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Human rights information bulletin

No. 76,
November 2008-February 2009

Donald Oliver, Canadian Senator

The Hague Conference
12 and 13 November 2008

Human rights *in* culturally diverse societies

challenges and perspectives

GRETA

The first meeting of the Group of Experts on Action against Trafficking in Human Beings (GRETA) took place from 24 to 27 February 2009

Interview with Hanne-Sophie Greve, the newly elected President of GRETA

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Convention on Action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was ratified by **Poland** on 17 November 2008 and by the **United Kingdom** on 17 December 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 **Azerbaijan** and **Liechtenstein** on 17 November 2008 and by **Albania** on 17 December 2008.

European Convention on the Adoption of Children (Revised)

The European Convention on the Adoption of Children (Revised) was signed by **Armenia, Denmark, Finland, Iceland, Norway** and the **United Kingdom** on 27 November 2008 and by **Belgium** on 1 December 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 caseload statistics (provisional) between 1 November 2008 and 28 February 2009:

- 677 (776) judgments delivered
- 571 (680) applications declared admissible, of which 549 (655) in a judgment on the merits and 22 (25) in a separate decision
- 9 279 (9 375) applications declared inadmissible
- 496 (523) 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.

Demir and Baykara v. Turkey

Article 11 (violations)

Judgment of 12 November 2008. Concerns: The applicants complained that the Turkish courts had denied them the right to form a trade union and to enter into collective agreements.

Facts and complaints

Kemal Demir and Vicdan Baykara are Turkish nationals who were born in 1951 and 1958 respectively. Mr Demir lives in Gaziantep and Ms Baykara in Istanbul. At the relevant time, Ms Baykara was the president of the Tüm Bel Sen trade union and Mr Demir one of its members.

The case concerned the failure by the Court of Cassation in 1995 to recognise the applicants' right, as municipal civil servants, to form trade unions, and the annulment of a collective agreement between their union and the employing authority.

The trade union Tüm Bel Sen was founded in 1990 by civil servants from various municipalities, its registered objective being to promote democratic trade unionism and thereby assist its members in their aspirations and claims.

In 1993 the trade union entered into a collective agreement with Gaziantep Municipal Council regulating all aspects of the working conditions of the Council's employees, including salaries, benefits and welfare services. The trade union, considering that the Council had failed to fulfil certain of its obligations – in particular financial – under the agreement, brought proceedings against it in the Turkish civil courts. It won its case in the Gaziantep District Court, which found in particular that although there were no express statutory provisions recognising a right for trade unions formed by civil servants to enter into collective agreements, this lacuna had to be filled by reference to international treaties such as the conventions of the Interna-

tional Labour Organisation (ILO) which had already been ratified by Turkey and which, by virtue of the Constitution, were directly applicable in domestic law.

However, on 6 December 1995 the Court of Cassation ruled that in the absence of specific legislation, the freedom to join a trade union and to bargain collectively could not be exercised. It indicated that, at the time the union was founded, the Turkish legislation in force did not permit civil servants to form trade unions. It concluded that Tüm Bel Sen had never enjoyed legal personality, since its foundation, and therefore did not have the capacity to take or defend court proceedings.

Following an audit of the Gaziantep Municipal Council's accounts by the Audit Court, the members of Tüm Bel Sen were obliged to reimburse the additional income they had received as a result of the defunct collective agreement.

The application was lodged with the European Commission of Human Rights on 8 October 1996. It was transferred to the Court on 1 November 1998 and declared partly admissible on 23 September 2004. In its Chamber judgment of 21 November 2006, the Court held unanimously that there had been a violation of Article 11 of the Convention.

On 21 February 2007 the government requested that the case be referred to the Grand Chamber under Article 43 of the Convention and on 23 May 2007 the panel of the Grand Chamber accepted that request.

A Grand Chamber public hearing took place in the Human Rights Building, Strasbourg, on 16 January 2008.

Decision of the Court

Article 11

The applicants' right, as municipal civil servants, to form trade unions

The Court considered that the restrictions imposed on the three groups mentioned in Article 11, namely members of the armed forces, of the police or of the administration of the state, were to be construed strictly and therefore confined to the "exercise" of the rights in question. Such restrictions could not impair the very essence of the right to organise. It was moreover incumbent on the state concerned to show the legitimacy of any restrictions. In addition, municipal civil servants, who are not engaged in the administration of the state as such, could not in principle be treated as "members of the administration of the state" and, accordingly, be subjected on that basis to a limitation of their right to organise and to form trade unions.

The Court observed that those considerations found support in the majority of the relevant international instruments and in the practice of European states. The Court concluded that "members of the administration of the state" could not be excluded from the scope of Article 11. At most the national authorities were entitled to impose "lawful restrictions" on them, in accordance with Article 11 § 2. In the present case, however, the government had failed to show how the nature of the duties performed by the applicants required them to be regarded as "members of the administration of the state" subject to such restrictions. The applicants could therefore legitimately rely on Article 11.

In the Court's view it had not been shown that the absolute prohibition on forming trade unions imposed on civil servants by Turkish law, as it applied at the relevant time, met a pressing social need. At that time, the right of civil servants to form and join trade unions was already recognised by instruments of international law, both universal and regional. Their right of association was also generally recognised in all member states of the Council of Europe. ILO Convention No. 87, the fundamental text securing, internationally, the right of public officials to form trade unions, was already, by virtue of the Turkish Constitution, directly applicable in domestic law, and the state had confirmed by its subsequent practice (amending of Constitution and judicial decisions) its willingness to recognise the right to organise of civil servants. Turkey had also, in 2000, signed the two United Nations instruments recognising this right.

The Court observed, however, that in spite of these developments in international law, the Turkish authorities had not been able, at the relevant time, to secure to the applicants the right to form a trade union, mainly for two reasons. First, the Turkish legislature, after the ratification in 1993 of ILO Convention No. 87 by Turkey, did not enact legislation to govern the practical application of that right until 2001. Secondly, during the transitional period, the Court of Cassation refused to follow the solution proposed by the Gaziantep District Court, which had been guided by developments in international law, and adopted a restrictive and formalistic interpretation of the domestic legislation concerning the forming of legal entities.

The Court thus considered that the combined effect of the restrictive interpretation by the Court of Cassation and the legislature's inactivity between 1993 and 2001 had prevented the Turkish Government from fulfilling its obligation to secure to the applicants the enjoyment of their trade-union rights and that this was not "necessary in a democratic society". Accordingly, there had been a violation of Article 11 on account of the failure to recognise the applicants' right, as municipal civil servants, to form a trade union.

Annulment of a collective agreement which had been applied for the previous two years

The Court pointed out that the development of its case-law as to the substance of the right of association enshrined in Article 11 was marked by two guiding principles: firstly, the Court took into consideration the totality of the measures taken by the state concerned in order to secure trade-union freedom, allowing for its margin of appreciation; secondly, the Court did not accept restrictions that affected the essential elements of trade-union freedom, without which that freedom would become devoid of substance. These two principles were not contradictory but were correlated. This correlation implied that the contracting state in question, whilst in principle being free to decide what measures it wished to take in order to ensure compliance with Article 11, was under an obligation to take account of the elements regarded as essential by the Court's case-law.

The Court explained that, from the case-law as it stood, the following essential elements of the right of association could be established: the right to form and join a trade union, the prohibition of closed-shop agreements and the right for a trade union to seek to persuade the employer to hear what it had to say on behalf of its members. This list was not finite. On the contrary, it was subject to evolution depending on particular developments in labour relations. Limitations to rights thus had to be construed restrictively, in a manner which gave practical and

effective protection to human rights.

Concerning the right to bargain collectively, the Court, reconsidering its case-law, found, having regard to developments in labour law, both international and national, and to the practice of contracting states in this area, that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention, it being understood that states remained free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any "lawful restrictions" that may have to be imposed on "members of the administration of the state", a category to which the applicants in the present case did not, however, belong.

The Court considered that the trade union Tüm Bel Sen had, already at the relevant time, enjoyed the right to engage in collective bargaining with the employing authority. This right constituted one of the inherent elements in the right to engage in trade-union activities, as secured to that union by Article 11 of the Convention. The collective bargaining and the resulting collective agreement, which for a period of two years had governed all labour relations within Gaziantep Municipal Council except for certain financial matters, had constituted, for the trade union concerned, an essential means to promote and secure the interests of its members. The absence of the legislation necessary to give effect to the provisions of the international labour conventions already ratified by Turkey, and the Court of Cassation's judgment of 6 December 1995 based on that absence, with the resulting *de facto* retroactive annulment of the collective agreement, constituted interference with the applicants' trade-union freedom.

In the Court's view, at the relevant time a number of elements showed that the refusal to accept that the applicants, as municipal civil servants, enjoyed the right to bargain collectively and thus to persuade the authority to enter into a collective agreement, had not corresponded to a "pressing social need". The right for civil servants to be able, in principle, to bargain collectively, was recognised by international legal instruments, both universal and regional, and by a majority of member states of the Council of Europe. In addition, Turkey had ratified ILO Convention No. 98, the principal instrument protecting, internationally, the right for workers to bargain collectively and enter into collective agreements – a right that was applicable to the applicants' trade union.

The Court concluded that the annulment of the collective agreement was not "necessary in a democratic society" and that there had therefore been a violation of Article 11 on that point also, in respect of both the applicants' trade union and the applicants themselves.

Article 14

In view of its findings under Article 11, the Court did not consider it necessary to examine this complaint separately.

Judge Spielmann expressed a concurring opinion joined by Judges Bratza, Casadevall and Villiger. Judge Zagrebelsky expressed a separate opinion.

Salduz v. Turkey

Article 6 §§ 1 and 3 (c) (violations)

Judgment of 27 November 2008. Concerns: the applicant had been denied access to a lawyer while in police custody and had not obtained a copy of the written opinion of the Principal Public Prosecutor at the Court of Cassation.

Facts and complaints

The applicant, Yusuf Salduz, is a Turkish national who was born in 1984 and lives in İzmir (Turkey).

He complained that he had been denied legal assistance while in police custody and that he had not had access to the written opinion of the Principal Public Prosecutor at the Court of Cassation.

On 29 May 2001 the applicant was arrested on suspicion of having participated in an illegal demonstration in support of the imprisoned leader of the PKK (the Kurdistan Workers' Party, an illegal organisation). He was also accused of hanging an illegal banner from a bridge.

On 30 May 2001 the police took a statement from the applicant, without a lawyer being present, in which he admitted having taken part in the demonstration and having written the words on the banner. The applicant subsequently denied the content of his police statement, alleging that it had been extracted from him under duress. The investigating judge remanded the applicant in custody, at which point he was allowed to see a lawyer.

Before the İzmir State Security Court, the applicant again denied the content of his police statement, alleging that it had been extracted from him under duress.

On 5 December 2001 the State Security Court convicted the applicant for aiding and abetting the PKK and sentenced him to four years and six months' imprisonment. His sentence was later reduced to two and a half years' imprisonment as he had been under 18 at the time of the offence.

In giving its decision the State Security Court relied on the statements the applicant had given to the police, to the public prosecutor and to the investigating judge. It also took into account the statements made by his co-accused to the public prosecutor and two other pieces of evidence. It concluded that the applicant's confession to the police had been authentic.

On 27 March 2002 the Principal Public Prosecutor at the Court of Cassation submitted his written opinion to that court, calling for the judgment of the İzmir State Security Court to be upheld. Neither the applicant nor his representative were given access to that opinion. On 10 June 2002 the Court of Cassation dismissed an appeal by the applicant.

The application was lodged with the European Court of Human Rights on 8 August 2002 and declared partly inadmissible on 28 March 2006.

In a Chamber judgment of 26 April 2007 the Court held unanimously that there had been a violation of Article 6 § 1 of the Convention on account of the non-communication to the applicant of the Principal Public Prosecutor's written opinion and, by five votes to two, that there

had been no violation of Article 6 § 3 (c) on account of the applicant's lack of legal assistance while in police custody.

On 20 July 2007 the applicant requested that the case be referred to the Grand Chamber (Article 43 of the Convention). On 24 September 2007 a panel of the Grand Chamber decided to accept his request.

A hearing took place in public in the Human Rights Building, Strasbourg, on 19 March 2008.

Decision of the Court

Access to a lawyer during police custody

The Court found that in order for the right to a fair trial under Article 6 § 1 to remain sufficiently "practical and effective", access to a lawyer should be provided, as a rule, from the first police interview of a suspect, unless it could be demonstrated in the light of the particular circumstances of a given case that there had been compelling reasons to restrict this right. Even where compelling reasons might exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not have unduly prejudiced the rights of the accused under Article 6. The rights of the defence would in principle be irretrievably prejudiced when incriminating statements made during a police interview without access to a lawyer were used as a basis for a conviction.

No justification was given by the Turkish Government for denying the applicant access to a lawyer other than the fact that this was provided for on a systematic basis by the relevant legal provisions. As such, this already fell short of the requirements of Article 6 in this respect.

The Court moreover observed in particular that the State Security Court had used the applicant's statement to the police as the main evidence on which to convict him, despite his denial of its accuracy. For the Court, the applicant had undoubtedly been personally affected by the restrictions on his access to a lawyer, in that his statement to the police had ultimately been used for his conviction. Neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred during police custody.

The Court lastly noted that one of the specific elements of the instant case was the applicant's age. Having regard to a significant number of relevant international law materials concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody was a minor.

In sum, the Court considered that, even though the applicant had had the opportunity to challenge the evidence against him at his trial and subsequently on appeal, the absence of a lawyer during his period in police custody had irretrievably affected his defence rights. There had therefore been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1.

Non-communication of the written opinion of the Principal Public Prosecutor at the Court of Cassation

The Court considered, for the reasons given by the Chamber in its judgment of 26 April 2007, that the applicant's right to adversarial proceedings has been breached. There had therefore been a violation of Article 6 § 1.

Judge Bratza expressed a concurring opinion. Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska expressed a concurring opinion and Judge Zagrebelsky expressed a concurring opinion joined by Judges Casadevall and Türmen.

S. and Marper v. the United Kingdom

Judgment of 4 December 2008. Concerns: the retention by the authorities of the applicants fingerprints, cellular samples and DNA profiles after their acquittal or discharge.

Article 8 (violation)

Facts and complaints

The applicants, S. and Michael Marper, are both British nationals, who were born in 1989 and 1963 respectively. They live in Sheffield, the United Kingdom.

The case concerned the retention by the authorities of the applicants' fingerprints, cellular samples and DNA profiles after criminal proceedings against them were terminated by an acquittal and were discontinued respectively.

On 19 January 2001 S. was arrested and charged with attempted robbery. He was aged eleven at the time. His fingerprints and DNA samples were taken. He was acquitted on 14 June 2001. Mr Marper was arrested on 13 March 2001 and charged with harassment of his partner. His fingerprints and DNA samples were taken. On 14 June 2001 the case was formally discontinued as he and his partner had become reconciled.

Once the proceedings had been terminated, both applicants unsuccessfully requested that their fingerprints, DNA samples and profiles be destroyed. The information had been stored on the basis of a law authorising its retention without limit of time.

The application was lodged with the European Court of Human Rights on 16 August 2004 and declared admissible on 16 January 2007. The Chamber to which the case was assigned decided to relinquish jurisdiction to the Grand Chamber on 10 July 2007.

The National Council for Civil Liberties and Privacy International were granted leave to intervene in the written procedure before the Grand Chamber.

A public hearing took place in the Human Rights building, Strasbourg, on 27 February 2008.

Decision of the Court

Article 8

The Court noted that cellular samples contained much sensitive information about an individual, including information about his or her health. In addition, samples contained a unique genetic code of great relevance to both the individual concerned and his or her relatives. Given the nature and the amount of personal information contained in cellular samples, their retention per se had to be regarded as interfering with the right to respect for the private lives of the individuals concerned.

In the Court's view, the capacity of DNA profiles to provide a means of identifying genetic relationships

between individuals was in itself sufficient to conclude that their retention interfered with the right to the private life of those individuals. The possibility created by DNA profiles for drawing inferences about ethnic origin made their retention all the more sensitive and susceptible of affecting the right to private life.

The Court concluded that the retention of both cellular samples and DNA profiles amounted to an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 § 1 of the Convention.

The applicants' fingerprints were taken in the context of criminal proceedings and subsequently recorded on a nationwide database with the aim of being permanently kept and regularly processed by automated means for criminal-identification purposes. It was accepted that, because of the information they contain, the retention of cellular samples and DNA profiles had a more important impact on private life than the retention of fingerprints. However, the Court considered that fingerprints contain unique information about the individual concerned and their retention without his or her consent cannot be regarded as neutral or insignificant. The retention of fingerprints may thus in itself give rise to important private-life concerns and accordingly constituted an interference with the right to respect for private life.

The Court noted that, under Section 64 of the 1984 Act, the fingerprints or samples taken from a person in connection with the investigation of an offence could be retained after they had fulfilled the purposes for which they were taken. The retention of the applicants' fingerprint, biological samples and DNA profiles thus had a clear basis in the domestic law.

At the same time, Section 64 was far less precise as to the conditions attached to and arrangements for the storing and use of this personal information.

The Court reiterated that, in this context, it was essential to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards. However, in view of its analysis and conclusions as to whether the interference was necessary in a democratic society, the Court did not find it necessary to decide whether the wording of Section 64 met the "quality of law" requirements within the meaning of Article 8 § 2 of the Convention.

The Court accepted that the retention of fingerprint and DNA information pursued a legitimate purpose, namely the detection, and therefore, prevention of crime.

The Court noted that fingerprints, DNA profiles and cellular samples constituted personal data within the meaning of the Council of Europe Convention of 1981 for the protection of individuals with regard to automatic processing of personal data.

The Court indicated that the domestic law had to afford appropriate safeguards to prevent any such use of personal data as could be inconsistent with the guarantees of Article 8 of the Convention. The Court added that the need for such safeguards was all the greater where the protection of personal data undergoing automatic processing was concerned, not least when such data were used for police purposes.

The interests of the individuals concerned and the community as a whole in protecting personal data, including fingerprint and DNA information, could be outweighed by the legitimate interest in the prevention of crime (the Court referred to Article 9 of the Data Protection Convention). However, the intrinsically private character of this information required the Court to exercise careful scrutiny of any state measure authorising its retention and use by the authorities without the consent of the person concerned.

The issue to be considered by the Court in this case was whether the retention of the fingerprint and DNA data of the applicants, as persons who had been suspected, but not convicted, of certain criminal offences, was necessary in a democratic society.

The Court took due account of the core principles of the relevant instruments of the Council of Europe and the law and practice of the other contracting states, according to which retention of data was to be proportionate in relation to the purpose of collection and limited in time. These principles had been consistently applied by the contracting states in the police sector, in accordance with the 1981 Data Protection Convention and subsequent Recommendations by the Committee of Ministers of the Council of Europe.

As regards, more particularly, cellular samples, most of the contracting states allowed these materials to be taken in criminal proceedings only from individuals suspected of having committed offences of a certain minimum gravity. In the great majority of the contracting states with functioning DNA databases, samples and DNA profiles derived from those samples were required to be removed or destroyed either immediately or within a certain limited time after acquittal or discharge. A restricted number of exceptions to this principle were allowed by some contracting states.

The Court noted that England, Wales and Northern Ireland appeared to be the only jurisdictions within the Council of Europe to allow the indefinite retention of fingerprint and DNA material of any person of any age suspected of any recordable offence.

It observed that the protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests. Any state claiming a pioneer role in the development of new technologies bore special responsibility for striking the right balance in this regard.

The Court was struck by the blanket and indiscriminate nature of the power of retention in England and Wales. In particular, the data in question could be retained irrespective of the nature or gravity of the offence with which the individual was originally suspected or of the age of the suspected offender; the retention was not time-limited; and there existed only limited possibilities for an acquitted individual to have the data removed from the nationwide database or to have the materials destroyed.

The Court expressed a particular concern at the risk of stigmatisation, stemming from the fact that persons in the position of the applicants, who had not been convicted of any offence and were entitled to the presumption of innocence, were treated in the same way as convicted persons. It was true that the retention of the applicants' private data could not be equated with the voicing of suspicions. Nonetheless, their perception that they were not being treated as innocent was heightened by the fact that their data were retained indefinitely in the same way as the data of convicted persons, while the data of

those who had never been suspected of an offence were required to be destroyed.

The Court further considered that the retention of unconvicted persons' data could be especially harmful in the case of minors such as the first applicant, given their special situation and the importance of their development and integration in society. It considered that particular attention had to be paid to the protection of juveniles from any detriment that could result from the retention by the authorities of their private data following acquittals of a criminal offence.

In conclusion, the Court found that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, failed to strike a fair balance between the competing public and private interests, and that the respondent state had overstepped any acceptable margin of appreciation in this regard. Accordingly, the retention in question constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society. The Court concluded unanimously that there had been a violation of Article 8 in this case.

Article 14 in conjunction with Article 8

In the light of the reasoning that led to its conclusion under Article 8 above, the Court considered unanimously that it was not necessary to examine separately the complaint under Article 14.

Sergey Zolotukhin v. Russia

Judgment of 10 February 2009. Concerns: the applicant complained that, after having already served three days' detention for disorderly conduct as a result of administrative proceedings against him, he had been detained and tried again for the same offence in criminal proceedings.

Article 4 of Protocol No. 7 (violation)

Facts and complaints

Sergey Aleksandrovich Zolotukhin is a Russian national who was born in 1966 and lives in Voronezh (Russia).

The case concerns administrative and criminal proceedings brought against Mr Zolotukhin in 2002 for disorderly conduct.

On 4 January 2002 Mr Zolotukhin was arrested for bringing his girlfriend into a military compound without authorisation. He was then taken to the Voronezh Leninskiy district police station. According to the police report the applicant, who was drunk, behaved insolently, used obscene language and attempted to escape. On the same day the Gribanovskiy District Court found the applicant guilty of "minor disorderly acts" under Article 158 of the Code of Administrative Offences and sentenced him to three days' detention.

Subsequently, criminal proceedings were brought against the applicant under Article 213 § 2 (b) of the Criminal Code in relation to his disorderly conduct before the police report was drawn up, and under Articles 318 and 319 of the Criminal Code in relation to his threatening and insulting behaviour during and after the drafting of the report. He was remanded in custody on 24 January 2002. On 2 December 2002 the same district court found the applicant guilty of the charges under Article 319 of the Criminal Code. He was, however, acquitted of the charges under Article 213, as the court found that his guilt had not been proven to the standard required in criminal proceedings.

The application was lodged with the European Court of Human Rights on 22 April 2003 and declared partly admissible on 8 September 2005.

In its Chamber judgment of 7 June 2007, the Court held unanimously that there had been a violation of Article 4 of Protocol No. 7.

On 5 September 2007 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 12 November 2007 the panel of the Grand Chamber accepted that request.

The President of the Court gave the Human Rights Training Institute of the Paris Bar Association leave to intervene as a third party in the Court's proceedings, under Article 36 § 2 of the Convention (third party intervention) and Rule 44 § 2 of the Rules of Court.

A hearing took place in public in the Human Rights Building, Strasbourg, on 26 March 2008.

Decision of the Court

The Court reiterated that Article 4 of Protocol No. 7 imposed a prohibition on trying or punishing an individual twice in criminal proceedings for the same offence.

As to the existence of a "criminal charge" for the purposes of that article, the Court, upholding the Chamber's findings, took the view that although the proceedings instituted against the applicant before the Gribanovskiy District Court on 4 January 2002 were classified as administrative in national law, they were to be equated with criminal proceedings on account, in particular, of the nature of the offence and the severity of the penalty.

As to whether the offences were the same, the Court noted that it had adopted a variety of approaches in the past, placing the emphasis either on identity of the facts irrespective of their legal characterisation, on the legal classification, accepting that the same facts could give rise to different offences, or on the existence or otherwise of essential elements common to both offences. Taking the view that the existence of these different approaches was a source of legal uncertainty which was incompatible with the fundamental right guaranteed by Article 4 of Protocol No. 7, the Court decided to define in detail what was to be understood by the term "same offence" for the purposes of the Convention.

After examining the scope of the right not to be tried and punished twice as set forth in other international instruments, in particular the United Nations Covenant on Civil and Political Rights, the European Union's Charter of Fundamental Rights and the American Convention on Human Rights, the Court stated that Article 4 of Protocol No. 7 should be construed as prohibiting the prosecution or trial of an individual for a second offence in so far as it arose from identical facts or facts that were "substantially" the same as those underlying the first offence. This guarantee came into play where a new set of proceedings

was instituted after the previous acquittal or conviction had acquired the force of *res judicata*.

In the instant case the Court considered that the facts underlying the two sets of administrative and criminal proceedings against the applicant differed in only one element, namely the threat to use violence against a police officer, and should therefore be regarded as substantially the same.

As to whether there had been a duplication of proceedings, the Court upheld the Chamber's conclusions, finding that the judgment in the "administrative" proceedings sentencing the applicant to three days' detention amounted to a final decision, as no ordinary appeal lay against it in domestic law. The Court further stressed that the fact that the applicant had been acquitted in the criminal proceedings had no bearing on his claim that he had been prosecuted twice for the same offence, nor did it deprive him of his victim status, as he had been acquitted not on account of the breach of his rights under Article 4 of Protocol No. 7, but solely on the ground of insufficient evidence against him.

The Court concluded that the proceedings instituted against the applicant under Article 213 § 2 (b) of the Criminal Code concerned essentially the same offence as that of which he had already been convicted under Article 158 of the Code of Administrative Offences, and that he had therefore been the victim of a breach of Article 4 of Protocol No. 7.

Andrejeva v. Latvia

Article 14 in conjunction with Article 1 of Protocol No. 1 and Article 6 § 1 (violations)

Judgment of 18 February 2009. Concerns: the applicant alleged, in particular, that by refusing to grant her a state pension in respect of her employment in the former Soviet Union prior to 1991 on the ground that she did not have Latvian citizenship, the Latvian authorities had discriminated against her in the exercise of her pecuniary rights. She also complained that the hearing of 6 October 1999 had taken place earlier than scheduled, which had prevented her from taking part in the examination of her appeal on points of law.

Facts and complaints

The applicant, Natālija Andrejeva, was born in 1942 and lives in Riga (Latvia). She has lived in Latvia for 54 years and, having previously been a national of the former USSR, currently has the status of a permanently resident non-citizen (*nepilsone*) of Latvia. Now retired, she was employed at a recycling plant at the Olaine chemical complex, formerly a public body under the authority of the USSR Ministry of Chemical Industry. The complex is situated in what was USSR territory and is now Latvian territory following the restoration in August 1991 of Latvian independence.

The case concerned, in particular, the applicant's complaint that the application of the transitional provisions of the Latvian State Pensions Act in her case had deprived her of pension entitlements in respect of 17 years of employment.

The applicant first entered Latvian territory in 1954, at the age of 12, at a time when it was part of the Soviet Union. She has been permanently resident there ever since. She started her job at the Olaine chemical complex in 1966. In 1973 she was assigned to the regional division of the Environmental Protection Monitoring Department of the USSR Ministry of Chemical Industry. Until 1981 she was under the authority of a state enterprise with its head office in Kiev. She was subsequently placed under the authority of a subdivision of the same enterprise, which was subordinate to a division with its head office in Moscow. Although the applicant's salary was paid by post-office giro transfer, initially from Kiev and then from Moscow, her successive reassignments did not entail any significant change in her working conditions, as she continued her duties at the Olaine recycling plant.

Following the declaration of Latvia's independence, on 21 November 1990 the Environmental Protection Monitoring Department was abolished and the applicant came under the direct authority of the plant's management.

