the European Court in this case is an isolated one.

Resolution CM/ResDH (2008) 79 Canciovici and Others against Romania Moșteanu and Others against Romania

32926/96, judgment of 26 November 2002, final on 24 September 2003 and 33176/96, judgment of 26 November 2002, rectified on 4 February 2003, final on 26 February 2003

Lack of access to a court, in 1995 and 1996, in order to claim the restitution of immovable property nationalised in 1950, the court having considered that it was not competent in this field (violations of Article 6§1).

Individual measures

Canciovici case

The building in question was returned to the applicants by an administrative decision under Law 10/2001.

Moşteanu case

The Court indicated (§61) that the applicants have in the meantime recovered their right of property over the building at issue.

The Court also awarded both applicants just satisfaction in respect of non-pecuniary damage.

General measures

Changes made to the legislation and case-law (especially Article 6 of Law No. 213/1998 and the judgment of 28 September 1998 of the Supreme Court in plenary session) recognised the right of access to a court for former owners of nationalised property.

Furthermore, after the adoption of Law No. 10/2001 of 14 February 2001 on the rules governing immovable property wrongfully seized by the state between 6 March 1945 and 22 December 1989, domestic courts have continued to examine actions for restitution on the merits, not rejecting restitution claims as inadmissible on the ground of lack of competence. Thus, in pending cases, Law No. 10/2001 provides the possibility either to continue judicial proceedings for restitution of property or to apply a special administrative procedure. In the latter case, the judicial proceedings may be renounced or suspended. Law No. 10/2001 also provides the possibility to contest administrative decisions rejecting claims for restitution or lack of restitution in kind before civil courts.

Both judgments were published in the Official Journal and on the Internet site of the High Court of Cassation and Justice (http://www.scj.ro/decizii_strasbourg.asp).

Resolution CM/ResDH(2008)80 – Pini and Bertani and Manera and Atripaldi against Romania

Application No. 78028/01, judgment of 22 June 2004, final on 22 September 2004

Non-enforcement of final court decisions, delivered in 2000, by which the applicants, two Italian couples, adopted two Romanian abandoned children, Mariana and Florentina, born in 1991 and living in a private institution for minors "CEPSB" (violation of Article 6§1).

Individual measures

Mariana's adoption was revoked by a final judicial decision in 2003. The other child, Florentina, instituted further proceedings to have her adoption revoked but domestic courts rejected it in 2005 and decided to entrust her to the applicants. This decision became final and the girl left Romania with her adoptive parents.

General measures

1) Violation of Article 6§1

It seems that the violation of Article 6 in this case was an isolated one and resulted from the failure of the domestic authorities to ensure CEPSB's respect for the domestic court decisions, in particular by refraining from imposing any sanctions on the CEPSB for its unjustified opposition to enforcing the court's

decisions. To prevent any future violations, the national Authority for the Protection of Children's Rights conducted an investigation of the CEPSB between 2 and 4 March 2005. As a result, several recommendations were made, requiring in particular better information and greater involvement of the children concerning decisions made in respect of them.

According to the new law on adoptions as well as its implementing norms, which entered into force on 1 January 2005, international adoptions are no longer possible except where the prospective adoptive parent is a grandparent of the child. As for national adoptions, the law provides in particular that before an adoption can take place, contact must be established between the child and the prospective adoptive parents. The law also provides that the child should spend a 90-day trial period with the adoptive family before adoption.

2) Publication and dissemination

The judgment of the Court was translated and published in the *Official Gazette*. It was included in a collection of judgments rendered against Romania between 1998 and 2004, 2 000 copies of which have been distributed free of charge to courts and others. In addition, the Ministry of Justice, the Ministry of Administration and Interior and the National Union of Bailiffs have also been informed of the content of the judgment.

22687/03, judgment of 1 December 2005, final on 1 March 2006

Resolution CM/ResDH (2008) 87 – SC Mașinexportimport Industrial Group SA against Romania

Violation of the right to a fair trial of the applicant company as a result of the Supreme Court's annulment in 2003 of a final court decision of 2001 following the application for nullity lodged by the Prosecutor General who was not a party to the proceedings (violation of Article 6§1). Violation of the applicant company's right to the peaceful enjoyment of its possessions since the Supreme Court's decision put the applicant company under the obligation to reimburse the sums received under a final decision of a domestic court (violations of Article 1 of Protocol No. 1).

Individual measures

When the Court delivered its judgment, enforcement proceedings were pending against the applicant company for recovery of the damages received under the final court decision of 31 January 2001. On 27 November 2006 the High Court of Cassation and Justice granted the revision requested by the applicant company of the decision of 17 February 2003. Consequently, the enforcement proceedings were dropped. The Court also awarded the applicant company just satisfaction in respect of non-pecuniary damage.

General measures

The government recalled that measures had already been taken to avoid new similar violations, these measures were presented in Resolution CM/ResDH (2007) 90 mentioned above (in particular the fact that Articles 330 and 330(1) of the Code of Civil Procedure were repealed by Article 1§17 of Emergency Ordinance No. 58 of 25 June 2003 adopted by the government, published in the *Official Gazette* on 28 June 2003, and approved by Parliament on 25 May 2004). The judgment was published on the Internet site of the High Court of Cassation and Justice (http://www.scj.ro/decizii_strasbourg.asp).

58496/00, judgment of 18 February 2003, final on 18 May 2003

Resolution CM/ResDH (2008) 81 – Prado Bugallo against Spain

Violation of the applicant's right to respect for his private life due to the lack of clarity of the legislation authorising telephone tapping. The applicant's telephone communications were intercepted, with judicial authorisation, in 1990 and 1991, in the course of a criminal investigation by the police concerning drug trafficking (violation of Article 8).

Individual measures

The recordings in question are kept by the Criminal Chamber of the Audiencia Nacional as the trial court and no one can have access to them.

General measures

In addition to the amendments already adopted following the judgment of the European Court in the Valenzuela Contreras case, in particular the introduction of the Implementing Act No. 4/1988 of 25 May 1988, which governs telephone monitoring in Spain, and the interpretation of this Act by the Supreme Court since its judgment of 18 June 1992 (Resolution DH (99) 127), the Spanish authorities have provided examples of recent case-law concerning telephone monitoring. This case-law is extensive and exhaustive, and covers the conditions of telephone monitoring as well as its control by the courts. Furthermore, in a recent admissibility decision (decision on application No. 17060/02, *Coban v. Spain*), the European Court considered that Article 579 of the Code of Criminal Procedure, as amended by Act No. 4/1988 and completed by the Supreme Court and the Constitutional Court case-law, has remedied the gaps in the legislation and provides adequate safeguards. As a consequence, it declared the application inadmissible.

The judgment of the European Court was published in Spanish in the Official Journal of the Ministry of Justice No. 1954 of 1 December 2003 and sent out to the authorities concerned.

Resolution CM/ResDH (2008) 82 – Grozdanoski and Mitrevski against "the former Yugoslav Republic of Macedonia"

21510/03 and 33046/02, judgments of 31 May 2007 and 21 June 2007, final on 31 August 2007 and 21 September 2007

Violation of the principle of equality of arms and thus of the applicant's right to a fair trial. In 2003, in civil proceedings, the applicant was not informed of the opposing party's intention to appeal on points of law before the Supreme Court, or of the public prosecutor's request for protection of legality, and thus had no opportunity to comment on these appeals (violation of Article 6§1).
Unfair civil proceedings on account of the failure to inform the applicants of the appeals lodged by the opposing party and the prosecutor (in the Grozdanoski case) or of a change of the place where the hearing was to be held (in the Mitrevski case) (violations of Article 6§1).

Individual measures

In accordance with Article 400 of the Civil Procedure Law, the applicants may request the reopening of these proceedings.

General measures

The authorities of the respondent state noted that the violations in the present cases resulted from isolated omissions rather than a deficiency in the system. Furthermore, they estimated that there was no need to change the Civil Procedure Law since the statutory provisions are clear with regard to the obligation of courts to notify parties to the proceedings on the application for review on points of laws and request for the protection of legality as well as on the venue of a hearing.

In any case, the Government Agent informed the Ministry of Justice, which is supervising the application of the Courts' Rules of Procedure, of the violations found.

The European Court's judgments have been translated and published on the website of the Ministry of Justice (www.pravda.gov.mk).

Resolution CM/ResDH (2008) 92 – Djidrovski and Veselinski against "the former Yugoslav Republic of Macedonia"

46447/99 and 45658/99, judgments of 24 February 2005, final on 24 May 2005

Unjustified interference with the applicants' right to the peaceful enjoyment of their possessions resulting, on the one hand, from the fact that in 1996 the Constitutional Court declared unconstitutional the legislation which had allowed the applicants to purchase their apartments in 1995 and 1996 at a preferential rate and, on the other hand, from the quashing by the Supreme Court of the decisions of the domestic courts authorising the applicants to purchase the apartments at a preferential rate (violation of Article 1 of Protocol No. 1).

Individual measures

The authorities of the respondent state indicated that the Public Attorney's office had taken no initiative to enforce the Supreme Court's judgments criticised by the Court and that any attempt to enforce them would now be time-barred. The applicants have been enjoying the ownership of the flats without any obstacle. In both cases the relevant ownership rights have been registered in the official "cadastre of immovable property". In these circumstances, the government considers that there is no longer risk of violation of the applicants' property rights in respect of the flats at issue.

Finally, it is noted that the applicants have not requested reopening of the domestic proceedings, a possibility provided by Article 400 of the Law on Litigation Procedure (*Official Journal* No. 79/05, in force as from 1 January 2006). According to this provision reopening of all domestic proceedings is now possible in all cases where the Court has found a violation of the Convention. In this context, all domestic courts are bound to fully comply with the Court's case-law.

General measures

The authorities of the respondent state informed the Committee of Ministers that the Court's judgments in these cases were immediately translated and sent out to all relevant authorities: the Ministry of Defence, the Public Attorney's office, the Supreme Court, the Skopje Court of Appeal, the Skopje and Bitola First-Instance Courts. In addition, the Court's judgments in the present cases were studied within the Training Project for Judges and Public Prosecutors organised by the Council of Europe, Civil Society Information Centre, Associations of Judges and Public Prosecutors and Continued Education Centre. The judgments were also published on the website of the Ministry of Justice (www.pravda.gov.mk) and in a brochure "Impact of the European Convention for Human Rights on National Law and Case-law", which was made available to judges and public prosecutors through their associations.

As a result of the direct application of the Convention in "the former Yugoslav Republic

of Macedonia" it is unlikely that similar violations will occur in the future.

28945/95, judgment of 10 May 2001, Grand Chamber

Resolution CM/ResDH (2008) 84 – T.P. and K.M. against the United Kingdom

Interference with the right of the applicants – a mother and her daughter – to respect for their family life due to the failure of the local authorities to submit promptly to the competent national court the question of whether some crucial evidence should be disclosed to the mother. As result, the latter was not adequately involved in the decision-making process leading to the placement of her 4-year old daughter into care from 1987 to 1988 (violation of Article 8). In addition, the applicants did not have available to them an effective remedy for obtaining determination of their claim that the local authorities were responsible for the damage which they suffered and obtaining an enforceable award of compensation for that damage (violation of Article 13).

Individual measures

The second applicant was returned to the first applicant in November 1988 and one year later, the High Court ruled that she was no longer a ward of the court.

General measures

1) Violation of Article 8

As regards disclosure of evidence to parents in the context of care proceedings, since the facts in the present case, the Family Proceedings Rules 1991 have come into force. Rule 4.23(1) provides for the disclosure of documents to parties to the proceedings. Further, Rule 17 of the Family Proceedings Court (Children Act 1989) Rules 1991 requires parties to serve in advance on other parties copies of any documents, including experts' reports, on which they intend to rely.

Furthermore, the courts recognised the importance of adequate involvement of parents in the decision-making process in care proceedings: see, *inter alia*, the case of *Re G (Care : Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam).

2) Violation of Article 13

If a similar case were to reccur, the local authority would be obliged, under Section 6 of the Human Rights Act (HRA), to act in a manner compatible with the Convention. If they were not to do so, their acts would be unlawful and the injured party could bring proceedings under Section 7 of the HRA. By virtue of Section 8 of the HRA, a court can grant whatever remedies it considers just and appropriate, including damages, but only where it has the power to award damages. In short, criminal courts are excluded, but civil courts are competent to award damages for acts which are unlawful in terms of Section 6 of the HRA. Thus the HRA provides an effective remedy.

Moreover, Section 8 (4) of the HRA states that, in determining whether to make an award and, in the affirmative its amount, domestic courts must take into account the principles applied by the European Court of Human Rights under Article 41 of the Convention.

In view of the fact that the Human Rights Act did not incorporate Article 13 of the Convention in domestic law, examples of relevant case-law on this point were provided: see *Re M (Challenging Decisions by Local Authority)* [2001] 2 FLR 1300 (approved by the House of Lords in *Re S (Minors) (Care Order: Implementation of a Care Plan)* [2002] UKHL 10, [2002] 1 FLR 815), quashing a decision of a local authority in which the parents had not been sufficiently involved to protect their interests; *C v. Bury Metropolitan Council* [2002] EWHC 1438 (Fam), [2002] 2 FLR 868, establishing that it is the Family Division of the High Court that should usually hear allegations concerning a breach of Convention rights by a local authority in the context of care proceedings, and *Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam), in which the High Court found that the failure of local authority to inform parents of proposed changes to a care plan, and to provide parents and their representatives with an opportunity to respond to allegations being made against them, constituted a violation of Article 8.

3) Publication

The European Court's judgment in this case was published at (2002) 34 EHRR 2 and [2001] 2 FLR 549.

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.

Situation in Georgia

The conflict in the Caucasus, within Georgia and between the Russian Federation and Georgia, is a serious challenge to the Council of Europe and the values for which it stands. There have been violations of the Statute of the Organisation as well as the obligations and commitments undertaken by member states. The undertaking to settle disputes by peaceful means, specified in the commitments made at the accession of both the Russian Federation and Georgia, has been ignored. The Statute's fundamental principles of co-operation and respect for international law – in particular state sovereignty, the right to territorial integrity and the inviolability of frontiers of states – have been infringed through military action.

The Committee of Ministers is the collective guarantor of the Statute of the Council of Europe. The Swedish Chairmanship has therefore decided to convene an informal extraordinary meeting of Ministers for Foreign Affairs of member states on 24 September 2008 in New York in order to ascertain the views of member states with regard to the further handling of the crisis in the Council of Europe.

Report by the Chairman of the Committee of Ministers in view of the Informal Meeting of Ministers for Foreign Affairs of the Council of Europe (New York, 24 September 2008) [Extracts]

1. Actions taken by the Council of Europe

In his statement on 9 August, Mr Carl Bildt urged the Russian Federation, Georgia and the separatist South Ossetian and Abkhaz administrations to immediately enter into a ceasefire, in order to stop hostilities, and called upon the parties to agree to direct talks and to co-operate in international efforts to achieve such a ceasefire. He stressed that the suffering of the civilian population must be brought to an immediate end. The Chairman went on to say that the use of violence contradicts the principles of the Council of Europe and violates commitments to peaceful settlement of conflicts, which are fundamental for achieving the aims of the Organisation. The territorial integrity and sovereignty of Georgia must be respected, and all actors on the ground have an obligation to respect the principles of distinction and proportionality, as laid down by international law.

The Chairman also deeply deplored the military action taken by the Russian Federation towards Georgia, and stressed that the reasons cited by the Russian authorities do not justify military action within Georgia's territory [...].

In a second statement on 11 August, Mr Bildt recalled that the peaceful resolution of conflicts is a general principle of the Council of Europe and that both Georgia and the Russian Federation had committed themselves, when they joined the Organisation, to settle all conflicts by peaceful means. [...]. He urged once again all parties to immediately enter into a ceasefire.

On 11 to 13 August Mr Bildt visited Tbilisi together with the Secretary General. The purpose of the trip was to gather first hand impressions of the conflict and to meet with the Georgian government as well as representatives of international organisations, to discuss the crisis and the role of the Council of Europe.

The Chairman of the Committee of Ministers also planned to visit Moscow, together with the Secretary General, in order to obtain more complete information about the crisis. However, the Russian Government informed the Chairman that it could not receive him.

In his meetings, Mr Bildt recalled the different obligations and commitments that both Georgia and the Russian Federation had made when joining the Council of Europe. The interlocutors gave their assessment of the background and the build-up of the crisis as well as of the situation as it presently stood.

Following the Russian Federation's recognition of Abkhazia and South Ossetia, the Chairman of the Committee of Ministers of the Council of Europe made a statement, in which he condemned this decision and underlined that it seriously jeopardised the possibility of a peaceful resolution of the conflict in line with the principles of international law, and blatantly contradicted the fundamental principles of the Council of Europe, and the commitments taken by the Russian Federation towards the Council of Europe.

On 15 September Mr Bildt, together with the OSCE Chairman-in-Office, Foreign Minister of Finland Mr Alexander Stubb, called for a strict adherence to the six-point ceasefire agreement. They noted that it was fundamental that the Russian troops return to their positions held prior to 7 August.

On 3 September 2008 the Deputies were informed about action taken or planned by the various Council of Europe bodies, such as the Parliamentary Assembly, the Commissioner for Human Rights, the European Court of Human Rights and the Council of Europe Development Bank, since the outbreak of the conflict.

Commissioner for Human Rights

The Commissioner for Human Rights visited the region from 22 to 29 August, focusing particularly on the situation of refugees and displaced persons. He published his report on 8 September. He identified a set of six principles for the urgent protection of human rights and humanitarian security, and stressed the need for support for the action carried out by other international organisations. He also highlighted the need for specialised human rights monitors who could operate in co-ordination with the domestic ombudsmen.

Paliamentary Assembly

The co-rapporteurs on Georgia of the Monitoring Committee of the Parliamentary Assembly, Mr Mátyás Eörsi and Mr Kastriot Islami, visited the country on 19 and 20 August. A parallel visit by one of the co-rapporteurs for Russia, Mr Luc Van den Brande, was carried out the same week.

The Parliamentary Assembly has also decided to send a fact-finding mission, composed of nine parliamentarians, to visit the two member states to gather information on the ground on the current situation. The mission was initiated with a view to identifying proposals for possible future action, in the perspective of an urgent debate to be held during the Assembly's autumn session (Strasbourg, 29 September - 3 October) on "the consequences of the war between Georgia and Russia".

Congress of Local and Regional Authorities

The President of the Congress of Local and Regional Authorities Mr Yavuz Mildon visited Georgia from 9 to 11 September. He also had discussions with the President of the Russian Federation Council on 17 September in St Petersburg.

European court of Human Rights

On 12 August 2008, at the request of the Georgian Government, the President of the European Court for Human Rights decided to apply Rule 39 of the Rules of the Court (interim measures) considering that the current situation gives rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations and pursuant to Rule 39, the President called upon both the High Contracting Parties concerned to comply with their engagements under the Convention particularly in respect of Articles 2 and 3 of the Convention. In accordance with Rule 39 paragraph 3, the President of the Court further requested both governments concerned to

inform the Court of the measures taken to ensure that the Convention is fully complied with. Both countries have replied to this request. Georgia has opened a second intergovernmental case against the Russian Federation.

Council of Europe Development Bank

The Council of Europe Development Bank is considering making a substantial contribution to the efforts by the international community to address the large-scale needs of humanitarian assistance generated by the conflict.

2. General considerations

A. International law

Under international law, states have an obligation to resort to dispute settlement provided for, in particular, in the Security Council of the United Nations in accordance with the Charter of the United Nations. Whenever a threat to international peace and security arises, the states involved should bring it to the attention of the Security Council. It is then up to the Security Council to decide on measures outlined by the Charter.

South Ossetia as well as Abkhazia are integral parts of Georgia and the military actions undertaken by Georgian forces during the conflict thus concerned Georgian territory.

In a letter to the Security Council on 11 August 2008, the Russian Federation stated that the Georgian military actions amounted to "illegal use of force" triggering the right to self-defence under the UN Charter. The Russian Federation further stated that its military response was proportionate and pursued no other goal but to protect the Russian peacekeeping contingent in South Ossetia and citizens of the Russian Federation.

However, the military actions undertaken by Georgia, on its territory, cannot be seen as an aggression towards the Russian Federation which would trigger the latter's right to self-defence. It is furthermore clear, that since it contravenes international law when a state uses military force to protect its citizens in another state, the Russian large-scale military actions in Georgia can not be justified as self-defence.

The Chairmanship notes that the OSCE High Commissioner on National Minorities has stressed, that one of the bedrocks of international law is that the protection of human rights, including minority rights, is primarily the responsibility of the states where minorities reside. This also holds true in the case of minorities holding dual citizenship. Protecting minority rights is also the responsibility of the international community. However, this does not entitle or imply the right for any state under international law to exercise jurisdiction over people residing on the territory of another state. The High Commissioner also stressed that the presence of one's citizens or "ethnic kin" abroad must not be used as a justification for undermining the sovereignty and territorial integrity of other states.

Nor is the protection of peace-keeping forces as such a basis for the use of force under international law. The large-scale military action by the Russian Federation against Georgia cannot be justified on these grounds.

B. The Council of Europe

Even though security policy and conflict resolution remain largely outside the competence of the Council of Europe, the rule of law is one of the core principles of the Council of Europe.

In addition to their general obligations under the Statute, the two member states in question also took on particular obligations upon their accession to the Council of Europe. These obligations are laid down in opinions adopted by the Parliamentary Assembly.

The opinion on the Russian Federation contains *inter alia* clear obligation for the Russian Federation to settle international as well as internal disputes by peaceful means, rejecting resolutely any forms of threats of force against its neighbours, and to denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called the "near abroad".

The opinion concerning Georgia also refers to its resolve to settle conflicts by peaceful means, as illustrated at that time by the substantial improvement in relation to South Ossetia, and calls upon Georgia to continue these efforts, as well as to accelerate talks on the status of Abkhazia, and to enact within two years of its accession, a legal framework determining the status of the autonomous territories and guaranteeing them broad autonomy. It also expected Georgia to do everything in its power to put a stop to the activities of all armed groups in the conflict zone and to guarantee the safety of *inter alia* the peace-keeping forces.

Against this background, the actions taken by both countries during the conflict in Georgia are of evident relevance for the Council of Europe and its response to the conflict.

Urgent measures in the areas of competence and expertise of the Council of Europe need to

be taken to redress the situation, in the interest of the populations affected by the conflict and in order to restore peace and stability in Georgia, thus enhancing security in the Caucasus and Europe as a whole.

C. The humanitarian situation

The humanitarian situation continues to be serious and requires continued action by all concerned actors, in particular through providing adequate protection of, and assistance to, all persons affected by the conflict. Safe and unimpeded humanitarian access to affected populations is essential.

In this context the Chairman wishes to recall the principles put forward by the Commissioner for Human Rights.

1. The right to return of those who fled or were displaced must be guaranteed. This requires that their safety is protected and that their homes are made liveable again. The repair of damaged houses is an urgent priority. Affected persons have the right to be informed about relevant developments, their different options, and no one must be returned against their will.
2. Those who fled or were displaced must be ensured adequate living conditions until they can return home. This requires competent co-ordination of the assistance from both governmental and intergovernmental actors. Not only material needs but also psychological and psycho-social damages must be addressed.
3. The whole area affected by the warfare must be demined. Cluster bombs, mines, unexploded ordnances and other dangerous devices must be located, removed and destroyed. Until this is done the targeted terrain must be marked and the population clearly informed about the dangers. The parties to the conflict need to declare what type of weapons and ammunition were used, when and where. International contribution to this effort will be required and should be welcomed by both parties.
4. Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account. The problem of the "policing vacuum" in the so-called "buffer zone" between Tskhinvali and Karaleti must be resolved urgently.
5. Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts. The established mechanism for dialogue and mutual exchanges of such cases – which the Commissioner assisted during his visit – should be kept in place and fully supported, also by the international community. There is a need to establish a co-ordinated system for assembling and acting upon information on missing persons.
6. International presence and assistance are needed in the area affected by the conflict. The programs of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission. Apart from ceasefire observers and police presence, there is a need for specialised human rights monitors who could also operate in co-ordination with the domestic ombudsmen. The protection of minorities must be a key priority and positive inter-community relations must be encouraged.

3. Possible action by the Council of Europe

Considering the state of affairs described above, business as usual is not an option for an organisation designed to be the guardian of human rights and the rule of law. If we want the organisation to remain credible and relevant, the Council of Europe has to react whenever member states infringe upon their obligations under the norms and standards of the Council of Europe and under international law.

