Taking Human Rights Complaints to the OSCE, European Parliament and Council of Europe

A MANUAL

January 2010

By Kerim Yıldız and Catriona Vine

Kurdish Human Rights Project
KHRP
Established 1992

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The Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.

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FOREWORD

The Kurdish Human Rights Project (KHRP) started its litigation programme in 1992. Since its inception, the KHRP has provided legal advice and representation to over 500 victims of human rights abuse before international human rights institutions. Over the past 16 years its scope has expanded to embrace a holistic human rights training programme. In addition, by undertaking fact-finding and trial observation missions to the regions, KHRP monitors trends in human rights abuses on the ground and disseminates its recommendations through a coherent programme of research, manuals and conferences. These tactics work in tandem in order to bring about a sustainable human rights framework in the Kurdish regions, as well as across the Council of Europe as a whole.

This manual offers a comprehensive guide to taking human rights complaints to the Organisation of Security and Co-operation in Europe (OSCE), the European Parliament and the Council of Europe. KHRP has presented its submissions to the OSCE Human Dimension Implementation Meeting in Warsaw for the past ten years on issues as diverse as tolerance and non-discrimination to national minorities; freedom of religion; refugees and displaced persons; and freedom of expression. To the present day, KHRP remains a forerunner in its use of strategic litigation via the full range of international human rights mechanisms in order to bring perpetrators of human rights abuse to justice. This manual reflects the expertise and experience amassed by the organisation during this time.

'*Taking Human Rights Complaints to the OSCE, European Parliament and Council of Europe*' constitutes the third in a series of KHRP manuals concerned with the use of international mechanisms as a launch pad for human rights complaints. The first two manuals have been translated into a number of languages, including Armenian, Turkish, Russian and Sorani, and have been extremely well received internationally. By providing information on a previously unchartered subject, this manual represents a very useful and exciting extension of KHRP's assistance to human rights victims and their defenders, interested individuals, legal and academic persons alike.

This manual's publication was made possible by the support of KHRP funders, to whom KHRP would like to thank for their continuing financial support of this project. As a long-standing member of the KHRP legal team, I would also like to extend my personal thanks to all those whose support has made this manual possible, and to those within KHRP who have worked so hard to produce it. It will provide an invaluable resource for human rights defenders in the field, and will make a major contribution to the promotion of human rights protection.

Ben Emmerson QC, Matrix Chambers

ABBREVIATIONS

AG	Assistance Group
BHRC	Bar Human Rights Committee of England and Wales
CAT	UN Committee against Torture
CDEG	Steering Committee for Equality between Women and Men
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CoM	Committee of Ministers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CSCE	Conference on Security and Co-operation in Europe
DDS	Document Distribution System
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECI	European Citizens Initiative
ECJ	European Court of Justice
ECRI	European Commission against Racism and Intolerance
ECSC	Treaty of the European Coal and Steel Community

ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EEC	European Economic Community
ESC	European Social Charter
EU	European Union
Euratom	European Atomic Energy Community
FCNM	Framework Convention for the Protection of National Minorities
GRETA	Group of Experts on Action against Trafficking in Human Beings
HCNM	High Commissioner on National Minorities
HDIM	Human Dimension Implementation Meeting
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-governmental Organisation
ODIHR	Office of Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
UDHR	Universal Declaration of Human Rights

INTRODUCTION

The role of the European Court of Human Rights (ECtHR) as the primary means of redress for violations of individuals' human rights is well documented. There is a dearth of information in the public domain, however, about the European institutions mandated to deal with human rights abuses outside the Strasbourg machinery.

Against this backdrop, this manual was inspired by a desire to inform individuals, groups, human rights defenders and legal practitioners about the alternative avenues available for bringing human rights abuses to the attention of European institutions; namely, how to lodge a complaint with the OSCE, submit a petition to the European Parliament, and how to make a collective complaint and/or consult the Council of Europe. It is novel in the sense that it is the first time that information on this subject matter has been compiled together in one definitive guide. The manual seeks to complement the two previous Kurdish Human Rights Project (KHRP) publications in this series entitled, *'Taking Human Rights Complaints to UN Mechanisms: A Manual'* and *'Taking Cases to the European Court of Human Rights: A Manual'*.

Complainants wishing to lodge a complaint with the OSCE face several dilemmas. First, there is no codified and accessible body of substantive rights upon which complaints can be grounded. The human rights ('human dimension') commitments which bind OSCE participating States are political rather than legal. As such, they tend to develop organically as a product of international diplomacy. Assessment guidelines are vague and lack uniformity. Furthermore, no formal procedures to guide individual complainants currently exist. With this in mind, Part A codifies the OSCE human dimension commitments and explains how individuals may bring their complaint to the relevant OSCE body.

Part B outlines the role of the European Parliament in redressing alleged human rights violations. Individuals and groups may submit a petition to Parliament. Petitions are often preferred as a form of redress in comparison to court proceedings for reasons of cost and speed. The civil, political, social and economic rights upon which petitioners rely are already codified in an international document, namely the Charter of Fundamental Rights of the European Union. Owing to this fact, it was not necessary to include a comprehensive appraisal of the relevant substantive rights, in contradistinction to Parts A and C. Part B also touches upon the jurisdic-

tion of the European Commission to bring implementation proceedings against Member States in order to remedy serious violations of human rights.

Part C focuses upon the role of the Council of Europe and its organs (excluding the ECtHR) in addressing alleged human rights violations and, in particular, the specific role of its Committees in achieving this aim. Although claims cannot be submitted by individuals, the introduction of a collective complaints procedure with the European Committee of Social Rights has resulted in instances where States have been brought into conformity with the Charter. Nevertheless, it is said to be under-used, with only 47 collective complaints lodged over the past 11 years.[1] Other Council of Europe human rights institutions, such as the European Committee for the Prevention of Torture, are restricted by their mandate in the degree of assistance they may provide in response to individual complaints of human rights.

Unlike the ECtHR, the OSCE, European Parliament and the Council of Europe cannot deal with individual human rights violations on the basis of legal precedents and binding court orders. The political context in which claims are dealt with is still determinative in respect of the extent to which allegations are properly assessed and followed-up. Hence, the ECtHR should still properly be considered to be the most effective mechanism for individuals wishing to bring a grievance based upon their human rights to a European institution because of the redress it provides. Nevertheless, the OSCE, European Parliament and Council of Europe are also effective tools for individuals and organisations wishing to lobby for human rights reform. It is hoped that this manual will make these mechanisms more accessible for those who would not otherwise have been able to use them.

1 Human Rights Co-operation and Awareness Division, 'NGO's and the Human Rights Work of the Council of Europe: Opportunities for Co-operation' (Strasbourg: Directorate General of Human Rights, Council of Europe, 2001), p.24 at <http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/List_of_collective_complaints/default.asp#TopOfPage>.

A. THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE: AN OVERVIEW

1.1 Introduction to the Human Dimension and the OSCE

The OSCE is the largest regional security organisation in the world. It originated from the Final Act of the Conference on Security and Co-operation in Europe (CSCE) 1975.[2] The stated aim of the CSCE was to establish confidence and security-building measures as well as East-West co-operation in matters of economic, scientific, technological, environmental, cultural and humanitarian concern.

The creation and early work of the CSCE (based in Helsinki and Geneva from 1973 to 1975) was a reaction to the Cold War and an attempt at rapprochement between Eastern and Western nations during the process of détente. There were originally 35 participating States.

The CSCE renamed itself the Organization for Security and Co-operation in Europe (OSCE) in 1994. The OSCE contends with three aspects of security –the human dimension, the politico-military dimension, and the economic-environmental dimension. This manual shall exclusively explore the human dimension.

During the 1990s a number of specialised institutions and posts were established, including the Office for Democratic Institutions and Human Rights (ODIHR) (1990), the High Commissioner on National Majorities (1993), the Representative on Freedom of the Media (1997) and the OSCE Parliamentary Assembly (1991). There are now 56 participating OSCE States who are all signatories to the Final Act of the CSCE.[3]

1.1.1 The Helsinki Final Act

The CSCE/OSCE commitments were first established by the signatories to the Final Act of the CSCE on 1 August 1975. These commitments became known as the Helsinki Accords or the Helsinki Final Act. The Helsinki Final Act includes the

2 The text of the Helsinki Final Act can be found in Appendix A.

3 See Appendix B for a list of participating OSCE States.

Helsinki Decalogue, which enshrines the following ten principles to guide relations between participating States:

- Sovereign equality;
- Refraining from the threat or use of force;
- Inviolability of frontiers;
- Territorial integrity of States;
- Peaceful settlement of disputes;
- Non-intervention in internal affairs;
- Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion and belief;
- Equal rights and self-determination of peoples;
- Co-operation among States;
- Fulfilment in good faith of obligations under international law.

1.1.2 The Vienna Mechanism

A period of dramatic change in Europe ensued after the Helsinki Final Act was signed: the break-up of the Soviet Union and Yugoslavia and the emergence of newly independent states resulted in a huge growth of CSCE membership.[4] This posed new challenges for the CSCE States, the greatest of which was the implementation of the OSCE commitments. Against this background and 11 years after the signing of the Helsinki Final Act, the Vienna Mechanism (established in the Vienna Concluding Document 1989) was introduced as an instrument to monitor the implementation of OSCE human dimension commitments.

The Vienna Mechanism establishes a set of procedures requiring participating States to raise questions and exchange information in relation to the human dimension situation of other OSCE States. It can be invoked by any participating State.[5] The four stages of the Vienna Mechanism under the Vienna Concluding Document are as follows:

1. A participating State responds to requests for information and representations made by any one or more other participating State(s) and exchanges information relating to the human dimension.[6]

4 30th CSCE Report, 'Implementation of the Helsinki Final Act', Vol 3 No 6 *US Department of State Dispatch Supplement, (*1992).

5 OSCE Secretariat, 'Summary of OSCE mechanisms and Procedures' 20 June 2008, p.3 at <http://www.osce.org/documents/cio/2008/07/32008_en.pdf>.

6 Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, 'Human Dimension of the CSCE', 1989, paragraph 1, p. 34 at <http://www.osce.org/documents/mcs/1989/01/16059_en.pdf>.

2. The participating State holds bilateral meetings with **any one or more** other participating State(s) upon their request, 'in order to examine questions relating to the human dimension … including situations and specific cases, with a view to resolving them'[7].

3. Any one or more participating State(s) may bring human dimension situations and cases to the attention of other participating States through diplomatic channels;[8] and

4. Any one or more participating State(s) may provide information and discuss the issues raised during stages one to three of the Vienna Mechanism at subsequent OSCE meetings[9].

In principle, a State may feel cause to invoke the Vienna Mechanism on the basis of individual complaints of human rights, including circumstances where the OSCE or non-governmental organisations (NGOs) decide to raise such complaints in the public domain. However, the Vienna Mechanism's application to individual complaints may otherwise be quite limited, since only an individual state, or group of states, may exercise their discretion to invoke it. In addition, use of the Mechanism has decreased in recent times, in an attempt to avoid inflaming diplomatic and political relations.[10] For instance, in March 1992 Austria raised the treatment of the Kurdish minority in Turkey (the first inter-Western application of the Vienna Mechanism) but did not pursue it beyond stage one.[11] Turkey 'retaliated' by invoking the Vienna Mechanism alleging Austrian support of terrorists.[12]

Nevertheless, membership of the OSCE has helped support the positive development of countries so far as human rights commitments are concerned. This is particularly the case in respect of the former Soviet Republics,[13] as illustrated by the case study below.

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7 Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe,'Human Dimension of the CSCE', 1989, paragraph 2, p. 34 at<http://www.osce.org/documents/mcs/1989/01/16059_en.pdf>.

8 ibid paragraph 3, p. 34.

9 ibid, paragraph 4, p. 34.

10 Jens Narten, 'Options for a General OSCE Human Dimension Monitoring Instrument' (Centre for OSCE Research, 2006), pp.9-10.

11 **Arie Bloed, Liselotte Leicht, Manfred Nowak, Allan Rosas (eds).** *Monitoring Human Rights in Europe. Comparing International Procedures and Mechanisms,* Dordrecht/Boston/London, Martinus Nijhoff (1993) p. 74.

12 ibid, p.74.

13 30th CSCE Report, 'Implementation of the Helsinki Final Act', Vol. 3, No 6 *US Department of State Dispatch Supplement,* September (1992), p.3.

Case study: Albania

The state of Albania is an example of the progress made within a country upon meeting CSCE standards. Under the communist dictatorship the Greek minority in Albania, making up 5% of the population,[14] was being suppressed due to their ethnic identity. Cultural expression was severely restricted by, for instance, prohibiting the use of the Greek language freely. In June 1991, after having agreed to implement all CSCE principles and standards, Albania was admitted to the CSCE. The requirement to adapt the country's policies in order to comply with the CSCE principles brought about a significant change. The CSCE Warsaw office for Free Elections organized seminars for election officials and coordinated the activities of international observers for the parliamentary elections in March 1992 in Albania. Despite the general improvement in the treatment of the Greeks, the law regulating the March 1992 elections excluded ethnically based organisations. The result was that OMONIA, a Greek political organisation, was banned from participating in the elections. The Albanian authorities were severely criticized for having excluded the country's only ethnic Greek organisation. The Unity for Human Rights Party was founded in order to replace OMONIA. Two ethnic Greek deputies were elected to parliament. The parliament passed a series of constitutional provisions guaranteeing basic human rights and declaring Albania to be a parliamentary republic based on free elections. Ethnic Greeks now have their own schools, primarily in the districts of Saranda and Gjirokaster, where a Greek language newspaper is now published.

1.1.3 The Copenhagen Document

The participating States held a review of the implementation of their commitments in the human dimension at the Copenhagen Meeting in 1990. They considered that, despite improvement in the degree of State compliance with the OSCE commitments in this field, further steps were required for their full realisation.[15] As part of a concerted effort to strengthen compliance with the human dimension commitments, the Document of the Copenhagen Meeting 1990 added three clauses to the Vienna Mechanism. These clauses (as amended subsequently by the Document of the Moscow Meeting 1991) provide:

14 US Department of State Dispatch Supplement, Vol. 3 No. 6, September 1992.

15 Document of the Copenhagen Meeting of the conference on the Human Dimension of the CSCE, p.2, at <http://www.osce.org/documents/odihr/1990/06/13992_en.pdf>.

- States must respond in writing in the shortest possible time, but no later than ten days, to written requests for information or written representations made under the Vienna mechanism;[16]

- Bilateral meetings between the participating States involved will take place as soon as possible and as a rule within one week of the request;[17]

- Such meetings must only address situations and cases raised and agreed to beforehand.[18]

1.1.4 The Moscow Mechanism

The Moscow mechanism was created by the Document of the Moscow Meeting 1991 (The Moscow Document). It strengthens and expands upon the Vienna Mechanism in an attempt to further improve the implementation of OSCE commitments in the human dimension.[19] More specifically, participating States are able to establish *ad hoc* missions of independent experts to resolve a 'specific human dimension problem' within the state itself or other OSCE States. In particular instances, a mission of Rapporteurs may be established without the consent of the state concerned. The Moscow Document provides for a resource list of experts. This list, comprising up to six impartial experts appointed by each participating State, became operational upon the appointment of a total of 45 experts.[20]

Voluntary invitations for missions

Any participating State may voluntarily invite a mission of experts (selected by that State from the resource list) to facilitate the resolution of a human dimension question or problem concerning its own territory. The OSCE institutions will provide appropriate support to a mission where necessary.[21] The mission may gather information necessary for carrying out its tasks and promote dialogue and co-operation among interested parties. The inviting state may assign further functions to the mis-

16 Paragraphs 42.1 and 42.2 of the Document of the Copenhagen Meeting, as amended by the Document of the Moscow Meeting, Paragraph 2, p. 31 at <http://www.osce.org/documents/odihr/1991/10/13995_en.pdf>.

17 Paragraph 42.2 of the Document of the Copenhagen Meeting 1990, as amended by Paragraph 2, p.31 of the Document of the Moscow Meeting, at <http://www.osce.org/documents/odihr/1991/10/13995_en.pdf>.

18 The Document of the Copenhagen Meeting 1990, Paragraph 42.3.

19 OSCE Secretariat, 'Summary of OSCE Mechanisms and Procedures' 20 June 2008, p.2 at <http://www.osce.org/documents/cio/2008/07/32008_en.pdf>.

20 The Document of the Moscow Meeting 1991, paragraph 3.

21 ibid, paragraph 4.

sion, such as fact-finding and advisory services.[22] The mission will be afforded full co-operation by the inviting state. It will be allowed to enter the territory without delay, travel freely, hold discussions and meet with officials, NGO's and any other group or persons. The mission may also receive information from an individual, group or organisation in confidence.[23] The mission will submit its observations to the inviting state, preferably within three weeks after its establishment. The observations will be transmitted by the inviting state, together with comments of any action it will take or intends to take, to other participating States within two weeks of the observations being submitted. The observations and comments may be discussed in the Permanent Council of the OSCE, which may consider any possible follow-up action.[24]

Requested invitations for missions

Any one or more participating State(s) may request that the OSCE direct an enquiry with another participating State as to whether it would agree to invite a mission of experts to address a particular human dimension question concerning that State's territory. If the other participating State agrees to invite a mission of experts, the same procedure as that under voluntary invitations for missions applies.[25]

Mission of Rapporteurs

If any participating State has sought a requested invitation for a mission of experts[26] and the participating State to which the request is directed has not established a mission within ten days of the enquiry, or if any participating State has sought a requested invitation for a mission of experts and judged that the mission has not resolved a particular human dimension issue, then the participating State, with the support of at least five other participating States, may decide to initiate the establishment of a mission of Rapporteurs without consent of the participating State concerned.[27]

The *requesting* State(s) may appoint one Rapporteur from the resource list. The *requested* State may also choose to appoint a second Rapporteur from the resource list, within six days of being notified of the first Rapporteur's appointment. If two Rapporteurs are appointed, the Rapporteurs will seek to reach an agreement on the

22 The Document of the Moscow Meeting 1991, paragraph 5.

23 ibid, paragraph 6.

24 ibid, paragraph 7.

25 ibid, paragraph 8.

26 ibid, paragraph 8.