On retiring in 1997 the applicant asked her local Social Insurance Board to calculate her retirement pension. She was informed that, in accordance with paragraph 1 of the transitional provisions of the State Pensions Act, only periods of work in Latvia could be taken into account in calculating the pensions of foreign nationals or stateless persons who had been resident in Latvia on 1 January 1991. As the applicant had been employed from 1 January 1973 to 21 November 1990 by entities based in Kiev and Moscow, the Board calculated her pension solely in respect of the time she had worked before and after that period. As a result, she was awarded a monthly pension of 20 Latvian lati (approximately EUR 35).

The applicant brought administrative and judicial proceedings, without success. Ultimately, the applicant's appeal on points of law to the Senate of the Supreme Court, examined at a public hearing on 6 October 1999, was dismissed. The Senate upheld the district and regional courts' findings that the period during which the applicant had been employed by Ukrainian and Russian enterprises could not be taken into account in calculating her pension. Furthermore, as those employers were not taxpayers in Latvia, there was no reason for the applicant to be covered by the Latvian mandatory social-insurance scheme.

The applicant requested the re-examination of her case because she had been unable to take part in the hearing of 6 October 1999 as it had started earlier than scheduled. That request was also dismissed.

In February 2000 the applicant was informed that, on the basis of an agreement reached between Latvia and Ukraine, her pension had been recalculated, with effect from 1 November 1999, to take account of the years she had worked for her Ukrainian-based employers.

The application was lodged with the European Court of Human Rights on 27 February 2000 and declared partly admissible on 11 July 2006. On 11 December 2007 the Chamber to which the case was assigned decided to relinquish jurisdiction in favour of the Grand Chamber under Article 30. The Grand Chamber held a public hearing in the case on 25 June 2008.

Decision of the Court

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

The Court reiterated that once an applicant had established the existence of a difference in treatment, it was for the government to show that the difference was justified.

In the present case the Court noted, firstly, that in the judgments they had delivered in 1999 the Latvian courts had found that the fact of having worked for an entity established outside Latvia despite having been physically in Latvian territory did not constitute "employment within the territory of Latvia" within the meaning of the State Pensions Act. The parties disagreed as to whether at that time such an interpretation could have appeared reasonable or whether it was manifestly arbitrary. The Court did not consider it necessary to determine that issue separately.

The Court accepted that the difference in treatment complained of pursued at least one legitimate aim that was broadly compatible with the general objectives of the Convention, namely the protection of the country's economic system.

The parties agreed that if the applicant became a naturalised Latvian citizen she would automatically receive the pension in respect of her entire working life. However, the Court had held that very weighty reasons would have to be put forward before it could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention; it could not discern any such reasons in the present case. Firstly, it had not been established, or even alleged, that the applicant had not satisfied the other statutory conditions entitling her to a pension in respect of all her years of employment. She was therefore in a similar situation to persons who had had an identical or similar career but who, after 1991, had been recognised as Latvian citizens. Secondly, there was no evidence that during the Soviet era there had been any difference in treatment between nationals of the former USSR as regards pensions. Thirdly, the Court observed that the applicant was not currently a national of any state. She had the status of a "permanently resident non-citizen" of Latvia, the only state with which she had any stable legal ties and thus the only state which, objectively, could assume responsibility for her in terms of social security.

In those circumstances, the arguments submitted by the Latvian Government were not sufficient to satisfy the Court that there was a "reasonable relationship of proportionality" between the legitimate aim pursued and the means employed.

The government took the view that the reckoning of periods of employment was essentially a matter to be addressed through bilateral inter-state agreements on social security. The Court was fully aware of the importance of such agreements but nevertheless reiterated that by ratifying the Convention, Latvia had undertaken to secure "to everyone within [its] jurisdiction" the rights and freedoms guaranteed therein. Accordingly, the Latvian State could not be absolved of its responsibility under Article 14 on the ground that it was not or had not been bound by inter-state agreements on social security with Ukraine and Russia. Nor could the Court accept the government's argument that it would be sufficient for the applicant to become a naturalised Latvian citizen in order to receive the full amount of her pension. The prohibition of discrimination in Article 14 was meaningful only if an applicant's personal situation was taken into account exactly as it stood. The Court therefore found a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

Article 6 § 1

The Court noted, among other things, that the appeal on points of law had been lodged not by the applicant herself or her lawyer but by the public prosecutor attached to the Riga Regional Court. The government argued that the favourable position adopted by the public prosecutor had dispensed the Senate from having to afford the applicant the opportunity to attend the hearing herself. The Court was not persuaded by that argument and observed, in particular, that it did not appear that under Latvian law, a public prosecutor could represent one of the parties or replace that party at the hearing.
Ms Andrejeva had been a party to administrative proceedings governed at the time by the Civil Procedure Act and instituted at her request. Accordingly, as the main protagonist in those proceedings she should have been afforded the full range of safeguards deriving from the adversarial principle.

The Court concluded that the fact that the appeal on points of law had been lodged by the prosecution service had in no way curtailed the applicant's right to be present at the hearing of her case, a right she had been unable to exercise despite having wished to do so. There had therefore been a violation of Article 6 § 1.

Judge Ziemele expressed a partly dissenting opinion.

A. and Others v. the United Kingdom

Article 3 (no violation)
Article 5§§ 1, 4 and 5 (violations)

Judgment of 19 February 2009. Concerns: The applicants complained before the Court that their indefinite detention in high security conditions amounted to inhuman or degrading treatment. They also alleged that the detention scheme was unlawful and discriminatory and that the derogation was disproportionate. Furthermore, although their detention was declared to be in breach of domestic law, they were unable to bring any proceedings in the United Kingdom to claim compensation or bring about their release. Lastly, the applicants complained that during their appeals against certification before SIAC they had only limited knowledge of the case against them and a limited possibility to challenge it.

Facts and complaints

The applicants are 11 individuals, six are of Algerian nationality; four are, respectively, of French, Jordanian, Moroccan and Tunisian nationality;

and, one, born in a Palestinian refugee camp in Jordan, is stateless.

Following the al-Qaeda attacks of 11 September 2001 on the United States of America, the British Government considered that the United Kingdom was a particular target for terrorist attacks, such as to give rise to a "public emergency threatening the life of the nation" within the meaning of Article 15 of the European Convention on Human Rights (derogation in time of emergency). The government believed that the threat came principally from a number of foreign nationals present in the United Kingdom, who were providing a support network for extremist Islamist terrorist operations linked to al-Qaeda. These individuals could not be deported because there was a risk that each would be ill-treated in his country of origin in breach of Article 3 of the Convention. The government considered that it was necessary to create an extended power permitting the detention of foreign nationals, where the Secretary of State reasonably believed that the person's presence in the United Kingdom was a risk to national security and reasonably suspected that the person was an "international terrorist". Since the government considered that this detention scheme might not be consistent with Article 5(1) of the Convention (right to liberty), on 11 November 2001 they issued a notice of derogation under Article 15 of the Convention to the Secretary General of the Council of Europe. The notice set out the provisions of Part 4 of the Anti-Terrorism, Crime and Security Act 2001 ("the 2001 Act"), including the power to detain foreign nationals certified as "suspected international terrorists" who could not "for the time being" be removed from the United Kingdom.

Part 4 of the 2001 Act came into force on 4 December 2001 and was repealed in March 2005. During the lifetime of the legislation 16 individuals, including the 11 applicants, were certified and detained. Six of the applicants were detained on 19 December 2001; the others were detained on various dates up until October 2003. They were initially detained at Belmarsh Prison in London. The Moroccan and French applicants were released as they elected to leave the United Kingdom in December 2001 and March 2002, respectively. Three of the applicants, following a deterioration in their mental health (including a suicide attempt), were transferred to Broadmoor Secure Mental Hospital. Another applicant was released on bail in April 2004, under conditions equal to house arrest, because of serious concerns over his mental health.

The decision to certify each applicant under the 2001 Act was subject to review every six months before the Special Immigration Appeals Commission (SIAC); each applicant appealed against the Secretary of State's decision to certify him. In determining whether the Secretary of State had had reasonable grounds for suspecting that each applicant was an "international terrorist" whose presence in the United Kingdom gave rise to a risk to national security, SIAC used a procedure which enabled it to consider both evidence which could be made public ("open material") and sensitive evidence which could not be disclosed for reasons of national security ("closed material"). The detainee and his legal representatives were given the open material and could comment on it in writing and at a hearing. The closed material was not disclosed to the detainee or his lawyers but to a "special advocate", appointed on behalf of each detainee by the Solicitor General. In addition to the open hearings, SIAC held closed hearings to examine the secret evidence, where the special advocate could make submissions on behalf of the detainee as regards procedural matters, such as the need for further disclosure, and as to the substance and reliability of the closed material. However, once the special advocate had seen the closed material he could not have any contact with the detainee or his lawyers, except with the leave of the court. On 30 July 2002 SIAC upheld the Secretary of State's decision to certify each of the applicants. However, it also found that, since the detention regime applied only to foreign nationals, it was discriminatory and in breach of the Convention.

The applicants also brought proceedings in which they challenged the fundamental legality of the November 2001 derogation. These proceedings were eventually determined by the House of Lords on 16 December 2004. It held that there was an emergency threatening the life of the nation but that the detention scheme did not rationally address the threat to security and was therefore disproportionate. The House of Lords found, in particular, that there was evidence that United Kingdom nationals were also involved in terrorist networks linked to al-Qaeda and that the detention scheme under Part 4 of the 2001 Act discriminated unjustifiably against foreign nationals. The House of Lords therefore made a declaration of incompatibility under the Human Rights Act and quashed the derogation order.

Part 4 of the 2001 Act remained in force, however, until it was repealed by Parliament in March 2005. As soon as the applicants still in detention were released, they were made subject to control orders under the Prevention of Terrorism Act 2005. Control orders impose various restrictions on those reasonably suspected of involvement in terrorism, regardless of nationality.

In August 2005, following negotiations commenced towards the end of 2003 to seek from the Algerian and Jordanian Governments assurances that the applicants would not be ill-treated if returned, the Government served Notices of Intention to Deport on the six Algerian applicants and Jordanian applicant. These applicants were taken into immigration custody pending removal to Algeria and Jordan. In April 2008 the Court of Appeal ruled that the Jordanian applicant could not lawfully be extradited to Jordan, because it was likely that evidence obtained by torture could be used against him there at trial. The case was decided by the House of Lords on 18 February 2009.

The application was lodged with the European Court of Human Rights on 21 January 2005. The Chamber to which the case was assigned decided to relinquish jurisdiction to the Grand Chamber on 11 September 2007. The Grand Chamber held a public hearing in the case on 21 May 2008.

The President granted leave to two London-based non-governmental organisations, Liberty and Justice, to intervene in the proceedings as third parties.

Decision of the Court

Article 3 taken alone or in conjunction with Article 13

The Court, while acutely conscious of the difficulties faced by states in protecting their populations from terrorist violence, stressed that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism, and irrespective of the conduct of the person concerned, the European Convention prohibits in absolute terms torture

and inhuman or degrading treatment and punishment.

The uncertainty and fear of indefinite detention had to have caused the remaining ten applicants anxiety and distress, as it would virtually any detainee in their position. Furthermore, it was probable that the stress had been sufficiently serious and enduring to affect the mental health of certain of the applicants.

It could not, however, be said that the applicants had been without any prospect or hope of release. In particular, they had been able to bring proceedings to challenge the legality of the detention scheme under the 2001 Act and had been successful before SIAC, on 30 July 2002, and the House of Lords on 16 December 2004. In addition, each applicant had been able to bring an individual challenge to the decision to certify him and SIAC had been required by statute to review the continuing case for detention every six months. The Court did not, therefore, consider that the applicants' situation had been comparable to an irreducible life sentence, which would have given rise to an issue under Article 3.

Each detained applicant had also had at his disposal the remedies available to all prisoners under administrative and civil law to challenge conditions of detention, including any alleged inadequacy of medical treatment. The applicants had not attempted to make use of those remedies and had not therefore complied with the requirement under Article 35 of the Convention to exhaust domestic remedies. It followed that the Court could not take the conditions of detention into account in forming an assessment of the applicants' claims.

In those circumstances, the Court found that the applicants' detention had not reached the high threshold of inhuman and degrading treatment for which a violation of Article 3 could be found.

As concerned the applicants' complaint that they had not had effective domestic remedies for their Article 3 complaints, the Court recalled in particular that Article 13 did not guarantee a remedy allowing a challenge to primary legislation before a national authority on the ground of being contrary to the Convention.

In conclusion, therefore, the Court found that there had been no violation of Article 3, taken alone or in conjunction with Article 13.

It declared the Moroccan applicant's complaints under Articles 3 and 13 inadmissible because he had been detained for only a few days.

Articles 5 § 1 and 15

Whether the applicants had been lawfully detained in accordance with Article 5 § 1 (f)

The Court recalled that Article 5 enshrined a fundamental human right, namely the protection of the individual against arbitrary interference by the state with his or her right to liberty, and that that guarantee applied to "everyone", regardless of nationality.

Subparagraph (f) of Article 5 § 1 permits the state to control the liberty of aliens in an immigration context and the Government contended that the applicants had been lawfully detained as persons "against whom action is being taken with a view to deportation or extradition".

The Court found no violation in respect of the Moroccan and French applicants, who had been detained for only short periods before electing to leave the United Kingdom.

However, concerning the remaining nine applicants, the Court did not consider that the United Kingdom Government's policy of keeping the possibility of deporting the applicants "under active review" had been sufficiently certain or determinative to amount to "action ... being taken with a view to deportation". One of the principal assumptions underlying the derogation notice, the 2001 Act and the decision to detain the applicants had been that they could not be removed or deported "for the time being". There was no evidence that, during the period of those nine applicants' detention, there had been any realistic prospect of their being expelled without them being put at real risk of ill-treatment. Indeed, the first applicant is stateless and the government had not produced any evidence to suggest that there had been another state willing to accept him. Nor had the government apparently entered into negotiations with Algeria or Jordan, with a view to seeking assurances that the applicants who were nationals of those states would not be ill-treated if returned, until the end of 2003. No such assurance was received until August 2005. Their detention had not, therefore, fallen within the exception to the right to liberty set out in paragraph 5 § 1(f). That conclusion had also been, expressly or impliedly, reached by a majority of the members of the House of Lords.

It was, instead, clear from the terms of the derogation notice and Part 4 of the 2001 Act that the applicants had been certified and detained because they had been suspected of being "international terrorists". Internment and preventive detention without charge are incompatible with the fundamental right to liberty under Article 5 § 1, in the absence of a valid derogation under Article 15. The Court therefore considered whether the United Kingdom's derogation had been valid.

Whether the United Kingdom had validly derogated from its obligations under Article 5 § 1

In the unusual circumstances of the case, where the House of Lords had examined the issues relating to the state's derogation and concluded that there had been a public emergency threatening the life of the nation but that the measures taken in response had not been strictly required by the exigencies of the situation, the Court considered that it would be justified in reaching a contrary conclusion only if it found that the House of Lords' decision was manifestly unreasonable.

Whether there had been a "public emergency threatening the life of the nation"

Before the domestic courts, the Secretary of State had provided evidence to show the existence of a threat of serious terrorist attacks planned against the United Kingdom. Additional closed evidence had been provided before SIAC. All the national judges had accepted that danger to have been credible. Although no al-Qaeda attack had taken place within the territory of the United Kingdom at the time when the derogation had been made, the Court did not consider that the national authorities could be criticised for having feared such an attack to be imminent. A state could not be expected to wait for disaster to strike before taking measures to deal with it. Moreover, the danger of a terrorist attack had, tragically, been shown by the bombings and attempted bombings in London in July 2005 to have been very real.

While it was striking that the United Kingdom had been the only Convention State to have lodged a derogation in response to the danger from al-Qaeda, the Court accepted that it had been for each government, as the guardian of

their own people's safety, to make its own assessment on the basis of the facts known to it. Weight had, therefore, to be attached to the judgment of the United Kingdom's Government and Parliament, as well as the views of the national courts, who had been better placed to assess the evidence relating to the existence of an emergency.

Accordingly, the Court, like the majority of the House of Lords, held that there had been a public emergency threatening the life of the nation.

Whether the derogating measures had been strictly required by the exigencies of the situation

The question whether the measures were strictly required was ultimately a judicial decision, particularly in a case such as the present where the applicants had been deprived of their fundamental right to liberty over a long period of time. Having regard to the careful way in which the House of Lords had approached the issues, it could not be said that inadequate weight had been given to the views of the government or Parliament on this question.

The Court considered that the House of Lords had been correct in holding that the extended powers of detention were not to be seen as immigration measures, where a distinction between nationals and non-nationals would be legitimate, but instead as concerned with national security. Part 4 of the 2001 Act had been designed to avert a real and imminent threat of terrorist attack which, on the evidence, had been posed by both nationals and non-nationals. The choice by the government and Parliament of an immigration measure to address what had essentially been a security issue had resulted in a failure adequately to address the problem, while imposing a disproportionate and discriminatory burden of indefinite detention on one group of suspected terrorists. As the House of Lords had found, there was no significant difference in the potential adverse impact of detention without charge on a national or on a non-national who in practice could not leave the country because of fear of torture abroad.

The government had argued before the Court that it had been legitimate to confine the detention scheme to non-nationals, to take into account the sensitivities of the British Muslim population in order to reduce the chances of recruitment among them by extremists. However, the government had not provided the Court with any evidence to suggest that British Muslims had been significantly more likely to react negatively to the detention without charge of national rather than foreign Muslims reasonably suspected of links to al-Qaeda. The system of control orders, put in place by the Prevention of Terrorism Act 2005, did not discriminate between national and non-national suspects.

Similarly, as concerned the argument that the state could better respond to the terrorist threat if it were able to detain its most serious source, namely non-nationals, the Court had not been provided with any evidence which could persuade it to overturn the conclusion of the House of Lords that the difference in treatment had been unjustified. Indeed, the national courts, including SIAC, which saw both the open and the closed material, had not been convinced that the threat from non-nationals had been significantly more serious than that from nationals.

In conclusion, therefore, the Court, like the House of Lords, found that the derogating measures had been disproportionate in that they had discriminated unjustifiably between nationals and non-nationals. It followed that there had been a violation of Article 5 § 1 in respect of all but the Moroccan and French applicants.

Article 5 § 4

Since the Moroccan and French applicants were already at liberty, having elected to leave the United Kingdom, by the time the various proceedings to determine the lawfulness of the detention under the 2001 Act had commenced, the Court declared those two applicants' complaints under Article 5 § 4 inadmissible.

The remaining applicants complained that the procedure before SIAC was unfair because the evidence against them was not fully disclosed.

Where a person is detained on the basis of an allegedly reasonable suspicion of unlawful behaviour, the guarantee of procedural fairness under Article 5 § 4 requires him to be given an opportunity effectively to challenge the allegations. This generally requires disclosure of the evidence against him. However, in cases where there is a strong public interest in keeping some of the relevant evidence secret, for example to protect vulnerable witnesses or intelligence sources, it is possible to place restrictions on the right to disclosure, as long as the detainee still has the possibility effectively to challenge the allegations against him.

The Court's starting point in the present case was that, as the national courts found and it accepted, during the period of the applicants' detention the activities and aims of the al-Qaeda network had given rise to a "public emergency threatening the life of the nation". During the relevant time, therefore, there was considered to be an urgent need to protect the population of the United Kingdom from terrorist attack and a strong public interest in obtaining information about al-Qaeda and its associates and in maintaining the secrecy of the sources of such information.

Balanced against these important public interests, however, was the applicants' rights under Article 5 § 4 to procedural fairness in their appeals to SIAC. It was, therefore, essential that as much information about the allegations and evidence against each applicant was disclosed as was possible without compromising national security or the safety of others. Where full disclosure was not possible, the difficulties this caused had to be counterbalanced in such a way that each applicant still had the possibility effectively to challenge the case against him.

The Court considered that SIAC, which was a fully independent court and which could examine all the relevant evidence, both closed and open, was best placed to ensure that no material was unnecessarily withheld from the detainee. The special advocate provided an important, additional safeguard through questioning the state's witnesses on the need for secrecy and through making submissions to the judge regarding the case for additional disclosure. On the material before it, the Court had no basis to find that excessive and unjustified secrecy had been employed in respect of any of the applicants' appeals or that there had not been compelling reasons for the lack of disclosure in each case.

Even where all or most of the underlying evidence had remained undisclosed, if the allegations contained in the open material had been sufficiently specific, it should have been possible for the applicant to provide his representatives and

the special advocate with information with which to refute them, without his having to know the detail or sources of the evidence which formed the basis of the allegations. Where, however, the open material consisted purely of general assertions and SIAC's decision to uphold the certification and maintain the detention had been based solely or to a decisive degree on closed material, the procedural requirements of Article 5 § 4 would not be satisfied.

The Court noted that the open material against four of the Algerian applicants and the Jordanian applicant had included detailed allegations about, for example, the purchase of specific telecommunications equipment, possession of specific documents linked to named terrorist suspects and meetings with named terrorist suspects with specific dates and places. Those allegations had been sufficiently detailed to permit the applicants effectively to challenge them. Accordingly, there had been no violation of Article 5 § 4 in respect of those five applicants.

The principal allegations against the stateless applicant and one of the two remaining Algerian applicants had been that they had been involved in fund-raising for terrorist groups linked to al-Qaeda. These allegations were supported by open evidence, such as evidence of large sums of money moving through a bank account or of money raised through fraud. However, in each case the evidence which had allegedly provided the link between the money raised and terrorism had not been disclosed to either applicant. Those applicants had not therefore been in a position effectively to challenge the allegations against them, in violation of Article 5 § 4.

The open allegations in respect of the Tunisian and remaining Algerian applicant had been of a general nature, principally that they had been members of named extremist Islamist groups linked to al-Qaeda. SIAC observed in its judgments dismissing each of these applicants' appeals that the open evidence had been insubstantial and that the evidence on which it relied against them had largely to be found in the closed material. Again, therefore, the Court found that those applicants had not been in a position to effectively challenge the allegations against them, in violation of Article 5 § 4.

Article 5 § 5

The Court noted that the above violations could not give rise to an enforceable claim for compensation by the applicants before the national courts. It followed that there had been a violation of Article 5 § 5 in respect of all but the Moroccan and French applicants.

Other complaints

Given the above findings, the Court held that it was not necessary to examine the applicants' complaints under Article 5 § 1 taken in conjunction with either Articles 13 or 14 or under Article 5 § 4 concerning the applicants' complaints that the House of Lords had been unable to make a binding order for their release. In addition, having already examined the issues relating to the use of special advocates, closed hearings and lack of full disclosure in the proceedings before SIAC, it also held that it was not necessary to examine the applicants' complaints under Article 6.

Kozacıoğlu v. Turkey

Article 1 of Protocol No. 1 (violation)

Judgment of 19 February 2009. Concerns: the applicant complained in particular of an infringement of his right to the peaceful enjoyment of his possessions. He further complained that the proceedings before the domestic courts had been unfair, in that they had refused to appoint a qualified art historian to assess the cultural and historical features of the disputed building.

Facts and complaints

İbrahim Kozacıoğlu, a Turkish national, died in 2005. His heirs decided to continue with the application before the Court.

In April 2000 a building belonging to the applicant was expropriated by the Ministry of Culture on the ground that it had been classified as a "cultural asset". The applicant was paid approximately EUR 65 326 on the transfer of the property.

In October 2000 Mr Kozacıoğlu lodged an application for increased compensation, requesting that a new panel of experts re-assess the property and take into account its historical value. He argued in particular that the building in question featured on the Council of Europe's inventory of cultural and natural heritage, and claimed approximately EUR 1 728 750 in additional compensation.

Two different panels of experts found in 2001 that, in view of the nature of the property, its value should be increased by 100%. On 15 June 2001 the domestic court allowed part of the applicant's claim and instructed the authorities to pay him approximately EUR 139 728 in additional compensation. However, on 19 November 2001 the Court of Cassation set aside that judgment. It held that, under Section 15 (d) of the Cultural and Natural Heritage (Protection) Act (Law No. 2863), a building's rarity and its architectural and historical features could not be factors for consideration in the assessment of its value. In May 2002, the domestic courts awarded the applicant a final sum of approximately EUR 45 980 in additional compensation.

The application was lodged with the European Court of Human Rights on 11 November 2002.

In a Chamber judgment of 31 July 2007, the Court held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1. The Court noted that the historical value of the expropriated building had not been taken into consideration when calculating compensation, either when determining the expropriation compensation or during the proceedings to increase that award. It considered that this total failure to take that element into account had deprived the applicant of the value of the expropriated property. It also held that its judgment constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded him 75 000 euros for pecuniary damage and 1 000 euros for costs and expenses.

On 31 October 2007, the Turkish Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber). That request was accepted by the Grand Chamber panel on 31 March 2008.

The Grand Chamber held a public hearing in the case on 2 July 2008.

Decision of the Court

The Court agreed with the Chamber that there had been a deprivation of possessions within the meaning of Article 1 of Protocol No. 1. It further noted that it was undisputed between the parties that the deprivation had been ordered "subject to the conditions provided by law" and pursued a legitimate aim, namely the protection of Turkey's cultural heritage, which should be considered an essential value to be protected and promoted by the government.

The Court then recalled that, where an expropriation satisfied the requirement of lawfulness, the lack of compensation to full market value did not make, in itself, the expropriation contrary to Article 1 of Protocol No. 1 provided that the expropriated person did not bear a disproportionate and excessive burden. Compensation terms under the relevant domestic legislation made it possible to assess whether the contested measure had respected the requisite fair balance and, notably, whether it had imposed a disproportionate burden on the applicant. The Court had previously held that the taking of property without payment of an amount reasonably related to its value normally constituted a disproportionate interference. Article 1 of Protocol No. 1 did not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest" could call for the expropriated property to be reimbursed for less than its full market value. The Court considered that the protection of historical and cultural heritage was one such objective.

In the present case, in determining the amount of the compensation to be paid to the applicant, the domestic authorities had not taken into account either the rarity of the building or its architectural and historical features. The Court acknowledged that the market value of landmark buildings might be difficult to assess. However, it noted that, under Turkish law, while the specific features of such buildings might never be taken into account to the owners' benefit, they were often used by domestic courts to depreciate the real estate value in favour of the expropriating authorities.

The Court considered that system to be unfair in that it placed the state at a distinct advantage. It enabled the depreciation resulting from a property's listed status to be taken into account during expropriation, while any eventual increase in value was considered irrelevant in determining the compensation for expropriation. Moreover, the option of taking into account particular historical or architectural features in assessing the value of expropriated landmark buildings was not categorically ruled out in a number of other Council of Europe member states.

It therefore concluded that, since the specific features of the expropriated building had not been taken into account to a "reasonable degree" in determining the amount of the compensation owed to the applicant, the requirements of proportionality between the applicant's rights and the public interest pursued had not been met. There had accordingly been a violation of Article 1 of Protocol No. 1.

Having regard to its findings under Article 1 of Protocol No. 1, the Court found that it was not necessary to examine separately the allegation of a breach of Article 6.

Judge Rait Maruste expressed a dissenting opinion.

Selected Chamber judgments

Güveç v. Turkey

Article 3, 5 §§ 3 and 4, Article 6 § 1 in conjunction with Article 6 § 3 (c) (violations)

Judgment of 20 January 2009. Concerns: the applicant complained, in particular, about his detention in an adult prison and his trial before the State Security Court instead of a juvenile court. He also complained that he had not been released pending trial and that he had not been tried fairly.

Facts and complaints

The applicant, Oktay Güveç, is a Turkish national who was born in 1980 and lives in Belgium.

The case concerned in particular the applicant's complaint that, although a juvenile, he had been placed in an adult prison, where he had remained for the next five years, and which had resulted in his repeated suicide attempts.

On 30 September 1995 the applicant, 15 years old, was arrested on suspicion of membership of the PKK (Kurdistan's Working Party). On 12 October 1995 he was taken to Istanbul State Security Court where a judge ordered his detention in prison pending the introduction of criminal proceedings against him.