It is up to the Committee of Ministers to formulate the policy of the Organisation, develop the necessary measures and monitor their implementation, taking into account the mandate of the Council of Europe and the Organisation's expertise as well as activities of other international organisations and developments with regard to the conflict in Georgia.

The following measures could be considered by the Committee of Ministers and member states.

- Article 8 of the Statute provides for a twofold sanction against a member state which has seriously violated Article 3: the Committee of Ministers may suspend the rights of representation of the state concerned, and it may invite the state concerned to withdraw from the Organisation. The Parliamentary Assembly shall be consulted if the Committee of Ministers intends to invite a member of the Council of Europe to withdraw. Article 8 has been discussed seriously on two occasions since the inception

of the Council of Europe. It should be recalled that the Parliamentary Assembly can act on its own initiative, and withdraw or deny the credentials or suspend the right of vote of the delegation of a member state in the Assembly.

- As member states of the Council of Europe and in fulfilment of their obligations undertaken when joining the Council of Europe, both Georgia and the Russian Federation are Parties to the European Convention on Human Rights (ECHR). Any member state may refer a case of violation to the Court.
- Other member states may intervene in a case before the Court, or open other cases against a member state. The Committee of Ministers has the responsibility to monitor the implementation of the Court's judgments.

The Committee of Ministers could also consider a number of other measures, based not least on member states' commitments to the Organisation with focus on the core objective of the Council of Europe of preserving and promoting human rights, democracy and the rule of law. The urgent humanitarian needs should also be taken into account. The measures should seek to respond to the serious consequences of the conflict, and support efforts for conflict resolution and reconciliation.

1. Enhanced monitoring of the implementation by the member states concerned of their obligations and commitments to the Council of Europe could be introduced. The scope of such enhanced monitoring could focus on the actions that the member states concerned have taken in the conflict area during the present conflict.

   A procedure for monitoring the obligations of Georgia already exists in three areas (law enforcement, functioning of democratic institutions and return of Meshkhetians). No similar procedure under the Committee of Ministers exists in respect of the Russian Federation. Enhanced monitoring should be underpinned by adequate resources and field presence.

   The monitoring results should serve as a basis for the Committee of Ministers to decide upon increased co-operation and assistance in order to ensure respect for Council of Europe principles and standards, particularly in areas where more progress is needed.

2. A plan for rapid action focusing on human rights monitoring and protection could be developed in the fields of expertise of the Council of Europe. In this context, the efforts of the Commissioner for Human Rights warrant support. The Committee of Ministers could also encourage the Commissioner for Human Rights to continue paying attention to the situation in the region and to act whenever action is called for under his mandate. These efforts must be supported by relevant means.

3. The international efforts to resolve the conflict in Georgia could be supported by the Council of Europe, not least through its different mechanisms to foster human rights, including the rights of persons belonging to national minorities, democracy and the rule of law.

4. The possibilities to enhance co-operation and political dialogue between the Council of Europe and Georgia and the Russian Federation, respectively, should be examined in order to improve the situation regarding human rights, democracy and the rule of law.

5. Finally, the Committee of Ministers could also address an invitation to the Council of Europe Development Bank to consider possible measures to assist refugees and internally displaced persons, as well as other forms of support to the population in the area.

The Chairmanship intends to maintain close contacts in this matter with other bodies in the Council of Europe. It will also stay in close contact with relevant international organisations, like the United Nations, the Organization for Security and Cooperation in Europe and the European Union. A High Level meeting with the OSCE was held on 15 September. A quadripartite meeting with the European Union will take place on 20 October.

Statements by Carl Bildt, Chairman of the Committee of Ministers

Judgment by the Turkish Constitutional Court concerning the AKP Party

Statement on 30 July 2008

Carl Bildt, Chairman-in-office of the Committee of Ministers

"As Chairman-in-Office of the Committee of Ministers of the Council of Europe I note with great satisfaction the decision taken by the Constitutional Court in not banning the ruling AKP.

The decision opens up for further reforms, ensuring Turkey's further progress in line with European norms of democratic governance, human rights and the rule of law. The Council of Europe stands ready to assist in this process.

I also invite the Turkish authorities to make use of the Council of Europe's expertise."

Presidential elections in Azerbaijan

Statement on 16 October 2008

The Chairman-in-office of the Committee of Ministers of the Council of Europe, Carl Bildt, Minister for Foreign Affairs of Sweden, took note of the assessment by the international observation mission of the Presidential elections held in Azerbaijan yesterday. "I am pleased to note that the elections were generally carried out in a calm and quiet atmosphere and welcome the improvements noted in the conduct of this election. However, shortcomings were identified in a number of areas.

The Azerbaijani authorities need to ensure an accurate and transparent process for complaints and appeals. It is highly regrettable that part of the opposition decided not to take part in the elections."

Minister Bildt recalled the importance for the Azerbaijani authorities to implement all their commitments to the Council of Europe, in particular regarding freedom of the media and to increase their efforts to promote the development of a pluralist civil society.

Replies from the Committee of Ministers to Parliamentary Assembly Recommendations [extracts]

Video surveillance of public areas

Recommendation 1830 (2008)
Reply adopted on 9 July 2008

The Committee of Ministers attaches great importance to human rights in the information society and agrees with the Parliamentary Assembly that there is a need to further consider the principles and guidelines necessary to balance the public interests involved with the human rights and freedoms of individuals in a democratic society.

The Committee of Ministers has taken note of the Assembly's proposal in paragraph 2 of the recommendation concerning the organisation of a conference on video surveillance and, in the light of preliminary comments received from the CDCJ, has transmitted this idea to the European Committee on Legal Co-operation (CDCJ) and to the Consultative Committee of the Convention for the Protection of Individuals with regard to automatic processing of personal data (T-PD) for further consideration.

Disappearance of newborn babies for illegal adoption in Europe

Recommendation 1828 (2008)
Reply adopted on 9 July 2008

Like the Parliamentary Assembly, the Committee of Ministers is concerned about the problems raised in the recommendation and firmly condemns all practices aimed at selling or stealing newborn babies, and more generally all forms of trafficking in children and human beings. It acknowledges, moreover, that the lack of coherence in laws relating to adoption and a lack of rigour in registering births are major obstacles to the prevention of trafficking in children.

The Committee of Ministers recalls that, at its Ministerial Session on 7 May 2008, it adopted the European Convention on the Adoption of Children (revised). It also recalls that although the convention does not formally address international adoption, it will undoubtedly have an important influence on international adoption as it aims to harmonise substantive law in the member states by laying down minimum rules on adoption based on the principle of the child's best interests.

Regarding more specifically the lack of rigour in registering births, which facilitates the disappearance of newborn babies, the Committee of Ministers points out that the CDCJ, in its work on the European Convention on Nationality (ETS No. 166) and Recommendation (99) 18 of the Committee of Ministers on the avoidance and reduction of statelessness, will consider, among other things, the implications of the failure to declare births for children's acquisition of nationality. As requested by the Parliamentary Assembly in its Recommendation 1443 (2000), it will also be considering the question of the acquisition of nationality by foreign children when an international adoption procedure is unsuccessful, particularly where this entails a risk of statelessness.

Lastly, the Committee of Ministers supports the Parliamentary Assembly's recommendation urging the law enforcement authorities in the countries concerned to show initiative and conduct full and effective investigations into cases of disappearance of newborn babies, with due regard to the seriousness of this criminal activity.

United Nations Security Council and European Union blacklists

Recommendation 1824 (2008)
Reply adopted on 9 July 2008

The Council of Europe keeps the questions raised by the recommendation under constant review, particularly within the Committee of Legal Advisers on Public International Law (CAHDI) and the Committee of Experts on Terrorism (CODEXTER). To this end, in 2004, the CAHDI set up a restricted database on the implementation at national level of the United Nations sanctions in the field of the fight against terrorism and respect of human rights, which contains national contributions from member and observer states to the CAHDI, as well as a contribution from the European Union. The CODEXTER considers this matter in the context of its activity aimed at securing effective follow-up to the "road map" for the Council of Europe's contribution to the implementation of the United Nations Counter-Terrorism Strategy.

Generally speaking, the Committee of Ministers underlines the importance in the fight against terrorism of the targeted sanctions contained in the resolutions of the Security Council of the United Nations adopted under Chapter VII of the United Nations Charter, and their implementation. Having said that, the Committee of Ministers reiterates that it is essential that these sanctions be accompanied by the necessary procedural guarantees, as specified in its "Guidelines on human rights and the fight against terrorism" of 11 July 2002. The Committee of Ministers encourages all member states of the Council of Europe to support ongoing efforts to further improve the international system of targeted sanctions, in particular with regard to fair and clear procedures for placing individuals and entities on the lists, for removing them and for granting humanitarian exemptions.

The Council of Europe's views are drawn to the attention of the United Nations and the European Union through regular exchanges between these bodies and CAHDI. The Council of Europe will hold further exchanges of views with these organisations on the relationship between targeted sanctions and compliance with human rights obligations, in particular after the European Court of Justice has delivered its judgments in the various cases concerning targeted sanctions currently pending before that Court.

Parliaments united in combating domestic violence against women: mid-term assessment of the campaign

Recommendation 1817 (2007)
Reply adopted on 11 September 2008

Like the Parliamentary Assembly, the Committee of Ministers has worked to promote the multidimensional approach (governmental, parliamentary, local and regional) adopted in the campaign, which has paved the way for comprehensive, co-ordinated action. It appreciates the Parliamentary Assembly's involvement and congratulates it on the action it has taken, not least in setting up a network of contact parliamentarians. The Committee of Ministers also welcomes the inclusive approach adopted at the campaign's closing conference,

held in Strasbourg on 10 and 11 June 2008. This event, which was attended, *inter alia*, by the Council of Europe's international partners active in the field, as well as NGOs, reflected the various dimensions of the campaign.

The conference provided an opportunity not only to reiterate the need for concerted action by all the parties involved, national and international, in order to eradicate violence against women, but also to show that the measures taken along these lines throughout the campaign, to raise awareness of this violation of human rights and protect victims, have in fact been a real success.

At the campaign's closing conference, the Task Force to combat Violence against Women, including Domestic Violence (EG-TFV) proposed that a series of future measures be implemented in this area and, more specifically, that a Council of Europe convention be drafted to prevent and combat violence against women. The Committee of Ministers, for its part, has invited its Rapporteur Group on Human Rights (GR-H) and its Rapporteur Group on Legal Co-operation (GR-J) to consider, at a joint meeting, whether a convention should be drafted and, if so, what it should contain, and to report back to it by 15 October 2008. The Committee of Ministers will inform the Assembly in due course of the follow-up that is to be given to this project.

State, religion, secularity and human rights, and blasphemy, religious insults and hate speech against persons on grounds of their religion

Recommendations 1804 (2007) et 1805 (2007)
Joint reply adopted on 16 September 2008

The action taken by the Committee of Ministers to follow up these commitments has focused on intercultural dialogue, including its religious dimension. The Committee of Ministers reaffirms its belief in the shared European principle of the separation between governance and religion in the Council of Europe member states with due regard for the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This principle, along with that of freedom of conscience and thought and the principle of non-discrimination, is an integral part of the concept of European secularity on which the Committee of Ministers bases its work on the religious dimension of intercultural dialogue.

Accordingly, and aware of the major potential of religious communities for contributing to the expansion of the values defended by the Council of Europe, the Committee of Ministers held, on 8 April 2008, on an experimental basis, the first annual Council of Europe Exchange on the religious dimension of intercultural dialogue. It devoted this Exchange to "Teaching religious and convictional facts. A tool for acquiring knowledge about religions and beliefs in education; a contribution to education for democratic citizenship, human rights and intercultural dialogue".

In the light of the conclusions of the General Rapporteur, the Committee of Ministers has agreed to foresee a continuation of work on the religious dimension of intercultural dialogue, focused on the core objective of the Council of Europe, through annual exchanges. These will be evaluated on a case-by-case basis and an assessment made of their impact.

The Committee of Ministers also reasserts its commitment to the freedom of expression and the freedom of thought, conscience and religion, which are fundamental freedoms enshrined in the ECHR and which lie at the very heart of democracy.

It encourages member states to closely monitor the constantly developing degree of protection of these freedoms, as seen in the enriching interpretation of the case-law of the Court to reflect this in their national law and practice.

Some of the questions raised by the two Parliamentary Assembly recommendations have already been the subject of two thematic reports by the Steering Committee for Human Rights (CDDH) on the wearing of religious symbols in public areas and on "hate speech". These two reports identify principles based on the relevant case-law of the European Court of Human Rights, with a view to providing guidance to the competent public authorities. With regard more specifically to the question of hate speech, the Committee of Ministers refers to the principles set out and the measures advocated in its Recommendation No. R (97) 20 on hate speech, which remain fully valid.

The Committee of Ministers would also draw attention to the *Conference on Human Rights in culturally diverse societies – challenges and perspectives*, to be held in The Hague on 12 and 13 November 2008, in which the Assembly is invited to participate, and which could afford an opportunity to reflect on other relevant

issues, such as freedom of religion or belief, hate speech and the role of the state.

Lastly, the Committee of Ministers welcomes the forthcoming signature of the Memorandum of Understanding between the Council of Europe and the Alliance of Civilisations by the Secretary General of the Council of Europe and the United Nations High Representative for the Alliance of Civilisations. The co-operation based on this agreement will further the respective objectives of both parties, including "the promotion and protection of democracy, human rights and the rule of law; the fight against all forms of discrimination on any ground; the equal dignity of every human being and gender equality; inclusive and cohesive societies; the democratic governance of cultural diversity; intercultural dialogue, including its religious dimension, as well as intercultural exchange; and the strengthening of democratic citizenship and participation and the promotion of civil society".[1]

1. See the Draft Memorandum of Understanding between the Council of Europe and the Alliance of Civilisations (document CM (2008) 76).

Rights of national minorities in Latvia

Recommendation 1772 (2006)
Reply adopted on 8 October 2008

The Committee endorses the Assembly's assertion, in paragraph 7 of Resolution 1527 (2006) that: "The issue of national minorities' rights must be broached in its political, social and historical context, and it is necessary to consider how the principles, values and standards upheld by the Council of Europe, which are designed as a universal model, should apply in order to achieve the objective of encouraging balanced interethnic coexistence, the integration of the various communities in society and, over and above that, the development of a country united by a common vision of the future. The Assembly considers that the ultimate objective of policy towards minorities is the cohesion of society and interethnic coexistence based on respect for diversity and a system of rights, obligations and responsibilities negotiated in a rational and constructive spirit by those directly concerned."

The Committee further recalls that a number of the issues raised in the resolution and recommendation relate to the implementation of the Framework Convention for the Protection of National Minorities. The Committee notes that Latvia has made the following declaration in its instrument of ratification of this Convention:

"Persons who are not citizens of Latvia or another state but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law."

Turning to the specific requests formulated by the Assembly in Recommendation 1772 (2006), the Committee of Ministers wishes to indicate that it supports the process of integration of national minorities in Latvia leading to the steady reduction as soon as possible of the number of non-citizens and encourages the implementation in Latvia of recommendations made by the Assembly, the Council of Europe Commissioner for Human Rights and by other relevant bodies both of the Council of Europe and of other international organisations to the extent that these are relevant and in compliance with the standards of the Council of Europe (items 1.1 and 1.2).

In relation to the encouragement of the Latvian authorities to take into account, in the preparation of future elections, the conclusions of the OSCE Election Observation Mission with regard to the elections held on 7 October 2006 (item 1.3), the Committee is also confident that Latvia will give due consideration to the pertinent recommendations of the Assembly, the Council of Europe Commissioner for Human Rights, the European Commission against Racism and Intolerance and relevant international bodies, regarding the granting of the right to vote in local elections to residents with the status of "non-citizens".

But the Committee of Ministers also takes fully into account the position of Latvia, which is to further encourage naturalisation, as Latvia aims at having citizens with full rights. By giving non-citizens voting rights, Latvia considers that the boundary between citizens and non-citizens becomes blurred and citizenship is devalued because it is no longer tied to any substantial additional rights beyond those already granted to non-citizens. Latvia believes that granting voting rights to non-citizens in local elections in Latvia would reduce the incentive to naturalise. Furthermore, this would require a change of the Constitution of Latvia which could become a major legal and political problem.

Finally, concerning the Parliamentary Assembly's call in item 1.8 to ensure "the same political approach, the same level of protection of minorities and the same level of interethnic integration in all Council of Europe member states", the Committee of Ministers stresses that, while "double standards" are to be rejected and human rights are to be guaranteed in a uniform manner throughout the continent, there is no rigid "one-size-fits-all model" for the protection of national minorities. This is also reflected in the formulation of the legal standards of the Framework Convention for the Protection of National Minorities.

Replies to Parliamentary Assembly Written Questions

Secret detentions and illegal transfers of detainees in Europe

Written Question No. 545 by Mrs Däubler-Gmelin Reply adopted on 11 September 2008

Question

The Committee of Ministers' reply to Recommendation 1801 (2007) merely speaks of "possible" follow-up to be given by governments to the Assembly's conclusions (see appended extract from document AS/Jur (2008) 14). Its reactions to the Secretary General's proposals following his inquiry under Article 52 ECHR have been equally disappointing.

In the light of recent new revelations in the media concerning, *inter alia*, Denmark, Germany, Portugal, and the United Kingdom, and in light of the lack of a satisfactory reply by the Polish and Romanian authorities to the repeated requests for information by the European Commission, what action does the Committee of Ministers intend to take in future in order to fully exercise its role as the executive body of the Council of Europe, the guardian of human rights on this continent?

Appendix: Extract from document AS/Jur (2008) 14 rev (Consideration of replies from the Committee of Ministers to recommendations emanating from the Committee – Comments by the Rapporteur, Mr Dick Marty, on the Committee of Ministers' reply to Recommendation 1801 (2007))

The reply by the Committee of Ministers is very disappointing. It confirms the attitude of the vast majority of governments encountered during the preparation of the report: to block the uncovering of the truth. Recent revelations concerning Denmark, Portugal, the British base of Diego Garcia, and the airport Mihail Kogalniceanu in Romania show that on the one hand, the "dynamics of truth" are still on the march, whilst on the other hand states are far from having fulfilled their duties of investigation. The reply to the Parliamentary Assembly is in line with the Committee of Ministers' equally weak reaction to the Secretary General's proposals following his enquiry based on Article 52 ECHR.

Reply

The Committee of Ministers has few comments to add to that reply. It does wish, nevertheless, to underline that the reply sets out – very clearly – governments' obligations under the European Convention on Human Rights, notably to prevent human rights violations and, if they have occurred, to carry out independent and impartial investigations and to bring to justice those responsible for serious violations.

The Committee of Ministers would like to draw the Honourable Member's attention to the fact that the second of two studies, which it commissioned from the Venice Commission in the context of its reply to Parliamentary Assembly Recommendation 1713 (2005), was adopted at the Commission's 74th Plenary Session (Venice, 14-15 March 2008) (Document CDL-AD(2008)004). The report concerns democratic control of the armed forces and complements a previous report on democratic oversight of the security services in member states. These texts have both been transmitted to the governments of member states; they are available on the website of the Venice Commission: http://www.venice.coe.int/docs/2008/CDL-AD(2008)004-e.asp.

Europe's response to China's human rights violations in Tibet

Written Question No. 544 by Mrs Acketoft Reply adopted on 11 September 2008

Question

With just six months to go to the Olympic Games in Beijing, the Chinese Government is continuing its human rights abuses. During the past weeks, the most obvious violations have occurred in Tibet.

Since the Chinese occupation of Tibet in 1949, more that 150 000 Tibetans have fled their

native country and it is estimated that 3 000 Tibetans flee across the Himalayas every year in search of a freer life. In addition to the perils of death or severe frostbite, they risk torture and imprisonment if caught by the Chinese military. The Chinese regime has constantly limited the Tibetans' right to practice their religion, freedom of speech and freedom of assembly. It is also highly disputable whether any of the natural resources that are harvested by the government actually benefit the Tibetans.

The current abuses are probably the worst in a long time, but China has a longstanding record of violations against the Tibetan community.

On 10 March it was reported that a group of demonstraters, mainly monks, were injured and taken into custody in central Lhasa. The purpose of the demonstration was to mark the 49th anniversary of the Dalai Lhama's flight from Tibet. On 11 March, according to eyewitnesses and media, the Chinese police used tear gas and electrical prods to break up a group that was demanding the release of monks who had been arrested earlier.

Amnesty International, among others, has severely condemned these breaches of human rights. Demonstrators have the right to peaceful gatherings and protests. China is breaking international human right law by denying the Tibetans their right to freedom of speech and freedom of assembly.

It is high time for the rest of the world to mark – strongly – that the recent events in Tibet are unacceptable. Members of the world community must recognise that human rights are universal.

I therefore ask whether the Committee of Ministers agrees that the actions of the Chinese authorities represent an infringement of the Universal Declaration of Human Rights and the European Convention of Human Rights.

Within the Council of Europe's mandate to protect human rights, how does the Committee of Ministers plan to act in order to ensure that the Universal Declaration of Human Rights is followed by the Chinese Government?

Reply

As China is neither a member of, nor has observer status with, the Council of Europe, it is at the worldwide level that the issue of respect for human rights by this country must be raised. In this respect, a concerted approach by all member states, particularly in the United Nations framework, in order to speak with one voice in favour of such respect, would certainly be an effective means of action. The annual exchanges of views organised under the auspices of the Committee of Ministers with experts from the capitals of the member states, covering human rights-related matters dealt with at the United Nations, offer a forum for such consultations. The Committee of Ministers can only encourage member states to use this platform for the universal defence and furtherance of human rights worldwide, in line with the action carried out by the Organisation on the European continent.

The United States of America and international law

Written Question No. 542 by Mrs Däubler-Gmelin Reply adopted on 11 September 2008

Question

Considering that the Committee of Ministers' reply of 12 July 2007 to PACE Recommendation 1788 (2006) on The United States of America and international law (Doc 11456) does not give a comprehensive answer to some of the Assembly's recommendations, Mrs Däubler-Gmelin asks the Committee of Ministers,

- Firstly, whether the Committee of Ministers has requested "the Government of the United States to provide information on its response to Assembly Resolutions 1340 (2003), 1433 (2005) and 1507 (2006), as well as Assembly Recommendation 1760 (2006) – relating to, in particular, the lawfulness of persons held in Guantánamo Bay and elsewhere, secret detentions and unlawful state transfers of detainees, and the abolition of the death penalty – as well as on measures taken to comply with them", and
- Secondly, what efforts and progress have been made further to Recommendation 1788 (2006) (more than six months after receipt)?

Reply

On 19 November 2007 the Committee of Ministers' Chairman transmitted to the Permanent Observer of the United States of America to the Council of Europe Parliamentary Assembly Resolution 1539 (2007) on "The United States and international Law" together with its Recommendation 1788 (2007) as well as the Committee of Ministers' reply.

The Committee of Ministers recalls that it has on many occasions confirmed its own commitment to the fundamental principles regarding

detention, fair trial and the treatment of detainees, including the prohibition of torture and inhuman or degrading treatment or punishment, as contained in Articles 3, 5 and 6 of the European Convention on Human Rights and corresponding provisions of the International Covenant on Civil and Political Rights. Moreover, the Committee of Ministers refers to the European Day against the Death Penalty, celebrated each year on 10 October, which it established in 2007 as a joint initiative with the European Union. It would like to inform the Honourable Member that the Ministers, meeting in Strasbourg on 7 May 2008 on the occasion of the 118th Ministerial Session, 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.

Finally, the Committee of Ministers recalls that Council of Europe's member states are in dialogue with the United States authorities, notably in the framework of the meetings of the Committee of Legal Advisers on Public International Law (CAHDI).

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

Parliamentary Assembly

"The Council of Europe must not withhold any criticism and must condemn in the firmest possible terms all that it regards as a violation of our principles and values. However, above all, we must look to the future and show caution, calm, clear-sightedness and political vision.
The main question that should guide us during our discussions should be what we want for the future of Europe and how we can guarantee its peace and stability."