27 ibid, paragraph 9.

appointment of a third Rapporteur from the resource list. The same degree of support from OSCE institutions and level of co-operation by the *requested* State as that under missions by voluntary invitation will apply.[28] The role of the Rapporteur(s) is to establish the facts, report on the observation of such facts and potentially give advice on possible solutions to the particular human dimension question. The report is submitted to the *requesting* States within 2 weeks after appointment of the last Rapporteur, unless otherwise agreed. The *requested* State is to submit any observations on the report to the ODIHR of the OSCE within 2 weeks after the report's submission, unless otherwise agreed. The OSCE is to transmit the report and any observations without delay to all participating States and the report is placed on the agenda of a meeting of the Permanent Council of the OSCE for consideration of any possible follow-up action.[29]

Emergency mission of Rapporteurs

If any participating State considers that a 'particularly serious threat' to the fulfillment of OSCE commitments under the human dimension has arisen in another participating State, the participating State, with the support of at least nine other participating States, may decide to initiate the establishment of a mission of Rapporteurs without consent of the participating State concerned.[30]

Missions established by the Permanent Council

Any one or more participating States may request to the Permanent Council of the OSCE that it establish a mission of experts or mission of Rapporteurs.[31] The submission of numerous individual complaints of a similar nature against a participating State may amount to evidence of a 'specific human dimension problem'. A complaint made to the OSCE may thus contribute to the awareness of systematic or extensive human rights violations, compelling the participating States to invoke the Moscow Mechanism. However, the Moscow Mechanism's application to individual complaints may otherwise be quite limited, as with the Vienna Mechanism, and is rarely invoked by participating States.[32]

28 The Document of the Moscow Meeting 1991, paragraph 10.

29 ibid, paragraph 11.

30 ibid, paragraph 12.

31 ibid, paragraph 13. Further discussion on the Permanent Council can be found under Chapter 4.4.2.

32 Narten, 'Options for a General OSCE Human Dimension Monitoring Instrument', pp.9-10.

Case study: Emergency mission to Turkmenistan, 2002-2003

On 25 November 2002 an apparent assassination attempt was made on the President of Turkmenistan. Several hundred people were reportedly arrested and 57 convicted on criminal charges in relation to the attempt. This included Batyr Atayievich Berdiev, the former Foreign Minister of Turkmenistan and former Ambassador to the OSCE. Concerns arose that many of those detained had no connection with the apparent attempt, having been targeted on political grounds, together with their family members, in a move to repress political opposition. Allegations of torture also surfaced, and the whereabouts of certain detainees was unknown.

On 20 December 2002 a group of ten Participating States invoked the Moscow Mechanism against Turkmenistan, requesting an emergency mission of rapporteurs under Paragraph 12. A single Rapporteur was appointed to conduct a fact-finding mission to 'investigate all matters relating to the conduct of the investigations, including allegations of torture'.

The Rapporteur released his report of 12 March 2003, casting doubt on the credibility of the official account of the assassination attempt. The report also found that some of the accused persons had 'obviously' been tortured, including Mr Berdiev who had been forced to sign a confession. It was noted that foreign observers had been barred access to the 'show' trials, many of the accused were not afforded access to a lawyer and the contents of their indictments not disclosed.

The Rapporteur made wide-ranging recommendations, including the strengthening of the rule of law and creation of an independent constitutional court. Specifically on those incarcerated, it was recommended that the political trials be reviewed by appeal or through new trials, with full respect for the rights of the defendant and a guaranteed presence of judicial observers. According to the Human Rights Watch World Report 2008, a large number of those incarcerated remain in prison. The fate of Mr Berdiev, who was sentenced to 25 years imprisonment, is said to be unknown.

This case study illustrates the limitations of the OSCE mechanisms, in relation to individual cases of human rights violations. This is particularly so where the participating State refuses to provide full co-operation with the OSCE. Turkmen authorities rejected OSCE requests to meet with Mr Berdiev, failed to sign a Memorandum of Understanding which would have defined a more substantive mandate for the OSCE centre in Ashgabat, Turkmenistan's capital city, and forced the centre's Ambassador to leave her post in 2004 after refusing to extend her accreditation.

1.2 Underlying OSCE Commitment Principles: Political and Consensual

Neither the Helsinki Final Act nor any of the subsequent documents[33] adopted by the OSCE are legally binding (with the exceptions of the Treaties on Conventional Armed Forces in Europe,[34] Open Skies [35] and the Convention on Arbitration and Conciliation).[36] In other words, OSCE commitments cannot be enforced in a court of law. Although their lack of legal enforceability is a considerable drawback, it does not mean that the OSCE commitments lack teeth altogether. They are politically binding and, as such, the OSCE commitments represent a political promise to comply with these standards.

Furthermore, numerous principles that underpin OSCE commitments are embodied in international treaties, which are legally binding on State Parties.[37] For example, the OSCE commitment relating to the right to life provides that in participating States where capital punishment has not been abolished, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments.[38] This principle is enshrined in international law by virtue of Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Likewise, the OSCE principle of freedom of expression and freedom of the media as a prerequisite for pluralistic and democratic societies[39] is embodied *inter alia* in Article 10 of the European Convention on Human Rights (ECHR). Importantly, OSCE commitments enter into force immediately and are not subject to state ratification and reservations.

The political nature of OSCE commitments has its advantages. In contrast to the lengthy process of deliberating and ratifying international legal documents, once consensus among the States has been achieved, decisions enter into force immediately and, in principle, are binding upon all OSCE States (the 'universality principle').[40] As a result, the OSCE is able to react promptly to new demands. For example,

33 Some have argued that the Helsinki Final Act has become customary international law: see, for example, Eric Manton, 'The OSCE Human Dimension and Customary International Law Formation', pp.5 & 9. at <http://www.osce.org/documents/odihr/2006/01/36428_en.pdf>.

34 Treaty on Conventional Armed Forces in Europe, 19 Nov. 1990, *reprinted in* 30 I.L.M. 1 (1991).

35 Treaty on Open Skies, 1993 SIPRI Y.B.: World Armaments and Disarmament app. 12C at 653.

36 Conference on Security and Cooperation in Europe: Convention on Conciliation and Arbitration within the CSCE, 15 Dec. 1992, *reprinted in* 32 I.L.M. 557 (1993).

37 See Chapter 1.3 below.

38 OSCE Human Dimension Commitments, A Reference Guide, p.23, at <http://www.osce.org/publications/odihr/2001/01/12366_161_en.pdf>.

39 ibid, pp.42-45.

40 OSCE, 'The Human Dimension of the OSCE: An Introduction', p.2, at <http://www.osce.org/documents/tr/2008/03/30435_en.pdf>.

'when human rights violations in regard to minorities increased in the beginning of the 1990s, it was the OSCE that reacted first and drafted a comprehensive set of standards in the field of minority protection. Later, these political standards served as basis for the legally binding Council of Europe Framework Convention on the Protection of National Minorities (FCNM)'.[41]

Lastly, political commitments are often used as guides to interpret national laws and practices.[42] A new development in this respect is the bilateral agreement between Romania and Hungary to consider all OSCE commitments concerning the protection of national minorities as legally binding.[43]

OSCE aquis

All documents collectively form the existing framework, building upon each other to constitute the *OSCE acquis*. That is, the total body of OSCE commitments accumulated so far. As OSCE meetings and summits are said to take place in a particular political climate and context, each document, to a varying degree, contains repetitions and innovations of previous commitments. It is not invalidated when subsequent documents are adopted.

Pluralistic democracy

The OSCE human dimension links human rights to the institutional and political system of each state. It believes that a pluralistic democracy is the only system capable of ensuring 'peace, security, justice and co-operation in Europe'. For instance, pluralism is significant in relation to the existence and diversity of political organisations.

Rule of law

The OSCE also recognises that a pluralistic democracy is related to the rule of law. Participating States are committed to the rule of law as the basis for a pluralistic democracy. For instance, the concept of equal opportunity between men and women is a fundamental aspect of a just and democratic society based on the rule of law.

41 OSCE, 'The Human Dimension of the OSCE: An Introduction', p.2, at <http://www.osce.org/documents/tr/2008/03/30435_en.pdf>.

42 Merja Pentikainen, Human Rights Commitments within the CSCE Process: Nature, Contents and Application in Finland, [The Advisory Board for International Human Rights Affairs, No. 3, Helsinki, 1992].

43 Arie Bloed, *OSCE*, 13 Netherlands Q. Hum. Rts. 181, 187 [1995].

Human rights and fundamental freedoms

The OSCE promotes and encourages 'civil, political, economic, social, cultural and other rights and freedoms', which are derived from 'the inherent dignity of the human person' and 'essential for his free and full development'.[44]

Ordre public

The OSCE human dimension is described as a 'common pan-European public order'. That is, the OSCE is not simply an organisation of participating States but rather a 'community of values'. Human rights, fundamental freedoms, pluralistic democracy and the rule of law are not the internal affair of states, but are rather of 'international concern' and 'common responsibility'. Thus, participating States are unable to invoke the 'non-intervention principle' in order to prevent discussions on human rights issues.

1.3 Substantive Commitments under the Human Dimension

OSCE commitments are generally comprised of documents adopted by consensus at summits or ministerial meetings. The term 'human dimension' describes a 'set of norms and activities related to human rights, democracy, and the rule of law'. The main OSCE human dimension commitments alleged to have been breached are set out below.[45] The OSCE has also incorporated other international human rights standards by reference. This is indicated in OSCE documents by the use of phrases, such as 'where it is not contrary to international commitments' or 'in accordance with international human rights standards'.

The following international treaties and declarations have been referenced in some form in OSCE commitments:

- The Universal Declaration of Human Rights (UDHR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW);
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child (CRC);
- The Convention on the Elimination of all forms of Racial Discrimination (CERD);

44 Further discussion can be found under Chapter 1.3.

45 See Chapters 1.3.1 – 1.3.11.

- The UN Standard Minimum Rules for the Treatment of Prisoners/UN Code of Conduct for Law Enforcement Officials;
- The European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR);
- The Geneva Conventions and their related protocols;
- The Convention Relating to the Status of Refugees and its 1967 protocol;
- The UN Declaration on the Rights and Responsibility of Individuals, Groups; and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

1.3.1 The Right to Life

According to the OSCE report '*The Death Penalty in the OSCE Area: Background Paper 2007*', the overwhelming majority of participating States have abolished the death penalty for all crimes.[46] The Vienna Concluding Document provides that if capital punishment has not yet been abolished, the death sentence may only be imposed for the most serious crimes and where it is not contrary to international commitments.[47]

The Document incorporates relevant rights enshrined in the ICCPR; namely,

- 'Every human being has the inherent right to life, which is protected by law' and 'no one shall be arbitrarily deprived of his or her life.'[48]
- Any death sentence, for only the most serious crimes, must be carried out pursuant to the final judgment of a competent court.[49]
- Anyone sentenced to death has the right to seek pardon or commutation of the sentence.[50]
- A death sentence cannot be imposed on persons who are under 18 years of age or carried out on pregnant women.[51]

The right to life also prohibits extrajudicial summary or arbitrary executions and enforced disappearances. For example, the OSCE reported that its now-closed As-

46 OSCE, 'The Death Penalty in the OSCE Area: Background Paper 2007', OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2007 at <http://www.osce.org/publications/odihr/2007/09/26345_934_en.pdf>.

47 Vienna Concluding Document, Paragraph 24.

48 International Covenant on Civil and Political Rights 1966, Article 6.1.

49 ibid, Article 6.2.

50 ibid, Article 6.4.

51 ibid, Article 6.5.

sistance Group (AG) to Chechnya received individual complaints for violations which occurred in the course of the Second Chechen War, alleging 51 extrajudicial killings and 288 forced disappearances between June 2001 and December 2002.[52] The vast majority of the disappeared were never found. The AG drew attention to these problems both nationally and internationally. As a result, discussions took place with the Procurator's offices in Chechnya, as well as with the Russian Federation President's Special Representative on the Protection of Human Rights in Chechnya, the Council of Europe Experts working in his Office, the Human Rights Centre Memorial, as well as other human rights organisations. A huge number of cases succeeded in reaching the ECtHR: by June 2008 the number of rulings totaled 31, including cases of torture and extrajudicial executions.[53] Judgments which have held against Russia include the deaths (or presumed deaths after years of forced disappearance) of Shakhid Baysayev,[54] Ruslan Alikhadzhyev,[55] Nura Luluyeva [56] and Khadzhi-Murat Yandiyev. [57]

1.3.2 Torture

The OSCE publication, *Preventing Torture: A Handbook for OSCE Field Staff*, states that almost no country is immune to practices amounting to torture and ill-treatment. The Vienna Concluding Document provides that all individuals in detention or incarceration will be treated with humanity and respect for the inherent dignity of the human person.[58] The UN Standard Minimum Rules for the Treatment of Prisoners and the UN Code of Conduct for Law Enforcement Officials will be observed.[59] Torture and other cruel, inhuman or degrading treatment or punishment is prohibited.[60] The State will consider acceding to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[61] Individuals

52 Organization for Security and Co-operation in Europe, 'Annual Report on OSCE Activities 2002' (2003), p. 36.

53 Human Rights Watch, 'Chechnya: European Court Last Hope for Victims; France, EU, Should Use Rulings to End Abuses' June 2008 at <http://www.hrw.org/en/news/2008/06/08/chechnya-european-court-last-hope-victims>.

54 ECHR, Application no. 74237/01, *Baysayeva v Russia*, Judgment of 5 April 2007

55 Council of Europe Parliamentary Assembly, 'Information on criminal case #22025 concerning the kidnapping of Alikhadzhiyev R.Sh, Council of Europe , 23 January 2001' in Doc. 8948, Conflict in the Chechen Republic – Recent Developments at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc01/EDOC8948.htm>.

56 ECHR, Application no. 69480/01, *Luluyev and others v Russia,* Judgment of 9 November 2006.

57 ECHR, Application no. 69481/01, *Bazorkina v Russia,* Judgment of 27 July 2006.

58 The Vienna Concluding Document, Paragraph 23.2.

59 ibid, Paragraph 23.3.

60 ibid, Paragraph 23.4.

61 ibid, Paragraph 23.5.

will be protected from any psychiatric or other medical practices that violate human rights and fundamental freedoms.[62]

The definition of 'torture' is found in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. Since the Vienna Concluding Document, this OSCE commitment has been elaborated upon in the Copenhagen Document,[63] the Moscow Document,[64] the Budapest Concluding Document 1994,[65] and the Istanbul Document 1999.[66]

1.3.3 Violence against Women

A former OSCE Chairman-in-Office has described violence against women as a 'major obstacle to women's expression of free will and the progress of humanity towards equity, development and peace'.[67] The Moscow Document states that adequate legal prohibitions and other appropriate measures will be ensured to seek the elimination of *all* forms of violence against women.[68] Violence against women encompasses both the public and private sphere. It includes sexual violence (either physical or psychological), rape, sexual abuse or harassment, forced or early marriages, torture[69] and trafficking.[70]

1.3.4 Detention

Detention encompasses arbitrary arrest, pre-trial detention and imprisonment. For example, the OSCE reported that in 2006, its Moldova mission office received a 'large number' of individual complaints predominantly from criminal defendants protesting pre-trial detention and poor detention conditions.[71] The Moscow Document provides that:

62 The Vienna Concluding Document, Paragraph 23.6.

63 ibid, Paragraphs 16.1 & 16.7.

64 The Moscow Document, Paragraphs 23.1-23.2.

65 The Budapest Concluding Document 1994, Paragraph 20.

66 The Istanbul Document 1999, Paragraph 21.

67 The OSCE Chairman-in-Office, Slovenian Foreign Minister Dimitrij Rupel, 28 April 2005, Press Release, 'OSCE must play bigger role in ending violence against women, says Chairman-in-Office', at <http://www.osce.org/cio/item_1_14074.html>.

68 The Document of the Moscow Meeting 1991, Paragraph 23.

69 For further discussion on torture see Chapter 1.3.2.

70 For further discussion on trafficking see Chapter 1.3.11.

71 The Secretary General, Organization for Security and Co-operation in Europe, 'Annual Report on OSCE Activities 2006' (Vienna: Press and Public Information Section, Office of the Secretary General, 2007), p.52.

- Persons deprived of their liberty will be treated with humanity and respect for the inherent dignity of the human person;
- Anyone who is arrested will be informed promptly, in a language which they understand, about the reason for their arrest and any charges against them;[72]
- Any person who has been deprived of their liberty will be promptly informed of their rights under domestic law;[73]
- Any person arrested or detained has the right to be brought promptly before a judge to determine the lawfulness of the arrest or detention, and if unlawful, they will be released without delay;[74]
- Anyone charged with a criminal offence has the right to defend themselves either in person, through legal assistance of their choice, or where unable to pay, through legal assistance provided for free in the interests of justice;[75]
- Any person arrested or detained has the right to notify, without undue delay, appropriate persons of their choice of their arrest, detention, imprisonment and whereabouts;[76]
- Law enforcement bodies will not compel a detained or imprisoned person to confess, incriminate themselves, or force them to testify against any other person;[77]
- Anyone who has been unlawfully arrested or detained has a legally enforceable right to seek compensation.[78]

These rights build upon principles contained in the Vienna Concluding Document[79] and the Copenhagen Document.[80]

72 The Document of the Moscow Meeting 1991, Paragraph 23.1(II).

73 ibid, Paragraph 23.1(III).

74 ibid, Paragraph 23.1(IV).

75 ibid, Paragraph 23.1(V).

76 ibid, Paragraph 23.1(VI).

77 ibid, Paragraph 23.2(VII).

78 ibid, Paragraph 23.1 (XI).

79 The Vienna Concluding Document, Paragraphs 23.1-23.2.

80 The Copenhagen Document. Paragraphs 5.15-5.19 and 11.

1.3.5 Fair Trials

The right to a fair trial encompasses OSCE commitments relating to arbitrary arrest and pre-trial detention in the Moscow Document.[81] In addition, the Copenhagen Document provides that:

- All persons are equal before the law and entitled without any discrimination to the equal protection of the law;[82]
- The state will ensure the independence of judges and the impartial operation of the public judicial service;[83]
- Criminal procedure rules will contain a clear definition of the powers relating to prosecution and the measures preceding and accompanying prosecution;[84]
- All persons are entitled to a fair and public hearing by a competent, independent and impartial tribunal[85] established by law, in determining criminal charges or the person's rights and obligations;[86]
- Any person prosecuted has the right to defend themselves either in person, through legal assistance of their choice or, where unable to pay, through legal assistance provided for free in the interests of justice;[87]
- No one will be charged with, tried for or convicted of any criminal offence, unless the elements of the offence are defined with clarity and precision in law;[88]
- Everyone is presumed innocent until proved guilty according to law;[89]
- States will allow observers sent by participating States, representatives of NGO's, and other interested persons at court proceedings under national legislation and international law;[90]

81 See Chapter. 1.3.4 for further discussion (above).

82 The Copenhagen Document, Paragraph 5.9.

83 ibid, Paragraph 5.12.