On 27 November 1995 the applicant was charged with undermining the territorial integrity of the state, an offence which was punishable by death at the time. In May 1997 that charge was modified and, following a retrial, in May 2001 the court found the applicant guilty of membership of an illegal organisation and sentenced him to eight years and four months in prison. In May 2002 the Court of Cassation upheld the applicant's conviction.

When questioned by the police, and subsequently by the prosecutor and the judge, the applicant was not represented by a lawyer. During the retrial, both the applicant and his lawyer were absent from most of the hearings.

In August 2000 the prison doctor reported that the applicant had been suffering from serious psychiatric problems in prison and had attempted to commit suicide twice in 1999. The doctor concluded that the situation in the prison was not conducive to the applicant's treatment and that he needed to be placed in a specialised hospital.

During his placement in a psychiatric hospital, another medical report was drawn up in April 2001; it noted that the applicant had made a third attempt to kill himself in September 1998 and had been treated for "major depression" at the hospital between June 2000 and July 2000. The report concluded that the applicant's psychological complaints had started and worsened during his detention.

In addition, the applicant alleged before the Court that, while detained in police custody, he had been given electric shocks, sprayed with pressurised water and beaten

with a truncheon, including on the soles of his feet.

The applicant apparently left Turkey in 2002 for Belgium where he has since been granted refugee status.

Decision of the Court

Article 3

The Court first observed that the applicant's detention in an adult prison had been in contravention of the applicable regulations in force in Turkey at the time and of the country's obligations under international treaties. It further noted that, according to the medical report of April 2001, the applicant's psychological problems had begun during his detention in prison and had worsened there.

Only 15 years old when he had been detained, the applicant had spent the next five years of his life together with adult prisoners. For the first six and a half months of that period he had had no access to legal advice; nor had he had adequate legal representation until some five years after he had first been detained. Those circumstances, coupled with the fact that for a period of 18 months he had been tried for an offence carrying the death penalty, had to have created a situation of total uncertainty for him.

The Court considered that those aspects of the applicant's detention had undoubtedly caused his psychological problems which, in turn, had tragically led to his repeated attempts to take his own life. What was more, the national authorities had not only directly been responsible for the applicant's problems, but had also manifestly failed to provide adequate medical care for him.

Consequently, given the applicant's age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated suicide attempts, the Court entertained no doubts that the applicant had been subjected to inhuman and degrading treatment, in breach of Article 3.

Article 5 § 3

The Court recalled that, in at least three judgments concerning Turkey, it had previously criticised the practice of detaining children in pretrial detention and had found violations of Article 5 § 3 for considerably shorter periods of detention than that spent by the applicant in his case. The Court thus concluded that the length of the applicant's detention on remand had been excessive, in violation of Article 5 § 3.

Article 5 § 4

The Court reiterated its findings in earlier cases, in which it had concluded that no real possibility for challenging the lawfulness of pretrial detention existed in Turkey at the relevant time, and found no reason to depart from its previous findings, thus finding a violation of Article 5 § 4.

Article 6 § 1 in conjunction with Article 6 § 3 (c)

The Court considered that the applicant had not been able to effectively participate in the trial, given that he had not attended at least 14 of the 30 hearings both during the initial trial and at retrial. Having considered the entirety of the criminal proceedings against the applicant, and their shortcomings, in particular the lack of legal assistance for most of the proceedings, the Court concluded that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c).

Articles 13 and 14

The Court held that there was no need to examine separately the complaints under Articles 13 and 14, in view of the violations found in respect of the other articles.

Under Article 41 (just satisfaction), the Court awarded Mr Güveç 45 000 euros in respect of non-pecuniary damage and 4 150 euros for costs and expenses.

Kaprykowski v. Poland

Judgment of 3 February 2009. Concerns: the applicant alleged that, in view of his severe epilepsy and other neurological disorders, the medical treatment and assistance during his detention in Poznań Remand Centre had been inadequate.

Article 3 (violation)

Facts and complaints

The applicant, Robert Kaprykowski, is a Polish national who was born in 1966 and lives in Poznań (Poland). He suffers from severe epilepsy and, at the relevant time, had frequent seizures, sometimes even several times a day. He also has other neurological disorders, including encephalopathy and dementia.

The case concerned Mr Kaprykowski's complaint that, in view of his state of health, the medical care with which he was provided during periods of his detention in Poznań Remand centre was inadequate.

A recidivist offender, Mr Kaprykowski has served a number of prison sentences in various detention facilities in Poland. He was first remanded in custody in May 1998 and since then has been released and then remanded in custody again on numerous occasions. In particular, from 5 August 2003 to 30 November 2007, he was in continuous detention either in ordinary detention facilities or prison hospitals. He was most recently released on 1 December 2007.

Throughout his incarceration several doctors stressed that he should receive specialised psychiatric and neurological treatment. Notably, in 2001 medical experts recommended that he should undergo brain surgery; and, in 2007, on his release from a stay in hospital, doctors clearly stated that he should be placed under 24-hour medical supervision.

The government submitted that the applicant had received adequate medical care and medicine and emphasised that he had been detained with inmates who knew what to do when he had had one of his epileptic seizures. The applicant had also been transferred to the Gdansk Remand Centre hospital which specialised in neurology to receive better medical care on two occasions. At the time when the applicant had been given alternative generic medicine, he had been kept under close medical supervision at the Poznań Remand Centre hospital, where he had been examined by doctors almost every day.

Decision of the Court

The Court declared the applicant's complaint concerning three periods (from May to July 2005, from January to what is presumed March 2006 and from May to November 2007) of his detention in Poznań Remand centre admissible and the remainder of the application inadmissible. However, it examined the case against its entire background, that is to say that the applicant had been in continuous detention from 5 August 2003 to 30 November 2007.

Article 3

The Court was convinced that, at the relevant time, the applicant had been in need of constant medical supervision and that, without such supervision, he had faced a major risk to his health.

From 5 August 2003 to 30 November 2007, namely four years, the applicant had had to rely solely on the prison health care system. It was a matter of concern that, during most of that time, he had been detained in ordinary detention facilities or, at best, in the ward of a prison hospital. He had been detained in the specialised neurological hospital of Gdansk Remand Centre on only two occasions, despite his specific condition.

During that time, the applicant had to have been aware of the fact that he had been at risk at any moment of needing serious emergency medical treatment and that, apart from his fellow inmates, no immediate medical assistance had been available. Even if examined later by in-house doctors, they had no specialist knowledge of neurology. Given his personality disorder, he had not been able to take autonomous decisions or go about more demanding daily tasks. That had to caused him considerable anxiety and had to have placed him in a position of inferiority vis-à-vis other prisoners.

Indeed, the Court was struck by the government's argument that the applicant sharing his cell with other inmates, who had known how to react to his seizures, could be considered adequate conditions of detention. The Court stressed its disapproval of remand centre staff having felt relieved of their duty to provide security and care to more vulnerable detainees by making cell mates responsible for providing daily assistance or, if necessary, emergency aid.

Moreover, the applicant had been transferred about 18 times, often over long distances, between different detention facilities. That had to have been unnecessarily detrimental to his already fragile mental health.

In the Court's opinion the lack of adequate medical treatment provided to the applicant in Poznań Remand Centre which had effectively placed him in a position of dependency and inferiority vis-à-vis his healthy cellmates had undermined his dignity and had entailed particularly acute hardship that had caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty.

In conclusion, the Court considered that the applicant's continued detention without adequate medical treatment and assistance had constituted inhuman and degrading treatment, in violation of Article 3.

Under Article 41 (just satisfaction) of the Convention, the Court awarded Mr Kaprykowski 3 000 euros in respect of non-pecuniary damage.

Kandzhov v. Bulgaria

Articles 5 § 1, 5 § 3 and Article 10 (violations)

Judgment of 6 November 2008. Concerns: the applicant complained that his arrest and detention for displaying a banner allegedly insulting the Minister of Justice and gathering signatures calling for the Minister's resignation had been unlawful, and that after his arrest he had not been brought promptly before a judge.

Facts and complaints

The applicant, Aleksandar Bogdanov Kandzhov, is a Bulgarian national who was born in 1971 and lives in Pobeda (Bulgaria).

On 10 July 2000 he was arrested for putting up two posters allegedly insulting the Minister of Justice and gathering signatures calling for the Minister's resignation.

On 11 July 2000 the Pleven District Prosecutor's Office received a complaint by the Minister of Justice who requested that criminal proceedings be instituted against the applicant for insult and for hooliganism under the relevant provisions of the Criminal Code.

The same day a prosecutor of the Pleven District Prosecutor's Office ordered that the applicant be detained for 72 hours, pending a ruling by the Pleven District Court on whether he should be placed in "pre-trial detention". He noted that proceedings had been instituted against the applicant on charges of insult and hooliganism and stated that there was a real risk that he would flee or re-offend. The applicant's counsel immediately appealed against the order to the Pleven Regional Prosecutor's Office. She received no reply.

At 11 a.m. on 14 July 2000 the Pleven District Court, after examining the request to place the applicant in "pre-trial detention", decided to release him on bail. The applicant apparently paid the bail immediately after the hearing and was released.

He was subsequently indicted on a charge of aggravated hooliganism. The insult charges had, it appears, been dropped earlier. In April 2001 he was convicted as charged and sentenced to four months' imprisonment, suspended for three years.

The applicant appealed and in September 2001 the Pleven Regional Court quashed the lower court's judgment and acquitted him. This verdict was upheld by the Supreme Court of Cassation in January 2002.

Decision of the Court

Article 5 § 1

The Court had first to determine whether the applicant's arrest and detention on charges of hooliganism and insult were "lawful" within the meaning of Article 5 § 1 and whether his deprivation of liberty had been based on a "reasonable suspicion" of his having committed an offence.

In so far as the charge of insult was concerned, at the relevant time it was a privately prosecutable offence and could not attract a sentence of imprisonment. The levelling of charges of insult could not therefore have served as a basis for the applicant's detention between 11 and 14 July 2000. By making an order to

this effect the Pleven District Prosecutor's Office had blatantly ignored the clear and unambiguous provisions of domestic law.

As regards the period immediately preceding the Prosecutor's order, it was clear that the police had no power to conduct preliminary investigations in respect of privately prosecutable offences such as insult. The applicant's police detention on this basis had therefore also been unlawful.

As regards the charge of hooliganism, the Supreme Court of Cassation specifically found that the applicant's actions had been entirely peaceful, had not obstructed any passers-by and had been hardly likely to provoke others to violence. On this basis, it had concluded these actions had not amounted to the constituent elements of the offence of hooliganism. Nor had the orders for the applicant's arrest and for his detention – which had not been reviewed by a court – contained anything which could be taken to suggest that the authorities could have reasonably believed that the conduct in which he had engaged had constituted hooliganism. It followed that the applicant's detention between 10 and 14 July 2000 had not constituted a "lawful detention" effected "on reasonable suspicion" of his having committed an offence and that there had therefore been a violation of Article 5 § 1.

Article 5 § 3

The applicant had been brought before a judge three days and 23 hours after his arrest. In the circumstances, this did not appear prompt as was required under Article 5 § 3. He had been arrested on charges of a minor and non-violent offence. He had already spent 24 hours in custody when the police proposed to the prosecutor in charge of the case to request the competent court to place the applicant in pre-trial detention. The prosecutor had ordered that he be detained for a further 72 hours, without giving any reasons why he considered it necessary, save for a stereotyped formula saying that there was a risk that he might flee or re-offend. The matter had been brought before the Pleven District Court only at the last possible moment, when the 72 hours had been about to expire. The Court could see no special difficulties or exceptional circumstances which would have prevented the authorities from bringing the applicant before a judge much sooner. This was particularly important in view of the dubious legal grounds for his detention. There had therefore been a violation of Article 5 § 3.

Article 10

For the Court, it was clear that in gathering signatures calling for the resignation of the Minister of Justice and in displaying two posters making statements about the Minister, the applicant had been exercising his right to freedom of expression. His arrest and subsequent detention for doing so, quite apart from the opening of criminal proceedings against him, therefore amounted to an interference with the exercise of this right.

Such interference gave rise to a breach of Article 10 unless it could be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 of Article 10 and had been "necessary in a democratic society" to attain them.

It had already been established that the applicant's arrest and detention had not been "lawful". It followed that the applicant's arrest and detention had not been "prescribed by law" under Article 10 § 2.

Furthermore, assuming that the measures taken against the applicant could be taken to pursue the legitimate aims of preventing disorder and protecting the rights of others, they had clearly been disproportionate to these aims. These measures had clearly not been "necessary in a democratic society". In a democratic system the actions or omissions of the government and of its members had to be subject to close scrutiny by the press and public opinion. Furthermore, the dominant position which the government and its members occupied made it necessary for them – and for the authorities in general – to display restraint in resorting to criminal proceedings, and the associated custodial measures, particularly where other means were available for replying to the unjustified attacks and criticisms of their adversaries.

There had therefore been a violation of Article 10.

Under Article 41 (just satisfaction), the Court awarded Mr Kandzhov 4 000 euros in respect of non-pecuniary damage and 2 000 euros for costs and expenses.

İpek and Others v. Turkey

Judgment of 3 February 2009. Concerns: the applicants complained about the unlawfulness of their arrest and the excessive length of their detention in police custody.

Articles 5 § 1 (c), 5 §§ 3, 4 and 5 (violations)

The applicants, Çetin İpek, Murat Özpamuk and Seyithan Demirel, are Turkish nationals who live in Diyarbakır (Turkey). They were born in 1985; at the time of the events they were 16 years old. In December 2001 the applicants were arrested at Mr Özpamuk's house and taken into police custody in order to establish whether they had any link with an illegal armed organisation, the PKK (the Workers' Party of Kurdistan). They were released pending trial in February 2002. Relying on Article 5 §§ 1, 3, 4 and 5 (right to liberty and security), the applicants complained in particular about the unlawfulness of their arrest and the excessive length of their detention in police custody. The Court first held unanimously that there had been no violation of Article 5 §1 (c) concerning Mr Özpamuk, but that there had been a violation of that provision in respect of Mr İpek and Mr Demirel, who, the Court considered, had been arrested mainly because they happened to be at Mr Özpamuk's house at the time it had been searched. The Court further held that there had been a violation of Article 5 § 3 in respect of all three applicants, who were minors at the time, on account of their detention in police custody for more than three days, in the absence of any safeguards against possible arbitrary acts by state authorities. Lastly, the Court held unanimously that there had been a violation of Article 5 § 4 on account of the lack of a domestic remedy by which the applicants could have challenged the lawfulness of their detention, and a further violation of Article 5 §5 concerning the lack of an enforceable right to compensation for the breach of their rights under Article 5 §§1, 3 and 4. In respect of non-pecuniary damage, the Court awarded Mr İpek and Mr Demirel 1 500 euros, each, and 1 000 euros to Mr Özpamuk. The applicants were

awarded 2 000 euros, jointly, for costs and expenses.

Kauczor v. Poland

Articles 5 § 3, 6 § 1 (violation)

Judgment of 3 February 2009. Concerns: the applicant complained that the length of his pre-trial detention, and of the criminal proceedings against him, had been excessive.

Facts and complaints

The applicant, Adam Kauczor, is a Polish national who was born in 1967 and lives in Siemianowice Slaskie (Poland).

On 9 February 2000 he was arrested and detained on suspicion of murder. On 21 June 2000 he was indicted for murder and illegal possession of weapons.

The first hearing in his case, scheduled for 28 December 2000, was adjourned. Overall, during the next seven years, the competent domestic court scheduled more than 110 hearings, a number of which did not take place. Meanwhile, Mr Kauczor's trial was discontinued and restarted in May 2003, because the judge rapporteur had retired.

In 2006 Mr Kauczor complained about the excessive length of the criminal proceedings against him. The competent court dismissed his complaint.

Mr Kauczor's detention was extended by numerous court decisions issued between July 2003 and January 2007. In those decisions the authorities relied primarily on the serious nature of the offences with which he was charged, the severity of the penalty to which he was liable, and the need to secure the proper conduct of the proceedings. On 11 December 2007 the applicant was released; the criminal proceedings against him are still pending.

Decision of the Court

Article 5 § 3

The Court first noted that Mr Kauczor had been detained in total for 7 years, 10 months and 3 days. While it accepted that the seriousness of the offence, which the applicant was suspected of having committed, could have been a valid consideration for detaining him initially, it concluded that the authorities had failed to justify the overall period of his detention, in violation of Article 5 § 3.

Article 6 § 1

The Court found that the length of the criminal proceedings, which had lasted for more than 8 years and 6 months at a single level of jurisdiction, and are still pending, had been excessive, in violation of Article 6 § 1.

Under Article 41 (just satisfaction), the Court awarded Mr Kauczor 10 000 euros in respect of non-pecuniary damage.

Note:

Furthermore the Court observed that numerous cases – both already decided and still pending before it – concerning the excessive length of pre-trial detention in Poland revealed a frequently recurring problem consisting of domestic courts' practice that was incompatible with the Convention. While welcoming the steps already taken by Poland to remedy this systemic problem, the Court concluded that, in view of the magnitude of the problem, Poland had to make consistent efforts in the long term and adopt further measures in order to achieve compliance with Article 5 § 3 of the Convention.

L'Erablière A.S.B.L. v. Belgium

Article 6 § 1 (violation)

Judgment of 24 February 2009. Concerns: the applicant association complained that the inadmissibility decision regarding its application for judicial review of planning permission amounted to a violation of its right of access to a court.

Facts and complaints

The applicant, L'Erablière A.S.B.L., is a non-profit-making association whose registered office is in Bande (Belgium). It campaigns for the protection of the environment in Marche-Nassogne, the Walloon Region, in the province of Luxembourg.

In December 2003 an application was granted for planning permission to expand a waste collection site in a place called "Al Pisserotte". The application had been filed by the Idelux co-operative company with the delegated official of the province of Luxembourg.

On 5 March 2004 the applicant association sought judicial review of that decision before the *Conseil d'Etat* and requested that it be stayed on the basis of a number of statutory instruments relating to the environmental effects of certain public projects and waste management. The decision granting planning permission was attached to the application for judicial review.

On 8 September 2004 the *Conseil d'Etat* dismissed the application for the decision to be stayed on the ground that it did not include a statement of the facts explaining the background to the dispute. The applicant association submitted, on the contrary, that the facts were known to the other party and that a short statement of the facts did not compromise the proceedings.

In a decision of 26 April 2007 the *Conseil d'Etat* declared the applicant association's application for judicial review inadmissible because the statement of facts did not satisfy the official requirements and did not provide the *Conseil d'Etat* and the judge examining the case with sufficient information.

Decision of the Court

Article 6 § 1

The Court reiterated that for Article 6 to be applicable there

must be a dispute with a sufficient link to a civil right and that, in order to exclude applications concerning the mere existence of a Law or a court decision affecting third parties, the Court did not allow an *actio popularis*. It has, however, previously held that this article was applicable in cases brought by an association that, whilst of general interest, also defended the specific interest of the members. In the present case it considered that increasing the capacity of the waste collection site could directly affect the private life of the members of L'Erablière A.S.B.L., and stressed that the aim of the association was limited to the protection of the environment in Marche-Nassogne. Consequently, it found that its action could not be regarded as an *actio popularis* and held that Article 6 was therefore applicable.

The Court noted that the submission of a statement of the facts was one of the formal requirements under domestic law for lodging an application for judicial review before the *Conseil d'Etat*. It observed, however, that the *Conseil d'Etat* and the opposing party could have acquainted themselves with the facts even without this statement.

The Court noted that the applicant association had annexed the decision granting planning permission to its application, which contained a detailed statement of the facts, and that it could not have provided a more comprehensive statement. It also noted that the composition of the *Conseil d'Etat* and the judges examining the case were the same as those who had heard a case on the same subject in 2001 and 2005. Lastly, the Court noted that the Belgian Government had access to the decision granting planning permission as they were the author of it.

The Court concluded that the limitation on the right of access to a court imposed on the applicant association was disproportionate to the requirements of legal certainty and the proper administration of justice, contrary to Article 6 § 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant association 3 000 euros in respect of non-pecuniary damage and 2 500 euros for costs and expenses.

Tătar v. Romania

Article 8 (violation)

Judgment of 27 January 2009. Concerns: the applicants complained that the technological process used by S.C. Transgold S.A. Baia Mare (formerly S.C. Aurul S.A. Baia Mare) put their lives in danger, and that the authorities had failed to take any action in spite of the numerous complaints filed by Vasile Gheorghe Tătar.

Facts and complaints

The applicants, Vasile Gheorghe Tătar and Paul Tătar, father and son, are Romanian nationals who were born in 1947 and 1979 respectively. At the relevant time they lived in Baia Mare (Romania). Paul Tătar has lived since 2005 in Cluj-Napoca (Romania).

The company S.C. Aurul S.A., now operating as S.C. Transgold S.A., obtained a licence in 1998 to exploit the Baia Mare gold mine. The company's extraction process involved the use of sodium cyanide. Part of its activity was located in the vicinity of the applicants' home.

On 30 January 2000 an environmental accident occurred at the site. A United Nations study reported that a dam had breached, releasing about 100 000 m3 of cyanide-contaminated tailings water into the environment. The report stated that S.C. Aurul S.A. had not halted its operations.

After the accident Vasile Gheorghe Tătar filed various administrative complaints concerning the risk incurred by him and his family as a result of the use of sodium cyanide by S.C. Aurul S.A. in its extraction process. He also questioned the validity of the company's operating licence. The Ministry of the Environment, in November 2003, informed him that the company's activities did not constitute a public health hazard and that the same extraction technology was used in other countries.

The first applicant also brought criminal proceedings, in 2000, complaining that the mining process was a health hazard for the inhabitants of Baia Mare, that it posed a threat to the environment and that it was aggravating his son's medical condition, namely asthma.

By an order of 20 November 2001 the Romanian courts discontinued the criminal proceedings concerning the accident of 30 January 2000 on the ground that the facts complained of did not constitute offences. No judicial order or decision concerning the other complaints has been issued to date.

Decision of the Court

Article 8

The Court observed that pollution could interfere with a person's private and family life by harming his or her well-being, and that the state had a duty to ensure the protection of its citizens by regulating the authorising, setting-up, operating, safety and monitoring of industrial activities, especially activities that were dangerous for the environment and human health.

The Court did not doubt the reality of the medical condition of Paul Tatar, who was diagnosed in 1996 and who required medical assistance, nor that of the toxicity of sodium cyanide and of the pollution detected, in excess of the authorised norms, by international organisations in the vicinity of the applicants' home following the environmental accident.

The Court noted that, in the light of what was currently known about the subject, the applicants had failed to prove the existence of a causal link between exposure to sodium cyanide and asthma. It observed, however, that the existence of a serious and material risk for the applicants' health and well-being entailed a duty on the part of the state to assess the risks, both at the time it granted the operating permit and subsequent to the accident, and to take the appropriate measures.

The Court observed that a preliminary impact assessment conducted in 1993 by the Romanian Ministry of the Environment had highlighted the risks entailed by the activity for the environment and human health and that the operating conditions laid down by the Romanian authorities had been insufficient to preclude the possibility of serious harm.

The Court further noted that the company had been able to continue

its industrial operations after the January 2000 accident, in breach of the precautionary principle, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the state in adopting effective and proportionate measures.

The Court also pointed out that authorities had to ensure public access to the conclusions of investigations and studies. It reiterated that the state had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues. It stressed that the failure of the Romanian Government to inform the public, in particular by not making public the 1993 impact assessment on the basis of which the operating licence had been granted, had made it impossible for members of the public to challenge the results of that assessment. The Court further noted that this lack of information had continued after the accident of January 2000, despite the probable anxiety of the local people.

The Court concluded that the Romanian authorities had failed in their duty to assess, to a satisfactory degree, the risks that the company's activity might entail, and to take suitable measures in order to protect the rights of those concerned to respect for their private lives and homes, within the meaning of Article 8, and more generally their right to enjoy a healthy and protected environment.

Judge Zupančič, joined by Judge Gyulumyan, appended a partly dissenting opinion to the judgment of the Court.

The Court awarded the applicants 6 266 euros for costs and expenses. It dismissed, by five votes to two, their claim for just satisfaction.

K.U. v. Finland

Article 8 (violation)

Judgment of 2 December 2008. Concerns: the applicant complained about the invasion of his private life and the fact that no effective remedy existed under Finnish law to reveal the identity of the person who had posted the ad about him on the Internet dating site.

Facts and complaints

The applicant, K.U., is a Finnish national who was born in 1986.

The case concerned the applicant's complaint that an advertisement of a sexual nature was posted about him on an Internet dating site and that, under Finnish legislation in place at the time, the police and the courts could not require the Internet provider to identify the person who had posted the ad.

In March 1999 an unknown individual posted the ad on an Internet dating site in the name of the applicant without his knowledge. The applicant was 12 years old at the time. The ad mentioned his age and year of birth and gave a detailed description of his physical characteristics. There was also a link to the applicant's web page where his picture and telephone number, accurate save for one digit, could be found. The ad announced that he was looking for an intimate relationship with a boy of his age or older "to show him the way".

The applicant became aware of that announcement when he received an e-mail from a man, offering to meet him and "to then see what he wanted".

The applicant's father requested the police to identify the person who had posted the ad in order to bring charges. The service provider, however, refused as it considered itself bound by the confidentiality of telecommunications as defined under Finnish law.

In a decision issued on 19 January 2001, Helsinki District Court also refused the police's request under the Criminal Investigations Act to oblige the service provider to divulge the identity of the person who had posted the ad. It found that there was no explicit legal provision in such a case, considered under domestic law to concern calumny, which could oblige the service provider to disregard professional secrecy and disclose such information.

Subsequently the Court of Appeal upheld that decision and the Supreme Court refused leave to appeal.

Decision of the Court

Article 8

Although in terms of domestic law the applicant's case was considered from the point of view of calumny, the Court preferred to highlight the notion of private life, given the potential threat to the boy's physical and mental welfare and his vulnerable age.

The Court considered that the posting of the Internet advertisement about the applicant had been a criminal act which had resulted in a minor having been a target for paedophiles. It recalled that such conduct called for a criminal-law response and that effective deterrence had to be reinforced through adequate investigation and prosecution. Moreover, children and other vulnerable individuals were entitled to protection by the state from such grave interferences with their private life.

The incident had taken place in 1999, that is, at a time when it had been well-known that the Internet, precisely because of its anonymous character, could be used for criminal purposes. The widespread problem of child sexual abuse had also become well-known over the preceding decade. It could not therefore be argued that the Finnish Government had not had the opportunity to put in place a system to protect children from being targeted by paedophiles via the Internet.

Indeed, the legislature should have provided a framework for reconciling the confidentiality of Internet services with the prevention of disorder or crime and the protection of the rights and freedoms of others. Although such a framework has subsequently been introduced under the Exercise of Freedom of Expression in Mass Media Act, it had not been in place at the relevant time, with the result that Finland had failed to protect the right to respect for the applicant's private life as the confidentiality requirement had been given precedence over his physical and moral welfare. The Court therefore found that there had been a violation of Article 8.

Article 13

Given the finding under Article 8, the Court considered that there was no need to examine the complaint under Article 13.

