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## **State of human rights and democracy in Europe**

### **State of human rights in Europe\***

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Christos POURGOURIDES, Cyprus, Group of the European People's Party

#### *Summary*

The Parliamentary Assembly of the Council of Europe should not only acknowledge the Organisation's major achievements in the fields of human rights, rule of law and democracy but also highlight new tasks and challenges confronting it in the 21<sup>st</sup> Century.

Much progress has been made in member states. However, the gap between standards on paper and the actual situation in Europe is striking. Human rights violations, including the most serious ones, such as enforced disappearances, extrajudicial killings, secret detentions, torture and inhuman treatment, still take place on our continent. The rule of law is still not fully respected and impunity of perpetrators of human rights violations persists. Moreover, the fight against terrorism is often a pretext to undermine or reduce the scope of fundamental rights. In addition, xenophobia and intolerance are increasing and several groups of vulnerable persons need better protection.

It is now time to end hypocrisy and to turn words into deeds. The most effective method of preventing human rights violations is by adopting a zero-tolerance approach. The Council of Europe's Committee of Ministers should take concrete measures, in particular giving priority to responding to the most serious human rights violations, preparing a set of guidelines to eradicate impunity, monitoring member states' legislation and practice with respect to the fight against terrorism, strengthening the fight against discrimination and creating a European migration observatory.

\* See also the report of the Political Affairs Committee, including a draft resolution (Doc. 11203). Both reports complement each other; the theme of "human rights" was dealt with by the Committee on Legal Affairs and Human Rights, whereas the theme of "democracy" was dealt with by the Political Affairs Committee.

## **A. Draft recommendation**

### **I. State of human rights in Europe**

1. The Parliamentary Assembly refers to its Resolution ... (2007) on the state of human rights and democracy in Europe. It also recalls its previous resolutions and recommendations addressing specific human rights issues referred to in the report<sup>1</sup> and opinions upon which the Resolution is based.

2. The Assembly recommends that the Committee of Ministers:

2.1. calls on all member states to give appropriate follow-up to human rights issues raised in Resolution ... (2007) on the state of human rights and democracy in Europe;

2.2. fully and speedily implements the 2005 Warsaw Summit Declaration and Action Plan, in particular measures aimed to ensure the continued effectiveness of the European Convention on Human Rights (ECHR) and those aimed to protect and promote human rights and the rule of law through other Council of Europe institutions and mechanisms;

2.3. reinforces its own activities in the legal and human rights fields, in particular by strengthening the Council of Europe's awareness-raising activities as well as its co-operation and assistance programmes, notably legislative expertise, capacity-building and training programmes;

2.4. defends the position of the Council of Europe in the European institutional architecture and beyond, taking into account its outstanding achievements and vast experience in the area of the promotion and protection of human rights, especially *vis-à-vis* the European Union;

2.5. increases its efforts to ensure the swift accession of the EU/Community to the ECHR and call on member states which are also members of the European Union to consider such accession as an urgent priority;

2.6. strengthens its political support for the European Court of Human Rights, by reaffirming its fundamental role, likewise for the Council of Europe's other supervisory and monitoring mechanisms, strengthens its follow-up to their work, and increase current resources which are clearly insufficient;

2.7. strengthens also its political support for the institution of the Commissioner for Human Rights of the Council of Europe by placing all the necessary means at its disposal, thus enabling it to effectively carry out its mandate.

3. The Assembly considers that the most serious human rights violations demand particularly strong responses and priority treatment, as the lack of effective reaction to such violations by the Organisation's decision-making body threatens the Council of Europe's credibility and may encourage such abuses. The Assembly therefore strongly urges the Committee of Ministers, within six months of the present recommendation, to indicate the efforts undertaken and progress achieved to eradicate the following violations:

3.1. enforced disappearances, including efforts it has taken to encourage member states to sign and ratify the new United Nations Convention for the Protection of All Persons from Enforced Disappearances;

3.2. extrajudicial killings, torture and ill-treatment, and to ensure that member states fully co-operate with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and systematically make its reports public; and

3.3. secret detentions and unlawful inter-state transfers that have taken place in Europe or elsewhere under the responsibility of European states, as well as to indicate follow-up given to specific proposals made by the Secretary General of the Council of Europe subsequent to his inquiry

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<sup>1</sup> Doc. 11202.

under Article 52 of the ECHR on this subject, and by the Parliamentary Assembly in Resolution 1507 (2006) and Recommendation 1754 (2006).

4. Impunity is a major threat to the rule of law in Europe. Therefore, the Assembly recommends that the Committee of Ministers envisages, in particular, the preparation of a set of guidelines (see the Guidelines on Human Rights and the Fight against Terrorism), drawing from, *inter alia*, the case-law of the European Court of Human Rights and the work of the United Nations on this issue.

5. In view of the need to support human rights defenders in Europe and to ensure the existence effective mechanisms of protection in urgent cases, the Assembly recommends that the Committee of Ministers gives priority to speedy completion of the work being undertaken on this matter within the Council of Europe.

6. Furthermore, the Assembly recommends that the Committee of Ministers pays increased attention to the human rights situation in Belarus and in areas within Council of Europe member states where obstacles exist to the effective implementation of the ECHR (including the “black holes”) and that the Organisation devises ways and means of ensuring that persons in such areas can effectively benefit from protection of their rights.

7. The Assembly also reiterates its recommendation that the Committee of Ministers considers means of improving the Council of Europe’s ability to react rapidly and effectively to allegations of systematic human rights abuse involving several member states and in particular to consider, together with the Assembly, how a specific mechanism with appropriate investigative powers akin to those provided to parliamentary inquiries in member states could be set up within the Assembly.

8. Terrorism is a key challenge for Europe’s open societies. The Assembly urges the Committee of Ministers to ensure that the fight against terrorism does not serve as a pretext to undermine or reduce the scope of fundamental human rights embodied in the ECHR as interpreted by the European Court of Human Rights and as reiterated in the Committee of Ministers’ 2002 Guidelines on human rights and the fight against terrorism; the Assembly also urges the Committee of Ministers to take steps to monitor on a regular basis member states’ legislation and practice.

9. Diversity in Europe needs to be better accepted and respected. The Assembly invites the Committee of Ministers to strengthen its political support for the European Commission against Racism and Intolerance’s (ECRI) action and the work of the Advisory Committee of the Framework Convention for the Protection of National Minorities, to reinforce its activities in the fight against all forms of discrimination, as well as its activities related to the protection of the rights of persons belonging to minorities and the integration of minority groups in society.

10. There is also a need to build a more human and inclusive Europe in which the fundamental social and economic rights to, *inter alia*, education, housing, health care, employment, minimum income, social benefits and pensions are guaranteed. Therefore, the Assembly invites the Committee of Ministers to urge all member states to sign and/or ratify the revised European Social Charter, to accept the Charter’s collective complaints procedure and to engage active consideration of European Union accession to the revised European Social Charter of the Council of Europe.

11. The Assembly calls on the Committee of Ministers to pay increased attention to persons in particularly vulnerable situations, notably those deprived of their liberty, refugees and internally displaced persons, asylum seekers and migrants, children, the elderly, disabled persons and socially excluded persons.

12. Given the complex challenges posed by migratory flows, the Assembly reiterates its recommendation to the Committee of Ministers to create a European migration observatory to monitor all aspects of migration and the situation of migrants, and to engage, where appropriate, in a dialogue with relevant non-member neighbouring countries. In addition, the Assembly considers that the rights of migrants under Council of Europe instruments are not sufficiently protected and invites the Committee of Ministers to examine gaps, such as those relating to the rights of irregular migrants, with a view to completing the Organisation’s legal arsenal.

13. The Assembly also asks the Committee of Ministers to take stock of the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence and, in the light of the results, take the necessary measures to step up the fight against this scourge. Concerning forced marriages and child marriages, the Assembly invites the Committee of Ministers to develop an effective strategy to eliminate these practices.

14. The Assembly also recommends that the Committee of Ministers invite the governments of the member states to take measures to ensure the right to a healthy, viable and decent environment and to promote the role and responsibilities of local and regional authorities with respect to sustainable development matters.

15. More generally, the Assembly considers that, in many cases, the effectiveness of Council of Europe conventions in the human rights field is considerably reduced not only by failure to ratify, but also by reservations or restrictive interpretative declarations made by member states at the time of signature or ratification, or by avoiding the acceptance of optional provisions. Consequently, the Assembly calls on the Committee of Ministers to encourage member states to sign and/or ratify all the Council of Europe's main legal instruments in the field of human rights, without reservations or restrictive interpretative declarations, and to withdraw those which have been made. The Assembly urges the Committee of Ministers to undertake a major review of this subject.

## **II. State of democracy in Europe**

16. The Parliamentary Assembly refers to its Resolution ... (2007) on the state of human rights and democracy in Europe. It also recalls its previous resolutions and recommendations addressing specific issues of democracy referred to in the report<sup>2</sup> and opinions upon which the Resolution is based.

17. The Assembly recommends that the Committee of Ministers calls on member states to give appropriate follow-up to the issues raised in Resolution ... (2007) and take appropriate measures in order to support and improve their democratic procedures as necessary, in particular:

17.1. to ensure that any restrictions on the freedom of expression are in accordance with the ECHR and the case-law of the Strasbourg Court, ensuring pluralism of the media and that measures are taken to prevent and dismantle media concentration;

17.2. to remove any bureaucratic obstacles and unjustified taxation restricting freedom of association and the right of association to certain professional groups and the right to create political parties;

17.3. to keep under review national legislation on the minimum age for voting;

17.4. to review different forms of distant voting, including electronic voting, with a view to eliminating possible misuse;

17.5. to consider granting the right to vote to lawfully resident immigrants;

17.6. to consider granting a passive and active right to vote in regional and local elections to nationals of the Council of Europe member states and persons who have lost their nationality involuntarily although lawfully residing in their territories;

17.7. to eliminate obsolete provisions disenfranchising certain categories of the population (such as certain categories of detainees);

17.8. to strengthen national mechanisms to promote the balanced participation of women and men in decision making, with a view to achieving a gender balance of a critical mass of at least 40% of representatives of either sex in all political bodies, be they local, regional, parliamentary or governmental, by 2020;

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<sup>2</sup> Doc. 11203.

- 17.9. to consider decreasing thresholds higher than 3% for parliamentary elections;
  - 17.10. to consider the introduction of elements of direct democracy such as the right of citizens to ask for referenda and propose legislative initiatives;
  - 17.11. to consider the introduction of recall ballots in respect of individually elected representatives;
  - 17.12. to examine whether national procedures for inheriting executive or legislative positions remain democratically appropriate;
  - 17.13. to examine whether national procedures for appointment to executive or legislative positions remain democratically appropriate;
  - 17.14. to examine whether national legislation on the length of term of office of the executive and legislature remains democratically appropriate;
  - 17.15. to examine whether national legislation on the number of consecutive terms of elective office for individual representatives remains democratically appropriate;
  - 17.16. to examine whether national legislation intended to ensure the secrecy and integrity of elections is sufficiently robust and independent;
  - 17.17. to examine whether the national constitution has sufficiently robust arrangements for the monitoring and control of the executive remains democratically appropriate;
  - 17.18. to examine whether the current constitutional arrangements are democratically appropriate;
  - 17.19. to examine whether the current national arrangements for changing the constitution require a sufficiently high approval level to prevent abuses of democracy;
  - 17.20. to genuinely apply the principles of the European Charter of Local Self-Government and endow local and regional authorities with all the powers, responsibilities and resources necessary to enable effective implementation of sectoral policies in full accordance with the principles of subsidiarity and good governance and for the benefit of Europe's citizens;
  - 17.21. to comply with commitments entered into upon accession and follow up recommendations and resolutions of the Assembly aimed at eliminating deficits in democracy and improving the quality of democracy;
  - 17.22. to introduce a comprehensive legal framework for the fight against corruption and ensure its enforcement, as well as effective prosecution of law-breakers and a constant adaptation of institutions to better withstand economic crime;
  - 17.23. to introduce and/or review legislation on lobbying, with a view to ensuring transparency and accountability and protect public interest against undue influence of lobbies;
18. Moreover, the Assembly calls on the Committee of Ministers:
- 18.1. to reinforce its own activities in the field of democracy, in particular by reacting to identified deficits in democracy in member states, elaborating legal instruments and policy guidelines as may be required and stepping up projects and co-operation programmes;
  - 18.2. to provide the necessary resources and means to ensure that the Forum for the Future of Democracy can be used as an effective tool for the further development of democracy in Europe;
  - 18.3. to strengthen its own monitoring procedures and those of other bodies and mechanisms of the Council of Europe aimed at the promotion of democracy, in particular the Congress of Local and Regional Authorities and the Venice Commission;

18.4. to ensure follow-up within the relevant intergovernmental bodies to the Assembly's recommendations proposing measures aimed at the improvement of democracy and the elimination of its deficits and in particular:

18.4.1. reintroduce in its Programme of Activities the work on nationality law, including the promotion of acquisition of citizenship, in accordance with the Action Plan adopted at the Third Summit;

18.4.2. embark on elaborating a legally-binding instrument in the field of democratic elections, as advocated by the Assembly, notably in Recommendation 1756 (2006);

18.4.3. continue its work on democracy and good governance in the information society and evaluate the implementation of relevant legal instruments with a view to reviewing them as appropriate;

18.5. to defend the Council of Europe's role in the European family of independent nation states as the primary defender, supporter and developer of democracy, human rights and the rule of law, and, to this end, oppose all attempts by the European Union to duplicate or interfere in this work;

18.6. to defend the Council of Europe position in the European architecture as the Organisation with an area of excellence in, *inter alia*, democracy. In this context, promote co-operation with the European Union with a view to concluding the Memorandum of Understanding properly reflecting that role of the Council of Europe and implementing it accordingly.

19. The Assembly also invites the Committee of Minister to establish a specific mechanism on freedom of expression and media tasked with the specific mandate to monitor the situation of freedom of expression and of the media in Council of Europe member states and to suggest corrective measures.

20. The Assembly asks the Committee of Ministers to draft a charter of democratic principles.

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**I. Introduction**

1. This report stems from a motion for a resolution (Assembly Doc 10859 rev) tabled by Mr de Puig and others on 30 March 2006 proposing a Council of Europe annual report on the state of human rights in Europe. However, the report has been prepared in the much larger context of the one-day debate or “summit” on the state of human rights and democracy in Europe, proposed by the Bureau of the Assembly for the April 2007 part-session.

2. This debate will be based on three main reports:

- the present thematic report on the state of human rights in Europe, to be prepared by the Committee on Legal Affairs and Human Rights;
- a thematic report on the state of democracy in Europe, to be prepared by the Political Affairs Committee;
- a progress report of the Monitoring Committee, which follows a country-by-country approach.

3. It was agreed that both thematic reports should give an overview of key trends and challenges in terms of human rights (Committee on Legal Affairs and Human Rights) and democracy (Political Affairs Committee), in the context of the Council of Europe (CoE).

4. The three main reports will be completed by opinions from all the other Assembly committees on issues in their respective fields of competence. In addition, the appendix to this report contains a brief description of the principal CoE monitoring mechanisms.

5. It has been a very challenging task to prepare such a report in view of the limited resources available and of the very tight timeframe foreseen by the Bureau.

6. This report has the merit of giving our Assembly an opportunity to take stock of the situation of human rights in Europe and to concisely evaluate both successes and failures; on this basis, it will then allow us to draw lessons for improvements and priority action, both in our member states and within the Organisation itself.

7. I am well aware that this report can cover neither all topical human rights issues, nor all the work of the CoE on each issue. I therefore had to be very selective and limit myself to key issues, trends and challenges which, in my view, should be given priority attention, in the context of the CoE. My other concern was to offer a solid basis for a lively "human rights summit debate" and therefore, to avoid making a very exhaustive and academic catalogue of different human rights and their implementation in Europe.

8. Having examined the Assembly's and in particular the recent and ongoing work of the Committee on Legal Affairs and Human Rights, as well as the distribution of the case load of the European Court of Human Rights (hereinafter "the Court" or "ECtHR"), which I take as the most objective and reliable reflection of priorities available, I have selected the following topics, outlining key issues, trends and challenges:

- *Upholding human rights in Europe*: the first part of the report is intended to seize the opportunity provided by this exercise to stress the primary role of the CoE and of human rights defenders as guardians of human rights in Europe and to examine the main challenges they are facing;
- *The rule of law: the backbone of human rights implementation*: since there is no separate report on this issue for this exercise, I consider it necessary to cover in this report the essential role of the rule of law in the implementation of human rights. Following the above-mentioned criteria, I will focus on the need for an independent and efficient judiciary and to fight impunity;
- *"Black holes", secret detention, enforced disappearances and extrajudicial killings*: in this stocktaking exercise, my concern is twofold: first, to recall that in Europe there are still geographical areas ("black holes") where the CoE human rights mechanisms cannot, or can only partially, be implemented, and second, to stress that secret detentions, disappearances and extrajudicial killings – the most serious human rights violations – still occur in Europe;
- *Protecting human rights while fighting terrorism*: this chapter refers to an important recent challenge for our society and provides an outline of the main concerns in this respect;
- *Human rights and the protection of vulnerable persons*: this chapter examines the situation of vulnerable persons deserving priority attention, in particular persons deprived of their liberty, refugees, internally displaced persons, migrants and asylum seekers, victims of trafficking in human beings, socially excluded persons and children;
- *Respect for diversity*: this chapter stresses the need to create a society in which diversity is accepted and respected. It examines more closely the situation of minorities, as well as key challenges in the fight against racism and intolerance in Europe;
- the last chapter presents my conclusions and proposals for improvements at the national level, as well as for future CoE action.



9. When perusing the present paper, it is obvious that each of these issues would merit a full report. In fact, many of them (e.g., areas where the European Convention on Human Rights cannot be implemented) have already been discussed by our Assembly in recently adopted reports, while others are still in the pipeline (e.g., the situation of human rights defenders in CoE member states). I can therefore afford to remain fairly general on many issues and refer to recent ongoing or future work of our Assembly or of other CoE bodies. I will also be able to make a number of cross-references to the report of the Political Affairs Committee and other Committees' opinions since a number of issues will be dealt with by them in more depth (e.g., freedom of expression<sup>3</sup>, corruption, social rights, migrants, refugees and displaced persons, women's human rights violations). Finally, I should stress that the thematic approach decided by the Bureau does not preclude references to specific countries in order to provide illustrations for best practices or difficulties<sup>4</sup>.

## II. Upholding human rights in Europe

### *i. The Council of Europe*

#### a. Point of reference and guardian of human rights in Europe

10. No international organisation, whether regional or global, is able to parallel the unique achievements of the CoE in the human rights field. Indeed, the CoE has both laid down European legal standards and set up monitoring mechanisms<sup>5</sup> – some of them independent – to help implement these standards. Four legal instruments, in particular, are at the forefront of what is indisputably the most effective and successful international set of mechanisms that have been set up to protect human rights: the European Convention on Human Rights (ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities and the European Social Charter. These legal instruments all provide for review mechanisms involving independent bodies<sup>6</sup>. This is important since it ensures that the review is conducted impartially and fairly and that all states are treated on an equal footing. The European Commission against Racism and Intolerance (ECRI) is another example of such an independent monitoring mechanism, although it is not a treaty-based body (see also chapter VII below)<sup>7</sup>.

11. In 1999, another cornerstone was added to this unique arsenal of human rights protection mechanisms with the setting up of the institution of the CoE Commissioner for Human Rights, which is an independent and impartial institution which does not play a judicial role.

12. The ECHR, to which all 46 CoE member states are Parties, is certainly the jewel in the crown. Its respect is ensured by the ECtHR in response to applications by individuals or States Parties. The Court delivers judgments on the existence of a violation of the Convention which are legally binding on States Parties and, therefore, must be executed by them. The correct execution of each and every judgment is controlled by the CoE Committee of Ministers. This control mechanism is the most successful international human rights protection mechanism.

13. In recent years, many complaints to the Court concern the effectiveness of national judicial systems, in particular the length of judicial proceedings, and action by security forces. New important cases concern abuses by security forces, notably in the context of the fight against terrorism, and the need to provide reparation to victims both of abuses and of inadequate state protection, the absence

<sup>3</sup> This issue is dealt with in the report of the PACE Political Affairs Committee and in the Opinion of the Committee on Culture, Science and Education.

<sup>4</sup> For references to countries, see also the Progress report of the Assembly Monitoring Committee including an Addendum covering CoE member states which are not under a monitoring procedure.

<sup>5</sup> See the appendix to the report, which contains a brief description of the principal CoE monitoring mechanisms. See also the progress report of the Assembly Monitoring Committee.

<sup>6</sup> Respectively, the European Court of Human Rights (ECtHR), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee and the European Committee of Social Rights (ECSR).

<sup>7</sup> Two hundred conventions have been drawn up under the auspices of the Council of Europe. The effectiveness of these conventions is often reduced not only by failure to ratify, but also by reservations or restrictive interpretative declarations or by failure to embrace the full panoply of optional provisions.

of adequate protection from environmental hazards, the rights of minority or vulnerable groups and the rights of children. A number of cases also concern abuses of human rights or situations of discrimination in areas of tension or so-called frozen conflicts.

14. The growing number of applications to the Court reveals the need for a more general improvement of implementation of the ECHR in CoE member states. This could be done in particular through a better scrutiny of draft legislation, improved domestic remedies, the publication and dissemination of the case-law of the Court, better training of law enforcement professionals, and the systematic reopening or re-examination of domestic proceedings which have violated the ECHR. The full and swift implementation of the broad package of ECHR reform measures adopted in May 2004<sup>8</sup> is also necessary.

15. In addition to its standard-setting and monitoring activities, the CoE provides a number of cooperation and assistance programmes in the field of human rights, in particular legislative expertise<sup>9</sup> and human rights capacity building and training<sup>10</sup>. The Organisation also organises awareness-raising activities in the legal and human rights fields<sup>11</sup>.

16. This work, often carried out in partnership with the European Commission, the OSCE, the United Nations and its specialised agencies, as well as non governmental partners, is contributing effectively to the constant improvement and consolidation of legal norms in member states<sup>12</sup>. The CoE human rights machinery has proved to be a fundamental element of European democratic stability as well as an essential element of European cooperation and integration.

