Addendum to the report
Doc. 11628 – 6 June 2008

The state of democracy in Europe

The functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure

(Rapporteur: Mr Serhiy HOLOVATY, Ukraine, Alliance of Liberals and Democrats for Europe)

Periodic reports on the honouring of statutory obligations by Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom based on a compilation of conclusions and recommendations issued by Council of Europe monitoring bodies as of 22 May 2008

Websites of relevant Council of Europe institutions and bodies: see www.coe.int

Norway

Council of Europe member state since 5 May 1949
Number of Council of Europe conventions ratified (as of 22 May 2008): 132 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 14

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: constitutional monarchy
Last general elections: 2005
Next general elections: 2009

B. Local and regional democracy

Last municipal elections: 2007
Next municipal elections: 2011

European Charter of Local Self-Government signed and ratified on 26 May 1989, entered into force on 1 September 1989

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: October 2003 (CPR(10)6 Part II.E), Resolution 168 (2003) and Recommendation 141 (2003) on local and regional democracy in Norway, adopted on 26 November 2003

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

Extract of Recommendation 141 (2003):

"The Congress, acting on a proposal from the Chamber of Regions,

…

11. Wishes to draw the attention of the Norwegian governmental and parliamentary authorities to the following considerations and recommendations:

a. in general terms, and bearing in mind the positive examples of many European countries, a regional level of administration having own powers and composed of democratically elected representatives is a fundamental factor in the appropriate application of the principle of subsidiarity and a potential source of solidarity and social and territorial cohesion;

b. regions formed on a historical and geographically rational basis, having genuine and clearly defined powers, are an effective means of governance making it possible to satisfy the aspirations of the populations concerned by defending their interests and preserving their identities;

c. bearing in mind the current structure of territorial administration in Norway, and the requirements in terms of public service, administrative efficiency and simplifying the functioning of the public authorities in various fields, in particular regional development, reform of territorial administration would appear to be both expedient and necessary;

d. the structure of the future regions should be based on the European Charter of Local Self-Government and on the principles of regional self-government approved by the Council of Europe and set out in the draft European Charter of Regional Self-Government adopted by the Congress;

e. when such a reform is carried out, the following should also be borne in mind:

i. in view of the geographical and demographic features of Norway, it would appear appropriate to retain three levels of government – local, regional and central – and to maintain a regional level with elected authorities having democratic legitimacy, satisfying more effectively the requirements of the principles of subsidiarity and proximity;

ii. any modernisation or reform of existing regional structures should be carried out with due respect for regional identities and should take account of the specific features of the different Norwegian regions;

iii. it is essential to avoid an excessive concentration of power at central government level, in order to comply with the principles of subsidiarity, complementarity and solidarity, and to implement a more balanced distribution of powers between the various levels of public authorities by regulating relations between central government, the regions and the municipalities;

iv. in the event that the current structure cannot be maintained, consideration should also be given to the form the regional level should take and the nature of the powers to be attributed to the future regions;

…"

II. Rule of law

A. Venice Commission

No specific opinion concerning Norway

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Norway in 2004 was €301 538 737;

– the number of professional judges on a full-time basis in Norway in 2004 was 501, that means 10.9 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Norway was 705, that means 15.3 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 4 November 1999, ratified on 12 February 2008, entered into force on 1 June 2008

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 2 March 2004, entered into force on 1 July 2004, additional protocol signed and ratified on 2 March 2004, entered into force on 1 February 2005

Extract of: "Second evaluation round: evaluation report on Norway", adopted by GRECO at its 20th plenary meeting (Strasbourg, 27-30 September 2004, Greco Eval II Rep(2004)3E):

1. Conclusions

"63. Norway has a well-developed system of legislation, law enforcement and judicial authorities to deal with economic crime, including criminalisation of corruption and confiscation of proceeds of corruption. Giving a higher degree of specific training for prosecutors and police officers in order to enable them to fully implement provisions on seizure and confiscation of proceeds of corruption could contribute to improving the situation. Norway has recognised the dangers of corruption for its own administration and also, and above all, in connection with Norwegian businesses abroad. However, the danger of the integrity of public administration being undermined by corruption is also increasingly being recognised within Norway itself at both central government and county and municipal level. A series of initiatives by various government agencies that are designed to prevent corruption and heighten awareness of the threats it poses are under consideration. Against the background of Norway's traditionally low corruption rates, the sustained efforts that nevertheless continue to be made to prevent corruption are impressive. As regards legal persons and corruption, the provisions of the Norwegian Law meet the standards of Article 19 of the Convention.

64. In view of the above, the GRECO addresses the following recommendations to Norway:

i. to continue developing intensive and comprehensive training to police officers and prosecutors in order to enable them to make better use of legal provisions on detection, seizure and confiscation (paragraph 21);

ii. to consider introducing the regular rotation of staff in such areas which entail a particular risk of corruption (awarding of contracts, public procurement, etc.) (paragraph 39);

iii. to introduce clear rules/guidelines for situations where public officials move to the private sector ('pantouflage'), in order to avoid conflicts of interests (paragraph 40);

iv. to ensure that tax authorities employees who might be in a position to detect corruption during the course of their duties are well aware of their obligation to report serious crime and are given sufficient training and the means to detect corruptions (paragraph 58);

65. Moreover, GRECO invites the Norwegian authorities to take account of the observation (paragraph 60) made by the experts in the analytical part of the present report.

66. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Norwegian authorities to present a report on the implementation of the above-mentioned recommendations by 31 March 2006."

2. Observation

"60. The right to report suspicious activity has only been given to auditors some five years ago. An obligation to report transactions associated with the proceeds of any criminal act was introduced by a new Money Laundering Act, in force from 1 January 2004. The number of suspicious transaction reports from auditors is very small. It was pointed out to the GET that, to a large extent, auditors are dependant on information provided by their clients and that it was almost impossible to detect any sophisticated effort to cover up a financial trail. The professional body of Public Accountants expressed its willingness to assist the police in any way possible. The GET observed that the Norwegian 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 to the authorities."

Extract of: "Second evaluation round: compliance report on Norway", adopted by GRECO at its 30th plenary meeting (Strasbourg, 9-13 October 2006, Greco RC-II (2006) 11E):

"III. Conclusions

23. In view of the above, GRECO concludes that Norway has implemented satisfactorily or dealt with in a satisfactory manner all the recommendations contained in the Second Round Evaluation Report. Recommendations i and iv have been implemented satisfactorily and recommendations ii and iii have been dealt with in a satisfactory manner.

24. The adoption of the present Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Norway. The Norwegian authorities may, however, wish to inform GRECO of further developments with regard to issuing of post-employment rules in local administration, referred to in the reply to recommendation iii."

1. Norway is in 9th position with a score of 8.7 in the 2007 Corruption Perceptions Index launched by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 November 1990, ratified on 16 November 1994, entered into force on 1 March 1995

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[1]

A. Activities of the Commissioner for Human Rights

First report on Norway published in September 2001 following a visit to the country in April 2001 (CommDH(2001)4)

Follow-up report on Norway published in March 2006, following visits to the country in 2001 and 2005

Extract of "Follow-up report on Norway (2001-2005): 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)10):

"Introduction

The Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Norway on 2-4 April 2001 on the invitation of the Norwegian Government. In his report of the visit, the Commissioner identified a number of concerns regarding law and practice in Norway with respect to human rights and made recommendations in order to assist the Norwegian authorities in their pursuit of remedying the shortcomings. The issues addressed in the original report include the rights of detainees and persons in custody, the situation of asylum seekers and national minorities, and racism and non-discrimination. In October 2003, following a request by the Commissioner, the Norwegian government provided information on progress made in implementing the Commissioner's recommendations until that time. Information was also received from several non-governmental organisations.

A follow-up visit to assess further developments was carried out by members of the Commissioner's Office on 5-7 September 2005. The follow-up visit also gathered information on two topics not directly covered by the Commissioner's original visit, namely, responses to violence against women as well as trafficking in human beings. The purpose of this report is to assess the extent the Norwegian authorities have implemented the recommendations made by the Commissioner in his 2001 report as well as to take note of the Norwegian responses to violence against women and trafficking in human beings.

The report is based on information gathered during the follow-up visit, written submissions from the Norwegian authorities, reports by human rights experts, local and international non-governmental organisations and intergovernmental organisations and other public sources. The members of the Commissioner's office would like to express their gratitude for the assistance and openness of the representatives of the Norwegian authorities and civil society.

The rights of detainees

…

Conclusions

The Commissioner welcomes the October 2002 amendments to the Criminal Procedure Code, which constitute an important shift. The 12 week maximum time-limit, which may even be extended, is still long, however, and it is to be hoped that it will be used with the appropriate restraint. More information and statistics are needed before making final conclusions on the difference made in practice by the amendments.

The number of juveniles in remand custody appears to be decreasing due to the commendable efforts of the authorities. The efforts of the prison authorities to separate juveniles from adults during the day and to provide for special activities, such as the possibility to attend school, organised for them while in custody are commendable. However, possibilities to create a special section for juveniles in Oslo prison should be further explored. The Commissioner welcomes the efforts to improve the quality of pre-trial detention in Oslo prison.

The rights of refugees and asylum seekers

…

Conclusions

The reforms implemented in recent years have clearly had the desired effect of both shortening the time it takes to process asylum-applications and reducing the number of applications that have no chances of being accepted. This is clearly a legitimate goal, also from the point of view of the asylum seekers. While many restrictions have been introduced in the asylum-system, the Norwegian authorities have taken additional measures to ensure that the asylum procedures are fair and that decisions are based on accurate information. Such measures include the emphasis given to human rights training for the officials dealing with asylum seekers, providing free legal counselling and free legal aid for all asylum seekers and the recent creation of a new Unit tasked with collecting reliable information about countries of origin to assist the decision-making bodies. The Norwegian authorities have continued to invest in the asylum-system and overall, it seems to be working quite well in practice.

Some concern may, however, be expressed over the categorisation of countries, some of which are regarded as safe. This can compromise the objectivity and accuracy of the asylum process, and may in some cases lead to erroneous decision. Even in generally safe democratic countries, there may well be situations where not all individuals or groups of individuals are protected. Individual circumstances must always be taken into account. It is difficult to see how this can consistently be guaranteed in the fastest 48-hour procedures based on simplified interviews, even if in Norway certain flexibility does appear to be applied.

To ensure a thorough examination of claims in the second instance, the Commissioner encourages the Appeals Board to interpret the language in the Article 38.*b*.2 of the Immigration Act covering 'cases without questions of substantial doubt' in such a manner as to ensure that deserving appeals are heard by the Appeals Board in its full composition.

1. Norway is in 1st position with a score of 0.75 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Eritrea is in 169th and last position with a score of 114.75).

The Commissioner welcomes the partial reversal of the policy to deprive finally rejected asylum seekers of any social assistance after the date on which they have been ordered to leave the country. The new policy, which takes into account the real prospects for return of the rejected asylum seekers is an improvement. The policy of facilitating voluntary returns is commendable and should be further encouraged.

The best interests of the child must guide all decisions taken by the authorities concerning minors. The Commissioner welcomes the 2004 recommendations of the Guardianship Committee to enact a new law on guardianship, which proposed special rules for unaccompanied minors who are asylum seekers or refugees. The decisions on the right to family reunification for the unaccompanied minors should be guided by what is in the best interest of the child, rather than the type of residence permit granted for the minor.

Action against racism and xenophobia and non-discrimination

…

Conclusions

The Commissioner welcomes the excellent progress made in implementing the National Plan of Action to Combat Racism and Discrimination as well as the transparent and inclusive monitoring of its implementation conducted in co-operation with NGOs and the groups it is aiming to assist. This serious approach clearly demonstrates the importance the Norwegian authorities are attaching to the fight against racism, xenophobia and discrimination. As stated in the Action Plan, there will always be new challenges to be confronted, and the fight against racism and discrimination demands a continuous, focused and long-term effort.

The Commissioner welcomes the strengthening of the legislative and institutional framework in the field of non-discrimination and the creation of low-threshold equality bodies entrusted to enforce legislation prohibiting ethnic and gender based discrimination. The Commissioner trusts that the strong message put forward by the legislator through the new Act on ethnic discrimination, reinforced by the amendments to the Penal Code on expressions of racial hatred, will also have a preventive effect in increasing the understanding that discrimination and racist acts and expressions are illegal, and in many cases, constitute crimes.

National minorities and indigenous people

…

Conclusions

The Commissioner welcomes the increased dialogue between the minorities and the Norwegian authorities and the financial support provided by the government for the practical realisation of the linguistic and cultural rights of minorities. It is within this co-operative framework that solutions to outstanding issues and problems will have to be found. The general strengthening of the anti-discrimination legislation and institutional framework referred to above will also offer greater protection to individual members of minorities.

The significant progress made on difficult questions relating to the rights of Sámi is particularly laudable. The Finnmark Act will provide a good legal framework for decision-making and management of land and natural resources in the county of Finnmark. The May 2005 agreement on procedures for consultations is also a positive development, further demonstrating the genuine commitment of the Norwegian authorities to respecting the rights of the Sámi as an indigenous people.

Responses to violence against women

…

Conclusions

The Commissioner welcomes the comprehensive efforts of the government to respond to violence against women in close relationships. The measures foreseen in the Action Plan to develop local capacities to respond to violence against women and to ensure better co-ordination at all levels already responds to some of the criticism expressed by civil society. The authorities must persist in their efforts and pay particular attention to the needs of immigrant women.

Responses to trafficking in human beings

…

Conclusions

The comprehensive measures included in the new Action Plan against Trafficking in Human Beings and the efforts to ensure the availability of services to all victims are welcome. Further investigation and remedial measures are to be encouraged in respect of the infrequent resort to reflection periods prior to expulsions. The Commissioner welcomes the information received from the Norwegian authorities that the government is currently considering the clarification of the conditions for obtaining reflection period with a view of making them less strict. The efforts of the Norwegian government to combat trafficking in human beings at both the national and the international level, through co-operation and assistance programmes, are commendable. The early ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ought not, therefore, to be difficult and is strongly to be encouraged."

B. European Convention on Human Rights

ECHR ratified on 15 January 1952

No reservation, no declaration

Protocol No. 6 ratified on 25 October 1988
Protocol No. 12 signed on 15 January 2003
Protocol No. 13 ratified on 16 August 2005
Protocol No. 14 ratified on 10 November 2004

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

Out of a total of 1 503 judgments delivered by the Court in 2007, there were five concerning Norway that gave rise to a finding of at least one violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 85 concerned Norway.

Resolutions adopted by the Committee of Ministers in 2007: 0

Resolutions adopted by the Committee of Ministers in 2008 (as of 8 April 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 26 November 1987, ratified on 21 April 1989, entered into force on 1 August 1989, Protocols Nos. 1 and 2 signed and ratified on 4 November 1993, entered into force on 1 March 2002

Last country visit: October 2005

Publication of the last report: April 2006

Response of the Government of Norway to the visit report: October 2006

The CPT's report and the response of the Norwegian Government are available on the committee's website: www.cpt.coe.int.

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 17 March 1999, entered into force on 1 July 1999

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in October 2006 (ACFC/OP/II(2006)006):

"Concluding remarks

153. The Advisory Committee considers that these concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with regard to Norway.

Positive developments

154. Since the adoption of the Advisory Committee's first opinion on 12 September 2002 and the Committee of Ministers' Resolution on 8 April 2003, Norway has taken further measures to improve the protection of national minorities.

155. The strengthening of the legislative and institutional framework for combating discrimination and promoting equality constitutes a significant step forward, likely to have a considerable impact on the situation of minorities in various fields.

156. The authorities have continued to support national minorities' efforts to preserve their identities and cultures. At the same time, further steps have been taken to improve the mechanisms and procedures established to compensate for the damage caused by past 'norwegianisation' policies.

157. New opportunities have been created for increased participation in public affairs by persons belonging to national minorities, and it is to be hoped that the 'Forum for contact between national minorities and the authorities', established in 2003, as well as other existing means of consultation, will gain in effectiveness.

158. Positive developments have also been noted, in the legislation and in practice, regarding use of minority languages for personal names and topographical indications. Similarly, in the fields of education and research, specific measures have been introduced and are currently being implemented to support the revitalisation and learning of the Kven language. Although there is still considerable room for improvement, the authorities have paid greater attention to the educational situation of children belonging to the Roma and Romani/Tater communities.

159. The authorities have also continued to develop and support projects and activities aimed at combating racism and intolerance, in particular through the National Action Plan against Racism and Discrimination for 2002-2006, which is currently being evaluated. In recent years targeted measures have been taken to facilitate the integration of persons of immigrant background, and a Social Inclusion Plan is being devised.

Issues of concern

160. Although efforts have been made to improve the situation of persons belonging to national minorities in different areas, the impact of these efforts remains limited. The lack of reliable statistics on the situation of the various groups and the insufficient participation of their representatives in decision-making hinder the action taken by the authorities in the fields concerned, and the authorities' initiatives are not always suited to the minorities' views.

161. The representatives of national minorities also consider that insufficient regard is shown for their specific cultures and identities, whether in education or in the media, and additional efforts are needed to improve their public image.

162. Persons belonging to certain groups, such as the Roma or the Romani/Taters, continue to encounter difficulties and discrimination in the labour market and in access to housing and education. In particular, the problems experienced by Roma and Romani/Tater children in the field of education remain a cause for concern and must be treated as a matter of priority by the authorities.

163. Use of minority languages in relations with the administrative authorities is another area where additional efforts are needed, both from a legal standpoint and in practice. It also seems that, apart from the Kven, the needs of other groups as regards minority language teaching have not been adequately considered.

164. Despite a real heightened awareness on the part of the authorities and the many measures taken to foster tolerance and respect for diversity, instances of intolerance and discrimination towards persons of immigrant background continue to be reported. Successful integration of the growing number of persons of immigrant background remains a key challenge for Norway.

Recommendations

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

– take the necessary steps, including from a financial standpoint, to enable the new institutions designed to strengthen the fight against discrimination to perform their tasks adequately; enhance information and awareness-raising measures on minority issues and the growing diversity of Norwegian society among the public at large, politicians, the media and the public authorities;

– pursue with greater determination, in co-operation with the groups concerned and in accordance with personal data protection requirements, the initiatives to obtain reliable data on the situation of minorities in various sectors;

– implement more resolute measures to eliminate the difficulties and discrimination encountered by the Roma and the Romani/Taters in various fields, such as employment and housing and, in particular, education; pay due heed to the Roma request concerning the establishment of a Roma community centre in Oslo;

– pursue and develop measures in support of national minority cultures, adapting initiatives and resources to the specific needs identified in consultation with the groups concerned, not least as regards the minorities' museums, in the context of the implementation of the current reform of the museums' network;

– continue and reinforce efforts to promote and support the learning of the Kven language and examine the needs of persons belonging to other minorities – notably the Roma and the Romani/Taters – in this field;

– identify, in co-operation with minority representatives, the most effective means of enhancing minority participation in public affairs, including social and economic life, both at the central and local levels;

– maintain and reinforce the measures of support of persons of immigrant background, so as to foster successful integration in Norway."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2007)11

Third state report expected for 1 July 2010

E. European Charter for Regional or Minority Languages

Convention signed on 5 November 1992, ratified on 10 November 1993, entered into force on 1 March 1998

Last periodic state report submitted on 2 May 2005 (MIN-LANG/PR(2005)3 and addendum 1, 2, 3)
Last assessment report of the Committee of Independent Experts adopted on 1 December 2006 (ECRML(2007)3)
Last recommendation of the Committee of Ministers adopted on 16 May 2007 (RecChL(2007)3)
Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: the third report on Norway was adopted on 27 June 2003 and made public on 27 January 2004

Extract of Document CRI(2004)3:

"Executive summary

Since the publication of ECRI's second report on Norway, progress has been made in a number of the fields highlighted in the report.

Norway adopted a National Plan of Action to Combat Racism and Discrimination (2002-2006), which contains measures in key areas of legislation and policy, such as employment, education, public services, the criminal justice system and local communities. A bill against ethnic discrimination has been drafted and is planned to be adopted in 2004; new antidiscrimination provisions are also in the process of being introduced in the field of employment and housing. Efforts have been made to ameliorate the response of the criminal justice system, notably the police and the prosecuting authorities, to manifestations of racism and discrimination. Initiatives have also been taken to tackle discriminatory practices by the police, including the adoption of an action plan to raise the awareness of the police of diversity and its implications.

Some of the recommendations contained in ECRI's second report, however, have not, or not fully, been implemented, notably as concerns the need to ensure adequate protection against racist expression, an issue which remains of special concern to ECRI. In spite of the initiatives taken, much remains to be done to ensure that foreigners and persons of immigrant background enjoy genuinely equal opportunities in employment and housing as the rest of the population of Norway. The exploitation in public and political debate of problems, admittedly of serious concern, but applying only to a small minority of the immigrant population has resulted in the stigmatisation of certain minority communities as a whole. Furthermore, a number of issues as regards immigrants and asylum seekers in Norway are raised by ECRI in the report.

In this report, ECRI recommends that the Norwegian authorities take further action in a number of areas. It recommends, *inter alia*, that adequate protection be available to individuals against racist expression. In order to improve equal access and opportunities in employment and housing for foreigners and persons of immigrant background, ECRI recommends a thorough enforcement of the relevant legislation and the adoption of further initiatives. In the framework of the ongoing process of adoption of antidiscrimination provisions, ECRI furthermore encourages the Norwegian authorities to ensure that adequate legal provisions and mechanisms of enforcement are put in place. Additional work is also necessary towards a more satisfactory implementation of the legal provisions already in force. ECRI calls for further efforts in the field of policing a diverse society and in education. It formulates recommendations aimed at ensuring that the rights of asylum seekers and persons without legal status in Norway are thoroughly respected."

G. Social rights

European Social Charter of 1961 signed on 18 October 1961, ratified on 26 October 1962, entered into force on 26 February 1965

European Social Charter (revised) signed and ratified on 7 May 2001, entered into force on 1 July 2001

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed and ratified on 20 March 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1964 and 2006, Norway submitted 22 reports on the application of the Charter and 4 reports on the application of the Revised Charter. The 5th report will concern the provisions accepted by Norway, 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 31/10/2007.

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

Norway's record with respect to application of the Charter is the following as of 1 July 2007:

Examples of progress achieved following conclusions or decisions of the ECSR[1]

Employment

Repeal of the Seafarers Act of 17 July 1953, which allowed criminal sanctions to be imposed on seafarers who deserted their post or committed disciplinary offences, even in cases where neither the safety of the vessel nor the lives or health of those on board were in danger (Act of 30 May 1975). Abolition of compulsory service for dentists. *Article 1, paragraph 2 – prohibition of forced labour*.

Amendment in 2002 of the 1958 Civil Service Disputes Act improves employees' representation in wage negotiations. *Article 6, paragraph 2 – negotiation procedures*

The Labour Disputes Act, amended in 2002, provides in its Section 35.9 that the mediator can now only join up ballots (*kobling av avstemninger*) relating to several sectors if the parties concerned agree. *Article 6, paragraph 3 – right to bargain collectively (conciliation and arbitration).*

Movement of persons

Extension of the scope of family reunion to include children only one of whose parents is living in Norway (1991 immigration directives, as amended in 1997). *Article 19, paragraph 6 – right to family reunion.*

Non-discrimination

Nationality

Various practical measures to assist foreigners in finding accommodation, such as reserving quotas of existing housing stock for refugees and immigrants, promoting research into multicultural living environments and disseminating information on the legislation providing for equal treatment in access to housing. *Article 19, paragraph 4 – right to equal treatment with regard to access to housing.*

Education/Health

Amendment to the Working Environment Act. Section 54 B establishes a prohibition against direct and indirect discrimination on the basis of disability. *Article 15, paragraph 2 – right to employment of persons with disabilities.*

1. "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" (Rule 2 of the rules of the ECSR).

Cases of non-conformity

Education/Health

Article 7, paragraph 3 – prohibition of the employment of children subject to compulsory education.

The rest period of young persons aged under 18 still subject to compulsory education who work is not sufficient during summer holidays and throughout the year.

Article 10, paragraph 5 – right to vocational training

Equal treatment for non-EU nationals with respect to financial assistance for training is not guaranteed.

Article 15, paragraph 2 – right to vocational training for persons with disabilities

The protection against discrimination on grounds of disability in the field of education is insufficient.

Article 15, paragraph 3 – integration and participation of persons with disabilities in the life of the community

No legislation prohibiting discrimination on grounds of disability covering housing, transport, telecommunications, cultural and leisure activities.

Social protection

Article 12, paragraph 1 – right to social security (development of the social security system)

Legislation does not provide for an initial reasonable period during which an unemployed person may refuse an offer of employment not corresponding to his previous qualifications without losing the right to unemployment benefits.

Employment

Article 2, paragraph 1 – right to reasonable working hours

Legislation provides that total working hours in a twenty-four hour period may, in certain circumstances, be up to sixteen hours.

Article 4, paragraph 5 – right to limitation of deduction from wages

Workers may be left in a position to waive the protection afforded by Article 4, paragraph 5 against deductions from wages which could deprive them of their very basic means of subsistence.

Article 6, paragraph 4 – right to bargain collectively (strikes and lock-outs)

During the reference period (2003-2004), legislation was enacted in order to terminate collective action in the oil sector in circumstances which went beyond those permitted by Article G of the revised Charter.[1]

Article 7, paragraph 5 – employment conditions for young persons aged between 15 and 18 (remuneration)

Norway has failed to provide information showing that young workers and apprentices have an effective right to a fair remuneration or to appropriate allowances.

Article 7, paragraph 6 – employment conditions for young persons aged between 15 and 18 (time for training)

Young workers are not entitled to have their training time paid as working hours.

1. RecChS(93)2 adopted on 7 September 1993 by the Committee of Ministers.

Article 21 – right of workers to be informed and consulted

Norway has not established that the existing rules on information and consultation cover the great majority of the workers concerned.

Article 22 – right of workers to take part in the determination and improvement of working conditions and the working environment

Not established that the existing rules on the participation of workers cover the great majority of the workers concerned.

Non-discrimination

Nationality

Article 12, paragraph 4 – equal treatment in social security matters

Norwegian legislation does not provide for the aggregation of insurance or employment periods completed by nationals of States Parties not covered by EU legislation or by a bilateral agreement with Norway."

H. Parliamentary Assembly

Resolution 1596 (2008): protection of the environment in the Arctic region, adopted by the Assembly on 22 January 2008 (see Doc. 11477, report by the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mr Grachev)

Resolution 1531 (2007): peril of using energy supply as an instrument of political pressure, adopted by the Assembly on 23 January 2007 (see Doc. 11116, report by the Political Affairs Committee, rapporteur: Mr Mihkelson)

Poland

Council of Europe member state since 26 November 1991
Number of Council of Europe conventions ratified (as of 22 May 2008): 82 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 15

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential elections: 2005
Next presidential elections: 2010
Last general elections: 2007
Next general elections: 2011

B. Local and regional democracy

Last municipal elections: 2006
Next municipal elections: 2010

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

European Charter of Local Self-Government signed on 19 February 1993, ratified on 22 November 1993, entered into force on 1 March 1994

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: November 2002 (CG(9)21PartII), Recommendation 120 (2002) on local and regional democracy in Poland adopted on 14 November 2002

II. Rule of law

A. Venice Commission

No opinion concerning Poland

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Poland in 2004 was €1 057 096 606;

– the number of professional judges on a full-time basis in Poland in 2004 was 9 766, which means 25.6 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Poland was 5 393, which means 14.1 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 3 April 2001, ratified on 11 September 2002, entered into force on 1 November 2003

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 11 December 2002, entered into force on 1 April 2003, additional protocol neither signed nor ratified

Extract of: "Second evaluation round: evaluation report on Poland", adopted by GRECO at its 18th plenary meeting (Strasbourg, 10-14 May 2004, GRECO Eval II Rep (2003) 6E):

1. Conclusions

"60. In recent years, Poland has taken appropriate steps to establish an adequate legislative framework to enable the competent authorities to cope with issues related to proceeds of corruption, corruption in public administration and corruption in corporate activities. A higher degree of specialisation and specific training is needed for prosecutors

1. Poland is in 61st position with a score of 4.2 in the 2007 Corruption Perceptions Index launched by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

and police officers in order to enable them to fully implement provisions on seizure and confiscation of proceeds of corruption. The ongoing reflection, within the public administration, on reform of the State structure and its functioning takes account of the problem of corruption. The applicable legislation and regulations are in place. However, the success of corruption prevention policies in public administration can be strengthened, notably, by regular monitoring and updating of implementation and the regulation of conflicts of interest. The 'Law on Liability of Collective Entities' entered into force in November 2003; it is therefore not possible to asses its effectiveness and practical application, however its provisions meet to a large extent the standards laid down in Article 18 of the Criminal Law Convention on Corruption.

61. In view of the above, GRECO addresses the following recommendations to Poland:

i. that the prosecution authorities be rapidly provided – during their investigative work – with co-ordinated and up-to-date financial and economical information and 2. to continue giving to prosecutors and police officers specific training and provide them with adequate means in order to make better use of legal provisions on seizure and confiscation;

ii. to intensify efforts to establish, within prosecutors' offices, multidisciplinary teams of experts in the field of combating economic and financial crime;

iii. to promote the use in practice of the legal measures on international legal assistance concerning provisional measures in relation to corruption offences;

iv. to set up a specialised body with the tasks of following up on the implementation of the anti-corruption programme, by organising the gathering and analysis of data, assessing the quality of these data and making them public, together with recommendations to the government concerning the prevention of corruption;

v. to gear ethics training seminars for civil servants to the resolving of practical, specific cases;

vi. to extend the scope of application of the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions and of the Act on Civil Service aimed at prohibiting 'pantouflage' (i.e. the improper movement of a public official to the private sector);

vii. to amend the Law on Liability of Collective Entities for Acts Prohibited under Penalty in order to include all relevant corruption offences which may lead to the establishment of corporate liability;

viii. to establish special training programmes for prosecutors and judges in order to ensure the effective implementation of the Law on Liability of Collective Entities for Acts Prohibited under Penalty;

ix. to establish special training and/or guidelines for the tax authorities concerning the detection of corruption offences and the effective fulfilment of their reporting obligation under the Code of Criminal Procedure.

62. Moreover, GRECO invites the Polish authorities to take account of the observations made in the analytical part of this report.

63. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Polish authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2005."

2. Observations

"53. The Polish authorities have taken appropriate steps in order to establish an adequate registration system for legal persons and access of the public to the information concerning the activity of legal persons. In spite of that, it should be mentioned that for a small category of legal persons (the various religious entities, Red Cross in Poland, etc.) *ex lege* there is no requirement for registration. The Polish authorities expressed their concern with regard to the situation where the registration regime does not cover such non-public bodies. There are no restrictions on legal persons to hold interests in another legal person, neither restrictions on the number of accounts a company can hold. The minor shareholders, i.e. the shareholders who possess less than 10 per cents of the share capital, are not registered and no information may be obtained on them. Besides this, the GET noted that at the time of the visit the information on the registered legal persons was not available on the Internet. The Polish authorities announced that from the beginning of 2004 some elements of the information on the registered legal persons would be accessible on the Internet. The GET observes that appropriate measures should be taken in order to facilitate further the access of the public to the information on legal persons."

"59. The GET finds that infringements of the accounting obligations are satisfactorily dealt with in the Polish legislation and notes that the Criminal Code, the Fiscal Penal Code and the Act on Accounting provide for an adequate range of effective, proportionate and dissuasive sanctions, including fines and deprivation of liberty, in case of respective account offences committed. During the visit the Polish authorities provided information on the tasks and status of the public internal auditors and independent expert auditors. The GET noted that in the respective laws dealing with the functions of the public internal audit (Law on Public Finance) and the independent audit (Act on Expert Auditors) there were no provisions concerning the reporting of suspected crimes to law enforcement authorities. Public internal auditors are under the obligation established for public officials to report to the relevant law enforcement bodies suspicions of criminal offences (Article 304 paragraph 2 of the Criminal procedure Code). For independent auditors the obligation to report suspicions of offences arises from the general civic obligation established by the Criminal Procedure Code (Article 304 paragraph 1). On the other hand, independent auditors are obliged by the special law to keep professional secret which might be viewed as contradicting the general reporting obligation under the Criminal Procedure Code. The GET wishes to stress that records and books violations can be important sources of information leading to the detection of corruption and emphasizes the importance of the increased awareness of detecting corruption offences in the course of exercising auditing duties and of the reporting obligation under the Code of Criminal Procedure. In this context, the GET observes that the lack of concrete steps taken to involve auditors in the policies aimed at detecting/reporting corruption offences may affect their role in the fight against corruption."

Extract of: "Second evaluation round: compliance report on Poland", adopted by GRECO at its 29th plenary meeting (Strasbourg, 19-23 June 2006, GRECO RC-II(2006)5E):

"III. Conclusions

50. In view of the above, GRECO concludes that Poland has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the Second Round Evaluation Report.

Recommendations i, ii, iii, v and vii have been implemented satisfactorily, recommendations iv and viii have been dealt with in a satisfactory manner, recommendation ix has been partly implemented and recommendation vi has not been implemented.

51. GRECO invites the Head of the Polish delegation to submit additional information regarding the implementation of recommendations vi and ix by 31 December 2007."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 5 November 1998, ratified on 20 December 2000, entered into force on 1 April 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, ratified on 8 August 2007, entered into force on 1 May 2008

"Third round detailed assessment report on Poland: anti-money laundering and combating the financing of terrorism" (adopted by MONEYVAL at its 23rd Plenary Session, 5-7 June 2007, MONEYVAL(2006)24)

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Poland published in March 2003 following a country visit in November 2002

Opinion by the Commissioner for Human Rights on the creation of a national institution to fight against discrimination in Poland published in February 2004

Memorandum to the Polish Government published in June 2007 following a country visit in December 2006

Extract of: "Memorandum to the Polish Government: assessment of the progress made in implementing the 2002 recommendations of the Council of Europe Commissioner for Human Rights, for the attention of the Committee of Ministers and the Parliamentary Assembly" (CommDH(2007)13):

"Summary of recommendations

1. Continue efforts to accelerate judicial proceedings for example by increasing the number of legal staff, court budget and improving the system of recording court proceedings. Review the law and practice by which apprentice judges are being asked to take on cases beyond their experience.

2. Settle outstanding matters related to the domestic remedy for excessive length of judicial proceedings.

3. Improve dissemination of the European Court of Human Right's case-law and ensure that legal training for judges reaches a wide audience.

4. Establish an independent body to investigate police misbehaviour. Provide specific training on trafficking in human beings and domestic violence on a larger scale and involve a greater number of police officers, in co-operation with NGOs.

5. Take urgent measures to combat over-crowding in prisons and improve the application of alternative penalties which do not involve incarceration.

6. Review the application and functioning of pre-trial detention in Polish law. Improve training of judges and prosecutors as regards European standards and case-law of the European Court of Human Rights in this area.

7. Ensure that detainees have direct contact with a lawyer.

8. Enact a comprehensive body of anti-discrimination legislation. Set up a single specialised body to combat discrimination in all areas of life and on all grounds. Launch visible, large-scale public campaigns, in co-operation with NGOs to inform the public about the notion of equal treatment.

9. Put in place adequate legal measures to combat hate speech and discrimination of those with different sexual orientation or gender identity. Take appropriate measures to raise awareness of diversity in co-operation with civil society.

10. Ban racist and anti-Semitic publications and broadcasting. Implement effectively the existing articles of the criminal code relating to incitement to racial and ethnic hatred.

11. Promote intercultural dialogue and understanding of different minorities, their culture and history within the media and the school curricula. Preserve minority monuments and cemeteries out of respect to minority groups and to preserve the common heritage.

12. Take further measures in respect of Roma education, housing, health and employment. Consult Roma in the planning and implementation of the activities of the National Programme. The remaining separate classes for Roma pupils must be replaced with integrated education.

13. Evaluate the functioning of the restraining order regime with the new Act on countering domestic violence. Make available shelters with adequate services for victims across the country.

14. Ensure that the provisions within the 2005 amendments to the Aliens' law, which provides for victim protection, are fully implemented. Ratify the Council of Europe's Convention on Activities to Prevent Human Trafficking.

15. Ensure that women falling within the categories foreseen by the Polish abortion law are allowed, in practice, to terminate their pregnancy without additional hindrance or reproach. Create an appeal or review procedure whereby the decision of a doctor not to issue a certificate permitting an abortion be subject to review. Undertake further activities aimed at providing effective sexual education in schools.

16. Improve access to information, legal assistance and education for those asylum seekers residing in reception centres. Ensure that those granted a permit to tolerated stay benefit from measures leading to a proper and effective integration into Polish society.

17. Ratify the revised European Social Charter and the Collective Complaints Protocol. Sign and ratify Protocol No. 12 to the European Convention on Human Rights. Ratify the Council of Europe's Convention on Activities to Prevent Human Trafficking.

1. Poland is in 56th position with a score of 18.50 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

18. Refrain from resorting to criminal law measures for the offence of insult.

19. Ensure that lustration procedures comply with all the guarantees of a state based on the rule of law and respect for human rights.

Appendix:

Comments by the Polish Government …"

B. European Convention on Human Rights

ECHR ratified on 19 January 1993

No reservation, no declaration

Protocol No. 6 ratified on 30 October 2000
Protocol No. 12 neither signed nor ratified
Protocol No. 13 signed on 3 May 2002
Protocol No. 14 ratified on 12 October 2006

Out of a total of 1 560 judgments delivered by the Court in 2006, there are 115 concerning Poland, of which 107 gave rise to a finding of at least one violation and eight gave rise to a finding of no violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 111 concerning Poland, of which 101 gave rise to a finding of at least one violation and nine gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 3 119 concerned Poland.

Resolutions adopted by the Committee of Ministers in 2007: two interim resolutions

Interim Resolution ResDH(2007)28 concerning the judgments of the European Court of Human Rights in 143 cases against Poland relating to the excessive length of criminal and civil proceedings and the right to an effective remedy (adopted by the Committee of Ministers on 4 April 2007, at the 992nd meeting of the Ministers' Deputies)

Interim Resolution ResDH(2007)75 concerning the judgments of the European Court of Human Rights in 44 cases against Poland (see Appendix II) relating to the excessive length of detention on remand (adopted by the Committee of Ministers on 6 June 2007, at the 997th meeting of the Ministers' Deputies)

Resolutions adopted by the Committee of Ministers in 2008 (on 19 May 2008): one

No interim resolution

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 11 July 1994, ratified on 10 October 1994, entered into force on 1 February 1995, Protocols Nos. 1 and 2 signed on 11 January 1995, ratified on 24 March 1995, entered into force on 1 March 2002

Last country visit: October 2004

Publication of the last report: March 2006

Press release of 2 March 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 Poland which took place in October 2004. The report has been made public at the Polish authorities' request.

During the visit, the CPT examined the treatment of persons detained by the police and Border Guard. The report contains recommendations aimed at further strengthening the formal safeguards against ill-treatment offered to such persons and improving the conditions under which they are held.

The CPT also paid visits to three prisons: in Warsaw-Mokotów, Cracow and Wołów. It called upon the Polish authorities to redouble their efforts to combat prison overcrowding. Particular attention was also paid to prisoners classified as 'dangerous' ('N' status).

The CPT's visit report and the Polish Government's response are available on the Committee's website: http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 20 December 2000, entered into force on 1 April 2001

"Declaration contained in a *Note Verbale*, handed at the time of deposit of the instrument of ratification on 20 December 2000:

Taking into consideration the fact, that the Framework Convention for the Protection of National Minorities contains no definition of the national minorities notion, the Republic of Poland declares, that it understands this term as national minorities residing within the territory of the Republic of Poland at the same time whose members are polish citizens.