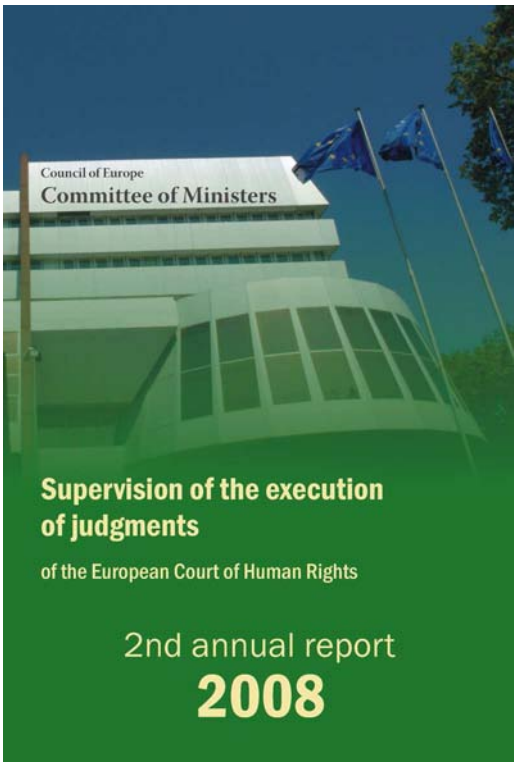
Under Article 41 (just satisfaction) of the Convention, the Court awarded K.U. 3 000 euros in respect of non-pecuniary damage.

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.

Due to the considerable amount of work involved in the preparation of the *Annual Report 2008 on the Supervision of judgments of the European Court of Human Rights*, the Department for the Execution of Judgments of the ECtHR was unable to provide a contribution to this issue. A specific article on the Annual Report will be included in the next issue of the Bulletin (No. 77, to be published in October 2009).



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.

Spanish Chairmanship of the Committee of Ministers (November 2008 - May 2009)

The Ministers for Foreign Affairs of Council of Europe member states hold the Chairmanship of the Committee of Ministers, the executive body of the Council of Europe, on a rotating basis in alphabetical order, for a six-month term.

Spain took over the Chairmanship of the Committee of Ministers (CM) from Sweden on Thursday 27 November. Its term of office will end on 12 May 2009, at a Committee of Ministers session in Madrid scheduled to coincide with the 60th anniversary of the Council of Europe's inception (5 May 1949).

Handover of the Chairmanship of the Committee of Ministers

Priorities for the Spanish chairmanship of the Committee of Ministers

Miguel Angel Moratinos, Minister for Foreign Affairs of Spain presented his country's priorities for the chairmanship of the Committee of Ministers over the coming six months.

1. The European Court of Human Rights

As it prepares to celebrate its 50th anniversary, the Court has become a victim of its own success. The Spanish chairmanship has two objectives:

- to find alternative arrangements and solutions that will make it possible to ensure the long-term effectiveness of the Court, pending the entry into force of Protocol No. 14 to the European Convention on Human Rights;
- to ensure that the Court's judgments are effectively implemented by member states.

2. Fundamental values

Spain will attach particular importance here to the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is to celebrate its 20th anniversary in 2009, and that of the Commissioner for Human Rights.

It will concentrate on such issues as combating the death penalty, gender discrimination, pro-

tection of the rights of people with disabilities, gender violence and human trafficking.

The Spanish chairmanship considers terrorism to be a threat to democratic stability and the rule of law. It will organise the first meeting of States Parties to the Convention on the Prevention of Terrorism in the spring.

3. Towards an inclusive and cohesive Europe

In this context, Spain will promote activities concerning:

- the phenomenon of migration and measures to combat trafficking in migrants;
- the management of multi-ethnic and culturally diverse societies;
- children in the justice system, health for and with children, as part of the 2009-2011 Strategy of "building a Europe for and with children", recently adopted by the Committee of Ministers;
- the situation of Roma and Travellers.

4. External relations

Spain considers that the establishment of a united Europe requires close co-ordination of all the organisations involved. To this end, it will:

- foster improvements in, and the intensification of, co-operation with the European Union, in particular with the French and Czech presidencies;
- continue to co-operate with the OSCE, in particular with the Finnish and Greek chairmanships;
- closely monitor the implementation of the resolution adopted by the United Nations General Assembly on 3 November.

Recommendations adopted by the Committee of Ministers

European Rules for juvenile offenders subject to sanctions or measures

Recommendation CM/Rec (2008) 11, adopted by the CM on 5 November 2008 at the 1040th meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, [...]

Recommends that governments of the member states:

– be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;

– ensure that this recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities and the police; services entrusted with the execution of sanctions and measures addressing juvenile offenders; penitentiary, welfare and mental health institutions holding juvenile offenders and their staff as well as the media and the general public.

Dimension of religions and non-religious convictions within intercultural education

Recommendation CM/Rec (2008) 12 adopted by the CM on 10 December 2008 at the 1044th meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

[...]

1. Recommends that the governments of member states, with due regard for their constitutional structures, national or local situations and educational system:

a. draw on the principles set out in the appendix to this recommendation in their current or future educational reforms;

b. pursue initiatives in the field of intercultural education relating to the diversity of religions and non-religious convictions in order to promote tolerance and the development of a culture of "living together";

c. ensure that this recommendation is brought to the attention of the relevant public and private bodies (including religious communities and other convictional groups), in accordance with national procedures;

2. Calls on the Secretary General of the Council of Europe to bring this recommendation to the attention of the States Party to the European Cultural Convention that are not members of the Council of Europe.

[...]

Declarations by the Committee of Ministers and statements by its Chairman

The role of community media in promoting social cohesion and intercultural dialogue

Declaration adopted by the CM on 11 February 2009 at the 1048th meeting of the Ministers' Deputies

The Committee of Ministers of the Council of Europe,

[...]

Declares its support for community media, with a view to helping them play a positive role for social cohesion and intercultural dialogue, and in this connection:

i. Recognises community media as a distinct media sector, alongside public service and private commercial media and, in this connection, highlights the necessity to examine the question of how to adapt legal frameworks which would enable the recognition and the development of community media and the proper performance of their social functions;

ii. Draws attention to the desirability of allocating to community media, to the extent possible, a sufficient number of frequencies, both in analogue and digital environments, and ensuring that community broadcasting media are not disadvantaged after the transition to the digital environment;

iii. Underlines the need to develop and/or support educational and vocational programmes for all communities in order to encourage them to make full use of available technological platforms;

iv. Stresses the desirability of:

a. recognising the social value of community media and examining the possibility of committing funds at national, regional and local level to support the sector, directly and indirectly, while duly taking into account competition aspects;

b. encouraging studies of good practice in community media, and facilitating co-operation and the exchange of good practice, including exchanges with such media in other regions of the world, as well as between community media and other interested media, for example by exchanging programmes and content or by developing joint projects;

c. facilitating capacity building and training of community media staff, for example via training schemes within the framework of lifelong learning and media literacy, as well as staff and volunteer exchanges with other media and internship arrangements, which could enhance the quality of community media programmes;

d. encouraging the media's contribution to intercultural dialogue through initiatives such as the setting up of a network to exchange information and support and facilitate initiatives which exist in this field in Europe;

v. Invites community media to be conscious of their role in promoting social cohesion and intercultural dialogue and, to this end, to elaborate and adopt or, if appropriate, review codes of professional ethics or internal guidelines and to ensure that they are respected.

International Human Rights Day and the 60th anniversary of the Universal Declaration of Human Rights

Statement by Miguel Ángel Moratinos, Chairman of the CM on 10 December 2008

Miguel Ángel Moratinos, Chairman of the Committee of Ministers and Spain's Minister for Foreign Affairs and Co-operation

"On the occasion of the International Human Rights Day and the 60th anniversary of the Universal Declaration of Human Rights, I wish to confirm the paramount importance that the Spanish Chairmanship of the Committee of Ministers attaches to the promotion of human rights and fundamental freedoms.

The action of the Council of Europe has bestowed the principles of the Universal Declaration of Human Rights with a concrete legal backing, through the European Convention of Human Rights and its supervisory mechanism, the European Court of Human Rights.

Next April, the Court will celebrate its 50th anniversary. There is no doubt that, throughout the past decades, it has become one of the institutions closest to people's hearts, and most well-known as a defender of fundamental rights. Nevertheless, we are all aware that

unless decisive action is taken, it may become a victim of its own success, due to its rapidly growing backlog of applications. The Spanish Chairmanship will make every effort fostering a dialogue that involves all the member states, to find a solution able to ensure that the Court can fulfil its duties with the necessary long-term effectiveness, and thus continue to be an emblematic European institution.

In the course of its history, the Council of Europe has constructed and continues to develop a close-knit network of treaty mechanisms on human rights, aiming to cover all the areas where human rights are challenged by new threats. The ones regarding gender violence, non-discrimination, as well as recent aspects of research on human life, could be underlined. They are also an instrument to achieve a comprehensive implementation of all universal human rights.

During its Chairmanship of the Committee of Ministers, Spain will strive to advance in every area regarding the promotion and protection of human rights. It will in particular promote gender equality and be active in the fight for the abolition of the death penalty."

Non-renewal of licences of foreign broadcasters in Azerbaijan

Statement by Miguel Ángel Moratinos, Chairman of the CM and Spanish Minister of Foreign Affairs and Co-operation, and Lluís Maria De Puig, President of the Parliamentary Assembly on 15 January 2009

"When it acceded to the Council of Europe in 2001, Azerbaijan undertook to guarantee the freedom of expression and independence of the media, which are essential preconditions for the functioning of a democratic society. We find it highly regrettable that the Azerbaijani National Radio and Television Council recently decided not to renew the licences of several foreign broadcasters. This cannot but create obstacles to pluralism of information in this country to the detriment of the interests of the Azerbaijani population. As pluralism is the basis of the principles in any democratic society, we hope that the decision adopted will be reconsidered and that steps can be taken quickly to rectify this situation. As it has done in the past, the Council of Europe is ready to provide assistance to the Azerbaijani authorities to this end."

Miguel Ángel Moratinos, Chairman of the CM and Lluís Maria De Puig, President of the Parliamentary Assembly

International Day of Persons with Disabilities

Statement by the Spanish Chairmanship of the CM on 3 December 2008

"Today we celebrate the International Day of Persons with Disabilities, which touches the core values of the Council of Europe. This Organisation that has as its principles the protection and promotion of human rights, democracy and the rule of law pays great attention to the rights of people with disabilities.

Increasing the personal autonomy of people with disabilities, acknowledging disability as an element of human diversity, developing public policies aimed at enabling these people to enjoy the same opportunities as all other citizens and ensuring the exercise and enjoyment of their civil, political and social rights, must remain among the main goals of the Council of Europe. In this respect, the Council of Europe Disability Action Plan sets the guidelines for future action.

Spain has been the third country of the Council of Europe to ratify the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, whose entry into force should also be celebrated. As Spain has stated in the document setting out its Chairmanship priorities, it wishes to pay special attention to creating effective conditions so that people belonging to this vulnerable group may fully exercise their rights.

Spain considers that the endeavour to implement social policies is a sign of the European identity that contributes to strengthen the idea of Europe. The Spanish Chairmanship has as one of its objectives the reinforcement of this common European field of social policy, which represents the ambitions of the citizens of our countries."

Replies from the Committee of Ministers to Parliamentary Assembly Recommendations

"Abuse of the criminal justice system in Belarus"

Parliamentary Assembly Recommendation 1832 (2008)
Reply adopted by the CM on 21 January 2009 at the 1046th meeting of the Ministers' Deputies

1. As already indicated in previous replies to Parliamentary Assembly recommendations, the Committee of Ministers strongly encourages the Belarusian authorities to initiate structural and legislative reforms in line with the Council of Europe standards in the core areas which form the basis of the Organisation: democracy, human rights and the rule of law. In this regard, the Committee of Ministers recalls that a crucial step to be made by Belarus towards aligning itself to Council of Europe principles and values, allowing for closer co-operation with the Organisation, would be the immediate suspension and the subsequent abolition in law of the death penalty. In the same context, the Committee of Ministers shares the Assembly's opinion that Belarus should bring its criminal justice system in line with Council of Europe norms and standards and in the meantime should cease from using this system for political purposes.

2. The Committee of Ministers also agrees that the Belarusian authorities must, if their commitment to political openness and democracy is to be treated credibly, remove the obstacles blocking the registration and functioning of the opposition political forces, the NGOs and the media, and continue to co-operate with the OSCE/ODIHR on the reform of electoral legislation.

3. The Belarus authorities have indicated a wish to be involved in practical co-operation in the legal field (including through participation in Council of Europe conventions) on such issues as: extradition, money laundering, cybercrime and mutual assistance in criminal matters. Interest has also been expressed in the Convention on Action against Trafficking in Human Beings. The Committee of Ministers is ready to study implications and conditions for membership by Belarus in conventions in the fields mentioned above with a particular eye to the opportunities offered to bring the criminal justice system in Belarus into line with Council of Europe norms and standards. The Committee of Ministers is also bearing in mind the possibility of inviting Belarus to accede to the European Convention for the Prevention of Torture, as raised by the President of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in his statement to the Ministers' Deputies on 15 October 2008.

4. The Assembly will recall that the Slovak and Swedish Chairmanships have both undertaken a number of initiatives, amongst which is an Agreement between the Council of Europe and the Belarus State University (BSU) on the establishment of a Council of Europe Information Point in Minsk which echoes the Assembly's initiatives. The Agreement was signed in May but registration by the Government of Belarus has not happened yet. It is important for the Information Point not only to become rapidly operational but also to be an open structure to which the public can have access without any restriction and which operates without any hindrance. For the Committee of Ministers, this is essential before any further steps are taken in the Council's relations with Belarus, in particular consideration of possible accession of Belarus to some Council of Europe conventions.

5. The Committee of Ministers will continue to provide assistance for Belarusian civil society in order to promote a democratic and pluralistic environment in Belarus.

Replies from the Committee of Ministers to Parliamentary Assembly written questions

"Persecution of people of Roma origin"

Reply of the CM adopted on 19 November 2008 at the 1041st meeting of the Ministers' Deputies

Written Question No. 549 by Mr Lindblad

The history of the Roma is marked by centuries of persecution. Discrimination seems to follow them wherever they go and therefore they are unable to enjoy full human rights in present-day Europe. Recently, several media sources have reported of anti-Roma persecutions in Italy.

However, the news of the current persecution of the Roma community in Italy has a particu-

lar dimension, as the reports are also about strongly discriminatory and threatening remarks by representatives of the parties in government, as well as legislative proposals that conflict with EU law: prison sentences of up to four years have been proposed for people who enter the country illegally. The proposal is directed at people who lack proper papers and reveals a tendency that they are especially seeking to "drive the Roma out of the country". Collective expulsion is prohibited under the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

Mr Lindblad asks the Committee of Ministers: What action the Committee of Ministers plans to take to persuade Italy to fulfil its obligations in this respect as a member state of the Council of Europe?

Reply

1. The Committee of Ministers reaffirms its firm position against all forms of racism and xenophobia, including hate speech, which have no place in a democratic society, and are contrary to the core values of the Council of Europe.

2. The Committee of Ministers expects all member states to respect the rights and freedoms embodied in the European Convention on Human Rights, and other relevant instruments, including the principle of non-discrimination which carries particular importance with regard to the Roma and other vulnerable populations which risk being particularly subject to prejudice and discrimination. The Committee of Ministers highlights the importance for the authorities of member states to ensure compliance of national legislation with relevant European principles and standards, in particular those relating to human rights.

3. The Committee of Ministers has welcomed the assurance received from the Italian authorities that the legal and practical measures taken in Italy in this respect, and which have been the centre of controversy, are fully in line with European standards and practices. Moreover, the Committee of Ministers has taken note that the Italian authorities continue to pay due attention to the specific issues raised by various Council of Europe bodies, such as the Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI). In particular, the Committee of Ministers takes note of the commitment of the Italian Government to continuing its good co-operation with the Council of Europe Commissioner for Human Rights who thoroughly reviewed the issues relating to Roma and Sinti during his visit to Italy in June 2008.

4. The Committee of Ministers is therefore confident of the commitment of the Italian authorities to ensure that there is no violation, or risk of violation, of the European human rights norms and standards to which all member states are committed. It will continue to closely follow developments in this regard.

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

Parliamentary Assembly

"It is when times are hard that the commitment to protecting human rights is tested most severely. History tells us that an economic downturn usually leads to a rise in prejudice and discrimination. We must redouble our efforts to fight them, as well as the resulting intolerance."

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

Evolution of human rights

PACE calls for people with disabilities to be full members of society

ACE asks member states to include disability issues in all areas of policy-making and allocate sufficient funds to them. To speed up the integration of people with disabilities into society and respect for their rights, the Assembly calls on governments to give them equal access to education, sustainable employment and health care, and to facilitate access to public areas and transport.

In line with the conclusions of the rapporteur for the Social, Health and Family Affairs Committee, Bernard Marquet (Monaco, ALDE), the Assembly asks member states to promote and carry out the Council of Europe Disability Action Plan for 2006-2015, which aims to provide practical answers to the day-to-day problems facing people with disabilities by encouraging equal opportunities. According to Mr Marquet, "this action plan should be a reference for all new policies and activities carried out in the area of disability".

Recommendation 1854 and Resolution 1642, adopted on 26 January 2009 (Doc. 11694 and Doc. 11694)

Mexico must pursue efforts to combat feminicides

In line with the conclusions by Lydie Err (Luxembourg, SOC), rapporteur for the Equal Opportunities Committee, the Assembly unanimously adopted a resolution asking Mexico to step up its efforts to combat "feminicides" – the murder of a woman because she is a woman. The text follows a previous 2005 resolution on "Disappearance and murder of a great number of women and girls in Mexico", in which PACE called on the Mexican Congress to complete the planned constitutional and legislative reforms to fight impunity for such grave human rights violations.

PACE welcomes the passing in 2007 of a general law on women's access to a life without violence and recommends that Mexico ensure the law is implemented. It also asks Mexico to develop working methods to increase the efficiency of investigations when women disappear or are victims of violence.

To apply the concept of "feminicide" effectively in Europe, PACE proposes that the member states consider including aggravating circumstances in criminal legislation, where women have suffered violence or been killed because of their gender. The parliamentarians also express their dismay about the millions of "missing" women and girls (who either remain unborn or meet an early death due to lack of care) in Asia, China and North Africa – a trend that affects Europe in some immigrant communities which prefer boys.

Resolution 1654 and Recommendation 1861 adopted on 30 January 2009 (Doc. 11781)

Situation of human rights in Europe

PACE still seriously concerned by the situation of detainees in Armenia but will not apply sanctions to the Armenian delegation

Resolution 1643, adopted on 27 January 2009 (Doc. 11786 and Doc. 11799)

Parliamentary Assembly, Winter Session: 26-30 January 2009

Following the proposals of the monitoring co-rapporteurs for Armenia, Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), the Parliamentary Assembly of the Council of Europe (PACE) decided not to suspend the voting rights of the members of the Armenian delegation to the Assembly at this stage, viewing the recent initiatives of the Armenian authorities as an indication of their readiness to address the demands made by PACE in its Resolutions 1609 (2008) and 1620 (2008).

The Assembly remains dissatisfied and seriously concerned by the situation of persons deprived of their liberty in relation to the events of 1 and 2 March 2008. Nevertheless, it believes that the number of pardons granted by President Sarkissian (28 to date), the National Assembly's recent initiative to revise Articles 225 and 300 of Armenia's Criminal Code (on "public order offences" and "usurping power") in accordance with Council of Europe standards within no more than two months[1] and the positive steps taken towards the establishment of an independent, transparent and credible inquiry, indicate that the Armenian authorities are prepared to address the Assembly's demands.

The Assembly expresses its concern over those who had been imprisoned for political reasons following the events of 1 and 2 March 2008 and calls on the Armenian authorities to continue releasing them by using other legal means, including amnesties or the dropping of charges. PACE also invites its Monitoring Committee to examine, before the April part-session, the progress achieved by the Armenian authorities with regard to the implementation of this resolution – as well as the previous ones – and to propose any further action to be taken by the Assembly as required by the situation.

1. Under the Constitution of Armenia, any positive changes to the law would be retroactive with respect to the charges brought against the persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

Chechnya: PACE committee demands full elucidation of the recent spate of murders

Statement adopted by the Committee on Legal Affairs and Human Rights (PACE)

Following the recent spate of murders and disappearances of a lawyer, a journalist, a witness and other critics of, in particular, the regime of the President of the Chechen Republic, the committee urges the competent authorities in Moscow and Vienna to carry out full inquiries and to prosecute the killers as well as the instigators and organisers of these crimes.

Stanislav Markelov, gunned down in Moscow on 20 January 2009, was a courageous human rights lawyer. He represented, *inter alia*, the injured parties in the cases of Colonel Yuri Budanov, Sergey Lapin (a policeman found guilty of torture), Mokhmadsalakh Masayev (who disappeared in Chechnya in the summer of 2008 after accusing the Chechen authorities of having subjected him to secret detention and torture) as well as several victims of members of fascist groups.

Anastasiya Baburova, who died shortly after being shot alongside Stanislav Markelov, was a young journalist with Novaya Gazeta, who had reported on Markelov's work.

Umar Israilov, a Chechen refugee who was murdered on 13 January 2009 in Vienna, had made an application to the European Court of Human Rights, in which he accused Chechen President Ramzan Kadyrov of being personally involved in serious human rights violations, including torture.

The committee deplores the climate of impunity which reigns in the Chechen Republic, which the Assembly has highlighted in several reports on the human rights situation in this region (Docs. 10774 and AS/Jur (2008) 21). It is concerned that this is now spilling over beyond the borders of the North Caucasus region, threatening outspoken journalists, lawyers and

others in Moscow and even in other countries in which they have been granted asylum.

In a series of recent judgments, the European Court of Human Rights held the Russian Federation responsible for a large number of enforced disappearances, arbitrary killings and torture in Chechnya, stressing the absence of any meaningful investigations of these crimes by the competent authorities.

These judgments, and the fresh cases above, urgently require a clear signal from the highest authorities of the Russian state to the effect that perpetrators of such serious human rights violations shall be punished in accordance with the law. The recent pardon of Colonel Yuri Budanov, condemned after several scandal-ridden trials to 10 years in prison in July 2004 for murdering a Chechen girl, and who has become a popular hero to ultra-nationalist and fascist groups in Russia, sends the wrong signal.

PACE calls for humanitarian access to South Ossetia and Abkhazia

Resolutions 1647 and 1648, and Recommendation 1857, adopted on 28 January 2009 (Docs 11800, 11806, 11805 and 11789)

The Parliamentary Assembly of the Council of Europe calls on both Russia and Georgia to allow unhindered and unconditional access for humanitarian organisations and aid to South Ossetia and Abkhazia – and says it is unacceptable that people living there should not be effectively covered by Council of Europe human rights protection mechanisms.

It calls for a Council of Europe action-plan for these people, which could include the establishment of a field presence and ombudsman in the two break-away regions to investigate and document human rights violations committed during and in the aftermath of the war.

The Assembly says in a resolution that Georgia has complied with "many but not all" of the demands made by the Assembly in October, whereas Russia has "not yet complied with the majority" of demands made.

The parliamentarians condemn the recognition by Russia of the independence of South Ossetia and Abkhazia as "a violation of international law and of the Council of Europe's statutory principles" and again calls on Russia to withdraw it. Russia should also implement the EU-brokered ceasefire agreement, allow OSCE and EU monitors into the two break-away regions and work towards the creation of a new peacekeeping format and an internationalised peacekeeping force.

Based on a report by Luc van den Brande (Belgium, EPP/CD) and Mátyás Eörsi (Hungary, ALDE), the parliamentarians also express their serious concern that the escalation of tensions and provocations along the borders of the break-away regions "could lead to renewed clashes or an outbreak of hostilities", and call on all parties to refrain from any provocative actions.

Following a separate debate on the humanitarian consequences of the war, based on a report by Corien W.A. Jonker (Netherlands, EPP/CD), the parliamentarians also call for investigations into, and where appropriate prosecutions of, all human rights violations and violations of humanitarian law, and say that reparations should be provided, including restitution of property and payment of compensation.

Internet: http://assembly.coe.int

Commissioner for Human Rights

The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation. To discharge the functions set out in the mandate, the Commissioner works along three main interconnected lines:

– a system of country visits and dialogue with the governments and civil society;

– thematic work and awareness-raising;

– co-operation with Council of Europe and other international human rights bodies.

Country monitoring

The Commissioner carries out visits to all member states for a comprehensive evaluation and constant monitoring of the human-rights situation. During the visits, he meets with the highest representatives of government, parliament, the judiciary, as well as leading members of human rights protection institutions and the civil society. He also visits relevant places, including prisons, psychiatric hospitals, asylum-seekers centres. After the visits, a report is released containing both an analysis of human rights practices and detailed recommendations about areas for improvement and possible ways to do so.

Visits

After the visit to **Belgium** in December, the full cycle of assessment visits has been completed. All 47 member states have now been visited for the purpose of comprehensive human rights appraisal since the establishment of the Commissioner's Office.

At the same time, a new approach was developed, with more focused visits concentrating on a selection of priorities on the basis of follow-up monitoring with the aim of defining key problems and issuing more precise recommendations. This approach included special visits to **Cyprus**, **Greece** and **Italy**.

An important part of the Commissioner's work was dedicated to the humanitarian disaster created by the **South Ossetia** conflict. In particular, he monitored the implementation of the six principles for urgent human rights and humanitarian protection formulated after his first visit in August:

- right of return;
- care for internally displaced persons;
- de-mining;
- establishing law and order;
- exchange of detainees and clarifying the fate of missing persons;
- and international access and human rights presence.

Visit to a Roma settlement in Italy

Commissioner Hammarberg was also involved in human rights diplomacy to define outstanding problems and advise on necessary remedial action. He made use of his good offices to facil-

itate the exchange of persons who had been detained and clarify the fate of missing persons.

The aftermath of the post-election violence in **Armenia** in March 2008 also required increased attention and extensive consultations with the Armenian authorities, Council of Europe bodies and international organisations.

A follow-up visit was carried out in November to support the establishment of an independent, impartial and transparent investigation into the events and review the situation of persons deprived of their liberty following the March 2008 events.

Reports

In November the Commissioner published a report on **France** drawing attention to the fact that French detention and immigration policies risk reducing human rights protection. The report identifies in particular problems as regards prison conditions, *rétention de sûreté*, juvenile justice and rights of migrants. Together with the report he presented a factual Memorandum on detention places for migrants in Roissy and Mesnil-Amelot.

A report on the Commissioner's follow-up visit to the areas affected by the **South Ossetia** conflict was published on 16 December 2008. It reviews the situation of the implementation of the six principles for urgent human rights and humanitarian protection.

On the occasion of his visit to the Republic of **Cyprus** in December, Commissioner Hammarberg presented his report with specific recommendations in particular on migrants and trafficking.

Finally, following his visit to **Greece**, two reports were released in February, setting out concrete recommendations to improve respectively the protection of asylum-seekers and the human rights of minorities.

Thematic work and awareness raising

To provide advice and information on the protection of human rights and the prevention of violations, the Commissioner may issue recommendations regarding a specific human rights issue in a single, or several member states. Either on the request of national bodies or motu proprio in accordance with Article 3 (e) of the mandate, the Commissioner may also offer opinions on draft laws and specific practices. The Commissioner also promotes awareness of human rights in Council of Europe member states by organising and taking part in seminars and events on various human rights themes. Commissioner Hammarberg publishes fortnightly Viewpoints aimed at stimulating discussions on specific human-rights concerns.

Thematic work focused mainly on the fight against discrimination and racism; the protection of migrants, refugees and asylum-seekers; juvenile justice; rights of lesbian, gay, bisexual and transgender persons; the protection of human rights in counter-terrorism measures and systematic work for human rights implementation.

