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Progress of the Assembly's monitoring procedure

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary

The Monitoring Committee is the only one in the Assembly which has a statutory obligation to submit an annual progress report on its activities. During the 10 years of its existence it has accompanied 20 member states in carrying out their democratic reforms.

This year's Progress Report is special for two reasons: it constitutes the committee's contribution to the debate on "*the state of democracy and human rights in Europe*"; its preparation coincides with the tenth anniversary of the committee's creation. It is therefore much more than an "annual" report offering:

- a brief overview of the evolution of the Assembly's monitoring procedure from the 1993 Halonen Order to the 2006 novelty of periodic reporting on all Council of Europe member states which are not under a monitoring or post-monitoring procedure (currently 33) on the basis of a three-year cycle (11 states per year);

- a country-by-country summary of all work carried out since the accession of the 10 states currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, the Russian Federation, Serbia and Ukraine) and the 3 states involved in a post-monitoring dialogue (Bulgaria, "the former Yugoslav Republic of Macedonia" and Turkey), listing achievements and outstanding issues by reference to the latest texts adopted by the Assembly.

With respect to the new procedure of periodic reporting on member states not currently under a monitoring or post-monitoring procedure, the report presents the follow-up given to Assembly recommendations by the first group of 11 member states which were reported upon last year and examines the situation in the second group of 11 states which are reported upon this year: Greece, Hungary Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands (see the Addendum to this report).

Finally, the report takes stock of the main achievements after 10 years of activity of the Monitoring Committee and briefly presents challenges for the future.

In the first part of the draft Resolution proposed to the Assembly, the Monitoring Committee has identified positive developments but also areas with problems common to, or recurrent in, groups of states on which it has carried out specific work (monitoring, post-monitoring, opinion on applications to initiate monitoring or on requests for accession); the second part addresses recommendations to the 11 member states which are subject to this year's periodic reporting.

A. Draft resolution

1. The Assembly acknowledges the important work carried out by its Monitoring Committee. The tireless efforts of the Committee to ensure full respect for democracy, the rule of law and protection of human rights have borne fruit in the 20 countries it has monitored in the 10 years of its existence. At the moment, 13 countries are under a monitoring procedure or engaged in a post-monitoring dialogue. The Committee is also investigating applications to initiate a monitoring procedure in respect of Italy and the United Kingdom and has actively participated in the accession procedure concerning Montenegro.

2. Over the years, constant dialogue with the national authorities of the countries under monitoring enabled the Committee to set roadmaps often reflected in national action plans (for instance in Armenia, Azerbaijan, Moldova and Ukraine) to fulfil specific commitments entered into upon accession to the Council of Europe. Progress has been made everywhere but there have also been setbacks, due to changing circumstances or political stalemates.

3. The Assembly regrets that past wars and conflicts in Europe continue to hamper development and progress towards fully fledged functioning democracies: several thousands of persons are still reported missing in the Caucasus and in the Balkans; Georgia and Moldova have not been able to regain full control over their separatist regions (Abkhazia and South Ossetia, Transnistria); the Nagorno Karabakh conflict between Azerbaijan and Armenia is still not solved. These regions qualify as "black holes" with regard to the effective protection of human rights. This applies also to Chechnya in the Russian Federation. International stewardship is still needed in Bosnia and Herzegovina and Kosovo.

4. Although substantial progress has been made with regard to electoral reform, free and fair elections remain a problem in several member states. Elections on the other hand were considered globally free and fair in Bosnia and Herzegovina, Georgia, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine. Biased or insufficient media coverage of the electoral campaigns was of concern in Moldova and the Russian Federation. Concerns have also been voiced over postal voting fraud in the United Kingdom.

5. In a number of countries, political life in Parliament is either monopolised by the strongest political party (Armenia, Azerbaijan, Georgia, the Russian Federation and, to some extent, Moldova and Turkey), totally polarised between two parties or blocs (Albania) or so fragmented that fragile coalitions have to be formed (Bosnia and Herzegovina, Serbia). The abuse by opposition parties of boycott strategies or their refusal to participate in elections is not fostering the democratic process (Albania, Azerbaijan). The notion that a strong opposition is beneficial to every democracy and is not to be considered a nuisance is not yet anchored everywhere. Electoral thresholds remain too high in Georgia, the Russian Federation and Turkey. The role of parliament as a necessary counterweight to the executive power is understood in principle but often not in practice, as parliaments lack the necessary structures, staff and legal expertise.

6. Constitutional reform is still very much needed to ensure a well functioning system of checks and balances. It has been achieved to some extent in Armenia, but is outstanding to various degrees in Azerbaijan, Bosnia and Herzegovina and Turkey. For some recently adopted constitutions (Serbia), draft constitutions (Montenegro) or constitutional amendments (Georgia, Liechtenstein and Ukraine), compatibility with European standards remains a topical and in some cases urgent issue.

7. Local self-government reform, in particular sustainable decentralisation, is a difficult and lengthy process that is not achieved in many countries. The minimum provisions of the European Charter for local self government are not yet fully implemented for example in Armenia, Azerbaijan, Moldova, Montenegro, the Russian Federation, Serbia and Ukraine.

8. Excessive media concentration, state or oligarchic control of media outlets (the Russian Federation), continue to be of concern. An application to initiate a monitoring procedure with regard to the monopolisation of electronic media and possible abuse of power in Italy is currently being investigated. Progress has been made with the setting up of public service broadcasters for example in Azerbaijan, Georgia and Moldova.

9. In a number of countries, civil society remains weak and unorganised and many NGO's, scientists, lawyers or human rights defenders face legal impediments in their work, harassment by the administrative authorities or costly lawsuits. In a welcome development, Ombudsman institutions (including at regional level in the Russian Federation and "the former Yugoslav Republic of Macedonia") exist now in almost all member states, but still lack in some cases full guarantees for their independence and effective functioning.

10. Full respect for the principle of the rule of law is the major challenge facing all countries under monitoring: the process of judicial reform proved to be longer and more complex than initially envisaged. It involves reform of the education system, notably higher education; the creation of professional academies for future judges, lawyers and police officers; effective mechanisms, including at constitutional level, to guarantee the independence of the bodies responsible for the selection, career and disciplinary procedures of judges and prosecutors; creation of bar associations; professional training; drafting of codes of ethics and substantial budgetary means. Judicial reform also requires revision or overhaul of substantial and procedural laws, especially in the field of criminal justice. The Assembly notes, with reference to the country reports of the Monitoring Committee, that progress has been made in all countries but that much remains to be done to adopt and ensure implementation of all relevant reforms.

11. Corruption is a scourge affecting all European countries to various degrees. There can be no public confidence in State authorities if diplomas, judgments, positions, contracts or votes can be bought or traded. The Assembly therefore welcomes the adoption of anti-corruption strategies in almost all countries under monitoring but reminds them that words must be matched by deeds. A stable, professional, competent and reasonably well paid civil service is of paramount importance is this respect.

12. As regards respect for human rights, the Assembly notes with satisfaction that the vast majority of countries under monitoring have ratified the relevant Council of Europe conventions in compliance with their accession commitments. The Russian Federation remains the only Council of Europe member state which has not ratified Protocol No. 6 to the European Convention of Human Rights (hereinafter “the Convention) on the abolition of the death penalty. It is also the only member state which has not ratified Protocol No. 14 to the Convention, thus delaying its entry into force. The Assembly is also particularly concerned by the slow pace of ratification of Protocol No. 12 to the Convention. Although ratifying conventions and enacting legislation is a pre-requisite, everywhere implementation on the ground and in practice remains the main stumbling block for the protection of human rights. This is a question of political will but also of administrative capacity and budgetary means. Also, the process of democratisation has to be accompanied by serious and lasting efforts in the field of education and human rights awareness-raising. Again the Assembly refers to the relevant Resolutions it adopted for each country upon proposal by the Monitoring Committee.

13. Prison conditions, in particular overcrowding, are of concern throughout Europe. The Assembly welcomes in this respect the commendable efforts made for example by the Russian Federation, Georgia and Turkey, although much more needs to be done to abide by the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in particular with regard to medical care. Experience has shown that the situation has improved as soon as prisons have been placed under the responsibility of the Ministry of Justice rather than the Interior Ministry. Torture and ill treatment, in particular during police custody and pre-trial detention, have not yet been eradicated; neither has hazing of young conscripts. Although progress has undoubtedly been made over the recent years for example with regard to zero tolerance policies towards torture (Georgia, Turkey), the Assembly deplores that the CPT has had to resort for the third time to the exceptional measure of issuing a public statement about the situation in the Chechen Republic as the Russian Federation fails to co-operate or refuses to improve the situation in the light of the CPT's recommendations.

14. Censorship, numerous prosecutions, intimidation or even physical threats to journalists still occur in the Russian Federation, Turkey and Azerbaijan. Freedom of the press has improved in Ukraine. Some countries have completely (Bosnia and Herzegovina, Georgia, Ukraine) or partly (Moldova and "the former Yugoslav Republic of Macedonia") decriminalised defamation which is a welcome development. Professional ethics of journalism however still need to be improved in most countries. The Assembly welcomes the anti-discrimination action plans for the Roma (Albania,

Bulgaria, Czech Republic, Romania, Slovakia), the registration of religious minorities (Armenia, Azerbaijan), the introduction of conscientious objection (Armenia, the Russian Federation but not yet Turkey or Azerbaijan). Problems remain regarding the legal status of churches, for example in Bulgaria, Moldova or Montenegro.

15. The Assembly urges all states currently under a monitoring procedure or engaged in a post-monitoring dialogue to continue their co-operation with the Monitoring Committee and to implement all the recommendations contained in the country specific resolutions adopted by the Assembly. It stands ready to provide all the necessary support to the countries concerned through its parliamentary co-operation and assistance programmes.

16. The Assembly is aware that the shortcomings identified by its Monitoring Committee in the 13 states currently under a monitoring procedure or engaged in a post-monitoring dialogue are sometimes misconstrued as unfair finger pointing by countries which have undergone tremendous changes often in less than a decade. The Assembly is also aware that democracy, the rule of law and respect for human rights are never given once and for all and that the other 33 member states of the Council of Europe also need to be reminded of the need to respect their statutory obligations as member states of this Organisation.

17. The Assembly therefore welcomes the initiative taken by its Monitoring Committee in 2006 with a view to also monitor the record of member states not currently placed under the Assembly's monitoring or post-monitoring procedure, to append to its annual progress report to the Assembly periodic reports on groups of states containing summaries of the findings of other Council of Europe bodies and institutions.

18. On the basis of periodic reports attached to last year's Progress Report of the Monitoring Committee on the first group of 11 member states (Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France and Germany), the Assembly, in its Resolution 1515 (2006), invited the states concerned to ratify a number of Council of Europe conventions providing for a monitoring mechanism. The Assembly regrets that since adoption of Resolution 1515 (2006) Belgium has not yet completed the legislative reforms required to ensure full execution of the judgment of the European Court of Human Rights in the case of *Conka v. Belgium* of 2 February 2002.

19. The Assembly welcomes the fact that a few months later the authorities of two member states, namely Austria and Germany, informed the President of the Assembly of follow-up measures or explained the position of their government. It urges the authorities of the other member states concerned to also provide information on follow-up measures.

20. The Assembly in particular welcomes the fact that, following the adoption of Resolution 1515 (2006), Austria and Belgium ratified the Civil Law Convention on Corruption, and Austria joined the Group of States Against Corruption (GRECO); Andorra and Belgium ratified Protocol No. 14 Convention amending the control system of the convention; France ratified the European Charter of Local Self Government; the Czech Republic ratified the European Charter for Regional or Minority Languages.

21. For this year, the Monitoring Committee has prepared periodic reports on the second group of 11 member states which are neither under a monitoring procedure nor involved in a post-monitoring dialogue: Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands. As last year, they are based on the country-by-country assessment made on these states by the Commissioner for Human Rights and other Council of Europe monitoring mechanisms or other institutions.

22. On the basis of these reports, which are appended to this year's Progress Report of the Monitoring Committee, the Assembly:

22.1. invites the national parliaments of the countries concerned to:

22.1.1. use these reports as the basis for a debate on their country's record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe;

22.1.2. promote execution of the judgments of the European Court of Human Rights and compliance with recommendations made by the Commissioner for Human Rights and the other Council of Europe specific monitoring bodies, both by provoking and accelerating necessary legislative initiatives and exercising their role of oversight of government action;

22.2. invites the European Union bodies, as far as applicable, to use these reports and take into account the findings of the Council of Europe human rights institutions and monitoring mechanisms, such as the European Court of Human Rights, the Commissioner for Human Rights, the reports of the Assembly's Monitoring Committee as well as the relevant resolutions and recommendations adopted by the Assembly;

22.3. notes that:

22.3.1. in Greece, the failure to ensure full execution of the *Dougoz and Peers* judgments concerning overcrowding in detention facilities led to the adoption by the Committee of Ministers of an Interim Resolution in 2005 (ResDH(2005)21). On 7 June 2006, the Committee of Ministers adopted another Interim Resolution (ResDH(2006)27) on two judgments of the European Court of Human Rights concerning issues of reafforestation and violations of property rights in Greece;

22.3.2. in Italy, despite repeated calls by the Assembly, most recently in its Resolution 1516 (2006), and the Committee of Ministers (ResDH(2007)2), structural deficiencies continue to cause repetitive findings of violations of the Convention for excessive length of judicial proceedings. The lack of progress towards the solution to the systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy has led to the adoption of yet another Interim Resolution by the Committee of Ministers on 14 February 2007 (ResDH(2007)3). Moreover, the Italian legislation still does not allow the reopening of domestic criminal proceedings impugned by the Court and no other measures have been taken to restore the applicants' right to a fair trial (ResDH(2005)85);

22.4. The Assembly thus urges Greece and Italy to accelerate the adoption of general measures necessary to ensure full execution of the judgments of the European Court of Human Rights and effectively prevent similar violations of the Convention.

23. The Assembly, noting that a number of the member states under consideration are not yet subject to certain specific monitoring mechanisms of the Organisation because they have not ratified the relevant conventions or have not joined the relevant bodies, invites the member states concerned to take the necessary steps within three years. Again, a special responsibility is placed on national parliaments to promote ratification. The Assembly notably urges:

23.1. Liechtenstein and the Netherlands to sign and ratify, whereas Iceland, Ireland and Italy to ratify the Civil Law Convention on Corruption;

23.2. Liechtenstein to sign and ratify, and Greece and Italy to ratify, the Criminal Law Convention on Corruption;

23.3. Hungary, Ireland, Liechtenstein and Lithuania to sign and ratify, and Greece, Iceland, Italy, Latvia, Luxembourg, Malta and the Netherlands to ratify, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, noting that all of them have ratified the 1990 Convention on the same subject-matter;

23.4. Lithuania and Malta to sign and ratify, and Greece, Hungary, Iceland, Ireland, Italy, Latvia and Liechtenstein to ratify, Protocol No. 12 to the European Convention on Human Rights;

23.5. Italy and Latvia to ratify Protocol No. 13 to the European Convention on Human Rights;

23.6. Latvia and Liechtenstein to sign and ratify, and Greece, Hungary, Iceland and Luxembourg to ratify, the revised European Social Charter;

23.7. Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg and Malta to sign and ratify, and Hungary to ratify, the Protocol to the European Social Charter on collective complaints;

23.8. Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities;

23.9. Greece, Ireland, Latvia and to sign and ratify, and Iceland, Italy and Malta to ratify, the European Charter for Regional or Minority Languages;

23.10. Italy and Liechtenstein to join the Group of States against Corruption (GRECO).

24. The Assembly looks forward to the next Progress Report of the Monitoring Committee which will contain periodic reports on the 11 remaining states which are neither under a monitoring procedure nor involved in a post-monitoring dialogue (Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom). It expects full co-operation of all member states in this exercise.

B. Explanatory memorandum by Mr Lintner, Rapporteur

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1. Introduction

1. The Monitoring Committee is the only one in the Assembly which has a statutory obligation to submit an annual progress report on its activities, traditionally presented by its Chairman as Rapporteur.

2. I am faced this year with a particularly difficult task because it has been decided that the Monitoring Committee with its specific country-by-country expertise should contribute to the debate on "*the state of democracy and human rights in Europe*" through its annual progress report. We normally submit this report to the Assembly at its summer part session.

3. This year, we have been asked to submit it already in April, to include an overview both of the achievements and of the outstanding issues in the 13 member states currently under a monitoring procedure or a post-monitoring dialogue and to make recommendations to the second group of 11 states (from Greece to the Netherlands) that are being dealt with through the Committee's periodic reports.

4. Given the Committee's very broad mandate, covering the three pillars of the Organisation (democracy, rule of law and human rights), it is impossible to list all the achievements made over the years by the states under monitoring. It is equally impossible to list all the Assembly's recommendations on outstanding shortcomings that still need to be addressed by these countries. Summarising both achievements and shortcomings for each country might be interpreted as a subjective endeavour. I feel I cannot substitute my analysis to that of the 20 rapporteurs to whose tireless efforts I want to pay tribute here.

5. In view of the fact that April 2007 coincides with the tenth anniversary of this Committee's creation, I have decided to present the Assembly with a brief overview of the evolution of its monitoring procedure (below under chapter 2) and a country-by-country summary of the work carried out so far, listing achievements and outstanding issues solely by reference to the latest texts adopted by the Assembly. Hyperlinks to the texts adopted will enable those who have a special interest in this or that country to get a full picture (below under chapter 3).

6. Follow-up to recommendations given by member states which were reported upon last year, as well as recommendations to the second group of states are presented in chapter 4 (see also the Appendixes and the Addendum).

7. Finally, I have tried to take stock of the main achievements after 10 years of activity of the Monitoring Committee, briefly presenting challenges for the future (below under chapter 5).

8. What I suggest in the draft Resolution is to identify areas with problems common to, or recurrent in, groups of states, based on the country-by-country approach contained in this explanatory memorandum.

2. Overview of the evolution of the assembly's monitoring procedure

2.1. From the Halonen Order to the creation of the Monitoring Committee

9. The creation of the Monitoring Committee was the culmination of a long process of reflection with a view to establishing an effective parliamentary monitoring procedure. This process started in **1993** when the Parliamentary Assembly was **the first body** of the Council of Europe to set up a monitoring mechanism.

10. Following the fall of the Berlin Wall, it was of paramount importance for the Assembly that the Council of Europe should rapidly welcome the "new democracies" despite their difficulties in advancing from a totalitarian regime to that of a pluralist democracy respecting human rights and the rule of law. For this reason, it has progressively introduced the practice of asking states, during the examination of their requests for membership, to undertake specific commitments on issues related to the basic principles of the Council of Europe and explicitly referred to in its accession Opinions.

11. In order to ensure the respect of these commitments, the Assembly adopted, in June 1993, **Order No. 488 (1993)** on *the honouring of commitments entered into by new member states*, known as the "*Halonen Order*" (by the name of the rapporteur, Mrs Halonen, now President of Finland). The Political Affairs Committee and the Committee on Legal Affairs and Human Rights were instructed, on an equal footing, to monitor closely the honouring of commitments entered into by the authorities of "the new member states" and to report to the Assembly's Bureau at regular six monthly intervals until all undertakings had been honoured.

12. Two years later, in April 1995, **Order No. 508 (1995)** provided for the first time for a public Assembly debate on the honouring of obligations and commitments by the state concerned, thus rendering the Assembly's monitoring procedure transparent and more influential. The leading role was given to the Committee on Legal Affairs and Human Rights. The distinction between "old" and "new" member states – already softened following the adoption of **Resolution 1031 (1994)** – was now completely abolished: **all** member states were made subject to the Assembly's monitoring procedure.

13. It was because of the importance and long-term nature of the parliamentary monitoring function that the Assembly decided, after another two-year interval, in **January 1997**, to strengthen further its monitoring mechanism by creating a new, permanent committee exclusively competent for monitoring. This is how our Monitoring Committee was created. In its founding text, **Resolution 1115 (1997)**, the Assembly entrusted the committee with the task of "*verifying the fulfilment of the obligations assumed by the member states under the terms of the Council of Europe Statute, the European Convention on Human Rights and all other Council of Europe conventions to which they are parties, as well as the honouring of the commitments entered into by the authorities of member states upon their accession to the Council of Europe*". The terms of reference of the committee are appended to Resolution 1115 (1997).

2.2. The evolution of the working methods of the Monitoring Committee

14. Since its creation, the Monitoring Committee has systematically developed its working methods and procedures in a continuing effort to increase its impact and credibility. I shall mention only briefly the most important steps taken in this respect:

15. In 2000, the committee introduced the mechanism of "**post-monitoring dialogue**" with the member states for which the monitoring procedure *stricto sensu* had been closed. This dialogue focuses on a number of specific issues mentioned in the Assembly resolution or recommendation bringing to an end the monitoring procedure[1]. Since 2002, the practice has been progressively introduced to organise fact-finding visits by the Chairperson or one of the Vice-Chairpersons to the countries concerned. The flexibility of this mechanism has allowed the committee to accompany the efforts for further democratic reforms in a number of member states. In some cases, it has proved to be a useful tool in preventing the re-opening of monitoring procedures. Also, the relevant documents of the committee have served as an important source of information for the European Union in the framework of its assessments of applicant states.

16. In 2005, the rules governing the **opening or re-opening of a monitoring procedure** were amended in order to allow for a public Assembly debate in case of diverging opinions between the Monitoring Committee and the Bureau of the Assembly as to whether or not a monitoring procedure should be initiated with respect to a given state[2]. Thus the Bureau of the Assembly can no longer block initiatives approved by the committee, as had happened in the past with respect to a request for opening a monitoring procedure for **Liechtenstein**[3]**.** Debating in plenary Assembly sessions whether or not a state should be put under a monitoring procedure will raise the visibility of the Assembly's efforts to ensure compliance by member states with their membership obligations[4].

[1] The modalities of post-monitoring were included in the committee's terms of reference upon the adoption of Resolution 1425 (2005) which revised Resolution 1115 (1997).
[2] See Resolution 1431 (2005).
[3] See below, chapter 3.4.
[4] Last year, Resolution 1515 (2006) further improved the system by: (*a*) requiring that an application to initiate a monitoring procedure should be referred to the Monitoring Committee by the Bureau at one of its next two meetings; thus delays that occurred with respect to the reference of an application to initiate monitoring for **Italy** could no longer take place; (*b*) introducing specific rules governing the conclusion of a post-monitoring dialogue similar to those governing the opening of a monitoring procedure. They aim at preventing situations where

17. Since 2002, the committee has progressively increased its **responsiveness** and made full use of its **political** mandate by consolidating its ability to react in a timely manner to current political events and recent developments in states it is monitoring. It has done so by introducing the practice of presenting reports to the Assembly, occasionally under urgent procedure, "*on the functioning of democratic institutions*" or other specific subjects (such as, for instance *constitutional reform*) in the member states under monitoring, without having to wait for the parliamentary delegations concerned to submit comments within three months on an initial draft report. This practice, made possible thanks to the full co-operation of the parliamentary delegations concerned, has led to several debates on the functioning of democratic institutions for instance in **Azerbaijan**, **Georgia**, **Moldova** and **Ukraine**, on the constitutional reform in **Armenia**, in **Bosnia and Herzegovina** and in **Ukraine**. Since 2004, the Committee has also introduced the practice of adopting public **declarations**[5] and regularly declassifying its information notes. By doing so, it has been able to send a strong political signal to member states when deemed necessary and also to increase its own visibility, and thus impact and credibility.

18. The committee has increasingly been associated to the exercise of **election observation** in member states under monitoring: its rapporteurs, as a general rule, participate in the pre-electoral or observation missions to the countries for which they are responsible. The committee is also represented in the **Council of Democratic Elections** of the Venice Commission.

2.3. The latest novelty: Resolution 1515 (2006) enabling the Monitoring Committee to carry out its mandate with respect to all Council of Europe member states

19. A criticism often levelled at the Committee in the past was that there had been no monitoring procedures in respect of long-term Council of Europe member states, with the notable exception of Turkey (procedure opened in 1996 and closed in June 2004). A quick glance at the Monitoring Committee's founding text – Resolution 1115 (1997) – clearly shows that this development was an anomaly and a departure from the original concept of the monitoring procedure as adopted by the Assembly ten years ago.

20. After a thorough reflection on various options which would enable the Monitoring Committee to carry out its full mandate, the committee opted last year for one of the most realistic ones, namely: the preparation of periodic reports on all member states not currently subjected to a monitoring procedure or involved in a post-monitoring dialogue (i.e. at the moment 33 states), sub-divided into three groups, on the basis of a country grid indicating for each country the record of ratifications or signatures of the main Council of Europe instruments which provide for a specialised monitoring mechanism and summing-up the findings of such mechanisms when applicable. The committee proposed to attach such periodic reports to its annual Progress Reports to the Assembly, with each group of (currently 11) countries reported upon every three years (see Doc. 10960).

21. Country reports summing-up the findings of Council of Europe specialised monitoring mechanisms were prepared and reproduced in an Addendum to the Monitoring Committee's Progress Report (for the period May 2005-June 2006) on the first group of 11 member states (Doc. 10960 Addendum), chosen on the basis of alphabetical order: **Andorra, Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France and Germany**.

22. Among the Council of Europe bodies and institutions whose country-by-country assessment was taken into account to prepare these periodic reports appear **all** those which are now invited to participate in the joint debate on the state of human rights and democracy in Europe, namely: the European Court of Human Rights; the Commissioner for Human Rights; the Congress of Local and

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diverging opinions between the committee and the Bureau can lead to an impasse, as happened in 2006 with respect to the conclusion of the post-monitoring dialogue with **Latvia**.

[5] The committee has thus adopted: three public declarations on the presidential elections in **Ukraine** in the course of 2004 and two declarations related to the dysfunctioning of the Constitutional Court in Ukraine in December 2005 and in January 2006; one declaration on the situation in the **Transnistrian** region in October 2004; a declaration on the presidential elections in **Azerbaijan** in April 2005; a declaration on the constitutional reform in **Armenia** in January 2006 and in **Bosnia Herzegovina** in April 2006; a declaration on **the current tensions between Georgia and the Russian Federation** in January 2007. Several public statements have been issued by the co-rapporteurs on their fact-finding visits to the states concerned, most recently with respect to **the Russian Federation** in April 2006 and **Ukraine** in March 2007.

Regional Authorities of the Council of Europe; the European Commission for Democracy through Law (Venice Commission); the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); the Advisory Committee on the Framework Convention for the Protection of National Minorities; the European Commission against Racism and Intolerance (ECRI), and the European Committee of Social Rights. The periodic reports also include references to the Committee of Ministers as regards the execution of the judgments of the Court, the European Commission for the Efficiency of Justice (CEPEJ), the Group of States against Corruption (GRECO) and the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

23. Without additional resources, the Monitoring Committee has thus enabled the Assembly and the public at large to become aware of the main issues at stake within the countries concerned and, at the same time, of the relevant work carried out by the Council of Europe. The option chosen has also provided a mechanism of **parliamentary oversight** of the activities of the intergovernmental sector of the Council of Europe.

24. The Assembly welcomed the initiative taken by the Monitoring Committee and the preparation of such country-by-country periodic reports in its **Resolution 1515 (2006),** adopted in June 2006. The reception by the member states concerned has also been positive. The recommendations addressed to them, the follow-up given as well as the recommendations addressed to the second group of 11 member states dealt with this year are presented below in chapter 4.

3. Overview of the country-by-country monitoring procedures for the last 10 years

25. During the **10 years** of its existence, the Monitoring Committee has accompanied **20** member states in carrying out their democratic reforms.

26. **11** monitoring procedures, opened under the previous system of **Order No. 508 (1995)**, were taken over from the Committee on Legal Affairs and Human Rights. They concerned: **Albania, Bulgaria, Croatia, the Czech Republic, Lithuania, Moldova, the Russian Federation, Slovakia, "the former Yugoslav Republic of Macedonia", Turkey** and **Ukraine**. Resolution 1115 (2006) instructed the Monitoring Committee to resume work on procedures from the point at which they stood.

27. Upon a proposal by the Monitoring Committee, a monitoring procedure was opened for **Latvia** in September 1997.

28. The accession of new member states led to the simultaneous opening of a number of monitoring procedures for: **Georgia** in 1999; **Armenia** and **Azerbaijan** in 2001; **Bosnia and Herzegovina** in 2002; **Serbia and Montenegro** in 2003 (now two independent states), and the **Principality of Monaco** in 2004.

3.1. Member states for which the monitoring procedure and the post-monitoring dialogue have been concluded

29. The procedures regarding **Estonia** and **Romania** were closed by the Committee on Legal Affairs and Human Rights just before the Monitoring Committee was set up[6]. However, in 2000, the Monitoring Committee initiated a post-monitoring dialogue with these two states. This dialogue was concluded shortly afterwards, at the end of 2000, with Estonia (Doc. 9475) and two years later, in 2002, with Romania (Doc. 8935 Addendum). A progress report on Estonia's record as regards its statutory obligations as a member state of the Council of Europe was presented to the Assembly in June 2006 as part of the Monitoring Committee's Progress Report (Doc. 10960 Addendum)[7]. A similar report on Romania will be presented to the Assembly in 2008 as part of next year's Progress Report of the committee.

30. The procedures regarding the **Czech Republic** and **Lithuania** were the first ones to be closed by the Assembly on the basis of a report presented by the Monitoring Committee.

[6] See Resolution 1117 (1997) and Resolution 1123 (1997) on Estonia and Romania respectively.
[7] See below.

Recommendation 1338 (1997) and **Recommendation 1339 (1997)** bringing to an end the monitoring procedure for the Czech Republic and Lithuania respectively were adopted in September 1997. The post-monitoring dialogue with the Czech Republic was concluded in 2004 (Doc. 10405 Part 1) and with Lithuania in 2002 (Synopsis of the Bureau No. 2002/035). A progress report on the Czech Republic's record as regards its statutory obligations as a member state of the Council of Europe was presented to the Assembly in June 2006 as part of the Monitoring Committee's Progress Report (Doc. 10960 Addendum). A similar report on Lithuania is presented to the Assembly as part of the **addendum** to the present report.

31. The Assembly closed the monitoring procedure for **Slovakia** in September 1999 when adopting **Resolution 1196 (1999).** The post-monitoring dialogue was concluded more than 6 years later, in January 2006 (Doc. 10794). A progress report on Slovakia's record as regards its statutory obligations as a member state of the Council of Europe will be presented to the Assembly in 2008 as part of next year's Progress Report of the committee.

32. The monitoring procedure regarding **Croatia** was closed in September 2000 through the adoption by the Assembly of **Resolution 1223 (2000)** and **Recommendation 1473 (2000)**. The post-monitoring dialogue with Croatia was concluded three years later, in 2003 (Doc. 9927). A comprehensive review on Croatia's record as regards its statutory obligations as a member state of the Council of Europe was presented to the Assembly in June 2006 as part of the Monitoring Committee's Progress Report (Doc. 10960 Addendum).

33. The monitoring procedure for **Latvia** was closed in January 2001, through the adoption of **Resolution 1236 (2001)** and **Recommendation 1490 (2001)**. The post-monitoring dialogue with Latvia was concluded 5 years later in 2006 (Doc. 10940). A progress report on Latvia's record as regards its statutory obligations as a member state of the Council of Europe is presented to the Assembly as part of the **addendum** to the present report.

3.2. Member states currently under monitoring procedure or post monitoring-dialogue

34. At present, **10** member states are under a monitoring procedure: **Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, the Russian Federation, Serbia** and **Ukraine**. With three member states, the committee continues a post-monitoring dialogue: **Bulgaria**, **"the former Yugoslav Republic of Macedonia"** and **Turkey**.

3.2.1. Overview of the monitoring activities in 2006 and the first trimester of 2007

35. Since this report is meant to be an annual report, I am giving below a summary of the Committee's activities for the year 2006 and the first quarter of 2007. Further information on the state of play for each country can be found in the relevant country section of this report summarising the overall monitoring procedure for each of them (below under *3.2.2*).

36. In a number of the 13 countries currently under a monitoring or a post-monitoring procedure, 2006 was an important **election year**: parliamentary elections were held in **Ukraine** in March, the first after the Orange revolution, in **"the former Yugoslav Republic of Macedonia"** in July and in **Bosnia and Herzegovina** in October. Since the parliamentary elections in **Azerbaijan** in November 2005 were once again deemed not free and fair, the credentials of the Azerbaijani delegation were challenged on substantial grounds at the opening of the January 2006 part-session. On the proposal of the Committee, the Assembly then decided to ratify the credentials, but to reconsider the question after the partial re-run elections to be held in May 2006. In view of the results, the Committee in June 2006 proposed to ratify the credentials of the Azeri delegation at this stage and to examine the honouring of obligations and commitments by Azerbaijan in a comprehensive report which will be presented in April 2007.

37. The referendum held in **Montenegro** in May 2006 led to the country's declaration of independence and marked the end of the dissolution of the former Federal Republic of Yugoslavia. In its opinion on the report on the consequences of the referendum in Montenegro which was debated under urgent procedure in June 2006, the Committee requested to be involved in the future accession procedure for Montenegro after the parliamentary elections to be held in the country in September, in order to ensure continuity with the previous monitoring procedure for the State Union of Serbia and

Montenegro, which had been a member of the Council of Europe since 2003. Concerning **Serbia**, the committee considered that the commitments entered into in 2003 needed to be redefined in order to be adapted to the new situation.

38. **Serbia** held a constitutional referendum in October, reaffirming that it considered Kosovo an integral part of Serbia. In **Bosnia and Herzegovina**, on the other hand, a proposal for constitutional reform aimed at improving the Dayton constitutional arrangements failed by two votes in Parliament in April 2006. This led the committee to organise an urgent Assembly debate on constitutional reform in June 2006, which set clear priorities for the authorities that would come to power after the October general elections.

39. The committee also presented to the Assembly a comprehensive report on the situation in **Georgia**, two years after the Rose revolution in January 2006 and, following fact-finding visits to the countries concerned, two comprehensive reports on the situation in **Albania** and **Armenia** in January 2007. A number of other reports to be presented to the Assembly in 2007 necessitated fact-finding visits also to **Azerbaijan**, **Bosnia and Herzegovina**, **Bulgaria, Moldova**, **Monaco, Serbia and Montenegro** (prior to the declaration of independence of Montenegro), **Montenegro, the Russian Federation** and **Ukraine**. As a result, two comprehensive reports on **Azerbaijan** and **Monaco** will now be presented to the Assembly during the April 2007 part-session. I have also visited **"the former Yugoslav Republic of Macedonia"** in January 2007 and prepared an information note for the attention of the committee. Two co-rapporteurs visited the **United Kingdom** from 26 to 28 February 2007 in order to prepare an opinion on whether or not a monitoring procedure should be opened in relation to electoral fraud. A fact-finding visit to **the Russian Federation** is scheduled from 26 to 29 March 2007.

40. In October 2006, moreover, the committee instructed two of its rapporteurs for **Georgia and the Russian Federation** respectively to investigate the escalating tensions between the two countries. Following fact-finding visits in late November 2006, the Committee approved and declassified the Rapporteurs' information note which contained a number of concrete recommendations.

41. In total **18** fact-finding visits were carried out by our rapporteurs in 2006 and **4** in the first three months of 2007.

3.2.2. Overview of country-by-country monitoring procedures since the accession of each state

Albania

Co-rapporteurs: Mr Leo Platvoet, Netherlands, UEL and Mr David Wilshire, United Kingdom, EDG

42. Albania is a member state of the Council of Europe since **June 1995** [see **Opinion No. 189 (1995)**] and has been placed under the Parliamentary Assembly's monitoring procedure ever since. To date, Albania has ratified **68** Council of Europe Conventions out of 200.

43. Following a first report on the honouring of obligations and commitments by Albania presented by the Committee of Legal Affairs and Human Rights in January 1997, the Monitoring Committee presented its own first report on Albania in June 2000, which led to the adoption of **Resolution 1219 (2000)**. A second report presented in April 2004 led to the adoption of **Resolution 1377 (2004)**.

44. The Assembly observed the **July 2005 parliamentary elections** in Albania (see Doc. 10664). On the basis of the latest report on the fulfilment of obligations and commitments by Albania presented by the Monitoring Committee (Doc. 11115), the Assembly adopted **Resolution 1538 (2007)** in **January 2007**.

45. In Resolution 1538 (2007), the Assembly **welcomed** the progress made by Albania and in particular the measures already taken to: establish and enforce a zero tolerance policy in the fight against organised crime, trafficking and corruption; improve the execution of final court decisions and increase the transparency of the government's work. It also praised the open and constructive policy which Albania maintained towards Kosovo.

46. However, the Assembly **regretted** that Albanian political life continued to be dominated by confrontation and obstructionism. The poor political climate had again delayed major and urgently required reforms, in particular in the field of election legislation and the media. The Assembly attached great importance to the local elections of 18 February, which it considered a major test for the capacity of the Albanian authorities to organise free and fair elections.

47. In its Resolution 1538 (2007), the Assembly **recommended** a number of concrete measures which the Albanian authorities should take to pursue further reform in the following areas: election legislation, local and regional government, the fight against corruption, domestic violence and trafficking in human beings, the judiciary and electronic media, the prevention of torture and respect of minority and children's rights.

48. The Assembly resolved to **pursue its monitoring** on the honouring of obligations and commitments by Albania until measures taken or planned in these fields have produced tangible results.

49. A few weeks after the adoption of Resolution 1538 (2007), the **local elections of 18 February 2007** were observed by the Congress of Local and Regional Authorities of Europe together with the OSCE/ODIHR. For the international observers, while the 18 February local elections provided for a competitive contest, they were another missed opportunity for Albania to conduct elections fully in line with OSCE Commitments, Council of Europe commitments and other international standards for democratic elections. Political parties fell short of respecting the considerable responsibilities granted to them by the law. While election day was calm overall, voting was marred by procedural shortcomings and in some places by tension (see Press Release 112/2007).

Armenia

Co-rapporteurs: Mr Georges Colombier, France, EPP/CD and Mr Mikko Elo, Finland, SOC

50. Armenia is a member state of the Council of Europe since **January 2001** [see **Opinion No. 221 (2000)**] and has been placed under the Parliamentary Assembly's monitoring procedure ever since. To date, Armenia has ratified **49** Council of Europe Conventions out of 200.

51. During six years of Armenia's membership of the Council of Europe, the Monitoring Committee has presented to the Assembly no less than **six reports** on the honouring of its obligations and commitments, of which two under urgent procedure:

52. On the basis of the first regular monitoring report debated in September 2002, the Assembly adopted **Resolution 1304 (2002)** in which it threatened Armenia with sanctions in case it would fail to ratify Protocol No 6 to the European Convention on Human Rights on the abolition of the death penalty before June 2003. In its **Resolution 1361 (2004)**, adopted on the basis of the second regular monitoring report, the Assembly welcomed the abolition of the death penalty in Armenia and the ratification of Protocol 6. Only three months after the adoption of Resolution 1361 (2004), the organisation of a series of protests by the opposition parties in Armenia, contesting the results of the presidential and parliamentary elections of 2003 and calling for the holding of a "referendum of confidence" in President Kocharyan, and the violence with which the Armenian authorities reacted between the end of March and mid-April 2004 led the Assembly to hold a debate under urgent procedure on the honouring of obligations and commitments by Armenia in April 2004 and to adopt **Resolution 1374 (2004)** on the basis of a third report by the Monitoring Committee. A fourth report on implementation of the last two resolutions – 1361 and 1374 – was submitted to the Assembly in October 2004 and resulted in the adoption of **Resolution 1405 (2004)**.

53. In its 2004 Resolutions on Armenia, the Assembly urged the authorities to organise a new referendum on the Constitution (a first one having failed for lack of a quorum in May 2003), since a number of fundamental reforms linked to the commitments entered into by Armenia were contingent on a revision of the Constitution. In view of the failure to organise such a constitutional referendum, the Monitoring Committee submitted to the Assembly a fifth report on the constitutional reform process in Armenia, on which a debate under urgent procedure was held in June 2005 and **Resolution 1458 (2005)** was adopted.

54. The constitutional reform was in the end adopted through a **referendum** organised on **27 November 2005** and observed by the Assembly (see Doc. 10778). In **January 2006**, the Monitoring Committee adopted a **declaration** on the constitutional reform in Armenia, in which it welcomed the positive outcome of the referendum, but deplored the irregularities affecting the ballot and the serious abuses noted by the Assembly observers, giving rise in particular to doubts as to the real voter turnout and whether the quorum had actually been reached.

55. In the latest comprehensive report on the honouring of obligations and commitments debated by the Assembly in **January 2007 (**Doc. 11117**)**, the Monitoring Committee took stock of implementation of the constitutional reform and of progress with the legislative reforms that should accompany it (concerning some 51 laws), one year after the constitutional referendum and a few months before the parliamentary elections to be held on 12 May 2007. The debate led to the adoption of **Resolution 1532 (2007)**.

56. In Resolution 1532 (2007) the Assembly **welcomed** legislative measures taken to implement Armenia's constitutional reform, carried out with Council of Europe assistance. Conditions conducive to the fulfilment of many of the country's commitments have now been created, including: a better balance of powers; the election by Parliament of the Human Rights Defender; the right of access to the Constitutional Court for citizens, the Human Rights Defender and the parliamentary opposition.

57. However, the Assembly **regretted** the irregularities that affected the constitutional referendum and the failure to take steps to sanction the cases of observed fraud noting that, since Armenia's accession to the Council of Europe, not a single ballot held in this country had been deemed fully free and fair. It warned that an improved political climate and dialogue between the ruling coalition and opposition would be necessary for the effective implementation of the new system of government provided for in the revised Constitution. Moreover, it noted that implementation of certain reforms, such as the reform of the judicial system and the fight against corruption, pluralism and independence of the media, as well as improvement in detention conditions and police conduct, would take more time than the reform of the legislation itself and **recommended** a number of concrete measures that the Armenian authorities should take in these fields in order to accelerate effective implementation. Referring to its earlier **Resolution 1416 (2005)** on this issue, the Assembly also regretted the lack of significant progress towards a peaceful settlement of the Nagorno-Karabakh conflict.

58. The Assembly resolved to **pursue its monitoring** until the current or proposed reforms have produced tangible results. It attached particular importance to the **implementation** of reforms in the fields of electoral law, the media and justice system, as well as to the conduct and organisation of the parliamentary elections in May 2007 and the presidential elections in 2008. The Assembly urged Armenia to demonstrate its capacity to hold these elections in accordance with international standards and ensure a pluralist and unbiased media coverage of the election campaign. The report of the Monitoring Committee gave full backing to any action by the Council of Europe and its member states aimed at assisting Armenia in accomplishing this task.

59. The Assembly has been invited to observe the parliamentary elections of 12 May 2007. A pre-electoral mission to Armenia has been scheduled for **11 to 13 April 2007**.

Azerbaijan

Co-rapporteurs: Mr Andres Herkel, Estonia, EPP/CD and Mr Tony Lloyd, United Kingdom, SOC

60. Azerbaijan is a member state of the Council of Europe since **January 2001** [see **Opinion No. 222 (2000)**] and has been placed under the Parliamentary Assembly's monitoring procedure ever since. To date, Azerbaijan has ratified **49** Council of Europe Conventions out of 200.

61. During six years of Azerbaijan's membership of the Council of Europe, the Monitoring Committee has presented to the Assembly no less than **seven reports** on progress made by Azerbaijan in honouring its obligations and commitments, of which three focused on the functioning of its democratic institutions and two followed the challenging of credentials of the parliamentary delegation of Azerbaijan after the parliamentary elections of November 2005. More specifically:

62. The first regular monitoring report and subsequently three reports on the functioning of democratic institutions in Azerbaijan led respectively to the adoption of **Resolution 1305 (2002), Resolution 1358 (2004), Resolution 1398 (2004)** and **Resolution 1456 (2005)**[8].

63. In its Resolution 1456 (2005), the Assembly regretted that since its accession to the Council of Europe in 2001, all ballots held in Azerbaijan failed to meet basic democratic standards. This failure was regrettably also repeated during the last parliamentary elections of November 2005 and led to the challenging of the credentials of the Azerbaijani delegation at the opening of the Assembly's January 2006 part-session. In its **Resolution 1480 (2006),** adopted in January 2006 on the basis of a report by the Monitoring Committee, the Assembly finally ratified the credentials of the delegation of Azerbaijan and instructed the Monitoring Committee to follow developments and report back to it in June 2006 in order to decide whether to reconsider the credentials. In the meantime, the Assembly observed the partial re-run of parliamentary elections of May 2006 (see Doc. 10941). In June 2006, in its **Resolution 1505 (2006)** the Assembly considered that, although progress was observed in the conduct of the voting on 13 May 2006, most of the requirements mentioned in Resolution 1480 (2006) had not been met. However, since co-operation between the Council of Europe and Azerbaijan remained essential and should continue for the purpose of preparing **the 2008 presidential elections**, the Assembly decided not to reconsider at that stage the credentials of the Azerbaijani delegation. It instructed again the Monitoring Committee to continue to follow closely the developments in the country and to report back to it at its spring 2007 part-session.

64. It is against this background that the Monitoring Committee has presented to the Assembly its seventh report on Azerbaijan (Doc. 11226), which is a comprehensive one covering the whole list of obligations and commitments undertaken by the country upon accession. It will be debated during the April 2007 part-session of the Assembly.

65. In this report, the Monitoring Committee **recognises the efforts** made by Azerbaijan in a number of areas, such as: the on-going co-operation with the Venice Commission on the revision of the Election Code and of the law on freedom of assembly, the establishment of a Justice Academy, the increase of the number of judges and the organisation of exams for the recruitment of new judges with Council of Europe assistance; the recent pardoning by presidential decree of 11 prisoners appearing on the lists of NGOs members of the Task Force entrusted to follow-up the implementation of Resolution 1457 (2005) on political prisoners in Azerbaijan; the recently adopted National Action Plan for the Protection of Human Rights, as well as the constructive attitude of the President of Azerbaijan towards the search of a solution to the Nagorno-Karabakh conflict.

66. However, the Monitoring Committee **highlights a number of areas of concern** and is insistent of the need to establish a dialogue between the ruling majority and the opposition both inside and outside the parliament; to further reinforce the role of parliament vis-à-vis the executive and to improve the balance of powers; to increase the number and the quality of defence lawyers; to further encourage the work of the Task Force and ensure that it produces concrete results; to improve the general environment for the independent media in the country, which has regrettably deteriorated during the last months, and to find a definitive solution to the licence issue of the independent TV channel ANS without further delay; to put an end to torture and ill-treatment by law enforcement agents and within the army and to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

67. The Monitoring Committee proposes to the Assembly to **pursue its monitoring** on the honouring of obligations and commitments by Azerbaijan. It attaches particular importance to the forthcoming presidential elections in 2008 which must be the first in the history of the country to comply fully with international standards for free and fair elections.

[8] Also, several reports were presented to the Assembly by the Committee of Legal Affairs and Human Rights on the honouring of a specific commitment, namely that of releasing or re-trying alleged political prisoners. See **Resolution 1272 (2002), Resolution 1359 (2004), Resolution 1398 (2004)** and **Resolution 1457 (2005)**. The developments regarding the Nagorno-Karabakh conflict have been followed-up by the Political Affairs Committee and an Ad Hoc Committee of the Bureau. See **Resolution 1416 (2005)** and **Recommendation 1690 (2005)** on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, adopted by the Assembly in January 2005. See also **Resolution 1525 (2006)** on the establishment of a Stability Pact for the South Caucasus, adopted by the Standing Committee in November 2006.

Bosnia and Herzegovina

Co-rapporteurs: Mr Mevlüt Çavuşoğlu, Turkey, EDG and Mr Kimmo Sasi, Finland, EPP/CD

68. Bosnia Herzegovina is a member State of the Council of Europe since **April 2002** [see **Opinion No. 234 (2002)**] and has been placed under the Parliamentary Assembly's procedure ever since. To date Bosnia and Herzegovina has ratified **56** Council of Europe Conventions out of 200.

69. The Monitoring Committee presented its first report on the honouring of obligations and commitments by Bosnia and Herzegovina in June 2004. In **Resolution 1383 (2004)**, the Assembly noted that major progress had been achieved since accession in building a stable, functional and efficient state. The chairmanship of the Council of Ministers no longer rotates and new State level ministries, including a Ministry of Defence had been created in December 2003. The Parliamentary Assembly also **welcomed** the fact that, for the first time since the end of the war in 1995, the October 2002 general elections, considered globally free and fair, were mainly administered by the domestic authorities themselves (see Doc. 9621 Addendum II).

70. Other positive steps taken were the setting up of a court at State level and the transfer or assumption of responsibilities from entity to state level in the fields of defence, intelligence, the judiciary, indirect taxation and the forthcoming police reform. As regards refugees and internally displaced persons, the Assembly **noted with satisfaction** that, almost nine years after the war, around one million people had returned to their pre-war homes or elsewhere in Bosnia and Herzegovina and that implementation of property return laws reached 93% throughout the country. The Assembly **regretted** that the fate of thousands of missing persons was still unknown and urged the adoption of a state level law on missing persons.

71. The Assembly also **regretted** that much of the progress achieved between 2002 and 2004 was a result of the constant pressure by the international community, and in particular the High Representative. It noted with concern that the co-operation and co-ordination between the different – and far too numerous – levels of authority were generally too low. The Assembly therefore **called** on the authorities and the political forces in the country to engage in a constructive dialogue on the issue of constitutional reform.

72. Different options for a comprehensive constitutional reform were submitted by the Venice Commission, upon request by the Parliamentary Assembly, already in March 2005. Consultations between the leaders of the main political parties, facilitated by the USA, and with the constant advice of the Venice Commission, resulted in a constitutional amendments package which was to be submitted to Parliament end of April 2006.

73. For the constitutional amendments to pass, a majority of two-thirds of the members of the House of Representatives present was required. In a **Declaration** adopted in early April 2006, the Monitoring Committee urged all parties represented in Parliament to vote in favour of these constitutional amendments, which represented a first attempt of the citizens of Bosnia and Herzegovina to take their future in their own hands and should be welcomed as such.

74. Following the rejection of the constitutional amendments by just 2 votes on 26 April 2006, the Assembly decided in June 2006, upon request by the Monitoring Committee, to hold an urgent debate on constitutional reform in Bosnia Herzegovina. In **Resolution 1513 (2006)**, the Assembly strongly regretted the failure of the constitutional reform and called on people and politicians in Bosnia and Herzegovina to again discuss constitutional reform immediately after the October general elections. As a second step the Assembly also urged the authorities of Bosnia and Herzegovina, by October 2010 at the latest, to draft and adopt a new Constitution.

75. The **October 2006 general elections** were observed *inter alia* by the Assembly and were considered globally free and fair, although the Assembly regretted that due to the failure of the constitutional amendments in April, these elections were again held in violation of the prohibition of discrimination provided in Protocol 12 to the European Convention on Human Rights since only the constituent people (Bosniaks, Serbs and Croats) to the exclusion of "Others" could stand for election to the state-level Presidency (see Doc. 11101).

Georgia

Co-rapporteurs: Mr Mátyás Eörsi, Hungary, ALDE and NN… (co-rapporteur to be appointed during the April 2007 part-session)

76. Georgia is a member of the Council of Europe since **April 1999** [see **Opinion No. 209 (1999)**] and has been placed under the Parliamentary Assembly's monitoring procedure ever since. To date, Georgia has ratified **51** Council of Europe Conventions out of 200.

77. The Monitoring Committee has presented to the Assembly **four reports** on progress made by Georgia in honouring its obligations and commitments. The first one was debated in September 2001 and led to the adoption of **Resolution 1257 (2001)** and **Recommendation 1533 (2001)**.

78. In November 2003, the co-rapporteurs of the Monitoring Committee were in Georgia when massive but peaceful protests following the fraudulent parliamentary elections led to the Rose Revolution and the resignation of President Eduard Shevardnadze. A few weeks later, in early January 2004, the co-reporters were back in Georgia on the occasion of the presidential election which led to the election of Mikhail Saakashvili.

79. In **Resolution 1363 (2004)** and **Recommendation 1643 (2004)** on the functioning of democratic institutions in Georgia, adopted in January 2004 (see also Doc. 10049), the Assembly acknowledged that the newly elected leadership could not be held responsible for the failure of the former regime to fulfil the country's obligations and commitments to the Council of Europe. As a sign of support to the new authorities and due to the extraordinary character of the transition that had taken place in Georgia, the Assembly therefore agreed to reconsider deadlines for Georgia's commitments to the Council of Europe.