Lluís Maria de Puig, President of the Parliamentary Assembly (PACE)

Evolution of human rights

Constitutional reform needs to be stepped up in Bosnia and Herzegovina

PACE calls upon the authorities of Bosnia and Herzegovina to step up their efforts with regard to constitutional reforms, which should be implemented on the basis of a shared vision of the development of the country's institutions, while respecting the autonomy of the two Entities and the Brcko district. "Without proper reforms, and in the absence of co-operation between the various structures and institutions at the level of the state and the Entities, Bosnia and Herzegovina will not be able to make full use of the benefits of European integration," the co-rapporteurs from the Monitoring Committee, Mevlüt Çavusoglu (Turkey, EDG) and Kimmo Sasi (Finland, EPP/CD).

In addition, the Assembly draws attention to the increase in nationalist and ethnic rhetoric, in the context of the campaign for the October 2008 local election. It also condemns the discrimination and violence against LGBTs and the recent attacks against organisers and participants of the Sarajevo Queer Festival and journalists.

Resolution 1626 and Recommendation 1843, adopted on 30 September 2008 (Doc. 11700)

Promoting a culture of democracy and human rights through teacher education

Highlighting the role of teachers and other educational staff in promoting a culture of human rights and democracy, the Assembly calls on European governments to promote "a lifelong learning perspective in respect of teacher education", in order to help teachers adapt to the needs of rapidly-changing democratic societies.

Recommendation 1849, adopted on 3 October 2008 (Doc. 11624)

PACE calls for a convention to combat violence against women

PACE recommends that a framework convention of the Council of Europe be drafted on the severest and most widespread forms of violence against women, in particular domestic violence, sexual assaults, harassment, forced marriages, honour crimes and female genital mutilation. According to the Assembly, this convention should encompass the gender dimension and address the specific nature of gender-based violence.

The rapporteur of the Committee on Equal Opportunities for Women and Men, José Mendes Bota (Portugal, EPP/CD), asks members of the Assembly to continue to play an active role on this issue and to demonstrate a firm political will. He further notes that unless legislation is adopted, this fight will continue to be in vain,

Resolution 1635 and Recommendation 1847, adopted on 3 October 2008 (Doc. 11702)

and that there is a vital need to provide protection for victims, to prosecute the perpetrators of violence and to introduce effective prevention.

Situation of human rights in Europe

Jorge Pizarro calls on Assembly members to protect the human rights of immigrants

President of the Latin American Parliament calls on PACE to guarantee the human rights of immigrants

Jorge Pizarro, President of the Latin American Parliament, calls on Assembly members to support changes in the European Union directive on migration so the human rights of immigrants are guaranteed. He declares that the directive criminalises immigrants and places them in a vulnerable situation.

Speaking at the Parliamentary Assembly, Jorge Pizarro pointed out on 29 September that inequity, exclusion and poverty in the world cannot be justified by the scarceness of resources or population growth. He expressed his concern that poverty is growing, and said Latin American countries have an important role to combat it, in addition to developed countries.

Jorge Pizarro, President of the Latino-American Parliament signs the PACE guest book

PACE welcomes Serbia's initiatives on minority rights but lists further steps

Resolution 1632 and Recommendation 1845, adopted on 1 October 2008 (Doc. 11528)

PACE welcomes a number of praiseworthy initiatives to advance the rights of national minorities in Serbia, but notes that there are still "serious deficiencies" in realising these rights. Serbia should "react with greater celerity and firmness against the perpetrators of inter-ethnic violence in all its forms", the parliamentarians stated. Among other things, they are calling for steps to make the national councils for national minorities more effective, and the adoption of a new law on discrimination.

Reunification of Cyprus: President Christofias and Mr Talat cannot afford to fail

Resolution 1628, adopted on 1 October 2008 (Docs 11699 and 11727)

The current situation offers the best opportunity in many years to reach a settlement that would restore peace and unity to Cyprus, says PACE. Following a debate on the situation on the island, parliamentarians call on "all the internal and external actors involved" to do their utmost to maximise the chances of the process succeeding. PACE asserts that "President Christofias and Mr Talat are conscious that they cannot afford to fail." The Assembly urges Greece, Turkey and the United Kingdom, as the three guarantor states of the 1960 Constitution of Cyprus, to "fully and actively" use their influence to support the political process under way.

Proposed 42-day pre-charge detention in the United Kingdom: PACE expresses "serious doubts"

Resolution 1634 adopted on 2 October 2008 (Doc. 11725)

The Parliamentary Assembly expresses concern about elements of draft counter-terrorism legislation in the United Kingdom that would enable the detention of a terrorist suspect for up to 42 days without charge, with limited judicial review.

The parliamentarians express "serious doubts" whether all the provisions of the draft legislation are in conformity with the European Convention on Human Rights. "A lack of appropriate procedural safeguards may lead to arbitrariness", the unanimously adopted text underlines.

Also, parliamentary involvement in the extension of pre-charge detention, as proposed, "is not appropriate". Hence, from the perspective of the separation of powers, "the decision to maintain a person in custody is a judicial function with respect to which a legislative, political body should, as a matter of principle, have no say."

The Assembly resolves to undertake a thorough study on this subject. According to the parlia-

mentarians, the British draft legislation should be examined within the framework of a more general comparative study in order "to assess, in particular, the compatibility of such legislation with the European Convention on Human Rights".

PACE Monitoring Committee remains concerned about the limited progress with regard to the implementation of Resolutions 1609 and 1620

Situation in Armenia, 2 October 2008

The Monitoring Committee of the Parliamentary Assembly received the report from the Human Rights Commissioner regarding his visit to Yerevan from 13 to 15 July 2008 and was extremely alarmed about its findings and conclusions that show that only limited progress has been achieved regarding key demands of the Assembly. The Committee therefore invited the Human Rights Commissioner to return to Yerevan and report back to the Committee at its meeting in Paris on 17 December 2008.

While noting the positive steps made regarding establishment of an independent and credible inquiry, the Monitoring Committee remains extremely concerned regarding persons deprived of their liberty in relation to the events on 1 and 2 March 2008.

In Resolution 1620 (2008), the Assembly made it clear that "the cases still under investigation should be closed or promptly brought before courts"; "a verdict based solely on police testimony without corroborating evidence cannot be acceptable" and that "the cases under Articles 300 and 225 of the Criminal Code should be dropped unless there is strong evidence that the accused have personally committed acts of violence or ordered, abetted or assisted to commit them".

In that respect, the Committee took note that, while the investigations regarding persons in preventive detention have now closed, the cases against seven, all charged under articles 300 and 225, have not yet been brought before the courts as a result of excessive length of investigation. In addition, the Committee is deeply concerned that the investigations regarding the responsibility for the 10 deaths on 1 and 2 March have not yet been, or are not yet on the point of being, concluded.

Serious questions remain regarding the nature of the charges brought against people arrested in relation to the events on 1 and 2 March as well as regarding the court proceedings of several cases, including with regard to the principle of fair trial. In addition, and contrary to Assembly demands, 19 persons have been convicted on the basis of police testimony only.

The Committee is therefore seriously concerned that people may have been detained, and even convicted, based on political believes and non-violent activities, which is unacceptable to the Assembly.

The Committee regrets that the Armenian authorities did not consider the possibility of amnesty, pardons or any other legal means available to them, to resolve the situation regarding persons deprived of their liberty in relation to the events on 1 and 2 March 2008. It strongly urges the authorities to consider such options, which would result in major progress towards meeting the requirements of the Assembly.

The Committee noted the positive steps regarding the establishment of an independent and credible inquiry as outlined in the report by the Commissioner. The Committee expresses its full support for the proposals made by the Commissioner. It welcomes the constructive dialogue between the Armenian authorities and Commissioner on this issue and hopes that the remaining outstanding issues will be resolved soon in order for the expert group to start and finalise its work as soon as possible.

The Committee is of the view that Armenia is on a threshold regarding the implementation of the Resolutions 1609 (2008) and 1620 (2008). Now is the time for the Armenian authorities to show the political will to resolve this problem. The Committee places full trust in, and gives full support to the work of the Human Rights Commissioner in this respect. Therefore, it would invite the Commissioner to make a follow-up visit to Yerevan and to report back to the Committee at its meeting on 17 December 2008 on the progress made regarding the independent and credible inquiry and release of persons deprived of their liberty in relation to the events on 1 and 2 March. In December, on the basis of that report, the Committee will make its decision on the actions, and possible sanctions, it will recommend to the plenary of the Assembly in January 2009.

PACE calls for independent international investigation into the war between Georgia and Russia

Resolution 1633 and Recommendation 1846, adopted on 2 October 2008 (Docs 11724, 11730, 11731 and 11732)

Since the facts surrounding the outbreak of war between Georgia and Russia are disputed, the Assembly urges that there be an independent international investigation into what happened.

The Assembly declares that both Georgia and Russia have violated Council of Europe principles and values, and their commitment to settle conflicts by peaceful means. Both sides are responsible for violations of human rights and humanitarian law.

The parliamentarians point to "a disproportionate use of armed force by Georgia" and assert that the Russian counter-attack "equally failed to respect the principle of proportionality". They further note that the use of indiscriminate force and weapons in civilian areas by troops of both sides "can be considered war crimes".

The Assembly also calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia, and to allow EU and OSCE monitors to have access to both territories. These, as well as full implementation of the EU-brokered ceasefire agreement, are "minimum conditions" for a meaningful dialogue.

The parliamentarians also express concern at "credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the 'buffer zone' by irregular militia and gangs which the Russian troops failed to stop".

Elections

PACE elects two new Vice-Presidents

Vice-presidential elections, 29 September 2008

The Assembly elected, at the opening of its Autumn 2008 Session, two new Vice-Presidents: Juan Fernando López Aguilar, for Spain, and Luigi Vitali, for Italy.

PACE re-elects Dean Spielmann judge of the European Court of Human Rights with respect to Luxembourg

ECtHR election, 30 September 2008

On 30 September 2008, the Parliamentary Assembly, re-elected Dean Spielmann as judge to the European Court of Human Rights with respect to Luxembourg.

Judges are elected by the PACE from a list of three candidates nominated by each state which has ratified the European Convention on Human Rights.

Internet: http://assembly.coe.int

European Social Charter

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

Signatures and ratifications

On 7 October 2008, **Bosnia and Herzegovina** ratified the Revised Charter becoming the 40th State Party to the Social Charter.

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. 40 states have ratified either of the two instruments (25 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)

Conclusions

At its 232nd session, from 20 to 24 October 2008, the ECSR adopted Conclusions 2008 and XIX-1, assessing the situation in law and practice of 38 States Parties on the basis of national reports concerning the first thematic group of provisions (Employment, training and equal opportunities: Articles 1, 9, 10, 15, 18, 20, 24 and 25).

Conclusions 2008 relate to: Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, the

Netherlands, Norway, Portugal, Romania, Slovenia, Sweden and Turkey.

Conclusions XIX-1 relate to: Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Poland, Slovak Republic, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom.

These Conclusions have been made public and have been published on the website: www.coe.int/socialcharter.

Elections

At their 1041st session, 19 November 2008, the Committee of Ministers declared elected as members of the ECSR the following four candidates, with effect from 1st January 2009, for a term of office which will expire on 31 December 2014:

- Mr Petros Stangos (Greek);
- Mr Alexandru Athanasiu (Romanian);
- Mr Luis Jimena Quesada (Spanish);
- Mr A. Rüchan Isik (Turkish).

Significant meetings

Colloquy on the collective complaints procedure

Strasbourg, 26-27 September 2008

A colloquy: "The collective complaints, ten years after the entry into force of the Protocol to the Social Charter", was held by the University Robert Schuman in Strasbourg.

The objective was to take stock of the past ten years, to study the impact of the procedure of collective complaints, to compare it to the other international and regional mechanisms for protecting human rights and also to debate the potential ways of improving this monitoring system.

Meeting between the Chairman of Ministers' Deputies, the Human Rights Commissioner and Presidents of monitoring bodies

Strasbourg, 7 October 2008

The purpose of the meeting was to discuss ways of enhancing the respective activities of the Commissioner and of the monitoring bodies, in full respect of their independence. It was also discussed how assistance activities could better be targeted, as well as the role of national authorities in taking responsibility for the necessary reforms.

Colloquy on economic, social and cultural rights – universality and indivisibility of human rights

Strasbourg, 16 October 2008

This colloquy was organised by the Consultative National Commission of Human Rights (France), on the occasion of the 60th Anniversary of the Universal Declaration of Human Rights.

The discussions principally concerned the place of social rights in the instruments of the European Union and the international instruments, the case-law of the European Court of Human Rights concerning poverty, and also the European Social Charter and the case-law of the European Committee of Social Rights.

Meetings on non-accepted provisions of the Social Charter

Within the framework of the procedure aiming at promoting the acceptance of further provisions (Article 22), the ECSR held meetings with the authorities of Armenia (Erevan, 30 September - 1st October 2008) and of Sweden (Strasbourg, 21 October 2008).

Collective complaints: latest developments

Decisions on the merits

In October the decision on the merits of the complaint **Mental Disability Advocacy Centre (MDAC) v. Bulgaria** (No. 41/2007) was made public: it was alleged that children living in Homes for Mentally Disabled Children (HMDC) in Bulgaria received no education.

The ECSR concluded that there was:

– a violation of Article 17§2 of the Revised Charter because children with moderate, severe or profound intellectual disabilities residing in HMDCs do not have an effective right to education; and,

– a violation of Article 17§2 of the Revised Charter taken in conjunction with Article E because there was discrimination against children with moderate, severe or profound intellectual disabilities residing in HMCDs as a result of the low number of such children receiving any type of education when compared to other children.

Decisions on admissibility

On 23 September 2008, four decisions were declared admissible by the ECSR:

- **Defence for Children International v. the Netherlands (DEI)** (No. 47/2008): It is alleged that Dutch legislation deprives children residing illegally in the Netherlands of the right to housing (Article 31) and consequently of a series of additional rights laid down in Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to social, legal and economic protection for the family), 17 (right of children and young persons to social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the European Social Charter (revised).
- **International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece** (No. 49/2008): It is alleged that the Greek Government continues to forcibly evict Roma without providing suitable alternative accommodation. It also alleges that the Roma in Greece continue to suffer discrimination in access to housing in violation of Article 16 of the European Social Charter (right of the family to social, legal and economic protection) alone or in conjunction with the non-discrimination clause in the Preamble.
- **Confédération française démocratique du travail (CFDT) v. France** (No. 50/2008): 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 Articles 4 (right to a fair remuneration), 12 (right to social security), 18 (right to engage in a gainful occupation in the territory of other Parties) and 19 (right of migrant workers and their families to protection and assistance) alone or read in conjunction with Article E (non-discrimination) of the European Social Charter (revised).
- **European Roma rights Centre (EERC) v. France** (No. 51/2008): The complainant organisation pleads a violation of Articles 16 (right of the family to social, legal and economic protection), 19 (right of 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 (non-discrimination), on the grounds that Travellers in France are victims of injustice with regard to access to housing, *inter alia* social exclusion, forced eviction as well as residential segregation, substandard housing conditions and lack of security. Furthermore, France has failed to take measures to address the deplorable living conditions of Roma migrants from other Council of Europe member states.

New collective complaints

Two collective complaints were registered:

- **Centre on Housing Rights and Evictions (COHRE) v. Croatia** (No. 52/2008): The complainant organisation pleads a violation of Article 16 of the Charter (the right of the family to social, legal and economic protec-

tion), read alone or in conjunction with Article E (non-discrimination) of the Charter, on the grounds that the ethnic Serb population displaced during the war in Croatia has been subjected to discriminatory treatment as the families have not been allowed to reoccupy their former dwellings prior to the conflict, nor have they been granted financial compensation for the loss of their homes.

- **European Federation on National Organisations working with the Homeless (FEANTSA) v. Slovenia** (No. 53/2008): The complainant organisation pleads a violation of Articles 31 (right to housing) and 16 (the right of the family to social, legal and economic protection), read alone or in conjunction with Article E (non-discrimination) of the Revised Charter. In support of its request, the complainant organisation alleges that a vulnerable group of persons occupying denationalised flats in the Republic of Slovenia have been deprived of their occupancy titles and subjected to eviction. As the persons concerned were denied access to alternative housing in the long term, they have now become homeless. These measures have also resulted in housing problems for the families of the evicted persons.

For more detailed information, see the website: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

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/socialcharter

Convention for the Prevention of Torture

Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Co-operation with national authorities is at the heart of the convention, given that its aim is to protect persons deprived of their liberty rather than to condemn states for abuses.

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.

Ad hoc visits

Georgia, 29 September - 2 October 2008

Extending the activities of the CPT to Abkhazia and South Ossetia

Representatives of the CPT[1] had a series of contacts in Tbilisi and Sukhumi aimed at enabling the Committee to exercise its mandate throughout the territory of Georgia.

In Tbilisi, the CPT's representatives held talks with the Minister and Deputy Minister of Justice, Nika Gvaramia and Tina Burjaliani, the Minister of Reintegration, Temuri Yakobashvili, the First Deputy Minister of Internal Affairs, Ekaterine Zguladze, and the Secretary of the National Security Council of Georgia, Alexander Lomaia, as well as with other senior government officials. They also met the Public Defender of Georgia, Sozar Subari.

Similar consultations were previously held in July 2008, following the postponement, at the Georgian authorities' request, of an intended ad hoc visit by the CPT to the regions of Abkhazia and South Ossetia. The new series of talks provided an opportunity to examine the implications of the recent armed conflict and subsequent developments for the planned ad hoc visit.

In Sukhumi, the CPT's representatives met the *de facto* Presidential Plenipotentiaries for human rights of Abkhazia and South Ossetia, respectively Georgyi Otyrba and David Sanakoyev, and explained to them the Committee's mandate and working methods.

The CPT's representatives also had discussions with members of the OSCE Mission to Georgia, the United Nations Observer Mission in Georgia, and the ICRC Delegation in Tbilisi.

1. Mauro Palma, President, Ales Butala, member in respect of Slovenia, and Trevor Stevens, Executive Secretary.

The CPT trusts that these contacts have laid the foundations for the visit by the Committee to places of deprivation of liberty in Abkhazia and South Ossetia. The CPT remains committed to organising that visit in the near future.

Turkey, 13 October 2008

CPT holds high-level talks with Turkish authorities

Representatives of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) recently went to Ankara for talks with Mehmet Ali Sahin, Minister of Justice, and senior officials of the Ministries of Justice, the Interior, Foreign Affairs, National Defence and the Turkish Armed Forces.

Issues discussed during the talks on 13 October 2008 included the conditions of detention of Abdullah Öcalan, who has been held for more than nine years as the sole inmate of the prison on the island of Imrali. The CPT's representatives also raised other matters with the Turkish authorities, in particular, recent allegations of ill-treatment of detained persons by law enforcement officials and prison officers, as well as the situation of foreign nationals detained under Aliens legislation.

Greece, 23-29 September 2008

A delegation of the CPT carried out an ad hoc visit to Greece from 23 to 29 September 2008. The main objective of the visit was to examine the treatment of persons detained by law enforcement agencies. Particular attention was paid to the situation of irregular migrants detained under Aliens legislation who are held in either police/border guard stations or in special holding facilities under the responsibility of the Ministry of Interior.

Periodic visits

"The former Yugoslav Republic of Macedonia", 30 June - 3 July 2008

The main objective of the visit was to examine the steps taken by the national authorities to implement recommendations made by the CPT after the May 2006 and October 2007 visits. The CPT's delegation focused on the treatment and conditions of detention of sentenced and remand prisoners. In this context, it assessed developments in relation to prison healthcare services and examined the use of means of restraint within prison. Particular attention was also paid to the issue of safeguards against ill-treatment of persons deprived of their liberty by law enforcement officials.

At the end of the visit the delegation presented its preliminary conclusions to the national authorities.

Montenegro, 15-22 September 2008

The visit was the CPT's first periodic visit to Montenegro as an independent state. The CPT had already visited Montenegro in the past as part of its visit to the State Union of Serbia and Montenegro in 2004. The recent visit was therefore an occasion to assess progress made in the last four years and the extent to which the CPT's recommendations had been implemented.

In the course of the visit, the CPT's delegation held consultations with the Minister of Justice, Minister of Internal Affairs and State Administration, Minister of Health, Labour and Social Welfare, Supreme State Prosecutor, Director of the Penitentiary Service, as well as with senior officials from relevant Ministries. It also met the Ombudsman, and held discussions with members of non-governmental and international organisations active in areas of concern to the CPT.

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

Italy, 14-26 September 2008

During the visit, particular attention was paid to the treatment of persons deprived of their liberty by law enforcement officials and to the conditions of detention under which foreign nationals are held in identification and expulsion centres. The delegation also examined in detail various issues related to prisons, including the situation of prisoners who are subject to a maximum security regime (the "41-bis" regime), overcrowding and prison health care. It also visited a judicial psychiatric hospital (OPG) and a civil psychiatric facility where patients may be subjected to "involuntary medical treatment" (TSO).

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

The visit focussed on the City of Moscow, the Republic of Udmurtia and the Regions of Arkhangelsk and Vologda. The CPT's delegation paid particular attention to the treatment of persons detained by Internal Affairs agencies, including foreign nationals and administrative detainees. It also examined in detail various issues related to prisons, including the regimes applied to remand prisoners, juveniles and life-sentenced prisoners. Further, the delegation visited a psychiatric hospital, where it considered the treatment and legal safeguards applicable to involuntary patients and patients undergoing psychiatric assessment and coercive treatment.

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

Russian Federation, 22 September - 6 October 2008

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 February 2007

The CPT has published the report on its visit to Liechtenstein in February 2007, together with the response of the Liechtenstein Government. These documents have been made public at the request of the Liechtenstein Government.

The report contains, in particular, recommendations to strengthen fundamental safeguards which persons deprived of their liberty by the police should enjoy, and to improve the activities offered to inmates at Vaduz Prison, the only prison in the Principality. Further, for the first time in Liechtenstein, the Committee has examined the procedures for involuntary placement (ordered by a civil or criminal court) in psychiatric hospitals, nursing homes or other specialised institutions. In their response, the Liechtenstein authorities provide details on the measures being taken or envisaged in order to address the issues raised in the CPT's report.

The CPT's visit report and the response of the Liechtenstein Government are available, in English and German, on the Committee's website.

Liechtenstein
Publication on 3 July 2008

Report on the ad hoc visit in October 2007[2]

The 2007 visit focused on the situation in prisons as well as examining the issue of safeguards against ill-treatment of persons detained by law enforcement officials. It was prompted by the fact that the authorities' response to the report on the 2006 visit did not address many of the issues identified by the Committee. The CPT was particularly concerned about three areas: the action taken to combat impunity, the conditions of detention in prisons and the treatment and care of vulnerable persons.

The CPT's report and the response of the national authorities to the October 2007 visit report are available on the CPT's website . Both documents have been made public at the request of the government.

"The former yugoslav Republic of Macedonia"
Publication on 19 September 2008

2. A further ad hoc visit to "the former Yugoslav Republic of Macedonia" was carried out in June/July 2008.

Finnish response to preliminary observations by the CPT after visit to Finland in April 2008

In preliminary observations made at the end of its visit to Finland in April 2008, the CPT's delegation requested the Finnish authorities to provide the Committee with detailed information about the legislative and organisational steps envisaged to eliminate the practice of holding persons on remand in police establishments, information on steps taken to end the practice of "slopping out" at Helsinki Prison, and a detailed action plan to reduce significantly recourse to seclusion at Vanha Vaasa State Psychiatric Hospital. By letter of 29 August 2008, the Finnish authorities provided their response; it will be taken into account in the context of the preparation of the CPT's report on the 2008 visit to Finland.

Finland
Publication on 17 September 2008

Report on the visit in February 2008

The Danish government has requested the publication of the report of the Committee for the Prevention of Torture on its visit to Denmark in February 2008. The visit was carried out within the framework of the CPT's programme of periodic visits for 2008; it was the Committee's fourth visit to Denmark.

Denmark
Publication on 25 September 2008

The CPT's delegation reviewed the measures taken by the Danish authorities to implement the recommendations made by the Committee after previous visits. The delegation examined in detail various issues concerning detention by the police, as well as the detention of asylum-seekers and other foreigners in the Ellebæk Establishment. As regards prisons, particular attention was paid to the treatment of maximum security prisoners. In the Herstedvester Establishment, the delegation focused on the treatment of sexual offenders who were receiving, or had been offered, anti-hormone therapy, as well as on the situation of prisoners from Greenland. In addition, the delegation visited two psychiatric establishments, where it examined in particular the legal safeguards afforded to patients in the context of the use of restraint. The delegation also visited two secure institutions for minors and juveniles.