An important part of thematic work was dedicated to the concrete follow-up of the "2008 Committee of Ministers Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities". Adopted in February 2008, the Declaration reinforced the mandate of the Commissioner in this field and his possibilities of promoting a conducive environment for the work of human rights defenders. One of the first steps undertaken was the organisation of a round table in November 2008 which gathered human rights activists from all parts of Europe and underlined that human rights defenders should be seen as key partners in governmental endeavours to promote and protect the rights of individuals. Participants also shared with the Commissioner their experiences of obstacles and problems faced in their daily work of promoting human rights in their respective countries. A declaration was adopted at the end of the round table, which called upon Council of Europe member states to enhance the support to the Commissioner's work. On the occasion of the 10th anniversary of the United Nations Declaration on Human Rights Defenders on 9 December 2008, Commissioner Hammarberg released a joint statement together with five UN and regional human rights mechanisms and representatives, alerting on the persistent challenges that human rights defenders face today.

Activities of co-operation with national human rights structures were also developed, in particular as part of the Joint Council of Europe – European Union Programme "Setting up an active network of independent non-judicial human rights structures".

An issue paper on protecting the right to privacy in the fight against terrorism was released on 4 December. The paper underlines that freedom has been compromised in the fight against terrorism and that government decisions have undermined human rights principles with flawed arguments about improved security.

Mr Hammarberg, Council of Europe Commissioner for Human Rights

On 5 December 2008, Commissioner Hammarberg released a joint statement with the EU Fundamental Rights Agency, urging European governments to remain engaged in the preparations of the UN Review Conference Against Racism which will take place in Geneva in April 2009.

On the 10th of December, marking the 60th anniversary of the Universal Declaration of Human Rights, the Commissioner published two audio messages and a video statement which underlined the topical importance that the Declaration still has in present times.

Building on his continuous attention to the need to adopt a systematic approach to implement human rights, he released on 18 February 2009, a recommendation underlining how states can adopt effective measures by using baseline studies, relevant action plans and indicators, in a continuous and inclusive process.

Social rights have also been increasingly present in the Commissioner's agenda. On 24 February 2009, he gave a speech at the First Conference of European Ministers responsible for social cohesion in Moscow, recommending that remedies to meet the crisis should not hit those who are already disadvantaged.

The Commissioner continued publishing fortnightly his Viewpoints in order to stimulate discussions and give ideas on possible concrete action to undertake on important human rights issues.

In November, he focused on action plans and social rights with the Viewpoints "Concrete and comprehensive action plans are needed to ensure implementation of human rights" and "In times of economic crisis it is particularly essential to ensure the protection of social rights".

"Arbitrary procedures for terrorist black-listing must now be changed" and "More control is needed of police databases" were published in December while "Discrimination against transgender persons must no longer be tolerated" "Europe must open its doors to Guantánamo Bay detainees cleared for release" were the first of 2009.

Finally, two other Viewpoints were released in February: "Children should not be treated as criminals" and "National parliaments can do more to promote human rights".

International co-operation

The Commissioner's status as an independent institution within the Council of Europe endows him with a unique flexibility to work with other institutions, including human rights monitoring mechanisms and intergovernmental and parliamentary committees.

The Commissioner continued its co-operation with other Council of Europe bodies, in particular with the European Court of Human Rights, the Parliamentary Assembly, the Committee for the Prevention of Torture, the Committee for Social Rights, the European Commission against Racism and Intolerance, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

He had also frequent exchanges with a broad range of international bodies, most importantly the United Nations and its specialised offices, the European Union, and the Organisation of Security and Co-operation in Europe. In particular, on 20 February the Commissioner met the EU High Representative for the Common Foreign and Security Policy, Javier Solana, with whom he discussed the situation

in Armenia, Azerbaijan, Belarus, Georgia and the Russian Federation.

The office also co-operated closely with leading human rights non-governmental organisations, universities and think-tanks.

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

UNHCR

United Nations High Commissioner for Refugees Representation to the European Institutions in Strasbourg: Strengthening refugee protection with the Council of Europe.

A word from Olivier Beer

Mr Olivier Beer, Representative, explains the role and activities of UNHCR Strasbourg and co-operation with the Council of Europe to protect the rights of refugees, stateless persons and internally displaced persons (IDPs).

UNHCR Representation to the European Institutions (or "UNHCR Strasbourg")

The mandate of the United Nations High Commissioner for Refugees (UNHCR) is to provide international protection to refugees, and together with Governments and other partners, seek permanent solutions to the problem of refugees. UNHCR's persons of concern are not only asylum-seekers and refugees, but also stateless persons and IDPs.

The UNHCR Representation to the European Institutions (or UNHCR Strasbourg) was set up as a unique liaison office in the late 1990s. Our expertise in refugee law and our physical location here in Strasbourg makes us ideally placed to play a co-operative role with the standard setting and monitoring bodies of the Council of Europe as well as the Permanent Representations of the Council of Europe member states also stationed in the city.

UNHCR co-operation with the Council of Europe

In November 2008 the United Nations General Assembly adopted a resolution (A/63/L12) encouraging further co-operation between UNHCR and the Council of Europe "in the field of nationality, in particular in the prevention and reduction of statelessness, and in the protection and promotion of the rights of refugees, asylum-seekers and internally displaced persons." The resolution builds on a decade of co-operation first formalised in a Memorandum of Understanding in August 1999. We are also the grateful recipients of funding from the Eu-

ropean Development Bank which has facilitated just some of our work, described below.

The Council of Europe's commitment is rooted in its own institutional mission to protect human rights across Europe by developing common and democratic principles based on the European Convention on Human Rights (ECHR) and other texts, including the 1951 Convention Relating to the Status of Refugees. The complementarity of protection afforded by the ECHR and the 1951 Convention enables us to better advocate for the rights of persons of concern. Even a single refugee's case, or issue, may simultaneously touch on a number of rights, e.g. Articles, 3, 5, 8 and 13 ECHR.

What UNHCR Strasbourg can offer

On a practical level, UNHCR is regularly requested by the Council of Europe bodies to provide information on issues relating to persons of concern. We respond by providing legal expertise and contact our other offices (e.g. Headquarters in Geneva, regional and field offices across the 47 Council of Europe member states and the rest of the world) for statistics and country information which is channelled back to the Council. We regularly engage in meetings, sessions and conferences of the Council of Europe bodies, The Parliamentary Assembly of the Council of Europe (PACE), and forge constructive working relationships with the people who drive these institutions day-to-day.

This partnership has allowed us to seek solutions for the problem of refugees, shape ECHR case-law (UNHCR's position has been quoted in the cases themselves) and soft law and politically-binding declarations (resolutions, recommendations, reports, and guidelines).

Preserving the asylum space, ensuring standards of protection in Europe and promoting durable solutions

Arrivals of migrants and asylum seekers by dangerous sea routes, displacements of population in Georgia, property rights of refugees in the Balkans, restrictive migration policies, and the economic crisis are a very few of the issues affecting persons in need of protection and access to asylum in Europe. These challenges facing the 47 member states give rise to difficult legal and humanitarian questions at Council of Europe level and create the context for our work. Let me give you a few examples of UNHCR-Council of Europe co-operation on human rights issues:

- Our third party interventions to the European Court of Human Rights (ECtHR) have addressed a number of issues relating to the rights of refugees, e.g. access to national asylum procedures; detention; appeals procedures. We also liaise on Rule 39 requests (for interim measures) from individuals alleging that expulsion would violate Article 3.
- We provide input to Council of Europe monitoring bodies – the Office of the Commissioner for Human Rights, the European Committee for the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI), and the European Committee on Migration – in connection with their ad hoc and periodic visits to the 47 member states.
- We liaise with the Committee on Migration, Refugees and Population of PACE on reports, resolutions and recommendations, e.g. on issues such as the quality and consistency of decision making, readmission agreements, durable solutions of IDPs etc.
- We actively promote UN and Council of Europe Conventions and their wider ratification, e.g. on Statelessness, on Trafficking, on National Minorities, on Nationality of Children, etc.
- We advocated for the rights of asylum-seekers during the drafting process of Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures (GT-DH-AS) adopted by the Steering Committee on Human Rights of the CDDH.
- Our Council of Europe-UNHCR joint assistance programme included joint activities in Council member states, e.g. a round table on the regularisation of the legal status of Roma in Croatia.
- Finally, the seminar we organised with the Youth Division of the Council of Europe on "Raising Young Refugees' Voices in Europe Today" was a great success.

Taking forward our human rights goals

Our co-operation is therefore mutually beneficial and it is important to us that we strengthen this partnership in the future. We welcome opportunities to advocate for better protection of persons of concern to UNHCR. Therefore, please do not hesitate to inform us of the work you are doing and participate in World Refugee Day at the end of June.

Who we are

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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

Azerbaijan, 8-12 December 2008

The main objective of the visit was to review improvements made in the light of the recommendations in the reports on previous CPT visits to Azerbaijan, concerning the treatment of prisoners – including inmates sentenced to life imprisonment – and psychiatric patients.

In the course of the visit, the delegation held consultations with the Minister of Justice, Fikrat Mammadov, and the Deputy Minister of Health, Sanan Karimov, as well as with other senior officials from the above-mentioned Ministries. The delegation also met representatives of civil society.

Bulgaria, 15-19 December 2008

The main objective of the visit was to review progress made as regards the implementation of previous CPT recommendations, in particular those contained in the report on the 2006 periodic visit to Bulgaria. The visit focused on the treatment of persons detained by the police, the situation of foreign nationals deprived of their liberty, and conditions of detention in investigation detention facilities and prisons.

In the course of the visit, the delegation held consultations with Roumen Andreev, Deputy Minister of Internal Affairs, Boyko Rashkov, Deputy Minister of Justice, and Petar Vassilev, Director of the Main Directorate for Execution of Sentences, as well as with senior officials from the Ministries concerned and from the State Agency for Refugees. The delegation also met Ginyo Ganev, Ombudsman of Bulgaria, and representatives of civil society.

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

Periodic visits

United Kingdom, 19 November - 1 December 2008

During the visit, the delegation focused its attention on the conditions of detention and the treatment of persons in three "local" prisons, two of which are in the High Security Estate, and in a juvenile detention facility in England. The delegation also visited Northern Ireland to examine developments there since its last visit in 1999, particularly as concerns the situation in the two prisons for male adults. The safeguards afforded to persons deprived of their liberty by the police were also examined in both England and Northern Ireland. Finally, the delegation examined issues relating to persons held under immigration legislation and an immigration removal centre was visited.

In the course of the visit, the CPT's delegation held consultations with the Home Secretary Jacqui Smith, the Lord Chancellor and Secretary of State for Justice, Jack Straw, the Minister of State for Northern Ireland, Paul Goggins, and the Parliamentary Under Secretary for Justice, Shahid Malik, as well as with the Chief Executive of the UK Border Agency, Lin Homer, and other senior officials from the Home Office, Northern Ireland Office, Youth Justice Board and National Offender Management Service for England and Wales.

In respect of England and Wales, the delegation also met the Chief Inspector of Prisons, Anne Owers, the Prisons and Probation Ombudsman, Stephen Shaw and one of the Independent Police Complaints Commissioners, Mike Franklin.

In Northern Ireland, the delegation met senior officials from the Police Service and the Prison Service, as well as with the Police Ombudsman, Al Hutchinson, the Prison Ombudsman, Pauline McCabe, and the Chief Commissioner of the Northern Ireland Human Rights Commission, Monica McWilliams.

Further, it held discussions in London and Belfast with representatives of non-governmental organisations active in areas of concern to the CPT.

At the end of the visit, the delegation presented its preliminary observations to the United Kingdom.

French Guyana, 25 November - 1 December 2008

The main objectives of the visit were to examine the situation at Remire Montjoly Prison, the only prison in this French administrative region, as well as the situation of foreign nationals detained under aliens legislation. The delegation also reviewed the treatment of persons held by the police, the gendarmerie and the customs administration.

Reports to governments following 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.

"The former Yugoslav Republic of Macedonia", publication on 4 November 2008

Report on the June/July 2008 ad hoc visit, together with the authorities' response

The 2008 visit focused on the treatment and conditions of detention of sentenced and remand prisoners. In this context, it assessed developments in relation to prison health care 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. The visit was prompted by the fact that the authorities' response to the report on a previous visit in 2007 did not address many of the issues identified by the Committee.

The CPT remains concerned about the apparent lack of action taken to tackle serious concerns such as ill-treatment of detained persons (including juveniles) by police and prison officers and the poor conditions of detention in prisons. The report states that little progress was observed during the 2008 visit and highlights the necessity for the authorities to provide the Committee with accurate and reliable responses as a prerequisite for co-operation.

Switzerland, publication on 13 November 2008

Report on the fifth visit in September/October 2007, together with the response of the government

During the 2007 visit, the CPT followed up a certain number of issues examined during previous visits, in particular the fundamental safe-

guards against ill-treatment offered to persons in police custody and the situation of persons deprived of their liberty under aliens legislation. Regarding prisons, the CPT paid particular attention to the conditions of detention of persons against whom a compulsory placement measure or institutional therapeutic measures have been ordered, as well as to conditions in the security units. It also examined the situation of juveniles and young adults in education centres.

In their response to the visit report, the Swiss authorities provided information on the measures being taken to implement the CPT's recommendations.

Report on the fourth periodic visit in September 2007, together with the response of the Moldovan authorities

Moldova, Publication on 4 December 2008

In the light of the information gathered during the 2007 visit, the CPT concluded that, despite clear efforts made by the Moldovan authorities in recent years, the phenomenon of ill-treatment by the police remained of serious proportions. The Committee has called upon the authorities to continue to deliver, from the highest level, a strong message of "zero tolerance" of ill-treatment. The CPT has also asked the authorities to carry out an inquiry into allegations of ill-treatment by staff at the temporary detention facility (IDP) of the General Police Directorate in Chişinău. The report contains recommendations aimed at strengthening the formal safeguards against ill-treatment, improving screening for injuries and introducing independent monitoring of police detention facilities.

Conditions of detention in IDPs continued to render them unsuitable for holding remand prisoners for prolonged periods of time. The CPT has called upon the authorities to give the highest priority to the implementation of the decision to transfer the responsibility for persons remanded in custody to the Ministry of Justice.

As regards the prisons visited in 2007, no allegations of recent physical ill-treatment of inmates by staff were received, with the exception of Penitentiary establishment No. 18 in Brăneşti. At Penitentiary establishment No. 13 in Chişinău, the CPT's delegation focused on the manner in which a mass disobedience by inmates on 6 September 2007 had been handled, and expressed concern about the proportionality of the force used by staff.

Prison overcrowding remained a problem, there being on average only 2 m^2 of living space per prisoner in the establishments visited. The CPT has stressed the need for adopting policies designed to limit or modulate the number of persons sent to prison. The report also contains recommendations aimed at improving the conditions of detention of life-sentenced prisoners at Penitentiary establishment No. 17 in Rezina as well as the situation of inmates with multi-resistant TB held in that establishment.

A follow-up visit was carried out to Penitentiary establishment No. 8 in Bender. This establishment, located in the Transnistrian region, is part of the prison system of the Republic of Moldova and has been the subject of four visits by the CPT. It was clear at the time of the 2007 visit that the Moldovan authorities had taken steps to alleviate, as far as possible, the difficult situation of prisoners in this establishment. Nevertheless, the Committee has called upon the Moldovan authorities to pursue actively negotiations with the municipal authorities of Bender, with a view to restoring the supply of running water and electricity as well as the connection to the municipal sewage disposal system.

At Chişinău Clinical Psychiatric Hospital, most of the patients spoke positively of the attitude of health-care staff. The CPT has made recommendations aimed at improving the living conditions and treatment of patients, and at strengthening the safeguards in the context of compulsory hospitalisation.

In contrast, at the Psycho-neurological Home in the village of Cocieri, the CPT's delegation heard many allegations of physical and verbal ill-treatment of residents by orderlies. The Committee has recommended that the selection procedures for orderlies be reviewed and a comprehensive training programme developed for them. Measures to avoid arbitrary placements in psycho-neurological homes have also been recommended.

In their response, the Moldovan authorities provided information on the measures being taken to address the issues raised in the CPT's report. For example, the authorities have drawn up guidelines for prosecutors on the carrying out of investigations into cases of ill-treatment. Further, prison ethics committees have been set up, with a view to fostering a culture among prison staff where it is regarded as unacceptable to have resort to ill-treatment. The authorities also refer to steps taken to improve the training of orderlies in psychiatric hospitals and psycho-neurological homes, and to employ more staff.

Romania, Publication on 11 December 2008

Report on the sixth visit in June 2006, together with the response of the Romanian Government

During the 2006 visit, the CPT reviewed the measures taken by the Romanian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and the conditions of detention in a number of police establishments and detention facilities for foreign nationals. The CPT also examined in detail various issues related to prisons, especially the detention regime and security measures applied to life-sentenced prisoners and prisoners classified as "dangerous". In the course of visits to a psychiatric hospital and a medical-social centre, the CPT reviewed the placement procedures and the legal status of patients/residents.

In their response to the visit report, the Romanian authorities provide information on the measures being taken to implement the CPT's recommendations.

Serbia, Publication on 14 January 2009

Report on the periodic visit in 2007, together with the Serbian authorities' response

During the 2007 visit, a number of allegations of physical ill-treatment of persons detained by the police were received. The CPT has made a series of recommendations to address this issue, as well as to improve the practical implementation of fundamental safeguards against ill-treatment, such as access to a lawyer (including for detained juveniles), access to a doctor and access to an interpreter for detained foreign nationals.

As regards prisons, the delegation received almost no allegations of ill-treatment of inmates by staff at Sremska Mitrovica Correctional Institution, and only a few allegations at Belgrade District Prison. This contrasted with the situation at Požarevac-Zabela Correctional Institution, where a number of recent allegations of physical ill-treatment were received. The CPT has recommended measures aimed at decreasing tension in the last-mentioned establishment, in particular in the high security unit and the remand section.

The CPT observed disturbing levels of overcrowding in all the prison establishments visited, especially in sections for remand prisoners. The Committee has taken note of the ongoing and planned refurbishment and expansion projects concerning various prisons and has called upon the Serbian authorities to devise, as a matter of high priority, a comprehensive and fully-budgeted refurbishment programme for Belgrade District Prison. The situation was exacerbated by the absence of constructive activities for prisoners in remand sections, and the inadequate provision of purposeful activities and work opportunities for sentenced prisoners. On a more positive note, the CPT welcomed the ongoing refurbishment of the Special Prison Hospital.

Turning to psychiatry, hardly any allegations of physical ill-treatment of patients by staff were received at the Specialised Neuro-Psychiatric Hospital in Kovin. However, inter-patient violence was a problem. In addition, the CPT has expressed concern about the frequent resort to mechanical restraints in the establishment, sometimes for prolonged periods. As regards safeguards surrounding involuntary placement, the Committee found that they remain unsatisfactory and has made recommendations to improve the situation. In the light of the poor material conditions found in the Kovin Hospital, the CPT has also recommended that the establishment be the subject of a comprehensive refurbishment programme. More generally, the Committee welcomed the adoption, in 2007, of a Strategy for the Development of Mental Health Care aimed at reducing the size or closing down some of the psychiatric hospitals in Serbia, and developing community care; the CPT has encouraged the Serbian authorities to implement these plans as a matter of priority.

No allegations of ill-treatment were received at the Special Institution for Children and Juveniles in Stamnica. However, instances of inter-resident violence were observed, which was hardly surprising given the combination of severe overcrowding and low staffing levels in various parts of the establishment. The CPT has expressed particular concerns about the living conditions and lack of activities in Pavilions 1 to 6 (the "upper zone") and made recommendations on this issue. More generally, the CPT has recommended that steps be taken to reorganise the system for provision of care to persons with mental disabilities, as well as to improve the legal safeguards surrounding the placement of people in specialised institutions.

In their response, the Serbian authorities provide information on the measures being taken to address the issues raised in the CPT's report.

Finland, Publication on 20 January 2009

Report on the fourth visit in April 2008

During the visit, the CPT's delegation examined, in particular, the safeguards offered to persons detained by the police, and the situation of remand prisoners held in police detention facilities. The visit report contains recommendations aimed at eliminating the practice of holding remand prisoners in police cells. In this context, the Finnish authorities have informed the Committee of plans to adopt measures to decrease the number of remand prisoners in police establishments and to shorten the periods spent by them in police custody.

The CPT's delegation also found that persons detained under the Aliens Act were still frequently held in police establishments. In this context, the Committee has recommended that the Finnish authorities consider the possibility of opening a second specialised holding facility for aliens, like the one opened in Metsälä.

The report also addresses in detail various issues related to prisons, in particular the phenomenon of inter-prisoner violence and intimidation as well as the situation of prisoners held in high security and closed units. The CPT has recommended that a national approach be developed to address the issue of "fearful" prisoners, and that a suitable programme of purposeful activities be provided to prisoners held in conditions of high security or segregated by court order.

The Committee was impressed by the high quality of the prisoner accommodation at Vantaa Prison; however, the original concept of a modern remand prison offering a variety of regimes while taking into account the interests of justice was compromised by overcrowding. Further, the CPT has called upon the Finnish authorities to end the practice of "slopping out" at Helsinki Prison, as well as elsewhere in the Finnish prison system. Particular attention was also paid to the treatment of prisoners suspected of concealing unlawful substances in their body ("body packers").

In addition, the CPT's delegation visited a state psychiatric hospital for forensic patients and civil patients considered dangerous or otherwise challenging (Vanha Vaasa Hospital) and, for the first time in Finland, a psychiatric unit for adolescent intensive care (the EVA Unit in Pitkäniemi).

As regards the latter establishment, the CPT's delegation noted with concern that some of the juvenile patients were prevented from taking outdoor exercise, on occasion for weeks on end; the Committee has recommended that steps be taken to ensure that all juvenile patients are offered the possibility to take daily outdoor exercise. The delegation also requested that a detailed action plan be drawn up to reduce significantly recourse to seclusion at Vanha Vaasa Hospital; the Finnish authorities subsequently informed the CPT of steps to be taken in this regard and also indicated that procedures and methods used in all psychiatric facilities (such as seclusion) would be subject to review in the context of legislative reforms to be launched in the course of 2009.

Kosovo,[1] Publication on 20 January 2009

Report on the first visit in March 2007, together with the response of the United Nations Interim Administration in Kosovo (UNMIK)

In the course of the visit, the CPT received a number of allegations of physical ill-treatment of persons held by officers of the Kosovo Police Service (KPS) in police stations throughout Kosovo. The CPT has recommended that a formal statement be delivered from the highest level to all KPS officers, reminding them that they should be respectful of the rights of detained persons and that the ill-treatment of such persons will be the subject of severe sanctions. The Committee has also made specific recommendations concerning the implementation in practice of the fundamental safeguards against ill-treatment (in particular, as regards the right of detained persons to have access to a lawyer).

Material conditions of detention were poor in almost all the police stations visited. Many cells were too small for the number of persons being held there, lacked natural light and/or artificial lighting, and were in a poor state of cleanliness.

The CPT visited Dubrava Prison, Lipjan/Lipljan Correctional Centre (the only penitentiary establishment in Kosovo for women and juveniles) and four pre-trial detention centres throughout Kosovo. At Dubrava Prison, the Committee received a number of allegations of physical ill-treatment and/or excessive use of force by members of the establishment's Intervention Unit (so-called "Delta Bravo"). Many prisoners also complained about brutal and provocative behaviour by members of that unit

1. "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo".

in the context of cell searches. In addition, some allegations of physical ill-treatment by custodial staff were received at Dubrava Prison and Lipjan/Lipljan Correctional Centre; no such allegations were heard in any of the detention centres visited.

Material conditions of detention were generally satisfactory at Lipjan/Lipljan Correctional Centre and the detention centres in Gjilan/Gnjilane and Mitrovica/Mitrovicë; however, they were very poor in some parts of Dubrava Prison and in the entire Pejë/Peć Detention Centre (advanced level of dilapidation, poor standards of hygiene, overcrowding, etc.)

The CPT has welcomed the initial efforts made by the prison administration to develop a programme of activities for prisoners (in particular, for female and juvenile prisoners). The Committee gained a generally favourable impression of the detention regime in the high-security block of Dubrava Prison. However, it is a matter of concern that many sentenced prisoners and almost all remand prisoners in the penitentiary establishments visited did not benefit from any regular out-of-cell activities other than outdoor exercise. Further, the Committee has expressed its concern about the frequent allegations of favouritism and corruption at Dubrava Prison.

As regards psychiatric/social welfare establishments, no allegations of ill-treatment by staff were received from patients at the Psychiatric Clinic in Prishtinë/Priština and the Regional Hospital in Mitrovica/Mitrovicë, but some allegations of physical ill-treatment (such as slaps) by orderlies were received at the Shtime/Štimlje "Special Institute". In addition, a number of patients/residents, mostly women, met at Shtime/Štimlje claimed that they had been subjected to violence and/or intimidation by other patients/residents. No such allegations were received in the other psychiatric establishments visited.

Living conditions of patients were very good in the emergency/intensive care unit at the Psychiatric Clinic in Prishtinë/Priština and generally satisfactory at the Regional Hospital in Mitrovica/Mitrovicë. However, the CPT has expressed its serious concern about the fact that patients in the forensic psychiatric unit in Prishtinë/Priština were being kept, often for months on end, in a state of total idleness: they did not have any possibility to go into the open air, nor were they provided with reading material or a radio or TV, and they had no possibility making telephone calls.

At the Shtime/Štimlje "Special Institute", the CPT gained a favourable impression of the living conditions in the new institution for persons with mental disabilities, both in terms of material conditions and socio-rehabilitative and recreational activities offered to residents. In contrast, conditions for patients in the Integration Centre for Mental Health were very poor. Many rooms were dilapidated and in a poor state of hygiene. In addition, the Centre lacked the necessary funds to ensure even the basic needs of patients (such as adequate clothing and shoes).

In its substantial response addressing all the issues raised by the CPT, UNMIK provides detailed information on the concrete measures taken by the relevant authorities to improve the situation in the light of the recommendations made by the Committee. For instance, to combat ill-treatment by the police, a directive has been issued to police officers and draft legislation has been prepared to aggravate sanctions against police officers who use force unnecessarily and/or in a disproportionate manner. In addition, steps have been taken to intensify the training of police officers and to strengthen the legal safeguards for persons detained by the police.

Albania, Publication on 21 January 2009

Report on the June 2008 ad hoc visit to Albania

The main objective of the visit was to review progress made as regards the implementation of the recommendations made by the CPT following its previous visits to Albania. Particular attention was paid to the treatment of persons detained by the police and conditions of detention in remand prisons and pre-trial detention centres.

In the course of the visit, the CPT observed improvements in various areas. In particular, in contrast to the findings made during previous visits, the majority of persons interviewed by its delegation stated that they had been treated correctly whilst in police custody; nevertheless, a number of credible allegations of recent physical ill-treatment were received. As regards conditions of detention in pre-trial detention centres, the CPT found that significant progress had been made.

The CPT has recommended that the Albanian authorities redouble their efforts to combat ill-treatment by the police and to improve, as a matter of urgency, conditions of detention in police stations, which remained unsatisfactory.

Response of the Government of the Kingdom of the Netherlands to the report on the CPT's visit in June 2007

Netherlands, publication on 4 February 2009

Report on the ad hoc visit to the Czech Republic in March/April 2008, together with the response of the Czech Government

Czech Republic, publication on 5 February 2009

One of the main objectives of the visit was to examine the application of testicular pulpectomy ("surgical castration") on sentenced sex-offenders. The CPT's delegation interviewed nine sexual offenders who had already undergone surgical castration, and five who were in the preparatory stages of the process to be castrated. In addition, the files of 41 sex offenders who had been surgically castrated between 1998 and 2008 were studied, and interviews on the treatment of sex offenders were carried out with medical practitioners, scientists and government officials. The CPT found that surgical castration was carried out not only on violent sex offenders but also on persons who had committed non-violent crimes, such as exhibitionism.