17. Another important achievement of the CoE, and of its Parliamentary Assembly in particular, is the *de facto* abolition of the death penalty in peacetime in CoE member states. The Parliamentary Assembly has tirelessly led the campaign for a death penalty-free Europe<sup>13</sup>, notably by making abolition a condition of accession for new member states. As stressed by the President of the Assembly, René van der Linden, this "achievement is an example of what can be done throughout the world, with the right conviction and political courage"<sup>14</sup>. Whilst the death penalty moratorium in the Russian Federation has recently been extended until 2010, this country remains the only CoE member state which has not yet ratified Protocol No 6 to the ECHR abolishing the death penalty. Furthermore, only Azerbaijan and the Russian Federation have not yet signed Protocol No 13 to the ECHR on the abolition of death penalty in *all* circumstances. Italy's recent campaign to promote a worldwide moratorium on the death penalty, as well as France's highly symbolic step to inscribe abolition of the death penalty in the Constitution, are most welcome developments.

18. Bearing in mind that these achievements were the fruit of very limited resources, the CoE's action can, by any standards, be regarded as a great success and excellent value for the taxpayer's money. When doing a comparative analysis of the 2007 budget among different European institutions, the European Court of Human Rights' (ECtHR) budget is less than a quarter of the budget of the European Court of Justice (ECJ), based in Luxembourg. In fact, the Luxembourg Court's budget is higher than the ordinary budget of the Council of Europe as a whole, which represents less than €

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<sup>8</sup> See Committee of Ministers (CM) Declaration of 19.05.2006. This matter is being followed up by the PACE Committee on Legal Affairs and Human Rights in the context of the preparation of a report on the Implementation of the Third Summit Declaration and Action Plan (Rapporteur, Mrs Bemelmans-Videc).

<sup>9</sup> Using international experts, the CoE examines the compatibility of legislation with the requirements of the ECHR. Ideally, the CoE should receive for expertise laws which have not yet been adopted. However, there is no guarantee that the findings of the CoE experts will be reflected in the law eventually adopted. There is also a risk that member states submit laws as a formality in order to announce in a domestic context that the new law "has been examined by the CoE". In order to counter this, the CoE often offers to follow up the written expertise with a round table with the national stakeholders and the experts in order to discuss the law and the experts' findings. This ensures that the experts' comments are disseminated, even if they do not subsequently make it into the text of the law.

<sup>10</sup> In this respect, priority has been given to programmes of "train-the-trainers" focusing on national ownership and sustainability by creating pools of local ECHR trainers – judges, prosecutors, lawyers, police officers – who can take over the responsibility for training at the national level.

<sup>11</sup> [http://www.coe.int/T/E/Human\\_rights/](http://www.coe.int/T/E/Human_rights/)

<sup>12</sup> See Doc H/Inf (2007) 2, "Practical impact of the CoE human rights mechanisms in improving respect for human rights in member state"s, [http://www.coe.int/T/E/Human\\_rights/](http://www.coe.int/T/E/Human_rights/)

<sup>13</sup> See the reports of Mrs Renate Wohlwend and related adopted texts, <http://assembly.coe.int>

<sup>14</sup> Speech on the occasion of the 3<sup>rd</sup> World Congress against the death penalty, Paris, 01.02.2007.

200 million (2007), including the budget of the Strasbourg Court<sup>15</sup>. Finally, the budget of the European Parliament is an impressive 90 times higher than that of the Parliamentary Assembly of the Council of Europe (PACE), which also covers an extra 19 countries.

b. Overview of major challenges

– Reform of the Convention system

19. The Court is becoming a victim of its own success. In view of the continuous increase in the number of individual applications pending before it – approximately 90,000 at the end of 2006 – and in order to guarantee the long-term effectiveness of the Convention system, a reform process is under way. Entry into force of Protocol No 14 to the ECHR<sup>16</sup> would enable the Court to at last introduce some changes which would help it to deal with the growing backlog of cases. So far, Protocol No 14 has been ratified by all CoE member states except the Russian Federation, whose State Duma failed to ratify it in December 2006. This is putting on hold much-needed changes. Besides Protocol No 14, a group of Wise Persons were given the task of making proposals to ensure the long-term effectiveness of the whole Convention system. Their report was made public in December 2006<sup>17</sup>. However, it presupposes that Protocol No 14 is already in place. According to the Court's President Jean-Paul Costa "if nothing is done about the influx of inadmissible and repetitive cases to the Court, our great European institution will be asphyxiated. Protocol No 14 must enter into force and as quickly as possible."<sup>18</sup> The number of judgments delivered by the Court in 2006 had risen by 40%<sup>19</sup>.

20. The long-term effectiveness of the system will also have to be backed by the necessary financial means. At present, the budget of the CoE, including the Court, is far from satisfactory (see also § 18 above).

– States' duty to cooperate with the Court

21. As I have stressed in a recent report<sup>20</sup>, most CoE member states cooperate smoothly with the Court. However, in 2006 the Court found in a number of cases that the states' duty to cooperate had been breached. In addition, a number of cases involving the alleged killing, disappearance, beating or threatening of applicants to the Court<sup>21</sup> were brought to my attention. Reports by several human rights organisations, including Amnesty International, Human Rights Watch and the International Helsinki Federation, have alleged that harassment, coercion and intimidation of Chechen applicants to the European Court of Human Rights constitute a major problem<sup>22</sup>. In some other cases, illicit pressure has also been brought to bear on lawyers who defend applicants before the ECtHR, or who assist victims of human rights violations in exhausting national remedies before applying to the Court. Most recent cases concern mostly, but not exclusively, applicants from the North Caucasus region of the Russian Federation<sup>23</sup>. In January 2006, our Assembly considered that it was "intolerable that reprisals

<sup>15</sup> CoE's budgets for 2007: The ordinary budget amounts to €197.2 million. Together with the Partial Agreements and other budgets, the Council of Europe total budget amounts to 270.1 million euros (see CoE website).

<sup>16</sup> Protocol No 14 is principally designed to help the Court deal more quickly with its ever-growing list of pending cases, in particular by simplifying procedures for dealing both with cases which have no chance of success (at least 90% of all cases) and well-founded repetitive cases. The Court's President, Jean-Paul Costa, indicated that "According to a provisional assessment, without any increase in resources, the application of Protocol 14 will enable the Court to increase its productivity by at least 25%. Although it cannot suffice by itself, the Protocol is therefore indispensable. Everything starts with Protocol 14". (ECtHR Press release of 25.01.2007: "Urgent need to implement reforms to secure future of European Court")

<sup>17</sup> The report is available on the CoE's website.

<sup>18</sup> ECtHR Press release of 25.01.2007: "Urgent need to implement reforms to secure future of European Court".

<sup>19</sup> *Idem*.

<sup>20</sup> See my report on "Member states' duty to cooperate with the ECtHR", Doc. 10387.

<sup>21</sup> *Idem*.

<sup>22</sup> Amnesty International (AI), "The Risk of Speaking Out: Attacks on Human Rights Defenders in the Context of the Armed Conflict in Chechnya"; Human Rights Watch (HRW), "Russian Federation/Chechnya: Human Rights Concerns for the 61<sup>st</sup> Session of the U.N. Commission on Human Rights"; International Helsinki Federation (IHF), "The OSCE-States Have Shirked Their Responsibility"; see also Peter Finn, Russian Appeals to Court Bring Intimidation, Death – Relatives of Missing and Dead Told not to Go to Rights Body, in: Washington Post, 03.07.2005; see also NGOs Alternative report on Russia to the UN Committee against torture (FIDH website); For details, see my report on "Member states' duty to cooperate with the ECtHR", Doc. 10387.

<sup>23</sup> For details, see my report on "Member states' duty to cooperate with the ECtHR", Doc. 10387.

against applicants to the Strasbourg Court take place and remain unpunished"<sup>24</sup>. It is a clear failure to cooperate with the Court if a member country does not ensure the safety of applicants from reprisals.

22. A separate aspect of the duty to cooperate with the Court derives from the Court's case law on the binding effect of interim measures. In the *Mamatkulov* judgment<sup>25</sup>, the Court's Grand Chamber departed from previous case law and ruled that failure on the part of a state to apply an interim measure constitutes a violation of the right of individual petition (Article 34 ECHR). In 2006, the Court issued an important clarification of this case law, holding that even if it subsequently turns out that the failure to apply the interim measure did not ultimately restrict the applicant's right of petition, the state's obligation remains. For this reason, it ruled that Spain<sup>26</sup> was in breach of Article 34, notwithstanding the fact that the applicant had been able to pursue his application and to communicate with his legal adviser.

– States' duty to execute judgments

23. The execution of the Court's judgments is a legal obligation under the Convention. The importance of prompt and effective execution of judgments is obviously central to the success of the Convention machinery in protecting human rights. It is unfortunately an issue of concern in a number of member states. Although it is the CoE's Committee of Ministers, which, according to the Convention, supervises execution, the Parliamentary Assembly has made important contributions<sup>27</sup>. In this context, the Assembly noted that unacceptable delays of implementation have arisen in a number of countries<sup>28</sup>. It also noted with grave concern the continuing existence of major structural deficiencies representing a serious danger to the rule of law in some of these countries<sup>29</sup>. The Assembly called on states to set up effective domestic mechanisms for rapid implementation of the Court's judgments and urged in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to give top political priority to resolving implementation issues of particular importance mentioned in Resolution 1516 (2006)<sup>30</sup>. The Assembly also appealed for more national parliamentary oversight of how states implement the Court's judgments. The Assembly considered that the prolongation of such situations of non-compliance puts at stake the authority of the Court and should be seen as a breach of the state's obligations under the Convention and under the Statute of the CoE. Slow or negligent compliance with the Court's judgments should also be given greater political visibility within the CoE and in the member states concerned.

24. States are in principle free to choose the means by which they discharge their legal obligation to execute the judgment by taking appropriate individual and general measures. In certain exceptional cases, the Court has itself made clear what action must be taken by the state in order to abide by the judgment<sup>31</sup>. "Pilot judgments" can also be seen as examples of this approach<sup>32</sup>. In 2006, the Court made use of the "pilot judgment" procedure in a case against Poland, *Hutten-Czapska*<sup>33</sup>. As in the first

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<sup>24</sup> PACE Res. 1479 (2006) on "Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-à-vis the Assembly's concerns".

<sup>25</sup> *Mamatkulov and Askarov v. Turkey* [GC], Nos. 46827/99 and 46951/99, ECHR 2005-I

<sup>26</sup> *Olaechea Cahuas v. Spain*, No. 24668/03, judgment of 10.08.2006.

<sup>27</sup> See PACE Doc 11020, "Implementation of judgments of the European Court of Human Rights", Rec. 1764 (2006) and Res. 1516 (2006), Rapporteur Mr Erik Jurgens (Netherlands, SOC).

<sup>28</sup> See PACE Res 1516 (2006), "Implementation of judgments of the European Court of Human Rights".

<sup>29</sup> *Idem*.

<sup>30</sup> As regards Turkey, it should be noted that the main structural problem was related to "return to home" cases. In its *Içyer* decision of 12.01.2006, the Court considered that the government had taken appropriate action at national level to deal with the underlying structural violation of Convention rights.

<sup>31</sup> *Ilaşcu and Others v. Moldova and Russia* [GC], No. 48787/99, § 490, ECHR 2004-VII: "the respondent States must take every measure to put an end to the arbitrary detention of the applicants still detained and to secure their immediate release." Two of the applicants in that case remain in arbitrary detention in Transdniestria and have a new application before the Court: *Ivantoc, Popa and Others v. Moldova and Russia*, No. 23687/05, communicated to both States in March 2006.

<sup>32</sup> The "pilot judgment" procedure is driven by two fundamental and complementary concerns: first, to resolve effectively and expeditiously a human rights problem concerning a large group of persons – this is best achieved when the systemic dysfunction is remedied by the competent national authorities, in keeping with the principle of subsidiarity. The second concern is for the continuing effectiveness of the Convention mechanism, which is ill equipped to deal with huge numbers of repetitive cases.

<sup>33</sup> *Hutten-Czapska v. Poland* [GC], No. 35014/97, judgment of 19.06.2006.

judgment of this kind, *Broniowski*, the problem at the root of this application was systemic – the restrictions on property rights of landlords imposed by Polish rent control legislation – and the Court considered that general measures should be applied by Poland to put an end to the systemic violation of the right of property identified in this case. Where a solution to a systemic problem has been introduced, or appears to be available shortly, the Court refrains from the pilot judgment approach. For example, although the Court considered that the German legal system lacked an effective remedy to deal with excessive length of proceedings, it noted with approval the tabling of a bill before Parliament in September 2005 that intended to bring Germany into conformity with the Article 13 of the Convention in light of the *Kudła* judgment<sup>34</sup>. It therefore declined to indicate any general measures at the national level, whilst encouraging the speedy enactment of the bill<sup>35</sup>.

– Gaps in Convention coverage

25. Although all CoE member states are Parties to the ECHR, it is also worth recalling that there are situations, within CoE member states, where obstacles exist to the effective implementation of the ECHR, as documented in chapter IV below.

– Credibility of the Council of Europe in the face of the most serious human rights violations

26. When examining challenges facing the CoE human rights protection system, I should also mention that the credibility of the CoE as a whole – as the leading European human rights Organisation – is closely linked to the capacity of the Committee of Ministers, the CoE decision-making body, to confront its responsibilities in the face of the most serious issues; here, “consensus decision-making” often means that no decision is taken or the decision comes too late and in a compromised manner with considerable detrimental consequences<sup>36</sup>. Competences and recognition imply responsibilities. The Committee of Ministers’ responses to the Assembly’s findings regarding the human rights situation in the Chechen Republic and politically motivated enforced disappearances in Belarus remain particularly weak.

– Relations with the European Union in the field of human rights

27. Another major challenge for the CoE human rights protection system is the risk of unnecessary duplication of its activities by European Union (EU) bodies, which could lead to double standards, inconsistencies and ultimately to new dividing lines on the European continent. Duplication would also waste public money at a time of general budgetary stringency, thus further alienating citizens from European institutions, including the mechanisms of human rights protection. The ultimate goal must be to ensure that all individuals will benefit from the most efficient, coherent and effective overall human rights protection system. Our Assembly has been following this issue very closely and several reports in this respect have been prepared or are under preparation by the Committee on Legal Affairs and Human Rights<sup>37</sup>.

28. At a time of increasing European integration, and in particular the steady expansion of the competence of the EU into the human rights field and related policy areas, the importance of the CoE, however, has not diminished. It can even be said to have increased, as it represents for many a bulwark of protection for the individual against threats to his or her fundamental rights, from whatever quarter. The profile of the Convention in the EU legal order remains very high, as does the case law of the Strasbourg Court.

29. The EU Fundamental Rights Agency, established in December 2006, took up its work on 1 March 2007. Last December, the Chair of the EU Justice and Home Affairs Council underlined that the establishment and work of the Agency would not affect the CoE’s position as the primary source and interpreter of European human rights standards but will instead add value to the important work carried out by the CoE and other institutions. It was also stressed that the new agency will focus on

<sup>34</sup> *Kudła v. Poland* [GC], No. 30210/96, ECHR 2000-XI.

<sup>35</sup> *Sümmeli v. Germany* [GC], No. 75529/01, judgment of 08.06.2006.

<sup>36</sup> See PACE Rec. 1733 (2006), “Human Rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s concerns”.

<sup>37</sup> PACE Rec. 1696 (2005), “Plans to set up a Fundamental Rights Agency of the EU” (Doc. 10449) and Rec 1744 (2006), “Follow-up to the Third Summit: the CoE and the Fundamental Rights Agency of the EU” (Doc. 10894).

the fundamental rights in the area of Community law. It will not monitor the state of fundamental rights in individual member states<sup>38</sup>. As stressed by the President of the Assembly in January 2007, the EU should scrupulously honour its undertaking that the Agency will not duplicate CoE activities. It is therefore crucial that the CoE be represented on the Agency's management structures by a person who is not only genuinely independent, but who also has a thorough knowledge of the CoE, its standards, mechanisms and activities. The very debate surrounding the Agency has served to demonstrate the CoE's central role to Europe's political leaders<sup>39</sup>.

30. In April 2006, the Assembly considered that "the political will impelling the proposals for the Agency should be employed to give new impetus towards EU accession to the ECHR, which would be the most important step in ensuring that the EU acts with full respect for human rights"<sup>40</sup>. Currently, while all member states of the EU are subject to the Convention since all EU members are also members of the Council of Europe, the supra-national institutions to which they have transferred considerable powers are not, representing a weakness in the current system of securing human rights in Europe. Tragically, as a result, a sort of "black hole" exists at the very centre of Europe where the Council of Europe's human rights mechanisms cannot be implemented. As stressed by the Parliamentary Assembly, its "concern in this matter is motivated by a desire to ensure that the inhabitants of Europe as a whole benefit from the most effective and efficient overall human rights protection system".<sup>41</sup> Accession of the EU/European Community to the Convention will serve to remedy negative consequences arising out of such a disparate system. In this context, the Committee of Ministers referred to the Warsaw Summit Action Plan, which indicated that "early accession of the EU to the ECHR would strongly contribute to ensuring coherence in the field of human rights in Europe"<sup>42</sup>.

31. Another major step for the EU in the area of human rights will probably be the adoption of some form of 'European constitution', and with it the Charter of Fundamental Rights. These developments are to be seen as opportunities for completing the human rights system in Europe, at the heart of which will remain the individual access model that has proven its great worth time and again, and which has become a basic feature of European legal culture.

32. It is the responsibility of both organisations to make their action complementary and to uphold the complete range of instruments and mechanisms for promoting and protecting human rights which the CoE has developed over the whole continent<sup>43</sup>.

33. At the Warsaw Summit in May 2005, the Heads of State and Government of the CoE member states – including those of all EU member states – reaffirmed the central role of the CoE in protecting and promoting human rights and resolved to enhance its role as an effective mechanism of pan-European co-operation in this field, including by ensuring that the EU and its member states make better use of available CoE instruments and institutions.

*ii. Human rights defenders and independent national human rights institutions*

34. Human rights defenders – individuals, groups, non-governmental organisations, human rights lawyers, journalists, ombudspersons, national human rights institutions, etc. – play a primary role in the protection and promotion of human rights, often supported by intergovernmental organisations, in particular the CoE. However, concern about the increasing climate of repression in which human rights defenders operate in many countries of Europe is growing<sup>44</sup>, in particular in Belarus and the

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<sup>38</sup> See Doc 11127, 20.01.2007, Reply from the CM to Rec. 1744 (2006).

<sup>39</sup> Opening Statement of Mr René van der Linden, PACE January 2007 part-session, 22.01.2007.

<sup>40</sup> PACE Rec. 1744 (2006), "Follow-up to the 3rd Summit: the CoE and the proposed fundamental rights agency of the EU". A report on the accession of the EU/European Community to the ECHR is under preparation by the Committee on Legal Affairs and Human Rights.

<sup>41</sup> Rec. 1744 (2006), Follow-up to the 3<sup>rd</sup> Summit: the CoE and the proposed fundamental rights agency of the European Union, § 4.

<sup>42</sup> CM reply to PACE Rec. 1744, Doc. 11127, 20.01.2007, quoting from the Guidelines on the Relations between the CoE and the European Union, § 4.

<sup>43</sup> See also the report of Mr Jean-Claude Juncker on relations between the CoE and the EU.

<sup>44</sup> CoE Colloquy on "Protecting and supporting human rights defenders", Strasbourg, 13-14.11.2006; CM/Monitor(2005)1 Vol. II final revised of 11.10.2005, on Freedom of Association, § 181. See also 'Human rights defenders endangered', Helsinki Committees Document growing Persecution in Europe and Central Asia,

Russian Federation<sup>45</sup>. Concerns have also been expressed mainly with respect to Azerbaijan, Georgia and Turkey<sup>46</sup>.

35. In some CoE member states, human rights defenders are facing numerous obstacles and restrictions ranging from direct use of violence, often by non-state actors, to more insidious measures, such as administrative obstacles and restrictive laws, which may have an equally drastic impact on the ability of NGOs and individuals to promote and defend human rights. In a number of CoE member states, human rights defenders face defamation campaigns aimed at discrediting them or are accused of being unpatriotic or extremists. Particularly at risk are human rights defenders belonging to or campaigning on behalf of vulnerable groups, notably those working for the protection and promotion of the rights of migrants, national or ethnic minorities, women and sexual minorities<sup>47</sup>. In the most extreme cases, human rights defenders receive death threats or are assassinated like the recently murdered journalists Anna Politkovskaia, who was the most prominent Russian journalist reporting on human rights violations in the Chechen Republic<sup>48</sup>, and Hrant Dink in Turkey (see also below). It shows the gap which exists between CoE and other international standards and principles and the reality for human rights defenders in the field. In addition, attacks on human rights defenders are often not properly investigated and many perpetrators, organisers or instigators are never prosecuted. Such impunity is not acceptable. The activities of extremists who threaten those raising controversial issues are also of particular concern<sup>49</sup> (see also the report of the Political Affairs Committee on the state of democracy in Europe).

36. In this respect, in January 2007, during a debate on the "Threats to the lives and freedom of expression of journalists", our Assembly recalled the importance of freedom of expression and information, protected by Article 10 of the ECHR. As the CoE does not dispose of a mechanism for systematically gathering and processing information on states' obligation to respect freedom of expression and information and media pluralism, the Assembly also called for new specific monitoring mechanisms for identifying and analysing attacks against journalists and other serious violations of media freedom in Europe, as well as progress made by national law enforcement authorities and national parliaments in their investigations of these attacks<sup>50</sup>. Since the issue of freedom of expression and information is dealt with in the report of the Political Affairs Committee and in the opinion of the Committee on Culture, Science and Education, I will only very briefly recall that in its *Handyside* judgment of 7 December 1976, the European Court of Human Rights has affirmed that freedom of expression applies not only to information and ideas that are favourably received or regarded as inoffensive or indifferent, but also to those that offend, shock or disturb the state or any sector of the population.

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20.11.2006. The IHF will devote its 2007 yearly campaign to the topic of endangered human rights defenders; see also AI 2006 report. A report on the situation of human rights defenders in Europe will be prepared by the Committee on Legal Affairs and Human Rights.

<sup>45</sup> PACE Res. 1455 (2005), "Honouring of obligations and commitments by the Russian Federation" and Doc. 10568. See also Persecution of NGOs and human rights defenders in Russia, Centre for the Development of democracy and human rights, November 2006; IHF report 11.02.2006 on Russia and Belarus; HRW 23/11/2006, Human rights defenders endangered', Helsinki Committees Document growing Persecution in Europe and Central Asia., 20.11.2006.; see also AI 2006 report. IHF recognition award was presented to Russian Human Rights lawyer Karinna Moshkalenko. IHF stressed that her work "deserves recognition, not persecution". see HRW and FIDH, 12.10.2006, Raising fear and insecurity for human rights defenders, Report of The Observatory for the Protection of human rights defenders; Centre "Demos": Persecution of and threats to human rights defenders working in the Chechen Republic and the Northern Caucasus on the wake of A. Politkovskaia's murder.