80. The new timeframe was set one year later, in **Resolution 1415 (2005)**, adopted in January 2005. One year after the Rose Revolution, the Assembly made it clear that the post-revolutionary situation should not become an alibi for hasty decisions and neglect for democratic and human rights standards.

81. Two years after the Rose Revolution, in **January 2006**, the Assembly debated the latest comprehensive report on the honouring of obligations and commitments by Georgia (Doc. 10779) and adopted **Resolution 1477 (2006)**.

82. In Resolution 1477 (2006), the Assembly **noted with satisfaction** that some specific commitments had been fulfilled and, in general, large-scale and long-term reforms had been set on the right track. The post-revolutionary euphoria had given way to more pragmatism. The Assembly welcomed the first tangible results in the fight against corruption and the reform of the police, as well as progress in developing a new generation of magistrates and improvements in the conditions in prisons and pre-trial detention centres. A nation-wide public service broadcasting had started operating and the work of the ombudsman had produced results.

83. However, the Assembly was **concerned** that most reforms were still at the very beginning and major challenges still lay ahead. The authorities had to demonstrate, at every step, that their solutions in overcoming the inevitable problems and obstacles along the way fully abide by the principles of democracy, the rule of law and the respect for human rights. They should also be careful to always match words and deeds and to be open to dialogue and criticism. The Assembly reiterated its concerns, raised already in January 2005, that the strong system of government was not accompanied by efficient checks and balances. The opposition, as well as the media, remained weak and the electoral threshold was too high.

84. The Assembly concluded that Georgia's progress could be regarded as generally encouraging but was still **only a first step** towards meeting its obligations and commitments. It thus **recommended** a number of concrete measures that the authorities should take to achieve this goal.

85. Aware that full normalisation of the situation in Georgia was impossible without reaching a peaceful and democratic settlement of the conflicts in the breakaway regions of **Abkhazia** and **South Ossetia**, the Assembly commended President Saakashvili's efforts to push forward his peace imitative but at the same time was **extremely worried** that no real progress had been achieved on

the ground and in the on-going negotiations. It called on all interested parties and in particular the Russian Federation to demonstrate their commitment, in principle and in practice, to a **peaceful and democratic solution** with **full respect of the territorial integrity of Georgia**.

86. The Assembly resolved to **pursue its monitoring** until it received evidence of substantial progress, particularly with regard to the issues mentioned in Resolution 1477 (2006).

87. Since the expulsion of four Russian military intelligence officers from Georgia, on 27 September 2006, and the serious sanctions the Russian authorities imposed against Georgia and its citizens residing in the Russian Federation, the long-lasting **tensions between the two countries** reached the bottom line, causing great concern to the Council of Europe and the Assembly in particular.

88. The Monitoring Committee authorised one of its co-rapporteurs on Georgia, Mr Eörsi, and one of its co-rapporteurs on the Russian Federation, Mr van den Brande, to visit both countries and report back to the committee. The visit to Tbilisi took place from 20 to 22 November 2006 and to Moscow from 28 to 30 November 2006. Following a discussion on the information note prepared by Mr Eörsi and Mr van den Brande, the committee, at its meeting on 13 December, decided to ask for an urgent procedure debate during the January 2007 part-session. Considering the closing of the remaining Russian bases in Tbilisi ahead of time and the return of the Ambassador of the Russian Federation to Tbilisi as first steps in the right direction, the Assembly decided not to hold the debate at that stage. On 23 January 2007, the Monitoring Committee adopted a **declaration** on the issue and declassified **the information note on its rapporteurs' fact finding visits** (AS/Mon (2006) 40 rev.), including a list of **immediate steps** the Georgian and Russian authorities should take.

Moldova

Co-rapporteurs: Mrs Josette Durrieu, France, SOC and Mr Egidijus Vareikis, Lithuania, EPP/CD

89. Moldova is a member state of the Council of Europe since **July 1995** [see **Opinion No. 188 (1995)**] and has been placed under the Parliamentary Assembly's monitoring procedure since **January 1996**. To date, Moldova has ratified **62** Council of Europe Conventions out of 200.

90. Following the fifth visit to the country by its co-rapporteurs[9], the Monitoring Committee presented to the Assembly a report on *the functioning of democratic institutions in Moldova* in April 2002 (Doc. 9418), which led to the adoption of **Resolution 1280 (2002)** and **Recommendation 1554 (2002)**. A second report on the same issue (Doc. 9571) was presented to the Assembly only few months later, in September 2002, and led to the adoption of **Resolution 1303 (2002)**. Subsequently, the Monitoring Committee presented an information report on the implementation of Resolution 1303 (2002) (Doc. 9772) to the Standing Committee at its meeting in Chisinau on 27 May 2003.

91. In October 2005, the Assembly adopted **Resolution 1465 (2005)** and **Recommendation 1721 (2005)** on *the functioning of democratic institutions in Moldova* at the end of a debate on the fourth report presented by the Monitoring Committee in a three-year period (Doc. 10671).

92. In Resolution 1465 (2005), the Assembly **welcomed** the fact that the situation of relative stability created after the **March 2005 parliamentary elections** (Doc. 10480) gave Moldova the opportunity to carry out the democratic reforms that were needed for the last 10 years. The Assembly presented a list of reforms which it was essential for the Moldovan authorities to implement if the country was to honour its obligations and commitments towards the Council of Europe. Furthermore, the Assembly noted with interest the latest initiatives aimed at achieving a peaceful settlement of the conflict in Transnistria.

93. Only one month after the adoption of Resolution 1465 (2005), on 11 November 2005, the Parliament of Moldova adopted **a timetable of legislative reforms** taking up almost all the recommendations set out in the Assembly's Resolution as proof of the authorities' determination to bring their country closer to standards of the Council of Europe.

[9] Several information notes on these visits have been prepared by the co-rapporteurs between 1997 and 2002. They are confidential except one, AS/Mon (1999) 29 rev.

94. In **June 2006**, the Monitoring Committee **declassified an information note** by its co-rapporteurs on their fact-finding visit to the country, including Transnistria, and Odessa (Ukraine) from 12 to 16 March 2006 (AS/Mon (2006) 12).

95. As examples of the most **substantial progress** Moldova had made since the general elections of March 2005, the co-rapporteurs mentioned: the adoption of laws giving the opposition a controlling majority in the Auditor General's Department, the Central Electoral Commission and the Judicial Service Commission; the adoption of amendments to the law on intelligence and security services which led to the setting up in December 2005 of a special parliamentary control committee made up of representatives of all the political parties present in Parliament; the approval by parliament of a programme for its co-operation with civil society.

96. In the list of **outstanding problems,** requiring urgent attention, the co-rapporteurs included: the independence of the judicial system; local self-government, including the election of the Mayor of Chisinau (which has failed four times due to la lack of quorum); the implementation of the reform of the broadcasting sector, including the independence of the public service broadcasting corporation TeleRadio Moldova; trafficking in human beings; religious freedom, including the execution of the Strasbourg Court's judgment of 13 December 2001 in the "*Metropolitan Church of Bessarabia and others v. Moldova"* case[10], the fight against corruption and the protection of the rights of sexual minorities.

97. In conclusion, the co-rapporteurs regretted the delays with the implementation of the legislative timetable and the Action Plan under the European Neighbourhood Policy. Several reasons for these delays were put forward: relative government inertia, lack of co-ordination between the ministries concerned, an economic situation which was showing no real signs of recovery and the problems in Transnistria. On the whole, the difficulties encountered did not seem to be due to a deliberate obstruction of the reforms but rather to a lack of democratic culture and knowledge of how democratic institutions should function in an advanced democracy. There was still a considerable gulf between what was considered in Moldova as an important democratic advance and the reality of its implementation.

98. Although in 2005 the search for a solution to the **Transnistrian conflict** was given a new boost with the Ukrainian plan, the co-rapporteurs regretted that there was still no sign of any significant breakthrough. Tension between the authorities in Chisinau and the breakaway region of Transnistria had increased in a regional context in which the Russian Federation was fully involved, but also Ukraine. Well aware of the serious problems caused by the conflict in Transnistria, the co-rapporteurs stressed that this conflict should not serve as an excuse for delaying the reforms the country so desperately needed. Perhaps the best way of showing the rest of Europe that Moldova is a modern, democratic, attractive country is to start by showing it to its own citizens in Transnistria. The Assembly had a role to play in this process, especially as it is a unique parliamentary forum where all the parties concerned can meet and debate. For this purpose, the co-rapporteurs made a few **practical proposals,** including the organisation of joint meetings of the parties concerned during PACE part-sessions, of hearings with Transnistrian NGOs etc.

99. Following a more recent visit to the country from 12 to 15 November 2006, the co-rapporteurs prepared a **preliminary draft report** on the honouring of obligations and commitments by Moldova[11] which was transmitted to the Moldovan parliamentary delegation for comments within three months in January 2007. An Assembly debate is scheduled for **June 2007**.

[10] See the Interim Resolution (ResDH(2006)12) adopted by the Committee of Ministers on 28 March 2006 urging the Moldovan authorities to pass a new law regulating the registration and activities of religious faiths; as well as a recent judgment of the Court finding a violation of Article 9, of Article 1 of Protocol No. 1 and of Article 13 in conjunction with Article 9 ECHR in a similar case (judgment of 27 February 2007 in the case of *Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova* (application No. 952/03).

[11] AS/Mon (2007) 01, confidential.

Monaco

Co-rapporteurs: Mr Pedro Agramunt, Spain, EPP/CD and Mr Leonid Slutsky, Russian Federation, SOC

100. In October 2004, the Principality of Monaco became the 46th Member State of the Council of Europe [see **Opinion No. 250 (2004)**]. The monitoring procedure in this case was due to start 6 months after accession, i.e. in April 2005. To date Monaco has ratified **29** conventions out of 200.

101. The co-rapporteurs have carried out 2 fact-finding visits, in December 2005 and June 2006 and prepared their first report on the honouring of obligations and commitments by Monaco. This report will be submitted to the Assembly in June 2007.

Russian Federation

Co-rapporteurs: Mr Luc Van den Brande, Belgium, EPP/CD and Mr Theodoros Pangalos, Greece, SOC

102. The Russian Federation has been a member State of the Council of Europe since **February 1996** [see **Opinion No. 193 (1996)**[12]]. To date the Russian Federation has ratified **49** conventions out of 200.

103. The Monitoring Committee presented to the Assembly **one information report** in June 1998 (Doc. 8127) and **two full reports** in April 2002 and June 2005. The latter have led to the adoption of **Resolution 1277 (2002)** and **Resolution 1455 (2005)** and **Recommendation 1553 (2002)** and **Recommendation 1710 (2005)** respectively.

104. Ad hoc committees of the Assembly, chaired in turn by the co-rapporteurs of the Monitoring Committee, observed the parliamentary and presidential elections in December 2003 and March 2004 respectively. Both elections confirmed (Doc. 10032 and Doc 10150) that they were technically well administered but lacked elements of a genuine democratic contest and thus failed to meet the Russian Federation's commitments to the Council of Europe.

105. Resolution 1455 (2005) **welcomed** the progress made by the Russian Federation towards honouring its obligations and commitments, notably the adoption of a new code of criminal procedure and a law on alternative military service, the substantial decrease of the number of inmates in penitentiary institutions, the signature of the Convention on the Transfer of Sentenced Persons (ETS No. 112) and the ratification of a border treaty with Lithuania. It **regretted**, however, that there had been very little progress regarding other outstanding commitments, including those related to the formal abolition of the death penalty, the withdrawal of Russian troops from Moldova, the obligation to bring to justice those found responsible for human rights violations, notably in relation to events in Chechnya and judicial reform, notably of the Prokuratura.

106. The Assembly also stressed that the Russian authorities should opt for solutions which are in line with the Council of Europe's legally and politically binding standards and principles. The Assembly further emphasised that the Russian authorities should not only significantly accelerate the pace of compliance with the remaining commitments, but also adjust the direction of some of the recent political, legislative, and administrative reforms. This is particularly important with regard to changes affecting the normal functioning of pluralist democracy which requires the organisation of free and fair elections, encouraging political competition (the Russian Federation has a high threshold of 7%), guaranteeing appropriate rights to the opposition, accountability of the executive power and independence of the media.

107. Against this background, the Assembly resolved to **pursue its monitoring** until it received evidence of substantial progress, particularly with regard to the issues mentioned in Resolution 1455 (2005).

[12] In parallel, the Assembly adopted Order No. 516 (1996) by which it created an ad hoc Committee on Chechnya to "monitor the situation and to respond to the Russian Federation's request for assistance with proposals in line with the Council of Europe Framework Convention for the protection of national minorities that might be acceptable to both sides". Thus the Monitoring Committee's review of the situation in Chechnya has been limited to the assessment relating to paragraphs 4 and 7.vii of the Opinion No. 193 (1996) and the general obligations of member states under Article 3 of the Council of Europe Statute.

108. In November 2005, the (then) Chair of the Monitoring Committee Mr György Frunda (Romania, EPP/CD), paid a visit to Moscow in order to call on Russian authorities to **abolish the death penalty in law** and to ratify Protocol No. 6 of the to the European Convention on Human Rights before the country was to take up the chairmanship of the Committee of Ministers of the Council of Europe. He reminded the authorities that the Russian Federation was the **only one** of the Council of Europe's 46 member states which had not yet done so.

109. Following a visit to Moscow in April 2006, the co-rapporteurs issued a **public statement** in which they underlined that stability and democracy in the Russian Federation must go hand in hand without any compromise of the fundamental values and principles that unite the 46 members of the organisation. This statement, which also outlined key areas where accelerated reform efforts were considered desirable, in particular as regards compliance with and support of the most important Council of Europe instruments (ratification of Protocols Nos. 6 and 14 of the European Convention on Human Rights), the separation of powers, independence of the judiciary, the *prokuratura* and law enforcement structures and fight against impunity, respect for human rights and fundamental freedoms of all citizens including in Chechnya, respect for human dignity in the army and places of detention, freedom of assembly and media, and combating interethnic, religious and racial intolerance, was approved by the Monitoring Committee on 7 April 2006.

110. The co-rapporteurs carried out a fact-finding visit to Novosibirsk and Moscow from 26 to 29 March 2007, during which they focused on the issues of interrelations between local, regional and federal authorities; the implementation of reforms in far-away regions and respect of human rights and dignity in the army and detention centres, notably in the light of the **public statement** made by the CPT on the consistent refusal by the Russian authorities to engage in a meaningful manner with the CPT on core issues. They also enquired into the recent elimination of the oppositional Liberal Union of Right Forces (SPS) from participating in the recent regional elections in 13 regions of the Russian Federation.

111. I visited Moscow in my capacity as Chairman of the Committee, together with the Chairman of the Committee on Legal Affairs and Human Rights, Mr Dick Marty, from 1 to 3 April 2007 to discuss the urgent need for the Russian Federation to ratify Protocol No. 14, amending the control mechanism of the European Convention on Human Rights. Russia is to date the only Member State which has not ratified Protocol No. 14.

112. Since the expulsion of four Russian military intelligence officers from Georgia, on 27 September 2006, and the serious sanctions the Russian authorities imposed against Georgia and its citizens residing in the Russian Federation, the long-lasting **tensions between the two countries** reached the bottom line, causing great concern to the Council of Europe and the Assembly in particular[13].

113. The Monitoring Committee authorised one of its co-rapporteurs on the Russian Federation, Mr van den Brande and one of its co-rapporteurs on Georgia, Mr Eörsi, to visit both countries and report back to the committee. The visit to Tbilisi took place from 20 to 22 November 2006 and to Moscow from 28 to 30 November 2006. Following a discussion on the information note prepared by Mr Eörsi and Mr van den Brande, the committee, at its meeting on 13 December 2006, decided to ask for an urgent procedure debate during the January 2007 part-session. Considering the closing of the remaining Russian bases in Tbilisi ahead of time and the return of the Ambassador of the Russian Federation to Tbilisi as first steps in the right direction, the Assembly decided not to hold the debate at that stage. On 23 January 2007, the Monitoring Committee adopted a **declaration** on the issue and declassified **the information note on its rapporteurs' fact finding visits** (AS/Mon (2006)40 rev.), including a list of **immediate steps** the Georgian and Russian authorities should take.

Serbia and Montenegro

Co-rapporteurs: Mr Charles Goerens, Luxemburg, ALDE and Mr Milos Budin, Italy, SOC

114. Serbia and Montenegro became a member of the Council of Europe on **3 April 2003**, after adoption of the Constitutional Charter by the parliaments of both Serbia and Montenegro and less than a month after the assassination of Serbian Prime Minister Zoran Djindjic. It was placed under

[13] See also above the section on Georgia.

monitoring procedure immediately upon accession [see **Opinion No. 239 (2002)**]. By September 2004, Serbia and Montenegro had already ratified **45** Conventions of the Council of Europe.

115. In October 2004 the Monitoring Committee considered it was necessary to submit a report (see Doc. 10281) on the functioning of democratic institutions in Serbia and Montenegro which led to the adoption of **Resolution 1397 (2004).**

116. The Assembly noted that the first period after the accession of Serbia and Montenegro to the Council of Europe was marked by the state of emergency in Serbia, imposed shortly after Zoran Djindjic's assassination and by numerous elections in Serbia (early parliamentary elections in December 2003 and presidential elections in June 2004, after almost two years and three invalidated elections), while in Montenegro the opposition boycotted Parliament since spring 2003. The Assembly **regretted** that the constitutional reform, aimed at making the constitutions of Serbia and Montenegro compatible with the Constitutional Charter, had not been completed within six months of the Charter's entry into force, i.e. on 4 July 2003. As a consequence, Serbia and Montenegro continued to be composed of two almost completely separate constitutional, legal, administrative and economic systems. The status quo was resulting in a constitutional vacuum and in ensuing constitutional, legal, administrative and political contradictions which was preventing the State Union and its institutions to be anything else but a nearly powerless shell.

117. The Assembly also **deplored** that the first year since the accession of Serbia and Montenegro was marked by a considerable deterioration in the country's co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. It recalled that the situation in Kosovo and the lack of security of the remaining members of the Serbian and other non-Albanian communities, particularly after the eruption of the ethnic violence in March 2004, was also negatively affecting the situation in Serbia. Large numbers of internally displaced persons represented an additional financial burden for a country that was already hosting several hundred thousands of refugees from Croatia and Bosnia and Herzegovina.

118. In conclusion, the Assembly made a number of concrete recommendations and called on all moderate, pro-European and progressive political forces in Serbia and Montenegro to engage in dialogue and co-operation with the aim to stabilise and consolidate democratic institutions within and between the two member states of the State Union of Serbia and Montenegro. It resolved to continue to monitor the situation closely.

119. The co-rapporteurs carried out two further fact-finding visits to Serbia and Montenegro in April 2005 (see Doc. AS/Mon (2005) 21) and May 2006, just before the referendum in Montenegro, which led to Montenegro's independence.

Serbia

Co-rapporteurs: Mr Charles Goerens, Luxembourg, ALDE and Mr Andreas Gross, Switzerland, SOC

120. The referendum held in Montenegro in May 2006 marked the end of the dissolution of the former Federal Republic of Yugoslavia. In its opinion on the report on the "**consequences of the referendum in Montenegro" which was debated under urgent procedure in June 2006** [see **Resolution 1514 (2006)** and Doc. 10980], the Monitoring Committee requested to be involved in the future accession procedure for Montenegro after the parliamentary elections to be held in the country in September, in order to ensure continuity with the previous monitoring procedure for the State Union of Serbia and Montenegro, which had been a member of the Council of Europe since 2003.

121. Concerning Serbia, as the continuing State of the former State Union of Serbia and Montenegro in the Council of Europe, the committee considered that the commitments entered into in 2003 needed to be redefined in order to be adapted to the new situation.

122. Serbia held a constitutional referendum in October 2006, reaffirming that it considered Kosovo an integral part of Serbia. The Assembly observed the referendum and also the parliamentary elections that were held in January 2007 (see Doc. 11102 and Doc. 11228). The co-rapporteurs will carry out a fact-finding visit as soon as the new Government is formed.

Ukraine

Co-rapporteurs: Mrs Hanne Severinsen, Denmark, ALDE and Mrs Renate Wohlwend, Liechtenstein, EPP/CD

123. **Ukraine** is a member state of the Council of Europe since **November 1995** and has been placed under the Parliamentary Assembly's monitoring procedure ever since [see **Opinion No. 190 (1995)**]. To date Ukraine has ratified **60** Council of Europe Conventions out of 200.

124. During eleven years of Ukraine's membership of the Council of Europe, the Monitoring Committee has presented to the Assembly no less than **nine reports** on the progress made by Ukraine in honouring of its obligations and commitments. These include: four regular monitoring reports, two supplementary reports measuring progress made under conditional threats of sanctions in June 1999 and September 2001, a special report in April 2000 focusing on the reform of institutions in Ukraine, and two reports under urgent procedure on freedom of expression and the functioning of parliamentary democracy, debated in January 2001, and on political the crisis in Ukraine, debated in January 2004. The co-rapporteurs and members of the committee have actively participated in the election observations of the 2002 and 2006 parliamentary elections and the 2004 presidential elections.

125. The regular monitoring reports presented between 1999 and 2003[14] observed severe shortcomings in the progress made by Ukraine in honouring its obligations and commitments and lack of willingness on behalf of the Ukrainian authorities to move the relevant issues ahead. The Assembly therefore repeatedly requested the Ukrainian authorities to take immediate measures that would allow substantial progress to be made, or face sanctions in accordance with Rule 9 of the Assembly's Rules of Procedure and Article 8 of the Statute of the Council of Europe. Finally, in September 2001, the Assembly **concluded** in its **Resolution 1262 (2001)** and **Recommendation 1538 (2001),** that substantial progress had, indeed, been made, particularly with respect to the enactment of significant new legislation. However, two years later, in its **Resolution 1346 (2003)** and **Recommendation 1622 (2003)** adopted in September 2003, it observed that the progress of reforms was at a standstill and therefore resolved to pursue the monitoring procedure in respect of Ukraine in close co-operation with the Ukrainian delegation.

126. In the years 2000-2004, the Assembly also held a number of debates on specific issues concerning Ukraine on the basis of reports prepared on behalf of the Monitoring Committee. In April 2000, the Assembly adopted **Recommendation 1451 (2000)** on reform of the institutions in Ukraine, in which it disapproved of the so-called referendum on the reform of the institutions. Five months later, following the murder of journalist Hyorhyi Gongadze in September 2000, the Assembly held a debate under urgent procedure on freedom of expression and functioning of parliamentary democracy, which led to the adoption of **Resolution 1239 (2001)** and **Recommendation 1497 (2001)**.

127. In reaction to the political deadlock over the controversial preliminary adoption by the Verkhovna Rada of a draft law on constitutional amendments and the ruling by the Constitutional Court of Ukraine in December 2003 giving President Kuchma the right to run for a third term of office in the 2004 Presidential elections, the Assembly held a debate under urgent procedure at its January 2004 part-session and adopted **Resolution 1364 (2004)** in which it again warned that if any further attempts should be made to push through political reforms by amending the constitution in a manner which is not prescribed by law and is unconstitutional, or if Ukraine should fail to guarantee free and fair elections on 31 October 2004, the Assembly would resort to further sanctions.

128. **Three public statements** were successively issued by the Monitoring Committee in the course of 2004, calling on the Ukrainian authorities to conduct the election process with absolute impartiality and respect for the Council of Europe standards and to allow all candidates to compete on fair and equitable grounds.

129. The Assembly also observed all three stages of the presidential elections and welcomed the fact that the re-run second round of the presidential election on 26 December 2004 which led to the election of Mr Yuschenko as President of Ukraine, moved substantially closer to meeting the criteria

[14] See **Resolution 1179 (1999)**, **Resolution 1194 (1999)** and **Resolution 1244 (2001)** and **Recommendation 1395 (1999)**, **Recommendation 1416 (1999)** and **Recommendation 1513 (2001)**.

of the Council of Europe, the OSCE and other international organisations for the holding of democratic elections (AS/Bur/UA (2004) 13).

130. Nine months after the Orange Revolution, in **October 2005**, the Assembly debated the 6th and the latest comprehensive report on the honouring of obligations and commitments by Ukraine (Doc. 10676) and adopted **Resolution 1466 (2005)** and **Recommendation 1722 (2005)**.

131. In Resolution 1466 (2005), the Assembly **welcomed** the first achievements of the new leadership, but cautioned that the post-revolutionary situation should not become an alibi for hasty decisions, infighting and neglect for democratic and human rights standards, and that the fight against corruption and the strengthening of the rule of law should become priority matters for Ukraine in order to build solid and lasting foundations for a stable, prosperous and democratic future.

132. The Assembly **regretted** that the constitutional amendments of 8 December 2004, adopted as part of a package-deal to halt the political turmoil, contained provisions which the Venice Commission had repeatedly found incompatible with the principles of democracy and the rule of law, in particular with regard to the imperative mandate of people's deputies and the powers of the prosecutor's office, and urged these provisions to be brought in line with the Venice Commission's opinion as soon as possible.

133. The Assembly also **deplored** the slow progress made in the investigation of the Gongadze and other high-profile cases and urged the new authorities to bring to justice the masterminds and perpetrators of the massive election frauds of the 2004 Presidential elections. It further recalled that a number of important specific commitments still remained unfulfilled. It therefore resolved to **pursue its monitoring** and to return to the assessment of Ukraine's compliance with its obligations and commitments after the March 2006 parliamentary and local elections, emphasising that the preparation and conduct of these elections in line with Council of Europe standards would be a major test for the new authorities. The Assembly would also assess the functioning of democratic institutions and the progress in the implementation of significant reforms on the basis of concrete benchmark recommendations which were proposed in Resolution 1466 (2005).

134. In **December 2005** and **January 2006** the Committee adopted two **declarations** calling upon the Verkhovna Rada and its leadership not to hold the renewal of the composition of the Constitutional Court hostage to political infighting.

135. In February 2006, the co-rapporteurs visited the country in order to discuss: the new government's capacity to carry out an ambitious **Action Plan for the Honouring by Ukraine of its Obligations and Commitments to the Council of Europe** that President Yushchenko approved on 20 January 2006; the possible ways of resolving the political deadlock over the constitutional amendments and the refusal of the Verkhovna Rada to renew the composition of the Constitutional Court; and the preparation of the election campaign for the 26 March legislative elections. The Committee approved and declassified the co-rapporteurs' information note on this visit in March 2006 [AS/Mon (2006) 07].

136. The Assembly observed the March 2006 legislative elections and considered them free and fair and consolidating a democratic breakthrough (Doc.10878).

137. Six months after the elections, in October 2006, the co-rapporteurs visited the country to discuss the key internal and foreign political orientations in the new political set-up following the March 2006 elections and to follow up on the progress made in implementing the Action Plan of 20 January 2006. An information note (AS/Mon (2007) 02) was issued following that visit, which included a list of immediate steps to be taken by the country's authorities. This note was declassified by the Committee in January 2007.

138. The co-rapporteurs **observed** that the parliamentary elections of 26 March had indisputably manifested a democratic breakthrough and that, for the first time after independence, Ukraine had a democratically elected government. Yet the country had not yet reached a state of genuine democracy that would be able to manage the change of power.

139. They **commended** the steps taken by the country's authorities in elaborating the Action Plan for the Honouring by Ukraine of its Obligations and Commitments and in speeding up the ratification of Council of Europe instruments as well as its accomplishments in adopting the Concepts on the Reform of the Judiciary and on Eradication of Corruption, and the Law on the Execution of Judgments and Application of Case-Law of the European Court of Human Rights. They also welcomed the signing of a Memorandum of Understanding between the Minister of Foreign Affairs and the Secretary General of the Council of Europe on setting up of the office of the Secretary General's special representative in Kyiv, which had been recommended in **Resolution 1364 (2004)** and **Recommendation 1722 (2005)**.

140. However, the report **deplored** that little or no progress had been made as regards i) the alignment of the constitutional amendments of December 2004 with European standards; ii) the enhancement of the functioning of democratic institutions through the adoption of relevant laws on the branches of power, on parliamentary investigatory commissions, on rules of procedure of the Verkhovna Rada or on guarantees of the oppositional activity; iii) the strengthening of the rule of law and independence of the judiciary through reforming the criminal justice system, the status and functioning of the judiciary and law enforcement bodies; iv) transformation of state broadcasting into genuine public service broadcasting or v) enhancement of the system of local self-government in compliance with the European Charter of Local Self-Government. It concluded that tangible progress is expected by September 2007 and that maintaining the status quo on the reforms could only mean a step backwards.

141. Following their most recent fact-finding visit to Donetsk and Kyiv, on 6 March 2007, the co-rapporteurs issued a **statement** in which they expressed their willingness to recommend the lifting of full-scale monitoring. To do so, they needed however credible assurances from the Ukrainian authorities that they were "*committed to engaging in serious, coherent and well-targeted reforms*". They noted positive signs, including a possible breakthrough in reforms of the judiciary, transfer of the penitentiary to the Ministry of Justice and transformation of public broadcasting, but also voiced concern over the standstill as regards the constitutional reform, reform of the local government, fight against corruption or investigation of the Gongadze case and bringing to justice of perpetrators.

142. It is against this background that the 7th regular full-scale monitoring report on Ukraine is being currently prepared with a view of an Assembly debate during the October 2007 part-session.

3.2.3. Member states currently under post-monitoring dialogue

Bulgaria

143. Bulgaria is a member state of the Council of Europe since **May 1992** [see **Opinion No. 161 (1992)**] To date Bulgaria has ratified **77** conventions out of 200.

144. A monitoring procedure as regards Bulgaria was initiated by the Committee on Legal Affairs and Human Rights in 1994. In January 2000 the Assembly adopted **Resolution 1211 (2000)**, which brought to an end the said procedure. The Assembly decided to pursue the dialogue with the country's authorities on an eight-point list of outstanding issues mentioned in paragraph 4, as well as on other relevant issues connected with the obligations inherent to accession to the Council of Europe. In May 2001 the Monitoring Committee initiated the post-monitoring dialogue with Bulgaria in accordance with the guidelines set out by the Bureau of the Assembly on 6 March 2000.

145. In January 2002 the Bulgarian parliamentary delegation submitted observations on the follow-up to the Assembly's recommendations and on the progress made by Bulgaria in specified fields towards complying with Council of Europe standards (AS/Mon (2002) 10). These observations were examined by the committee in May 2002.

146. The dialogue continued through two fact-finding visits carried out by the then Chair of the Monitoring Committee, Mrs Josette Durrieu, in October 2002 and June 2004. The information gathered was presented in a confidential memorandum in October 2004. Comments by the Bulgarian authorities and oppositional political forces were received as requested in December 2004 and considered by the Committee on 24 January 2005 (AS/Mon (2004) 53 rev). Since January 2005, the dialogue has been carried out by the 1st Vice-Chair of the Committee Mrs Hanne Severinsen. She

visited the country from 31 May to 3 June 2006 and issued an information note (AS/Mon (2006) 26) which was approved and declassified by the Monitoring Committee in October 2006.

147. The information note paid tribute to the Bulgarian authorities for the progress made on the road to democracy and aligning itself to the *acquis communautaire* as well as to the political criteria of the European Union accession. Nevertheless, it noted that the country still needed more decisive and far-reaching reforms as regards its judiciary system, decentralisation and combating corruption and organised crime. Bulgaria also needs to improve its track record in other areas of human rights, such as the conditions of detention, respect of minority and religious rights, fight against trafficking in human beings, child protection, etc. It regretted that the Council of Europe had not played a more significant role in assisting the whole reform process and that the Bulgarian authorities had not used the opportunity to seize the Venice Commission or the Directorate General of Legal Affairs for expertise and opinion on their key reforms. In the light of the above, the 1st Vice-Chair requested the Bulgarian delegation to supply her complementary information that would allow her to prepare final conclusions.

148. The Bulgarian parliamentary delegation has submitted written information, as requested, in February 2007 (AS/Mon (2007) 13 – confidential). The Monitoring Committee will discuss this supplementary information at its meeting of 28 March 2007.

"The former Yugoslav Republic of Macedonia"

149. "The former Yugoslav Republic of Macedonia"[15] is a member of the Council of Europe since **November 1995** [see **Opinion No. 191 (1995)**]. To date the country has ratified **77** conventions out of 200.

150. The monitoring procedure, opened in July 1996 was closed by **Resolution 1213 (2000)** in April 2000.

151. By Resolution 1213 (2000), the Assembly considered that "the former Yugoslav Republic of Macedonia" had honoured most of its commitments. It resolved therefore to pursue its dialogue with the Macedonian authorities on a number of key issues referred to in paragraph 13 or any other issue arising from its obligations as member state of the Council of Europe. The key areas where further improvements were expected are the following: integration of the Albanian and other minorities with regard to education, the use of language, their proportional representation in the police and other state institutions; reforms of the judiciary and the efficiency of the legal system; functioning of the Public Prosecutor's Office; respect by the law enforcement bodies for human rights and fundamental freedoms; adoption and implementation of efficient measures to fight corruption, organised crime and money laundering; and independence of media. It was widely accepted that the decision to close the monitoring procedure was premature and motivated mainly by the desire to calm down the inter-ethnic tensions which deteriorated into a conflict in late 2000 and early 2001.

152. Following the outburst of the civil insurgence, the Assembly adopted **Resolution 1255 (2001)** in June 2001 on the basis of a report prepared by the Political Affairs Committee (Doc. 9146). The Assembly strongly condemned the action of the armed ethnic Albanian extremist groups and called for their complete disarmament. While underlining its full respect for the sovereignty and territorial integrity of "the former Yugoslav Republic of Macedonia" and for the rights of all citizens and ethnic groups, the Assembly requested the government to take a series of urgent measures, including constitutional ones, concerning, in particular, the use of the Albanian language, the improvement of (higher) education in Albanian and adequate representation of ethnic Albanians in public institutions. It also called upon the Political Affairs Committee to immediately establish an *ad hoc* committee to visit the region and to report back to the Assembly at it September 2001 part-session. The Bureau of Assembly considered it advisable not to reopen the monitoring procedure in accordance with **Resolution 1115 (1997)** at that stage.

153. In September 2001, the Assembly adopted **Resolution 1261 (2001)** on the basis of the opinion of the *ad hoc* committee of the Political Affairs Committee (Doc. 9234), which called on the

[15] In this document, the term "Macedonia" is used for descriptive purposes and for readers' convenience, without prejudice to the Assembly's position on the name of the state.

Monitoring Committee to intensify the post-monitoring dialogue with "the former Yugoslav Republic of Macedonia" and urged the authorities to fully co-operate in this process. It is acknowledged that although the monitoring procedure had been closed too early, both Resolutions 1213 (2000) and 1255 (2001) contributed considerably to the elaboration of the Ohrid Framework Agreement, signed in August 2001, which contains many of the key requirements expressed by the Assembly.

154. The dialogue continued through two fact-finding visits carried out by the then Chair of the Monitoring Committee, Mrs Josette Durrieu, in December 2002 and November 2004. The information gathered during those visits was presented in confidential information notes [AS/Mon (2003) 06 and AS/Mon (2004) 51].

155. In June 2005, the Assembly adopted **Resolution 1440 (2005)** on the basis of a report prepared by the Political Affairs Committee (Doc. 10547), which made further recommendations in the implementation of outstanding important commitments.

156. An *ad hoc* committee of the Assembly observed the parliamentary elections of 5 July 2006 and considered these elections mostly in line with Council of Europe commitments and standards for democratic elections, regardless of the instances of violence and intimidation during the first half of the campaign and isolated instances of serious irregularities during Election Day. On the whole, they noted that voters could decide on the political direction of their country in a democratic fashion and the irregularities observed did not overshadow the democratic progress made (Doc. 11015).

157. In my capacity as Chair of the Monitoring Committee, I conducted a fact-finding visit to Skopje in January 2007. During this visit, I concentrated on the political developments in the country since the parliamentary elections of 5 July 2006; consolidation of good governance and democratic institutions; inter-ethnic relations and the implementation of the Ohrid Framework Agreement; progress made by the country in honouring its obligations and outstanding accession commitments to the Council of Europe, and solving outstanding bilateral issues such as the name issue.

158. The impressions of this visit have fed into an information note (AS/Mon (2007) 12), which the Monitoring Committee discussed and declassified at its meeting of 28 March 2007.

Turkey

159. Turkey has been a member State of the Council since 1949. To date Turkey has ratified **96** conventions out of 200.

160. It has been the first "old" member State subject of a monitoring procedure since the adoption, in 1996, of **Recommendation 1298 (1996)** on Turkey's respect of commitments to constitutional and legislative reforms.

161. On 28 June 2001, in **Resolution 1256 (2001)**, the Parliamentary Assembly welcomed the progress made by Turkey but decided to continue the monitoring process and review progress, pending a further decision to close the procedure.

162. By **Resolution 1380 (2004)**, the Assembly decided to close the monitoring procedure with regard to Turkey. The Assembly considered that Turkey had achieved more reforms in a little over two years than in the previous decade. It welcomed the adoption in October 2001 of important changes to the Constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms.

163. In particular the Assembly **congratulated** the authorities on abolishing the death penalty, instituting "zero tolerance" towards torture and impunity, lifting many restrictions to freedom of expression, association and religion and granting certain cultural rights to the Turkish citizens of Kurdish origin.

164. The Assembly decided, through its Monitoring Committee, to enter into a **post-monitoring dialogue** with Turkey on a twelve-point list of outstanding issues, including a major reform of the 1982 Constitution, amendments to the electoral code, in particular in relation to the 10% threshold for parliamentary elections, recognition of national minorities, continued efforts to combat violence against women, the fight against corruption and the right to conscientious objection and alternative civil service.

This dialogue, conducted by the Chairman of the Monitoring Committee is ongoing, with the Turkish authorities having submitted written information on the fulfilment of the 12 issues raised in Resolution 1380(2004) and with a planned fact-finding visit by the end of 2007.

3.3. Applications to initiate a monitoring procedure

165. In accordance with Resolution 1115 (1997), the Monitoring Committee can present itself a "written reasoned application" to the Bureau asking for the opening of a monitoring procedure. In all other cases, applications to initiate a monitoring procedure are referred to the Monitoring Committee for a written opinion.

166. During its 10 years of existence, the Monitoring Committee has presented two "written reasoned applications" for the opening of monitoring procedure: one with respect to **Latvia** in September 1997, accepted by the Bureau few days later; and one with respect to **Austria** in March 2000, rejected by the Bureau in April 2000[16]. It has been consulted on several other occasions by the Bureau.

167. The first consultation procedure was initiated by the Bureau on the occasion of a motion for an order on the situation of the Muslim minority in Western Thrace (**Greece**) just after the committee's creation in 1997. In the course of the preparation of the committee's opinion, a significant legislative amendment with high policy implications was agreed by the Greek government: the abolition of Article 19 of the Greek Nationality Code, criticised as discriminatory *vis-à-vis* non ethnic Greeks. In the light of this development, the Bureau, in April 1998, decided in favour of the committee's opinion not to open a monitoring procedure for Greece. The experience showed that democratic changes can be prompted through constructive dialogue even without or prior to the opening of a monitoring procedure[17].

168. In March 2003, the Bureau made an application to the Monitoring Committee to initiate a monitoring procedure for **Liechtenstein** in the light of serious concerns raised with respect to constitutional amendments proposed by the Princely House of Liechtenstein and approved by referendum. At the same time, the Bureau transmitted to the committee the opinion of the Venice Commission on the constitutional amendments which concluded that the proposed constitutional reform "would not only prevent the further development of constitutional practice in Liechtenstein towards a fully-fledged constitutional monarchy as in other European countries, but even constitute a serious step backward." This opinion was prepared upon the Bureau's request and made public in December 2002 prior to the constitutional referendum in Liechtenstein[18]. Following a fact-finding to the country by two co-rapporteurs, the committee recommended to the Bureau, in September 2003, that a monitoring procedure should be initiated for Liechtenstein. This procedure should aim at re-examining, in co-operation with the national authorities, the decisions taken during the vote on the People's Initiative in March 2003 in the light of this report, of the Venice Commission's opinion, and of constitutional practice in existing constitutional monarchies in Europe, with a view to ensuring that the constitutional practice in Liechtenstein is in conformity with the general principle that no government action can be taken without accountability to parliament or to the people[19]. The Bureau did **not** follow the committee's opinion and decided instead to set up an Ad Hoc Committee to carry out a dialogue with the Parliament of Liechtenstein. The Assembly ratified the Bureau's decision in January 2004. The report of the Ad Hoc Committee was made public in September 2006[20].

169. A request to re-open the monitoring procedure with respect to **Latvia** was referred by the Bureau for opinion to the committee in June 2002. The committee decided not to follow-up the request and instead continue its ongoing post-monitoring dialogue with Latvia. Following a new request by the Bureau in December 2003, the committee, in April 2004, adopted an opinion recommending not to re-open the monitoring procedure with respect to Latvia. The Bureau followed the committee's recommendation.

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[16] See in this respect doc. AS/Bur(2000)025.
[17] See Progress of the Assembly's monitoring procedures (April 1997-April 1998), Doc. 8057.
[18] Doc. 9661.
[19] Doc. 10044.
[20] Doc. 10940 Addendum. A comprehensive report on Liechtenstein appears in the addendum to the present report.

170. In January 2006, an application to initiate a monitoring procedure concerning the monopolisation of the electronic media and the possible abuse of power in **Italy** was tabled. It was referred to the committee only five months later, in May 2006, following parliamentary elections in the country and a government change. The committee appointed rapporteurs in June 2006. They will visit the country as soon as the current political crisis has come to an end.

171. An application to initiate a monitoring procedure to investigate electoral fraud in the **United Kingdom** was referred by the Bureau to the committee in October 2007. Two rapporteurs for opinion visited the country from 26 to 27 February 2006 to look, in particular, into allegations of irregularities involving postal and absentee votes in the United Kingdom. They will present their opinion to the committee at one of its next meetings.

4. Periodic reports on member states which are not under a monitoring procedure or involved in a post-monitoring dialogue

4.1. Follow-up given to recommendations addressed in 2006 to the first group of 11 member states

172. In the Addendum to its Progress Report of last year, the committee presented to the Assembly periodic reports on the first group of 11 member states which are not currently under a monitoring procedure or involved in a post-monitoring dialogue: **Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France and Germany**.

173. On the basis of these period reports summing-up the findings of the Commissioner for Human Rights and other Council of Europe bodies and institutions, the Assembly, in its Resolution 1515 (2006), invited the **national parliaments** of the countries concerned to: (i) use these reports as the basis for a debate on their country's record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe; (ii) promote execution of the judgments of the European Court of Human Rights and compliance with recommendations made by the Commissioner for Human Rights and the other Council of Europe specific monitoring bodies, both by provoking and accelerating necessary legislative initiatives and exercising their role of oversight of government action.

174. Noting that a number of the member states under consideration were not yet subject to certain specific monitoring mechanisms of the Organisation – and thus no assessment of the relevant issues was available – because they had not ratified the relevant conventions or had not joined the relevant bodies, the Assembly urged the member states to take the necessary steps and ratify the relevant conventions within three years.

175. The Assembly also encouraged the Belgian authorities and, in particular, the Belgian Parliament, to accelerate the legislative reforms required to ensure full execution of the judgment of the European Court of Human Rights in the case of *Čonka v. Belgium.*

176. The President of the Assembly, Mr van der Linden, wrote to the Speakers of the national parliaments concerned inviting them to ensure follow-up action to Resolution 1515 (2006). The authorities of three member states have responded to Mr van der Linden's letter: **Austria**, **Belgium** and **Germany**. The Speaker of Parliament of Austria, Ms Barbara Prammer, and the Chairman of the Parliamentary Delegation of Germany to the Assembly, Mr Joachim Hörster, have sent information on follow-up measures or have explained the position of their government. The President of the Chamber of Deputies of Belgium, Mr Herman de Croo, has informed Mr van der Linden that he had transmitted Resolution 1515 (2006) to the Prime Minister, as well as the Committees of Justice, External Relations and Finances of the Chamber of Deputies, drawing their attention to the recommendations made by the Assembly.

177. I particularly welcome the follow-up measures already taken by **Austria** which**:** ratified the Civil Law Convention on Corruption on 30 August 2006; joined the GRECO on 1 December 2006; has initiated the ratification procedure with respect to the Criminal Law Convention on Corruption and the 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; intends to ratify Protocol No. 12 to the European Convention on Human Rights after having concluded the debate on the maintenance of the right of individual

complaints; according to the information transmitted by the Speaker of the Austrian Parliament, the ratification of the Revised European Social Charter would be added to the work programme of the coming government; ratification of the Additional Protocol to the European Social Charter will be discussed subsequently. Austria is a member of the Financial Action Task Force (FATF) and thus actively involved in the fight against money-laundering;

178. As regards **Germany**, according to the information submitted by the Chairman of the German delegation to the Assembly in July 2006, the German government will push for implementation and ratification of the Civil Law and Criminal Law Conventions on Corruption "before the end of the current legislative term". The legal situation in the country being in compliance with the requirements of these conventions, minor changes will be required to the current domestic legislation. As regards ratification of Protocol No. 12 to the European Convention on Human Rights, the current German government has adopted a "wait and see" approach as regards the process of ratification by other member states and the position that the Strasbourg Court will take in its relevant rulings, so as to better assess the consequences of ratification. The German government is currently assessing whether or not the conditions are given for signing the Revised European Social Charter and the Additional Protocol to the European Charter. Germany is a member of the FATF and, as such, has observer status with MONEYVAL.

179. As results from an up-dated chart of the ratifications and signatures of Council of Europe conventions by the first group of 11 states in Appendix I, other member states have taken follow-up measures, notably:

180. **Andorra** and **Belgium** ratified Protocol No. 14 to the European Convention on Human Rights amending the control system of the convention; Belgium also ratified the Civil Law Convention on Corruption;

181. **France** ratified the European Charter of Local Self Government;

182. The **Czech Republic** ratified the European Charter for Regional or Minority Languages.

183. Regrettably, **Belgium** has **not** yet completed the legislative reforms required to ensure full execution of the judgment of the European Court of Human Rights in the case of *Conka v. Belgium* of 2 February 2002. In that case, the Court found violations of several provisions of the convention on grounds of the means deployed to secure the arrest of the applicants, Slovak nationals of Roma origin seeking asylum, and the conditions of their expulsion in 1999, as well as the haphazard treatment of the appeals they had lodged in this connection.

184. A review of follow-up measures will be made again next year as part of the Progress Report of the committee.

185. In its Resolution 1515 (2006), the Assembly also invited the Commissioner for Human Rights to give priority in organising visits and preparing reports on Austria, Belgium and Germany, which his predecessor had not visited. A visit to Germany by the new Commissioner took place from 9-11 October and 15-20 October 2006 and a report is under preparation.

4.2. Recommendations addressed to the second group of 11 member states

186. In the addendum to the present report appear periodic reports on the second group of 11 member states which are neither under a monitoring procedure nor involved in a post-monitoring dialogue: **Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta** and **the Netherlands**.

187. As last year, they are based on the country-by–country assessment made on these states by the Commissioner for Human Rights and other Council of Europe monitoring mechanisms or other institutions. The Secretariat has also prepared a chart of ratifications and signatures of the main Council of Europe conventions providing for a specialised monitoring mechanism with respect to this second group of 11 member states (see Appendix II).

188. The Assembly should invite the **national parliaments** of the countries concerned to:

(i) use these reports as the basis for a debate on their country's record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe;

(ii) promote execution of the judgments of the European Court of Human Rights and compliance with recommendations made by the Commissioner for Human Rights and the other Council of Europe specific monitoring bodies, both by provoking and accelerating necessary legislative initiatives and exercising their role of oversight of government action.

189. Noting that a number of the member states under consideration are not yet subject to certain specific monitoring mechanisms of the Organisation – and thus no assessment of the relevant issues was available – because they have not ratified the relevant conventions or have not joined the relevant bodies, the Assembly should urge the member states concerned to take the necessary steps and ratify the relevant conventions within three years. Again, a special responsibility is placed on national parliaments to promote ratification. More specifically:

– **Liechtenstein** and the **Netherlands** should be invited to sign and ratify, whereas **Iceland, Ireland and Italy** should be invited to ratify the Civil Law Convention on Corruption,

– **Liechtenstein** should be invited to sign and ratify, whereas **Greece and Italy** should be invited to ratify the Criminal Law Convention on Corruption;

– **Hungary, Ireland, Liechtenstein** and **Lithuania**, should be invited to sign and ratify, whereas **Greece, Iceland, Italy, Latvia, Luxembourg, Malta** and **the Netherlands** should be invited to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, noting that all of them have ratified the 1990 Convention on the same subject-matter;

– **Lithuania** and **Malta** should be invited to sign and ratify, whereas **Greece, Hungary, Iceland, Ireland, Italy, Latvia** and **Liechtenstein** should be invited to ratify Protocol No. 12 to the European Convention of Human Rights;

– **Italy** and **Latvia** should be invited to ratify Protocol No. 13 to the European Convention of Human Rights;

– **Latvia** and **Liechtenstein** should be invited to sign and ratify, whereas **Greece, Hungary, Iceland** and **Luxembourg** should be invited to ratify the Revised European Social Charter;

– **Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg** and **Malta** should be invited to sign and ratify, whereas **Hungary** should be invited to ratify the Protocol to the European Social Charter on collective complaints;

– **Greece, Iceland** and **Luxembourg** should be invited to ratify the Framework Convention for the Protection of National Minorities;

– **Greece, Ireland, Latvia** and **Lithuania** should be invited to sign and ratify, whereas **Iceland, Italy** and **Malta** should be invited to ratify the European Charter for Regional or Minority Languages;

– **Italy** and **Liechtenstein** should be invited to join the Group of States against Corruption (GRECO);

190. In **Greece**, the absence of a comprehensive plan to resolve the systemic problem of overcrowding of detention facilities and thus the failure to ensure full execution of the *Dougoz* and *Peers* judgments led to the adoption by the Committee of Ministers of an Interim Resolution in 2005[21]. The same problem was highlighted more recently in the *Kaja* judgment of 27 July 2006. On 7 June 2006, the Committee of Ministers adopted another Interim Resolution on two judgments of the European Court of Human Rights concerning issues of reafforestation and violations of property rights in Greece[22].

[21] ResDH(2005)21. See also Resolution 1516 (2006) on implementation of judgments of the European Court of Human Rights.
[22] ResDH(2006)27 concerning the cases of *Papastavrou and others* and *Katsoulis and others*.

191. In **Italy**, despite repeated calls by the Assembly[23] and the Committee of Ministers[24], structural deficiencies continue to cause large numbers of repetitive findings of violations of the European Convention on Human Rights for excessive length of judicial proceedings. The lack of progress towards the solution to the systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy has led to the adoption of yet another Interim Resolution on 14 February 2007[25]. Moreover, the Italian legislation still does not allow the reopening of domestic criminal proceedings impugned by the Court. Since no other measures have been taken to restore the applicants' right to a fair trial, the situation of non-compliance with the Strasbourg Court's judgments persists[26].

192. **Greece and Italy** could thus be urged to accelerate the adoption of general measures necessary to ensure full execution of the above-mentioned judgments of the European Court of Human Rights and effectively prevent similar violations of the Convention.

193. The first 3-year cycle will be completed with the last group of states being examined in 2008: **Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland** and **the United Kingdom**. However, already now, a chart of the ratifications and signatures of the main Council of Europe conventions appears in Appendix III. It gives a picture of the main recommendations to be addressed to this last group of 11 member states.

5. Stock-taking after ten years of activity of the Monitoring Committee: main achievements and challenges for the future

194. Since its first meeting, the committee has reflected on the character and purpose of **parliamentary** monitoring. Its specificity, in contrast to the conventional monitoring mechanisms of the Organisation or of other international organisations, lies in the influence which the Assembly can exercise on the **national parliaments** of the member states concerned. The fact that not only the authorities of the states concerned but also the opposition, represented in the national delegations to the Assembly, fully participate in the monitoring exercise is one of the unique strengths of the parliamentary monitoring mechanism.