The Danish government is currently preparing its response to the issues raised by the Committee.

The report is available in English on the CPT's website.

United Kingdom
Publication on
1 October 2008

Report on the ad hoc visit in December 2007

The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published the report on its ad hoc visit to the United Kingdom in December 2007, together with the response of the United Kingdom Government. These documents have been made public at the request of the United Kingdom authorities.

During the December 2007 visit, the CPT's delegation re-examined the safeguards afforded to persons detained by the police under the Terrorism Act 2000 as well as the conditions of detention of such persons at Paddington Green High Security Police Station.

Croatia
Publication on
9 October 2008

Report on the visit in 2007

The CPT has published the report on its 3rd periodic visit to Croatia, in 2007, together with the authorities' response. These documents have been made public at the request of the Croatian Government.

The report reviews the situation of persons detained by the police, including immigration detainees. The information gathered during the visit indicated that ill-treatment by the police remained a problem in Croatia. The CPT made a series of recommendations to address this problem, including that a clear message of "zero tolerance" of ill-treatment be delivered, from the highest level and through ongoing training activities, to all police officers. The CPT also noted with concern that little progress had been made as regards notification of custody, access to a lawyer, and access to a doctor; it called upon the Croatian authorities to take effective steps to ensure compliance with these fundamental safeguards against the ill-treatment of people detained by the police.

The CPT welcomed the efforts made to improve material conditions in police establishments in Zagreb, in sharp contrast with the situation observed in police cells outside the capital. It recommended the Croatian authorities to redouble their efforts to improve conditions of detention in police cells throughout the country.

As regards prisons, the delegation received no allegations of ill-treatment of inmates by staff at Požega Re-education Institution. However, some allegations of physical ill-treatment and verbal abuse were received at Lepoglava, Osijek and Rijeka Prisons. Further, the delegation had misgivings about the manner in which investigations of prisoners' complaints were carried out, after gathering allegations of psychological pressure by prison officers against prisoners who had complained. The CPT recommended that the authorities deliver the firm message to prison staff that both physical ill-treatment and verbal abuse of prisoners, as well as any kind of threats or intimidating action against a prisoner who has made a complaint, will not be tolerated and will be subject to severe sanctions.

Prison overcrowding had worsened since the 2003 visit, with an increase of the prison population by some 40%. The CPT recommended that the Croatian authorities redouble their efforts to combat prison overcrowding, in particular by adopting policies designed to limit or modulate the number of people sent to prison. The CPT's delegation noted the efforts to offer activities to sentenced prisoners in the establishments visited, including prisoners serving very long sentences. By contrast, the regime of remand prisoners at Osijek and Rijeka Prisons remained very poor, most inmates on remand being confined to their cells for some 22 hours a day.

No allegations of ill-treatment were received at Vrapce Psychiatric Hospital and the Pula Social Care Home for Adults with Psychiatric Disorders. At both establishments, the CPT was impressed by the caring attitude displayed by staff

towards patients and residents. However, at Vrapce Psychiatric Hospital, little or no action had been taken to implement the recommendations made after the Committee's 2003 visit; there is in particular an urgent need to proceed with the construction of the new forensic psychiatric unit.

As regards treatment at Pula Social Care Home, the situation was globally satisfactory. That said, the CPT recommended that programmes of rehabilitative activities as well as resocialisation programmes be developed, which will require more qualified staff.

In their response, the Croatian authorities provide information on the measures being taken to address the issues raised in the CPT's report.

18th General Report of the CPT

Publication on 19 September 2008

In its 18th General Report to the Committee of Ministers of the Council of Europe, the CPT provided details on the 20 visits which it has carried out during the last twelve months.

The CPT also commented on the draft European Rules for juvenile offenders, which are currently pending before the Committee of Ministers. There is a high degree of consonance between the draft rules and the standards developed by the CPT in relation to juvenile offenders. However, the Committee considered that the particular vulnerability of juveniles during police custody should be addressed in a more concrete manner.

The CPT announced its intention to examine in depth the use of electroshock stun devices in detention-related situations, with a view to developing standards that will help to prevent ill-treatment. Electroshock stun devices, and in particular tasers, are increasingly being used in law enforcement and detention contexts. Originally presented as a non-lethal alternative for situations when lethal force might be employed, there is growing concern that such devices are being resorted to in circumstances that do not warrant their use.

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 specialised 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 work,

– work on general themes,

– relations 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.

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 Autumn 2008 ECRI carried out contact visits to Belgium, the Czech Republic, Germany, Greece, Slovakia and Switzerland, 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 11 General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; and combating racism and racial discrimination in policing.

ECRI continued work on its future General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sports. A draft text of the Recommendation has been sent for written consultation to relevant institutions and persons with expertise in the field of sport. It is foreseen that ECRI will adopt the Recommendation at its 47th plenary meeting in December 2008.

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 the principle of non-discrimination. A working group was set up to examine these issues in more detail and formulate proposals to ECRI on this subject.

Relations with civil society

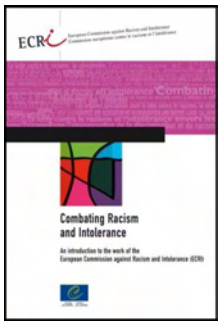
This aspect of ECRI's programme aims at spreading ECRI's anti-racist message as widely as possible among the general public and making its work known in relevant spheres at international, national and local level. In 2002 ECRI adopted a programme of action to consolidate this aspect of its work, which 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 the Russian Federation

On 23 September 2008 ECRI held a national round table in Moscow. The main themes of this round table were: ECRI's Third Report on the Russian Federation; racism, xenophobia, anti-Semitism and intolerance in public discourse and in the public sphere; racist violence in the Russian Federation and the legislative and institutional framework for combating racism and racial discrimination.

Participants at the Moscow round table

Publications



- *Combating racism and intolerance, an introduction to the work of the European Commission against Racism and Intolerance (ECRI)*, September 2008
- *ECRI in brief*, September 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.

Conference

International conference to assess the protection of national minorities by the Framework Convention

The Council of Europe held a conference on 9 and 10 October to assess the progress achieved in the continent in protecting the rights of national minorities ten years after the entry into force of the first binding international treaty on this subject: the Framework Convention for the Protection of National Minorities (FCNM).

The conference, organised under the theme "Enhancing the impact of the Framework Convention: past experience, present achievements and future challenges", gathered members and former members of the independent monitoring body of the convention (the Advisory Committee), academics, and representatives of national minorities, NGOs and international organisations.

The participants analysed the impact of the monitoring work the Council of Europe has carried out in these years and in particular its impact on national legislation and policies. As of today, 39 member states have ratified the convention and 8 have not.

A meeting of non-governmental organisations co-ordinated by Minority Rights Group International, a London-based non-governmental organisation, was held alongside the conference. Its participants agreed on the text of an NGO declaration on the Framework Convention addressed to its monitoring bodies and other actors active in the field of minority protection.

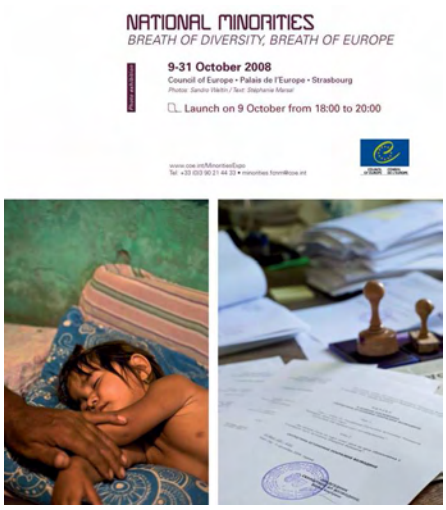
Rainer Hofmann, 2nd Vice-President of the Advisory Committee, Philippe Boillat, Director General of Human Rights and Legal Affairs, and Alain Chablais, Executive Secretary of the Framework Convention

The conference was opened by Philippe Boillat, Director General of Human Righs and Legal

Affairs of the Council of Europe, Thomas Hammarberg, Human Rights Commissioner, Rainer Hofmann, second Vice-President of the Advisory Committee, and Alan Phillips, its President. Morten Kjaerum, Director of the European Union Fundamental Rights Agency, and Brendan F. Moran, Director of the Office of the OSCE High Commissioner on National Minorities, participated in the meeting.

Photo exhibition entitled "National Minorities, Breath of Diversity, Breath of Europe"

A photo exhibition on national minorities was also inaugurated by the Secretary General of the Council of Europe on the occasion of the conference. Through a journey in Vojvodina (Serbia), this exhibition entitled "National Minorities, Breath of Diversity, Breath of Europe", intends to provide an insight into the life of national minorities. See also the website of the photo exhibition: www.coe.int/minoritiesexpo.



First Monitoring Cycle

State Reports

The Netherlands

The state report on the Netherlands was submitted on 16 July, pursuant to Article 25, paragraph 1, of the FCNM. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

Advisory Committee Opinions

Montenegro

The Advisory Committee's opinion on Montenegro was made public on 6 October at the government's request. The Advisory Committee visited Montenegro in December 2007 and adopted its report (opinion) on 28 February 2008. The Committee of Ministers will now draw on the report as it prepares a Resolution on the issue.

Summary of the Opinion:

Montenegro has taken important steps for the protection of national minorities: it has adopted a Constitution which includes a minority rights chapter reflecting the principles of the Framework Convention. The National Strategy on Roma was recently adopted; national minority councils are in the process of being established and a substantial fund for minorities was approved by the Parliament, paving the way for increased support in respect of their cultures. The Advisory Committee welcomes the political will of the authorities, and in particular the Ministry of Human and Minority Rights, to enhance national minority rights protection in Montenegro.

The adoption of more detailed legal guarantees together with the availability of adequate implementation and monitoring capacity are now needed to fully implement constitutional rights and policy documents. Legal provisions on the use of minority languages in the relations between persons belonging to national minorities and the administrative authorities need to be made more specific. Further efforts need to be made regarding the availability of minority language teaching as part of the school curriculum, including for the Bosniacs/Muslims and the Croats. The difficulties experienced by many Roma in various fields of life requires a vigorous implementation of the newly adopted National Strategy and an adequate monitoring of the progress made in this context.

The authorities should address citizenship in a way that secures full and effective equality for persons belonging to national minorities. Due attention should be paid to ensuring that there

is no unjustified restriction of the personal scope of application of the Framework Convention, and that accessing fundamental rights for those whose legal status is currently unclear, in particular the Roma and the Serbs, is guaranteed.

While interethnic relations in Montenegro have, on the whole, remained peaceful, interaction and dialogue need to be expanded among the different segments of society. Media has an important role to play in this respect and efforts should be made to increase the availability of information on national minorities to the general public. Greater involvement of national minority journalists by editorial boards in the production of educational, cultural and other mainstream programmes is also encouraged.

The Advisory Committee considers that the implication of the constitutional right to "authentic representation" of national minorities in Parliament needs to be approached with all due caution so as to avoid any excessive polarisation of politics along ethnic lines and the monopolisation of discussions on national minorities by certain political parties.

The provision of the Constitution on "proportionate representation" of national minorities in public services needs to be made operational, notably by relying on data on the participation of persons belonging to national minorities and by catering for national minorities' specific training needs to compete better for public posts.

Shortcomings regarding the effective participation of persons belonging to national minorities in economic life need to be addressed. National minorities should be closely involved in the implementation of regional development plans targeting economically-depressed areas where they live.

Latvia

The Advisory Committee adopted its opinion on Latvia on 9 October. The opinion is restricted for the time being and has been submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

Second Monitoring Cycle

Advisory Committee Opinions

Bosnia and Herzegovina

On 9 October the Advisory Committee adopted its opinion on Bosnia and Herzegovina. The opinion is restricted for the time being and has been submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

"The former Yugoslav Republic of Macedonia"

The Advisory Committee's opinion on "the former Yugoslav Republic of Macedonia" was made public on 9 July upon adoption of the Committee of Ministers' resolution.

Summary of the Opinion:

Since the adoption of the Advisory Committee's first Opinion in May 2004, the authorities of "the former Yugoslav Republic of Macedonia" have made new efforts to improve the implementation of the Framework Convention. Steps taken at legislative and institutional level as part of the implementation of the Ohrid Agreement form a solid basis for increasing the level of protection of persons belonging to national minorities.

The participation of persons belonging to minority communities has progressively increased. The Albanian community, in particular, plays an active role in the country's political life at national and local level. Significant efforts have been made to extend the use of minority languages in communication with and within public authorities. The opportunities for learning the Albanian language and receiving instruction in this language have been expanded. Some progress is also reported as regards access to the media of persons belonging to minority communities.

Notwithstanding the efforts made to enhance respect and mutual understanding, interethnic dialogue remains limited and manifestations of discrimination against persons belonging to the various ethnic communities are still reported. The increasing separation of children and youth belonging to different communities in education and leisure activities is a source of concern.

The needs of smaller communities deserve increased attention. Resolute efforts are needed in the implementation of the National Strategy for the Roma, to address the serious difficulties and discrimination still faced by many Roma in

access to employment, housing, health care and education.

Cyprus

The Advisory Committee's opinion on Cyprus was made public on 9 July upon adoption of the Committee of Ministers' resolution.

Summary of the Opinion:

Since the adoption of the Advisory Committee's first Opinion, Cyprus has taken new steps to improve the implementation of the Framework Convention in respect of the Armenians, the Latins and the Maronites. Efforts have been made to support the cultural activities of the these three minority groups and to provide them with better opportunities to receive minority-specific education. Nevertheless, additional measures are necessary in order to meet the particular needs of these persons.

While the Armenians, the Latins and the Maronites are well integrated in society, their participation in decision-making on issues concerning them appears to be insufficient. Problems remain as regards the implementation of the principle of free self-identification in respect of the Armenians, the Latins and the Maronites, as well as in respect of the Roma.

It is positive that the legal and institutional framework for combating discrimination has been strengthened in Cyprus. Adequate resources should be provided to the new institutions established in this area.

Notwithstanding efforts made to promote tolerance and intercultural dialogue, Cypriot society remains divided and there is only a limited amount of dialogue and trust between the Greek Cypriot Community and the Turkish Cypriot Community. More resolute steps are needed to promote mutual respect, understanding and integration among all persons living on the territory of Cyprus, particularly through more active media contribution and the education system.

It is essential that the authorities, as well as all the parties involved, strengthen their efforts to achieve as soon as possible a just and lasting solution to the division of Cyprus.

Opinion and Comments

Switzerland

The comments on the Advisory Committee's opinion on Switzerland were received and made public on 8 September at the government's request, together with the Advisory Committee Opinion. The Advisory Committee visited Switzerland in November 2007 and adopted its Opinion on 29 February 2008.

Summary of the Opinion:

The protection of persons belonging to linguistic minorities in Switzerland is highly developed due to the institutional arrangements and the Federal system, which allow for an effective participation of these persons at all levels. Major constitutional reforms in several cantons and important new laws, both at the Federal and cantonal levels, have been adopted in recent years. As a result, legal certainty has been strengthened as concerns the use of languages in official contexts. Italian and Romanche languages have in particular gained increased protection due to the enactment of comprehensive legislation at the Federal level and in the canton of Graubünden. The emphasis must now be placed on the implementation of these new guarantees.

General budgetary savings in the public sector have adversely affected institutions promoting human and minority rights and ongoing discussions on the possible introduction of an Ombudsman Office or an independent human rights institution have not yet yielded concrete results.

Although the language of instruction and the teaching of national languages are closely linked to the traditional territorial distribution of languages, there have been commendable efforts to move towards a co-ordinated intercantonal development of language teaching in compulsory education. This should foster language proficiency at an earlier age in all cantons, while ensuring that the development of English teaching does not take place to the detriment of national languages. However the overall situation of Italian and Romanche-speakers who live outside their traditional areas of settlement has not significantly improved with regard to access to language teaching and opportunities to enjoy cultural and linguistic support.

The development of the daily use of Italian and Romanche in official contexts is essential to preserve the identity of the canton of Graubünden and this remains a challenge. In this context, the new law on languages should help the authorities and the linguistic minorities concerned to find ways and means to

ensure that these languages effectively enjoy equal status with German, as prescribed by the cantonal Constitution.

Significant efforts to address the situation of Travellers in a comprehensive way were for the first time made in the aftermath of the 2006 report of the government on the situation of Travellers in Switzerland. However Travellers continue to face significant problems in Switzerland and the preservation of their identity is at stake since many of them experience increasingly greater difficulties to practice their itinerant or semi-itinerant way of life. Efforts must therefore be intensified to make sure that the cantons create further stopping places and transit sites as a matter of priority. There is also scope for improvement in Travellers' participation in decision-making, especially at the cantonal and local levels.

Committee of Ministers Resolutions

Cyprus, "the former Yugoslav Republic of Macedonia" and the United Kingdom

The Committee of Ministers adopted a resolution on the protection of national minorities in Cyprus, "the former Yugoslav Republic of Macedonia" and the United Kingdom on 9 July. 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.

Advisory Committee visits

Serbia

A delegation of the Advisory Committee on the FCNM visited Serbia from 3 to 7 November in the context of the monitoring of the implementation of this convention by this country. In addition to Belgrade, the delegation visited Novi Sad, Bujanovac, Niš and Novi Pazar.

The expected legislation on the national councils of national minorities and other relevant laws together with the effective implementation of the norms in all regions of Serbia will be at the centre of the discussion.

The Delegation had meetings with the representatives of all relevant ministries, the State and Provincial Ombudsmen and the Parliament. In addition to contacts with public officials, the Delegation also met persons belonging to national minorities and Human Rights NGOs in Belgrade and in all the regions visited.

Follow-up Seminars

Slovenia

The authorities and the Council of Europe organised a follow-up seminar in Slovenia on 21 October to discuss how the findings of the monitoring bodies of the Council of Europe's Framework Convention for the Protection of National Minorities are being implemented in Slovenia.

Election of the Bureau of the Advisory Committee

On 8 October, during the 33rd Plenary, the Advisory Committee elected members of the Bureau of the Advisory Committee on the Framework Convention for a period of two years.

The following members were elected:

- Mr Alan Phillips (President, member elected in respect of the UK),
- Ms. Ilze Brands-Kehris (1st Vice-President, member elected in respect of Latvia), and
- Mr Rainer Hofmann (2nd Vice-President, member elected in respect of Germany).

Publications

- *Framework Convention for the Protection of National Minorities – Collected Texts* (5th edition) (2008) ISBN 978-92-871-6501-5

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

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.

Reflection on possible reforms to guarantee the long-term efficiency of the European Court

In October 2008 the Reflection Group of the Steering Committee for Human Rights (CDDH) continued its examination of possible reforms leading to guarantee the long-term efficiency of the European Court of Human Rights, through amendments to the European Convention on Human Rights or otherwise. In this context, the Group decided to go along with the preparation of a possible non-binding legal instrument of the Committee of Ministers concerning remedies which should be available in domestic law for the protection of the rights guaranteeed by the Convention. As to the protection system set up by the Convention, the Group examined a number of technical aspects, such as the so-called "pilot judgments" procedure, the extension of the Court's jurisdiction to give advisory opinions, ways of increasing use of third-party interventions, or the possibility of setting up a new filtering mechanism for applications. It recommended starting work with a view to drafting a possible Statute for the Court.

Improving the supervision of the execution of Court's judgments

In September and October 2008 the Committee of Experts of the CDDH responsible for the improvement of procedures for the protection of human rights adopted draft practical proposals for supervising the execution of judgments of the Court in cases of slow execution. It is accompanied by two documents explaining the objective factors to detect problems in the execution of a given judgment and the tools that are available to the Committee of Ministers in order to react. The practical proposals will be sent by the CDDH to the Committee of Ministers at the end of this year.

Protection of national minorities

In October 2008 the Committee of Experts of the CDDH dealing with questions relating to the protection of national minorities prepared, in particular, comments on Recommendation 222 (2007) of the European Congress of Local and Regional Authorities – *"Teaching of regional and minority languages"*.

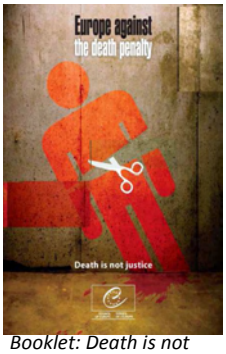
Protection of human rights in the context of accelerated asylum procedures

In September 2008 the ad hoc working party of the CDDH finalised the draft Guidelines on the protection of human rights in the context of accelerated asylum procedures and a very comprehensive explanatory memorandum which reflects in particular the Court's case-law on the subject. This draft instrument should be adopted by the CDDH and sent to the Committee of Ministers by the end of the year.

Co-operation with the United Nations

The second Council of Europe/Office of the High Commissioner for Human Rights (OHCHR) co-ordination meeting took place in Geneva in September. This meeting led to the identification of topics for future co-operation in several human rights areas and an increased understanding of each other's work.

Death penalty



Booklet: Death is not justice

On 10 October 2008 a Joint European Union/Council of Europe Declaration was adopted to establish the European Day against the Death Penalty as a joint initiative of the two organisations. The European Day was marked this year by a panel discussion at the Council of Europe sponsored by the Swedish Chairmanship of the Committee of Ministers and the French Presidency of the European Union. On this occasion, the Council of Europe launched a TV spot to condemn capital punishment.

Human Rights of Members of the Armed Forces

The Steering Committee for Human Rights (CDDH) continued its work on a recommendation of the Committee of Ministers on the human rights of members of the armed forces.

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

Study visit to the Council of Europe, including the ECtHR, for judges and prosecutors' trainers and lawyers of Montenegro

Strasbourg, 1-4 July

A study visit was organised to Strasbourg for ten judges and prosecutors' trainers from Montenegro, in co-operation with the Judicial Training Council, from 1 to 4 July 2008. Five lawyers from Montenegro with a special interest in freedom of expression joined the group. The delegation had the opportunity to attend the hearing in the case of *Kozacioglu v. Turkey* and to listen to presentations made by staff members working in the standard-setting, monitoring and co-operation directorates of the DGHL. They also had the opportunity to meet the judge elected in respect of Serbia and the Serbian lawyer at the Court's Registry.

Training session on financial management for the staff of the Albanian School of Magistrates

Tirana, Albania, 3-4 July

The objective of this final training session on financial management was to provide the Albanian School of Magistrates (ASM) with the final competencies required for the drafting of future clear and standard annual budgets. Participants were the administrative staff of the ASM. This was the last training session on Financial Magement. Necessary competencies were transferred to the ASM. The standard budget model developed for Albanian Courts in the framework of the EURALIUS programme was provided to the ASM. This will contribute to the budgetary standardisation within the Albanian judiciary. Council of Europe experts will continue to assist the ASM with the elaboration of its budget for 2009-2010 as foreseen in the terms of reference of the project.

Thematic seminar for the staff of the Office of the Prosecutor General of Ukraine on ECHR

Kyiv, Ukraine, 4 July

The seminar was organised in co-operation with the Office of the Prosecutor General (http://www.gpu.gov.ua) and the Association of Prosecutors of Ukraine (http://www.uap.org.ua) under the Council of Europe/EC Joint Programme "Fostering a Culture of Human Rights". The seminars highlighted the ECHR substantive provisions and their domestic application in criminal proceedings as well as the relevant standard-setting case-law of the European Court of Human Rights and the case-law in the Council of Europe member states. DVDs with full video-recording of the seminar were produced and distributed in Ukraine's regional prosecutor offices. This video-recording was also posted on the official website of the Office of Prosecutor General of Ukraine (http://www.gpu.gov.ua/ua/siminar.html).

Fourth and fifth seminars (in a series of 5) for judicial staff

Tbilisi, Georgia, 4 July and 11 July

The seminars were organised in co-operation with the Institute of State and Law of the National Academy of Sciences under the EC/Council of Europe Joint Programme "Fostering a Culture of Human Rights". The seminars provided an overview of the ECHR substantive provisions and modalities of their domestic ap-

plication with a view to standards developed in the case-law of the European Court of Human Rights. The case-law in the Council of Europe member states was also highlighted.

Kyiv, Ukraine, 8-9 July

Follow-up in-depth seminar for national ECHR trainers of judges on ECHR (Artashes)

The seminar was organised in co-operation with the Academy of Judges of Ukraine (http://aj.court.gov.ua) under the Council of Europe/EC Joint Programme "Fostering a Culture of Human Rights". The seminar targeted the national pool of expert-trainers on the European Convention on Human Rights developed by the Council of Europe. The seminar highlighted the ECHR substantive provisions and their domestic application, the case-law of the European Court of Human Rights as well as the methodology of the ECHR training campaign in Ukraine, its progress and results. The publication of the seminar's proceedings and presentations was produced and distributed to the courts in regions of Ukraine.