See also CoE Colloquy on "Protecting and supporting human rights defenders", Strasbourg, 13-14.11.2006 .

<sup>46</sup> The Observatory for the Protection of Human Rights defenders, 2005-2006.

<sup>47</sup> The PACE Committee on Legal Affairs and Human Rights is preparing a report on "Freedom of assembly and expression for lesbian, gay, bisexual and transgendered persons in member states", as well as a report on "Legal recognition of same-sex partnerships in Europe".

<sup>48</sup> Reportedly, Lidya Yussupova, activist of the human rights centre "Memorial", also received death threats in October 2006.

<sup>49</sup> In this connection, see, e.g., the assassination of the filmmaker Theo van Gogh in The Netherlands in November 2004.

<sup>50</sup> See PACE Res. 1535 (2007) and Rec 1783 (2007).

37. In Belarus, the systematic and worsening campaign of intimidation and persecution of independent journalists and civil society, already denounced by the Parliamentary Assembly<sup>51</sup>, persists. In December 2006, there were attempts to close down the Belarusian Helsinki Committee, the last remaining independent human rights organisation legally registered in the country<sup>52</sup>.

38. In the Russian Federation, the working environment for civil society, one of the main sources of independent voices in the country, has deteriorated significantly in the past two years. Reportedly, pressure on NGOs has taken a systematic form in 2006, in the name of enhancing national security, with activists addressing issues related to the conflict in the Chechen Republic bearing the brunt of violations<sup>53</sup>. The Russian revised law on NGOs, requiring stricter registration rules, has given rise to particular concerns<sup>54</sup>. The law, adopted on 10 January 2006, differed in several respects from the drafts submitted to the CoE for legal expertise<sup>55</sup>. It would appear that several of its new provisions raise serious issues related to the freedom of assembly and association (Article 11 ECHR) and to the prohibition of discrimination (Article 14 ECHR). It is in particular claimed that the law gives the government excessive powers to interfere arbitrarily in the activities of human rights NGOs<sup>56</sup>. In this respect, I should mention that in February 2007, the EU Presidency denounced the "coercive closure" of the Russian-Chechen Friendship Society (RCFS). According to the EU Presidency, the RCFS case shows that the "NGO law as well as the Law on Countering Extremist Activity can be implemented in an arbitrary manner"<sup>57</sup>.

39. In Turkey, the reform of legislation on associations achieved as part of discussions relating to opening of negotiations for its entry into the EU, reflects notable progress<sup>58</sup>. However, a wide range of opinions remain open to criminalisation, with writers, journalists, publishers, human rights defenders and academics among those prosecuted under a law which penalises "denigration" of Turkishness, the state and its institutions (article 301 of the Criminal Code)<sup>59</sup>. Hrant Dink, a Turkish journalist and writer of Armenian descent, outspoken advocate of human rights and Turkish-Armenian reconciliation, was shot dead in Istanbul on 19 January 2007. He had been convicted in recent years on the basis of article 301. Two weeks before his murder, he had filed an application before the European Court of Human Rights. In January 2007, the Parliamentary Assembly called on the Turkish parliament to abolish once and for all the provision on the basis of which Hrant Dink had in the past been prosecuted and subjected to trials stirring up nationalist sentiment against him<sup>60</sup>. Since then, future reform of this provision has been announced by various high level officials. In the case of Hrant Dink, I should like to welcome the fact that his murder was promptly and strongly condemned by the political leadership and civil society. In addition, robust investigations started immediately leading to the apprehension of suspects and other consequences.

40. Ombudsmen (whether with a nation-wide or a regional /local, a general or a thematic competence), national human rights Commissions and other national institutions for the promotion and protection of human rights have a very important place in the European human rights system. Their independence should be protected by law and in practice. The CoE Commissioner for Human Rights has an explicit mandate to promote the setting-up of such "national human rights structures", to

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<sup>51</sup> PACE Res. 1372 (2004), Rec. 1658 (2004) and Doc. 10107, "Persecution of the press in the Republic of Belarus"; PACE Res. 1371 (2004), Rec. 1657 (2004) and Doc. 10062, "Disappeared persons in Belarus".

<sup>52</sup> IHF 14.12.2006.

<sup>53</sup> See footnote 45.

<sup>54</sup> See in particular PACE Res. 1479 (2006), § 12, "The Assembly expresses concern that the recently adopted law on the legal status of civil society organisations falls short of the standards of the CoE".

<sup>55</sup> At the end of 2005, at the request of the Russian authorities, the CoE gave an expert opinion on the draft amendments to Russian NGO legislation, subsequently adopted by the Law of 10.01.2006. The adopted Law differed in several respects from the drafts submitted to the CoE for appraisal. On 20.03.2006, the Secretariat prepared another opinion on the adopted Law that was officially transmitted to the Russian authorities as a confidential document. Later an expert opinion on secondary acts was also prepared and transmitted to the Russian authorities.

<sup>56</sup> HRW 23.11.2006, "Such as those granting officials the right to order inspections, the right to be present at events and the requirement for international groups to notify the government of their plans in advance". See also AI 2006 report.

<sup>57</sup> EU Statement/Russian Chechen Friendship Society - 01/02/07

<sup>58</sup> CM/Monitor(2005)1 Vol. II final revised of 11.10.2005, on Freedom of Association, § 119, and EC 2006 Progress report.

<sup>59</sup> IHF, Human Rights Defenders in Turkey, 03.04.2006, IHF report, Observatory report 2005 and AI report 2006.

<sup>60</sup> PACE Res. 1535 (2007), "Threats to the lives and freedom of expression of journalists" (Doc 11143).



facilitate their work and to co-operate with them<sup>61</sup> and he has organised a number of activities with these institutions in 2006<sup>62</sup>. The 2006 report of the Wise Persons mandated to make proposals to ensure the long-term effectiveness of the European human rights system suggests that an active network of the Commissioner and national human rights structures could be of assistance to the European Court of Human Rights. In this respect, the establishment, development or consolidation of Ombudsman institutions in a number of countries in recent years – as in Armenia<sup>63</sup>, Bulgaria, Montenegro, the Russian Federation, Serbia (as yet only regional), and “the former Yugoslav Republic of Macedonia” – are most welcome. As regards the Russian Federation, the Ombudsman for Human Rights, Mr Lukin, plays an important mediating role. In addition, a regional ombudsman office opened in the Chechen Republic in 2006 as did offices in Dagestan, Ingushetia and North Ossetia. On a positive note also, in Turkey, the Law establishing an Ombudsman was adopted<sup>64</sup>.

41. States have the obligation and the responsibility to protect human rights defenders and their work, also by creating conditions that fully enable the exercise of advocacy, monitoring and reporting on human rights. There is also a need to ensure protection, even of a physical kind, of human rights defenders who face specific threats. Last but not least, attacks on human rights defenders should be condemned at the highest level of the state and prosecuted vigorously.

42. While the main responsibility lies with the governments which should promote and support the vital role played by human rights defenders in their respective countries, the CoE is well placed to promote a favourable environment for their work and should develop a strong mechanism supporting and protecting human rights defenders in Europe. It has been proposed that the CoE Commissioner for Human Rights should play a key role in supporting human rights defenders in Europe, also in co-operation and in complementarity with other active intergovernmental organisations, in particular the OSCE/ODIHR Focal Point for Human Rights Defenders, the EU and the United Nations’ Special Representative on Human Rights Defenders. The CoE Commissioner for Human Rights was encouraged to develop the role and the capacity of his Office so as to achieve an effective mechanism of protection of human rights defenders in urgent cases. Such a mechanism must be able to count on the close co-operation of member states<sup>65</sup>.

43. A National Action Plan for Human Rights is one tool that has been found to be useful to diminish the gap between international standards and domestic reality. A few European countries, in particular Lithuania, Norway, Moldova and Sweden, have so far worked with comprehensive National Action Plans for Human Rights. However, many other countries have thematic action plans which cover specific fields, such as racism or domestic violence. The CoE Commissioner for Human Rights has started a dialogue on such Action Plans with representatives of CoE member states<sup>66</sup>.

### III. Rule of law: the backbone of human rights implementation

44. Since there is no specific report on the rule of law for the Assembly debate – although democracy is dealt with by the Political Affairs Committee – I considered that it was necessary to add a chapter dealing with some of its principles – an independent and effective judiciary and the necessary accountability of human rights violators – since these remain problematic in many CoE member states. The aim is not to examine the rule of law in depth, which is done in a separate report currently under preparation<sup>67</sup>, but to recall that it is the backbone for human rights implementation. Nobody is above the law and everybody must be treated equally before the law. Independence, impartiality, integrity, fairness, equality, responsibility, competence and diligence are core values and

<sup>61</sup> Article 3 (c) and (d) of his mandate (CM Resolution (99) 50).

<sup>62</sup> See <http://www.coe.int/t/commissioner>.

<sup>63</sup> See reference to the constitutional reform in Armenia in PACE Res. 1532 (2007), § 6.1, "Honouring of obligations and commitments by Armenia".

<sup>64</sup> The institution has still to be established in practice.

<sup>65</sup> See CommDH(2006)19, "Conclusions of Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, CoE Colloquy on "Protecting and supporting human rights defenders", Strasbourg, 13-14.11.2006, <http://www.coe.int/t/commissioner>

<sup>66</sup> See <http://www.coe.int/t/commissioner>

<sup>67</sup> Principle of the rule of law (Rapporteur Mr Erik Jurgens, Netherlands, SOC).

principles which should guide the judiciary<sup>68</sup>. In this respect, I wish to focus on recent trends and major threats to the proper functioning of the judiciary in Europe, in particular impunity, and the abuse of judicial processes for political purposes which are a gangrene undermining the rule of law in Europe.

*i. Independent and effective judiciary*

45. In order to inspire confidence in the judicial systems of the 46 Council of Europe member states, justice must be fair, ensure proper access for all and must not be slow as "justice delayed is justice denied". The proper functioning of a judicial system is a key factor in a state that guarantees human rights and founds its institutions on the rule of law. Improving the efficiency of justice is also one of the means of reducing "at source" the number of applications to the ECtHR.

– Independence of the judiciary

46. Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. The right to an independent and impartial tribunal is clearly established in Article 6 of the ECHR. In 2006, the fundamental importance under the Convention of the real and effective independence of the judiciary was underlined by the Court in the *Zubko* case concerning Ukraine<sup>69</sup>. In addition, in two judgments of 2006<sup>70</sup> drawing on its well-established case law on this issue, the Court recalled the general unacceptability of civilians being tried by military courts. It should be stressed that in both countries concerned – Turkey and the United Kingdom – the legislation in question has since been modified in order to bring it into conformity with the requirements of the Convention.

47. However good they may be, national laws can be effective only if judges are independent, impartial, competent and efficient. In this respect, judicial independence has two aspects, one is the independent state of mind each judge needs to adopt when deciding disputes. The other dimension of judicial independence falls within the responsibility of the state, which is required to create the necessary pre-conditions for the individual judge to be in such a state of mind. The European Charter for the Statute of Judges provides a reference for states wishing to reinforce the independence of the judicial powers.

48. In practice, however, undue political influence on the criminal justice system, in particular in the investigation of corruption cases<sup>71</sup>, remains a concern in a number of CoE member states. Most of the time, it is exercised through pressure on judges, prosecutors and investigators, instruction of the prosecution by the executive, patronage and influence in the selection, appointment or removal of judges or prosecutors, politically motivated prosecutions/convictions or, to the contrary, failures to prosecute or immunities preventing prosecution and protecting corrupt politicians or other high ranking officials<sup>72</sup>.

49. Recently, concerns with respect to the independence of the justice system in Azerbaijan<sup>73</sup>, the Russian Federation<sup>74</sup> and Ukraine<sup>75</sup> have been expressed on several occasions. The issue of alleged political prisoners in Azerbaijan has not yet been finally closed despite the commitment undertaken by

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<sup>68</sup> As reflected in Recommendation Rec(94)12 of the CoE Committee of Ministers on the Independence, Efficiency and the Role of Judges, the Bangalore Principles on Judicial Conduct and the Charter for the Status of European judges.

<sup>69</sup> *Zubko and Others v. Ukraine*, Nos. 3955/04, 5622/04, 8538/04 and 11418/04, §§ 65-70, judgment of 06.04.2006.

<sup>70</sup> *Ergin v. Turkey (no. 6)*, No. 47533/99, judgment of 04.05.2006 and *Martin v. the United Kingdom*, No. 40426/98, judgment of 24.10.2006. In their comments to the introductory memorandum on this subject, the Turkish authorities indicated that "Necessary legal and constitutional changes have been made in 1999 in Turkey and since then no military judge sits in the State Security Courts. Furthermore, State Security Courts as such were abolished in 2004. The judgments of the ECtHR concerning this issue simply refer to the conditions before 1999 in Turkey".

<sup>71</sup> The issue of corruption is dealt with in the report of the Political Affairs Committee.

<sup>72</sup> See Octopus Conference on corruption and democracy, November 2006.

<sup>73</sup> See in particular PACE Res. 1457 (2005), Follow-up to Res. 1359 (2004) on political prisoners in Azerbaijan, and HRW 2007 Report.

<sup>74</sup> See PACE Res. 1455 (2005) and Doc. 10568, "Honouring of obligations and commitments by the Russian Federation"; Doc. 11031, "Fair trial issues in criminal cases concerning espionage or divulging state secrets".

<sup>75</sup> PACE Res. 1466 (2005) and Doc. 10676, "Honouring of obligations and commitments by Ukraine".

Azerbaijan upon accession to the CoE to “release or grant a new trial to those prisoners who are regarded as “political prisoners” by human rights protection organisations...”<sup>76</sup>. This issue is now being dealt with by the Parliamentary Assembly’s Monitoring Committee in the framework of its monitoring procedure of Azerbaijan. New alleged politically motivated arrests were still reported before the 2005 parliamentary elections<sup>77</sup>. A report by this Committee, including this issue, is under preparation with a view to an Assembly debate in the April 2007 part-session. Recently organised exams for the recruitment of new judges in Azerbaijan, with CoE assistance, have been considered successful and should contribute to improving the image of justice in the country in the long-run.

50. The Group of States against Corruption (GRECO)<sup>78</sup> has identified various ways in which the guarantee of independence of the judiciary has been impaired by structures which allow, or are unable to prevent, influence on judges or prosecutors. Particular problems highlighted were the process of selecting and appointing judges, as well as the system for promoting or evaluating them. In this respect, the procedure for judicial appointments has become a particular focus of attention of the Venice Commission in the countries of former Yugoslavia where judges were traditionally elected by parliament, which leads to an undue politicisation of judicial appointments. The importance of involving an independent judicial council in judicial appointments is increasingly recognised. Within both the Venice Commission and the Consultative Council of European Judges, further reflection on the appropriate role and composition of such councils is currently ongoing.

51. Furthermore, the assignment of cases to a particular judge should be done in a manner that is not open to abuses. Court presidents should not be able to assign cases to a particular judge at his/her pleasure. Also, once a case is before a judge, it should not be transferred to another judge unless there are compelling reasons which should be communicated to the parties in open court.

52. In spite of measures already taken by CoE member states, it would appear that criminal law and criminal enforcement are inadequate to deal with breaches of ethical standards, undue influence or corrupt practices in the judiciary in a comprehensive and effective manner. Judicial systems need to develop and improve continuously to address the increasing challenges posed to judicial independence and accountability and to consolidate the people's confidence in justice. There is obviously a need to further promote implementation of existing standards regarding the independence of justice, such as standards of conduct, and to ensure an increased independence of the prosecutor's office. In addition, it would appear that a “credible and independent oversight body” within the judiciary, “that would be responsible for receiving and investigating complaints, protect complainants against retaliation, protect judges against blackmail and provide for a transparent review, decision and sanctioning for any established breaches of ethical standards”<sup>79</sup> would be a useful tool in this respect.

– The contribution of constitutional courts and their independence

53. Constitutional justice is the key to guaranteeing that the principles of democracy, human rights and the rule of law contained in the national constitutions are really implemented. All European countries have some degree of constitutional review in the wide sense. However, at times the independence of constitutional courts and equivalent bodies is threatened by other state powers.

<sup>76</sup> PACE Opinion No 222, § 14.iv.b. See also Human Rights Law Journal, Vol 23 Nos 8-12, 31.12.2002, The notion of “political prisoner” as defined for the purpose of identifying political prisoners in Armenia and Azerbaijan, Stefan Trechsel.

<sup>77</sup> See HRW 2007 Report. See also Res. 1457 (2005), § 8, “The Assembly firmly condemns the serious dysfunctions of the Azerbaijani judicial system, resulting in the creation of new cases in which dozens or even hundreds of people find themselves charged and tried collectively for offences, such as attempted coups, offences against state security, terrorism and serious breaches of the peace, which do not always relate to the facts”.

<sup>78</sup> GRECO is an enlarged partial agreement which was created at the Council of Europe in 1999 – see appendix to the present report. In 2007, the Russian Federation has become the 44<sup>th</sup> member state of GRECO, which now includes nearly all Council of Europe member states, as well as the Republic of Montenegro and the United States of America. The Russian Federation thus joins other member countries who have actively committed themselves to fighting corruption by accepting to participate in the mutual evaluation process (see also the report of the Political Affairs on the state of democracy in Europe).

<sup>79</sup> See Octopus Conference on corruption and democracy, 20-21.11.2006, summary and conclusions, § 97.

54. The independence of constitutional courts and their members requires constitutional guarantees in the procedure of appointment of judges (like qualified majorities for the election of judges by Parliament), their term of office, judges' qualifications, incompatibilities, guarantees against dismissal (irrevocability), the duty of "ingratitude" or independence towards the appointing authority, judges' immunities but also the publicity of the work of the Court and collegiality. The possibility for dissenting opinions, material guarantees (salary), judicial ethics as well as the budget of the court and the execution of its judgments are all related to the court's independence, which must not only be respected but must also be 'seen' to be respected. The importance of a right to individual petition before constitutional courts should also be stressed. Since the introduction of this right, the Constitutional Court of Armenia has started to play a vital role as guarantor of the country's institutions and of human rights<sup>80</sup>.

55. However, in some countries the independence of constitutional courts has been threatened and some have been 'punished' by failure to appoint judges to vacant seats. This amounts to an attempt to 'starve' the court by pushing the number of remaining judges below the necessary quorum (as in Ukraine in 2005-2006)<sup>81</sup>. Another form of 'starvation' is the refusal to give a constitutional court an appropriate budget (as in Bosnia and Herzegovina in 2004)<sup>82</sup>. The independence and authority of constitutional courts is sometimes also threatened by the non-execution of their decisions, for example in Austria – the ongoing non-execution of a decision on bilingual topographical signs in the province of Carinthia by Governor Haider. In one case, the outright abolition of a constitutional court was averted following an intervention by the Venice Commission (Georgia, 2004), which plays an important role in supporting constitutional justice.

– Prosecutors

56. National systems vary in many ways, including the location and relationship of the office with respect to other branches of government, its responsibilities and powers within the criminal justice system and its role as regards the courts and other spheres of public administration. The Assembly has already made a number of recommendations to member states<sup>83</sup> and to the CoE Committee of Ministers on the role of the public prosecutor's office in a democratic society governed by the rule of law<sup>84</sup>. The role and scope of the powers of public prosecutors in the former socialist countries and in particular the Commonwealth of Independent States (CIS) have also been a concern of the Venice Commission, in particular with respect to the Russian Federation<sup>85</sup> and Ukraine<sup>86</sup>. After the end of one-party rule, prosecutors remain reluctant to see their powers reduced. While often enjoying formal independence, the powerful and centralised prosecution service is often *de facto* a tool in the hands of the presidential administration blocking the prosecution of abuses of power, or pressing trumped-up charges against perceived opponents. The Gongadze case under the regime of President Kuchma<sup>87</sup> in Ukraine, and the prosecution of leading Yukos officials in the Russian Federation<sup>88</sup> are well-documented examples of such abuses. As a result, it is imperative to have in place a Code of Practice regulating the conduct of investigations and other activities of prosecutors. It is also necessary to establish a credible and independent oversight body within the Prosecution Service.

– Effective remedies

57. As guaranteed by Article 13 of the ECHR, all victims of human rights violations should be provided with effective legal remedies. The right of access to a court in the determination of one's civil rights is a mainstay of the rule of law. Examination of the execution of judgments of the ECtHR

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<sup>80</sup> See PACE Res. 1532 (2007) , "Honouring of obligations and commitments by Armenia", § 5.2.

<sup>81</sup> The Venice Commission and the CoE PA have assisted the Ukrainian Court through direct support; the Venice Commission also gave an opinion pointing out solutions on how to avoid such problems in the future (opinion on the uninterrupted functioning of the Constitutional Court of Ukraine, June 2006, CDL-AD (2006)016).

<sup>82</sup> The Venice Commission also provided assistance in this case.

<sup>83</sup> See PACE monitoring Resolutions, most recently re. Armenia (Res 1532 (2007), § 5.3).

<sup>84</sup> See PACE Rec 1604 (2003), "Role of the public prosecutor's office in a democratic society governed by the rule of law" (Doc. 9796).

<sup>85</sup> CDL-AD(2005)014.

<sup>86</sup> CDL(2001)134.

<sup>87</sup> *Gongadze v. Ukraine*, Application No. 34056/02, Judgment, Strasbourg, 08.11.2005, final, 08.02.2006.

<sup>88</sup> PACE Res 1418 (2005), Rec 1692 (2005) and Doc. 10368 and Addendum, "The circumstances surrounding the arrest and prosecution of leading Yukos executives".

reveals shortcomings with respect to the existing domestic remedies: be it general remedies to prevent new kinds of violations or special remedies to deal with all situations in which the ECtHR has already established violations of the ECHR. "In Italy, and to a certain extent in Turkey<sup>89</sup>, the law still does not allow the reopening of domestic criminal proceedings impugned by the Court, and these governments have taken no other measures to restore the applicants' right to a fair trial despite repeated demands to that effect by the CoE Committee of Ministers and the Assembly"<sup>90</sup>. In 2006, the ECtHR also found violation of the right to an effective remedy in two cases concerning Bulgaria<sup>91</sup>. Serious concerns are also reported with respect to effective remedies in the Russian Federation, in particular the North Caucasus region<sup>92</sup>. It appears, notably, that a number of victims of human rights violations have faced threats or retaliation against themselves or family members, in some cases even assassination, when seeking redress before national courts or the ECtHR<sup>93</sup>.

58. Concerning remedies for excessive length of proceedings, the Venice Commission found that it was necessary to fast-track proceedings as a result of breaches of the reasonable time requirement. Pecuniary reparation should only be a solution of last resort.