84 ibid, Paragraph 5.14.

85 The Moscow Document, Paragraphs 19-20.

86 The Copenhagen Document, Paragraph 5.16.

87 ibid, Paragraph 5.17.

88 ibid, Paragraph 5.18.

89 ibid, Paragraph 5.19.

90 ibid, Paragraph 12.

- Proceedings before court will be open to the public, except in circumstances prescribed by law and consistent with international law obligations and commitments.[91]

As part of their mandate to implement OSCE fair trial standards, the Rule of Law Unit of the OSCE Spillover Monitor Mission to Skopje helped to create a trial observation network comprised of a coalition of 18 NGOs, 'All for Fair Trials'. The NGO coalition forms part of a larger trial observation network in the country, which includes observers from other NGOs, law faculties, the Bar Association and the OSCE Mission to Skopje.[92] The Mission has been heralded as 'a real network - a grassroots movement that can effect real change. Having observers in the courts will make a difference.'[93] Indeed, through the monitoring of domestic trials, the coalition has gone some way towards restoring public confidence in the legal system and helping to ensure the right to a fair trial.[94] Its reports highlight areas in need of legal reform.[95]

A second OSCE Mission to Moldova has also concluded an extensive Trial Monitoring Programme for the period 2006-2009. More than '7,000 hearings in Chisinau courts, as well as 365 hearings in courts in south eastern Moldova, were monitored with respect to the physical conditions of court facilities as well as to professional performance of the judges, prosecutors, defence lawyers, court clerks and interpreters'.[96] The report finds that the rights of defendants and the rights of the victims and witnesses to a fair trial are not always adhered to in accordance with OSCE and international standards.[97]

91 The Copenhagen Document, Paragraph 12.

92 OSCE website, OSCE Spillover Monitor Mission to Skopje: Feature: Skopje Mission helps build fair trial system' at <https://www.osce.org/skopje/item_2_169.html>.

93 Per Lucasz Bojarski, lawyer and international trainer, Polish Helsinki Foundation for Human Rights, quoted on OSCE website in 'OSCE Mission to Skopje supports implementation of fair trial standards' at <http://www.osce.org/item/8711.html>.

94 OSCE website, 'OSCE Mission to Skopje supports implementation of fair trial standards' at <http://www.osce.org/item/8711.html>.

95 See Skopje Final Report, 'Project: 'Countrywide Observation of the Implementation of International Fair Trial Standards in Domestic Courts and Assessment of the Functioning of the Judiciary' (2004) at <http://www.osce.org/documents/mms/2004/09/3780_en.pdf>.

96 OSCE website, OSCE Highlights 'OSCE Mission to Moldova to present final report of Trial Monitoring Programme for Moldova' at <http://highlights.osce.org/index.php?id=1503>

97 For example, see OSCE Mission to Moldova, '6-month analytical report: Preliminary Findings on the Experience of Going to Court in Moldova' at <http://www.osce.org/documents/mm/2006/11/24340_en.pdf>.

1.3.6 Tolerance and Non-Discrimination

The Vienna Concluding Document states that tolerance and non-discrimination extends to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth and any other status.[98] The commitment under the Istanbul Summit Declaration 1999 is significantly broad. It provides: '[The States …] reiterate unreservedly our commitment to respect human rights and fundamental freedoms and to abstain from *any* form of discrimination'[99] (emphasis added).

A 'hate crime' is defined as '[a]ny criminal offence, including offences against persons or property, where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership with a group.[100] 'A group may be based upon their real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or other similar factor.'[101] Incidents of hate crime are monitored by the OSCE ODIHR. For example, in 2006 the ODIHR supported the establishment of a Slovakian complaints bureau, relating to internet hate speech.[102]

Non-discrimination is further protected by OSCE documents in the following aspects:

- National minorities;[103]
- Language rights;[104]
- Religious opinions;[105]
- Political opinions;[106]
- State Commitments;[107]
- Women;[108]
- Migrant workers;[109]

98 The Vienna Concluding Document, Paragraph 13.7.

99 The Istanbul Summit Declaration 1999, Paragraph 2.

100 The Secretary General, OSCE, 'Annual Report on OSCE Activities 2006', Part A, p.80.

101 ibid, Part B, p.80.

102 Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2005), p.12.

103 The Copenhagen Document, Paragraphs 30-32, 35-36.

104 ibid, Paragraphs 32.1, 32.5, 34.

105 ibid, Paragraphs 30, 32.2-32.3.

106 ibid, Paragraph 30.

107 ibid, Paragraphs 33, 37, 40.

108 The Moscow Document, Paragraphs 40-40.13.

109 The Budapest Concluding Document, Paragraph 30; The Helsinki Final Act, Section 6.

- The Roma and Sinti[110] (Charter for European Security, Paragraph 20).

1.3.7 Freedom of Thought, Conscience, Religion and Belief

The participating OSCE States have agreed to recognise and respect individuals' freedom to profess and practice their own religion or belief and to take effective measures to prevent and eliminate discrimination on such grounds.[111] The Vienna Concluding Document provides that the State will:

- Foster a climate of mutual tolerance and respect;[112]
- Grant recognition upon request to communities of believers, either practising or prepared to practise their faith;[113]
- Respect the right of religious communities to: establish and maintain freely accessible places of worship or assembly; organise themselves according to their own structure; select, appoint and replace their personnel; and solicit and receive voluntary financial and other contributions;[114]
- Engage in consultations with religious faiths, institutions and organisations;[115]
- Respect the right of everyone to give and receive religious education in the language of their choice;[116]
- Respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;[117]
- Allow the training of religious personnel in appropriate institutions;[118]
- Respect the right of individual or communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice;[119]

110 The Charter for European Security, Paragraph 20.

111 The Helsinki Decalogue, Principle 7; the Vienna Concluding Document, Paragraph 16.1.

112 The Vienna Concluding Document, Paragraph 16.2.

113 ibid, Paragraph 16.3.

114 ibid, Paragraph 16.4.

115 ibid, Paragraph 16.5

116 ibid, Paragraph 16.6.

117 ibid, Paragraph 16.7.

118 ibid, Paragraph 16.5.

119 ibid, Paragraph 16.9.

- Allow religious faiths, institutions and organisations to produce, import and disseminate religious publications and materials.[120]

The Copenhagen Document contains further provisions regarding conscientious objections to military service.[121]

1.3.8 Freedom of Expression, Media and Information

Under the Copenhagen Document, everyone has the right to freedom of expression, including the right to communication.[122] This right 'includes the freedom to hold opinions, and to receive and impart information and ideas without interference.'[123] States will not impose limitations on access to, and use of, means of reproducing documents. The OSCE Representative on Freedom of the Media is a signatory to the Joint Declaration on International Mechanisms for Promoting Freedom of Expression, which provides that 'States have an obligation to seek to prevent illegal attempts to limit the right to freedom of expression, particularly in relation to intimidation of journalists. Public bodies should allow people the right of access to all information held on behalf of the public, except in limited circumstances'.[124] The Copenhagen Document incorporates the ICCPR, which states that restrictions to the right to freedom of expression are limited to those provided by law and necessary to ensure respect for the rights or reputations of others and the protection of national security, public order, and public health or morals.[125]

1.3.9 Freedom of Peaceful Assembly and Association

Under the Copenhagen Document, everyone has the right of peaceful assembly and demonstration. Any restrictions on this right must be prescribed by law and con-

120 The Vienna Concluding Document, Paragraph 16.10.

121 At the Second Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (the Copenhagen Meeting, 5 June-29 July 1990) the representatives of the participating CSCE States noted 'that the UN Commission on Human Rights has recognized the right of everyone to have conscientious objection to military service' and agreed 'to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature'. The participating States also agreed to 'make available to the public information on this issue'. The Copenhagen Document, Paragraphs 18.4-18.5.

122 The Copenhagen Document, Paragraph 9.1.

123 ibid, Paragraph 9.1.

124 Joint Declaration on International Mechanisms for Promoting Freedom of Expression, 2006.

125 International Covenant on Civil and Political Rights, Article 19.3.

sistent with international standards.[126] The Copenhagen Document also guarantees the right of association, which includes the right to form and freely join a trade union.[127] Under the Moscow Document, participating States will recognise NGO's and facilitate their ability to freely conduct national activities.[128]

1.3.10 Freedom of Movement

Under the Vienna Concluding Document, everyone has the right to freedom of *movement* and *residence* within the borders of each State. Moreover, everyone has the right to *leave* any country, including his or her own, and to *return* to their country.[129] The various OSCE documents further provide that this right will be restricted only in very rare exceptions; namely, where it is considered necessary in response to a specific public need (such as national security, public order, public health, and morals).[130] The States will respect the right to seek asylum and to ensure the international protection of refugees as set out in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.[131] The States will allow all refugees desiring to return to their homes, to do so in safety.[132]

1.3.11 Trafficking in Human Beings

Trafficking in human beings is defined as:

> The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. [133]

126 The Copenhagen Document, Paragraph 9.2.

127 ibid, Paragraph 9.3.

128 The Document of the Moscow Meeting, Paragraph 43.

129 Vienna Concluding Document, Paragraph 20.

130 The Copenhagen Document, Paragraph 9.5.

131 The Istanbul Document, Paragraph 22.

132 The Vienna Concluding Document, Paragraph 22.

133 Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

Under the Charter for European Security 1999, all States are committed to undertake measures to eliminate all forms of trafficking in human beings and to promote the adoption or strengthening of legislation to hold persons accountable.[134] The OSCE assists participating States in the implementation of their anti-trafficking commitments. It does so through two main mechanisms: the OSCE Action Plan and OSCE field operations.[135]

The Action Plan provides the framework for the anti-trafficking efforts of the OSCE. It consolidates the OSCE's recommendations on how participating States should bring national legislation into compliance with national standards, as well as how OSCE bodies can assist the participating States in this endeavour.[136] Recommendations are divided into the areas of 'Prevention' of trafficking in human beings, 'Protection' and assistance and 'Prosecution'.[137] Implementation of OSCE recommendations remain a long-term obligation for its bodies.

OSCE field operations assist in the fight against trafficking by 'regular monitoring and reporting[138] and assisting State authorities through, inter alia, promoting dialogue and acting as a bridge between governments and [NGO's]; and institutions, in resolving individual trafficking cases'.[139] Field operations should assist with the coordination of responses to urgent trafficking cases by: verifying the circumstances and allegations surrounding trafficking cases; the facilitation of shelter; the provision of legal, translation, medical and psychological assistance to the trafficking victims; liaising with consular and border authorities in order to obtain the necessary travel and identification documents to allow safe and voluntary repatriation of trafficking victims; monitoring and reporting follow-up to individual cases of trafficking, as well as the reintegration of trafficking victims into society.[140]

Despite its efforts, the last decade has seen an increase in both incidents of human trafficking and in the number of victims.[141] The main reasons for this increase are attributed to a failure on behalf of participating States to effectively criminalise the

134 Charter for the European Security 1999, Paragraph 24.

135 For further discussion on 'field operations' see Chapter 1.4.1 below.

136 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'Combating Trafficking in Human Beings in the OSCE Region', p.12, at <http://www.osce.org/publications/cthb/2007/10/27431_971_en.pdf>.

137 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'Combating Trafficking in Human Beings in the OSCE Region', p.12, at <http://www.osce.org/publications/cthb/2007/10/27431_971_en.pdf>.

138 See OSCE Anti-Trafficking Guidelines, 2001 for further details.

139 OSCE Vienna Ministerial Council, 2000, Decision No 1, Paragraph 12.

140 OSCE Anti-Trafficking Guidelines, 2001.

141 OSCE Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings PC.DEC/557/Rev.1, 7 July 2005 p.1.

offence, more sophisticated and better resourced criminal organisations, as well as poverty and a lack of employment opportunities.[142] Recommendations at OSCE level to prevent further increases in human trafficking detailed in its 2005 Action Plan include data collection, awareness raising, the development of programmes to tackle economic factors that increase the vulnerability of women and minorities to trafficking and the development of national public information resource centres (to, for instance, allow individuals to check the legitimacy of businesses). At national level, the recommendations propose legislation that would create effective criminal offences to outlaw trafficking and corresponding proportionate penalties.

The valuable role of the OSCE Action Plan is already being felt in certain countries: an OSCE-supported multi-agency working group has recently assisted in preparing the draft Law of Ukraine 'On Combating Trafficking in Human Beings'.[143] The law aims to introduce a system of tools to prevent and prosecute the crime and to assist victims according to the best international human rights standards. Additionally, it provides guidelines for institutional, analytical, logistical and financial support for a national anti-trafficking response.

Finally, OSCE actions against human trafficking are coordinated by the Office of the Special Representative for Combating Trafficking in Human Beings. Since 2006 this office has been held by Eva Biaudet. Her responsibilities include: encouraging governments to act on their responsibilities for curbing human trafficking; offering guidance to governments on anti-trafficking management; assisting governments to develop the national anti-trafficking structures required for efficient internal and transnational co-operation; raising awareness; and ensuring the effective interaction of all agents and stake holders involved in the fight against human trafficking.[144]

1.4 The OSCE - Dealing with Individual Complaints

The OSCE does not have a formal complaints body. Nevertheless, individual complaints may be reported to four possible OSCE structures and institutions: the field office, the Office of Democratic Institutions and Human Rights, the Representative on Freedom of the Media and Human Dimension Implementation Meetings.

142 OSCE Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings.

143 OSCE Highlights, 'OSCE Project Co-ordinator supports development of comprehensive anti-trafficking law in Ukraine' 22 June 2009 at <http://highlights.osce.org/index.php?id=1472>.

144 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'Combating Trafficking in Human Beings in the OSCE Region' at <http://www.osce.org/publications/cthb/2007/10/27431_971_en.pdf>.

1.4.1 Field Missions

'Field missions' is the term given to OSCE operations instigated through the deployment of personnel working in countries at ground or 'field' level. The OSCE conducts field operations in four general regions – south-eastern Europe, Eastern Europe, South Caucasus and Central Asia. Countries are selected according to mandates agreed on by OSCE participating States. For example, the responsibilities of the OSCE office in Yerevan include the development of democratic institutions in the country, strengthening civil society as well as promoting OSCE standards and principles.[145] Typical activities include monitoring and reporting on situations within the host nation, maintaining and updating a case list of alleged violations, and attending forums to discuss mandate findings and raising appropriate individual cases with government representatives. In contrast, the OSCE field mission to Moldova is charged with 'facilitating the achievement of a lasting, comprehensive political settlement of the Transdniestrian conflict in all its aspects'.[146] The Mission's activities consist of the following: facilitating dialogue and negotiations between the parties in order to reach a political settlement of the conflict; gathering information on the situation in the region, including the military situation; and encouraging the participating States concerned to reach an agreement on the status and the early, orderly and complete withdrawal of foreign troops.[147]

Mission offices are usually the first point of entry for individual complaints, either by an approach by the complainant in person or in writing. Whether a mission office is able to pursue an individual complaint will depend not only on the nature of the complaint, but also the office's size and logistics. This differs in accordance with the mission's mandate and local situation in the region of deployment.

1.4.2 The Office of Democratic Institutions and Human Rights (ODIHR)

The ODIHR is the OSCE institution with the most comprehensive human dimension mandate, covering the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law.[148] As such, the ODIHR is ideally placed to provide guidance to all OSCE field operations on how to deal with individual complaints, to provide training and expertise on specific issues and to ensure uniformity in OSCE actions with regard to individual complaints. Because, however, the ODIHR is geographically removed from the scene of alleged

145 OSCE website, 'OSCE Office in Yerevan' at <http://www.osce.org/yerevan/13261.html>.

146 OSCE website, 'Mission to Moldova: Mandate' at <http://www.osce.org/moldova/13174.html>.

147 OSCE website, 'Mission to Moldova: Mandate' at <http://www.osce.org/moldova/13174.html>.

148 The OSCE website, 'About the Office for Democratic Institutions and Human Rights' at <http://www.osce.org/odihr/>.

human rights violations, it is not particularly well placed to deal with individual complaints.

For this reason, the general rule is that where a field mission has a presence in a country, complaints should be lodged with the mission office, which may then consult with the ODIHR.[149] The underlying rationale for this rule is the avoidance of duplicity and possible conflicting judgments within OSCE bodies. In the following instances, however, it is suggested that a complaint may be sent directly to the ODIHR:

- Where a field mission does not have a human rights mandate in the relevant country and the issue falls within the ODIHR mandate;
- The issue in the complaint is election-related and therefore at the core of the ODIHR mandate, particularly when an election observation mission is in the field;
- Follow-up to cases in which the ODIHR has intervened in the past;
- Where consistency requires that the ODIHR deal in a similar manner with similar cases in more than one country.

The ODIHR may receive complaints either by mail or email,[150] in person at Human Dimension Meetings, or directly to ODIHR personnel working or travelling in the field, including members of election observation missions. The ODIHR's options for dealing with individual complaints are similar to the options available to missions. [151]

1.4.3 The Representative on Freedom of the Media

The Office of the Representative observes media developments in the participating States and ensures State compliance in the areas of freedom of expression and free media. It is within the Representative's mandate to receive individual complaints on issues in these areas from 'all bona fide sources'.[152] In particular, he may receive from 'participating States' and 'other interested parties' (e.g. the media and their representatives, institutions and organisations and relevant NGO's),[153] requests, sugges-

149 'Individual Human Rights Complaints: A Handbook for OSCE Field Personnel, Part III and Annexes 1 October 2003', at <http://www.osce.org/publications/odihr/2003/10/12354_164_en.pdf>

150 See Appendix C.

151 Described further in Chapters 4.4 - 4.4.2.

152 Permanent Council, Decision Number 193, Mandate of the OSCE Representation on Freedom of the Media, PC Journal No.137, 5 November 1997, Paragraph 5.

153 ibid, Paragraph 6.

tions and comments related to developing compliance with OSCE principles, including 'allegations of serious instances of intolerance by participating States which utilise media in violation of OSCE principles'.[154] Where the Representative feels it appropriate, he or she may forward requests, comments and suggestions to the Permanent Council recommending further action.