Period covered: 1 April 2001-

The preceding statement concerns Article(s): –

Declaration contained in a *Note Verbale*, handed at the time of deposit of the instrument of ratification on 20 December 2000:

The Republic of Poland shall also implement the Framework Convention under Article 18 of the Convention by conclusion of international agreements mentioned in this Article, the aim of which is to protect national minorities in Poland and minorities or groups of Poles in other states.

Period covered: 1 April 2001-

The preceding statement concerns Article(s): 18."

Extract of the last opinion of the Advisory Committee adopted in November 2003 (ACFC/INF/OP/I(2004)005):

"Concluding remarks

126. The Advisory Committee considers that the concluding remarks below reflect the main thrust of the present opinion and that they could therefore serve as the basis for the corresponding conclusions and recommendations to be adopted by the Committee of Ministers.

127. Poland has in many respects made valuable efforts to support national minorities and their cultures, including through certain sectoral legislative provisions in such fields as the educational and electoral systems and through the recent adoption of the Programme for the Roma community in Poland.

128. Although the legal and institutional framework protecting persons belonging to national minorities is fairly well developed in some areas, it lacks overall coherence and contains important shortcomings. This is particularly the case for the use of minority languages in relations with administrative authorities, as well as the display of traditional local names and other topographical indications in minority languages. In these areas, legislative guarantees are needed as a matter of priority. The adoption of a comprehensive law on national minorities could ensure legal coherence and address the issue of limited state support for national minorities in practice.

129. Poland should pursue the efforts made to solve the issues linked to monuments and cemeteries affecting many national minorities including Germans, Ukrainians, Jews, Lemks and Karaites. These efforts should be made in a spirit of tolerance and intercultural dialogue and in consultation with those concerned. The same applies to demands by many national minorities, including the Ukrainians, Slovaks, Armenians, Russians and Belarusians with regard to the setting up of and support for cultural centres, museums and libraries.

130. Despite regular radio and television broadcasts in a number of minority languages, the Advisory Committee finds that there is scope for improvement in the media sector, especially concerning additional radio programmes and geographical cover of broadcasting for dispersed national minorities. Greater attention should also be paid to involving more consistently persons belonging to national minorities in the preparation of programmes intended for them.

131. Notwithstanding the existing legal guarantees and the many opportunities available to persons belonging to national minorities for receiving instruction of/in their languages as part of the public education system, there is reason for concern about the threats of closure of a number of Lithuanian schools. It is thus important that all means of maintaining these schools be explored in consultation with those concerned.

132. Despite efforts by the government, there remain problems in the implementation of the Framework Convention as concerns Roma. Consultation with the Roma is crucial for the successful implementation of the newly adopted Programme together with further action to address acts of discrimination and ensure equal opportunities for access to education.

133. While participation in public affairs at local and regional level is satisfactory, there is a clear need to reinforce participation of persons belonging to national minorities at national level."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2004)10

Third state report expected for 1 April 2012

E. European Charter for Regional or Minority Languages

Convention signed on 12 May 2003, but not ratified

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: the third report on Poland was adopted on 17 December 2004 and made public on 14 June 2005

Extract of Document CRI(2005)25:

"Executive summary

Since the publication of ECRI's second report on Poland, progress has been made in a number of areas. The Framework Convention for the Protection of the National Minorities entered into force in 2001. The Polish authorities have started to raise the awareness of the police and the judiciary to the need to combat racist offences more effectively. They adopted a Programme for the Roma community in Poland in 2003 and a Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance in 2004 in Poland. The labour code now contains extensive provisions prohibiting direct and indirect racial discrimination. The competences of the Government Plenipotentiary for Equal Status of Women and Men have been extended to cover, amongst others, racial discrimination. Some measures have been taken in favour of the cultural and linguistic rights of national and ethnic minorities. The Polish authorities have launched and supported many initiatives to combat anti-semitism, particularly in schools.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. The police and the prosecutors do not give sufficient attention to the racist motivation of an offence even though there are reports of racial incidents occurring against members of minority groups such as immigrants and Roma. Cases of racial hatred are rarely investigated and prosecuted while publications containing racist, and particularly anti-semitic material are still available on the market. There is still no comprehensive body of civil and administrative legislation prohibiting racial discrimination in all fields of life. There is a need for an immigration policy providing for integration measures. Refugees with a 'tolerated status' encounter difficulties concerning the exercise of their social rights. There is evidence of latent social attitudes which result in an underestimation of the seriousness of issues of intolerance and discrimination and of the need for corrective action. Thus, national and ethnic minorities, immigrants, asylum seekers and refugees are sometimes confronted with intolerance by some members of the majority population. ECRI particularly notes the persistence of anti-semitism particularly through verbal and written abuse against Jews. Roma often experience difficult living conditions and are faced with discrimination and exclusion.

In this report, ECRI recommends that the Polish authorities take further action in a number of areas. In particular, they should adopt measures to make agencies, particularly those with a responsibility for law enforcement, fully aware of the issues pertaining to racism and racial discrimination so that they can address them when the need arises. ECRI recommends the adoption of a comprehensive body of legislation aimed at combating racial discrimination in all fields of life and the creation of a specialised body entrusted with the task of assisting victims of racism and racial discrimination. ECRI calls for the adoption of an immigration policy which contains integration measures. The authorities should continue and strengthen their efforts to adequately address the needs of all national and ethnic minorities. They should take further measures to combat manifestations of racism and anti-semitism in the media, political and other public discourses and daily life. ECRI also recommends a series of measures to address the situation of disadvantage and discrimination faced by the Roma community."

G. Social rights

European Social Charter of 1961 signed on 26 November 1991, ratified on 25 June 1997, entered into force on 25 July 1997

European Social Charter (revised) signed on 25 October 2005, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1999 and 2006, Poland submitted 6 reports on the application of the Charter. The 6th report on non hard core provisions of the Charter was submitted on 28 April 2006.

The 7th report will concern the provisions related to the theme 'Employment, Training and Equal Opportunities' (Articles 1, 9, 10, 15, 18 of the Charter and Article 1 of the 1988 Protocol). The 7th report should be submitted before 31 October 2007.

Poland's record with respect to application of the Charter is the following as of 1 July 2006.

Examples of progress made or under way

Health

The Act of 23 January 2003 is expected to remedy previous shortcomings concerning waiting time for some medical treatment, as well as mismanagement of waiting lists.

Movement of persons

The Act of 1 July 2001 expressly guarantees the right to family reunion of the migrant workers' family members.

Employment

With Poland's accession to the European Union, there is no longer a nationality requirement for access to the professions of sworn translator or to paramedics.

Cases of non-compliance

Health

Article 3, paragraph 2 – right to health and safety at work

Private farms fall outside the inspection system in Poland; the number of accidents in farms is extremely high.

Non-discrimination (nationality)

Article 1, paragraph 2 – non-discrimination in employment

1. Discrimination of nationals of the other Contracting Parties of the Charter wishing to practice medicine in Poland, as they require the discretionary authorisation of the National Chamber of Physicians.

2. Driving test examiners must be Polish nationals

Article 1, paragraph 4 – non-discrimination (vocational guidance and training)

Discrimination of nationals of the other Contracting Parties of the Charter, lawfully resident or regularly working in Poland as regards continuing vocational training (length of residence requirement).

Article 9 – right to vocational guidance

Nationals of the other Contracting Parties having a residence permit other than permanent cannot accede to vocational guidance as Polish nationals.

Article 10, paragraph 1 – right to access to higher technical and university education based solely on individual aptitude

Equal access to higher education and training is provided only to non-nationals residing on the territory since at least three years.

Article 12, paragraph 4 – social security of persons moving between states

Aggregation of insurance or employment periods is not provided for in the absence of bilateral or multilateral agreements.

Article 13, paragraph 3 – prevention, abolition or alleviation or need

Access to social services by nationals of other Contracting parties of the Charter is subject to an excessively long length of residence requirement.

Article 14, paragraph 1 – provision or promotion of social welfare services

Equal treatment for nationals of other Contracting Parties to the Charter and of States Parties to the Revised European Social Charter lawfully resident or regularly working in Poland with respect to access to social services is not guaranteed (excessive length of residence requirement).

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

Equal treatment for nationals of Contracting Parties and State Parties to the Revised Charter to the Charter with respect to the payment of family benefits is not ensured because of a residence requirement.

Children

Article 7, paragraph 10 – protection of children against physical and moral dangers

Young persons between the ages of 15 and 18 are not adequately protected against all forms of sexual exploitation, in particular child pornography.

Article 17 – right of mothers and children to social and legal protection

1. Corporal punishment of children in the home is not prohibited;

2. The maximum length of detention on remand (two years) is excessive;

3. Children may be detained for 'moral depravity'.

Movement of persons

Articles 19, paragraphs 8 and 10 – guarantees concerning deportation

The Aliens Act of 25 June 1997 authorises the expulsion of foreigners if they are guilty of offences under the 1997 Aliens Act which go beyond the grounds admitted under Article 19, paragraph 8. The same applies to self-employed workers.

Social protection

Article 12, paragraph 1 – right to social security

The level of unemployment benefit is manifestly inadequate.

Article 12, paragraph 3 – development of the social security system

Recent reforms have led to restrictions with respect to unemployment benefits and family benefits.

Employment

Article 1, paragraph 1 – policy of full employment

The employment policy effort is inadequate in the light of the level of unemployment and long-term unemployment.

Article 2, paragraph 1 – right to reasonable working time

Working hours may under certain circumstances be up to 16 hours in a 24-hour period and up to seventy-two hours weekly.

Article 4, paragraph 2 – right to increased remuneration for overtime

For certain categories of workers, the increased rate of remuneration provided by the Labour Code may be replaced by a period of rest of equal duration (and not more). In the public sector, civil servants are only granted a period of rest equal to overtime.

Article 4, paragraph 4 – right to a reasonable period of notice of dismissal

A fixed term contract of more than six months' duration may be terminated by a two-week notice which does not constitute a reasonable period of notice.

Article 4, paragraph 5 – right to limitation of deduction from wages

Workers may be left, after deductions from wages, with less than the minimum subsistence amount.

Article 5 – right to organise

There are restrictions to the right to organise of civil servants, retired persons, homeworkers and of the unemployed.

Article 8, paragraph 2 – prohibition of dismissal during maternity leave

In certain circumstances an employer can alter the terms and conditions of the employee during the protected period and if the woman rejects this the employment contract can be terminated."

H. Parliamentary Assembly

Resolution 1562 (2007): secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, adopted by the Assembly on 27 June 2007 (see Doc. 11302, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty)

Resolution 1560 (2007): promotion by Council of Europe member states of an international moratorium on the death penalty, adopted by the Assembly on 26 June 2007 (see Doc. 11303, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marcenaro; and Doc. 11321, opinion of the Political Affairs Committee, rapporteur: Mrs Aburto Baselga)

Portugal

Council of Europe member state since 22 September 1976
Number of Council of Europe conventions ratified (as of 22 May 2008): 105 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 40

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential elections: 2006
Next presidential elections: 2011
Last general elections: 2005
Next general elections: 2009

B. Local and regional democracy

Last municipal elections: 2005
Next municipal elections: 2009

European Charter of Local Self-Government signed on 15 October 1985, ratified on 18 December 1990, entered into force on 1 April 1991

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: May 2003 (CG(10)5 rev. Part II), Recommendation 127 (2003) on local and regional democracy in Portugal, adopted on 21 May 2003

Extract of the last report by the Steering Committee on Local and Regional Democracy (the CDLR was first set up in 1967 to make it possible for governments of member states to discuss issues of local and regional democracy and pave the way for greater European co-operation in this area): "Structure and operation of local and regional democracy: Portugal: situation in 2006":

> "Reforms envisaged or in progress
>
> The transfer of new functions and powers to the local authorities was provided for by the outline law on administrative regions with a view to creating a new tier of local administration. However, the outcome of the 2001 referen-

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

dum was not the one expected so the process has been suspended.

However, the aims inherent in the decentralisation currently under way following the reform of territorial organisation at the municipal level are being pursued. They are also the subject of regulations laid down by Acts 10/2003 and 11/2003 of 13 May.

At the same time, the transfer of new powers to the municipalities is under way and is covered by Act 159/99 of 14 September (framework legislation transferring functions and powers to the local authorities).

The aim of this legislative framework is to transfer more functions and powers to the municipalities so that they will be able to organise themselves better and develop activities of common interest within a supramunicipal framework. The objectives enshrined in the European Charter of Local Self-Government will thus be implemented, and this will improve the effectiveness of administrative action, which will be closer to the citizen.

At the inframunicipal level also, the emphasis is on organising the various services so as to improve efficiency and performance.

Act 58/98 of 18 August regulates the creation of municipal and intermunicipal enterprises.

Like central government, the municipalities have modified the legal framework concerning senior local-authority staff by introducing a diploma in leadership of the new supramunicipal entities.

The new system for evaluating efficiency aims to revolutionise assessment of public servants and managerial staff and constitutes one of the main tools for modernising public administration in Portugal. It is part of a comprehensive reform currently under way which seeks to equip the country's public administration to meet the demands of modern society, in particular by developing a culture of management by objective aimed at providing service to the individual and to enterprise."

II. Rule of law

A. Venice Commission

No opinion concerning Portugal

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Portugal in 2004 was €552 462 601;

– the number of professional judges on a full-time basis in Portugal in 2004 was 1 754, which means 16.7 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Portugal was 1 217, which means 11.6 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption neither signed nor ratified

Criminal Law Convention on Corruption signed on 30 April 1999, ratified on 7 May 2002, entered into force on 1 September 2002, additional protocol signed on 15 May 2003, but not ratified

Extract of: "Second evaluation round: evaluation report on Portugal", adopted by GRECO at its 28th plenary meeting (Strasbourg, 9-12 May 2006, GRECO Eval II Rep(2005)11E):

1. Conclusions

"76. Steps have been taken in Portugal to combat financial crime and corruption and to deprive offenders of the proceeds from such offences by means of detailed legislation, extended powers of confiscation and seizure and the establishment of specialist departments, particularly within the Judicial Police. However, the generally satisfactory legislation appears in a variety of specific and scattered sources, relating particularly to banking secrecy, the use of special investigation measures, the management of seized and confiscated assets and legal persons' liability. These need to be harmonised to provide greater overall cohesion and clarity, in order to facilitate the work of all those – judges, prosecutors and investigators – concerned. The latter also lack the necessary material, financial and human resources, and sometimes training, to carry out more effective financial and asset investigations. The activities of the Criminal Justice Reform Unit in the Justice Ministry and parliamentary progress towards a proper legal framework for national penal policy may help to give a firmer underpinning to policy on corruption and recovering the proceeds of crime.

77. Portugal adopted a public service ethics charter for civil servants as early as 1997. In 2005 the central directorate for corruption and economic and financial crime inquiries (DCICCEF) published a guide containing police recommendations to all public officials. In addition, the country has a developed inspection system. Still, the fight against corruption within the public service calls for a more structured preventive strategy based on more regular analyses and an integrated approach to corruption risks and ethical issues. These issues are particularly relevant in the light of current developments in the public service environment and increased pressure for efficiency and effectiveness. Improvements must be made to existing regulations, particularly on conflicts of interest, inappropriate migration of public sector employees to the private sector, protection for whistle-blowers and greater transparency.

78. Finally, to ensure that legal persons are not used to perpetrate or conceal corruption, appropriate measures must be introduced to monitor such bodies and clarify their liability, and to make the provisions on professional disqualifications better known. There is a need for action by the authorities and active collaboration with professionals in the private sector, such as accountants and auditors as well as private enterprise, to encourage ethical practices in the business world to a greater extent.

1. Portugal is in 28th position with a score of 6.5 in the 2007 Corruption Perceptions Index, which was compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

79. In view of the above, GRECO recommends to Portugal that:

i. more systematic use be made of asset investigations and that all available resources – legal, technical and human – be used to the full and if necessary strengthened to make financial investigations more effective (paragraph 20);

ii. existing provisions on the identification, seizure and confiscation of the proceeds of corruption and trading in influence be reviewed and, if necessary, guidelines be drawn up and additional training organised to facilitate their application (paragraph 22);

iii. the anti-money laundering arrangements make a greater contribution to combating corruption, particularly by ensuring that bodies involved in combating money laundering, and institutions and professions required to declare suspicious transactions, receive directives and training to assist the identification and reporting of acts of corruption (paragraph 25);

iv. more regular analyses be carried out on the risks of corruption and that a more integrated approach be adopted to its ethical aspects, with a view to extending preventive measures to the entire public sector, including local government, and to monitoring their application (paragraph 43);

v. appropriate rules be introduced, applicable to all public officials, on conflicts of interest and improper migration to the private sector and that mechanisms be established to ensure that they are properly applied and monitored (paragraph 49);

vi. existing codes of conduct be expanded to include explicit references to ethical issues and risks of corruption (such as the issue of gifts) for all public officials and prescribe appropriate sanctions for non-compliance with these codes. Training programmes on these topics should be modified to include practical examples of potential conflicts of interest and provided to all public officials (civil servants and others) (paragraph 53);

vii. appropriate protection be offered to whistle-blowers and that methods of dealing with allegations of corruption within the public service be re-examined, to ensure that appropriate procedures are followed as rapidly as possible (paragraph 54);

viii. *a*. the existing system of professional disqualifications be made better known; *b*. closer supervision be exercised over private law legal persons – including "irregular" companies – and their managers during and after their registration, particularly concerning their prior judicial records, and *c*. that priority be given to enacting and implementing the draft legislation to reform the commercial register (paragraph 72);

ix. an appropriate system of liability be introduced for legal persons involved in the offences of active corruption, trading in influence and money laundering; that effective, proportionate and dissuasive sanctions be introduced, in accordance with the Criminal Law Convention on Corruption; that appropriate training be organised to ensure the effective enforcement of this liability and the application of sanctions; and that consideration be given to establishing a criminal records system for legal persons on whom penalties have been imposed for criminal offences (paragraph 73);

x. training for tax officials on the detection of corruption offences be introduced (paragraph 74).

80. GRECO also invites the Portuguese authorities to take account of the observations in the analytical parts of this report (paragraphs 24, 44, 46, 48, 55 and 75).

81. Finally, pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Portuguese authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2007."

2. Observations

"24. There is no special body responsible for managing seized assets. Although the Portuguese authorities maintain that the matter is properly dealt with on a case-by-case basis, the GET considers that a specialist body responsible for all aspects of the seizure and management of assets and securities, such as associated expenses and the conservation and use of perishable goods, could simplify judges' task and make it easier to apply confiscation in practice. The GET observes that a special body responsible for managing seized assets should be established."

"44. The complex nature of the relevant legislation and administrative delays are also seen as factors that increase the risk of corruption, which is why successive reforms have tried to simplify administrative procedures and increase the use of new information technologies. The modernisation of State institutions since the 1980s and the reform of the Code of Administrative Procedure have also helped to make the decision making process and public service functioning more transparent. The 1993 access to administrative documents legislation and the activities of the access to administrative documents Commission have put an end to the air of secrecy surrounding official transactions and offer citizens an important means of monitoring government. Nevertheless, their right of access is not always effective in practice. Among the reasons put forward for this on the visit were: i. the excessive time taken by certain departments to supply requested information (for example, concerning public procurement and building permits); and ii. procedural (occasionally protracted) delays, particularly when the access commission is required to give a prior opinion, which can sometimes take up to two months. The Portuguese authorities have nevertheless indicated that the information delivery procedures are not normally slow and that the commission's prior opinion is warranted in certain touchier cases such as access to documents with personal data identifying third parties. The GET therefore observes that the Portuguese authorities should implement a more proactive policy on access to official documents and review the procedural constraints that lead to delays (occasionally protracted), with a view to giving proper effect to individuals' right of access to official documents."

"46. In principle, recruitment to public service posts is by competition, in accordance with procedures to which appropriate safeguards are attached (Section 5 of Legislative Decree 204/98). However, recruitment is carried out not by an independent authority with overall responsibility but by panels operating under and in accordance with Article 12 of the Legislative Decree 184/89. In particular, decisions relating to competitions and recruitment are subject to appeal to a higher level of authority. Article 26.4c of the disciplinary statute makes it a dismissible offence to negotiate or offer public employment fraudulently. Nevertheless, the GET has been told that public service recruitment, including local government recruitment, is vulnerable to corruption and is not always conducted transparently. The GET therefore observes that the Portuguese authorities should make existing recruitment procedures, including ones at local level, more transparent and

strengthen the arrangements for ensuring compliance with these procedures."

"48. The GET was told that staff rotation was standard practice and obligatory in certain sectors considered to be vulnerable, such as the state financial authorities, criminal and traffic police and the customs service, but that it had been abandoned in the customs and taxation services. Rotation is a way of limiting the risks and effects of the corruption that can otherwise result from extended periods performing the same duties in exposed sectors. The GET observes that the Portuguese authorities should consider introducing or reintroducing the rotation principle, at least in administrative sectors that might be deemed vulnerable to corruption."

"55. The GET has insufficient information to enable it to establish the scale of disciplinary proceedings or measures against public officials, or their effectiveness. It is recalled that there is no central registry of disciplinary proceedings or sanctions. According to the Portuguese authorities, disciplinary procedures are monitored through a national system of internal audits undertaken primarily by general inspections. Nonetheless, the GET notes that more systematic checks could be carried out on whether the sanctions imposed are adequate or proportional in the case of corruption or related offences. The GET observes that the authorities should examine whether current disciplinary procedures enable them to carry out proper investigations of alleged corruption and other abuses (such as accepting gifts or failing to report offences or conflicts of interest) and impose appropriate sanctions."

"75. Despite accountants' and auditors' obligation to notify the State Prosecutor of criminal offences that come to their attention in the course of their duties and the fact that there are numerous reports of certain offences, there have been few if any reports of corruption offences. The judicial authorities have even identified a number of cases of failure to fulfil this obligation. The GET takes the view that accountants and auditors could make a greater contribution to combating corruption, particularly since under proposals they have submitted to the government auditors might also be called on in the future to audit the accounts of local and regional authorities. The auditors' association hopes to introduce training for its members in 2006 aimed at making them more aware of corruption and more prepared to report cases of it. The GET observes that the authorities should explore, in consultation with the accountants' and auditors' professional organisations, steps to take to improve the reporting of suspected corruption, for example through directives and training on the detection and reporting of corruption."[1]

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 November 1990, ratified on 19 October 1998, entered into force on 1 February 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, but not ratified

1. According to the auditors' professional association the courts have referred two cases of failure to report corruption to the association to enable it to take the appropriate disciplinary measures. It was unable to take action on these cases because the one-year time limit for such action had expired. However, the association's new draft statutes include changes to the time limit for disciplinary measures.

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Portugal published in December 2003 following a country visit in May 2003

Opinion by the Commissioner for Human Rights on the procedural safeguards surrounding the authorisation of pre-trial detention in Portugal published in March 2004

Extract of: "Opinion of the Commissioner for Human Rights, Mr Alvaro Gil-Robles, on the procedural safeguards surrounding the authorisation of pre-trial detention in Portugal" (CommDH(2004)8):

"Conclusions

Detention on remand represents an extreme limitation of individual liberty and ought therefore to be imposed exceptionally and subject to the appropriate procedural guarantees. Though frequently applied in Portugal, the criteria laid down for the detention on remand in the Code of Criminal Procedure are sound. The problem arises rather in respect of the suspect's knowledge of the elements motivating the decision, and consequently his ability to challenge it effectively.

Greater precision in the formal motivation for such decisions in the remand order (the 'despacho'), than is currently required and, in practise, often given, would certainly go some way to rectifying this shortcoming. Such orders might be expected to contain both substantial elements regarding the offence allegedly committed and a detailed reasoning of the strict necessity of detention on remand.

Such a welcome development would not suffice to resolve, but would, indeed, itself continue to be vitiated by, the difficulties liable to arise as a result the provisions relating to the 'segredo de justiça' and the absence of clear indications regarding extent of the information that must be disclosed to the accused. The occasional need to keep certain elements of the enquiry confidential in order to guarantee the effectiveness of the investigation is not in question. Nor, therefore, is the notion of the 'segredo de justiça' itself; it is a perfectly valid procedural feature, analogues of which are, moreover, employed in other countries. The problem arises only in respect of its potentially excessive and lengthy application to cases in which the subject is detained pending the formulation of an accusation.

The current system renders the confidentiality of the enquiry, in its entirety, the norm. Information contained in the enquiry may, indeed, in the light of the rulings of the Constitutional Court, exceptionally be disclosed, but this sits awkwardly with fact that it ought only exceptionally be necessary to withhold it. Consideration might be given, therefore, to inverting the current practise such that, in the event of the application of detention on remand, the maintenance of the 'segredo de justiça' would constitute, as in other member states of the Council of Europe with analogous provisions,[2] not the rule, but the exception. Whilst provision must, in any event, be made for the obligatory disclosure of sufficient elements to challenge the decision effectively, regard must also be had to the effectiveness of

1. Portugal is in 8th position with a score of 2.00 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).
2. Refer to Article 302 of the Spanish Penal Procedure Code.

the criminal proceedings. The examining judge might still, therefore, be able to maintain the confidentiality of the remainder of the enquiry through a motivated decision. The maintenance of the 'segredo de justiça' ought to continue only for so long as is strictly necessary for the effectiveness of the investigation. The current delays for the formulation of charges by the Prosecution Service are not, in themselves, excessive, but might constitute, if extended without motivation to the maximum twelve-month period provided for, a rather lengthy period for the retention of important confidential elements from the defence. Consideration might also be given to introducing a provision requiring the lifting of the 'segredo de justiça' sufficient time in advance of the formulation of charges to permit the introduction, at the investigative stage, of additional elements by the defence in response to the information and claims previously covered by 'segredo de justiça'.

A wide variety of reforms improving the respect for the fundamental rights of suspects might equally well be entertained. It is not the purpose of this opinion, nor the role of the Commissioner, to propose such alternatives in detail. The concern of this opinion has rather been to identify the procedural shortcomings liable to arise in the application of the current provisions and to indicate the principles to be respected in their resolution.

Foremost amongst these principles is the right to liberty and security, the respect for which constitutes the mainstay of democratic criminal justice systems. Portugal's real and long-standing commitment to the respect for fundamental human rights is not in question. Improvements in line with this commitment might still be made, however, in respect of the guarantees surrounding the application of pre-trial detention. It is for the Portuguese authorities to consider, and decide on, the reforms that are deemed to respect best the rights of suspects, the effectiveness of criminal investigations and the Portuguese legal tradition."

B. European Convention on Human Rights

ECHR ratified on 9 November 1978

"Reservation contained in the letter from the Permanent Representative of Portugal, dated 8 November 1978, handed to the Secretary General at the time of deposit of the instrument of ratification, on 9 November 1978:

Article 5 of the Convention will be applied subject to Articles 27 and 28 of the Military Discipline Regulations, which provide for the placing under arrest of members of the armed forces.

Articles 27 and 28 of the Military Discipline Regulations read as follows:

Article 27

1. Arrests consist of the detention of the offender in a building intended for the purpose, in an appropriate place, barracks or military establishment, in suitable quarters on board ship or, failing these, in a place determined by the competent authority.

2. Between the reveille and sundown, during the period of detention, the members of the armed forces can perform the duties assigned to them.

Article 28

Close arrest consists of the detention of the offender in a building intended for the purpose.

Period covered: 9 November 1978 -
The preceding statement concerns Article(s): 5

Reservation contained in the letter from the Permanent Representative of Portugal, dated 8 November 1978, handed to the Secretary General at the time of deposit of the instrument of ratification, on 9 November 1978:

Article 7 of the Convention will be applied subject to Article 309 of the constitution of the Portuguese Republic, which provides for the indictment and trial of officers and personnel of the State Police Force (PIDE-DGS).

Article 309 of the constitution reads as follows:

Article 309

1. Law No. 8/75 of 25 July shall remain in force with the amendments made by Law No. 16/75 of 23 December and Law No. 18/75 of 28 December.

2. The offences referred to in Articles 2.2, 3, 4.*b* and 5 of the Law referred to in the foregoing paragraph may be further defined by law.

3. The exceptional extenuating circumstances as provided for in Article 7 of the said Law may be specifically regulated by law.

(Act No. 8/75 lays down the penalties applicable to officers, officials and associates of the former General Directorate of Security (beforehand the International and State Defence Police), disbanded after 25 April 1974, and stipulates that the military courts have jurisdiction in such cases).

Period covered: 9 November 1978-
The preceding statement concerns Article(s): 7."

Protocol No. 6 ratified on 2 October 1986
Protocol No. 12 signed on 4 November 2000
Protocol No. 13 signed on 3 October 2003
Protocol No. 14 ratified on 19 May 2006

Out of a total of 1 560 judgments delivered by the Court in 2006, there were five concerning Portugal, of which four gave rise to a finding of at least one violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 10 concerning Portugal, of which nine gave rise to a finding of at least one violation and one gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 214 concerned Portugal.

Resolutions adopted by the Committee of Ministers in 2007: four, of which one interim resolution

Interim Resolution ResDH(2007)108 concerning the judgments of the European Court of Human Rights in 25 cases against Portugal relating to the excessive length of proceedings (adopted by the Committee of Ministers on 17 October 2007, at the 1007th meeting of the Ministers' Deputies)

Resolutions adopted by the Committee of Ministers in 2008 (on 20 May 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Convention signed on 26 November 1987, ratified on 29 March 1990, entered into force on 1 July 1990, Protocols Nos. 1 and 2 signed on 3 June 1994, ratified respectively on 20 March 1998 and 3 February 2000, entered into force on 1 March 2002

Publication of the last report: January 2007 (available in French only)

Last country visit: January 2008

Press release of 25 January 2007:

> "The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today its reports on the ad hoc visit to Portugal in 2002 and the 4th periodic visit to Portugal in 2003, together with the authorities' responses. These documents have been made public at the request of the Portuguese Government.
>
> The 2002 ad hoc visit focused on the situation at Oporto Central Prison. In previous visits to this establishment, the CPT had found the prison overcrowded, prisoners' living areas unhygienic, a high level of inter-prisoner intimidation/violence, a wide availability of drugs and inadequate staffing levels. The report on the 2002 visit highlighted that while some improvements had been made, there remained significant challenges.
>
> In the course of the 4th periodic visit to Portugal in 2003 the CPT's delegation examined the treatment of persons detained by law enforcement agencies and the fundamental safeguards against ill-treatment offered to such persons. It also reviewed the conditions of detention in prisons, including at Oporto Central Prison, and examined for the first time the treatment of patients in a penitentiary psychiatric hospital.
>
> The CPT's visit reports and the responses of the Portuguese authorities are available on the Committee's website at http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 7 May 2002, entered into force on 1 September 2002

No reservation, no declaration

Extract of the last opinion of the Advisory Committee, adopted in October 2006 (ACFC/INF/OP/I(2006)002):

> "Concluding remarks
>
> Following the receipt of the initial State Report of Portugal on 23 December 2004 (due on 1 September 2003), the Advisory Committee commenced the examination of the State Report at its 22nd meeting from 21 to 24 February 2005. The Advisory Committee adopted its opinion on Portugal at its 27th meeting on 6 October 2006.
>
> Although the State Report states that there are no national minorities in Portugal, the position expressed by the authorities with regard to the scope of application of the Framework Convention has evolved in the course of their dialogue with the Advisory Committee and, in particular, the relevance of Article 6 of the Framework Convention has been recognised. The authorities are encouraged to take further steps in this respect, including engaging in consultations on the Framework Convention with the groups considered ethnic minorities by the authorities.
>
> The Advisory Committee welcomes the authorities' efforts to adopt legislative, institutional and practical measures to combat discrimination and racism. Integration policy, coupled with the promotion of multicultural education, has also remained high on the agenda. Moreover, measures have been taken to improve the socio-economic and educational situation of the Roma. However, a large number of Roma are still at a disadvantage in this respect. They are also often confronted with discrimination, social exclusion and marginalisation.
>
> Further measures should be developed, in co-operation with the persons concerned, to promote the full and effective equality of the Roma, in particular in the fields of housing, education, employment and health and to continue to combat prejudice and hostility against them."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2007)12

Second state report expected for 1 September 2008

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: "Third report on Portugal" was adopted on 30 June 2006 and made public on 13 February 2007

Extract of Document CRI(2007)4:

> "Executive summary
>
> Since the publication of ECRI's second report on Portugal on 4 November 2002, progress has been made in a number of the fields highlighted in that report. The administrative law provisions and those included in the Labour Code prohibiting racial discrimination have been strengthened. A victim support unit for immigrants and others who have suffered racial or ethnic discrimination (UAVIDRE) has been created. The High Commission for Immigration and Ethnic Minorities (ACIME) has been restructured and strengthened, and its budget has been considerably increased. This institution actively works to facilitate the integration of immigrants and to combat racism and racial discrimination. The authorities have taken measures to legalise immigrant workers without legal status present on Portuguese territory. The Foreigners and Borders Service (SEF) has been improved. Immigrants and Gypsies have benefited from general measures aimed at social inclusion.
>
> However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. Gypsy communities still suf-

fer from social exclusion and encounter difficulties in their dealings with the majority population, local authorities and law enforcement officials. Access to education, to public services, to housing and the opportunity to carry out an economic activity all remain problematic for these communities. A lack of awareness of the problem of racism has been noted on the part of the police, prosecutors and judges. The procedure for receiving complaints of racial discrimination contained in the Law 18/2004 suffers from major dysfunctions. There are allegations of direct and indirect racial discrimination in the fields of employment, housing, healthcare and access to goods and services, particularly affecting Black people and Gypsies. There are also allegations of discriminatory behaviour on the part of law enforcement officials. Regarding immigration, despite the efforts undertaken by the SEF to improve the situation, progress remains to be made both in managing the backlog and reception by the SEF and in implementing the procedure for granting a legal status to non-citizens living in Portugal. There are apparently still many immigrants without legal status in the country. These people are particularly vulnerable to exploitation by dishonest employers. Some immigrants still encounter integration difficulties. Racist stereotypes and racial prejudices persist within part of the population and are sometimes conveyed by the media, notably in the case of Gypsies, immigrants, Jews and visible minorities in Portugal.

In this report, ECRI recommends that the Portuguese authorities take further action in a number of areas. It recommends strengthening training on issues of racism and racial discrimination for actors in the justice system. It recommends improving the procedure for receiving complaints of racial discrimination under the Law 18/2004. ECRI recommends raising public awareness of the need to combat racism and intolerance and the benefits of a multicultural society. It asks the Portuguese authorities to continue their efforts aimed at taking measures in favour of the legalisation and integration of immigrants. It recommends additional measures to put an end to misconduct on the part of law enforcement officials towards minority groups. Finally, ECRI asks the Portuguese authorities to adopt a national strategy to combat the social exclusion of Gypsies, by improving their situation in such fields as housing, education and access to public services."

G. Social rights

European Social Charter of 1961 signed on 1 June 1982, ratified on 30 September 1991, entered into force on 30 October 1991

European Social Charter (revised) signed on 3 May 1996, ratified on 30 May 2002, entered into force on 1 July 2002

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed on 9 November 1995, ratified on 20 March 1998, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1993 and 2006, Portugal submitted 9 reports on the application of the Charter and 1 report on the application of the Revised Charter. The 2nd report on non hard core provisions of the Revised Charter was due by 31 March 2006 and Portugal failed to submit it.

The 3rd 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 3rd report should be submitted before 31 October 2007.

Collective complaints (proceedings in course)

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

Allegation: violation of Article 12, paragraphs 1, 2, 3 (the right to social security), decision on admissibility of 16 October 2007.

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

Allegation: violation of Articles 6, paragraphs 1-2 (the right to bargain collectively), 21 (the right to information and consultation) and 22 (the right to take part in the determination and improvement of the working conditions and working environment), decision on admissibility of 21 May 2007.

Collective complaints (final decisions)

World Organisation against Torture v. Portugal (No. 34/2006)

Violation of Article 17 (right of children to social, economic and legal protection), decision on the merits of 5 December 2006.

World Organisation against Torture v. Portugal (No. 20/2003)

No violation of Article 17 (right of children to social, economic and legal protection), decision on the merits of 7 December 2004.

European Council of Police Trade Unions v. Portugal (No. 11/2001)

No violation of Articles 5 and 6 (right to organise and right to collective bargaining), decision on the merits of 21 May 2002.

European Federation of Employees in Public Services v. Portugal (No. 5/1999)

No violation of Articles 5 and 6 (right to organise and right to collective bargaining), decision on the merits of 4 December 2000.

International Commission of Jurists v. Portugal (No. 1/1998)

Violation of Article 7, paragraph 1 (prohibition of employment under the age of 15), decision on the merits of 9 September 1999.

Portugal's record with respect to application of the Charter is the following as of 1 July 2007:

Examples of progress made or under way

Health/Education

Prohibition of the employment of minors subject to compulsory education (Constitutional Act No. 1/97); the minimum age for employment has been fixed as 16 and light work has been defined (Act No. 58/99); illegal employment of young persons is regarded as a very serious offence and sanctions have been stepped up (Acts Nos. 113, 114, 116 and 118/1999).

General prohibition of night work between 8 p.m. and 7 a.m. for young persons under 16 years of age and between 11 p.m. and 7 a.m. for young persons over 16 years of age has been introduced (Act No 58/99).

Six-weeks post-natal leave has been made compulsory (Act No. 142/99) and maternity leave has been increased from 98 to 120 days (Act No. 18/98).

The right to time off for nursing mothers has been extended to cover the whole period of nursing, including in the case of part-time work (Act No. 142/99).

Employment

1. Act No. 105/97 on equality between women and men;

2. Act No. 134/99, as implemented by Legislative Order No. 111/2000 prohibits any distinction, exclusion, restriction or preference based on race, colour, ancestry or national or ethnic origin in the exercise of economic, social or cultural rights.

Decree No. 132/99 contains the principles on the organisation and functioning of employment services.

Act No. 73/98 regulates working time.

Act No. 45/98 removed age as a criterion for determining the level of the statutory minimum wage.

Legislative Decree No. 84/99 guarantees the right to organise for all public employees.

The government has stopped defining by decree the minimum services to be guaranteed in the event of a strike where the parties are unable to reach agreement (decision of the Constitutional Court declaring that certain provisions of the Act on the right to strike were unconstitutional).

Act No. 14/2002 of 19 February 2002 concerning the exercise of the freedom of association and collective bargaining and participation rights of staff members of the Public Security Police.

Movement of persons/Non-discrimination

Act No. 134/99 prohibits any discrimination on the ground of nationality.

Act No. 105/97 provides for equality and non-discrimination based on gender at work and in employment.

Under Act No. 32/2002, specific emergency assistance (housing, food and benefits in kind to cover basic needs) is available to all persons who are in a situation of exceptional need.

Simplification of the formalities for issuing work permits (Act No. 20/98).

Abolition of the quota of foreign nationals allowed to work in undertakings with more than five employees (Act No. 20/98).

Act No. 134/99 repealed Decree No. 55/1977 which gave nationals alone the right to apply for subsidised housing.

The scope of the provisions relating to family reunion has been extended (Decree-Law of 8 August 1998).

Act No. 30-E/2000 provides equal treatment for nationals of the Parties with respect to legal aid.

Social protection

Legislative Decree No. 84/2000 has amended the legislation on the guaranteed minimum income.

1. Act No. 135/99 introduced a series of protective measures for heterosexual couples having cohabited for two years or more. In 2001, these measures were extended to homosexual couples;

2. Act No. 142/99 improved provisions for maternity and paternity leave.

Cases of non-compliance

Health

Article 3, paragraph 2 – right to health and safety at work (regulations)

The effective exercise of the right to health and safety at work is not guaranteed given the high number of fatal accidents, particularly in the construction industry, and the insufficient number of inspection visits at the workplace.

Non-discrimination (sex)

Article 20 – right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

Portuguese law does not permit pay comparisons for determining equal work or work of equal value beyond the same enterprise.

Children

Article 7, paragraph 10 – protection of children against physical and moral dangers

The possession of child pornography is not a criminal offence.

Education/Health

Article 11, paragraph 2 – right to protection of health

The great majority of pupils do not benefit from health education.