– Execution of judicial decisions

59. The enforcement of domestic court decisions, within a reasonable time, is an integral part of the right to a fair trial for the purposes of Article 6 of the ECHR<sup>94</sup>. The high number of violations of this article found by the ECtHR in many CoE member states reveals an important structural problem of non-execution of domestic court decisions, which is particularly prevalent in Moldova<sup>95</sup>, the Russian Federation and Ukraine<sup>96</sup>. The first judgment of the ECtHR against Bosnia and Herzegovina, issued in 2006, concerns this very point<sup>97</sup>.

– *Res judicata* / Legal certainty

60. There is a considerable body of ECtHR case law on the possibility, in certain legal systems, of reopening proceedings which have ended in a judgment that has acquired final force (the so-called 'supervisory review procedures'). The Court has affirmed the incompatibility of such procedures with one of the fundamental tenets of the rule of law, the principle of legal certainty. While certain states have amended their procedural laws so as to comply with Article 6 of the ECHR, it remains a problem in other countries<sup>98</sup>.

– Fair trial, within a reasonable time

61. Cases raising one or more aspects of the fairness of legal proceedings (civil and criminal) have always accounted for a considerable proportion of the judgments delivered by the ECtHR. Of particular note in 2006 is the issue of the use of evidence obtained in violation of Article 3, i.e. by the use of torture or inhuman or degrading treatment. In 2006, in the case of *Jalloh v. Germany*<sup>99</sup>, as well

<sup>89</sup> Turkish Code of Criminal Procedure only provides for the reopening of proceedings in respect of European Court judgments which became final before 04.02.2003 or judgments rendered in applications lodged with the Court after 04.02.2003 (CM Interim Resolution ResDH(2005)113, 30.11.2005). See also ResDH(2007)1 adopted by the CM on 14.02.2007.

<sup>90</sup> See Res 1516 (2006); among other cases, *Dorigo v. Italy* and *Hulki Günes v. Turkey*. Concerning Turkey, see also the footnote above.

<sup>91</sup> *Capital Bank AD v. Bulgaria*, No. 49429/99, judgment of 24.11.2005.; *Zlinsat, spol. s r.o. v. Bulgaria*, No. 57785/00, judgment of 15.06.2006.

<sup>92</sup> A report on this issue will be prepared by the Assembly Committee on Legal Affairs and Human Rights.

<sup>93</sup> See PACE Doc 10774, "Human Rights violations in the Chechen Republic", and my report on cooperation with the ECtHR (Doc. 10387). See also § 21 above.

<sup>94</sup> See *Hornsby v. Greece* judgment of 19.03.1997, § 40. See also CM/Monitor (2001)14, Part 1, on the effectiveness of judicial remedies.

<sup>95</sup> See ECtHR cases re. Moldova, in particular *Popov v. Moldova*, judgment of 18.01.2005.

<sup>96</sup> See PACE Doc. 11020, "Implementation of judgments of the ECtHR". In 2006, this concerned many states, in particular Ukraine (this being the most frequent ground on which the State is found to violate the Convention) and the Russian Federation.

<sup>97</sup> *Jeličić v. Bosnia and Herzegovina*, No. 41183/02, judgment of 31.10.2006.

<sup>98</sup> In this respect, see also PACE Doc. 11020, "Implementation of judgments of the ECtHR", and Res. 1516 (2006).

<sup>99</sup> *Jalloh v. Germany* [GC], No. 54810/00, judgment of 11.07.2006.

as in cases concerning Turkey<sup>100</sup>, the Court made a general point about the utter unacceptability of the use of evidence extracted by torture or other forms of inhuman and degrading treatment. The most serious and continued concerns in this respect in CoE member states are reported in the Russian Federation<sup>101</sup>.

62. Fair trial issues in the context of the fight against terrorism, as well as in criminal cases concerning espionage or divulging state secrets<sup>102</sup> are also of particular concern. One of my recent reports details problems in this respect in several CoE member states.

63. One of the most important aspects related to the proper functioning of courts concerns the adoption of the principles of a fair trial within a reasonable time. "Justice delayed is justice denied". Complaints of this sort remain numerous. The cases decided by the Court in 2006 indicate that the problem of protracted proceedings is widespread, and that in a considerable number of states there is still no remedy for the problem, notwithstanding the requirements of Article 13. The problem of excessive length of judicial proceedings, and/or setting up an effective domestic remedy in this respect is currently being examined by the CoE Committee of Ministers in cases concerning 21 countries: Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Liechtenstein, Lithuania, Poland, Romania, San Marino, Slovakia, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom. Of particular note is the case of Slovenia, in respect of which over 140 judgments were handed down in 2006 finding a violation of Article 6 § 1 and Article 13<sup>103</sup>. The large number of cases of this sort creates heavy congestion on the docket of the Strasbourg Court, diverting a disproportionate amount of its time and resources to cases of minimal significance for human rights law. The problem of length of civil proceedings is particularly acute in Italy<sup>104</sup>.

64. The extent to which the excessive length of judicial proceedings has become a common and serious phenomenon in Europe represents one of the most evident failures of the principle of subsidiarity which underlines the whole European system of human rights protection. Reinforcing subsidiarity is the key to any viable and effective system of human rights protection. Due to member states' failure in this respect, the European Court of Human Rights is at risk of becoming itself an example for excessive length of proceedings amounting to a denial of justice.

*ii. Need to eradicate impunity*

65. As guaranteed by Article 13 of the ECHR, all victims of human rights violations should be provided with effective legal remedies. Since the adoption of the ECHR and the setting up of the CoE human rights protection mechanisms, much progress has been made to protect human rights in Europe and to bring those responsible for human rights violations to justice. However, there continue to be examples of impunity, even for the most serious crimes.

66. The duty on states to effectively investigate killings, disappearances and instances or credible allegations of torture or inhuman or degrading treatment is well established in Convention case law. In 2006, the Court continued to find procedural violations of Article 2 (Right to life), most of these in cases brought against Turkey in relation to deaths that occurred in the 1990s and for which the persons responsible have not been identified and/or punished, as required by Article 2. There were three such findings in cases against the Russian Federation. All of these were linked to military operations in the Chechen Republic in 2000; the Court found in each case that the state was also responsible for the victims' deaths. Regarding Article 3 (Prohibition of torture) particular mention should be made of the Okkali case v. Turkey in which the Court found that the excessively lenient sanction on the police officers amounted to *de facto* impunity<sup>105</sup>. In the Mammadov (Jalaloglu) case v.

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<sup>100</sup> *Örs and Others v. Turkey*, No 46213/99, judgment of 20.06.2006, and *Göçmen v. Turkey*, No. 72000/01, judgment of 17.10.2006.

<sup>101</sup> This issue is dealt with in more detail in Chapter VI (i).

<sup>102</sup> PACE Doc. 10086. See also PACE Res. 1418(2005), "The circumstances surrounding the arrest and prosecution of leading Yukos executives" (Doc. 10368).

<sup>103</sup> The absence of an adequate remedy was confirmed in the *Lukenda* judgment of 6.10.2005.

<sup>104</sup> See, in particular, Doc 11020 and CoE press release of 12.12.2006, "Italy: execution of judgments of the ECtHR concerning the excessive length of proceedings". See also ResDH(2007)2.

<sup>105</sup> Judgment of 17.10.2006.

Azerbaijan, in January 2007<sup>106</sup>, the Court found a violation of Article 3 not only because of the ill-treatment suffered in police custody but also for the lack of effective investigation into the applicant's allegation of ill-treatment.

67. Impunity enjoyed by perpetrators of the most serious crimes is often linked to places where the ECHR is not in force – Belarus – or areas facing obstacles to its implementation (see chapter IV below).

68. In Belarus, perpetrators of enforced disappearances documented in my report adopted by the Assembly in 2004<sup>107</sup> have still not been held accountable (see also chapter IV below).

69. In 2006, the Assembly underlined that serious human rights violations still occur on a massive scale and in a climate of impunity in the North Caucasus Region<sup>108</sup>. The Assembly also stressed that "in order to prevent future serious human rights violations, all law enforcement agencies active in the Chechen Republic should receive additional orders from the highest authorities to respect basic human rights in the course of their operations". On 13 March 2007, the CoE Anti-Torture Committee (CPT) issued its third public statement concerning the Chechen Republic, according to which "from the information gathered, it is clear that investigations into cases involving allegations of ill-treatment or unlawful detention are still rarely carried out in an effective manner; this can only contribute to a climate of impunity". The ECtHR has already delivered eight judgments<sup>109</sup> arising out of the Chechen conflict. Some 200 more individual applications relating to this conflict are currently under examination by the Court, raising mainly Article 2 (Right to life), Article 3 (Prohibition of torture) issues and the absence of effective investigation into allegations of torture.

70. In Turkey, despite some positive developments – in particular an increase in the number of convictions of perpetrators since 2003 – impunity for human rights violations, including torture, remains a concern<sup>110</sup>.

71. The Assembly has "paid special attention to the implementation by the Russian Federation, Turkey and the United Kingdom of judgments relating to abuses by security forces and/or the lack of effective investigations into such abuses<sup>111</sup>". It has "welcomed progress being made by Turkey and the United Kingdom in remedying structural underlying problems as well as the Russian authorities' willingness to do the same<sup>112</sup>". The Assembly also "encouraged the Russian authorities to implement as rapidly as possible judgments concerning action of the security forces, notably in relation to the Chechen Republic"<sup>113</sup>.

72. The fact that indicted war criminals are still at large in the Western Balkans is also of serious concern. Ratko Mladic and Radovan Karadzic are the most wanted war criminals in Europe. Intense international pressure brought about improved cooperation with the International Criminal Court for the Former Yugoslavia (ICTY)<sup>114</sup>, with the capture or voluntary surrender of a number of suspects accused of the most serious crimes, including war crimes and crimes against humanity. In this respect, the arrest of General Gotovina in 2005, as well as the ongoing domestic prosecutions, are major steps in addressing impunity for war crimes and crimes against humanity. However, lack of

<sup>106</sup> Judgment of 11.01.2007.

<sup>107</sup> PACE Res. 1371(2004), Rec. 1657 (2004) and Doc. 10062, "Disappeared persons in Belarus".

<sup>108</sup> PACE Res. 1479 (2006), "Human Rights violations in the Chechen Republic" and Doc. 10774. See also Res. 1455 (2005) and Doc 10568.

<sup>109</sup> Isayeva, Yusupova and Bazayeva (Nos. 57947/00, 57948/00, 57949/00, judgment of 24.02.2005); Khashiyev and Akayeva (Nos. 57942/00, 57945/00, judgment of 24.02.2005); Isayeva (No. 57950/00, judgment of 24.02.2005); Bazorkina (No.69481/00, judgment of 27.07.2006); Estamirov and others (No. 60272/00, judgment of 12.10.2006); Luluyev and others (No. 69480/01, judgment of 9.11.2006); Imakayeva (No. 7615/02, judgment of 9.11.2006); Chitayev and Chitayev (No. 59334/00, judgment of 18.01.2007).

<sup>110</sup> EC Progress report on Turkey, November 2006; IHF and AI 2006 reports; The Norwegian Helsinki Committee, Turkey: need for firm leadership on human rights, 25.01.2007.

<sup>111</sup> PACE Res. 1516 (2006), "Implementation of judgments of the ECtHR", § 13, and Doc. 11020. As concerns the United Kingdom, see also the submissions of the Committee on the Administration of Justice to the Committee of Ministers "in relation to supervision of cases concerning the action of the security forces in Northern Ireland", February 2007 <http://www.caj.org.uk/>.

<sup>112</sup> PACE Res. 1516 (2006), "Implementation of judgments of the ECtHR", § 13.

<sup>113</sup> Idem.

<sup>114</sup> A report on this issue is under preparation by the PACE Committee on Legal Affairs and Human Rights.

political will and deficiencies in domestic judicial systems have led to continued and widespread impunity for a large number of wartime violations.

73. Some NGOs<sup>115</sup> consider that failure to deliver justice to the victims of some of the most serious human rights violations in Europe in the last decade has left a legacy of impunity in Kosovo. This failure has been compounded by the general problem of accountability relating to the status of Kosovo, where power does not derive from the people but from a decision by the United Nations Security Council. While this may change, it would appear that a part of power will still be exercised by the EU, an organisation of which Kosovo is not a member and in which Kosovo citizens have no say. In addition, the staff of these international organisations enjoy immunity and their acts are not controlled as to their compatibility with human rights standards. For UNMIK this problem is being alleviated by the establishment of a human rights advisory panel providing an independent opinion to the Special Representative of the UN Secretary-General (SRSG) in the case of alleged human rights violations by "internationals". The question of the applicability of the Convention in Kosovo, and the resulting obligations – if any – of the states participating in KFOR are currently under examination by the ECtHR<sup>116</sup>. On a positive note, it should be mentioned that the CoE's CPT has recently obtained access to places of detention coming under the authority of the interim civil administration of Kosovo, as well as to NATO-run detention facilities.

74. The above examples of lack of accountability in Europe illustrate once more the gap between theory and practice. Impunity must be overcome since it denies justice to the victims, robbing them a second time of their rights. Impunity is the gangrene of the rule of law. By prosecuting and bringing to justice those responsible for human rights violations, it is clearly demonstrated that such violations are not tolerated, that nobody is above the law, not even those enforcing it. State authorities must show their political will to uphold the law and root out impunity by conducting prompt, thorough and impartial investigations and prosecutions.

75. Immunity from investigation and of prosecution for corruption is another cause for concern in CoE member states. Immunities varying in scope and nature exist in most if not all member states. In a number of its evaluation reports, GRECO recommended that the list of categories of persons covered by immunity and/or the scope of the immunities be reduced and that procedures for lifting immunities be rendered more efficient and simple. That being said, the risk of abuses of immunities must be weighed against the vulnerability of the particular office vis à vis the executive, which might justify the granting of a particular immunity, in particular when it was found that prosecutions could be politically motivated or the investigation and prosecution of offences could be unduly influenced. Consequently, for example, in several countries, the immunity provided to election candidates is no longer challenged, and in other countries, it has been explicitly recognised that moves by the government to strip election candidates of their immunity could be considered as being politically motivated in pre-election time. In all cases, GRECO has emphasised, however, that procedures for lifting immunities should be clear and transparent and should ensure that the necessary decisions are made free from political considerations.

#### **IV. "Black holes", secret detention, enforced disappearances and extrajudicial killings**

76. In this stocktaking exercise, from the very outset one has to question where and what are the most serious human rights violations in Europe. My concern is therefore twofold: first, to stress that in Europe there are still geographical areas ("black holes") where the CoE human rights mechanisms cannot, or can only partially, be implemented, and second, to stress that secret detention, disappearances and extrajudicial killings – the most serious human rights violations – still exist in Europe. These issues have too long been taboo; we can no longer close our eyes to them.

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<sup>115</sup> See in particular AI report, "The UN in Kosovo, a legacy of impunity", November 2006.

<sup>116</sup> A hearing was held on 15.11.2006 in *Behrami v. France* (Application No. 71412/01) and *Saramati v. France, Germany and Norway* (No. 78166/01). The first case raises Article 2 issues (right to life); the second concerns Article 5 (right to liberty). Another case concerning KFOR – *Kasumaj v. Greece*, no. 6974/05 – was communicated in 2006. The issues here are respect for property rights, access to a court and the availability of a remedy (Article 13).



i. "Black holes" and related issues

a. Belarus

77. Belarus is a former Soviet republic in which fundamental democratic reforms have not yet taken place and it is the last dictatorship in Europe which consequently cannot be admitted to the CoE (see the report of the Political Affairs Committee on the state of democracy in Europe). The Assembly has on several occasions pinpointed serious human rights violations<sup>117</sup>. The situation is reportedly still deteriorating<sup>118</sup>. Belarus also continues to execute the death penalty<sup>119</sup>. It therefore still qualifies as a "black hole" as regards human rights protection in Europe.

b. Areas within CoE member states facing obstacles to the effective implementation of the ECHR

78. Notwithstanding the fact that the ECHR applies to all States Parties, there are still in practice geographical areas within CoE member states where obstacles to its effective implementation exist. Our Assembly has already examined this issue on the basis of one of my reports<sup>120</sup>. These obstacles take various forms. Some are the result of armed conflict or emergency situations, occupation of part of a state's territory or intervention by one state on the territory of another, or the absence of effective control by a state over part of its territory. Other obstacles are due to the difficulties of submitting individual applications and others stem from the scale and gravity of violations.

79. To date, these territories include Nagorno-Karabakh and a number of secessionist areas whose authorities are not recognised internationally, i.e. the 'Moldovan Republic of Transnistria' in Moldova, as well as South Ossetia and Abkhazia in Georgia<sup>121</sup>, where Council of Europe standards of democracy, rule of law and human rights are *de facto* ignored. Serious problems also remain in northern Cyprus – under Turkish occupation since 1974, and in Kosovo – under international administration. As detailed in my previous report on this issue, cases concerning human rights aspects of the Cyprus problem have given rise to important judgments of the ECtHR, concerning notably the responsibility of a member state exercising *de facto* effective control over the occupied territory of another member state<sup>122</sup>.

80. In the case of *Ilaşcu et al. v. Moldova and the Russian Federation*<sup>123</sup>, no progress has been achieved as regards the release of Andrei Ivantoc and Tudor Petrov-Popa still detained in the "Moldovan Republic of Transnistria"<sup>124</sup>. As underlined by the Secretary General of the CoE in December 2006, these two persons have been detained for 13 years in an illegal prison in the middle of Europe<sup>125</sup>.

81. The specific situation of Kosovo, in particular the accountability issue, has already been described above<sup>126</sup>.

<sup>117</sup> See PACE Res. 1372 (2004), Rec. 1658 (2004) and Doc. 10107, "Persecution of the press in the Republic of Belarus"; Res. 1371 (2004), Rec. 1657 (2004) and Doc. 10062, "Disappeared persons in Belarus".

<sup>118</sup> See HRW, IHF, AI 2006 reports; Declaration of former President of European Parliament, 13.12.2006, when awarding the European Parliament's Sakharov Prize for freedom of thought to Belarusian opposition leader Alyaksandr Milinkevich.

<sup>119</sup> See Doc. 10911, "Position of the PA as regards the CoE member and observer states which have not abolished the death penalty"; and IHF, 6.10.2006.

<sup>120</sup> See Doc. 9730 and Rec. 1606 (2003), "Areas where the ECHR cannot be implemented".

<sup>121</sup> The CoE Commissioner for Human Rights visited Georgia, including South Ossetia and Abkhazia, in February 2007. The CPT has also announced a visit in Georgia, including South Ossetia and Abkhazia.

<sup>122</sup> See Doc. 9730, Areas where the ECHR cannot be implemented.

<sup>123</sup> *Ilaşcu and Others v. Moldova and Russia* [GC], No. 48787/99, § 490, ECHR 2004-VII. In this case, the Court found the applicants' detention to be arbitrary and unlawful and ordered the immediate release of the applicants still in detention.

<sup>124</sup> See ResDH(2006)26, 10.05.2006. See also AS/Mon (2006)12 (declassified).

<sup>125</sup> See CoE press release 766(2006). Both detained persons have a new application before the Court: *Ivantoc, Popa and Others v. Moldova and Russia*, No. 23687/05, communicated to both States in March 2006. It has been granted priority.

<sup>126</sup> § 73.

82. Finally, it must be recalled that the Assembly has noted with concern that the separatist territories, whose authorities are not internationally recognised, of Abkhazia, South Ossetia (Georgia) and the "Moldovan Republic of Transnistria" (Moldova) do not observe the abolition of the death penalty<sup>127</sup>. Abkhazia and the "Moldovan Republic of Transnistria" reportedly continue to sentence people to death.

*ii. Secret detention, enforced disappearances and extrajudicial killings*

83. The most outrageous human rights violations still take place in Europe: secret detentions, enforced disappearances and extrajudicial killings<sup>128</sup> are still reported, even in CoE member states. The Parliamentary Assembly has already had the opportunity on several occasions to denounce such practices in separate reports, in particular concerning Belarus and the Russian Federation. As indicated above (see chapter III), ending impunity is the strongest signal that can be sent to potential future perpetrators.

84. As the issue of missing persons is also being dealt with in the opinion of the Assembly Committee on Migration, Refugees and Population, in particular with respect to the Caucasus and the Balkan countries, as well as Cyprus, I will not dwell further on these regions.

*a. Belarus*

85. As documented in a report of the Parliamentary Assembly adopted in April 2004 on disappeared persons in Belarus<sup>129</sup>, leading representatives of the Belarus regime were implicated in a series of politically motivated disappearances. The Assembly recommended to the Committee of Ministers, *inter alia*, to consider suspending the participation of Belarus in various CoE agreements and activities, as well as any contacts between the CoE and the Belarussian government on a political level, until sufficient progress has been made in holding the alleged perpetrators accountable, and in the meantime to step up its cooperation with civil society in Belarus with a view to promoting human rights. So far, the alleged perpetrators – including a former Minister of the Interior and Prosecutor General – have still not been held accountable, despite the fact that the EU and the United States have imposed sanctions against the persons named in the Assembly's report.

*b. Council of Europe member states*

86. In October 2005, the Assembly unequivocally condemned enforced disappearances as a very serious human rights violation on a par with torture and murder. It expressed its concern that this humanitarian scourge has not yet been eradicated, even in Europe, and examined cases in CoE member states, in particular in Cyprus, Turkey, the Chechen Republic of the Russian Federation, Ukraine and Azerbaijan. The Assembly has also recently looked into the issue of missing persons from the conflicts in the Balkans<sup>130</sup> and is currently examining the issue of missing persons from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions<sup>131</sup>. Over a decade has passed since these conflicts and time is of the essence as evidence is being lost. It is essential that all sides co-operate fully with one another and with the International Committee of the Red Cross (ICRC), which plays a central role in this matter. Solving the issue of the missing and of violent and indiscriminate attacks on civilian targets is a humanitarian and human rights cause and must never be treated as a political issue (for further information on this, see the opinion of the Assembly Committee on Migration, Refugees and Population). With respect to the question of missing persons, I welcome the progress made in Cyprus on this issue.

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<sup>127</sup> See PACE Rec 1760 (2006), "Position of the PA as regards the CoE member and observer states which have not abolished the death penalty".

<sup>128</sup> On this issue, see also the Report of the UN Special Rapporteur, Philip Alston, E/CN.4/2006/53 of 08.03.2006.

<sup>129</sup> PACE Doc. 10062, Res. 1371 (2004) and Rec. 1657 (2004).