Lori, Armenia, 19-20 July

Third cascade seminar (in a series of 3) for lawyers in the western regions of Armenia

The seminar was organised in co-operation with the Chamber of Advocates of Armenia (http://www.pastaban.am) with the assistance of a national pool of qualified experts trained by the Council of Europe. The seminar highlighted the ECHR substantive provisions and their domestic application in civil and criminal proceedings as well as the relevant standard-setting case-law of the European Court of Human Rights and the case-law in the Council of Europe member states.

Albania, Shkodre, 2-13 September, Pogradec, 19-20 September, Saranda, 26-27 September

Training seminars for lawyers on the standards of the European Convention on Human Rights

These seminars were organised in co-operation with the National Chamber of Advocacy of Albania with the assistance of a national pool of qualified experts trained by the Council of Europe.

The seminars highlighted the ECHR substantive provisions and their domestic application in civil and criminal proceeding as well as the relevant standard-setting case-law of the European Convention of Human Rights.

Ohrid, "the former Yugoslav Republic of Macedonia", 22-23 September and 2-3 October

Two thematic seminars for judges and prosecutors on selected articles of ECHR

The seminars were organised in co-operation with the Academy for training of Judges and Prosecutors with the assistance of a national pool of qualified experts trained by the Council of Europe. The seminars highlighted the ECHR substantive provisions and their domestic application, the case-law of the European Court of Human Rights as well as the relevant standard-setting case-law of the European Convention of Human Rights.

Tirana, Albania, 23-24 October

Training of trainers for judges and prosecutors

Within the framework of the Joint Programme between the European Union and the Council of Europe "Support to the sustainability of the School of Magistrates of Albania", a two-day training session took place on 23 and 24 October 2008 at the School of Magistrates of Albania for the benefit of trainers of judges and prosecutors. The main topics of the training were as follows: magistrate trainer specifics; framing the curricula; training by objectives; trainer-centered versus student-centered approach. The training methods used were mostly brainstorming, group work and interactive presentations.

Training and awareness-raising activities in the field of media

Azerbaijan, Masally, 2-3 July
Guba, 12-13 July
Novkhani, 23-24 August
Novkhani, 30-31 August

Training seminars for the written and broadcasting press on the professional coverage of election campaigns

During four training seminars, media professionals working for the written press and in broadcasting received practical advice on how to implement Council of Europe standards on fair, balanced and impartial coverage of election campaigns. The seminars were organised as part of the Action Plan for Council of Europe support to free and fair presidential elections in Azerbaijan on 15 October 2008. The seminars aimed to raise awareness amongst journalists on the professional coverage of election campaigns and to elaborate measures to achieve this aim. Approximately 80 journalists from Baku and other regions were trained.

Conference on media diversity in Armenia

Yerevan, Armenia, 7 July

Following Resolutions 1609 (2008) and 1620 (2008) of the Parliamentary Assembly of the Council of Europe (PACE) and the judgment of the ECtHR in *Meltex v. Armenia* (2008), this conference was organised to discuss the state of media pluralism in Armenia. Representatives from the national authorities, civil society and the media discussed steps that should be taken by the Armenian authorities before the 2009 PACE in order to improve media pluralism, as demanded in PACE Resolution 1609(2008).

Television debate on the professional media coverage of election campaigns

Baku, Azerbaijan, 28 July

This television debate was organised as part of the Action Plan for Council of Europe support to free and fair presidential elections in Azerbaijan on 15 October 2008. During the debate, the role and responsibilities of the media during elections were explored. The aim of the debate was to raise awareness amongst media professionals and the general public on the quality of media coverage in the run-up to elections, to critically assess this coverage and consider ways of improving coverage. The programme also made reference and gave visibility to the media monitoring carried out in the framework of the project.

Training course on online journalism

Baku, Azerbaijan, 4-22 August

The Council of Europe organised a three-week training seminar on web journalism in Baku, Azerbaijan, together with the local NGO Institute for Reporters' Freedom and Safety. During the first two weeks of the training, the 18 participants received basic training in journalism skills and creating online content. In the final week of training, the participants refined their technical skills and obtained the necessary skills for creating independent online news and blogs. Many of the participants said that they wanted to use the skills learned during the training to start their own news blogs and webpages.

Conference on the role of the media in a democratic society

Baku, Azerbaijan, 26 August

This activity was added to the Action Plan for Council of Europe support to free and fair presidential elections in Azerbaijan on 15 October 2008. During the conference, representatives from the Azeri Parliament, the Central Elections Commission, the media and international experts discussed the responsibilities of the media in a democracy, especially during election campaigns and asked whether the media in Azerbaijan were doing enough to provide the information that citizens needed to vote in elections.

Seminar on defamation for judges

Sarajevo, Bosnia and Herzegovina, 11-12 September

The general purpose of the seminar was to discuss with judges the European standards in the field of defamation and media freedom in general, in order to reduce the number of compensations for the printed media based on the Defamation Laws in Bosnia and Herzegovina. The participants were very happy with the seminar, especially with the concrete examples from the European Court of Human Rights and the examples from the Bosnia and Herzegovina court practice. They agreed that this kind of seminar should be organised with the participation of journalists. The next seminar on the same topics and with the participation of journalists will be organised on 20 and 21 November, as suggested by participants.

Seminar on Ethics in the Audiovisual sector

Chisinau, Moldova, 23-24 September

The Council of Europe, in association with the Association of Electronic Press (APEL), hosted a two-day seminar on national and European ethical standards in broadcasting in Chisinau, that brought together key stakeholders, including media practitioners from public and private broadcasters, representatives of the press, the Moldovan audiovisual regulatory body (CCA) and the civil society. The core areas of debate focused on the need for ethics in broadcasting and, specifically, to what degree self-regulation could serve public interest in both protecting the consumer and providing fair and balanced information; and whether such influential media as broadcasting could be effectively regulated by the licensing authority and the Co-ordinating Council of the Audiovisual (CCA). Trust and respect were identified as key principles that all broadcasting companies should apply in order to serve the information needs of society. Conference delegates were very supportive of the principles of consumer protection but expressed concern that resources both within the regulatory au-

thority and the broadcasters did not facilitate the consistent application of the agreed norms.

Chisinau, Moldova, 24-25 September

Seminar on Access to Information

The Seminar was organised as part of the 5th edition of the Right to Know Days in order to identify shortcomings and ways to improve the co-operation between the public administration, NGOs and the media in the field of access to information. The first part of the debate focused on the identification of the main challenges related to the implementation of access to information in Moldova. It was followed by an exchange of views on draft regulations on press office activities within public institutions, on press officer's duties and on journalists' accreditation. The seminar highlighted the lack of information on citizens' rights, including the right to access information and official documents and the need to educate officials to respect the law in that matter.

Tirana, Albania, 9-10 October

Round-table discussion on the "Harmonisation of the broadcasting legislation in Albania with European standards"

A round-table discussion on the "Harmonisation of the broadcasting legislation in Albania with European standards" took place on 9 and 10 October 2008 in Tirana. It was organised by the Council of Europe and the Delegation of the European Commission in Albania in partnership with the Parliament of Albania. Government officials, parliamentarians, regulators and media professionals discussed with a Council of Europe expert concrete issues to be regulated in the draft broadcasting law which is under preparation. The round-table discussion is part of the Action Plan agreed between the Albanian Parliament, the European Commission and the Council of Europe and is aimed at aligning the broadcasting legislation in Albania with European standards.

Belgrade, Serbia, 21 October

Round table on the Public Broadcasting Service and legislation reform in Serbia

The round table was organised in co-operation with the Media unit of the Ministry of Culture. Its aim was to inform the professional public about the European standards in the media field, more particularly regarding the public broadcasting service, to present some experiences from the region and to discuss the positive and negative sides of the proposed changes in the current legislation. The participants were media professionals, representatives of relevant ministries (Ministry of Culture, Ministry of telecommunications), national and regional public broadcasting service, media associations, etc. They agreed that there are some areas (i.e. digitalisation, financing, separation of broadcasting equipment) where the present law would need to be amended, which will be of a great assistance to the working group for reform of media laws, formed within the Ministry.

Training and awareness-raising activities in the field of prisons and police

Lipetsk, 7-18 July

Study visit to the Russian Federation

The study visit was organised for a delegation of prison staff from Bruchsal prison, Germany, within the context of a partnership programme with the Lipetsk region in the Russian Federation. The German prison delegation visited colonies and prisons in the Lipetsk region, focusing on recent developments and exchange of experiences between the delegation and the Russian prison staff.

Baku, 3-4 September

Meetings in Azerbaijan in the framework of the project "Support for Prison Reform in Azerbaijan 2008-2009"

An initial meeting to launch the project "Support for Prison Reform in Azerbaijan 2008-2009", financed by the Norwegian Government and implemented by the Council of Europe, took place in Baku on 3 September 2008. The initial meeting, targeting stakeholders from the Penitentiary Service, the Ministry of Justice and the Ministry of Health, aimed to introduce the project and its objectives to the national authorities and to present and discuss the project's Work Plan. On 4 September 2008 bilateral meetings to exchange views and information on the project and possible related fields of activities were held with delegations from the ICRC, OHCHR, EU, OSCE and the Ombudsman Office in Baku.

Study visit to Norway

Oslo, 8-2 September

Five prison professionals and policy makers from Bosnia and Herzegovina took part in the study visit organised within the context of the prison project "Professionalisation and Harmonisation of Prison Systems in Bosnia and Herzegovina". The delegation was *inter alia* introduced to the national practices of education and training programmes for operational prison staff and exchanged information on different forms of specialised training as well as in-service training for prison staff at all levels.

Study visit to Estonia

Estonia, 22-26 September

The aim of the study visit was for participants to become acquainted with the best practices of another European country in the field of prison management. It aimed to exchange experiences with a more developed prison service, in particular to get an insight into the organisation of the training component. The participants were six representatives of the Ministry of Justice of the Republic of Moldova headed by the Director General of the Department of Penitentiary Institutions.

Train the trainers session for judges and prosecutors

Belgrade, Serbia, 9-10 October

Following requests from Serbian Officials and the OSCE in March 2007, the Council of Europe undertook to develop training curriculum and to organise and deliver the training of trainers on alternative sanctions for judges and prosecutors in co-operation with the Judicial Training Centre. A working group consisting of judges, prosecutors and professors of law was created in July 2008. Work on a training curriculum for judges and prosecutors, which will be included in a regular training curricula, is still in progress. A group of judges and prosecutors from different regions of Serbia has been selected to be trained as trainers and a first training of trainers session was held on 9 and 10 October.

Training and awareness-raising activities on human rights for civil society representatives

Round table on "The legal profession as the watchdog for the European human rights' standards within the Albanian Legal System"

Vlora, Tirana, 2-3 July

The activity was organised within the framework of the Programme entitled "Training of Albanian Lawyers on the ECHR" funded by the voluntary contributions from the Governments of Norway and the United Kingdom and implemented by the Council of Europe in co-operation with the Albanian National Bar Association. The objectives were to raise awareness among lawyers, public bodies, service providers and project partners about the role of the legal profession as the watchdog for the European human rights' standards within a state, and their active involvement in the domestic legal system's reform process, the importance of the legal profession in civil society and the need for ongoing learning to comply with the ECtHR's standards for legal representation. Participating delegations from the Parliament, the government, the judiciary, the NGOs involved with legal representation, representatives from the National Bar Association and international experts stressed the importance of the legal profession in the civil society and the need for ongoing learning to comply with the ECtHR's standards for legal representation. The National Bar Association requested the authorities to take into consideration their suggestions on the draft laws, important for their functioning, such as the draft law on "legal professions", under preparation by the MoJ. Moreover, it stressed the urgency for the adoption of the law "on legal assistance". The activity was largely covered by the media.

Study visit for senior lawyers of the Ombudsperson Institution in Kosovo

The Hague and Rotterdam, the Netherlands, 3-4 July 2008

On the first day of the study visit, the participants visited the Office of the National Ombudsman of the Netherlands. They were received by the Ombudsman, Mr Alex Brenninkmeijer. Later, they met with the staff members of the Ombudsman's office who explained the role and organisation of the Dutch Ombudsman and the institution's methods of dealing with cases and investigating them. On 4 July, the lawyers participated in a Ph.D. Research Seminar at the Erasmus University of Rotterdam. In the morning, they made presentations on the practice of human rights protection in Kosovo. The afternoon session was devoted to presentations and discussions on

the European Court's decision in *Behrami v. France* case, its implications and consequences.

Strasbourg, 10-11 September

Study visit addressed to civil society

A delegation from the Helsinki Foundation Warsaw, made up of lawyers and Human Rights defenders of ten different nationalities, including non-Council of Europe member states, visited the Council of Europe with a view to strengthening their knowledge in the Council of Europe's work in the field of human rights. Through different meetings with judges of the ECtHR and Council of Europe officials, the participants were provided with valuable information on the basic principles of the European Court of Human Rights, the role and the execution of its case-law as well as issues related to the protection of national minorities and the Commissioner for Human Rights.

Budapest, Hungary, 30 September - 3 October 2008

Study visit to the Government Agent Office of Hungary by three members of the Government Agent Office of Armenia and two members of the Government Agent Office of Azerbaijan

The study visit was organised with a view to developing and strengthening procedures and mechanisms for the effective protection of human rights at national level. The three-day study visit was split into two main parts in accordance with the aim of the study visit:

- the theoretical perspective. This was aimed at finding out about the internal structure competencies and sharing peer to peer experiences of the Government Agent Office of Hungary;
- the practical perspective. The spotlight of this part was placed on different external visits as part of the current activities of the Government Agent Office of Hungary (a visit to the Supreme Court of the Republic of Hungary, a visit to the Human Rights Parliamentary Commission and Hungarian Ombudsman and a visit to an International NGO active with the ECHR proceedings).

Both approaches aimed at strengthening the capacity building of the Government Agent Offices respectively of Armenia and Azerbaijan with the view to better representing the cases before the ECHR and to prevent future findings of violations by the ECHR through strengthening the human rights protection at domestic level.

Pezinok and Bratislava, Slovakia, 6-10 October

Study visit for the lecturing staff of the National Institute of Justice of the Republic of Moldova

As many as 11 members of the lecturing staff of the NIJ took part in this visit organised jointly with the Slovak Judicial Academy. During the visit, the members of the Moldovan delegation received tailor-made training sessions targeted *inter alia* at highlighting the strategic partnership and technical co-operation between the academy and the other stakeholders in the field. These were delivered by representatives of other Slovak judicial institutions such as the Ministry of Justice, the Courts, the General Prosecutor's Office and others. Sufficient time for an open exchange of information between participants was granted and discussions focused on topics such as the legal framework to regulate the activity of the Slovak Judicial Academy, its structure, composition and organisation of work, methodology of training, planning of training activities, development and use of training material, as well as the role of the Ministry of Justice within the judicial education of judges and court clerks and others.

Madrid, Spain, 14-17 October

Study visit of two senior lawyers from the Ombudsman Office in Georgia, in Armenia and in Azerbaijan to a member state

The study visit was organised as part of the EU/Council of Europe Joint Programme entitled "Fostering a Culture of Human Rights" for two senior lawyers from the Ombudsman Office in Georgia, Armenia and Azerbaijan to the Spanish Ombudsman Office, with a view to developing and strengthening procedures and mechanisms for the effective protection of human rights at national level. During the four-day study visit, the participants identified, on the one hand, good practices as regards the use of European human rights standards and, on the other, learned about and promoted the establishment of national human right structures.

Kiev, Ukraine, 15-16 October

Seminar on international and European standards and the case-law of the ECtHR concerning refugee protection, extradition and expulsion

The seminar involved participants from Ukrainian authorities at both regional and national level and from a range of institutions involved in law enforcement, border management, legislative developments and asylum, in addition to international organisations and NGOs. The agenda was drafted by the Ministry of Justice of Ukraine and the United Nations High Commissioner for Refugees and reviewed by the Office of the Prosecutor General and the Council of Europe prior to the event. The event was co-funded by the Council of Europe and the UNHCR. The participants commented generally on the current legislation and practice and referred to their own wide range of experiences in order to highlight how Ukraine worked in line with international standards, in addition to highlighting certain shortcomings in the current approach. This was particularly so within the asylum authorities, among decision-makers in extradition cases, international organisations and NGOs. It was agreed that interested parties should meet more frequently to identify and take forward recommendations to address some of these shortcomings. The Council of Europe presented safeguards for the protection of refugees and asylum-seekers based upon the ECHR. While the ECHR was not designed to specifically address the situation of refugees, it has been used successfully to protect their rights. The Council of Europe highlighted Articles 3, 5 and 6 of the ECHR, as well as Rule 39 of the Court Procedures, and mentioned that a number of applications against Ukraine were pending and should be decided soon by the Court. The Ministry of Justice reminded participants of the Law on International Treaties, which provides that treaties ratified by Ukraine are considered to be part of and applied as national law.

Chisinau, Moldova, 31 October

Round table on the presentation and discussion of the in-depth study on the functioning of the Moldovan Judicial System

The round table was convened to present the main findings of the studies and discuss its outcome with Moldovan counterparts. The round table was used as a platform for discussing the main findings of the study and to clarify open questions with regard to the actual situation within the different areas of the judiciary. Participants also used the event to express their first reactions to the findings of the study and took the opportunity of having an extensive exchange of information with the expert. The additional information on the situation of judicial branches in other member states will especially enable Moldovan counterparts to see their own system in a different light and to consider new approaches for improvement. It was agreed that Moldovan partners would submit their written comments to the findings of the study to the JP by 20 November, so that the Council of Europe expert could take these into consideration when completing, updating and amending the current draft. The study should then be used as an instrument for developing concrete steps in each judiciary-related field in order to steer the changes towards a more transparent, efficient and independent system. The design of concrete actions regarding the development of judiciary-related professions, such as judges, prosecutors, lawyers, bailiffs and court clerks will benefit from such a paper to the same extent as actions targeted to further improve the legal framework of the judiciary and its implementation.

Internet: http://www.Council of Europe.int/awareness/

Legal co-operation

European Committee on Legal Co-operation (CDCJ)

Set up under the direct authority of the Committee of Ministers, the European Committee on Legal Co-operation (CDCJ) 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.

Work on Children's rights

Stockholm, 8 September 2008

Seminar: "Towards European guidelines on child-friendly justice: Identifying core principles and sharing examples of good practice"

The seminar entitled "Towards European guidelines on child-friendly justice: Identifying core principles and sharing examples of good practice" was co-organised with the Swedish Ministry of Justice on 8 September 2008 in Stockholm. This event took place on the first day of the high-level Conference "Building a Europe for and with Children – Towards a strategy for 2009-2011", organised in co-operation with the Swedish chairmanship of the Council of Europe's Committee of Ministers. It gathered various stakeholders and key actors in the field, including eminent scientific and academic experts, representatives from governments, international organisations and institutions, NGOs and professional networks, local authorities, parliamentarians, ombudspersons for children, judges and children's advocates as well as young people.

The seminar gave impetus and momentum to the work of the Council of Europe which, further to Resolution No. 2 on child-friendly justice adopted at the 28th Conference of the European Ministers of Justice (Lanzarote, October 2007), is currently preparing European guidelines meant to assist the governments, in a very concrete manner, in making their legal systems more adapted to children's needs. The seminar focused on the civil and administrative law systems, as well as the criminal law system. The role of children as perpetrators, children in conflict with the law, witnesses, and victims of crime were also discussed. Overall, important and valuable material was provided for the Group of Specialists of the Council of Europe which will be entrusted with the task of drafting comprehensive European guidelines on child-friendly justice in 2009.

Work on Incapable Adults

The Council of Europe has continued its work on the Committee of Ministers' Draft Recommendation on continuing powers of attorney and advance directives for incapacity. The Working Party in charge of its drafting agreed that the draft recommendation should mainly focus on two methods of self-determination, i.e. continuing powers of attorney and advanced directives. In the interests of transparency and information-sharing, the draft recommendation and the draft explanatory report were made available on the Council of Europe website for consultation by the general public on 12 June 2008, and a letter was sent to different stakeholders, indicating the working nature of this document, requesting their comments. Indeed, a number of comments have arrived from the members states from observers, the most active NGOs in this area and Council of Europe bodies, and these were duly taken into account by the Working Party during its September meeting.

The next meeting (the final one) will take place from 3 to 5 December 2008.

Lille Conference: "International Protection of Vulnerable Adults"

Lille, 16-17 September 2008

In addition, the Council of Europe actively participated at the Lille Conference on 16 and 17 September 2008, entitled "International Protection of Vulnerable Adults" organised by the French Presidency of the European Union. The main objective of this conference was to promote the ratification of the Hague 2000 Convention on International Protection of Adults. Having been ratified by France, the Convention gathered three ratifications and will enter into force on 1 January 2009.

The Council of Europe's Director Mr Jan Kleijssen presented some of the multi-faceted activities of the Council of Europe in this area, and elaborated on possibilities of co-operation between the different international organisations active in this field, in particular, the Council of Europe, European Union and the Hague Conference on International Private Law. The Chairs of the two Council of Europe Working Groups on Recommendation of the Committee of Ministers No. R (99) 4 on principles concerning the legal protection of incapable adults and the new Recommendation on continuing powers of attorney and advance directives for incapacity, Mr Svend Danielsen and Mr Kees Blankman, presented the activities of their respective working groups.

Lastly, the Conference proved to be an excellent opportunity to raise awareness on the various Council of Europe activities in this field.

Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/

Venice Commission

The European Commission for Democracy through Law, or Venice Commission, is the Council of Europe's advisory body on constitutional matters. Its work aims to uphold the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law – fundamental tenets of the Council of Europe.

Democratic institutions and human rights

Blasphemy, religious insult and incitement to religious hatred

Opinion No. 406/2006
CDL-AD(2008)026
CDL-AD(2008)026 add and add2

On 17 and 18 October 2008 the Venice Commission adopted its report on "The relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred". The Commission has researched the domestic legislation of the 47 members of the Council of Europe in relation to the offences of blasphemy, religious insult and incitement to religious hatred. In the report the Commission underlines that mutual understanding and acceptance is perhaps the main challenge of modern societies. Diversity is undoubtedly an asset; but cohabiting with people of different backgrounds and ideas calls for a new ethic of responsible intercultural relations, in Europe and in the world. Unlike blasphemy, incitement to hatred must be criminalised and prosecuted, with no unjustified difference being made between different groups. Democratic societies must not become hostage of the excessive sensitivities of certain individuals: it must be possible to criticise religious ideas even if such criticism may be perceived by some as hurting their religious feelings. Fear of violent reactions should not dictate self-censorship. But reasonable self-restraint should be used if constructive debate is to replace dialogues of the deaf.

The Venice Commission has prepared a publication on "Tackling blasphemy, insult and hatred in a democratic society" which contains, in addition to the above report and annexes, the reports which were presented at the International Round table on "Art and sacred beliefs: from Collission to Co-existence" (Athens, 31 January - 1 February 2008) and ECRI General Policy Recommendation No. 7 on National Legislation to combat Racism and Racial Discrimination. This publication is available at the Secretariat of the Venice Commission.

Amicus curiae briefs

The Venice Commission further adopted two *amicus curiae* briefs in proceedings pending before the European Court of Human Rights (*Bjelic v. Monteengro and Serbia* and *Sejidic and Finci v. Bosnia and Herzegovina*).

Bjelic v. Monteengro and Serbia

Opinion No. 495/2008
CDL-AD(2008)021

The first case relates to a fundamental problem in the constitutional structure of Bosnia and Herzegovina, directly stemming from the constitution: the exclusion of the category of "the others" (those who do not belong to the three constituent peoples: Serbs, Croats and Bosniacs) from the elections to the Presidency and to the House of Peoples of BH. The Commission concluded that the exclusion of the "others" from elections to both the Presidency and

the House of Peoples violated the European Convention on Human Rights and in particular Protocol Nos. 1 and 12.