Employment

Article 1, paragraph 2 – prohibition of forced labour

Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code providing for sanctions against seamen who abandon their post even where the safety of the vessel or the lives or health of persons on board are not at risk remains in force.

Article 2, paragraph 2 – right to public holidays with pay

Workers in enterprises with less than 10 employees who are obliged to work on a public holiday are not entitled to equivalent time off in lieu.

Article 4, paragraph 4 – right to notice of dismissal

Some categories of workers are not granted a period of notice for termination of employment after serving with the same employer for eight months.

Article 6, paragraph 4 – right to collective bargaining (strikes and lockouts)

Trade unions have a monopoly over the taking of strike action, and forming trade unions is subject to excessive time frames depriving non-affiliated workers from the effective exercise of the right to strike.

Article 15, paragraph 2 – right of disabled persons to employment and training

There is no legislation prohibiting discrimination on grounds of disability in the field of employment.

Social protection

Article 12, paragraph 1 – right to social security

The level of sickness benefit is manifestly inadequate.

Article 13, paragraph 1 – adequate assistance for every person in need

The level of social assistance for persons living alone is manifestly inadequate."

H. Parliamentary Assembly

No recent specific text concerning Portugal

Romania

Council of Europe member state since 7 October 1993
Number of Council of Europe conventions ratified (as of 22 May 2008): 97 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 13

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential election: 2004
Next presidential election: 2008
Last general elections: 2004
Next general elections: 2008

B. Local and regional democracy

Last municipal elections: 2004
Next municipal elections: 2008

European Charter of Local Self-Government signed on 4 October 1994, ratified on 28 January 1998, entered into force on 1 May 1998

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: May 1995 (CG(2)5 Part II), Resolution 18 (1995) and Recommendation 12 (1995) on local democracy in Romania adopted on 31 May 1995

Extract of: "Information report on local and regional democracy in Romania" (25 April 2002, CG/INST(8)55rev1):

"Conclusions

95. This information report is being submitted to the Institutional Committee for final approval under the responsibility of the rapporteurs, after consultation with Mr De Sabbata's. Given its status as an information text, these conclusions do not contain particular recommendations.

96. This text is intended merely to provide the Congress's Institutional Committee with information to enable it to identify the questions that are currently arising as regards local and regional self-government in Romania. Despite the progress made, problems remain, especially as regards:

a. respect for the fundamental principles of local self-government, irrespective of the political interests and the forces in power at central level;

b. the financial resources of local authorities, which continue to be too limited, based on excessively rigid regulations that do not correspond to the powers allocated, and oblige local authorities to depend to too large an extent on state transfers;

c. the status and smooth functioning of local self-government in the capital Bucharest, on account of:

– excessive politicisation of relations between the central authorities and the general mayor on the one hand, and between the general mayor, general council and borough mayors on the other;

– an unhealthy combination of private interests and public priorities;

– inappropriate mechanisms governing the relationship between the deliberative and executive bodies;

– an electoral system that requires further development;

d. the supervision and sanction conditions and procedures provided for in the law with regard to suspension and dismissal, the dissolution of the organs and/or abrogation of the decisions of local authorities.

97. Bearing in mind this information report and the Romanian authorities' reaction to it, and following the organisation of a European colloquy on regionalisation by the end of 2002 in Romania, the Institutional Committee could re-examine the situation in the course of 2003 and decide on the appropriateness of preparing a second monitoring report on the situation of regional democracy in Romania."

See also "Follow-up to the information report on local and regional democracy in Romania" (2 April 2003, CG/INST(9)45).

II. Rule of law

A. Venice Commission

Opinion on the two draft laws amending Law No. 47/1992 on the organisation and functioning of the Constitutional Court of Romania adopted by the Commission at its 66th Plenary Session (Venice, 17-18 March 2006, CDL-AD(2006)006):

1. The non-governmental organisation Freedom House gives Romania a score of 2 for political rights and 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).

Opinion on the draft law regarding the religious freedom and the general regime of religions in Romania adopted by the Commission at its 64th Plenary Session (Venice, 21-22 October 2005, CDL-AD(2005)37)

Opinion on the draft law on the statute of national minorities living in Romania adopted by the Venice Commission at its 64th Plenary Session (Venice, 21-22 October 2005, CDL-AD(2005)026)

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Romania in 2004 was €190 761 081;

– the number of professional judges on a full-time basis in Romania in 2004 was 4 030, which means 18.6 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Romania was 2 784, which means 12.8 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 4 November 1999, ratified on 23 April 2002, entered into force on 1 November 2003

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 11 July 2002, entered into force on 1 November 2002, additional protocol signed on 9 October 2003, ratified on 29 November 2004, entered into force on 1 March 2005

Extract of: "Second evaluation round: evaluation report on Romania", adopted by GRECO at its 25th plenary meeting (Strasbourg, 10-14 October 2005, GRECO Eval II Rep(2005) 1E):

1. Conclusions

"72. Romania has made considerable progress in the field of legislative and institutional reform. Romanian society has managed to adapt quickly to the new political, economic and legal environment, but will no doubt need some time to assimilate all these changes. At the same time, Romania must obtain immediate tangible results in transforming its administration and ensuring its efficient and transparent functioning if it is to combat corruption effectively. A series of corresponding measures have already emerged, such as the adoption of a new anti-corruption strategy and an action plan to implement it, and the scheduled setting up of a National Integrity Agency and a body responsible for verifying declarations of assets and interests and incompatibilities. Further progress is possible in terms of preventing and suppressing corruption in legal persons and in recovering the proceeds of corruption. In all these fields, finalisation of the Penal Code and the Code of Criminal Procedure and a number of adjustments to legislation, accompanied by effective implementing measures and appropriate training, should help achieve the desired results.

73. In view of the above, GRECO addresses the following recommendations to Romania:

i. to harmonise the relevant provisions relating to interim measures and confiscation, including value seizure and confiscation, by finalising, as soon as possible, the envisaged amendments on the Criminal code and Code of criminal procedure (paragraph 16);

ii. to introduce the possibility to confiscate the proceeds of corruption every time it is sanctioned by an administrative penalty (paragraph 17);

iii. to strengthen the capacities of prosecution services and courts to deal efficiently with corruption cases within a reasonable time, in particular through specialisation and training (paragraph 18);

iv. to establish effective co-operation among the National Anti-Corruption Prosecution Office, the prosecutor's office at the High Court of Cassation and Justice and the competent police departments in cases combining corruption, money laundering and/or organised crime (paragraph 19);

v. to review, as necessary, the legislation unduly restricting the right of individuals to have access to official documents and to provide appropriate training to public officials on the implementation of the rules on freedom of information (paragraph 46);

vi. to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion (paragraph 48);

vii. to complement the existing codes of conduct, where necessary (eg regarding reactions to gifts and reporting of corruption) and to ensure that all public officials receive appropriate training (paragraph 49);

viii. to extend the scope of the existing rules on conflicts of interest and incompatibilities, and make them applicable to all public officials exercising an activity involving prerogatives of public authority, and to introduce an appropriate system for supervising the application of these rules, including in the field of abusive migration by public officials to the private sector (paragraph 50);

ix. to introduce an effective system for supervising declarations of assets and interests (paragraph 52);

x. to consolidate and harmonise the rules on gifts and to provide appropriate training for public officials, drawing on practical examples (paragraph 53);

xi. to add the offence of money laundering to the list of criminal offences justifying the professional disqualification for convicted persons (paragraph 64);

xii. to reinforce checks on the information required by law and the companies' real purposes, during and after registration (paragraph 65);

xiii. to actively pursue the current legislative developments aimed at introducing an adequate regime of liability of legal persons for criminal offences committed on their behalf and

1. Romania is in 69th position with a score of 3.7 in the 2007 Corruption Perceptions Index, which was compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

to establish adequate sanctions or measures for such offences in conformity with the Criminal Law Convention on Corruption (paragraph 66);

xiv. that the institutions involved in preventing and detecting corruption offences committed on behalf of legal persons (eg Commercial Register, Tax Administration, police, customs, auditing bodies) should step up their co-operation in order to ensure permanent exchange of relevant information on legal persons and also reinforce their co-ordination with the judicial authorities (paragraph 67);

xv. to introduce training courses for tax inspectors in the field of detecting corruption offences (paragraph 70).

74. GRECO also invites the Romanian authorities to take account of the observations (paragraphs 41, 43, 47 and 71) of the analytical section of this report.

75. Lastly, in accordance with Rule 30.2 of its Rules of Procedures, GRECO invites the Romanian authorities to submit a report on the implementation of the above-mentioned recommendations by 30 April 2007."

2. Observations

"41. Romania has made great progress over the past fifteen years in reforming State institutions, and has adopted extensive new legislation in all fields. Romanian society has managed to adapt quickly to the new political, economic and legal environment, but will no doubt need some time to assimilate all these changes. At the same time, Romania is endeavouring to obtain tangible and immediate results in transforming its administration so that it can combat corruption. Legal professionals such as the judges and lawyers interviewed during the visit have acknowledged that the rapid adoption of many new laws and amendments has injected a great deal of complexity, uncertainty and sometimes contradictions into legislation. The GET observes that the Romanian authorities should take particular care about the clarity and coherency of legislation."

"43. The GET noted that the Strategy for Administrative Reform as revised in 2004 pinpoints action against corruption as one of the aims of a more efficient administration, but fails to mention any actual instruments geared to combating corruption. This revised Strategy does, however, comprise provisions designed to improve information on the numbers and categories of public officials, as well as to reinforce the integrity of the system for managing civil servants, vis-à-vis their recruitment, appraisal and promotion. The revised strategy is supervised by the Higher Council for Administrative Reform operating within the government. At the time of the visit, the GET noted that there was insufficient co-ordination between the anti-corruption strategies and action plans and the revised Strategy for Administrative Reform, and also inadequate co-operation among the different bodies responsible for formulating and implementing these instruments.[1] The GET observes that the Romanian authorities should ensure improved co-ordination between the different anti-corruption strategies and action plans and the Strategy for Administrative Reform, and improve co-operation in monitoring these instruments."

"47. Article 45 of the Civil Service Regulations obliges civil servants to maintain the confidentiality of any actions, information or documents obtained in the performance of their duties, except information deemed of public interest. According to Article 13 of the codes for civil servants and contractual staff public officials must promote a positive image of Romania and the institutions which they represent in international relations, under threat of disciplinary sanctions. According to the GET, the wording of these obligations and the remnants of the culture of secrecy within public administration are likely not to favour transparency within public administration. In the light of the foregoing, the GET observes that the Romanian authorities should review the provisions on civil servants' duty to be discreet."

"71. Chartered accountants are required to declare to the principal public prosecutor's office and the NOPCMLO any financial transaction giving rise to suspicions of money-laundering. It is unclear to what extent private auditors and accountants are required to report suspicions of corruption to the NAPO, apart from Article 14 of GEO No. 43/2003, which requires persons responsible for verification to report any suspicions of corruption to the NAPO. At the time of the visit there had never been any such reports of cases of corruption. Furthermore, the Romanian Association of Chartered Accountants has drawn up a code of ethics and organised compulsory 40-hour training modules for chartered experts on the prevention of corruption, laying down guidelines on detection of corruption. However, the GET has been unable to ascertain the situation of private auditors, their contribution to combating corruption and their rules on ethical matters and conflicts of interest. The GET observes that the authorities should explore, in dialogue with the private auditors' and accountants' representative bodies, potential measures that could be taken to improve the situation in relation to reports of suspicious acts to the competent authorities."

The compliance report of the second evaluation round on Romania exists, but has not been made public to date.

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 18 March 1997, ratified on 6 August 2002, entered into force on 1 December 2002

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) signed on 16 May 2005, ratified on 21 February 2007, entered into force on 1 May 2008

"Second round evaluation report on Romania: summary" (4 July 2003, MONEYVAL(2003)9Summ)

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Romania published in November 2002 following a visit to the country in October 2002 (CommDH(2002)13)

1. According to the Romanian authorities, the Strategy for Administrative Reform is subordinate to NACS II. Co-ordination is formally provided for by the NACS II Co-ordinating Council, which is apparently sufficiently representative for the task.

1. Romania is in 42nd position with a score of 12.75 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

Follow-up report on Romania published in March 2006 following a visit to the country in September 2004

Extract of "Follow-up report on Romania (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)7):

"Introduction

The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Romania between 5 and 9 October 2002 at the invitation of the Romanian Government. In the report of his visit, the Commissioner had raised a number of questions concerning the legislation and effective respect for human rights in Romania. The purpose of the present report is to evaluate the changes that have come about following the conclusions and the recommendations made by the Commissioner in 2002. It follows the order of the recommendations and deals only with the problems raised in the first report.

This report is based on the documents and information provided by the Romanian authorities relating to developments in observance of human rights since the first report and also the findings and conclusions of a follow-up visit to Romania by members of the Office of the Commissioner between 13 and 17 September 2004. The members of the Office wish to thank all those whom they met and also the Information Office of the Council of Europe in Bucharest for its invaluable assistance.

Judiciary

Functioning of the judicial system and exceptional powers of the prosecutor

…

Conclusions

The Commissioner welcomes the repeal of the exceptional powers of the general prosecutor and the reforms undertaken in relation to the judiciary. He nonetheless recommends that these reforms be continued, in order to strengthen the independence of the judicial system while improving its structure and its effectiveness.

Prisons

…

Conclusions

The Commissioner emphasises the efforts made and the investments carried out to improve prison conditions and welcomes the adoption of new alternative measures. There is a clear intention to increase available prison places in order to reduce prison overpopulation. The programme of bringing prisons into line with the standards of the Council of Europe must be continued. However, significant difficulties remain and an urgent solution must be envisaged for the most obsolete and the most overcrowded prisons, such as Jilava prison.

Police

…

Conclusions

The Commissioner recommends continuing the reform of the police forces, in particular as regards awareness of effective respect for human rights. The fight against the misuse of firearms must continue, in particular by severely punishing any inappropriate use.

Child protection

Closure of institutions

…

International adoption

…

Conclusions

The Commissioner is pleased to learn that a number of traditional children's institutions have been closed and that new host structures have been set up. The new legislation on adoption puts the child's interest back at the centre of the procedure and emphasises the importance of adoption at national level. However, the possibility of international adoption should not be precluded if adoption is in the best interest of the child and is accompanied by all the guarantees which will enable the abuses of the past to be prevented.

The fight against trafficking in human beings

…

Conclusions

The Commissioner welcomes the normative texts adopted and the programmes put in place to prevent and fight against trafficking. However, the collection and publication of reliable statistics on the number of victims of trafficking would enable better account to be taken of the phenomenon. It is also necessary to reinforce the protection of victims of trafficking and the prosecution of offenders.

The mentally ill

Conditions of confinement

…

Memorandum on the reform and rehabilitation of the mental health services

…

Conclusions

In spite of the initiatives undertaken, care and leaving conditions of the mentally ill in specialised institutions continue to cause great concern. Accordingly, the Commissioner invites the Romanian authorities to carry out the reforms initiated as quickly as possible, in order to insure that the death of patients will not happen again and to provide decent living conditions to all patients. The confinement procedure must be reviewed both from a legal point of view and as regards its implementation. Finally, it would be appropriate to develop reception structures for marginalised persons so that they are no longer accommodated in psychiatric institutions.

Domestic violence

…

Conclusions

The Commissioner invites the authorities to continue the efforts already undertaken and to develop training programmes for those concerned. It remains necessary to implement the action plan, to increase the number of publicly-subsidised shelters and to ensure that the provisions of the Criminal Code are applied in full.

The Roma Community

General situation

…

Education

…

Conclusions

The Commissioner welcomes the initiatives undertaken, in particular in education and access to the jobs market. However, significant efforts remain to be made to allow members of the Roma community to have full access to medical services, civil status and a good-quality education. These improvements, like better access to the jobs market, will come about through the full implementation of an ambitious action plan. Finally, programmes to allow everyone to have access to essential services such as water and electricity must be intensified.

The People's Advocate

…

Conclusions

The Commissioner welcomes the distinct improvement in the material conditions available to the People's Advocate and the importance of the work carried out by that institution.

Freedom of expression

…

Conclusions

The Commissioner welcomes the adoption of the self-regulation code and the reforms of the Criminal Code. He encourages Romania to pursue the protection of freedom of expression and of the media both in legislative terms and in practice."

B. European Convention on Human Rights

ECHR ratified on 20 June 1994

No reservation, no declaration

Protocol No. 6 ratified on 20 June 1994
Protocol No. 12 ratified on 17 July 2006
Protocol No. 13 ratified on 7 April 2003
Protocol No. 14 ratified on 16 May 2005

Out of a total of 1 560 judgments delivered by the Court in 2006, there were 73 concerning Romania, of which 64 gave rise to a finding of at least one violation and three gave rise to a finding of no violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 93 concerning Romania, of which 88 gave rise to a finding of at least one violation and one gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 8 275 concerned Romania.

Resolutions adopted by the Committee of Ministers in 2007: six

No interim resolution

Resolutions adopted by the Committee of Ministers in 2008 (as of 28 April 2008): one

No interim resolution

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 4 November 1993, ratified on 4 October 1994, entered into force on 1 February 1995, Protocols Nos. 1 and 2 signed on 4 November 1993, ratified on 4 October 1994, entered into force on 1 March 2002

Last country visit: June 2006

Publication of the last report: January 2006 (available in French only)

Press release of 19 January 2006:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has today published the report on its visit to Romania in June 2004, together with the response of the Romanian Government. These documents have been made public at the request of the Romanian authorities.

The Committee's visit was triggered by information received regarding the death of many patients, due to malnutrition and/or hypothermia, at Poiana Mare Psychiatric Hospital (region of Dolj), an establishment which the CPT had already strongly criticised in the past in respect of the patients' living conditions (particularly food and heating). In the course of this visit, the CPT also examined the situation of the residents at Craiova Recovery and Rehabilitation Centre for Disabled Persons.

The Committee intends to return to Romania in 2006 to carry out a periodic visit.

The CPT's visit report and the response of the Romanian authorities are available on the Committee's website: http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 11 May 1995, entered into force on 1 February 1998

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in November 2005 (ACFC/OP/II(2005)007):

"Concluding remarks

197. 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 Romania.

Positive developments

198. Since the adoption of the opinion of the Advisory Committee in April 2001 and the resolution of the Committee of Ministers in March 2002, Romania has continued to pay particular attention to the protection of national minorities. Important steps have been taken to

consolidate and build upon Romania's existing legislation and practice in the field of minority protection, while constantly involving the representatives of national minorities in this process.

199. On the legislative level, these steps have resulted in new constitutional and legislative provisions in areas of direct concern to persons belonging to national minorities. Increased efforts have also been made to develop an adequate legal and institutional basis for preventing and combating manifestations of discrimination, intolerance and hostility based on ethnicity. In addition, a Draft Law on the Status of National Minorities is currently being examined by Parliament.

200. Special measures adopted in order to promote the full and effective equality of persons belonging to national minorities have produced results in various fields, including education, the use of minority languages in the public sphere, and participation in decision-making. Representatives of national minorities acknowledge the existence of a social climate favourable to tolerance and intercultural dialogue and agree that progress has taken place in this regard.

201. The situation of the Roma continues to remain a priority for the authorities. Numerous sectoral measures have been adopted in recent years aimed at combating the social exclusion of the Roma, and reducing the serious disparities which continue to separate them from the rest of the population in most areas. Moreover, significant efforts have been made to improve the public image of the Roma as well as their relations with the police.

Issues of concern

202. Although Romania has a developed legal and institutional framework for the protection of national minorities, shortcomings continue to be reported with regard to the implementation of certain legislative provisions, particularly at local level. The financial difficulties affecting many fields of relevance to the protection of national minorities, such as education, also have an impact on the effective implementation of measures adopted by the government. Further efforts must be made to redress imbalances in the state support provided to the different national minorities in various fields. The ongoing restitution of property is likely to increase the resources of more prosperous groups and to leave persons belonging to other groups, such as the Roma, in a disadvantaged position. However, no assessment of the impact of this process on the various groups has been made.

203. Similarly, the authorities should adopt a more open approach, in their dialogue with the national minorities, towards organisations other than those represented in the Council of National Minorities and, in a more general way, towards other groups that have expressed an interest in receiving the protection afforded by the Framework Convention.

204. In spite of the many initiatives taken by the government, the majority of the Roma continue to confront serious difficulties and manifestations of discrimination in different fields, including employment, housing, health and education.

205. Moreover, the impact of the awareness-raising measures taken to improve the public image of the Roma and to encourage more positive attitudes towards them within society remains limited. Public manifestations of hostility and intolerance are still reported in certain media, as well as in the statements made by certain members of public authorities and, in spite of improvements in this area, in the conduct of certain members of the police.

Recommendations

206. 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:

– increase awareness-raising measures among the public, politicians and the media regarding the importance of tolerance and respect for diversity and ensure that educational curricula reflect, in an appropriate manner, the diversity of Romanian society; take effective measures to strengthen interethnic dialogue and mutual understanding in areas where persons belonging to the majority are in a minority position;

– take more resolute action to prevent and combat discrimination and social exclusion of the Roma and address, as a matter of priority, the difficulties they face in employment, housing, health and education; evaluate the effects of the process of restitution of property on the situation of persons belonging to the Roma minority;

– find ways to provide more convenient time-slots for minority television programmes and promote better access of the Roma to the local radio;

– pursue and strengthen the initiatives taken in order to improve the situation of the Roma in the field of education and to develop the teaching of their language; pursue and monitor the measures taken to prevent and combat the isolation of Roma children within the educational system;

– increase efforts, which require also an increase of the general budget for education, to ensure the availability of sufficient and qualified teachers and textbooks for education of or in minority languages, in particular for numerically smaller minorities;

– promote further the participation of persons belonging to national minorities in public affairs at central and local levels, in particular as regards the Roma and the numerically smaller minorities; encourage pluralism within minorities and develop contacts with organisations which are not represented in the Council for National Minorities, in order to avoid unnecessary politicisation of minority organisations;

– make an assessment of the legal and institutional effects as well as the budgetary implications of the Draft Law on the Status of National Minorities and ensure compliance of the draft law with the principles embodied in the Framework Convention."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2007)8

Third state report expected for 1 February 2009

E. European Charter for Regional or Minority Languages

Convention signed on 17 July 1995, ratified on 29 January 2008, entered into force on 1 May 2008

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: "Third report on Romania" was adopted on 25 June 2005 and made public on 1 February 2006

Extract of Document CRI(2006)3:

"Executive summary

Since the publication of ECRI's second report on Romania on 23 April 2002, progress has been made in a number of fields. Romania has made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Romanian authorities have adopted an anti-discrimination law and set up the National Council Against Discrimination, which is the body responsible for applying this law. Moreover, the Romanian Criminal Code has been amended to include, among others, provisions against racial hatred. Under the Strategy for Improving the Situation of the Roma, the authorities have set up programmes designed to place members of the Roma community on an equal footing with the rest of the population. They have also provided members of the judiciary and the police with training courses on discrimination issues.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. As regards the reception of asylum seekers and refugees, ECRI notes that the programmes intended for them receive virtually no government funding, which makes it difficult to integrate these people into Romanian society. The anti-discrimination legislation has hardly been applied at all and neither public officials nor the general public are aware of said legislation or of the existence of the National Council Against Discrimination. The electoral law subjects minority organisations which are not already represented in parliament to eligibility requirements for local elections which are unacceptable in a democratic society. Moreover, the Roma community continues to be discriminated against in all areas, including the labour market and access to education, public places and decent housing. Furthermore, at local level, the media continue to publish derogatory articles on minorities, especially on the Roma, in complete impunity, without incurring the appropriate penalties.

In this report, ECRI recommends that the Romanian authorities take further action in a number of areas. They should, notably, take steps to fully apply the anti-discrimination legislation and provide the National Council Against Discrimination with sufficient resources to perform its tasks. ECRI also asks the Romanian authorities to apply the Criminal Code provisions on racial hatred and intolerance. They should also pursue and strengthen their efforts to train judges, prosecutors, lawyers and members of law enforcement agencies and border police in combating discrimination. ECRI considers it vital that the Strategy for Improving the Situation of the Roma should be fully applied at all levels and in co-operation with NGOs and civil society so that the Roma cease to be victims of major discrimination in Romanian society. It insists on the need for a swift solution to the problem of Roma who have no identity papers."

G. Social rights

European Social Charter of 1961 signed on 4 October 1994, but not ratified

European Social Charter (revised) signed on 14 May 1997, ratified on 7 May 1999, entered into force on 1 July 1999

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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 2001 and 2006, Romania submitted 6 reports on the application of the Revised Charter. Trades Unions and organisations of employers have not submitted comments on the reports. The 7th 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). It was due by 31 October 2007.

The Charter in domestic law

Automatic standing incorporation based on the constitution, Article 11: '1. The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to. 2. Treaties ratified by parliament, according to the law, are part of national law 3. If a treaty Romania is to become a party to comprises provisions contrary to the constitution, its ratification shall only take place after the revision of the constitution'.

The situation of Romania with respect to application of the Charter is the following as of 1 December 2007:

Examples of progress achieved following conclusions or decisions of the ECSR[1]

Health

Listing of occupations or activities where the length of work is to be decreased for health risk reasons (Labour Code as revised in 2003).

Restrictions on tobacco advertising and sale (Act No. 148/2000); measures preventing and combating the effects of the tobacco products (Act No. 90/2004).

Children

Adoption of a comprehensive framework on the protection and promotion of the rights of the child and setting up of the National Authority for the Protection of the Rights of the Child (Act No. 272/2004 on the Protection of the Rights of the Child).

National action plan to eliminate child labour approved in Government Decision No. 1769/2004.

Prohibition of trafficking of children for any kind of exploitation, including sexual (Act No. 678/2001 on the Prevention and Combat of Trafficking in Human Beings).

Non-discrimination

Prohibition of all forms of discrimination in employment (Ordinance No. 137/2000 as modified by Act No. 48/2002).

1. "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" (Rule 2 of the Rules of the ECSR).

Prohibition of all forms of discrimination on grounds of sex in access to social security benefits (Act No. 76/2002).

Prohibition of all forms of discrimination on grounds of sex in all aspects of working life and right to equal pay for a work of equal value (Act No. 202/2002).

Prohibition of discrimination in employment on the grounds of disability (Decree No. 77/2003 and Labour Code as revised).

Equal opportunities

Exemption of all persons with disabilities working on individual employment contracts from tax on their wages (Governmental Emergency Ordinance No. 102/1999 approved by Act No. 519/2002).

Right of children and young persons to protection

Adoption of measures to prevent and protect children and young persons against domestic violence (Act No. 217/2003).

Employment

Regulation of special types of contracts of employment (temporary agency work, part-time employment, employment on fixed term contracts, home-based work) (Labour Code as revised in 2003).

Right of employees to set up and join trade unions, without any restriction, including of nationality, or preliminary authorisation (Act No. 54/1991 on trade unions as revised in 2003).

Right of civil servants to organise in principle (Act No. 344/2004 on the status of civil servants).

Right of female employees to a compulsory 42 days post-natal leave (Article 16 of Government Emergency Ordinance No 96/2003).

Cases of non-compliance

Health

Article 3, paragraph 2 – Right to health and safety in the workplace

Self-employed workers and domestic staff are not covered by the occupational health and safety regulations. Prevention and protection measures do not also cover all the risks linked to this provision.

Article 11, paragraph 1 – Removal of the causes of ill-health

The Committee considers that infant and maternal mortality rates are too high (in 2002, respectively, 17.3 deaths for 1 000 live births and 22 deaths for 100 000 live births). The situation in certain psychiatric hospitals is also alarming (lack of resources, report of ill treatment in particular).

Children

Article 7, paragraphs 1 to 9 – 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 effective. Young people employed as domestic staff are also not covered by labour legislation.

Article 7, paragraph 3 – Prohibition of employment of children subject to compulsory school

Definition of light work for children aged more than 15 still subject to compulsory education does not adequately reflect the notion of light work used under Article 7. In addition, children aged more than 15 still subject to compulsory education are not guaranteed the benefit of a sufficiently long rest period during holidays (the period of rest must cover at least half the holiday period for them).

Article 7, paragraph 10 – Right of children and young persons to protection against moral and physical dangers

Although significant measures have been taken to address the problem of trafficking of minors, the number of children affected is too high, indicating that the measures adopted have not yet been fully effective.

Article 15, paragraph 1 – Right of persons with disabilities to education

Separate schooling of the majority of children with disabilities in special schools.

Article 17, paragraph 1 – Right of young persons (legal and social protection)

Corporal punishment within the family is not prohibited. The Committee also considers that the level of non-attendance of compulsory schooling is manifestly too high (with regard to high school of which two years is compulsory almost 44% of urban children and 70% of rural children were not enrolled in 2002-2003).

Non-discrimination (Nationality)

Article 5 – Right to organise

The Romanian nationality is required for representatives of management and labour on the Economic and Social Council.

Article 12, paragraph 4 – Equal treatment in social security matters

The legislation does not provide for retention of accrued benefits when persons move to a state party not bound by agreement with Romania. In addition, the legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of states party not bound by agreement with Romania.

Non-discrimination (Disability)

Article 15, paragraphs 1 and 2 – Right of persons with disabilities to education and employment

Legislation does not prohibit discrimination in relation to disability in the field of education and training.

Non-discrimination (Minority)

Article 16 – Legal social and economic protection of the family

Roma families are subject to shortage of housing (inadequacy of the supply of housing appropriate to the size and needs of Roma families).

Social Protection

Article 16 – Legal social and economic protection of the family

According to Eurostat, child allowances (in the amount of €6.39 monthly) only represented approximately 2.21% of the value of the median equivalised income (which was

about €288.4 the same year) in 2003. The Committee considered that the level of family benefits was manifestly inadequate.

Employment

Article 1, paragraph 1 – Full employment policy

Any information on the public expenditure on active and passive employment measures as a percentage of GDP or on the number of participants in the various active measures is not provided in the framework of the policy measures to address the high long-term unemployment rate as well as the rising youth unemployment rate.

Article 1, paragraph 2 – Prohibition of forced labour

The Committee considered that the length of alternative service to military service (24 months) is excessive. It took the view that the additional 12 months (the normal period is 12 months), during which the persons concerned were deprived of the right to earn a living through freely undertaken work, went beyond reasonable limits in relation to the length of military service.

Article 4, paragraph 1 – Right to adequate remuneration

In 2004, the minimum wage only represented 34.40% of the average annual gross earning (€2 140 in 2003). According to Eurostat, 12% of employees earned minimum wage both in 2003 and 2004. The Committee considered that the level of the minimum wage was manifestly inadequate.

Article 4, paragraph 4 – Right to reasonable notice of termination of employment

The Labour Code only provides for a 15-day period of notice regardless of the length of service.

Article 4, paragraph 5 – Limitation of deduction from wages

Deductions from wages may deprive the worker of his very means of subsistence.

Article 5 – Right to organise

The restrictions on the right to organise of senior civil servants and officials holding management positions or high public office are too general. Certain categories of persons, for example, such as persons holding management positions or high public office, are not untitled to form trade unions. The membership of the police officers to the National Police Association is compulsory.

Article 6, paragraph 4 – Right to collective action (strike and lock-out)

A trade union may take collective action only if it fulfils representativity criteria and if more than 50% of its members agree to do so, which unduly restricts the right of trade unions to take collective action.

Article 29 – Right to information and consultation in collective redundancy procedures

The content of the information supplied to workers' representatives is limited to the reasons for the redundancies and the number of employees concerned. In addition, no penalties are provided for failure to observe the consultation procedures.

The ECSR is unable to assess whether Romania complies with the following provisions:

Article 4, paragraph 1 – Right to adequate remuneration."

H. Parliamentary Assembly

Resolution 1562 (2007): secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, adopted by the Assembly on 27 June 2007 (see Doc. 11302, report by the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty)

Resolution 1534 (2007): the situation of migrant workers in temporary employment agencies (TEAs), adopted by the Assembly on 24 January 2007 (see Doc. 11109, report by the Committee on Migration, Refugees and Population, rapporteur: Mr Henderson)

Resolution 1488 (2006): regrouping land in central and eastern Europe, adopted by the Standing Committee, acting on behalf of the Assembly, on 17 March 2006 (see Doc. 10836, report by the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mr Maissen)

Resolution 1123 (1997) relating to the honouring of obligations and commitments by Romania, adopted by the Assembly on 24 April 1997 (see Doc. 7795, report by the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jansson) ending the monitoring procedure

Post-monitoring dialogue with Romania closed in 2002 (see Doc. 9475, "Progress report by the Bureau of the Assembly and the Standing Committee (26 April-24 June 2002)", rapporteur: Mr Gross)

San Marino

Council of Europe member state since 16 November 1988
Number of Council of Europe conventions ratified (as of 22 May 2008): 38 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 17

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last election of the Captains Regent: April 2008
Next election of the Captains Regent: October 2008
Last general elections: 2006
Next general elections: 2011

B. Local and regional democracy

European Charter of Local Self-Government neither signed nor ratified

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: May 1999 (CPL(6)4 PartII), Resolution 82 (1999) and Recommendation 63 (1999) on local democracy in the Republic of San Marino adopted on 17 June 1999

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

II. Rule of law

A. Venice Commission

No specific opinion concerning San Marino

B. Functioning 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.

It emerges from this report that:

– the number of professional judges on a full-time basis in San Marino in 2004 was 16, which means 53.9 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in San Marino was 1, which means 3.4 for 100 000 inhabitants.

C. The fight against corruption and organised crime

Civil Law Convention on Corruption neither signed nor ratified

Criminal Law Convention on Corruption and Additional Protocol signed on 15 May 2003, but not ratified

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 16 November 1995, ratified on 12 October 2000, entered into force on 1 February 2001

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed on 14 November 2006, but not ratified

"Second evaluation round report on San Marino: summary" (20 January 2005, MONEYVAL(2004)19Summ)

III. Protection of human rights

A. Activities of the Commissioner for Human Rights

First report on San Marino published in April 2008 following a visit to the country in January 2008

Extract of: "Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to the Republic of San Marino on 23-25 January 2008, for the attention of the Committee of Ministers and the Parliamentary Assembly" (CommDH(2008)12):

> "Summary of recommendations
>
> 1. Ratify the European Social Charter (revised) as well as the Optional Protocol to Convention Against Torture.
>
> 2. Proceed to the reform of the Criminal Procedure Code to ensure that there are adequate rules for the gathering of evidence.
>
> 3. Proceed to the planned adoption of a law that would raise the age of criminal liability for minors from 12 to 14.
>
> 4. Continue efforts undertaken for the establishment of a national Ombudsman.
>
> 5. Ensure progress towards the adoption of a general law on anti-discrimination.
>
> 6. Consider the setting up of a complaint mechanism for children who feel that their rights have been abused.
>
> 7. Establish procedural rules for involuntary confinement of persons with mental disabilities."

B. European Convention on Human Rights

ECHR ratified on 22 March 1989

> "Declaration contained in the instrument of ratification, deposited on 22 March 1989:
>
> The Government of the Republic of San Marino, although confirming its firm undertaking neither to foresee nor to authorise derogations of any kind from the obligations subscribed, feels compelled to stress that the fact of being a State of limited territorial dimensions calls for particular care in matters of residence, work and social measures for foreigners even if they are not covered by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto.
>
> Period covered: 22 March 1989
>
> The preceding statement concerns Article(s): -
>
> Reservation contained in the instrument of ratification, deposited on 22 March 1989:
>
> With regard to the provisions of Article 11 of the Convention on the right to form trade unions, the Government of the Republic of San Marino declares that in San Marino two trade unions exist and are active, that Articles 2 and 4 of Law No. 7 of 17 February 1961 on the protection of employment and employees foresee that associations or trade unions must register with the Law Court and that such registration may be obtained provided the association includes at least six categories of employees and a minimum of 500 members.
>
> Period covered: 22 March 1989
> The preceding statement concerns Article(s): 11."

Protocol No. 6 ratified on 22 March 1989
Protocol No. 12 ratified on 25 April 2003
Protocol No. 13 ratified on 25 April 2003
Protocol No. 14 ratified on 2 February 2006

Out of a total of 1 560 judgments delivered by the Court in 2006, there was no judgment concerning San Marino.

Out of a total of 1 503 judgments delivered by the Court in 2007, there was one concerning San Marino.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, four concerned San Marino.

Resolutions adopted by the Committee of Ministers in 2007: 0

Resolutions adopted by the Committee of Ministers in 2008 (as of 29 April 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 16 November 1989, ratified on 31 January 1990, entered into force on 1 May 1990, Protocols Nos. 1 and 2 signed on 4 November 1993, ratified on 5 December 1996, entered into force on 1 March 2002

Last country visit: February 2005

Publication of the last report: February 2008

Press release of 26 February 2008:

> "The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has today published the report on its visit to San Marino from 8 to 11 February 2005, together with the San Marino Government's response. These documents have been made public with the agreement of the San Marino authorities.
>
> During the visit, the delegation followed up the recommendations made by the CPT after the visits in 1992 and 1999, in particular, as regards the conditions of detention at San Marino Prison and the safeguards offered to persons detained by law enforcement agencies. Further, it examined in detail the procedures for involuntary hospitalisation and 'obligatory medical treatment' (TSO) of psychiatric patients. For the first time in San Marino, the delegation also visited two homes for the elderly. In their response, the San Marino authorities provided information on the steps being taken to address the issues raised by the CPT.
>
> The CPT's visit report and the response of the San Marino authorities are available on the Committee's Website: http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 11 May 1995, ratified on 5 December 1996, entered into force on 1 February 1998

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in March 2006 (ACFC/OP/II(2006)002):

> **"Concluding remarks**
>
> 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 with respect to San Marino.
>
> **Positive developments**
>
> San Marinese society continues to be distinguished by a general climate of tolerance and understanding, and this is all the more important since cultural diversity has been increasing in San Marino over the past few years.
>
> **Issues of concern**
>
> In view of recent information relating to the existence of latent prejudices within the San Marinese society and reported integration difficulties, existing means of preventing and combating discrimination and intolerance could be improved and made more effective.
>
> **Recommendations**
>
> 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:
>
> – make additional efforts to ensure that San Marino's legislative and institutional framework effectively contribute to preventing and combating discrimination and intolerance.
>
> – continue and strengthen measures to heighten public awareness of the importance of tolerance and intercultural dialogue, and adopt measures to promote and facilitate integration."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2007)3

Third state report expected for 1 February 2009

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: "Third report on San Marino" was adopted on 14 December 2007 and made public on 29 April 2008

Extract of Document CRI(2008)24:

> "Executive summary
>
> Since the publication of ECRI's second report on San Marino on 4 November 2003, progress has been made in a number of the fields highlighted in that report. The provisions governing the acquisition of citizenship by descent have been amended so as to enable children of all citizens of San Marino to acquire citizenship of San Marino at birth. A process of stabilising the employment situation of transfrontier workers is under way. A number of initiatives have been taken to raise awareness of issues of racism and racial discrimination among the general public, notably in the framework of the Council of Europe's 'All Different All Equal' campaign. Opportunities for teachers to acquire competencies in the field of intercultural education and for pupils to increase their knowledge of human rights have been increased. Additional support in Italian as a second language has been introduced in schools. In 2004, an Equal Opportunities Commission was established with the task of promoting equality before the law and equal opportunities. Furthermore, the Government of San Marino has announced plans to establish an Ombudsman with the task of protecting human rights and to introduce legislation against racist expression, racist organisations and racially motivated offences.
>
> However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. There is still a need to improve the understanding of the notions of racism and racial dis-

crimination in San Marino and promote awareness among the general population of the way in which these phenomena operate in society. The authorities of San Marino have not yet fully taken into account the specific needs of some parts of San Marino's population, such as women from Central and Eastern Europe who come to work as private carers and citizens of San Marino from Argentina. As a result, the members of these groups often find themselves in a situation of disadvantage compared with the rest of the population, which can make them vulnerable to discrimination. An overall National Action Plan against racism which would address these and other aspects of combating racism and racial discrimination in San Marino has not yet been adopted. The provisions governing naturalisation have not been reviewed since ECRI's second report and remain excessively restrictive. Comprehensive civil and administrative legislation prohibiting discrimination in all fields of life still remains to be adopted.