In its report, the CPT expresses several fundamental objections to the use of surgical castration as a means of treatment of sex-offenders. Firstly, it is an intervention that has irreversible physical effects, and direct or indirect mental health consequences. Further, there is no guarantee that the result sought (i.e. lowering of the testosterone level) will be lasting. Moreover, given the context in which the intervention is offered, it is questionable whether consent to the option of surgical castration will always be truly free and informed. The CPT also points out that effective alternative therapies for the treatment of sex offenders are currently available.

In the CPT's view, surgical castration of detained sex offenders amounts to degrading treatment and the Committee calls upon the Czech authorities to end immediately this practice.

In their response, the Czech authorities state that surgical castration is carried out with the free, informed, consent of the patient and that they do not consider the reasons given by the CPT in favour of abandoning its use as "sufficient and established".

During the 2008 visit, the CPT also paid a follow-up visit to Section E of Valdice Prison, which accommodates persons sentenced to life imprisonment as well as "troublesome" or "dangerous" high security prisoners. It found that the treatment and conditions of detention of these prisoners continued to raise serious concerns and recommended that the Czech authorities undertake a thorough review of Section E.

In their response, the Czech authorities provide information on various measures taken to implement the Committee's recommendations.

Talks

High-level talks between the Council of Europe and the United Nations Interim Administration in Kosovo (UNMIK)

Priština, Kosovo, 15 December 2008

In the context of these talks, which were held from 9 to 11 December 2008, the CPT's representatives met the Special Representative of the Secretary-General of the United Nations in Kosovo, Ambassador Lamberto Zannier, the Head of the OSCE Mission in Kosovo, Ambassador Werner Almhofer, the Deputy Head of the European Union Rule of Law Mission (EULEX), Mr Roy Reeve, as well as senior officials of UNMIK, the OSCE and EULEX. Under the auspices of UNMIK, discussions were also held with representatives of the Advisory Office on Good Governance and Human Rights of the Kosovo authorities.

Separately, consultations were held with the Chief of Staff of KFOR, Brigadier General David H. Berger, on the continuation of the CPT's work with regard to KFOR's powers to deprive persons of their liberty.

The CPT's representatives were Ms Renate Kicker, 1st Vice-President of the CPT, Mr Tim Dalton, member of the CPT, and Mr Michael Neurauter, Head of Division in the Committee's Secretariat.

Internet: http://www.cpt.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

To date 43 member states of the Council of Europe have signed the Revised European Social Charter. The remaining 4 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)

Exchange of views

At its 233rd session, from 1 to 5 December 2008, the ECSR held an exchange of views with the Deputy Secretary General of the Council of Europe, Ms Maud de Boer-Buquicchio, to mark the 40th Anniversary of its supervision of the application of the Social Charter.

The Deputy Secretary General emphasised the transformation in the status and role of the Committee that had taken place since 1968, as well as the importance of the collective complaints procedure in putting into practice the principle of indivisibility of human rights.

She underlined that social rights must not be treated as less important than civil and political rights and she made specific suggestions on how to raise the profile of the Charter and its supervisory mechanism:

Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, Ms Polonca Koncar, President of the ECSR, Mr Régis Brillat, Executive Secretary of the ECSR

– to encourage all member states to ratify the Revised Charter and to accept to be bound by the collective complaints procedure;

– to consider the possibility of an individual complaints mechanism;

– to examine the follow-up to the Committee's findings of violations, especially in collective complaints cases, in the context of the DH meetings of the Committee of Ministers on the execution of judgments of the European Court of Human Rights.

Elections

At their 1047th session (4 February 2009), the Committee of Ministers declared elected as a member of the ECSR Ms Jarna Petman (Finnish), with effect immediately, a term of office which will expire on 31 December 2014.

The ECSR held its first session in 2009 (16-20 February) with five new members (see Human Rights Information Bulletin No. 75) and elected for a two-year period a new Bureau which has the following composition:

President: Ms Polonca Koncar

Vice-President: Mr Andrzej Swiatkowski

Vice-President: Mr Colm O'Cinneide

Rapporteur General: Mr Jean-Michel Belorgey

Significant events

Meetings on non-accepted provisions of the Social Charter

Chișinău (Moldova), 18 November 2008

Representatives of five ministries working with issues related to the Charter, as well as the Deputy Prime Minister of the Republic of Moldova participated in a meeting to examine which new provisions could now be accepted in light of improvements in the social field and the adoption of an appropriate legal framework which implement the standards of the Charter.

Articles 3 § 4, 7 § 6, 10 § 2, 19 §§ 2,4, 5 and 9, 22, 27 §§ 1 and 3 can now be accepted by Moldova.

Brussels (Belgium), 3 and 4 February 2009

The Minister for Employment and Equal Opportunity announced that Belgium would in the near future accept the provisions relating to employment which depend on the federal authorities: Articles 24, 26 § 2, 27 §§ 1 and 2 and Article 28.

Ministerial Conference

The first Conference of Ministers in the Council of Europe member states responsible for social cohesion took place in Moscow (Russian Federation) on 26 and 27 February 2009. The theme was: "Investing in social cohesion – investing in stability and the well-being of society".

In addition to speeches by political personalities at a high level such as the Russian Prime Minister, the Russian Minister for Public Health and Social Development, the Secretary General and the Commissioner for Human Rights of the Council of Europe, statements were made by Ms Koncar, President of the European Committee of Social Rights and by Ms Pimenta, Vice-President of the Governmental Committee of the Social Charter. They emphasised the evolution of the Charter and the reform of its supervision mechanisms as well as the working methods of the two committees.

In their final declaration, some 30 Ministers, present at the Conference, committed themselves to:

– promoting social rights by ratifying the Revised European Social Charter, the European Code of Social Security and its Proto-

col and the European Convention on Social Security;

– sharing responsibilities and strengthening social dialogue;

– building confidence in a secure future for all by providing adequate social protection in the context of the present economic crisis and encouraging social mobility and employment.

Other activities

Conference-debate, Paris, 19 December 2008

A Conference-debate entitled "*Droits sociaux, droits de l'homme : le Conseil de l'Europe et nous ?*", organised by the Delegation to European and International Affairs of the Ministry of Employment, was the occasion to take stock of the role of the Council of Europe in the promotion of social rights, especially the impact of the Social Charter and its supervision mechanisms.

ATD Fourth-world Colloquy, Paris, 17-19 December 2008

"*La démocratie à l'épreuve de l'exclusion – Quelle est l'actualité de la pensée politique de J. Wresinski ?"* was the title of the international colloquy organised in Paris by the movement ATD Fourth-world and the National Foundation of Political Sciences. The topic was human rights and extreme poverty.

In addition to plenary sessions, 18 thematic workshops were organised during this colloquy which grouped researchers namely in political and social sciences, as well as social and political actors including people affected by poverty.

An exchange of views was held on different issues including the working methods of the movement ATD Fourth-world which has lodged several collective complaints to the ECSR.

Collective complaints: latest developments

Decisions on the merits

In January 2009 two decisions on the merits were published concerning the following collective complaints:

European Council of Police Trade Unions (CESP) v. Portugal (No. 40/2007)

It was alleged that police officers in Portugal did not enjoy the right to bargain collectively (Article 6 §§ 1 and 2), the right to information and consultation (Article 21) and the right to take part in the determination and improvement of the working conditions and working environment (Article 22) (Revised Charter).

Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal (No. 43/2007)

The complaint related to Article 12 § 1, 2 3 (right to social security) of the Revised Charter. It was alleged that staff of the Public Prosecutor's Office in Portugal were excluded from the social Welfare Service of the Ministry of Justice (Legislative Decree No. 212/2005 of 9 December 2005).

In both cases, the ECSR concluded that there was no violation.

Decisions on admissibility

On 2 December 2008 and 17 February 2009 the ECSR respectively declared admissible the two following collective complaints:

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 (right of the family to social, legal and economic protection), read alone or in conjunction with Article E (non-discrimination) of the Revised Charter. It is alleged 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.

– European Council of Police Trade Unions (CESP) v. France (No. 54/2008)

The CESP (European Council of Police Trade Unions) claims that the new regulations introduced by the French Government on 15 April 2008 (General Regulations on Employment in the National Police Service and General Instruction on the organisation of working hours in the National Police Service) are in breach of Article 2 § 1 on the grounds that it is impossible to ascertain whether daily and weekly police working hours are reasonable because such working hours are not recorded. The CESP also contends that the flat, i.e. non-increased, rate of remuneration for overtime work provided for in the new regulations of 17 April 2008 (the General Regulations on the National Police Service and Instruction NOR INTC0800092C) infringes Article 4 § 2 because the rate of remuneration for overtime work, where the latter is taken into consideration, is based on a rate below the hourly rate for police officers, and where compensation is available in the form of rest periods, such compensation is ineffective.

New collective complaint

One collective complaint was registered:

Confédération générale du Travail (CGT) v. France (No. 55/2009)

The complaint, lodged on 21 January 2009, relates to Articles 2 (the right to just conditions of work), 4 (the right to a fair remuneration) and 11 (the right to protection of health). The CGT (Confédération générale du Travail) claims that the new regulations on working time introduced in France on 20 August 2008 (Act No. 2008-789) violates these provisions).

For more detailed information on collective complaints, see the Social Charter website

Publications

- Conclusions XIX-1 of the European Committee of Social Rights – 1961 Social Charter, Council of Europe Publishing, 2008, ISBN 978-92-871-6528-2, 517 p.
- Conclusions 2008 of the European Committee of Social Rights – Revised Social Charter, Volume 1, Council of Europe Publishing, 2008, ISBN 978-92-871-6530-5, 438p.
- Conclusions 2008 of the European Committee of Social Rights – Revised Social Charter, Volume 2, Council of Europe Publishing, 2008, ISBN 978-92-871-6532-9, 392p.

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

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.

On 24 February 2009 ECRI published the first three reports of its fourth round of country monitoring, on Bulgaria, Hungary and Norway. In these reports, ECRI underlines that positive developments have occurred in all three of these Council of Europe member states. At the same time, however, the reports detail continuing grounds for concern for ECRI:

– In Bulgaria, the legal and institutional framework against racism and discrimination has been strengthened and initiatives have been taken to improve the situation of Roma and of refugees. However, some anti-racism or anti-discrimination legal provisions are rarely applied, the situation of Roma and asylum seekers remains worrying, the public's awareness of problems of racism and intolerance still needs to be raised, and the response of the justice system to racist publications and to allega-

tions of racist or discriminatory behaviour on the part of the police should be improved.

- In Hungary, the Equal Treatment Authority, which has been operating since 2005 can award compensation to victims of discrimination and impose fines on persons or bodies that commit discrimination. A variety of measures have also been taken to improve the integration of disadvantaged individuals, including Roma, and steps have been taken to improve the situation of asylum seekers. However, the recent rise in racist and xenophobic discourse in Hungarian society is worrying, as is the continuing disadvantage experienced by Roma in every field of daily life. Negative stereotypes also remain with respect to migrants and asylum seekers, who experience difficulties in gaining access to housing and employment.
- In Norway, the legal and institutional framework against racism and discrimination has been strengthened and the vast majority of the measures foreseen in the National Plan of Action to Combat Racism and Discrimination (2002-2006) have been implemented. However, the situation of persons of immigrant background remains worrying in sectors such as employment and school education, as well as the situation of Roma and Romani/Taters. Political discourse sometimes takes on racist and xenophobic overtones, and the police still have important challenges to take up, including in the field of addressing racial profiling.

For each of these country monitoring reports an interim follow-up will take place no later than two years after the publication of the reports.

The publication of ECRI's country-by-country reports is an important stage in the development of an ongoing, active dialogue between ECRI and the authorities of member states with a view to identifying solutions to the problems of racism and intolerance with which the latter are confronted. The input of non-governmental organisations and other bodies or individuals active in this field is a welcome part of this process, and should ensure that ECRI's contribution is as constructive and useful as possible.

Work on general themes

ECRI's work on general themes covers important areas of current concern in the fight against racism and intolerance, frequently identified in the course of ECRI's country monitoring work. 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 twelve General Policy Recommendations, covering some very important themes, including key elements of national legislation to combat racism and racial discrimination; the creation of national specialised bodies to combat racism and racial discrimination; combating racism against Roma; combating Islamophobia in Europe; combating racism on the Internet; combating racism while fighting terrorism; combating anti-Semitism; combating racism and racial discrimination in and through school education; combating racism and racial discrimination in policing and combating racism and racial discrimination in the field of sport.

On 19 December 2008 ECRI adopted its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport. This General Policy Recommendation sets out a very wide range of measures that the governments of member states are advised to adopt in order to successfully combat racism and racial discrimination in the field of sport. In this text, ECRI demands that governments ensure equal opportunities in access to sport for all; combat all forms of racism and racial discrimination in sport; and build a coalition against racism in sport. ECRI's suggestions as to how this can be achieved cover, among other things, ensuring that adequate legal provisions are in place to combat racial discrimination and to penalise racist acts and providing training to the police to enable them to identify, deal with and prevent racist behaviour at sporting events. ECRI also emphasises the important role of local authorities, sports federations, sports clubs and schools in ensuring the participation of minority groups in sports, as well as the role of various other actors in combating

racism in sports, such as athletes, coaches, referees, supporters' organisations, politicians, the media and sponsors. ECRI calls on all these actors to unite and build a coalition against racism in sport.

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.

Seminar with national specialised bodies to combat racism and racial discrimination: communicating on racism and racial discrimination

On 26 and 27 February 2009, ECRI held a seminar with national specialised bodies to combat racism and racial discrimination on how best to communicate on phenomena of racism and racial discrimination.

The aim of the seminar was to help national specialised bodies to further develop their strategies for communication and partnership building in order to enhance the impact of their action. To this end, issues such as how to reach the main stakeholders, how to identify their needs and how to develop and use different communication tools, were explored in depth during the seminar.

The first part of the seminar focused on how to develop a comprehensive communication strategy. The second part of the seminar concentrated on identifying all the relevant stakeholders in the fight against racism and racial discrimination and on developing strategies to win their trust and support for sustained action in this field.

Publications

- ECRI Report on Bulgaria (fourth monitoring cycle), 24 February 2009
- ECRI Report on Hungary (fourth monitoring cycle), 24 February 2009
- ECRI Report on Norway (fourth monitoring cycle), 24 February 2009

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.

First Monitoring Cycle

Committee of Ministers' Resolution

Montenegro

On 19 January, the Committee of Ministers adopted a resolution on the protection of national minorities in Montenegro. The resolution contains 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.

Extract from the resolution

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

"– Montenegro has taken important steps for the protection of national minorities: it adopted a Constitution which includes a minority rights chapter reflecting the principles of the Framework Convention. A National Strategy on Roma has been adopted; national minority councils are being inaugurated and a substantial fund for minorities has been approved by the Parliament, paving the way for increased support in respect of their cultures. The political will of the authorities, and in particular the Ministry of Human and Minority Rights, to enhance national minority rights protection in Montenegro is to be welcomed.

– 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 require a vigorous implementation of the 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 to 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 inter-ethnic relations have remained peaceful, on the whole, in Montenegro, interaction and dialogue need to be expanded among the different segments of society. Media has an important role to play in this

Montenegro, 19 January 2009

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 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.

– In line with the Strategy on Minority Policy adopted in July 2008, 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."

Advisory Committee Opinion

The resolution is largely based on the corresponding Opinion of the Advisory Committee on the Framework Convention, adopted on 28 February 2008. The detailed Opinion of the Advisory Committee of independent experts, together with the comments on the Opinion by the Government of Montenegro are also available on line.

Advisory Committee visits

Georgia, 8-13 December 2008

Georgia

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Georgia from 8-13 December in the context of the monitoring of the implementation of the Convention by this country. In addition to Tbilisi, the delegation visited Marneuli, Akhalkalaki, Sagarejo (Kakheti region) and Gori.

This was the first visit of the Advisory Committee to Georgia. The Delegation had meetings with the representatives of all relevant ministries, as well as with the Parliament, the office of the Ombudsman, and other institutions. In addition to contacts with public officials, the delegation met persons belonging to national minorities and Human Rights NGOs.

Note:

Georgia submitted its first State Report under the Framework Convention in July 2007. Following its visit, the Advisory Committee will adopt its own report (called Opinion) in March 2009, which will be sent to the government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Georgia.

The Netherlands, 25-27 February 2008

The Netherlands

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited the Netherlands from 25 to 27 February in the context of the monitoring of the implementation of this convention by this country. The delegation visited Leeuwarden (Fryslân) as well as Utrecht, Amsterdam and the Hague.

This was the first visit of the Advisory Committee in the Netherlands: the scope of application of the Framework Convention as well as the measures taken to implement this Convention were at the centre of the discussion. The Delegation had meetings with the representatives of all relevant ministries as well as Provincial authorities. In addition to contacts with public officials, the Delegation also met persons belonging to national minorities and Human Rights NGOs.

Note:

The Netherlands submitted its first State Report under the Framework Convention in July 2008. Following its visit, the Advisory Committee will adopt its own report (called Opinion) in the first half of 2009, which will be sent to the Dutch Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of the Netherlands.

Second Monitoring Cycle

State Reports

Portugal

On 14 January, Portugal submitted its second state report in French and Portuguese, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

Advisory Committee Opinions

Albania

Opinion on Albania made public on 1 December 2008

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Albania was made public by the Albanian Government on 1 December. The Advisory Committee adopted this Opinion in May following a country visit in February. The government comments on the Opinion have also been made public.

Summary of the Opinion

"Albania has made efforts in order to enhance the implementation of the Framework Convention since the adoption of the first Opinion of the Advisory Committee. A State Committee on Minorities was established with a view to formulate recommendations on improvements of minority protection and agreements were signed between central and local authorities in order to find solutions regarding place names and topographical indications in minority languages. In the field of non-discrimination, an amendment to the Criminal code was adopted, making racial motivation for criminal offences an aggravating factor. More recently, Albania adopted a law on personal data protection which provides legal guarantees for future ethnic data collection.

More resolute action is however required in order to make substantial progress in the field of minority protection: ethnic data collection remains an issue when discussing minority protection in Albania, since no reliable statistics exist as yet on the ethnic composition of the country or on the socio-economic position of national minorities. At the same time, the practice of the mandatory recording of ethnic belonging still appears to occur in respect of some minorities (Greeks and Macedonians): this raises problematic issues, in particular with regard to the principle of self-identification. Furthermore, territorial restrictions still have some relevance in practice, *de facto* restricting access to minority rights outside "minority zones". This is in particular so with regard to the Greeks and the Macedonians as well as the Serbo-Montenegrins whose requests for minority language education are still pending. Persons belonging to the so-called "ethno-linguistic" minorities, the Roma and the Vlachs/Aromanians, face particular difficulties to maintain their cultural and linguistic identity and as persons belonging to "ethno-linguistic" minorities are subject to different treatment.

Further dialogue is needed between the authorities and the Egyptian and Bosniac communities in order to accommodate their protection needs adequately.

The Albanian legislative framework needs to be completed and made sufficiently clear *inter alia* with regard to minority language use in relations with administrative authorities, place names and topographical indications and broadcasting in minority language.

The implementation of the National Strategy on Roma is regrettably slow and in spite of existing good initiatives, it lacks overall adequate state funding, effective involvement of local authorities, proper co-ordination and evaluation tools to produce its effects. Lack of civil registration of the Roma is still reported to be widespread in Albania and has negative repercussions for their access to social and other rights and increases the risk of their children being victims of trafficking.

Participation of persons belonging to national minorities in public administration is still reported to be low. Although the authorities appear to have taken steps to recruit minorities in the police, efforts remain to be made to promote greater inclusion of national minorities in the public service. The institutional framework for minority participation in public affairs needs to be revised: a better articulation of minority interests should be supported, promoting minority self-organisation and a governmental sector that consults national

minorities on issues affecting them should have decision-making powers."

Opinion on Azerbaijan was made public on 10 December 2008

Azerbaijan

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Azerbaijan was made public on 10 December. The Advisory Committee adopted this Opinion in October 2007 following a country visit in September 2007. The government comments on the Opinion were made public at the same time.

Summary of the Opinion

"Since the adoption of the Advisory Committee's first Opinion in May 2003, Azerbaijan has continued to pay attention to the protection of national minorities. Minority language education continues to be available in regions where persons belonging to national minorities live in substantial numbers. The Ombudsperson's office has set up regional branches and an Action Plan on the Protection of Human Rights was adopted in 2006.

However, there is at present no governmental structure dealing specifically with national minorities issues and no mechanism to enable consultation and effective participation of persons belonging to national minorities. The discussions on a draft law on national minorities have not yet resulted in the adoption of new legislation. Legal obstacles to the participation of persons belonging to national minorities in the media persist.

Resolute measures need to be taken to tackle serious cases of discrimination against persons belonging to some national minorities, in particular persons belonging to the Armenian minority. Efforts should also be made to raise awareness on discrimination in the population at large, in the judiciary and the law enforcement bodies. Serious problems persist as regards the freedom of association, freedom of expression and freedom of peaceful assembly.

Increased resources should be provided for the preservation and development of minority culture and languages."

Committee of Ministers' Resolution

Switzerland

The Committee of Ministers adopted a resolution on 19 November on the protection of national minorities in Switzerland. The resolution contains 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.

Extract from the resolution

"Switzerland has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first opinion of the Advisory Committee in February 2003 and the Committee of Ministers' resolution in December 2003. The constitutional and legal framework has been complemented in a number of respects both at the federal and cantonal levels and this has, *inter alia*, resulted in significant reinforcement of the protection offered to the linguistic minorities. For example, promising measures to support national languages are expected to be developed and supported by the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities." [....]

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

"– take measures to strengthen existing institutions promoting human rights and the fight against discrimination;

– make particular efforts to ensure the full implementation of the new federal legislation on languages, including to promote more decisively multilingualism, mutual understanding and exchanges between linguistic communities;

– pursue efforts to promote the official use of the Romanche and Italian languages at the municipal and district levels in the canton of Graubünden by ensuring the swift implementation of the new cantonal Law on Languages;

– take further steps in the canton of Graubünden to encourage wider written and oral use of Italian and Romanche by the general public as well as within the administration and the judiciary;

– pursue the harmonisation process of language teaching requirements in compulsory education and consider complementing the existing offer of optional Italian-language courses outside the areas where this language is traditionally spoken on the basis of existing needs;
– ease and accelerate the planning and creation of transit sites and stopping places for Travellers through appropriate measures. Develop stronger financial and other incentives to promote action by the cantons and pursue further efforts to create stopping places and transit sites, including the reassignment of military sites. Develop stronger inter-cantonal co-operation from planning to operation of stopping places and transit sites;
– pursue efforts to support the language and culture of Travellers through various educational projects carried out in close co-operation with those concerned and to facilitate regular school attendance of children practising an itinerant way of life;
– ensure effective participation of Travellers' representatives in the work of various bodies dealing with Travellers' issues and set up mechanisms of systematic consultation at the cantonal and municipal level where appropriate."

Advisory Committee Opinion

The resolution is largely based on the corresponding Opinion of the Advisory Committee on the Framework Convention. The detailed Opinion of the Advisory Committee of independent experts, together with the comments on the Opinion by the Government of Switzerland are also available online.

Azerbaijan

Resolution on the protection of national minorities in Azerbaijan adopted by the Committee of Ministers on 10 December 2008

The Committee of Ministers adopted a resolution on 10 December on the protection of national minorities in Azerbaijan. The resolution contains 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.

Extract from the resolution

"Since the adoption of the Advisory Committee's first opinion in May 2003, Azerbaijan has continued to pay attention to the situation of persons belonging to national minorities. Moreover, the authorities have maintained an inclusive approach with regard to the scope of application of the Framework Convention." [....]

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

"– resume efforts to finalise new legislation on the protection of national minorities. Re-establish specific institutional structures devoted to national minority issues;
– identify ways and means of allowing effective participation of persons belonging to national minorities in decision making, notably on issues of relevance to them. Set up a consultative body to allow persons belonging to national minorities to channel their concerns and to serve as a forum for dialogue between national minorities' representatives and the authorities on issues of interest for national minorities;
– increase state support to persons belonging to national minorities, including to activities of the organisations representing them. Consider setting up a specific support scheme, allowing persons belonging to national minorities to take part in decision making on the allocation of state support;
– take measures to combat all forms of intolerance and discrimination on grounds of belonging to a national minority. Set up a system of regular monitoring by the authorities of discrimination cases and undertake awareness-raising campaigns on discrimination, including among the judiciary;
– take all appropriate measures to ensure that persons belonging to national minorities can freely exercise their rights to freedom of expression, of association and of peaceful assembly. Combat all manifestations of hostility directed against persons and organisations promoting minority rights;
– consider adopting measures, including legislative, to guarantee that persons belonging to national minorities can effectively use their minority languages in relations with the local administrative authorities;
– take measures to ensure that persons belonging to national minorities can display all signs and posters, of a private nature and visible to the public, in minority languages;

– consider taking measures allowing the display, where appropriate, of topographical indications in minority languages;
– take additional steps to expand teaching of minority languages, including by addressing shortcomings with regard to teaching material and teacher training."

Advisory Committee Opinion
The resolution is largely based on the corresponding Opinion of the Advisory Committee on the Framework Convention, adopted on 9 November 2007. The detailed Opinion of the Advisory Committee of independent experts, together with the comments on the Opinion by the Government of Azerbaijan are also available on line.

Advisory Committee visits

Poland, 1-4 December 2008

Poland

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Poland from 1 to 4 December in the context of the monitoring of the implementation of the Convention by this country. In addition to Warsaw, the delegation visited Gdansk, Wroclaw and Opole.

This was the second visit of the Advisory Committee to Poland. The objective was to evaluate the progress made by Poland in implementing the Convention and in particular, to take stock of the legislative and policy measures taken by the authorities to follow up on the recommendations of the Advisory Committee in its first Opinion adopted on 27 November 2003.

The Delegation had meetings with the representatives of all relevant ministries, as well as with the Parliament, the office of the Ombudsman, and other institutions. In addition to contacts with public officials, the delegation met persons belonging to national minorities and Human Rights NGOs.

Note

Poland submitted its second state report under the Framework Convention in November 2007. Following its visit, the Advisory Committee will adopt its own report (called Opinion) in March 2009, which will be sent to the government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Poland.

Serbia, 3-7 November 2008

Serbia

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities 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.

This was the second visit of the Advisory Committee in Serbia: 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 was 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.

Note

Serbia submitted its second state report under the Framework Convention in March 2008. Following its visit, the Advisory Committee will adopt its own report (called Opinion) in March 2009, which will be sent to the Serbian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Serbia.

Follow-up Seminars

Follow-up seminars were held in Germany, Sweden and "the former Yugoslav Republic of Macedonia" with the respective authorities and the Council of Europe to discuss how the findings of the monitoring bodies of the Framework Convention were being implemented.

Germany, 27 November 2008
Sweden, 5-6 February 2009
"The former Yugoslav Republic of Macedonia", 26 January 2009

Other

UNMIK (the United Nations Interim Administration Mission in Kosovo) progress report on the implementation of the Framework Convention for the Protection of National Minorities (FCNM) in Kosovo was made public on 24 December. This report provides information on the measures taken to follow up on the 2006 recommendations of the FCNM monitoring bodies. It was made public in conformity with a specific agreement signed in 2004 between UNMIK and the Council of Europe. This agreement emphasises that it is without prejudice of the status of Kosovo and abides Security Council Resolution 1244 (1999).

Publication of the UNMIK progress report on 24 December 2008

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

Action against trafficking in human beings

Trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and the integrity of the human being. This new convention is a comprehensive treaty aimed at prevention trafficking, protecting the human rights of its victims and prosecuting the traffickers. It is the first European treaty in this field and the most important Council of Europe human rights treaty in the last ten years.