195. The committee has tried to give expression to the **political** nature of parliamentary monitoring. The emphasis is not exclusively on whether a Convention has been ratified but – if ratified – how it is **implemented** in practice. The same goes for the domestic legislation whose implementation in every-day life has to be verified. For this reason, the committee has tried to reflect in its reports, a deeper understanding of the geopolitical and economic context, as well as the domestic concerns of citizens of the country being monitored.

196. A **non-confrontational, long-term approach** has prevailed over a sanction-orientated approach since the setting up of the committee. Monitoring is understood as a process of seeking solutions to specific problems rather than a process of confrontation. The co-operation with the national parliamentary delegations concerned has overall been excellent and extremely constructive.

197. The fact that most of the reports presented by the Monitoring Committee lead to a debate by the national institutions of the countries concerned, or the adoption of a national action plan, is a proof of the increasing influence of the work of the committee as a tool capable of pushing forward democratic reforms within the countries concerned.

198. Moreover, the reports of the committee and the recommendations made to the authorities of the states concerned offer one of the main sources of information and inspiration for the assistance programmes or Action Plans (large scale or ad hoc ones, for instance for election purposes) developed by the intergovernmental sector of the Organisation for these states.

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[23] See Resolution 1516 (2006) on implementation of judgments of the European Court of Human Rights.
[24] ResDH(2007)2*:* Interim Resolution concerning the problem of excessive length of judicial proceedings in Italy, adopted by the Committee of Ministers on 14 February 2007.
[25] ResDH(2007)3: Interim Resolution – Systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy, adopted by the Committee of Ministers on 14 February 2007.
[26] ResDH(2005)85 Interim Resolution concerning the case of *Dorigo Paolo against Italy* (violation of the right to a fair trial).

199. At the same time, the committee's work benefits from and promotes in turn the work done by other institutions and monitoring bodies of the Council of Europe, such as: the European Court of Human Rights, the Commissioner for Human Rights; the Congress of Local and Regional Authorities; the Venice Commission; the GRECO; the MONEYVAL; the CPT; the ECRI; the Advisory Committee of the Framework Convention for the Protection of National Minorities and the European Committee for Social Rights.

200. The Monitoring Committee rapporteurs, during their visits to the countries concerned and in their reports, systematically refer to the judgments of the Court and the recommendations issued by the other Council of Europe bodies and institutions and urge for their execution or implementation.

201. Just to quote an example, in both **Albania** and **Armenia**, the co-rapporteurs of the Monitoring Committee insisted in their meetings with the Prime Ministers of the two countries, respectively in April and October 2006, on the need to authorise the publication of CPT reports (in Albania on a July 2003 ad hoc visit and a May/June 2005 periodic visit; in Armenia on an April 2004 ad hoc visit). They received assurances that the publication would be immediately considered. The CPT reports on both countries were made public, in the case of Albania, 3 months later and, in the case of Armenia, one and a half months later.

202. It is also the work of the same Council of Europe institutions and bodies which is now being used as the basis for the preparation of periodic reports on the member states which are not under monitoring procedure or involved in a post-monitoring dialogue. For this reason, the committee, just after the adoption of Resolution 1515 (2006) and the launch of its new initiative, invited for an exchange of views the Commissioner for Human Rights, Mr Thomas Hammarberg, and discussed with him how best to profit from his experience and enhance co-operation. For the same purpose, the committee held an exchange of views also with the Chairman of the Institutional Committee of the Congress of Local and Regional Authorities, Mr Keith Whitmore[27].

203. The increasing impact of the Assembly's monitoring procedure can also be witnessed by the equally increasing reference to the fulfilment of Council of Europe obligations and commitments in the European Commission's assessments of applicant countries' progress towards European Union accession. The compliance with Council of Europe obligations and commitments is furthermore a very important element in the assessment of the democratic and human rights record of the European participants in the European Neighbourhood Policy (ENP), which are also subject to the Assembly's monitoring procedure or in the assessment of OSCE member states.

204. Last but not least, the Monitoring Committee's work does not only reflect information and recommendations emanating from all various bodies of the Council of Europe as well as other international organisations, but is also largely based on the work of the civil society. Reports of international NGOs (such as Amnesty International, Human Rights Watch, Freedom House, Transparency International, Reporters without Borders etc.), but also local NGOs, are one of the main sources of information for the committee's reports. Meetings with representatives of the civil society in the country concerned and subsequent reference to their reports largely promotes the work in particular of the local NGOs and increases their impact.

205. Although it is an extremely difficult task to pick and choose some "success stories" out of 10 years of activities by our committee, I have tried to so. Here is a non-exhaustive list of some older and some more recent examples of results achieved:

– In **Albania**, over the last ten years, the parliamentary monitoring mechanism has helped re-launching several times the political dialogue between the two biggest political parties, the Democratic Party and the Socialist Party, in particular thanks to the fact that the leading figures of the two parties were members of the Assembly.

[27] See the draft minutes of the meeting held in Nafplion on 14 September 2006, Doc. AS/Mon (2006) PV 07 (to be declassified). The committee had planned to organise further exchanges of views with the Chairpersons of the other Council of Europe monitoring mechanisms. However, since the initiative was taken to hold an Assembly debate on the state of democracy and human rights in Europe with the participation of most of them, it preferred not to duplicate efforts.

– In **Armenia,** an extremely vigorous monitoring procedure contributed to: the abolition of the death penalty and the ratification of Protocol No. 6 to the European Convention on Human Rights in September 2003; the adoption of a comprehensive constitutional reform in November 2005, in close co-operation also with the Venice Commission, and the subsequent approval of a national Action Plan for adopting or amending some 51 laws, paved the way for the fulfilment of many commitments undertaken upon the country's accession.

– In **Azerbaijan**, an equally vigorous monitoring procedure prompted the authorities to finally engage in consultations with the Venice Commission in order to amend the Electoral Code and the law on freedom of assembly. Thanks to the Monitoring Committee's co-rapporteurs, the Task Force, composed of the Chairman of the Azerbaijani parliamentary delegation and other representatives of the authorities as well as human rights NGOs and entrusted with the follow-up to the issue of alleged political prisoners, has recently been reactivated; the co-rapporteurs' intervention has also contributed to the re-opening of the independent and most popular TV Channel ANS in December 2006 – after a three-week closure – pending a definitive solution to the issue of its license.

– In **Georgia**, thanks to the work carried out by the co-rapporteurs of the Monitoring Committee, our Assembly was the first international institution to take stock of progress one year after the Rose Revolution and to deliver a genuine road-map for future reforms including specific deadlines.

– In **Latvia**, the ratification of the Framework Convention for the Protection of National Minorities on 6 June 2005 is at least partly the result of continuing efforts under the post-monitoring dialogue between the committee and the Latvian authorities (concluded in June 2006).

– In **Moldova**, one of the co-rapporteurs and former Chairperson of the Monitoring Committee (Mrs Josette Durrieu) was the first parliamentarian representing the international community to meet Mr Ilascu in prison in Transnistria (where he had been detained for more than seven years). This meeting encouraged Mr Ilascu to seize the Strasbourg Court giving rise to one of its most famous judgments in recent years. More recently, in November 2005, the work of the Monitoring Committee has prompted the adoption by the Moldovan Parliament of a *timetable of legislative reforms* taking up almost all the recommendations set out in the Assembly's Resolution 1465 (2005) on the functioning of democratic institutions in Moldova.

– In **Ukraine**, another active monitoring procedure (with nine reports having been presented to the Assembly from 1999 to date) has closely accompanied the democratic reforms in the country and contributed to democratic changes which led to the Orange Revolution at the end of 2004. The committee's work also allowed the Assembly to deliver a road-map for the future one year after the Orange Revolution, in October 2005. A few months after the adoption of Assembly Resolution 1466 (2005), the previous Ukrainian government submitted an *Action Plan for the Honouring by Ukraine of its Obligations and Commitments to the Council of Europe*, approved by President Yushenko in January 2006.

– In the **Russian Federation**, Resolution 1455 (2005), adopted by the Assembly in June 2005, was the result of a close co-operation with the Russian parliamentary delegation. The latter participated fully in the debate despite some initial hesitations. The resolution, based on a 95-page report presented by the Monitoring Committee, takes stock of progress and outstanding issues in all relevant fields and fixes clearly the objectives for the future.

– Following the tensions which rose between **Georgia and the Russian Federation** last autumn and in the absence of a debate in the plenary of the Assembly, the Monitoring Committee has offered a unique forum for dialogue between the two parliamentary delegations. Similarly, it offered a forum for parliamentary dialogue with the delegation of **Slovakia** following xenophobic incidents in the country during the summer months of 2006[28].

206. The above-mentioned examples, whose list is far from being exhaustive, shows that the monitoring mechanism of the Assembly has proved its efficiency and achieved some concrete results,

[28] See the statement made by the Bureau of the Assembly on 6 September 2006 calling on the Slovak Government to intensify the fight against hate speech.

in co-operation with the parliamentary delegations of the states concerned and, in some cases, in co-operation with other bodies of the Council of Europe or other international organisations.

207. Of course, alongside the list of achievements, there is another list, often much longer, of outstanding commitments or general obligations which have yet to be fulfilled. Just to quote again a few examples:

– Separatist regions in Georgia (**South Ossetia** and **Abkhazia**) and Moldova (**Transnistria**), as well as the region of **Nagorno-Karabakh** continue to qualify as "black holes" for the protection of human rights; there is no responsibility over the honouring of any commitments or membership obligations in any of these regions.

– Despite constant improvements, the conduct of fully free and fair elections remains an unfulfilled objective in many states under monitoring, such as **Albania, Armenia, Azerbaijan** and **the Russian Federation**

– The presence of a strong government *vis-à-vis* a weak opposition and the absence of sufficient checks and balances continue to raise concerns in several member states such as **Armenia, Azerbaijan, Georgia** and **the Russian Federation**.

– A too high electoral threshold in **Georgia** (7%), **the Russian Federation** (7%) and in **Turkey** (10%) impedes the access of smaller parties to parliament, despite repeated calls by the Assembly calling for its lowering.

– The failure of constitutional reform in **Bosnia and Herzegovina** and an unsuccessful constitutional reform in **Ukraine** have prevented these countries from carrying out reforms and progressing in the honouring of their membership obligations and commitments.

– Journalists still face many problems in **Azerbaijan**, **the Russian Federation** and **Turkey**, whereas media independence pluralism is a problem in almost all countries under monitoring. Offences against journalists remain inadequately investigated in many member states under monitoring or post-monitoring.

– The process of judicial reform has proved to be longer and more complex than initially envisaged in all countries under monitoring. Whereas progress has been made in all of them, much remains to be done to ensure implementation of relevant reforms.

– Prison conditions are of concern throughout Europe. Torture, in particular during police custody, has not yet been eradicated.

– **the Russian Federation** remains the only Council of Europe member state which has ratified neither Protocol No 6 to the European Convention on Human Rights on the abolition of the death penalty (which it signed 10 years ago) nor Protocol No 14 to the European Convention on Human Rights amending the control system of the convention (thus delaying its entry into force).

– Local self-government is not yet fully implemented in many states under monitoring and, despite on-going legal reforms, many capitals are still lacking a democratically elected mayor, such as **Yerevan**, **Baku**, **Chisinau** etc. In **the Russian Federation**, recent government proposals aiming at nomination of mayors of the major cities constitute a worrying step backwards.

208. It is hence clear that the committee does not risk staying out of work in the near future… However, our ultimate goal should be precisely to get rid of our job. Ideally, the day all member states will have complied with their accession commitments and statutory obligations, there should be no reason to have a Monitoring Committee. However, such an ideal situation is far from being achieved, in particular since our job is not simply to verify the ratification of conventions or the adoption of laws, but their actual implementation in the states under monitoring. This is a common problem in all states under monitoring.

209. A more realistic medium-term objective would be to pass from the stage of specific monitoring procedures to that of post-monitoring dialogue and then to the newly created third category of

"periodic reporting". Here again, the number of accession commitments which have not yet been fulfilled for the states under monitoring remains unfortunately too long for such an objective to be reached relatively soon.

210. That said, the continuation of a specific monitoring procedure for even a long period of time (in some states more than 10 years) has proved not to be a "bad thing". As shown above, with the evolution of the monitoring procedure of the Assembly, monitoring is no longer conceived as a sanction or a mere burden on the states. It is also an opportunity to draw international attention to progress achieved in these states as well as unresolved conflicts for which otherwise there would be much less discussion. For instance, without a monitoring procedure for Moldova or Georgia there would have been much less debate about the situation in Transnistria, South Ossetia or Abkhazia.

211. At the same time, I feel that our committee should gradually prepare itself for the day when less and less monitoring procedures will be open. This is why the novelty of **periodic reporting** on all states which are not under monitoring is probably the greatest challenge for the future.

212. For the moment, this initiative has been relatively timid: the committee relies on the assessment made by other Council of Europe bodies, urges compliance with their recommendations and execution of the Strasbourg Court judgments, and checks the record of ratifications of the main Council of Europe conventions. But it does not check itself the degree of implementation. The challenge for the future is therefore how the committee will be able to develop gradually its periodic reporting function, if necessary resources could be made available for this purpose.

213. In this respect, I would only like to raise at this stage a number of questions for further reflection:

– Should the committee organise exchanges of views with the parliamentary delegations of the states for which periodic reports have been prepared in order to discuss the follow-up given to the recommendations made by various Council of Europe bodies and institutions?

– Should the committee develop its relations with the other Council of Europe monitoring bodies and mechanisms and pursue further the exchanges it started last year with the Commissioner for Human Rights and the Congress of Local and Regional Authorities?

– Which measures could the committee envisage at the end of the three-year cycle of periodic reporting with respect to states which, for instance, have failed to ratify a number of Council of Europe conventions or execute a number of judgments of the European Court of Human Rights?

– Should the committee try to develop further its relations with relevant European Union bodies (European Parliament? European Commission?) by organising for instance joint hearings?

– Could such hearings be also organised with the main international NGOs active in the fields of human rights, democracy and the rule of law, focusing for instance on a group of states each time?

– To what extent could the committee launch a more thematic exercise, for instance dealing with issues common to a group of states under monitoring without entering into the fields of competence of other Assembly committees? For instance, should/could the committee organise a hearing on "frozen conflicts", since all of them concern countries under monitoring?

214. The debate on the state of human rights and democracy in Europe scheduled for the April part-session of the Assembly will offer an excellent opportunity to discuss some of these questions with a number of main actors. Such an exchange of views could be particularly beneficial for our committee, allowing us afterwards to better draw the main lines for its future. I invite you all to take an active part in the debate having in mind this common objective.

Appendices

Appendix I: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the first group of 11 member states

Appendix II: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the second group of 11 member states

Appendix III: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the third group of 11 member states

Table of abbreviations

R:	Ratified
S:	Signed but not yet ratified
–:	neither signed nor ratified
ECHR:	Convention for the Protection of Human Rights and Fundamental Freedoms
ECPT:	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ESC:	European Social Charter (1961 or revised)
FCNM:	Framework Convention for the Protection of National Minorities
ECRML:	European Charter for Regional or Minority Languages
ECLS-G:	European Charter of Local Self-Government

Appendix I: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the first group of 11 member states

CoE member states not currently under monitoring procedure or post-monitoring dialogue	Total No of CoE Conventions ratified or signed (out of 200)	DEMOCRACY	RULE OF LAW			HUMAN RIGHTS									
			Convention on Corruption		Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)		Prot. ECHR					Social rights		Minority rights	
		ECLS-G	*Civil Law*	*Criminal Law*		ECHR	6	12	13	14	ECPT	ESC	Prot. ESC on collective complaints	FCNM	ECRML
ANDORRA	29 R 6 S	–	S	S	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	**R** rev	–	–	–
AUSTRIA	99 R 32 S	**R**	**R**	S	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
BELGIUM	118 R 39 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	S	–
CROATIA	77 R 12 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	**R**	**R**	**R**	**R**	R 1961 – rev	**R**	**R**	**R**
CYRPUS	120 R 17 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
CZECH REP.	98 R 11 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
DENMARK	127 R 17 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
ESTONIA	76 R 7 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R** rev	–	**R**	–
FINLAND	94 R 18 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
FRANCE	116 R 43 S	**R**	S	S	R 1990 – rev	**R**	**R**	–	S	**R**	**R**	**R**1961 & rev	**R**	–	S
GERMANY	113 R 44 S	**R**	S	S	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 – rev	–	**R**	**R**

Appendix II: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the second group of 11 member states

CoE member states not currently under monitoring procedure or post-monitoring dialogue	**Total No of CoE Conventions ratified or signed (out of 200)**	**DEMOCRACY**	**RULE OF LAW**			**HUMAN RIGHTS**									
			Convention on Corruption		**Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)**		**Prot. ECHR**					**Social rights**		**Minority rights**	
		ECLS-G	*Civil Law*	*Criminal Law*		**ECHR**	6	12	13	14	**ECPT**	**ESC**	**Prot. ESC on collective complaints**	**FCNM**	**ECRML**
GREECE	90 R 57 S	**R**	**R**	S	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	**R**	S	–
HUNGARY	70 R 14 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
ICELAND	79 R 32 S	**R**	S	**R**	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	–	S	S
IRELAND	94 R 16 S	**R**	S	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	–
ITALY	116 R 45 S	**R**	S	S	R 1990 S rev	**R**	**R**	S	S	**R**	**R**	**R**1961 & rev	**R**	**R**	S
LATVIA	75 R 16 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	S	S	**R**	**R**	R 1961 – rev	–	**R**	–
LIECHTENSTEIN	77 R 5 S	**R**	–	–	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 – rev	–	**R**	**R**
LITHUANIA	85 R 6 S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	**R** rev	–	**R**	–
LUXEMBOURG	123 R 45 S	**R**	S	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	R 1961 S rev	–	S	**R**
MALTA	75 R 26 S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	–	S	**R**	**R**	**R**1961 & rev	–	**R**	S
NETHERLANDS	132 R 22 S	**R**	–	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**

Appendix III: Chart of ratifications and signatures of the main Council of Europe Conventions with a monitoring mechanism by the third group of 11 member states

CoE member states not currently under monitoring procedure or post-monitoring dialogue	Total No of CoE Conventions ratified or signed (out of 200)		DEMOCRACY	RULE OF LAW			HUMAN RIGHTS									
				Convention on Corruption		Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 or rev)		Prot. ECHR					Social rights		Minority rights	
			ECLS-G	*Civil Law*	*Criminal Law*		ECHR	6	12	13	14	ECPT	ESC	Prot. ESC on collective complaints	FCNM	ECRML
NORWAY	128 15	R S	**R**	S	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
POLAND	77 17	R S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	–	S	**R**	**R**	R 1961 S rev	–	**R**	S
PORTUGAL	104 40	R S	**R**	–	**R**	R 1990 S rev	**R**	**R**	S	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	–
ROMANIA	94 15	R S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	s 1961 **R** rev	–	**R**	S
SAN MARINO	38 16	R S	–	–	S	R 1990 S rev	**R**	**R**	**R**	**R**	**R**	**R**	S rev	–	**R**	–
SLOVAKIA	88 9	R S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	R 1961 S rev	S	**R**	**R**
SLOVENIA	92 14	R S	**R**	**R**	**R**	R 1990 – rev	**R**	**R**	S	**R**	**R**	**R**	s 1961 **R** rev	S	**R**	**R**
SPAIN	104 16	R S	**R**	S	S	R 1990 – rev	**R**	**R**	S	S	**R**	**R**	R 1961 S rev	–	**R**	**R**
SWEDEN	127 17	R S	**R**	**R**	**R**	R 1990 S rev	**R**	**R**	–	**R**	**R**	**R**	**R**1961 & rev	**R**	**R**	**R**
SWITZERLAND	105 16	R S	**R**	–	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	R 1961 – rev	–	**R**	**R**
UNITED KINGDOM	111 19	R S	**R**	S	**R**	R 1990 – rev	**R**	**R**	–	**R**	**R**	**R**	R 1961 S rev	–	**R**	**R**

Doc. 11214

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution 1115 (1997)

Draft resolution adopted unanimously by the committee on 28 March 2007

Members of the committee: Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mr Mikko Elo (2nd Vice-Chairperson), Mr Tigran Torosyan (3rd Vice-Chairperson), Mr Aydin **Abbasov**, Mr Pedro **Agramunt**, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet Lamaña, Mr József **Berényi**, Mr Aleksandër Biberaj, Mrs Gülsün **Bilgehan**, Mrs Mimount Bousakla, Mr Luc Van den Brande, Mr Patrick **Breen**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mr John Dupraz, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mr Per-Kristian Foss, Mr György **Frunda**, Mrs Urszula **Gacek**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles **Goerens**, Mr Stef **Goris**, Mr Andreas **Gross**, Mr Michael Hagberg, Ms Gultakin **Hajiyeva**, Mr Michael Hancock, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mrs Iliana Iotava, Mr Kastriot Islami, Mr Erik **Jurgens**, Mr Ali Rashid Khalil, Mr Konstantin **Kosachev**, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Frano Matušić, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nadezhda Mikhailova, Mr Neven **Mimica**, Mr Paschal Mooney, Mr João Bosco Mota Amaral, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mr Leo **Platvoet**, Ms Maria Postoico, Mr Christos Pourgourides, Mr Dario **Rivolta**, Mr Armen Rustamyan, Mrs Katrin Saks, Mr Oliver Sambevski, Mr Kimmo Sasi, Mr Samad **Seyidov**, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Birutė Vėsaitė, Mr Oldřich Vojíř, Mr David **Wilshire**, Mr Tadeusz Wita, Mrs Renate **Wohlwend**, Mr Andrej **Zernovski**, Mr Emanuelis **Zingeris**.

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

Secretariat of the committee: Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats

Parliamentary **Assembly**
Assemblée parlementaire

Parliamentary Assembly
Assemblée parlementaire
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Doc. 11214 Addendum
2 April 2007

Progress of the Assembly's monitoring procedure

Addendum
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Eduard LINTNER, Germany, Group of the European People's Party

Periodic reports on the honouring of statutory obligations by Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands based on a compilation of conclusions and recommendations issued by Council of Europe monitoring mechanisms as of 1 March 2007.

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Web sites of relevant Council of Europe institutions and bodies

Committee of Ministers	www.coe.int/t/cm
Parliamentary Assembly	www.assembly.coe.int
Congress of Local and Regional Authorities	www.coe.int/t/congress
Commissioner for Human Rights	www.coe.int/t/commissioner
European Social Charter	www.coe.int/T/E/Human_Rights/Esc
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	www.cpt.coe.int
Advisory Committee on the Framework Convention for the Protection of National Minorities	www.coe.int/T/E/human_rights/minorities
European Commission against Racism and Intolerance (ECRI)	www.coe.int/T/e/human_rights/ecri
European Commission for the Efficiency of Justice (CEPEJ)	www.coe.int/t/dg1/legalcooperation/cepej
Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)	www.coe.int/Moneyval
Steering Committee on Local and Regional Democracy (CDLR):	www.coe.int/t/E/Legal_Affairs/Local_and_Regional_Democracy
European Charter for Regional or Minority Languages	www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Regional_or_Minority_languages
Venice Commission	www.venice.coe.int
Group of States against corruption (GRECO)	www.coe.int/t/dg1/Greco

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

GREECE

CoE member State since **9 August 1949**
Number of CoE Conventions ratified (as of 1 March 2007): **90 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **57**

I. PLURALISTIC DEMOCRACY[1]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **March 2005**
Next presidential election: **2010**
Last general elections: **7 March 2004**
Next general elections: **2008**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2006**
Next municipal elections: **2010**

European Charter on Local Self-Government ratified on **6 September 1989**

Last **Congress of Local and Regional Authorities** monitoring report: May 2002 [CG (9) 5 Part II], **Resolution 131 (2002)** and **Recommendation 109 (2002)** on local and regional democracy in Greece adopted on 5 June 2002.

Extract of **Recommendation 109 (2002)**:

> "The Congress:
> […]
> recommends that:
>
> a. the Greek Government, Parliament and other authorities take into account the following recommendations, suggestions and considerations when reorganising the local authorities:
>
> i. reorganisation of the administrative authorities should be carried out in conformity with the principles enshrined in the European Charter of Local Self-Government, which Greece ratified on 6 September 1989, and in the draft European charter of regional self-government adopted by the Congress in 1997;
>
> ii. the local authorities and associations of local authorities (ENAE and KEDKE) concerned in the administrative reorganisation must be consulted before any final decision is made, in accordance with Article 4 paragraph 6 of the European Charter of Local Self-Government, and should be invited, whenever possible, to participate in the work of the parliamentary or expert committees responsible for preparing the new organisation of administrative responsibilities;
>
> iii. between central and local government, an intermediate level of government composed of representatives elected by direct universal suffrage should be provided for, as such a level helps to cater more effectively for the needs and interests of the citizen and reconciles political representativeness with administrative efficiency;

[1] The non-governmental organisation Freedom House gives to Greece a score of 1 for political rights and of 2 for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results)

iv. administrative decentralisation should be matched by genuine financial decentralisation;

b. the Committee of Ministers of the Council of Europe instruct the Steering Committee on Local and Regional Democracy (CDLR) to provide any legislative and technical assistance the Greek authorities may request, through the expertise available in the CDLR's different member institutions or through the Secretariat of Directorate General I – Directorate of Co-operation for Local and Regional Democracy;

c. the KEDKE and ENAE associations and all the elected authorities at local and prefecture level in Greece, and in particular the members of the Greek delegation to the CLRAE:

i. monitor the reform process underway in Greece, especially before and after the October 2002 elections, and ask to be consulted on the different stages of the reform, in accordance with Article 4 paragraph 6 of the European Charter of Local Self-Government;

ii. regularly inform the Congress of progress on this reform, the consultation process and any problems encountered, and let it know immediately should expert advice on a specific topic be required."

A visit by the Rapporteur is foreseen in spring 2007.

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Greece: Situation in 2000, adopted in December 2000:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Greece as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

No specific opinion concerning Greece.

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

"The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.

The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Greece in 2004 was **310,700,000 euros**;
- the **number of Professional judges on a full-time basis** in Greece in 2004 was **2,200**, that means 19.9 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Greece was **520**, that means 4.7 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[2]

Civil law convention on corruption signed on **8 June 2000**, ratified on **21 February 2002**
Criminal law Convention on corruption signed on **27 January 1999**, **Additional Protocol** signed on **15 May 2003**

Extract of: **Second Evaluation Round: evaluation report on Greece adopted by GRECO at its 26th Plenary Meeting** [Strasbourg, 5-9 December 2005, Greco Eval II Rep(2005)6]:

1. Conclusions

"The fight against corruption appears to be one of Greece's political priorities. Successive public service reforms have laid great emphasis on ethical requirements and quality of service. This is reflected in the large number of laws passed in recent years and the establishment of special bodies to monitor the implementation of these laws, such as the Directorate of Internal Affairs of the Hellenic Police and the General Inspector for Public Administration. Many new laws were about to be adopted at the time of preparation of this report, such as the law for the ratification of the Criminal Law Convention on Corruption, the new anti-money laundering law and the law establishing a new centralised system of registration for legal persons. One of the challenges for Greece will be to take all necessary measures to implement the evolving legal and regulatory framework in an effective manner. Moreover, further review of applicable procedures and training are needed to ensure that offenders are also systematically deprived of the proceeds of corruption offences to the extent possible. Additional measures are recommended with regard to the reporting of corruption by public officials, the protection of whistleblowers, public officials' reactions to gifts and the monitoring of conflicts of interest, incompatibilities and accessory activities. Finally, in order to prevent legal persons from being used to conceal corruption and other suspicious activities, an appropriate system of control and of liability of legal persons, as well as adequate professional limitations must be put in place. Determined action to implement in practice high professional and ethical standards of all public officials and active co-operation on behalf of the private sector, such as accountants and auditors, as well as the provision of appropriate training, will contribute to establishing a zero tolerance attitude towards corruption.

In view of the above, GRECO addresses the following **recommendations** to Greece:

i) to review the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds and, where appropriate, to provide adequate training, as well as to increase the resources available with a view to strengthening the efficiency of financial investigations (paragraph 23);

ii) that the Greek authorities strengthen their anti-money laundering regime with a view to increasing its efficiency and contribution to the fight against corruption, and draw-up guidelines and provide training on the detection of corruption (paragraph 25);

[2] Greece is in 54th position with a score of 4,4 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

iii) to ensure appropriate monitoring of the implementation of the new law on freedom of information (paragraph 49);

iv) to ensure that all public officials, whether or not civil servants, are bound by appropriate rules and guidelines designed to prevent corruption (in particular in respect of ethics, the expected reaction to gifts and the countering of risks of corruption) and receive appropriate training; to increase the control over the selection procedures of public officials; and to ensure that an effective system of performance evaluation of public officials is established (paragraph 54);

v) to regulate more strictly conflicts of interest (including the improper migration to the private sector), incompatibilities and accessory activities in respect of all public officials and to establish proper monitoring of the application of the rules in this area (paragraph 55);

vi) to establish appropriate protection for whistleblowers and to take all other measures deemed necessary to facilitate the reporting of corruption (paragraph 57);

vii) to speed up the adoption of the new law setting up an appropriate system of central registration for legal persons and to ensure appropriate monitoring of its implementation (paragraph 73);

viii) to establish an appropriate system of professional limitations for persons found guilty of criminal offences (paragraph 74);

ix) that, in the context of the forthcoming ratification of the Criminal Convention on Corruption (ETS No 173), all officials concerned receive appropriate training on corporate liability with a view to making full use of the provisions and sanctions foreseen in cases of active bribery, trading in influence and money laundering and to consider establishing a registry of legal persons which have been subject to sanctions for criminal offences (paragraph 75);

x) that the authorities explore, in dialogue with the professional bodies of accountants and auditors, which measures should be taken to improve the situation in relation to reports of suspicions of corruption to the authorities (e.g. guidelines for the detection of corruption and training) (paragraph 77).

GRECO also invites the Greek authorities to take account of the **observations** (paragraphs 18, 24, 26 and 56) of the analytical section of this report.

Lastly, in accordance with Rule 30.2 of its Rules of Procedures, GRECO invites the Greek authorities to submit a report on the implementation of the above-mentioned recommendations by 31st July 2007."

2. Observations

"[…]
18. A general problem faced by the GET during the visit was the lack of appropriate information permitting the evaluation of the practical implementation of existing legislation concerning identification, seizure, freezing and confiscation of corruption proceeds. In the GET's view, the availability of appropriate statistics could contribute to a more focused anti-corruption policy with a view not only to obtaining convictions for corruption offences but also to depriving offenders of any benefit from their crimes. *The GET observes that statistics should be collected and properly analysed concerning provisional measures and subsequent confiscation orders in cases of corruption.*

24. There is no specialised body for the management of seized assets. The DIAHP told the GET that seized instruments, money, securities, or vehicles are handed over to the prosecutor, the Fund for Official Deposits or to the Organisation for

the Management of Public Materials. In the GET's view, a special body responsible for all the specialist aspects of seizure and management of property and assets, such as associated costs, storage, use of perishable goods, could simplify the work of prosecutors and judges. *The GET observes that consideration should be given to setting up a specific body to manage seized assets.*

26. The Ministry of Justice is the Central Authority for handling mutual assistance requests. The representatives of the Ministry of Justice stressed that they could assist the prosecutors/judges by giving lectures at the Judicial school on the implementation of international treaties and on the procedures in foreign jurisdictions, such as on freezing or waiving of banking secrecy, which may delay or prevent the efficient seizure and confiscation of proceeds of crime. As International treaties, once ratified, become part of the law of the land, judges and prosecutors expressed the wish to have additional information on the time of ratification and the technicalities of implementation. In view of the above, *the GET observes that the Greek authorities in consultation with the Judiciary should identify the needs of the Judiciary when dealing with international treaties and assist them as appropriate.*

56. The GET welcomes that a system of rotation has been put in place for some positions of the public administration exposed to corruption (managers, tax administration, police) as a tool to reduce risks of corruption. *The GET observes that this approach should serve as a model for other similarly vulnerable sectors of public administration. […]* "

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **22 June 1999**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **12 October 2006**

III. PROTECTION OF HUMAN RIGHTS[3]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on the Hellenic Republic published in **July 2002** following a visit to the country in **June 2002** [CommDH(2002)5]

Follow-up report on the Hellenic Republic published in **March 2006** following a visit to the country in **November – December 2005**

Extract of **Follow-up report on the Hellenic Republic (2002-2005): Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2006)13]**:**

"Introduction:

The Commissioner for Human Rights visited Greece in June 2002 on the invitation of the Greek Government. In the resulting Report, the Commissioner identified a number of human rights concerns and made a series of recommendations to improve the country's effective respect for human rights. The issues addressed by the Commissioner pertained to justice and the prison system, freedom of thought, conscience and religion and the situations of minority groups and of foreigners. The Commissioner would like to reiterate his gratitude to the Government of Greece for

[3] Greece is in 32nd position with a score of 8 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

their co-operation at the time of the visit, and again, on the occasion of the follow-up visit conducted by members of his Office from 30 November to 2 December 2005.

The purpose of this report is to examine the manner in which the Greek authorities have implemented the recommendations made by the Commissioner in his 2002 report. The report follows the order of the main recommendations and does not as a matter of principle aim to address any issues other than those included in the recommendations of the first report.

The report is based on information gathered during the follow-up visit, reports by human rights experts, local and international non-governmental organisations and inter-governmental organisations and other public sources. The members of the Commissioner's Office would like to express their warm gratitude to the Greek officials in Strasbourg and Athens who organised the visit and for the assistance and openness of all those with whom they met in the course of their visit.

Justice and the prison system

Justice
[…]
Conclusions

The Commissioner notes with great satisfaction that the Greek Government has kept to its undertaking to adopt adequate legislative and practical measures to tackle the problem of non abidance by court decisions by certain Greek authorities. The enforcement mechanisms set up by both the Supreme Court and the Council of State in conformity with new legislation are already producing significant results. While it is too early to assess whether the measures taken will definitively resolve the problem, it is very likely that the situation will now rapidly improve.

The many legal and practical measures taken to cope with the problem of excessive length of proceedings, especially before the administrative jurisdictions, are promising.

Prisons
[…]
Conclusions

It is disappointing and of increasing concern, given the continuing rise in the prison population, that not a single new prison has been completed in the more than three years since 2002. It is true that there has been a change of government in the Hellenic Republic in between and that any new government has to be given some time to reassess and implement commitments taken by its predecessor. The new Greek Government has acknowledged the need to make progress in this area and it is essential for the dignity and proper treatment of prisoners, but also of the prison personnel, that the new building programme be implemented quickly.

Freedom of thought, conscience and religion

Proselytism
[…]
Conclusions

The Commissioner regrets that, for the sake of legal certainty, the manifestly obsolete legislation under which criminal sanctions can be imposed for proselytism has not yet been repealed.

Places of worship
[…]
Conclusions

It is regrettable that the status quo regarding the asking of the opinion of the local Orthodox bishop on places of worship for all religions has been maintained. It is all the more so since the information provided in October 2005 by the Greek Government to the Committee of Ministers of the Council of Europe in the context of the execution of *Manoussakis* judgment (where a refusal of a place of worship under the legislation in question had been found in violation with Articles 13, 1 and 2 and 9, 1 and 2 of the ECHR) stated that "close attention was paid by Greece" to the recommendations made by the Commissioner on this issue.

The Commissioner deeply regrets the fact that no tangible progress has been made for offering the important number of Muslim believers in Athens suitable and recognised places of worship. The project of one single big mosque to be built with foreign capital at Paeania – in spite of the many disadvantages which have been pointed out by many in Greece – would have been or would be an important step ahead. The fact is, however, that this project has long been announced without any actual construction work ever starting.

This situation is bound to oblige Muslim worshippers in Athens to gather covertly in all kinds of unsuitable places for their prayers for many more years. This situation is far from conducive to smooth and mutually respectful relations between the religious communities in Greece. A practicable solution providing for the opportunity of public worship must be found – for the right to freedom of religion of the Muslim community in the capital to be effectively respected. Much the same considerations would apply to the issue of an Islamic cemetery in Athens, in respect of which progress must also be made. However, the Commissioner has learned with great appreciation that the Holy Synod of the Orthodox Church of Greece has very recently announced its decision to cede use of land in the area of Schistos near Athens to the competent municipality for the purpose of establishing a Muslim cemetery.

Conscientious objectors
[…]
Conclusions

The Commissioner is pleased to note that the conditions of the alternative service offered to conscientious objectors in Greece have significantly improved since his visit in 2002 with the adoption of new legislation in 2004, especially as regards the length of such service. It can, however, still be subject to discussion whether an alternative service which lasts almost twice as long as the regular armed service has a punitive character or is genuinely equivalent to military service in terms of hardship and constraints. The Commissioner recommends that the Greek authorities grant conscientious objector status to persons who have already performed a military service in another country if they had no realistic possibility to refuse it or when their experience has been traumatic.

Minority groups in Greece

The Muslim minority in Thrace
[…]

The right to identify oneself as one sees fit
[…]
Conclusions

The Commissioner repeats his recommendation that Greece become a Party to the Framework Convention for the Protection of National Minorities and the European

Charter for Regional or Minority Languages. This would open the way to independent expert advice and review of outstanding issues affecting the Muslim minority.

The Commissioner welcomes the moves made by the Greek authorities to address the problems raised by the withdrawal of Greek citizenship under Article 19 of the Greek law on citizenship, particularly in respect of those continuing to reside in the country and he encourages further reflection on measures to provide redress to those currently living abroad.

The situation of the Roma community
[…]
Conclusions

The Commissioner continues to be very concerned as regards the respect of the basic rights for Roma in Greece.

The Commissioner notes with satisfaction that there is an important amount of money (320 million Euros) out of EU and national resources available for the improvement of the living conditions of the Roma in Greece.

The results on the ground, however, at least in respect of the two concrete cases previously highlighted by the Commissioner have not been very encouraging. In both cases precise promises were made but not kept, mainly, it would appear, because of resistance on the local level. It must be recalled, however, that the responsibility for the respect of international human rights standards throughout the country lies with the Governments of member States. Under international law, resistance at local level is not a valid reason for exonerating a Government from responsibility for human rights breaches persistently occurring at local level. The Commissioner urges the new Greek Government to take all adequate action to ensure that the basic human rights of Roma citizens are now rapidly respected in places like Aspropyrgos, Amaroussia, Patras or elsewhere.

Situation of foreigners (refugees, asylum seekers and immigrants)

Regularisation of irregular immigrants
[…]
Conclusions

The Commissioner welcomes the second round of regularisation of irregular migrants, but does not yet have statistical information that permit its success to be evaluated. He encourages the Greek authorities to step up their efforts to integrate migrants into the community as a whole and regrets the lack of a concerted integration policy, which would aid in the fight against racism and xenophobia and help to provide protection to lawful immigrants against abuse.

Measures to prevent violence against foreigners
[…]
Conclusions

The Commissioner commends the efforts made by the authorities to respond to problems of police violence, especially to foreigners, in particular as regards training. However, these measures are just the first steps needed. The Greek Ombudsman's report reveals continuing, structural problems that need to be addressed; the widely reported failure to examine and punish cases of ill-treatment effectively remains of particular concern and the functioning of the mechanisms in place for this purpose needs to be reviewed.

Asylum seekers
[…]
Conclusions

The challenges faced by the Greek authorities in ensuring the humane reception of irregular immigrants have increased as their number has risen. Attempts have, certainly been made to meet them. However, access to asylum proceedings continues to be difficult for immigrants detained on their irregular entry as the access to information and legal assistance remains poor. Both the low number and the low proportion of successful asylum claims reflect these shortcomings.

The efforts made by the Greek authorities to improve the reception facilities for registered asylum seekers should be commended. Nevertheless, the Commissioner remains very concerned about the poor conditions in these centres. Minimum standards, notably regarding access to health care and education, urgently need to be met.

The closure of the detention facility in which foreigners pending deportation were previously held at Attica General Police Station is also welcome. The replacement facilities at Petros Rali cannot, however, be considered to meet the required standards for a detention that can, and frequently does, extend to up to three months. A viable long-term solution must be found to meet the needs and dignity of irregular immigrants, who, it must be recalled, have committed no crime. The Commissioner also recommends that the authorities increase and improve their co-operation with NGOs, allowing them to pay regular visits to all facilities in which foreigners are detained."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **28 November 1974**

No reservation, no declaration

Protocol No. 6 ratified on **8 September 1998**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 ratified on **1 February 2005**
Protocol No. 14 ratified on **5 August 2005**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **105** concerning Greece of which **100** gave rise to a finding of at least one violation and 2 gave rise to a finding of no violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **55** concerning Greece of which **53** gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **369** concerned Greece.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **678** concerned Greece.

Resolutions adopted by the Committee of Ministers in 2006: **5** (of which **1** Interim Resolution)

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

"**Interim Resolution ResDH(2006)27 on judgments by the European Court of Human Rights concerning issues of reafforestation and violations of property rights in Greece in the cases:**
- Papastavrou and others, judgments of 10 April 2003, final on 10 July 2003 and of 18 November 2004, final on 18 February 2005
- Katsoulis and others, judgments of 8 July 2004, final on 8 October 2004 and of 24 November 2005, final on 24 February 2006

(adopted by the Committee of Ministers on 7 June 2006,at the 966th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention");

Having regard to the judgments of the European Court of Human Rights delivered in the cases of Papastavrou and others, and Katsoulis and others, transmitted to the Committee of Ministers once they had become final under Articles 44 and 46 of the Convention;

Recalling that the case of Papastavrou and others originated in an application (No. 46372/99) against Greece, lodged with the European Commission of Human Rights on 6 October 1998 under former Article 25 of the Convention by twenty-five Greek nationals;

Recalling that the case of Katsoulis and others originated in an application (No. 66742/01) against Greece, lodged with the European Court of Human Rights on 6 December 2000 under Article 34 of the Convention by thirty-nine Greek nationals;

Recalling that in its respective judgments of 10 April 2003 and 8 July 2004, the Court unanimously held that there had been violations of Article 1 of Protocol No 1 to the Convention due to a decision by the Prefect of Athens in 1994 to reafforest plots of land possessed in good faith by the applicants (in pending domestic court proceedings the state has claimed property rights itself), thus confirming a 1934 ministerial decision to the same effect, without a fresh assessment of the situation described in the latter decision;

Recalling, furthermore, that the Court also found in the case of Katsoulis and others a violation of Article 6, paragraph 1, of the Convention on account of the excessive length of the proceedings before the Council of State (Supreme Administrative Court);

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Recalling that the obligation of all member states to abide by the judgments of the European Court of Human Rights in accordance with Article 46, paragraph 1, of the Convention involves an obligation to adopt rapidly individual measures in order to grant the applicants, to the extent possible, full redress for the violations found (*restitutio in integrum*), as well as to adopt without delay general measures, including, to the extent possible, interim measures, to stop ongoing violations of the Convention and to prevent the recurrence of violations similar to those found by the Court;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgments of 10 April 2003 and 8 July 2004, having regard to Greece's obligation under Article 46, paragraph 1, of the Convention to abide by them;

Whereas during the examination of the cases by the Committee of Ministers, the government of the respondent state gave the Committee information about interim and long-term general measures taken and under way in order to prevent new violations of the same kind as those found in the present judgments; this information appears in the appendix to this resolution;

Stressing, in particular, that the violations established in these cases have highlighted the problems inherent in the present absence of a functioning, up-to-date national forest register;

Noting, however, that the setting up of such a forest register is intimately linked to that of setting up also a functioning land register and that this latter situation is at the origin of a number of further violations established by the Court of Articles 6 of the Convention and 1 of Protocol No. 1 (see e.g. the Tsirikakis group of cases, judgment of 17 January 2002, final on 10 July 2002 and other similar cases);

Noting with concern the delay taken in setting up the national forest and land register foreseen since 1994, and stressing the need, in view of the problems caused by the present situation, to bring this project to an end as rapidly as possible;

Noting also the absence of any proposal to introduce through legislation, pending the completion of the forest register, a remedy capable of providing compensation for *bona fide* landowners affected by reafforestation decisions and involved in lengthy litigation related to the recognition of the ownership of forests, as is the case with the applicant**s**;

Noting, however, in this context the direct effect granted to the Convention and the Court's case-law in cases regarding reafforestation and protection of individual land property rights, as was expressly affirmed in 2005 by the Plenary of the Court of Cassation (see Appendix) and awaiting information on the consequences of this development, particularly for the right of compensation;

Noting with interest that Greece has adopted certain general measures to accelerate proceedings before all administrative courts (see Final Resolution ResDH(2005)65 on Pafitis and others and 14 other cases against Greece, 18 July 2005) and that additional problems revealed by recent judgments of the Court (see e.g. Manios, judgment of 11/03/04) are being addressed by Greece under the Committee's supervision;

Underlining in this connection the importance attached to following up the Committee's 2004 Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" and the Recommendations referred to therein, in particular, Recommendation Rec(2004)5 to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention and Recommendation Rec(2004)6 on the improvement of domestic remedies[4];

ENCOURAGES the competent Greek authorities, in particular the Ministry of Environment, Urban Planning and Public Works, to intensify and accelerate their efforts to complete the national land and forest register;

ENCOURAGES the rapid development of a remedy capable of providing compensation for *bona fide* landowners such as the applicants, affected by reafforestation decisions and involved in lengthy litigation related to recognition of the ownership of forest**s**;

INVITES the Greek government to keep the Committee regularly informed of the progress of the national land and forest register project and of the other relevant developments of national law;

DECIDES to examine at one of its meetings, not later than at the end of the planned 2nd stage of the forest and land register reform, i.e. by December 2008, further progress achieved in the adoption of the general measures necessary effectively to prevent similar violations of Article 1 of Protocol No 1 to the Convention.

[4] See documents at: www.coe.int/t/cm.

Appendix to Interim Resolution ResDH(2006)27

Information supplied by the Government of Greece during the consideration of the cases of Papastavrou and others and Katsoulis and others by the Committee of Ministers

I. Introductory note

The government is aware of the present need to guarantee the long-term effectiveness of the European Convention system and has approached the execution problems raised in these cases, as indeed those raised in all cases presently pending before the Committee of Ministers for supervision of execution, in the light of the Committee's 2004 Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" and the different Recommendations mentioned therein, including Recommendation Rec(2004)5 to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention and Recommendation Rec(2004)6 on the improvement of domestic remedies.

II. Individual measures

In both cases the European Court found that the applicants had suffered a "drastic limitation of their property's use"5 and awarded them just satisfaction covering the pecuniary damage that had been caused. Possible consequences of the violation still suffered by the applicants should be remedied in the context of the interim and long-term general measures (see below). The applicants have not communicated any further claims.

III. Interim and long-term general measures adopted and under way with a view to preventing similar violations of Article 1 of Protocol No 1 to the Convention

III.1 Interim measures – Direct effect granted to the Convention and the Court's case law

Both judgments (merits), immediately after their delivery, were translated and published on the website of the State Legal Council (www.nsk.gr). They have also been sent by the State Legal Council to the Ministry of Justice and to the Council of State. Further dissemination of both judgments to competent administrative authorities is currently envisaged, possibly with a circular explaining their practical implications for these authorities.

The Greek government notes that the effectiveness of these interim measures is corroborated by the fact that the Convention and the Court's case law enjoy direct effect in Greek law. In particular, the Plenary of the Court of Cassation, by its judgment no 21/2005 of 1 April 2005 (published in the widely-read Athens Bar journal *Nomiko Vima*, 2005, 1084-7) recognised and stressed the supra-statutory force of Article 1 of Protocol No 1 to the Convention in cases regarding reafforestation and protection of individual land property rights.

The government does not exclude that a case-law development following this Supreme Court Plenary decision may provide for a possibility of reparation to *bona fide* landowners, such as the applicants, affected by reafforestation decisions. The situation is being kept under supervision in order to ensure that the Court is not seised with unnecessary applications.

[5] See above-mentioned judgments (just satisfaction) in the cases of Papastavrou and others, §16 and Katsoulis and others, §21.

It is to be noted that under Greek law, compensation may always be awarded to individuals after their land or forest ownership has been recognised by courts. This compensation may cover any potential damage that individuals may have suffered during the period during which they had been unable to use their property due to pending proceedings concerning ownership.

III.2 Long-term general measures under way - Progress report on the national land and forest register project

1. The Greek government stresses that the project of national land and forest register initiated in 1994 is a priority of national importance.
The project consists of four stages. Approximately 800 specialised companies have been involved in it collaborating with 300 law firms and 170 offices of forest experts. The procedure of land registration consists of 11 stages:

- Inclusion of an area in the register;
- Publication of the announcement of the register in the press and its notification to State and local administrative entities;
- Lodging of registration requests by the beneficiaries;
- Processing of the requests and drafting of register tables;
- Publication of the above tables;
- Possible lodging of objections by interested parties;
- Judgments on objections and amendment of register tables;
- Second publication of corrected tables;
- Lodging of objections against corrected tables;
- Judgments on the objections against corrected tables;
- Registration in the register.

2. In 2005 the Greek Technical Chamber (TEE), acting as consultant to the Greek state, submitted a study to the Ministry of the Environment, Urban Planning and Public Works, taking stock of the work accomplished during the first 10 years of the project and making proposals for its conclusion:

(a) The first 10 years produced the groundwork by laying down guidelines facilitating the management of various land property problems in Greece (problems relating to public areas, forests, *usucapio*, non-registered land transactions etc);

(b) After the conclusion of the first stage, the legal and technical framework is in position to support the next stages. The human resources and the infrastructures already in place at state and private levels are capable of leading to the conclusion of the project;

(c) The delays encountered so far have been caused primarily by the lack of official forest maps and by the enormous volume of land ownership-related declarations submitted by natural or legal persons;

(d) It is foreseen that the second stage of the project (2005-2008) will cover all urban centres and may materialise without state funding which may instead be used for the third and fourth stages (2009-2016).

3. On 5 May 2006 the Minister of Environment, Urban Planning and Public Works submitted a new Bill to the Greek Parliament, which aims at the acceleration of the completion of the national land register, in particular by simplifying the land registration procedure (item 1 above) laying down, in cases of objections, simpler administrative procedures and providing for the possibility of short, *ex parte* proceedings.

IV. General measures adopted and under way to accelerate proceedings before administrative courts, with a view to preventing new, similar violations of Article 6, paragraph 1

Greece has adopted a number of legislative and other measures with a view to accelerating proceedings before all administrative courts (see Final Resolution ResDH(2005)65 on Pafitis and others and 14 other cases against Greece, adopted on 18 July 2005). Additional problems in this field, including that of an effective domestic remedy against this kind of violations, have been highlighted in more recent judgments (see Manios group of cases) and are being addressed by the Greek authorities under the Committee's supervision. Such measures include in particular, provision of an effective domestic remedy in case of excessively lengthy judicial proceedings.

V. Conclusion

The Greek government believes that the measures above demonstrate the efforts that it has made with a view to fully executing the Court's present judgments, in accordance with Article 46, paragraph 1, of the Convention. The Greek authorities will continue to adopt measures to that effect and will keep the Committee of Ministers regularly informed of all new developments, in particular those relating to the completion of the national land and forest register."