The Representative frequently consults with the Chairman-in-Office and regularly reports to the Permanent Council. He or she reports annually to the Implementation Meeting on Human Dimension Issues or the OSCE Review Meeting on the status of the implementation of OSCE principles and commitments in respect of freedom of expression and free media in participating States.[155] The Representative has, for example, condemned the jailing of a newspaper editor in Belarus for reprinting cartoons depicting the prophet Mohammed in 2008;[156] conducted an enquiry into the disappearance and murder of a journalist in Ukraine in 2002;[157] criticised the listing of particular authors whose works should not be published and read in Belarus in 2002;[158] and expressed concern over the barring of journalists by police from entering a radio station in Bulgaria in 2001.[159]

1.4.4 The Human Dimension Implementation Meeting (HDIM)

The HDIM is a two-week conference held annually in Warsaw where participating States discuss the implementation of OSCE commitments. Attendees include OSCE officials, representatives from participating OSCE States and international or NGO's. The review of OSCE commitments is divided into working sessions on subjects relevant to the OSCE commitments.[160] In 2009, for example, the topics were human rights education, freedom of expression, free media and information, Roma/Sinti and the education of Roma/Sinti children. During the sessions Rap-

154 Permanent Council, Decision Number 193, Mandate of the OSCE Representation on Freedom of the Media, Paragraph 7.

155 ibid, Paragraphs 3, 6 and 7.

156 'OSCE media freedom representative protests jailing of editor in Belarus for reprinting cartoons', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories, 18 February 2008.

157 'OSCE Media Representative urges Ukrainian authorities to step up efforts to find murderers of independent journalist', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories, 16 September 2002.

158 'OSCE Media Representative criticizes list of banned authors in Belarus', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories, 20 June 2002.

159 Concern over the conflict in Bulgarian state radio', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories 15 November 2001.

160 OSCE website, 'Human Dimension Implementation Meeting, Warsaw, 28 September 2009 – 9 October 2009' at <http://www.osce.org/conferences/hdim_2009.html?page=39486>.

porteurs present reports on the discussions. Recommendations are proposed by participating States and other relevant parties.

HDIM meetings provide NGOs with the opportunity to present recommendations and grievances directly to OSCE states. The 1992 Helsinki Document specifically calls for increasing openness and more extensive NGO participation in OSCE activities. NGOs are therefore actively encouraged to attend and contribute to the working sessions and organise side events. In addition, participants may make an oral intervention during a plenary session. To do so the participant must add their name to the Speakers List. The List is opened one hour prior to the start of each session. Interventions are limited to a maximum of five minutes.[161]

Prepared statements, background documents, and other written materials may be submitted for distribution via the Document Distribution System (DDS). Documents can be submitted in advance via email[162] or in hard copy (maximum three pages) to staff at the Document Distribution Centre during the conference. All documents submitted to DDS can be viewed on computers outside the plenary hall, and will also be uploaded to the conference website, where they will remain accessible after the end of the conference.

Registration for attendance at OSCE conferences is free of charge. To register, visit the ODIHR website.[163] Consolidated summaries or full reports of Human Dimension Meetings may be viewed on the OSCE website.[164]

Supplementary Human Dimension Meetings are held three times a year, usually in Vienna. These focus on key substantive concerns which were raised at previous Implementation Meetings or Human Dimension Seminars. The topics for discussion are selected by the OSCE Chairman-in-Office.

The Kurdish Human Rights Project (KHRP) regularly attends the Human Dimension Implementation Meeting. The event provides a useful platform for the KHRP to raise awareness among OSCE member states concerning the continuing and pervasive barriers to freedom of expression in Turkey, as well as an opportunity to encourage pressure on the Turkish government to comply with their various international obligations. During the meeting held in Warsaw from 24 September to 5

161 OSCE website, 'Human Dimension Implementation Meeting, Warsaw, 28 September 2009 – 9 October 2009' at <http://www.osce.org/conferences/hdim_2009.html?page=39486>.

162 Documents should be submitted in advance to hdim@odihr.pl.

163 OSCE/ODIHR Meetings website, 'OSCE/ODIHR Conference Registration System' at <http://meetings.odihr.pl>.

164 OSCE website, 'Office for Democratic Institutions and Human Rights – Meetings', at <http://www.osce.org/odihr/13414.html>.

October 2007, it addressed attendees during the working session on 'Fundamental Freedoms, including: Freedom of expression, free media and information'. In an oral presentation, KHRP Chief Executive Kerim Yıldız spoke on the right to freedom of expression in Turkey. Mr Yıldız noted the suppression of legitimate debate on the basis of Article 301 of the Turkish penal code, which criminalises 'insulting Turkishness'. The KHRP urged the OSCE to exert its influence with Turkey to address a change in attitude to allow for democratic reform, and to closely monitor the application of the right to freedom of expression for a number of state investigations that were underway in Turkey. The KHRP also took the opportunity to submit a report, as with previous years, titled 'Human Rights Violations Against Kurds in Turkey'. The report provided key recommendations on a wide range of human rights issues, namely, freedom of expression and association, minority rights, language and education rights, women and security, internally displaced persons, torture, and Turkish anti-terror laws.

Recommendations for NGOs attending the HDIM:

- Any desired meetings with OSCE delegates and other attendees must be organised in advance;
- Any written submissions for publication should be prepared well in advance and structured on a working session-by-session basis;
- An extra copy of the transcript for any oral presentation should be provided to translators;
- Where an oral presentation is addressed to a particular OSCE participating State, the State concerned should be notified in advance to allow for an informed response.
- Any written submissions or oral presentations should be prepared in electronic form for electronic distribution by the OSCE;
- Any side meeting or event should be organised in advance and well publicised, both before and at the meeting or event;
- Inviting an expert to speak at a side meeting or event on the topic concerned may attract delegates to the meeting or event.

1.5 Relevant Political Bodies

The following section will briefly outline the role of the Chairman-in-Office and the High Commissioner on National Minorities. Because both persons exercise political roles, they are explicitly excluded under their mandate from considering individual complaints. Nevertheless, both positions exercise a significant role in the complaints procedure.

1.5.1 The Chairman-in-Office

The Chairman-in-Office of the OSCE fulfils roles in political leadership and executive action, representation of the Organisation and oversight of its activities. The post rotates annually between the participating States and is held by the Foreign Minister of the State chairing the OSCE. The Chairman-in-Office may intervene on individual complaints at the highest diplomatic level. He may be prompted to do so due to personal concerns or under recommendation from OSCE mission offices or other bodies. The Chairman-in-Office has, for example, expressed concern for the detention of four domestic electoral observers in Belarus in 2006;[165] called for the release of protesting human rights activists and opposition party politicians in Kyrgyzstan in 2002;[166] sought clarification of the disappearance of a journalist in Chechnya in 2000;[167] and facilitated the release of three prisoners-of-war by Armenia after meeting with the Armenian President in 1999.[168] The Chairman-in-Office is also involved in the convening and hosting of Human Dimension Meetings, and addressing the Permanent Council. Representatives from NGO's have the opportunity to discuss human dimension issues with the Chairman-in-Office during OSCE meetings or visits to OSCE regions.

1.5.2 The High Commissioner on National Minorities (HCNM)

The HCNM is mandated to provide 'early warning' and 'early action' in relation to 'tensions involving national minority issues that have the potential to develop into a conflict'.[169] That is, the High Commissioner is responsible for containing and de-escalating tensions, as well as alerting the OSCE of tensions intensifying beyond their influence. As mentioned previously, the High Commissioner is explicitly excluded under its mandate from considering individual complaints.[170]

165 'OSCE CiO seriously concerned with the situation in Belarus', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories (Brussels, 2006).

166 OSCE Chairmanship calls for release of Kyrgyz opposition activists', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories (Lisbon, 2002).

167 'Statement by the Chairperson-in-Office on the fate of journalist Babitsky', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories (Vienna, 2000).

168 'OSCE Chairman-in-Office welcomes release of prisoners-of-war by Armedia', Organization for Security and Co-operation in Europe, Press Releases and Media Advisories (Vienna, 1999).

169 The Helsinki Document 1992, Section I, Paragraph 23.

170 The Helsinki Document 1992, Section II, Paragraph 5c.

2. OUTLINE OF THE PROCEDURE FOR TAKING INDIVIDUAL COMPLAINTS TO THE OSCE

There are no formal rules of procedure for submission and assessment of individual complaints to the OSCE. However, the OSCE has published general guidelines for its own field officers in dealing with individual complaints, to encourage a more consistent approach spanning across its numerous mission offices in Europe. Guidelines on what is involved in the lodging of a complaint are provided, together with a procedural summary of the avenues in which the OSCE may deal with the complaint.

The following section outlines how to lodge a complaint with the OSCE, together with an explanation of how complaints are assessed by the relevant OSCE bodies. Mission offices are the primary port-of-call for lodging complaints. For this reason, the following section is written upon the assumption that the complaint is lodged at a mission office. Complaints tend to be dealt with in a similar manner, regardless of which institutional body receives the complaint.

2.1 Lodging the Complaint with the Organisation

Complaints may be lodged in person or delivered in writing. If the complaint is made in person, a staff member might ask the complainant preliminary questions to ascertain basic facts and circumstances and to fill in a standardized form.[171] If the complaint is received in written form, an acknowledgment of receipt of the complaint will be sent to the complainant with, if appropriate, an invitation to visit the mission to provide further information.

Whether the complaint is lodged orally or in written form, the mission will make a careful record of the details of the allegations and the contact information of the complainant. There is no fee for lodging a complaint.

171 Appendix E provides an example of an OSCE mission office complaint form.

2.1.1 Who May Lodge a Complaint?

The OSCE advises that an individual complaint may be reported to a mission office by any of the following: [172]

- Persons contacting the mission on their own initiative, including individuals wishing to testify on their alleged treatment;
- Family members of alleged victims;
- Community leaders, political activists, human rights defenders, defence lawyers, and members of minority or religious groups;
- Local human rights organisations or other NGO's;
- Other international organisations or institutions in the region;
- The media;
- Any other OSCE body.

2.1.2 Basic Details and Case-specific Information

OSCE guidelines suggest that a complaint should contain the following personal details and case-specific information:[173]

Basic details:

- Date of interview/testimony;
- Place and circumstances of the interview/testimony;
- Names of those present, including the interpreter;
- Personal details of the individual: name, age, sex, family, education, occupation, political or other relevant activity or background, address, and telephone numbers;
- Names, addresses and telephone numbers of contact persons, if different from the victim.

172 Human Rights Complaints: A Handbook for OSCE Field Personnel (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2003), p.35, at <http://www.osce.org/publications/odihr/2003/10/12354_164_en.pdf>.

173 ibid, Annex II, p.117.

Case-specific information:

- Date of the incident or violation;
- Place of the incident or violation;
- The human right alleged to have been violated;
- Nature of the incident or violation;
- Identity of the victim;
- Identity of the alleged perpetrator(s);
- Official status of the alleged perpetrator(s), or other official connection;
- Witnesses, including their names, positions, addresses/contact numbers;
- Any other relevant factual details, including a chronological narration of the case;
- Any correspondence with authorities, where notified of the violation, their reaction, and any steps being taken to investigate;
- Information on any prior notification of complaint or appeal lodged with a court, or any other international or domestic organisations, and what the reaction has been;
- Copies of relevant documents or evidence;
- Remedies sought by the complainant.

2.2 Preliminary Assessment of the Complaint

Due to the limited resources available to mission offices to follow up on individual cases, priority is given to certain cases. The OSCE Guidelines are intended to provide a template for field officers when deciding whether to pursue an individual complaint and the manner in which that complaint should be pursued. In addition, by providing a legitimate expectation to individual complainants that their case will be dealt with in a particular manner, the Guidelines go some way towards upholding the rule of law within the OSCE. The Guidelines provide that the following cases should be given priority:

- Matters of particular urgency, such as where someone's life or safety is endangered;
- The complaint constitutes part of a pattern of human rights violations;
- Where involvement of the OSCE would likely contribute to a satisfactory resolution.[174]

In general, individuals alleging human rights violations should primarily seek a remedy through domestic avenues. Hence, where complainants have not attempted to resolve their problem through national means, such as courts, ombudsman offices, or other avenues, they should do so. However, if circumstances in the host country are such that effective and timely domestic remedies are precluded, or if the allegation is sufficiently serious or urgent, missions can become involved even when domestic remedies have not been pursued.[175]

A complaint is also likely to fail where a different international organisation is better placed to deal with it. For example, if the complaint concerns treatment of refugees, it is more appropriate to direct it to the local representative of the UN High Commissioner for Refugees, or, if it concerns treatment of a prisoner, the International Commission of the Red Cross may better suited to follow up.

2.3 Decision on Merits and Credibility

Where it is found that a complaint has no merit or has no credibility, or alternatively, if the complaint may have merit but does not involve violations of OSCE commitments or human rights standards, the complainant will be informed within a reasonable period of time. In this eventuality, the complainant should be told whether his or her claim has any possible merit and, if so, where he or she can pursue an alternative remedy. Individuals may, for example, still be able to pursue their grievance(s) via government offices, courts, or other human rights groups. It is also worth inquiring as to the availability of free or low-cost legal services in the country. A handout on how to pursue domestic remedies and on local resources is usually available from mission offices in order to help complainants in these matters.[176]

174 *Human Rights Complaints: A Handbook for OSCE Field Personnel, PT II, 'Standards, Information Gathering, and Reporting on Individual Complaints'* (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2003), p.36, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

175 ibid, p.37.

176 See also Chapter 4.4.1 for further information.

On the other hand, if the complaint is found to have merit and the mission decides to pursue the case, it may either take immediate action (where the case is urgent) or seek to obtain further information. The latter may involve conducting interviews with the complainant and investigations to corroborate or verify the complaint.

Contact details:

- Appendix C lists contact details for OSCE institutions;
- Appendix D lists contact details for OSCE mission offices.

3. OSCE GUIDELINES ON SPECIFIC HUMAN RIGHTS COMPLAINTS

3.1 Torture and Detention

OSCE bodies and institutions have been confronted with deeply disturbing cases involving torture in many participating States.[177] Categories at risk tend to be the most disadvantaged and socially marginalised groups in society (and include, for example, religious and ethnic minorities, persons suspected or found guilty of particularly despised offences and the homeless), persons accused of heinous crimes about which the police are pressurised to get results (e.g. drug trafficking, terrorism and paedophilia, political) and those who are unpopular with the political elite (e.g. political activists, human rights campaigners and trade unionists).[178]

In its handbook entitled 'Preventing torture: a handbook for OSCE field staff OSCE Office for Democratic Institutions and Human Rights',[179] the OSCE published a set of guidelines for field mission staff when interviewing complainants who allege to be victims of torture. According to the Guidelines, the following principles should be adhered to when conducting an interview:[180]

- The interview should be conducted in a respectful manner and acknowledge the difficulties of talking about the trauma;
- The victim should be given as much of a sense of control as possible, (e.g. asking if he or she is ready to begin and giving permission to withhold information he or she is not ready to divulge);
- No loud, aggressive voice or gesturing should be used during the interview;
- A non-confrontational interviewing style should be used;

177 Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), p.4, at <http://www.osce.org/documents/odihr/2009/01/36137_en.pdf>.

178 ibid, p.47.

179 ibid, pp.50-52.

180 ibid, pp.50-52.

- The victim should tell the story in his or her own words with as few interruptions as possible;
- No disbelief of a person's experiences should be expressed;
- Emotional break-downs should be anticipated and handled in a gentle manner.

The questionnaire below is likely to be used as the basis of an interview or a written report:[181]

1. Was the complainant kept in incommunicado detention? If so, for what duration?
2. Has the complainant appeared before a judicial authority? If so, when, which authority, and what were the nature of proceedings?
3. Was the complainant's detention notified to a family member or other third party? If so, how, when and to whom?
4. Was the complainant granted access to a lawyer? If so, when and what was the nature of access?
5. Was a medical examination conducted? If so, when, by whom, what was reported?
6. Was a complaint made of ill-treatment?
7. Was any medical treatment given?
8. What interrogation procedures was the complainant subjected to? Were they notified of their rights? Were they blindfolded or hooded? Was the process recorded?
9. What were the conditions of detention?
10. Was a complaints procedure available?
11. Was any such complaint investigated? Did it result in prosecution?
12. What avenues of redress were available?
13. What is the continuing impact on the complainant? Are there any physical injuries, psychological trauma, social or other consequences?

181 Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), pp.50-51 at <http://www.osce.org/documents/odihr/2009/01/36137_en.pdf>.

Individuals are permitted to retain a copy of their report. In addition, the 'copy retained by the field mission and any notes made on the basis of a structured interview should be treated as confidential by the mission'.[182] Finally, an individual's testimony cannot be used for a public purpose without their consent.

3.2 Violence against Women

The OSCE recognises that 'violence against women in the family and society is pervasive and cuts across lines of income, class and culture'.[183] Minority women are particularly vulnerable to violence, including refugee women, women from remote communities, destitute women, disabled women, elderly women and women in situations of armed conflict.[184] The root of domestic violence, according to the OSCE, lies in inequalities between men and women.[185]

The following guidelines are adapted from OSCE suggestions for field mission staff as good practice. The complainant may expect:[186]

- To be interviewed with sensitivity, under conditions determined by the victim (e.g. in confidence, at a time when the victim is willing to talk about her experiences);
- To be interview efficiently, in a manner that avoids the need to repeat the interview at subsequent stages or with different individuals;
- Centres to have been established which are not immediately identifiable to the community as being connected with domestic violence and that can be sought out without stigmatisation or reprisals;
- To be informed of significant developments in their case.

If the persons concerned are refugees or internally displaced persons:

- Ensure that the limited defences and resources of female-headed households, unaccompanied minors, older persons and persons suffering from trauma are com-

182 Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), pp.50 at <http://www.osce.org/documents/odihr/2009/01/36137_en.pdf>.

183 Gender Advisor, Office of the Secretary General, 'Gender Aspects in Post-conflict Situations: A Guide for OSCE Staff' (2001), Chapter 2.1, p.7, at <http://www.osce.org/secretariat/item_11_14003.html>.

184 ibid, Chapter 2.1, p.7.

185 ibid, Chapter 2.1, p.7.

186 ibid, Chapter 2.1, p.3, and Chapter 7.1.

pensated for via the camp lay-out, security systems and assistance distribution systems;

- Diligent follow up by the police working in conjunction with the local authorities;

- Where prosecution results, the human rights officer should ensure the diligent and dignified prosecution of the accused and defence of the victim's rights (e.g. to privacy, protection from retribution, etc);

- Ensure psychological counselling when the victim is ready. Counselling must extend to children involved in cases of domestic violence, whether as a victim or witness;

- When men or boys are suspected to have suffered from sexual violence, safe access to medical attention and psycho-social counselling should likewise be afforded to them.