In this report, ECRI recommends that the authorities of San Marino take further action in a number of areas. These areas include: the need to adopt a National Action Plan against Racism in close consultation with potential victims of racism and racial discrimination; the need to fine-tune the legal and institutional framework against racism and racial discrimination, notably through the adoption of criminal law provisions against racist expression, racist organisations and racially motivated offences and of civil and administrative antidiscrimination legislation providing for effective mechanisms of redress; and the need to facilitate acquisition of citizenship of San Marino through naturalisation. In this report, ECRI also recommends that the authorities of San Marino: monitor racism and racial discrimination, including by generating data based on perceptions of these phenomena among potential victims; review legislation and practices concerning the granting of permits to certain categories of workers, including private carers and seasonal workers, and extend the rights they confer; better promote the learning by adults of Italian as a second language."

G. Social rights

European Social Charter of 1961 neither signed nor ratified

European Social Charter (revised) signed on 18 October 2001, 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 six of these nine articles); in even years half of the other provisions.

H. Parliamentary Assembly

Recommendation 1770 (2006): the promotion of local self-government along Council of Europe borders, adopted by the Assembly on 6 October 2006 (see Doc. 11009, report by the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mr Gubert)

Slovakia

Council of Europe member state since 30 June 1993
Number of Council of Europe conventions ratified (as of 22 May 2008): 92 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 6

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential election: 2004
Next presidential election: 2009
Last general elections: 2006
Next general elections: 2010

B. Local and regional democracy

Last municipal elections: 2006
Next municipal elections: June 2008

European Charter of Local Self-Government signed on 23 February 1999, ratified on 1 February 2000, entered into force on 1 June 2000

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: October 2006 (CPR(13)6 Part II)

Extract of: "Regional democracy in the Slovak Republic" (CPR(13)6 Part II):

"IV. Conclusions and recommendations

A. Conclusive assessment

69. The Slovak Republic has made an important effort in the domain of decentralisation over the past six years. For what concerns regional self-government, it may be said that the Slovak system deserves an overall positive assessment, in the light of the Slovak Republic's recent history (especially the post-war period), taking into consideration the political and social context of the country, and with due attention to Slovakia's size, population and current political priorities. The current regionalisation process in the Slovak Republic seems to be a fair, sensible and reasonable arrangement responding to a delicate balance between the need to be in line with European standards on territorial organisation and the historical unitary character of the country.

70. In the light of the Act of 4 July 2001 and its supplementary laws and regulations, the Higher Territorial Units in Slovakia may be perfectly considered as true regions, therefore largely meeting the criteria for regional self-government set out in the documents of the Council of Europe (Helsinki Declaration on Regional Self-Government), and in the light of comparative experience in Europe. On the other hand, the transfer of competences from the central instance to the regional (and local) one, as well as the establishment of a sensitive and delicate fiscal decentralisation

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

has been accomplished in a very reasonable time and with a notable expediency.

71. The regional instance of government is nowadays fully accepted by all political parties. The process of regionalisation is irreversible, and the regions constitute a stable and developing layer of government. Inter-governmental litigation is almost non-existent, and there are no major conflicts between the central and the regional governments. Of course, there are still discussions on issues such as the number and financing of the regions, but the whole idea itself is not called into question. In the general perspective, the process of regionalisation can be considered very successful.

B. Recommendations

72. As any new system establishing a new territorial system and approach in the handling of public affairs, the Slovak experience in the domain of regional decentralisation may be streamlined and improved. From that perspective, some suitable recommendations could be the following ones:

i. The Slovak Republic should be encouraged to continue the progress and initiatives taken so far, in order to consolidate and deepen regional democracy. In particular, it should be encouraged to pursue the legislative efforts already accomplished, aiming at strengthening regional authorities.

ii. It would be desirable to carry on the process of fiscal decentralisation and to increase the financial autonomy of the regions, so that they are able to cover not only operating expenses, but also to perform a comprehensive program of investments.

iii. It would be very convenient to reinforce the technical capacity and the managerial abilities of the human resources of the regional authorities. The training of civil servants at the regional level should be the object of a nation-wide program of technical education, so that they are fit to satisfy the challenges of the regional governmental activity.

iv. Some links should be created between the regional and local government, so that they can develop joint development strategies and co-operative efforts.

v. The interest of the people towards the regions should be enhanced, maybe through an institutional information campaign. Participation should be seriously encouraged, in order to improve the poor electoral turnout registered in the 2001 and 2005 elections.

vi. Specific Co-ordination structures (for instance, bilateral bodies) should be set up between the state administration and the regional one, in order to provide a solution to the lack of co-ordination in some fields such as social affairs and education."

II. Rule of law

A. Venice Commission

"Opinion on the Act of 4 July 2001 on elections to bodies of self-government regions and on amendment to the Code of Civil Procedures of the Slovak Republic adopted by the Venice Commission at its 49th Plenary Session" (Venice, 14-15 December 2001, CDL-INF(2001)024):

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Slovakia in 2004 was €107 595 527;

– the number of professional judges on a full-time basis in Slovakia in 2004 was 1 208, which means 22.4 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Slovakia was 697, which means 12.9 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 8 June 2000, ratified on 21 May 2003, entered into force on 1 November 2003

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 9 June 2000, entered into force on 1 July 2002, additional protocol signed on 12 January 2005, ratified on 7 April 2005, entered into force on 1 August 2005

Extract of: "Third evaluation round: evaluation report on the Slovak Republic on incriminations (ETS 173 and 191, GPC 2) (Theme I)", adopted by GRECO at its 36th plenary meeting (Strasbourg, 11-15 February 2008, GRECO Eval III Rep(2007)4E Theme I):

"IV. Conclusions

114. The main problem of Slovakia with the implementation of the Criminal Law Convention on Corruption (ETS No. 173) is that the domestic legal framework is complex and cumbersome. A series of shortcomings need to be addressed such as the coverage of bribery of public officials which is not broad enough and is limited – as regards domestic officials – to situations which involve a breach of duty or the 'procurement of a thing of general interest', trading in influence which appears to be criminalised in respect of categories of persons which are not clearly identified or which are left out of its scope of application (e.g. foreign public officials), and bribery of foreign public officials which is related to a limited number of persons or situations. Regarding the Additional Protocol to the Criminal Law Convention on Corruption, the Slovak legislation does not criminalise corruption of arbitrators and jurors in a satisfactory manner since the nature of their functions is not fully captured in the existing legislation. GRECO welcomes the Slovak authorities' intention to review the current legal provisions on corruption. The legal framework in its complexity will clearly benefit from such a review. This would also provide a good opportunity to address the shortcom-

1. Slovakia is in 49th position with a score of 4.9 in the 2007 Corruption Perceptions Index, which was compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

ings and other lacunae identified in this report. The GET encourages Slovakia to proceed speedily with this reform.

115. In view of the above, GRECO addresses the following recommendations to the Slovak Republic:

i. to introduce the concept of 'offering' (of an undue advantage) in Section 332 of the Criminal Code (paragraph 104);

ii. (i) to review Sections 328 and 332, as well as 329 and 333 of the Criminal Code in order to ensure that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the 'procurement of a thing of general interest', in line with the Criminal Law Convention on Corruption (ETS No. 173) and (ii) to consider, for the sake of clarity, criminalising bribery in the public and in the private sector in separate provisions, in conformity with the Convention (paragraph 105);

iii. to ensure that (i) trading in influence is criminalised in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence, and (ii) cases of alleged influence and non-exerted influence are covered by domestic law (paragraph 107);

iv. to take measures to ensure that the criminal offence of bribery of foreign public officials under Slovak law is fully in line with the requirements of Art. 5 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 108);

v. (i) to criminalise bribery of domestic arbitrators and jurors, ensuring that the nature of their functions is fully captured, in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); (ii) to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution (paragraph 109);

vi. to examine the need to provide more explicitly for a broader concept of members of foreign assemblies in line with Article 6 of the Criminal Law Convention on Corruption (ETS No. 173), or at least to provide guidance on this matter in an appropriate manner (paragraph 110).

116. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Slovak authorities to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.

117. Finally, GRECO invites the authorities of Slovakia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public."

Extract of: "Third evaluation round: evaluation report on the Slovak Republic on transparency of party funding (Theme II)", adopted by GRECO at its 36th plenary meeting (Strasbourg, 11-15 February 2008, GRECO Eval III Rep(2007)4E Theme II):

"V. Conclusions

100. Act No. 85/2005 Coll. on Political Parties and Political Movements is to a large extent in line with the relevant provisions of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. Indeed, the problems as regards funding of political parties in the Slovak Republic are not so much related to the letter of Act No. 85/2005 but the spirit in which parties comply (or do not comply) with the provisions. A clear example of this is the issue of candidates' expenses, which a number of parties consider as not to fall within the scope of the provisions of Act No. 85/2005. However, a more pressing concern is the inadequate supervisory system, and, related to this, the observed lack of enforcement of the rules. The current system of supervision is fragmented, diffused and formalistic and neither the Committee on Finance, Budget and Currency of the National Council nor Ministry of Finance has the necessary expertise or any kind of investigative capacity. As a result, infringements of political finance rules are rarely brought to light by the supervisory authorities and, if they are brought to light, the detected infringements – with the exception of fines imposed for non-submission of financial reports – do not appear to lead to any penalties. Establishing an effective supervisory mechanism and ensuring adequate enforcement of the rules on party and election campaign funding must therefore be a matter of priority.

101. In view of the above, GRECO addresses the following recommendations to Slovak Republic:

i. to require candidates for elections to the National Council to disclose all donations they have received in relation to their political activities – including their source (at least above a certain threshold), nature and value – and details of the expenditure incurred (paragraph 86);

ii. to take measures to enhance the transparency of income and expenditure of parties and candidates at local and regional level (in particular in connection with mayoral elections) (paragraph 87);

iii. to introduce proportionate disclosure rules for expenditure incurred by entities outside the party structure, related directly or indirectly to the party, in connection with election campaigns (paragraph 88);

iv. (i) to ensure that the annual reports of political parties are easily accessible to the public and (ii) to establish a standardised format (accompanied by appropriate instructions, if necessary) for the campaign and annual reports to be submitted by political parties (paragraph 89);

v. to provide a single body with a mandate and adequate resources to supervise and investigate party funding (both from private and public sources) and election campaign finances, including those of election candidates, and to ensure that this body is in a position to exercise its functions in an independent and impartial manner (paragraph 94);

vi. to review the sanctions available for violations of the rules on political funding, to ensure that these are proportionate and dissuasive (paragraph 95);

vii. to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding is independent, impartial and effective in practice (paragraph 96);

viii. to provide advice and training to political parties and election candidates on the applicable political funding regulations (paragraph 97);

ix. to establish liability of election candidates for infringements of political funding rules, in line with the rules applying to political parties (paragraph 98);

x. to assess whether there is a need to amend the provisions of Act No. 46/1999 on the Method of Election of the President with a view to enhancing the transparency of the funding of presidential candidates (to ensure that the

amended provisions, if any, are in line with the requirements of Act No. 85/2005 Coll. on Political Parties and Political Movements) (paragraph 99);

102. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Slovak authorities to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.

103. Finally, GRECO invites the authorities of the Slovak Republic to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 September 1999, ratified on 7 May 2001, entered into force on 1 September 2001

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) signed on 12 November 2007, but not ratified

"Third round detailed assessment report on Slovakia: anti-money laundering and combating the financing of terrorism", adopted by MONEYVAL at its 20th Plenary Session (Strasbourg, 12-15 September 2006, MONEYVAL(2006)09 and addendum)

"Written progress report submitted to MONEYVAL by Slovakia", adopted by MONEYVAL at its 24th Plenary Session (Strasbourg, 10-14 September 2007, MONEYVAL(2007)15)

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Slovakia published in September 2001 following a visit to the country in May 2001

Extract of: "Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Slovak Republic, on 14-16 May 2001, for the Committee of Ministers and the Parliamentary Assembly" (CommDH(2001)5):

"Conclusions and recommendations

The Slovak Republic has made considerable efforts over the past ten years, and clearly tribute should be paid to its work. All the reforms undertaken show the government's willingness to meet its political and international commitments.

From the political and social standpoint, both the government and civil society are clearly very concerned by all of these changes. Non-governmental organisations appear to be the best partners to help the government carry out its reforms.

As far as respecting and promoting human rights is concerned, I think it is extremely important to carry out more regular work so that society as a whole shares a sense of responsibility and has a better understanding of its rights and duties.

From the talks which I had, I have reached the conclusion that everyone agrees that improving the situation of the Roma/Gypsy community deserves special attention.

Recommendations

It is essential that the Slovak Republic complete its institutional and legislative reforms as soon as possible, and take the necessary steps to give effect to human rights at all levels of society.

While Roma/Gypsies must put a great deal of effort into training and educating the members of their community to play an active part in the relevant institutions, the government must take all necessary measures to ensure their integration into Slovak society.

The Slovak authorities ought to devise practical projects, even if only on a small scale, and submit them to the Council of Europe's Development Bank for funding and so help the Roma/Gypsy community.

The political and law-making authorities are invited to amend the legislation and support institutions which look after women and children in distress so that they can meet the needs of these vulnerable groups.

The authorities should, as soon as possible, also take all necessary steps to ensure that the procedure for acquiring Slovak nationality is in keeping with its international commitments under the European Convention on Nationality.

The Minister of Justice and the Minister of the Interior should set in motion the necessary reforms for guaranteeing the sound administration of justice and effective respect of citizens' rights by the police.

The Slovak authorities are encouraged to do their utmost to ensure that the office of ombudsman is set up in the Slovak Republic in the very near future."

B. European Convention on Human Rights

ECHR ratified on 18 March 1992

"Reservation contained in the instrument of ratification of the Czech and Slovak Federal Republic, deposited on 18 March 1992, and in a *Note Verbale* from the Federal Ministry of Foreign Affairs, dated 13 March 1992, handed to the Secretary General at the time of deposit of the instrument of ratification – Or. Cze./Engl. – and confirmed at the time of accession of Slovakia to the Council of Europe, on 30 June 1993.

During the ceremony of accession to the Council of Europe, the Minister of Foreign Affairs of Slovakia declared that the reservation made by the Czech and Slovak Federal Republic to Articles 5 and 6 of the Convention will remain applicable. The reservation reads as follows:

'The Czech and Slovak Federal Republic in accordance with Article 64 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 57 since the entry into force of the Protocol No 11) makes a reservation in respect of Articles 5 and 6 to the effect that

1. Slovakia is in 3rd position with a score of 1.00 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

those articles shall not hinder to impose disciplinary penitentiary measures in accordance with Article 17 of the Act No. 76/1959 of Collection of Laws, on Certain Service Conditions of Soldiers.'

The terms of section 17 of the Law on certain conditions of service of members of the armed forces, No. 76/1959 in the Compendium of Legislation, are as follows:

Section 17: text transmitted by *Note Verbale* from the Permanent Representation of the Czech and Slovak Federal Republic, dated 8 April 1992, registered at the Secretariat General on the same day – Or. Fr.

Disciplinary Sanctions

1. Disciplinary sanctions shall comprise: a reprimand, penalties for petty offences, custodial penalties, demotion by one rank, and in the case of non-commissioned officers, reduction to the ranks.

2. Disciplinary custodial penalties shall comprise: confinement after duty, light imprisonment and house arrest.

3. The maximum duration of a disciplinary custodial penalty shall be twenty-one days.

Period covered: 1 January 1993

The preceding statement concerns Article(s): 5, 6."

Protocol No. 6 ratified on 18 March 1992
Protocol No. 12 signed on 4 November 2000
Protocol No. 13 ratified on 18 August 2005
Protocol No. 14 ratified on 16 May 2005

Out of a total of 1 560 judgments delivered by the Court in 2006, there were 35 concerning Slovakia that gave rise to a finding of at least one violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 23 concerning Slovakia, of which 22 gave rise to a finding of at least one violation and one gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 1 176 concerned Slovakia.

Resolutions adopted by the Committee of Ministers in 2007: 2

No interim resolution

Resolutions adopted by the Committee of Ministers in 2008 (as of 3 May 2008): 1

No interim resolution

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 23 December 1992, ratified on 11 May 1994, entered into force on 1 September 1994, Protocols Nos. 1 and 2 signed on 7 March 1994, ratified on 11 May 1994, entered into force on 1 March 2002

Last country visit: February-March 2005

Publication of the last report: February 2006

Press release of 2 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 the Slovak Republic in February/March 2005, together with the Slovak Government's response. These documents have been made public at the request of the Slovak authorities.

During the 2005 visit, the CPT followed up a number of issues examined during previous visits, in particular the treatment of persons deprived of their liberty by the police, as well as the situation in prisons and social services homes. For the first time in the Slovak Republic, the CPT examined the situation in psychiatric establishments.

The CPT's visit report and the Slovak Government's response are available on the Committee's website: http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 14 September 1995, entered into force on 1 February 1998

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in May 2005 (ACFC/OP/II(2005)004):

"Concluding remarks

131. 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 Slovakia.

Positive developments

132. Slovakia 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 as well as changes in practice. Furthermore, important pieces of legislation on the financing of minority cultures and the protection of national minorities are currently under discussion within the government and should be transmitted to the parliament soon.

133. Since the adoption of the first opinion of the Advisory Committee, Slovakia has improved markedly its anti-discrimination legal and institutional framework. The most significant step was the adoption, in May 2004, of Act No. 365/2004 Coll. On Equal Treatment in Certain Areas and Protection against Discrimination, the scope of which covers a number of societal settings. This Anti-discrimination Act provides in particular for the reversal of the burden of proof in civil proceedings and tasks an independent authority to monitor its implementation, develop awareness-raising activities about the fight against discrimination and arrange legal aid to victims of discrimination. The setting up of an Ombudsman institution in 2002 represents a further contribution to an improved framework to combat discrimination.

134. The overall substantial increase in the allocation of financial support to minorities by the Ministry of Culture in recent years deserves to be welcomed.

135. Serious efforts have been made to address ethnically motivated crimes more vigorously both in terms of strengthening relevant legal provisions and improving the institutional framework, notably through the creation of a Commission for racially motivated crime in 2001. Commendable measures have also been taken to train police officers to deal with such cases in full respect of human rights and raise their awareness about the importance of the problem.

136. In the field of education, the setting up of the Selye János University in Komárno, which started to operate in September 2004, is to be welcomed. This state-run University, which comprises three faculties, will significantly improve teacher training opportunities and expand the possibilities available for persons belonging to the Hungarian minority to receive higher education in their language, since it offers most of its courses in the Hungarian language.

Issues of concern

137. While the adoption of the Anti-discrimination Act in 2004 significantly strengthened the existing legal framework, there is reason for concern about the related constitutional dispute which has so far hampered the entry into force of an important provision allowing the introduction of positive measures to address disadvantages linked to racial or ethnic origin. Furthermore, the impact of the aforementioned dispute on a range of existing or planned special measures in favour of the Roma is still unclear.

138. The legislative framework pertaining to the protection of national minorities still contains shortcomings, including as regards the financing of minority cultures and instruction in minority languages, as well as certain restrictions such as those limiting linguistic rights to persons belonging to national minorities who hold Slovak citizenship. There is scope for improvement in the participation of persons belonging to national minorities in the decision-making process, including with regard to the pending legislative reforms and representation in the civil service.

139. The continuing occurrence in recent years of a significant number of racially motivated crimes and incidents targeting Roma and other vulnerable groups poses particular challenges and seriously affects the implementation of the Framework Convention in Slovakia. Allegations of police abuse against Roma in various contexts are still reported and need to be addressed.

140. The Roma continue to face particular difficulties and experience various forms of exclusion and even discrimination. Serious problems persist in different societal settings, such as employment, housing and health care, a domain in which recent legislative changes still need to be fully reflected in practice. Their participation in public affairs remains insufficient and their involvement in governmental programmes aimed at improving their position should be more consistent.

141. In the field of education, the persistence of various forms of exclusion and segregation which mainly affect Roma children is a source of deep concern. The potential impact on disadvantaged Roma pupils of recent measures promoting increased decentralisation, as well as the effects of the 2004 social reform, merit particular attention, including in terms of monitoring to ensure that equal opportunities for access to education are not negatively affected. The number of classes with instruction in the Roma language remains limited despite the interest expressed by those concerned.

Recommendations

142. 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 Act No. 365/2004 Coll. On Equal Treatment in Certain Areas and Protection against Discrimination and take steps to ensure that existing or planned special measures in favour of disadvantaged groups like the Roma are further supported and encouraged;

– pursue the efforts already made to complete the legislative framework pertaining to national minorities, including in the fields of culture and education, and ensure that achievements in this field are not hindered by undue interpretations of the 1995 State Language Law; consider easing restrictions as regards linguistic rights available to persons belonging to national minorities;

– review the mechanisms aimed to ensure participation of persons belonging to national minorities in order to render it more effective;

– ensure that persons belonging to national minorities, especially the numerically smaller ones, are adequately represented in the civil service;

– redouble efforts to fight more vigorously ethnically motivated crimes at all levels, including through the consistent application, by law enforcement officers and prosecution bodies, of reinforced criminal provisions;

– address allegations of police abuse against Roma and consider in this context the introduction of an independent, effective and reliable complaint system;

– take further steps to put an end to exclusion and segregation practices affecting Roma pupils;

– ensure that the rights of Roma women are respected in practice, particularly in the field of health care;

– intensify existing measures, including as regards teacher training, so as to create further opportunities to receive Roma language teaching."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2006)8

Third state report expected for 1 February 2009

E. European Charter for Regional or Minority Languages

Convention signed on 20 February 2001, ratified on 5 September 2001, entered into force on 1 January 2002

Last periodical state report submitted on 5 December 2003 (MIN-LANG/PR(2003)8, Addenda 1 and 2 and appendices)

Last evaluation report by the Independent Committee of Experts adopted on 23 November 2005 (ECRML(2007)1)

Last recommendation of the Committee of Ministers adopted on 21 February 2007 (RecChL(2007)1)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: "Third report on Slovakia", adopted on 27 June 2003 and made public on 27 January 2004

Extract of Document CRI(2004)4:

"Executive summary

Since the publication of ECRI's second report on Slovakia in June 2000, progress has been made in a number of the fields highlighted in the report.

An Action Plan for the Prevention of Discrimination, Racism, Xenophobia, Anti-Semitism and Intolerance was put in place for the years 2000-2001 and extended to 2002-2003.

Criminal provisions to combat racism have been extended, while the problem of racially-motivated crime has been the subject of different initiatives on the part of the authorities. A draft anti-discrimination law has been prepared and the Office of Ombudsman set up. Different projects have been implemented in various fields of life to address the problems faced by the Roma minority, including a number of successful initiatives such as the appointment of Roma assistants in some classes.

However, progress made in dealing with the problems of racism, intolerance and discrimination remains limited in many respects. Racially-motivated violence, including serious acts of police brutality, continues and too frequently meets with impunity, due to an insufficient application of the law. The Roma minority remains severely disadvantaged in most areas of life, particularly in the fields of housing, employment and education. Various strategies and measures to address these problems have not led to real, widespread and sustainable improvements, and the stated political, priority given to this issue has not been translated into adequate resources or a concerted interest and commitment on the part of all the administrative sectors involved. Public opinion towards the Roma minority remains generally negative.

In this report, ECRI recommends that the Slovak authorities take further action in a number of fields. It calls, *inter alia*, for a strengthened implementation of criminal law provisions against racism and the rapid adoption and introduction of the draft anti-discrimination law. ECRI recommends a stronger response to incidents of police mistreatment of members of minority groups. It stresses that the stated political will to tackle the problems faced by the Roma community must be translated into concrete, widespread and sustainable improvements, notably in the fields of education, housing and employment, with a genuine involvement of the Roma community itself. In this respect, the new policy orientation involving the introduction of special equalising measures to permit the Roma to participate on an equal footing with other members of society, should be put into practice, accompanied by intensified awareness raising among society to encourage its commitment to such an approach.

Finally, ECRI calls for a full, transparent and impartial investigation into the recent allegations concerning sterilisations of Roma women without their full and informed consent."

G. Social rights

European Social Charter of 1961 signed on 27 May 1992, ratified on 22 June 1998, entered into force on 21 July 1998

European Social Charter (revised) signed on 18 November 1999, but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed on 18 November 1998, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 2001 and 2006, Slovakia submitted 4 reports on the application of the Social Charter. The 4th report, on the non hard-core provisions of the Charter and Articles 2 and 3 of the 1988 Additional Protocol, was submitted on 27 April 2006. The next report will concern the provisions accepted by Slovakia, i.e. those related to the theme Employment, Training and Equal opportunities (Articles 1, 9, 10, 15 and 18 of the Charter) and Article 1 of the 1988 Additional Protocol. This report should be submitted before 31 October 2007.

The Charter in domestic law

Dualistic approach. Article 11 of the constitution: 'International instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements shall take precedence over national laws provided that the international treaties and agreements guarantee greater constitutional rights and freedoms.'

The situation of Slovakia with respect to application of the Charter is the following as of 13 February 2008:

Example of progress achieved following conclusions or decisions of the ECSR[1]

Right to safe and healthy working conditions

Several laws and regulations adopted on minimum safety and health requirements at work which cover most of the risks concerning this matter, i.e. among others, those related to health protection at work with ionising radiations, carcinogens, biological and chemical agents, asbestos, noise and vibrations, as well as minimum safety and health requirements for the use of work equipment and for the manual handling of loads at work.

Vocational continuing training

Measures taken by employers to deal with the decline in skilled labour in the face of technological and/or economic progress (Act No. 386/1997 on the system of further training).

Equal treatment in relation to vocational continuing training is guaranteed to nationals of others states party to the

1. "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" (Rule 2 of the Rules of the ECSR).

Charter and the Revised Charter who reside legally and work regularly in Slovakia (Act No. 5/2004).

Participation of workers in the determination and improvement of the working conditions

Trade unions and works councils are allowed to operate concurrently within an undertaking (Amendment No. 210/2003 to the Labour Code).

Existence of legal remedies for employees' representatives (labour inspection and supervisory bodies) in the event the employer fails to eliminate shortcomings in the protection of health and safety at the workplace which the employees' representatives have pointed out (Act No. 330/1996).

Cases of non-compliance

Right to work

Article 1, paragraph 1 – Policy of full employment

The Committee considered that insufficient measures had been taken to address the problem of high level unemployment and long-term unemployment.

Article 1, paragraph 4 – Vocational guidance, training and rehabilitation

Repeated lack of information with regard to the vocational guidance and rehabilitation of persons with disabilities.

Right to collective bargaining

Article 6, paragraph 4 – Collective actions

The Committee cannot assess whether the restrictions to the right to strike, at least those applying to certain categories of civil servants and certain categories of employees, such as, *inter alia*, workers employed in the social, health, telecommunication and nuclear fields, fall within the limits of Article 31 of the Charter (any restriction shall be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals).

Non-discrimination (nationality)

Article 16 – Right of the family to social, legal and economic protection

The granting of childbirth allowance and child-minding allowance is subject to a three years' residence requirement.

Article 10, paragraph 4 – Encouragement for the full utilisation of available facilities

Equal treatment for nationals of the other Contracting Parties to the 1961 Social Charter and of the Parties to the revised Charter lawfully resident or regularly working in Slovakia is not guaranteed with respect to financial assistance for education and training.

Employment

Article 2, paragraph 1 – Reasonable daily and weekly working hours

The domestic legislation permits daily working time up to sixteen hours.

Article 4, paragraph 1 – Adequate remuneration

The minimum net wage represented only about 45% of the net average wage in 2004. The Committee considered it as not sufficient.

Article 4, paragraph 2 – Increased rate of remuneration for overtime work

The right to workers to an increase compensatory time-off for the overtime work is not guaranteed. Legal guarantees as regards overtime for workers whose salary is fixed by an individual contract do not sufficiently protect workers, because working overtime can be left to the discretion of the employer or the employee.

Article 4, paragraph 4 – Reasonable notice of termination of employment

The length of service of employees working fewer than twenty hours a week is not taken into consideration in order to establish the period of notice.

Article 4, paragraph 5 – Limitation of deduction from wages

In accordance with contractual freedom, the range of deductions depend entirely on an agreement between employee and employer. Deductions from wages are not consequently limited and workers may waive their right to limitations on deductions from wages. These deductions may also deprive workers of a minimum level of income to ensure the means of subsistence for themselves and their families.

Article 8, paragraph 2 – Illegality of dismissal during maternity leave

The relocation of the employer as well as the transfer of all or part of its business activities can be regarded as going out of business and can justify the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence.

Articles 15, paragraph 1 and 2 – Vocational training arrangements for the disabled; Placement arrangements for the disabled

The Committee cannot assess the situation because of a repeated lack of information.

Vocational training

Articles 10, paragraphs 1and 2 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education; Encouragement for the full utilisation of available facilities

The Committee cannot assess the situation because of a repeated lack of information.

Right to social and medical assistance

Article 13, paragraph 1 – Right for every person in need to adequate assistance

The Committee cannot assess whether everyone in need has the right to social assistance and whether the right to assistance is guaranteed in practice.

Right of children and young persons to protection

Article 7, paragraph 2 – Prohibition of dangerous or unhealthy occupations under the age of 18

The National Labour Inspectorate does not monitor the working conditions of minor employees.

Article 17 – Right of mothers and children to social and economic protection

Corporal punishment of children is not prohibited at home, in schools, in institutions and elsewhere.

Right to engage in a gainful occupation in the territory of other Contracting Parties.

Article 18, paragraph 2 – Simplifying existing formalities and reducing dues and taxes

Formalities for the granting of temporary residence permits have still not been simplified.

The ECSR cannot assess whether the respect of the following rights is ensured:

Article 1, paragraph 2 – Freely undertaken work

Article 1, paragraph 3 – Free placement services

Article 2, paragraph 2 – Public holidays with pay

Articles 4, paragraphs 3 and 1 of the 1988 Additional Protocol – Right to equal opportunities and equal treatment in matters of employment

Article 6, paragraph 2 – Negotiation procedures

Article 7, paragraph 3 – Prohibition of employment of children subject to compulsory education

Article 7, paragraph 5 – Fair pay

Article 7, paragraph 7 – Paid annual holidays

Article 7, paragraph 10 – Protection against physical and moral dangers

Article 8, paragraph 1 – Maternity leave

Article 9 – Right to vocational guidance

Article 11, paragraph 1 – Removal of the causes of ill-health

Article 11, paragraph 2 – Advisory and educational facilities

Article 11, paragraph 3 – Prevention of diseases

Article 12, paragraph 1 – Existence of a social security system

Article 12, paragraph 2 – Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102

Article 12, paragraph 4 – Social security of persons moving between states

Article 14, paragraph 1 – Provision or promotion of social welfare services

Article 2 of the 1988 Additional Protocol – Right to information and consultation

Article 4 of the 1988 Additional Protocol – Right of elderly persons to social protection."

H. Parliamentary Assembly

Resolution 1196 (1999) and Recommendation 1419 (1999): honouring of obligations and commitments by Slovakia, adopted by the Assembly on 21 September 1999 (see Doc. 8496, report by the Committee on the Honouring of Obligations and Commitments by the Member States of the Council of Europe, rapporteurs: Mr Magnusson and Mr Sinka) ending the monitoring procedure

Post-monitoring dialogue with Slovakia closed in January 2006:

Extract of: "Post-monitoring dialogue with Slovakia: memorandum", prepared by Mrs Hanne Severinsen (Denmark, ALDE), 1st Vice President, following the visit from 21 to 24 September 2005 (Doc. 10794: "Progress report of the Bureau of the Assembly and of the Standing Committee" (7 October 2005-23 January 2006):

"III. Conclusions and recommendations

82. The Slovak Republic has formally fulfilled its commitments undertaken in Opinion 175 (1993) upon accession to the Council of Europe as well as the major bulk of the recommendations listed in Resolution 1196 (1999) which closed the monitoring procedure and opened a post-monitoring dialogue.

83. The country has made outstanding progress in a very short time in remodelling its politics, economy and society and carrying out important judicial and administrative reforms. I commend the Slovak authorities for the recent constitutional amendments and other legislative reforms which have significantly strengthened the independence of the judiciary, allowed access for natural persons to constitutional complaints, facilitated speeding up the court proceedings and fight against corruption in courts. The country has also successfully carried out its administrative reform. Furthermore, I particularly welcome the establishment of the offices of the Ombudsman (Public Protector of Rights) and the Government Plenipotentiary for Roma Communities.

84. Nevertheless, some important shortcomings still persist in areas referred to in the various paragraphs of this memorandum, which are not denied by state authorities. Although various different measures and strategies have been conceived over recent years to improve the situation of the Roma minority in Slovakia, it is evident that this community still continues to be gravely disadvantaged in most key areas of life and that their situation requires serious attention as the social and economic precariousness of this community embodies a crucial obstacle to a homogenous and equitable development of the country's population as a whole. There is also justified concern about the increase of racially motivated violence and allegations of discriminatory behaviour by the police and other law-enforcement bodies towards members of minority groups, particularly Roma, including acts of ill-treatment and violence. Although anti-discrimination laws are generally in place, real, widespread and sustainable improvements coupled with adequate resources are needed for the adequate application of the legislation. I appreciated the openness as well as critical and self-critical attitude towards tackling the above problem issues that I encountered during my meetings with government officials and various state institutions in Bratislava. These exchanges of views have convinced me that the authorities truly seek to improve and to implement legislation regarding the above fields.

85. Also, as most of the issues pertaining to racism and discrimination are to a large extent similar to problems faced elsewhere in western and central Europe, I am convinced that they will continue to be tackled through the EU directives and programmes as well as through specific international instruments that the Slovak Republic has adhered to, which are closely monitored by various competent organisations: EU, UN, OSCE, Council of Europe.

86. With regard to the fulfilment of its obligations and the remaining commitments as member state of the Council of

Europe, the Slovak authorities should continue to work towards short and long-term improvements in the various areas underlined in the above chapters of this memorandum as well as in the recent reports by different international inter-governmental and non-governmental organisations. To this end, they are called upon to:

i. continue the efforts in combating excessive delays in court proceedings and fighting corruption in public services, without any prejudice to the independence of the judiciary or financial liability of the judges;

ii. examine the possibility of extending the direct sanctioning authority as well as the resources of the Office of the Ombudsman and setting up fully-functioning regional offices in the country;

iii. step up bringing national laws in line with the Charter of Regional and Minority Languages; examine the possibility of ratifying Protocol No. 12 to the European Convention of Human Rights;

iv. exert additional efforts to combat racial intolerance and xenophobia by efficiently implementing the Anti-Discrimination Law and providing for the necessary structures and means for the functioning of the Slovak National Centre for Human Rights as the monitoring authority in discrimination matters;

v. intensify co-ordinated efforts under a comprehensive plan for access of Roma to housing, employment, mainstream education and financial services with a view to combating their exclusion and social marginalisation. Make full use of the resources offered by the EU for that purpose;

vi. fully implement in practice the legislation prohibiting discrimination in employment and all discriminatory practices in the labour market; take further measures to focus on professional training of the Roma in order to reduce unemployment among this community; to this end, consider the introduction of some elements of positive (affirmative) action into legislation concerning education, training and employment;

vii. continue monitoring all tendencies that may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies; take all necessary measures to combat racial violence and incitement, provide proper protection to Roma, and establish effective, reliable and independent mechanisms to receive complaints from victims and ensure prompt and impartial investigation and prosecution of cases of racial violence and incitement of racial hatred; make adequate provisions for compensation and rehabilitation of victims of torture and ill-treatment;

viii. set up an independent monitoring mechanism to investigate allegations of police abuse;

ix. enhance the efforts to offer targeted training to the police, the judiciary and public officials pertaining to the issues of human rights and in particular implementation of legislation concerning racial discrimination.

87. I have confidence in the Slovak authorities' will and capacity to continue to take action on the above as well as on the further recommendations by different organisations, including the various specialised Council of Europe bodies such as the ECRI, the CPT, the CLRAE, the Advisory Committee of the Framework Convention for the Protection of National Minorities and the Office of the Commissioner for Human Rights. In this belief, I deem it timely and appropriate to propose to the Bureau of the Assembly to conclude this post-monitoring dialogue with the Slovak authorities."

Slovenia

Council of Europe member state since 14 May 1993
Number of Council of Europe conventions ratified (as of 22 May 2008): 92 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 16

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential election: 2007
Next presidential election: 2012
Last general elections: 2004
Next general elections: 2008

B. Local and regional democracy

Last municipal elections: 2006
Next municipal elections: 2010

European Charter of Local Self-Government signed on 11 October 1994, ratified on 15 November 1996, entered into force on 1 March 1997

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: May 2001 (CPR(8)6 Part II), Recommendation 89 (2001) on local and regional democracy in Slovenia adopted on 30 May 2001

Extract of the last report by the Steering Committee on Local and Regional Democracy (the CDLR was first set up in 1967 to make it possible for governments of member states to discuss issues of local and regional democracy and pave the way for greater European co-operation in this area):

Structure and operation of local and regional democracy: Slovenia: situation in 2007:

> "Reforms envisaged or in progress
>
> We conclude that the new system of local government is now well established in Slovenia although a number of issues still need to be addressed. Following analysis of local self-government in the Republic of Slovenia and its comparison with other European experiences and trends, it would be reasonable to continue the reform in the following areas:
>
> – constitutional changes, particularly to Article 143, adopted in June 2006 will enable regions to be established as a secondary level of local self-government; the necessary laws (Law on Regions, Law on Regional Elections, Law on Procedure for Establishing Regions, Law on Financing Regions) are under preparation. In accordance with the subsidiarity principle, the regional legislation should divide tasks between the state and local self-governments (municipalities), and by taking into consideration the principle of connexity, transfer certain state tasks to the control of the regions and municipalities. It is still not yet

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

decided whether the establishment of regions would require the abolition of the present two-tier administrative system in which national and local administrative systems coexist on the same territory. In a one-tier administrative system, regions would implement those tasks that exceed the capacities of (too) small municipalities, and in the process of decentralisation the state would transfer to them (as well as to the municipalities) a number of the administrative tasks so far performed exclusively by the state;

– the new Act on the Financing of Municipalities which will give more fiscal autonomy to municipalities and will enable municipalities to distribute revenues more evenly, is currently being prepared;

– the new Act on Local Security Force is under preparation: it will enable local security forces (i.e. local police) to carry out the new task of maintaining public order, in addition to local traffic control."

II. Rule of law

A. Venice Commission

No recent opinion concerning Slovenia

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Slovenia in 2004 was €127 100 000;

– the number of professional judges on a full-time basis in Slovenia in 2004 was 780, which means 39.0 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Slovenia was 171, which means 8.6 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 29 November 2001, ratified on 17 March 2003, entered into force on 1 November 2003

Criminal Law Convention on Corruption signed on 7 May 1999, ratified on 12 May 2000, entered into force on 1 July 2002, additional protocol signed on 9 March 2004, ratified on 11 October 2004, entered into force on 1 February 2005

The third evaluation round report on Slovenia exists, but has not yet been made public.

1. Slovenia is in 27th position with a score of 6.6 in the 2007 Corruption Perceptions Index, which was compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 23 November 1993, ratified on 23 April 1998, entered into force on 1 August 1998

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) signed on 28 March 2007, but not ratified

"Third round detailed assessment report on Slovenia: anti-money laundering and combating the financing of terrorism" (adopted by MONEYVAL at its 17th Plenary Session, 30 May-3 June 2005, MONEYVAL(2005)16E)

"Slovenia: progress report 2006" (adopted by MONEYVAL at its 20th Plenary Session, 12-15 September 2006, MONEYVAL(2006)15)

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Slovenia published in October 2003 following a visit to the country in May 2003

Monitoring report on Slovenia published in March 2006 following a visit to the country in May 2005

Extract of: "Monitoring report on Slovenia (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)8):

"Introduction

The Commissioner for Human Rights visited Slovenia in May 2003 on the invitation of the government. The Commissioner would like to reiterate his gratitude to the Government of Slovenia for 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 17 to 20 May 2005. In his first report, the Commissioner identified a number of concerns regarding law and practice in Slovenia with respect to human rights and made recommendations in order to assist the Slovenian authorities in their pursuit of remedying the shortcomings.