Sejidic and Finci v. Bosnia and Herzegovina

Opinion No. 483/2008
CDL-AD(2008)027

The second case raises two main issues: the succession of Serbia and Montenegro to the treaty obligations of the former State Union of Serbia and Montenegro, and the liability of a successor state for the wrongful acts of its predecessor. The Commission considered that it would be unreasonable to hold Serbia responsible for human rights violations allegedly committed by the courts of the Republic of Montenegro in the period between 3 March 2004 (date of the entry into force of the European Convention on Human Rights in respect of the State Union of Serbia and Montenegro) and 6 June 2006 (date as of which the independent State of Montenegro was a party to the ECHR).

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

European human rights institutes

Through their research and teaching activities, the institutes play an important part in the development of human rights awareness.

The following, non-exhaustive, list gives an outline of the resources of various human rights institutes and their activities in 2008. The information, provided by the institutes, is presented in the language in which it was drafted.

Austria/Autriche

Internationales Forschungszentrum für Grundfragen der Wissenschaften

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Website: http://www.menschenrechte.ac.at/

Publications

- *Newsletter Menschenrechte*. A publication in German which is published six times a year, giving precise and timely information about recent decisions of the European Court of Human Rights, the European Court of Justice, the UN Human Rights Committee and the Austrian supreme instances.
- Karl, Wolfram/Berka, Walter (ed.), *Medienfreiheit, Medienmacht und Persönlichkeitsschutz* (Freedom of media, media power and protection of personality), Vol. 10 of Schriften des Österreichischen Instituts für Menschenrechte (miscellanies of the Austrian Human Rights Institute). The publication comprises the lectures and discussions held on 14 and 15 June 2007 on occasion of an international symposium run in memorial of the Institute's 20th anniversary (1987 – 2007).
- Karl, Wolfram/Schöpfer, Eduard Christian (ed.), "The jurisprudence of Austrian courts in respect of the European Convention on Human Rights in 2007", *Zeitschrift für Öffentliches Recht*, vol. 63/2008.
- Loos, Thomas/Zlatojevic, Ljiljana/Czech, Philip (ed.), *Österreichisches und Europäisches Fremdenrecht* (Austrian and European Aliens Law) (script).

Events

On 12 December 2008 the Institute ran, together with the Austrian Institute for European legal policy, a symposium under the title "Direkte Demokratie in der Europäischen Union" (Direct democracy within the European Union) to commemorate the Human Rights Day (10 December).

Projects

Since 2008 the Institute has participated in a project run upon initiative of the Austrian Association of Judges. Its aim is to improve and consolidate the knowledge of forthcoming judges of the rights guaranteed by the European Convention on Human Rights. To this end, members of the Institute elaborated a script about *Fundamental rights in a judge's daily work* and participated in a pilot project aimed at finding out which course should be followed to guarantee a thorough training and

education. Two seminars have already been held in April and November 2008, respectively. Beginning in 2009, the Institute will report on actual developments in the case-law of the European Court of Human Rights, to be published in a newly founded *European Yearbook on Human Rights*.

Documentation

The Institute's homepage provides visitors with a free, accessible archive, comprising all the volumes of the *Newsletter* (containing Strasbourg case-law in abridged form, starting from 1992) as well as the titles of its library. Potential complainants have also access to useful information on how to bring complaints before the European Court of Human Rights. The Institute makes Strasbourg Court decisions available to the public in the form of a comprehensive database of Austrian laws and court decisions (Rechtsinformationssystem des Bundes – RIS).

Library

The library's collection of volumes in the field of human and fundamental rights currently comprises more than 2 000 titles and 27 periodic journals.

Legal advice

The Institute is a platform for anyone who seeks legal advice concerning alleged violations of his/her human rights, especially of those guaranteed by the European Convention on Human Rights. The service is free of charge.

National correspondent

In February 2008 the Institute was informed of the discontinuation of the national-correspondents-reporting scheme in its current form. As regrettable as that may be, the Institute will go on collecting information on the development of human rights in Austria (jurisprudence, laws, bibliography) and making it available to the interested public in one way or another.

European training and research centre for human rights and democracy (ETC)

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Internet: www.etc-graz.at

The ETC was set up as a non-profit association and started its work in October 1999. Its premises in Graz were opened on the occasion of the Human Rights Day on 10 December 2000. Its main aim is to conduct research and training programmes in the fields of human rights, democracy and the rule of law in close co-operation with the University of Graz. Special emphasis is placed on training programmes for civil servants, the police, army, as well as for members of international organisations and NGOs in Austria and abroad. New innovative teaching methods are applied in "train the trainers programs". Simultaneously, basic research is conducted with main research focuses on South Eastern Europe and anti-discrimination.

Recent publications

Internet Governance and the Information Society. In this book, experts discuss global perspectives and European dimensions of the Internet Governance.

Occasional papers Nos. 20 and 21: "Thematic Legal Study on Homophobia" and "Discrimination on Grounds of Sexual Orientation" (Slovakia and Hungary). Edited by VIA IURIS Attorneys at Law and the ETC, in the framework of the EU Fundamental Rights Agency FRALEX Network, commissioned by FRA. Available online at the ETC homepage (www.etc-graz.at).

Intersectional discrimination. Collection of good practices and recommendations in the field of intersectional discrimination focusing on gender, age, disability, migration, sexual orientation and social standing.

1st human rights report of the city of Graz. The ETC together with the human rights advisory board published the first human rights report of the city of Graz. The report contains the years 2001-2007 with three focuses: poverty, Islamophobia and racism. Available online at the ETC homepage.

Manual. The 2nd edition of the human rights manual in German is now available on the ETC

homepage. It contains an introduction and 13 modules on different human rights as well as selected activities, additional references and teaching methodology. From 7 January 2009 the manual will also be available in a printed version.

Occasional paper No. 22: "Promotion of Migrants in Science Education: Austrian, German, Bosnian and Turkish Perspectives". Edited by Tanja Tajmel, Zalkida Hadzibegovic, Munire Erden, Seval Fer and Klaus Starl. Available online at the ETC homepage.

Science Education Unlimited. In the context of the Promise project (2005-2007) a book with the focus on "Approaches to equal opportunity in learning science" will be published at the beginning of 2009. Edited by Tanja Tajmel and Klaus Starl.

European Yearbook an HR 2008. The ETC will contribute an article for the *European Yearbook an HR 2008* with the working title "EU policies on Racism, Xenophobia and Islamophobia".

Professional training

Intercultural training

The ETC currently has a focus on interculturality. So, different trainings and seminars are held on this topic, for health care providers (Muslims in hospitals), prison staff (Interculturality and gender), and local administration (Strategies against racist paroles) among others.

Police training

Every year the ETC holds seminars on the topic of "State and Human Rights" for police officers from all over Austria. The focus of this training is the practice of human rights protection within the Security Authority.

Teacher training

The focus of the teacher training held by the ETC is on the Internet, the Right to Food, and an introduction to human rights education based on the manual.

Offers for general public

Lecture Series "Understanding Human Rights"

Every year the Institute for International Law and International Relations at the University of Graz and the ETC co-organise a lecture series (with ECTS credits) on "Understanding Human Rights" open to students of all faculties and all other interested people, which is based on the ETC's manual "Understanding Human Rights".

Student Workshops

The ETC holds workshops in schools on the topics "right-wing extremism" and "basic rules of democracy".

Certificate course

The 2nd part of the certificate course "Introduction to Human Rights Education based on the manual 'Understanding Human Rights'" (with ECTS credits) will be held in February 2009. The focus is on the practical testing of self-elaborated activities and teaching units. The university course is open to all students.

Public lectures, workshops and panel discussions

These will be on different topics such as '*Homophobia and equal opportunities in the EU*' and will be held by the ETC in January 2009.

Other activities

Library

The library is open to the public every day from 9 to 12 and contains over 2 000 publications on human rights, human rights education, human security, democracy and anti-discrimination.

ETC Summer Academy

The ETC organises an annual summer academy, with a different focus each year. This year's academy from 20 to 30 July 2008 focused on the impact of transnational terrorist and criminal organisations on the peace-building process in the Western Balkan region.

Film project

At the beginning of 2009 the ETC will produce a short film about everyday racism on the basis of a real discrimination case. Pupils from a school in Graz will be the main actors and actresses.

Belgium/Belgique

Institut Magna Carta

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Spin-off universitaire, l'Institut Magna Carta est un réseau académique d'experts et un institut de recherche indépendant et transdisciplinaire spécialisé en droit international et en droits de l'homme *sensu lato*.

Ressources principales

Recherche

L'Institut Magna Carta mène et coordonne des programmes de recherche d'envergure internationale. Ces programmes, financés par les pouvoirs publics ou par des entités privées, portent sur des questions relatives au droit international ou aux droits de l'Homme. L'Institut Magna Carta s'engage tant dans des recherches fondamentales qu'appliquées et veille à diffuser largement les résultats obtenus. L'Institut Magna Carta assure la coordination et la réalisation des programmes de recherche en s'appuyant sur ses chercheurs et sur un large réseau d'experts, composé tant de chercheurs et professeurs universitaires que de praticiens expérimentés.

Formation

L'Institut Magna Carta organise des sessions de formation sur le droit international et les droits de l'homme ainsi que sur toutes questions ou problématiques connexes. Ces formations sont généralement mises en place spécifiquement pour répondre à une demande concrète formulée par une administration, une entité privée, une université, des praticiens ou encore par des particuliers. L'Institut Magna Carta dirige le programme scientifique, organise les sessions de formation et sélectionne les meilleurs experts et spécialistes compétents.

Expertise, conseils et consultance

L'Institut Magna Carta met à la disposition des administrations, des entités privées, des praticiens ou de toutes autres institutions, ses services d'expertise. Soucieuse d'assurer un service professionnel de qualité en droit international ou dans le domaine des droits de l'Homme, l'Institut Magna Carta s'appuie sur ses chercheurs et son réseau d'experts universitaires.

Parallèlement aux activités d'expertise adressées essentiellement aux institutions, l'Institut Magna Carta offre également un service de conseils juridiques en matière de droit international et de droits de l'homme destiné aux praticiens, et plus précisément aux organisations non gouvernementales et aux cabinets d'avocats. Ce service doit permettre aux praticiens de sous-traiter la résolution de questions techniques liées au droit international ou aux droits de l'homme pour lesquelles ils n'ont ni les ressources ni l'expertise exigées.

Programmes

L'Institut Magna Carta mène, seul ou en collaboration, des programmes de recherche et de formation relatifs au droit international, aux droits de l'Homme ou à toute autre thématique connexe. En particulier, l'Institut s'est vu confier un projet de recherche international sur la lutte globale contre le terrorisme dans une perspective transatlantique (financé par l'Union Européenne, en partenariat avec la NYU, l'université de Vienne, Paris I et UNODC (United Nations Office on Drugs and Crime)), mène des recherches en droit international humanitaire (financé par le 7e programme cadre de l'UE, en partenariat avec Paris I – Panthéon Sorbonne, le Collège de France, le British Institute of International and Comparative Law, etc.), sur la théorie du droit international public et l'histoire du droit international (financé par la Loterie Nationale et communauté française de Belgique), sur la promotion scientifique des droits de l'Homme en Amérique latine, ou encore sur la responsabilité sociale des entreprises en Europe, mais aussi dans les pays BRIC (Brésil, Russie, Inde, Chine). D'autre part, l'Institut organise des programmes de formation à destination de praticiens, magistrats ou avocats, fonctionnaires ou entrepreneurs, sur divers thèmes comprenant entre autre la responsabilité sociale des entreprises, la lutte contre le terrorisme, la protection des droits de l'Homme, le droit international et a notamment organisé des sessions de formation à des-

tination de hauts magistrats algériens et marocains (en collaboration avec l'International Legal Assistance Consortium et UNODC).

Publications

Soucieux de promouvoir l'excellence scientifique en droit international et droit des droits de l'Homme, l'Institut assure et encourage les publications scientifiques relatives à ces matières, que ce soit dans le cadre de programmes de formation ou de recherche. Ci-dessous, les ouvrages avec la participation des membres de l'Institut Magna Carta :

- *Penser la guerre juste d'hier à aujourd'hui*
  Editions Bruylant, coll. « Penser le droit » – no 11, Bruxelles, 2009, sous la direction de Thomas Berns et Gregory Lewkowicz ;
- *Juger le terrorisme dans l'Etat de droit*
  Editions Bruylant, coll. « Magna Carta » – n° 1, Bruxelles, 2009, sous la direction de Ludovic Hennebel et Damien Vandermeersch ;
- *Juger les droits de l'homme : Europe et Etats-Unis face à face*
  Editions Bruylant, coll. « Penser le Droit » – n° 10, Bruxelles, 2008, de Ludovic Hennebel, Gregory Lewkowicz et al. ;
- *La jurisprudence du Comité des droits de l'homme des Nations Unies: Le Pacte international relatif aux droits civils et politiques et son mécanisme de protection individuelle*
  Editions Nemesis/Bruylant, coll. « Droit et Justice » – n° 77, Bruxelles, 2007, Ludovic Hennebel ;
- *La Convention américaine des droits de l'homme : Mécanismes de protection et étendue des droits et libertés*
  Editions Bruylant, coll. « Publications de l'Institut international des droits de l'homme », Bruxelles, 2007, Ludovic Hennebel ;
- *Responsabilités des entreprises et corégulation*
  Editions Bruylant, coll. « Penser le Droit », Bruxelles, 2007, de Thomas Berns, Pierre-François Docquir, Benoît Frydman, Ludovic Hennebel, Gregory Lewkowicz ;
- *Armes légères : Syndrome d'un monde en crise*
  Editions L'Harmattan, coll. « Questions Contemporaines », Paris, 2006, de Lazare Beullac, Jörg Krempel, Gaspard Metzger, Karim Sader, Adeline Taravella, Romain Thaury ;
- *Classer les droits de l'homme*
  Editions Bruylant, coll. « Penser le Droit », Bruxelles, 2004, sous la direction de Emmanuelle Bribosia et Ludovic Hennebel.

Finland/Finlande

The Erik Castrén Institute of International Law and Human Rights

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The Erik Castrén Institute of International Law and Human Rights was established in 1998 within the confines of the Faculty of Law at the University of Helsinki in order to provide a centre for research and study in its field of activities. The institute was named after Professor Erik Castrén, a former professor of international law at the University of Helsinki and former member of the International Law Commission. Today, the Director of the Institute is Professor Martti Koskenniemi and the Deputy Director is Professor Jan Klabbers.

Staff of the Erik Castrén Institute

Main Services

In the course of its ten years, the Erik Castrén Institute has completed several projects of consultant research, many of which have been commissioned by its long-term partner the Finnish Ministry of Foreign Affairs. Currently, there are several on-going research projects commissioned by the institute for doctoral and post-doctoral candidates. Reports of each completed project are published in the institute's own Research Reports series. In addition, in the year 2000, the institute launched the Erik Castrén Institute Studies in International Law, published by Martinus Nijhoff.

Several seminars and workshops are organised by the institute every year, many of which are in co-operation with the Ministry of Foreign Affairs. The institute also co-operates with, inter alia, the University of Helsinki, the Ministry of Education, the Academy of Finland, the Finnish International Studies Association, the ius Gentium Association, the Institute for Human Rights at Åbo Akademi, the Finnish Red Cross, and other international and national human rights organisations.

Recent publications

Copies of the Erik Castrén Institute's Research Reports series can be purchased from the institute's website (see above). The most recent publications (2008) are:

- *The Politics of Responsibility to Protect: Problems and Prospects* by Pekka Niemelä, and
- *Legal Implications of NATO Membership: Focus on Finland and Five Allied States* by Juha Rainne.

Forthcoming Seminars

The institute organises an annual two-week "Helsinki Summer Seminar" on contemporary international law in conjunction with the Faculty of Law at the University of Helsinki. Speakers are of high international standard and participants come from all over the world.

The 22nd Summer Seminar will be held from 17 to 28 August 2009 and its topic will be "Linking State Responsibility and International Criminal Law". The purpose is to provide a platform for discussions on recent developments regarding issues of responsibility and their interconnections.

More information on the seminar and more can be found at: www.helsinki.fi/eci/.

Institute for Human Rights

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Main services for the public

These include:

- Human rights library
- Depository library for the Council of Europe
- United Nations depository library
- Bibliographic reference database for human rights literature (FINDOC)
- Database for Finnish case-law pertaining to human rights (DOMBASE)

Recent publications

Yksilön oikeusasema Euroopan unionissa – Individens rättsställning inom Europeiska unionen, by Heidi Kaila, Elina Pirjatanniemi and Markku Suksi (eds.) (ISBN: 978–952–12–2051–7. 770 pp). This volume, written in Finnish and Swedish and pertaining to the fundamental rights of an individual within the European Union, was published in May 2008 to honour Dr Allan Rosas, Judge at the Court of Justice of the European Communities and former Director of the Institute for Human Rights at Åbo Akademi University, on his 60th anniversary.

Main activities in 2008

Master's Degree Programme in International Human Rights Law: a two-year programme, open for applicants holding a law degree or another bachelor's degree with subjects relevant to the legal protection of human rights.

Advanced Course on the International Protection of Human Rights, 18–29 August 2008: an intensive course for post-graduate students and practitioners with a good knowledge of human rights law.

Intensive Course on Justiciability of Economic, Social and Cultural Rights: Theory and Practice, 10–14 November 2008: a course for post-graduate students, practicioners and policy-makers. Arranged in co-operation with the Chair in Human Rights Law, Department of

Public Law, Stellenbosch University (South Africa) and the Norwegian Centre for Human Rights.

Dr Elina Pirjatanniemi was appointed Acting Professor of Constitutional and International Law (2008–2009) and Director of the Institute for Human Rights as from September 2008.

Dr Louise Arbour, UN High Commissioner for Human Rights was awarded a honorary doctorate of Åbo Akademi University in May 2008, and on that occasion she also visited the Institute for Human Rights and met with staff, researchers and students.

Forthcoming courses and seminars

Master's Degree Programme in International Human Rights Law, Autumn 2009 – Spring 2011, application deadline 27 February 2009.

Advanced Course on the International Protection of Human Rights, 17–28 August 2009, application deadline 20 April 2009.

France

Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH)

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Site internet : http://www.crdh.fr/

Créé en 1995 par les doyens Mario Bettati et Gérard Cohen-Jonathan, le Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH) est dirigé depuis 2003 par le professeur Emmanuel Decaux, responsable du Master 2 de droits de l'homme et droit humanitaire de l'Université Paris II. Le CRDH est l'une des composantes du Pôle international et européen de Paris II (PIEP), mis en place en 2004. Le CRDH, dont les activités propres prolongent les enseignements du Master 2 droits de l'homme et droit humanitaire, sert de support à la recherche individuelle – une quarantaine d'étudiants y préparent leur thèse de doctorat – et à la recherche collective, à travers l'organisation de colloques et de journées d'étude, la participation à des programmes ou réseaux d'échanges et l'animation de chantiers scientifiques. Le CRDH assure aussi la publication d'une revue électronique *Droits fondamentaux*, avec le soutien de l'Agence universitaire de la Francophonie (AUF) : www.droits-fondamentaux.org, ainsi que l'animation d'un site internet concernant ses activités et celles de ses institutions partenaires : www.crdh.fr.

Colloques internationaux

Le CRDH a organisé dernièrement plusieurs colloques internationaux.

- Les Actes du deuxième colloque organisé conjointement avec le Centre Thucydide de Paris II, sous les auspices du ministère des affaires étrangères, *L'OSCE, trente ans après l'Acte de Helsinki, Sécurité coopérative et dimension humaine*, sous la direction d'Emmanuel Decaux et de Serge Sur, viennent de paraître chez Pedone en 2008, coll. FMDH, no 13).
- Les Actes du troisième colloque organisé en mai 2008, *La pauvreté, un défi pour les droits de l'homme*, avec la Fondation Marangopoulos pour les droits de l'homme doivent paraître, chez Pedone au printemps 2009.
- En octobre 2009 un quatrième colloque international sera organisé par le CRDH avec l'OIF et le Bureau international catholique de l'enfance (BICE), à l'occasion du 20e anniversaire de la Convention internationale des droits de l'enfant.

Le 60e anniversaire de la Déclaration universelle des droits de l'homme

Le CRDH est étroitement associé aux manifestations marquant le *60e anniversaire de la Déclaration universelle des droits de l'homme*, avec notamment la publication d'un recueil préparé par Emmanuel Decaux avec une équipe de jeunes chercheurs, *Les grands textes internationaux des droits de l'homme*, La Documentation française, 2008. Il a participé à plusieurs événements publics :

- la soirée sur les droits de l'homme organisée le 4 décembre 2008 par les Editions Pedone, à l'occasion de la publication de plusieurs ouvrages récents dont la thèse de Claire Callejon sur *La réforme de la Commission*

des droits de l'homme des Nations Unies (Pedone, 2008) ;

– une table ronde organisée le 9 décembre 2008 avec le CERI (Sciences Po), au Trocadéro sur *la Convention sur le crime de génocide, 60 ans après*, avec Mario Bettati, Emmanuel Decaux, Rafaëlle Maison, Jacques Semelin et William Schabas.

Journées d'étude

Parallèlement, des journées d'étude sont régulièrement organisées, comme la journée d'étude tenue à Paris avec l'Institut en formation aux droits de l'homme du barreau de Paris sur *La tierce intervention devant la Cour européenne des droits de l'homme* (dir. E. Decaux et C. Pettiti), à paraître en 2008 (Bruylant, coll. « Droit et Justice »). On citera aussi *La responsabilité des entreprises multinationales en matière de droits de l'homme*, à paraître, Bruylant, 2009 ; *La Convention internationale pour la protection de toutes les personnes contre les disparitions forcées* ; à paraître, Bruylant, 2009.

Le CRDH lance de nouveaux chantiers scientifiques, avec la publication de commentaires collectifs portant sur les principaux traités internationaux relatifs aux droits de l'homme :

– un premier volume, consacré au *Pacte international relatif aux droits civils et politiques*, (dir. E. Decaux) paraîtra chez Economica en 2009.

– un second volume sera consacré au *Pacte international relatif aux droits économiques, sociaux et culturels* (dir. E. Decaux et O. de Schutter).

– Le CRDH et le Centre Thucydide pilotent également le projet de commentaire du *Statut de la Cour pénale internationale*, lancé par une équipe de jeunes chercheurs, à paraître en 2010 chez Pedone.

Les équipes du CRDH assurent une série de chroniques d'actualité, notamment la chronique annuelle de la jurisprudence de la Cour européenne des droits de l'homme, avec le CREDHO pour le *Journal du droit international* (Clunet), la chronique de l'Organisation pour la sécurité et la coopération en Europe dans l'*Annuaire de droit européen*.

Les réseaux internationaux

Le CRDH fait lui-même également partie de plusieurs réseaux internationaux, notamment le Réseau des instituts francophones et centres de recherche des droits de l'homme, de la démocratie et de la paix (RIF-DHDP) mis en place lors du Sommet de la francophonie à Beyrouth de 2002, dont il fut l'un des fondateurs.

– *Dans le cadre de l'Organisation internationale de la francophonie* (OIF), le CRDH a élaboré plusieurs séries de rapports pour la Délégation à paix, à la démocratie et aux droits de l'homme, portant sur *les engagements internationaux des Etats francophones en matière de droits de l'homme*, en 2004, 2006 et 2008, et sur *les instruments internationaux en matière de sécurité humaine*, en 2006 et 2008. Il prépare un « guide pratique » de l'examen périodique universel, qui sera mis en ligne par l'OIF en 2009.

– Dans le cadre de l'*Agence universitaire de la francophonie* (AUF), le CRDH a coopéré avec l'Université de Nantes pour la conception scientifique et l'encadrement pédagogique d'un diplôme d'enseignement à distance des *Droits fondamentaux* (DUDF). La revue électronique *Droits fondamentaux* est également née de cette coopération.

Concernant les réseaux européens, le CRDH est une des principales composantes du « groupe de Fribourg » sur les droits culturels, animé par le professeur Patrice Meyer-Bisch de l'Institut interdisciplinaire d'éthique et des droits de l'homme de l'Université de Fribourg (Suisse). Il a également activement participé au réseau universitaire euro-chinois sur les droits de l'homme, piloté par le professeur William Schabas directeur *l'Irish Centre for Human Rights* de Galway, projet qui fait l'objet d'un nouvel appel d'offre.