With regard to gender-related torture:

- The definition of 'torture' makes no reference to the site of torture. For example, it may occur in a school or home.

- An act within the definition will constitute torture, where the State does not exercise due diligence in preventing and remedying the crime, no matter who commits the act. For example, the perpetrator may be a neighbour, boss or parent.

3.3 Tolerance and Non-Discrimination

Discrimination can manifest itself in many different forms, varying from discrimination against women to migrant workers. Positive discrimination, which constitutes acts taken to eliminate discrimination, is a legitimate form of discrimination. Furthermore, States are subject to an obligation to take measures to eliminate discrimination in the private sector.[187]

According to the OSCE guidelines, in order to establish whether a case of discrimination may have taken place, field mission staff must apply the 'comparative test'. It consists of the following questions:

- Is any distinction between similarly situated individuals justified by reasonable and objective criteria?

187 OSCE, '*Individual Human Rights Complaints: A Handbook for OSCE Field Personnel*' Pt II, p.53, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

- Is the distinction objectively or reasonably related to the aim of the law and practice, and is that aim consistent with the recognised principles of human rights?

- Does a law or practice have a discriminatory impact? That is, is there any 'hidden' discrimination that routinely affects a certain group in the society?[188]

Owing to the broad scope of cases that could fit within this area, field staff should consider referring cases to the appropriate national authorities for redress. On the other hand, the Guidelines state that 'even the smallest missions should consider following up on certain individual complaints of discrimination, e.g., if a candidate for election is arbitrarily refused registration because he or she does not speak the national language'.[189] This is particularly the case as regards individual complaints which reflect a pattern of discrimination.[190]

188 OSCE, 'Individual Human Rights Complaints: A Handbook for OSCE Field Personnel' Pt II, p.53 at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

189 ibid p.53.

190 ibid p.53.

4. REPORT AND FOLLOW-UP OPTIONS

Section 4 describes the OSCE procedure regarding the reporting, recording and security of individual complaints, as well as available follow-up options.

4.1 Reports of Interviews with Individuals

Missions prepare and keep records of each interview. The reasons for this are manifold: 'an interview might later turn out to be the first report of a human rights situation that is more serious than had previously seemed'; 'information received later may substantiate an allegation that did not seem credible when the interview took place'; 'an interviewee may later be the victim of further violations'; or, 'an interviewee may be providing the first report to the mission of what may later emerge as a pattern of human rights violations'.[191]

A report of an interview with an individual contains an account of the facts in objective language. Records are kept of place names, names of people, and other such details in the language the interviewee used, as well as in English. If an interpreter is used, the interpreter may read the report written by the interviewer, in order to ensure that the interview has been accurately recorded and to minimise misunderstandings. Any written accounts by the interviewee, sketches, etc. are attached to the report.[192]

Any comments by the interviewer are separate from the narrative. These might include 'the interviewer's personal impression of the interviewee, an assessment of the credibility of the information provided, and the reasons for possible doubts or additional relevant information the interviewer may have acquired from other sources'.[193]

In general, reports of interviews with individuals are not forwarded to the OSCE headquarters. Reports to the OSCE may, however, include references to individual

191 OSCE, '*Individual Human Rights Complaints: A Handbook for OSCE Field Personnel*' Pt II, p.75, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

192 ibid, p 75.

193 Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), p.75, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

cases, including a summary of an interview report, where appropriate or interviews with individuals where the alleged violation is part of a pattern of alleged violations of the same type.[194]

4.2 Records

A record is kept of individual complaints where they involve allegations of human rights violations. A file of an individual complaint could include the following:[195]

- The mission's report of its interview with the complainant and copies of any other reports prepared by the mission relating to the case, especially including any reporting forwarded to OSCE headquarters;
- Narratives with the facts presented in a chronological manner;
- Copies of evidential documents such as written statements provided by victims or witnesses themselves, photographs, medical certificates, or autopsy results;
- Copies of court records;
- Copies of relevant legislation or decrees related to the case, or references of where to find them;
- Press reports about events or persons involved;
- A record of any action the mission has taken on the case;
- A record of any statements on the case made at the OSCE Permanent Council or made publicly by the Head of Mission or other senior OSCE officials such as the Chairman-in-Office or the head of an institution;
- Information on any action or statements by government authorities regarding the case.

194 Office for Democratic Institutions and Human Rights,'*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), p.75,at<http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

195 ibid, p.76.

4.3 Security

Reports and files of individual complaints are stored in locked cabinets and locked filing cabinets in order to protect the safety and privacy of victims.[196] Computer files always require passwords to access. Visitors who come to an OSCE office to report human rights violations are registered by the relevant OSCE staff member. While collecting information and reporting on alleged human rights violations, OSCE staff must not put anyone involved in danger.[197]

4.4 Follow-up Options

Following-up on individual complaints of human rights violations is often politically sensitive. It includes referring the complainant to governmental offices, international or NGOs, or other OSCE diplomatic channels that could help to resolve the dispute. In addition, the individual lodging the complaint should be made aware of the appeals options available through other international organisations. The following paragraphs in this section describe the range of options available.

4.4.1 Referral to Domestic Institutions and Groups

As a general principle, victims of human rights violations are expected to exhaust domestic legal remedies before seeking international remedies for their complaints. There are exceptions to this principle (e.g., where domestic remedies are unavailable, ineffective, or slow, or in circumstances where the complainant's life would be endangered by an appeal to local authorities). Nevertheless, for most individual complaints, the first step is to consider a referral to an appropriate national body. The various options available domestically include the following:

Government offices: The first step by someone alleging an individual violation of human rights should be an appeal to the relevant government institution or agency to take action to redress the violation. This may take the form of a ministry (e.g., the Ministry of Housing, Social Affairs, or Justice) or it might be an institution (e.g., the police or the central election commission).

National human rights institutions: If national human rights commissions and/or ombudsman institutions exist in the host country, they can be a valuable way for an individual to pursue their complaint. Some also have special offices to assist persons belonging to minorities or other groups.

196 Office for Democratic Institutions and Human Rights,*'Preventing Torture: A Handbook for OSCE Field Staff'* (1999), p.76, at<http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

197 Ibid, p.78.

The judicial system: Most human rights violations entail violations of domestic law, as well as international standards. In such cases, the legal system in the country may provide a reasonable channel of redress for a specific kind of human rights violation. An alternative point of referral may be the public-defenders office, whose job it is to assist victims of human rights abuses. Furthermore, the complainant may be referred to free or low-cost legal services if they are available. In countries 'legal clinics' exist: these bodies provide free legal advice for people who cannot afford to hire lawyers.

Non-governmental organisations: NGO's can provide assistance to victims of human rights violations, including helpful advice on how to proceed with an individual complaint at the national level. NGOs that specialise in specific aspects of human rights can offer more specialized advice and assistance. Some NGOs provide social services relevant to victims of human rights violations, e.g., shelters for victims of domestic violence or centres for the treatment of victims of torture.

Other international organisations that may be of assistance to victims of human rights abuses include:

- The UN High Commissioner (refugees);
- The International Organization for Migration and the United Nations Children's Fund (trafficking);
- The International Committee of the Red Cross (prisoners, tracing disappearances, and refugees and internally displaced persons in conflict situations).

4.4.2 Interventions

The mission office, in following up individual complaints, may find it appropriate to intervene with the host government. In such cases, it will most likely contact the relevant government ministry, either by writing or in person, at the appropriate level. The level of intervention will depend on the seriousness and urgency of the complaint. The complaint may subsequently be followed up through progressively higher levels, until a resolution is reached.

The communication to the domestic body sets out the facts of the case as the mission understands them and indicates exactly what the mission requests the government to do, e.g., review an individual case, investigate an incident, release a prisoner, allow a religious group or an NGO to function, etc. It also refers to the OSCE commitment involved. It should be extremely accurate and use polite terminology. If the letter is in English, it is helpful to provide a copy in the local language. In

determining what information should be disclosed, the mission office will consider the safety and wishes of the complainant.

Written approaches may be considered too formalistic and rigid. Direct interventions in person are a more flexible approach. They can take the form of a formal office call and 'it is not unusual for OSCE officials to raise individual cases with especially close or trusted contacts in a less formal setting'.[198] When making a personal intervention, the OSCE staff member briefly explains how the individual case relates to the mandate of the mission or the country's OSCE commitments. Copying the relevant document is a useful way of bringing a specific commitment or agreement to the institution's attention.

Alternatively, the mission office may intervene with existing human rights offices and regulatory bodies, or the Ministry of Foreign Affairs. It may also undertake more public measures of showing support and expressing concern, by monitoring alleged human rights violations. For instance, mission staff may monitor trials, observe public demonstrations, and visit detention conditions, refugee camps and domestic violence shelters.[199] In extreme circumstances, the head of a field operation can issue a public statement of concern or criticism.

Upon the instigation of the mission office, the OSCE Office for Democratic Institutions and Human Rights, Representative on Freedom of the Media, and Human Dimension Meetings may also provide assistance in resolving a complaint. The mission office may seek consultative advice on the matter, or refer or report the complaint to such institutions.

Furthermore, the mission office may involve the following additional OSCE bodies:[200]

ODIHR Advisory Panel of Experts on Freedom of Religion or Belief

This advisory and consultative body to the ODIHR consists of 60 expert members, serving in their personal capacities. They are nominated by either the ODIHR or participating States. The panel's expertise is available to OSCE mission offices, and

198 Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), p.91, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

199 ibid, p.94.

200 Further discussion of the role of OSCE bodies dealing with individual complaints can be found at 1.5; Office for Democratic Institutions and Human Rights, '*Preventing Torture: A Handbook for OSCE Field Staff*' (1999), pp.94-96, at <http://www.osce.org/publications/odihr/2003/10/12354_163_en.pdf>.

in response to individual complaints, members may provide expert advice or opinion, and hold discussions with participating States.

The Permanent Council

This OSCE body is comprised of delegates from all participating States. It is based in Vienna, carrying out negotiating and decision-making processes. The delegations are able to raise security issues, including individual cases within the human dimension, and exert political pressure at weekly and ad hoc Plenary Meetings. The Council receives reports from OSCE heads of institutions, heads of field missions, and the Chairman-in-Office's Personal Representatives. In certain circumstances, non-OSCE bodies have been invited to address the Council.[201] Any subsequent Council decision is reached by consensus with unanimous approval.

201 For example, the Chairman-in-Office invited representatives from the United Nations Alliance of Civilisations to address the Permanent Council on freedom of expression in 2006.

5. CONCLUSION

Chapter 1 of Part A described how expansion of OSCE membership during the 1970s and 1980s brought with it a risk that the OSCE commitments on the human dimension would not be fully implemented. The OSCE responded to this implementation deficit through the adoption of both vertical and horizontal instruments. In respect of the former, the OSCE adopted two tools; namely, the Vienna Mechanism and the Moscow Mechanism. Despite some political drawbacks, together they have facilitated the positive development of human rights standards in participating States, especially in respect of States belonging to the former Soviet Republic. On the horizontal plain, the main vehicle utilised to further OSCE substantive rights and freedoms has been the mobilisation of OSCE field missions. This two-pronged approach has been affected in particular countries and in particular fields with considerable success.

Chapter 2 considered how the OSCE deals with individual complaints. Although several of its institutions are mandated to deal with individual complaints, individuals are still precluded from accessing the relevant OSCE body. The main reason for this is a lack of clarity as to which body complainants should direct their complaints. Nor are their any independent safeguards built into the assessment process. In the future the OSCE must look forward to ways of overcoming both its democratic deficit and the barriers facing individuals wishing to bring their complaints to one of its institutions. It is suggested that the establishment of a formal and independent complaints body would go some of the way towards ameliorating these inherent difficulties.

The Guidelines listed in Chapter 3 are intended to be used as a general aid for field staff conducting interviews in specific human rights areas. There is, however, no comprehensive and codified body of procedural rules guiding the submission and assessment of individual complaints in these or indeed any areas within the human dimension. This oversight is hugely problematic for individuals who, as a result, have no guarantee that their complaint will be dealt with in accordance with the rule of law, nor a body to which they can appeal decisions of the arbiters overseeing their complaint. A precise, comprehensive and codified body of procedural rules for the submission and assessment of individual complaints is needed.

The reporting of individual complaints was explored in Chapter 4. OSCE procedure in these respects is uniform, systematic and secure. As regards the follow-up of

complaints, referral to domestic bodies is, and should necessarily be, the first step. There is an unavoidable risk, however, that complaints are not followed-up beyond the first domestic body. A formal and independent complaints body would again help to ensure that complaints are systematically followed-up through to institutionally higher domestic bodies.

B. THE EUROPEAN PARLIAMENT: AN OVERVIEW

6.1 Introduction to the European Parliament and the Right to Petition

Making a formal petition to the European Parliament is just one of a number of ways which individual citizens or residents of the European Union (EU) can interact with the European Parliament. Other means of interaction include writing to Parliament or making a request to see public documents. This section will focus on providing an overview of practice and procedure regarding individual petitions to the European Parliament

The European Parliament is the parliamentary body of the EU. The origins of the European Parliament lie in the Treaty of the European Coal and Steel Community (ECSC) 1951, which established an executive European 'High Authority'. This included a parliamentary assembly, known as the Common Assembly. The establishment of the European Economic Community (EEC) and the European Atomic Energy Community ('Euratom') in 1958 continued this notion of the 'European Community' (EC). The ECSC Common Assembly became the European Parliamentary Assembly, expanding to encompass all three Communities.

In 1962 the European Parliamentary Assembly renamed itself the European Parliament. The European Parliament is intended to represent the citizens of the EU, in order to provide a democratic basis for the EC.

There has been a significant expansion of the Parliament's powers, notably with the signing of the Treaty on European Union in 1992 (the Maastricht Treaty), the Treaty of Amsterdam amending the Treaty of the European Union in 1997 (the Amsterdam Treaty), the Treaty of Nice in 2001 and the Treaty of Lisbon in 2007.[202] In particular, the Maastricht Treaty recognised the right to petition within the procedures of Parliament, which provided it with committees of enquiry, bringing about greater legislative powers to the Council of the European Union.[203]

202 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community signed at Lisbon 13 December 2007. This treaty came into force on 1 December 2009.

203 The Council of the European Union is not to be confused with the Council of Europe which will be discussed in Part C.

There are now 27 Member States of European Parliament and 785 elected members. Members serve a term of five years and are affiliated to recognised political groups, rather than being tied to a nationality (alternatively, they may remain 'non-attached').

It has long been established that fundamental rights form an integral part of the general principles of EC law.[204] However, it was not until the proclamation of the Charter of Fundamental Rights on 7 December 2000 that fundamental rights for the EU were codified. An amended version of this Charter[205] is appended to the Treaty of Lisbon which entered into force on 1 December 2009. Article 44 of the Charter of Fundamental Rights provides that 'any citizen of the Union and any natural or legal person residing or having its registered office in a Member State, has the right to petition the European Parliament.'

6.2 The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union sets out in a single text for the first time the whole range of civil, political, economic and social rights of European citizens and residents. The Charter is divided into six sections with 54 articles dealing with dignity, freedoms, equality, solidarity, citizens' rights and justice. The rights outlined in the Charter are based on the fundamental rights and freedoms recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the constitutional traditions of the EU Member States, the Council of Europe's Social Charter (ESC), the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the EU or its Member States are parties. Following the enactment of the Treaty of Lisbon on 1 December 2009, the Charter became legally binding. However, its provisions are addressed to Member States and the institutions and bodies of the Union only when they are implementing EU Law.

6.3 The Committee on Petitions

The Committee on Petitions is a standing committee of the European Parliament. It is comprised of 40 members drawn from the European Parliament and headed by a Chairman and four Vice-Chairmen. The Parliament has recognised what it claims to be the Committee's significant role in exercising parliamentary scrutiny over EU institutions and national, regional, local and social administrations.[206] The

204 Case 228/69, *International Handelsgesellschaft mbH v Einfuhr und Corratsstelle fur Getreid und Futtermittle [1970] ECR 1125.*

205 See Appendix I.

206 Resolution A5-0050/2000 of 16 March 2000.

Committee's members meet on a regular basis to determine the admissibility of petitions and the procedures to be adopted for dealing with them. The Committee is assisted in its role by a permanent secretariat.[207] The Committee is also responsible for liaising with the European Ombudsman.

6.4 The European Commission

The European Commission is the executive body of the EU. It is comprised of 27 commissioners, headed by the President of the Commission, and divided into 40 directorates-general. The Commission's purpose is to represent the common European interest of all Member States of the EU. As the executive body, it drafts and proposes legislation which will be consideration by the European Parliament and Council of the European Union. Its role also involves policy implementation, budgetary administration, and management of activities of the EU. In relation to petitions, the Committee on Petitions often consults with the Commission, where appropriate, as it has greater resources at its disposal. The Commission's mandate is restricted to matters falling within the 'European Community' – that is, economic, social and environmental laws and policies.

6.5 Right to Petition the European Commission

Since the enforcement of the Lisbon Treaty in December 2009 EU citizens are provided with a further form of petition called the European Citizens Initiative (ECI). This provision enables EU citizens to request the EU Commission to propose new legislation. This is the first step within the EU towards direct democracy. Articles 11 cover the rules of bringing a petition and provides that 'Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'.[208] The Commission has issued a 'green paper'[209] to the public which is intended to gather suggestions on the ECI procedure from the citizens as well as organisations. This was concluded on 31 January 2010 and procedural definitions have been drawn up since. It is not defined in the Treaty what a 'significant number of Member States'

207 Further discussion on the Committee's procedure can be found under Chapter 7.3 'Decision on Substantive Admissibility'.

208 Lisbon Treaty 2007, Article 11(4).

209 *The Green Paper,* on a European Citizens' Initiative, Brussels, 11.11.2009, COM(2009) 622; <http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2009_622_en.pdf>.

means, however, it has been suggested that the one million signatures should stem from a third of Member States which makes up nine Member States.[210]

6.6 Right to Petition the European Parliament

The right to submit petitions to the European Parliament (initially established by the internal regulations of the European Parliament)[211] was included in the Treaty of Maastricht in its provisions on European citizenship.[212] Article 44 of the Charter of Fundamental Rights of the European Union reproduces Article 194 of the Maastricht Treaty exactly.