<sup>130</sup> Res. 1414 (2004) and Rec (2004), Persons unaccounted for as a result of armed conflicts or internal violence in the Balkans. See also the report on this issue by the Committee on Migration, Refugees and Population (Rapporteur: Mr Mevlüt Çavuşoğlu, Turkey, EDG, Doc. 10251).

<sup>131</sup> Report, Committee on Migration, Refugees and Population, Mr Leo Platvoet, (Netherlands, UEL) on "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions".

87. More recently, in his report of June 2006<sup>132</sup>, Mr Dick Marty, Chairperson of the Assembly Committee on Legal Affairs and Human Rights, denounced a "spider's web" of disappearances, secret detentions and unlawful inter-state transfers of detainees carried out by the United States, with the collaboration or tolerance of several CoE member states. He considered that "the following member states could be held responsible, to varying degrees, which are not always settled definitively, for violations of the rights of specific persons identified in his report: Sweden, Bosnia and Herzegovina, the United Kingdom, Italy, "the former Yugoslav Republic of Macedonia", Germany and Turkey. Some of these above-mentioned states, and others, could be held responsible for collusion – active or passive (in the sense of having tolerated or having been negligent in fulfilling the duty to supervise) – involving secret detention and unlawful inter-state transfers of a non- specified number of persons whose identity so far remains unknown:

- Poland and Romania, concerning the running of secret detention centres;
- Germany, Turkey, Spain and Cyprus for being "staging points" for flights involving the unlawful transfer of detainees;
- Ireland, the United Kingdom, Portugal, Greece and Italy for being "stopovers" for flights involving the unlawful transfer of detainees"<sup>133</sup>.

88. In its June 2006 Resolution<sup>134</sup>, the Assembly commended the Secretary General of the CoE for his swift and thorough use of his power of inquiry under Article 52 of the ECHR<sup>135</sup> and recommended that the CoE Committee of Ministers consider means of improving the CoE's ability to react rapidly and effectively to allegations of systematic human rights abuse involving several member states. The Assembly also stressed the need to enhance control over the activities of the secret services.

89. The Assembly also highlighted the widespread breach of the positive obligation of CoE member states to investigate such allegations in a full and thorough manner. On a positive note, the Council of Europe's work has triggered healthy developments in the United States, including the admission, by President Bush in September 2006<sup>136</sup>, of the existence of secret places of detention outside the United States, and in some European countries vindicating the exhaustive investigations carried out by the CoE, mainly through its Parliamentary Assembly<sup>137</sup>. These investigations are ongoing<sup>138</sup>. In Germany, Italy, Spain and the United Kingdom in particular, national parliaments and/or judicial authorities are actively fulfilling their duty to investigate such serious allegations.

90. In 2006 also, the Assembly expressed on several occasions its deep concern at the continued reports of secret detention and torture, often followed by enforced disappearances<sup>139</sup> or extrajudicial killings in the North Caucasus, in particular in the Chechen Republic<sup>140</sup>. As documented in Mr Bindig's report adopted by the Parliamentary Assembly in January 2006, "in some cases the individuals are released within a few days, often after having been beaten or tortured, in other cases they remain missing, and in some cases their bodies are found bearing signs of a violent death. Whilst fewer persons are now affected by such 'targeted' operations, which have replaced large-scale 'move-ups', they amount in the view of Russian human rights defenders to quasi-legalised 'death squad'

<sup>132</sup> Doc. 10957 and Addendum, "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states". See also Res. 1507 (2006) and Rec. 1754 (2006).

<sup>133</sup> Mr Marty's report, Doc. 10957, § 288-289.

<sup>134</sup> PACE Res. 1507 (2006), "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states".

<sup>135</sup> In this respect, see also SG(2006)01, Follow-up to the Secretary General's reports under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies (SG/Inf(2006)5 and SG/Inf(2006)13), Proposals made by the Secretary General, 30.06.2006.

<sup>136</sup> President Bush statement . See also CoE Press release of 7.09.2006.

<sup>137</sup> Doc. 10957 and Addendum, "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states". See also Res. 1507 (2006) and Rec. 1754 (2006).

<sup>138</sup> Mr Marty will present a follow-up report on these issues. See also the European Parliament Resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners.

<sup>139</sup> The issue of disappearances of applicants to the Court has already been mentioned above. In this respect, see also my report on cooperation with the Court, Doc. 10387.

<sup>140</sup> Doc. 10774, "Human Rights violations in the Chechen Republic" and Doc. 10957, "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states".

activities.”<sup>141</sup>. These reports have since been supplemented by new detailed testimony by victims, and credible allegations from NGOs and other bodies<sup>142</sup>. In a report of September 2006 to the UN General Assembly, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted that eight members of the UN Human Rights Council, including the Russian Federation “have failed to issue requested invitations” for his country-visits<sup>143</sup>.

91. In recent years, the CPT has carried out several visits to the North Caucasus, most recently in May and September 2006<sup>144</sup>. In May 2006, the CPT had grounds for believing that one or more facilities that could be used as unofficial places of detention were located in the region<sup>145</sup>. Relevant extracts of the CPT report appended to its third public statement concerning the Chechen Republic, issued in March 2007, provides further information in this respect. However, the Russian authorities have still not accepted publication of all the CPT reports on these visits. They also deny allegations of detention in secret detention places. As stated by the Assembly in June 2006, further serious investigations and analysis of secret detentions in the North Caucasus are still clearly required.

92. The total number of disappeared persons is not known. In a Special Report on disappearances in April 2006, the ombudsman of the Chechen Republic cited 2,707 cases between 2000 and 1 April 2006<sup>146</sup>. The human rights centre “Memorial” suggested that the figure was considerably higher. In October 2006, the former President of the Chechen Republic, Mr Alkhanov, appointed an Inter-Agency Commission to establish the whereabouts of 400 federal troops reported missing in action and 2,000 other individuals who had disappeared since 2000. He told journalists that the number of abductions in 2006 had halved since 2004<sup>147</sup>. Human rights NGOs claim that people are increasingly frightened to report disappearances to the law enforcement authorities<sup>148</sup>. In 2006, the ECtHR upheld the duty to investigate killings and disappearances in the case of *Bazorkina v. Russia*<sup>149</sup>.

93. In 2006, the Assembly expressed its deep concern “that a fair number of governments, member states and the Committee of Ministers of the CoE have failed to address the ongoing serious human rights violations in a regular, serious and intensive manner, despite the fact that such violations still occur on a massive scale and in a climate of impunity in the Chechen Republic and, in some cases, in neighbouring countries”<sup>150</sup>.

94. The Russian authorities consider that their operations in this area have been part of the international “war on terrorism”. They claim that the number of serious human rights violations has diminished in recent times, that the situation in the Chechen Republic is normalising and that “Chechnya is back within the framework of the Constitution of the Russian Federation”<sup>151</sup> (see also chapter V below).

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<sup>141</sup> Doc. 10774, “Human Rights violations in the Chechen Republic”, § 4.

<sup>142</sup> See the appendix to the CPT third public statement concerning the Chechen Republic, made on 13.03.2007; the first conclusions of the visit of the CoE Commissioner for Human Rights in the Chechen Republic of the Russian Federation, Strasbourg, 06.03.2007; the Special Report on disappearances (April 2006) of the Ombudsman of the Chechen Republic ([www.ombud.ru](http://www.ombud.ru), for the text of the report in Russian) and The International Commission of Jurists: Russia Leading Jurists assess counter-terrorism measures and protection of human rights, 01.02.2007. See also AI, HRW and IHF reports from January to November 2006, as well as Memorial reports and NGOs Alternative report on Russia to the UN Committee against torture (FIDH website).

<sup>143</sup> Interim report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions submitted by Philip Alston, Special Rapporteur, to the UN General Assembly, A/61/311 of 05.09.2006 §5. For more details, see also E/CN.4/2006/53 of 08.03.2006.

<sup>144</sup> In this respect see also Chapter VI(i).

<sup>145</sup> See CPT press release of 09.05.2006.

<sup>146</sup> [www.ombud.ru](http://www.ombud.ru), for the text of the report in Russian.

<sup>147</sup> Press Conference 27.10.2005, Interfax.

<sup>148</sup> [www.memo.ru](http://www.memo.ru) provides an analysis of the elections by the “Memorial” Human Rights Centre: “In a Climate of Fear”.

<sup>149</sup> Judgment of 27.07.2006.

<sup>150</sup> Res. 1479 (2006), “Human rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s concerns” (Doc. 10774).

<sup>151</sup> Quoted by Agence France Press, Moscow, 31.01.2006

95. Investigations and prosecutions relating to killings, disappearances and other serious human rights abuses are still clearly insufficient<sup>152</sup>. On a positive note, as already mentioned in Chapter II above, a regional ombudsman office opened in the Chechen Republic in 2006 as did offices in Dagestan, Ingushetia and North Ossetia.

96. Extrajudicial killings are also reported in Turkey<sup>153</sup>. On 9 November 2005, grenades thrown into a Kurdish bookshop in Semdinli in South-East Turkey killed one man and wounded eight. Local residents captured two gendarmes and a former PKK member, reported to work as a gendarmerie informer. They also seized a car licensed to the gendarmerie just outside the bookshop, in which they found weapons, including hand grenades, a sketch of the bookshop and a list of people with *inter alia* the name of the bookshop owner. The two gendarmes and the former PKK member were later found responsible for the bombing. However, a parliamentary investigation had to be abandoned prior to completion in order to diffuse tension between the armed forces and the government<sup>154</sup>. Judicial proceedings are pending before Turkish courts.

97. Reportedly, in 2006, there was an increase in the disproportionate use of lethal force by security forces during protests, as well as during normal policing activities<sup>155</sup>. It should also be stressed that nationalist Kurdish organisations have stepped up violent<sup>156</sup> and indiscriminate attacks on civilian targets.

#### c. Instruments to fight disappearances

98. A well-defined international legal framework on enforced disappearances is of the utmost importance. In this context, the recent adoption by the UN General Assembly of the new "International Convention for the Protection of All Persons from Enforced Disappearances" in December 2006, supported by the Assembly in its above-mentioned report of December 2005, is most welcome. The Convention outlaws the barbaric practice of enforced disappearance and foresees concrete measures to prevent and punish such crimes more effectively. It also outlaws any form of secret detention, including those currently being investigated by our Assembly, and recognises the right to truth and to reparation for victims and their relatives. It remains to be seen whether these measures, and the monitoring and urgent intervention mechanism foreseen in the UN convention are sufficiently strong.

99. As indicated in Resolution 1463 (2005), the Assembly will examine in due course the results achieved in the framework of the UN and consider any new initiatives that may be required from the CoE in order to achieve the desired level of protection against enforced disappearances. In this respect, the Committee of Ministers has recalled the powers of the ECtHR to carry out its own on-site investigations when examining applications lodged with it and to take interim measures, including to request urgently information from the authorities as to the whereabouts of a person who has allegedly disappeared in disturbing circumstances<sup>157</sup>.

## V. Protecting human rights while fighting terrorism

100. This chapter refers to one of the recent major challenges for our society: respect for human rights while fighting terrorism. As an organisation that has been dedicated since 1949 to upholding human rights, the rule of law and democracy, the CoE is determined to combat terrorism, which aims

<sup>152</sup> A report (for information) on "Legal remedies for human rights violations in the North Caucasus" is being prepared by the PACE Committee on Legal Affairs and Human rights.

<sup>153</sup> See UN reports of the Special rapporteur on extrajudicial, summary or arbitrary executions, in particular E/CN.4/2006/53/Add.1 of 27.03.2006, as well as reports of the Special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in particular E/CN.4/2006/98/Add2 of 24.03.2006. See also The Human Rights Association of Turkey, FIDH and AI 2006 reports.

<sup>154</sup> EC Progress Report on Turkey, November 2006, HRW 2006 report, and Report and KurdishMedia.com, 04.11.2006.

<sup>155</sup> Local and international NGOs as well as the Diyarbakir Bar Association, following the Diyarbakir incidents in 2006; HRW 2007 Report; The Norwegian Helsinki Committee, Turkey: need for firm leadership on human rights, 25.01.2007.

<sup>156</sup> The Norwegian Helsinki Committee, Turkey: need for firm leadership on human rights, 25.01.2007.

<sup>157</sup> Reply from the CM to PACE Rec. 1719 (2005), Doc. 10973.

to destroy these three fundamental values<sup>158</sup>. The CoE's action is based on three cornerstones: strengthening legal action against terrorism, safeguarding fundamental values, and addressing the root causes of terrorism. The added value of the CoE's contribution to the international fight against terrorism is its focus on human rights<sup>159</sup>.

*i. Council of Europe standards applicable to human rights and the fight against terrorism*

101. In the aftermath of 11 September 2001, the CoE has reviewed its existing anti-terrorist measures and reinforced them with new instruments and activities. Through its different institutions and organs, it has developed a wide range of standards applicable to human rights and the fight against terrorism. Since this issue is covered by a report under preparation on respect for human rights in the fight against terrorism, I will only briefly mention core CoE human rights instruments.

102. In 2002, the CoE Committee of Ministers adopted the Guidelines on human rights and the fight against terrorism, the first international text in this field, and in 2005 the Guidelines on the protection of victims of terrorists acts. Apart from the ECHR, the CoE has also adopted specific Conventions on human rights and the fight against terrorism, most recently an amending Protocol, opened for signature on 15 May 2003, to the 1977 Convention on the Suppression of Terrorism, the Convention on the Prevention of Terrorism, opened for signature on 16 May 2005 and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crimes and on the Financing of Terrorism, opened for signature on 16 May 2005. However, some of these conventions have been ratified only by very few CoE member states<sup>160</sup>.

*ii. Major concerns*

103. The fight against terrorism waged in the aftermath of 11 September has harmed the cause of human rights in different ways. It is too often used as an excuse to disregard fundamental principles established by international law. Security concerns have also been exploited to justify repressive measures against human rights defenders, who are sometimes accused of jeopardising perceived national interests.

104. A survey of the ECtHR's case law reveals that the deaths in a large percentage of the cases in which the Court found violations of Article 2 of the ECHR (Right to life) had been caused during anti-terrorist operations.

105. In June 2006, Mr Marty's report on "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states"<sup>161</sup> highlighted numerous and systematic human rights abuses committed in the pursuit of the so-called "war on terrorism" in a number of CoE member states (see chapter IV above).

106. Mr Marty's report also documents the troublesome worldwide trend to question the absolute ban on torture and ill-treatment in the name of security. In Germany and in the United Kingdom, officials have publicly justified the use of information obtained by torture for "operational purposes"<sup>162</sup>. In this respect, it should be recalled that the ban on torture and ill-treatment is enshrined in the Universal Declaration of Human Rights as well as in numerous international and regional human rights treaties, including the ECHR. The ECHR, *inter alia*, explicitly prohibits derogation from the provisions prohibiting torture. Given the absolute character of the ban on torture and other forms of ill-

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<sup>158</sup> In *Chraidi v. Germany*, No. 65655/01, judgment of 26.10.2006, the ECtHR had regard to the particular difficulties posed to States by international terrorism.

<sup>159</sup> See *The fight against terrorism*, CoE standards, 3<sup>rd</sup> Edition, CoE.

<sup>160</sup> For details see CoE website [www.coe.int](http://www.coe.int).

<sup>161</sup> Doc. 10957, "Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states".

<sup>162</sup> In his Information Memorandum "Alleged secret detention in Council of Europe member states", AS/Jur (2006) 03 rev, 22.01.2006, § 85, Mr. Marty, referring to Mr Schäuble's statements, quoting Spiegel online, 16.12.2005, notes: "He seems to consider that the use of information obtained by dubious means is acceptable, provided that the German services were not perpetrating acts of torture themselves". In the case of the UK, the former British Ambassador to Uzbekistan has presented evidence, which suggests that UK authorities knowingly continued to make use of evidence obtained through torture and supplied by Uzbek intelligence services, Mr Marty's Information Memorandum, *ibid.* at § 88. See also: [http://news.bbc.co.uk/2/hi/uk\\_news/3732488.stm](http://news.bbc.co.uk/2/hi/uk_news/3732488.stm).

treatment, it is clear that it can never be “balanced” against national security interests, as some governments have argued. The ECtHR has explicitly ruled out the possibility of such a balancing by stating: “The Court is well aware of the difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim’s conduct” (case *Chahal v. the United Kingdom*)<sup>163</sup>.

107. Extradition to countries likely to resort to torture or to apply the death penalty, even when relying on “diplomatic assurances” to the contrary, is also a major concern. A good argument against diplomatic assurances is that the perceived need for such guarantees is itself an acknowledgement that a risk of torture or ill-treatment exists in the receiving state.

108. In addition to the US government having violated international law in its counter-terrorism efforts, it appears that a number of European countries have themselves adopted new anti-terrorism measures having negative implications for the enjoyment of fundamental rights. Since a report on respect for human rights in the fight against terrorism is being prepared by the Assembly’s Committee on Legal Affairs and Human Rights, I will only point out some key concerns regarding:

- provisions undermining the absolute ban on torture;
- the excessive length of pre-trial detention;
- restrictions to the right to a fair trial;
- increased police and intelligence powers that give rise to concerns about undue intrusion into private life;
- restrictions on freedom of expression; as well as
- increasingly restrictive asylum and immigration policies.

109. The CoE has on many occasions voiced its concern about these practices in the fight against terrorism, including the indefinite imprisonment of foreign nationals on no precise charge and without access to an independent court (as in the US facilities in Guantanamo Bay<sup>164</sup>), detention or harassment on the grounds of political or religious activism, or arbitrary and discriminatory stop-and-searches.

110. In order to obtain a representative picture of anti-terrorism legislation, the Assembly report under preparation on this subject is likely to provide a critical overview of the legislation and practice of several member states, including the key role of judicial review<sup>165</sup>. Here, the combined effect of several laws on human rights and the rule of law deserves particular attention. In this respect, the International Commission of Jurists has stressed the cumulative impact of recent laws in the Russian Federation<sup>166</sup>. On 1 March 2006, the Federal Council of the Russian Duma endorsed an anti-terrorist law, which grants the authorities the power to eliminate terrorist targets outside the national territory, on the strength of a decision by the President. In addition, amendments adopted in July 2006 to the 2002 Law on Countering Extremism have broadened the definition of “extremist activity”<sup>167</sup>, which now

<sup>163</sup> Judgment of 15.11.1996, § 79.

<sup>164</sup> PACE Res. 1507 (2006), Rec. 1754 (2006) Doc. 10957 and Addendum, “Alleged secret detentions and unlawful inter-state transfers of detainees involving CoE member states”; PACE Res. 1340 (2003), “Rights of persons held in the custody of the US in Afghanistan or Guantanamo Bay” and Doc. 9817, as well as Doc. 10388, “The United States of America and international law”.

<sup>165</sup> The Committee on Legal Affairs and Human Rights is preparing a report on “Respect for human rights in the fight against terrorism”. See, e.g., the House of Lords 2004 judgment in which the British anti-terrorism legislation was found to be incompatible with Articles 5 and 14 of the ECHR, and which led to the United Kingdom’s withdrawal of its derogation under Article 15 of the ECHR. For a comprehensive overview consult the UK Joint Committee on Human Rights report on “Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuation in force of sections 1 to 9) Order 2007, March 2007 <http://www.parliament.uk/jchr>

<sup>166</sup> See in particular The International Commission of Jurists: Russia Leading Jurists assess counter-terrorism measures and protection of human rights, 01.02.2007.

<sup>167</sup> The definition of “extremist activity” in the 2002 Law on Countering Extremism already included violent actions against the state, any actions aimed at inciting national, racial, religious and social enmity in connection with violence or threats of violence; humiliation of national dignity; vandalism and mass disorders; propaganda of the exclusivity, superiority or inferiority of people on the ground of their social, racial, religious, national and linguistic group; propaganda and demonstration of Nazi or similar symbols. This law has already been criticised by NGOs on the grounds that the definition was too broad and could be applied at the discretion of prosecutors to restrict

also includes public slander of state officials, use or threatened use of violence against the authorities, any public appeal for, or justification of, or even simple expression of sympathy with an alleged extremist act<sup>168</sup>.

111. I would like to stress that there is no conflict between the duty of states to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine human rights. Safeguarding persons from terrorists' acts and respecting human rights both form part of a seamless web of protection incumbent upon the state. Both contemporary human rights and humanitarian law allow states a reasonably wide margin of flexibility to combat terrorism without contravening human rights and humanitarian legal obligations<sup>169</sup>. We cannot win the fight against terrorism with methods which deny the very foundations of our democracies and of our justice systems, whose destruction is the terrorists' aim. We must fight terrorism with legal means, lest we hand the terrorists victory. In reply to those who feel that the ECHR is no longer relevant to the current circumstances of the fight against terrorism, I should like to quote the President of the Assembly, Mr van der Linden, who recalled that "the Convention was drafted in the aftermath of the bloodiest, most destructive war the world has ever seen. It is not a luxury for times of peace, but a necessity to prevent tyranny and conflict"<sup>170</sup>.

112. Finally, one should stress that the wide attention given to the perceived threat of religious extremism in public debate, and the tendency to portray Islam as being incompatible with human rights, also contributed to fuel intolerant attitudes toward Muslims in Europe (see also chapter VII below).

## **VI. Human rights and the protection of vulnerable persons**

### *i. Treatment of persons deprived of their liberty*

113. Through its standards and its various control mechanisms, in particular the ECtHR, the CPT<sup>171</sup> (or often called "Anti-Torture Committee"), the Parliamentary Assembly<sup>172</sup> and the Commissioner for Human Rights, the CoE plays a unique role with respect to the treatment of persons deprived of their liberty.

114. The Anti-Torture Committee was established to examine the treatment of persons deprived of their liberty with a view to strengthening the protection of such persons from torture and from inhuman or degrading treatment or punishment. It can inspect, at any moment, any detention facility located in a contracting state. The CPT has compiled a comprehensive catalogue of standards for adequate treatment and accommodation in detention facilities<sup>173</sup>. These standards have inspired a number of national or international texts. The real challenge, however, is their full implementation.

115. The CPT has highlighted that the treatment of persons deprived of their liberty deserves attention throughout Europe, in all types of places of detention (police stations, prisons, psychiatric hospitals, detention facilities for foreign nationals detained under aliens' legislation, for juveniles and women, etc.). In many CoE member states, ill-treatment of detainees takes the form of degrading living conditions: overcrowding, illness, malnutrition and deplorable sanitary conditions are the shared

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the actions of many lawful and non-violent organisations. Memorial – a leading human rights organization – was reportedly issued a warning on the basis of this law in February 2006.

<sup>168</sup> This law was also referred to by the BBC in the context of the murder of the former FSB member Alexander Litvinenko in London, in December 2006.