The purpose of this follow-up report is to examine the manner in which the Slovenian authorities have implemented the recommendations made by the Commissioner in 2003. 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, written submissions from the Slovenian authorities, reports by human rights experts, local and inter-

1. Slovenia is in 21st position with a score of 6.50 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

national non-governmental organisations and inter-governmental organisations and other public sources.

The members of the Commissioner's Office would like to express their gratitude for the assistance and openness of all with whom they met during the course of their visit.

Minority protection

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Conclusions

The Commissioner regrets the reluctance on the part of the Slovenian Government to strengthen the regime of minority protection and encourages the Slovenian authorities to engage in a constructive dialogue with all minority groups regarding the measures that are necessary to improve the situation of all minorities in Slovenia.

The Commissioner is concerned about the discriminatory impact of the application of the terms autochthonous and non-autochthonous on the enjoyment of rights by Roma and urges the Slovenian government to abolish the use of such notions. The Commissioner encourages the authorities to continue the consultations that are currently under way relating to the enactment of the specific law devoted to the rights of the Roma.

The Commissioner urges the authorities to do their utmost to actively assist those Roma, who, while being entitled to it, are still without citizenship.

Situation of Roma

Education

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Conclusions

The Commissioner welcomes the adoption of the new Strategy of Education of Roma in the Republic of Slovenia and the new measures implemented from the beginning of 2003/2004 school year, which aim at full integration of Roma in the mainstream education. It is regrettable, however, that the new measures have not yet been fully implemented in all the schools. The new Strategy, at present only a concept paper, should be developed into an operational Action Plan as soon as possible with sufficient resources to ensure its effective implementation.

Regarding the model implemented in Brsljin elementary school, the Commissioner's view is that the separation of Roma children from the others in important subjects does not fulfil the criteria of full integration. It also increases the risk of Roma children being taught at a lower standard than the others, which could have serious consequences for the Roma children and their prospects for the future. It is of concern that the model currently implemented in Brsljin represents a step back from the already achieved levels of integration and falls short of the impressive ambitions contained in the national strategy.

The Commissioner recommends that the authorities revise the implementation model adopted in Brsljin and ensure full integration of Roma children in the normal classroom for all the subjects. The model should be revised in consultation with experts on education and Roma representatives. Additional support should be made available to the school, teachers and the Roma pupils and their families.

Employment and housing

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Conclusions

The Commissioner welcomes the efforts made by the employment services in assisting Roma in gaining employment and accessing public services and recommends that these types of projects are implemented in all the regions where Roma reside, regardless of their status.

The Commissioner notes the efforts that have been made in developing the National Action Plan on Social Inclusion for 2004-2006 and the fact that a new National Action Programme for Employment and Social Inclusion of Roma, which is being drawn up. The projects improving the situation of Roma in different fields, be it housing, employment, or education, should be given a high priority in the allocation of financial resources, as they remain one of the most disadvantaged groups in Slovenian society. It will be important to involve Roma communities in all stages of the cycle, from planning and implementing, to monitoring the impact of the program, also at a local level.

The Commissioner regrets that only piece-meal progress appears to have been made in addressing the housing difficulties faced by many Roma. Information on concrete projects, or results so far, do not seem to be available. The Commissioner is aware of the funding possibilities offered to solve the Roma housing problems under the Housing Fund of the Republic of Slovenia.[1] The Commissioner urges the Slovenian authorities to pay particular attention to the local level implementation of the strategy of the Housing Fund of the Republic of Slovenia and to ensure that housing improvement programmes are adequately resourced. For the most marginalised groups greater efforts and specific programs are needed to secure their right to adequate housing. The recent Recommendation by the Committee of Ministers of Council of Europe on improving the housing conditions of Roma and Travellers in Europe, provides useful and detailed policy guidance.[2]

Non-discrimination

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Conclusions

The Commissioner welcomes the legislative and institutional developments made in combating discrimination and recommends that adequate resources be made available to the Advocate for the Principle of Equality. The Commissioner welcomes the Ombudsman's strengthened focus and new resources allocated to combating discrimination.

The Commissioner regrets that the building of the Mosque in Ljubljana continues to be held up. The Commissioner urges the authorities to work together to find a solution to this long standing problem. It is to be hoped that the various legal and political obstacles so far employed to prevent the building of the mosque, will rapidly give away to a consensus, recognising the rights of the Muslim community to effectively practise their religion.

The Commissioner welcomes the enactment of the Law on Registered Same-Sex Partnership, but regrets that it does not guarantee full equality for sexual minorities in the area of social security, in respect of which the law falls behind increasingly common legal standards in many EU countries

1. In its 2005 conclusions on Slovenia, the European Committee of Social Rights under the European Social Charter (revised) also requested detailed information on the steps taken or planned to improve the situation (Article 31, paragraph 1, Right to adequate housing).
2. Recommendation Rec(2005)4 of the Committee of Ministers to member states, adopted on 23 February 2005.

and the general principle of non-discrimination. The homophobic and intolerant public statements made by some politicians during the discussions about the draft law in the parliament cannot fail to be of concern.

Finally, the Commissioner encourages the Slovenian authorities to take steps towards the ratification of Protocol 12 to the European Convention on Human Rights relating to non-discrimination.

Situation of persons erased from the list of permanent residents

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Conclusions

The Commissioner urges the Ministry of Interior to immediately continue and finalise the issuance of supplementary decisions giving retroactive effect to the permanent residence permit of all those persons, who are entitled to it.

As regards the enactment of the law regulating and reinstating the status of the remaining erased persons, the Commissioner urges the Slovenian Government to definitely resolve the issue in good faith and in accordance with the decisions of the Constitutional Court. Whatever the appropriate legislative solution maybe, the current impasse reflects poorly on the respect for the rule of law and the Constitutional Court's judgments in Slovenia.

The Commissioner is extremely concerned about the continuous public manifestations of hate speech and intolerance by some politicians. The Commissioner calls for greater responsibility of politicians and media in this regard and for the full respect of the rights and values laid down in European Convention on Human Rights and other international instruments.

Problems relating to denationalised property – the situation of tenants[1]

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Conclusions

The Commissioner does not have enough information concerning the practical impact of the financial incentives provided under the new Housing Act to make his final conclusion on this issue. Regarding the new Housing Act, it seems that some of its provisions on the use of apartments seem to unduly limit the tenant's use of property. Exemptions from some of the most onerous provisions of the Act maybe required to protect the right to housing of tenants of the denationalised property in the short term until more permanent solutions can be found.

The Commissioner welcomes the measures outlined in the National Action Plan on Social Inclusion (NAP 2004-2006) to ensure suitable living conditions for all by increasing the number of non-profit housing units, implementing a new system of subsidising rents and by providing suitable housing and living conditions for at-risk groups. With the effective implementation of these measures, the improvement of at least the most vulnerable tenant's situation is hopefully in sight.

Judicial system

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Conclusions

The Commissioner welcomes the government's continued efforts to reduce the judicial backlog and the length of court proceedings. The Commissioner remains concerned, however, about the continued backlog especially in civil cases concerning private persons and encourages the government to take further measures to reduce backlog.

The Commissioner welcomes the further development of mediation. In this regard, best practices from the other Council of Europe member states and the Council of Europe recommendations on mediation in different matters can provide useful guidance.[1]

Police

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Conclusions

The Commissioner welcomes the reforms made so far. The change of the composition of the body, which now includes representatives of civil society, is a notable improvement as such. The fact that human rights NGOs had been involved in the reform process is commendable and the co-operation between the NGOs and the police should continue also in the future. Concerning the functioning of the new procedures, it is too early to assess whether the new procedures are more effective than the ones used in the past. In this regard, the Commissioner encourages careful monitoring of the functioning of the new system by the Ministry of the Interior, the Ombudsman and the local human rights NGOs.

Placement of persons in the centres for foreigners

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Conclusions

The Commissioner encourages the Slovenian authorities to review the procedures for retaining foreigners prior to expulsion so as to enable appeals to be promptly lodged before the Administrative Courts, without having to pass through a prior administrative appeal before the Ministry of Interior.

Situation of asylum seekers and refugees

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Conclusions

The Commissioner welcomes the adoption of the new Integration Decree as a positive step. Recognised refugees often require support and assistance by the authorities, as well as the non-governmental sector, in order to be able to fully integrate into a society. To ensure that the support given to the refugees is adequate, the Commissioner calls for improved co-operation between the various authorities, and more inclusive approach to the NGOs qualified to work in this field.

The Commissioner urges the authorities to provide access to all asylum seekers and refugees to adequate healthcare and education, not only emergency healthcare and primary education. Even if this is already the case in practise, as reported by the authorities, the situation should be regulated by law.

1. On the terminology used, it is to be noted that the former holders of the occupancy rights became tenants in the denationalised apartments after the entry into force of the Denationalisation Act in December 1991.

1. The Council of Europe Committee of Ministers has issued recommendations to the member states on family mediation, mediation in penal matters, alternatives to litigation between administrative authorities and private parties and mediation in civil matters. See Recommendations No. R (98) 1, R (99) 19, Rec(2001)9 and Rec(2002)10 of the Committee of Ministers.

Trafficking in human beings

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Conclusions

The Commissioner welcomes the efforts made by the Slovenian authorities in preventing and combating trafficking in human beings. Progress made so far can be largely attributed to the timely implementation of the Action Plan and the co-ordination efforts of the IWG. Another important factor has been the good co-operation established between the various ministries, the general prosecutor's office and the NGOs, who are also represented in the IWG.

The Commissioner's conviction is that respect for the human rights and dignity of the victim should be central to any efforts to combat trafficking, including the prosecution of perpetrators. The Commissioner welcomes the reflection period of three months, which is granted for all victims of trafficking in Slovenia, but is concerned about the strict conditions for issuance of even a temporary residence permit.

The Commissioner's view is that the needs of the victim and assessment of her/his situation should be the basis for any assistance given and for the availability of protection measures, including the issuance of a residence permit. The Commissioner hopes that solution is found to the current lack of financing of the activities of the NGO Kljuc, so that it can continue to operate the safe house and to provide care to the victims of trafficking in human beings in Slovenia.

The Commissioner encourages the Slovenian authorities to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings, which was opened for signature in May 2005.

Institutions for persons with disabilities

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Conclusions

The Commissioner welcomes the plans for the improvement of social institutions and welcomes the community-based approach adopted in caring for persons with disabilities in social institutions, the first results of which are beginning to be seen.

Employment rights

…

Conclusions

The Commissioner welcomes the measures taken so far in respect of improving equal access to employment as well as the efforts taken to enforce the monitoring of labour rights. He shares the views expressed by the authorities that these measures alone will not be sufficient and encourages the authorities to increase the use of preventive measures, such as providing information to the employers, employees and the public about their rights and duties."

B. European Convention on Human Rights

ECHR ratified on 28 June 1994

No reservation, no declaration

Protocol No. 6 ratified on 28 June 1994
Protocol No. 12 signed on 7 March 2001
Protocol No. 13 signed on 4 December 2003
Protocol No. 14 ratified on 29 June 2005

Out of a total of 1 560 judgments delivered by the Court in 2006, there were 190 concerning Slovenia, of which 185 gave rise to a finding of at least one violation and four gave rise to a finding of no violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 15 concerning Slovenia, of which 14 gave rise to a finding of at least one violation and one gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 2 698 concerned Slovenia.

Resolutions adopted by the Committee of Ministers in 2007: 0

Resolutions adopted by the Committee of Ministers in 2008 (as of 20 May 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 4 November 1993, ratified on 2 February 1994, entered into force on 1 June 1994, Protocols Nos. 1 and 2 signed on 31 March 1994, ratified on 16 February 1995, entered into force on 1 March 2002

Last country visit: February 2006
Publication of the last report: February 2008

Press release of 15 February 2008:

"The Council of Europe's Committee for the Prevention of Torture (CPT) has today published the report on its third periodic visit to Slovenia in February 2006, together with the Slovenian authorities' response. Both documents have been made public at the request of the Slovenian Government.

The majority of the persons interviewed during the visit indicated that they had been treated by the police in a correct manner. Nevertheless, a few allegations of physical ill-treatment by police officers were received, which concerned mainly the time of apprehension and less frequently subsequent questioning. The CPT has recommended that the Slovenian authorities remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions. The report also criticises the practice of restraining of detained persons in a hyper-extended position with hand and ankle cuffs linked together behind the back.

As regards prisons, most inmates interviewed by the delegation considered that prison staff treated them correctly. However, the CPT's delegation received several allegations of physical ill-treatment by staff at Koper and Ljubljana prisons. Further, the CPT was concerned by the lack of progress as regards remand prisoners' conditions of detention. Overcrowding continued to be an issue in the remand section at Ljubljana Prison, and remand prisoners were not offered anything which remotely resembled a programme of activities. Conditions at Ig Prison were in general satisfactory, and they were of a good standard at Koper Prison and Radeče Re-education Centre for young persons.

No allegations of ill-treatment were received at the Fužine Home for Elderly Persons in Ljubljana. The CPT was impressed by the commitment of staff to providing the best possible care. Further, living conditions were of a high standard. As regards treatment, the CPT has recommended an

increase in the range of therapeutic, rehabilitative and recreational activities, which will require more qualified staff.

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

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

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 25 March 1998, entered into force on 1 July 1998

"Declaration contained in a *Note Verbale* from the Permanent Representation of Slovenia, dated 23 March 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 25 March 1998

Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia, in accordance with the constitution and internal legislation of the Republic of Slovenia, declares that these are the autochthonous Italian and Hungarian National Minorities. In accordance with the constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.

Period covered: 1 July 1998 –

The preceding statement concerns Article(s): –."

Extract of the last opinion of the Advisory Committee adopted in May 2005 (ACFC/OP/II(2005)005):

"Concluding remarks

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 Slovenia.

Positive developments

The progress made by Slovenia in developing its anti-discrimination legislation, particularly the passage of the Act on Equal Treatment in May 2004, is to be welcomed. Another positive development has been the setting up, under the aforementioned Act, of the Council for the Implementation of the Principle of Equal Treatment and the establishment of the post of Advocate for the Principle of Equality as institutional mechanisms for ensuring the proper implementation of the principles of equality and non-discrimination. It is also noted that discussion is under way regarding a possible law dealing specifically with the protection of the Roma.

As regards practice, the Advisory Committee notes the system providing high level of protection that the Hungarians and Italians continue to enjoy, and the climate of mutual understanding characterising relations between these minorities and the majority.

In recent years, Slovenia has developed a range of programmes and measures aimed at improving the social and economic situation of the Roma, providing solutions to the problems they face in the education field and, more generally, combating their social exclusion and marginalisation. Further efforts have also been made to step up their participation in public affairs, particularly at local level.

In terms of tolerance and intercultural dialogue, the Advisory Committee welcomes the inclusive, active approach adopted by public institutions such as the Ombudsman and the Constitutional Court, and the continuous efforts they have made to promote respect for human rights and diversity in Slovenia.

Issues of concern

The personal scope of application given to the Framework Convention by the Slovene authorities remains limited. In particular, the exclusion of certain Roma and of non-Slovenes from former Yugoslavia (SFRY) and the lack of dialogue in this respect give grounds for concern. The situation of those non-Slovenes from former Yugoslavia (SFRY) whose legal status has still not been resolved raises substantial problems in terms of access to social and economic rights, including educational rights, and effective participation.

There are still shortcomings in the implementation of legislative provisions having a bearing on the protection of minorities, together with shortcomings in the resources allocated by the State in this area. As a result, difficulties have been reported by the various groups in respect of the preservation and affirmation of their identity and culture. As regards the Hungarians and Italians, there are still problems in the implementation of the legislation relating to protection of their linguistic rights in the 'ethnically mixed areas'. Another source of concern is the insufficient attention paid to the concerns expressed by persons belonging to national minorities in decision-making affecting them.

Notwithstanding the measures taken by the authorities, the situation of the Roma is still a cause of concern. There remain substantial problems in the housing, employment and education fields. Concerns about equality for Roma children in education persist, since the practice of segregating these children in Slovene schools – ordinary or 'special' – has not yet been completely abolished.

There are concerns about ongoing displays of a lack of understanding, and even hostility, towards certain persons, such as non-Slovenes from former Yugoslavia (SFRY) and the Roma, although these are isolated. It is regrettable that such displays are also reported among certain public officials and politicians, as well as in some media.

Recommendations

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:

– undertake wider consultation with representatives of the various ethnic groups and civil society regarding the personal scope of application given to the Framework Convention in Slovenia.

– find without further delay solutions to the situation of persons from former Yugoslavia (SFRY) whose legal status in Slovenia has still not been regularised and take specific measures to assist these persons on the social and economic front.

– take enhanced measures to prevent and combat discrimination and social exclusion of and among the Roma; make every effort, in consultation with those concerned, to improve their situation in fields such as employment, housing and education.

– take all necessary measures to eradicate completely the practice of segregating Roma children in the school system and ensure that they enjoy equal opportunities in access to quality education at all levels.

– increase the assistance granted to cultural projects and other activities fostering the preservation and affirmation of the cultural, linguistic and religious identity of the Hungarians, the Italians and the Roma, ensuring that the relevant legislation is applied in practice and that resources are commensurate with needs.

– look for ways to increase the level of State assistance granted to the Albanians, Bosniacs, Croatians, Macedonians, Montenegrins, Serbs and to the German-speaking persons in their efforts to develop their identity through education, culture and the media.

– prevent and combat displays of intolerance and xenophobia, including on the political scene, via every possible means; more actively foster a sense of respect for diversity and multiculturalism among the public, and encourage and support the media to play a more active role in this regard.

– identify, in conjunction with representatives of the minorities, ways to improve their participation in the taking of decisions concerning them, at local and central level."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2006)6

Third state report expected for 1 July 2009

E. European Charter for Regional or Minority Languages

Convention signed on 3 July 2007, ratified on 4 October 2000, entered into force on 1 January 2001

Last periodical state report submitted on 13 June 2005 (MIN-LANG/PR(2005)4)

Last evaluation report by the Independent Committee of Experts adopted on 15 September 2006 (ECRML(2007)4)

Last recommendation of the Committee of Ministers adopted on 20 June 2007 (RecChL(2007)5)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: the third report on Slovenia was adopted on 30 June 2006 and made public on 13 February 2007.

Extract of document CRI(2007)5:

"Executive summary

Since the publication of ECRI's second report on Slovenia on 8 July 2003, progress has been made in a number of the fields highlighted in that report. The legal framework against racial discrimination has been strengthened through the adoption of primary antidiscrimination legislation covering different areas of life, whose implementation and monitoring is supported by newly established institutions, including the Advocate of the Principle of Equality. Progress has been made in the field of improving opportunities for Roma children in education, where the authorities have started to implement a strategy adopted in 2004. Work on the preparation of a comprehensive legal framework regulating the rights of the Roma communities in accordance with the constitution is under way and is expected to be finalised before the end of 2006. The mechanisms for dealing with complaints of police misconduct have been improved and made more transparent. The Human Rights Ombudsman, who has continued to provide invaluable support to members of minority groups, is in the process of focusing activities specifically against discrimination and for the promotion of a positive attitude towards diversity.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. The situation of those persons who were unlawfully erased from the register of permanent residents in February 1992 has not yet been solved, in spite of a Constitutional Court decision from April 2003 indicating the necessary steps to do so, which has not yet been implemented. In the absence of an overall strategy to simultaneously address all areas where Roma experience disadvantage and discrimination, the members of this group, including those considered by the Slovenian authorities as 'non-autochthonous', are still in need of special support in order to enjoy equal opportunities with the rest of the Slovenian population. Ex-Yugoslav minority groups still experience prejudice, disadvantage and discrimination in a number of areas and do not yet enjoy access to opportunities to promote their identity in a way that fully reflects their contribution to Slovenian society. Negative attitudes and generalisations concerning the members of the Muslim communities still appear in public debate, notably in connection with the issue of the construction of a Mosque in Ljubljana, which is long overdue. The protection provided to persons seeking asylum in Slovenia has been weakened by the adoption of amendments to the Law on Asylum in 2006. The increased use of racist, xenophobic and otherwise intolerant discourse in Slovenian politics since ECRI's last report hampers efforts to improve the situation for all minority groups, including those mentioned above.

In this report, ECRI recommends that the Slovenian 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 introduction of provisions explicitly establishing racist motivation as a specific aggravating circumstance for all offences; the need to improve implementation of the legal framework in force and monitoring thereof; the need to raise awareness of racism and racial discrimination among the authorities and the general public and to work with minority groups to improve their confidence in the institutions. In this report, ECRI also recommends that the Slovenian authorities: fully implement the Constitutional Court's decision concerning the 'erased' without further delay; take measures to improve the situation of the Roma population in a number of areas; establish a meaningful dialogue with minority groups wishing to access better opportunities to express their identity; ensure that the practising Muslim population finally enjoys the use of a proper Mosque. It also recommends that measures be taken against the use of racist and xenophobic discourse in politics."

G. Social rights

European Social Charter of 1961 signed on 11 October 1997, but not ratified

European Social Charter (revised) signed on 11 October 1997, ratified on 7 May 1999, entered into force on 1 July 1999

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed on 11 October 1997, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 2000 and 2006, Slovenia submitted 6 reports on the application of the Revised Charter. The sixth report (on the first part of the non-core provisions) has been submitted on 28/08/2006.

The seventh 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 seventh report should be submitted before 31 October 2007.

The Charter in domestic law

Automatic incorporation into domestic law

The situation of Slovenia with respect to the application of the Charter is the following as of 1 July 2006:

Examples of progress achieved or being achieved

Employment

The Employment Act (2003) provides for an increase in paid holidays *Article 2, paragraph 3 – annual holiday with pay*

The new Employment Relations Act provides protection against notice of termination of contract and dismissal during worker's pregnancy. A woman unlawfully dismissed is entitled to be reinstated *Article 8, paragraph 2 – illegality of dismissal during maternity leave*

The Employment Act (2002) introduces the right to time off for nursing mothers *Article 8, paragraph 3 – time off for nursing mothers*

Family Relations Act which entered into force in January 2003 regulates protection of parents from dismissal during pregnancy or breastfeeding *Article 27, paragraph 3 – prohibition of dismissal for reasons relating to family responsibilities.*

Social protection

The Parental Care and Family Benefits Act entered into force on 1 January 2002. It contains provisions on maternity leave, paternal leave, childcare leave and adoption leave *Article 12, paragraph 3 – development of the social security system.*

Non-discrimination

The Employment Act (2002) contains provisions against discrimination in employment *Article 1, paragraph 2 – non-discrimination in employment*

A Constitutional Court decision in February 2003 overturned the provision of the existing regulation stipulating that Slovenian nationals were favoured for receiving national grants *Article 10, paragraph 5 – right to financial assistance*

The Parental Care and Family Benefits Act which entered into force on 1 January 2002, abolished the condition of nationality to which the childbirth allowance was subjected *Article 12, paragraph 4 – equal treatment in social security matters*

An act on rehabilitation and employment of persons with disabilities will enter into force in 2004 *Article 15, paragraphs 1 and 2 – right of disabled persons to training and employment*

The new Aliens Act which entered into force in November 2002 abolished the housing condition for migrant workers who wished to be joined by their families *Article 19, paragraph 6 – family reunion.*

The Ministry of Education no longer authorises the creation in schools of special classes for Roma children. A special working group on integration strategies into the school system for Roma has been established *Article 17, paragraph 1 – right of children and young persons to social, legal and economic protection*

Cases of non-compliance

Employment

Article 2, paragraph 2 – right to public holidays with pay

No right to time off in lieu for work performed on public holidays.

Article 4, paragraph 4 – right to reasonable notice of termination of employment

A reasonable period of notice based on length of service is not guaranteed.

Article 7, paragraph 5 – right of young workers to fair pay

Apprentices do not enjoy a right to appropriate allowances.

Health/Employment

Article 3, paragraph 3 – right to health and safety at work (supervising regulations)

1. Excessive number of accidents in the extractive sector;

2. inadequate number of inspection visits.

Social protection

Article 7, paragraph 10 – protection against physical and moral dangers

Lack of legislation prohibiting possession of child pornography and trafficking of children for sexual exploitation.

Article 17, paragraph 1 – right of children and young persons to social, legal and economic protection

No particular legislation expressly prohibiting corporal punishment within the family.

Non-discrimination

Nationality

Article 1, paragraph 4 – professional guidance, training and retraining

Discrimination against nationals of other States Parties to the Charter as concerns continued professional training.

Article 10, paragraphs 1, 2, 3 and 5 – right to access to higher technical and university training based solely on individual aptitude; right to apprenticeships; right to professional training and retraining of adult workers; right to financial assistance

Equal treatment for nationals of other States Parties is not guaranteed (residence requirement, reciprocity clause and quota).

Article 12, paragraph 4 – equal treatment in social security matters

Equal treatment of nationals of other States Parties is not ensured in respect of health insurance cover and because of the nationality requirement to which certain family benefits are subjected.

Article 16 – rights of the family

Equal treatment for nationals of other States Parties with respect to family benefits is not guaranteed, and there is insufficient legal protection of Roma families.

Article 19, paragraph 4 and Article 31, paragraph 2 – equal treatment in housing

Equal treatment regarding access to low-rent accommodation is not secured for all migrant workers who are nationals of the States Parties.

Article 19, paragraph 10 – equal treatment for migrant workers

Self-employed migrant workers are not protected as provided under the Revised Charter.

Article 31, paragraph 3 – affordable housing

Nationals of other Parties to the Revised Charter and to the 1961 Charter lawfully residing or working regularly in Slovenia are not entitled to equal treatment regarding eligibility for non-profit housing.

Disability

Article 1, paragraph 4 – professional guidance, training and retraining

The right of persons with disabilities to professional guidance, training and retraining is not guaranteed (lack of non-discrimination legislation as regards disability in the field of education).

Article 15, paragraphs 1 and 2 – right of persons with disabilities to professional training and to employment

Lack of non-discrimination legislation as regards disability, neither in the field of education nor in the field of employment.

Article 15, paragraph 3 – right of persons with disabilities to integration and participation in the life of the community

Lack of non-discrimination legislation covering fields such as housing, transport, telecommunications and cultural and leisure activities.

Movement of persons

Article 19, paragraphs 8 and 10 – guarantees in case of expulsion

Migrant workers may be deported if they lack sufficient funds. This ground of expulsion does not belong among those permitted by Article 19, paragraph 8. This also applies to self-employed workers."

H. Parliamentary Assembly

Preventing corruption in Slovenia: Written Question No. 525 to the Committee of Ministers – Reply from the Committee of Ministers adopted at the 1010th meeting of the Ministers' Deputies (7 November 2007) (Doc. 11451, 9 November 2007):

Written Question No. 525 by Mr Bartumeu Cassany (Doc. 11290)[1]

Spain

Council of Europe member state since 24 November 1977
Number of Council of Europe conventions ratified (as of 22 May 2008): 106 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 14

I. Pluralistic democracy[2]

A. Free and fair elections

System of government: constitutional monarchy
Last general elections: 2008
Next general elections: 2012

B. Local and regional democracy

Last municipal elections: 2007
Next municipal elections: 2011

European Charter of Local Self-Government signed on 15 October 1985, ratified on 8 November 1988, entered into force on 1 March 1989

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: November 2002 (CG(9)22PartII), Resolution 147 (2002) and Recommendation 121 (2002) on local and regional democracy in Spain adopted on 14 November 2002

1. This document is available on the Council of Europe Internet site at the following address: www.coe.assembly.int.
2. The non-governmental organisation Freedom House gives Spain a score of 1 for political rights and of 1 for civil liberties (with 1 representing the most free and 7 the least free. The rating shows a general opinion based on enquiry results).

Extract of: "Report on the situation of local and regional democracy in Spain" (CG(9)22 Part II):

"4. Fourth part: concluding remarks and tentative proposals

4.1. Regional self-government: an as yet incomplete reform

130. As regards regional democracy, the picture in Spain is a particularly rich and well structured one.

131. The creation of the *Comunidades Autónomas* has strongly marked the entire institutional structure of Spain, which has been able to institute and consolidate a thoroughly democratic system, while at the same time preserving local features of cultural and political diversity and ensuring the necessary unity of the State (even in the face of independence-seeking agitation which has assumed the traits of terrorist violence, which the rapporteurs strongly and unreservedly condemn).

132. Now that the transfer of powers and resources to the *Comunidades Autónomas* has been largely brought forward,[1] there is the problem of finding a more balanced system for the new devolutionary State, taking account of the considerable weight now acquired by the regional tier of government. The Autonomous Communities (and Catalonia in particular) point out that many things have been done at administrative level in connection with the transfer of powers but that at legislative and, generally speaking, political level there is still a long way to go.

133. The key questions raised concern:

a. the status of national legislation which, according to the regions, by using all the available instruments for supervising national interests has far exceeded the constitutional provisions guaranteeing the Autonomous Communities clearly defined areas of legislation;

b. enhanced presence of the Autonomous Communities at national level in the bodies responsible for taking decisions on matters which are of direct concern to the regions and which have a bearing on the legislative or administrative activity of regions.

134. With regard to the first point, it is a question of applying the constitution more openly by involving the bodies of the Autonomous Communities in the taking of decisions of concern to the regions (a sort of self-restraint by the state in the use of the instruments guaranteeing the unity of national interests). Unity of the country is different from uniformity of organisational solutions.

135. With regard to the second point, there needs to be far-reaching change to the regulation of links and consultation between central government and the Autonomous Communities, which seem to be insufficient.

136. At legislative level, in order to adapt the Spanish legal order to the solutions adopted in the matter by federal states (although Spain is not a federal state, it has a regional self-government regime that is definitely one of the most advanced in Europe), the best avenue seems to be that of instituting a second Chamber of *Comunidades Autónomas*, with the radical reform of the *Senado* that it necessitates, through amendment of the constitution.

137. Yet action in the legislative sphere alone cannot be deemed sufficient. In addition, new solutions would have to be found regarding the involvement of the *Comunidades Autónomas* in framing all State policies that may affect their development and functioning (along the lines of the Standing Conferences in which national and regional executives are represented).

4.2. Local self-government: implementation of the *Pacto local* at regional level

138. As regards local democracy, the basic regulatory framework for the local government bodies, and the genuine democratic activity carried on within them, make Spain a model of correct and complete application of the principles set out in the European Charter of Local Self-Government, there being still more innovative and advanced solutions in some cases. Nonetheless, there is a limited but significant number of aspects concerning the legal order of local authorities which would merit further thought:

a. an excessive tendency to using delegated powers as opposed to assigned powers; this diminishes the effect of the suppression of controls of the acts of local authorities;

b. the dispersion of the powers of local authorities (in national or regional laws) which would appear to be at odds with the principle of full and exclusive powers contained in the Charter;

c. the effective limitation of regulatory autonomy at technical level, a result of a large number of detailed legislative texts at both national and regional level, and a large number of reservations in legislation on aspects which could be left to local regulation (forced execution, sanctions, etc.);

d. the shortcomings in the legislative provisions enabling local elected representatives to return more easily to their occupational activities at the expiry of their term of office.

139. The sore point is effective compliance with the principle of subsidiarity which appears to demand a radical improvement in the allocation to *Municipios* and *Provincias* of administrative responsibilities still concentrated at the level of the *Comunidades Autónomas*. On a formal level, it could be recommended that this principle be explicitly introduced into the statutes of all the Autonomous Communities. Substantively, this would make it possible to evaluate the processes initiated in recent years.

140. The *Pacto local* issued in 1996 by the FEMP has produced some initial significant results by way of consolidating the democratic activity of the local authorities, but is finding it hard to do the same in respect of responsibilities. In this regard, it seems to operate more at a political than a strictly legal-institutional level.

141. The *Pacto local* is actually still open-ended. Latterly it has assumed the guise of a general proposal for a political agreement put by the government and the majority party (the PP) to all Spanish political parties, but apparently to the PSOE in particular. The reasoning behind the proposal is that if the two main parties agree on a general scheme for enhancement of local self-government, even assuming that it is to be achieved at the expense of the *Comunidades Autónomas*, the agreement will be readily applicable at the level of the individual regions, virtually all governed by one of these two parties. The nationalist parties, for their part, either choose not to react or display more overt opposition

1. Some regions such as Basque Country for instance, however, reckon that this process should be brought forward further and that a number of other responsibilities should still be transferred from the state to the regions depending on the their status.

to an agreement that could have a levelling effect in terms of territorial organisation.

142. Looked at from a more 'regionalist' point of view (the rapporteurs confirmed the position of the Generalitat of Catalonia and representatives of local authorities in that region), there is a strong impression that the *Pacto local* has acted as a catalyst in terms of processes and openness, but that it needs to be implemented effectively at the level of each Autonomous Community. This is the crux of the problem. The Autonomous Communities could be persuaded to transfer more powers and responsibilities to the local authorities if in parallel their role as guarantor of the legal and financial regimes of local authorities were strengthened; if, in other words, such a regime were to be put on a more openly regional footing.

143. If the process manages to make an effective and independent start, with the adoption of all its proposed measures at both national and autonomous community level for effective devolution of powers to local authorities, appropriate solutions will have to be found for all the problems that traditionally arise subsequent to a transfer of powers:

– the necessary transfer of human and financial resources to the local authorities;

– setting in motion more effective linking mechanisms between *Comunidades Autónomas* and local authorities;

– in the longer term, it is possible that the establishment of closer relations between regions and local authorities could lead to more regionalism in the apportionment of powers relating to the organisation of local government (in respect of finance for example), with due regard to the general principles securing local autonomy which are laid down by national law."

Extract of the last report by the Steering Committee on Local and Regional Democracy (the CDLR was first set up in 1967 to make it possible for governments of member states to discuss issues of local and regional democracy and pave the way for greater European co-operation in this area):
"Structure and operation of local and regional democracy: Spain: situation in 2007"

II. Rule of law

A. Venice Commission

No specific opinion concerning Spain

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Spain in 2004 was €2 503 746 020;

– the number of professional judges on a full-time basis in Spain in 2004 was 4 201, which means 9.8 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Spain was 1 740, which means 4.1 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 10 May 2005, but not ratified

Criminal Law Convention on Corruption signed on 10 May 2005, but not ratified, additional protocol neither signed nor ratified

Extract of: "Second evaluation round: evaluation report on Spain", adopted by GRECO at its 23rd plenary meeting (Strasbourg, 17-20 May 2005, GRECO Eval II Rep(2004)7E):

1. Conclusions

"70. In Spain, recourse to seizure and confiscation of assets is an usual practice for the police and prosecution services. Detailed legal provisions dealing with seizure, confiscation and management of seized and confiscated assets are in place. Recent legislative developments in the field of confiscation of the instruments and proceeds of crime have introduced, *inter alia*, the possibility of using value and *in rem* confiscation. The confiscation of proceeds/instruments found in the possession of a third party is also addressed by the law. The Special Attorney General's Office for the Repression of Economic Offences related with Corruption is strongly supported by special units of experts in tax and other financial matters. The government intends to extend these specific capability of using specialised units to the main prosecutors' offices in the country, in order to enhance their operative capacity. As far as public administration and ethics is concerned, Spain does not have one general enforceable text that could be considered as a code of conduct for its public officials and employees in the General State Administration. The current system is based on different pieces of legislation dealing with obligations and rights of public officials and there is no general written compilation of the criminal and disciplinary standards available to officials and employees or to the public. As regards legal persons and corruption, the Spanish legal system does not provide for corporate liability. Legal persons may be held liable for the damage caused by corruption only within the framework of civil law provisions on torts.

71. In view of the above, GRECO addresses the following recommendations to Spain:

i. that a legal provision be introduced specifically providing for provisional measures to be taken for the purpose of guaranteeing the effective confiscation of the proceeds of corruption (paragraph 19);

ii. to conduct a review of the legal provisions that provide the public with rights to access government information and the implementation practices that have been developed to determine if the law(s) and/or current implementation practices are inappropriately limiting the public's access to information that would help support the government in its fight against corruption (paragraph 46);

1. Spain is in 25th position with a score of 6.7 in the 2007 Corruption Perceptions Index, which is compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

iii. that a full evaluation of the effectiveness of the current system of criminal/disciplinary sanctions that substitute for an enforceable code of conduct for public officials/employees be conducted and that study be made public. It recommends further that Spain compile the current criminal/ disciplinary provisions and make them available to public officials and employees and publish the compilation for public information (paragraph 51);

iv. that consideration be given to drafting guidelines for public officials/employees addressing situations where interests or activities of the public official/employee are not prohibited but may still create a conflict of interest with his/her actual duties and responsibilities (paragraph 52);

v. 1. to introduce an adequate system of liability of legal persons for acts of corruption, including effective, proportionate and dissuasive sanctions, and subsequently, 2. to consider to establish a registry of legal persons which have been subject to corporate sanctions (paragraph 65);

vi. that the Spanish authorities encourage through all possible means the Chamber of Commerce to play a more active role in promoting ethics in business (paragraph 66).

72. Moreover, GRECO invites the Spanish authorities to take account of the *observations* (paragraphs 20, 23, 24, 43, 53) made in the analytical part of this report.

73. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Spanish authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2006."

2. Observations

"20. The GET welcomed the recent legislative developments in the field of confiscation of the instruments and proceeds of crime. The introduction of value confiscation and of *in rem* confiscation represents essential tools for the effective deprivation of financial advantages obtained through a crime, including corruption. The confiscation of proceeds/instruments found in the possession of a third party, except for *bona fide* third parties, is also addressed by the law. As regards the application of these measures, the notion of *bona fide* third parties is interpreted in a restrictive manner, excluding those persons who should have been aware of the illicit nature of the goods or who were unable to provide a reasonable explanation for a sudden improvement of their financial situation. Moreover, according to the Spanish authorities, proving the illicit origin of the assets concerned does not necessarily imply a requirement to provide direct proof that assets derive from a particular offence, it being sufficient to have convincing circumstantial evidence of the criminal origin of the goods (e.g. lack of an economical explanation for certain revenues; timing of a purchase coinciding with that of the commission of a criminal offence; the involvement of the owner of assets in criminal activity, etc.). However, the lack of statistical data on the number of cases, value and grounds for taking provisional measures as well as the number of cases and the value of confiscated property related to corruption make it difficult to obtain an accurate idea of the effectiveness of the existing legislation and the efforts made in practice by law enforcement agencies to deprive a perpetrator of property obtained unlawfully as a result of corruption. Therefore, the GET observes that statistics should be collected, and properly analysed, concerning provisional measures and subsequent confiscation orders in cases of corruption."

"23. There are two police forces at national level: the National Police and the Civil Guard. They have special departments for the investigation of economic crime, money laundering, organised crime and corruption. The traditional division into two national police bodies with largely separate areas of competence, both territorial and material, does not appear to create particular problems. That said, the GET took the view that the separate and unco-ordinated databases of the two police forces may well hamper the carrying out of investigations, including financial investigations aimed at tracking instruments and proceeds of corruption and facilitating the seizure thereof. During the on-site visit, the GET was informed that an initiative to integrate the databases into one is being considered by the Ministry of Interior. The GET observes that the setting up of a single database for the National Police and the Civil Guard should be given a high priority.[1]

24. The adoption of Law No. 19/2003 – which extends the categories of entities with an obligation to report any unusual or suspicious transaction – has had an important impact on revealing possible connections between money laundering and corruption. For instance, notaries were included and, since the entry into force of the law, 24 cases of money laundering related to corruption have been reported by notaries, as a result of their obligation to report suspected cases of money laundering in connection with the acquisition of property or the setting up of companies. The GET was informed that 135 reports were sent by SEPLAC to ACPO in 2003 compared to only 39 in 2002, an increase of 235%. Although the reporting system is well regulated, no feedback on the outcome of the reports filed is apparently provided. In this connection, the GET was informed that in 2005 the Ministry of Finance would set up an impact evaluation plan on the results of suspicious transaction reports. Such an impact evaluation would, in the GET's opinion, greatly help clarify the patterns used by perpetrators to launder illicit assets and to revise guidelines to the reporting entities concerning the identification of abnormal transactions or activity. The GET observes that the setting up of an impact evaluation plan concerning the outcome of suspicious transaction reports should be pursued as a matter of urgency."