The submission of petitions allows the European Parliament to bring an infringement of EU citizens' and residents' rights to the attention of the Committee on Petitions. Over 10,000 petitions are submitted each year, with around two-thirds declared admissible by the Committee.[213] The right of individual petition has formed the subject of numerous resolutions of the European Parliament.[214] These resolutions are emblematic of the Parliament's belief in the importance of upholding citizens' rights and their contribution to the implementation of Community law. Many resolutions have called for an improvement in the procedures for lodging and dealing with petitions in order to increase their effectiveness. Despite this, the right remains little used and the procedures can be difficult to understand for those not well versed in EC law.

The right to petition is limited to EC law. Since the enactment of the Lisbon Treaty in December 2009, the main body of rights, upon which petitioners may rely, are contained in the Charter of Fundamental Rights of the European Union. In addition, individual petitioners have recourse to the rights defined in the ECHR[215] as the Protocol to the Lisbon Treaty[216] provides for accession of the European Union to the Convention.

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210 *The Green Paper*, on a European Citizens' Initiative, COM (2009) 622; <http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2009_622_en.pdf>.

211 Article 174 of the Rules of Procedure of the European Parliament of July 2002.

212 Treaty on European Union, 7 February 1992, Articles 21 and 194.

213 European Parliament website, 'Fact Sheets on the European Union', at <http://www.europarl.europa.eu/facts/2_5_0_en.htm>.

214 Including Resolution A5-0050/2000 of 16 March 2000, Resolution A5-0162/2000 of 6 July 2000, Resolution A5-0088/2001 of 15 May 2001, Resolution A5-0223/2001 of 5 July 2001, Resolution A5-0236/2001 of 6 September 2001, Resolution A5-0429/2001 of 11 December 2001, Resolution A5-0451/2002 of 15 January 2003, Resolution A5-0281/2003 of 4 September 2003.

215 European Convention on Human Rights and Fundamental Freedoms.

216 Lisbon Treaty, Protocol Relation to Article 6(2) of the Treaty on European Union on the Accession of Human Rights and Fundamental Freedoms, Article 1.

Petitions are submitted to the Parliament's Committee on Petitions which is responsible for examination of the petition. Where the Committee on Petitions decides that the petition is inadmissible petitioners are informed of the reasons for this decision. The Committee on Petitions may make suggestions suggests, if appropriate, addressing the competent authority of the Member State, the European Union or another international body. If the petition is found to be formally admissible by the Committee, the petition is then decided upon at the Committee meeting. Notice of petitions is given in Parliament, with the essential opinions and decisions in connection with the consideration by the Committee on Petitions. Each petitioner may at any time withdraw his/her support for the petition.[217] In order to secure individual privacy a petitioner can request that his/her name be withheld from publication.[218]

217 Rules of Procedure of the European Parliament, Rule 201.4.

218 Rules of Procedure of the European Parliament, Rule 201.10.

7. OUTLINE OF THE PROCEDURE FOR SUBMITTING PETITIONS TO THE EUROPEAN PARLIAMENT

7.1 Submitting the Petition to Parliament

A petition should be submitted to the President of the European Parliament. It may be submitted either by post or, using the prescribed form, online. There is no set format for a postal petition. Mass group petitions should be submitted by post only. A petition may be in the form of a complaint, request, or observation on the application or contravention of European Union laws; or an appeal for Parliament to adopt a specific position. The petition should include all of the relevant facts, and be clear and legible. A summary of the petition and copies of supporting documents may be attached to the petition. A petition must be submitted by a person directly affected by the issue of concern. There is no fee for lodging a petition. For an online petition, an electronic confirmation of receipt will be sent. Any future correspondence is by post. Further supplementary information or supporting documents should be forwarded to the Committee on Petitions by post with the petition reference number. To submit an online petition, visit the Parliament's website.[219] Appendix J provides an illustration of the online petition form.

The rules of procedure of the European Parliament contain conditions of formal and substantive admissibility of petitions, and the way in which they are to be examined.[220]

7.1.1 Requirements for Formal Admissibility

The Rules of Procedure of the European Parliament state that for a petition to be formally admissible, it must contain each petitioner's (or the main group petitioner's) name, nationality and permanent address.[221] It must also be signed by each petitioner. The petition must be written in one of the official languages of the Eu-

219 European Parliament website, 'Submitting a Petition', at <https://www.secure.europarl.europa.eu/parliament/public/petition/secured/submit.do?language=EN>.

220 Rules of Procedure of the European Parliament, Articles 174-176)

221 ibid, Rule 191.2

ropean Union.[222] The official languages are: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish. Alternatively, the petition will be considered where a translation or summary in an official language is attached. The translation or summary itself is exclusively relied upon by the Parliament. Any subsequent correspondence will be in the official language of the translation or summary.[223]

7.2 Entry onto Register of Documents

Once a petition has been submitted, it is assigned a petition number. Its details are entered onto a public register of documents, organized chronologically in order of receipt.[224] The petitioner's name and petition number are published. Petitions that are not formally admissible are filed, and the petitioner is informed of the reasons why. The petitioner may request that the petition be treated confidentially.[225] Such a request should be clear and explicitly mentioned in the petition. The petition is then kept in parliamentary records, and available for inspection by parliamentary members.[226] The register of documents may be viewed on the Parliament website.[227]

7.3 Decision on Substantive Admissibility

The President of the Parliament will forward a formally admissible petition to the Committee on Petitions which is responsible for examination of petitions.[228] The Committee convenes to discuss the petitions at regular meetings, held on a monthly basis (except August). Where the petition is not confidential, meetings are open to the public and the petitioner may attend upon request. The Committee on Petitions verifies the subject of the petition which should come under the fields of activity of the European Union. The European Commission also attends and participates at such meetings. The Committee determines if the petition is substantively admissible. A petition that is declared substantively inadmissible is filed, and the petitioner informed of the Committee's decision and its reasons.[229] The Committee

222 Rules of the Procedure of European Parliament, Rule 191.3

223 ibid, Rule 191.3.

224 ibid, Rule 191.4.

225 ibid, Rule 191.8.

226 ibid, Rule 193.2.

227 European Parliament website, 'List of Parliament Documents Directly Accessible Through the Register' at <http://www.europarl.europa.eu/RegWeb/application/registre/listParlDoc.faces>.

228 Rules of Procedure of the European Parliament, Rule 201.7.

229 ibid, Rule 201.3.

may, if appropriate refer the petitioner to a relevant body of a Member State, or the European Union.[230]

7.4 Further Examination of the Petition

If the petition is declared substantively admissible, the Committee may draft a parliamentary report or respond to the petition by expressing its opinions.[231] The Committee may request documents, information, or access to facilities of the European Commission.[232] It can also request opinions from other committees of the Parliament.[233] The Committee may organise hearings with petitioners or send delegations of Committee members on fact-finding missions.[234] When the Committee reaches its decisions on how to deal with the petition, the President of the Parliament is required to notify the petitioner of the decisions made and the reasons for it.[235] The Committee's reports, meeting documents and opinions may be viewed on its website.[236]

Where there is a matter of general importance, for example, if the European Commission finds that a Community law has been infringed it may consider asking the Member State concerned to submit its observations and, eventually it can open infringement proceedings against the member state for failing to fulfil Treaty obligations under Article 226 of the Treaty on the European Community.

Notice of petitions is given in Parliament, with the essential opinions and decisions in connection with the consideration by the Committee on Petitions. Everything is entered in the minutes of the proceedings, and, with the petitioner's consent, is available to the public in a database. On request by the petitioner, petitions may be examined confidentially, in which case they will not be available on the public database but will only be entered in the Parliamentary archives where they can be consulted by Parliamentarians.

230 Rules of the Procedure of European Parliament, Rule 201.3.

231 ibid, Rule 202.2.

232 ibid, Rule 202.2.

233 ibid, Rule 202.7.

234 ibid, Rule 202.5.

235 ibid, Rule 202.9.

236 European Parliament website, '6th Parliamentary Term – Meeting Documents Available' at <http://www.europarl.europa.eu/meetdocs/2004_2009/organes/peti/peti_meetinglist.htm>.

Contact details:

The President of the European Parliament
European Parliament
Rue Wiertz
B-1047 BRUSSELS
Website: http://www.europarl.europa.eu

The Secretariat
Committee on Petitions
European Parliament
Rue Wiertz
B-1047 BRUSSELS

Email: ip-PETI@europarl.europa.eu
Fax: +32 2 284 68 44

8. ASSESSMENT BY THE COMMITTEE ON PETITIONS

8.1 Who May Submit the Petition?

Under Article 44 of the Charter of Fundamental Rights of the European Union, the following persons may submit a petition:

- A citizen of the European Union;[237]
- A resident in a European Union Member State;
- A member of an association, organisation (natural or legal person) with its headquarters in a European Union Member State.

Notwithstanding this, those persons falling outside of these criteria may still submit a petition. Applications from individuals without petitioning rights can be submitted on the basis of their general right to deliberate on and deal with juridical matters. In this instance, however, there is no obligation to scrutinise or investigate the petitioner's petition.[238] Petitions which are submitted by persons falling outside of the criteria are registered and filed separately. The President of the Parliament sends a record of the petition's subject matter to the Committee on a monthly basis. The Committee can request specific petitions which it particularly wishes to examine.[239]

8.1.1. Citizens of the European Union

A citizen of the EU is anybody who holds the nationality of a Member State.[240] Nationality is determined in accordance with the national law of the relevant Member

237 A list of European Member States can be found at Appendix H.

238 Recommendation CM/Rec (2007) 14 of the Committee of Ministers to Member States on the legal status of non-governmental organisations in Europe.

239 Rules of Procedure of the European Parliament, Rule 201.13.

240 Article 17(1) (formerly 8(1), second sentence, EC Treaty.

State.[241] Citizenship and nationality co-exist and are not necessarily synonymous.[242] Citizens of the EU enjoy the rights envisaged by the Treaty and are subject to the duties found therein. [243] These rights and duties are in addition to those held by nationals of Member States. To this extent, citizenship of the EU confers upon nationals, rights which are specific to the nature of the Union and are exercised and safeguarded specifically by the Union, not only within its boundaries but also beyond them. Against this background, the right of petition held by citizens of the EU should be regarded as an active expression of a right derived directly from European citizenship.

8.1.2 Residents of the Member States

Natural persons residing in Member States also benefit from the right to petition. It is unclear whether the term 'resident' refers to legal or illegal residents. Given that legal residents benefit from the rights granted to EU citizens, their right to submit a petition is safeguarded. In contrast, illegal immigrants do not normally benefit from the rights granted to EU citizens. In determining whether an illegal immigrant may exercise the right to petition, the Committee should take into consideration the following: (a) the Declaration on Human Rights and Fundamental Freedoms[244] which states that the right to petition shall be extended to everyone;[245] (b) it is recommended that the European Parliament should study admissibility on the basis of the material object of the petition rather than on the basis of the person submitting it;[246] and (c) the fact that the European Parliament can grant the right under certain conditions to non-residents of the Community to submit petitions.[247]

8.1.3 Legal Persons with their Registered Office in a Member State

The only requirement regarding petitions submitted by legal persons is that they should have their registered office in a Member State.[248] Where the office is registered is determined in accordance with the national law of the relevant Member State. Legal persons are defined in accordance with the national law of each

241 See for example, Case C-129/99, *The Queen v Secretary of State for the Home Department, ex parte Manjit Kaur.*

242 Article 17(1) third sentence EC Treaty.

243 Article 17(2) EC Treaty.

244 Adopted by the European Parliament in May 1989.

245 Declaration on Human Rights and Fundamental Freedoms, Articles 23 and 25.

246 1989 report to the plenary of the European Parliament.

247 Rules of Procedure of the European Parliament, Rule 201.13.

248 EC Treaty, Article 194.

Member State and include companies pursuing economic activities, federations[249], associations[250], foundations[251], committees[252], action groups[253], and local and international non-governmental organisations.[254]

Certain questions may need to be answered regarding the admissibility of petitions submitted by companies, including whether the company has been formed in accordance with the law of a Member State; whether the companies have their central administration or their principal place of business or both within the Community; and whether, in the case of agencies, branches or subsidiaries, they also have an effective and permanent link with the economy of a Member State.[255]

Non-governmental organisations (NGOs) encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can either be membership or non-membership based. In relation to these bodies the Committee of Ministers (CoM) has advised that the following features are indicative of being a legal personality:[256]

- Statutes comprising the constitutive instrument or instrument of incorporation and, where applicable, any other document setting out the conditions under which they operate;
- The NGO is a voluntary self-governing body or organisation established to pursue the essentially non-profit-making objectives of their founders or members;
- The NGO does not include political parties.

8.1.4 Non-Resident Citizens of Third Countries and Legal Persons with a Registered Office Outside the Community

Petitions by natural or legal persons who are neither citizens of the EU nor reside in a Member State nor have their registered office in a Member State are registered and filed separately. The President sends a monthly record of such petitions re-

249 See, for example, the Federation of European Motorcyclists, Petition No. 754/92: the Bavarian Federation of Market Salesmen, Petition No. 483/92.

250 See, for example, the 'National Nature Conservation Association of Portugal', Petition No. 641/92

251 See, for example, the 'Fondation universitaire Luxembourgeoise', Petition No. 759/90.

252 See, for example, the 'Committee for Science and Technology Museums' in Padua, Italy Petition No. 711/92.

253 See, for example, 'Anti-Fur Campaign Group', Petition No. 452/92.

254 Petition 472/2000 submitted by 'Denia Fisheries Association'.

255 Articles 52 and 58 EEC and Title 1 of the General Programme.

256 Recommendation CM/Rec (2007) 14 of the Committee of Ministers to Member States on the legal status of non-governmental organisations in Europe.

ceived during the previous month, indicating their subject matter, to the committee responsible for considering petitions, which may request those which it wishes to consider.[257] With this provision the European Parliament retains the right and the possibility to receive applications from individuals who do not have petitioning rights as such. However, the European Parliament can deliberate on and deal with judicial matters submitted by petitioners' with no guaranteed right to petition, on the basis of the European Parliament's right to take such petitions into consideration. However, there is no obligation that a scrutiny or investigation of the petition is provided to the petitioner. Hence, while citizens of the Union and residents of Member States have an automatic right to have their petitions considered, non-resident citizens of third countries do not enjoy this right automatically. Persons with an automatic right to have their petitions considered must also prove that the subject matter of their petition affects them directly. Petitions regarding issues such as the free movement of persons, the right of residence and the right of asylum should always be examined by the Committee. This lower admissibility threshold also applies to foreign policy issues such as the recognition of new states, financial external aid and human rights in third countries. In addition, the Committee on Petitions will be more sensitive to petitions submitted from natural persons than those submitted by non-EEC multinational companies, which might have been affected by certain Community protectionist practices.

8.2 Which Subjects can a Petition Deal With?

The subject of the petition must be concerned with issues of European Union interest or responsibility such as:

- A petitioner's rights as a European citizen as set out in the Treaties;
- Environmental matters;
- Consumer protection;
- Free movement of persons, goods and services and the internal market;
- Employment issues and social policy;
- Recognition of professional qualifications;
- Other problems related to the implementation of EU law.

In addition the object of the petition:

- Must refer to a subject originating from the fields of Community activity;
- Have a direct impact on the petitioner.

The following petitions which were declared admissible and fall within the above named subject areas are as follows. The petitioner[258] submitted a claim that building

257 Rule 201.13 of the procedures of the European Parliament.

258 Petition <NPET>0900/2008</NPET> by Inge Russ-Aigner (German), CM\802692EN.doc.

works on a plot of land did not fall within the EU directive[259] regulating the evaluation of the environment. Although the issue came within EU Community Law the Commission declared that there was not enough evidence for them to assess the issue in relation to the Directive and did not issue a 'Notice to Member States'.

A further example within the area of national implementation of EU legislation on pension funds was the petition brought by a German national[260] claiming that the German Government restricted his freedom of movement within the Union by making citizens pay back all benefits to the State if they were customers of 'Riester Pension'. 'Riester' pays out cash-allowances such as child benefit to people who are subject to German Tax Law. The Commission held that this provision is incompatible with the right to free movement as well as the ban on discrimination. Due to this incompatibility the Commission opened up an infringement procedure, though Germany refused to amend their national laws accordingly. Therefore, the case was referred to the European Court of Justice (ECJ). The ECJ agreed with the Commission's conclusion and held that German Tax Laws were incompatible with the EU right of free-movement as well as discrimination. Once the legislation has been adopted in accordance with the ECJ decision the infringement procedure will be closed.

The majority of petition decisions published called 'Notice to Members', are in the area of environmental complaints. Since the beginning of 2010, 12 such documents have been published.[261] If not concerning environmental matters then petitions often come under the issue of wrong or omitting the implementation of EU Directives in national law.

Another case concerning Italy was brought to the Commission's attention by an incident in 1994. According to the complainant, a German national who travelled to Italy on business, received a visit from the police on the night of his arrival. They invited him to accompany them to the alien's office at the *Questura*, where he was informed that he was considered *persona non grata* in Italy. He was obliged to sign a declaration requiring him to leave Italy but received no explanations as to why this measure was taken.

In the Commission's view, on the basis of the information available, the Italian authorities had failed to comply with their obligations under a Directive concerning restrictions of free movement on grounds of public policy, public security or public health (64/221/EEC). According to the Directive, as confirmed by the case law of

259 Directive 2002/49/EC, OJ L 189, 18.7.2002, p. 12.

260 Petition 0<NPET>141/2008</NPET> by Manuel Berkel (German), CM\802684EN.doc.

261 European Parliament website, website search facility at <http://www.europarl.europa.eu/activities/archives/comDocSearch/documentSearch.do?language=EN&startValue=0>.

the Court of Justice, Member States may expel EU nationals only if they would have represented a genuine and sufficiently serious threat to public order. Moreover, the Directive required that, in respect of any expulsion order, the person concerned should receive an explanation of the reasons for his expulsion, unless state security is involved. He should access to the same legal remedies as are available to nationals of the state concerned in respect of administrative acts. The Commission did not have any evidence that explanations or remedies were offered in this case. The Italian authorities failed to respond to the letter of formal notice sent concerning this case. On the basis of the information available it was not possible to examine whether the rights guaranteed by the Directive were respected.

If a satisfactory reply is not forthcoming within two months of receipt by the Member State concerned of the reasoned opinion, the Commission may refer the matter to the ECJ.

Additionally, the right to petition does not include competencies that fall within the second and third pillars of the Treaty on Economic Union i.e. common, foreign and security policy, and police and judicial cooperation in criminal matters.