Enfin, dans le *cadre interne*, le CRDH a fondé un atelier juridique (law clinic), avec l'Institut de formation aux droits de l'homme du barreau de Paris et le CREDHO (Université Paris-Sud), pour développer la pratique de *l'amicus curiae* devant les juridictions et instances internationales, notamment la Cour européenne des droits de l'homme. Après une première intervention dans l'affaire Bosphorus et dans l'affaire Makaratzis, l'atelier a soumis un mémoire à titre *d'amicus curiae* dans l'affaire *Sergey Zolotukhin contre Russie* en février 2008. Le CRDH a également participé à la contribution de la CNCDH au réseau FRALEX, mis en place dans le cadre de l'Agence européenne des droits fondamentaux.

A l'invitation de la direction des affaires juridiques de l'Organisation des Nations Unies, des chercheurs du CRDH ont participé à la mise à jour de l'état de la pratique des organes des Nations Unies notamment M. Spyridon Aktypis au sujet d'article 14 de la Charte. Cette étude est disponible en ligne sur le site de l'Or-

ganisation des Nations Unies et sur celui du CRDH. Le travail est poursuivi par Mlle Gesa Danneberg.

Publications

En ce qui concerne la recherche individuelle, le CRDH sert en particulier de laboratoire pour la préparation de thèses de doctorat, très souvent publiées et honorées. Parmi les dernières thèses on citera :

- Sébastien Touze, *La protection diplomatique*, Pedone, 2006 ;
- Claire Callejon, *La réforme de la Commission des droits de l'homme des Nations Unies*, Pedone, 2008 ;
- Mylène Bidault, *La protection des droits culturels*, à paraître chez Bruylant, 2009 ;
- Christophe de Aranjo, *Les rapports entre juges de la loi dans la protection des droits de l'homme : étude comparée en Allemagne et en France*, à paraître chez Bruylant, 2009 ;
- Spyridon Aktypis, *La légitime défense en droit international public*, à paraître à la LGDJ ;
- Despina Sinou, *L'action extérieure de l'Union européenne en matière de droits de l'homme*, à paraître chez Pedone ;
- Mouloud Boumghar, *Une approche de la notion de principe dans le système de la Convention européenne des droits de l'homme*, à paraître chez Pedone.

Institut de droit européen des droits de l'homme

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Site internet : www.idedh.fr

Le centre de recherche

Créé en 1989, l'Institut de droit européen des droits de l'homme – dirigé par le professeur Frédéric Sudre – a pour objet de recherche principal les normes européennes des droits de l'homme, envisagées dans leur élaboration, leur interprétation et leur application. Pour ce faire sont mobilisés tant le droit européen et international (Convention européenne des droits de l'homme, droit communautaire, droit international général) que le droit interne (droit administratif, droit processuel), le droit public que le droit privé, la jurisprudence européenne comme la jurisprudence interne, les théories de l'interprétation comme l'analyse du droit positif ...

Reconnu par le Ministère comme « jeune équipe » dés 1991, l'IDEDH a, depuis 1995, le statut d' « Equipe d'accueil » (EA n° 3976). A ce titre, l'IDEDH a été le laboratoire d'accueil du DEA de droit communautaire et européen, créé en 1995, puis du Master II droit européen des droits de l'homme. Depuis 2007, l'IDEDH est l'un des trois laboratoires d'accueil du Master II droit public général, issu du regroupement des M2 de droit public interne et de droit européen des droits de l'homme, et a plus précisément au sein de ce Master la responsabilité du parcours « droit européen et international ». L'IDEDH regroupe 8 professeurs, 9 maîtres de conférences et 33 doctorants. Depuis sa création, 29 docteurs en droit ont préparé et soutenu leur thèse au sein du laboratoire, 13 d'entre eux ont embrassé la carrière universitaire (maître de conférences, professeur agrégé).

Le projet de recherche

Posant, dés sa création en 1989, l'hypothèse théorique de la formation d'une norme européenne commune en matière de droits de l'homme, trouvant son origine principale dans une élaboration prétorienne – la Convention européenne des droits de l'homme telle qu'elle est interprétée et appliquée par le juge européen – et produisant un effet d'harmonisation des droits internes, l'IDEDH construit son projet de recherche sur les normes européennes des droits de l'homme en privilégiant l'étude des méthodes d'interprétation du juge européen. Il s'agit, fondamentalement, de s'interroger sur le « sens » de la norme européenne, issue de l'interprétation de la Convention européenne que livre le juge.

Les travaux déjà menés par l'IDEDH en la matière (cf. publications) conduisent à placer aujourd'hui au cœur de la recherche la question des contraintes pesant sur l'interprète et de la cohérence des méthodes d'interprétation qu'il mobilise (interprétation évolutive,

consensuelle, autonome, finaliste). Comment le juge européen entend-il sa fonction : gardien des valeurs fondatrices de la Convention ou vecteur de son adaptation au changement social ? Le projet de l'IDEDH est de vérifier l'hypothèse d'un juge déchiré entre l'idéologie de l'hypertrophie des droits subjectifs et sa mission de conservateur du bien commun, entre interprétation évolutive (le juge s'efforce surtout d'enregistrer les changements sociaux) et interprétation axiologique (les droits conventionnels exprimant un ordre objectif de valeurs). On le voit, une telle interrogation concerne la cohérence et la signification des solutions retenues par le juge de Strasbourg et renvoie, plus généralement, à la posture que doit avoir le juge des droits et libertés.

La connaissance de la norme européenne et de son mode d'élaboration implique une démarche comparatiste qui invite à dépasser les clivages traditionnels – droit public/droit privé, droit interne/droit international. En effet, l'imbrication des sources, l'hybridation des normes, caractérisent le processus de « fabrication » de la norme protectrice des droits de l'homme. L'analyse des sources internationales de la jurisprudence européenne comme – en retour – de l'influence du droit européen des droits de l'homme sur le droit international général, l'étude de l'appropriation par le juge communautaire de la jurisprudence européenne et de la formation d'un droit communautaire propre des droits fondamentaux, l'examen de la réception des normes européennes en droit interne et de la recomposition du champ juridique qu'elle emporte (diffusion d'un modèle européen du procès équitable, « dialogue des juges ») sont alors autant de voies qu'emprunte l'IDEDH pour mener sa recherche.

L'IDEDH valide les hypothèses théoriques énoncées par une recherche « appliquée », qui conduit – dans le cadre de colloques réguliers, auxquels participent universitaires et praticiens, français et étrangers – à une exploration systématique du « sens » des droits garantis dans l'ordre conventionnel (droit au respect de la vie privée, droit au respect de la vie familiale, liberté de religion, droit à la non-discrimination) et à sa confrontation avec les ordres juridiques interne, communautaire, international.

Publications recentes de l'IDEDH

Ouvrages

- F. Sudre et C. Picheral (dir.), *La diffusion du modèle européen de procès équitable*, La Documentation française, Coll. « Perspectives sur la justice », 2003, 353 p.
- F. Sudre (dir.), R. Tinière, *Droit communautaire des droits fondamentaux. Recueil de décisions de la Cour de justice des Communautés européennes*, Némésis-Bruylant, coll. Droit et justice, 2e éd. 2007, n° 75, 337 p.

Colloques

- *Réalité et perspectives du droit communautaire des droits fondamentaux*, (dir. F. Sudre et H. Labayle), Némésis-Bruylant, coll. Droit et justice (n° 27), 2000, 530 p.
- *Le droit au respect de la vie familiale au sens de la Convention européenne des droits de l'homme*, (dir. F. Sudre), Némésis-Bruylant, coll. Droit et justice, n° 38, 2002, 410 p.
- *Le ministère public et les exigences du procès équitable*, (dir. I. Pingel et F. Sudre), Némésis-Bruylant, coll. « Droit et justice » n° 44, 2003, 267 p.
- *Le droit au respect de la vie privée au sens de la Convention européenne des droits de l'homme* (dir. F. Sudre), Némésis-Bruylant, coll. Droit et justice, n° 63, 2005, 336 p.
- *Laïcité, liberté de religion et Convention européenne des droits de l'homme* (dir. G. Gonzalez), Némésis-Bruylant, coll. Droit et justice, n° 67, 2006, 266 p.
- *Le droit à la non discrimination au sens de la Convention européenne des droits de l'homme* (dir. F. Sudre et H. Surrel), Némésis-Bruylant, coll. Droit et justice, 2008.

Les cahiers de L'IDEDH

- *Cahier n° 8, Les garanties du procès équitable hors les juridictions ordinaires* (dir. F. Sudre et C. *Picheral), 2001, 355 p.*
- *Cahier n° 9, Espace de liberté, sécurité, justice et Convention européenne des droits de l'homme* (dir. C. Picheral), 2003, 369 p.
- *Cahier n° 10, Le renforcement du rôle de Cour suprême de la Cour de justice des communautés européennes et l'encadrement « substantiel » du juge national* (dir. C. Maubernard), 2006, 401 p.
- *Cahier n° 11, Le dialogue des juges* (dir. F. Sudre), 2001, 480 p.
- Les sources internationales dans la jurisprudence de la Cour européenne des droits de l'homme (dir. G. Gonzalez).

– *Cahier n° 12, Les standards du droit communautaire des étrangers* (dir. C. Picheral) 2008, 353 p.

Chroniques

Droit communautaire des droits fondamentaux. Chronique de la jurisprudence de la Cour de justice des Communautés européennes (dir. C. Picheral et H. Surrel), *Revue trimestrielle des droits de l'homme* (depuis 1998).

Chronique de jurisprudence de la Cour européenne des droits de l'homme (dir. F. Sudre), *Revue de droit public* (depuis 1999).

Chronique de jurisprudence de la Cour européenne des droits de l'homme, *Annuaire de Droit européen*, Bruylant (depuis 2003).

Institut de formation en droits de l'homme du barreau de Paris

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L'Institut des Droits de l'Homme du Barreau de Paris, créé en 1978, a pour activité principale la formation des avocats français et étrangers au droit international des droits de l'Homme. Les formations sont également accessibles à des juristes non avocats. L'Institut organise des sessions de formation avec le concours des Ecoles de formation des Barreaux, et des conférences et séminaires avec d'autres associations et universités.

Conferences et colloques

L'Institut a organisé avec le CREDHO Université Paris XI un colloque sur *les arrêts de la Cour européenne des droits de l'homme concernant la France en 2007*, à Paris, en janvier 2008. Les actes de ce colloque seront publiés aux Editions Bruylant en 2009.

L'Institut a organisé avec l'Institut des droits de l'homme des avocats européens un colloque sur *la Charte des droits fondamentaux* au mois de mai 2008 à Luxembourg. Les actes du colloque seront publiés aux Editions Bruylant en 2009.

Formation (premiers projets)

- *La Déclaration universelle des droits de l'homme : histoire et portée* : Lieu : Maison du Barreau 3 février 2009, 18h30.
- *La procédure devant la Cour européenne des droits de l'homme*, Lieu : Maison du Barreau. Date projetée : mai 2009.
- *L'agence des droits fondamentaux* : Lieu : Maison du Barreau. Date projetée mars 2009, 18h30.

Activités avec l'université

L'Institut poursuit ses activités avec le groupe de réflexion et d'intervention « law clinic », créé avec le CRDH de l'Université Paris II et le CREDHO de l'Université Paris XI-Sceaux. Une tierce intervention a été faite devant la Cour européenne dans l'affaire *Zolotukhin c. Russie*, n° 14939/03.

L'Institut participe à la formation du master contentieux européen de l'Université Paris II, sur la Convention européenne des droits de l'homme, et le droit des étrangers.

Remise du prix Ludovic Trarieux

L'Institut organisera la remise du 14e prix international des droits de l'homme Ludovic Trarieux, au mois d'octobre 2009. Ce prix remis à un avocat, est décerné avec le concours de l'Institut des droits de l'homme des avocats européens, avec l'Institut des droits de l'homme du Barreau de Bordeaux, l'Unione Forense Per la Tutela Del Diritti dell'uomo (Rome), et de l'Institut des droits de l'homme du Barreau de Bruxelles.

Publications

Colloque organisé avec l'Institut des droits de l'homme du Barreau de Bruxelles sur *le droit de la famille*, Editions Bruylant, Collection Droit et justice n° 78.

Germany/Allemagne

MenschenRechtsZentrum

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Publications

En Allemand:

- Eckart Klein/Christoph Menke (Ed.) : Droits de l'homme: Universalité – Mécanismes de protection – Interdictions de discrimination. 15 ans de Conférence mondiale de Vienne sur les droits de l'homme, 2008. (*Menschenrechte: Universalität – Schutzmechanismen – Diskriminierungsverbote 15 Jahre Wiener Weltmenschenrechtskonferenz*)
- Christoph Menke (Ed.) : Le droit de liberté, modèles de liberté et de justice dans la modernité – une reconnaissance, Bd. 31 (en tirage). (*Das Recht auf Freiheit, Freiheits- und Gerechtigkeitsmodelle der Moderne – Anerkennung*)
- Christoph Menke (Ed.) : L'intégrité du corps. Histoire et théorie d'un droit de l'homme fondamentale, Frankfurt am Main 2007. (*Die Unversehrtheit des Körpers. Geschichte und Theorie eines elementaren Menschenrechts*)

MenschenRechtsMagazin (en Allemand)

n° 3/2007

- Vue d'ensemble du travail des organes de surveillance des traités des Nations-Unies en 2007 (*Überblick über die Arbeit der UN-Vertragsüberwachungsorgane im Jahr 2007*)
- Soldats d'enfants sous la perspective du droit international – Partie II (*Kindersoldaten aus völkerrechtlicher Perspektive – Teil II*)
- Droits de l'homme et démocratie – sur la reconnaissance des droits universels (*Menschenrechte und Demokratie – Zur politischen Anerkennung universaler Ansprüche*)
- Protection régionale des droits de l'homme en Asie (*Regionaler Menschenrechtsschutz in Asien*)
- Rapport sur les séances du Conseil des droits de l'homme 2006/2007

n° 1/2008

- Liberté d'opinion et la protection de l'âme selon le Pacte international relatif aux droits civils et politiques (*Meinungsfreiheit und Ehrenschutz nach dem Internationalen Pakt über bürgerliche und politische Rechte*)
- La liberté d'opinion et d'expression et la protection de l'âme selon la Convention Européenne des droits de l'homme (*Meinungsäußerungsfreiheit und Ehrenschutz nach der Europäischen Menschenrechtskonvention*)
- Transcendance culturelle et éléments culturo-critiques de la dignité humaine (*Kulturtranszendenz und kulturkritische Elemente der Menschenwürde*)
- Rapport sur le travail du comité des droits de l'homme des Nations Unies en 2007 – Partie I
- Bilan du projet : 15 ans après la conférence mondiale sur les droits de l'homme à Vienne 1993 – un bilan (*Projektbilanz : Fünfzehn Jahre nach der Weltkonferenz über Menschenrechte in Wien 1993 – eine Bilanz*)

Conférences / Colloques

- 25-27 juillet 2007, Potsdam : conférence internationale: *The Protection of Human Rights by the United Nations Charter Bodies*, Conférence internationale (en anglais) en collaboration avec l'Hebrew University of Jerusalem et la National University of Ireland.
- 28 juin 2008, Potsdam ONU – conférence (en collaboration avec le cercle de recherche NU).
- 13 novembre 2008 : Jour d'étude des NU: Tous les êtres humains et les nations forment une seule famille d'humanité d'une riche diversité. Sur l'état du combat du racisme, de la discrimination raciale, la xénophobie et y liée l'intolérance à l'avance de la Durban Review Conference 2009. (*Alle Menschen und Völker bilden eine einzige Menscheitsfamilie von reicher Vielfalt. Zum Stand der Bekämpfung von Rassismus, Rassendiskriminierung, Fremdenfeindlichkeit*

und damit zusammenhängender Intoleranz im Vorfeld der Durban Review Conference 2009).

Greece/Grèce

Marangopoulos Foundation for Human Rights (MFHR)

Consultative Status with the Council of Europe, the UN [ECOSOC (special), DPI] and UNESCO

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The Marangopoulos Foundation for Human Rights (MFHR) is a non-profit legal entity under Greek law, established on 22 December 1977. Its basic aims and objectives are the research, study, protection and promotion of fundamental human rights and freedoms. Within this framework, the MFHR takes a particular interest in the advancement of human rights education and training and the raising of public awareness in all matters affecting human rights, peace and the development of democratic institutions. To this end, it employs a wide range of appropriate means – theoretical and practical, judicial and extra-judicial – namely the organisation of courses, lectures, seminars and conferences, the granting of scholarships and financial support, the conduct of research in human rights fields and the issue of protests. It also makes proposals for the effective treatment of problems related to civil, political, economic, social and cultural rights. Last but not least, it offers free legal aid to persons whose fundamental rights have allegedly been violated.

MFHR contribution to human rights issues at national level

The MFHR has been a member of the Greek National Commission for Human Rights (GNCHR) since its creation, in January 2000. As they have done repeatedly in the past, the representatives of MFHR to the GNCHR, Professor A. Yotopoulos-Marangopoulos and Professor L.-A. Sicilianos, Director, have submitted comments on various legislative bills, including comments during the preparation of Law 3719/2008 "Reforms for the Family, the Child and the Society". During the negotiations for the above-mentioned Law adoption, the President of MFHR was invited to present its opinion concerning this Law before the Greek Parliament.

Education

The MFHR has sponsored the "Marangopoulos Chair" at the International Institute for Human Rights, in Strasbourg, for the last 18 years, designating the speaker and funding the participation of two distinguished post-graduate students in the Annual teaching session of the International Institute of Human Rights. Since 2007 the MFHR has awarded two prizes followed by these scholarships to the post-graduate Greek students who have submitted the best essay concerning two subjects designated by the MFHR.

The MFHR organises the yearly model UN in Athens, in which hundreds of high school students participate. This year the event will take place from 27 to 29 March 2009.

Conferences

- Conference on *Anti-terrorist measures and human rights* organised in Athens by the Parliamentary Assembly of the Council of Europe and MFHR (28 March 2008). This event was considered "the event of the year in Athens" and concentrated on the CIA's illegal transfers and secret detentions. The keynote speakers were Dick Marty and Gavin Simpson.
- Event for the nomination of scholarship prizes by MFHR (22 May 2008).
- International Conference entitled *La pauvreté, un défi pour les droits de l'homme* ("Poverty, a challenge for human rights") organised in Paris by the Research Center for Human Rights (RCHR) of Panthéon-Assas University (Paris II) and the MFHR (16-17 May 2008).

- Follow-up conference organised in Kozani by the Energy Union for Workers' Solidarity and the MFHR (18 June 2008). Its purpose was to examine the measures taken by the government for the implementation of the decision taken by the European Committee of Social Rights after the collective complaint (No. 30/2005) lodged by the MFHR against Greece.
- Event for solidarity and support to Cuba for lifting the economic embargo – Release of five Cuban fighters kept in USA prisons, organised in Athens (Bar Association) by the MFHR, the Cuban Embassy and others (3 Novermber 2008).
- Conference on *Environment and Health*, organised in Ptolemaida by the MFHR and the Association of Cancer Patients of Ptolemaida (1 November 2008). This conference was also concentrated on the collective complaint (No. 30/2005) lodged by the MFHR against Greece.
- Conference on *The 60th Anniversary of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide* organised in Athens by the MFHR and the Hellenic Brunch of International Law Association (12-13 November 2008).
- Conference on *The Sixty years of the Universal Declaration of Human Rights – Challenges for the future* organised in Athens, by the MFHR and the Hellenic Society of International Law and International Relations (18-19 December 2008).

Publications

The MFHR published four books in 2008 (the total number of its publications is 61):

- *Actes des Conférences Aquinas, La Citoyenneté et le Système de Contrôle Pénal*, Direction: J. Hurtado Pozo, Université Fribourg (CH) – Centre international de criminologie comparée (CICC – Université de Montréal) & FMDH ; Fribourg, 2008, 124 pp. [in French];
- *The protection of the environment: the actual and legal situation*, Direction: A. Yotopoulos-Marangopoulos and L.-A. Sicilianos, Nomiki Vivliothiki Publishers, Athens, 2008, 543 pp. [in Greek];
- *L'OSCE trente ans après l'acte final d'Helsinki*, Direction E. Decaux – S. Sur, Série FMDH No. 12, A. Pedone Publications, Paris, 2008, 234 pp. [in French];
- Weber A., *Les mécanismes de contrôle non contentieux du respect des droits de l'homme*, Série FMDH No. 13, A. Pedone Publications, Paris, 2008, 411 pp. [in French].

Legal Assistance

The MFHR offers *pro bono* legal assistance, judicial and extra-judicial, to several vulnerable persons, particularly refugees and asylum seekers, who have the free legal support of the Foundation's lawyer.

Library

The MFHR has the biggest human rights library in Greece, which is open to the public. Its website contains, apart from all of its own publications and activities, the most up-to-date database on human rights issues in Greece.

Youth group

In 2008 the Group made several statements and issued resolutions on current human rights matters. The e-Yearbook Tribune for Human Rights No. 2 [November 2008, pp. 140 (www.mfhr.gr)] was published. During the summer more than 20 members undertook an on the spot research project on the question of fires in Greece.

Italy/Italie

International Institute of Humanitarian Law

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The International Institute of Humanitarian Law is an independent and non-profit organisation, whose objective is to promote the development, application, and dissemination of international humanitarian law in all its dimensions. This contributes to the safeguarding

and respect of human rights and fundamental freedoms throughout the world.

Publications

The Institute has published a report of its 2006 activities, which is available on its website (in English). It also publishes records of the proceedings of its round tables, periodic information bulletins, and manuals on substantive areas of international humanitarian law. The most recent such manual is the *Manual on the Law of Non-International Armed Conflict*, published in March 2006.

Training programmes

The 2009 programme of courses at the Institute includes:

- Courses on international humanitarian law for military personnel (in English, French, and Spanish. These courses will be conducted from 9 to 20 March (English), 20 April to 1 May (French), from 11 to 22 May (English, with Arabic classes), from 14 to 25 May (Spanish), and from 9 to 20 November (English), in Sanremo.
- Courses on refugee law (in English, French and Spanish). These courses will be conducted from 24 to 28 March (French), from 5 to 9 May (English), from 3 to 7 November (Spanish), and from 24 to 28 November (English), in Sanremo.
- Course on international human rights and humanitarian law in peace operations (in English), from 25 to 29 May 2009, in Sanremo.
- Summer course on international humanitarian law (in English), from 29 June to 11 July 2009, in Sanremo and Geneva.
- Course on international migration law (in English), from 28 September to 2 October 2009, in Sanremo.
- Specialised courses on the law of armed conflict (in English and French), from 5 to 16 October 2009, in Sanremo.
- Courses for planners and executors of naval and air operations (in English), from 30 November to 4 December 2009, in Sanremo.
- Course for Directors of training programmes in the law of armed conflict (in English and French), from 7 to 11 December 2009, in Sanremo.

Internship programme

The Institute offers a variety of internship programmes for researchers and students with an interest and background in international humanitarian law. More details are available on the website.

Interdepartmental Centre on Human Rights and the Rights of Peoples

(Centro interdipartimentale di ricerca e servizi sui diritti della persona e dei popoli)

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Presentation

The Interdepartmental Centre on Human Rights and the Rights of Peoples, established in 1982, is the University of Padua's structure devoted to carrying out educational, formational and research activities in the field of human rights.

The original vocation of the Interdepartmental Centre is that of "docere (teaching) for educating and training" and of "making research" primarily aimed at educating, in the framework of a continuing interaction with vital realities such as civil society organisations, schools,

local and regional authorities, and international institutions.

Activities

The Centre carry out the following activities:

- Academic programmes
- UNESCO Chair on Human Rights, Democracy and Peace
- Research on relevant topics referring to human rights and peace, human security, human development, international democracy, national institutions for human rights, intercultural dialogue
- Special Agreements/Contracts with national and international institutions
- Peace Human Rights Archive Database
- Courses for Teachers on active citizenship, human rights, peace, intercultural dialogue, with the support and cooperation of the Ministry of Education and the Region of Veneto
- The Library "Piergiorgio Cancellieri"
- Conferences/Events/Seminars
- Publications

Academic programmes

The Centre is currently involved in the organisation and management of the following degree courses at the Faculty of Political Sciences, University of Padua:

- **Degree Course on Political Sciences, International Relations, and Human Rights** (three years). Specific teachings: International Relations, International Law, International Organisation, European Union Political System, Comparative Constitutional Law and Human Rights, Human Rights Sociology, Human Rights Philosophy, International Protection of Human Rights, Criminal and Humanitarian International Law, and Gender Politics and Human Rights.
- **Master Degree Course ("Laurea magistrale") on Institutions and Politics of Human Rights and Peace** (two years). Specific teachings: History of Human Rights Ideas, International Organisation of Human Rights and Peace, Human Rights and International Case-law, National Human Rights Institutions, Bioethics, Sciences for Peace, Economic and Social Rights, Human Rights and International Justice, International Politics of Education, Human Rights and Vulnerable Groups, Children's Rights and Politics, Human Rights Monitoring, Electoral Observation, Peace-Keeping, Humanitarian Aid, and Democratic Institution Building.