Its monitoring mechanism consists of two pillars: GRETA and the Committee of the Parties

Setting up the monitoring mechanism

The entry into force of the *Council of Europe Convention on Action against Trafficking in Human Beings* [CETS No. 197] on 1 February 2008 triggered the setting up of its independent monitoring mechanism: GRETA (the *Group of Experts on Action against Trafficking in Human Beings*) composed of independent and highly qualified experts; and the Committee of the Parties, composed of the representatives in the Committee of Ministers of the parties to the Convention and of representatives of parties non-members of the Council of Europe.

GRETA is responsible for monitoring implementation of the Convention by the parties. It will regularly publish reports evaluating the measures taken by the parties and those parties which do not fully respect the measures contained in the Convention will be required to step up their action. The Committee of the Parties may also, on the basis of GRETA's report and conclusions, make recommendations to a Party concerning the measures to be taken to follow up GRETA's conclusions.

The Committee of the Parties met for the first time in Strasbourg on 5 and 8 December 2008. During this meeting it elected, 13 members for the first composition of GRETA in accordance with the Committee of Ministers Resolution which sets out the rules for the election procedure.

From 24 to 27 February 2009, GRETA held its first in Strasbourg. Ms Hanne Sophie Greve was elected President (see interview below), Mr Nicolas Le Coz first Vice-President and Ms Gulnara Shahinian second Vice-President.

Interview with Ms Hanne Sophie Greve, President of GRETA

Hanne Sophie Greve
President of GRETA

What is trafficking in human beings, in a nutshell?

Trafficking in human beings is the modern form of the old world-wide slave trade. It consists of a combination of three basic components: (i) the action of: "recruitment, transportation, transfer, harbouring or receipt of persons"; (ii) by means of: "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"; (iii) for the purpose of exploitation, which includes "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Trafficking in human beings is a combination of these constituents and not the constituents taken in isolation. For there to be trafficking in human beings elements from each of the three categories (action, means, purpose) must be present together. There is, however, an exception regarding children: recruitment, transpor-

tation, transfer, harbouring or receipt of a child for the purpose of exploitation is regarded as trafficking in human beings even if it does not involve any of the means listed.

Trafficking is thus something more than smuggling of migrants and prostitution; it may be, but will not necessarily be, linked to organised crime; and it may be, but will not necessarily be, trans-national.

Trafficking is a world-wide phenomenon. It is often very difficult to detect and that is why it has become a lucrative low-risk criminal activity. Trafficking is a major problem in Europe today. All indicators point to an increase in the number of victims. Action to combat trafficking in human beings is receiving world-wide attention because it threatens the human rights and the fundamental values of democratic societies.

What will the Council of Europe Convention on Action against Trafficking in Human Beings do about it?

The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) was opened for signature in Warsaw on 16 May 2005 on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe. It entered into force on 1 February 2008.

From the Council of Europe perspective, trafficking in human beings is an absolute offence to the dignity and the integrity of the victim – each and every victim. That is, trafficking represents violations of even the most basic of human rights. Therefore the Council of Europe Convention aims to (i) prevent trafficking; (ii) protect the victims; (iii) prosecute the traffickers – the three "Ps", as it may be summarised. Ideally trafficking will be prevented to the highest possible degree, but to achieve this goal all the three "Ps" have to be addressed simultaneously.

The Convention provides for the setting-up of an effective and independent monitoring mechanism capable of evaluating the implementation by the Parties of the measures contained in the Convention and assisting them in improving this implementation.

The Convention will help states to improve their legislation to cover all essential aspects of trafficking and, through its monitoring mechanism, it will assist states to fully implement the measures contained in the Convention.

The Convention is open to all countries – not just Council of Europe member states – so in this respect it has the potential to make a global impact on trafficking in human beings. It is however, most likely that European efforts to combat this evil within the European continent will impact and improve the global situation. Every step in the right direction will count.

What is the monitoring mechanism of the Convention like? Is it different from Council of Europe's other independent monitoring bodies?

The new monitoring mechanism belongs to the family of existing Council of Europe human rights monitoring mechanisms, such as the Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) or the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), but it is also different – has been further developed – in that it consists of two pillars: GRETA and the Committee of the Parties.

GRETA is a technical body, composed of independent and highly qualified experts, acting in their individual capacity; its main task is to evaluate the implementation by the parties of the measures contained in the Convention.

The Committee of the Parties is a political body, composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the parties to the Convention, which are not members of the Council of Europe.

It is to be expected that this two-pillar approach will substantially enhance the prospects of success in having the Convention fully implemented, and thus help relieve humankind of the scourge represented by trafficking in human beings.

Who are members of GRETA?

The members of GRETA are independent and professionally qualified experts, who act in their individual capacity. They are elected by the Committee of the Parties.

Along with requirements to be independent and highly qualified, to become a member of GRETA a person needs to be a national of a State Party to the Convention.

GRETA can have a minimum of 10 and a maximum of 15 members. The first composition of GRETA, as elected by the Committee of the Parties during its first meeting from 5 to 8 December 2008, consists of 13 members.

One of the key conditions that will ensure GRETA's efficient work is its multidisciplinary composition – it unites prominent experts from different areas, relevant to trafficking in human beings.

***Left to right, back row**: Hanne Sophie Greve (Norwegian), Davor Derencinovic (Croatian), Vladimir Gilca (Moldovan), Nicolas Le Coz (French), Robert Stratoberdha (Albanian), Gulnara Shahinian (Armenian),*

***Front row**: Louise Calleja (Maltese), Diana-Florentina Tudorache (Romanian), Nell Rasmussen (Danish), Leonor Maria Da Conceição Cruz Rodrigues (Portuguese), Alexandra Malangone (Slovak), Josie Christodoulou (Cypriot), Vessela Banova (Bulgarian)*

How will GRETA work?

GRETA will adopt its Rules on the Evaluation Procedure, which will establish the modalities and means of the evaluation. According to the Convention, the evaluation carried out by GRETA will be divided into rounds. The duration of these rounds will be determined by GRETA. At the end of each round GRETA will adopt a Report in respect of the party undergoing the evaluation.

Based on the information received from parties, GRETA will examine how the parties are implementing the measures contained in the Convention; following this examination it will produce a Report with its conclusions and will indicate what needs to be done further by the party concerned to improve the implementation of these measures.

GRETA will work with the parties to the Convention in the spirit of co-operation and, in particular, will submit draft Reports to the party concerned for comments. GRETA's final Reports will be made public as soon as they are adopted. Parties will have an opportunity to submit their comments to final Reports, and these comments too will be made public.

In addition, GRETA will, in co-operation with the party concerned, carry out country visits in order to get acquainted with the practical situation regarding all aspects of trafficking in human beings. GRETA's approach will be that of dialogue to advance towards the actual realisation of the aspirations of the Convention.

When will the first round start?

The first evaluation round is expected to start as soon as the first questionnaire to be sent to the parties of the Convention is approved by GRETA, most probably at the end of 2009.

What impact do you expect the monitoring mechanism to have on the implementation of the Convention?

Independent monitoring mechanisms in general provide for a highly qualified evaluation of the implementation of corresponding legal instruments and establish a high credibility in their work.

The monitoring mechanism of the Council of Europe Convention on Action against Trafficking in Human Beings by GRETA should pave the way to creating a "case-law" relating to combating trafficking in human beings. It also has the potential to become a leading actor in finding adequate and timely responses at legislative and practical levels to this constantly adjusting criminal activity – the modern form of slavery.

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

Law and policy

Intergovernmental co-operation in the human rights field

One of the Council of Europe's 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.

Council of Europe Convention on Access to Official Documents

In November 2008 the Committee of Ministers adopted the Council of Europe Convention on Access to Official Documents, the first binding international legal instrument to recognise a general right of access to official documents. It decided to open it for signature by member states on the occasion of the 29th Council of Europe Conference of the European Ministers of Justice, which will take place in Tromsø (Norway) from 17 to 19 June 2009.

CDDH opinion on the question of putting into practice certain procedures envisaged to increase the Court's case-processing capacity

In November 2008 the Committee of Ministers again noted with grave concern the continuing increase of the Court's workload, which creates an unsustainable situation and threatens to undermine the effective functioning of the Convention system. In this context, the Steering Committee for Human Rights (CDDH) was instructed to give a final opinion by 31 March 2009 on the advisability and modalities of inviting the Court to put into practice certain procedures which are already envisaged (including by Protocol No. 14) to increase the Court's case-processing capacity, thus enabling it to address its workload more effectively.

Guaranteeing the long-term effectiveness of the European Convention on Human Rights

In January 2009 the CDDH Reflection Group continued its examination of proposals for guaranteeing the long-term effectiveness of the control system of the European Convention on Human Rights. In this context, the Group considered notably the possibility of drafting a non-binding Committee of Ministers' instrument on improving domestic remedies for excessive length of proceedings. It examined ways to increase states' awareness to take account of the relevant principles arising from the Court's case-law in their domestic law in order to avoid violations of the Convention, namely by encouraging the use of third-party interventions, including through the establishment of a network of government agents. Other issues under consideration include the possibility of extending the Court's competence to give advisory opinions and a possible Statute for the Court.

Human rights protection in the context of accelerated asylum procedures

In February 2009, the Working Group of the CDDH finalised its draft Guidelines on the protection of human rights in the context of accelerated asylum procedures and their draft Explanatory memorandum. These texts should be adopted by the CDDH in March 2009 and transmitted to the Committee of Ministers thereafter.

Human rights in culturally diverse societies

Dr Anne Weber, Author of the Manual on "hate speech"

Prof. Malcolm Evans, Author of the Manual on wearing of religious symbols

The Directorate General of Human Rights and Legal Affairs (DGHL) organised a Conference entitled "Human rights in culturally diverse societies – challenges and perspectives" within the framework of the Steering Committee of Human Rights' activities, which was hosted by the Netherlands Ministry of the Interior and Kingdom Relations in The Hague on 12 and 13 November 2008. This Conference addressed some of the most topical issues: Is freedom of speech unlimited? What should be the relation between the state and religion? How can we ensure the full enjoyment of freedom of assembly by all? The ultimate aim was to contribute to the development of human rights policy approaches to better manage Europe's increasing cultural diversity. Two manuals prepared for the Council of Europe were launched on this occasion, one on "hate speech", by Dr Anne Weber, and the other on the wearing of religious symbols, by Professor Malcolm Evans. They present the case-law of the European Court of Human Rights and the relevant international instruments in an accessible and practical way. The proceedings of the Conference will be published in the course of 2009

Co-operation with the United Nations

On 12 February the Committee of Ministers held an exchange of views on the United Nations (human rights questions) with the participation of experts from capitals. An informal afternoon session was organised by the Directorate General of Human Rights and Legal Affairs (DGHL) during which topics discussed included the Durban Review Conference (April 2009), the Universal Periodic Review mechanism and the abolition of the death penalty. The aim of this session was to prepare for the next session of the Human Rights Council (2-27 March 2009) and discuss follow-up to the 63rd session of the UN General Assembly.

Sexual orientation and gender identity

The first meeting of the Committee of Experts on Discrimination on grounds of Sexual Orientation and Gender Identity (DH-LGBT) took place on 18-20 February 2009. This Committee has been tasked to draft a recommendation to be adopted by the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity, to ensure respect for human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them. This recommendation should be firmly based on human rights standards while having a clear practical use. Members of the Committee started its work with exchanges of views with notably Dr Nicolas Beger, Director of Amnesty International's European Union Office and expert on transgender issues, and Professor Michael O'Flaherty, Professor of Applied Human Rights and Co-Director of the Human Rights Law Centre at the University of Nottingham, who spoke on human rights issues concerning sexual orientation. In addition to government experts, a number of NGOs active in this field developed a checklist of a number of issues, which could be addressed in the recommendation, as well as practical measures that could be encouraged.

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 and to the Federal Constitutional Court of Karlsruhe for judges and legal assistants of the Constitutional Court of Serbia and judges of the Supreme Court of Serbia

Through meetings with judges of the ECtHR and Council of Europe officials, the participants were provided with valuable information on the principles of the ECtHR, the role and the execution of its case-law as well as issues related to other Council of Europe institutions and bodies. Furthermore, the participants had the possibility to assist to a Grand Chamber public hearing for *Enea v. Italy* case, on Articles 3 and 8 of the Convention. The group of judges from the Constitutional Court of Serbia participated also in a one-day visit to the Federal Constitutional Court of Karlsruhe. Participants learned of the work of the Federal Constitutional Court with a special focus on issues related to the role of Constitutional Courts in the protection of human rights.

Strasbourg, France, 3-7 November 2008
Karlsruhe, Germany, 6 November 2008

Study visit of Russian lawyers to the European Human Rights Advocacy Centre

17 lawyers from all major regions of the Russian Federation who were selected on the basis of their voluntary participation in a series of initial training seminars and had thus a prior knowledge of the ECHR took part in the visit. The objective was to reinforce their skills and knowledge of the procedure for bringing a case to the ECtHR. The experience of the hosted NGO in successfully litigating cases provided a valuable insight into the procedure. One day of the study visit was dedicated to a thorough introduction to the legal system and practices of England and Wales.

London, United Kingdom, 4-7 November

Training of magistrates on civil and civil procedural law under the ECHR

The objectives were to provide training on civil and civil procedural law, with focus on Articles 6 and 13 of the European Convention on Human Rights (ECHR), as well as to assist the specialised Albanian trainers in strengthening on ECHR knowledge. Other issues covered included compensation for non-contractual damage, moral damage and its compensation, liability for causing damage.

Tirana, Albania, 5-6 November

Training of Trainers for judges and prosecutors of the School of Magistrates of Albania

The objectives session were to round up the fundamentals of the session planning, to analyse the typology of training methodology and to practice active learning methods and interactive approaches for skill and ability development.

Tirana, Albania, 10-11 November

The training seminar on criminal and criminal procedural law, including ECHR and EC law

The objectives were to deliver training on criminal and criminal procedural law, with focus on Articles 6 and 13 of the ECHR, as well as to assist the specialised Albanian trainers on the ECHR. Other issues covered included jurisdictional relations with other countries, recognition of

Tirana, Albania, 10-11 November

foreign courts decisions, rogatory letters from and to abroad, extradition.

Tirana, Albania, 10-11 November, 2-3 December, 2-3 February and 12-13 February

Training of Trainers for judges and prosecutors

The objective of these training sessions was to analyse the typologies of training methodologies, to practise active learning methods and interactive approaches for skill and ability development, to summarise the specific abilities that a trainer at the School of Magistrates should have. Various training methods were used during the sessions, such as brainstorming, group work, video presentation of a mock criminal trial, pair work, role plays, simulations, debates, case studies and in reactive presentations.

Tirana, Albania, 4-5 December

Training of magistrates on juvenile justice law under the ECHR

The session aimed to train Albanian Magistrates on issues of juvenile justice law including ECHR and EC law. Training was focused on Article 8 of the ECHR. The trainers followed the training patterns and skills learned during their own Training of Trainers sessions, combining explanation of the article, case-law and discussions.

Odessa, Ukraine, 4-5 December

International conference on "200 years of Commercial Courts Proceedings in Ukraine – present and future"

An international conference "200 years of Commercial Courts Proceedings in Ukraine – present and future" was organised in Odessa in co-operation with the High Commercial Court and the Odessa Commercial Court. Council of Europe experts made presentations on alternative dispute resolution methods in commercial matters and on the role of the "information kiosk" in order to promote the use of alternative dispute resolution and to strengthen the access to justice. The conference was attended *inter alia* by the Minister of Justice of Ukraine, the President of the High Administrative Court, the Head of the State Court Administration and the Head of the Academy of Justice.

Moscow, Russian Federation, 15 December

Conference at the Moscow University of the Ministry of the Interior on the occasion of the anniversary of the Universal Declaration on Human Rights

A conference was held for more than 60 participants, some of whom were deputies and members of the Federal Assembly of Russia, other being high officials from the Ministry of Interior, members of the Prosecutor General's Office, representatives from the Constitutional Court, the Ministry of Justice, the team of the Commission on Human Rights Issues, as well as representatives of international organisations, professors and students.

The achievements of the Universal Declaration of Human Rights and the ECHR were discussed and the event received a wide media coverage. It signalled the resumption of the co-operation activities under the Joint Programme "Enhancing the capacity of legal professionals and law enforcement officials to apply the ECHR in domestic legal proceedings and practices" between the Ministry of Interior and the Council of Europe.

Moscow, 9-11 December; Nizhny Novgorod, 20-23 January; Moscow, 27-30 January; St. Petersburg, 26-27 February

Seminars on the ECHR for Russian lawyers, judges and prosecutors

Two introductory courses to the ECHR were organised for 35 participants, which enabled them to discuss its specific articles, the procedure for filing an application, and the structure and proceedings of the ECtHR. A further seminar for lawyers deepened the examination of the procedure for filing an application with the ECtHR, while two back-to-back seminars organised for junior prosecutors focused on the study of specific articles of the Convention relevant to the work of prosecutors and investigative agencies.

Tirana, Albania, 15 December

Training on public procurement

The objective of the session was to provide in depth knowledge to the staff of the School of Magistrates of Albania on the Albanian Law on Public Procurement and EU practice on the application of the procurement procedures. The seminar enabled participants to increase their level of competence and knowledge in the field of public procurement.

Tbilisi, Georgia, 24-25 January

Training of students of the High School of Justice on the ECHR

The objective of the training was threefold: to provide an overview of Articles 5 and 6 of the European Convention on Human Rights and related issues as well as of the case-law of the ECtHR; to promote the direct application of the ECHR in domestic courts' proceedings; and

to enhance the dialogue with the target group in Georgia. Participants were familiarised with the standards of the ECHR and case-law of the ECtHR under Articles 5 and 6 and acquired practical skills for applying these standards in the course of their future daily work. The mode of direct application of ECHR standards was emphasised and specific examples were provided. As a follow-up to the activity, the participants highly welcomed this training event and emphasised its relevance in the context of improving the level of their knowledge on the ECHR standards and ECtHR case-law.

Training of magistrates on civil and civil procedural law under EC law

Tirana, Albania, 26 January

The objectives of the training session were to deliver training on civil and civil procedural law, with special focus on EC law. The main topics of the session were as follows: the EU legal framework for judicial co-operation on civil matters; a presentation of Brussels I and II Regulations, both of them aiming at creating the common European Judicial Space.

Seminars on the ECHR for junior prosecutors on the ECHR

Moscow, Russian Federation, 27-30 January

Two back-to-back seminars were organised for junior prosecutors. They aimed to introduce the participants to the ECHR, its specific articles, the procedure for filing an application with the ECtHR, and the structure and proceedings of the ECtHR.

Training of magistrates on criminal and criminal procedural law under EC law

Tirana, Albania, 28-29 January

The objectives were to deliver training on criminal and criminal procedural law, with special focus on the models of judicial assistance between States, extradition and provisions governing the taking of evidence abroad (procedures of letters rogatory and other requests to authorities of other States). The second part was devoted to discussion of cases involving questions related to domestic Albanian legislation.

Seminar for magistrates on civil and civil procedural law under the ECHR

Tirana, Albania, 9-10 February

The training session was devoted to the relevance of the ECHR for the civil judge. It focused on Article 6 of the ECHR as to civil proceedings, with references to Article 13 of the ECHR as to the effective remedy principle, Article 35 related to the admissibility of complaints and Article 41 as to the just satisfaction principle. The issue of property restitution was also examined.

Initial training of a group of 8 trainers on the methodology of the HELP Programme as regards the ECHR

Strasbourg, France, 12-13 February

The objective of the visit was to train a group of 8 trainers on the methodology of the HELP Programme ("Human Rights Education for Legal Professionals") as regards training on the ECHR. The programmes focused on the presentation of the HELP Programme and demonstration of the HELP website, case study methodology: "Strengthening the implementation of the ECHR at national level through understanding and using of the Court's reasoning and case-law" and specific aspects of Articles 3, 8, 5 and 6 ECHR.

Study visit for students of the High School of Justice of GE

Strasbourg, France, 12-13 February

The objective of the visit was to permit an exchange of views between future judges in Georgia and the Registry of the ECtHR and the Council of Europe Secretariat in fields where their action can contribute to the advancement of the protection of human rights. Participants were familiarised with the latest developments in the case-law of the ECtHR and in other Council of Europe bodies and institutions. A second group of students will visit the Council Headquarters in June 2009.

Seminar on Articles 2, 3 and 5 of the Convention for the Constitutional Court of Serbia

Belgrade, Serbia, 13-14 February

A thematic seminar on Articles 2, 3 and 5 of the ECHR was organised on 13-14 February 2009 for the Constitutional Court of Serbia within the framework of the project "Support to the Constitutional Court of Serbia to effectively implement the European human rights standards at domestic level". The seminar was intended to develop the capacity of the Constitutional Court of Serbia to apply the ECHR and the case-law of the ECtHR in respect of Articles 2, 3 and 5 and to deal with individual complaints lodged under the constitutional appeal proce-

dure in a manner consistent with the ECHR requirements.

Serbia, Belgrade, 20 February

Round table on "Serbia's Role in Ensuring Effective Justice"

The round table was organised by the Belgrade Centre for Human Rights, the AIRE Centre, the OSCE Belgrade office and the Council of Europe. The aim was to gather legal professionals (mostly members of Serbian judiciary) to discuss issues related in particular to length of proceedings in Serbian courts in the context of the new remedy of constitutional appeal, introduced before the Constitutional Court, and to identify general problems in Serbian law and practice concerning the execution of judgments of ECtHR. Participants identified general problems concerning length of proceedings in Serbian courts, examples of goods practice conforming to the Convention standards and possible solutions to facilitate execution of judgments of ECtHR.

Tbilisi, Georgia, 20-21 February

Training on the ECHR for judges' assistants

The objective of the training was threefold: to provide an overview of Articles 5, 6 of the European Convention on Human Rights and related issues as well as of the respective case-law of the ECtHR; to promote the direct application of the ECHR in domestic courts' proceedings; to enhance the dialogue with the target group in Georgia. Participants were familiarised with the standards of the ECHR and case-law of the ECtHR under Articles 5, 6 of the ECHR and acquired practical skills for applying these standards in the course of their daily work. The mode of direct application of ECHR standards was emphasised and specific examples were provided.

Training and awareness-raising activities in the field of media

Chisinau, Moldova, 2-13 November

Seminar on the Co-ordination Council of the Audiovisual

The seminar gathered representatives of the Co-ordination Council of the Audiovisual in Chisinau (CCA) (members and staff), the TRM Supervisory Board (members and staff), the OSCE mission in Moldova, media NGOs, academia, media, the "Alliance Française" and two Council of Europe experts. The participants noted that the CCA does not fulfil all obligations stipulated in the Moldovan audiovisual code and that its work should be more transparent, independent and professional.

Chisinau, Moldova, 6-7 November

Seminar on Teleradio-Moldova Supervisory Mechanism

Representatives of the Teleradio-Moldova (TRM) Supervisory Board, of the Co-ordination Council of the Audiovisual (CCA), of TRM, of media NGOs as well as journalists took part in the seminar on TRM Supervisory Board functions and responsibilities. The participants raised issues such as poor quality of TRM programmes, the need for of pluralism in TRM newscasts and political programmes, the need for of professionalism among the TRM Supervisory Board members, the importance of visibility of the activities carried out by the TRM Supervisory Board and the tense relations between the TRM Supervisory Board and the TRM Management.

Chisinau, Moldova, 18 January

Working sessions on the rules related to media coverage of elections

Representatives from the Central Election Commission, the Co-ordination Council of the Audiovisual (CCA), Teleradio-Moldova, media NGOs, the international community in Moldova and two experts appointed by the Council of Europe exchanged views on the rules to be observed by the media while covering election campaigns in order to guarantee a fair access for all political parties to all media. The experts, staff members of the French audiovisual regulatory body the – *Conseil supérieur de l'audiovisuel* – answered a large amount of questions related to the French regulation on media coverage of elections campaigns that included among other things: principles of pluralism, news programmes, free airtime, paid political advertising, institutional communication, political debates, defamation, monitoring.

Study visit to France for Teleradio-Moldova staff members

Teleradio-Moldova political debates moderators, editorial and technical staff visited French public service television and radio channels, the French Parliamentary channel and the French audiovisual regulatory body. They met their French counterparts in order to exchange views and gain experience in the field of the fair media coverage of election campaigns. The discussions focused on the media coverage of politics including the election campaigns in France: rules and common practices. The visit was a valuable opportunity to learn from other experiences and to initiate in-depth thinking on the following concepts: equity, equality, editorial choices, independence and responsible journalism.

Paris, France, 26-28 February

Cycle of three training sessions on access to information at the local level

Two training sessions were organised in February and one training will be held in March in order to train the local authorities, representing all Moldovan departments, to apply national legislation regarding access to information and transparency of the decision-making process. Mayors and secretaries of the local councils worked in groups on different themes regarding the Moldovan law on access to information, co-operation of local authorities with civil society, the involvement of the citizens in the decision-making process and their participation gained in public hearing debates. They were assisted by experts and important knowledge in these fields.

Vadul lui Voda, Moldova, 18-20 February, and 25-27 February

Training and awareness-raising activities in the field of prisons and police

Series of in-service training sessions for female prison officers

The purpose of these training sessions was to refresh prison staff's knowledge on core competencies aiming to foster gender equality by involving more female staff in carrying out daily duties. At the moment, female prison officers are insufficiently used in daily operation of prisons, being engaged in activities related to female prisoners and visitors only. By raising the level of their competence through this refreshment course, they would be more skilled to become more involved in other daily tasks such as escorts, maintenance of security level at entry and exit point, search of premises and vehicles etc.

Bosnia and Herzegovina, 3-12 November

Expert meeting on the conditions of life-sentenced, long-term and untried prisoners

Participants were acquainted with the standards contained in the Recommendations of the Committee of Ministers of the Council of Europe, Rec (2006) 2 on the European Prison Rules, Rec (2003) 23 on the administration by prison administrations of life-sentenced and other long-term prisoners and Rec (2006) 13 on remand in custody, illustrated with best practices of the countries represented at the meeting by the Council of Europe experts. Ways of integrating such standards into legislation and practice in Ukraine were elaborated.

Kiev, Ukraine, 4-5 November 2008

Training Seminar for NGO representatives from the Chechen Republic on effective working methods and human rights advocacy

The participants from Chechnya represented several NGOs. The international experts had prepared a tailor-made programme for this special target group to meet the needs of the participants. Through the excellent presentations and tasks given to the participants within case studies and working groups, they absorbed the content of the training and contributed through valuable presentations of their group work.

Pyatigorsk, Russian Federation, 18-19 November 2008

Conference: "Strategies for effective stop and search: Addressing ethnic profiling in Europe via the STEPPS Project"

The Manager of the Police and Human Rights Programme participated on this very valuable and interesting conference. He also moderated a panel with international experts during the event. The STEPSS project which was presented dealt with Stops and Searches and the discorrespondance between crime rates and foreigners.

Fuenlabrada, Spain, 20-21 November

Training seminar on human rights with focus on CPT standards

Participants were primary Shift Managers from police stations all over the country. The inter-

Ohrid, "the former Yugoslav Republic of Macedonia", 25-26 November

national experts engaged in case studies and group work to enhance their awareness of ethical and human right issues in dealing with detained persons. The standards and finding of the CPT were also presented.

Zugdidi, Gori, Mtskheta, Georgia, 24 November - 13 December

Training of the European Union Monitors in Georgia on human rights standards and monitoring

The training of the European Union monitors (EUMM) in Georgia on human rights standards and monitoring was delivered by the Council of Europe experts between 24 November and 13 December 2008 in a series of eleven 1 day and 3 day workshops at EUMM Georgia Mission Field Office locations. The objective was to provide the EU monitors with the necessary knowledge of relevant Council of Europe human rights standards, and the skills to apply these in practice while carrying out their monitoring duties. Just over 200 monitors attended the training courses held over a three-week period. Through the sessions the main aspects of a number of basic human rights were covered, and the monitors were able to absorb the key concepts of human rights monitoring and reporting. Amongst other things the training focused on the right to life, prohibition of any kind of torture and inhuman treatment, freedom of movement, non-discrimination, the right to liberty and security of the persons as well as the right to property. Each session took as its starting point a very practical approach, focusing on actual monitoring work and skills such as interviewing techniques, working with interpreters and effective reporting. The training also provided an opportunity to highlight the importance of mainstreaming gender issues into monitoring.