The following matters will not be dealt with by the Committee on Petitions:

- Requests for information and general comments on European Union policy;[262]
- Complaints on the maladministration of European Union institutions and bodies (this falls within the European Ombudsman's mandate);[263]
- Requests to pass judgment on, or revoke decisions by the courts of law of Member States;[264]
- Requests to override decisions by competent and responsible authorities within Member States, on other matters of national, regional or local responsibility (for example, the implementation of education systems).[265]

262 European Parliament website, 'Who Can Submit a Petition and on What Subjects?' at <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&pageRank=2&language=EN>.

263 Rules of Procedure of the European Parliament, Rule 201(12).

264 European Parliament website, 'What Action is Taken in the Case of Admissible Petition?' at <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&pageRank=4&language=EN>.

265 European Parliament website, 'What Action is Taken in the Case of Admissible Petition?' at <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&pageRank=4&language=EN>.

9. REPORTING AND FOLLOW-UP

9.1 Reporting to the European Parliament

The Committee on Petitions must report regularly to the European Parliament. During parliamentary plenary sittings, the Committee gives notice of its determinations on the procedure of a particular petition to the Parliament.[266] Provided, the petition is not confidential, the notice is published in the parliamentary meeting.[267] The Committee is required to inform the Parliament every six months about petition outcomes and measures taken,[268] although in practice this occurs with the tabling of annual reports. Members of the Parliament may request updates from the Committee or European Commission on the progress regarding its dealings with petitions, this is done by submitting a parliamentary question. Parliamentary questions and their responses are published in the Official Journal of the European Union. Appendix K provides an example of a Notice to Members by the Committee on Petitions. Notices to Members may be viewed on the Committee website.[269] The Official Journal of the EU may be viewed on the EU website.[270]

9.2 Follow-up Options

The Committee of Petitions has a variety of different options in the procedure of following-up with petitions. These are listed in more detail below.

9.2.1 The Committee on Petitions

The Committee of Petitions is covered by the Rules of Procedure of the European Parliament Title VIII.[271] Where the Committee considers it appropriate to follow up a petition it Petitions may ask the European Commission to conduct a preliminary

266 Rules of Procedure of the European Parliament, Rule193 (1).

267 ibid, Rule 203(1).

268 ibid, Rule 303(3).

269 European Parliament website, 'Petitions' at <http://www.europarl.europa.eu/activities/committees/noticeMembersCom.do?language=EN&body=PET>

270 EUR-Lex website, 'Official Journal of the European Union' at <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>.

271 Rules of Procedure of the European Parliament, Title VIII, Rules 201-203.

investigation and provide information regarding compliance with relevant Community legislation or contact SOLVIT.[272] Additionally, it may invite the President of Parliament to intervene with national or, local authorities of Member States.[273] In majority of cases he/she will request assistance from the European Commission. The Committee on Petitions may also refer the petition to another European Parliament committee, such as the Committee on Foreign Affairs, requesting its opinion or further information and action. In exceptional circumstances, the Committee may submit a proposed policy initiative to the Parliament, which would be voted on during plenary sittings.[274] It may also in such exceptional circumstances, conduct a fact-finding visit to the country or region concerned and issue a Committee report containing its observations and recommendations. Finally the Committee may take any other action considered appropriate to try to resolve an issue or deliver a suitable response to the petitioner.

The Committee on Petitions cannot, however, override decisions taken by competent authorities within Member States. As the European Parliament is not a judicial authority it can entire pass judgment on, nor revoke decisions taken by, the courts of law in member States. Indeed petitions which seek such courses of action will be found to be inadmissible.

9.2.2 The European Commission

Where the Committee on Petitions decides to consult with the European Commission, the Commission undertakes a preliminary investigation into the matter obtains relevant information and drafts a response to the petition. It may intervene with national or local authorities of Member States or with the representatives of Member States themselves. The Commission may find that it does not possess powers to intervene, particularly with matters falling outside of the 'European Community'.

Whether further action is required depends on the particular case. If the petition is a special case requiring individual treatment, the Commission may contact the appropriate authorities or put the case to the permanent representative of the Member State concerned. This is likely to settle the matter. In some cases the Committee asks the President of Parliament to make representations to the national authorities. If the petition concerns a matter of general importance, for instance, if the Commis-

272 SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein).

273 Rules of Procedure of the European Parliament, Rule 202(7).

274 ibid, Rule 202(2).

sion finds that Community law has been infringed, the Commission can institute legal proceedings. This process is likely to result in a ruling by the Court of Justice to which the petitioner can then refer. Alternatively, the petition may result in political action taken by the Parliament or the Commission. In every case the petitioner receives a reply setting out the result of the action taken.

The Commission's responses to petitions can be viewed on its website.[275]

9.2.3 The European Ombudsman

The Committee on Petitions may refer a petition, where appropriate, to the European Ombudsman.[276] The Ombudsman is elected to an independent and impartial office by the European Parliament, and deals with complaints of poor or failed administration by the European Union's institutions and bodies. This occurs if an institution fails to act in accordance with the law, fails to respect the principles of good administration, or violates human rights. Some examples are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay. A matter referred to the Ombudsman will be investigated, and further information will often have to be obtained. The Ombudsman may attempt to conciliate the complaint, refer the matter to the relevant institution, provide recommendations to that institution or submit a special report to Parliament. The Parliament will not refer any matter relating to court proceedings or complaints on decisions made by competent and responsible authorities within Member States, regarding matters of national, regional or local responsibility.

Citizens or residents of Member States can also make a complaint directly to the European Ombudsman about maladministration of the EU institutions and bodies. Businesses associations or other bodies with a registered office in the Union may also complain to the Ombudsman. A complaint can be made by writing a letter to the European Ombudsman or by using the complaint form provided on the Ombudsman's website.[277]

275 European Commission website, 'Petition Responses' at <http://ec.europa.eu/commission_barroso/president/contact/petitions/index_en.htm>.

276 Rules of Procedure of the European Parliament, Rule 201.12.

277 The European Ombudsman website at <http://www.ombudsman.europa.eu>.

Contact details of the European Ombudsman:

The European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
FR-67001 Strasbourg Cedex
France
Telephone: +33 (0) 3 88 17 23 13
Website: http://www.ombudsman.europa.eu

10. CONCLUSION

The right petition the European Parliament empowers individuals to police Member State implementation of Community law. Its main advantage, in comparison to the European Court of Human Rights (ECtHR), is that it provides petitioners with a vehicle to bring human rights abuses to the attention of the European Parliament without having to initiate costly and time-consuming court proceedings. By doing so individuals are offered a form of redress: where national law is incompatible with EU Community law the Commission may initiate infringement proceedings in the ECJ.

The right to petition is limited, however, in two main respects. First, the Committee on Petition's jurisdiction is restricted to matters falling within its' field of activity. As a result the Committee cannot deal with petitions concerned with issues falling within the second and third pillars of the EU Treaty, including crime, security policy, police and judicial cooperation. Areas falling within the jurisdiction of other EU institutions are also precluded from forming the basis of a petition. Petitions cannot, for example, make complaints on the maladministration of the institutions (which falls within the European Ombudsman's mandate), or request a judgement on a national court's decision (which falls under the ECJ's mandate).

Second, the redress petitions provide is limited. Because the Commission has discretion as to whether it refers cases to the ECJ, infringements proceedings are not guaranteed. Moreover, the Commission's decisions are not legally binding. As such, they cannot legally be enforced.

Despite these legal limitations, in practice there is considerable political pressure on Member States to comply with the Commission's decisions: decisions are published and Member State compliance is reviewed on a regular basis. Hence, the right to petition should properly be considered, alongside the ECtHR, as a valuable and alternative tool for natural and legal persons registered in Member States to highlight shortcomings in national legislation with Community human rights commitments.

C. THE COUNCIL OF EUROPE: AN OVERVIEW

11.1 Introduction to Human Rights and the Council of Europe

For the past sixty-five years, the Council of Europe has built up considerable powers in the matter of human rights. These powers encompass mainly standards pertaining to civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and the fight against racism. Additionally, the Council of Europe has powers concerned with the active monitoring of these standards by its member states. This monitoring is done by several well-established human rights bodies with recognised expertise and professionalism. The monitoring is done both on a country-by-country basis and increasingly with the common feature that the monitoring bodies are mutually independent. One of the primary aims of the Council is the protection of human rights. Consequently, it has adopted several international treaties which permit individuals to bring claims against the State, alleging violations of their human rights before both international and regional bodies, the most notable of these is the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR).

The primary institution of the Council of Europe that provides a legal basis for matters concerning the violation of human rights is the European Court of Human Rights (ECtHR) in Strasbourg. However, the aim of this section is not to analyse the impact of the Court on European human rights legislation, nor to analyse the effectiveness of the ECHR. Rather, this section will focus on the numerous other treaties and institutions of the Council of Europe.

The Council of Europe was the first intergovernmental organisation in Europe, following the Second World War. It stated aims are to 'achieve a greater unity' between Member States, realise common ideals and principles, and facilitate the progress of Member States both in economic and social terms. The Council was established in May 1949, following the advocacy of United Kingdom Prime Minister Winston Churchill for a 'United States of Europe' that was 'free and happy'. The Council was thus formed by the Treaty of London 1949, now known as the Statute of the Council of Europe. There were originally ten Member States: Belgium, France, Luxembourg, the Netherlands and the United Kingdom, accompanied by Ireland, Italy, Denmark, Norway and Sweden. During 1949 to 1970 eight new countries joined, including Greece, Iceland, Turkey, Germany, Austria, Cyprus, Switzerland and Malta. In the

late 1980s Eastern European Countries started joining the Council of Europe. Today there are 47 Member States. The permanent seat of the Council is located in Strasbourg, France. To date there are 47 State Parties to the Council of Europe. However, in the past there have been a number of crises relating to membership accessions. In 1969 Greece withdrew its membership shortly before a decision to exclude it following a military coup by a regime which openly rejected the Council's principles was made. Five years later, after the fall of the dictatorship, Greece was readmitted. A similar situation occurred in 1988 when Turkey withdrew its seat after the military coup d'état in Turkey. Following elections which were held three years later Turkey re-joined.

The Council of Europe is comprised of four main institutions: the Committee of Ministers (CoM); the Parliamentary Assembly; the Congress of Local and Regional Authorities; and the Secretary General. The CoM is the Council's executive and decision-making body. It is comprised of the 47 foreign ministers from Member States. The Committee meets annually for each session, to collectively discuss all matters of mutual interest to Member States excluding, however, national defence. The Committee's role includes admitting, suspending or terminating Member States, monitoring state respect for the Council of Europe's commitments, adopting international treaties and non-binding recommendations to Member States and supervising the execution of judgments handed down by the ECtHR.

The Parliamentary Assembly of the Council of Europe is a political forum of the Council. It consists of over 600 members, either appointed or elected by their respective national parliaments (two to 18 delegates from each Member State). The Parliamentary Assembly meets four times a year to debate and consider relevant issues, such human rights and democracy. Its role includes visiting and monitoring Member States, drafting Assembly reports, providing consultation on the drafting of Council of Europe international treaties, electing judges to sit on the ECtHR, adopting resolutions and opinions and make recommendations to the CoM.

The Congress of Local and Regional Authorities of Europe was initially established as the Conference of Local Authorities of Europe in 1957. It was replaced in 1994 by the Congress of Local and Regional Authorities. The Congress is considered the local and regional arm of the Council of Europe. It is a political assembly of representatives from over 200,000 local and regional authorities of the Member States, which meets on an annual basis. There are presently 318 full and 318 substitute members (the number of representatives from each member State ranges between two and 18). The Congress consists of the Chamber of Regions (representatives from authorities operating between state and local authority level) and Chamber of Local Authorities (representatives from other territorial authorities). The mandate of the Congress is to promote and monitor both local and regional democracy and governance.

The Secretariat of the Council of Europe serves both the CoM and Parliamentary Assembly. The Secretary General, together with the Deputy Secretary General and other required staff, comprises the Secretariat. Under the Statute of the Council of Europe, the Secretary General is responsible to the CoM for the day-to-day work of the Secretariat. The Secretary General must also provide secretariat assistance where required by the Parliamentary Assembly. Furthermore, the Secretary General is responsible for the strategic management of the Council of Europe's budgetary expenditure and financial reporting. The Secretary General is elected by the Parliamentary Assembly for a five year term.

11.2 Convention Rights under the Council of Europe

One of the Council of Europe's most significant achievements was the adoption of the ECHR by the Member States in 1950. The ECHR created a right of individual petition, whereby individuals could take a case challenging a member State initially to the European Commission of Human Rights (established in 1954) and subsequently to the ECtHR (established in 1959). Members of the Council of Europe must accept the principles of the rule of law and enjoyment of human rights and fundamental freedoms.[278] Thus, for new member States the signing and ratification of the ECHR and its Protocols within a specified timeframe is one of the conditions for entry into the Council of Europe. The majority of member States have incorporated the Convention into their domestic legal system, thus enabling the domestic courts to invoke the ECHR principles and ECtHR case law.

Practical information on using the ECHR and taking cases to the ECtHR can be found in the Kurdish Human Rights Project (KHRP) publication *Taking Cases to the European Court of Human Rights: A* Manual.[279] As stated above, this section therefore, is concerned with international treaties other than the ECHR, which have been adopted by the Council of Europe, and their impact on the protection of human rights as well as the monitoring of human rights violations. For a table of signatures and ratifications of Member States visit the Council's website.[280]

11.2.1 Social and Economic Rights

While the ECHR focuses predominantly on civil and political rights the European Social Charter (ESC) 1961 specifically guarantees the protection of economic

278 Statute of the Council of Europe, Article 3.

279 KHRP, *Taking Cases to the European Court of Human Rights: A Manual*, (KHRP, London, August, 2002); This can be downloaded for free from our Download Library by registered member, or purchased from the KHRP shop <http://www.khrp.org>.

280 Council of Europe website, 'Complete List of the Council of Europe Treaties' at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>.

and social rights. Since the ESC additional Protocols have been established. The first in 1988 which came into force on 2 September 1992 covering workers' rights and rights' of the elderly. In 1991, a further document was drafted, amending the European Charter of Social Rights (ECSR) in order to improve the reporting and enforcement procedures of the Charter. The CoM adopted a further document in 1995 which provided a system of collective complaints which has provided for a stronger enforcement of the Charter rights. The rights within the Charter are designed for all individuals of Member States of the Council of Europe.

The ESC includes the following rights:

- The right to just conditions of work, including reasonable working hours, paid public holidays, and paid annual leave;[281]
- The right to safe and healthy working conditions;[282]
- The right to fair remuneration, including the right of men and women workers to equal pay for work of equal value, and the right to a reasonable period of notice for termination;[283]
- The right to freedom of association, for workers and employers to form and join local, national or international organisations for the protection of their economic and social interests;[284]
- The right to collective bargaining of terms and conditions for employment, and to collective action such as the right to strike;[285]
- The right to protection of health, including the provision of advisory and educational facilities, and preventing as far as possible epidemic, endemic and other diseases;[286]
- The right to social security;[287]

281 European Social Charter 1961, Article 2.

282 ibid, Article 3.

283 ibid, Article 4.

284 ibid, Article 5.

285 ibid, Article 6.

286 ibid, Article 11.

287 ibid, Article 12.

- The right to social and medical assistance, with the State to ensure that any person without adequate resources and unable to secure such resources be granted adequate assistance and necessary medical care;[288]

- The right to economic, legal and social protection for the full development of family life;[289]

- The right of workers to undertake gainful occupation in the territory of another Member State.[290]

The ESC has proven successful on two accounts. Firstly, the concept of economic and social rights have obtained widespread acceptance under the Charter (only two member States have not signed the revised Charter).[291] Secondly, it has led to the establishment of a collective complaints procedure to the ECSR, under the Additional Protocol to the ESC of 1995[292] (ratified by 12 member States).[293]

In the drafting of the Social Charter, the members States recognised that one of the main aims of the Council of Europe was 'facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms'.[294]

The CoM adopted the Revised European Social Charter[295] and opened it for signature on 3 May 1996. It entered into force following ratification by Italy on 1 July 1999. The revised Charter provides the following additional rights:

- The right to equal opportunities and equal treatment in employment without discrimination on grounds of sex;[296]

- The right to equal opportunities and equal treatment in employment for workers with family responsibilities, including maternity and parental leave, and protection against termination of employment;[297]

288 European Social Charter 1961, Article 13.

289 ibid, Article 16.

290 ibid, Article 20.

291 Namely, Switzerland and Liechtenstein.

292 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, opened for signature 9 November 1995, entry into force 1 July 1998.

293 Namely, Belgium, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Sweden.

294 Original Charter, preamble.

295 The text of the Revised European Social Charter can be found at Appendix M.

296 European Social Charter 1996, Article 20.

297 ibid, Article 27.

- The right to protection against termination of employment, without the provision of valid reasons based on capacity, conduct, or operational requirements;[298]
- The right to protection of all workers' dignity at work, in relation to the prevention of sexual harassment, and recurring actions which are reprehensible, or negative and offensive;[299]
- The right to protection against poverty and social exclusion, with the State to ensure effective access to employment, housing, training, education, culture, and social and medical assistance;[300]
- The right to housing, with the State to ensure adequate standards and accessible pricing, and prevent and reduce homelessness;[301]
- The rights to social protection for the elderly;[302]
- The right to a special protection, in case of maternity, for employed women;[303]
- The right to appropriate social, legal and economic protection for children and young persons, the right to a special protection for children and young persons against the physical and moral hazards to which they are exposed;[304]
- The right to independence, social integration and participation in the life of the community for disabled persons;[305]
- The right to protection and assistance in the territory of any other Party for Migrant workers who are nationals of a Party and their families.[306]

The ECSR, which consists of 15 independent and impartial experts, was set up to supervise the implementation of the ESC. The ECSR will be discussed in more detail below under Chapter 12.2.

298 European Social Charter 1996, Article 24.

299 ibid, Article 26.

300 ibid, Article 30.

301 ibid, Article 31.

302 ibid, Article 23.

303 ibid, Article 8.

304 ibid, Articles 7 and 17.

305 ibid, Article 15.

306 ibid, Article 19.