Extract of **Resolution 1516 (2006)** on **the Implementation of judgments of the European Court of Human Rights** adopted by the Assembly on 2 October 2006 (see Doc. 11020, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens):

"[…]
6. In eight other members states – namely Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania – reasons for non-compliance and possible solutions to outstanding problems have been considered, making use of written contacts with these countries' delegations to the Assembly.
[…]

11. Furthermore the Assembly deplores that the following important and overdue implementation problems, stressed by both the Committee of Ministers and the Assembly, still remain without solution, thus prolonging the situation of non-compliance with the Strasbourg Court's judgments:
[…]

11.3. in *Greece*, no comprehensive plan has been presented to resolve the systemic problem of overcrowding of detention facilities (Dougoz and Peers judgments, CM Interim Resolution DH(2005)21), which has just been highlighted in yet another judgment *(Kaja v. Greece)* of 27 July 2006;
[…]

22. In view of the foregoing, the Assembly:
[…]

22.5. urges in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to resolve implementation issues of particular importance mentioned in the present resolution and to give this top political priority; […]"

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **2 August 1991**, **additional protocols 1 and 2** ratified on **29 June 1994**

Publication of the last report: **December 2006**
Last country visit: **February 2007**

Press release of 20 December 2006:

> "The Greek government has requested the publication of the report of the Council of Europe's Committee for the Prevention of Torture (CPT) on its 4th periodic visit to Greece in August/ September 2005, together with the authorities' response.
>
> In the course of the 2005 visit, the CPT reviewed the treatment of persons detained by law enforcement officials and examined the conditions of detention in police and border guard stations, coast guard posts and in special facilities for illegal migrants. It also looked at the situation in a number of prisons, notably Korydallos, focusing on the issues of overcrowding, health care and the regime for prisoners. A psychiatric hospital on the island of Corfu was also visited.
>
> The CPT has recommended various measures to stamp out ill-treatment by law enforcement officials; they include investigating allegations of ill-treatment thoroughly and, where appropriate, imposing disciplinary and/or criminal sanctions on the officers concerned, as well as rigorous recruitment and professional training programmes and the establishment of an independent police inspectorate.
>
> The conditions in the detention facilities for illegal migrants in Athens, in the Evros region and on the islands of Chios and Mytilini were of particular concern to the Committee. Most of the facilities visited were in a poor state of repair, unhygienic and lacking in basic amenities.
>
> The CPT noted that prisons in Greece remain overcrowded and offer only an impoverished regime for prisoners. Prison health care services also require further investment. Few cases of physical ill treatment of prisoners by staff were brought to the attention of the CPT; however, inter-prisoner violence appeared to be on the rise.
>
> No major shortcomings were observed in the psychiatric hospital visited.
>
> In their response, the Greek authorities provide information on the measures being taken to address the concerns raised in the CPT's report.
>
> The report and response are available in English on the CPT's website: http://www.cpt.coe.int"

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has just **completed a one-week visit** to Greece (20 to 27 February 2007).

The main objective of the visit was to examine the steps taken by the Greek authorities to implement recommendations made by the CPT after the August/September 2005 periodic visit. Particular attention was paid to the issues of safeguards against ill-treatment of persons detained by law enforcement officials and conditions of detention in police stations and holding facilities for aliens. The delegation also paid a targeted visit to Korydallos Men's Prison in order to examine the conditions of detention in the segregation units and assess developments in relation to the prison's healthcare service (see press release of 2 March 2007).

Next country visit in: date unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **22 September 1997**, but **not ratified**

No reservation, no declaration

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention neither signed nor ratified

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Greece was adopted on 5 December 2003 and made public on **8 June 2004**

Extract of document **CRI(2004)24:**

> "Executive summary:
>
> Since ECRI's second report on Greece was published in June 2000, progress has been made in a number of areas covered by the report. For example, the Ombudsman and the National Committee on Human Rights have contributed to the fight against racism and intolerance in Greece. Measures have been taken to combat the traffic in human beings. The Greek authorities have taken a stance against racism and for a multicultural society, particularly by reinforcing the network of intercultural schools. Progress is noted in the exercise of the religious freedom of minority religious groups. An integrated action programme aims to better the day-to-day life of the Roma. Equal opportunities programmes regarding access to education and employment have been planned for the Muslim minority in Western Thrace. Lastly, the situation of immigrants in Greece has been the focus of two legalisation procedures.
>
> However, many of the recommendations contained in ECRI's second report have not, or not fully, been implemented. There remain stereotypes, prejudices and incidences of discrimination targeting members of minority groups, particularly the Roma community and minority religious groups, as well as against immigrants. Criminal law is not enforced to a sufficient extent to curb racist acts, and existing civil and administrative law provisions are insufficient to effectively prohibit discrimination. The position of the Muslim minority in Western Thrace should improve further. The situation of immigrants is a long way from being completely legalised, and there is still no comprehensive, targeted integration policy on immigration. The measures taken at national level to combat racism and intolerance are not always replicated at the local level.
>
> In the current report, ECRI makes a series of recommendations to the Greek authorities. Specifically, it recommends that a number of international instruments of relevance to the fight against racism and intolerance be ratified. ECRI recommends that the Greek authorities strengthen legal provisions and their implementation in criminal, civil and administrative law to fight against racism and racial discrimination, and set up a specialised body to combat racism and racial discrimination. ECRI recommends to the Greek authorities to intensify their efforts to improve the situation of Roma, particularly in respect of housing, employment and education. It encourages the authorities to continue their efforts to improve the situation of members of other minority groups, including the Muslim minority in Western Thrace, the Macedonian community, the minority religious groups, as well as immigrants, refugees and asylum seekers. ECRI recommends continuing efforts to raise the awareness of civil servants, the general public and the media about human rights and the problem of racism and intolerance. Lastly, ECRI recommends legalising the situation of immigrants in Greece and strengthening policies aimed at their integration."

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **18 October 1961**, ratified on **6 June 1984**, entered into force on **6 July 1984**

European social Charter (revised) signed on **3 May 1996**, but **not ratified**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed and ratified on **18 June 1998**, entered into force on **1 August 1998**

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 1986 and 2004, Greece submitted 15 reports on the application of the Charter and 2 on the Protocol that adds new rights. The 16th report, on the core provisions of the Charter, was submitted on 19/10/2005. The next report, on some of the core provisions, must be submitted by 31/03/06.

Collective complaints (in process)

Maragopoulous Foundation for Human Rights v. Greece (No. 30/2005)
Allegation: violation of articles 11, 2§4, 3§1 and 3§2 (right to health and right to safety at work), admissibility decision of 10 October 2005.

Collective complaints (decided)

European Roma Rights Centre v. Greece (No. 15/2003)
Violation of Article 16 (families' right to social, economic and legal protection), decision on the merits of 8 December 2004.

World Organisation against Torture v. Greece (No. 17/2003)
Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 8 December 2004.

Quaker Council for European Affairs v. Greece (No. 8/2000)
Violation of Article 1§2 (prohibition of forced labour), decision on the merits of 25 April 2001.

International Federation of Human Rights Leagues v. Greece (No. 7/2000)"
Violation of Article 1§2 (prohibition of forced labour), decision on the merits of 5 December 2000.

European Federation of Employees in Public Services v. Greece (No. 3/1999)
Inadmissibility decision of 13 October 1999.

The Charter in domestic law

Automatic incorporation into domestic law under Article 28§1 of the Constitution: "1. The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity."

The situation of Greece with respect to application of the Charter is the following as of 1st January 2006:

Examples of progress achieved following conclusions or decisions of the ECSR[6]

Children

► Minimum age for employment set at 15 (Act No. 1837/1989). Application of the general ban on employment of children to children working in family businesses in the agricultural, forestry and livestock sectors (Presidential Decree No. 62/1998)

► Extension of the ban on night work to young persons employed in family businesses in the agricultural, forestry and livestock sectors (Act No. 2956/2001) and in the maritime and fishing industries (Presidential Decree No. 407/2001).

► Measures to combat trafficking in human beings, sexual and economic exploitation and child pornography (Act No. 3064/2002).

► Explicit ban on the corporal punishment of secondary school pupils (Act No. 3328/2005).

Non-discrimination (nationality)

► Equal employment rights for Greek citizens and all foreign nationals lawfully working in Greece, with no discrimination, racial or otherwise (Presidential Decrees No. 358/97 and 359/97).

► Eligibility of foreign nationals of states party for all vocational guidance and training programmes organised by the state employment office (OAED) and for equal treatment regarding all types of training allowances (Act No. 2224/1994).

Non-discrimination (sex)

► Same criteria for both sexes for admission to police training college (Act No. 3103/2003).

Employment

► Increased penalties for discrimination and new right of redress before the courts (Act No. 2639/1998).

► Clarification of the definition of state of emergency and thus of the circumstances when the population can be mobilised (Act No. 2936/2001).

► More restrictive definition of cases where criminal penalties may be imposed on seamen refusing to work, where the safety of persons, the vessel or the cargo is imperilled or where there are threats to the environment, public order and public health (Act No. 2987/2002).

► Reduction in the period of duty of career military officers from 25 to about 10 years (Act No. /2003).

► Prohibition of dismissal of employees of the merchant navy during pregnancy (presidential decree of 1997).

Movement of persons

► Simplification of the procedures for issuing work and residence permits (Act No. 3386/2005 on foreign nationals' entry into Greece, and their residence and social integration).

► Repeal of Article 19 of the Nationality Code, under which Greek nationals leaving the country with no intention of returning could be deprived of their Greek nationality (Act No. 2623/1998).

Cases of non-compliance

Health

► *Article 3§1 – right to health and safety at work*

Self-employed workers are not sufficiently covered by the occupational health and safety regulations.

[6] "1. The European Committee of Social Rights (ECSR) makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure". (Article 2 of the Rules of the ECSR).

Children

► *Article 7§5 – young workers' right to a fair wage*

The minimum wage paid to young workers, on the basis of which apprentices' allowances are calculated, is too low.

► *Article 17 – right of mothers and children to social and economic protection*

There is no statutory ban on corporal punishment in the family and in other child care institutions and settings.

Education

► *Article 9 – right to vocational guidance*

To be eligible for vocational guidance, interested parties must be able to speak Greek.

Non-discrimination (nationality)

Discrimination against nationals of non-EU and non-EEA states party, regarding:

► *Article 1§2 – prohibition of discrimination in employment*

access to civil service posts and to "related activities" is closed to non-EU and non-EEA nationals.

► *Article 12§4 – right to equal treatment with regard to social security*

1. The aggregation of periods of insurance or employment completed by non-EU and non-EEA nationals is not guaranteed.
2. Payment of family benefits to non-EU and non-EEA nationals is conditional on the children being resident in Greece.
3. There is no provision for the export of social security benefits accrued under Greek legislation by non-EU and non-EEA nationals.

Non-discrimination (minorities)

►*Article 16 – right of the family to social, legal and economic protection*

1. Roma families have inadequate legal protection since many Roma people have no legal status.
2. There are insufficient permanent homes and camping sites for Roma families.
3. The criteria for and practice of forced evictions of Roma families are incompatible with families' right to housing.

Non-discrimination (disability)

► *Article 15§2 – right of persons with disabilities to employment*

There is no legislation protecting persons with disabilities from discrimination.

Employment

► *Article 1§2 – workers' right to earn their living in an occupation freely entered upon.*

The length of alternative service, usually double that of compulsory military service, constitutes a disproportionate limitation on the worker's right to earn a living in an occupation freely entered upon.

► *Article 4§1 – right to a fair remuneration*

The minimum gross wage falls manifestly short of the 60 % threshold and the Government has not shown that the effects of taxation or other factors result in the minimum wage ensuring a decent standard of living for workers receiving it.

► *Article 4§4 – right to reasonable notice of termination of employment*

1. Notice periods for employees with fewer than ten years' service are inadequate.
2. The number of days' wages paid as compensation in lieu of notice is inadequate.

► *Article 8§1 – entitlement to maternity leave*

Periods of unemployment are not taken into account when calculating periods of employment needed to qualify for maternity leave.

Social protection

► *Article 13§1 – right to adequate assistance for anyone in need*

There is no individual right to social assistance.

► *Article 16 – family rights (family benefits)*

1. Family benefits are inadequate.

2. The self-employed, who represent about 32% of the active population, do not receive family benefits.

Movement of persons
► *Articles 19§6 and 19§10 – right of family reunion*
1. The two-year residence condition in Act No. 2910/2001 for entitlement to family reunion is excessive.
2. This also applies to self-employed workers.
► *Articles 19§8 and 19§10 – safeguards regarding deportation*
1. Migrant workers may be expelled if their presence in Greece poses a simple threat to public order.
2. This also applies to self-employed workers.

Greece has failed to provide evidence that it complies with the following provisions:

► *Article 7§5 – right of young workers and apprentices to a fair remuneration*
► *Article 15 – right of persons with disabilities to employment and training and Article 1§4*
► *Articles 19§6 and 19§10 – right of family reunion*"

H. PARLIAMENTARY ASSEMBLY

Extract of **Recommendation 1766 (2006)**: **Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe**, adopted by the Assembly on 4 October 2006 (see Doc. 10961, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevičs):

"[…]

2. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed the Framework Convention but have still not ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified it. The Assembly recalls that already in Recommendation 1492 (2001), it called upon the above-mentioned states to sign and/or ratify, as soon as possible, without reservations or declarations, the Framework Convention. It deplores the derisory progress that has been made with regard to ratification since the adoption of its last recommendation in 2003, as only three new ratifications – by the Netherlands, Latvia and Georgia – have been recorded.
[…]

5. The Assembly notes that Andorra, Belgium, France, Greece, Iceland, Monaco and Turkey persist in their refusal to sign or ratify the Framework Convention, on the grounds that they respect the principle of non-discrimination in their domestic law. It is therefore surprised that they are still not parties to Protocol No. 12 and would regard the ratification of this instrument by these seven states as evidence of their desire to match their deeds to their words, and thus ensure effective protection for the rights of persons belonging to national minorities or to minority groups under the authority of the European Court of Human Rights. […]"

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

HUNGARY

CoE member State since **6 November 1990**
Number of CoE Conventions ratified (as of 1 March 2007): **70 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **14**

I. PLURALISTIC DEMOCRACY[7]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **June 2005**
Next presidential election: **…**
Last general elections: **April 2006**
Next general elections: **2010**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2006**
Next municipal elections: **2010**

European Charter on Local Self-Government ratified on **21 March 1994**

Last **Congress of Local and Regional Authorities** monitoring report: June 2002 [CPR (9) 2 Part II], **Resolution 142 (2002)** and **Recommendation 116 (2002)** on regional democracy in Hungary adopted on 6 June 2002.

Extract of **Recommendation 116 (2002)**:

> "The Congress,
> […]
>
> express to the Hungarian parliamentary and governmental authorities the following recommendations:
>
> a. Taking into account the complexity of the structures of the current territorial administration and the new requirements, in particular in the field of regional development resulting from the future membership in the European Union, it is necessary to consider a major and comprehensive reform of the territorial administration of Hungary;
>
> b. This reform should be conceived in the widest possible political context, integrating in its considerations all the levels, and all administrative and political structures existing at the levels of the municipalities, cities with specific statutes, counties and the regions of territorial development;
>
> c. The conception of the administrative reform should be founded on a political consensus as broad as possible, since some of the decisions essential to an effective and operational reform will necessitate the modification of certain current legislation for which, in certain cases, a two-thirds' majority is necessary in the national parliament;
>
> d. A revision of the current structures makes it necessary:

[7] The non-governmental organisation Freedom House gives to Hungary a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

i. to clarify the distribution of the responsibilities and the tasks between the state, the regional structures, the cities and the communes, and to define the origins of competences to be entrusted to the regional level;

ii. to express a clear option in favour of the creation of only one regional level and to create, on this basis, regions catering to the needs of a democratic society and economic development, and to equip the regions with proper competences, autonomous elected bodies, their own and sufficient budgetary resources, according to the criteria outlined in the draft European charter of regional self-government;

iii. to take into consideration, when creating the regions, the aspirations of the population for a directly elected representation, a regional identity, an effective administration, a transparent and democratic institutional structure with a real decisional competence and suitable financing, in particular for the management of regional development;

iv. to proceed to a clear definition of the distribution of competences of the public authorities between the commune level, cities with specific statutes, regional level and the state, while taking into consideration the principles of the European Charter of Local Self-Government and the draft European charter of regional self-government;

v. to define, according to the competences granted to the regional authorities, the number of regions to be created by taking into account the principles of effectiveness and rationality of management; the requirements of regional socio-economic development; the traditions and developments relating to regional identities; if necessary by carrying out territorial regroupings;

vi. to choose one of the existing levels of public administration for the creation of the democratically operational regional structures, namely the level of the counties or that of the regions of territorial development.

In the first case, at the level of the counties, it would be necessary:

– to equip the current structures with real competences for self-government and with the appropriate financial means;

– to re-examine their number and to rationalise their structures by a regrouping and fusion of a certain number of them;

– to clearly define the relations between the state, the regions, the cities and the communes as well as the control structures by taking account of the principles of autonomy, subsidiarity, transparency, complementarity, and solidarity;

– to proceed to a policy of broad devolution of competences on behalf of the state towards the new counties, in particular in the field of the regional development;

– to re-examine and reduce the decentralised structures of the state ministries and agencies and to transfer their tasks to the autonomous administrations of the regions;

– to integrate the cities with specific statutes into the counties and to give to some of them the function of the seat of the regional institutions.

In the second case, at the level of the regions of territorial development, it would be necessary:

– to equip the region of territorial development with decisional and executive structures, directly elected by the population to give them democratic legitimacy, to make them autonomous financially and administratively, and to transfer to their level the public administrative management competences currently exercised by the state or its regional offices;

– to re-examine the place and the role of the counties;

– to regulate the relations between the regions and the municipal level;

– to also re-examine from the point of view of their reduction and integration into the regions, the number of cities with statutes that have county status and to clearly re-examine the functions of the micro-regions as the framework of intercommunal co-operation and their function as units of administrative and statistical assistance;

– to entrust proper budgetary resources to this level to ensure its functioning and its democratic and autonomous management;

– to envisage a national system of equalisation of the budgetary means to balance the disparities in regional development resulting from geographical, demographic, economic, historical or political disadvantages;

vii. To proceed quickly to the essential reforms needed to reinforce regional democracy in Hungary, to adapt local self-government to the new requirements resulting from the rationalisation of territorial administration structures, and to equip Hungary with a strong and effective regional level administration, founded on the principles of administrative autonomy and democratic legitimacy."

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Hungary: Situation in 2004:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Hungary as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

No specific recent opinion concerning Hungary.

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems

Extract of the press release of 5 October 2006:

"The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.

The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Hungary in 2004 was **385,315,333 euros**;
- the **number of Professional judges on a full-time basis** in Hungary in 2004 was **2,757**, that means 27.3 for 100 000 inhabitants;
- the **number of public prosecutors** in 2004 in Hungary was **1,453**, that means 14.4 for 100 000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[8]

Civil law convention on corruption signed on **15 January 2003**, ratified on **4 December 2003**
Criminal law Convention on corruption signed on **26 April 1999**, ratified on **22 November 2000, Additional Protocol** signed on **15 May 2003**.

Extract of: **Second Evaluation Round: evaluation report on Hungary adopted by GRECO at its 27th Plenary Meeting** [Strasbourg, 6-10 March 2006, Greco Eval II Rep(2005)5]:

1. Conclusions

"In Hungary, detailed legal provisions dealing with confiscation, seizure and management of seized and confiscated assets are in place. That said, the provision of specific training to prosecutors and police officers could contribute to improving the effectiveness of the existing legal framework with respect to seizure and confiscation of proceeds of corruption. As far anti-corruption/integrity policies in public administration are concerned, Hungary has undertaken in the last years substantial steps to prevent and combat corruption within public administration, and the system appears to be generally transparent. The planned adoption of the model Code of Conduct for Civil Servants will be a further important step in this direction. It is to be hoped that this process will be completed as soon as possible. Further improvements are recommended with respect, for example, to access to official documents, development of a comprehensive Action Plan against Corruption, guidance for public officials with respect to the acceptance of gifts and situations of conflicts of interest (including moving to the private sector) and procedures for reporting suspicions of corruption. As regards legal persons, the control of the registers of companies and existing professional restrictions could be strengthened. The introduction of corporate criminal liability in Hungary is commendable. However, further implementation of this legislation appears to require extensive awareness and the provision of appropriate information to the relevant authorities. Moreover, professionals such as lawyers, accountants and auditors should become more actively involved in detecting and revealing suspicions of corruption, in particular by complying with their reporting obligation on money laundering.

In view of the above, GRECO addresses the following **recommendations** to Hungary:

i. to provide specialised training for prosecutors and police officers with a view to making full use of all means available aiming at identifying, seizing and confiscating proceeds of corruption (paragraph 29);

ii. that the Anti Money Laundering Department enhances the knowledge of the bodies/persons obliged to report suspicious transactions with a view to improving the quality of their reports, including by providing feedback on suspicious transactions reports to the extent possible (paragraph 31);

[8] Hungary is in 41st position with a score of 5,2 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

iii. that as the Advisory Board for Corruption-free Public Life develops an Action Plan against Corruption, the good practices already implemented on the basis of the existing sectoral anti-corruption programmes are taken into account. It recommends further that the Board co-ordinates the anti-corruption activities developed by other Governmental bodies and provides greater publicity of the measures taken in public administration to combat corruption (paragraph 55);

iv. to provide appropriate training to public officials on the implementation of freedom of information legislation and to raise the general public's awareness of their right of access to information (paragraph 56);

v. to introduce as soon as possible the model Code of Conduct for Civil Servants for the development of consistent standards for ethical behaviour throughout public administration, to widely disseminate it among public officials and the general public, and to provide the officials concerned with appropriate training on a permanent basis (paragraph 58);

vi. that, as the Ministry of the Interior develops the model Code of Conduct for Civil Servants, clear guidance is provided with respect to seeking or receiving gifts (paragraph 59);

vii. to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests (paragraph 60);

viii. to establish clear guidelines and training for civil servants concerning the reporting of suspicions of corruption (paragraph 61);

ix. to consider strengthening the controlling functions of the courts in charge of the registration of legal persons regarding (a) the identity of the owners of legal persons; (b) certain legal restrictions in place to ensure effective responsibility of the owners of legal persons; and (c) legal limitations on exercising executive functions (paragraph 83);

x. that efforts should be made to ensure that applicability of corporate criminal liability cannot be circumvented by institutional changes occurred after the commission of the criminal offence (paragraph 84);

xi. to ensure that investigating, prosecuting and adjudicating authorities are given the necessary training in order to fully apply the existing provisions on corporate criminal liability (paragraph 85);

xii. 1) the introduction of appropriate measures, such as specific training, in order to make auditors, accountants and legal professionals increasingly aware of their role concerning the detection and reporting of suspicious transactions; 2) the development of an adequate risk analysis in order to improve the effectiveness of the control performed by the Anti Money Laundering Department concerning implementation of the anti-money laundering framework by service providers without State or professional supervision (paragraph 89).

Moreover, GRECO invites the Hungarian authorities to take account of the **observations** (paragraphs 30, 33 and 86) made in the analytical part of this report.

Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Hungarian authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2007."

2. Observations

"[…]
30. […] Although the representatives of the Anti-Corruption Unit of the Police, as well as certain representatives of other law enforcement authorities indicated that appropriate inter-institutional cooperation and coordination channels were in place, *the GET observes that the sharing of information between relevant institutions in the course of corruption-related investigations should be improved in order to ensure that "sensitive" information is transmitted in real time to prevent the dissipation of corruption proceeds at early stages of the investigation.*

33. Although in the GET's view the existing legal framework concerning confiscation and interim measures provides adequate tools for identifying, tracing and seizing corruption proceeds (also in cases when mutual legal assistance is requested), it is difficult to ascertain to what extent the system is effective in practice, due to a lack of systematic statistics. The available data concerning confiscation orders suggest that courts are gradually increasing their recourse to this type of measure, but the lack of precise figures (e.g., value of confiscated property, use of interim measures, mutual legal assistance requests concerning confiscation and interim measures in respect of corruption offences) makes it difficult to draw any further conclusion on the effectiveness of the system in practice. In this connection, *the GET observes that systematic statistics should be collected and analysed concerning the use of confiscation, interim measures and international co-operation.*

86. Tax authorities are subject to the general obligations included in the Criminal Code and the Code of Criminal Procedure, which require all public officials to report on suspicions of criminal offences detected within their scope of competence. In addition, the Tax and Financial Control Administration must record suspicious operations in a separate file and subsequently report those facts to the competent law enforcement body. Tax authorities are also obliged to disclose confidential tax information to investigating bodies upon request. The Customs and Finance Guard have a particular corruption management action plan in order to deal with corruption cases within that body. According to the action plan, all customs and finance guards should receive training on facts associated with corruption offences and the obligations and procedure of reporting such cases. In the GET's view, the tax authorities (notably, tax officials from the Tax and Financial Control Administration) could play a more significant role in the detection and subsequent reporting of suspicions of such offences in the course of their normal activity, if appropriate training could be provided. *Consequently, the GET observes that training for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies should be provided.*[…]"

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **2 March 2000**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) neither signed nor ratified

Third Round report on Hungary: Anti-Money Laundering and Combating the Financing of Terrorism: Memorandum prepared by IMF [adopted by MONEYVAL at its 17th plenary meeting, 30 May – 3 June 2005, **MONEYVAL(05)17-I**]

Third Round detail assessment report on Hungary: Anti-Money Laundering and Combating the Financing of Terrorism: Compliance with the European Union Anti-Money Laundering Directives Memorandum prepared by Mr Herbert Z. Laferla [adopted by MONEYVAL at its 17th plenary meeting, 30 May – 3 June 2005, **MONEYVAL(05)17-II**]**:**

Hungary: Progress report 2006 [MONEYVAL(2006)16rev]

III. PROTECTION OF HUMAN RIGHTS[9]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Hungary published in **September 2002** following a visit to the country in **June 2002** [CommDH(2002)6]

Follow-up report on Hungary published in **March 2006** following a visit to the country in **September 2005**

Extract of **Follow-up report on Hungary (2002-2005): Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2006)11]:

> "Introduction:
>
> The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Hungary from 11 to 14 June 2002 at the invitation of the Hungarian Government. He would again thank the Hungarian authorities for their co-operation during that visit and for the facilities made available to the members of his Office who made a follow up visit from 26 to 29 September 2005. His first report raised a number of issues concerning legislation and actual observance of human rights in Hungary.
>
> The purpose of the present report is to assess changes further to the Commissioner's 2002 findings and recommendations. It follows the order of the recommendations which the Commissioner made in his first report.
>
> The present report is based on information provided by the Hungarian authorities as regards developments in observance of human rights since 2002, documents of national and international NGOs and of international organisations, reports in the media, and the findings and conclusions of the follow up visit by members of the Commissioner's Office.
>
> *Protection of minorities*
>
> *Representation of minorities in Parliament*
> *[…]*
> *Conclusions*
>
> The Commissioner calls on the Hungarian legislature to bring the law into line with the provisions of the Constitution and introduce a mechanism ensuring that national and ethnic minorities are represented in Parliament.
>
> *Legislation on the organisation of national minorities and on discrimination*
> *[…]*
> *Conclusions*
>
> The Commissioner welcomes and acknowledges the considerable progress which Hungary has made as regards both representation of minorities and action to counter discrimination. Even though the legislative changes have yet to demonstrate their full effect, he remains convinced that the efforts at legislative level will be reflected in the community. Greater independence of the Equal Treatment Authority might further reinforce protection of minorities.

[9] Hungary is in 10th position with a score of 3 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

Situation regarding the Roma minority

Access to the employment market
[…]
Conclusions

The Commissioner notes that the government authorities are addressing the difficulties which members of the Roma community experience in obtaining work. These efforts nevertheless need continuing and intensifying if genuine employment opportunities are to be opened up for Roma, in particular by means of special measures encouraging private employers to follow the example set in the public sector. As regards housing, it is necessary to further develop provision for helping Roma obtain decent housing, while firmly punishing discriminatory or anti-Roma behaviour and pressing ahead with the action to combat social prejudice towards them.

Roma children and the education system
[…]
Conclusions

The Commissioner notes the measures which the Hungarian authorities have taken to promote schooling for all children and provide financial and material aid for the most disadvantaged, in particular Roma children. Closer supervision of placement in special classes and the new post of Ministerial Commissioner on Roma Matters and Disadvantage are two moves in that direction. These measures must be continued and developed so as to guarantee free and equal access to the education system. The most pressing requirement is to put a stop as quickly as possible to misuse of placement of Roma children in special classes or home education.

Domestic violence
[…]
Conclusions

The Commissioner welcomes the progress in the protection of victims of domestic violence and invites the Hungarian authorities to step up their action, in particular by further carrying on with specific trainings and raising public awareness on this issue. Shelters specifically for victims of domestic violence need to be opened speedily so as to provide protection and support for victims in difficulty and their children.

The Commissioner calls on the Government and Parliament to enact as soon as possible legislation creating a specific offence of domestic violence. The adoption of the restraining order law which will enter into force on 1st July 2006 is very much to be welcomed. It remains to be implemented swiftly and fully in order to ensure better protection of victims.

Committals to psychiatric establishments
[…]
Conclusions

The Commissioner welcomes the progressive measures which have been introduced, in particular the removal of net-beds and the improved observance of patients' rights in placements and committals to psychiatric hospital. He invites the Hungarian authorities to make similar efforts regarding the procedure for review of committals to the IMEI so as to guarantee genuine adversariality and that patients' wishes are taken into consideration.

Protection of vulnerable persons
[…]
Conclusions

The Commissioner encourages the authorities to maintain the efforts on behalf of children, elderly people and mental patients so that all enjoy decent conditions in adapted facilities without any overcrowding. He invites the Hungarian authorities to begin as soon as possible building the psychiatric centre which is to replace the IMEI and urges them, pending the opening of the new facility to improve conditions at the IMEI, which are currently sub-standard.

Police violence
[…]
Conclusions

The Commissioner notes the reduction in cases of police brutality and the policy of prosecuting the officers responsible when cases occur. The efforts being made as part of initial training, opening up the police force to Roma and police exposure to Roma culture will further reduce any persisting use of violence.

Police custody and provisional detention
[…]
Conclusions

The Commissioner welcomes the entry into force of the new code of criminal procedure and the substantial reduction in the length of detentions at police stations. He would nonetheless repeat that the rule should be that prisoners on charges are held at remand prisons, not police stations, so as to prevent any misuse of authority by the law enforcement agencies. The increase in the prison population also remains a concern, to which a speedy, structural response is needed.

Asylum seekers
[…]
Conclusions

The Commissioner notes the improved quality of decisions in asylum cases, progress in relations between the competent authorities and NGOs, and the increased resources allocated to protection of asylum seekers and refugees.

The Commissioner nevertheless remains concerned at detention of irregular aliens for periods of up to 12 months on the sole ground that they have been found on Hungarian territory without any valid residence permit. The Commissioner points out that all pre-deportation detention must be as short as possible and asks the Hungarian authorities to comply with the guidelines adopted by the Committee of Ministers. His concern is all the greater in that a quasi-prison regime is applied to such foreigners even though they have not committed any serious offence. Such detention should not be systematic and should last only the time strictly necessary to determine the foreigner's status and take any deportation decision.

Freedom of association
[…]
Conclusions

The Commissioner invites the Hungarian authorities to ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints and to allow national trade unions to make use of it. It also urges them to supervise international firms effectively so as to prevent any hindrance to exercise of freedom of association."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **5 November 1992**

No reservation, no declaration

Protocol No. 6 ratified on **5 November 1992**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 ratified on **16 July 2003**
Protocol No. 14 ratified on **21 December 2005**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **17** concerning Hungary that gave rise to a finding of at least one violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **31** concerning Hungary that gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **647** concerned Hungary

Out of a total of 89,887 pending case before the Court on 1 January 2007, **1,277** concerned Hungary

Resolutions adopted by the Committee of Ministers in 2006: **1**
No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **4 November 1993**, **additional protocols 1 and 2** ratified on **4 November 1993**

Publication of the last report: **June 2006**
Last country visit: **January-February 2007**

Press release of 29 June 2006:

> "The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its third periodic visit to Hungary, which took place in March/April 2005. The report has been made public at the request of the Hungarian authorities, together with their response.
>
> During the visit, the majority of the persons interviewed by the CPT's delegation indicated that they had been treated correctly when detained by the police. Nevertheless, a few allegations of physical ill-treatment by the police were received. To further strengthen the protection of persons detained by the police from ill-treatment, the Committee has recommended that they benefit from an effective right of access to a lawyer – including to free legal assistance – from the very outset of their deprivation of liberty. Moreover, in addition to being seen by police doctors, detained persons who present injuries and make allegations of ill-treatment should be seen by an outside medical expert and the case referred to a prosecutor.
>
> Particular attention was paid during the visit to the holding of remand prisoners on police premises. Certain improvements were noted in this respect; nevertheless, the CPT has stressed that the medium-term objective should be to end completely the practice of accommodating remand prisoners in police establishments.
>
> The majority of inmates at the prisons visited stated that staff treated them in a correct manner. However, at Kalocsa and Szeged prisons, relations between prisoners and staff – as well as among prisoners themselves – appeared to be rather tense, a

situation compounded by serious overcrowding and low staffing levels. The CPT has recommended that the cell occupancy levels at the two establishments be reduced, the objective being to provide a minimum of 4 m² of living space per prisoner. Close attention was also given to prisoners placed under a special security regime (Grade 4) and the so-called "actual lifers" (prisoners who cannot be released except on compassionate grounds or by pardon). In this context, the Committee has stressed the need for refining the approach to risk assessment and reviewing the application of security measures.

The CPT also visited for the first time the Judicial and Observation Psychiatric Institute (IMEI) in Budapest, which is the only high-security psychiatric hospital in Hungary. No allegations of ill-treatment were received and patients' living conditions were found to be, on the whole, adequate. However, the Committee has reservations about the very location of IMEI, within the boundaries of a prison complex; it would be highly desirable for the institute to be re-located.

The report and response are available in English on the CPT's website: http://www.cpt.coe.int"

Next country visit in: unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **25 September 1995,** entered into force on **1 February 1998**

No reservation, no declaration

Extract of the last opinion by the Advisory Committee adopted in **December 2004** [ACFC/INF/OP/II(2004)003]:

"Concluding remarks:

124. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Hungary.

Positive developments

125. Hungary has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in September 2000 and the Committee of Ministers' Resolution in November 2001. This process has included important legislative changes – recently entered into force or pending before the Parliament – as well as changes in practice, and it has been facilitated by the continuation of a constructive dialogue between the authorities and representatives of minorities.

126. Since the adoption of the first Opinion of the Advisory Committee, Hungary has improved markedly its anti-discrimination legal and institutional framework. The most significant step was the adoption of Law CXXV on equal treatment and the promotion of equal opportunities, adopted in December 2003, the scope of which covers a number of societal settings. Furthermore, this Law contains major innovations such as the introduction of an *actio popularis*, the reversal of the burden of proof and the creation of an administrative authority at national level - which should be operational in 2005 - to oversee the application of the law.

127. In the field of media, Hungary endeavoured to facilitate the extension of radio and television programmes intended for minorities.

128. Several minorities have managed to – or are about to – introduce the teaching of their language within the public education system. Despite certain difficulties, the national self-governments of some minorities have been able to manage, run or even acquire kindergartens or schools that offer teaching in or of minority languages.

Issues of concern

129. Law LXXVII of 1993 on the Rights of National and Ethnic Minorities contains in its current form shortcomings and the need for it to be amended is now widely acknowledged. The election process of the minority self-governments has regularly led to abuses and made it possible for a number of candidates to be elected in respect of a minority with which they had no link whatsoever, thus affecting the credibility and functioning of the minority self-governments. The process enabling the minority self-governments to take over schools remains excessively difficult and the practical financial implications of this process have not yet been satisfactorily resolved.

130. Generally speaking, the funding of the national minority self-governments remains problematic and the local minority self-governments seem to remain heavily dependent on the goodwill of local authorities in this matter. The relations between the minority self-governments and local authorities are indeed often difficult, even tense, particularly for financial reasons.

131. Despite important measures to promote the integration of the Roma into society, these persons continue to face particular difficulties and various forms of discrimination in a range of fields such as employment, housing and health care. The collection of additional statistical data in these fields seems indispensable to better assess the effectiveness of the measures taken.

132. The programme slots for television broadcasts intended for minorities have raised objections for several years from those concerned and a recent change in programming could render them even less favourable.

133. In the field of education, the persistence of various exclusion and segregation practices at the expense of a high number of Roma pupils by local authorities is a source of deep concern. The governmental control on local authorities in this field is not efficient enough to discourage the perpetuation of such practises. As far as bilingual education is concerned, little progress has been made despite the interest shown by persons belonging to several minorities.

134. A specific mechanism for the representation of minorities in the Parliament is still awaited despite existing constitutional obligations in this area.

Recommendations

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

- Ensure the full and effective implementation of Law CXXV on Equal Treatment and the Promotion of Equal Opportunities without any delay, in particular through the setting up of the administrative authority tasked to oversee its application, and ensure co-ordination between the different bodies involved in the fight against discrimination.
- Pursue the efforts already made to remedy the shortcomings of Law LXXVII of 1993 on the Rights of National and Ethnic Minorities by improving the electoral system of the minority self-governments, strengthening their functional and financial autonomy as regards the acquisition, running and managing of public institutions and clarifying state and local authority funding and support for the minority self-governments.

- Redouble efforts to put an end to exclusion and segregation practises at the expense of Roma pupils, in particular through a more efficient control on local authorities in this field.

- Intensify existing measures to enable all Roma to enjoy decent living conditions.

- Define the geographical areas in which the use of minority languages in relations with the administrative authorities could be more actively encouraged and pursue efforts to employ officials who can speak minority languages.

- Set up more systematically forms of bilingual teaching for minorities.

- Resume and accelerate their efforts to create a mechanism for the representation of minorities in the Parliament."

Last CM resolution on the implementation of the Framework Convention: **ResCMN(2005)10**

Next State report due: 1 February 2009

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **5 November 1992**, ratified on **26 April 1995**

Last State periodical report submitted on **21 November 2005** [MIN-LANG/PR(2005)6, addendum 1 and annexes]
Last Committee of Experts' evaluation report adopted on **1 December 2006** (not yet public)
Last Committee of Ministers' Recommendation adopted on **30 June 2004** [RecChL(2004)4]
Last biennial report of the Secretary General to the Parliamentary Assembly: **3 September 2005** (Doc. 10659)

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Hungary was adopted on 5 December 2003 and made public on **8 June 2004**

Extract of document **CRI(2004)25:**

"Executive summary:

Since the publication of ECRI's second report on Hungary in March 2000, progress has been made in a number of the fields highlighted in the report. Training in human rights and conflict management has been provided to police officers and other officials. The Hungarian authorities have set up an anti-discrimination network and a national network for integrated education. New bodies dealing with Roma issues have been established as well as an Office for Equal Opportunities. A new law on asylum entered into force in June 2002. An Act on Equal Treatment and the Promotion of Equal Opportunities was adopted on 22 December 2003. Different projects have been implemented in various fields of life to address the problems faced by the Roma minority, particularly in the fields of employment and education. The Hungarian authorities have shown a willingness to pursue issues relating to the position of ethnic and national minorities, including Roma.

However, the progress made in the field of legislation and governmental policy in dealing with the problems of racism, intolerance and discrimination remains limited in a number of respects. Racially-motivated violence, including also acts of police brutality, continues. While the situation of national and ethnic minorities other than the Roma minority has generally improved, there remain some lacunae in the legislative framework relating to national and ethnic minorities. The criminal law needs to be further extended in order to cover all instances of racist expression**,** and the existing provisions against racism are not sufficiently implemented. The Roma minority

remains severely disadvantaged in most areas of life, particularly in the fields of health care, housing, employment and education. Some shortcomings in the law and practice concerning the rights of refugees, asylum-seekers and "persons authorised to stay" have been identified. There is still no comprehensive and targeted integration strategy ensuring that immigrants fully become part of Hungarian society. Antisemitic, racist, xenophobic and intolerant feelings have been expressed in the media, by some politicians as well as within mainstream society, alongside negative attitudes towards migrants and asylum seekers. ECRI recognises the positive initiatives that the Hungarian authorities are beginning to take in the field of Roma education but it considers that the segregation of Roma children in education remains an important issue of concern. Moreover, initiatives taken at national level to combat racism and discrimination do not always successfully filter down to local level.

In this report, ECRI recommends that the Hungarian authorities take further action in a number of fields. It recommends, inter alia, the ratification of Protocol 12 to the European Convention of Human Rights, fine-tuning the legislation on minority self-government and maintaining efforts in the field of cultural autonomy and the education of national and ethnic minorities in Hungary. It calls for a strengthened implementation of existing criminal law provisions against racism and the rapid adoption and implementation of further criminal law provisions to better combat racist expressions. ECRI also recommends that the Hungarian authorities duly implement the existing provisions of the civil and administrative law, including the Act on Equal Treatment and the Promotion of Equal Opportunities, adopted on 22 December 2003. ECRI calls for measures to improve the situation of non-citizens in Hungary, including immigrants, refugees, asylum-seekers and "persons authorised to stay". ECRI encourages the Hungarian authorities to take awareness-raising measures to combat racist feelings among the general public. It recommends that the Hungarian authorities maintain and strengthen their efforts to improve the situation of the Roma minority, particularly in combating discrimination against Roma in the fields of health care, housing and employment. In particular, ECRI recommends measures to combat any form of discrimination and segregation against Roma children in education. ECRI recommends a stronger response to incidents of police mistreatment of members of minority groups. It encourages the authorities to maintain their efforts concerning training on human rights and the problems of racism and discrimination aimed at officials working in contact with members of minority groups."

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **13 December 1991**, ratified on **8 July 1999**, entered into force on **7 August 1999**

European social Charter (revised) signed on **7 October 2004**, but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed **7 October 2004**, but not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 2002 and 2006, Hungary submitted 4 reports on the application of the Social Charter. The 4th report, on the non-core provisions of the Charter, was submitted on 31/03/2006. The 5th report will concern the provisions accepted by Hungary, i.e. those related to the theme Employment, Training and Equal opportunities (Articles 1, 9, 10

and 15 of the Charter and Article 1 of the 1988 Protocol). The 5th report should be submitted before 31 October 2007.

The Charter in domestic law

Dualistic approach. Article 7§1 of the Constitution: "The legal system of the Republic of Hungary shall ensure harmony between the assumed international law obligations and domestic law'."

The situation of Hungary with respect to application of the Charter is the following as of 1st October 2006:

Example of progress achieved following conclusions or decisions of the ECSR[10]

Right to specific emergency assistance for non-residents
► Measures taken to enable nationals of other states party to the Charter and the revised Charter to have equal entitlement to specific emergency assistance (amendment of the Health Insurance Benefits Act in 2004)

Cases of non-compliance

Right to work
► *article 1§2 – Freely undertaken work*
All civil service posts are reserved for nationals or citizens from countries members of the European Economic Area (EEE).

Right to collective bargaining
► *article 6§4 – Collective actions*
The calling and carrying out of a strike for civil service trade unions is subjected to restrictive conditions and procedures.

Right to social and medical assistance
► *article 13§1 – Adequate assistance for every person in need*
There is no right of appeal against social assistance decisions to an independent body.

The ECSR is not able to assess whether the respect of the following rights is ensured:
► *article 1§3 – Right to free placement services*
► *article 6§3 – Conciliation and arbitration*
► *article 13§3 – Right to social services devoted to persons in urgent need of assistance*
► *article 16 – Right of the family to social, legal and economic protection*

H. PARLIAMENTARY ASSEMBLY

No specific recent text concerning Hungary

[10] "1. The European Committee of Social Rights (ECSR) makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure"(Article 2 of the Rules of the ECSR).

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

ICELAND

CoE member State since **7 March 1950**
Number of CoE Conventions ratified (as of 1 March 2007): **79 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **32**

I. PLURALISTIC DEMOCRACY[11]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **2004**
Next presidential election: **2008**
Last general elections: **May 2003**
Next general elections: **2007**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2006**
Next municipal elections: **2010**

European Charter on Local Self-Government ratified on **25 March 1991**

No report by the **Congress of Local and Regional Authorities**

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Iceland: Situation in 2006:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Iceland as well as their operation, including their competencies and financial and human resources.

Extract:

"[…]

12. REFORMS ENVISAGED OR IN PROGRESS

In December 2004, there were 101 municipalities in Iceland. It is clear that many of them are too small to be able to carry out all their duties. In August 2003 the Minister of Social Affairs appointed a task force to coordinate a joint initiative by the Government and the Association of Icelandic Local Authorities in order to strengthen local government. A sub-committee was assigned to make proposals for reducing the number of municipalities. In March 2005, the committee presented its proposals, which envisage that the number of local authorities could be reduced to 46 by the year 2006. A referendum based on the committee's proposals took place on 8 October 2005 in each municipality concerned.

The inhabitants in most of the municipalities concerned did not approve of the committee's proposals. In 41 municipalities the inhabitants decided against merger, but in 20 municipalities the inhabitants accepted the proposal for a merger. Only one of the proposals was accepted by a majority of the electorate in all of the municipalities concerned.

In November 2004 and in April 2005 three other proposals for amalgamation were approved in a referendum. The number of municipalities in the next local government elections in May 2006 will therefore be 89 unless further mergers are approved before the elections.

[11] The non-governmental organisation Freedom House gives to Iceland a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

12.1 Process of merger

In Iceland there is a long tradition for merger based on the local authorities' own initiative. Normally two or more local councils decide to put forward a merger proposal after formal discussions. The proposal is then presented to the inhabitants in the respective municipalities, who decide in a referendum whether or not the merger is to go ahead. A simple majority of votes in each municipality is required for the merger to be accepted. If a majority of the electorate in all the municipalities concerned agree to the proposal, the merger is considered accepted and will go through.

If, however, a majority of the electorate in any of the municipalities concerned vote against the proposal, voters will have to vote again on the same proposal within 6 weeks, provided that at least two of the municipalities concerned have accepted the proposal. The second round is organised to allow the inhabitants of the municipalities that decided against merger to reconsider their options when they know the will of the neighbouring municipalities. If after the second round the electorate in any of the municipalities concerned still vote against the proposal, the merger will not be completed automatically. However, the councils of the municipalities whose inhabitants voted in favour of the proposal can decide to merge those municipalities if more than 2/3 of the municipalities concerned voted for the proposal, and they encompass more than 2/3 of the total population affected by the merger as originally proposed.

Example:

Municipality	***Inhabitants***
A	*1,500*
B	*1,000*
C	*500*
Total	***3,000***

The councils of A, B and C have put forward a proposal of merger. A simple majority of the electorate of A and C have voted for the proposal, but a majority of the electorate of B have voted against. Within six weeks, the electorate of B have the chance to vote again on the same proposal. If a majority still decides against the proposal, municipality B will not be merged with the others. However the councils of A and C can still decide to merge in spite of the results in B, because they constitute 2/3 of the municipalities concerned and 2/3 of the total population live in those municipalities.

12.2 Further reforms in progress

Concurrently another committee was given the task of revising the system of the revenue sources of local authorities. Behind this revision, and the proposals for reducing the number of local authorities, are ideas regarding changes in the competencies of local and national authorities. The committee submitted its proposals in March 2005. The proposals do not include suggestions for any major changes to the current system but further committee work on the equalisation system will take place in 2005 and 2006.

The task force has also presented proposals to transfer responsibility for some public services from the State to the local authorities. These include certain aspects of health services and services for the elderly and the handicapped. In addition it is being examined how to reduce joint assignments between the different levels of government. The outcome of the referendum on 8 October 2005 may have a negative impact on the chances for these proposals to be implemented in the near future.[2]

II. RULE OF LAW

A. VENICE COMMISSION

No specific recent opinion concerning Iceland

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Iceland in 2004 was **13,700,000 euros**;
- the **number of Professional judges on a full-time basis** in Iceland in 2004 was **47**, that means 16 for 100 000 inhabitants;
- the **number of public prosecutors** in 2004 in Iceland was **7**, that means 2.4 for 100 000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[12]

Civil law convention on corruption signed on **4 November 1999**
Criminal law Convention on corruption signed on **27 January 1999**, ratified on **11 February 2004, Additional Protocol** signed on **15 May 2003**

Extract of: **Second Evaluation Round: evaluation report on Iceland adopted by GRECO at its 19th Plenary Meeting** [Strasbourg, 28 June – 2 July 2004, Greco Eval II Rep(2003)7]:

> **1. Conclusions**
>
> "Iceland remains a country with a record of an extremely low level of domestic corruption and, accordingly, Icelandic officials in all fields lack practical experience from dealing with the fight against corruption. At the same time Iceland has a long-standing tradition of international business and is sensitive to risks of connected crime. There is a legal framework in place which deals with most aspects of proceeds of corruption and corruption in corporate activities, with only minor legal shortcomings. The public administration is transparent and information is easy to access. Reforms of

[12] With a score of 9,6, Iceland is in 1st position (ex aequo with Finland and New Zealand, while Haiti is in 163rd position with the lowest score at 1.8) in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption).

public administration in recent years has to a large extent focused on bringing public administration conditions closer to those of the private sector, and a low priority has been given to anti-corruption measures, such as the development of public sector ethics and conflicts of interest.

In view of the above, GRECO addresses the following **recommendations** to Iceland:

i. to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime and consider reviewing the burden of evidence necessary in various situations to provide for better possibilities to use confiscation effectively in cases of corruption; in particular with regard to situations where no conviction is possible (*in rem confiscation)* and when the property is held by a third party (paragraph 29);

ii. to establish a general code of conduct/ethics, based on an overall strategy against corruption in public administration at all levels and to introduce appropriate training on public ethics on a permanent basis (paragraph 59);

iii. that appropriate rules for situations of conflicts of interest, such as gift giving and when public officials move from the public to the private sector, be considered (paragraph 60);

iv. to introduce clear rules and training for public officials to report unlawful, improper or unethical acts, including corruption in public administration and to enhance the system of protection for those who report such misconduct (paragraph 61);

v. to strengthen the controlling functions of the Registry of Enterprises with regard to pertinent information on legal persons in the registration process (paragraph 88);

vi. to consider the possibility of establishing bans on business activities for physical persons, following conviction for serious offences, such as corruption (paragraph 91).

Moreover, GRECO invited the authorities of Iceland to take account of the observations made by the experts in the analytical part of this report.

Finally, in conformity with Article 30.2 of the Rules of Procedure, GRECO invited the authorities of Iceland to present a report on the implementation of the above-mentioned recommendations before 31 December 2005."

2. Observation

"[…]
31. The GET noted that there is no regulation with regard to the management of seized property, nor with regard to the property that has been confiscated. During the on site discussions it was explained that seizure is very seldom used and that the law enforcement agencies will handle seized property in a way to avoid it from diminishing in value on a case by case basis. The GET observes that a clear legal framework relating to the administrative handling of such property in order to promote transparency, fairness and efficiency could be warranted and Iceland is encouraged to regulate this area in the future. […]"

Extract of: **Second Evaluation Round: compliance report on Iceland adopted by GRECO at its 30th Plenary Meeting** [Strasbourg, 9-13 October 2006, Greco RC-II(2006)10]:

"**Conclusions**

In view of the above, GRECO concludes that Iceland has implemented satisfactorily or dealt with in a satisfactory manner one third of the recommendations contained in the Second Round Evaluation Report. Recommendation iv has been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner,

recommendations ii and iii have been partly implemented and recommendations i and v have not been implemented.

GRECO invites the Head of the Icelandic delegation to submit additional information regarding the implementation of recommendations I, ii, iii and v by 31 May 2008."

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **21 October 1997**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **16 May 2005**

III. PROTECTION OF HUMAN RIGHTS[13]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Iceland published in **December 2005** following a visit to the country in **July 2005**

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the Republic of Iceland, 4-6 July 2005, for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2005)10]:

"**Final observations and recommendations**:

62. Iceland has a long-standing and justified reputation as a country committed to guaranteeing a high level of respect for human rights. In order to assist the Icelandic authorities in their efforts to further promote the respect of fundamental rights and ensure that high standards are not weakened, I recommend, in accordance with Article 8 of Resolution (99) 50 of the Committee of Ministers, that the Icelandic authorities:

Judiciary

1 Review the current appointments procedure to the Supreme Court in the light of Recommendation No. R (94)12 of the Committee of Ministers and the recent reforms and practice in other Nordic countries in order to ensure the independence of the appointments in practice.

Prison system

2 Ensure that prisoners have access to adequate psychiatric care either in prisons or hospitals on the basis of their individual care requirements and that, when necessary, adequate safeguards are put in place for the personnel and other patients involved.

3 Carry out the planned prison reforms with an emphasis on improving psychiatric care for inmates, strengthening the rehabilitating function of the penitential system and the renewal of the prison estate.

Pre-trial detention

4 Clarify the decision-making procedure regarding the placement of remand prisoners in isolation so that the final decisions are always made by a court for specified time periods.

[13] Iceland share the 1st position (together with Finland, Ireland and the Netherlands) with a score of 0,50 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison North Korea is on the 168th and last position with a score of 109).

5 Review the current practice of placing children in isolation to ensure that isolation is only applied in cases of absolute necessity and that decisions are taken by a court with due respect for the welfare of the minor.

6 Take measures in the context of penitential reforms so that prison facilities can be adapted to the special needs of children as remand prisoners even if they are not totally separated from adult inmates.