<sup>169</sup> See the ICJ Declaration on Upholding human rights and the rule of law in Combating terrorism adopted on 28.08.2004.

<sup>170</sup> CoE press release 09.09.2005.

<sup>171</sup> See the 16<sup>th</sup> General Report on the CPT's activities, covering the period 01.08.2005 to 31.07.2006: "The work of the CPT is designed to be an integrated part of the CoE system for the protection of human rights, placing a proactive non judicial mechanism alongside the existing reactive judicial mechanism of the ECtHR".

<sup>172</sup> See PACE Rec. 1747 (2006) and Doc. 10922, "European prisons charter".

<sup>173</sup> See "The CPT standards" CPT/Inf/E(2002)1-Rev.2006, they cover police custody, imprisonment, training of law enforcement personnel, health care services in prisons, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments, as well as juveniles and women deprived of their liberty, as well as the fight against impunity. See also, *inter alia*, "Twenty guidelines on forced return" and the "European Prison Rules".



fate of hundreds of thousands of prisoners<sup>174</sup>. It appears that the treatment of foreign nationals detained under immigration legislation (transit zones in airports, deportation of foreign nationals etc.), as well the treatment of persons sentenced to life in prison, of prisoners in poor health, and the excessive use of means of restraint in psychiatric establishments are concerns in many CoE member states<sup>175</sup>.

116. In 2006, the ECtHR found a violation of Article 3 (Prohibition of torture) in two judgments against Moldova, on the ground that each applicant's serious physical condition – in one case, the consequence of severe ill-treatment at the hands of the police<sup>176</sup> – was not properly treated. Inadequate care for a multiple sclerosis sufferer imprisoned in Greece was also found to violate Article 3<sup>177</sup>. The state's duty to adapt the prison environment for wheelchair-bound prisoners was affirmed in a case against France<sup>178</sup>. The duty to afford sufficient and appropriate treatment to prisoners suffering from severe mental illness was also highlighted in a case against France (the authorities' undeniable efforts were nevertheless acknowledged)<sup>179</sup>.

117. The abolition of the death penalty and its replacement by long sentences raise specific problems; the remoteness and isolation of prisoners serving long sentences must not lead to violations of basic human rights and dignity<sup>180</sup>. Serious concerns in this respect were recently expressed about the situation of persons sentenced to life imprisonment in Azerbaijan<sup>181</sup>.

118. As regards prisons and probation, several other major issues would also deserve more attention in a number of member states, in particular:

- the overuse of deprivation of liberty which leads to the persisting problem of overcrowding in prisons;
- the overly harsh treatment of juvenile offenders in certain countries, e.g. the United Kingdom<sup>182</sup>;
- the often poorly financed and badly structured system of community sanctions and measures, which does not allow courts to make enough use of it;
- the poorly developed inspection and complaints' systems, i.e. the levels of accountability and transparency of prison systems;
- the problem of the harsh conditions of detention often imposed on pre-trial detainees, which are incompatible with the presumption of innocence.

119. However, the most striking and shocking finding is that a number of prisoners and other persons deprived of their liberty are still being subjected to torture or other forms of inhuman and degrading treatment in Europe<sup>183</sup>. In many CoE member states, there are reports that law enforcement officials – occasionally or even systematically – use excessive force against persons detained in connection with common criminal offences. While this behaviour affects both citizens and foreigners, Roma and immigrants are often at particular risk. The CPT has emphasised that the danger of intimidation and ill-treatment is greatest in the period immediately following a person's arrest by the police. To avoid this danger, everyone taken into custody must be granted, at the beginning of their detention, the right to inform a close relative of their arrest, to consult a lawyer, and to be seen by a doctor<sup>184</sup>.

<sup>174</sup> See Doc. 10922, "European prisons charter", see also Rec. 1747 (2006), and CM reply, Doc 11041.

<sup>175</sup> See CPT general reports.

<sup>176</sup> *Boicenco v. Moldova*, No. 41088/05, judgment of 11.07.2006.

<sup>177</sup> *Serifis v. Greece*, No. 27695/03, judgment of 02.11.2006.

<sup>178</sup> *Vincent v. France*, No. 6253/03, judgment of 24.10.2006.

<sup>179</sup> *Riviere v. France*, No. 33834/03, judgment of 11.07.2006.

<sup>180</sup> See Doc. 10922, European prisons charter.

<sup>181</sup> See FIDH/HRCA report "Après l'abolition de la peine de mort, les condamnés à perpétuité en danger de mort", January 2007, *Mission Internationale d'enquête*.

<sup>182</sup> See case *T. v. The United Kingdom*, (No. 24724/94), judgment of 16.12.1999 and case *V. v. The United Kingdom*, (No. 24888/94), judgment of 16.12.1999.

<sup>183</sup> See CPT website, as well as CoE/Themes.torture.

NB: The CPT has made a conscious decision not to define torture and other forms of ill-treatment since that is a matter for the ECtHR.

<sup>184</sup> See CPT web site and Coe.int.files/themes/torture

120. The most serious and persistent incidences of torture and ill-treatment of persons deprived of their liberty in CoE member states, and the lack of convincing efforts to eradicate them, are reported in the Russian Federation, in particular in the North Caucasus<sup>185</sup>. In its third public statement concerning the Chechen Republic, the CPT indicated that it “remains deeply concerned by the situation in key areas covered by its mandate. Resort to torture and other forms of ill-treatment by members of law enforcement agencies and security forces continues, as does the related practice of unlawful detentions”. It would appear that safeguards against torture (including access to legal counsel, to independent medical examination and judicial review of arrest, as well as the right to relatives being notified of the fact of arrest) are often circumvented<sup>186</sup>. According to the “Alternative report on the Russian Federation to the UN Committee against torture” presented by NGOs, which examined the fourth periodic report submitted by the Russian Federation under the UN Convention against Torture (November 2006)<sup>187</sup>, some positive changes have taken place in the Russian penitentiary system in recent years, but serious concerns remain with respect to impunity for torture, conflicting functions of prosecution authorities resulting in ineffective investigations of complaints of ill-treatment, and the absence of an adequate system of compensation for torture victims. In a Special Report on Torture issued on 6 April 2006, the Ombudsman of the Chechen Republic described torture as a problem that began with counter-terrorist operations in 2000 and is still in need of a solution<sup>188</sup>.

121. According to the CPT<sup>189</sup>, despite a clear prevalence of good cooperation between the CPT and Parties to the Convention, there have been isolated examples of attempts to disguise the true situation in places visited. In addition, CPT delegations “have gained the distinct impression that inmates at places visited had been warned against making any complaints”. The CPT considered that any such behaviour on the part of state officials would be “totally unacceptable”<sup>190</sup>. NGOs reported that the persons interviewed by the CPT delegation visiting Grozny in September 2006 were put in significant danger since one of the armed guards provided by the Russian authorities had taken photographs of all persons entering the office of the human rights group “Memorial”, for interviews with the CPT<sup>191</sup>. Reportedly, Mrs Rita Ersenoyeva, disappeared three weeks after her meeting with the CPT in Memorial’s office<sup>192</sup>. With respect to cooperation with the CPT, the Russian Federation does not regularly authorise publication of the CPT’s reports. By so doing, the Russian Federation deprives itself of the opportunity for valuable public discussions on progress made in eradicating torture and ill-treatment. In addition, in its third public statement concerning the Chechen Republic, the CPT noted that the “Russian authorities consistently refuse to engage in a meaningful manner with the CPT on core issues”. Considering that “this material speaks for itself”, the CPT has also chosen to make public relevant extracts of its visit report and of the Russian authorities’ comments<sup>193</sup>.

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<sup>185</sup> See in particular the CPT third public statement concerning the Chechen Republic, made on 13.03.2007; the first conclusions of the visit of the CoE Commissioner for Human Rights in the Chechen Republic of the Russian Federation, Strasbourg, 06.03.2007; see also *Mikheyev v. Russia*, final judgment of 26.04.2006 and *Chitayev and Chitayev v. Russia*, judgment of 18.01.2007; PACE Doc. 10568, Honouring of obligations and commitments by the Russian Federation of 03.06.2005 and Doc. 10774 of 21.12.2005. New reports confirm the trend in the Human Rights abuses in the Northern Caucasus described in PACE January 2006 report, according to which “persons are reportedly being arbitrarily detained and subjected to torture and ill-treatment, in order to force them to confess to crimes that they have not committed. Once they have signed a “confession”, they are transferred to another detention facility where they have access to a lawyer, but the confession obtained under duress appears to secure their conviction by the Court” (see Doc 10774, §. 6). See also AI report: Russian Federation, torture and forced “confessions” in detention, 22.11.2006, and NGOs Alternative report on Russia to the UN Committee against torture (FIDH website).

<sup>186</sup> See in particular the CPT third public statement concerning the Chechen Republic, made on 13.03.2007; AI report, 22.11.2006 and the NGOs Alternative report on Russia to the UN Committee against torture (FIDH website).

<sup>187</sup> See IHF website.

<sup>188</sup> See the judgment of *Chitayev and Chitayev v. Russia* of 18.01.2007 : violations of Articles 3, 5 and 13, ECHR in a case from 2000.

<sup>189</sup> See the 16<sup>th</sup> General Report on the CPT’s activities, covering the period 01.08.2005 to 31.07.2006.

<sup>190</sup> *Idem*, § 14.

<sup>191</sup> Reportedly, when CPT members were informed of this, they protested and raised the matter with the Chechen and the Russian authorities. Information from “Demos” on Cooperation of the Russian Federation with international organisations.

<sup>192</sup> Information from “Demos” on Cooperation of the Russian Federation with international organisations.

<sup>193</sup> CPT third public statement concerning the Chechen Republic, made on 13.03.2007.

122. It would also appear that torture and ill-treatment remain a widespread problem in Azerbaijan<sup>194</sup>. Regrettably, the authorities of Azerbaijan have not yet authorised the publication of the latest CPT reports documenting its visits to the country. In addition, as already indicated above, the issue of alleged political prisoners is still a matter of concern. The CoE has, on several occasions, already requested the release of a number of prisoners on humanitarian grounds<sup>195</sup>.

123. Despite positive developments in Turkey<sup>196</sup>, and attempts by new governments in Georgia and Ukraine to tackle the issue of torture and ill-treatment, such abuses have reportedly not yet been eradicated in these countries<sup>197</sup>.

124. Moreover, as already indicated above (see chapter V), evidence continues to come to light of resort to secret detention<sup>198</sup>, torture and inhuman or degrading treatment in various places, in the context of the fight against terrorism, while the prohibition of torture and ill-treatment is one of these few rights which admit no derogation.

125. Independent and impartial investigations and prompt prosecutions are the key to eradicating torture and other forms of ill-treatment. As continuously stated by the CPT, there must be “zero tolerance” of such abuses. In this connection, the establishment of the new UN Sub-Committee for the Prevention of Torture, following the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT) in 2006, is a landmark in the world-wide fight against torture and inhuman or degrading treatment. Ensuring synergy between the CPT and the new UN Sub-Committee will certainly represent a major challenge<sup>199</sup>.

*ii. Refugees, internally displaced persons, migrants, asylum seekers' issues*

126. “People migrate. They always have done, and they always will. Whatever their motives, people will continue to move – from persecution to freedom, from starvation to survival, from poverty to dignity and from despair to hope”<sup>200</sup>. Managing migratory flows has become a major challenge for all European countries.

127. Given that all these issues are covered by the opinion of the Assembly’s Committee on Migration, Refugees and Population, in particular the rights of irregular migrants, the treatment of asylum seekers and migrants at borders, as well as the integration of migrants, I will only very briefly mention a few elements<sup>201</sup>.

128. It should go without saying that all migrants are entitled to enjoyment of human rights. Human rights norms in the UN Treaties, the ECHR and the Social Charter also apply to non-citizens. All policies aimed at regulating migratory flows must respect human rights<sup>202</sup>. Irregular migrants are in a particularly vulnerable situation and must, as highlighted in Assembly Resolution 1509 (2006), be

<sup>194</sup> IHF 2006 report and HRW 2007 report. The report being prepared by the PACE Monitoring Committee will deal in more detail with this issue.

<sup>195</sup> See in particular PACE Res. 1457 (2005), “Follow-up to Res. 1359 (2004) on political prisoners in Azerbaijan”.

<sup>196</sup> See CPT report published on 06.09.2006 (CPT/Inf (2006) 30). The report refers in particular to the “favourable legal framework” combined with the Turkish Government’s message of “zero tolerance” of torture and ill-treatment” (§.16). The report further indicates that “the information gathered during the CPT’s December 2005 visit would indicate that the curve of ill-treatment by law enforcement officials remains on the decline” (§. 20).

<sup>197</sup> See in particular AI, HRW and IHF 2006 reports. With respect to Turkey, see the CPT report published on 06.09.2006 (CPT/Inf (2006) 30): “However, there are clearly no grounds for complacency, all the more so as reports continue to appear of ill-treatment by law enforcement officials in different parts of the country” (§. 20). See also the EC 2006 Progress Report and The Norwegian Helsinki Committee, Turkey: need for firm leadership on human rights, 25.01.2007.

<sup>198</sup> See Chapter IV above.

<sup>199</sup> One of the major strengths of the UN system is the obligation for States Parties to the OPCAT, to foresee, at national level, prevention mechanisms with large monitoring competences with respect to places of deprivation of liberty, which is a fundamental guarantee against ill-treatment. These national mechanisms should play a crucial role in the future.

<sup>200</sup> See CoE press release of 18.12.2006, Statement of the CoE Secretary General on the occasion of the International Day of Migration.

<sup>201</sup> This Committee is also preparing a report on “A new response to migratory flows”.

<sup>202</sup> See the CoE Commissioner for Human Rights’ view point “Migrants should not be denied their human rights”, [www.coe.int](http://www.coe.int).

guaranteed certain basic rights. In the absence of a comprehensive European instrument protecting the rights of migrants, it is disappointing to note that only three member states of the Council of Europe have ratified the International Convention on the Rights of all Migrant Workers and Members of their Families (Azerbaijan, Bosnia and Herzegovina and Turkey). All member states of the Council of Europe should ratify this instrument.

129. The situation of individuals arriving illegally in Europe is alarming<sup>203</sup>. The CPT has recently paid increasing attention to the treatment of irregular migrants when arriving in Europe and during their detention. In its view, common European immigration policies, currently under discussion, should not undermine CoE efforts aimed at guaranteeing fundamental rights to the persons concerned. The Assembly in 2006 expressed particular concerns about the mass arrival of migrants and asylum seekers on Europe's Southern shores<sup>204</sup>, making it clear that the issue was not simply a border management issue or a migration management issue, but that certain humanitarian and human rights standards needed to apply. The Assembly will continue to monitor mass arrivals on Europe's Southern shores in the course of 2007.

130. There is a lack of consistency and quality of the asylum system in Europe with huge variations of acceptance rates for asylum seekers. The recognition rate for refugee status is, for example, particularly low in Cyprus<sup>205</sup>. The use of accelerated asylum procedures also raises concerns, especially when the notion of safe country of origin or the principle of safe third country are applied, or when special procedures are adopted at the border for dealing with asylum seekers. On this very issue, the ECtHR has declared admissible a group of applications from asylum seekers who were among the more than one thousand persons who landed on the island of Lampedusa (Italy) in March 2005, coming from the Libyan coast. The case has been accorded priority.

131. It should also be recalled that the situation of refugees and internally displaced persons (IDPs) is still an issue of concern in a number of CoE countries, in particular in the Western Balkans and Caucasus regions. In the Western Balkans, a major concern is the rate of return and the sustainability of the return, with discrimination and hostility hampering the return process. In the Northern Caucasus, the safety of returning IDPs is not yet assured. In the Southern Caucasus, local integration needs to be encouraged for IDPs and refugees and the right of return has to be guaranteed for when this becomes viable.

132. In most countries also, there is a need to strengthen dialogue on a fairer multicultural Europe. Diversity, rights and well-being – both of migrants and non-migrants – are not contradictory but are interdependent. The particular needs of migrant women and their possible contribution to integration and dialogue should be taken into account.

133. Given the complex challenges posed by migratory flows, the Assembly has already recommended the creation of a European migration observatory with the aim of defending human rights and dignity whilst monitoring all aspects of migration and the situation of migrants, and engaging in a dialogue with relevant non-member countries of the CoE.<sup>206</sup>

*iii. New forms of slavery, in particular trafficking in human beings*

134. The word "slavery" today covers a variety of human rights violations. These abuses include, for instance, trafficking in human beings, prostitution and forced labour<sup>207</sup>. There are no clear distinctions between different forms of slavery. The same families and groups of people are often victims of several kinds of modern slavery – for example, forced labour, child labour or child prostitution. Poverty of the victims is typically a common factor.

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<sup>203</sup> By way of example, see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (application No. 13178/03, judgment of 12.10.2006).

<sup>204</sup> Res. 1521 (2006) and Rec. 1767 (2006) on "Mass arrival of irregular migrants and asylum seekers on Europe's Southern shores". See also the report by the Committee on Migration, Refugees and Population (Rapporteur: Mr Christopher Chope, United Kingdom, EDG, Doc. 11053).

<sup>205</sup> For details, see the Opinion of the Assembly's Committee on Migration, Refugees and Population.

<sup>206</sup> See PACE Rec. 1655 (2004) and 1693 (2005).

<sup>207</sup> In this respect, see e.g., ECtHR Decision of 01.02.2005 on the case *Siliadin v. France* (No. 73316/01).

135. Since the opinion of the Assembly's Committee on Equal Opportunities for Women and Men will cover the issues of human rights violations that concern primarily women, in particular domestic violence, trafficking in human beings and forced marriages, I will limit myself to recalling the following elements.

136. The new Council of Europe Convention on Action against Trafficking in Human Beings 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 member states, but it has not yet entered into force. The Convention is based on the recognition that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and integrity of the human being. It focuses on measures to protect and promote the human rights of victims of trafficking. Following its entry into force, an independent monitoring mechanism capable of controlling the implementation of the obligations contained in the Convention (GRETA), will be set up.

137. As underlined in a report on agriculture and illegal employment in Europe<sup>208</sup>, modern-day enslavement and trafficking of seasonal agricultural workers concern a number of CoE member states. The report highlighted in particular the situation in Andalusia (Spain) and Bouche-du-Rhone (France). "Situations vary between countries, but all point to the same findings: the active population looking for work is, in part, constituted illegally and lastingly so as to create a real labour market and a casual, exploited workforce to match, often under outright conditions of modern-day bondage, since agricultural employees are underpaid for their work, working hours are elastic, social rights are minimised when they exist at all, social protection is not properly ensured and unscrupulous employers are seldom penalised"<sup>209</sup>. Seasonal agricultural workers' conditions of employment have to be improved by ending the disparity in regulations and making conditions of employment in agriculture subject to a binding legal framework applicable to all workers, whether permanent or seasonal, immigrants or nationals.

138. Although many countries have increased their efforts to combat trafficking, it would appear that there is still a gap between standards and concrete results. As stressed by the Office of the Commissioner for Human Rights, trafficking should be seen less as an issue of migration policies than an issue of protection of victims and their human rights<sup>210</sup>.

#### *iv. Others*

139. A wide range of other vulnerable groups could be included in this report, in particular disabled persons, children, the elderly, socially excluded persons, including Roma. A common ultimate aim in respect of all these groups should be to change not just laws, but also attitudes towards them.

140. As the issue of social rights is being dealt with in the opinion of the Assembly Social, Health and Family Affairs Committee, I will simply recall that, in May 2005, the Heads of State and Government of CoE member states decided to step up its work in the social policy field on the basis of the European Social Charter and other relevant instruments in order to define remedies and solutions which could be effective in fighting poverty and exclusion, ensuring equitable access to social rights and protecting vulnerable groups. In addition, they confirmed their commitment to combat all kinds of exclusion and insecurity of the Roma communities<sup>211</sup> in Europe and to promote their full and effective equality (in this respect, see also chapter VII below). It was also decided to consolidate the CoE's work on disability issues<sup>212</sup>, to promote effectively the rights of the child and to take specific action to eradicate all forms of violence against children<sup>213</sup>.

<sup>208</sup> Doc. 11114, Report by the Committee on the Environment, Agriculture and Local and Regional Affairs, Rapporteur Mr John Dupraz (Switzerland, ALDE); Rec. 1781 (2007).

<sup>209</sup> Mr John Dupraz, rapporteur on this issue.

<sup>210</sup> CoE campaign to combat trafficking in human beings, Regional seminar: Prevention, Protection and Prosecution, 5-6.12.2006, Office of the Commissioner for Human Rights.

<sup>211</sup> [http://www.coe.int/T/DG3/RomaTravellers/Default\\_en.asp](http://www.coe.int/T/DG3/RomaTravellers/Default_en.asp)

<sup>212</sup> Council of Europe web page on integration of people with disabilities

<sup>213</sup> See also, in this respect, PACE Doc. 11118, "Child victims: stamping out all forms of violence, exploitation and abuse", as well as CoE programme "Building a Europe for and with Children". Mrs Vermot-Mangold (Switzerland, SOC) is preparing a report for the Assembly on the disappearance of new-born babies for illegal adoption (Social, Health and Family Affairs Committee). See also the Issue Paper "Children and corporal punishment – the right not to be hit, also a children's right", by the CoE Commissioner for Human Rights.

141. With respect to children, reference should be made to the following two judgments of the ECtHR in 2006. In the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*<sup>214</sup>, the Court found that the detention of a five year old girl of Congolese nationality at an adult detention centre in Belgium for more than two months, followed by her repatriation – all without adequate supervision and support – violated the ECHR. The Court placed very heavy emphasis on the respondent state's failure to cater to the needs of a young child, separated from her family and detained in a totally alien environment. In the case of *Wallová and Walla v. the Czech Republic*<sup>215</sup>, the applicants are the parents of five children who were placed in care in 2000 on account of the family's inability to secure adequate accommodation due to lack of financial means. The Court considered that this was a particularly serious interference with the applicant's right to respect for family life. It recalled its case law on the positive obligation on the public authorities to support family life. The Court found that, in accordance with domestic law, the social services should have given priority to assisting and advising the parents so that they would be in a position to provide the necessary care to their children rather than resorting to institutional care.

## VII. Respect for diversity: indispensable in a multicultural society

142. The particularity of Europe is the diversity of traditions and cultures of European peoples with shared values and a common history. A multicultural Europe is a fact. The CoE strives to create a society in which diversity is accepted and respected.