"43. As part of the review of the organisation, functioning and decision-making processes of public administration, the GET met with the Ombudsman and the Court of Audit as representatives of offices with supervision and oversight of the public administration. Decentralisation is shifting more public funds to the Autonomous Communities than had been the case in the past. The GET was told that supervision and oversight resources at that level has not always kept pace with those changes. The GET observes that the appropriate Spanish authorities should encourage the Autonomous Communities and the local government entities to include supervision and oversight in their organisational plans to the extent that those services are not provided by the General State Administration and to find opportunities to share good practices with and among the

1. After the visit, the GET was informed that the Royal Decree 278/2005 of 11 March modifies the structure of the Ministry of the Interior and creates, within the Dirección General de Infraestructuras y Material de Seguridad (State Infrastructures and Security Material Office) a Subdepartment of Information Systems and Security Communications, as one of the main objectives of the Ministry of the Interior is the creation and management of common police databases. Since 30 March 2005, the Police and the Civil Guard are sharing six databases (National Identity Cards, Weapons and Explosives, Reports on Travellers, DNA, SAID (Automatic Fingerprint Identification Service and Voice Recognition).

Autonomous Regions and local government entities, whenever appropriate."[1]

"53. Spain has two reporting Registers for State Government Members and High Officials of the General State Administration: one for reporting outside activities and one for reporting property and rights. The Activities Register is public and contains the high officials' declarations concerning all their activities, their participation in enterprises etc. It also contains the high officials communications concerning the future activities they may develop once dismissed from a public function. In seeking information on how these reports are reviewed and used, the GET noticed that they are not used in any proactive way to help advise officials on how to avoid potential conflicts of interest with their specific interests or activities or incompatibilities. The GET was also told by representatives of the Ministry of Finance and Treasury, which has information on the ownership of companies and businesses, that they were not consulted by reviewers of the Registers when the reviewers determined whether 10% of a particular company or business was owned by a public official (a standard established in the Law 53/1984 on Incompatibilities of Personnel of the Service of Public Administration). The GET observes that this Register system should be redesigned in a way that would allow the reports to be used to provide individual counselling on the prevention of conflicts of interest and incompatibilities."

Extract of: "Second evaluation round: compliance report on Spain", adopted by GRECO at its 34th plenary meeting (Strasbourg, 16-19 October 2007, GRECO RC-II(2007)10E):

"III. Conclusions

39. In view of the above, GRECO concludes that Spain has implemented satisfactorily one third of the recommendations contained in the second round evaluation report. Recommendations iv and vi have been implemented satisfactorily. Recommendations i, ii, iii and v remain partly implemented. In this connection, GRECO very much hopes that specific provisions concerning provisional measures to be taken for the purpose of further facilitating and guaranteeing the effective confiscation of corruption proceeds will be introduced in the near future. Further, Spain has recently adopted a number of laws aimed at strengthening the transparency of public administration (e.g. e-governance, common and consolidated framework for public officials and employees concerning their rights and responsibilities, targeted ethical guidance for high-ranking officials); these are steps in the right direction for which the Spanish authorities should be commended. That said, GRECO urges the authorities to persist in their efforts to increase transparency and accountability of public administration by reviewing the implementation practices concerning the right to access government information, as well as by developing a general written compilation of the criminal and disciplinary standards in the public function coupled with a full evaluation of the effectiveness of the system. Finally, there remains a clear need for the authorities to pursue actively the envisaged amendments to the Criminal Code with a view to establishing an adequate system of liability of legal persons for acts of corruption.

40. GRECO invites the Head of the Spanish delegation to submit additional information regarding the implementation of recommendations i, ii, iii and v by 30 April 2009.

41. Finally, GRECO invites the authorities of Spain to translate the report into the national language and to make this translation public."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 November 1990, ratified on 6 August 1998, entered into force on 1 December 1998

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[1]

A. Activities of the Commissioner for Human Rights

First report published in March 2001 following a visit to Spain and, in particular, to the Basque Country, in February 2001 (CommDH(2001)2)

Report on Spain published in November 2005 following a country visit in March 2005

Extract of: "Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Spain, on 10-19 March 2005, for the Committee of Ministers and the Parliamentary Assembly" (CommDH(2005)8):

"Recommendations

184. The Commissioner, in accordance with Article 3 b, c and e, and Article 8 of Committee of Ministers Resolution (99) 50 makes the following recommendations to the Spanish authorities:

Ill-treatment

1. Investigate rapidly and thoroughly all allegations of torture or ill-treatment, and deaths of detainees in police stations, premises of the Guardia Civil and other police authorities, applying where necessary the appropriate disciplinary and criminal sanctions. Establish appropriate procedures guaranteeing that allegations of ill treatment in a given detention centre, police station or Guardia Civil unit, will not be investigated exclusively or responded to directly by the officers allegedly involved but by specialist investigation services unconnected with the reported facts and under the supervision of a higher authority.

1. After the visit, the GET was informed that the recent first draft of the White Book on Local Government Reform, was prepared by the Spanish Ministry of Public Administration. This document is available in the Ministry's web page (www.map.es), in order to collect as many opinions as possible from public and private sectors. Among its aims, the White Book may provide some help to determine competencies of Local Government, notably in order to evaluate costs and better articulate organisation and performance. The distribution of competencies between Administrations (State, Autonomous Communities and Local Government), is conducted on the basis of co-operation and co-ordination principles. As an example, new instruments of co-ordination among administrations are settled, like the "Sectorial" Conference for Local Issues (in which participates the General Administration, the Regions and Local Administrations), the Commission of Directors General in Local Government (which takes part in the preparation works of the "Sectorial" Conference) and the Conference for Cities (that combine the presence of the biggest cities, the regions and the General State Administration to work in specific urban and metropolitan problems).

1. Spain is in 33rd position with a score of 10.25 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

2. Extend the prescription period for the crime of torture; consider removing the prescription of such offences altogether.

3. Remove from police stations and barracks any remaining instruments of defence prohibited by the regulations, which may cause dangerous physical harm.

4. Identify and eliminate the causes of the higher incidence of cases of ill-treatment by the police units of the local authorities and Autonomous Communities compared to national security forces. It may be useful, in this context, to introduce the control procedures similar to those used by the *Ertzaintza* more widely.

5. Create the necessary mechanisms for compensating victims of torture and ill-treatment, where necessary through legislative reforms.

6. Review the current regime of incommunicado detention so as to allow the detainee to meet his or her counsel in private, at least once.

The prison system

7. Revise, in the context of the reform of the Code of Criminal Procedure, the legal provisions on pre-trial detention, bringing them into line with the criteria set forth by the European Court of Human Rights.

8. Progressively reduce overcrowding in prisons by building new establishments, refurbishing those already in existence and extending the use of alternative sentences to imprisonment which would assist those convicted with their reintegration into society.

9. Carry out a thorough review of the provision of psychiatric care in the detention estate, equipping prisons with psychiatric care units able to treat detainees suffering from mental disorders and setting up a network of specialist establishments for the most serious cases, acting where appropriate in conjunction with the health authorities of the Autonomous Communities.

10. Revise and update the Suicide Prevention Programme.

11. Strengthen and expand drug rehabilitation and severance programmes, in particular the use of methadone treatment where medically advisable. Implement stricter measures to control drug trafficking in prisons.

12. Improve health care in prisons, particularly with regard to infectious and contagious diseases.

13. Take all necessary measures to ensure that detention facilities holding mothers and small children are specially adapted to the children's development.

14. Provide the necessary guarantees to ensure that the information contained in the files on prisoners requiring special observation ('FIES') is used exclusively by the authorised units, with due regard for the provisions of the Act on Personal Data Protection and without its application resulting in disciplinary measures not provided for in prison legislation and regulations. Ensure access to this information by officials of the Spanish Data Protection Agency and the judges responsible for the supervision of prisons. Regulate the use of these files through their inclusion in the legislation covering the prison service.

15. In Catalonia, the necessary measures must be taken to reduce overcrowding in certain prisons and avoid a repetition of cases of ill-treatment such as those in *Quatre Camíns*. With regard to these serious incidents, it is essential to identify those responsible and, where appropriate, ascertain the criminal liability of officers involved in the physical attacks suffered by prisoners during their transfer as a result of the violent and aggressive behaviour directed towards officers and officials in the centre. Such conduct cannot be allowed to go unpunished.

The situation in young offender institutions

16. Take the necessary steps to prevent cases of abuse and ill-treatment in young offender institutions. Juvenile court judges and prosecutors should make regular visits to these centres and verify that the accommodation and treatment conditions are appropriate.

The administration of justice

17. Make the necessary legislative and budgetary reforms to reduce the excessive length of proceedings, increasing the number of judicial organs, setting up at the earliest opportunity the 'Judicial Offices', introducing community courts to deal with minor cases and amending the arrangements for and scope of appeals to the Supreme Court.

18. Introduce a second instance for criminal proceedings, offering the possibility of appeal against all convictions delivered at first instance as provided for in the International Covenant of Civil and Political Rights and consider the ratification of Protocol No. 7 to the European Convention on Human Rights.

19. Ensure that the future Code of Criminal Procedure simplifies proceedings, reduces delays, and regulates telephone tapping in compliance with the requirements of the European Convention on Human Rights. Introduce the possibility of reviewing convictions handed down as a result of judicial proceedings which the European Court of Human Rights has declared to be contrary to the Convention.

Constitutional Court

20. Heed, as a matter of urgency, the complaints emanating from the Constitutional Court, by reforming the conditions for and scope of '*amparo*' (protection) appeals so as to reduce their number and thereby enable the said Court to devote itself to considering the substantive questions referred to it.

Immigration and asylum

21. Adopt and promote the necessary measures at national and European level to combat the trafficking in human beings for the purposes of illegal immigration.

22. Facilitate the registration of foreigners and adopt measures to preclude use of the information contained in the municipal registry to penalise illegal immigrants.

23. Complete the reforms of the Retention Centres for Foreigners in order to improve the living conditions. Speed up the anticipated transfer of the '*La Verneda*' centre in Barcelona to the new facilities in the 'Free Zone' of the city.

24. Ensure that the foreigners held in the centres have access at all times to all the necessary information about their situation. All centres should provide new arrivals with a sheet setting out their rights and duties, explained both clearly and fully. This information should be provided in various languages, and at the very least in English, French and Arabic. The information in foreign languages must be correct and be devoid of errors which could give rise to misunderstandings.

25. Facilitate, at all times, access to a lawyer and to an interpreter free of charge for foreign persons held in retention centres.

26. Bar associations should allocate the necessary resources to provide specific training in alien, immigration and asylum legislation for those acting as court-appointed lawyers dealing with foreigners in an unlawful situation or seeking asylum.

27. Set out clear rules concerning access by non-governmental organisations to Retention Centres for Foreigners.

28. Adopt the necessary measures to ensure that deportations and returns take place in strict compliance with the law, particularly the right to legal aid and an interpreter, with an indication of the grounds for the decision and the appeals that can be made. All cases of unlawful deportations or returns must be thoroughly investigated and the appropriate administrative and criminal sanctions imposed.

29. Avoid the collective return of foreigners, by ensuring the individual examination of each case and guaranteeing the right to appeal expulsions and access to asylum proceedings.

30. Adopt the necessary measures to ensure the respect for the life and safety of immigrants during collective assaults on the metal fences of Ceuta and Melilla. Ensure the human treatment of these persons, where possible in concertation with the Moroccan authorities and with those of other countries concerned by these migration flows, guaranteeing the exercise of their right to asylum and conducting, if necessary, the return to the country of origin with full respect for their physical integrity and dignity as human beings.

31. Actively promote a common immigration policy within the European Union with a view to better responding to the large-scale immigration flows disproportionately affecting member states in the Mediterranean area (Spain, Italy, Malta) and organising the co-operation with, and assistance to, the third countries where this immigration originates.

32. Examine the possibility of providing foreigners who, for various reasons, cannot be deported with certain necessary documentation, for example the general health card, without requiring the person's inclusion on the municipal registry. In addition, welfare expenditure on the provision of care for these individuals must be maintained and increased and ways to provide them with occupations in certain areas examined in order to improve their situation.

33. Ensure the appropriate reception and care for unaccompanied foreign minors.

34. Ensure that the current legislation requiring minors to be given appropriate documentation without exception within nine months of being handed over to the juvenile welfare services is respected.

35. Identify alternatives to the determination of age through bone examinations, in view of the unreliability of such methods.

36. Close, immediately, the '*Llanos Pelados*' unaccompanied foreign minors centre in Fuerteventura, transferring those held there to facilities offering acceptable reception and care provision conditions. Provide the Department of Social Affairs of the Island's Council with the necessary resources to carry out this transfer and to provide appropriate care to all unaccompanied foreign minors arriving or located on the island.

37. Fully respect the legal requirements concerning the asylum application procedure, so as to preclude cases of unlawful deportation or return.

38. Provide the Aliens Offices with the necessary human and material resources to process rapidly and efficiently all asylum applications submitted.

39. Ensure that all asylum seekers have unrestricted access to the application procedure and that they effectively enjoy the right to the assistance of a lawyer and an interpreter.

40. With regard to stowaways, consideration should be given to reviewing the instruction issued by the office of the government delegate for alien affairs dated 9 April 2002 and ensure that such individuals have access to a lawyer whatever the circumstances.

Trafficking in human beings

41. Strengthen the legal provisions pertaining to the prosecution of human-trafficking networks.

42. Improve the mechanisms protecting female victims of trafficking in order to guarantee their fundamental rights and facilitate the prosecution of traffickers.

Gender-based violence

43. Give consideration to approving and implementing provisions of a general nature concerning asylum for female victims of gender-based violence. Until they adopt a decision on this issue, the Spanish authorities should show a degree of flexibility in this area.

44. Establish clearer mechanisms to protect illegally-resident foreign women who are victims of gender-based violence, avoiding as far as possible the initiation of proceedings to deport the individuals in question who turn up at a police station to report cases of domestic violence.

45. Where an application is made for a protection order for the victims of domestic violence, adopt all the necessary measures to ensure that the court deals with the matter as swiftly as possible and once the order has been issued ensure that it is notified immediately to the parties and the competent public authorities.

Support and assistance to the victims of terrorism

46. Strengthen the mechanisms for assisting victims of terrorism.

47. Improve the co-ordination between the different administrations managing assistance schemes for victims of terrorism and, to the extent possible, establish a single office to administer all the assistance victims are entitled to.

48. Create the necessary mechanisms to ensure that assistance is rapidly afforded to victims without prolonged formalities.

49. Provide victims of terrorism with adequate care and attention on the occasion of trials against the persons accused of terrorist crimes, informing the former adequately and making sure, to the extent possible, that they enjoy the calm and respect they deserve as victims during judicial proceedings.

Basque Country

50. Continue and strengthen the measures taken by the Basque and national security forces against the resurgence of '*kale-borroka*', acts of street violence and intimidation against holders of elective offices at national, autonomous community and local level, and any other type of terrorist pressure exerted on individuals.

51. Attach priority to the protection of and solidarity with victims of terrorism, persevering with the dialogue initiated with associations of victims of terrorism in search of appropriate responses to their actual needs, putting into practice promptly whatever methods seem necessary to improve their material situation and alleviate as far as possible their distress.

52. Reconsider the situation of the group of 'non-permanent' teachers who have been unable to meet the criteria of the linguistic profile attached to the posts they have been holding for many years, avoiding measures which are detrimental against them for this reason.

The situation of the Gypsies

53. Adopt the necessary measures to facilitate access by the Gypsy community to housing (eradicating the shanytown settlements), employment and education.

54. Give fresh impetus to the Gypsy Development Programme, actively including Gypsy organisations in this or any other government strategy seeking to develop and improve their living conditions."

B. European Convention on Human Rights

ECHR ratified on 4 October 1979

"Reservation made at the time of depositing the instrument of ratification, on 4 October 1979:

In pursuance of Article 64 of the Convention (Article 57 since the entry into force of the Protocol No. 11), Spain makes reservations in respect of the application of the following provisions:

Article 11, insofar as it may be incompatible with Articles 28 and 127 of the Spanish Constitution.

Brief statement of the relevant provisions:

Article 28 of the constitution recognises the right to organise, but provides that legislation may restrict the exercise of this right or make it subject to exception in the case of the armed forces or other corps subject to military discipline and shall regulate the manner of its exercise in the case of civil servants.

Article 127, paragraph 1, specifies that serving judges, law officers and prosecutors may not belong to either political parties or trade unions and provides that legislation shall lay down the system and modalities as to the professional association of these groups.

Period covered: 4 October 1979 –
The preceding statement concerns Article(s): 11.

Declaration made at the time of depositing the instrument of ratification, on 4 October 1979:

Spain declares that it interprets the provisions of the last sentence in Article 10, paragraph 1, as being compatible with the present system governing the organisation of radio and television broadcasting in Spain.

Period covered: 4 October 1979 –
The preceding statement concerns Article(s): 10

Declaration made at the time of depositing the instrument of ratification, on 4 October 1979:

The provisions of Articles 15 and 17 to the effect that they permit the adoption of the measures contemplated in Articles 55 and 116 of the Spanish Constitution.

Period covered: 4 October 1979 –
The preceding statement concerns Article(s): 15

Updating of a reservation transmitted by the Ministry of Foreign Affairs of Spain and registered at the Secretariat General on 23 May 2007:

Spain, in accordance with Article 64 of the Convention (Article 57 since the entry into force of the Protocol No 11), reserves itself the implementation of Articles 5 and 6 insofar as they could be incompatible with the Organic Law 8/1998, of 2 December, Chapters II and III of Tile III and Chapters I, II, III, IV and V of Title IV of the Disciplinary Regime of the Army Forces, which came into force on 3 February 1999.

Period covered: 23 May 2007 –
The preceding statement concerns Article(s): 5, 6."

Protocol No. 6 ratified on 14 January 1985
Protocol No. 12 ratified on 13 February 2008
Protocol No. 13 signed on 3 May 2002
Protocol No. 14 ratified on 15 March 2006

Out of a total of 1 560 judgments delivered by the Court in 2006, there were five concerning Spain that gave rise to a finding of at least one violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were five concerning Spain, of which two gave rise to a finding of at least one violation and three gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 631 concerned Spain.

Resolutions adopted by the Committee of Ministers in 2007: 0

Resolutions adopted by the Committee of Ministers in 2008 (as of 6 May 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 26 November 1987, ratified on 2 May 1989, entered into force on 1 September 1989, Protocols Nos. 1 and 2 signed on 21 February 1995, ratified on 8 June 1995, entered into force on 1 March 2002

Publication of the last reports: July 2007
Last country visit: September-October 2007

Press release of 10 July 2007:

"The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published today the reports on its visits to Spain in July-August 2003 and December 2005, together with the responses by the Government of Spain. These documents have been made public at the request of the Spanish authorities.

Both reports highlight the Committee's concerns about the practical safeguards in place to prevent ill-treatment by law enforcement officials. In the report on the 2005 visit, the

CPT concluded, following a detailed analysis of a number of individual cases, that the safeguards in place for persons deprived of their liberty by law enforcement agencies do not provide adequate protection from ill-treatment. Consequently, the CPT called upon the Spanish authorities to review the existing legal framework and operation of safeguards against ill-treatment for persons deprived of their liberty.

The treatment of foreigners detained under aliens legislation is examined in both reports. The CPT visited Melilla in 2005 in order to examine the procedures for the interception and treatment of foreign nationals by the Civil Guard at Spain's border with Morocco. The CPT recommended that the authorities take appropriate measures to ensure that the temporary holding centre for immigrants (CETI) in Melilla is able to cope with the great numbers of arrivals at the centre.

The report on the 2003 visit contains a series of recommendations concerning the treatment of inmates placed in special units because they are considered to be 'dangerous' or 'unsuited to an ordinary prison regime'. The situation of patients and prisoners in penitentiary psychiatric hospitals and of children in detention facilities is also examined.

In their responses, the Spanish authorities indicate the measures that they have taken or intend to take in order to implement the CPT's recommendations.

The CPT reports and the responses of the Spanish authorities are available on the CPT's website (http://www.cpt.coe.int)."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

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

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in February 2007 (ACFC/OP/II(2007)001):

"Concluding remarks

166. 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 Spain.

Positive developments

167. Since the adoption of the Advisory Committee's first opinion in November 2003, Spanish authorities have introduced a number of measures which have improved the implementation of the Framework Convention.

168. Steps have been taken to strengthen Spain's legislative provisions for combating discrimination, including by extending protection against discrimination, by public or private entities, to all relevant fields.

169. Numerous initiatives have been launched, at national and regional levels, to improve access to social services and the labour market for Roma and other vulnerable groups. It is positive that public authorities have recognised the importance of obtaining data on the situation of ethnic groups in order to achieve this aim.

170. There has been considerable progress towards achieving the full education of Roma children at primary level. Recent legislative provisions aimed at improving access to education for students from disadvantaged communities, including by increasing funding for remedial classes and student grants, should add further to this trend.

171. Spanish authorities have publicly endorsed the need to protect and promote the distinct culture and identity of Roma, a positive development that is also reflected in the Spanish Government's intention to open an Institute of Roma Culture to operate at national level.

172. The recent establishment of a nation-wide Consultative Council for the Roma People represents an important step in the direction of involving Roma in the preparation and implementation of policies that are likely to affect them.

Issues of concern

173. Although efforts have been made to improve the situation of persons belonging to minorities, the impact of these efforts remains in many respects limited. Problems persist in the implementation of existing legislation for combating discrimination, including the continuing delay in setting up a specialised body that will provide assistance to victims of discrimination on racial or ethnic grounds. There is also a need to step up awareness within the judicial system of problems related to racism and racially-motivated crime, bearing in mind that the relevant criminal law provisions are rarely invoked.

174. Notwithstanding various positive initiatives, Roma, and in particular Roma women, still face particular difficulties and discrimination in their access to employment, housing and social services and, reportedly, in the treatment they receive within the criminal justice system. Efforts to collect data on the situation of Roma need to be expanded in order to remedy this state of affairs, while ensuring due respect for the safeguards concerning personal data protection.

175. References to Roma culture, history and traditions continue to be virtually absent in school curricula and teaching materials. It will be necessary to ensure that the new legislative

provisions introducing a subject on cultural diversity into school curricula will be implemented in ways that also benefit Roma.

176. Few Roma have the necessary training and resources to participate in the production of radio, television and print media. News items that touch upon the life of Roma tend to perpetuate negative stereotypes.

177. In spite of progress made, difficulties ensuring equal access to education for Roma remain considerable, with Roma students revealing higher levels of absenteeism, higher drop-out rates and lower school performance than non-Roma children, especially at secondary school level. There is an increasing concentration of Roma (and immigrant pupils) in schools that are academically poorer.

178. Roma representatives consider that they are not sufficiently consulted in the design, implementation, monitoring and evaluation of programmes aimed at promoting their social and economic integration, nor in decision-making concerning the allocation of public funds to nongovernmental organisations working with Roma.

Recommendations

179. 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:

– establish without further delay a specialised body for combating discrimination, and ensure that its competences and resources are sufficient to operate effectively; redouble efforts to raise awareness, about the problems of discrimination and racially-motivated crime among the police, prosecuting authorities, judges, and media, as well as the general public;

– step up activities aimed at increasing understanding of minority cultures among the population of Spain; take effective measures to encourage intercultural dialogue among all persons living on the territory of the state;

– closely involve Roma representatives in the design, implementation, monitoring and evaluation of programmes aimed at promoting social and economic integration, including in the process of drafting a new Roma Development Plan;

– pursue further efforts to collect data on the situation of Roma and other ethnic groups in all relevant spheres, including the criminal justice system, in consultation with the persons concerned;

– consolidate the public pronouncements in favour of providing greater recognition to the distinct culture and identity of Roma through the adoption of concrete legislative, institutional and financial measures;

– take steps to support the access to and presence in the media of Roma, and continue to encourage media self-regulation to combat stereotypes of Roma in the media;

– ensure that existing legislative provisions aimed at promoting equal access to education for vulnerable groups are adequately applied by the relevant authorities in ways that also benefit Roma;

– ensure the effectiveness of the recently established Consultative Council for the Roma People, and make efforts to ensure that Roma associations not included in the Council also have opportunities to influence the Council's work."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2008)1

Third state report expected for 1 February 2009

E. European Charter for Regional or Minority Languages

Convention signed on 5 November 1992, ratified on 9 April 2001, entered into force on 1 August 2001

Last periodical state report submitted on 30 April 2007 (MIN-LANG/PR(2007)3 and Addendum 1)

Last evaluation report by the Independent Committee of Experts adopted on 4 April 2008, but not yet made public

Last recommendation of the Committee of Ministers adopted on 21 September 2005 (RecChL(2005)3)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: "Third report on Spain" was adopted on 24 June 2005 and made public on 21 February 2006

Extract of Document CRI(2006)4:

"Executive summary

Since the publication of ECRI's second report on Spain on 8 July 2003, progress has been made in a number of the fields highlighted in that report. There has been a recent willingness on the part of the Spanish authorities to move from an aliens policy to an immigration and integration policy. This shift in approach is reflected, for instance, in the opening of a 'normalisation' procedure which allowed around 700 000 non-citizens who had been working in Spain without legal status to obtain work and residence permits, and in a number of steps taken to rationalise and speed up the process of issuing these permits. The tone of public, and notably political, debate on immigration has improved since June 2004. Measures have been taken to reduce the disadvantage faced by many members of the Roma communities of Spain and some of these measures, notably in the field of employment, are reported to have yielded tangible positive results. A State Council for the Roma People is being established and will be central to developing new strategies for promoting equal opportunities for this part of the Spanish population. A reform of the education system which aims, *inter alia*, to promote equal opportunities for children in need of special educational support, including many Roma children and non-Spanish mother tongue children, is under discussion.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. Lack of awareness of issues of racism and racial discrimination across Spanish society affects the institutional response to these phenomena in a negative way. Thus, for instance, legislation in the field of combating racism and racial discrimination, including the provisions establishing racist motivation as an aggravating circumstance, still need to be adequately implemented. A specialised body to combat racism and racial discrimination has not yet been established. Racial discrimination in a wide range of areas, including employment, housing and access to public places still affects the daily lives of members of ethnic minority groups, including Roma, North Africans, people from sub-Saharan Africa and South Americans. These persons are also particularly affected by ethnic profiling practices by the police which increase the likelihood of them falling victims of police misconduct. Racial and xenophobic violence still needs to be adequately recognised and countered. Furthermore, certain aspects of immigration and asylum policy remain of concern, such as those concerning adequate access to the asylum procedure, notably in certain geographical areas, the position of unaccompanied minors and the situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla.

In this report, ECRI recommends that the Spanish 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 racism and racial discrimination, including racially motivated crime; and the need to establish a specialised body to combat racism and racial discrimination. ECRI also recommends that the Spanish authorities take steps to raise awareness of issues of racism and racial discrimination

among society. Other areas addressed by ECRI's recommendations include: the need to further develop and implement, in close co-operation with the Roma communities, adequately funded equal opportunities strategies targeting these communities; the need to counter racist organisations, including neo-Nazi and skinhead groups; the need to counter discrimination and labour exploitation of immigrants; and the need to provide border control and law enforcement officials, especially in the Canary Islands, Ceuta and Melilla, with thorough training in human rights, non-discrimination and refugee law."

G. Social rights

European Social Charter of 1961 signed on 27 April 1978, ratified on 6 May 1980, entered into force on 5 June 1980

European Social Charter (revised) signed on 23 October 2000, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1982 and 2006, Spain submitted 19 reports on the application of the Charter. The 19th report on the non hard core provisions of the Charter accepted by Spain was submitted on 24 March 2006.

The 20th report will concern the provisions related to the theme 'Employment, Training and Equal opportunities' (Articles 1, 9, 10, 15, 18 of the Charter and Article 1 of the 1988 Protocol). Spain submitted it on 25 October 2007.

The Charter in domestic law

Automatic incorporation into domestic law based on Article 96(1) of the constitution.

The situation of Spain with respect to application of the Charter is the following as of 1 July 2007:

Examples of progress achieved following conclusions or decisions of the ECSR[1]

General

Adoption of the Workers' Statute of 10 March 1980 in view of Spain's ratification of the European Social Charter.

Non-discrimination

Adoption of new legislation on non-discrimination in employment and occupation (Act No. 62/2003).

Non-discrimination (Nationality)

Reinforcement of trade unions' bargaining power by increasing the number of areas that may be covered by collective bargaining (Act No.7/1990 on collective bargaining and participation in determining the working conditions of public servants).

Extension of medical assistance to foreigners resident or lawfully present in Spain (Act No. 13/1996, which entered into force on 1 January 1997).

Equal treatment in employment, including self-employment, and in access to social services and public housing for legally resident foreigners (Acts No. 4/2000 and No. 8/2000).

Simplification of administrative procedures and laws affecting foreign nationals (Act No. 14/2003).

Improvement of safeguards against the expulsion of foreign nationals (Act No. 4/2000).

Foreign nationals in Spain, including ones who are there unlawfully, are entitled to emergency medical treatment in the event of serious illnesses or accidents (Institutional Act on the rights and freedoms of foreign nationals in Spain of 11 January 2000).

Non-discrimination (Disability)

Legislation on equal opportunities for persons with disabilities (Law 45/2002).

Act explicitly prohibiting direct and indirect discrimination in employment and occupation on the ground, *inter alia*, of disability (Law No. 62/2003).

Children

Extension of the Workers' Statute (prohibition of work under 16 years of age) to cover young workers working with their families.

Prohibition of minors' access to self-employment.

Submission of young workers, including self-employed, to statutory working-time limitations, prohibition of night-working, and to regular medical examinations.

Improvements of the Criminal Code as regards sexual exploitation, pornography and trafficking of children.

Education

Adoption of Constitutional Law No. 10/2002 on the Quality of Education (Law 45/2002).

Employment

Adoption of new Employment Law No. 56/2003 on the Quality of Education (Law 45/2002).

Repeal of the Merchant Navy (Criminal and Disciplinary Offences) Act of 22 December 1955, merchant seamen are now liable to disciplinary sanctions (pecuniary and professional-related) only for the offences listed in Chapters III and IV of Part IV of the 1992 Act (National Ports and Merchant Navy Act No. 27/1992); repeal of Sections 29 and 49 of Act No. 209/1964, whereby flight personnel could be subjected to criminal penalties for disciplinary

1. "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" (Rule 2 of the Rules of the ECSR).

offences even in cases where neither the safety of the aircraft nor the lives or health of those on board was threatened (Act No. 10/1995 amending the penal code).[1]

Reduction of daily working time for men and women whose children are hospitalised after birth (Law 12/2001).

Prohibition of dismissal during pregnancy (Law No. 33/99).

Improvement in the regulations governing night work for women in industrial jobs (Act No. 11/1994).

Social Protection

Improvement of the social security coverage for self-employed (Royal Decree-Law 2/2003 and Royal Decree 1273/2003).

Extension of the payment of old-age, invalidity and family benefits to all citizens concerned, in cases where they have insufficient means (Act No. 26/1990).

Cases of non-compliance

Non-discrimination (Nationality)

Article 13, paragraph 1 – adequate assistance for every person in need

Payment of minimum income benefit is subject to a residence requirement in one community and to a minimum age requirement, set at twenty-five years, in most of the autonomous communities. Furthermore, social assistance for persons living alone is manifestly inadequate in several regions, and the minimum income is not paid for as long as the need persists.

Article 18, paragraph 3 – right to liberalisation of immigration procedures

No extension of the residence permit of a foreign worker who lost his job in order to provide sufficient time for a new job to be found.

Articles 19, paragraphs 6 and 10 – family reunion

There is no evidence that migrant workers' children between the age of 18 and 21 have the right to family reunion. The same applies to self-employed workers.

Non-discrimination (Disability)

Article 15, paragraph 1 (and Article 1, paragraph 4) – vocational training arrangements for the disabled

The government has failed to demonstrate that persons with disabilities are guaranteed an effective right to mainstream education and training.

Children

Article 7, paragraph 5 – working conditions between the age of 15 and 18 (remuneration)

Young workers' wages are not adequate.

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

Corporal punishment in the home is not prohibited.

Employment/Health

Articles 3, paragraph 1 and 2 – right to health and safety at work (regulations)

1. Regulations for temporary workers are not sufficiently effective to protect this category of workers in an adequate manner;

2. Self-employed workers, who are a high proportion of the active population, are not sufficiently covered by the occupational health and safety regulations;

3. The number of occupational accidents is very high and their frequency is increasing.

Employment

Article 2, paragraph 1 – right to reasonable working time

1. The Workers' Statute permits a one year reference period in certain circumstances for averaging of working hours;

2. The law permits weekly working time in excess of sixty hours.

Article 2, paragraph 3 – right to annual holiday with pay

Workers who fall ill or have an accident during their holidays are, in general, not entitled to take holiday at another time.

Article 4, paragraph 1 – right to fair remuneration

The minimum wage falls far below the threshold of 60% of the average wage.

Article 4, paragraph 2 – right to increased remuneration for overtime

There is nothing in the law to ensure that workers receive an increased rate of pay or an equivalent rest period, in exchange for overtime.

Article 4, paragraph 4 – right to protection in case of dismissal

1. Workers with fixed-term contracts of less than a year whose contract is broken before the end are not granted any notice;

2. Workers on fixed-term contracts of more than one year are entitled to only fifteen days' notice.

Article 6, paragraph 4 – right to collective bargaining (strikes and locks-out)

The cases in which the government may resort to compulsory arbitration go beyond the requirements of Article 31 of the Charter.

Article 8, paragraph 2 – protection against dismissal during maternity leave

Domestic workers are not entitled to the same protection against dismissal during pregnancy and maternity leave as other workers; dismissals of women during pregnancy and maternity leave are permitted in the context of collective redundancy even where the undertaking has not ceased to operate.

Article 8, paragraph 3 – time off for nursing mothers

Domestic workers are not entitled to time off for nursing their children.

1. RecChS(95)9 adopted by the Committee of Ministers on 22 May 1995.

Social Protection

Article 12, paragraph 1 – right to social protection

Unemployment benefits are inadequate.

Article 16 – social, legal and economic protection of the family

Family benefits are inadequate even when other existing benefits and tax relief are taken into consideration."

H. Parliamentary Assembly

Resolution 1569 (2007): assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers, adopted by the Assembly on 1 October 2007 (see Doc. 11304, report by the Committee on Migration, Refugees and Population, rapporteur: Mrs Corien W.A. Jonker; and Doc. 11393, opinion by the Committee on Equal Opportunities for Men and Women, rapporteur: Mr Branger).

Resolution 1568 (2007): regularisation programmes for irregular migrants, adopted by the Assembly on 1 October 2007 (see Doc. 11350, report by the Committee on Migration, Refugees and Population, rapporteur: Mr Greenway).

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 by the Committee on Migration, Refugees and Population, rapporteur: Mr Chope).

Sweden

Council of Europe member state since 5 May 1949
Number of Council of Europe conventions ratified (as of 22 May 2008): 127 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 18

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: constitutional monarchy
Last general elections: 2006
Next general elections: 2010

B. Local and regional democracy

Last municipal elections: 2006
Next municipal elections: 2010

European Charter of Local Self-Government signed on 4 October 1988, ratified on 29 August 1989, entered into force on 1 December 1989

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: June 2005 (CG(12)7 Part II rev), Recommendation 163 (2005) on local and regional democracy in Sweden adopted on 1 June 2005

Extract of: "Local and regional democracy in Sweden" (CG(12)7 Part II rev):

"Conclusions

Sweden is a unitary state but with a strong system of local autonomy, which applies many of the principles of local self-government contained in the European Charter of Local Self-Government. There is constitutional recognition of the principle of local self-government as well as constitutional recognition of the right for local authorities to levy taxes to perform their tasks. The Funding principle states that central government will provide adequate funding resources if additional tasks are requested of them. In practice, Swedish local authorities have played a very important role in the welfare state system and have a high standing in the eyes of the population.

There are, nevertheless, problems with the implementation of the above-mentioned principles. The instrument of government itself is ambiguous with regard to the principle and this allows different interpretations. The two bodies which examine the constitutionality of legislation, the Council on Legislation and the Standing Committee on the constitution, themselves seem to disagree on the interpretation of the principle as found in the instrument of government. There are also serious disagreements between the central and local authorities. To some extent, these disagreements are based on party political considerations but we were also struck by the fact that, among the local authorities, councillors of all parties were united in their defence of the principle of local self-government against what they regarded as encroachments by the central authorities. This unanimity was manifest between county councils and municipalities, and among county councils and municipalities right across Sweden whatever their size, geographical location, party political leadership or model (e.g. the trial project of Skåne). We felt that, at the level of the national government, there was a greater emphasis on the principles of equality achieved through uniformity than on recognising the importance of local autonomy and that this was at least in part a party political difference. Although we recognise that these two principles are not easy to reconcile in practice, we would recall to the Swedish authorities that they have signed and ratified the European Charter of Local Self-government and are obliged to take into account its provisions.

Although the principle of local self-government is given constitutional and legal recognition in Sweden, we feel that its constitutional position could be strengthened by obliging Swedish law-makers always to refer to the European Charter of Local Self-government when drawing up all legislation. At present, Swedish law-makers simply assume that, because the principle is mentioned in the instrument of government (the Swedish Constitution) and the Local Government Act, then it will be taken into account. In this regard, there should be a system of redress, referred to in the constitution, to which local authorities could refer breaches of the principle. The European Charter of Local Self-government could then be the bench-mark against which such breaches would be judged. This might mean a Constitutional Court, although we understand that this option is not widely favoured in Sweden even among the local authorities themselves. Another option would be to strengthen the position of the local authorities vis-à-vis the parliament which is currently the final court in interpreting the scope of local self-government in particular with regard to funding. This might mean creating a parliamentary committee on local self-government which could hear both

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

sides of the case – the government and the local authorities. We think that it will be appropriate that these issues, which are vital for local self-government, are raised and discussed during the work currently undertaken by the Commission on the constitution. For the sake of clarity, the Commission should have a supplementary guideline, providing it with the mandate of putting forward proposals aimed at improving local self-government in the Swedish constitution in accordance with these conclusions.

Our examination of a number of case studies suggests that there has been a steady erosion of the principle of local self-government in Sweden over the past number of years in a number of areas such as rights legislation, housing provisions, immigration policy, the role of administrative courts, and the right to contract out services such as acute-care hospitals. There has also been a new tendency towards specific grants rather than general grants, although we were assured by the Ministry of Finance that that would change in the coming three years. If the government's announced proposals are approved, there will be in the next few years a reduction in the proportion of central government grants allocated for specific purposes.

Reforms envisaged or in progress

A governmental committee has been appointed to examine the responsibilities between central, regional and local government in Sweden. The committee will analyse the present system, taking into account economic and demographic changes and increasing internationalisation which will affect the ways in which municipalities and county councils can deliver social welfare.

Sweden has, for some time, been working to improve the conditions for cross-border co-operation. Current Swedish legislation allows municipalities and county councils the right to co-operate with corresponding levels in other countries through different bodies governed by private law. In areas of public law there are no such possibilities. Co-operation between the municipalities of Haparanda and Torneå on the border between Sweden and Finland is quite far-reaching and extensive. These two municipalities wish to further expand this co-operation. The Swedish government will, in the near future, appoint an inquiry with a commission to solve the difficulties that such cross-border co-operation creates."