Human rights structures

7 Consider whether the authority of the Parliamentary Ombudsman should be enhanced by the power to refer cases to courts and whether more resources should be put at the disposal of the Ombudsman for Children.

8 Ensure that Iceland continues to benefit from the services of an independent national human rights institution either through supporting and developing existing structures or by the establishment of a statutory institution fully in line with the Paris principles.

Treatment of asylum seekers

9 Provide free legal advice to asylum-seekers from the outset of the application process.

10 Apply the provisions of the Act on Foreigners concerning grounds for expulsion (in particular illegal presence in Iceland in Section 20) and the penalisation of the possession of forged identity documents (Section 57) in accordance with Article 31 of the Refugee Convention of 1951.

11 Ensure that foreigners are not expelled to a place where they may be liable to be subjected to torture, inhuman or degrading treatment or punishment, even when they are deemed to pose a threat to national security in line with Section 45 of the Act on Foreigners.

Integration of foreigners

12 Grant work permits directly to employees in stead of employers.

13 Rescind the age limit of 24 for obtaining a residence permit on grounds of marriage or cohabitation of Section 13 of the Act on Foreigners and clarify the applicability of this section to family members of Icelandic nationals.

14 Prepare and implement a Government policy for the integration of foreign residents and improve their opportunities for learning Icelandic.

Gender equality

15 Strengthen the position of the Complaints Committee on Equal Status by, for example, conferring it the right to impose fines when its requests for information or improvements are not heeded in practice or the ability to refer such cases to courts.

16 Enhance transparency and standardisation of public recruitment procedures for improving the comparability of the merits of different applicants.

Responses to violence against women

17 Consider extending the scope of the activities of the Centre for Victims of Sexual Violence at the Emergency Department of the National University Hospital to cover all victims of domestic violence.

18 Improve the awareness of all professionals concerned, including the police, prosecutors and the judiciary, of the different possibilities to tackle violence against women including restraining orders and victim support.

19 Ensure that foreign spouses, who have been victims of violence perpetrated by their partners, can continue their residence in Iceland after separation from their partners.

Non-discrimination

20 Ratify Protocol No. 12 to the ECHR and review safeguards against discrimination with reference to current European practice by exploring, in particular, the extension of low-threshold complaints bodies to other areas than gender discrimination.

21 Consider ways of adapting religious education in schools to meet the particular needs of pupils who belong to minority religions and the provision of an alternative, non-confessional, curriculum on religious and ethical education.

Trafficking in human beings

22 Ratify the Council of Europe Convention on Action against Trafficking in Human Beings and verify that the current legal provisions and services for the protection of victims of crime and their support can be effectively applied in cases of trafficking in human beings.

Data protection

23 Intensify efforts to raise awareness of data protection issues among public authorities, employers, professionals and the general public and encourage the development of institution-specific safeguards for data protection. Particular emphasis should be put on the respect for the confidentiality of personal data, the right of individuals to access and correct data held on them, and the right to object to the processing of personal data.
[…]

Appendix I
Comments of the Ministry of Justice in Iceland on recommendation 1 and recommendation 13
[…]

Appendix II
Comments of the Ministry of Social Affairs in Iceland on recommendation 12 and recommendation 4
[…]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **29 June 1953**

No reservation, no declaration

Protocol No. 6 ratified on **22 May 1987**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 ratified on **10 November 2004**
Protocol No. 14 ratified on **16 May 2005**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **0** concerning Iceland.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **0** concerning Iceland.

Out of a total of 35,402 pending case before the Court in 2005, **6** concerned Iceland.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **21** concerned Iceland.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **19 June 1990**, **additional protocols 1 and 2** ratified on **29 June 1995**

Publication of the last report: **January 2006**
Last country visit: **June 2004**

Press release of 26 January 2006:

> "The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its visit to Iceland in June 2004, together with the Icelandic Government's response. These documents have been made public at the request of the Icelandic authorities.
>
> In the report, the CPT reviewed measures taken by the Icelandic authorities in response to the Committee's recommendations made after its 1993 and 1998 visits, in particular as regards the safeguards offered to persons detained by the police, the situation in penitentiary establishments, and the treatment of persons subject to civil involuntary psychiatric hospitalisation and treatment. For the first time, the CPT examined the modalities of the execution of decisions to deport foreign nationals by air.
>
> The CPT's visit report and the Icelandic Government's response are available on the Committee's website: http://www.cpt.coe.int"

Next country visit in: unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, but **not ratified**

No reservations nor declarations

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **7 May 1999**, but **not ratified**

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Iceland was adopted on 30 June 2006 and made public on **13 February 2007**

Extract of document **CRI(2007)3:**

> "Executive summary:
>
> Since the publication of ECRI's second report on Iceland on 8 July 2003, progress has been made in a number of the fields highlighted in that report. In an effort to improve co-ordination and initiative in policy-making concerning immigrants and integration, an Immigration Council has been established to formulate recommendations on policies in these areas, monitor their implementation and ensure provision of services to

immigrants. The State has assumed increasing responsibility and ownership in the field of meeting asylum seekers' reception needs. Programmes aimed at promoting mutual integration of "quota" refugees and local communities have continued to be successfully implemented. Some measures have also been initiated to address the situation of disadvantage experienced by young people of immigrant background, notably in the field of education.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. The legal framework to combat racism and racial discrimination still remains to be strengthened and better implemented. Immigrants still often find themselves in a situation of excessive dependence on their employers, which, coupled with limited knowledge of the Icelandic language and awareness of their rights, exposes them to a higher risk of exploitation and discrimination. The position of immigrant women who are victims of domestic violence continues to be a cause for concern to ECRI. Improvements still remain to be made to the asylum procedure and to certain provisions regulating the residence rights of non-citizens.

In this report, ECRI recommends that the Icelandic authorities take further action in a number of areas. These areas include: the need to strengthen the legal framework against racism and racial discrimination, including through ratification of Protocol No.12 to the European Convention of Human Rights and the adoption of comprehensive primary antidiscrimination provisions; the need to better implement the legal framework in force; the need to reduce exposure of immigrants to exploitation and discrimination by reviewing the system for granting work permits and by providing them with adequate opportunities to learn the Icelandic language and access interpretation services; the need to ensure, including by introducing the necessary changes to the legislation, that foreign women who are victims of domestic violence are not forced to stay in violent relationships to avoid deportation; the need to improve asylum seekers' access to free legal aid and to an impartial and independent appeals mechanism. In this report, ECRI also recommends that the Icelandic authorities build on efforts made since ECRI's second report to develop co-ordinated policies concerning immigrants and integration and that they ensure that the fight against discrimination in all its forms feature prominently within these policies."

G. SOCIAL RIGHTS

European Social Charter of 1961 signed and ratified on **15 January 1976**, entered into force on **14 February 1976**

European social Charter (revised) signed on **4 November 1998**, but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed nor ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 1981 and 2006 Iceland submitted 19 reports on the application of the Charter. The 20th report on non core provisions of the Charter accepted by Iceland was due to be submitted in June 2006.

The 21st report will concern the provisions related to the theme 'Employment, Training and Equal opportunities' (Articles 1, 9, 10, 15, and 18, of the Charter). The report should be submitted before 31/10/2007.

The Charter in domestic law
Iceland is a dualist state.

Iceland's record with respect to the application of the Charter is the following as of 1 July 2006:

Examples of progress achieved or being achieved

Employment
► Article 180 of the Criminal Code which provided for imprisonment if a person became a public burden, neglected his maintenance obligations and refused to take on a job was repealed (Act of 14 June 1985). Section 81 of the Seamen's Act which provided for criminal sanctions against a crew member rising against the shipmaster even if not using the force, was repealed (Act of 4 May 1990). *Article 1§2 – prohibition of forced labour*

Right to organise
► The requirement that taxi drivers have to belong to a specified trade union in order to operate was abolished (Act No. 61/1995). The Constitution was amended to expressly recognise the negative right to organise (Act No. 97/1995). *Article 5 - right to organise*

Health
► Act No. 870/2000, revoking the 1983 Regulation, and Act No. 44/2002 replacing Act No. 117/1985, fixed regulations for protecting workers against asbestos and against ionsing radiation respectively. *Article 3§1 – right to health and safety in the workplace*

Cases of non-compliance

Employment
► *Article 4§3 – right to equal pay*
1. Iceland does not permit pay comparisons for determining equal work or work of equal value beyond a single employer;
2. There is no provision under Icelandic law for declaring null a dismissal by reprisal and/or reinstating a victim of such a dismissal.
► *Article 6§4 - right to collective bargaining (strikes and lock-outs)*
During the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the Charter.

Non-discrimination

General
► *Article 1§2-prohibiton of discrimination in employment*
legislation prohibiting discrimination in employment on grounds other than sex is inadequate.

Nationality
Discrimination against non EU or EEA nationals in the following matters:
► *Article 12§4 – equal treatment in social security matters*
Legislation does not provide for retention of accrued benefits when persons move to a state party not bound by Community regulations or by agreement with Iceland;nor does it provide for the accumulation of insurance or employment periods completed by the nationals of States party not covered by Community regulations or bound by agreement with Iceland.
► *Article 13§1 – adequate assistance for every person in need*

Entitlement to medical assistance is subject to a 6 months residence requirement.
► *Article 13§4 – Specific emergency assistance to non residents*
Nationals of States Parties which are not parties to the Nordic Agreement on Social Assistance and Social Services have no right to urgent social assistance unless domiciled in Iceland.
►*Article 1§2-prohibiton of discrimination in employment*
Certain occupations (primary school teaching posts, posts involving pharmacists and occupations involving the operation of an industrial, craft or factory facility) which are not inherently connected with the protection of the public interest or national security and do not involve the exercise of public authority and therefore are not covered by Article 31 of the Charter are restricted to Icelandic nationals or EAA nationals.

The ECSR is unable to assess whether Iceland complies with the *following provision:*
► *Article 5 - right to organise"*

H. PARLIAMENTARY ASSEMBLY

Extract of **Recommendation 1766 (2006)**: **Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe**, adopted by the Assembly on 4 October 2006 (see Doc. 10961, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevičs):

"[…]

2. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed the Framework Convention but have still not ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified it. The Assembly recalls that already in Recommendation 1492 (2001), it called upon the above-mentioned states to sign and/or ratify, as soon as possible, without reservations or declarations, the Framework Convention. It deplores the derisory progress that has been made with regard to ratification since the adoption of its last recommendation in 2003, as only three new ratifications – by the Netherlands, Latvia and Georgia – have been recorded.
[…]

5. The Assembly notes that Andorra, Belgium, France, Greece, Iceland, Monaco and Turkey persist in their refusal to sign or ratify the Framework Convention, on the grounds that they respect the principle of non-discrimination in their domestic law. It is therefore surprised that they are still not parties to Protocol No. 12 and would regard the ratification of this instrument by these seven states as evidence of their desire to match their deeds to their words, and thus ensure effective protection for the rights of persons belonging to national minorities or to minority groups under the authority of the European Court of Human Rights. […]"

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

IRELAND

CoE member State since **5 May 1949**
Number of CoE Conventions ratified (as of 1 March 2007): **94 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **16**

I. PLURALISTIC DEMOCRACY[14]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **2004**
Next presidential election: **2011**
Last general elections: **May 2002**
Next general elections: **2007**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2004**
Next municipal elections: **2009**

European Charter on Local Self-Government ratified on **14 May 2002**

Last monitoring report by the **Congress of Local and Regional Authorities**: May 2001, **Resolution 117 (2001)** and **Recommendation 97 (2001)** on local democracy in Ireland adopted on 31 May 2001

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Ireland: Situation in 1998:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Ireland as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

No specific opinion concerning Ireland.

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a

[14] The non-governmental organisation Freedom House gives to Ireland a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Ireland in 2004 was **174,301,000 euros**;
- the **number of Professional judges on a full-time basis** in Ireland in 2004 was **130**, that means 3,2 for 100 000 inhabitants;
- the **number of public prosecutors** in 2004 in Ireland was **100**, that means 2.5 for 100 000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[15]

Civil law convention on corruption signed on **4 November 1999**
Criminal law Convention on corruption signed on **7 May 1999**, ratified on **3 October 2003, Additional Protocol** signed on **15 May 2003**, ratified on **11 July 2005**

Extract of: **Second Evaluation Round: evaluation report on Ireland adopted by GRECO at its 26th Plenary Meeting** [Strasbourg, 5-9 December 2006, Greco Eval II Rep(2005)9]:

1. Conclusions

"Ireland has a solid framework for dealing with proceeds of corruption and instrumentalities. The efficiency of the civil forfeiture schemes is particularly impressive, and even though the main focus in this respect is to recover proceeds in cases involving high economic values, there are rules in place which make it possible to seize and confiscate any proceeds deriving from corruption.

The public administration has during the last decade been considerably modernised towards transparency, customer-orientated services and integrity. Several laws and codes of conduct have been enacted in recent years. These are complemented by accurate monitoring mechanisms. It is important that the transparency of the administration is maintained and that all public officials are trained in applying the codes and closely involved in the further development of such guidelines. In particular, guidance to public officials on reporting instances of corruption as well as adequate protection of whistleblowers should be further developed.

There is generally a well developed legal system concerning legal persons; however, the registration process of companies and branches is efficient, but could be improved through enhanced material checking of the persons behind legal persons. The effectiveness and dissuasiveness of some of the penal sanctions under company law should be reviewed.

In view of the above GRECO addresses the following **recommendations** to Ireland:

i. to reconsider the system of fees for requests for access to official information according to the Freedom of Information Act as well as with regard to the available review and appeal procedures in this respect (paragraph 78);

ii. to introduce clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty

[15] Ireland is in 18th position with a score of 7,4 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

and, to establish adequate protection for public officials who report instances of corruption (whistleblowers) (paragraph 82);

iii. to establish regular training for all public officials concerned with regard to the principles of the Civil Service Code of Standards and Behaviour (central government) and the Code of Conduct for Employees (local government) as well as with regard to other relevant codes of conduct of the public administration (paragraph 83);

iv. to establish centralised systems for collecting statistics on the use of disciplinary proceedings and sanctions covering central as well as local administrations (paragraph 84);

v. to consider strengthening the material checking function of the Company Registration Office (CRO) with regard to the accuracy of information submitted in the registration process, in particular, with regard to the identity of persons behind a legal person (paragraph 109);

vi. to consider increasing the penal sanctions for account offences in order to ensure that the available sanctions are effective, proportionate and dissuasive (paragraph 113);

Moreover, GRECO invites the Irish authorities to take account of the **observation** (paragraph 34) made in the analytical part of this report.

Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Irish authorities to present a report on the implementation of the above-mentioned recommendations by 31 July 2007."

2. Observation

"[…]
34. With respect to statistics, the GET took note of the data provided in relation to proceeds recovered/seized by the Criminal Assets Bureau and confiscated in criminal proceedings. The GET found these statistics confusing. Not much light was shed on the extent to which perpetrators of specifically corruption offences - including legal persons - are deprived of illicit benefits and the number of interim measures taken in this regard. The GET was unable to ascertain whether this was due to a lack of adequate registration or to a flaw in the representation of these statistics. For example, the GET was told that the figures relating to criminal confiscation and civil forfeiture were not exhaustive as confiscation may occur without criminal or civil proceedings through the Revenue Commissioners powers under the Taxes Acts, but the only two cases of asset recovery in relation to corruption that were reported did in fact relate to taxation. Leaving aside possible indications from the Criminal Assets Bureau as to which crimes the property to be forfeited is suspected to derive from , the GET was of the opinion that a more systematic collection and representation of statistical data may help to identify possible flaws or blind spots in the Irish anti-corruption policy. *The GET therefore observes that the authorities should consider establishing a systematic registration and analysis of the number of seizures, investigations, prosecutions and confiscations (and if possible civil forfeitures) linked to corruption.*[…]"

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **28 November 1996**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) neither signed nor ratified

III. PROTECTION OF HUMAN RIGHTS[16]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

No report on Ireland

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **25 February 1953**

> "**Reservation contained in the instrument of ratification, deposited on 25 February 1953:**
>
> The Government of Ireland do hereby confirm and ratify the aforesaid Convention and undertake faithfully to perform and carry out all the stipulations therein contained, subject to the reservation that they do not interpret Article 6.3.c of the Convention as requiring the provision of free legal assistance to any wider extent than is now provided in Ireland.
> Period covered: 3/9/1953 -
> The preceding statement concerns Article(s): 6
>
> **Withdrawal of derogation contained in a letter from the Secretary General of the Department of External Affairs of Ireland, dated 20 October 1977, registered at the Secretariat General on 24 October 1977**
>
> 1. The note of 18 October 1976 informed the Secretary General of the enactment of the Emergency Powers Act, 1976 (...). It described the security situation which obtained at that time. The Government of Ireland, having reviewed the present situation, have come to the conclusion that the degree by which the measures contained in Section 2 of the Act ameliorated the public emergency is not such as to make them strictly required by the exigencies of the situation. Accordingly, the Government of Ireland has decided not to make an order under paragraph (a) of Section 1(2) of the Act providing for the continued existence of those powers.
>
> 2. Because of the Government of Ireland's decision not to make such an order, the measures which gave rise to the Government's notification of 18 October 1976 of possible derogation from the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms ceased to operate on 16 October 1977. The legal position in regard to arrest, custody and questioning of persons which existed prior to the coming into force of that Act, and which remains strictly required by the exigencies of the situation, obtains again, since that date.
>
> The Government of Ireland requests the Secretary General to regard this letter as informing him accordingly, in compliance with the requirements of Article 15(3) of the Convention.
> Period covered: 16/10/1977 -
> The preceding statement concerns Article(s): 15"

Protocol No. 6 ratified on **24 June 1994**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 ratified on **3 May 2002**
Protocol No. 14 ratified on **10 November 2004**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **3** concerning Ireland of which **1** gave rise to a finding of at least one violation and 2 gave rise to a finding of no violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **0** concerning Ireland.

[16] Ireland shares the 1st position (together with Finland, Iceland and the Netherlands) with a score of 0,50 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison North Korea is on the 168th and last position with a score of 109).

Out of a total of 35,402 pending case before the Court in 2005, **45** concerned Ireland.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **80** concerned Ireland.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **14 March 1988**, **additional protocols 1 and 2** ratified on **10 April 1996**

Publication of the last report: **September 2003**
Last country visit: **October 2006**

Press release of 18 September 2003:

> "The Irish Government has requested the publication of the report of the Council of Europe's Committee for the Prevention of Torture (CPT) on its visit to Ireland in May 2002, together with the response of the Irish government.
>
> The visit was carried out within the CPT's programme of periodic visits for 2002. It was the Committee's third visit to Ireland. The CPT visited a number of police stations, prisons and psychiatric establishments, in particular in Dublin and Cork. In the report, the Committee pays particular attention to the treatment of persons detained by the Garda Síochána (police) and measures taken to improve conditions of detention and health care services in prison. It also examines the situation of detained children and of persons cared for in the Central Mental Hospital and in institutions for the mentally disabled.
>
> The response sets out steps taken by the Irish Government in the light of the CPT's recommendations; they include measures to provide additional activities for prisoners and the development of national standards for institutions for persons with mental disabilities. The Government has also announced its intention to publish shortly draft legislation for the establishment of an independent Garda Síochána Inspectorate.
>
> The report and response are available on the CPT's website http://www.cpt.coe.int"

Next country visit in: unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **7 May 1999**, entered into force on **1 September 1999**

No reservations nor declarations

Extract of the last opinion by the Advisory Committee adopted in **October 2006** [ACFC/INF/OP/II(2006)007]:

> "Concluding remarks:
>
> 119. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Ireland.

Positive developments

120. Ireland has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in May 2003 and the Committee of Ministers' Resolution in May 2004. It has espoused an inclusive position as regards the scope of application of the Framework Convention, and the authorities are actively seeking solutions to address new challenges resulting from the expanding diversity of the country.

121. Ireland has strengthened further its anti-discrimination legislation, and these legal guarantees are reinforced by an advanced institutional framework devoted to issues concerning minorities and non-discrimination.

122. There are valuable initiatives to tackle racism and manifestations of intolerance, notably in the commendable Action Plan against Racism, which was prepared through an inclusive process.

123. Ireland has commissioned a high number of studies, plans and reports designed to address problems faced by Travellers, in fields ranging from accommodation to health issues. The Committee monitoring the implementation of the recommendations of the Task Force on the Travelling Community carried out important work, with significant Traveller participation, up until 2005.

124. The authorities have planned new data collection activities, which are likely to facilitate efforts to identify and address Travellers' concerns.

Issues of concern

125. Certain new structures dealing with Traveller issues have not involved Traveller representatives sufficiently in their work, while some of the previous channels of communication between Travellers and the authorities have ceased to exist.

126. Travellers continue to be exposed to discrimination in different context, and negative societal attitudes towards them and certain new minority groups persist. These problems are at times fuelled by some media reports promoting negative stereotypes.

127. The principle of voluntary self-identification of persons belonging to minorities has not always been fully taken into account by the authorities in such contexts as data collection and in discussions on whether the Travellers constitute an ethnic group.

128. The Equality Tribunal's processing delays are negatively affecting the effectiveness of this remedy, while the transfer of non-discrimination cases concerning licensed premises from the Equality Tribunal to the District Court has prompted concerns.

129. The implementation of Traveller accommodation plans has been inadequate in a number of localities. Improved provision of halting sites merits particular attention, bearing in mind also the consequences of criminalisation of trespassing.

130. The Travellers' average school attendance and achievement levels remain low and in some cases negative societal attitudes towards Travellers are felt also in schools. Such problems in the field of education contribute to the significant unemployment amongst Travellers. At the same time, the issuance of the Traveller education strategy and associated implementation plan has been delayed.

131. Further steps are also needed to accommodate the growing diversity of Irish schools, including in relation to the increasing demand for nondenominational or multi-denominational schools.

Recommendations

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

- Ensure Traveller representatives' effective participation in various bodies dealing with Traveller issues, while facilitating Travellers' involvement also in elected bodies.

- Pay increasing attention to the principle of self-identification in data collection and other contexts.

- Monitor the impact of the recent changes to the complaint mechanisms for non-discrimination cases so as to ensure that they do not harm the accessibility or effectiveness of the remedies available and ensure that the structures concerned are adequately resourced.

- Take decisive measures to ensure the implementation of Traveller accommodation plans throughout the country. Launch rapidly the Traveller education strategy, coupled with an implementation plan, and follow it up decisively.
- Pursue on-going efforts to accommodate growing diversity in Irish schools, including in terms of demand for non-denomination or multi-denominational schools.

- Take further steps aimed to facilitate self employment and other economic activities of the Travellers.»

Last CM resolution: on the implementation of the Framework Convention: **ResCMN(2004)6**

Next State report due: 1 September 2010

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention neither signed nor ratified

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Second report on Ireland was adopted on 22 June 2001 and made public on **23 April 2002**

Extract of document **CRI(2002)3:**

"Executive summary:

Ireland has taken a number of significant steps towards combating racism and intolerance since the publication of ECRI's first report, including the ratification of important international legal instruments, the adoption of a body of anti-discrimination legislation, the establishment of an infrastructure of specialised bodies to support this legislation, and the creation of a framework of bodies for the reception of asylum seekers and refugees.

Although there is today a growing recognition of Ireland as an intercultural society, there still exists a certain degree of prejudice and intolerance towards members of minority groups, both "new" minority groups (persons of immigrant origin, asylum seekers and refugees) but also the "old" minority group, the Traveller Community. Discrimination and racism are manifested notably in the refusal of entry into public places, public misconceptions concerning refugees and asylum seekers, sometimes fuelled by biased media reporting, verbal and other harassment and in some cases violence. A lack of reliable data makes the extent of such manifestations hard to monitor.

In the present report, ECRI recommends that the Irish authorities take action in a number of fields. It recommends, inter alia, the strengthening and effective application of criminal law provisions to combat racism, the introduction of data-gathering mechanisms on the incidence of racism and discrimination and the situation of minority groups, increased efforts to raise awareness among the general public, more concerted action to improve the situation of the Traveller Community, and a reconsideration of long-term policies and strategies aimed at asylum seekers and refugees."

Next report foreseen: April/May 2007

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on 18 October 1961, ratified on **7 October 1964**, entered into force on **26 February 1965**

European social Charter (revised) signed and ratified on **4 November 2000**, entered into force on **1 January 2001**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed and ratified on **4 November 2000**, entered into force on **1 January 2001**

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 1966 and 2006, Ireland submitted 21 reports on the application of the Charter and 2 reports on the application of the Revised Charter. Ireland failed to submit a 2nd report on the Revised Charter relating to non core provisions.

The 3rd report (on the non-core provisions of the Revised Charter): was submitted in parts between May and September 2006:

The 4th report will concern the provisions accepted by Ireland related to the theme "Employment, Training and Equal Opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25).

Collective complaints (decided)

► *World Organisation Against Torture (OMCT) v. Ireland No 18/2003*: Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 8 December 2004.

Ireland's record with respect to application of the Revised Charter is the following as of 1 September 2006:

Examples of progress achieved or being achieved

Employment
►Introduction of a statutory minimum wage (2000 Act on the National Minimum Wage). *Article 4§1 – right to a fair remuneration*
►Repeal of section 9 of the 1939 Offences Against the State Act, which allows the prosecution of public service officials and employees for taking strike action. *Article 6§4 – right to collective bargaining (strikes and lock-outs)*

Health/Education

► The Protection of Young Persons (Employment) Act, 1996 sets out a broader definition of a child for the purpose of employment by including all persons under the age of 16 years or, if higher, still subject to compulsory education. The limits on working time for children aged 14 and 15 are set at 7 hours per day and 35 hours per week. *Article 7§3 – Prohibition of employment of children subject to compulsory education.*

Non-discrimination

Employment

►Employment Equality Act 2004 strengthens protection against discrimination in employment. *Article 1§2 – prohibition of discrimination in employment*

Birth

►Elimination of discrimination against children born out of wedlock in respect of custody, and the right of ownership and succession (1987 Status of Children Act). *Article 17 – rights of children and young persons (legal and social protection)*

Movement of persons

►The power of the Minister of the Interior to issue expulsion orders has been restricted in that he must take account of the age, family status, employment prospects and length of stay of the person concerned (1999 Immigration Act) *Article 16 – rights of family (legal protection)*

Examples of cases of non-compliance [17]

Health

►*Article 8§1 – right to maternity leave.*

A post-natal maternity leave of at least six weeks is not compulsory.

Health/Education

►*Article 7§1 – prohibition of employment under the age of 15.*

Children employed by a close relative are not afforded the protection required by this provision of the Revised Charter.

►*Article 7§3 – prohibition of employment of children subject to compulsory schooling.*

The mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education and children employed by a close relative are not afforded the protection required. [18]

►*Article 7§4-length of working time for young workers-*

The Committee is unable to assess whether the working time of young workers employed by a close relative is reasonable.

►*Article 7§8- prohibition of night work for young workers*

The Committee is unable to assess whether children employed by a close relative are prohibited form performing night work.

Employment

►*Article 1§2 - prohibition of forced labour*

The period of compulsory service required from officers of the armed forces is excessive.

►*Article 2§1 – reasonable working hours*

1. Legislation on working hours permits a 60-hour working week, overtime included;
2. Legislation covering hotel staff permits a working week of up to 66 hours, overtime included;
3. Legislation on working hours does not apply to certain categories, such as office workers, sales representatives and the self-employed.

[17] This list is not exhaustive. Ireland's failure to submit a report on certain provisions means that certain provisions have not been assessed for a considerable period of time.

[18] RecChS(95)6 adopted by the Committee of Ministers on 22 June 1995.

►*Article 2§4 - reduced working hours or additional holidays for workers in dangerous or unhealthy occupations*
No provision is made for reduced working hours or additional holidays in dangerous or unhealthy occupations.
►*Article 4§1 – adequate remuneration*
During the period 1994-1996, 6.5% of the workforce received an inadequate gross wage (less than 2.50 IEP per hour, i.e. less than 51% of average net wages in manufacturing). Low gross hourly wages were paid in 1997 to general ancillary workers in the retail grocery sector.
►*Article 4§4 – reasonable notice of termination of employment*
1. The minimum statutory notice periods provided for in law (ranging from 1 to 8 weeks) are not adequate [19].
2. Established civil servants do not receive a notice period but instead a 14-day period during which the person concerned may make representations against a proposed dismissal.
►*Article 5 – right to organise*
1. Certain closed shop practices are permitted in law;
2. National law does not fully protect workers against dismissal on the ground of trade union membership or activities.
►*Article 6§4 – right to collective bargaining (strikes and lock-outs)*
Only authorised trade unions (i.e. those holding a negotiation licence) and their members are afforded immunity against civil action in the event of a strike and, under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in strike action. [20]
►*Article 7§5 – working conditions between the age of 15 and 18 (remuneration).* The wage differences in the labour market are excessive: as all young workers under 18 years may be paid 30% less than adult workers.

Non-discrimination
Article 1§2 Prohibition of discrimination in employment
►Upper limits to the amount of compensation that may be awarded in discrimination cases (other than in sex discrimination cases).

Nationality
► *Article 1§4, 10§1 and 10§3 – non-discrimination – right to access to higher technical and university education based solely on individual aptitude – right to access to continuing training and retraining*
Access to higher education and to continuing training is subject to a length of residence requirement for nationals from other States Parties.
► *Article 10§4 – right to vocational training*
Equal treatment for nationals of other States Parties is not guaranteed with respect to fees and financial assistance for training.
► *Article 12§4 – equal treatment in social security matters*
Legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Ireland.
► *Article 19§8 and 19§10– right to guarantees in case of expulsion*
No right of appeal to an independent body or court against a deportation order is available to nationals of States party to the Charter which are not members of the EU or party to the 1955 Convention on Establishment. [21]

Social protection
►*Article 12§1 –existence of a social security system*
The level of sickness benefit and unemployment benefit for a single person is manifestly too low."

[19] RecChS(1995)6 adopted by the Committee of Ministers on 22 June 1995
[20] RecChS(2001)2 adopted by the Committee of Ministers on 7 February 2001.
[21] RecChS(95)6 adopted by the Committee of Ministers on 22 June 1995 (renewed on 14 December 1995, 4 March 1999 and 7 February 2001).

H. PARLIAMENTARY ASSEMBLY

Resolution 1389 (2004): **The Council of Europe and the conflict in Northern Ireland**, adopted by the Standing Committee, acting on behalf of the Assembly, on 7 September 2004 (see Doc. 10245, report of the Political Affairs Committee, rapporteur: Mr Ouzký).

Resolution 1360 (2004): Contested Credentials of the parliamentary delegations of Ireland and Malta, adopted by the Assembly on 27 January 2004 (see Doc.10051, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Kroupa).

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

ITALY

CoE member State since **5 May 1949**
Number of CoE Conventions ratified (as of 1 March 2007): **116 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **45**

I. PLURALISTIC DEMOCRACY[22]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **2006**
Next presidential election: **2013**
Last general elections: **April 2006**
Next general elections: **2011**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **…**
Next municipal elections: **2007**

European Charter on Local Self-Government ratified on **11 May 1990**

No monitoring report by the **Congress of Local and Regional Authorities**.

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Italy: Situation in 1999:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Italy as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Opinion on the compatibility of the Laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media** adopted by the Venice Commission at its 63rd Plenary Session [Venice, 10-11 June 2005, **CDL-AD(2005)017**]:

> "Conclusions
>
> The Parliamentary Assembly of the Council of Europe has requested the Venice Commission to give an opinion on whether or not the two Italian laws on the broadcasting system ("the Gasparri Law ") and on the conflict of interest ("the Frattini Law ") are in conformity with the Council of Europe standards in the fields of freedom of expression and pluralism of the media.
>
> The Venice Commission has carried out this assessment. It has confined itself to identifying the pertinent standards and to analysing these laws against the background of such standards. Accordingly, it has examined only certain aspects of these laws, that is to say those which relate to existing standards. Where no sufficiently clear or defined standards exist, the Commission has also had recourse to some comparative analysis of the constitutional and legislative provisions of the member states of the Council of Europe.

[22] The non-governmental organisation Freedom House gives to Italy a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

While the case-law of the European Court on Human Rights does not offer specific guidance on the matter, certain pertinent principles may nonetheless be derived from that case-law: *in primis* that freedom of expression has a fundamental role in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive, and that the State is the ultimate guarantor of pluralism, especially in relation to audio-visual media, whose programmes are often broadcast very widely.

The applicable standards identified by the Commission are essentially resolutions and recommendations of the Council of Europe's Committee of Ministers and Parliamentary Assembly. These do not, as such, impose legally-binding obligations on States, and only constitute so-called "*soft law*". The Commission underlines nevertheless that they represent an important indication of the trends of the member states of the Council of Europe in respect of these very real concerns of modern society.

Media pluralism is achieved when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views. In the Commission's opinion, internal pluralism must be achieved in each media sector at the same time: it would not be acceptable, for example, if pluralism were guaranteed in the print media sector, but not in the television one. Plurality of the media does not only mean, in the Commission's view, the existence of a plurality of actors and outlets, it also means the existence of a wide range of media, that is to say different *kinds* of media.

The Council of Europe instruments set out certain tools for promoting media pluralism, which include:

– a legislative framework establishing limits for media concentration; the instruments for achieving this include permissible thresholds (to be measured on the basis of one or of a combination of elements such as the audience share or the capital share or revenue limits) which a single media company is allowed to control in one or more relevant markets;

– specific media regulatory authorities with powers to act against concentration;

– specific measures against vertical integration (control of key elements of production, broadcasting, distribution and related activities by a single company or group);

– independence of regulatory authorities;

– transparency of the media;

– pro-active measures to promote the production and broadcasting of diverse content;

– granting, on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control, direct or indirect financial support to increase pluralism;

– self-regulatory instruments such as editorial guidelines and statutes setting out editorial independence.

In respect of the provisions in the Gasparri Law aiming at protecting media pluralism, the Commission considers at the outset that the mere increase in the number of channels which will be brought about by digital television is not sufficient in itself to guarantee media pluralism. Newly available channels may have very small audiences but with similar amounts of output. Finally, larger companies will enjoy greater

purchasing power in a wide range of activities such as programme acquisitions, and will thus enjoy significant advantages over other national content providers.

The Commission considers therefore that the threshold of 20% of the channels is not a clear indicator of market share. It should be combined, for instance, with an audience share indicator.

As regards the second threshold set out in the Gasparri Law, that is 20% of the revenue in the Integrated Communications Systems (SIC), the Commission considers that SIC certainly reflects a modern trend but should not, at least in this very broad definition, be used already at this stage instead of the "relevant market" criterion, as its effect is to dilute the effectiveness of the instruments aimed at protecting pluralism. Indeed, it may allow an individual company to enjoy extremely high degrees of revenue shares in individual markets, whilst at the same time remaining below the 20% threshold for the whole sector.

Indeed, the Commission notes that the combined effect of the new framework set out in the Gasparri Law has relaxed the previous anti-concentration rules whose maximum permissible levels had been exceeded by Mediaset and RAI. Retequattro has accordingly been allowed to continue to occupy analogue frequencies.

The Commission considers therefore that the SIC criterion should be replaced by the previously used "relevant market" criterion, as is the case in the other European countries.

The Commission considers that the provisions on prohibition of discrimination between independent content providers and those content providers which are referable to either linked or controlled companies and the Broadcasting Authority (AGCOM) decisions guaranteeing to a certain extent access to networks for independent content providers are, if duly applied, good contributions to internal pluralism.

As regards the provisions on migration of radio and television broadcasters from analogue to digital frequencies, the Commission has the impression that the Gasparri Law has taken the approach of attempting to hold back on finding a real solution to the problem of media concentration in the television market until some future point in time and it relies heavily on the point when digitalisation will come into full effect. In the Commission's view, this approach is not satisfactory, as, if the *status quo* is maintained, it is likely that Mediaset and RAI will remain the dominant actors in Italian television. In this respect, the Commission recalls that while general anti-trust measures against the *abuse* of dominant positions, in the media sector dominant positions are forbidden *as such*.

As regards the provisions in the Gasparri Law on the Public Broadcasting Service, the Commission considers that the role of the Parliamentary Commission on Radio and Television should not be extended to programme matters and the manner of developing service contracts.

Access to airtime seems to be regulated in a democratic manner. However, the entitlement of the Presidency of the Council of Ministers to obtain free air time "on request" appears to be formulated in too vague terms.

In respect of the privatisation of RAI, which should lead to a lesser degree of politicisation of the public broadcaster, the Commission notes that change at RAI will allow for government control over the public broadcaster for an unforeseeable period of time. For as long as the present government stays in office, this will mean that, in addition to being in control of its own three national television channels, the Prime Minister will have some control of the three public national television channels. The Commission expresses concern over the risk that this atypical situation may even strengthen the threat of monopolisation, which might constitute, in terms of the case-

law of the European Court of Human Rights, an unjustified interference with freedom of expression.

The printed press is protected in Italy through allocation of subsidies to political newspapers and through a provision in the Gasparri Law that part of the public budget for the purchase of advertising space for institutional communication by means of mass communication must be used for daily newspapers and magazines. This is to be welcomed. In the Commission's view, the broadest possible support should be provided to the press, in particular in the light of the extremely concentrated market of advertising revenues in Italy.

As regards conflict of interest, the Commission notes that the Frattini Law does not refer in general terms to situations in which public officials have personal or financial interests that would make it difficult for them to fulfil their duties with just the public interest in mind. It is also silent about conflicts of interest which may arise in connection with legislative measures affecting a specific category of individuals to which a government member belongs or a category of business in which a government member has a proprietary interest.

The solution provided by the Frattini Law to the issue of conflicts of interest consists of a mix of *a priori* incompatibilities (primarily of an administrative nature) and the *a posteriori* examination of individual acts of government. It does not contain sufficient "preventive" measures for resolving a potential conflict of interest. Instead, the Anti-Trust and Broadcasting Authorities have to investigate abuses on a case-by-case basis when a government act is considered to be in violation of the law. This might entail the necessity of investigating a great number of individual acts, a process which would burden the relevant authority and weaken its action.

Government members who find themselves in a situation of conflict of interest must inform the competent Authorities, but are put under no other obligation to remove such conflict of interest. None of the solutions envisaged *mutatis mutandis* for civil servants is contained in the Frattini Law . The Commission is not persuaded that no solution – not even a compromise one – could be found.

The Frattini Law only declares a general incompatibility between the management of a company and public office, not between ownership as such and public office. Yet, in Italy this appears to be the most important aspect of conflict of interest, the one which has, in fact, made it necessary to adopt a law. The Frattini Law, therefore, should offer an adequate solution to this problem.

The Frattini Law offers a solution in respect of acts or omissions of a government member which have "a specific, preferential effect on the assets of the office holder or of his spouse or relatives up to the second degree, or of companies or other undertakings controlled by them to the detriment of the public interest". However, the need for such effect to be "specific" and "to the detriment of the public interest" makes the burden of proof a very heavy one, and in the Commission's view renders this provision difficult to apply in practice.

The sanctions foreseen in the Frattini Law do not seem entirely adequate. In particular, the impact of a political sanction may in principle prove effective, but risks having little impact in a situation of predominance in parliament of the political party of the government member concerned.

The Commission considers that entering the political arena is the free choice of each individual. It entails prerogatives and duties. Public office carries with it some incompatibilities and limitations. Provided that these are reasonable, clear, foreseeable and do not undermine the very possibility of access to public office, it is open for each individual to decide whether or not to accept them. The mere possibility of suffering some financial loss should not, in itself, be a reason to exclude an activity from the list of activities incompatible with public office.

> The Commission is of the opinion that the Frattini Law is unlikely to have any meaningful impact on the present situation in Italy. It therefore encourages the Italian authorities to continue to study this matter with a view to finding an appropriate solution."

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Italy in 2004 was **3,983,484,256 euros**;
- the **number of Professional judges on a full-time basis** in Italy in 2004 was **6,105**, that means 10.4 for 100 000 inhabitants;
- the **number of public prosecutors** in 2004 in Italy was **2,146**, that means 3,7 for 100 000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[23]

Civil law convention on corruption signed on **4 November 1999**, but **not ratified**
Criminal law Convention on corruption signed on **27 January 1999**, but **not ratified, Additional Protocol** signed on **15 May 2003** but **not ratified**.

Italy is not a member of GRECO

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **20 January 1994**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **8 June 2005**

[23] Italy is in 45th position with a score of 4,9 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

III. PROTECTION OF HUMAN RIGHTS[24]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Italy published in **December 2005** following a visit to the country in **June 2005**

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Italy, 10-17 June 2005 for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2005)9]:

> "Conclusions and recommendations
>
> In accordance with Article 3, paragraphs b, c and e, and Article 8 of Committee of Ministers Resolution (99) 50 the Commissioner makes the following recommendations to the Italian authorities:
>
> **Concerning the functioning of the judicial system**
>
> 1. Implement a reform programme to reduce procedural delays and the backlog of cases, *inter alia* by simplifying procedures;
>
> 2. Increase the financial and human resources of the courts, particularly by appointing legal assistants and lay magistrates;
>
> 3. Examine and process cases still pending before the *sezioni stralcio* as rapidly as possible;
>
> 4. Modify the time-limit system to limit abuses and delaying tactics, by taking account only of periods when the public authorities fail to act;
>
> **Concerning reform of criminal law**
>
> 5. Adopt legislation making it possible to reopen criminal proceedings when new evidence comes to light or the European Court of Human Rights gives a relevant decision;
> 6. Insert the crime of torture, as defined in international law, in the Criminal Code;
>
> **Concerning the prison system**
>
> 7. Take rapid action to reduce overcrowding in prisons, by promoting alternative measures and increasing prison capacity;
>
> 8. Recruit prison staff to fill current vacancies, and ensure a reasonable staff/prisoner ratio;
>
> 9. Give prison inmates better access to health care;
>
> 10. Expand the activities, and particularly the possibilities of working, available to prisoners;
>
> 11. Provide the funds needed to ensure that young offenders' prisons function effectively, and to cover renovation;

[24] Italy is in 40th position with a score of 9,90 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

Concerning the Section 41 bis system

12. Improve conditions of detention for prisoners covered by Section 41 bis, particularly by humanising living and exercise areas, and providing more activities;

13. Provide ongoing psychiatric support for these prisoners, particularly when daytime solitary confinement is added to the other Section 41 bis measures;

Concerning the mental health system

14. Make compulsory placement in a psychiatric institution conditional on a psychiatrist' favourable opinion;

15. Increase the number of places available in psychiatric facilities in hospitals, particularly for chronic and long-term patients;

16. Guarantee that patients interned in judicial psychiatric hospitals (OPGs) are not forced to remain because no outside places are available;

Concerning asylum procedures and asylum-seekers

17. Keep asylum-seekers in detention only when this is strictly necessary, and having studied each case individually;

18. Improve conditions of detention in identification centres (CDIs) and temporary residence and assistance centres (CPTAs);

19. Provide the funds which the territorial commissions need to operate;

20. Establish a second instance for asylum applications going through the ordinary procedure that suspends the expulsion order;

21. Ensure that the social rights of asylum-seekers are respected throughout Italy, particularly in the matter of access to health services;

22. Launch a programme to provide all asylum-seekers with decent accommodation and with meals until the asylum procedure is completed;

Concerning the principle of non-refoulement

23. Ensure that the principle of non-return is firmly respected when migrants are intercepted at sea or are being removed;

24. Ensure that each case is examined individually, making it possible for aliens arriving in Italy to apply for asylum;

Concerning the removal of illegal aliens

25. Ensure that the expulsion of aliens considered to pose a threat to national security be controlled and authorised by a judicial authority;

26. Authorise the presence of a member of the Red Cross on non-commercial flights carrying deported aliens;

Concerning the special situation on Lampedusa

27. Review the management and distribution of arrivals on the island of Lampedusa, to ensure that the number of occupants does not exceed the centre's maximum capacity;

28. Pending opening of the new centre, improve living conditions in the existing centre, particularly by renovating the sanitary facilities;

29. Thoroughly investigate allegations in the press in October 2005 concerning ill-treatment and harassment, and punish any guilty parties;

30. Accept the permanent access of a UNHCR representative to the centre, to guarantee transparency of procedures;

Concerning illegal aliens

31. Facilitate practical arrangements and procedures for the obtention of residence permits and access to housing;

Concerning the Roma community

32. Provide easier access to residence permits and, when appropriate, Italian nationality for foreign members of the Roma community who have been resident in Italy for many years;

33. Continue the programmes designed to help Roma to enter the labour market;

34. Implement, as a matter or priority, a national programme to provide Roma in shanty-towns with decent living conditions;

35. Allow children without papers, including Roma children, to continue their schooling on reaching the age of 13;

Concerning human rights institutions

36. Promote the appointment of a national ombudsman and the establishment of a national human rights institution based on the Paris principles;

37. Institutionalise and strengthen the powers of regional ombudsmen;

Concerning media freedom

38. Implement the Venice Commission's conclusions, to ensure that the Council of Europe's principles on support for the media, media concentrations and supervision of the media are fully respected.

Appendix: Italian considerations following the report of the Human Rights Commissioner, Mr Alvaro Gil-Robles, on his mission to Italy (June, 10-17 2005) […]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **26 October 1955**

No reservation, no declaration

Protocol No. 6 ratified on **29 December 1988**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 signed on **3 May 2002**
Protocol No. 14 ratified on **7 March 2006**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **79** concerning Italy of which **67** gave rise to a finding of at least one violation and 3 gave rise to a finding of no violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **103** concerning Italy of which **96** gave rise to a finding of at least one violation and 5 gave rise to a finding of no violation.

Out of a total of 35,402 pending case before the Court in 2005, **848** concerned Italy

Out of a total of 89,887 pending case before the Court on 1 January 2007, **3,393** concerned Italy.

3 Interim Resolutions adopted by the Committee of Ministers in 2005:

Interim Resolution ResDH(2005)56 concerning the right to an effective remedy against monitoring of prisoners' correspondence and other restrictions imposed on prisoners' rights – general measures in the cases of Messina No.2 (judgment of 28 September 2000, final on 28 December 2000), Ganci (judgment of 30 October 2003, final on 30 January 2004) and Bifulco (judgment of 8 February 2005, final on 8 May 2005) against Italy (adopted by the Committee of Ministers on 5 July 2005 at the 933rd meeting of the Ministers' Deputies)

Interim Resolution ResDH(2005)85 Dorigo Paolo against Italy (violation of the right to a fair trial) (Application No. 33286/96) Interim Resolutions DH(99)258, DH(2002)30 and DH(2004)13 (adopted by the Committee of Ministers on 12 October 2005, at the 940th meeting of the Ministers' Deputies)

Interim Resolution ResDH(2005)114 concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in 2183 cases against Italy relating to the excessive length of judicial proceedings (adopted by the Committee of Ministers on 30 November 2005 at the 948th meeting of the Ministers' Deputies)

Resolutions adopted by the Committee of Ministers in 2006: **2**
No Interim Resolution

2 Interim Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007):

Interim Resolution ResDH(2007)2 concerning the problem of excessive length of judicial proceedings in Italy (Adopted by the Committee of Ministers on 14 February 2007, at the 987th meeting of the Ministers' Deputies)

Interim Resolution ResDH(2007)3 Systemic violations of the right to the peaceful enjoyment of possessions
through "indirect expropriation" by Italy (adopted by the Committee of Ministers on 14 February 2007at the 987th meeting of the Ministers' Deputies)

Extract of: **Resolution 1516 (2006) on the Implementation of judgments of the European Court of Human Rights** adopted by the Assembly on 2 October 2006 (see Doc. 11020, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens):

> "[…]
> 5. The Assembly's Committee on Legal Affairs and Human Rights has now adopted a more proactive approach and given priority to the examination of major structural problems concerning cases in which unacceptable delays of implementation have arisen, at this moment in five member states: Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Special *in situ* visits were thus paid by the rapporteur to these states in order to examine with national decision makers the reasons for non-compliance and to stress the urgent need to find solutions to these problems. The issue of improving domestic mechanisms which can stimulate correct implementation of the Court's judgments was given particular attention.
> […]
>
> 8. Three member states, in particular, deserve praise for attempts to solve specific implementation problems by improving domestic mechanisms:

8.1. *Italy* adopted the Azzolini law in 2006, which has created a legislative basis for a special procedure for the supervision of the implementation of judgments by the government and parliament;
[…]

10. At the same time, the Assembly notes with grave concern the continuing existence of major structural deficiencies which cause large numbers of repetitive findings of violations of the ECHR and represent a serious danger to the rule of law in the states concerned. These problems are:

10.1. the excessive length of judicial proceedings in *Italy* (CM Interim Resolution DH(2005)114), which also leads to ineffective protection of a wide range of other substantial rights;
[…]

11. Furthermore the Assembly deplores that the following important and overdue implementation problems, stressed by both the Committee of Ministers and the Assembly, still remain without solution, thus prolonging the situation of non-compliance with the Strasbourg Court's judgments:

11.1. in *Italy* and, to a certain extent in *Turkey*, the law still does not allow the reopening of domestic criminal proceedings impugned by the Court, while these governments have taken no other measures to restore the applicants' right to a fair trial despite repeated demands to that effect by the Committee of Ministers and the Assembly (among many other cases, *Dorigo v. Italy* and *Hulki Güneş v. Turkey*);
[…]

11.4. the lack of progress towards the solution to the systemic problem of "indirect expropriation" in *Italy*, an abusive practice – which is in fact illegal confiscation – conducted by local authorities to the detriment of applicants' property rights under the ECHR;
[…]

22. In view of the foregoing, the Assembly:
[…]

22.5. urges in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to resolve implementation issues of particular importance mentioned in the present resolution and to give this top political priority; […]"

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **29 December 1988**, **additional protocols 1 and 2** ratified on **8 March 1999**

Publication of the last report: **April 2006** (available in French only)
Last country visit: **June 2006**

Press release of 27 April 2006:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its visit to Italy in 2004, as well as the response of the Italian authorities. These documents have been made public at the request of the Italian authorities.

In its report, the CPT observes that the majority of persons deprived of their liberty met by its delegation did not make any allegation of ill-treatment against law enforcement officers. However, the Committee continues to follow closely the progress of the judicial and disciplinary proceedings following the incidents in Naples (March 2001)

and Genoa (July 2001). In addition, it has requested information on the measures taken to avoid such incidents in future.

With regard to holding centres for foreign nationals, the CPT welcomes the closure of the Agrigento Centre, which had serious shortcomings in terms of infrastructure and security. Living conditions at the Lampedusa Centre were generally satisfactory at the time of the visit. This, however, would not be the case if its official capacity were to be exceeded or if foreign nationals were to remain there for a prolonged period.

The CPT also focused its attention on the removal of foreign nationals to Libya which took place at the end of 2004. Numerous failures were brought to light in administrative and judicial procedures provided for by immigration legislation and the Committee requested detailed comments on each of them. The Committee particularly stressed that each individual case should be properly verified to ensure that the persons to be removed would not run a real risk of being submitted to torture or ill-treatment.

Concerning prisons, the CPT examined in detail several special detention regimes ("Article 41-bis" and "Article 72") and formulated a certain number of recommendations in this field. It stressed once again that it would be a highly questionable practice to use the "41-bis" regime as a means of exerting psychological pressure on prisoners to co-operate. Alarming shortcomings were also observed in the provision of health-care in prisons; in particular, there seems to be a significant disparity between the level of health-care offered to prisoners and that offered to the general public.

Finally, the CPT examined the situation of patients subjected to an involuntary placement measure ("TSO") at the San Giovanni di Dio Hospital at Agrigento and recommended that certain aspects of the administrative and judicial procedures applicable in this field be improved (in particular with regard to the guardianship judge).

The CPT's visit report and the response of the Italian authorities are available on the Committee's website: http://www.cpt.coe.int "

Next country visit in: unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **3 November 1997**, entered into force on **1 March 1998**

No reservation, no declaration

Extract of the last opinion by the Advisory Committee adopted in **February 2005** [ACFC/INF/OP/II(2005)003]:

"Concluding remarks:

145. The Advisory Committee considers that these concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers in respect of Italy.

Positive developments

146. Italy has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in September 2001 and the Committee of Ministers' Resolution in July 2002. This process has included valuable efforts to implement the coherent legislative framework designed to secure general protection of the historical linguistic minorities

(Law 482/99). Moreover, a number of commendable measures aimed at promoting the language and culture of minorities have continued to be taken at the regional level.