### *i. Rights of persons belonging to minorities*

– The Council of Europe Framework Convention for the Protection of National Minorities

143. The acceptance of international scrutiny of minority policies and practices has become more widespread, with the Framework Convention for the Protection of National Minorities affirming its position as the main legal yardstick in Europe. In 2006, the number of State Parties to the Framework Convention increased to 39, due in part to the work of the Parliamentary Assembly<sup>216</sup>. Most countries today recognise the positive contribution of national minorities to their societies and the value of the Framework Convention as an objective legal standard and a tool for countering extremist positions, although anti-minority rhetoric still remains all too common in Europe, especially around election time.

144. The profile of the Framework Convention is raised by the fact that its monitoring mechanism has continued to develop its activities. Today, countries regularly invite the Advisory Committee to carry out monitoring visits and, by and large, pursue a constructive approach vis-à-vis the monitoring process. Some countries, however, including Austria, Cyprus and the United Kingdom, have hampered the monitoring process through significant delays in submitting their reports. Ireland and Norway have enhanced the transparency of the process in 2006 by being the first countries to make the opinions of the Advisory Committee public immediately upon receipt. Such steps reflect the fact that minority issues, while still politically sensitive, should be subject to the same open and transparent dialogue as that which is or ought to be applied to any other aspect of human rights.

145. However, significant gaps remain. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed but not ratified the Framework Convention, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified. Some of them have continued to face significant challenges linked to the diversity of their societies. In France, violent clashes in 2005 involving mostly French citizens of North African origin, led to heated debates about integration. It should be noted that, in a recent report, the Parliamentary Assembly examined the different points of view of the eight member states which have not yet ratified the Convention.<sup>217</sup>

146. Moreover, some countries that have ratified the Convention, such as Germany, have adopted a minimalist approach, reflected in restrictive declarations and reservations which limit the

<sup>214</sup> No. 13178/03, judgment of 12.10.2006.

<sup>215</sup> No. 23848/04, judgment of 26.10.2006.

<sup>216</sup> See in particular PACE Doc. 10961, 12.06.2006, "Ratification of the Framework Convention for the Protection of National Minorities by member states of the CoE".

<sup>217</sup> *Idem*. See also PACE Rec. 1766 (2006). ). In addition, PACE reports on minorities issues are under preparation by the Committee on Legal Affairs and Human Rights (see AS/Jur (2007) 01, Work Programme).

Convention's scope of application strictly to the so-called "historical" minorities, coupled with reluctance to engage in a dialogue at the national level on a more inclusive approach. Whilst it is a matter of political appreciation whether to grant certain Convention rights to immigrant communities<sup>218</sup>, the provisions on the need to promote a spirit of tolerance should be applied all-inclusively in order to avoid a deterioration of inter-ethnic relations, which is threatening in many countries.

147. In several member states, the integration of minority groups in society has become a major challenge, for example as regards the Russian-speaking minority (including many "non-citizens") in Latvia and Estonia<sup>219</sup>. Measures to promote proficiency in state languages are specifically relevant for persons belonging to certain minorities, in particular those that have arrived recently, but they must be pursued with adequate regard to the protection and promotion of the minorities' cultural rights<sup>220</sup>. In a number of states, minority languages are threatened. Minorities have often been disappointed with the slow rate of implementation of promising programmes and policies. A case in point is the Roma strategies which, in many countries, have only had a limited impact in practice. For example, despite the repeatedly stated intentions to the contrary, segregation of Roma in schools is still common.

148. National minorities have generally benefited from new laws against discrimination, which in many countries have widened the scope of protection and strengthened related remedies. This development would be reinforced if the rate of ratification of Protocol No 12 to the ECHR<sup>221</sup>, providing for a general prohibition of discrimination, would gain more speed. At the same time, discrimination has been used as an argument to block certain minority rights initiatives: special measures and mechanisms, aimed at ensuring effective equality and/or to advance the participation of national minorities, have been met with constitutional challenges on grounds of alleged discrimination in countries such as Slovakia and Montenegro.

149. A range of consultative bodies and new structures have been introduced to give minorities a voice in decision-making, providing new impetus to cultural and other initiatives of minorities. However, the real impact of these mechanisms remains in many cases limited, and they are in some cases used to undermine more critical voices, as the authorities often treat the consultative bodies as exclusive rather than 'just' privileged interlocutors. In some cases, only the most numerous minority communities have been able to participate effectively in important decision-making processes (for example, in the status-related processes in Kosovo<sup>222</sup>).

150. Whilst promising local initiatives celebrate minority cultures and their contribution to society, some of the most disturbing examples of hostility towards minorities have also taken place at the local level. In some localities – such as Kondopoga in the Russian Federation and Ambrus in Slovenia in 2006 – as well as in Greece (Roma issues), local tensions and pressure from the majority community have even forced minorities to leave their place of residence, without effective intervention by central authorities.

151. Bilateral co-operation on minority issues is an important feature of European minority rights protection schemes. Although there have been some unfortunate conflicts in this field (e.g. between Hungary and Slovakia, and between the Russian Federation and Georgia after bilateral tension led to the adoption of measures in the Russian Federation against Georgians<sup>223</sup>; minority issues in Greece and Turkey and in different regions of Serbia are the subject of ongoing work in the Assembly), we have recently also witnessed constructive bilateral efforts, including the launching of the work of the Romanian-Ukrainian Joint Intergovernmental Commission on National Minorities in 2006. States

<sup>218</sup> In this respect, some countries refuse the term "new minorities" and refer, instead, to "persons of immigrant origin", for instance.

<sup>219</sup> In this respect, see, for instance, the recent PACE Doc. 11094 on "Rights of national minorities in Latvia", and Rec. 1722 (2006) and CDL-AD(2007)001, "Report on non-citizens and minority rights", adopted by the Venice Commission on 15-16.12.2006.

<sup>220</sup> See also PACE report on "The 2003 guidelines on the use of minority languages in the broadcast media and the CoE standards: need to enhance co-operation and synergy with the OSCE", Doc 11030 and Rec. 1773 (2006).

<sup>221</sup> It entered into force on 01.04.2005.

<sup>222</sup> See also PACE Doc. 10393, "Protection of Human Rights in Kosovo", Res. 1417 (2005) and Rec. 1691 (2005).

<sup>223</sup> See ECRI statement on this issue, adopted on 15.12.2006 at ECRI's 41<sup>st</sup> plenary meeting.

should consistently view minority rights protection as an integral part of their human rights obligations and a permanent feature of a democratic society, not as a political issue conditioned on reciprocity or a temporary measure designed to accelerate European integration.

152. Evaluating and improving minority protection requires the availability of reliable data on the situation of minorities. Some countries, for example Germany and Norway, still need to do more in this respect, bearing in mind that their legitimate data protection concerns can be accommodated. It should be pointed out, in this connection, that the monitoring procedure set-up under the Framework Convention does not apply to states which have not ratified the Framework Convention, and these states therefore escape scrutiny.

– The Roma and Travellers issue

153. Since 1993, the Roma and Travellers issue has been at the heart of three of the Council's top priorities: protection of minorities, the fight against racism and intolerance and the fight against social exclusion. Roma and Travellers form a group of approximately 8-10 million people in Europe. They are present in almost all Council of Europe member states and in some Central and East European countries they represent over 5% of the population. As a result of centuries of rejection and persecution, many Roma and Travellers communities today live in very difficult conditions, often on the fringe of the societies in the countries where they live, and their participation in public life is very limited<sup>224</sup>. Forced evictions of Roma families, or planned forced evictions, have been reported in a number of CoE countries, in particular in Albania, Bulgaria, the Czech Republic, France, Greece, Romania, the Russian Federation, the Slovak Republic, Slovenia, Turkey and the United Kingdom<sup>225</sup>. On a positive note, "*Guidelines for Improvement and Legalization of Roma Informal Settlements in Serbia*" were signed in Serbia in January 2007.

154. Two important applications by Roma applicants are currently under examination by the Court: *D.H. and Others v. the Czech Republic*<sup>226</sup>, in which the applicants complain that the educational policies for Roma children in the Czech Republic are discriminatory; *I.G., M.K. and R.H. v. Slovak Republic*<sup>227</sup>, in which the applicants – Roma women – complain that they were sterilised without their knowledge or consent in a public hospital just after giving birth.

– Non-citizens belonging to minority groups<sup>228</sup>

155. The Venice Commission has engaged in a reflection on the position of non-citizens belonging to minority groups, aimed at guaranteeing a greater consistency and coordination between the national systems and the international instruments of minority protection. It has developed some guidelines in this area, to be used when assessing further draft legislation prepared by CoE member states.

ii. *Eradicating racism and intolerance in Europe*

156. Sixty years after the Second World War, Jews, Roma, and Gay and Lesbian people are still discriminated against in a number of CoE member states. In other words, racism and intolerance based on racial, ethnic or religious origin, sex or sexual orientation has not yet been eradicated in Europe.

157. A number of trends in this respect, mentioned below, can be distinguished from the country-by-country monitoring reports of the European Commission against Racism and Intolerance (ECRI). ECRI is the Council of Europe's independent human rights monitoring body in the field of combating racism, xenophobia, antisemitism and intolerance. ECRI's action covers all the measures needed to

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<sup>224</sup> [http://www.coe.int/T/DG3/RomaTravellers/Default\\_en.asp](http://www.coe.int/T/DG3/RomaTravellers/Default_en.asp)

<sup>225</sup> See CoE Commissioner for Human Rights: Viewpoint: "forced eviction of Roma families must stop", 04.09.2006 and European Roma Rights Centre.

<sup>226</sup> No. 57325/00. The Chamber delivered its judgment on 07.02.2006, finding no violation. The case was subsequently accepted for rehearing by the Grand Chamber.

<sup>227</sup> No. 15966/04.

<sup>228</sup> In this respect, see, for instance, the recent PACE Doc. 11094 on "Rights of national minorities in Latvia", Rec. 1722 (2006) and CLD-AD (2007) 001, "Report on non-citizens and minority rights", adopted by the Venice Commission on 15-16.12.2006.



combat violence, discrimination and prejudice against persons or groups of persons on grounds of race, colour, language, religion, nationality or national or ethnic origin. ECRI's programme of activities comprises three aspects: (1) country-by-country monitoring; (2) work on general themes; and (3) activities in relation with civil society.

158. The overall picture as regards contemporary forms of racism and racial discrimination is complex and disturbing, and intensified manifestations of racism and intolerance can be observed in many member states.

159. One of the new faces of racism is cultural racism. Today, the idea of "culture" appears to increasingly replace the idea of "race", and take on the role it used to play in the field of racism and discrimination. According to this new form of racism, cultures make up predefined entities which are homogeneous, rigid, and above all, incompatible with one another. Groups of persons are therefore defined by their culture, with some cultures being "superior" to others.

160. One point which is particularly important is that of the persistence of discrimination in everyday life. Despite the progress in legislation and other domains which has been made over the last few years, equal treatment is far from being a reality in daily life. Many people still suffer from discrimination in crucial fields of life, such as employment, education, housing, health, etc.

161. First of all, there are still manifestations of antisemitism in many European countries. These manifestations are not exclusively the actions of marginal or radical groups, but are often widespread phenomena, including in schools. These manifestations originate in different social groups and, in some European societies, some victims of racism and exclusion become themselves perpetrators of antisemitism.

162. There is also an increase in the climate of hostility towards persons who are Muslim, or believed to be Muslim. Islamophobia manifests itself in different guises within European societies. Muslims are more and more often targets of prejudice, discrimination and sometimes violence. Islam is often portrayed inaccurately on the basis of hostile stereotypes, the effect of which is to make this religion seem like a threat.

163. Certain groups of persons, notably Arabs, Jews, Muslims, certain asylum seekers, refugees and immigrants, and other visible minorities have become particularly vulnerable to racial discrimination as a result of the fight against terrorism engaged since the events of 11 September 2001.

164. Roma and Travellers are singled out as a particular target for racism throughout Europe. This finding applies to countries in Western Europe as much as to those in Eastern Europe. Most members of Roma communities are victims of numerous and varied human rights violations. Racism and racial discrimination are in many cases central elements of these violations.

165. Another cause for concern is the situation of migrants, refugees and asylum seekers. Xenophobia and discrimination towards them have not diminished, nor have the prejudices and stereotypes which are sometimes heard in political discourse and in the media. Immigrants, and particularly foreigners, are presented as the persons responsible for the deterioration of security conditions, terrorism, unemployment and increased public expenditure. Such attitudes have often given rise to widespread acts of xenophobic violence, whose authors are not always prosecuted with the required vigour.

166. The use of racist and xenophobic elements in political discourse is no longer confined to the sphere of extremist political parties, but is increasingly contaminating mainstream political life.

167. There is a need, throughout Europe, to increase efforts to promote tolerance and respect, and more importantly, to change mentalities in order to change reality. Concrete and practical solutions to deal with problems identified are proposed by ECRI, in the form of targeted country-specific recommendations. In addition, in its General Policy Recommendations, which are addressed to all member states, ECRI provides guidelines which policy-makers are invited to use when drawing up national strategies and policies.

168. Several challenges arise, however, in the field of ensuring that ECRI's work is used to tackle racism and racial discrimination in real terms. First, governments should in fact draw inspiration from them. Second, the Council of Europe should demonstrate more clearly and resolutely its determination to be an Organisation that combats racism and racial discrimination, by providing more political support for ECRI's action.

169. Equality between women and men is also an integral part of human rights<sup>229</sup> and sex-related discrimination is an impediment to the recognition, enjoyment and exercise of human rights and fundamental freedoms (Declaration of the Committee of Ministers, 1998). However, discrimination based on sex or sexual orientation still occurs on a large scale.

170. Whilst progress has been achieved in awareness raising in the field of gender equality<sup>230</sup>, much remains to be done, in the CoE<sup>231</sup>, as in member states, to adopt relevant texts and achieve changes in practice<sup>232</sup>.

171. Discrimination related to sexual orientation and gender identity is still widespread in Europe. This has been highlighted in recent years by extensive opposition to the right of lesbian, gay, bisexual and transgendered (LGBT) persons to freedom of assembly<sup>233</sup> in many countries, in particular in Latvia, Moldova, Poland, Romania and the Russian Federation. This opposition has manifested itself in a number of ways, particularly the banning of marches, the use of inflammatory language by politicians and religious leaders, violent counter-demonstrations, and failure by the police to provide adequate protection for LGBT demonstrators. Homophobia, including assaults on members of sexual minorities, still prevails in many countries. When it comes to same-sex partnerships<sup>234</sup>, two thirds of the CoE's member states do not provide any form of legal recognition. In this context, it should be recalled that the ECtHR has ruled against criminalisation of homosexuality. It has also taken a clear position against unequal ages of sexual consent, exclusion of homosexuals from the military and deprivation of child custody. In its judgments, the Court has emphasised that in principle, discrimination based on sexual orientation is no more acceptable under the Convention than that based on gender, race or religion.

172. In the light of the above, the entry into force of Protocol No 12 to the ECHR, providing for a general prohibition of discrimination, can only be welcomed. However, the lack of signature and/or ratification by many member states runs counter to their publicly expressed commitment to oppose all forms of discrimination and support the principle of equality.

## VIII. Stock-taking and proposals for improvements

### *i. The Council of Europe, Europe's human rights watchdog*

173. The role of the Council of Europe, as the **leading human rights organisation in Europe**, is irreplaceable: had it not been set up in 1949, it would now need to be created.

174. The Organisation now encompasses almost the entire continent and is the point of reference for and the guardian of human rights, democracy and respect for the rule of law in Europe. It possesses an **array of effective control mechanisms**, amongst which the ECHR, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Social Charter and the Framework Convention for the Protection of National Minorities, are at the forefront. These instruments, *inter alia*, possess independent review bodies, such as the European Court of Human Rights, unique in providing for the international judicial protection of human rights. This arsenal for human rights protection has been reinforced notably by the creation of the

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<sup>229</sup> In this respect, see also the Opinion of the Committee on Equal Opportunities for Women and Men.

<sup>230</sup> E.g., adoption of a Resolution and a Plan of Action by the 6<sup>th</sup> European ministerial Conference on Equality between women and men and Launching of the Campaign on combating violence against women, including domestic violence.

<sup>231</sup> E.g., adoption by the Council of Europe's Committee of Ministers of draft recommendations on gender equality.

<sup>232</sup> See also the Opinion of the Committee on equal opportunities for women and men.

<sup>233</sup> A report will be prepared by the Committee on Legal Affairs and Human Rights on "Freedom of assembly and expression for lesbian, gay, bisexual and transgendered persons in member states".

<sup>234</sup> A report is under preparation by the Committee on Legal Affairs and Human Rights on this issue.

European Commission against Racism and Intolerance (ECRI) and the institution of the Commissioner for Human Rights.

175. In addition to its **standard-setting** and **monitoring** activities, the Council of Europe runs **cooperation, assistance and awareness-raising programmes** in the legal and human rights fields, which include legislative expertise, capacity building and training. This work, often carried out in partnership with the European Commission, the OSCE, the United Nations and its specialised agencies, as well as non-governmental partners, **contributes effectively to the constant improvement and consolidation** of legal norms and their implementation in member states, thus strengthening democratic stability in Europe. The role of the Council of Europe in stimulating and actively supporting the creation of independent national human rights institutions in member states is an example of the Organisation's contribution to the consolidation of human rights institutions in Europe.

176. One of the greatest achievements of the Council of Europe, and of its Parliamentary Assembly in particular, is the **de facto abolition of the death penalty** in peace time in all member states.

177. These successes have been achieved with **very limited resources**, the total budget of the Council of Europe representing less than € 200 million in 2007 – including that of the Assembly and the Court – amounting to less than 15% of the 2007 budget of the European Parliament alone.

178. However, we must not become complacent with respect to this *acquis*, even though it has surpassed the organisation's founding fathers' most optimistic dreams. Our Parliamentary Assembly, composed of parliamentarians from the organisation's 46 member states, should not only acknowledge the Organisation's outstanding achievements, but also highlight the **new tasks and challenges** confronting it in the 21st Century.

#### *ii. Major human rights challenges*

179. Much progress has been made in member states. But the **gap between standards on paper and the reality on the ground is striking**. The full implementation of existing human rights in everyday life is an unfinished task. Human rights violations, including very serious ones, still take place in Europe.

180. In several European countries, **human rights defenders** are harassed and face a worsening climate of repression. Unimpeded work of human rights defenders, in particular non-governmental organisations, lawyers as well as that of journalists, is crucial for the protection and promotion of human rights in Europe.

181. The **rule of law is still not fully respected** in several European countries. Judicial independence and the effectiveness of legal proceedings need consolidation and strengthening in many instances, and there continue to exist geographical areas ("**black holes**") where the Council of Europe's human rights mechanisms cannot be fully implemented. This concerns Belarus, a non-member country, and certain areas within member states whose authorities are not internationally recognised and/or which are not under their *de facto* control, such as Nagorno-Karabakh, Kosovo, the 'Moldovan Republic of Transnistria', South Ossetia and Abkhazia, as well as northern Cyprus.

182. Even the **most serious** human rights violations, such as **enforced disappearances, extrajudicial killings, secret detentions, torture and inhuman treatment**, still occur in Europe.

183. **Impunity**, even for these most serious human rights violations, has not been eradicated in Europe. Impunity needs to be rooted out by prompt, thorough and impartial investigations and prosecutions.

184. Furthermore, **terrorism** is one of the key challenges for Europe's open societies; it **can and must be vanquished without violating the very principles of human rights, the rule of law and tolerance** that terrorists are out to destroy. Major concerns include secret detentions, renditions and attempts to put into question the absolute ban of torture.

185. **Trafficking in human beings**, especially women and children, is the modern form of the old worldwide slave trade. It treats human beings as a commodity to be bought and sold. This phenomenon is widespread in Europe and constitutes a serious violation of human rights. The new Council of Europe Convention on Action against trafficking in Human Beings, opened for signature in May 2005, is a major step in the fight against this scourge.

186. Throughout Europe, there are **persons in particularly vulnerable situations** whose rights need further and enhanced protection.

187. The treatment of **persons deprived of their liberty** deserves increased attention, be they detained in police cells, prisons, psychiatric hospitals, or other detention facilities, such as 'holding centres' for illegal immigrants. The eradication of all ill-treatment of persons detained, including the most serious documented incidences of torture, the existence of which has been established by the European Court of Human Rights in different regions of Europe and in particular in the North Caucasus, must continue to be given top priority.

188. Too many **refugees and internally displaced persons** are unable to return to their homes in safety. Asylum seekers have difficulties entering Europe and, once in a member state, they are often faced with the *de facto* impossibility of having their application dealt with fairly because of administrative procedures of unacceptable complexity; this situation is aggravated by substantial differences of treatment from one country to another. In addition, **migrants** – especially those in an irregular situation – often suffer discriminatory treatment in obtaining access to their social and economic rights.

189. The rights of **children, the elderly and disabled persons** require better protection. Special efforts must also be deployed to integrate **socially excluded persons**, including Roma and Travellers.

190. **Violence against women**, including domestic violence, is still widespread and must be fought resolutely at all levels. Similarly, **forced marriages and child marriages** should be rooted out once and for all.

191. **Racism, xenophobia and intolerance** have not been eradicated and discriminations based on racial, ethnic or religious origin remain widespread in European societies. The upsurge of **anti-semitism** is of particular concern, as is the worrying increase of **islamophobia**.

192. **Discrimination based on gender or sexual orientation** is prevalent in a number of states. The denial or unacceptable restriction of rights, such as freedom of expression, association and assembly based on grounds of gender or sexual orientation, is unacceptable.

193. Similarly, in many member states respect for the **rights of persons belonging to national or other minorities**, as well as the need to **integrate** minority groups into society, in particular Roma and Travellers, remains a major challenge.

194. **Social and economic rights** need to be fully respected, notably as regards access to education, housing, health care, employment, minimum income, social benefits and pensions. All member states should consider themselves bound to uphold these rights in accordance, *inter alia*, with the principles laid down in the revised European Social Charter.

195. **Sustainable development** is another major European and global objective. Everyone should have a right to a healthy, viable and decent environment. This right is interdependent with and inseparable from the fundamental values of peace and the rule of law, respect for human dignity and human rights, equity between generations, social and spatial cohesion and economic development. It must be guaranteed if sustainable, solidarity-based development is to be achieved for present and future generations.

iii. *Necessity to strengthen the Organisation's human rights mechanisms*

196. In view of the above challenges, the Council of Europe's **statutory mission remains equally – if not more – relevant as it was at its inception in 1949**. The Organisation must be further strengthened as Europe's "moral conscience".

197. In order to guarantee the **long-term effectiveness of the ECHR**, implementation of the reform process must be accelerated. The swift entry into force of Protocol No 14 to the ECHR is necessary, but not sufficient. Human rights must first and foremost be enforced at the national level.