II. Rule of law

A. Venice Commission

No specific opinion concerning Sweden

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in Sweden in 2004 was €648 143 063;

– the number of professional judges on a full-time basis in Sweden in 2004 was 1 618, which means 17.9 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in Sweden was 767, which means 8.5 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 8 June 2000, ratified on 25 June 2004, entered into force on 1 October 2004

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 25 June 2004, entered into force on 1 October 2004, additional protocol signed on 15 May 2003, ratified on 25 June 2004, entered into force on 1 February 2005

Extract of: "Second evaluation round: evaluation report on Sweden", adopted by GRECO at its 22nd plenary meeting (Strasbourg, 14-18 March 2005, GRECO Eval II Rep(2004)9E):

1. Conclusions

"90. Sweden has a well developed legislation and law enforcement system. The recent establishment of a unit specialised in investigating cases of corruption is still in a developing stage and in need of further support and training. The use of measures such as confiscation and seizure is likely to increase in the future. Swedish public administration has a longstanding tradition of carrying out its duties and providing services with a high degree of integrity governed by law. It appears that the development of ethical norms and professional standards as a complement to legislation is on its way. This should be further encouraged, in particular to provide for consistency throughout public administration, bearing in mind the independence of State agencies and local authorities. Moreover, there is a developed system of legal persons; their establishment, etc. However, corporate sanctions could be strengthened.

91. In view of the above, GRECO addresses the following recommendations to Sweden:

i. to verify whether the resources available to the Anti-Corruption Unit of the office of the prosecutor general are adequate, and to provide specialised training on the use of seizure and confiscation to the prosecutors of that Unit (paragraph 30);

ii. to establish model codes for the development of consistent standards on ethical behaviour throughout public administration and to promote related training of civil servants (paragraph 62);

iii. to introduce clear rules/guidelines and training for civil servants concerning the reporting of suspicions of corruption (paragraph 63);

iv. to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflicting interests (paragraph 64);

1. Sweden is in 4th position with a score of 9.3 in the 2007 Corruption Perceptions Index, which was compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

v. to reconsider existing rules concerning 'corporate liability' with a view to introducing effective, proportionate and dissuasive sanctions for legal persons involved in corruption and to examine the advisability of establishing a registry on the use of corporate sanctions (paragraph 89).

92. Moreover, GRECO invites the Swedish authorities to take account of the observation (paragraph 28) in the analytical part of this report.

93. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Swedish authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2006."

2. Observation

"28. The GET learned that the number of corruption cases in Sweden had increased in recent years (see below) and that confiscation and seizure had been used in corruption cases; the authorities provided some examples. Furthermore, there are only limited statistics available on the use of seizure and confiscation, but the aim in Sweden is to have recourse to these measures to a larger extent in the future. In this respect, the GET recalls the conclusions of the above mentioned Governmental Commission on extended powers concerning confiscation as well as the ongoing work to implement the EU framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. The GET could not assess to what extent seizure and confiscation are applied in a systematic manner in cases of corruption. The GET observes that systematic collection of data on the use of confiscation and seizure would be particularly valuable in the present situation where such measures increasingly are being considered important tools in the fight against serious economic crime, including corruption."

Extract of: "Second evaluation round: compliance report on Sweden", adopted by GRECO at its 33rd plenary meeting (Strasbourg, 29 May-1 June 2007, Greco RC-II(2007)1E):

"III. Conclusions

26. In view of the above, GRECO concludes that Sweden has implemented satisfactorily almost all of the recommendations contained in the Second Round Evaluation Report. Recommendations i, ii, iii and v have been implemented satisfactorily. Recommendation iv has not been implemented.

27. GRECO invites the Head of the Swedish delegation to submit additional information regarding the implementation of recommendation iv by 30 November 2008.

28. Finally, GRECO invites the authorities of Sweden to translate the report into the national language and to make this translation public."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 November 1990, ratified on 15 July 1996, entered into force on 1 November 1996

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[1]

A. Activities of the Commissioner for Human Rights

First report on Sweden published in July 2004 following a visit to the country in April 2004

Monitoring memorandum on Sweden published in May 2007 following a visit in January 2007

Extract of: "Memorandum to the Swedish Government: assessment of the progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights, for the Committee of Ministers and the Parliamentary Assembly (CommDH(2007)10):

"Summary of recommendations

The Commissioner for Human Rights recommends that the Swedish authorities:

1. continue their efforts to prevent isolation of prisoners, in particular victims of inter-prisoner violence;

2. change the current system on restrictions to reinforce the role of courts and secure that remand prisoners can effectively challenge and appeal decisions to impose or maintain specific restrictions;

3. establish a separate and independent body for investigation of complaints of police misconduct;

4. provide training for decision-makers in the asylum procedure to ensure proper application of the new legislation granting refugee status to persons who are persecuted on grounds of gender or sexual orientation;

5. refrain from using diplomatic assurances in cases where there are doubts about the deportee being subject to torture or ill treatment upon arrival in the receiving country;

6. give full effect to the decision of the UN Committee Against Torture concerning Ahmed Agiza and the decision of the UN Human Rights Committee concerning Mohammed Alzery including the provision of adequate reparation and compensation;

7. take further action in co-operation with the municipalities to ensure that unaccompanied minors arriving in Sweden are provided with care, safe and suitable accommodation and competent guardians as expeditiously as possible;

8. finalise and implement action plans against trafficking in human beings to ensure adequate protection and assistance to victims and ratify the Council of Europe Convention on Action Against Trafficking in Human Beings without delay;

9. continue counteracting discrimination by creating a more comprehensive protection to cover all forms of discrimination, including multiple discrimination, and a right to reasonable accommodation for persons with disabilities. Ratify Protocol 12 to the European Convention on Human Rights;

1. Sweden is in 5th position with a score of 1.50 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

10. speed up the efforts to resolve problems relating to Sámi land rights, leading to the ratification of ILO Convention No. 169, in co-operation with the parties concerned;

11. enhance the influence of the Sámi in decision making related to the use of natural resources affecting their traditional means of subsistence;

12. encourage efforts to improve gender equality in the Sámi communities and guarantee all Sámi children access to instruction in the Sámi languages;

13. intensify efforts to combat discrimination and intolerance against the Roma population, including efforts to assist Roma suffering from multiple discrimination;

14. develop and implement an action plan to prevent violence against women with sufficient funding and follow-up mechanisms and adopt necessary legislative and policy changes to ensure adequate victims support and protection to all women."

B. European Convention on Human Rights

ECHR ratified on 4 February 1952

No reservation, no declaration

Protocol No. 6 ratified on 9 February 1984
Protocol No. 12 neither signed nor ratified
Protocol No. 13 ratified on 22 April 2003
Protocol No. 14 ratified on 17 November 2005

Out of a total of 1 560 judgments delivered by the Court in 2006, there were eight concerning Sweden, of which three gave rise to a finding of at least one violation and two gave rise to a finding of no violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were seven concerning Sweden, of which five gave rise to a finding of at least one violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 337 concerned Sweden.

Resolutions adopted by the Committee of Ministers in 2007: 6

No interim resolution

Resolutions adopted by the Committee of Ministers in 2008 (as of 8 May 2008): 0

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 26 November 1987, ratified on 21 June 1988, entered into force on 1 February 1989, Protocols Nos. 1 and 2 signed and ratified on 7 March 1994, entered into force on 1 March 2002

Last country visit: January-February 2003
Publication of the last report: November 2004

Press release of 18 November 2004:

"The Council of Europe's Committee for the prevention of torture (CPT) has published today the report on its third periodic visit to Sweden in January/February 2003, together with the response of the Swedish Government. These documents have been made public with the agreement of the Swedish authorities.

During the visit, the CPT's delegation received no allegations of ill-treatment by the police from the detained persons it interviewed. However, the report raises questions as regards the effectiveness of the investigation into complaints lodged against the police and involving allegations of assault by police officers. In their response, the Swedish authorities refer to a number of proposals designed to strengthen the existing complaints mechanism.

Despite legislative changes in recent years, the CPT's report finds that the imposition of restrictions on remand prisoners' contact with the outside world and other prisoners continues to raise a number of issues in practice. The Swedish authorities' response indicates that prosecutors in Gothenburg have been made aware of the Committee's concerns and instructed to comply with the relevant provisions when imposing such restrictions.

The report also draws attention to allegations received at the Bärby Home for Young Persons concerning the excessive use of force to control violent or recalcitrant residents. In their response, the authorities highlight that additional guidelines on the use of physical force have been drawn up and distributed to all institutions for young persons.

The CPT visit reports and the response of the Swedish authorities are available on the Committee's website: http://www.cpt.coe.int."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 9 February 2000, entered into force on 1 June 2000

"Declaration contained in the instrument of ratification deposited on 9 February 2000:

The national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews.

Period covered: 1 June 2000 –
The preceding statement concerns Article(s): –."

Extract of the last opinion of the Advisory Committee adopted in November 2007 (ACFC/OP/II(2007)006):

"Concluding remarks

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 Sweden.

Positive developments

Sweden has continued to develop its legislative framework to combat discrimination. It has pursued valuable work concerning structural discrimination. The Ombudsman against Ethnic Discrimination and other key actors have helped tackle discriminatory practices in some areas, including in access to entertainment establishments. In addition, a large majority of the Swedish population considers that persons belonging to ethnic minorities enrich their society and encourage firmer measures to combat discrimination. Swedish society is increasingly self-critical with regard to xenophobic attitudes.

Sweden has continued to take measures with a view to implementing the right to use minority languages in five municipalities in northern Sweden, and the possible expansion of related legislative guarantees has been studied and promoted in valuable official reports.

Public funding for cultural initiatives of national minorities has slightly increased, and the contribution of minority cultures to the society is today widely recognised in Sweden. The need to enhance the representation of minority cultures, for example, in school textbooks, has been stressed in official reports.

Sweden's public service broadcasting encompasses certain commendable practices in terms of minority language media. These include extensive radio broadcasting in Sami and Finnish languages.

Sweden has developed promising web-based educational tools to advance minority language education and to address the shortage of educational materials in this sphere.

New consultation structures have been introduced to enhance the participation of persons belonging to national minorities in decision-making processes. The central government has also sought to engage local authorities more closely in issues concerning national minorities.

Issues of concern

Although the offices responsible for minority issues have shown clear commitment to their tasks, their effectiveness and capacity have been negatively affected by frequent shifts and changes in their institutional responsibilities.

There have been delays in the development of the legislative framework to protect national minorities, including as regards expanding the scope of guarantees for the use of minority languages.

While there are some commendable exceptions, engagement of local authorities in national minority issues remains limited. There is, for example, a need to generate more local commitment to posting minority language signs and street names as well as to participation of persons belonging to national minorities in decision-making.

Lack of reliable data on national minorities complicates the formulation, implementation, evaluation and improvement of minority policies. Calls by some national minority representatives for measures need to be followed up more decisively by the authorities.

Minority language education in public schools remains limited and, in some cases, inconveniently organised. Bilingual education is offered in private schools and by isolated public initiatives. There is a need to take further measures to address the shortage of teachers and other capacity problems.

Persons belonging to national minorities, particularly Roma, still face discrimination, including in housing and employment, and limited confidence amongst many Roma in law enforcement bodies complicates the situation further.

The continuous legal uncertainty concerning land rights continues to affect traditional activities of the Sami, including reindeer herding. It has given rise to legal disputes, with heavy financial consequences for certain Sami villages. The role of the Sami Parliament is not sufficiently developed in areas other than reindeer industry.

There are concerns that the print media subsidy system and certain mechanisms for supporting minority organisations do not adequately reflect the specific needs and diversity of national minority initiatives.

Recommendations

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:

– take further steps to ensure that the protection of national minorities is tackled in a consistent and co-ordinated manner at both central and local level, and that there is clarity and stability as regards institutional responsibilities;

– ensure close involvement of persons belonging to national minorities in decision-making processes at both central and local level, including in general questions of central importance to national minorities, ranging from health to spatial planning;

– pursue swiftly the pending proposals to strengthen the legislative guarantees for the protection of national minorities. These include the important initiative to expand the scope of guarantees for the use of minority languages;

– enhance data on national minorities by supporting data collection practices that take into account the views amongst national minorities and fully respect data protection and other pertinent concerns;

– take decisive measures in order to expand the availability of minority language education and give adequate support to bilingual education. These measures should also address teacher shortages and other capacity problems;

– pursue further efforts to combat discrimination against Roma and persons belonging to other national minorities, keeping this as a key consideration in the continuing institutional and legislative reforms;

– tackle, as a priority, the continuous legal uncertainty around land rights in northern Sweden, in a manner that fully protects the rights of the Sami. In the meantime, ensure that the related legal disputes do not threaten the viability of Sami villages and their reindeer herding activities;

– consider increasing the role of the Sami Parliament in areas other than reindeer industry;

– take further measures to support minority language media and cultural initiatives of national minorities, including by ensuring that the eligibility criteria of the related subsidy systems take into account the specific concerns of national minorities."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2003)12

Third state report expected for 1 June 2011

E. European Charter for Regional or Minority Languages

Convention signed and ratified on 9 February 2000, entered into force on 1 June 2000

Last periodical state report submitted on 18 October 2007

Last evaluation report by the Independent Committee of Experts adopted on 23 March 2006 (ECRML(2006)4)

Last recommendation of the Committee of Ministers adopted on 27 September 2006 (RecChL(2006)4)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: the third report on Sweden was adopted on 17 December 2004 and made public on 14 June 2005

Extract of Document CRI(2005)26:

"Executive summary

Since the publication of ECRI's second report on Sweden, progress has been made in a number of areas. Civil law provisions against discrimination have been extended to a number of important fields of life. There has been an increasing focus in public debate on the different forms of racial discrimination, as reflected in the setting up of two governmental enquiries on structural discrimination and in increased funding of institutions and organisations working against racism and racial discrimination. Work to promote democracy, human rights and respect of difference has been intensified, notably through the Living History Forum. The Swedish authorities have taken additional measures, including legal and financial measures, to combat trafficking in human beings. A system to monitor progress towards the achievement of integration objectives has been put in place.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. In spite of an increased focus on racial discrimination, this phenomenon still affects the daily life of some members of ethnic minorities in Sweden. While discrimination in employment is of particular concern, discrimination is also widespread in housing, access to public places and other areas. The situation of *de facto* segregation in residential areas and schools still runs counter to efforts to promote an integrated society. The active presence of racist organisations in Sweden and their activities, including the widespread dissemination of racist propaganda notably through the Internet, are still of concern to ECRI. The responsibility of these organisations for part of the racist violence and harassment that Swedish society still experiences is stressed.

In this report, ECRI recommends that the Swedish authorities take further action in a number of areas. It recommends that they ratify Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination. ECRI also recommends that the Swedish authorities fine-tune existing criminal and civil law provisions to ensure that they constitute effective tools against racist expression, racist organisations, racially motivated crime and racial discrimination. The Swedish authorities should also take further steps to improve the implementation of these provisions, including in respect of members of racist organisations. ECRI recommends that the Swedish authorities increasingly put the fight against discrimination at the heart of their integration strategies and consequently focus on measures aimed at the majority population. In this context, ECRI recommends that discrimination in employment be given priority attention. ECRI recommends that the Swedish authorities continue and expand their work to ensure that their monitoring systems enable them to monitor progress in the achievement of integration objectives."

G. Social rights

European Social Charter of 1961 signed on 18 October 1961, ratified on 17 December 1962, entered into force on 26 February 1965

European Social Charter (revised) signed on 3 May 1996, ratified on 29 May 1998, entered into force on 1 July 1999

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed on 9 November 1995, ratified on 29 May 1998, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1964 and 2000, Sweden submitted 20 reports on the application of the Charter. Between 2001 and 2006 it submitted 6 reports on the Revised Charter. The 7th report will concern the provisions accepted by Sweden, related to the theme Employment, Training and Equal Opportunities (Articles 1, 9, 10, 15,18, 20, 24 and 25 of the Revised Charter).

The 7th report should be submitted before 31/10/2007.

Collective complaints

No. 12/2002 Confederation of Swedish Enterprises: Article 5

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

Sweden's record with respect to application of the Charter is the following as of 1 July 2007.

Examples of progress achieved following conclusions or decisions of the ECSR[1]

Health/Education

The Act on the working environment has been extended to cover children under 18 who do not receive any income, including children related to their employer (1990) and those who work in their employer's home (1996) *Article 7, paragraph 1 – prohibition of employment under the age of 15*

In 2001, legislation was enacted which makes health education a school subject in its own right *Article 11, paragraph 2 – right to health (education)*

Non-discrimination

Origin

Adoption of the Act of 7 April 1994 against ethnic discrimination, including in employment

Article 1, paragraph 2 – non-discrimination in employment

Entry into force on 1 January 2001 of the new Social Security Act (*Socialförsäkringslagen* No. 1999/799) which

1. "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" (Rule 2 of the Rules of the ECSR).

contains provisions concerning work-related benefits which are no longer related to residence in Sweden; and all direct references to nationality have been abolished *Article 12, paragraph 1 – right to social security*

Sex

Adoption of Act No. 433 of 1991 on equal opportunities *Article 1, paragraphs 2 and 20 – right of men and women to equal treatment and equal opportunities*

Employment

Abolition of the provision of the legislation governing seafarers which provided that seamen could be bound by coercive measures to remain at their post (Act No. 282 of 18 May 1973 on the Merchant Navy) *Article 1, paragraph 2 – prohibition of forced labour*

Recourse to the closed shop provisions has been made more restrictive (Act of 10 June 1976 on participation in decisions in employment) *Article 5 – right to organise*

Movement of persons

Abolition of the requirement for employers to pay for language courses for their migrant workers (Repeal in 1986 of Act No. 650 of 1972) *Article 19, paragraph 5 – right to equal treatment in respect of taxes and dues*

Cases of non-conformity

Health

Article 7, paragraph 9 – working conditions between the age of 15 and 18 (regular medical examination)

The legislation does not guarantee regular medical examination for young workers aged under 18 in prescribed occupations.

Article 8, paragraph 1 – right to maternity leave and benefits

Swedish legislation does not provide for a period of at least six weeks compulsory postnatal leave.

Education

Article 7, paragraph 3 – prohibition of employment under the age of 15

The mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they benefit from such education.

Movement of persons

Article 18, paragraph 3 – right to simplification and liberalisation of formalities related to immigration

1. Rules governing the access to the employment market for nationals of States Parties to the Revised Charter or of Contracting Parties to the Charter of 1961 are too restrictive;

2. Residence permit extensions for foreign workers who have lost their job in order to provide sufficient time for a new job to be found are not granted.

Article 19, paragraphs 8 and 10 – right to guarantees in case of expulsion

A migrant worker expelled on grounds of national security may not appeal to an independent body.[1] This also applies to self-employed workers.

1. RecChS(95)10 adopted on 22 May 1995 by the Committee of Ministers (renewed on 14 December 1995).

Employment

Article 4, paragraph 1 – right to a fair remuneration

There is no evidence that the right to a remuneration that ensures a decent standard of living is guaranteed for a single worker earning the minimum wage.

Article 4, paragraph 4 – right to notice of dismissal

Provisions of collective agreements may provide, to an excessive extent, for derogations from the statutory period of notice on dismissal.

Article 5 – right to organise

There is no protection in law of the freedom not to join a trade union where a closed shop operates and closed shop and priority clauses are found in practice.

Article 29 – right to information and consultation in collective redundancy procedures

No provision is made for some possibility of recourse to administrative or judicial proceedings before redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

Non-discrimination

Sex

Article 20 – right of women and men to equal treatment and opportunities in employment

Employment insurance legislation involves indirect discrimination against women working part-time.

Nationality

Article 10, paragraph 5 – full use of facilities available

Foreign students are subject to a length of residence requirement for entitlement to financial assistance for training."

H. Parliamentary Assembly

No recent specific text concerning Sweden

Switzerland

Council of Europe member state since 6 May 1963
Number of Council of Europe conventions ratified (as of 22 May 2008): 106 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 15

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: parliamentary democracy
Last presidential election: 2008
Next presidential election: 2009

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

Last general elections: 2007
Next general elections: 2011

B. Local and regional democracy

Municipal elections take place every four years.

European Charter of Local Self-Government signed on 21 January 2004, ratified on 17 February 2005, entered into force on 1 June 2005

No Congress of Local and Regional Authorities of the Council of Europe monitoring report to date

II. Rule of law

A. Venice Commission

"Opinion on the electoral law of the Canton of Ticino", adopted by the Venice Commission at its 47th plenary meeting (Venice, 6-7 July 2001, CDL-INF(2001)016)

B. Functioning 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.

Switzerland did not provide any data for the present report.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption neither signed nor ratified

Criminal Law Convention on Corruption signed on 26 February 2001, ratified on 31 March 2006, entered into force on 1 July 2006, additional protocol signed on 3 June 2004, ratified on 31 March 2006, entered into force on 1 July 2006

Switzerland, having joined the GRECO after the end of the first evaluation round (31 December 2002), is submitted to a joint evaluation of the 1st and 2nd rounds, which is as yet still confidential.

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 23 August 1991, ratified on 11 May 1993, entered into force on 1 September 1993

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism neither signed, nor ratified

1. Switzerland is in 7th position with a score of 9.0 in the 2007 Corruption Perceptions Index, which is compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

III. Protection of human rights[1]

A. Activities of the Commissioner for Human Rights

First report on Switzerland published in June 2005 following a visit to the country in November-December 2004

Extract of: "Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Switzerland on 29 November-3 December 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly" (CommDH(2005)7):

> **"Final comments and recommendations**
>
> Switzerland undoubtedly guarantees a very high level of human rights protection for native Swiss and also people who have chosen to live in the country, whether or not they have acquired Swiss nationality and residential status in a canton.
>
> The shadows on the picture concern the 'others' – foreign nationals who, entering legally or illegally, come to Switzerland for essentially humanitarian reasons – whose right to live there has not yet been determined or has been denied. The vast majority of the comments made by the Commissioner for Human Rights concern, directly or indirectly, respect for the human rights of these persons, whose proper reception at all times is at least partly responsible for the reputation Switzerland has long enjoyed in this area. To support the Swiss authorities' efforts to respect the rules on human rights protection which their country has accepted, and in pursuance of his terms of reference (Article 3, e of Resolution (99) 50), the Commissioner for Human Rights recommends that the federal, cantonal and local authorities:
>
> **Treatment of asylum seekers**
>
> – Asylum procedure at airports: make sure there are no cases of *refoulement* or return on arrival; stop using private services to control or interview passengers; issue no non-admission ('INAD') order unless a witness has confirmed that the person concerned does not wish to apply for asylum; extend the 24-hour time limit for applying for suspension of the decision to deport following rejection of an asylum application, and continue to involve the UNHCR in asylum procedure at airports, unless that procedure is modified to include systematic assistance and adequate time limits;
>
> – Out of hand rejection ('NEM')[2] and its consequences, present situation: stop rejecting applications out of hand when people are unable to produce identity papers within 48 hours of being asked to do so, and take all decisions on entitlement to reside in Switzerland on the basis of a series of cumulative indications, having first conducted a personal interview with the applicant, at which he/she has legal and linguistic assistance; extend the five-day period currently allowed for appealing against a decision to reject an application out of hand, and provide the applicant, from the time that period starts, with legal assistance and an interpreter, if needed; abolish the possibility of demanding procedural

1. Switzerland is in 11th position with a score of 3.00 in the Worldwide Press Freedom Index 2007, which is compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).
2. In Switzerland the right of asylum is governed by the Asylum Act of 26 June 1989 ("LAsi"), which provides for a summary procedure ("non-entrée en matière" or "NEM") whereby manifestly ill-founded applications are rejected out of hand.

costs; give people whose applications have been rejected out of hand reasonable time to leave the country (with the Swiss authorities' assistance and possibly positive incentives) before treating them as illegally resident, with all the effects which that entails; restore entitlement to social assistance for people whose applications are rejected out of hand;

– Out of hand rejection ('NEM') and its consequences, measures under discussion: bring humanitarian protection, and also the concept of persecution by non-state protagonists, into the laws on asylum; not give asylum seekers whose applications have been considered and rejected the status currently assigned to those whose applications are rejected out of hand; reduce, instead of increasing, the maximum period of detention prior to deportation;

– Deportation of illegal immigrants resident in Switzerland for a long time: in decisions giving reasons and open to appeal before a court, determine the situation of long-term illegal residents, taking due account, among other things, of their individual and family situations, and of any efforts they have made to find work and integrate;

– Means employed by the police when deporting aliens: forbid the use of stun guns during deportation operations; do not employ private firms on such operations; suggest that relevant NGOs accompany police officers effecting deportations, particularly collective deportations by charter flight; avoid using children to trace unlawfully resident aliens; provide continued training and supervision to ensure that police officers responsible for deportation measures always respect the rights and dignity of aliens;

Trafficking in human beings

– ratify and implement the Council of Europe's Convention on Trafficking in Human Beings, ensuring that the victims of trafficking benefit from all the protective measures advocated in that text, issuing them with residence permits for humanitarian reasons and also to allow them to co-operate with the police, and making it possible to waive punishment for those forced to take part in unlawful activities; supervise the real working and living conditions of 'cabaret dancers' more closely;

Domestic violence

– abolish the rule that an alien who leaves the home of a violent Swiss spouse, or turns to the social services for help, forfeits the B permit;

Racism and xenophobia

– sign and ratify the relevant international instruments; adopt laws to prohibit and punish racial discrimination in the private sphere; give the authorities responsible for combating xenophobia and racism adequate resources; establish an effective system to monitor and punish racist incidents; repress racist and offensive publicity campaigns; teach police to respect foreigners, and set up independent and effective bodies, which can be asked, without fear of reprisal, to investigate allegations of maltreatment and misconduct by police officers;

Independence of the judiciary

– maintain the independence of the Attorney General of the Confederation; scrupulously respect the authority and independence of the Federal Court and its judges;

Life-long detention of sex offenders or violent offenders regarded as dangerous and beyond rehabilitation

– scrutinise cases in which life-long detention, as provided for in the new Criminal Code, is ordered, and examine judicial practice – particularly that of the Federal Court and the European Court of Human Rights – to establish whether such detention is compatible with the ECHR and its Protocols; provide for judicial appeal against decisions to maintain life-long detention;

The situation in certain places of detention

– take all appropriate measures, including the use of alternative sanctions, to reduce the population of the Champ-Delon prison to an acceptable level very rapidly; immediately entrust the supervision of under-age prisoners in the 'La Stampa' prison to properly trained warders and educators, and improve the premises in which these young people are held; stop using the cells in the Central Police Station at Bellinzona for detention purposes;

Travellers

– allow, in regional planning programmes and decisions, for the special needs and traditions of travellers, and attempt to provide them with more long-term and short-term campsites in all parts of Switzerland;

Institutions for the defence of human rights

– promote the appointment of ombudspersons in cantons (and towns) and give them the powers and resources they need, among other things, to assist prison inmates and asylum seekers (both those whose applications are rejected out of hand, and those whose applications are processed and then rejected); reconsider favourably, within a reasonable time, the appointment of a federal ombudsperson; set up an independent national institution for the protection and promotion of human rights.

Appendix to the report:

Comments and observations by the Swiss authorities on the report of the Council of Europe Commissioner for Human Rights following his visit to Switzerland (in French only) …."

B. European Convention on Human Rights

ECHR ratified on 28 November 1974

No reservation, no declaration

Protocol No. 6 ratified on 13 October 1987
Protocol No. 12 neither signed, nor ratified
Protocol No. 13 ratified on 3 May 2002
Protocol No. 14 ratified on 25 April 2006

Out of a total of 1 560 judgments delivered by the Court in 2006, there were nine concerning Switzerland which all gave rise to a finding of at least one violation.

Out of a total of 1 503 judgments delivered by the Court in 2007, there were seven concerning Switzerland, of which six gave rise to a finding of at least one violation and one gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 455 concerned Switzerland.

Resolutions adopted by the Committee of Ministers in 2007: 3

No interim resolution

Resolutions adopted by the Committee of Ministers in 2008 (as of 15 May 2008): 2

No interim resolution

C. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Convention signed on 26 November 1987, ratified on 7 October 1988, entered into force on 1 February 1989, Protocols Nos. 1 and 2 signed and ratified on 9 March 1994, entered into force on 1 March 2002

Publication of the last report: December 2004

Last country visit: September-October 2007

Publication of the preliminary observations: January 2008

Press release of 7 January 2008:

> "During its visit to Switzerland in September/October 2007, the CPT's delegation followed up a number of issues examined during previous visits, in particular the fundamental safeguards against ill-treatment offered to persons in police custody and the situation of persons deprived of their liberty under aliens legislation. With regard to prisons, particular attention was paid to the conditions of detention of persons against whom a compulsory placement measure or institutional therapeutic measures had been ordered, as well as to conditions in the security units. The delegation also examined the situation of juveniles and young adults in education centres.
>
> Today's publication concerns the preliminary observations made by the CPT's delegation to the Swiss authorities at the end of the visit."

Next country visit: date unknown

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 21 October 1998, entered into force on 1 February 1999

> **"Declaration contained in the instrument of ratification deposited on 21 October 1998:**
>
> Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.
>
> Period covered: 1 February 1999 –
> The preceding statement concerns Article(s): –
>
> Declaration contained in the instrument of ratification deposited on 21 October 1998:
>
> Switzerland declares that the provisions of the framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages.
>
> Period covered: 1 February 1999-
> The preceding statement concerns Article(s): –."

Last opinion of the Advisory Committee adopted in February 2008, but not yet made public

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2003)13

Third state report expected for 1 February 2010

E. European Charter for Regional or Minority Languages

Convention signed on 8 October 1993, ratified on 23 December 1997, entered into force on 1 April 1998

Last periodical state report submitted on 24 May 2006 (MIN-LANG/PR(2006)3)

Last evaluation report by the Independent Committee of Experts adopted on 19 September 2007 (ECRML(2008)2)

Last recommendation of the Committee of Ministers adopted on 12 March 2008 (RecChL(2008)2)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: "Third report on Switzerland" was adopted on 27 June 2003 and made public on 27 January 2004

Extract of Document CRI(2004)5:

> "Executive summary
>
> Since the publication of ECRI's second report on Switzerland, progress has been made in a number of fields highlighted in the report.
>
> A new constitution, containing a prohibition of discrimination, came into force in 2000. Plans are under way to extend criminal law provisions to combat racism, and attention is being paid to the problem of right-wing extremism. A Federal Service to Combat Racism has been set up within the public administration and is responsible, *inter alia*, for administrating funds allocated to various projects to combat racism and discrimination. The situation of the Jenisch, Sinti and Roma communities has been improved by the introduction of a new Law on Itinerant Trade, and it is hoped that a new Law on Citizenship will be accepted which will facilitate naturalisation for second and third generation persons of immigrant origin.
>
> However, progress made in other areas remains limited. No developments have occurred as regards the possibility of introducing more comprehensive anti-discrimination legislation in civil and administrative law. Problems still remain to be solved as regards the situation of Jenisch, Sinti and Roma in Switzerland. The incidence of police misbehaviour and discriminatory treatment towards members of certain minority groups, notably black Africans, is a matter of concern, as is the general climate of opinion in society towards this group. The issue of asylum seekers and refugees is also the subject of negative and hostile debate in the public and political sphere, and a number of problems remain in the field of the asylum procedure. The new Law on Foreigners and the 'binary' admissions policy have been criticised by relevant actors within society as creating new discriminations and divisions.

In this report, ECRI recommends that the Swiss authorities take further action in a number of fields. It calls, *inter alia*, for the introduction of a prohibition of discrimination in the different fields of life within civil and administrative law, and for the establishment of mechanisms at federal and cantonal level with competence to receive and investigate individual complaints of discrimination and racism. ECRI recommends further steps to improve the situation of the Jenisch, Sinti and Roma, notably as regards the provision of stopping places. It urges the authorities to take firm action to counter the problem of police discrimination and misbehaviour towards members of certain minority groups. It also stresses the need to take steps to improve the climate of opinion within society towards certain groups, particularly black Africans and asylum seekers. ECRI also recommends that care should be taken to ensure that new laws and regulations in the field of asylum seekers and non-citizens do not lead to a weakening of the position of these groups."

G. Social rights

European Social Charter of 1961 signed on 6 May 1976, but not ratified

European Social Charter (revised) neither signed, nor 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 six of these nine articles); in even years half of the other provisions.

H. Parliamentary Assembly

No recent specific text concerning Switzerland

United Kingdom

Council of Europe member state since 5 May 1949
Number of Council of Europe conventions ratified (as of 22 May 2008): 112 (out of 203)
Number of Council of Europe conventions signed (as of 22 May 2008): 21

I. Pluralistic democracy[1]

A. Free and fair elections

System of government: constitutional monarchy
Last general elections: 2005
Next general elections: 2010

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

B. Local and regional democracy

Last municipal elections: 2008
Duration of the mandate: four years

European Charter of Local Self-Government signed on 3 June 1997, ratified on 24 April 1998, entered into force on 1 August 2008

Last Congress of Local and Regional Authorities of the Council of Europe monitoring report: May 1998 (CG(5)7PartII), Recommendation 49 (1998) on the situation of local and regional democracy in the United Kingdom adopted on 28 May 1998

II. Rule of law

A. Venice Commission

Extract of: "Opinion on the electoral law of the United Kingdom adopted by the Council for Democratic Elections at its 23rd meeting (Venice, 13 December 2007) and by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)", CDL-AD(2007)046:

"Conclusion

In response to the first query (relating to the voters' registration system), the introduction of a rolling registration system throughout the year in addition to the annual canvass is a positive measure for both increasing participation in elections and for the accuracy of registers. Regarding the household system, due to the fact that this system can lead to inaccuracies and problems of securing the exercise of the individual right to vote, the Venice Commission would suggest that Great Britain should advance towards an individual registration system. On the other hand, the lack of personal identifiers, and the fact that the system relies on a general belief on the *bona fides* of citizens may eventually be a source of inaccuracies from which other vices could eventually flow. The use of more accurate personal identifiers is strongly advised. Sanctions are an ex-post mechanism linked to punishing behaviour, but by themselves, sanctions cannot secure accuracy.

In response to the second query (relating to postal voting), the United Kingdom legislation goes a long way to try to defend the systems of absent voting, including postal voting, from fraud and manipulation. The improvements made in this sense with the introduction of personal identifiers in the postal voting statement are welcomed. However, some effort is still pending related to the verification of the personal data provided by the postal voting statement. The extension of the right to vote by post on demand, where no reason is required, has to go together with effective anti-fraud measures. In this respect, the cross checking of 20% of the votes as a precautionary measure raises questions about its reliability.

In answer to the third question (relating to the differences in legislation between Great Britain and Northern Ireland): the special requirements for Northern Ireland are justified and fair, given the special circumstances. In summary, the legislation in force in Northern Ireland establishes tighter controls for securing the right to secret and free vote that cannot be considered as an obstacle for the exercise of this right, but as measures that intend to reduce fraud and abuses, and to guarantee democratic elections. The differences between the electoral legislation applicable to Northern Ireland and the rest of the United Kingdom

referred to registration of voters and postal voting are the result of a number of amendments introduced by parliament in order to tackle problems of inaccuracies of the registers and electoral fraud. These abuses, which were linked with particular social and political circumstances of Northern Ireland, were of deep concern within the government, the parliament itself, and other British public authorities (e.g. the Electoral Commission). The aim of the Electoral Fraud (Northern Ireland) Act 2002, the Northern Ireland (Miscellaneous Provisions) Act 2006, and the Electoral Administration Act 2006 was precisely to include anti-fraud measures to prevent electoral abuses that could be generated through registration or postal voting. The arguments exposed above support the opinion that *the difference in the electoral system* is not, *per se*, against the standards of democratic elections and human rights that bind the member states of the Council of Europe. In this particular case, moreover, the different requirements are reasonably justified by the special historical circumstances of Northern Ireland and by the importance both of preventing fraud and improving the social perception of elections as the cornerstone mechanisms for the good functioning of democracy. Concerning *the specific requirements* for Northern Ireland implemented by the electoral law, it can be affirmed that they are also in accordance with the standards of the Council of Europe. Even more, we could say that they adjust better to them than the ones that operate in the rest of the United Kingdom concerning parliamentary elections, especially in relation with registration. Thus, the continuous individual registration system complies better with the principles of good practice in electoral matters and with the European electoral heritage that underlies them and it could be appropriate to extend it to Great Britain. The same is true about the postal voting system, on the other hand, it establishes a procedure of application, returning and checking of identity and personal data by the electoral officer that tend to make this electoral mechanism more secure and transparent. In other words, the legislation in force in Northern Ireland establishes tighter controls for securing the right to secret and free vote that cannot be considered as an obstacle for the exercise of this right, but as measures that intend to reduce fraud and abuses, and to guarantee democratic elections. Given these stronger controls, British authorities should perhaps ascertain whether the continuation of circumstances that called for 'justified' absent voting (in opposition to 'on demand' absent voting applied in Great Britain) still remain in Northern Ireland. If not, the authorities should then explain why the different treatment of absent voting in Great Britain and Northern Ireland still remains justifiable and acceptable."

B. Functioning 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.

It emerges from this report that:

– the total budget allocated to the judiciary system (courts, public prosecution and legal aid) in the United Kingdom in 2004 was €4 269 000 000;

– the number of professional judges on a full-time basis in the United Kingdom in 2004 was 1 305, which means 2.5 for 100 000 inhabitants;

– the number of public prosecutors in 2004 in the United Kingdom was 2 819, which means 5.3 for 100 000 inhabitants.

C. The fight against corruption and organised crime[1]

Civil Law Convention on Corruption signed on 8 June 2000, but not ratified

Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 9 December 2003, entered into force on 1 April 2004, additional protocol signed on 15 May 2003, ratified on 9 December 2003, entered into force on 1 February 2005

Extract of: "Third evaluation round: evaluation report on the United Kingdom: incriminations (ETS Nos. 173 and 191, GPC 2) (Theme I)", adopted by GRECO at its 36th plenary meeting (Strasbourg, 11-15 February 2008, GRECO Eval III Rep(2007)3E Theme I):

"IV. Conclusions

133. Overall, the criminal law – common law and statutory legislation – of the United Kingdom in respect of bribery complies with the relevant provisions of the Criminal Law Convention on Corruption. Nevertheless, it appears that the current legislation, which is drawn from a number of sources, would benefit from reform in order to provide a fully coherent and consistent terminology and legal framework for corruption offences. This would no doubt be beneficial for legal practitioners as well as for the wider public. The on-going reform process is therefore supported and the authorities are asked, in particular, to review – in the context of this process – their position concerning two of its reservations on Articles 7 and 12 made in respect of the Criminal Law Convention on Corruption.

134. In the view of the above, GRECO addresses the following recommendations to the United Kingdom:

i. to proceed with the efforts to revise existing criminal law in order to provide for comprehensive, consistent and clearer definitions of bribery offences (paragraph 130);

ii. to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS No. 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention (paragraph 131).

135. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the United Kingdom to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.

136. Finally, GRECO invites the authorities of the United Kingdom to authorise, as soon as possible, the publication of the report."

Extract of: "Third evaluation round: evaluation report on the United Kingdom: transparency on party funding (Theme II)", adopted by GRECO at its 36th plenary meeting (Strasbourg, 11-15 February 2008, Greco Eval III Rep(2007)3E Theme II):

1. The United Kingdom is in 12th position with a score of 8.4 in the 2007 Corruption Perceptions Index, which is compiled by the non-governmental organisation Transparency International (it scores countries on a scale from 0 to 10, with 0 indicating high levels of perceived corruption and 10 indicating low levels of perceived corruption; for instance, Denmark, Finland and New Zealand share the top score of 9.4 while Somalia is in 179th position with the lowest score of 1.4).