147. There has been a welcome development of educational projects promoting minority languages and cultures funded by the state budget. Similarly, a range of laudable initiatives have been taken at the municipal level to encourage the use and reinforce the visibility of minority languages in their respective territorial areas of protection. These achievements have to a large extent benefited minorities living outside regions enjoying special autonomy. The national legislative framework has therefore proven instrumental in reducing the sometimes significant differences in the level of protection available to various minorities.

148. The participation of representatives of historical linguistic minorities covered by Law 482/99 in public affairs has improved in recent years both at the national and regional levels through their inclusion in various bodies, especially those established to assist in the implementation of relevant legislation.

Issues of concern

149. There remain shortcomings in the implementation of the legal framework protecting minorities. For example, the implementation of the specific legislation protecting the Slovene minority in the region Friuli-Venezia Giulia has not really started four years after its adoption due to the persisting political, legal and technical disputes over the demarcation of the Law's territorial scope of application.

150. Efforts to tackle discrimination and negative stereotypes in the media must be stepped up as these problems continue to affect vulnerable minority groups.

151. Participation of representatives of minorities could be strengthened through the setting up of a specific structure to institutionalise dialogue with the authorities.

152. While there exist a commendable number of radio and television programmes in minority languages spoken in regions enjoying special autonomy, there remains a need to develop programmes in other minority languages like in Friulan. Legal obligations in this field, which derive from the national legislative framework on minorities, have not been implemented to date. The reception of existing programmes remains impossible in certain provinces with a traditional presence of minorities, such as the Slovenians and the Ladins.

153. The lack of tangible progress in the integration of the Roma, Sinti and Travellers, the widespread discrimination they face and the deplorable living conditions prevailing in the camps, where they continue to be placed, is a source of deep concern. A comprehensive strategy of integration at national level remains to be developed in consultation with those concerned. The lack of legal protection at the state level for the Roma, Sinti and Travellers needs to be addressed by the authorities so as to enable these persons to better preserve and further develop their identity and culture.

Recommendations

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

- Address the remaining shortcomings in the implementation of Law 482/99 on the protection of historical linguistic minorities, including through increasing the volume of minority language television and radio broadcasts and providing stronger support for educational projects both in terms of resources and sustainability.

- Increase awareness-raising measures to encourage the municipalities and schools concerned to make better and more frequent use of the possibilities offered by Law 482/99 on the protection of historical linguistic minorities in the field of education and public use of minority languages.

- Implement as a matter of priority the provisions of Law 38/01 on the Slovene minority which are not strictly linked to the approval of the territorial areas of protection and facilitate the implementations of the Law in those municipalities whose inclusion in the territorial area of protection raises no objection.

- Consolidate the participation of minority representatives in existing bodies assisting in the implementation of the legal framework on minorities and/or consider the development of a specific structure to institutionalise minority participation.

- Consider the reinforcement of procedural guarantees and legal remedies so as to make existing legal provisions against discrimination more effective and thereby ensure equality before the law and equal protection of the law for persons belonging to minorities.

- Step up efforts at the state level to ensure legal protection of the Roma, Sinti and Travellers and enable them to preserve and develop their identity.

- Intensify existing measures to enable Roma, Sinti and Travellers to enjoy adequate living conditions and design, in consultation with those concerned, a comprehensive strategy of integration at national level focusing on access to housing, employment, education and health care."

Last CM resolution on the implementation of the Framework Convention: **ResCMN(2006)5**

Next State report due: 1 March 2009

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **27 June 2000**, but **not ratified**

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Italy was adopted on 16 December 2005 and made public on **16 May 2006**.

Extract of document **CRI(2006)19:**

"Executive summary:

Since the publication of ECRI's second report on Italy on 23 April 2002, progress has been made in a number of the fields highlighted in that report. As part of the changes introduced since then to antidiscrimination legislation, the Italian authorities have established a specialised body to combat racial discrimination, which assists victims and raise awareness of this phenomenon among the general public. Antidiscrimination legislation has been applied in some cases in the fields of employment and housing. Monitoring of school pupils' attainment broken down by nationality has been introduced to assess imbalances. School education on the Holocaust and against antisemitism as well as awareness-raising initiatives on these issues have been strengthened. Efforts to protect and assist victims of trafficking have continued and yielded positive results. Furthermore, a special procedure carried out in 2003 has resulted in approximately 650 000 non-EU workers acquiring legal status in Italy.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. The use of racist and xenophobic discourse in politics has intensified and targets in particular non-EU

citizens, Roma, Sinti and Muslims. Members of these groups have continued to experience prejudice and discrimination across a wide range of areas. Immigration legislation has made the situation of many non-EU citizens more precarious, and its implementation, notably in respect of immigrants without legal status, has resulted in the exposure of these persons to a higher risk of human rights violations. In the absence of a national policy to improve the situation of Roma and Sinti and combat the prejudice and discrimination they face, many members of these groups continue to live in a situation of marginalization and practical segregation from the rest of Italian society. Members of Muslim communities have also experienced a deterioration in their situation, notably due to the generalisations and the associations made in public debate and the media between the members of these communities and terrorism. The vulnerability of the members of these and other groups to racism and racial discrimination has been increased by the lack of political support for protection of individuals against incitement to racial violence and discrimination.

In this report, ECRI recommends that the Italian authorities take further action in a number of areas. These areas include: the need to fine-tune the legal framework against racism and racial discrimination, including through ratification of Protocol No. 12 to the European Convention of Human Rights; the need to ensure the thorough implementation of the existing criminal and civil provisions against racism and racial discrimination, and notably penal legislation against incitement to racial hatred and racially-motivated offences; the need to ensure thorough respect for the human rights of immigrants, including those intercepted at sea or apprehended on entering Italy illegally. In this report, ECRI also recommends that the Italian authorities take measures against the use of racist and xenophobic discourse in politics. It recommends that they improve their systems for monitoring racist, xenophobic and anti-Semitic incidents. Furthermore, ECRI recommends specific measures to counter racial discrimination and promote equal opportunities for minority groups, notably non-EU citizens, Roma, Sinti and Muslims."

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **18 October 1961**, ratified on **22 October 1965**, entered into force on **21 November 1965**

European social Charter (revised) signed on **3 May 1996**, ratified on **5 July 1999**, entered into force on **1 September 1999**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed **9 November 1995**, ratified on **3 November 1997**, entered into force on **1 July 1998**

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 1967 and 2000, Italy submitted 20 reports on the application of the Charter. Between 2001 and 2006 it submitted 4 reports on the application of the Revised Charter. Italy failed to submit the report relating to Conclusions 2005 and has not yet submitted that for Conclusions 2007 (the deadline was 31/06/2006). Trade unions and organisations of employers have not submitted comments on the reports.

The next report will concern the accepted provisions related to the theme 'Employment, Training and Equal opportunities' (Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter). The report should be submitted before 31/10/2007.

Collective complaints (decided)

European Federation of Employees in Public Services v. Italy (No. 4/1999)
No violation of Article 5 (right to organize) and 6 (right to collective bargaining), decision on the merits of 12 December 2000.

World Organisation against Torture (OMCT) v. Italy (No. 19/2003),
No violation of Article 17 (right of children to social, economic and legal protection), decision on the merits of 26 January 2005.

ERRC (European Roma Rights Centre) v. Italy (No. 27/2004),
Violation of Article 31 (right housing) taken together with Article E, decision on the merits of 7 December 2005.

The Charter in domestic law

Statutory *ad hoc* incorporation into domestic law based on Act No. 30/1999 (Legge recante ratifica ed esecuzione della carta Sociale europea riveduta con annesso fatta a Strasburgo il 3 Maggio 1996).

The situation of Italy with respect to application of the Charter is the following as of 1st July 2006:

Examples of progress achieved following conclusions or decisions of the ECSR[25]

Health
► Prohibition of night work by women between midnight and 6 am from confirmation of pregnancy until the child's first birthday. Female wage earners with a child under 3 years of age cannot be required to perform night work, nor may wage earners of either sex with a disabled dependant (Act of 5 February 1999).
► Protection from hazardous forms of work of women who are pregnant, have recently given birth or are breastfeeding (Legislative Decree No. 645/96 and 25/99).

Children
► Prohibition of the employment of children under the age of 15 in all sectors of the economy – Minors may only be employed in hazardous work for the purpose of vocational training, under the supervision of a competent instructor and only for the time necessary (Legislative Decree No. 345/1999). [26]
► According to Section 1.3 of Act No. 30/2000, compulsory education lasts until the age of 15.
► Extension of the duty to train up to the age of 18 years in school-based education or vocational training or a combination of work and training (Act No. 144/1999)
► Section 9 of the Legislative Decree No. 345/1999 provides for a mandatory medical examination of young workers prior to their employment and for periodical examinations during the employment.

Non-discrimination (Nationality)
► Legislative Decree No. 286/1998 lays the foundations for a policy for integrating foreign nationals and combating racism and xenophobic propaganda, in particular: liberalisation of the rules governing the employment of foreign nationals; entitlement to family reunion according to the Appendix of the Charter; grounds for expulsion;

[25] The European Committee of Social Rights (ECSR) makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the ECSR).
[26] RecChS(94)4 adopted by the Committee of Ministers on 8 April 1994 (renewed on 14 December 1995) and RecChS(98)3 adopted by the Committee of Ministers on 4 February 1998.

compulsory education of all foreign children resident in the country; equal treatment in access to accommodation for foreign workers in Italy may be upheld by the courts.
► Legal assistance and free interpretation is available for migrant workers (Act No. 189/2002).

Non-discrimination (Employment and Sex)
► Prohibition against discrimination in employment on grounds of religion, personal convictions, disability, age and sexual orientation (Act No. 216/2003).
► Gender mainstreaming in the labour market (Act No. 30/2003 Biagi Law and implementing decree No. 276/2003).
► The principle of equal treatment between men and women has been introduced in the Constitution, Article 51 (Act No. 1/2003).
► Act No. 53/2000 introduces parental leave.

Social protection
► Law No. 448/1998 introduced a five month maternity allowance for women not entitled to maternity benefit. Law 53/2000 on parental leave extends benefits for parents of disabled children and introduced a right to parental leave in certain circumstances. Law No. 346/2000 partially increased the level of coverage of unemployment benefits and extended the period for which they are granted in the cases of persons over 50 years of age.
► Outline Act No. 328/2000 on the implementation of the integrated system of social intervention and services, which applies to all foreigners legally working in Italy.
► Acts No. 154/2001 and No. 304/2003 on measures against violence in family relations. A second family benefit (*assegno di sostegno*) has been introduced in 1999. Outline Act No. 328/2000 covers services for families.

Employment
► Labour market reform and innovations (Act No. 30/2003 Biagi Law and implementing decree No. 276/2003).
► Implementing measures to improve free placement services (Legislative Decree No. 181/2000 and Presidential Decree No. 442/2000).
► Legislative Decree No. 532/1999 on night work.
► Prohibition on dismissing domestic employees during the compulsory period of maternity leave (national collective agreement on domestic employment of 16 July 1996) – Female domestic employees who do not qualify for maternity benefit are entitled to "maternity cheques" (Act No. 448/1998). [27]

Cases of non-compliance

Health
►*Article 2§4 – right to compensatory time off in dangerous or unhealthy occupations.* Workers employed in dangerous or unhealthy occupations are not eligible for reduced working hours or additional holidays with pay.
►*Article 8§2 – prohibition of dismissal during maternity leave.* Certain domestic employees are not protected against dismissal during pregnancy.
►*Article 8§3 – time off for nursing mothers.* Two groups of female employees (domestic employees and women working at home) are still excluded from the general right to paid breaks for nursing mothers.

Children
► *Article 7§1, 7§3, and 7§4 – prohibition of employment of children aged under 15 and of children subject to compulsory education – right of young persons aged between 15 and 18 to specific employment conditions* The labour legislation regarding young workers is not effectively enforced.
►*Article 7§2 – prohibition of employment under the age of 18 – for dangerous activities.* Italian law (decree no. 345/1999) does not conform with the notion of

[27] RecChS(94)4 adopted by the Committee of Ministers on 8 April 1994 and RecChS(95)7 adopted by the Committee of Ministers on 22 May 1995.

absolute necessity provided by the Appendix to the Revised Charter in relation to the permission of employment of young people under the age of 18 in dangerous activities.

Non-discrimination (Nationality)
►*Article 18§2 – simplification of existing formalities for migrant workers.* Formalities for the granting of work permits to self-employed workers, nationals of states parties not covered by community law have not been simplified.

Non-discrimination (Disability)
►*Article 15§§1 and 2 – right of disabled persons to employment and training.* There is no legislation prohibiting discrimination on grounds of disability either in the field of education or of employment.
►*Article 15§3 –integration and participation of persons with disabilities in the life of the community.* There is no legislation prohibiting discrimination on grounds of disability in the field of education, employment, housing, transport, telecommunications, cultural and leisure activities.

Social Protection
► *Article 13§1 – right of every person in need to adequate assistance* All decisions concerning eligibility for the minimum income (RMI) are not subject to appeal before an independent authority.

Employment
►*Article 1§2 – prohibition of forced labour.* 1. The Shipping Code provides for criminal sanctions against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where neither the safety of the vessel or aircraft nor the lives or health of those on board are in danger.
►*Article 4§4 – Reasonable notice of termination of employment.* In certain sectors (particularly the food industry) the periods of notice are unacceptably short (2 days in the case of a worker with at least 2 years' service). [28]
►*Article 4§5 – right to limitation of deduction from wages.* Deductions from wages for workers' debts to their employers are not subject to any regulations and are left to the discretion of the competent courts. [29]
► *Article 6§4 – right to collective action (strikes)* The requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive.
►*Article 10§4 – right of long-term unemployed persons to speical integration meaures.* Italy's effort to reduce the high-level of long-term unemployment is weak.
►*Article 24 – right not to be dismissed without valid reasons.* The categories of workers excluded from protection against termination of employment are more extensive than those provided by the Charter.

The ECSR is unable to assess whether Italy complies with the following provision:

Health
►*Article 3§2 – right to health and safety at work (regulations).* Italy has failed to demonstrate compliance with this requirement, in that self-employed workers in agriculture, trade and industry and members of their families working with them are not always covered by occupational health and safety regulations. [30]
►*Article 3§3 – right to health and safety at work (supervision).* Italy has failed to provide evidence of its compliance with this provision since its ratification of the 1961 Charter and the revised Charter.

[28] RecChS(94)4 adopted by the Committee of Ministers on 8 April 1994 and RecChS(95)7 adopted by the Committee of Ministers on 22 May 1995.
[29] RecChS(94)4 adopted by the Committee of Ministers on 8 April 1994 (renewed on 15 January 1997).
[30] RecChS(95)7 adopted by the Committee of Ministers on 22 May 1995.

Children
►*Article 7§5 – working conditions between the age of 15 and 18.* The Italian government has not demonstrated that the remuneration of an apprentice is proportionate and adequate.
►*Article 9 – right to vocational guidance.* Italy has failed to provide evidence of its compliance with this provision in the last seven reports.

Social Protection
► *Article 13§3 – right of every person in need to prevention, abolition or alleviation of need* It is impossible to assess that special arrangements have been made to provide personal advice and assistance to prevent or alleviate want.

Employment
►*Article 1§3 – free placement services.* It is impossible to assess whether the right to free placement services is guaranteed in practice.
► *Article 6§4 – right to collective action (strikes)* It is impossible to assess whether the Government's right to issue ordinances restricting strikes in essential public services falls within the limits of Article G.
►*Articles 1§4 and 9 – right to professional guidance, training and retraining.* Italy has failed to provide evidence of its compliance with these provisions in its previous reports."

H. PARLIAMENTARY ASSEMBLY

Doc. 10811 (24 January 2006)**: Application to initiate a monitoring procedure concerning the monopolisation of the electronic media and the possible abuse of power in Italy**: Motion for a resolution presented by Mr Wodarg and others, transmitted on 29 May 2006 by the Bureau to the Monitoring Committee for a written opinion for the Bureau in accordance with Resolution 1115 (1997) as modified by Resolution 1431 (2005).

Resolution 1387 (2004): Monopolisation of the electronic media and possible abuse of power in Italy adopted by the Assembly on 24 June 2004 (see Doc. 10195, report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney; and Doc. 10228, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ates).

Resolution 1388 (2004): The Italian Law on Legitimate Suspicion adopted by the Assembly on 24 June 2004 (see Doc. 10124, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Leutheusser-Schnarrenberger).

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

LATVIA

CoE member State since **10 February 1995**
Number of CoE Conventions ratified (as of 1 March 2007): **75 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **16**

I. PLURALISTIC DEMOCRACY[31]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **2003**
Next presidential election: **2007**
Last general elections: **October 2006**
Next general elections: **2010**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2005**
Next municipal elections: **2009**

European Charter on Local Self-Government ratified on **5 December 1996**

Last **Congress of Local and Regional Authorities** monitoring report: April 1998: **Recommendation 47 (1998)** on local and regional democracy in Latvia adopted on 28 May 1998.

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Latvia: Situation in 2006
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Latvia as well as their operation, including their competencies and financial and human resources.

Extract:

"[…]

12. REFORMS ENVISAGED OR IN PROGRESS

The administrative and territorial reform of local government

The present administrative and territorial division was formed at the end of the 1960s and at the beginning of the 1970s and is considered to be inappropriate for carrying out local government functions, since administrative units with a small number of inhabitants and, consequently, a weak base of financial revenue, predominate. The small local authorities have low income per capita and high administrative expenditure. Since small local authorities are not able to execute effectively many decentralised functions, the process of decentralising functions and financial resources cannot be fully implemented.

The division of the state into twenty-six regions and seven republican cities is also considered to be inappropriate for decentralised administration.

The main targets of the administrative and territorial reform:

– to form competent, independent local authorities which can provide services according to the interests of the inhabitants;

[31] The non-governmental organisation Freedom House gives to Latvia a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

– to concentrate the material and financial resources of local authorities for effective implementation of the local authorities' functions;
– to reduce the necessity for subsidies and increase opportunities for local authorities to be self-financing;
– to further the process of decentralising state administration, to increase the role and influence of local authorities in state administration;
– to form a regional administrative and territorial division which would promote balanced, long-term regional development of the state and secure the cultural and historical heritage of each region.

Since 1996, 56 local authorities in total have amalgamated in Latvia, establishing 25 amalgamated municipal units, including 21 counties. All these local authorities have received an additional grant from the state budget.

In order to implement the provisions of the Law on Administrative-territorial reform an investigation of all 26 administrative districts has been carried out. On the basis of the summarised district investigation projects and the experience acquired through the ongoing reform process, an Administrative Division of Local Authorities Project was set up, presenting and applying national criteria for establishing new administrative territories, and a draft on unified administrative division for the territory of Latvia in 102 local authorities was prepared.

It is of high importance to stress the necessity for a unified project applicable to the whole territory of the country. The former practice of developing reform projects for separate districts or counties created problems due to the territories not matching the borders of districts, and in any case, different criteria were applied for planning and establishing new administrative territories.

When developing the project of 102 local authorities the following criteria were used for establishing new administrative territories:

1. the population of the new local authority shall not be less than 5000 inhabitants;

2. the new territory shall have a development centre with a population of 2000-25000;

3. the road network of the new territory shall be directed from the separate parts of the territory towards the administrative centre;

4. the distance from the centre of the new territory to its border shall not exceed 30 km;

5. individual analysis.

By choosing this project as a basis for the reform, the scale of local authorities is determined and a unified approach applied to the whole territory of Latvia.

At its meeting of 3 July 2002, the Cabinet of Ministers acknowledged that during the public discussion of the administrative and territorial division projects, as well as in the public opinion poll conducted by a company (SKDS) carrying out sociological investigations, the administrative and territorial division of local authorities project envisaging an eventual 102 local authorities was supported as a means for furthering administrative and territorial reform. The Cabinet of Ministers too is essentially in favour of the project to set up 102 local authorities.

The 6th Saeima, on adopting the Law on Administrative and Territorial Reform, has determined that the administrative and territorial reform of local authorities should be carried out by 30 November 2004. During the year 2005 the 8th Saeima adopted amendments on the Law on Administrative and Territorial Reform, stipulating that the

reform of local authorities should be carried out by the local government elections in 2009.

Sufficient experience has been accumulated to prepare for the final stage of the reform and to complete the administrative and territorial reform successfully."

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Opinion on the draft law on judicial power and corresponding constitutional amendments of Latvia** [**CDL-AD(2002)026**]:

"Conclusions

In general, it can be said that the Law represents a progressive, thorough and well-considered effort at establishing a comprehensive act of legislation setting out the framework for the organization and operations of the judicial power in a manner consistent with the above objectives. Accordingly, it should be favourably regarded from a European point of view. The provisions of the Law are mostly well coordinated, and although they go into considerable detail, this is not necessarily to the detriment of the overall result.

It follows that the main aspects of the Law which need to be considered relate to issues which are central to the framework proposed, such as the basic method for appointment of judges and the role of the legislative assembly and the judiciary in that respect, the scope of powers of the Council of Justice and the composition of the Council (in the light of those powers and otherwise), and the position of the judiciary towards the legislative power and the Ministry of Justice. The powers of the Council of Justice are very wide ranging. The scope of these powers taken together with the composition of the Council mainly of judges might create a problem of democratic legitimacy of the judiciary in Latvia.

The proposed legislation constitutes a very comprehensive and detailed product. It is so rich in detail that its strict application may serve to obstruct the natural adjustment of the Law to the circumstances of specific cases. A review should be conducted in order to investigate whether all the detailed provisions are necessary and also to avoid repetitions to some extent.

Remarks of a concrete character have been directed *inter alia* at the following conditions:

1. The Council of Justice has a decision-making influence on the organisation of the courts. Certain issues like involve political considerations, however, that may call for reflection as to whether the *Saeima* should be assigned this decision-making authority. The composition of the Council might need a revision.

2. The Prosecutor's Office is to be included as part of the Judicial power. Judicial power shall only be exercised by independent courts, and thus the prosecution authorities should be kept separate.

3. A court decision is to be binding for all in the same way as a law. A court decision can never be ascribed such a general effect. Each individual decision has the significance accorded to it by its wording.

4. The judge is to swear an oath of allegiance to the Republic of Latvia. This oath may constitute an obstacle to the impartial and fair exercise of the judicial office.

5. Provisions for interpreters should be made at court proceedings.

6. The procedure for the appointment of judges should set out clear criteria.

7. The procedure of distribution of cases between judges should follow objective criteria."

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Latvia in 2004 was **33,746,210 euros**;
- the **number of Professional judges on a full-time basis** in Latvia in 2004 was **384**, that means 16.6 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Latvia was **604**, that means 26 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[32]

Civil law convention on corruption signed on **4 February 2004**, ratified on **12 April 2005**
Criminal law Convention on corruption signed on **27 January 1999**, ratified on **9 February 2001**, **Additional Protocol** signed on **7 April 2005**, ratified on **27 July 2006**

Extract of: **Second Evaluation Round: evaluation report on Latvia adopted by GRECO at its 19th Plenary Meeting** [Strasbourg, 28 June – 2 July 2004, Greco Eval II Rep(2004)4]:

> **1. Conclusions**
>
> "In Latvia, the existing legal framework concerning freezing and confiscation of proceeds of corruption is (in general) adequate. Improvements can be made by introducing measures allowing investigating/prosecuting authorities for provisional freezing and confiscation of proceeds of crime when those proceeds are not any more "in the hands" of the perpetrator of the crime. In addition, more attention should be given at the beginning of an investigation to the importance of making an economic investigation of the suspect to identify the proceeds of corruption with a view to

[32] Latvia is in 49th position with a score of 4,7 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

obtaining a provisional order swiftly, thus preventing any dissipation of assets. Relevant efforts have been made in the public administration to build up policies aimed at preventing and combating corruption: the Corruption Prevention and Combating Bureau was established in 2002, a Strategy for Combating Corruption has been adopted, activities of state institutions in the sphere of public access to information are regulated and a new law on prevention of conflict of interest has been adopted. However, the success of corruption prevention policies in public administration can be strengthened, notably by setting up the institution of the Ombudsman and by defining clearly the legal framework within which civil servants at local level exercise their functions. In the Latvian legal system, there is a need to establish liability of legal persons for offences of bribery, trading in influence and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption.

In view of the above, GRECO addresses the following **recommendations** to Latvia:

i) that legal provisions be introduced allowing 1) effective provisional freezing and confiscation of assets in the hands of third parties and 2) the confiscation of assets of an equivalent value to the proceeds of corruption offences (paragraph 13);

ii) 1) to prepare specific guidelines for police officers and prosecutors on how to effectively track defendants' assets, especially at the beginning of investigations in the field of corruption; 2) to strengthen cooperation between investigators/prosecutors at the early stages of investigation to ensure economic investigations likely to result in the freezing of the proceeds of corruption (paragraph 15);

iii) to assess in a comprehensive manner the problem of corruption in Latvia and thus to further define Latvian strategy for preventing and corruption (paragraph 33);

iv) that measures be taken to enhance easier access to public information, above all at local level (paragraph 34);

v) that the introduction of the institution of ombudsman be speeded up (paragraph 36);

vi) that the scope of the State Civil Service Law be extended so as to apply to civil servants in local government administration (or that specific legislation in this area be drawn up) (paragraph 37);

vii) to provide a proper legal basis for checking data of candidates to senior posts in public administration (paragraph 38);

viii) that measures be taken to enhance the adoption of codes of ethics for civil servants of all state and employees of local government institutions (paragraph 41);

ix) to place civil servants under a clearly defined obligation, as would be appropriate to their public status, to report suspicions of corruption offences and to establish an adequate system of protection for those civil servants who report wrongdoing (paragraph 43);

x) to establish liability of legal persons for offences of bribery, trading in influence and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (paragraph 52);

xi) to ensure that the execution of the additional sentence of limitation of rights is effective in practice (paragraph 54);

xii) to ensure that the legal framework does not allow for the deductibility of the expenses related to corruption offences (paragraph 56);

xiii) to train and provide specific guidelines to tax inspectors in respect of the identification of corrupt practices, including disguised bribes (paragraph 57).

Moreover, GRECO invites the Latvian authorities to take account of the **observations** made in the analytical part of this report.

Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Latvian authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2005."

2. Observations

"[…]
18. With regard to confiscating the proceeds of crime (including corruption), according to the existing legal provisions, the burden of proof is upon the State. It appeared to the GET that the Latvian authorities fully appreciate the difficulty of proving the unlawfulness of indirect proceeds from crime. The GET was informed that a draft Criminal Procedure Law is pending before Parliament, which is geared towards reversing the burden of proof. *The GET observes that the Latvian authorities could consider the reversal of the burden of proof in connection with a conviction, to assist the court in identifying criminal proceeds liable to confiscation in appropriate cases.*

40. […] The GET considered that the law "On Prevention of Conflicts of Interest in Activities of Public Officials" is rather efficient. Nevertheless, *it observed that those professions such as doctors or teachers who, in spite of the fact that they are not public officials, carry out significant tasks within the public sector (and are considered to be vulnerable to corruption) should also be subject to regulations on improper behaviour, including corruption offences*.

53. During the visit, the GET was pleased to note that all the parties involved in fighting corruption acknowledged the need for (criminal) liability of legal persons for corruption offences. However, the GET had the impression that the law enforcement bodies were sceptical about the chances of convicting legal persons. Their concerns were based on the fact that collecting evidence would be very difficult. Different organisations referred to the problems that they meet detecting the beneficial owners of companies. *The GET observed that it is necessary to train officials from the investigative and judicial authorities to improve their skills in applying the future law on liability of legal persons*.[…]"

Extract of: **Second Evaluation Round: compliance report on Latvia adopted by GRECO at its 30th Plenary Meeting** [Strasbourg, 9-13 October 2006, Greco RC II (2006)4]:

"Conclusions:

In view of the above, GRECO concludes that Latvia has implemented satisfactorily or dealt with in a satisfactory manner just under half of the recommendations contained in the Second Round Evaluation Report. Recommendation i has been implemented satisfactorily and recommendations iii, iv, viii and xii have been dealt with in a satisfactory manner. Progress has been reported on recommendations v, vi, ix, x and xiii which GRECO considers as partly implemented. Recommendations ii, vii, and xi have not been implemented.

GRECO invites the Head of the Latvian delegation to submit additional information regarding the implementation of recommendations ii, v, vi, vii, ix, x, xi and xiii by 31 May 2008."

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **1 December 1998**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **19 May 2006**

Second Round Evaluation Report on Latvia: Summary [Moneyval(2004)5Summ, 17 May 2004]

III. PROTECTION OF HUMAN RIGHTS[33]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Latvia published in **February 2004** following a visit to the country in **October 2003**

Follow-up visit in **June 2006** (report not yet public)

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Latvia from 5 to 8 October 2003, for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2004)3]**:**

> "Conclusions and recommendations
>
> Latvia has taken significant strides in the construction of a democratic society. The completion of this process depends on its being perceived by the large majority of Latvians as a collective challenge leading to democratic development and European integration. This requires that Latvia close a chapter on the past, however painful it may have been, and fixes its attention firmly on the future.
>
> In the light of the preceding findings, and with the aim of assisting Latvia in the promotion of the respect for human rights, the Commissioner makes the following recommendations in conformity with article 8 of Resolution (99)50:
>
> 1. Put an end to ill treatment on the part of representatives of the forces of law and order. Ensure that the mechanisms for sanctioning violations committed by law enforcement officials function effectively;
>
> 2. Improve the material conditions in penitentiary establishments and police detention centres. Close down the Riga Central Prison Hospital and transfer its activities to a site better suited to the treatment of the ill, pending the hospital's total refurbishment;
>
> 3. Ensure the respect for the time limits established by law for judicial proceedings;
>
> 4. Accelerate the naturalisation of non-citizens. In this context:
>
> - facilitate the naturalisation of the particularly vulnerable, such as the elderly, the disabled and the young,
> - examine the possibility of providing the naturalisation procedure free of charge,
> - ensure the effective implementation of article 3.1 of the law on the nationality regarding infants born after 21 august 1991. To this end, modify the birth registration forms so as to include the requirement that parents express the desire for their child to acquire Latvian citizenship, or, alternatively, specify a preference for a different nationality;

[33] Latvia is in 10th position with a score of 3 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

5. With a view to encouraging non-citizens to naturalise and promoting their integration, increase their participation in the political life of the country, notably by examining the possibility of granting them, amongst others, the right to vote in local elections;

6. Strengthen the protection of minorities by ratifying the Framework Convention for the Protection of National Minorities;

7. Facilitate the use of minority languages, including in written correspondence with the administration;

8. Increase the financial resources of Latvian language training programmes, so as to enable all members of national minorities desiring to improve their knowledge of the official language to do so without charge;

9. Provide the support and protection of the State to the functioning of secondary schools teaching in minority languages:

- ensure that the reform of the education system maintains the current high quality of teaching,
- strengthen the cooperation between the Ministry of Education, teachers and parents in the process of defining the best model and time-scales in the implementation of the reforms,
- establish tertiary education programmes for the preparation of teachers of minority languages and syllabi for the teaching of other subjects in minority languages, ensure the publication of textbooks in minority languages;

10. Proceed rapidly with the adoption of the Law on Psychiatric Assistance;

11. Provide an effective system for the protection of women and children against domestic violence;

12. Reinforce the cooperation between the authorities and associations representing, respectively, the interests of owners of restituted real estate and renters, with a view to finding acceptable solutions to the problems of renters unable to afford market level rental rates.

Annex to the report: Comments by the Latvian authorities
[…]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **27 June 1997**

No reservation, no declaration

Protocol No. 6 ratified on **7 May 1999**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 signed on **3 May 2002**
Protocol No. 14 ratified on **28 March 2006**

Out of a total of 1,105 judgments delivered by the Court in 2005, there is **1** concerning Latvia which gave rise to a finding of at least one violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **10** concerning Latvia of which **9** gave rise to a finding of at least one violation and 1 gave rise to a finding of no violation.

Out of a total of 35,402 pending case before the Court in 2005, **234** concerned Latvia.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **890** concerned Latvia.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

Extract of **Resolution 1516 (2006)** on **the Implementation of judgments of the European Court of Human Rights** adopted by the Assembly on 2 October 2006 (see: Doc. 11020 of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens):

> "[…]
> 6. In eight other members states – namely Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania – reasons for non-compliance and possible solutions to outstanding problems have been considered, making use of written contacts with these countries' delegations to the Assembly.
> […]
>
> 9. With regard to specific implementation problems raised by the Assembly, it welcomes in particular decisive progress achieved in:
>
> 9.1. *Slivenko v. Latvia*, where the applicants' rights of permanent residence in Latvia has recently been restored, in line with the Committee of Ministers requests. Latvia has thus erased the effects of the applicants' expulsion to Russia found by the Court to be in violation of the ECHR; […]"

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention, **additional protocols 1 and 2** ratified on **10 February 1998**

Publication of the last report: **May 2005**
Last country visit: **May 2004**

Press release of 10 May 2005:

> "The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its visit to Latvia in September/October 2002, together with the Latvian Government's response. These documents have been made public with the agreement of the Latvian authorities.
>
> During this visit, the CPT's delegation reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after the 1999 visit. Particular attention was paid to the treatment of persons detained by the police and border guards, as well as the conditions of detention of life-sentenced prisoners and of juveniles on remand held in prison. For the first time in Latvia, a visit was carried out to a social welfare home.
>
> The CPT's visit report and the Latvian Government's response are available on the Committee's website: http://www.cpt.coe.int"

Next country visit in: 2007

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **11 May 1995**, ratified on **6 June 2005**, entered into force on **1 October 2005**

"Declaration contained in the instrument of ratification deposited on 6 June 2005:

The Republic of Latvia

- Recognizing the diversity of cultures, religions and languages in Europe, which constitutes one of the features of the common European identity and a particular value,
- Taking into account the experience of the Council of Europe member States and the wish to foster the preservation and development of national minority cultures and languages, while respecting the sovereignty and national-cultural identity of every State,
- Affirming the positive role of an integrated society, including the command of the State language, to the life of a democratic State,
- Taking into account the specific historical experience and traditions of Latvia,

declares that the notion "national minorities" which has not been defined in the Framework Convention for the Protection of National Minorities, shall, in the meaning of the Framework Convention, apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law.
Period covered: 1/10/2005 -
The preceding statement concerns Article(s): -

Declaration contained in the instrument of ratification deposited on 6 June 2005 - Or. Engl.

The Republic of Latvia declares that it will apply the provisions of Article 10, paragraph 2, of the Framework Convention without prejudice to the Satversme (Constitution) of the Republic of Latvia and the legislative acts governing the use of the State language that are currently into force.
Period covered: 1/10/2005 -
The preceding statement concerns Article(s): 10

Declaration contained in the instrument of ratification deposited on 6 June 2005 - Or. Engl.

The Republic of Latvia declares that it will apply the provisions of Article 11, paragraph 2, of the Framework Convention without prejudice to the Satversme (Constitution) of the Republic of Latvia and the legislative acts governing the use of the State language that are currently into force.
Period covered: 1/10/2005 -
The preceding statement concerns Article(s): 11"

No **opinion** by the Advisory Committee to date

No **Resolution by the CM** on the implementation of the Framework Convention to date

Last State report received: 11 October 2006 [ACFC/SR(2006)001]

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention neither signed nor ratified

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Second report on Latvia was adopted on 14 December 2001 and made public on **23 July 2002**

Extract of document **CRI(2002)21:**

> "Executive summary:
>
> Since the publication of ECRI's first report, Latvia has taken a number of steps towards addressing issues of racism, intolerance and discrimination. Such steps include measures to facilitate access to citizenship, moves to improve non-Latvian mother tongue population's knowledge of the Latvian language and the recent adoption of an integration strategy with a potential to favour mutual integration of the different parts of Latvian society, while maintaining and protecting linguistic and cultural diversity.However, serious problems remain, particularly as regards the Russian-speaking population , many members of whom are still non-citizens. This part of the population of Latvia is at risk of exclusion and marginalisation from the structures of society and the decision-making processes. Imbalances in the position of the Russian-speaking population vis-à-vis the rest of the population of Latvia in different fields may tend to deepen the separation between these communities and create a climate where social tensions could arise. The lack of a comprehensive body of anti-discrimination legislation and the need to increase the effectiveness of the criminal law provisions aimed at combating racist and intolerant expressions are also noted.In this report, ECRI recommends that the Latvian authorities take action in a number of fields. These recommendations cover, inter alia: the need to enlarge the take-up of Latvian citizenship through the naturalization process, the need to monitor the effects of legislation in the field of language and access to mother tongue education and to take the necessary corrective action, the need to increase the non-Latvian mother tongue population's knowledge of the Latvian language and the need to ensure that the concrete implementation of the integration strategy will be beneficial to the cohesion of the whole population of Latvia."

Next visit to the country foreseen in the framework of the preparation of the Third Report on Latvia: March 2007

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **29 May 1997**, ratified on **31 January 2002**, entered into force on **2 march 2002**

European social Charter (revised) **neither signed not ratified**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 2004 and 2006 Latvia submitted 2 reports on the application of all the accepted provisions of the Charter. The third report will concern the provisions accepted by Latvia, related to the theme Employment, Training and Equal opportunities (Articles 1, 9, 10, 15, 18 of the Charter).

The third report should be submitted before 31/10/2007.

The Charter in domestic law

The Charter is recognized as having immediate legal effects in the domestic legal order.

Latvia's record with respect to application of the Charter is the following as of 1 July 2006:

Examples of progress achieved or being achieved

Employment
► The law on the Support of the Unemployed and Jobseekers which entered into force on 1 July 2002 stipulates a range of active measures from which unemployed persons may benefit *Article 1§1 – right to work)*
► A prohibition of discrimination in employment is prescribed by the Labour Law which came into force in 2004 *Article 1§2 – freely undertaken work (non discrimination)*

Cases of non-compliance

Employment
► *Article 1§2 – freely undertaken work (non discrimination, prohibition of forced labour other aspects)*
The length of alternative service constitutes a disproportionate limitation to the worker's right to earn a living in an occupation freely entered upon
► *Article 5 – right to organise*
the high number of members required to form a trade union constitutes an unreasonable obstacle to the right to organize and because police personnel associations are denied fundamental trade union prerogatives
► *Article 6§4 – right to strike*
The statutory majority required to call a strike is too high.

Health
► *Article 8§1 –right to maternity leave and benefits*
Six weeks postnatal leave is not compulsory.

Social protection
► *Article 13§1 –right to social and medical assistance*
The level of social assistance benefits is manifestly inadequate.
► *Article 16 –social, legal and economic protection of the family*
The level of family state benefit is inadequate.

Non- discrimination
Nationality
► *Article 13§4 –right to social and medical assistance*
Emergency social and medical assistance for non-nationals is not guaranteed.
► *Article 16 – social, legal and economic protection of the family*
Equal treatment for nationals of other Contracting Parties to the Charter or of Parties to the revised Charter with respect to the payment of family benefits is not ensured because of a residence requirement."

H. PARLIAMENTARY ASSEMBLY

Resolution 1236 (2001) and **Recommendation 1490 (2001)** on the **Honouring of obligations and commitments by Latvia** adopted by the Assembly on 23 January 2001 (see Doc. 8924, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: MM. Davis and Jansson) and closing the **monitoring procedure**.

Post-monitoring dialogue closed with Latvia on June 2006:

Extract of: **Post-monitoring dialogue with Latvia: Memorandum prepared by Mr György Frunda (Romania, EPP/CD), Chair of the Monitoring Committee, following the visit from 17 to 19 October 2005** [Doc. 10940: Progress report of the Bureau of the Assembly and of the Standing Committee (13 April – 26 June 2006)]:

"**IV. Conclusions and recommendations**

49. Latvia has formally fulfilled all its commitments undertaken by Opinion 183 (1995) upon accession to the Council of Europe as well as all the recommendations prescribed in Resolution 1236 (2001) which closed the monitoring procedure and opened a post-monitoring dialogue.

50. Since the adoption of the last post-monitoring report on Latvia (AS/Mon (2004) 08 rev) in May 2004, the country has continued to make substantial progress in the three fields that were regarded by my predecessor as the last obstacles to concluding the post-monitoring dialogue, i.e. in speeding up the naturalisation process, implementing the education reform and ratifying the Framework Convention for the Protection of National Minorities.

51. Yet it should not be forgotten that 18,9% of the Latvian population today, constituting more than 400,000 legal residents, continue to be non-citizens who do not enjoy full political or civil rights. The sincerity of the political will to integrate the non-citizen population in the society tends sometimes to be questionable, the last year having witnessed several attempts to make the Citizenship Law more restrictive for naturalisation applicants. In this regard, and notably in view of the upcoming legislative elections in 2006, I call on the Latvian government and my colleagues in the Latvian Saeima to look beyond short-term party-political gains and stick to the country's priority goals to integrate its multi-ethnic non-citizen population. On the other hand, I also urge all non-citizens to make the necessary effort to become full-fledged citizens of the country where they have chosen to reside.

52. It is clear that that the situation in Latvia is very particular and that for well founded historical reasons there is a strong need to protect the Latvian language. However, the protection of the official state language should not be to the detriment of the rights of minorities, which should be fully respected. Having recently become a full-fledged member of the NATO and the European Union, which gives additional guarantees to Latvian independence and security, Latvia should demonstrate its political maturity by admitting that the tens of thousands of non-citizens who are either born on Latvian territory or have lived there for decades have today little to do with the Soviet occupation and deserve to be included in the multi-ethnic political nation with full political rights.

53. Nevertheless, with regard to the objective criteria as specified in the preamble of this memorandum, and in full agreement with the conclusions of the rapporteurs of the "Opinion on the reopening of monitoring procedure as regards Latvia" (AS/Mon (2004) 13) stipulating that "*the Assembly should avoid increasing requirements and imposing new benchmarks on the few member states currently under monitoring or post-monitoring*", I propose to the Committee to conclude this post-monitoring exercise upon the understanding that the below specific recommendations will be continued to be closely followed up by the new Commissioner of Human Rights, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the

ECRI as well as by the rapporteur of the PACE Legal Affairs Committee on the situation of the Russian-speaking minority in Latvia. I would also reserve the right for this committee to come back to the issues of minority rights protection in Latvia at a later stage in the context of the general follow-up on the honouring of obligations by the member states.

Specific recommendations:

54. To further improve the effectiveness of naturalisation policies, I call on the relevant Latvian authorities to:

– encourage non-citizens to become fully-fledged members of the Latvian society by conveying regular and consistent positive messages to this end in public media and in specific campaign documents of the Naturalisation Board and the Ministry of the Society Integration;
– review the applied policies so as to take account of the reasons for motivation and obstruction of naturalisation among the non-citizen population in the future implementation of the Citizenship Law, including those on automatic entitlement or lowering of requirements;
– avoid producing new non-citizens and, in this respect, consider facilitating the granting of automatic citizenship (*jus soli*) to all new-born children born to non-citizen and stateless parents, with a possibility for the parents to opt out of their descendant's Latvian citizenship within a defined period of time;
– examine the possibility to extend the age limit for the possibility to register under-aged children as citizens without the lengthy naturalisation procedure from the current age of 15 to at least a year after their majority in order to guarantee that the child can make a conscious choice for citizenship even if the parents have not;
– examine the possibility to ease the naturalisation requirements for persons towards the end of their professional life and abolish the naturalisation examination altogether for persons over 60 years old who resided in Latvia when it regained its independence in 1991 and who otherwise fulfil all the application criteria;
– consider abolishing the requirement to attest the knowledge of history, the national anthem and the principles of the Latvian Constitution for naturalisation purposes as the latter constitutes an unnecessary duplication of loyalty attestation already provided for in the oath of allegiance to the Latvian state;
– examine the possibility of reducing the naturalisation fee for all categories of applicants to the minimum cost of processing documents;
– allocate more substantial funds for new motivation campaigns and for meeting the increased demands for naturalisation, including free-of-charge training;

55. With a view to helping further diminish the differences between the status of citizens and non-citizens, I also encourage the Council of Europe member states that are also EU member states to grant the Latvian non-citizens – holders of the Latvian non-citizen's passport – similar visa-free travel rights as to Latvian citizens, and the Russian authorities to apply the same visa fees to both categories of the Latvian population.

56. As regards the education reform,
– continue to implement the education reform with flexibility and without rushing the transition so as to guarantee continued application of equal education opportunities;
– step up the dialogue between the Ministry of Education and Science, minority schools and parents with a view to enhanced co-operation and reassurance of the parents on the benefits of the reforms.

57. While sincerely welcoming the ratification of the Framework Convention for the Protection of National Minorities by Latvia and in particular the extension of its application to Latvia's non-citizen population, I encourage the Latvian authorities to examine the possibility of gradually withdrawing the two declarations made, notably

the one pertaining to Article 10.2 which regulates the use of minority languages in local administration;

58. With a view to guaranteeing all people under Latvia's jurisdiction similar-standard political and civic rights, examine the possibility of granting all non-citizens the right to vote and to be elected at local elections."

Resolution 1527 (2006) and **Recommendation 1772 (2006**) on **Rights of national minorities in Latvia** adopted by the Standing Committee, acting on behalf of the Assembly, on 17 November 2006 (see Doc. 11094, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Severin).

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

LIECHTENSTEIN

CoE member State since **23 November 1978**
Number of CoE Conventions ratified (as of 1 March 2007): **77 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **5**

I. PLURALISTIC DEMOCRACY[34]

A. FREE AND FAIR ELECTIONS

System of government: **constitutional monarchy**
Last general elections: **March 2005**
Next general elections: **2009**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **…**
Next municipal elections: **…**

European Charter on Local Self-Government ratified on **11 May 1988**

No monitoring report by the **Congress of Local and Regional Authorities**

No report by the **Steering Committee on Local and Regional Democracy** (CDLR):
The CDLR comprises representatives of the national ministries responsible for local and regional authorities.

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Opinion on the amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein** adopted by the Venice Commission at its 53rd plenary session [Venice, 13-14 December 2002, **CDL-AD(2002)032**]:

> "Conclusions
>
> The present Constitution of Liechtenstein dating from 1921 already provides for a fairly strong position of the monarch, stronger than is the practice in other European monarchies members of the Council of Europe. However, the experience of these monarchies shows that this is not necessarily an obstacle to the development of a constitutional monarchy fully respecting democratic principles and the rule of law. The Constitution therefore was not considered an obstacle to accession to the Council of Europe in 1978.
>
> By contrast, the present proposal from the Princely House would present a decisive shift with respect to the present Constitution. It would not only prevent the further development of constitutional practice in Liechtenstein towards a fully-fledged constitutional monarchy as in other European countries, but even constitute a serious step backward. Its basic logic is not based on a monarch representing the state or nation and thereby being removed from political affiliations or controversies but on a monarch exercising personal discretionary power. This applies in particular to the powers exercised by the Prince Regnant in the legislative and executive field without any democratic control or judicial review. Such a step backwards could lead to an isolation of Liechtenstein within the European community of states and make its

[34] The non-governmental organisation Freedom House gives to Liechtenstein a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

> membership of the Council of Europe problematic. Even if there is no generally accepted standard of democracy, not even in Europe, both the Council of Europe and the European Union do not allow the *"acquis européen"* to be diminished."

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Liechtenstein in 2004 was **11,205,489 euros**;
- the **number of Professional judges on a full-time basis** in Liechtenstein in 2004 was **17**, that means 49.1 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Liechtenstein was **7**, that means 18.8 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[35]

Civil law convention on corruption neither signed nor ratified
Criminal law Convention on corruption neither signed nor ratified, **Additional Protocol neither signed nor ratified**.

Liechtenstein is not a member of GRECO.

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **9 November 2000**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) **neither signed nor ratified**

Second Round Evaluation Report on Liechtenstein: **Summary** [Moneyval(2003)14Summ, 4 July 2003]

[35] Liechtenstein is not listed in the *"***2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* .

III. PROTECTION OF HUMAN RIGHTS[36]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Liechtenstein published in **May 2005** following a visit to the country in **December 2004**

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Principality of Liechtenstein from 8 to 10 December 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2005)5]**:**

"Final observations and recommendations

Liechtenstein can be considered as a country committed to guaranteeing a high level of respect for human rights. This is demonstrated by the importance attached to the role of courts in defending fundamental rights. In order to assist the Liechtenstein authorities in their efforts to further promote the respect of fundamental rights, and in accordance with Article 8 of Resolution (99) 50, I would recommend the following measures:

1) prepare a national action plan for the integration of foreign residents, strengthen their possibilities for participating in public life and improve their opportunities for learning German;

2) take steps to ensure that the practice of requiring financial and material guarantees as part of the procedure for granting the right to family reunification does not lead to the discrimination of women wishing to exercise this right;

3) reconsider the length of residence requirements of the naturalisation procedures and review the discretionary procedure of granting citizenship by a vote of the local community in the light of its possible discriminatory effects;

4) ensure the presence of an NGO representative during all hearings with asylum seekers and, as far as possible, during forced removals from the country;

5) provide adequate resources for the implementation of the National Action Plan against Racism and, especially, as regards awareness raising among young people;

6) persevere in efforts to improve equality between women and men as well as responses to violence against women; consider recruiting more women police officers and step up awareness raising among the police about the available means of dealing with domestic violence;

7) give the force of law to the Government decision enabling foreign spouses, who have been victims of proven domestic violence, to continue their residence in Liechtenstein even after separation from their partners when their residence permits have been dependent on their marital relationship;

8) ensure that minority religious communities are not discriminated against on procedural or other grounds when state subsidies are allocated to religious communities;

9) review the system of temporary residence permits for cabaret dancers in order to prevent any risk of its being used for facilitating trafficking in human beings;

10) verify that the current and planned measures for the protection and support of victims and witnesses of crime can be effectively applied in cases of trafficking in human beings;

[36] Liechtenstein is not listed in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders*.

11) grant people who have been detained the right to access a lawyer at the outset of their detention including during police interrogations and appearances before an investigating judge;

12) ensure that foreigners can, always when necessary, access interpreters and translations during court proceedings and detention;

13) give serious consideration for establishing the institution of ombudsperson;

14) ratify the European Social Charter and Protocol 12 to the ECHR.

In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.

Annex to the report

Comments of the Government of Liechtenstein
The Commissioner for Human Rights has decided to append to his report the […] comments submitted by the Government of Liechtenstein when the report was presented to the Committee of Ministers of the Council of Europe on 4 May 2005. […]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **8 September 1982**

"Reservation contained in the instrument of ratification, deposited on 8 September 1982 and modified with a declaration contained in a letter from the Permanent Representative, on 23 May 1991, registered at the Secretariat General on 24 May 1991, concerning the Liechtenstein laws

In accordance with Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11], the Principality of Liechtenstein makes the reservation that the principle that hearings must be held and judgments pronounced in public, as laid down in Article 6, paragraph 1, of the Convention, shall apply only within the limits deriving from the principles at present embodied in the following Liechtenstein laws:

- Act of 10 December 1912 on civil procedure, LGBl. 1912 No. 9/1
- Act of 10 December 1912 on the exercise of jurisdiction and the competence of the courts in civil cases, LGBl. 1912 No. 9/2
- Code of Criminal Procedure of 18 October 1988, LGBl. 1988 No. 62
- Act of 21 April 1922 on non-contentious procedure, LGBl. 1922 No. 19
- Act of 21 April 1922 on national administrative justice, LGBl. 1922 No. 24
- Act of 5 November 1925 on the Supreme Court (``Haute Cour''), LGBl. 1925 No. 8
- Act of 30 January 1961 on national and municipal taxes, LGBl. 1961 No. 7
- Act of 13 November 1974 on the acquisition of immovable property, LGBl. 1975 No. 5.