Training and awareness-raising activities in the field of human rights for civil society representatives

Chisinau, Moldova, May-December 2008

4-day training seminars for the Moldovan judges and prosecutors on the European Convention on Human Rights

This was the last training session on the ECHR in the framework of the National Institute of Justice ongoing training of judges and prosecutors. During the 16 sessions of this training course 370 acting judges and prosecutors from the Republic of Moldova were trained. The objective was to increase the knowledge of judges and prosecutors about the key concepts and interpretation of the ECHR and their impact on the national legislation and jurisprudence, as well as specific substantive rights under the ECHR.

Chisinau, Moldova, 11 November

Round table on the presentation and discussion of the report on the assessment visit of training needs of court clerks in Moldova

This round table was as a follow-up to the assessment visit on the training needs of court personnel conducted by the Council of Europe expert from 16 to 18 September 2008. The aim was to present and discuss the findings, conclusions and recommendations of the expert report. Special attention was paid to such aspects as the legal status, competence and role of the court clerks in the justice system, shortcomings of the profession, structure and durations of a training course, selection of topics for the training curricula, etc. The event was attended by the representatives of the National Institute of Justice, the Department of Judicial Administration, the Superior Council of Magistrates and the working group responsible for the design of the curriculum for court clerks.

Chisinau, Moldova, 12 November

Working group on the training curricula and training methodology for court clerks in the Republic of Moldova

This working group was a follow-up activity to the assessment visit and the round table on training needs for court clerks organised on 12 November 2008. It was conducted in a more pragmatic format, during which the Council of Europe expert presented a step-by-step concept of drawing up a training curricula, highlighting some concrete aspects such as duration of the course, the number of trainees, the choice of the right timing for the training course, teaching methodology, etc. An important part of this event was a joint exercise on drafting a roadmap for the development of a training plan and training curriculum for court clerks.

Round table on setting up an internship module within the initial training for judges and prosecutors

Chisinau, Moldova, 24 November

The main objectives of the round table were to familiarise the Moldovan counterparts with the best practices of Council of Europe member states regarding the internship of judges and prosecutors and to draw up concrete recommendations for the improvement of the quality of the internship modules for the National Institute of Justice audience. Council of Europe experts and the Moldovan participants presented their domestic approaches to the professional internship of judges and prosecutors, highlighting the most important aspects, such as the character of the internship in the sense of correlation between theory and practice, duration and structure of an internship etc. Within this round table there were discussed and analysed the advantages and disadvantages of the Moldovan training system as well as there were sought possible improvements.

Training on prohibition of discrimination under Article 14 and Protocol No. 12 of the EHCR for lawyers of the Public Defender's Office of Georgia (PDO)

Tbilisi, Georgia, 24 November

The aim of the training was to discuss for the first time prohibition of discrimination under the ECHR among PDO lawyers within the framework of on-going project. Article 14 and Protocol No. 12 of the ECHR, recommendations of the European Commission against Racism and Intolerance and the European Committee of Social Rights were also discussed with PDO lawyers, who have to deal with non-discrimination issues in their daily work on a permanent basis.

Round table on setting up a strategy for mentors/tutors of a professional internship for the National Institute of Justice audience

Chisinau, Moldova, 25 November

The main objective was to familiarise the Moldovan partners with best practice for mentorship for judges and prosecutors, the selection criteria of mentors and the role of the National Institute of Justice in the training and support for mentors. The presentations made by experts and the discussions held during the round table broadened the outlook of the Moldovan partners on the principles of a high quality mentorship. The participants identified basic ideas for a successful mentoring, signs of a less effective one that should be avoided and the most important things to be taken into consideration during the mentorship.

Workshop on investigation and reporting techniques in cases involving specific groups for lawyers of the Public Defender's Office of Georgia (PDO)

Tbilisi, Georgia, 25 November

The workshop focused on investigation and reporting techniques in cases involving discrimination and violation of the rights of specific groups. It combined substantive teaching and individual coaching on cases of discrimination. The emphasis was made on what the Ombudsman's institute can do to fight discrimination. A key conclusion was the importance of sending out the message in public, putting the discrimination problem/question in a public discussion forum. The importance of having permanent control/check of discrimination by institutions like the Ombudsman institution has been underlined. The importance of taking cases *ex officio* by the Ombudsman institution has been discussed.

Legal and law drafting assistance to the Ministry of Justice of the Republic of Moldova

Chisinau, Moldova, November - February

The objective is to provide permanent assistance and advice to the Ministry of Justice (MoJ) on legal drafting, in particular on standards for developing legal regulations in the area of justice. This is implemented by a team of four national consultants who are based in the MoJ premises and two Council of Europe experts from the MoJ of Romania. From November 2008 until February 2009 the working group continued to provide assistance in drawing up regulations on the implementation of the Law on State Guaranteed Legal Aid, Law on Mediation, Law on Status of Judges, Law on the Conflict of Interest, and Law on the Status of Court Clerks, draft new National Action Plan on Human Rights etc. There has been made an important output on the "decriminalisation" of the Moldovan Criminal Code and on amendments to the Criminal Code.

Round table in order to assist the Moldovan Bar Association in setting up a training system for lawyers

Chisinau, Moldova, 3 December

The objectives were to assess the current system of professional training of lawyers in Moldova and to assist the Moldovan Bar Association (MBA) in drawing up the training curriculum and programmes for lawyers. The

event was attended by the leadership of the MBA, its members, and different lawyers. The Council of Europe experts provided an overview of the European standards and best practices for the training of the legal profession, which was followed by discussions on possible ways to implement initial and ongoing training of lawyers, including training institutions, training methods, accreditation, evaluation, monitoring, and others.

Tbilisi, Georgia, 12-14 December

Training on the rights of internally displaced persons (IDP) affected by the conflict in Georgia for lawyers of the Public Defender's Office of Georgia (PDO)

The aim was to help PDO lawyers to assess any violation of the rights and freedoms of individuals affected by the conflict, to introduce PDO lawyers to main principles of international law on human rights and the status of the persons affected by the conflict, and to expose them to the limitations on the European standards of human rights during war and extraordinary situations. The objective was also to increase the PDO's ability to process the many complaints made by IDPs.

Copenhagen, Denmark, 21-23 January

Placement of four high officials from the Office of Public Defender of Georgia (PDO) with the Danish Parliamentary Ombudsman and National Human Rights Institute of Denmark

The aim of the study visit was to exchange experiences, compare different solutions to similar problems, and widen the PDO's top managements' knowledge of the activities of an Ombudsman institution in an older Council of Europe member state. The Danish Parliamentary Ombudsman institution has more than fifty years of work experience in complaints handling and promoting rule of law in Denmark; based on this fact, the meetings of representatives of Public Defender's Office of Georgia with the Parliamentary Ombudsman, Senior advisor to the Ombudsman, representatives of Inspection unit and OPCAT division, as well as with important divisions of the National Human Rights Institute of Denmark resulted in an extremely informative and challenging visit.

Strasbourg, France, 12-13 February

Study visit to the Council of Europe, including the ECtHR, for students of High School of Justice of Georgia

The visit was devoted to the recent developments related to the case-law of the European Court of Human Rights and other Council of Europe institutions and bodies. The students had the opportunity to watch video broadcasting of the case *The Georgian Labour Party v. Georgia II*, to meet the judge elected in respect of Georgia and Georgian lawyers at the Court's Registry. The also had the opportunity to listen to presentations made by staff members working in the co-operation, standard-setting and monitoring directorates.

Tbilisi, Georgia, 19-20 February

Round table on the admissibility of applications before the European Court of Human Rights and selected substantive Articles of the ECHR

The target group for the activity was the Georgian Government's legal team, which was composed of about 15 (young) lawyers. The government agent and Government Agent Office representatives received substantial training and responses to their queries. In particular, the participants were familiarised with individual applications' admissibility criteria.

Tbilisi, Georgia, 20-21February,

Workshop on the rights of disabled persons under the Revised Social Charter for lawyers of the Public Defender's Office of Georgia (PDO)

The aim of the workshop was to train the PDO staff on European and international human rights standards on the rights of persons with disabilities. The relevant case-law of the ECHR and the conclusions of the European Committee of Social Rights were analysed.

Georgia, 6-7 December, 24 January and 20-21 February

Thematic seminars for judges' legal assistants on ECHR

The seminars 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 Convention of Human Rights.

Training seminar for the representatives of civil society on selected substantive Articles of the ECHR and recent developments in the case-law of the ECtHR

The target group was representatives of civil society. Particular attention was drawn to the territorial application of the ECHR and the case-law developed by the ECtHR. Recent statistics published by the ECtHR were also discussed. At the end of the discussion, a multiple choice test was given to all of the participants. The test consisted of 40 questions relating to the procedural matters and almost everyone answered over 35 questions correctly. Discussion on each substantive article was followed by a case study.

Georgia, Tbilisi, 20-22 February

Study visit to the Government Agent Office of the United Kingdom of three members of the Government Agent Office of Georgia

This study visit was divided into two main parts in accordance with the aim of the study visit: the theoretical perspective aimed at learning the internal structure competencies and sharing peer to peer experience of the Government Agent Office of the UK and the practical perspective related to different external visits in the framework of the current activities of the Government Agent Office of the UK.

London, United Kingdom, 24-26 February

Round table on the transparency of debtor's assets

The objective of the round table was to discuss best practice of Council of Europe member states related to different aspects and measures to ensure transparency of debtors' assets, such as access to information (registers) and debtors' declarations of assets, etc. The Council of Europe expert made a presentation of the European Green Papers on the attachment of bank accounts and transparency of debtors' assets, with a description of techniques providing access to information, cross-border recovery of debts and others.

Chisinau, Moldova, 27 February

Round table on the promotion of the values set out in the Code of Conduct for the Moldovan bailiffs

The main objective was to hold discussions on the experts' findings concerning the newly adopted Code of Conduct for the Moldovan bailiffs to exchange views on its provisions. Participants focused on such issues as the role of the Code of Conduct in the bailiffs' activity, and its influence upon the bailiff's practical approach. Other issues discussed were the status of the Code from the point of view of its binding force and its place in the hierarchy of the Moldovan legislation on the work of bailiffs and civil service in general. An important and effective methodology used during this round table was the article-by-article analysis of the Code made by the Council of Europe experts jointly with their Moldovan colleagues.

Chisinau, Moldova, 28 February

Internet: http://www.Council of Europe.int/awareness/

Media and information society

The constant developments in the information society presents the Council of Europe with the challenge of defending and maintaining its fundamental principles in new environments. While pursuing its efforts in "traditional" media and their role in the democratic process, the Steering Committee on Media and New Communication Services (CDMC) is also working on freedom of expression in the complex context of the new communications services.

Texts and instruments

Declaration on the role of community media in promoting social cohesion and intercultural dialogue

Contributing to the completion of the action plan it was given at the 7th European Ministerial Conference on Mass Media Policy (Kyiv (Ukraine), 10 and 11 March 2005) the Steering Committee on Media and New Communication Services (CDMC) prepared a *Declaration on the role of community media in promoting social cohesion and intercultural dialogue*, adopted by the Committee of Ministers on 11 February 2009.

Community media have an important role to play in social cohesion

The Council of Europe supports the positive role for social cohesion and intercultural dialogue played by community media. Their social value should be recognised, the various aspects of their contribution to intercultural dialogue should be encouraged and their capacities should be reinforced. Therefore, the Council of Europe insists that community media should enjoy the resources necessary for their functioning, both financially and in terms of frequencies and technical means.

Main events

Conference on anti-terrorism legislation in Europe, Amsterdam, 17-18 November 2008

Organised together with the Institute for Information Law of the University of Amsterdam and with the support of the Dutch Ministry of Education, Culture and Science the aim of the conference was to exchange experiences on the impact of anti-terrorism legislation and its implementation on freedom of expression and information in Europe. Representatives from the media, civil society, national authorities and independent experts discussed the observance, in law and practice, of Council of Europe standards that define the rights to freedom of expression and information in the context of the fight against terrorism. Specific attention was paid to the case-law of the European Court of Human Rights, legislation and practice on glorification of terrorism, surveillance, state

secrets/access to information and protection of sources.

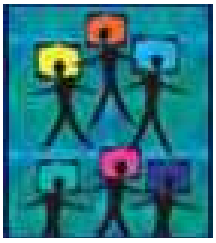
First Pan-European dialogue on Internet governance (EuroDIG), Strasbourg, 20-21 October 2008

The first Pan-European dialogue on Internet governance was the initiative of a number of key actors representing various stakeholder groups active in the field of Internet governance. It aimed at providing an open platform for informal and inclusive discussions and exchange between stakeholders on the issues to be discussed at the Internet Governance Forum (IGF) in Hyderabad, India, December 2008.

Over 100 participants worked, among other issues, on the need for a reflexion on Internet governance at European level, the attention to be paid to rights and freedoms, the rule of law and democracy, a people-centred approach to the Internet, in particular to promote transparency, accountability and participation, the digital divide.

Publications

The Internet Literacy Handbook – 4th version (available in English and French)



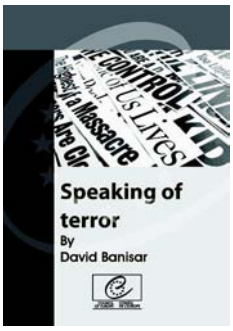
More and more children and young people are making use of the many possibilities offered by Internet in their education and entertainment activities and also using it as a mean of communication. But, by its own nature as a free and openly accessible space, Internet has its risks that can be addressed through literacy. On the eve of Safer Internet Day 2009, the Council of Europe launched a new edition of The Internet Literacy Handbook, which offers teachers, parents and students a full guide on getting the most out of the Internet while being protected from its risks.

This edition incorporates specific tips on how to participate in online social networks, such as MySpace, Facebook or Friendster, and web 2.0. Thousands of young people and children are today interacting with their friends, classmates and people with common hobbies or interests, frequently publishing personal data and photographs. Sharing this information is a great opportunity for communication with others, but implies risks that users must know how to avoid.

The Internet Literacy Handbook contains 25 fact sheets that offer technical knowledge on how to use the Internet, points out ethical issues and provides advice on how best to use the Internet for educational purposes. It also provides ideas for practical activities in class or at home and best practices. The fact sheets include tips and exercises on how to search for information, participate in chats or blogs, learn or play online, and protect privacy and security. They also contain information on how to avoid bullying or harassment, become an active e-citizen, shop online or report online illegal activities.

"As technologies evolve, the educational needs of Internet users change too. This handbook can help teachers and parents to teach students to use the Internet efficiently and be aware of its risks. It also invites users to contribute to making the Internet a user-friendly environment fully respectful of human rights", declared Janice Richardson, the editor of the handbook.

"Speaking of terror – A survey of the effects of counter-terrorism legislation on freedom of the media in Europe" by Mr David Banisar, Director of the Freedom of Information and Project at the INGO Privacy International.



This report – available in English only – was presented at a conference on "Anti-terrorism legislation in Europe since 2001 and its impact on freedom of expression and information" (Amsterdam, 17-18 November 2008). The French version will be issued later this year.

The effects of anti-terrorism legislation and efforts since 2001 has raised new challenges for the media's ability to collect and disseminate information. Nearly all European nations have adopted new laws in that period. The role of international bodies including the Council of Europe (CoE) and the European Union (EU) has been more negative than positive with the adoption of many international agreements that either ignore or only pay scant attention to fundamental human rights and the importance of a free media. The role of European institutions such as the EU and the CoE have resulted in greater adoption and harmonisation of these laws than most other regions. Freedom of expression has been especially challenged by the adoption of new laws on prohibiting speech that is considered "extremist" or supporting of terrorism. These new laws in many jurisdictions are used to suppress political and controversial speech. Websites are often taken down or blocked.

Access to information laws have been widely accepted and adopted across the CoE. However, state secret and national security laws are regularly being used against journalists and their sources. There are also growing, mostly unregulated, limits on photography. Protection of journalists' sources is also widely recognised both in national laws and in decisions of the European Court of Human Rights (ECtHR). However, these protections are often undermined by governments seeking to identify officials who provide information. Newsrooms are often searched. New anti-terrorism laws are giving authorities wide powers to conduct surveillance. Sources protections and journalists rights are often undermined by the use of these laws. Other new laws are making it easier to conduct surveillance by imposing technical and administrative requirements on keeping information.

Perspectives for the future

Revision of the European Convention on Transfrontier Television: a step forward

During its 43rd meeting from 12 to 14 November 2008, the Standing Committee on Transfrontier Television reached a provisional agreement on the amendments proposed to the European Convention on Transfrontier Television, taking into account the comments by observer states and stakeholders in the framework of the preliminary consultation procedure. The draft revised Convention, which will take the form of an amending protocol to the Convention, and its explanatory report will be formally adopted by the Standing Committee during its 44th meeting for submission to the Committee of Ministers.

A new mandate for the Steering Committee on Media and New Communication Services (CDMC)

On 11 February the Committee of Ministers renewed the terms of reference of the CDMC for a period of three years (2009 to 2011). It will receive a new action plan to be implemented during its life time at the 1st Council of Europe Conference of Ministers in charge of the Media and New Communication Services (28-29 May 2009, Reykjavik, Iceland).

The 1st Council of Europe Conference of Ministers responsible for the Media and New Communication Services (28-29 May 2009, Reykjavik, Iceland)

The CDMC has actively been preparing the 1st Council of Europe Conference of Ministers in charge of the Media and New Communication Services that will take place on 28 and 29 May 2009 in Reykjavik on the theme "A new notion of media?" Ministers and participants will discuss the need for reconceptualising media in the changing environment of mew media and emerging means of communications. They will also reflect on the opportunity of new regulations, on the relations of those new media and

the individuals and the community as well as on the trust one can have in new media.

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

Legal co-operation

European Committee on Crime Problems

Set up in 1958, the European Committee on Crime Problems (CDPC) was entrusted by the Committee of Ministers the responsibility for overseeing and co-ordinating the Council of Europe's activities in the field of crime prevention and crime control. The CDPC identifies priorities for intergovernmental legal co-operation, makes proposals to the Committee of Ministers on activities in the fields of criminal law and procedure, criminology and penology, and implements these activities.

It elaborates conventions, agreements, recommendations and reports. It organises criminological research conferences and criminological colloquia, conferences of directors of prison administration.

European Rules for Juvenile Offenders

Under the authority of the European Committee of Crime Problems (CDPC), the Council for Penological Co-operation (PC-CP) drafted European Rules for Juvenile Offenders. Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures were adopted by the Committee of Ministers on 5 November 2008. The call for separate and distinct Rules on how to deal with juvenile offenders in the community and in closed settings was felt to be urgent because of the differing needs for treatment and care juveniles have as compared to adults.

Recommendation Rec (2008) 11 lists a set of basic principles centered on interventions which safeguard the juvenile offenders' human rights, are based on the best interests of the child and promote their physical, mental and social well-being. Its subsequent parts deal with the implementation of sanctions and measures in the community, as this avoids as much as possible the negative impact of any form of deprivation of liberty and preserves and develops the positive social ties a juvenile has with his family, school and close environment. It then regulates the conditions in which sanctions and measures are to be executed in a penitentiary, welfare or mental health institution, as well as in police custody. The emphasis is first and foremost on the educational and reintegration aspects of any intervention addressing a juvenile offender. Special importance is also given to the recruitment, selection and professional and personal capacities of staff working with juveniles as well as to the need to ensure effective inspection and monitoring of the implementation of all types of sanctions and measures.

Sexual exploitation and sexual abuse of children

The Council of Europe organised a third regional conference to promote ratification of the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) in Warsaw, Poland, on 15-16 December 2008.

The convention aims at preventing sexual exploitation and sexual abuse of children, protecting child victims of sexual offences and prosecuting perpetrators. It places a strong emphasis on respecting the rights of children and keeping their best interests in the forefront, in particular through "child-friendly" procedures for investigation and prosecution which are adapted to children's special needs.Representatives of the following countries participated in

the conference: Austria, Czech Republic, Germany, Hungary, Lithuania, Netherlands, Poland and Slovakia.

©Council of Europe, illustration by Lotte Klaver.

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.

European Convention on the Adoption of Children (revised)

The European Convention on the Adoption of Children (revised) was opened for signature in Strasbourg on 27 November 2008. To date, 8 Council of Europe member states have signed it: Armenia, Belgium, Denmark, Finland, Iceland, Norway, Romania and the United Kingdom. 3 ratifications are necessary for this instrument to enter into force.

Modernisation of the 1967 Convention

The revised Convention updates the 1967 Council of Europe Convention on Adoption of Children in line with the case-law of the European Court of Human Rights and takes into account social changes over the last 40 years, meeting the requirements of modernity.

Harmonisation of adoption rules

The aim of the revised Convention is to harmonise the substantive law of the member states by setting minimum rules on adoption. It takes into account the provisions of the United Nations Convention on the Rights of the Child of 1989, the case-law of the European Court of Human Rights and the European Convention on the exercise of children's rights (ETS No. 160).

©Council of Europe, illustration by Lotte Klaver.

National adoption

The revised Convention deals with national adoption. Nevertheless, by setting minimum standards, it will undoubtedly lead to a harmonisation of national laws and thereby have an important influence on rules for international adoption which is governed by the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption.

Guaranteed principles

The revised Convention reasserts the principle of best interests of the child as stipulated in the United Nations Convention on the Rights of the Child (Article 4(1)); requires the consent to adoption of the child considered by law as having sufficient understanding and in all cases when older than 14 (Article 5); stipulates that, as far as possible, the child should be consulted and his or her views and wishes should be taken into account having regard to his or her degree of maturity (Article 6); establishes that an adoption may be revoked or annulled only by decision of the competent authority guided by the best interests of the child which shall always be the paramount consideration (Article 14); highlights the importance for the competent authority to take an individualised decision striking the best possible balance between the right of the child to know his or her origins and the right of his or her parents of origin not to disclose their identity (Article 22 (3)).

Internet: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/

Preventing and combating violence against women

Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)

In December 2008 the Committee of Ministers decided to set up a new committee to draft legally binding standards to prevent and combat violence against women and domestic violence. At its 1044th meeting on 10 December 2008 it adopted the terms of reference for the *Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)* – a drafting Committee composed of national experts and observers directly answerable to the Committee of Ministers. The Committee will meet for the first time from 6 to 8 April 2009.

Drafting Committee composed of national experts and observers directly answerable to the Committee of Ministers

The fact that the Council of Europe has embarked on the path of setting legally binding standards in this field is the culmination of two parallel developments.

On the one hand, the Heads of State and Government of the Organisation had recognised in their Action Plan adopted during the 3rd Summit (Warsaw, May 2005) the need to enhance the protection of women from all forms of violence – a recognition that resulted in the Council of Europe *Campaign to Combat Violence against Women, including Domestic Violence (2006-2008)*. The Campaign showed that, while many important measures were being taken by most member states, many gaps in prevention, protection and prosecution remained. The assessment of national approaches to preventing and combating violence against women by the Council of Europe *Task Force to Combat Violence against Women, including Domestic Violence*, an independent expert group monitoring implementation of the Campaign, revealed that a legally binding instrument in this field would fill the existing void.

The need to enhance the protection of women from all forms of violence – a recognition that resulted in the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence

On the other hand, the European Ministers of Justice had placed the issue of partner violence high on their agenda and had decided during their 27th Conference in October 2006 to assess the need for a Council of Europe legal instrument on violence against the partner. In concluding that such an instrument would be necessary to offer adequate protection from such violence, it became clear that efforts in this field needed to be aligned with any developments to prevent and combat violence against women.

Accordingly, the *Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)* has been instructed to cover both, domestic (partner) violence and violence against women. The extent to which these forms of violence will be included in a future convention will have to be decided on by the Committee. For reasons of many diverging views on the scope of any future convention, the Committee has been given flexibility to assess whether these terms of reference may be fulfilled by a single instrument or whether it is preferable to draft two instruments. These and a range of other important elements will have to be discussed during the first meeting of the Committee – a challenging task.

The CAHVIO has been instructed to cover both, domestic (partner) violence and violence against women

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

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Armed forces and security services: what democratic controls? (2009)

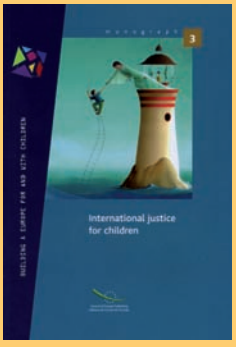
ISBN 978-92-871-6536-7, €35/US$70

Faced with the growing threats of terrorism and international organised crime, European societies are feeling an increasing need for both domestic and external security. Government action to combat these threats must be lawful – and also legitimate – and be conducted with due respect for human rights, democracy and the rule of law, which are fundamental Council of Europe principles. The question arises as to who is going to exercise democratic oversight in this area. What are the roles of parliaments, the executive, the judiciary and civil society? Do supervisory bodies exist at supranational level?

This book presents the various players and their duties in the security field and confirms the need to strike a balance between a democratic conception of fundamental freedoms and security safeguards.

International justice for children (2009)

ISBN 978-92-871-6534-3, €25/US$50



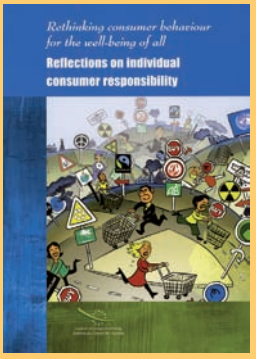
International justice for children discusses the principles of child-friendly justice at international level and examines monitoring mechanisms and current systems of admissibility, determining how easy or difficult it is for children to gain access to them. This publication also identifies the obstacles to be overcome and proposes concrete ways to remove them through specific recommendations to governments, international organisations and monitoring bodies.

This work is a solid contribution to making international justice accessible, friendly and meaningful to children, thus ensuring that children's rights safeguarded by conventions are concrete and not just theoretical.

Rethinking consumer behaviour for the well-being of all - Reflections on individual consumer responsibility (2009)

ISBN 978-92-871-6482-7, €28/US$56

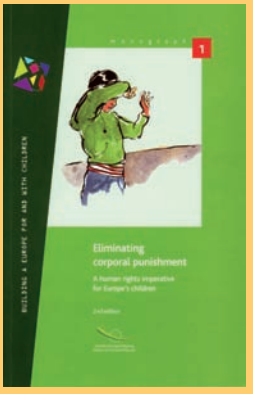
This guide invites the reader to think about consumption as one factor in the difficult task of building cohesive, sustainable societies based on the principle of universal well-being. The Council of Europe hopes that this reassessment will prompt people to question their choices as consumers: taking account of human rights, decent working conditions, the sustainable use of resources and our legacy to future generations. Surely consumption should be a responsible, socially committed act.



An eclectic mix of academic articles, examples and illustrations makes this guide an unusual, informative work which can be readily used as the basis for discussions on this pressing social issue.

Eliminating corporal punishment: a human rights imperative for Europe's children (2nd Edition) (2008)

ISBN 978-92-871-6182-6, €19/US$29



Physical punishment is an accepted form of child discipline in far too many countries, and challenging this widespread form of violence against children may be unpopular with both politicians and parents. Yet hitting children, even mildly, is a violation of children's basic human rights - the right not to be subjected to degrading treatment or punishment and the right to equal protection under the law.

For those already convinced, this book will add fuel to their convictions and provide substantiated arguments for abolition; for others, it is to be hoped that it will enable them to understand better the inherent legal and moral contradiction of disciplining children with violence.

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