198. In view of its limited resources, the Council of Europe – including its Parliamentary Assembly – should **focus on its areas of excellence** – human rights, democracy and the rule of law.

199. The **credibility** of the Council of Europe as Europe's leading human rights organisation depends on the capacity of the **Committee of Ministers**, the Organisation's decision-making body, to confront its responsibilities in the face of major human rights challenges. Decision-making by consensus may paralyse the Organisation's human rights *acquis*.

200. Another major challenge for the Organisation's human rights protection system is **the risk of unnecessary duplication of its activities by EU bodies**, which could lead to double standards and new dividing lines in Europe. Such duplication would also waste scarce budgetary resources at a time of general austerity. The EU and its member states should make better use of existing Council of Europe instruments, with **accession to the ECHR** now being an urgent priority. Active consideration should also be given to EU accession to the revised European Social Charter of the Council of Europe. Complementarity and the search for added value should also govern relations between the Council of Europe and the newly founded EU Fundamental Rights Agency.

iv. *The way forward*

201. There is a **discrepancy** between solemn declarations and commitments undertaken by member states – including at the Council of Europe's Warsaw Summit in May 2005 – and the situation in practice, where human rights violations often remain without redress or remedy. **States talk big on human rights, but often act small**. This discrepancy undermines the credibility of all our national leaders, our parliamentary bodies, of the Organisation, as well as that of the whole European continent and the universal values it upholds.

202. Therefore, it is **now time to end hypocrisy and to turn words into deeds**. The most effective method of preventing human rights violations is by showing **zero tolerance** towards such violations.

203. First and foremost, I consider that the **Assembly** should mandate itself, with respect to its future work, with a higher degree of **priority to human rights and the rule of law**, inviting the **Committee of Ministers** to do likewise.

204. It should also **call upon all member states** of the Council of Europe, and in particular their respective parliamentary bodies, to **address all the issues raised in the report and opinions**, as indicated in **Part I (human rights) of the draft resolution** on the state of human rights and democracy<sup>235</sup>:

“and in particular to

- ensure prompt and full implementation of the 2005 Warsaw Summit Declaration and Action Plan, notably measures ensuring the continued effectiveness of the European Convention on Human Rights and those aiming at protecting and promoting human rights and the rule of law through other Council of Europe institutions and mechanisms;

- take all appropriate measures in a resolute effort to eliminate all human rights violations, and in particular enforced disappearances, extrajudicial killings, secret detentions, torture and inhuman treatment, and to effectively investigate these crimes and prosecute perpetrators. In this respect,

<sup>235</sup> See Doc. 11203.

the Assembly recalls, again, that the right to life and the prohibition of torture and inhuman or degrading treatment or punishment are non-derogable rights under the ECHR;

- root out impunity of human rights violators by swiftly and firmly condemning such violations at the highest level, and by ensuring that the law enforcement bodies carry out effective, impartial and transparent investigations, and by parliaments holding the authorities accountable;
- effectively protect human rights defenders and their work, including the uninhibited access of individuals to the European Court of Human Rights.
- give full effect at the national level to the rights guaranteed by the ECHR and other international human rights instruments, thereby making human rights a reality for people everywhere in Europe;
- fully implement the judgments of the Court within the legal order of all member states.
- fully respect human rights while fighting terrorism, as already requested by the Assembly on numerous occasions, as well as to sign and/or ratify at the earliest opportunity the Organisation's conventions and instruments pertaining to human rights, including those on combating terrorism;
- eliminate trafficking in human beings. In this respect, the Assembly calls on member states to sign and/or ratify the Council of Europe Convention on Action against Trafficking in Human Beings without delay so that it enters into force as soon as possible; in any event, to apply forthwith its most important provisions. The Assembly also calls on the EU to sign and ratify this convention as soon as possible;
- better protect the rights of persons in particularly vulnerable situations, notably persons deprived of their liberty, refugees and internally displaced persons, asylum seekers and migrants, children, the elderly, disabled persons, socially excluded persons, including Roma and Travellers, and fully cooperate with relevant treaty-based and other bodies working in this field;
- effectively combat domestic violence, forced marriages and child marriages;
- effectively combat all forms of discrimination based on racial, ethnic or religious origin, in particular the upsurge of anti-semitism and islamophobia, and in this respect, sign and ratify Protocol 12 to the ECHR providing for a general prohibition of discrimination and fully implement ECRI's recommendations;
- also effectively combat all forms of discrimination based on gender or sexual orientation, introduce anti-discrimination legislation, partnership rights and awareness-raising programmes where these are not already in place;
- better protect the rights of persons belonging to national and other minorities and better ensure integration of minority groups in society, in particular Roma and Travellers;
- sign and/or ratify the revised European Social Charter, as well as the Charter's collective complaints procedure and fully uphold and apply social and economic rights, notably as regards access to education, housing, health care, employment, minimum income, social benefits and pensions, with a view to building a more human and inclusive Europe;
- seek gradual and complete eradication of poverty;
- take legislative measures in favour of joint sustainable management of resources, to protect the environment, to stimulate the use of renewable energy resources, to implement energy-saving programmes in industry, offices and housing, to stimulate public transport and sustainable water-management, and to put in place an agriculture policy in which food safety, animal welfare and the sustainable use of resources are central elements.
- more generally, sign and/or ratify all Council of Europe's main legal instruments in the human rights field without reservations or restrictive interpretative declarations, and withdraw those which have been made.
- enhance the role of the Council of Europe as an effective mechanism of pan-European co-operation in protecting and promoting human rights;
- ensure that complementarity and the search for added value governs relations between the Council of Europe and other international organisations and bodies working in the human rights

field, and in particular, with the newly founded EU Fundamental Rights Agency, in order to avoid duplications and waste of public money.

- consider the swift accession of the EU to the ECHR as an urgent priority and, for those states which are also members of the European Union, take the necessary measures to ensure such accession;
- make better use of Council of Europe instruments and institutions, and ensure that the Organisation's resources are considerably increased on account of its important achievements in the human rights field."

205. In addition, the Assembly should recommend to the **Committee of Ministers** a number of measures listed in the **draft recommendation, *inter alia* to** :

- **indicate, within six months, efforts undertaken and progress achieved** to eradicate the following violations:
  - **enforced disappearances**, including efforts it has taken to encourage member states to sign and ratify the new UN Convention for the Protection of All Persons from Enforced Disappearances;
  - **extrajudicial killings, torture and ill-treatment**, and to ensure that member states fully co-operate with the Anti-Torture Committee (CPT) and systematically make its reports public; and
  - **secret detentions and unlawful inter-state transfers** that have taken place in Europe or elsewhere under the responsibility of European states, as well as to indicate follow-up given to specific proposals made by the Secretary General subsequent to his Article 52, ECHR, inquiry on this subject, and by the Parliamentary Assembly in Resolution 1507 (2006) and Recommendation 1754 (2006).
- in order to **fight impunity**, envisage, in particular, the preparation of a set of **Guidelines** (c.f. the Guidelines on human rights and the fight against terrorism), drawing from, *inter alia*, the case-law of the European Court of Human Rights and the work of the CPT and of the United Nations on this issue.
- pay increased attention to the human rights situation in **Belarus** and in **areas within Council of Europe member states** where obstacles exist to the effective implementation of the ECHR (including the so-called "**black holes**"). The Organisation should also devise ways and means of ensuring that persons in such areas can effectively benefit from protection of their rights.
- consider means of improving the Council of Europe's ability to **react rapidly and effectively to allegations of systematic human rights abuse involving several member states** and in particular to consider, together with the Assembly, how a **specific mechanism** with appropriate investigative powers, akin to those provided to parliamentary inquiries in member states, could be set up within the Assembly.
- ensure that the **fight against terrorism** does **not serve as a pretext** to undermine or reduce the scope of fundamental human rights and take steps to **monitor** on a regular basis member states' legislation and practice.
- create a **European migration observatory** to monitor all aspects of migration and the situation of migrants, and engaging, where appropriate, in a dialogue with relevant non-member neighbouring countries.

## Appendix

### Core Council of Europe mechanisms and institutions and other important areas of activity

#### I. Core Council of Europe mechanisms and institutions

##### *European Convention on Human Rights*

By virtue of Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (**ECHR**, [CETS 5, 1950](#)), States Parties undertake to secure for everyone in their jurisdiction the rights and freedoms enshrined in the Convention. In ratifying the Convention and its protocols, the States Parties accept a dual commitment, namely to ensure that their domestic law is compatible with the Convention and to offer effective remedies to anyone who believes that his or her rights and freedoms under the Convention have been violated.

Since November 1998 and the entry into force of Protocol No 11 to the ECHR ([ETS No 155](#)), the control mechanism has been strengthened and become entirely judicial. A single and permanent **European Court of Human Rights** replaced the two-tier system composed of a European Commission and a European Court of Human Rights. Both individuals and States may bring applications before the Court.

Final judgments are binding on States Parties. The Committee of Ministers (CM) is required to ensure that States comply with judgments, in particular by verifying that the necessary steps are taken to stop ongoing violations and prevent new violations in future as well as to remedy the situation of the applicants.

The European Court of Human Rights is the most successful international human rights control mechanism in existence today.

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For further information see:

Court website: <http://www.echr.coe.int/ECHR/>

Execution of court judgments: [http://www.coe.int/T/E/Human\\_Rights/execution/](http://www.coe.int/T/E/Human_Rights/execution/)

Reform of the Court: [http://www.coe.int/t/e/human\\_rights/ECHRReform.asp](http://www.coe.int/t/e/human_rights/ECHRReform.asp); Reform of the Convention:

[http://www.coe.int/t/e/human\\_rights/cddh/3\\_committees/01.%20steering%20committee%20for%20human%20rights%20\(cddh\)/06.%20activity%20reports/2006/01\\_CDDH\(2006\)008%20\(ECHR%20reform\).asp#TopOfPage](http://www.coe.int/t/e/human_rights/cddh/3_committees/01.%20steering%20committee%20for%20human%20rights%20(cddh)/06.%20activity%20reports/2006/01_CDDH(2006)008%20(ECHR%20reform).asp#TopOfPage)

Article 52 (inquiries by the Secretary General):

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

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##### *European Social Charter*

The European Social Charter ([CETS 35, 1961](#)), which is rapidly being replaced by the Revised European Social Charter ([CETS 163, 1996](#)), complements the ECHR in the field of economic and social rights. **The European Committee of Social Rights (ECSR)** is the monitoring body responsible for ascertaining whether or not national law and practice in the State Parties are in conformity with the Charter. By virtue of an additional protocol ([CETS 158, 1995](#)), which came into force in 1998, collective complaints of violations of the Social Charter may be lodged with the ECSR by social partners and, under certain conditions, non-governmental organisations. This mechanism of collective complaints is quasi-judicial in character.

In respect of national reports, the ECSR adopts "[conclusions](#)", in respect of collective complaints it adopts "[decisions](#)".

If a State takes no action with respect to a Committee decision of non-conformity, the CM addresses a recommendation to that State, asking it to change the situation in law or in practice.

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For further information see: [http://www.coe.int/T/E/Human\\_Rights/Esc](http://www.coe.int/T/E/Human_Rights/Esc)

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### ***European Convention for the Prevention of Torture***

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ([CETS 126, 1987](#) and Protocols [ETS 151](#) and [152](#), 1993), provides non-judicial preventive machinery to protect persons deprived of their liberty by a public authority. It is based on a system of visits by the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**, also known as **Anti-Torture Committee**. The CPT is entitled to visit any place of detention (e.g. prisons and juvenile detention centres, police stations, holding centres for detained immigrants and psychiatric hospitals), to assess how persons deprived of their liberty are treated and, if necessary, to recommend improvements. This work is based on the principle of confidential dialogue with the authorities. If a State Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, by a majority of two-thirds of its members, and after the Party has had an opportunity to make known its views, to make a public statement on the matter (Article 10(2) of the Convention).

For further information see: <http://www.cpt.coe.int/en/>

### ***Fight against racism***

The **European Commission against Racism and Intolerance (ECRI)** was established by the first Summit of Heads of State and Government of the member States of the Council of Europe in Vienna in 1993. The adoption, in 2002, of a Statute for ECRI has consolidated this body's role as an independent human rights monitoring body ([Res. \(2002\)8](#)). ECRI's task is to combat racism, xenophobia, anti-Semitism and intolerance throughout Europe and ECRI's action covers measures to combat, in particular, violence, discrimination and prejudice faced by persons or groups of persons, notably on grounds of "race", colour, language, religion, nationality and national or ethnic origin. This work is carried out on the basis of country-by-country monitoring and thematic recommendations, as well as networking with civil society.

For further information see: [http://www.coe.int/T/E/human\\_rights/Ecri/](http://www.coe.int/T/E/human_rights/Ecri/)

### ***Protection of national minorities***

In accordance with Articles 24-26 of the **Framework Convention for the Protection of National Minorities** ([CETS 157, 1995](#)), which entered into force in 1998, this instrument lays down minimum standards for the protection of national minorities designed to serve as a basis for national legislation and practices in this field (see [CM Res. \(97\)10](#)). The monitoring of the implementation of the Framework Convention is carried out by the **Advisory Committee composed of independent experts** which issues opinions on States' compliance with the provisions of the Framework Convention. The Committee of Ministers issues recommendations on the basis of the main conclusions in the opinions.

For further information see: [http://www.coe.int/T/E/human\\_rights/minorities/](http://www.coe.int/T/E/human_rights/minorities/),

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### ***Commissioner for Human Rights***

The post of Council of Europe Commissioner for Human Rights which was created in 1999 by [CM Res. \(99\) 50](#), is defined as "a non-judicial institution to promote education in, awareness of and respect for human rights, as embodied in the human rights instruments of the Council of Europe" ([Art. 1](#)). The Commissioner functions "independently and impartially" ([Arts. 2](#) and [6](#)).

The Commissioner acts as a preventive body in the human rights field, without prejudice to the range of supervisory machinery already in existence within the Organisation. The Commissioner is a dynamic link between the CM and PACE, and the various institutions at both national and international levels.

Apart from his/her promotional role for human rights and its counselling and assistance services, the Commissioner has also assumed a “watchdog” function by issuing reports, opinions and recommendations both thematic and country-specific.

For further information see: [http://www.coe.int/t/commissioner/default\\_EN.asp](http://www.coe.int/t/commissioner/default_EN.asp)

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### **Committee of Ministers**

The Committee of Ministers is the executive organ of the CoE which, on the basis of the "[Declaration on compliance with commitments accepted by member States of the Council of Europe](#)", adopted in November 1994, has developed a range of procedures for ensuring compliance with the undertakings entered into by each of the member States.

In addition, the Committee of Ministers is the body responsible for supervising execution of the Court's judgments under the ECHR.

For further information see: “Compliance with member states' commitments: The Committee of Ministers' Monitoring Procedures” [Monitor/Inf \(2005\)1, January 19, 2005](#).

### **Parliamentary Assembly**

The **Monitoring Committee** of the Parliamentary Assembly of the Council of Europe (**PACE**) was set up in 1997 (see [PACE Res 1115 \(1997\)](#)). It is responsible for verifying the fulfilment of obligations assumed by member states under the terms of the Organisation's Statute, the ECHR and all other CoE conventions, as well as honouring of specific commitments undertaken by member states upon accession. Relying on cooperation and dialogue with national delegations of countries under a monitoring procedure, its findings and recommendations are based, *inter alia*, on fact-finding visits.

According to its Rules of Procedure, in case of “persistent failure to honour obligations and commitments and lack of co-operation in the Assembly's monitoring procedure”, the Assembly may challenge the credentials of a national delegation, *inter alia*, on the basis of a report prepared by the Monitoring Committee.

In addition, the work of specific committees, notably the [Committee on Legal Affairs and Human Rights](#) and [Political Affairs Committee](#), contributes significantly to the Assembly's monitoring function. The Committee on Legal Affairs and Human Rights plays a major role in promoting and defending human rights. Its Rapporteurs carry out inquiries on specific legal and human rights issues. It is also responsible for a whole variety of activities that make it, *de facto*, the Assembly's legal advocate. The Political Affairs Committee considers the general policy of the Council of Europe especially political developments raising particular concern. It reports, when necessary, on urgent political situations and crises in member states.

For further information see: <http://assembly.coe.int>

### **Congress of Local and Regional Authorities**

The Congress of Local and Regional Authorities of Europe (**CLRAE**), established in 1994 by Statutory Resolution (94)3, was reinforced by the [CM Res \(2000\)1](#). On this basis, the Congress monitors effective implementation of the principles contained in the **European Charter of Local Self-Government**. In addition, the Congress has instituted a system of monitoring local and regional democracy in member States, including local elections, which comprises two procedures: *ex-officio* and monitoring on request.

For further information please see: [http://www.coe.int/T/Congress/Default\\_en.asp](http://www.coe.int/T/Congress/Default_en.asp) and [http://www.coe.int/t/congress/4-Texts/monitoring\\_en.asp](http://www.coe.int/t/congress/4-Texts/monitoring_en.asp)

## II. Other important areas of activity<sup>236</sup>

### ***Combating corruption and money laundering***

The **Group of States against Corruption (GRECO)**, created in 1999, is in charge of improving its members' capacity to combat corruption by monitoring, via its evaluation procedures, their application of the twenty guiding principles and relevant CoE conventions and recommendations, in particular the **Criminal Law Convention on Corruption (CETS 173, 1999)**, the **Civil Law Convention on Corruption (CETS 174, 1999)**, **CM Rec(2000)10** on codes of conduct for public officials and **CM Rec(2003)4** on common rules against corruption in funding of political parties and electoral campaigns.

The **Select Committee of Experts on the Evaluation of Anti-Money-Laundering Measures, MONEYVAL**, uses a mutual evaluation and peer pressure system to review the application and effectiveness of countries' legal and financial measures to combat money laundering and the financing of terrorism.

For further information see: on the topic of corruption: [http://www.coe.int/t/dg1/Greco/Default\\_en.asp](http://www.coe.int/t/dg1/Greco/Default_en.asp), on the topic of money laundering: [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/combating\\_economic\\_crime/5\\_Money\\_laundering/Default.asp#TopOfPage](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/5_Money_laundering/Default.asp#TopOfPage)

### ***Advice on constitutional issues, independence and efficiency of justice***

The **European Commission for Democracy through Law (or "Venice Commission")** is the Council of Europe's advisory body on constitutional matters. Established in 1990, the commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage.

The CM has established a **European Commission for the Efficiency of Justice (CEPEJ)** (see [Res\(2002\)12, 2003](#)). Its objective is to provide advice and assistance aimed at better implementation of the international legal instruments of the CoE concerning efficiency and fairness of justice, including through analysis of results achieved by different judicial systems.

The **Consultative Council of European Judges (CCJE)** is an advisory body of the CoE, set up in 2000 whose work is focused on issues relating to the independence, impartiality and competence of judges. The CCJE is the first body within an international organisation to be composed exclusively of serving judges, and in this respect, it is unique in Europe.

For further information see: <http://assembly.coe.int/>, <http://www.coe.int/cm> and <http://www.venice.coe.int>, <http://www.coe.int/cepej> [http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/presentation/ccje\\_en.asp](http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/presentation/ccje_en.asp)

### ***Protection and promotion of regional or minority languages***

The **European Charter for Regional or Minority Languages (CETS 148, 1992)**, which entered into force in 1998, applies to languages (not linguistic minorities) and requires States to take positive measures to protect and promote the use of regional or minority languages in public and private life. The Charter is supported by an independent monitoring mechanism, consisting of a **Committee of Experts** which examines, on a three-yearly basis, State reports and carries out visits to States under evaluation.

For further information see: <http://www.coe.int/minlang> and [http://www.coe.int/T/DG3/RomaTravellers/Default\\_en.asp](http://www.coe.int/T/DG3/RomaTravellers/Default_en.asp)

<sup>236</sup> This overview is by no means intended to provide an exhaustive list of all CoE monitoring and control mechanisms. For more information, please see: [http://www.coe.int/T/E/Human\\_rights/](http://www.coe.int/T/E/Human_rights/), "Council of Europe Monitoring Procedures: An Overview" Monitor/Inf(2004)2, 4 April, 2004, as well as the Council of Europe - Activity Report 2005 (2006), and the Council of Europe Human Rights Information Bulletin

*Reporting committee:* Committee on Legal Affairs and Human Rights

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*Draft recommendation* adopted unanimously by the Committee on 12 March 2007

*Members of the Committee:* Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr György Frunda, Mrs Herta Däubler-Gmelin (Vice-Chairpersons), Mr Athanasios **Aletras**, Mr Miguel Arias, Mr Birgir Ármannsson, Mrs Aneliya **Atanasova**, Mr Abdülkadir Ateş, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc (alternate: Mr Pieter **Omtzigt**), Mr Erol Aslan **Cebeci**, Mrs Pia **Christmas-Møller**, Mrs Ingrida **Circene**, Mrs Lydie Err, Mr Valeriy Fedorov, Mr Aniello Formisano (alternate: Mr Andrea **Manzella**), Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery **Grebennikov**, Mr Holger Haibach, Mrs Gultakin **Hajiyeva**, Mrs Karin Hakl, Mr Nick Harvey, Mr Serhiy **Holovaty**, Mr Michel Hunault, Mr Rafael Huseynov, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Željko **Ivanji**, Mr Sergei Ivanov, Mrs Kateřina **Jacques**, Mr Antti Kaikkonen, Mr Karol Karski, Mr Hans Kaufmann (alternate: Mr Andreas **Gross**), Mr András Kelemen, Mrs Kateřina Konečná, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mr Eduard **Kukan**, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Humfrey **Malins**, Mr Pietro **Marcenaro**, Mr Alberto Martins, Mr Andrew **McIntosh**, Mr Murat Mercan, Mrs Ilinka Mitreva, Mr Philippe Monfils, Mr João Bosco **Mota Amaral**, Mr Philippe **Nachbar**, Mrs Nino Nakashidzé, Mr Tomislav Nikolić, Mrs Carina Ohlsson, Ms Ann Ormonde, Mr Claudio Podeschi, Mr Ivan Popescu, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Valeriy Pysarenko, Mr François Rochebloine, Mr Francesco Saverio Romano, Mr Armen Rustamyan, Mrs Rodica Mihaela Stănoiu, Mr Christoph Strässer, Mr Mihai Tudose (alternate: Mrs Florentina **Toma**), Mr Øyvind Vaksdal, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mrs Renate **Wohlwend**, Mr Marco Zacchera, Mr Krzysztof **Zaremba**, Mr Vladimir Zhirinovskiy, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the Committee:* Mr Drzemczewski, Mr Schirmer, Mrs Maffucci-Hugel, Ms Heurtin, Ms Schuetze-Reymann