The statutory provisions of criminal procedure relating to juvenile delinquency, as contained in the Act on Criminal Procedure in Matters of Juvenile Delinquency of 20 May 1987, LGBl. 1988 No. 39.
Period covered: 8/9/1982 -
The preceding statement concerns Article(s): 6

Reservation contained in the instrument of ratification, deposited on 8 September 1982

In accordance with Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11], the Principality of Liechtenstein makes the reservation that the right to respect for family life, as guaranteed by Article 8 of the Convention, shall be

> exercised, with regard to aliens, in accordance with the principles at present embodied in the Ordinance of 9 September 1980 (LGBl. 1980 No. 66).
> Period covered: 8/9/1982 -
> The preceding statement concerns Article(s): 8"

Protocol No. 6 ratified on **15 November 1990**
Protocol No. 12 signed on **4 November 2000**
Protocol No. 13 ratified on **5 December 2002**
Protocol No. 14 ratified on **7 September 2005**

Out of a total of 1,105 judgments delivered by the Court in 2005, there is **1** concerning Liechtenstein which gave rise to a finding of at least one violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **1** concerning Liechtenstein of which gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **3** concerned Liechtenstein.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **3** concerned Liechtenstein.

Resolutions adopted by the Committee of Ministers in 2006: **1**
No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **12 September 1991**, **additional protocols 1 and 2** ratified on **5 May 1995**

Publication of the last report: **November 2002**
Last country visit: **February 2007**

Press release of 14 February 2007:

> "A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Liechtenstein from 5 to 9 February 2007. This was the Committee's third visit to Liechtenstein.
>
> In the course of the visit, the delegation reviewed the measures taken by the Liechtenstein authorities following the recommendations made by the Committee after its previous visits concerning the treatment of persons in police custody and the conditions of detention in Vaduz Prison. Further, for the first time in Liechtenstein, the delegation visited a nursing home. It also went to Vaduz Hospital, where it examined the conditions of hospitalisation of prisoners as well as involuntary placement procedures for psychiatric patients. […]"

Next country visit in: date unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **18 November 1997**, entered into force on **1 March 1998**

> **"Declaration contained in the instrument of ratification deposited on 18 November 1997**
>
> The Principality of Liechtenstein declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are

to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Principality of Liechtenstein. The Principality of Liechtenstein considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention.

Period covered: 1/3/1998 -
The preceding statement concerns Article(s): 24, 25"

Extract of the last opinion by the Advisory Committee adopted in **October 2004** [ACFC/INF/OP/II(2004)1]:

"Concluding remarks:

15. The Advisory Committee considers that these concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers in respect of Liechtenstein.

Positive developments

16. Liechtenstein has taken steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in November 2000 and the Committee of Ministers' Resolution in November 2001.

17. As was recognised in the first monitoring cycle, there is however only limited potential for application of a number of provisions of the Framework Convention in Liechtenstein.

Issues of concern

18. Discrimination continues to affect people who do not share the language, culture or religion of the majority population, particularly non-nationals who are not part of the immigrant population from neighbouring countries.

Recommendations

19. In addition to the measures to be taken to implement the detailed recommendations contained in sections I and II of the Opinion of the Advisory Committee, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Pay requisite attention to the full implementation of the 2003 National Action Plan against racism and intolerance and regularly assess the impact of the measures taken, including through the gathering of relevant data."

Last **Resolution by the CM** on the implementation of the Framework Convention: **ResCMN(2005)7**

Next State report due: 1 March 2009

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **5 November 1992**, ratified on **18 November 1998**

Last State periodical report submitted on **1 March 2005** [MIN-LANG/PR(2005)2]
Last Committee of Experts' evaluation report adopted on **8 April 2005** [ECRML(2005)2]
Last Committee of Ministers' Recommendation: **no recommendation to date**
Last biennial report of the Secretary General to the Parliamentary Assembly: **3 September 2005** (Doc. 10659)

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Second report on Liechtenstein was adopted on 28 June 2002 and made public on **15 April 2003**

Extract of document **CRI(2003)4:**

> "Executive summary:
>
> Liechtenstein has taken many important steps towards combating racism and intolerance since the publication of ECRI's first report, including the ratification of a number of significant international legal instruments in the field, the adoption of new criminal law provisions to combat racist activities, the development of a strategy to combat right-wing extremism and the beginning of a process of recognition of the need to further integrate Liechtenstein's significant non-citizen population into society as a whole.
>
> A number of problems still exist however. The issue of a certain interest in right-wing extremism, particularly among young people, remains an area for concern. There is a lack of knowledge and data concerning the possible extent of discrimination and racism in most areas of life. A clear and detailed mission statement and strategy to integrate non-citizens and persons of immigrant origin into society remains to be fully elaborated and implemented.
>
> In the present report, ECRI recommends that the authorities of Liechtenstein take action in a number of fields. It recommends, inter alia, further progress in ratifying international legal instruments and in adopting national legislation against discrimination, the development of comprehensive and reliable methods of monitoring the situation as regards racism and discrimination in the country, the continuation of strategies to combat extreme right-wing tendencies, and the development and implementation of a detailed and concrete integration strategy, including measures to further facilitate access to citizenship for long-term residents."

Next visit to the country foreseen in the framework of the preparation of the Third Report on Liechtenstein: September/October 2007

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **9 October 1991** but **not ratified**

European social Charter (revised) **neither signed not ratified**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

H. PARLIAMENTARY ASSEMBLY

Extract of: **Liechtenstein: Opinion by the Monitoring Committee for the Bureau of the Assembly,** co-rapporteurs: Mr Michael HANCOCK, United Kingdom, LDR and Mr Erik JURGENS, Netherlands, SOC [Doc. 10044 Part1]: Progress report of the Bureau of the Assembly and of the Standing Committee (2 October 2003 to 26 January 2004)]:

"III. Conclusions

43. The Prince was quoted on the eve of the vote as saying: "If the Council of Europe does not accept the content of the Prince's initiative, then Liechtenstein will have to decide between the Princely House and Council of Europe" (Liechtensteiner Vaterland, 14 March 2003). On 9 August 2003, after the visit of the rapporteurs, he stated, again in the Liechtensteiner Vaterland, that membership in the Council of Europe was costing Liechtenstein only time and money[11] and that, should the Council of Europe require a change in the new constitution adopted by referendum in March, this would represent a golden opportunity to leave the organisation.

44. As this report suggests, the Council of Europe cannot accept the result of the popular vote in Liechtenstein that took place on 16 March 2003 because it strengthened the political position of the non-elected head of state of that country.

45. The rapporteurs understand the special position of the Princely House in Liechtenstein, especially since 1938, when the Prince took up active residence in Vaduz. They also understand that in a very small community, which wishes to assert itself as a sovereign state, the role of the hereditary monarch is stronger than, say, in the United Kingdom or in the Netherlands. At the same time they would stress that such a basic democratic achievement as that of responsible government and accountability to parliament for all government actions, that such a basic rule cannot lightly be put aside.

46. Since 1978, Liechtenstein is part of the great European family. This implies adherence to the common European values and standards enshrined in the organisation's statute and in the numerous conventions adopted within the framework of the Council of Europe. Many other countries could claim, as Liechtenstein does, that their system is unique and cannot be compared with those existing in other member States. This however does not dispense Liechtenstein or any other country from abiding by fundamental European principles.

47. The Rapporteurs therefore recommend to the Bureau that a monitoring procedure be opened as regards Liechtenstein according to the procedure prescribed in Resolution 1115 (1997). This procedure should aim at re-examining, in co-operation with the national authorities, the decisions taken during the vote on the People's Initiative in March 2003 in the light of this report, of the Venice Commission's opinion, and of constitutional practice in existing constitutional monarchies in Europe, with a view to ensuring that the constitutional practice in Liechtenstein is in conformity with the general principle that no government action can be taken without accountability to parliament or to the people."

Extract of: **Dialogue with the Parliament of Liechtenstein**: report of the Ad Hoc Committee of the Bureau of the Parliamentary Assembly, draftet by the Chairman, Mr Marcel Glesener (Luxembourg, EPP/CE), on behalf of the Ad Hoc Committee [Doc. 10940 Addendum, 31 May 2006]:

"**VIII. Conclusions**

39. The ad hoc committee considered that this dialogue was a positive experience which could be a useful precedent for other appropriate cases. At the same time, it was important to avoid giving the impression that double standards were being applied, one for the new democracies of Central and Easter Europe and another for older, established democracies of Western Europe. Possible problems in member States of Western Europe should not be seen as "luxury problems" when compared to deficiencies in the States of Central and Eastern Europe.

40. As a result of the dialogue, taking into account the evidence presented or known to them on the constitutional and political practices in Liechtenstein since the reform of the 1921 Constitution on 14 August 2003, the ad hoc committee was able to conclude the following:

- there was a change in the balance of power between the Prince and the People (seen collectively as encompassing the government, parliament, the media and citizens) with the former having increased his powers;

- the trend of constitutional monarchies in member States of the Council of Europe was to reduce the political powers of the constitutional monarch and to increase the powers of the representatives elected by the people; the evolution in Liechtenstein due to the constitutional changes in 2003 was contrary to this trend;

- as only two years had elapsed since the constitutional changes had been enacted in Liechtenstein, it was too early to make a definitive judgment whether the trend described above contravened the fundamental norms of the Council of Europe.

41. Taking into account its mandate and the situation described above, the ad hoc committee was unable to agree on a unanimous proposal to be submitted to the Bureau. It considered that it falls to the Bureau and the Assembly to decide whether it is opportune to continue the dialogue, possibly on the basis of an enlarged mandate."

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

LITHUANIA

CoE member State since **14 May 1993**
Number of CoE Conventions ratified (as of 1 March 2007): **85 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **6**

I. PLURALISTIC DEMOCRACY[37]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **2004**
Next presidential election: **2009**
Last general elections: **October 2004**
Next general elections: **2008**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2002**
Next municipal elections: **2007**

European Charter on Local Self-Government ratified on **22 June 1999**

Last **Congress of Local and Regional Authorities** monitoring report: Mai 2001 [CG (8) 4 Part II]: **Recommendation 87 (2001)** on local and regional democracy in Lithuania adopted on 30 May 2001

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Lithuania: Situation in 2006
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Lithuania as well as their operation, including their competencies and financial and human resources.

Extract:

"[…]

12. ONGOING AND PLANNED REFORMS

Future administrative territorial division

Reform of the administrative territorial structure is currently under consideration. The purpose of this reform is to increase the number of municipalities from 60 to 80-90 in order to strengthen the relationship between the residents and their elective representatives at local level. So far the number of municipalities is 60.

The main reform of Local self-government was made after the decision of the Lithuanian Constitutional Court in February 2003. The Constitutional Court stated that the existing system of local self government – the municipal council as a deliberative body and the municipal board formed from councillors as the executive body – contradicts the Constitution. So the Law of Local self-government was changed and a new system was established. According to the Law, the municipal council is a deliberative body and the director of municipal administration a person appointed by the municipal council according to the Law of the Civil service, is the executive body. Some functions of the mayor were also revised.

[37] The non-governmental organisation Freedom House gives to Lithuania a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

Government has approved plans for administrative territorial units. According to these plans new municipalities can be established under further conditions: civil initiative, the will of political authority, appropriate funds assigned from the state, municipalities' ability to arrange administrative governing and its financial abilities."

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Opinion on the draft law on amendments to the law on national minorities in Lithuania** [**CDL-AD(2003)013**]:

"Conclusions

The Commission welcomes the initiative to amend the Law on National Minorities presently in force. However, limiting itself to providing only the legal framework, the submitted Draft Law seems neither to be an appropriate alternative to the existing legislation nor a satisfactory means of implementation of the Framework Convention into the Lithuanian domestic legal system. Moreover, the adoption of new framework legislation will further delay the implementation of the Framework Convention while in principle full respect of the obligations embodied in, or resulting from, a treaty should be guaranteed at the moment of its ratification.

In order to ensure the effective protection of the rights of national minorities in Lithuania, the legislation on national minorities should be more specific in relation to the scope of the minority rights embodied and the guarantees of their effective exercise. It should contain the essential elements of the rights whose regulation is delegated to special laws, in particular the right of the persons belonging to the national minorities to receive information in their mother tongue in their relations with administrative authorities, and the right to receive instruction in minority languages in public schools. There is also a strong need to improve the coherence between different constitutional and legal provisions that regulate citizenship, education, and participation in public life.

The Venice Commission remains at the disposal of the Lithuanian authorities for further co-operation in the field of this Draft Law."

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

"The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.

The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Lithuania in 2004 was **64,056,360 euros**;
- the **number of Professional judges on a full-time basis** in Lithuania in 2004 was **693**, that means 20.2 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Lithuania was **850**, that means 24.8 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[38]

Civil law convention on corruption signed on **18 April 2002**, ratified on **17 January 2003**
Criminal law Convention on corruption signed on **27 January 1999**, ratified on **8 March 2002**, **Additional Protocol neither signed nor ratified**.

Extract of: **Second Evaluation Round: evaluation report on Lithuania adopted by GRECO at its 23rd Plenary Meeting** [Strasbourg, 17-20 May 2005, Greco Eval II Rep(2004)12]:

1. Conclusions

"Lithuania has an adequate legal framework to deal with the seizure and confiscation of proceeds of corruption. To make full use of the existing provisions, the resources of the Special Investigation Service, which is the main authority entrusted with the investigation of corruption offences, should be reinforced. With regard to public administration, a good legal framework has been established, and the system appears to be generally transparent. The foreseen adoption of the Code of Conduct for Public Officials will be a further important step in this direction which Lithuania should take as soon as possible. The national anti-corruption strategy is well-developed. However, the sector and local levels need to be closely monitored in order to provide consistency with the national level. The recent introduction of corporate criminal liability in Lithuania is commendable. However, further implementation of this legislation requires extensive awareness and the provision of appropriate information to the relevant authorities. Moreover, professionals such as accountants and auditors should become more actively involved in detecting and revealing corruption offences in particular by complying with their reporting obligation on money laundering.

In the light of the foregoing, GRECO addresses the following **recommendations** to Lithuania:

i. to consider providing the Special Investigation Service with adequate resources and enhance its in-house specialised knowledge with a view to enabling the Service to trace instrumentalities and proceeds of crime, particularly with regard to legal persons, in a more effective manner (paragraph 24);

ii. to enhance, through guidelines and training, the practical side of management of temporarily seized property (such as enterprises or company shares) among responsible authorities (paragraph 25);

iii. to provide for an efficient monitoring of the anti-corruption programmes adopted at sector and local levels (paragraph 57);

iv. to consider introducing the regular rotation of staff, or similar measures, in such areas which entail a particular risk of corruption (paragraph 60);

[38] Lithuania is in 46th position with a score of 4,8 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

v. to progressively eliminate the practice of accepting gratuities in the health and social care sectors (paragraph 61);

vi. to introduce, pending the adoption of the Code of Conduct, regular in-service training on public ethics for public officials at all levels (paragraph 62);

vii. to establish liability of legal persons for the offence of trading in influence, in accordance with the Criminal Law Convention on Corruption (paragraph 81);

viii. to ensure that investigating, prosecuting and adjudicating authorities have the necessary training in order to fully apply the provisions on corporate criminal liability. Moreover, appropriate information on these matters should also be provided to the tax authorities (paragraphs 83).

Moreover, GRECO invites the Lithuanian authorities to take account of the **observations** (paragraphs 28 and 85) in the analytical part of this report.

Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Lithuanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2006."

2. Observations

"[…]
28. The GET noted that, although the existing legislation on confiscation and seizure seems to be generally satisfactory, it was difficult to ascertain to what extent perpetrators of corruption offences, including legal persons, are in fact deprived of the illicit benefits secured, due to the lack of appropriate statistics. The GET was only provided with general figures in relation to all crimes for the years 2001 and 2002, whereas no statistics were available in respect of confiscation of proceeds of corruption offences. Furthermore, statistics were also lacking with regard to the sanctions for failure to notify cases of corruption or laundering by institutions which are obliged to do so by law. In view of the above, *the GET observes that statistics should be collected, and properly analysed, concerning provisional measures and subsequent confiscation orders in cases of corruption*.

85. With regard to the role of various professionals in combating corruption, the GET was concerned that auditors do not appear to receive any particular training in identifying corruption nor have they ever reported suspicions of corruption to the Police or to the SIS. Even with regard to the duty to report suspicions of money laundering, auditors seem to have not yet come to terms with their obligation nor have they put in place the necessary procedures to report to the FCIS as required by law. Bearing in mind that the anti-money laundering legislation imposes an obligation to report suspicions of money laundering to the FCIS, as well as realising that there was a lack of understanding and the need of training for reporting corruption as a predicate offence, *the GET observes that the Lithuanian authorities could usefully explore, in dialogue with the professional body of the auditors, what, if any, measures could be taken to improve the situation in relation to reports of suspicions of corruption as a predicate offence to money laundering to the competent authorities*. […]"

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **20 June 1995**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) neither signed nor ratified

Third round detailed Assessment Report on Lithuania: Anti-Money Laundering and Combating the Financing of Terrorism: Summary [adopted by MONEYVAL at its 21st Plenary Meeting, Strasbourg, 28-30 November 2006, MONEYVAL(2006)12Summ]

III. PROTECTION OF HUMAN RIGHTS[39]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on the Lithuania published in **February 2004** following a visit to the country in **November 2003**

Follow-up visit in **May-June 2006** (report not yet public)

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Lithuania from 23 to 28 November 2003, for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2004)6]**:**

> "Final comments and recommendations
>
> Lithuania has achieved significant success these last ten years in the promotion and respect of human rights. As a result, it can be said that fundamental rights and liberties are widely respected today. Having successfully taken up the challenge of consolidating democratic institutions and making the transition to a market economy, the country faces now the challenge of joining the European Union which will bring major and economic and social changes. In order to assist and encourage Lithuania in its task, and in accordance with Article 8 of Resolution (99) 50, the Commissioner makes the following recommendations to the Lithuanian authorities:
>
> 1. Pursue its efforts to achieve greater judicial independence and efficiency by tackling issues such as the length of judicial proceedings and establishing a performance evaluation system and regular training for judges;
>
> 2. Provide judges and courts with the necessary human resources to carry out their work. Funds should be allocated for the recruitment of sufficient court assistants as well as filling out the remaining vacancies for judges;
>
> 3. Create, as a matter of urgency and necessity, special courts or specialized judges to deal with complex and difficult issues such as domestic violence;
>
> 4. Continue efforts to improve living conditions in prisons. The renewal of pre-trial detention facilities is urgent and should be given priority;
>
> 5. Examine alternatives punishing measures to imprisonment. Life imprisonment sentences should be periodically reviewed. Additional efforts should be also be made to inform the inmates of the possibilities they have for alternative sentences;
>
> 6. Take appropriate measures to ensure that no exceptions are made to the principle of *non refoulement* with which Lithuania already complies. Develop alternatives to the detention of asylum-seekers;
>
> 7. Develop necessary and firm measures against the trafficking in human beings. Criminal prosecution of this practice should focus on the network and not on the victim who should be given assistance especially if he or she provides information that can lead to the detention and prosecution of those involved;

[39] Lithuania is in 27th position with a score of 6.50 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison, Finland, Ireland, Iceland and the Netherlands share the 1st position with a score of 0,50 while North Korea is on the 168th and last position with a score of 109).

8. Draw up a national plan for combating domestic violence. Only a coordinated action between the judiciary and the police can be effective in fighting against this practice. Specialized training for judges and police officers should be considered as a priority. Greater efforts should be made to establish a wider network of reception centres for the victims;

9. Envisage measures to improve the care of the elderly and persons with mental disability, including the development and rehabilitation of appropriate care centres;

10. Review the regulation on dual citizenship once a decision by the Constitutional Court has been adopted;

11. Broaden the existing integration programmes for the Roma community, with a view to improve the access to employment, housing, health and education;

12. Accelerate the process of restitution of private property to individuals and religious communities;

13. Take appropriate measures, in particular implementing existing legislation, to ensure the protection of personal and private data as well as regulating the use of information in the case of public persons. Also, it is of the utmost importance to develop legal education and explain to people the content of the right to privacy and ways of protecting it."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **20 June 1995**

No reservation, no declaration

Protocol No. 6 ratified on **8 July 1999**
Protocol No. 12 **neither signed nor ratified**
Protocol No. 13 ratified on **29 January 2004**
Protocol No. 14 ratified on **1 July 2005**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **5** concerning Lithuania of which **3** gave rise to a finding of at least one violation and 1 that gave rise to a finding of no violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **7** concerning Lithuania of which **6** gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **266** concerned Lithuania.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **464** concerned Lithuania.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention, **additional protocols 1 and 2** ratified on **26 November 1998**

Publication of the last report: **February 2006**
Last country visit: **February 2004**

Press release of 23 February 2006:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its visit to Lithuania in February 2004, together with the response of the Lithuanian Government. These documents have been made public at the request of the Lithuanian authorities.

During the 2004 visit, the CPT followed up a number of issues examined during its first visit to to the country in 2000. Particular attention was paid to the treatment of persons detained by the police and the legal safeguards provided to such persons, as well as to the conditions of detention in prisons and police establishments. For the first time in Lithuania, the Committee visited a juvenile prison and a psychiatric hospital.

The CPT's report on its 2004 visit and the response of the Lithuanian authorities are available on the Committee's web site: http://www.cpt.coe.int"

Next country visit in: date unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **23 March 2000**, entered into force on **1 July 2000**

No reservation, no declaration

Last opinion by the Advisory Committee adopted in **February 2003** [ACFC/INF/OP/I(2003)008]:

"Concluding remarks:

107. The Advisory Committee believes that the following concluding remarks reflect the main substance of this opinion and could thus serve as a basis for the relevant conclusions and recommendations which will be adopted by the Committee of Ministers.

108. The Advisory Committee welcomes the open and flexible approach chosen in the past by Lithuania as regards the personal scope of application of the Framework Convention. The Advisory Committee considers that Lithuania has made commendable efforts for the protection of national minorities including in the legislative field. These efforts have allowed for the preservation and development of the culture and identity of national minorities.

109. At the same time, the Advisory Committee notes certain shortcomings both in legislation and in practice, in such fields as education, use of minority languages, participation in public affairs, and intercultural dialogue. Particular attention should be paid to the discriminatory effect, towards persons belonging to national minorities, of the provisions relating to dual citizenship in the new law on citizenship.

110. The Advisory Committee notes with concern that the ongoing legislative reform could lead to the reduction of certain acquired rights and freedoms of persons belonging to national minorities. The Advisory Committee is of the opinion that, whatever the field, the authorities should make sure that these changes do not lead to a lower level of protection than that already enjoyed by persons belonging to national minorities. Also, in view of the lack of coherence observed between the legal provisions in force and between the legislative proposals concerned, it is essential to ensure that the abovementioned revisions lead to the establishment of a coherent legal framework for the protection of national minorities. In this respect, further efforts are needed to remedy the legal uncertainty noted as regards the use of minority languages in relations between persons belonging to national minorities and the administrative authorities, and as regards local names, street names and other topographical information.

111. In the field of education, it is essential to ensure that the changes in legislation currently in progress provide a clear and effective legal framework with respect to the instruction of and instruction in minority languages. Given the gradual decline in the number of schools or classes providing such teaching, the authorities should ensure that the new legislation provides clear criteria in this respect, in particular as concerns the number of pupils required, and the authorities competent to decide on the opening, maintaining or closing of such classes or schools.

112. Despite recent initiatives by the authorities, certain Roma continue to be confronted with serious problems, including those of a socio-economic nature. Further efforts are essential to eliminate such difficulties."

Last Resolution by the CM on the implementation of the Framework Convention **ResCMN(2003)11**

Last State report received: 3 November 2006 [ACFC/SR/II(2006)007]

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention neither signed nor ratified

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Lithuania was adopted on 25 June 2005 and made public on **21 February 2006**

Extract of document **CRI(2006)2:**

"Executive summary:

Since the publication of ECRI's second report on Lithuania on 15 April 2003, progress has been made in a number of the fields highlighted in that report. The legal framework against racial discrimination has been strengthened by the adoption of the Law on Equal Opportunities, which also extended the mandate of the Equal Opportunity Ombudsman to further grounds than gender, including race, ethnic origin and religion. Some measures have been taken to further national minorities' enjoyment of their right to mother tongue education. Projects aimed at the integration of national minorities, and particularly Roma, in the labour market are being initiated. Specific action plans, which had already been adopted at the time of ECRI's second report to improve the integration of national minorities and, in particular, the Roma population, are being developed further.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. The provisions in force to counter racist expression, including incitement to racial hatred, which has notably targeted the Jewish, Roma and Chechen communities, have not been adequately applied. In spite of some initiatives taken, the members of the Roma population of Lithuania continue to face disadvantage, prejudice and discrimination across a wide range of areas and still need to be thoroughly involved in decision-making processes that concern them. Asylum legislation and practice has undergone an important reform which, in spite of positive elements introduced, has diminished refugee protection in several areas. Instances of antisemitism continue to be a cause of concern to ECRI in Lithuania. The contribution made by some media to creating an atmosphere of hostility towards members of minority groups is also noted in the report. The lack of awareness within society of discrimination and its manifestations is reflected in a general lack of support for, or hostility to the adoption of positive measures for disadvantaged groups.

In this report, ECRI recommends that the Lithuanian authorities take further action in a number of areas. As concerns legislation, these areas include; ratification of Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination; the need to adequately implement existing legislation against racist expression, including incitement to racial hatred; and the need to fine-tune criminal legislation

against racially motivated crime. ECRI also recommends that the Lithuanian authorities further develop, in close co-operation with the Roma communities, their integration strategies targeting these communities and that they adequately fund and implement these strategies. ECRI recommends that the Lithuanian authorities ensure that the rights of asylum seekers to seek and obtain protection is not jeopardised by restrictive legislation or practice. It also recommends that the Lithuanian authorities monitor closely and address all instances of antisemitism. ECRI furthermore recommends that the Lithuanian authorities strengthen their efforts to raise the awareness among Lithuanian society of discrimination and of the need to tackle it through equal opportunities policies."

G. SOCIAL RIGHTS

European Social Charter of 1961 neither signed nor ratified

European social Charter (revised) signed on **8 September 1997**, ratified on **29 June 2001**, entered into force on **1 August 2001**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**

Between 2003 and 2005, Lithuania submitted 3 reports on the application of the Revised Charter. The 4th report on non hard core provisions of the Revised Charter was due by 31 March 2006.

The 5th report will concern the provisions related to the theme 'Employment, Training and Equal opportunities' (Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter). The 5th report should be submitted before 31 October 2007.

Lithuania's record with respect to application of the Charter is the following as of 1 September 2006:

Examples of progress achieved or under way

Children
► *Article 16 – social, legal and economic protection of the family*
Extension of the number of child allowance beneficiaries (Child Allowances Act, entry into force 1 July 2004)

Cases of non-compliance

Health
► *Article 8§1 – maternity leave*
There is no compulsory period of 6 weeks post-natal maternity leave.

Non-discrimination
► *Article 1§2 – non-discrimination in employment*
The employment rights of persons who have in the past been employed in the security services of the former Soviet Union are restricted beyond the scope of Article G.
► *Article 12§4 – equal treatment in social security matters*
1. Entitlement to certain social security benefits, contributory as well as noncontributory, is subjected to a *de facto* length of residence requirement.

2. Retention of certain accrued social security benefits is not ensured for persons who move to a state party not covered by Community regulations or bound by agreement with Lithuania.
► *Article 13§1 – adequate assistance for every person in need*
The grant of social assistance to nationals of other States party to the Charter is subject to an excessive condition of residence.
► *Article 13§3 – prevention, abolition or alleviation of need*
Existence of an excessive length of residence requirement for entitlement to social services by non nationals of other States Parties.
► *Article 14§1 – provision or promotion of social welfare services*
An excessive length of residence is required for entitlement to social services.
► *Article 16 – social, legal and economic protection of the family*
Equal treatment of non nationals of other States Parties in the payment of family benefits is not ensured because of a length of resident requirement.
► *Article 19§7 and 19§10 – equality regarding legal proceedings*
Not all migrant workers are secured treatment not less favourable than that of nationals in respect of legal proceedings (eligibility to receive legal aid).

Children
► *Article 17 – the right of children and young persons to social, legal and economic protection*
Corporal punishment in the home is not prohibited.

Social Protection
► *Article 12§1 – existence of a system of social security*
The level of social benefit for the elderly and the unemployment benefit is inadequate.
► *Article 13§1 – adequate assistance for every person in need*
The level of social assistance benefit paid to a living alone person not yet of retirement age is manifestly inadequate.

Employment
► *Article 5 – right to organise*
The requirement of 30 members to form a trade union is excessive and undermines the freedom to organise.
► *Article 6§4 – the right to collective bargaining (strikes and lock-outs)*
1. The right of trade unions to initiate collective action is unduly restricted by requiring that two-third's of an undertaking's employees vote in favour of a strike.
2. The prohibition of strikes in electricity, district heating and gas supply enterprises goes beyond the scope of Article G.
► *Article 8§2 – protection against dismissal during maternity leave*
National law did not, for at least part of the reference period (2001-2002), ensure that adequate damages were payable to a woman dismissed in violation of this provision.
► *Article 8§5 – prohibition of dangerous, unhealthy or arduous work*
Pregnant women, women who have recently given birth and breastfeeding women who were obliged to take leave due to the health and safety risks at work were not remunerated or compensated during this period.
► *Article 27§1 – participation in professional life*
Fathers who are not single are discriminated against with regard to the right to work part-time.
► *Article 29 – right to information and consultation in collective redundancy procedures*
The content of the information provided to workers' representatives in the event of collective redundancies is too restrictive"

H. PARLIAMENTARY ASSEMBLY

Recommendation 1339 (1997) on the obligations and commitments of Lithuania as a member state, adopted by the Assembly on 22 September 1997 (see Doc. 7896, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: Mr Gross and Mr Mota Amaral) and closing the **monitoring procedure**.

Post-monitoring Dialogue with Lithuania closed in 2002 (see document: **Lithuania: Post-monitoring dialogue: Memorandum approved by the Monitoring Committee** [AS/Mon(2002)13])

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

LUXEMBOURG

CoE member State since **5 May 1949**
Number of CoE Conventions ratified (as of 1 March 2007): **123 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **45**

I. PLURALISTIC DEMOCRACY[40]

A. FREE AND FAIR ELECTIONS

System of government: **constitutional monarchy**
Last general elections: **June 2004**
Next general elections: **2009**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **2005**
Next municipal elections: **2011**

European Charter on Local Self-Government ratified on **15 May 1987**

Last **Congress of Local and Regional Authorities** monitoring report: April 2005 [CPL (12) 6 Part II], **Recommendation 172 (2005)** on local democracy in Luxembourg adopted on 2 June 2005

Extract of **Recommendation 172 (2005)**:

> "13. Concerning the general situation of local democracy in Luxembourg, the Congress:
>
> *a.* recalls that:
>
> i. Luxembourg's institutions generally comply with the requirements of the European Charter of Local Self-Government;
>
> ii. a number of technical and social developments have had the effect of intensifying centralisation *de facto*, making it necessary to energise communal management;
>
> *b.* recommends that:
>
> i. a series of measures be taken to provide municipalities with a more suitable framework for reinforcing their management capabilities and extending their general jurisdiction;
>
> ii. to achieve this, priority be given to re-thinking the organisation of the inter-communal level, with the emphasis on a new form of intensified inter-communal co-operation at a level which might correspond to that of the six spatial planning regions;
>
> iii. this new system embrace a sufficiently dynamic combination of responsibilities to ensure the availability of highly qualified staff, and the reform of local finances take account of the creation of this inter-communal structure, channelling resources directly to this level."

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Luxembourg: Situation in 1997:

[40] The non-governmental organisation Freedom House gives to Luxembourg a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Luxembourg as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

Opinion on the draft law Nr 4832 on the Establishment of an Ombudsman in Luxembourg, endorsed by the Venice Commission at its 52nd plenary session [Venice, 18-19 October 2002, CDL-AD(2002)022 (French only)]

Opinion on the draft law of Luxembourg on the protection of persons in respect of the processing of personal data, endorsed by the Venice Commission at its 51st plenary session [Venice, 5-6 July 2002, CDL-AD(2002)019]

Opinion on the draft law of Luxembourg on freedom of expression in the media endorsed by the Venice Commission at its 51st plenary session [Venice, 5-6 July 2002, CDL-AD(2002)018]

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Luxembourg in 2004 was **48,593,995 euros**;
- the **number of Professional judges on a full-time basis** in Luxembourg in 2004 was **162**, that means 35.6 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Luxembourg was **39**, that means 8.6 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[41]

Civil law convention on corruption signed on **4 November 1999**
Criminal law Convention on corruption signed on **27 January 1999**, ratified on **13 July 2005**, **Additional Protocol** signed on **11 June 2003**, ratified on **13 July 2005**

Extract of: **Second Evaluation Round: evaluation report on Luxembourg adopted by GRECO at its 18th Plenary Meeting** [Strasbourg, 10-14 May 2004, Greco Eval II Rep(2003)5]:

1. Conclusions

"As a whole, Luxembourg is considered to have an effective and reputable public service. Corruption is perceived as a marginal problem. However, it is an insidious phenomenon, with no clearly identified victims. Lack of interest or failure to comply with certain fundamental rules may make government and its officials more vulnerable, thus trivialising the problem and making it quasi-normal and invisible.

A series of initiatives proposed in this report or currently being drawn up by the relevant Luxembourg authorities would help to compensate for the apparent absence of a genuine penal policy focusing on the proceeds of crime. Genuine confiscation of the proceeds and instruments of crime or of any assets of equivalent value would make an effective contribution to preventing and combating corruption.

GRECO urges the introduction of a proper system of liability for legal persons, accompanied by dissuasive penalties, which would permit the confiscation of their criminally acquired assets. The tax authorities, auditors and accountants have a fundamental role to play in reporting accounting offences and corruption to the police and other enforcement agencies.

In view of the above, GRECO addresses the following **recommendations** to Luxembourg:

i. that the law be changed to permit, where appropriate, the confiscation of assets of an equivalent value to the proceeds of any corruption offence, including private corruption, and that this be encouraged in judicial practice;

ii. that the law be changed to permit, where appropriate, the seizure of assets of an equivalent value to the proceeds of corruption and that this be encouraged in judicial practice;

iii. that appropriate training programmes be established for the relevant authorities on the identification, seizure and confiscation of the instruments and proceeds of corruption or of assets of equivalent value;

iv. to consider establishing an appropriate balance in the burden of proof, in connection with a conviction, to assist the court in identifying corruption proceeds liable to confiscation in suitable cases;

v. that explicit references to the risk of corruption be added in an appropriate manner to the civil service statute and that codes of conduct concerning the risks of corruption be introduced, at least in potentially vulnerable areas of government;

vi. that training be extended to all established public officials and other public employees, including specific training on the risks of corruption;

[41] Luxembourg is in 11th position with a score of 8.6 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

vii. that conflicts of interest be subject to stricter regulation, by limiting or, where appropriate, completely withdrawing the right to be engaged in an ancillary occupation, and possibly by organising the rotation of staff who are most exposed to the risk of corruption; That there should also be clearer regulation of gifts to officials, whose statute should draw particular attention to the risks they incur in accepting gifts and the relevant criminal sanctions, and finally regulate, in order to prohibit, "pantouflage" (i.e. the improper movement of public officials to the private sector);

viii. that the rules governing the transparency of administrative activities be extended, involving in particular, guaranteed access to public documents, and that responsibility for monitoring compliance with these rules be assigned to an appropriate authority;

ix. to provide public officials with information concerning the implications of Article 23 of the Code of Criminal Investigation, which would assist the fight against corruption, and the consequences in cases of non-compliance;

x. to extend the range of public institutions that can be audited by the Court of Auditors;

xi. the expansion of the role of the existing administrative inspection services;

xii. that current legislative developments be accompanied by guidelines for accountants and auditors on how to identify signs of corruption and its proceeds as part of their professional activities and to report their findings;

xiii. to introduce an adequate system of liability of legal persons for acts of corruption, with adequate sanctions or measures for the associated offences.

GRECO also invites the Luxembourg authorities to take account of the experts' **observations** in the analytical parts of this report.

Finally, in accordance with Rule 30.2 of its Rules of Procedure GRECO invites the Luxembourg authorities to report back to it not later than 30 November 2005 on its implementation of the above recommendations."

2. Observations

"[…]
21. Under the special arrangements in the third paragraph of Article 32.1 of the Criminal Code, confiscation of the object or directly identifiable product of laundering or of any pecuniary benefit arising from such an offence may be ordered even in the event of acquittal, exemption from sentence, lapse of proceedings or expiry of the time limit for prosecution. *The GET observed that steps should be taken to ensure that any confiscation ordered in the event of acquittal, exemption from sentence, lapse of proceedings or expiry of the time limit for prosecution meets the requirements of Article 6.2 of the ECHR and the case law of the European Court of Human Rights.*

45. Incompatibilities are covered by Articles 14 to 17 of the civil service statute. Article 17 makes the status of civil servant incompatible with that of Member of Parliament, which means that it *is* compatible with all other elective offices. Yet there may be significant risks of conflict of interest when a public official's geographical area of responsibility overlaps with the local authority for which he or she is an elected member. The size of the country undoubtedly does not lend itself to the introduction of geographical incompatibilities and it would not be in the interests of the country itself to deny government employees access to elective office. *However, the GET observes that at the very least the exercise of such functions should be subject to authorisation involving a mandatory examination of the risk of conflict of interests and that checks should be made to establish any additional income received.*

76. The system for auditing the accounts of non-profit making companies and associations appears to resemble that in other European countries. Company accounts are filed with the register of commerce and published in the relevant official journal. However, the recent computerisation of the register should facilitate the rapid transfer of files on insolvent companies to the State Prosecutor. Although in theory the functions of accountant (for drawing up and managing company accounts) and auditor are separate, the same audit company can carry out both, on condition that a certain functional independence is maintained. Moreover, Luxembourg does not impose any compulsory rotation of company auditors. The debate about conflicts of interest between accountants and auditors has been fuelled by a number of major European and international cases. One possible solution to the problem might be for companies to contribute to a joint fund. The fund would then be responsible for appointing and paying company auditors. In this context, *the GET observed that the Luxembourg authorities should consider whether to establish a system for resolving the conflict of interests between auditors and accountants with the companies concerned.*

78. Chamber of Deputies Bill No. 5165, tabled on 16 June 2003, is designed to strengthen the existing anti-laundering armoury and the obligations of those concerned to report suspected offences, including offences of corruption. The new law should implement the pertinent provisions of the Criminal Law Convention on Corruption concerning laundering of the proceeds and instruments of corruption and the equivalent value of these proceeds. The growing sophistication of financial offences, particularly corruption and the laundering of its proceeds, calls for more stringent and more effective checks by those responsible for supervising the financial sector and closer cooperation from those required to exercise all due diligence. In practice, there are many ways of transferring and investing assets inside the country and beyond it, including tax havens. Nor are the instruments of corruption always visible – for example, persons are encouraged to buy shares on the stock exchange whose values are then artificially inflated. Despite the rules in Circular CSSF 01/40, *the GET observed that directives could be drawn up to make the surveillance commission's supervision of the finance and banking sector and the detection of corruption offences more effective.* […]"

Extract of: **Second Evaluation Round: compliance report on Luxembourg adopted by GRECO at its 28th Plenary Meeting** [Strasbourg, 9-12 May 2006, Greco RC-II(2006)7]:

"**Conclusions**:

In view of the above, GRECO concludes that Luxembourg has implemented satisfactorily or satisfactorily dealt with less than one-quarter of the recommendations contained in the Second Round Evaluation Report. Recommendations vi and x have been implemented satisfactorily. Recommendation iv has been dealt with in a satisfactory manner. Recommendations i, ii, iii, v, vii, viii, ix, xii and xiii have been partly implemented and recommendation xi has not been implemented.

GRECO notes a fairly significant shortfall in the implementation of the recommendations contained in the second-round evaluation report. It nonetheless expects the Luxembourg authorities to do everything necessary to bring to completion the numerous legislative initiatives referred to in this respect. It urges the authorities of Luxembourg to speed up the reform process so as to show tangible results in the effective implementation of the recommendations as soon as possible.

GRECO invites the Head of the Luxembourg delegation to submit additional information regarding the implementation of recommendations i, ii, iii, v, vii, viii, ix, xi, xii and xiii by 30 November 2007 at the latest."

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **12 September 2001**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **16 May 2005**

III. PROTECTION OF HUMAN RIGHTS[42]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on the Luxembourg published in **July 2004** following a visit to the country in **February 2004**

Extract of **Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Grand Duchy of Luxembourg, 2-3 February 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2004)11]**:**

"Final comments and recommendations

Luxembourg manifestly has a long tradition of respect for human rights and basic human values, and is constantly seeking to ensure increasingly effective compliance with the fundamental rights of the individual. The exchanges of views which I held during my visit with the most senior Luxembourg officials convinced me that the authorities really would do their utmost to solve the small number of problems with which they are currently faced. In order to shore up their firm determination and assist them in pursuing their aims, and in accordance with Article 8 of Resolution (99) 20, I would recommend the following measures:

1) to accord absolute priority to construction of a special centre for the detention of minors;

2) to determine, at least on an indicative basis, the duration of placement of minors in open or closed centres;

3) to humanise the conditions of solitary confinement in the Schrassig CSEE by providing the minors in question with access to an outdoor area;

4) as far as possible to keep young people who can legitimately be described as "offenders" separate from other minors;

5) to expedite the processing of asylum applications, notably by reinforcing the team responsible for this task;

6) as soon as possible to introduce activities for foreigners detained in prison and provide them with greater access to outdoor areas;

7) to reduce or even abolish the requisite period before foreigners detained in prison can receive visits;

8) to increase the number of wardens in the Luxembourg Prison and provide access to certain specialist posts for non-Luxembourgers;

9) to establish effective supervision of the issuing of cabaret artistes' visas in order to prevent any risk of their being used for such unlawful purposes as trafficking in human beings; and to introduce an appropriate system for protecting witnesses and victims of this criminal activity;

[42] Luxembourg is not listed in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* .

10) to ratify Protocols 12 and 13 to the ECHR and to sign and ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints.

In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly."

Annex to the report:
Comments and observations by the Luxemburg Authorities on the Commissioner for Human Rights' report on his visit to the Grand Duchy of Luxemburg

[…] on each of the recommendations issued at the end of Mr Gil-Robles' report […]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **3 September 1953**

No reservation, no declaration

Protocol No. 6 ratified on **19 February 1985**
Protocol No. 12 ratified on **21 March 2006**
Protocol No. 13 ratified on **21 March 2006**
Protocol No. 14 ratified on **21 March 2006**

Out of a total of 1,105 judgments delivered by the Court in 2005, there is **1** concerning Luxembourg that gave rise to a finding of at least one violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **2** concerning Luxembourg that gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **28** concerned Luxembourg.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **94** concerned Luxembourg.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **6 September 1988**, **additional protocols 1 and 2** ratified on **20 July 1995**

Publication of the last report: **April 2004** (available in French only)
Last country visit: **February 2003**

Press release of 29 April 2004:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published today the report on its periodic visit to Luxembourg in February 2003, together with the Luxembourg Government's response. These documents have been made public with the agreement of the Luxembourg authorities.

The CPT's delegation followed up a certain number of issues already examined during two previous visits, in particular in respect of Luxembourg Prison at Schrassig and the State Socio-Educational Centre for Boys at Dreiborn. In addition, the delegation

examined in detail the situation of foreign nationals deprived of their liberty under aliens legislation.

The CPT's visit report and the Luxembourg authorities' response are available on the Committee's website: www.cpt.coe.int"

Next country visit in: date unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **20 July 1995**, but **not ratified**

"Declaration contained in a letter from the Permanent Representative of Luxembourg, dated 18 July 1995, handed to the Secretary General at the time of signature, on 20 July 1995 - Or. Fr.

The Grand Duchy of Luxembourg understands by "national minority" in the meaning of the Framework Convention, a group of people settled for numerous generations on its territory, having the Luxembourg nationality and having kept distinctive characteristics in an ethnic and linguistic way.

On the basis of this definition, the Grand Duchy of Luxembourg is induced to establish that there is no "national minority" on its territory.
The preceding statement concerns Article(s): -"

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **5 November 1992**, ratified on **22 June 2005**

Last State periodical report submitted on: not available, **due in October 2006**
Last Committee of Experts' evaluation report adopted on: **…**
Last Committee of Ministers' Recommendation adopted on **…**
Last biennial report of the Secretary General to the Parliamentary Assembly: **3 September 2005 [Doc. 10659]**

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Third report on Luxembourg was adopted on 16 December 2005 and made public on **16 May 2006**

Extract of document **CRI(2006)20:**

"Executive summary:

Since the publication of ECRI's second report on Luxembourg on 8 July 2003, progress has been made in a number of areas highlighted in the report. Luxembourg has ratified the European Charter for Regional or Minority Languages. It has also adopted a new law easing the requirements for foreigners' participation in local elections. The establishment of the office of Ombudsman, which is empowered, inter alia, to examine complaints by foreign residents, is also a step forward in the fight against racial discrimination in Luxembourg. Furthermore, the Grand Duchy now has a commission responsible for receiving complaints about the media.

However, a number of recommendations set out in ECRI's second report have not been or have been only partially implemented. Thus, most of the international legal instruments mentioned in the second report, including Protocol No.12 to the European Convention on Human Rights, have not been ratified. Luxembourg is still delaying transposing the European Union directives on equal treatment into its national legislation in spite of a European Court of Justice judgment against it for this omission. Moreover, specialised bodies such as the National Council for Foreigners and the

Consultative Commission on Human Rights still lack the human and material resources they need to fulfil their tasks. Housing conditions for asylum seekers and refugees still leave much to be desired, and the bill on the right of asylum and complementary forms of protection has been strongly criticised by the United Nations High Commissioner for Refugees and by NGOs. It has also been the subject of a formal opposition by the Council of State, on two occasions. ECRI notes that no policy has been introduced to integrate communities from an immigrant background in matters such as employment and housing. It also notes that the Luxembourg Government has still not signed an agreement granting the Muslim religion official recognition.

In this report ECRI recommends that the Luxembourg authorities take additional measures in a number of areas. It recommends that they ratify Protocol No.12 to the European Convention on Human Rights, among other instruments. It also considers that the Luxembourg Government should adopt as soon as possible the bills on nationality and on the asylum application procedure, as well as the bill transposing the European Union directives, by taking account of the criticisms and recommendations made regarding them. ECRI considers it essential to adopt a clear policy for integrating members of immigrant communities in all areas, especially on the labour market, in order to eliminate any discrimination that they suffer. As part of this policy, public awareness measures should be reinforced in order to fight prejudices and stereotypes against Muslims. ECRI calls on the Luxembourg Government to take more account of the opinions of specialised bodies such as the Consultative Commission on Human Rights on issues relating to racism and racial discrimination when it takes initiatives aimed at combating these trends. ECRI moreover believes that the judiciary, the police and the staff of the Luxembourg Detention Centre should be offered basic and on-going training on the issues of racism and racial discrimination."

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **18 October 1961**, ratified on **10 October 1991**, entered into force on **9 November 1991**

European social Charter (revised) signed on **11 February 1998**, but **not ratified**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

"**Reports**
Between 1993 and 2004, Luxembourg submitted 7 reports on the application of the Charter. The 9th report on the hard core provisions of the Charter was due before 30/06/2005 and it was received between 20/09/2005 and 06/06/2006. The next report will concern the provisions accepted by Luxembourg, i.e. those related to the theme Employment, Training and Equal opportunities (Articles 1, 9, 10, 15, 18 of the Charter). It should be submitted before 31/10/2007

The Charter in domestic law
Automatic incorporation into domestic law based on case-law (Conseil d'Etat, 28 July 1951, Pas. lux. t. XV, p. 263).

Luxembourg's record with respect to application of the Charter is the following as of 1 August 2006:

Examples of progress achieved or being achieved

Social Protection
►The minimum age requirement for entitlement to the guaranteed minimum wage has been lowered to 25 years and the condition of residence reduced to 5 years (Act of 29 April 2000). *Article 13§1 – adequate assistance for every person in need*

Employment
► The deductions made to the wages of young workers aged between 15 and 16 have been reviewed (Act of 22 December 2000). *Article 7§5 – working conditions between the age of 15 and 18 (remuneration).*
►It is now forbidden to give a woman notice of dismissal during maternity leave and a woman unlawfully dismissed may now request that her dismissal be annulled and that she be maintained in her job (Act of 7 July 1998). *Article 8§2 – prohibition of dismissal during maternity leave.*

Cases of non-compliance

Non-discrimination (nationality)
► *Article 19§4 – right to equal treatment in trade union matters* Eligibility for election to joint works councils.
► *Articles 19§7 and 19§10 – right to equal treatment in respect of legal proceedings.* Nationals of States that have not ratified the 1954 Hague Convention on Civil Procedure are obliged to lodge a security when applied for by the defendant and agreed to by the court. The same applies to self-employed workers.

Children
►*Article 7§4 – working conditions between the age of 15 and 18 (working time).* Working time for young people under 16 (up to 8 hours per day and 40 hours per week) is excessive.

Health
► *Article 2§4 – right to compensatory time off in dangerous occupations.* There is no system for reducing working time or giving additional paid leave to those employed in dangerous or unhealthy occupations.

Social Protection
► *Article 13§1 – adequate assistance for every person in need.* Eligibility for RMG is subject to a minimum age of 25 and five years' residence, there being no right to social assistance for those not eligible for RMG.

Employment
► *Article 4§2 – right to increased remuneration for overtime.* After the ninth hour of overtime, State officials and employees are not entitled to an increased compulsory rest period or to increased remuneration if the overtime was performed between 6 and 10 p.m. or not during the weekend or public holidays.
► *Article 5 – right to organise* National law does not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality.

Movement of persons
► *Articles 19§6 and 19§10 – right to family reunion*. The Government has not established that all migrant workers who are nationals of Contracting Parties are entitled to family reunion. The same applies to self-employed workers.
Articles 19§8 and 19§10 – right to guarantees in case of expulsion. The grounds for expulsion provided by the amended Act of 28 March 1972 on the entry and stay of foreign nationals, their medical examination and employment go beyond those permitted by the Charter. The same applies to self-employed workers.

The ECSR is unable to assess whether Luxembourg complies with the following provisions:
► *Article 13§4 - specific emergency assistance for non-residents"*

H. PARLIAMENTARY ASSEMBLY

Extract of **Recommendation 1766 (2006)**: **Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe**, adopted by the Assembly on 4 October 2006 (see Doc. 10961, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevičs):

"[…]

2. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed the Framework Convention but have still not ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified it. The Assembly recalls that already in Recommendation 1492 (2001), it called upon the above-mentioned states to sign and/or ratify, as soon as possible, without reservations or declarations, the Framework Convention. It deplores the derisory progress that has been made with regard to ratification since the adoption of its last recommendation in 2003, as only three new ratifications – by the Netherlands, Latvia and Georgia – have been recorded.
[…]"

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

MALTA

CoE member State since **29 April 1965**
Number of CoE Conventions ratified (as of 1 March 2007): **75 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **26**

I. PLURALISTIC DEMOCRACY[43]

A. FREE AND FAIR ELECTIONS

System of government: **parliamentary democracy**
Last presidential election: **April 2004**
Next presidential election: **2009**
Last general elections: **April 2003**
Next general elections: **2008**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **…**
Next municipal elections: **…**

European Charter on Local Self-Government ratified on **6 September 1993**

Last **Congress of Local and Regional Authorities** monitoring report: November 2002 [CPL (9) 7 Part II]: **Recommendation 122 (2002)** on local democracy in Malta adopted on 14 November 2002

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Malta: Situation in 2006
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in Malta as well as their operation, including their competencies and financial and human resources.

Extract:

"[…]

12. REFORMS ENVISAGED OR IN PROGRESS

Great inroads have been registered since the introduction of local government in Malta in 2003. These include the decentralisation of services and devolution of functions (such as the administration of public libraries and public property), the devolution of local enforcement of traffic and environment regulations, and, more recently, the provision of local e-Government services for the benefit of the citizens of the respective localities.

Reforms are envisaged with respect to:

– the Local Enforcement System (in particular with respect to guaranteeing a more effective system based on the rule of law);
– decentralisation and devolution of more responsibilities and functions;
– streamlining of legislation with a view to reducing administrative bureaucracy;
– offering more front office services through Local Councils, including the provision of e-services;
– strengthening the administrative capacity of Local Councils (in particular through the deployment of public agency employees with Local Councils);
– ensuring more efficiency, effectiveness and cost-effectiveness through better monitoring;

[43] The non-governmental organisation Freedom House gives to Malta a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

– training of Local Council members and staff, including information seminars on specific topics related to local government issues and other issues related to the functions and operations of local government;
– local councils election procedures."