"V. Conclusions

133. The existing legal system and organisational framework regarding the transparency of political financing, its supervision and the available sanctions for infringements of financing rules is generally of a high standard in the United Kingdom and is, to a large degree, in line with the relevant provisions of the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. The piece of legislation of the greatest importance in this respect, the Political Parties Elections and Referendums Act 2000 (PPERA), provides a solid framework in respect of transparency and control of party funding. However, the PPERA and, in particular, its implementation, since its entry into force almost six years ago, has not been without criticism and debate. Public debate was further fuelled by extensive media interest in respect of controversial party loans in the 2005 general elections. This has resulted in a number of amendments to the legislation. Moreover, inquiries, studies and proposals on how to further improve the system of transparency and supervision have recently been issued aiming at – ultimately – consolidating the fundamental values of the democratic system and at reinforcing public trust and participation therein. Just and transparent political financing is critically important in this respect. GRECO's findings indicate, *inter alia*, that the transparency of party accounts could be improved if more standardised formats for financial reporting were applied; that third parties should, to the extent possible, be subject to transparency requirements comparable to those of the parties; and that the transparency requirements at constituency level as well as in respect of election candidates needs to be further considered. Moreover, the Electoral Commission has a high degree of independence, but needs to adopt a more pro-active approach. Research should be carried out into future police investigation and prosecution of these offences. Finally, as a complement to the current (mainly criminal) sanctions, more flexible sanctions should to be introduced for less serious violations of the political financing rules.

134. In view of the above, GRECO addresses the following recommendations to the United Kingdom:

i. that a common format be established for parties' accounts and returns with a view to ensuring that such information to be made available to the public is coherent, meaningful and comparable to the greatest extent possible (paragraph 125);

ii. that to the greatest extent possible, election candidates and third parties be subjected to transparency standards in respect of loans which are comparable to those applying to political parties (paragraph 126);

iii. that consideration be given to increasing the transparency of political financing at constituency level and in respect of election candidates, bearing in mind the particular conditions and needs at the local level (paragraph 127);

iv. that the regulating function of the Electoral Commission be reinforced, and that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities (paragraph 128);

v. that – as a complement to the current (mainly criminal) sanctions – more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions (paragraph 131);

vi. that objective research be carried out concerning future police investigation and prosecution in respect of political funding offences (paragraph 132).

135. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the United Kingdom to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.

136. Finally, GRECO invites the authorities of the United Kingdom to authorise the publication of this report."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 signed on 8 November 1990, ratified on 28 September 1992, entered into force on 1 September 1993

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[1]

A. Activities of the Commissioner for Human Rights

Opinion by the Commissioner for Human Rights on certain aspects of the derogation in Article 5, paragraph 1, of the European Convention on Human Rights published in August 2002

First report on the United Kingdom published in June 2005 following a country visit in November 2004

Extract of: "Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom from 4 to 12 November 2004, for the Committee of Ministers and the Parliamentary Assembly" (CommDH(2005)6):

"Recommendations

The Commissioner, in accordance with Article 3, paragraphs *b*, *c* and *e* and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the British authorities:

The prevention of terrorism

Provide for the judicial authorisation of all control orders; ensure that the essential content of the right to a fair trial under Article 6 of the ECHR is guaranteed where necessary.

Ensure that evidence suspected of having been extracted through torture is in no case admissible and in particular is not relied on in control order proceedings.

Ensure the judicial supervision of expulsions carried out on the basis of diplomatic assurances.

Continue to carefully monitor the impact of the application of anti-terror powers on disproportionately affected communities.

1. The United Kingdom is in 24th position with a score of 8.25 in the Worldwide Press Freedom Index 2007, which was compiled by the non-governmental organisation Reporters Without Borders (in comparison, Iceland and Norway share 1st position with a score of 0.75 while Eritrea is in 169th and last position with a score of 114.75).

Asylum

Provide for the automatic judicial review of the continuing administrative detention of foreigners under Immigration Act powers beyond three months; ensure that adequate legal representation is provided in such cases.

Ensure the public availability of comprehensive statistics relating to the detention of minors under Immigration Act powers.

Increase the use of alternative forms of supervision of families with children pending deportation.

Ensure that the detention of minors for any period be authorised by a judicial authority, and subject to periodic judicial review.

Take all possible measures to ensure that foreigners detained under Immigration Act powers are not held in ordinary prisons.

Extend the five day time-limit for the filing of appeals against negative Asylum and Immigration Tribunal decisions before the High Court, so as to permit their effective presentation.

Improve the quality of first instance asylum decisions by immigration officers, through increased training for front-line immigration officers and improved internal review of the reasons for high success rates of appeals by applicants from certain countries.

Provide for the possibility of open regimes in asylum processing centres for applicants in fast-track proceedings.

Reinstate the suspensive effect of appeals against negative asylum decisions on the deportation of applicants in fast-track proceedings.

Ensure that assistance from the National Asylum Support Service is not withheld from applicants who would otherwise be rendered destitute.

Place the burden of proof on the prosecution to show that the accused has deliberately destroyed his or her identity documents for the purpose of entering the country or frustrating deportation.

Juvenile justice

Bring the age of criminal responsibility in the different jurisdictions of the United Kingdom in line with European norms.

Provide greater investment in alternative sentences for juvenile and young offenders.

In Scotland, provide for the prosecution of juvenile offenders under the age of 16 in specialised Youth Courts, in the event of their country-wide introduction.

Anti-Social Behaviour Orders

Ensure that Anti-social behaviour order guidelines adequately delimit the nature of the behaviour targeted.

Exclude the possibility of authorising Anti-Social Behaviour Orders on the basis of hearsay evidence alone.

Restrict the ability to apply to the courts for Anti-Social Behaviour Orders to the authorities currently invested with this right.

Raise to 16 the age at which children in breach of terms of Anti-Social Behaviour Orders may be sentenced to custody.

Reformulate Anti-Social Behaviour Order guidelines so that they neither encourage nor permit the excessive publicity of the making of orders against juveniles. In order to guarantee the right of children to privacy, the reproduction and public dissemination of posters reproducing the pictures of children submitted to Anti-Social Behaviour Orders should be prohibited.

Prison conditions

Address the problem of over-crowding in prisons through the construction of new detention facilities and greater investment in alternative sentences and non-custodial pre-trial supervision.

Improve the psychiatric support services in the adult prison estate; increase the capacity of National Health Service secure accommodation facilities so as to enable the transfer of all detainees in need of full time psychiatric treatment.

Improve the educational and psychiatric support services in juvenile and young offender detention facilities; ensure that purposeful activity targets in Young Offender Institutions are met.

In Scotland, eradicate slopping out in all detention facilities.

Provide for the possibility of private family visits.

Measures to combat discrimination

Give greater priority to the elimination of potential discrimination in the criminal justice system.

Include the prohibition of discrimination on the grounds of age and sexual orientation in the provision of goods and service in future legislation in this area.

Consider the introduction of single equality legislation standardising protection across all areas.

Reintroduce the obligation on local authorities to provide caravan sites for Roma/Gypsies and Travellers; provide financial assistance for their construction to local authorities.

The Commission for Equality and Human Rights

Ensure that the Commission for Equality and Human Rights enjoys the necessary resources and independence to carry out its functions effectively.

The respect for Human Rights in Northern Ireland

Increase efforts to dismantle paramilitary structures and combat organised crime in Northern Ireland's poorest communities.

Accelerate the implementation of the reforms of the criminal justice system.

Provide for an obligation on disclosure judges to regularly review court proceedings in juryless trials.

Encourage and facilitate the organisation of an inclusive round-table on a Bill of Rights for Northern Ireland and the participation of all political parties.

Ensure that the public inquiries recommended by the Cory report are capable of establishing the full circumstances surrounding the deaths of the four individuals concerned and meeting the legitimate interests of their families.

Ensure the access of Coroners to all relevant material held by the police; ensure that inquests conducted into suspicious deaths in Northern Ireland prior to the adoption of the Human Rights Act are capable of satisfying the requirements of Article 2 of the ECHR.

Appendix to the report:

Comments by the Government of the United Kingdom

B. European Convention on Human Rights

ECHR ratified on 8 March 1951

Declarations contained in a letter from the Permanent Representative of the United Kingdom, dated 31 March 2004, registered at the Secretariat General on 1 April 2004:

The Government of the United Kingdom declares that it extends the Convention to the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, being a territory for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom declares on behalf of the above territory that the government accepts the competence of the Court to receive applications as provided by Article 34 of the Convention.

(Note by the Secretariat: In accordance with the letter from the Permanent Representative of the United Kingdom, dated 21 February 2006, registered at the Secretariat General on 23 February 2006 – Or. Engl. – the current situation of territories for whose international relations the United Kingdom is responsible is the following:

1. Application of the Convention:

Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, the Bailiwick of Guernsey, Isle of Man, the Bailiwick of Jersey, Montserrat, St Helena, St Helena Dependencies, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, Turks and Caicos Islands.

2. Recognition of the right of individual petition before the European Court of Human Rights:

Territorial extension renewed for a period of five years as from 14 January 2006: Anguilla, Bermuda, Montserrat, St Helena, St Helena Dependencies, Turks and Caicos Islands.

Territorial extension accepted on a permanent basis as from 14 January 2001: Bailiwick of Jersey.

Territorial extension accepted on a permanent basis as from 1 June 2003: Isle of Man.

Territorial extension accepted on a permanent basis as from 1 May 2004: Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

Territorial extension accepted on a permanent basis as from 14 January 2006: Falkland Islands, Gibraltar, South Georgia and South Sandwich Islands.

Territorial extension accepted on a permanent basis as from 23 February 2006: Bailiwick of Guernsey, Cayman Islands.)

Period covered: 1 May 2004 –
The preceding statement concerns Article(s): 34, 56

Withdrawal of derogation contained in a *Note verbale* from the Permanent Representation of the United Kingdom dated 16 March 2005, registered at the Secretariat General on 16 March 2005:

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council of Europe, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 5 November 1950, as well as to the notification made by the then United Kingdom Permanent Representative to the then Secretary General under Article 15, paragraph 3, dated 18 December 2001.

The provisions referred to in the 18 December 2001 notification, namely the extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001, ceased to operate on 14 March 2005. Accordingly, the notification is withdrawn as from that date, and the Government of the United Kingdom confirm that the relevant provisions of the Convention will again be executed as from then.

Period covered: 16 March 2005 –
The preceding statement concerns Article(s): 15

Withdrawal of derogation contained in a letter from the Permanent Representative of the United Kingdom, transmitted by the Permanent Representation and registered by the Secretariat General on 5 May 2006:

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council of Europe, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as well as to the notification made by the United Kingdom under that provision dated 23 December 1988 and 23 March 1989, and to the further communication in that regard made on 12 November 1998.

By a letter from the then Permanent Representative of the United Kingdom to the then Secretary General dated 19 February 2001, the derogation referred to in the abovementioned notifications was withdrawn as from that date in respect of the United Kingdom of Great Britain and Northern Ireland only.

It has now also become possible to withdraw the derogation referred to in those notifications and in the above mentioned letter of 12 November 1998 in respect of the Crown Dependencies, that is the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Accordingly, the derogation is withdrawn in respect of those territories with immediate effect, and the Government of the United Kingdom confirm that the relevant provisions of the Convention will again be executed there.

Period covered: 5 May 2006 –
The preceding statement concerns Article(s): 15."

Protocol No. 6 ratified on 20 May 1999
Protocol No. 12 neither signed nor ratified
Protocol No. 13 ratified on 10 October 2003
Protocol No. 14 ratified on 28 January 2005

Out of a total of 1 560 judgments delivered by the Court in 2006, there were 23 concerning the United Kingdom, of which 10 gave rise to a finding of at least one violation and eight gave rise to a finding of no violation

Out of a total of 1 503 judgments delivered by the Court in 2007, there were 50 concerning the United Kingdom, of which 19 gave rise to a finding of at least one violation and seven gave rise to a finding of no violation.

Out of a total of 79 427 pending cases before the Court on 31 December 2007, 1 363 concerned the United Kingdom.

Resolutions adopted by the Committee of Ministers in 2007: six, of which one interim resolution

Interim Resolution ResDH(2007)73 relating to the action of the Security Forces in Northern Ireland (case of *McKerr against the United Kingdom* and five similar cases). Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom (adopted by the Committee of Ministers on 6 June 2007, at the 997th meeting of the Ministers' Deputies)

Resolutions adopted by the Committee of Ministers in 2008 (as of 16 May 2008): 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, report by 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:
>
> …
>
> 8.3. The United Kingdom introduced a new practice in March 2006 consisting of progress reports on the implementation of Court judgments presented by the Joint Human Rights Committee of the British Parliament.
>
> …
>
> 13. The Assembly pays special attention to the implementation by the Russian Federation, Turkey and the United Kingdom of judgments relating to abuses by security forces and/or the lack of effective investigation into such abuses. It welcomes progress being made by Turkey and the United Kingdom in remedying underlying structural problems as well as the Russian authorities' willingness to do the same, as demonstrated by the first part of their action plan presented to the Committee of Ministers. The Assembly encourages the Russian authorities to fully exploit the experience of other states and to implement as rapidly as possible judgments concerning action of the security forces, notably in relation to the Chechen Republic.
>
> …
>
> 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

Convention signed on 26 November 1987, ratified on 24 June 1988, entered into force on 1 February 1989, Protocols Nos. 1 and 2 signed on 9 December 1993, ratified on 11 April 1996, entered into force on 1 March 2002

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

Press release of 10 August 2006:

> "The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published today the reports on its visits to the United Kingdom in July and November 2005, together with the responses of the United Kingdom Government. These documents have been made public at the request of the United Kingdom authorities.
>
> During the July 2005 visit, the CPT's delegation examined the treatment of persons detained under the Terrorism Act 2000 and, in this context, visited Paddington Green High Security Police Station and Belmarsh Prison. The practical operation of the Prevention of Terrorism Act 2005 was also examined, and various persons served with control orders under that Act were met by the delegation. In addition, the delegation examined the treatment of persons detained at Campsfield House Immigration Removal Centre.
>
> The November 2005 visit was focused on the treatment of certain persons recently detained under the Immigration Act 1971, with a view to being deported; for this purpose, the delegation visited Full Sutton and Long Lartin Prisons as well as Broadmoor Special Hospital. Particular attention was given to the mental health of the individuals concerned. The delegation also revisited Paddington Green High Security Police Station and once again met persons served with control orders under the Prevention of Terrorism Act 2005. During this visit, the delegation held an exchange of views with the United Kingdom authorities on the use of diplomatic assurances in the context of deportation proceedings and related Memoranda of Understanding.
>
> The CPT's visit reports and the responses of the United Kingdom Government are available on the Committee's website at http://www.cpt.coe.int."

Next country visit: 2008

D. Framework Convention for the Protection of National Minorities

Convention signed on 1 February 1995, ratified on 15 January 1998, entered into force on 1 May 1998

No reservation, no declaration

Extract of the last opinion of the Advisory Committee adopted in June 2007 (ACFC/OP/II(2007)003):

"Concluding remarks

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 the United Kingdom.

Positive developments

Since the adoption of the Advisory Committee's first opinion in November 2001, the authorities of the United Kingdom have introduced a number of measures which have improved the implementation of the Framework Convention.

Great Britain and Northern Ireland's legislation on racial equality has been strengthened in a number of ways and new legislation, protecting individuals from religious discrimination, has been introduced in Great Britain. Provisions for tackling religiously aggravated incidents have come into force and a new offence of incitement to religious hatred has been created with effect in England and Wales.

Public authorities throughout the United Kingdom have taken steps to strengthen equal opportunities in their recruitment practices and functions. In England in particular, public authorities and schools have made commendable efforts to collect data on the situation of minority groups.

In May 2007, an important power-sharing agreement was reached between Northern Ireland's leading nationalist and loyalist parties, marking the resumption of Northern Ireland's devolved Government, established in 1998 under the historic Belfast (Good Friday) Agreement.

The authorities of Northern Ireland have launched a *Shared Future* strategy aimed at facilitating mutual respect, understanding and co-operation between all the communities living in Northern Ireland.

New legislation has been adopted in England and Wales aimed at improving the availability of authorised sites for Gypsies and Travellers living in caravans.

The Scottish Executive has taken important steps to enhance the preservation and development of Gaelic in Scotland, following the positive example of the Welsh Assembly Government's language policies in Wales. The entry into force of Scotland's Gaelic Language Act in 2005 is particularly noteworthy.

The government's commitment, enshrined in the St Andrew's Agreement of 2006, to adopt an Irish Language Act for Northern Ireland, and to enhance and protect the Ulster Scots language, culture and heritage, is a welcome development.

Issues of concern

Notwithstanding the efforts made to strengthen the United Kingdom's equality legislation, persons from minority ethnic communities continue to face greater difficulties than the majority population in their access to public services and employment.

A shortage of data on the situation of persons belonging to minority ethnic communities in Northern Ireland, Scotland and Wales hampers efforts to combat discrimination and promote racial equality in these jurisdictions.

In spite of efforts made to ensure equal access to education, a number of problems remain in this area, including lower achievement levels and higher exclusion rates among persons belonging to certain minority ethnic communities.

Hostility among the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that many Gypsies and Travellers continue to live on unauthorised sites and face the threat of eviction.

Negative and inaccurate reporting by certain sections of the media on issues relating to certain minorities, in particular Gypsies and Travellers, asylum seekers, migrant workers and Muslims, is contributing to hostile attitudes towards these groups. There has been an increase in racist and religiously aggravated incidents in different parts of the country.

Although important measures have been taken to combat discrimination in the conduct of law-enforcement officials, persons belonging to certain minority ethnic communities continue to be disproportionately stopped and searched by the police. There is still no specific legislation prohibiting incitement to religious hatred in Scotland.

Notwithstanding the efforts made to promote integration between Protestants and Catholics, housing estates and schools in Northern Ireland still tend to be split along sectarian lines.

Possibilities for using Gaelic in communications with administrative authorities are not sufficiently publicised and are not always guaranteed. While the provision of Gaelic-medium education has increased, it is still not sufficient to meet existing demand. The Scots language should receive greater recognition and support from the Scottish authorities.

In Northern Ireland, there is a lack of clarity regarding the language rights of Irish speakers and further support is required for the Ulster Scots language, culture and heritage.

The presence of persons belonging to minority ethnic communities in elected bodies remains low. Representatives of minority ethnic communities consider that public consultations organised by the authorities are not always effective, and do not engage with the full spectrum of opinions.

Recommendations

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 that public authorities adopt a more determined approach to combating discrimination and promoting equal opportunities, including in their functions and in their employment practices;

– pursue further efforts to collect data on the situation of persons belonging to minorities in Northern Ireland, Scotland and Wales;

– step up efforts to support schools to mainstream equality and diversity issues throughout the curriculum; encourage the media to pursue further its actions aimed at raising awareness of and interest in the United Kingdom's multicultural and multi-lingual society;

– take the necessary steps to meet the accommodation needs of Gypsies and Travellers, in consultation with the persons concerned; provide Gypsies and Travellers with greater access to support in securing the legal protection of their rights;

– continue to direct resources to identifying and prosecuting hate crime; introduce a statutory prohibition on incitement to religious hatred in Scotland; review the use of stop and search powers to ensure that they do not discriminate directly or indirectly against persons belonging to minorities;

– intensify efforts to promote awareness, among the two main communities in Northern Ireland, of the benefits of a more integrated approach especially to housing and education;

– pursue further existing initiatives to protect and enhance the development of the languages and cultures of the peoples of Wales, Scotland and Northern Ireland;

– identify further ways of encouraging full participation of persons belonging to minority ethnic communities in elected bodies;

– step up meaningful dialogue with the broadest possible spectrum of representatives of minority ethnic communities, both at national and local levels."

Last resolution of the Committee of Ministers on the implementation of the Framework Convention: ResCMN(2002)9

Third state report expected for 1 May 2009

E. European Charter for Regional or Minority Languages

Convention signed on 2 March 2000, ratified on 27 March 2001, entered into force on 1 July 2001

Last periodical state report submitted on 1 July 2005 (MIN-LANG/PR(2005)5, addendum and appendices)

Last evaluation report by the Independent Committee of Experts adopted on 14 September 2006 (ECRML(2007)2)

Last recommendation of the Committee of Ministers adopted on 14 March 2007 (RecChL(2007)2)

Last biennial report by the Secretary General to the Parliamentary Assembly: 24 October 2007 (Doc. 11442)

F. European Commission against Racism and Intolerance (ECRI)

Last report by ECRI: "Third report on the United Kingdom" was adopted on 17 December 2004 and made public on 14 June 2005

Extract of Document CRI(2005)27:

"Executive summary

Since the publication of ECRI's second report on the United Kingdom, progress has been made in a number of areas. The legal framework against racism and racial discrimination has been strengthened. An important element of this framework, the statutory duty on public authorities to promote equality has been in force and implemented for over three years. Emphasis has increasingly been put on the achievement of concrete outcomes for ethnic minorities and specific equality targets for these groups of persons have been set across the public sector. Monitoring of the situation of different ethnic groups across a wide range of areas has facilitated the identification of priority areas for action and the elaboration of targeted policies. A strategy has been launched to promote community cohesion and race equality throughout Great Britain. Citizenship education has been introduced in secondary schools in order to better reflect the needs of a multicultural school population. Work is under way to establish a support mechanism to raise the awareness of the general public of their rights under the Human Rights Act and to advise and assist individuals.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. In spite of initiatives taken, members of ethnic and religious minority groups continue to experience racism and discrimination. Asylum seekers and refugees are particularly vulnerable to these phenomena, partly as a result of changes in asylum policies and of the tone of the debate around the adoption of such changes. Members of the Muslim communities also experience prejudice and discrimination, especially in connection with the implementation of legislation and policies against terrorism. Continuing high levels of hostility, discrimination and disadvantage of Roma/Gypsies and Travellers are also a cause for concern to ECRI. The media has continued to play an important role in determining the current climate of hostility towards asylum seekers, refugees, Muslims, Roma/Gypsies and Travellers. Although it is in part the result of better reporting and recording techniques, the number of racist incidents is high. The disproportionate impact of criminal justice functions on ethnic minorities has continued to increase.

In this report, ECRI recommends that the authorities of the United Kingdom take further action in a number of areas. These areas include the need to ratify Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination, and the need to adopt a consolidated equality act that would eliminate current discrepancies in the levels of protection of individuals against discrimination. ECRI recommends that the authorities take the lead in promoting a debate on asylum issues that is balanced and that reflects the human rights dimension of these issues. It also recommends that the authorities of the United Kingdom review their legislation against terrorism in order to eliminate discrimination in its provisions and in its implementation and that they assess the impact of legislation and policies against terrorism on race relations. ECRI also recommends a series of measures to address the situation of disadvantage and discrimination faced by the Roma/Gypsy and Traveller communities."

G. Social rights

European Social Charter of 1961 signed on 18 October 1961, ratified on 11 July 1962, entered into force on 26 February 1965

European Social Charter (revised) signed on 7 November 1997, 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 six of these nine articles); in even years half of the other provisions.

Extract of the website of the European Social Charter (situation as of 29 April 2008):

"Reports

Between 1965 and 2006, the United Kingdom submitted 27 reports on the application of the Charter. The 27th report concerns the provisions related to the theme 'employment training and Equal Opportunities' (Articles 1, 9, 10, 15, and 18 of the Charter). The report was submitted on 16 November 2007.

The Charter in domestic law

The United Kingdom is a dualist state.

The United Kingdom's record with respect to application of the Charter is the following as of 1 December 2007:

Examples of progress achieved or being achieved

Non-discrimination

Sex

Access to a court and recognition of the right of appeal against the certifications provided for under section 79 of the Equal Treatment in Employment Act (Northern Ireland) to justify refusing employment on grounds of safeguarding national security or public order. *Article 1, paragraph 2 – non-discrimination in employment.*

Nationality

Eligibility for housing benefit (in the United Kingdom, the Isle of Man, Scotland and Northern Ireland), long tenancies for local authority housing and the right to occupy housing (in Scotland and in Northern Ireland) has been extended to foreign nationals who are citizens of states that are Contracting Parties to the Charter provided that they are habitually resident (orders of 1997, 1998 and 1999 on housing and the homeless). *Article 19, paragraph 4 – right to equal treatment in housing.*

Disability

Protection against discrimination on grounds of disability was strengthened (Disability Discrimination Act 1995). *Article 15 – rights of persons with disabilities to education and employment.*

Employment

Dismissing an employee under a *closed shop* agreement is considered unfair and affords a right of action (Employment Act 1982). Any dismissal on the ground of membership or non-membership of a trade union is automatically unfair (Employment Act 1988). Any discrimination on grounds of membership or non-membership of a trade union on recruitment is unlawful (Employment Act 1990).

The confidentiality of trade union membership is protected (Employment Relations Act 1999). *Article 5 – right to organise.*

Introduction of a statutory procedure for trade union recognition (Employment Relations Act 1999). *Article 6, paragraph 2 – right to collective bargaining (negotiation procedures).*

Workers who take strike action enjoy employment protection for the first eight weeks (Employment Relations Act 1999).[1] *Article 6, paragraph 4 – right to collective bargaining (strikes and lock-outs).*

Children

Corporal punishment has been abolished in both state schools and grant-maintained schools in the United Kingdom (Education Act 1986 (No. 2)). *Article 17 – right of young persons (legal and social protection).*

The protection of children from sexual exploitation and trafficking for economic exploitation strengthened (Sexual Offences Act 2003 Asylum and Immigration Act 2004). *Article 7 – right of children and young persons to protection from exploitation.*

Movement of persons

An appeal may be brought before the Immigration Appeals Tribunal against deportation orders made by the Home Secretary on grounds of national security or for political reasons (1997 Act governing the Special Immigration Appeals Commission). *Article 19, paragraph 8 – right to guarantees in case of expulsion.*

Nationals of States Parties to the Charter are no longer prevented from having access to public funds even if they happen to be subject to immigration control. They may claim means tested social assistance benefits on an equal footing with United Kingdom nationals (Social Security (immigration and Asylum) Consequential Amendments regulations 2000) – *Article 19, paragraph 6 – right to family reunion.*

Cases of non-compliance

Health

Article 2, paragraph 4 – right to compensatory time off in dangerous occupations

There is no provision in legislation for reduced working hours or additional holidays for workers in dangerous or unhealthy occupations coupled with the fact that no evidence is given demonstrating that such measures are provided by collective agreement or by other means.

Article 8, paragraph 1 – right to maternity leave

The compulsory period of post natal leave is less than six weeks.

Non-discrimination

Nationality/ethnic origin

Article 16 – (legal) protection of the family

The right of Roma/Traveller/Gypsy families to housing is not effectively guaranteed.

Sex

Article 16 – (legal) protection of the family

Full equality between spouses with respect to their matrimonial property is not guaranteed in Northern Ireland.

1. Recommendation RecChS(93)3 adopted by the Committee of Ministers on 7 September 1993.

Education

Article 7, paragraph 3 – prohibition of employment of children subject to compulsory education

The mandatory rest period during the school holidays for children still subject to compulsory education is not sufficient to ensure that they may fully benefit from such education.

Article 10, paragraph 4 – right to vocational training

Equal treatment for non-EU nationals with respect to fees and financial assistance for training is not guaranteed.

Social protection

Article 8, paragraph 1 – right to maternity leave

The standard rates of SMP (Statutory Maternity Pay) and MA (Maternity Allowance) were inadequate during the reference period.

Article 12, paragraph 1 – right to social security

The level of Statutory Sick Pay, the Short Term Incapacity benefit and the Contributory Jobseekers Benefit for a single person are inadequate.

Children

Article 17 – right of young persons (legal and social protection)

1. Corporal punishment in the home is not prohibited;

2. The age of criminal responsibility is manifestly too low.

Employment

Article 2, paragraph 3 – annual holiday with pay

Workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

Article 2, paragraph 5 – weekly rest period

Workers in a wide range of sectors may work for more than twelve consecutive days without a rest period and no safeguards.

Articles 4, paragraph 1 (adults) and 7, paragraph 5 (young persons) – right to fair remuneration

The full rate minimum wage and *a fortiori* the development rate fall manifestly short of the 60% threshold (net minimum wage as a share of the net average wage).

Article 4, paragraph 2 – right to increased remuneration for overtime

Workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

Article 4, paragraph 4 – right to notice of dismissal

Notice of termination of employment for workers with less than 3 years' service is too short.

Article 4, paragraph 5 – right to limitation of deduction from wages

Deductions from wages are left to the mere negotiation between the parties to the employment contract.

Article 5 – right to organise

1. Unjustified incursions into the autonomy of trade unions (Sections 15 and 65 of the Trade Union and Labour Relations (Consolidation) Act 1992);

2. Excessive restriction of trade unions' right to determine their membership conditions (Section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended by Sections 33 and 34 of the Employment Relations Act 2004).

Article 6, paragraph 4 – right to collective bargaining (strikes and lock-outs)

1. The scope for workers to defend their interests through lawful collective action is excessively circumscribed;

2. the requirement to give notice to an employer of a ballot on industrial action is excessive;

3. the protection of workers against dismissal when taking industrial action is insufficient.[1]

Article 7, paragraph 5 – fair pay for young workers

There was no evidence that, during the reference period, young workers' lowest wages were fair compared to adult workers' minimum wages, which were themselves unreasonably low compared to the average wage in industry and services.

Movement of persons

Article 19, paragraphs 6 and 10 – migrant workers' right to family reunion

Neither legislation or practice provide for family reunion in respect of migrant workers' children aged between 18 and 21 years. The same applies to self-employed workers.

Article 19, paragraphs 8 and 10 – migrant workers' guarantees in case of expulsion or repatriation

Where a migrant worker is deported from the United Kingdom, his family members are also liable to deportation. The same applies to self-employed workers."

H. Parliamentary Assembly

Extract of: "Application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom: opinion for the Bureau of the Assembly by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)", co-rapporteurs: Mrs Däubler-Gmelin, Germany, Socialist Group, and Mrs Urszula Gacek, Poland, Group of the European People's Party (14 April 2008, Doc. 11565 Addendum 2):

"Decision

1. On 28 June 2006, Mr Wilshire and others tabled, through a motion for a resolution, an application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom (Doc 10993 (2006). In their application, the authors allege that the growing body of evidence that absent voting fraud is taken place in the United Kingdom would warrant the initiation of a monitoring procedure by the Assembly.

2. In conformity with the Rules of Procedure of the Assembly, and in particular Resolution 1115 (1997) as amended by Resolution 1431 (2005), this motion was referred for opinion to the Monitoring Committee by the Bureau on 2 October 2006. The Monitoring Committee, at its meeting on 16 October 2006, then appointed Ms Herta

1. Recommendation RecChS(97)3 adopted by the Committee of Ministers on 17 January 1997.

Däubler-Gmelin (Germany, SOC) and Ms Ursula Gacek (Poland, EPP/CD) as co-rapporteurs for the United Kingdom and authorised them to carry out a fact finding visit to the country, which took place from 26 to 28 February 2007.

3. From the findings of the rapporteurs, it is clear that the electoral system in Great Britain is open to electoral fraud. This vulnerability is mainly the result of the, rather arcane, system of voter registration without personal identifiers. It was exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the electoral code in 2006. The 2006 changes to the electoral code enhanced the security of the postal voting arrangements, but other shortcomings and vulnerabilities remain. Together with numerous British experts we strongly recommend to eliminate those.

4. Despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the people of the United Kingdom. On these grounds, it cannot be argued that the United Kingdom has fallen short on honouring its democratic commitments to the Council of Europe and we can therefore not recommend opening a monitoring procedure with respect to the United Kingdom.

5. It should be stressed, however, that the United Kingdom delivers democratic elections despite the vulnerabilities in its electoral system. These vulnerabilities could easily affect the overall democratic nature of future elections in Great Britain. The Monitoring Committee should, in its periodic reports on the honouring of commitments by member states, pay special attention to electoral issues in the United Kingdom and, if the vulnerabilities noted are found to undermine the overall democratic nature of future elections in Great Britain, apply to initiate a Monitoring procedure with respect to the United Kingdom.

…

Conclusions and recommendations

121. Postal Voting on Demand is an important means to counter the increasingly lower turnout at British, and indeed elections in European states, and is a preferred option for many voters. It is therefore without doubt for the rapporteurs that postal voting, as well as other arrangements for absentee voting, will continue to be an integral aspect of the British electoral system. As mentioned, absentee voting, including postal voting, does not run counter to Council of Europe standards for democratic elections, on the condition that the security of the vote is guaranteed.

122. Based upon a request by the Chairman of the Monitoring Committee, the Venice Commission adopted an opinion on the Electoral Law in the United Kingdom. This opinion concludes that the legal provisions for postal voting and household registration used in the Great Britain do not *per se* run counter to Council of Europe standards, but that the individual registration system with personal identifiers as used in Northern Ireland better complies with these standards than the household registration system used in the rest of the United Kingdom.

123. From the Venice Commission opinion it can furthermore be derived that the handling of postal ballots by third persons who have no legal necessity to do so, such as party activists, runs counter to Council of Europe standards. The rapporteurs therefore strongly recommend to the British authorities to prohibit this practice for future elections.

124. It is clear that the electoral system in Great Britain is open to electoral fraud. This vulnerability is mainly the result of the, rather arcane, system of voter registration without personal identifiers and exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the electoral code in 2006.

125. The crucial weakness of the household registration system is that it precludes the registration of personal identifiers. This, in combination with the absence of any form of civil registry, makes it childishly simple to register bogus voters on the voters' list, and makes the verification of these lists practically impossible. While voting inside a polling station on behalf of bogus entries on the voters lists is necessarily only possible on a limited scale, and bears a heightened chance of detection, the postal voting arrangements provide both the means and anonymity to do so without restrictions.

126. The 2006 changes to the electoral code closed many of the loopholes that allowed for the fraudulent application, redirecting, and casting of postal ballots on behalf of legitimate voters, which were an important vehicle for electoral fraud during previous elections. In addition they address the problem of disenfranchisement of these legitimate voters as a result of a fraudulent application in their name. In that respect the 2006 changes to the electoral code significantly enhanced the security of the postal voting arrangements.

127. However, none of the 2006 changes to the electoral code addressed the vulnerability of electoral fraud by means of bogus entries on the voters register. While it is recognised that it would take a considerable degree of premeditation and organisation of a candidate or party to change the outcome of an election by these means, this vulnerability continues to be very much present in the British electoral system.

128. In the light of the vulnerabilities of the electoral system, and their obvious exploitation, the rapporteurs are at loss to understand why the provisions in the Electoral Fraud (Northern Ireland) Act of 2002[1] are not implemented across the board in the United Kingdom, especially taking into account the positive experiences with these provisions in Northern Ireland. In this respect the rapporteurs can only question the reluctance, or even refusal, of the current British Government to introduce individual voter registration with personal identifiers, despite strong recommendations to the contrary by the Electoral Commission, the Committee on Standards in Public Life, as well as most other election experts.

129. The official argument that there is little statistical evidence to support the notion that electoral fraud is widespread in Great Britain is clearly not valid and does not seem to be substantiated by the recent investigations into electoral fraud. It should be noted in this context that there were equally no official statistics to support the notion that electoral fraud was rampant in Northern Ireland before the Electoral Fraud (Northern Ireland) Act was adopted in 2002. In that case the government, rightfully, concluded that countering the public perception that electoral fraud was widespread, was an important objective in its own right.

130. Equally, the argument that the introduction of an individual registration system with personal identifiers would result in a significant group of eligible voters being disen-

1. Except for not introducing postal voting on demand. As already mentioned, the rapporteurs are sufficiently convinced about the benefits of absentee voting on demand.

franchised does not seem to be corroborated by the experience from Northern Ireland after individual registration was implemented in 2002.[1]

131. While recognising that, within the limits of the principles that govern democratic elections, governments have the freedom to chose the electoral system that best serves the need of their country, the rapporteurs also are convinced that governments are under the obligation to ensure that the electoral system is as robust as possible. Leaving known vulnerabilities in an electoral system unaddressed runs counter to this principle. In addition, high public confidence in the electoral system is crucial for the conduct of democratic elections. It is beyond questioning that the public confidence in the electoral system in Great Britain has suffered as a result of the cases of electoral fraud that have come to light. This alone should be sufficient rationale for corrective measures.

132. The rapporteurs therefore urge the British authorities to introduce a system of individual voter registration with appropriate personal identifiers in line with the recommendations of the Electoral Commission and the Committee on Standards in Public Life. The local voters' lists should be linked to a nationwide database in order to be able to identify multiple registrations. The rapporteurs would also like to strongly recommend the British authorities to consider introducing in Great Britain the other security enhancing measures contained in the Electoral Fraud (Northern Ireland) Act of 2002, such as for instance the need to provide identification in order to vote. The regulations governing the validity of cast ballots should explicitly invalidate any altered ballots, as the current regulations that allow altered ballots to be considered valid opens an avenue for electoral fraud.

133. As an immediate measure to ensure the effectiveness of the provisions to combat electoral fraud in the 2006 electoral legislation, the rapporteurs strongly recommend that the checking of personal identifiers on 100% of the returned postal ballots is made mandatory by law in all of Great Britain before the next elections take place.

134. Despite the vulnerabilities in the electoral system, there is no doubt that elections in the United Kingdom are conducted democratically and represent the free expression of the will of the British people.[2] It can therefore not be argued that the United Kingdom has fallen short on honouring its democratic commitments to the Council of Europe and we can therefore not recommend opening a monitoring procedure with respect of the United Kingdom.

135. It should be stressed, however, that the United Kingdom delivers democratic elections despite the vulnerabilities in its electoral system. The shortcomings noted in this report could, by the same token, easily affect the overall democratic nature of elections in Great Britain. The rapporteurs would therefore recommend that the Monitoring Committee, in its periodic reports on the honouring of commitments by member states not subject to a monitoring procedure, pays special attention to electoral issues with respect of the United Kingdom. If the vulnerabilities noted in this report remain unaddressed, and are found to change the overall democratic nature of elections in the United Kingdom, the Monitoring Committee should consider applying to initiate a Monitoring Procedure in respect of the United Kingdom."

Extract of: "Progress report of the Bureau of the Assembly and of the Standing Committee (25 January-14 April 2008)", rapporteur: Mr Greenway, United Kingdom, European Democrat Group (Doc. 11565 Part 1):

"Appendix II

Application to initiate a monitoring procedure to investigate electoral fraud in the United Kingdom

1. On 25 January, the Bureau:

– took note of the opinion of the Monitoring Committee on this matter (AS/Mon(2007)38) and decided to declassify it;

– agreed to postpone consideration of this item until its next meeting.

2. On 13 March, in accordance with the recommendation of the Monitoring Committee, the Bureau recommended to the Assembly not to open such a procedure at this stage.

3. According to paragraph 3 of the terms of reference of the Monitoring Committee contained in Resolution 1115 (1997) as modified by Resolution 1431 (2005), in case both the Monitoring Committee and the Bureau consider that there is no need to open a monitoring procedure, the Assembly shall confirm this decision by a vote during the discussion of the progress report of the Bureau. However, during that discussion the Assembly may decide, by a majority vote following a request by at least ten members, that a debate be held during the next part-session on the written opinion of the Monitoring Committee which then shall be transformed into a report containing a draft resolution."

1. See also paragraph 69 of Doc. 11565 addendum 2. In addition, in response to a written question of the rapporteurs regarding this issue the Electoral Commission answered: "In other words, where this problem [voters showing up in the polling stations who were not registered to vote] occurred it stemmed from having an election during the annual registration canvas, not from the 2002 reforms. Evidence that we are currently examining from the recent March 2007 elections bears this out."

2. This was also confirmed in the report of the Assessment Mission of the OSCE/ODIHR for the 2005 general elections in the United Kingdom, which states: "The United Kingdom has a long-standing tradition of democratic elections, and the 5 May 2005 general election was conducted in keeping with this tradition."