In 1997 the Centre promoted the **European Master's Degree in Human Rights and Democratisation**, based in Venice, being its co-ordinator and supervisor until 2003. Nowadays it actively participates together with 41 other European universities. In the E.MA context the Centre has promoted the establishment in 2003 of the "European Joint Degree in Human Rights and Democratisation", an integrated academic diploma in the framework of the "Bologna Process", and the foundation of the "European Inter-University Centre for Human Rights and Democratisation", EIUC, based in Venice (an association of the E.MA universities, with legal personality). In 2007 the Centre assured its participation in the E.MA, also in the capacity of first enrolment university for the European Joint Degree. So far, 800 students coming from more than 50 countries of several continents have been awarded European Masters in Human Rights and Democratisation.

Deadline for the academic year 2009-2010: 20 March 2009. For information: www.ema-humanrights.org.

Post-graduated Courses on Human Rights and the Rights of Peoples

The Interdepartmental Centre has carried out 20 annual post-graduate courses on Human Rights and the Rights of Peoples. The 21st post-graduate course on Human Rights and the Rights of Peoples is on *Economic social and cultural rights and vulnerable groups protection*, 2008/2009. An additional complementary training course will be on *Fundamentals for the study of the Arab-Muslim civilisation*.

UNESCO Chair in human rights, democracy and peace

The Chair, established in 1999, works in close co-operation with the Human Rights Interdepartmental Centre. Many activities are carried out in the form of joint ventures between the two institutions. The Chairman is Antonio Papisca, professor of International Relations and International Protection of Human Rights, former Director of the European Master Degree in Human Rights and Democratisation. The Chair and the Interdepartmental Centre co-operate actively with NGOs and movements connected with the "Tavola della Pace" (Peace Table) and the association "Italian Local Authorities for Peace and Human Rights", a

network gathering 700 local government institutions (municipalities, provinces, regions), in particular by provinding scientific advice to prepare the "UN Peoples Assembly" (every two years) and of the related historical Peace March Perugia-Assisi. This year the Chair participated in the 1st Conference on City Diplomacy (The Hague, 11-13 June 2008).

Research

In 2007 the Interdepartmental Centre started a research project with the University of Pavia and Jordan University in Amman entitled "Towards an integrated perspective of human rights and human development". The reserach is envisaged to foster the organisation of an MA on Human Rights and Human Development at Jordan University, with courses also taking place at the Universities of Padua and Pavia. The research will also contribute to the establishment of a Research and Higher Education Centre on Human Development and Human Rights at Jordan University. The opening ceremony, with the participation of Queen Rania of Jordan, took place in Amman on 10 December, 2007. Other seminars and conferences on the topic have also been carried out in 2008.

In 2008 the Centre completed a research project for the Equal Opportunities Department of the Italian Council of Ministers on the status of ombuds-institutions in Italy, mapping statutes of provinces, regions and of municipalities with more than 5 000 inhabitants.

Special agreements/contracts

The Centre on Human Rights has continued to co-operate, on the basis of formal agreements and memoranda, with different bodies of the Region of Veneto:

- Regional Ombudsperson;
- Regional Children's Ombudsperson;
- Regional Department on Human Rights, Peace and Development Co-operation, to support their respective policies in the field of human rights, peace, international solidarity, intercultural dialogue, and equal opportunity.

In January 2008 the Centre signed an Administrative Arrangement with the Office of the High Commissioner for Human Rights of the Council of Europe in the framework of a Joint European Union/Council of Europe Programme called "Peer-to-Peer Project". This Joint Programme consists of a work programme to be implemented by the Office of the Commissioner for Human Rights in 2008 and 2009 in co-operation with the Human Rights Centre of the University of Padua, Italy and the St Petersburg Humanitarian and Political Science "Strategy" Centre in St. Petersburg, Russian Federation. The main tool of the programme is the organisation of workshops for specialised staff members of the National Human Rights Structures (NHRS), in order to convey select information on the legal norms governing priority areas of NHRS action and to proceed to a peer review of relevant practices used or envisaged throughout Europe. In 2008 three training workshops for NHRS were organised in Padua (see below under "Conferences and Seminars").

Peace Human Rights Archives database

The *Peace Human Rights Archives* is one of the most relevant Italian databases that promote and disseminate a civic-political culture based on the paradigm of internationally recognised human rights. It has functioned since 1989 on the basis of a formal agreement with the Region of Veneto in accordance with Regional Bill on human rights, peace and international co-operation.

NGOs database

In the framework of the *Peace Human Rights Archive*, the Centre updates a comprehensive NGOs database, collecting the data, contacts, and activities of any NGO in the Veneto Region dealing with human rights, co-operation and human development. All records can be consulted on the Centre's website.

Human Rights at School database

A collection of documents and updated material on children's rights in the context of school, in particular didactic projects.

International Instruments database

The database aims at providing information on relevant international legal instruments on human rights, criminal and humanitarian law, and developmental co-operation, and is also available in Italian. Instruments of "soft law" are also included.

The *Peace Human Rights Archives* contain specific websites devoted to the functioning of the Ombudsman of the Region of Veneto and to the Regional Ombudsperson for Children's Rights.

Courses for teachers

Since 1986 the Centre has organised courses on human rights, peace and intercultural dialogue for Secondary School Teachers in co-operation with the Regional Directorate of the Italian

Ministry of Education and the Region of Veneto. This year the Centre will carry out a special Higher Education Course for teachers in order to create a group of experts in civic education, human rights, citizenship and constitution, 2008/2009.

Library "Piergiorgio Cancellieri"

This provides more than 6 000 volumes, national and international scientific reviews, relevant material of international organisations, both governmental and non-governmental. The Library is linked to the Library of the European Master Degree in Human Rights and Democratisation, E.MA, Monastery of San Nicolò in Venice-The Lido. Through the Padua Library, access is made possibile to other pertinent databases and online reviews.

Conferences and seminars

In 2008 the Centre organised the following seminars and conferences:

International Day of Human Rights. Convegno

- "Tutti gli esseri umani nascono liberi ed eguali in dignità e diritti. Promuovere e realizzare i diritti umani impegno permanente." Palazzo del Bo, Aula Magna Galileo Galilei, 10 December 2008

Joint European Union – Council of Europe Programme. "Setting up an active network of independent non-judicial human rights structures".

- 3rd Workshop for specialised staff of national human rights structures. *The promotion and protection by national human rights structures of freedom of expression and information*, Padua, 21-23 October 2008
- 2nd Workshop for specialised staff of national human rights structures, *Protecting the human rights of irregular migrants: the role of national human rights structures*, Padua, 17–19 June 2008
- 1st Workshop for specialised staff of national human rights structures, *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, 9–10 April 2008

Three Religions Chair

- Seminar on *The Law of God and the Law of Men in the three big monotheist religions*, Padua, May 2008
- Seminar on *The mask of the Other: Ethics and intercultural dialogue in the complex civilisation*, Padua, 21 May 2008
- European Year of Intercultural Dialogue with the participation of the President of the Committee of the Regions of the European Union, Padua , 11 March 2008

Publications

- The Quarterly *Pace diritti umani/Peace human rights*. IEdited by the Interdepartmental Centre on Human Rights and printed by Marsilio Editore, Venice (essays in Italian and in English). This is a strongly policy-orientated publication and is addressed to university establishments, civil society organisations, and national and local government institutions. Three issues were edited in 2008.
- *The Bulletin Peace Human Rights Archive*. This has been published since 1991 as a supplement to the Quarterly *Pace diritti umani/Peace human rights*, with around 4 000 copies distributed all over Italy. It is also published as an electronic version on the web: www.centrodirittiumani.unipd.it/. Each issue is devoted to a specific topic.
- The Interdepartmental Centre continues the publication of *Quaderni* (volumes), *Tascabili* (pocket books), and CD ROM. *The most recent publication is: Tascabile n. 6, Codice internazionale dei diritti umani* (Human Rights International Code), 2008.

Poland/Pologne

Poznań Human Rights Centre Institute of Legal Studies of the Polish Academy of Sciences

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Poznań Human Rights Centre was founded in 1973. It is a research institution working within the framework of the Institute of Legal Studies of the Polish Academy of Sciences. The Centre

was created with a view to conducting research and training experts as well as to promote knowledge in the field of human rights. Currently, one of its objectives is focus on the combined protection offered by national constitutional rights and internationally recognised rights, in particular the application of international standards within the national legal order. The Centre is headed by Professor Roman Wieruszewski and currently employs five research staff members.

Course on International Protection of Human Rights

The 17th Course on International Protection of Human Rights took place from 1 to 10 September 2008. It was organised by Poznań Human Rights Centre and Adam Mickiewicz University, Faculty of Law and Administration with financial support of the OSCE Office for Democratic Institutions and Human Rights .

Course participants

The main objective of the Course was to enhance the participants' knowledge and understanding of the existing standards and institutional aspects of the protection of human rights at the international level. This year's edition focused additionally on issues related to the rights of national minorities. The Course was offered particularly to NGO activists, young researches, lawyers and students from all over the world with the special focus on former Soviet Union and former Yugoslavia area. The number of participants was limited to 25.

The Course consisted of 60 hours of lectures and case studies given in English. The lectures were held by eminent professors and experts in the field of human rights and international law. The case studies involved discussions on decisions of the European Court of Human Rights and the UN treaty bodies.

The next course takes place in September 2009 and will be advertised on the Centre's website.

Conference on "Sexual Orientation and Sex Identity – Legal Issues and Challenges"

The conference took place on 27th October 2008 and was organised by Poznań Human Rights Centre and Human Rights Chair, Faculty of Law and Administration of the Warsaw University. Its objective was to discuss the main problems faced by LGBT individuals within the scope of various domains of law. The speakers were Polish scholars and NGO activists. The conference is to be proceeded by publication of the book containing conference papers and Polish translation of Yogyakarta Principles – the reconstruction of international standards of human rights with reference to the sexual

Conference on "Sexual Orientation and Sex Identity – Legal Issues and Challenges"

International co-operation

The Poznań Human Rights Centre has worked to establish contacts with a number of institutions in Poland and abroad, including the Human Rights Directorate of the Council of Europe in Strasbourg, the Office of United Nations High Commissioner for Human Rights in Geneva, the Institute of Human Rights in Abo Akademii University of Turku (Finland), the Netherlands Institute of Human Rights (SIM) in Utrecht, The Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund (Sweden).

The Centre is a member of the following international educational and scientific networks:

- European Inter-University Centre for Human Rights & Democratisation (EIUC) in co-operation with Adam Mickiewicz University in Poznań;
- European Master's Degree in Human Rights and Democratisation (EMA) – in co-operation with Adam Mickiewicz University in Poznań;
- Association of Human Rights Institutes (AHRI);

– EU-China Human Rights Network.

Poznań Human Rights Centre has established its own library and documentation centre. The library collection consists of 3 000 volumes, mainly from the domain of human rights and constitutional law, but also concerning family law and rights of child. Apart from the collection of books, the library has a selection of periodicals and a variety of domestic documents.

Library

Portugal

Ius Gentium Conimbrigae (Institute of International Law and Co-operation with Portuguese-speaking states and communities) / Human Rights Centre

Faculty of Law, University of Coimbra, 3004-545 Coimbra
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Website: http://www.fd.uc.pt/hrc/

The *Ius Gentium Conimbrigae* (ICG), founded in 1995, is an institute working under the Faculty of Law of the University of Coimbra, which focuses on the study of current international issues, in general, and that of the Portuguese-speaking community, in particular, from a multidisciplinary perspective yet based on a legal scope.

The Human Rights Centre of the IGC, founded in 2000, is a research, education, training and international exchange centre, focused on Human Rights issues. Therefore, partnership work is favoured and foreign lecturers, researchers and experts are often invited to the Centre. In parallel, its lecturers and researchers take part in several international events. Besides research activities, the Centre is also active in education, training and in the organisation of conferences, seminars, summer courses and, in particular, the post-graduate course.

The post-graduate course in Human Rights

The post-graduate course in Human Rights, which began in 1999, works concurrently as part of the European Master's Degree in Human Rights and Democratisation, established in Venice and organised by a consortium of 41 EU Universities, and as an independent post-graduate course, which is open to other interested ones. Partly delivered in English, the course is multidisciplinary in nature, with a broad scope. During the current academic year (2008-2009), the 11th post-graduate course will take place from January to June 2009. The course is divided in two main parts. The first, which is taught in Portuguese, includes an introduction to the international human rights' system and its protection mechanisms, and a general approach to personal rights and public freedoms as well as economic, social and cultural rights. Emphasis is also placed upon furthering issues related to the protection of vulnerable groups, such as migrants, children, detainees or persons with disabilities. The second part, in English, encompasses four specialised modules under the following topics: rights of political participation, gendered human rights, armed conflicts, peace processes and law, and bioethics.

Summer Courses

Summer Courses, which are in English, offer a great opportunity for cultural exchange, as we have an extremely diverse selection of students, hailing from countries spanning the globe and we usually operate with the collaboration of a variety of professors. The course takes place in July, for one week, and each year it focuses on a separate topic within the Human Rights international agenda. In recent years, the topics have been *Fighting Terrorism within Human Rights Law* (2008); *Economic, Social and Cultural Rights in an Age of Globalisation* (2007);

The European Court of Human Rights (2006); *Religion and International Law: past and present* (2005).

Autumn Conference

We have created an annual cycle of seminars and conferences entitled the "Autumn Conference", which was first held in 2001. Each year, the topic of the Conference is devoted to a different theme, reflecting a specific issue on the international Human Rights agenda.

The Centre provides training sessions, upon request, in schools, armed forces, professional associations, and other institutions, and it publishes books and articles written within our teaching and researching activities.

Having identified the need to compile all texts related to human rights issues, the CDH keeps an Online Portuguese Human Rights Encyclopaedia.

All of our activities are intended to be a space for the exchange of ideas and a reflection of the national and international environment associated with human rights. To further achieve this goal, we organise special events and we continually seek partnership and co-operation with other complimentary entities.

Spain/Espagne

The Human Rights Institute of Catalonia (IDHC)

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The Human Rights Institute of Catalonia (IDHC) was established in 1983, by a group of people committed to fighting for the progress of freedom and democracy in the world. Their aim was to join both individual and collective forces, coming from both public and private institutions, in order to expand the political, social and cultural rights of everyone.

The main activities of the IDHC are study and research, dissemination and promotion of human rights. And with this purpose in mind, the IDHC develops three main areas of activity: promotion, advising and education.

Education

Annual course on human rights

The Course of Human Rights has been organised every year since 1983. The next course will take place in March 2009.

The course is addressed to students of legal, economic and social sciences, administration officials, bodies and security forces, lawyers, social workers, economists and all other professionals that are related to this matter.

Lecturers of recognised national and international prestige are in charge of the conferences.

For further information see http://www.idhc.org/eng/141_cursdh.asp.

Scholarships

Among the participants in the Annual Course on Human Rights who write a paper on the protection of human rights, the IDHC awards different kinds of scholarship:

- A three-month internship in the Office of the United Nations High Commissioner of Human Rights, Geneva.
- A 15-day visit to the Headquarters of the Council of Europe and the European Court of Human Rights, Strasburg, for up to five students.
- A six-month internship at the office of the Ombudsman of Catalonia, Barcelona.
- The IDHC hosts number of internships in Barcelona, through the European programme Leonardo and other agreements with different universities.

For further information see http://www.idhc.org/eng/143_beques.asp.

Courses and seminars

Human Rights Training for Aid Workers

This course has been organised twice a year since 2006. The last course took place in November 2008 and the next one will be in May 2009. The main purpose of the course is to provide those who work in different areas of co-operation for development the necessary tools

to understand the international reality through the knowledge and study of the international law of human rights, humanitarian law, and international criminal law.

For further information see http://www.idhc.org/eng/142_seminaris.asp.

Seminars, workshops and publications on Emerging Human Rights (CEHR)

The aim of these seminars and workshops is to present a series of rights recognised in the Universal Declaration of Emerging Human Rights – such as the right to water, the right to self-determination and personal sexual diversity, bioethical issues, the right to basic income of citizenship, the right to development – that for various reasons have not been sufficiently developed or that require further reflection.

For further information see http://www.idhc.org/eng/1245_seminaris.asp.

Promotion

The IDHC organises several promotional activities in connection with the human rights area such as:

Forgotten Conflicts

This programme aims to publicise the situations of war in which millions currently live, and to explore the human, political, economic and social natures of these conflicts, which most of the time are forgotten by the public. Some conflicts already tackled are: Western Sahara, Nepal, Tibet, Ivory Coast, Mapuche, Sri Lanka, and Kosovo.

For further information see http://www.idhc.org/eng/125_conflictes.asp.

Human Rights in the Street

Storytelling sessions designed to promote a wider knowledge of the Universal Declaration of Human Rights in the population, while at the same time spreading knowledge of and giving visibility to the situation of human rights in the world.

Advising

The Institute does scientific advising in the field of human rights to public institutions and private entities, most of them in respect of the "European Charter for Safeguarding Human Rights in Cities".

For further information see http://www.idhc.org/eng/13_assessora.asp.

Publications

- *Forgotten conflicts serial*. The Mapuche people, Tibet, Western Sahara and Nepal: This forgotten conflicts serial contains researches and reports about the conflicts, and also compiles the speeches of the participants at round tables.
- *Universal declaration of emerging humanrights serial*. Human rights and Climate change, The human right to the access to drinking water and sanitation, Sexual orientation and gender identity, Basic Income: This serial contains much research and information on specific themes addressed in the titles.
- *Historical memory*. By analysing the diverse solutions adopted in the international sphere, this publication examines to what point these legislative initiatives carry out the objective of making these rights effective, and serve to compensate victims.
- *Human rights in the 21st century*. This collective work contributes to the understanding of the main problems and challenges faced in the safeguarding of human rights in the 21st century from a legal and political perspective.
- *The Little Book of human rights*. This book is aimed at children between 8-12 years old. The book includes activities that allow parents and teachers to explain in a very easy way what Human Rights mean.
- *The Iraq conflict and international humanitarian law*. Analysis of the Iraq conflict from the point of view of the applicable law to each phase of the conflict.

Library

Bibliographical resources

The IDHC counts in its head office with a vast library on human rights. More than 1 000 monographs, several collections of specialised magazines and publications of international organisations and other institutions that work for the defence, study and promotion of human rights compose the IDHC's bibliographical resources.

On-line resources

In the IDHC's website, the on-line library contains a selection of sources about human rights and basic legislative documentation.

United Kingdom/Royaume-Uni

Human Rights Law Centre

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Website: http://www.nottingham.ac.uk/law/hrlc

Established in 1993, the University of Nottingham's Human Rights Law Centre is an internationally recognised human rights institution with considerable experience in the design and delivery of human rights research, technical cooperation and training. The centre consists of six working units and conducts research in a range of fields. Below is a summary of the activities and publications of each working unit.

Short Courses and Training Unit

Short Course on International Human Rights Law

This course is for three months and is run twice annually, October to December and January to March. The next course starts on Thursday 8 January 2009.

The course provides an in-depth understanding of international human rights standards, looking at the human rights systems of organisations such as the United Nations, the Council of Europe, the OAS and the African Union. It provides a valuable insight for those working for NGOs or in government, as well as graduates, lecturers and legal or other professionals. The course features organised visits to NGOS, criminal courts and prisons.

The fee for three months is £2 950. There is an option to undertake a six-month course which includes a three-month internship.

For more detailed course information visit www.nottingham.ac.uk/law/hrlc/courses/.

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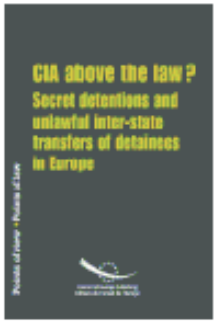
Points of view - Points of law
Point de vue - Point de droit

CIA above the law? Secret detentions and unlawful of detainees in Europe (2008)

ISBN 978-92-871-6419-3
310 pages, € 23 / US$ 46 + 10 % postage



Has Europe become "a happy hunting ground" for foreign security services? Is it acceptable, in the name of common security and the fight against terrorism, for citizens to be kidnapped, transferred and arbitrarily detained in secret prisons, and then tortured, on the mere suspicion or terrorism and in defiance of international law?

Two investigations by the Parliamentary Assembly into the High Value Detainee (HVD) programme set up by the US Administration after the attacks of 11 September have revealed the global "spider's web" spun by the CIA. The so-called "extraordinary renditions" programme has resulted in numerous serious human rights violations.

Furthermore, the European Commission for Democracy through Law has included its expert legal opinion on general international legal principles and the responsibility that Council of Europe member states would incur if they, either deliberately or by negligence, failed to meet their obligations.

This book, with its revealing eye-witness accounts, gives credence to the Council of Europe's position that if measures to combat terrorism are to be effective in the long term, they must respect human rights and the rule of law.

La CIA au-dessus des lois ? Détentions secrètes et transferts illégaux de détenus en Europe (2008)

ISBN 978-92-871-6418-6
320 pages, 23 € / 46 $US + 10% frais de port

L'Europe serait-elle devenue un «terrain de chasse» pour des services de sécurité étrangers? Peut-on accepter, au nom de la sécurité et de la lutte contre le terrorisme, que des citoyens soient kidnappés, transférés et détenus arbitrairement dans des prisons secrètes, torturés, sur simple suspicion de terrorisme et au mépris des lois internationales?

L'analyse du programme HVD (High Value Detainees/Détenus de grande importance) mis en place par l'administration des USA après les attaques du 11 septembre révèle ici, au travers de deux enquêtes de l'Assemblée parlementaire, la «toile d'araignée» mondiale tissée par la CIA. Ce programme, a donné lieu à des nombreuses et graves violations des droits de l'homme.

Par ailleurs, la Commission européenne pour la démocratie par le droit apporte son expertise juridique sur les principes généraux du droit international et la responsabilité des Etats membres du Conseil de l'Europe qui auraient manqué, intentionnellement ou par négligence, à leurs obligations.

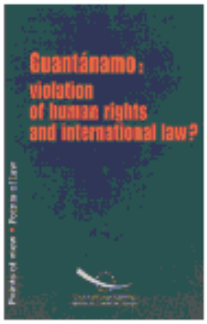
Ce livre, émaillé de témoignages édifiants, réaffirme la position du Conseil de l'Europe selon laquelle la lutte contre le terrorisme ne peut être efficace à long terme que par l'usage de moyens qui respectent les droits de l'homme et la prééminence du droit.

Guantánamo: violation of human rights and international law? (2007)

ISBN 978-92-871-6294-6
120 pages, € 13 / US$ 20 + 10% postage

What are the rights of the prisoners held by the United States at the base in Guantánamo Bay? Is their imprisonment lawful? Should we be thinking about strengthening the Geneva Conventions and changing international law?

This book contains all the Parliamentary Assembly's arguments, along with the study by the Venice Commission, which brings all its legal expertise to bear in considering whether the detention of people by the United States in Guantánamo Bay is lawful and if there is a need for a change in international law.



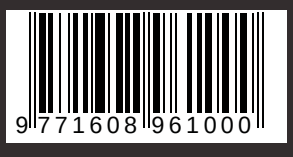
Guantánamo : une violation des droits de l'homme et du droit international ? (2007)

ISBN 978-92-871-6293-9
120 pages, 13 € / 20 $US + 10% frais de port

Quels sont les droits des personnes détenues par les Etats-Unis sur la base de Guantánamo Bay? Quelle est la légalité de leur détention? Faut-il s'interroger sur un développement des conventions de Genève et une évolution du droit international?

Ce livre présente l'ensemble des arguments exposés par l'Assemblée Parlementaire, ainsi que l'étude de la Commission de Venise, qui apporte son expertise juridique quant à la légalité de la détention de personnes par les Etats Unis à Guantánamo Bay et à la nécessité d'un développement éventuel du droit international.

ISSN 1608-9618



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