II. RULE OF LAW

A. VENICE COMMISSION

No specific opinion on Malta.

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

> "The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.
>
> The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in Malta in 2004 was **9,718,980 euros**;
- the **number of Professional judges on a full-time basis** in Malta in 2004 was **35**, that means 8.7 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in Malta was **6**, that means 1.5 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[44]

Civil law convention on corruption signed on **15 January 2003**, ratified on **31 March 2004**
Criminal law Convention on corruption signed on **20 November 2000**, ratified on **15 May 2003**, **Additional Protocol** signed on **15 May 2003**, **but not ratified**.

Extract of: **Second Evaluation Round: evaluation report on Malta adopted by GRECO at its 24th Plenary Meeting** [Strasbourg, 27 June – 1 July 2005, Greco Eval II Rep(2004)14]:

> **1. Conclusions**
>
> "Malta promotes international and co-ordinated actions to prevent and fight corruption, organised crime and money laundering and takes due account of the links between

[44] Malta is in 28th position with a score of 6.4 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

these crimes. It has taken several initiatives to adapt the legal provisions concerning the seizure and forfeiture of proceeds of crime as well as the criminal and civil liability of legal persons with a view to implementing the Criminal law Convention on Corruption. Minor adaptations are still required. It also adopted, in 1995, a Code of Ethics for Employees of the Public Sector and, subsequently, several other codes of ethics, including for sectors vulnerable to corruption to maintain the existing high ethos of its public officials. That said, the country still lacks a comprehensive anti-corruption strategy and appropriate co-ordination for implementing and monitoring such a strategy in the public sector and in specific areas of law. Further improvements are recommended with respect, for example, to access to official documents, procedures for reporting and processing suspicions of corruption, and abusive migration of public officials to the private sector (pantouflage). Finally, tax authorities, accountants and auditors could also play a more significant role in detecting and reporting corruption.

In view of the above, GRECO addresses the following **recommendations** to Malta:

i. that the law be amended to permit, where appropriate, the full use of interim measures and forfeiture in cases of trading in influence and accounting offences as defined in the Criminal Law Convention on Corruption (paragraph 15);

ii. to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflict of interest (paragraph 35);

iii. to introduce clear rules/guidelines and training for public officials concerning the reporting of suspicions of corruption and to enhance protection for whistle-blowers who report in good faith (paragraph 36);

iv. that existing rules on freedom of information be extended, involving in particular, access to official documents, and that the implementation of the rules be properly monitored (paragraph 37);

v. that assessments be made periodically of the country's anti-corruption measures and their effectiveness within public administration, and that consideration be given to publishing the results of these assessments, together with recommendations to the Government (paragraph 38);

vi. to introduce rules/guidelines and training for the staff of Tax authorities concerning the detection of corruption offences (paragraph 57);

vii. that existing proposals to encourage the reporting of suspicions of money laundering be accompanied by guidelines and that training be offered to private accountants and auditors on how to identify signs of corruption and to report their findings (paragraph 60).

Moreover, GRECO invites the Maltese authorities to take account of the **observations** (paragraphs 17, 33, 34, and 59) in the analytical part of this report.

Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Maltese authorities to present a report on the implementation of the above-mentioned recommendations by 31st December 2006."

2. Observations

"[…]
17. The international co-operation between the FIAU and homologue structures of other countries is said to be satisfactory. In 2004, the FIAU received 21 requests from foreign FIUs and addressed to them 31 requests. The GET was told that the judiciary lacks human and financial resources to deal efficiently with complex economic crime proceedings, interim measures and forfeiture. This situation has also led to problems – mainly related to the length of procedures - in mutual legal assistance and the

processing of rogatory letters. *The GET observes that the possibilities of courts and other relevant authorities to deal with mutual legal assistance should be improved.*

33. The GET noted that there is no single legal definition of the term "public officer or servant", therefore some public officials (in particular those excluded from the definition and the scope of the Public Service Management Code) may not be subject to the same or equivalent rules and preventive measures as other public servants are, for instance, during the recruitment process by the Employment and Training Corporation, for receiving initial and ongoing training on ethical rules and the risks of corruption, on conflicts of interest, reaction to gifts, etc. The GET was told that some categories of officials may also be excluded from the scope of the Code of Ethics for Employees in the Public Sector and/or be subject to their own ethical/professional rules. These rules or sectoral and specific codes are often however less detailed than the Code of Ethics. *The GET observes that in the context of the preparation of the new Public Service Act it should be verified that all public officials are bound by clear and detailed ethical rules*.

34. The GET appreciates that, in a small administration, the scope for pre-planned staff rotation is limited. It welcomes that a system of rotation has been put in place in the Police Force and in the customs administration for some positions exposed to corruption as a tool to reduce risks of corruption in vulnerable sectors. *The GET observes that the Maltese authorities should examine whether this approach could serve as a model for other sectors of public administration (e.g. procurement, purchasing, licensing, document issue, cash transactions), if deemed necessary.*

59. The GET was informed that all companies, under the provisions of the National Audit Office Act and international accounting and auditing standards, are required to appoint a professional auditor. Moreover, concerning sanctions imposed for the intentional use of invoices or other accounting documents containing false or incomplete information, unlawful omission of payments records and the destruction of such documents, there exist certain relevant provisions in the Criminal Code (Art 121B), the Companies Act (Art 307) and the Prevention of Money Laundering Act (Art 3(1)). In relation to the provisions of these texts, the GET found that there is no adequate homogeneity in the correspondence between the gravity of each offence and the sanction provided. *Therefore the GET observes that due consideration should be given to better harmonising the sanctions, measures and other related issues applicable to account offences. […]*"

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **19 November 1999**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **16 May 2005**

Second Round Evaluation Report on Malta: **Summary** [11 April 2003, MONEYVAL(2003)1Summ]

III. PROTECTION OF HUMAN RIGHTS[45]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

First report on Malta published in **February 2004** following a visit to the country in **October 2003** [CommDH(2004)4]

Follow-up report on Malta published in **March 2006** following a visit to the country in **November-December 2005**

[45] Malta is not listed in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* .

Extract of: **Follow-up report on Malta (2003-2005): Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights for the attention of the Committee of Ministers and the Parliamentary Assembly** [CommDH(2006)14]**:**

"Introduction:

The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Malta on 20 and 21 October 2003 at the Maltese Government's invitation. The Commissioner would like to repeat his thanks to the Maltese authorities for their co-operation during the visit and the facilities extended to the members of his Office[1] who conducted a follow-up visit on 30 November and 1 December 2005. The first report[2] raised a number of matters to do with the treatment received by asylum seekers and foreigners in an irregular situation, administration of justice, and the detention conditions of some prisoners at Corradino Prison.

The purpose of the present report is to assess changes which have been made further to the 2003 findings. It follows the order of the recommendations which the Commissioner made in his first report.

The present report is based on material and information supplied by the Maltese authorities concerning developments as regards observance of human rights since the first report, reports by national and international NGOs and international organisations, coverage in the media and the findings and conclusions of the follow-up visit by the delegation from the Commissioner's Office[3].

To preface the report, and in line with my responsibility as Commissioner to support and reinforce human-rights institutions, I should like to salute Parliament's election on 12 December 2005 of a new Ombudsman, Mr Joseph Said Pullicino, who takes over from Mr Joseph Sammut on expiry of the latter's second term of office. In December 2003 the Maltese authorities likewise introduced a Children's Ombudsman, the first holder of the post being Ms Sonia Camillieri.

Situation regarding asylum seekers and irregular migrants at detention centres

Use of detention
[…]
Conclusions

The Commission notes that undoubtedly the Maltese authorities have made progress with regard to detention of asylum seekers and aliens in an irregular situation. Detention is no longer unlimited as it was in 2003 but the current periods of maximum detention still appear excessive and inappropriate. Committee of Ministers Recommendation (2003)5 states clearly that detention measures "should be specific, temporary and non-arbitrary and should be applied for the shortest possible time"[7]. Once again it must be pointed out that asylum seekers and irregular migrants have not committed any offence or been tried by any court, yet their systematic arrest and detention for as long as 18 months resembles a prison sentence in all but name.

The Commissioner further welcomes the special arrangements applied to vulnerable groups but stresses the need for the Maltese authorities to apply them transparently to all persons requiring specific attention.

The Commissioner finally regrets that, contrary to his recommendation, no legislation on the subject has been passed. The new measures now in place are the result of administrative practice albeit confirmed to varying extent by government documents. It is clear that such practices are often introduced after the event, in an attempt to remedy some occurrence. A more proactive policy on the question, particularly enshrined in a piece of legislation, might greatly contribute to clarify the situation.

Judicial review of detention
[…]
Conclusions

The Commissioner notes that a special body has been given competence to rule on the length of aliens' detention and to release them in appropriate cases. The application of this Act in practice will have to be carefully monitored in particular with regard to the protection of the aliens' rights, who are sometimes detained for over a year. The Commissioner recalls that detention of migrants in irregular situation is governed by Article 5(4) of the European Convention on Human Rights, which requires national legal systems to provide them with the possibility of challenging the lawfulness of detention before a "court". Lastly, it should, once again, be pointed out that detention of asylum seekers should be warranted only in special circumstances and last as short as possible.

Detention conditions
[…]
Conclusions

The Commissioner welcomes the investment and progress made, in particular towards relieving the overcrowding. Nonetheless, considerable efforts still need to be made urgently if migrants held at these detention centres are to have decent conditions in buildings protected from the vagaries of the climate and with clean, working sanitary facilities. In spite of the effort made sanitary conditions had scarcely improved, and in some cases had even deteriorated

Medical situation
[…]
Conclusions

The Commissioner invites the Maltese authorities to establish a permanent medical service appropriate to aliens' needs at detention centres and to provide the same kind of psychological care as at Corradino Prison. A solution is urgently needed for migrants suffering from serious or contagious diseases or medical conditions and the present arrangements for vulnerable people should be applied to them.

Establishment of an aliens detention service and management of the centres
[…]
Conclusions

The Commissioner welcomes the establishment of a unified detention service dealing with foreigners, as a genuine step forward in improved provision for foreign detainees. It is now for the Maltese authorities to allow the service to recruit the range of professional
staff necessary for decent detention conditions, in particular social workers as an addition to the necessary security staff. Speedy progress needs making as regards maintenance of discipline and order. Use of handcuffs should be non-systematic.

The Commissioner calls on the Maltese authorities to stop using military methods of conducting searches – use of handcuffs, early-morning searches, etc. – and to respect detainees' human dignity.

Information leaflets about the reasons for detention, its possible duration and foreigners' rights after release would be an undoubted improvement to detainees' conditions. Lastly the Commissioner points out the importance of providing proper activities for foreign detainees, in particular educational and integration-related ones, so that the detainees, some of whom will spend anything from a year to a year and a half in detention, are physically and mentally occupied.

Events of 13 January 2005
[…]
Conclusions

The Commissioner was greatly concerned by the events of January 2005 and thus welcomes publication, albeit late, of Mr Depasquale's extremely detailed report, which is the outcome of taking evidence from 170 witnesses. The Commissioner invites the Maltese authorities to take administrative measures as speedily as possible, prosecute those already identified as responsible for the use of excessive violence and conduct a thorough investigation with the view to persecuting any additional culprits which have not yet been identified. The publication of Mr. Depasquale report should likewise prompt the authorities to improve training and supervision of members of the armed forces dealing with detention of foreigners.

Open centres for refugees and regular and irregular aliens
[…]
Conclusions

The Commissioner congratulates the Maltese authorities on their efforts to accommodate migrants at open centres, and asks them to open further centres modelled on the Marsa one and provide decent conditions and sufficient places for the foreign detainees released from the closed centres. He also invites the authorities to develop the accommodation of these persons in private apartments in order to further their integration into Maltese society.

Asylum procedure

The Refugee Commissioner
[…]
Conclusions

The Commissioner welcomes the increase in the Refugee Commissioner's staff and the positive impact which this has had on processing time for asylum requests. The institution of Refugee Commissioner now seems adequately staffed to cope with forthcoming asylum requests if the number of requests remains at the present level.

The Commissioner has more reservations about the changes to the Refugees Act, notably as regards the risks created by the new admissibility criterion for asylum requests. The Refugee Commissioner and the appeal body will have to apply that criterion in accordance with the principles governing individual treatment of asylum requests and with the rights guaranteed by the Geneva Convention on Refugees and the European Convention on Human Rights. Lastly, if asylum seekers have their applications rejected, the Commissioner asks the Maltese authorities, in actual practice, to keep them on national territory until the decision of the Refugee Appeals Board.

The Refugee Appeals Board
[…]
Conclusions

The Commissioner welcomes the introduction of an effective arrangement that provides free legal aid to asylum seekers challenging an adverse decision of the Refugee Commissioner, and is also pleased to note the improvement regarding statements of reasons for the Board's decisions. However, he cannot but regret that free legal aid is not available to asylum seekers before the Refugee Commissioner.

Access to education for irregular foreign children
[…]
Conclusions

The Commissioner welcomes the efforts by the Maltese authorities to make schooling more readily available to the children, and in general to enable them to integrate better. He also welcomes the work being done for and with unaccompanied minors. It is to be hoped that the

tensions here and there over what is sometimes perceived as preferential treatment for foreign children in the school system can be quickly defused so as to avert any upsurge of racism or xenophobia

Functioning of the justice system
[…]
Conclusions

The Commissioner welcomes the reforms undertaken to improve the effectiveness and speed of Maltese justice. However, such action must not be at the expense of protection of the individual's rights, in particular basic rights. The Commissioner accordingly repeats his recommendation to consider recruiting more judges and magistrates. The independence of the judiciary should be fully guaranteed.

Detention conditions of some prisoners
[…]
Conclusions

The Commissioner regrets that no substantial changes have been made to improve the living and detention conditions of vulnerable prisoners held in the former women's wing. He repeats his suggestion that this small group of prisoners be moved to another part of the prison where detention conditions would be more in line with the recent recommendation on the European Prison Rules[25] so as to allay all suspicion that their harsh conditions are being allowed to continue because of the nature of their offences.

Undertakings on protection of human rights
[…]
Conclusions

The Commissioner welcomes the signature and ratification of the Revised Social Charter and of nearly all of its articles. He urges the Maltese authorities to do likewise regarding the Third Protocol to the European Social Charter providing for a system of collective complaints, which must be seen not just as an international instrument but also as a useful tool for negotiation and dialogue with civil society and trade unions in the country.

Annex I: Comments of the Maltese Authorities
[…]

Annex II: Comments of the Minister for the Family and the Social Solidarity
[…]

Annex III: Comments of the Ombudsman
[…]"

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **23 January 1967**

"Declaration made at the time of signature, on 12 December 1966, and contained in the instrument of ratification, deposited on 23 January 1967 - Or. Engl.

The Government of Malta declares that it interprets paragraph 2 of Article 6 of the Convention in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts.
Period covered: 23/1/1967 -
The preceding statement concerns Article(s): 6

Reservation made at the time of signature, on 12 December 1966, and contained in the instrument of ratification, deposited on 23 January 1967 - Or. Engl.

The Government of Malta, having regard to Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11], and desiring to avoid any uncertainty as regards the application of Article 10 of the Convention, declares that the Constitution of Malta allows such restrictions to be imposed upon public officers with regard to their freedom of expression as are reasonably justifiable in a democratic society. The Code of conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on official premises.
Period covered: 23/1/1967 -
The preceding statement concerns Article(s): 10

Reservation made at the time of signature, on 12 December 1966, and contained in the instrument of ratification, deposited on 23 January 1967 - Or. Engl.

The Government of Malta, having regard to Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11] declares that the principle of lawful defence admitted under sub-paragraph a of paragraph 2 of Article 2 of the Convention shall apply in Malta also to the defence of property to the extent required by the provisions of paragraphs a and b of section 238 of the Criminal Code of Malta, the text whereof, along with the text of the preceding section 237, is as follows:

"237. No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.

238. Cases of actual necessity of lawful defence shall include the following:

a. where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;

b. where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder;

c. where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person."
Period covered: 23/1/1967 -
The preceding statement concerns Article(s): 10"

Protocol No. 6 ratified on **26 March 1991**
Protocol No. 12 **neither signed nor ratified**
Protocol No. 13 ratified on **3 May 2002**
Protocol No. 14 ratified on **4 October 2004**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **2** concerning Malta of which **1** gave rise to a finding of at least one violation and 1 gave rise to a finding of no violation

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **8** concerning Malta which gave rise to a finding of at least one violation.

Out of a total of 35,402 pending case before the Court in 2005, **13** concerned Malta.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **30** concerned Malta.

Resolutions adopted by the Committee of Ministers in 2006: **0**

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **7 March 1988**, **additional protocols 1 and 2** ratified on **4 November 1993**

Publication of the last report: **August 2005**
Last country visit: **June 2005**

Press release of 25 August 2005:

> "The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on the visit carried out to Malta in January 2004, together with the responses of the Maltese Government. These documents have been made public following a decision of the Maltese authorities.
>
> In its report, the CPT examined in depth the treatment of persons deprived of their liberty under the immigration legislation. The Committee made a certain number of recommendations concerning the fundamental safeguards to be offered to such persons and their conditions of detention. It also requested detailed information on several enquiries carried out into allegations of ill-treatment made by immigration detainees vis-à-vis law enforcement agencies.
>
> In their responses, the Maltese authorities mention several measures taken following the CPT's recommendations, mainly relating to conditions of detention and legal safeguards. They also provide information concerning ongoing enquiries.
>
> The CPT's visit report and the Maltese Government's responses are available on the Committee's website: http://www.cpt.coe.int"

Next country visit in: date unknown

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **11 May 1995**, ratified on **10 February 1998**, entered into force on **1 June 1998**

> "**Reservation contained in the instrument of ratification, deposited on 10 February 1998**
>
> The Government of Malta reserves the right not to be bound by the provisions of Article 15 insofar as these entail the right to vote or to stand for election either for the House of Representatives or for Local Councils.
> Period covered: 1/6/1998 -
> The preceding statement concerns Article(s): 15
>
> **Declaration contained in the instrument of ratification, deposited on 10 February 1998**
>
> The Government of Malta declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta. The Government of Malta considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention.
> Period covered: 1/6/1998 -
> The preceding statement concerns Article(s): 24, 25"

Extract of the last opinion by the Advisory Committee adopted in **November 2005** [ACFC/OP/II(2005)006]:

"Concluding remarks

30. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Malta.

Positive developments

31. Malta has taken steps to address the findings of the first Opinion of the Advisory Committee, adopted in November 2000, and the Committee of Ministers' Resolution, adopted in November 2001.
32. The authorities have adopted an inclusive approach in their dialogue with the Advisory Committee. This is particularly important in light of the increasing cultural diversity of Malta's society.
33. Malta's legal framework for combating discrimination has expanded since the first monitoring cycle and various integration efforts have begun.

Issues of concern

34. Malta's legislative and institutional framework for combating discrimination remains incomplete.
35. While discrimination does not appear to be a widespread phenomenon in Malta, isolated incidents of discrimination on ethnic grounds have been reported in areas that are not currently covered by specific anti-discrimination legislation, namely, in the renting of accommodation and in access to places of entertainment.
36. Although efforts are being made to promote a spirit of tolerance and intercultural dialogue among all persons living in Malta, there is still scope for improvement in this area, particularly in view of the arrival of increasing numbers of migrant workers and refugees.

Recommendations
37. In addition to the measures to be taken to implement the detailed recommendations contained in chapters I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:
- Pursue further efforts to expand and consolidate Malta's legal and institutional framework for combating discrimination on ethnic or racial grounds.
- Take further measures to raise awareness about the importance of tolerance and intercultural dialogue, in particular in the fields of education and the media.
- Provide increased support for measures promoting social integration."

Last Resolution by the CM on the implementation of the Framework Convention: **ResCMN(2007)2**

Next State report due: 1 June 2009

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **5 November 1992** but **not ratified**

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the Second report on Malta was adopted on 14 December 2001 and made public on **23 July 2002**

Extract of document **CRI(2002)22:**

> "Executive summary:
>
> Malta has recently started to take measures to address the issue of racism and discrimination through the introduction of new criminal law provisions to combat incitement to racial hatred, the ratification of further relevant international instruments and the putting in place of legislation and structures to deal with asylum seekers and refugees.
>
> Despite a widely-held perception in Malta that problems of racism and discrimination are not a major issue, incidents of discrimination, inter alia in access to public places, as well as prejudices and stereotypes within society, suggest that further steps still need to be taken, both to combat concrete manifestations of discrimination and to raise awareness and combat prejudices among the general public. It is particularly important to combat stereotypes and prejudices since such latent phenomena may rapidly lead to more overt forms of racism and discrimination.
>
> In the following report, ECRI recommends that further action be taken in a number of areas to combat racism, xenophobia and discrimination. These recommendations cover, inter alia, the need to introduce civil and administrative law provisions to combat discrimination in fields such as housing, employment and access to public places, the need to complement the legislation and structures put in place to process asylum requests with a organisational framework of practical assistance for refugees and asylum seekers residing in Malta, and the need to raise awareness in society of the existence of discrimination and prejudice and to provide special training for key sectors dealing with minority groups."

Next visit to the country foreseen in the framework of the preparation of the Third Report on Malta: July 2007

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **26 May 1988**, ratified on **4 October 1988**, entered into force on **3 November 1988**

European social Charter (revised) signed and ratified on **27 July 2005**, entered into force on **1 September 2005**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints neither signed not ratified

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

> "**Reports**
> Between 1990 and 2006 Malta submitted 14 reports on the application of the Charter. .The 14th report on non core provisions of the Charter accepted by Malta was submitted in August 2006.
> The first report on the Revised Charter will concern the provisions related to the theme 'Employment, Training and Equal opportunities' (Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter). The report should be submitted before 31/10/2007.

The Charter in Domestic law
Malta is a dualist state.

Malta's record with respect to application of the Charter is the following as of 1 July 2006:

Examples of progress achieved or being achieved

Health
► The regulations on the medical supervision of young workers apply to all workers in all sectors (1994 Act on the promotion of health and safety at work) *Article 7§9 – working conditions between the age of 15 and 18 (regular medical examination).*
► The right to maternity leave has been extended to part-time employees (1996 regulation), six weeks post natal leave is now compulsory and in general the right to maternity leave has been strengthened (Industrial Relations and Employment Act (cap 452) and Protection of Maternity (Employment) Regulations 2003) *Article 8§1 – right to maternity leave.*
► Prohibition on assigning an employee while she is pregnant, following delivery or while she is breastfeeding, to work which may pose hazards for the course of her pregnancy or her own or the child's physical and mental health (administrative regulation 92/2000) *Article 8§4 – prohibition of the employment of women in certain dangerous types of work.*

Non-discrimination
Sex
► Elimination of gender-based discrimination with regard to the payment of survivor's pension and sickness benefit (changes made with effect from 1 January 1998) *Article 12§1 – right to social security.*
► Elimination of discrimination between spouses in wedlock and with regard to children including replacement of paternal responsibility by parental authority (Act No. XXI of 1993) *Article 16 – rights of the family (legal protection).*
►Protection against discrimination strengthened (Equal Treatment in Employment Regulations L.N. 461 of 2004 were adopted under the Employment and Industrial Relations Act XXII of 2002) *Article 1§2 Prohibition of discrimination in employment.*

Nationality
► Entitlement to the social security benefits provided for in the Social Security Act of 1987 has been extended to include nationals of other Contracting Parties (European Social Charter Order, 1999) *Articles 13 and 16 – right to social assistance and family rights (family benefit).*

Employment
► Under the Police Act as amended in 2002 police officers from the rank of inspector and above may form one professional association, while all police officers of other ranks may form another . *Article 5 – the right to organise.*
► Creation of Malta Council for Economic and Social Development to promote social dialogue in Malta. *Article 6§1 joint consultation.*
► Female employees related to the employer and part-time employees protected against dismissal during maternity leave. (Protection of Maternity (Employment) Regulations 2003) *Article 8§2 – Prohibition of dismissal during maternity leave*

Cases of non-compliance

Health/Education
► *Article 7§3 – prohibition of the employment of children subject to compulsory education*
Children are permitted to work up to 4 hours per day and cannot therefore enjoy the full benefit of their education.
► *Article 1§4 and 15§1 – right of disabled persons to employment and training* People with disabilities are little integrated into mainstream institutions

Social Protection
►*Article 12§1 –right to social security*
The rates of sickness benefits for a single person, of unemployment benefits, including the Special Unemployment Benefit for a single person, and of the invalidity pension and the survivors' pension are manifestly inadequate; and the duration for which unemployment benefit is payable is too short.

Children
► *Article 17§1 – right of children and young persons to social, legal and economic protection*
1. Corporal punishment of children is not prohibited;
2. The age of criminal responsibility is manifestly too low.

Employment
► *Article 2§1 – right to reasonable working time*
Absence of limits on overtime.
► *Article 2§3 – right to annual holiday with pay*
1. Employees can waive their right to annual leave in return for additional pay;
2. Maltese law does not guarantee that workers who fall ill or have an accident during their holiday can take the holiday at another time.
► *Article 2§5 – right to weekly rest*
Employees required to work on their rest day are entitled only to extra pay and not to compensatory rest.
► *Article 4§4 – right to notice of termination of employment*
Certain periods of notice are unacceptably short (1 week for workers with up to one year of service; 2 weeks for workers in their second year of service; 8 weeks for workers with more than 5 years' service).

Non-discrimination
Birth
► *Article 17 – rights of young persons (legal and social protection)*
1. Children born out of wedlock are discriminated against in matters of succession;
2. Inequalities exist between children of a first and second marriage.

The ECSR is unable to assess whether Malta complies with the following provisions:
► *Article 3§2 – right to health and safety at work*
► *Article 4§3 – right to equal pay*
►*Article 6§1-right to joint consultation*
► Article *10§1 – right to access to higher technical and university education*
►*Article 13§3 – prevention, abolition or alleviation of need*
►*Article 16 –right of the family to social protection*"

H. PARLIAMENTARY ASSEMBLY

Resolution 1521 (2006): Mass arrival of irregular migrants on Europe's Southern shores, adopted by the Assembly on 5 October 2006 (see Doc. 11053, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Chope).

Resolution 1379 (2004): Composition of the Bureau of the Assembly, adopted by the Assembly on 21 June 2004 (see Doc. 10185, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Cekuolis).

Resolution 1360 (2004): Contested Credentials of the parliamentary delegations of Ireland and Malta, adopted by the Assembly on 27 January 2004 (see Doc.10051, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Kroupa).

PERIODIC REPORT ON THE HONOURING OF STATUTORY OBLIGATIONS BY

NETHERLANDS

CoE member State since **5 May 1949**
Number of CoE Conventions ratified (as of 1 March 2007): **132 (out of 200)**
Number of CoE Conventions signed (as of 1 March 2007): **22**

I. PLURALISTIC DEMOCRACY[46]

A. FREE AND FAIR ELECTIONS

System of government: **constitutional monarchy**
Last general elections: **November 2006**
Next general elections: **2010**

B. LOCAL AND REGIONAL DEMOCRACY

Last municipal elections: **March 2006**
Next municipal elections: **2010**

European Charter on Local Self-Government ratified on **20 March 1991**

Last **Congress of Local and Regional Authorities** monitoring report: May 2005 [CG(12)16 Partie II], on local and regional democracy in the Netherlands (no resolution nor recommendation).

Extract of CG(12)16 Part II:

> "Conclusion
>
> 1. Context and limits of the present report
>
> For the comprehension of the present report it seems necessary to underline that, on account of its origin, it can not give a complete evaluation of local and regional self-government in the Netherlands. It focuses on current problems which, seen as isolated issues, do not characterise the Dutch culture of self-government in general. On the contrary, the Dutch local administration has developed its own solutions, often interesting and exemplary for other countries. Their description and evaluation have not been the aim of this report, since it is limited to two essential and current problems which, seen isolated, may appear to be phenomena of a crisis that, as a general fact, is not to be stated. Indeed, the problems may be discussed and resolved, improving a well working local and regional administration.
>
> 2. The election of mayors
>
> The statements on the introduction of elected mayors, culminating in long term discussions, may appear as interferences in an old, traditionally legitimated system of royal appointment. It can neither be judged simply undemocratic, nor has it resisted to transformations in direction of an elective process. But it is just this oscillating character and this transformation between Royal appointment and democratic election which shows the necessity of a better political legitimacy and gives the impression of a half step, leaving in secret essential parts of the appointment procedure and reserving the possibility of overruling democratic decisions. For which cases shall that be possible? The limitation and thus the character of exceptions from the democratic procedure are not clear. Therefore the consequence of the system asks for a democratic regulation, either of an election by the council, or by the citizens. Only a

[46] The non-governmental organisation Freedom House gives to Netherlands a score of 1 for political rights as well as for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

solution of this kind would be in accordance with a modern-day local democracy in the sense of Congress Recommendation 113 (2002).

Nevertheless it is incontestable that such a change heavily affects the system of administration, self-government and political culture of the Netherlands. That is why the present report, underlining the consequent character of the change, argues in favour of a prudent and moderate transition.

3. The real estate tax reform

With regard to local finance, the conflicts of interest are obvious and not a special Dutch problem. But the situation of the Netherlands is characterised, on the one hand, by the developed entanglement between the different tiers of government and between the local and regional communities, and on the other hand by a very small tax power of local (and regional) communities. In this situation any decrease of local tax power raises difficult problems. Under the European Charter of Local Self-Government, it is not only the amount of own resources and the freedom to exercise policy discretion of local authorities which is problematic, but the tax power which is at a very low level by European standards, as well. Hence reducing it by abolishing the user's real estate tax on users of dwellings would bring the Netherlands in conflict with obligations of public international law."

Last report by the **Steering Committee on Local and Regional Democracy** (CDLR):
Structure and operation of local and regional democracy: Netherlands: Situation in 1998:
The CDLR comprises representatives of the national ministries responsible for local and regional authorities. This study presents the legal and institutional framework of local and regional authorities in the Netherlands as well as their operation, including their competencies and financial and human resources.

II. RULE OF LAW

A. VENICE COMMISSION

No specific opinion on the Netherlands.

B. FUNCTIONNING OF THE JUDICIARY

On **5 October 2006**, the European Commission for the Efficiency of Justice (CEPEJ) published its report on the evaluation of European judicial systems.

Extract of the press release of 5 October 2006:

"The report, comprising data for 45 European states, provides the Council of Europe with a real snapshot of justice in Europe. This is a unique process in Europe. Collecting and analysing these essential data should enable decision-makers and the judicial community to understand the major trends in judicial organisation, pinpoint the difficulties and help implement reforms to improve the efficiency of justice.

The report gives a comparative description of public spending on the judicial system, the relationship between judicial systems and their users, and the organisation of courts and of judicial staff. The data collected show, for example, that the legal aid system seems very limited in certain member states considering that it is a requirement of the European Court of Human Rights. It is also noted that few member states have definite, accurate data on the duration of judicial proceedings, although failure to observe reasonable time is the principal argument in the cases brought before the Strasbourg Court. The study also shows that there are wide geographical disparities in Europe as regards measures to protect vulnerable persons."

It emerges from this report that:

- the **total budget** allocated to the judiciary system (courts, public prosecution and legal aid) in the Netherlands in 2004 was **1,476,265,000 euros**;
- the **number of Professional judges on a full-time basis** in the Netherlands in 2004 was **2004**, that means 12.3 for 100,000 inhabitants;
- the **number of public prosecutors** in 2004 in the Netherlands was **598**, that means 3.7 for 100,000 inhabitants.

C. THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME[47]

Civil law convention on corruption not signed
Criminal law Convention on corruption signed on **29 June 2000**, ratified on **11 April 2002**, **Additional Protocol** signed on **26 February 2004**, ratified on **16 November 2005**.

Extract of: **Second Evaluation Round: evaluation report on the Netherlands adopted by GRECO at its 25th Plenary Meeting** [Strasbourg, 10-14 October 2005, Greco Eval II Rep(2005)2]:

1. Conclusions

"In general, the system in place in the Netherlands aimed at depriving offenders of the proceeds of corruption is efficient, with a comprehensive legal framework and a set of institutions responsible for dealing with various aspects of the matter. Legislation in this area is supplemented by the new "Directive on Special Confiscation", issued in 2005. Value confiscation is possible and the confiscation of instrumentalities/proceeds found in the possession of a third party is also addressed. Moreover, an efficient system providing for interim measures (search, seizure, mandatory hand-over of documents and records) is also in place. Notwithstanding this generally positive consideration of the regime, the system may still be improved notably by promoting a wider use of the existing seizure and confiscation schemes and by increasing the level of the fine applicable to Article 177a and 178 paragraph 1 of the Criminal Code in order to place these provisions - dealing with some specific cases of corruption - within the overall system of provisional measures, special criminal financial investigation and, subsequently, confiscation.

As regards public administration and corruption, despite the fact that in the Netherlands corruption is not considered to be a major problem, the public authorities remain, however, aware of the potential dangers of corruption and consider that it is important to adopt a continuous pro-active and preventive attitude with regard to integrity in public organisations. A number of government agencies have been adopting initiatives designed to prevent corruption and heighten awareness of the threats it incurs for public administration. These actions are aimed at enhancing integrity standards at all levels of public administration and at furthermore limiting opportunities for misbehaviour/wrongdoing of civil servants. However, further measures are needed in order to establish a set of clear standards for preventing possible conflicts of interest. As far as the issue of legal persons and corruption is concerned, the Dutch legislation on corporate liability appears to meet the standards of the Article 18 of the Criminal Law Convention on Corruption. On the other hand, the existing system of deprivation of rights and of sanctions for legal persons need to be revised.

In view of the above, GRECO addresses the following **recommendations** to the Netherlands:

[47] The Netherlands are in 9th position with a score of 8.7 in the "**2006 Corruption Perceptions Index**" launched by the non-governmental organisation *Transparency International* (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, Finland, Iceland and New Zealand share the top score of 9.6 while Haiti is in 163rd position with the lowest score at 1.8).

i. to take measures to promote the wider use of seizure/confiscation schemes (paragraph 25);

ii. to increase the level of the fine in relation to Articles 177a and 178 paragraph 1 of the Criminal Code from fourth to fifth category in order to place these provisions within the overall system of provisional measures, special criminal financial investigation and, subsequently, confiscation (paragraph 26);

iii. to issue guidelines for use by civil servants when confronted with situations where personal/financial interests or activities may lead to a question of conflict or partiality with regard to the civil sevant's actual duties and responsibilities (paragraph 48);

iv. to make sure that all public organisations adopt their own code of conduct for civil servants (paragraph 49);

v. to ensure that the regime of disqualification from exercising specific professions is effective in practice in respect of persons acting in a leading position in legal persons (paragraph 66);

vi. to consider to increase the penal sanctions for legal persons in order to be sure that the sanctions are effective, proportionate and dissuasive (paragraph 68).

Moreover, GRECO invites the authorities of the Netherlands to take account of the **observation** (paragraph 27) in the analytical part of this report.

Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the authorities of the Netherlands to present a report on the implementation of the above-mentioned recommendations by 30 April 2007."

2. Observations

"[…]
27. As for money laundering, the GET appreciates the effective current reporting system which includes an elaborate and comprehensive set of indicators. Unusual transactions are sent by the reporting entities to the MOT (the Dutch FIU) which processes them (using the assistance of the BLOM - specialised investigative police unit) and sends the suspicious transactions, whenever necessary, to the Police. The GET was informed that the Police (including the BLOM) are overburdened by the large number of reports they receive and are unable to deal effectively and timely with all of them. As regards the BLOM, it is worth remembering that it is vested with a multitude of tasks, including making analyses and developing cases for the Public Prosecution Service and other Police units. The situation could be improved by assigning to the Police units more specialised officers to deal with the reports. Additionally the specific, regular training within the Police should be continued. In view of the above, *the GET observes that more specially trained staff should be assigned to the relevant police units, in particular the BLOM, to process suspicious transaction reports. The staff concerned should also be provided with appropriate training on anti-money laundering procedures and techniques.* […]"

D. THE FIGHT AGAINST MONEY LAUNDERING

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 ratified on **10 May 1993**

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism (revised) signed on **17 November 2005**

GAFI's Presidency had appointed the Netherlands member of the MONEYVAL for a period of 2 years (2005-2006).

III. PROTECTION OF HUMAN RIGHTS[48]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

No report on the Netherlands

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR ratified on **31 August 1954**

"Declaration contained in a letter from the Permanent Representative of the Netherlands, dated 24 December 1985, registered at the Secretariat General on 3 January 1986 - Or. Engl.

The island of Aruba, which is at present still part of the Netherlands Antilles, will obtain internal autonomy as a country within the Kingdom of the Netherlands as of 1 January 1986. Consequently the Kingdom will from then on no longer consist of two countries, namely the Netherlands (the Kingdom in Europe) and the Netherlands Antilles (situated in the Caribbean region), but will consist of three countries, namely the said two countries and the country Aruba.

As the changes being made on 1 January 1986 concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands, and as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding to treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba. These treaties will remain in force for Aruba in its new capacity of country within the Kingdom. Therefore these treaties will as of 1 January 1986, as concerns the Kingdom of the Netherlands, apply to the Netherlands Antilles (without Aruba) and Aruba.

Consequently the treaties referred to in the annex, to which the Kingdom of the Netherlands is a Party and which apply to the Netherlands Antilles, will as of 1 January 1986 as concerns the Kingdom of the Netherlands apply to the Netherlands Antilles and Aruba.

List of Conventions referred to by the Declaration

(.)
Convention for the Protection of Human Rights and Fundamental Freedoms.
(.)

[**Note by the Secretariat**: The current situation of territories for whose international relations the Netherlands are responsible is the following:

1. Application of the Convention:

Netherlands Antilles: since 1 September 1979.
Aruba: since 1 January 1986.

2. Recognition of the right of individual petition before the European Court (and, until the entry into force of Protocol No. 11, the Commission) of Human Rights:

Netherlands Antilles: since 1 September 1979 until further notice.
Aruba: since 1 January 1986 until further notice.]
Period covered: 1/1/1986 -
The preceding statement concerns Article(s): 56"

[48] The Netherlands share the 1st position (together with Finland, Iceland and Ireland) with a score of 0,50 in the "**Worldwide press freedom index 2006**" made by the non-governmental organisation *Reporters Without Borders* (in comparison North Korea is on the 168th and last position with a score of 109).

Protocol No. 6 ratified on **25 April 1986**
Protocol No. 12 ratified on **28 July 2004**
Protocol No. 13 ratified on **10 February 2006**
Protocol No. 14 ratified on **2 February 2006**

Out of a total of 1,105 judgments delivered by the Court in 2005, there are **10** concerning the Netherlands of which **7** gave rise to a finding of at least one violation and 1 gave rise to a finding of no violation.

Out of a total of 1,560 judgments delivered by the Court in 2006, there are **7** concerning the Netherlands of which **6** gave rise to a finding of at least one violation and 1 gave rise to a finding of no violation.

Out of a total of 35,402 pending case before the Court in 2005, **412** concerned the Netherlands.

Out of a total of 89,887 pending case before the Court on 1 January 2007, **544** concerned the Netherlands.

Resolutions adopted by the Committee of Ministers in 2006: **1**
No interim Resolution

Resolutions adopted by the Committee of Ministers in 2007 (as of 1 March 2007): **0**

C. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

Convention ratified on **12 October 1988**, **additional protocols 1 and 2** ratified on **23 February 1995**

Publication of the last report: **November 2002**
Last country visit: **February 2002**

Press release of 15 November 2002:

> "The authorities of the Kingdom of the Netherlands have made public the report of the European Committee for the Prevention of Torture (CPT) on the visits carried out in February 2002 to the Kingdom in Europe and to the Netherlands Antilles.
>
> In the Kingdom in Europe, the CPT received no allegations of ill-treatment by law enforcement officials. Some recommendations were made regarding conditions of detention in police establishments (e.g., concerning access to outdoor exercise for remand prisoners) and fundamental safeguards for persons in police custody (as regards, in particular, access to a lawyer during the initial period of detention for interrogation purposes). The CPT reviewed the situation at the Extra Security Prison (EBI) in Vught; it recommended measures in order to prevent inter-prisoner violence, improve the regime and define more precisely the conditions under which placement in this establishment may be extended. Other recommendations were made as regards the treatment of persons suspected of carrying drugs *in corpore*, held at Bloemendaal Special Detention Facility.
>
> During the visit to the Netherlands Antilles, the CPT reviewed the situation at Bon Futuro Prison in Curacao and visited, for the first time, Pointe Blanche Prison and the Central Police Station in Sint Maarten. The conditions of detention in that police station were unacceptable, and the authorities made a commitment to take measures immediately to remedy this situation. At Bon Futuro Prison, the material conditions had improved, but a severe shortage of staff had numerous negative consequences; in particular inter-prisoner violence and the absence of a regime. Conditions at Pointe Blanche Prison were generally more favourable, despite critically low staffing levels.
>
> The report is available on the CPT's website: http://cpt.coe.int"

Next country visit in: 2007

D. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention signed on **1 February 1995**, ratified on **16 February 2005**, entered into force on **1 June 2005**

> **"Declaration contained in a Note verbale from the Permanent Representation of the Netherlands deposited with the instrument of acceptance, on 16 February 2005**
>
> The Kingdom of the Netherlands will apply the Framework Convention to the Frisians.
> Period covered: 1/6/2005 -
> The preceding statement concerns Article(s): -
>
> **Declaration contained in a Note verbale from thePermanent Representation of the Netherlands deposited with the instrument of acceptance, on 16 February 2005**
>
> The Government of the Netherlands assumes that the protection afforded by Article 10, paragraph 3, does not differ, despite the variations in wording, from that afforded by Article 5, paragraph 2, and Article 6, paragraph 3 (a) and (e), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
> Period covered: 1/6/2005 -
> The preceding statement concerns Article(s): 10
>
> **Declaration contained in the instrument of acceptance deposited on 16 February 2005**
>
> The Kingdom of the Netherlands accepts the Framework Convention for the Kingdom in Europe.
> Period covered: 1/6/2005 -
> The preceding statement concerns Article(s): 30"

No opinion by the Advisory Committee to date

No CM resolution on the implementation of the Framework Convention to date

State report due since: 1 June 2006

E. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention signed on **5 November 1992**, ratified on **2 May 1996**

Last Periodical State report submitted on **26 May 2003** [MIN-LANG/PR(2003)6]
Last Committee of Experts' evaluation report adopted on **17 June 2004** [ECRML(2004)8]
Last Committee of Ministers' Recommendation adopted on **15 December 2004** [RecChL(2004)7]
Last biennial report of the Secretary General to the Parliamentary Assembly: **3 September 2005** [Doc. 10659]

F. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the second report on the Netherlands was adopted on 15 December 2000 and made public on **13 November 2001**

Extract of document **CRI(2001)40:**

> "Executive summary:
>
> Over recent years, the Netherlands has taken positive steps to counter racism and discrimination, including: initiatives aimed at improving the enforcement of existing criminal law provisions in the field of combating racism and discrimination, for example through the establishment of a National Discrimination Expertise Centre within the Office of the Public Prosecutor; action to counter the activities of extremist groups resorting to racially inflammatory propaganda, including through the establishment of a hotline for discrimination-related offences on the Internet; and initiatives to increase representation of ethnic minorities in the police service.
>
> Problems of racism, xenophobia and discrimination persist, however and the labour market is one of the areas where discrimination still appears to be most widespread. The effectiveness of existing criminal law aimed at combating racism and discrimination is limited, notably due to difficulties in the enforcement of the relevant provisions. Of concern is also the general climate concerning asylum seekers and immigrants, sometimes resulting in manifestation of hostility vis-à-vis these groups of persons.
>
> In the following report, ECRI recommends to the Dutch authorities that further action be taken to combat racism, xenophobia, discrimination and intolerance in a number of areas. These recommendations cover, *inter alia*: the need to take further action to improve durable participation of persons of ethnic minority background in the labour market, including in the public sector, *inter alia* through an improved use of existing civil law provisions; and the need to improve the effectiveness of the implementation of the criminal law provisions in force in the field of combating racism and discrimination, notably addressing certain aspects related to enforcement. Emphasis is also put on the need to ensure that the police service reflect, in a durable manner, the multicultural reality of the Dutch society."

Next visit to the country in the framework of the preparation of the third report on the Netherlands: March 2007

G. SOCIAL RIGHTS

European Social Charter of 1961 signed on **18 October 1961**, ratified on **22 April 1980**, entered into force on **22 May 1980**

European social Charter (revised) signed on **23 January 2004**, ratified on **3 May 2006**, entered into force on **1 July 2006**

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed on **23 January 2004**, ratified on **3 May 2006**, entered into force on **1 July 2006**

Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter: in odd years the report concerns the «hard core» provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years half of the other provisions.

Extract of the website of the European Social Charter:

> "**Reports**
> Between 1982 and 2006 the Netherlands submitted 19 reports on the application of the European Social Charter. As regards the Netherlands Antilles 7 reports have been submitted. As regards Aruba 2 reports have been submitted. The 19th report on part of the non-core provisions of the Charter was submitted by the Netherlands (Kingdom in Europe) on 20/07/2006. The next report on Articles 1, 9, 10, 15, 18, 20, 24, 25 of the revised Charter should be submitted before 31/10/2007.

The Charter in domestic law
Automatic incorporation into domestic law.

The situation of the Netherlands's with respect to the application of the Charter is the following as of 1 April 2006:

Examples of progress achieved following conclusions or decisions of the ECSR

The Netherlands (Kingdom in Europe)

Health
► 1. Extension of maternity leave from 12 to 16 weeks (Act of 22 February 1990).
2. Entitlement of women working in private households and in the public health services for less than three days a week to maternity leave and maternity benefit during at least sixteen weeks (2000 Self-employed Persons Disablement Benefits Act - WAZ).

Non-discrimination (Nationality)
► Entitlement of migrant workers to be treated not less favourably than nationals as regards legal proceedings (Law of 8 March 1980).

Non-discrimination (Sex)
► Adoption in 1994 of a general Act on equal treatment covering all forms of discrimination – Extension of the prohibition of discrimination between men and women to categories of persons eligible for pensions, to pension rules and the implementation of pensions schemes (Amendment of the Equal Opportunities Act (WGB), in 1998).
► Prohibition of dismissing an employee because he has brought legal or extra judicial proceedings to obtain equal remuneration (Act on "Reparation" of 1989).
►Entitlement of unmarried parents to exercise joint parental authority – Maintenance of joint parental authority even if the parents separate (Amendments to the Civil Code in 1995 and 1998).

Employment
► Repeal of Article 6 of the Exceptional Decree of 1945 on professional relations pursuant to which a worker had to obtain prior authorisation in order to terminate his employment (Act on Flexibility and Security of 1999).
► Granting of the right to a one month period of notice of dismissal to all workers (including part-time workers and those working from home) regardless of their status (Act on Flexibility and Security entering into force in 1999).
► Abolition of closed shop clause in the print workers collective agreement following collective bargaining negotiations.
►Reduction from 100 to 50 employees of the threshold from which a works council must be created in the workplace (Amendments to the WOR in 1998).
►Authorisation of employees and workers, national insurance and subsidised institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

The Netherlands Antilles and Aruba

Employment
► Prohibition of dismissal during pregnancy or maternity leave, or because of an employee's marriage or membership of a trade union (Amendments to the Civil Code in 2000).

Cases of non-conformity

The Netherlands (Kingdom in Europe)

Health

►*Article 2§4 – right to compensatory time off in dangerous occupations*

There is no provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations.

Non-discrimination (Nationality)

► *Article 10§4 –right to vocational training*

Equal treatment of nationals of non-EU States party to the Charter and the revised Charter lawfully resident or regularly working in the Netherlands with respect to financial assistance for training is not guaranteed.

►*Article 18§3 – right to simplification and liberalisation of formalities related to immigration*

The *R*egulations governing the access of nationals of States party to the Charter or the revised Charter not being members of the European Union or the European Economic Area to the national labour market remain restrictive.

►*Articles 19§6 and 19§10 – right to family reunion*

Welfare support benefits are not counted towards the income level above which family reunion is approved. In this respect the possibility of exercising family reunion for a migrant worker who is receiving social assistance benefits is unduly restrictive.

►*Article 19§8 and 19§10 – guarantees concerning deportation*

A migrant worker's family members who have settled on Dutch territory as a result of family reunion are expelled when the migrant worker is expelled.

Non-discrimination (Sex)

►*Article 1 Additional Protocol – equal opportunities and treatment in employment and occupation*

The notion of remuneration used for the application of the principle of equal pay is not sufficiently large as it excludes benefits or rights linked to a pension scheme.

Children

►*Article 7§3 – prohibition of employment of children subject to compulsory education*

1. Children aged 15, still subject to compulsory education, are allowed to work for more than half of the long summer school holidays.

2. It is possible for children aged 15, still subject to compulsory education, to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school.

► *Article 7§5 – working conditions between the age of 15 and 18 (remuneration)*

Even though an apprentice is entitled to more than two thirds of an adult worker's minimum wage during the last year of his apprenticeship, the allowances are not fair in view of the fact that an 18-years old adult worker's minimum wage is unreasonably low.

► *Article 17 – right of mothers and children to social and economic protection*

Not all forms of violence against children are prohibited.

Employment

►*Article 2§1 – right to reasonable working time.*

The "flexiblity regulations" of the Working Hours Act do not contain sufficient guarantees for collective bargaining in order to protect workers.

►*Article 4§1 – right to a fair remuneration*

The statutory minimum wage of workers aged between 18 and 21 years is too low to be considered fair in the meaning of this provision.

► *Article 4§3 – right to equal pay*

Benefits or rights linked to a pension scheme are excluded from the notion of pay and therefore from the application of the principle of equal treatment.

► *Article 6§4 – Right to collective bargaining (strike and lock-outs)*

The Dutch judges power to determine whether recourse to a strike is premature constitues an impingement on the very substance of the right to strike as this allows

the judge to exercise the trade unions' key prerogatives of deciding whether and when a strike is necessary.

Social Protection
►*Article 12§3– development of the social security system*
Self-employed persons are no longer covered by the sickness, maternity and invalidity branches of the social security.
►*Article 12§4–social security of persons moving between states*
The legislation does not provide for the retention of supplementary benefits when persons move to a state Party not bound by Community regulations or by agreement with the Netherlands.

Netherlands Antilles

Non-discrimination (Sex)
► *Article 1§2 – Non-discrimination in employment*
The legal framework aimed at prohibiting discrimination is insufficient.
►*Article 1 Additional Protocol – equal opportunities and treatment in employment and occupation*
1. The legal measures prohibiting discrimination in employment are inadequate.
2. No particular steps are taken to promote women's access to employment.

Employment
►*Article 1§1 – policy of full employment*
The employment policy efforts are inadequate in the light of the prevailing employment situation.

Social Protection
►*Article 16 – rights of the family*
Family benefits are not paid to a significant number of families.

Aruba

Non-discrimination (Sex)
►*Article 1 Additional Protocol – equal opportunities and treatment in employment and occupation*
1. The legal safeguards against discrimination in employment are inadequate.
2. The legislation excludes women from night work.
3. No particular steps are taken to promote women's access to employment.
► *Article 1§2 – Non-discrimination in employment*
Legislation prohibiting discrimination in employment is inadequate.
► *Article 16 – rights of family*
Eligibility for certain family benefits is subject to a nationality condition.

The Committee is unable to assess whether the situation in the Netherlands is in conformity with the following provisions:

The Netherlands (Kingdom in Europe)

► *Article 7§6 – working conditions between the age of 15 and 18 (time spent on vocational training)*
There is no evidence that the great majority of young workers and apprentices have a right to remuneration for time spent on vocational training with the consent of the employer.
► *Article 12§1– existence of a social security system*
The information provided by the Government does not allow the Committee to assess whether the right to sickness and invalidity benefits is effectivly secured as a social security right for all workers.

Netherlands Antilles

► *Article 1§4 – vocational guidance, training and rehabilitation*
The Netherlands have failed, since the first supervision cycle, to provide evidence of compliance with this provision."

H. PARLIAMENTARY ASSEMBLY

Resolution 1483 (2006): Policy of return for failed asylum seekers in the Netherlands adopted by the Assembly on 26 January 2006 (see Doc. 10741, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Zapfl-Helbling)