11.2.2 Torture

Article 3 of the ECHR provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. While the ECHR recognised both the right of protection itself and created a right of individual petition for violation of article 3, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987[307] seeks to complement the ECHR. In the Preamble to the Convention, explicit reference is made to Article 3 of the ECHR. The Preamble continues on by stating that Member States are 'convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventative character based on visits'. Such non-judicial means include the establishment of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which 'by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment' (Article 1). The CPT examines the treatment of persons in places of detention and seeks to strengthen their protection from torture and inhuman or degrading treatment or punishment.[308] The Convention has been ratified by all Member States, notably Armenia,[309] Azerbaijan[310] and Turkey.[311] Further discussion on the CPT can be found in Chapter 12.3.

307 Opened for signature 26 November 1987, entry into force 1 February 1989.

308 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987, Article 1.

309 Signed 11 May 2001, ratified 18 June 2002, entry into force 1 October 2002.

310 Signed 21 December 2001, ratified 15 April 2002, entry into force 1 August 2002. Reservations: 'it is unable to guarantee the application of the provisions of the Convention in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation …'

311 Signed 11 January 1988, ratified 26 February 1988, entry into force 1 February 1989.

11.2.3 Minority Rights

The Framework Convention for the Protection of National Minorities (FCNM) of 1995 was established to recognise the protection of national minorities.[312] It has been ratified by the majority of member States including Armenia[313] and Azerbaijan,[314] but not Turkey. The FCNM is considered the 'first legally binding multilateral instrument devoted to the protection of national minorities in general'.[315] However, it has been criticised on a number of fronts.[316] For instance, the FCNM eschews from defining the phrase 'national minority'. It also fails to establish an international enforcement mechanism, rather relying on a discretion-oriented monitoring mechanism. Furthermore, the Framework Convention's objectives and principles have been described as 'vaguely defined'.

In relation to the phrase 'national minority', it could be said that its meaning may be implicitly read from the Convention (particularly from Articles 5 and 6) as being a minority group in possession of a distinct cultural and territorial identity. The FCNM provides the following rights for persons belonging to a national minority:

- The right to exercise and enjoy their rights and freedoms, either individually or as a community;[317]
- The right to equality before the law and equal protection of the law;[318]
- The State will ensure full and effective equality in all areas of economic, social, political and cultural life;[319]
- The State will ensure protection against threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity;[320]

312 Opened for signature 1 February 1995, entry into force 1 February 1998.

313 Signed 25 July 1997, ratified 20 July 1998, entry into force 1 November 1998.

314 Acceded 26 June 2000, entry into force 1 October 2000. Reservations: ratification does 'not imply any right to engage in any activity violating the territorial integrity and sovereignty, or internal and international security of the Republic of Azerbaijan'.

315 Council of Europe, Explanatory Memorandum, Framework Convention for the Protection of National Minorities <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>.

316 See, for example, Geoff Gilbert, 'The Council of Europe and Minority Rights' (1996) 18 *Human Rights Quarterly* 160; Council of Europe, Parliamentary Assembly, Recommendation 1255 (1995) on the protection of the rights of national minorities, adopted 31 January 1995.

317 The Framework Convention for the Protection of National Minorities 1995, Article 3.2.

318 ibid, Article 4.1.

319 ibid, Article 4.2.

320 ibid, Article 6.2.

- The right to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.[321]

The FCNM also provides that the CoM will monitor the Treaty's implementation.[322] Further discussion on the CoM and the FCNM can be found at 12.4.

In addition, the European Charter for Regional or Minority Languages of 1992[323] provides for the protection and promotion of minority languages, as an element of cultural heritage. This Charter has been ratified by Armenia[324] but not Azerbaijan,[325] and remains unsigned by Turkey. The rights under the Charter particularly relate to persons in territories where a regional or minority language is used. The Charter provides the following rights for persons in territories where a regional or minority language is used:

- The State will ensure the elimination of discrimination against the use of a regional or minority language, where it is intended to discourage or endanger that language's maintenance or development;[326]

- The right to an education in the regional or minority language or teaching of that language as part of the curriculum, for all levels of education;[327]

- The right to have court proceedings conducted in a regional or minority language, or to use that language or present documents and evidence in that language;[328]

- the creation of media stations and publications which use the regional or minority language and ensure the freedom of direct broadcasting reception, freedom of expression, and free circulation of information;[329]

321 The Framework Convention for the Protection of National Minorities 1995, Article 7.

322 ibid, Article 24.

323 Opened for signature 5 November 1992, entry into force 1 March 1998.

324 Signed 11 May 2001, ratified 25 January 2002, entry into force 1 May 2002. Reservations: minority languages in Armenia are Assyrian, Yezidi, Greek, Russian and Kurdish languages. Bound by Articles 9(1)(a)(ii)-(iv), (1)(b)(ii), (1)(c)(ii)-(iii), (1)(d), (3), Articles 10(1)(a)(iv) and (v), (1)(b), (2)(b), (2)(f), (2)(g), (3)(c), (4)(c), (5), Articles 11(1)(a)(iii), (1)(b)(ii), (1)(c)(ii), (1)(e), (2)-(3) Articles 12(1)(a), (1)(d), (1)(f), (2)-(3); 13(1)(b), (1)(c), (1)(d), (2)(b), (2)(c),Articles 14(a)-(b).

325 Signed 21 December 2001.

326 The European Charter for Regional or Minority Languages 1992, Article 7.2.

327 ibid, Article 8.

328 ibid, Article 9.

329 ibid, Article 11.

- encouraging, fostering, and promoting cultural activities and facilities in the regional or minority language.[330]

11.2.4 Racism and Intolerance

The Council of Europe has sought to provide for the protection of persons from discrimination, racism and intolerance under various international conventions. Article 14 of the ECHR states that:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

However, it must be noted that the above article falls short of establishing a free-standing right to protection from discrimination. This limitation was sought to be remedied by Protocol 12 to the ECHR,[331] which provides for a general prohibition of discrimination. Article 1 of Protocol 12 provides:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

The Protocol has been supported by the signature of the majority of member States (including Armenia,[332] Azerbaijan[333] and Turkey).[334] However, considerable attention has been drawn to the United Kingdom's failure to sign the protocol, said to be due to the ambiguity of and potentially wide application of the phrase, 'any right set forth by law', and uncertainty over whether the Protocol allows for a defence of objective and reasonable justification.[335]

330 The European Charter for Regional or Minority Languages 1992, Article 12.

331 Opened for signature 4 November 2000, entry into force 1 April 2005.

332 Signed 18 June 2004, ratified 17 December 2004, entry into force 1 April 2005.

333 Signed 12 November 2003.

334 Signed 18 April 2001.

335 See, for example, United Kingdom, Joint Committee on Human Rights, Seventeenth Report (2005); Professor Sandra Fredman, 'Why the UK Government should Sign and Ratify Protocol 12' (2002) at <http://www.justice.org.uk/images/pdfs/protocol12.pdf>.

Another Council of Europe treaty of significance is the Additional Protocol to the Convention on Cybercrime of 2003.[336] This Additional Protocol has been signed and ratified by Armenia.[337] The Convention itself has yet to be ratified by Azerbaijan or Turkey. The Additional Protocol criminalises acts of a racist and xenophobic nature which are committed through computer systems. Article 2.1 of the Convention defines 'racist and xenophobic material' as:

> any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

The Additional Protocol provides that member States will ensure the criminalisation of acts conducted through a computer system which involve the dissemination of racist and xenophobic material,[338] threats or insults motivated by racism and xenophobia,[339] and the distribution of material which denies, grossly minimises, approves or justifies acts of genocide or crimes against humanity.[340]

In addition, it may be recalled that the ESC guarantees the protection of economic and social rights, which are deemed to be enjoyed by all persons without discrimination on any grounds, including race, colour, national extraction, or association with a national minority.[341] As previously discussed, the FCNM and European Charter for Regional or Minority Languages also apply to the combating of discrimination, racism and intolerance.

Other Council of Europe treaties in this area include the Convention on the Participation of Foreigners in the Public Life at Local Level of 1992[342] and European Convention on Nationality of 1997.[343] However, neither Convention has been signed by Azerbaijan, Armenia or Turkey. The Convention on the Participation of Foreigners in particular has failed to obtain widespread support.[344] The Convention deals with the protection of participation in public life for persons who are not nationals of

336 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Opened for signature 28 January 2003, entry into force 1 March 2006.

337 Signed 28 January 2003, ratified 12 October 2006, entry into force 1 February 2007.

338 Additional Protocol to the Convention on Cybercrime, Article 3.

339 ibid, Articles 4-5.

340 ibid, Article 6.

341 European Social Charter 1996, Article E.

342 Opened for signature 5 February 1992, entry into force 1 May 1997.

343 Opened for signature 6 November 1997, entry into force 1 March 2000.

344 As of January 2010, the Convention had been ratified by 8 member states.

the Member State, but who lawfully reside on its territory. It ensures equal terms of protection for the right to freedom of expression, freedom of peaceful assembly and freedom of association,[345] as well as certain voting rights and the right to stand for local authority elections.[346] The Convention on Nationality ensures that each Member State, in determining its own rules on nationality, must be guided by a principle of non-discrimination between persons who are nationals by birth or those who have subsequently acquired nationality.[347]

11.2.5 Gender Equality and Domestic Violence

Article 14 of the ECHR and Article 1 of Protocol no 12 are just as applicable to gender equality as they are to racism and intolerance. The ESC also resonates with the promotion of gender equality and protection against domestic violence. The ESC provides that the rights established by the Charter shall be enjoyed without discrimination on any grounds including sex.[348] The Charter protects the right of workers to equal opportunities and treatment without discrimination on grounds of sex,[349] the right to fair remuneration, including equal pay for men and women,[350] the right of workers with family responsibilities,[351] the right of employed women to protection of maternity,[352] and the right to dignity at work, including promoting against sexual harassment.[353]

The Council of Europe's CoM has also made recommendations to Member States on gender equality matters. These recommendations are adopted texts which embody the Committee's decisions, but are not binding on Member States. For example: The Committee of Ministers Recommendation on the protection of women against violence.[354] 'Violence against women' is defined as 'any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life;'[355] the Committee

345 Convention on the Participation of Foreigners in the Public Life at Local Level 1992, Article 3.

346 ibid, Article 6.

347 Council of Europe Convention on Nationality 1995, Article 5.

348 European Social Charter 1996, Article E.

349 ibid, Article 20.

350 ibid, Article 4(3).

351 ibid, Article 27.

352 ibid, Article 8.

353 ibid, Article 26.

354 The Committee of Ministers Recommendation Rec(2002)5.

355 ibid.

of Ministers Recommendation on gender mainstreaming[356] (the incorporation of a gender equality perspective in all policies at all levels/stages[357]); the Committee of Ministers Recommendation on balanced participation of women and men in political and public decision making;[358] and the Committee of Ministers Recommendation on gender equality standards and [national] mechanisms.[359] Gender equality and domestic violence matters are dealt with by the Steering Committee for Equality between Women and Men. Further discussion on the Steering Committee can be found at 12.6.

11.2.6 Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings 2005 is a comprehensive treaty which deals with the prevention of trafficking, protection of victims' human rights, and prosecution of traffickers. The Convention defines 'trafficking in human beings' as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.[360]

The Convention provides the following guarantees:

- The State will ensure measures to prevent and combat trafficking in human beings, and to discourage demand for all forms of exploitation that lead to trafficking;[361]
- The State will ensure legislative measures which establish that trafficking in human beings is a criminal offence;[362]

356 The Committee of Ministers Recommendation No R(98)14.

357 Gender Mainstreaming: Conceptual framework, methodology and presentation of good practice.

358 The Committee of Ministers Recommendation Rec(2003)3.

359 The Committee of Ministers Recommendation Rec(2007)17.

360 The Convention on Action against Trafficking in Human Beings 2005, Article 4(a).

361 ibid, Articles 5 and 6.

362 ibid, Articles 18, 19 and 20.

- The State will ensure measures to identify persons as victims of trafficking, who are entitled to certain rights to residence and assistance;[363]

- The right of persons believed to be victims of trafficking to a 30 day period of recovery and reflection, for which they shall be authorised to remain in the State's territory, and upon which they may reach an informed decision on cooperating with public authorities;[364]

- The right of victims to be issued with a renewable residence permit, where their stay is considered necessary due to their personal situation or for co-operation with public authorities in the investigation or criminal proceedings;[365]

- The right of victims to psychological and emergency medical treatment, counselling, and appropriate accommodation;[366]

- The right of victims to compensation and legal remedy;[367]

- The right to protection of private life and identity of victims.[368]

The Convention also provides for the establishment of a group of experts to monitor the treaty's implementation.[369] Further discussion on the Group of Experts on Action against Trafficking in Human Beings (GRETA) can be found at Chapter 12.7.

11.2.7 Freedom of Expression and Media

An extensive body of jurisprudence has been developed in relation to the right to freedom of expression, under Article 10 of the ECHR. It may be less well known that the right to freedom of expression and media, in the context of international broadcasting, is promoted by the European Convention on Transfrontier Television of 1989.[370] This Convention has been ratified by Turkey,[371] but remains unsigned by Armenia and Azerbaijan. In the preamble to the Convention on Transfrontier

363 The Convention on Action against Trafficking in Human Beings 2005, Article 10.

364 ibid, Article 13.

365 ibid, Articles 14.1.

366 ibid, Article 12.1.

367 ibid, Article 15.

368 ibid, Article 11.

369 ibid, Article 36.

370 Opened for signature 5 May 1989, entry into force 1 May 1993.

371 Signed 7 September 1992, ratified 21 January 1994, entry into force 1 May 1994. Declarations: the designated Central Authority is Radio and Television Supreme Council, Bilkent-Ankara.

Television, reference is made to Article 10 of the ECHR. Article 10 is described as 'one of the essential principles of a democratic society and one of the basic conditions for its progress'.

The Convention applies only to international broadcasting of television programme services.[372] Article 4 provides that the State will ensure the freedom of reception and retransmission. Conversely, the Convention places responsibilities on the broadcaster, to ensure that television programme services respect the dignity of human beings and fundamental rights. In particular, they shall not be indecent (including pornographic content), and give undue prominence to violence or be likely to incite racial hatred;[373] and to ensure that the news fairly presents the facts and events, and encourages the free formation of opinions.[374] The Convention also provides for the establishment of a standing committee.[375] Further discussion on the Standing Committee on Transfrontier Television can be found at 12.8.

A draft second protocol amending the Convention is in the process of being forwarded to the CoM for adoption and opening for signature.[376] The Draft Second Protocol[377] seeks to revise the Convention, in response to technological, societal and economic developments in television broadcasting.[378] Under the Draft Second Protocol, the Convention is to be renamed as the Council of Europe Convention on Transfrontier Audiovisual Media Services.[379] It broadens the scope of the Convention to 'audiovisual media services'.[380] The responsibilities of 'media service providers' are broadened to include a prohibition on services which contain any incitement based not just on race, but also sex, religion and nationality. The general prohibition on pornography is now framed in terms of the protection of minors (such programmes are permissible at times not normally accessed by minors). A new provision states that Contracting States ought to encourage media service providers to ensure improved access for persons with a visual or hearing disability.[381]

372 The European Convention on Transfrontier Television 1989, Article 3.

373 ibid, Article 7.1.

374 ibid, Article 7.3.

375 ibid, Article 20.

376 Council of Europe, Standing Committee on Transfrontier Television, Report of 44th meeting, T-TT(2009)12, 11 and 12 June 2009.

377 Draft Second Protocol Amending the European Convention on Transfrontier Television and its Explanatory Report, T-TT(2009)007FIN_en, 24 September 2009.

378 Draft Second Protocol to the convention on Transfrontier Television, Preamble.

379 ibid, Article 1.

380 ibid, Article 1.

381 ibid, Article 7.

12. THE COUNCIL OF EUROPE INSTITUTIONS – DEALING WITH HUMAN RIGHTS

The primary institution of the Council of Europe that provides legal remedy for the violation of human rights is the ECtHR. An individual may lodge a complaint with the ECtHR for an alleged breach of the Convention by a Contracting State, following the exhaustion of domestic legal avenues. The ECtHR is one of numerous Council of Europe institutions involved in the upholding of human rights. Their mandates vary from deciding upon human rights complaints, to the broader protection and monitoring of human rights. The former is illustrated by the ECSR, which receives collective complaints about State violations of the ESC.

As to the other institutions, the CPT acts as a non-judicial preventative mechanism, empowered with the ability to inspect places of detention within Contracting States. The CoM possesses the mandate to evaluate reports by Contracting States on the implementation of the FCNM. The GRETA also evaluates state reporting on the implementation of the Convention on Action against Trafficking in Human Beings. Similarly, the Standing Committee on Transfrontier Television monitors the implementation of the European Convention on Transfrontier Television. The European Commission against Racism and Intolerance (ECRI) monitors Contracting States and makes State-specific recommendations on racism and intolerance issues. The Steering Committee for Equality between Women and Men (CDEG) exercises a broad mandate in dealing with gender equality and domestic violence issues. Finally, the Commissioner for Human Rights, an independent body which was set up in 1999 which deals generally with the promotion of human rights and measures for reform.

12.1 The Commissioner for Human Rights

The Commissioner for Human Rights is an independent, non-judicial institution within the Council. Its mandate involves fostering the observance of human rights and assisting with the implementation of human rights standards, promoting education and awareness, identifying potential shortcomings in law and practice, facilitating the activities of national human rights structures including ombudsman institutions, and providing advice and information. In carrying out its mandate, the Commissioner co-operates, for example, with the United Nations, the European Union, the OSCE, and human rights non-governmental organisations. The activi-

ties of the Commissioner for Human Rights includes: dialogue with governments and country visits, thematic recommendations and awareness-raising and promoting the development of national human rights structures.

NGO's may provide reliable information on individual human rights violations, which inform and provide impetus for the Commission to encourage wider reform in certain aspects of human rights. However, the Commissioner cannot specifically deal with individual complaints.

Official country missions typically include meetings with the highest representatives of government, parliament, the judiciary, as well as leading members of human rights protection institutions and civil society. Following completion of a country mission, the Commissioner will publish a report that analyses human rights practices and detailing recommendations about possible ways of improvement. Follow-up reports assessing progress of implementation of recommendations are published a few years after the initial visit. In addition to these official visits the Commissioner conducts contact visits to countries or regions in order to strengthen relations with the authorities and to examine one or a number of problem areas. However, reports are not published following such visits. NGOs wishing to be included in itineraries for such visits should maintain contact with the Office of the Commissioner (contact details are provided below).

The mandate of the Commissioner for Human Rights also includes providing advice and information on the protection of human rights and the prevention of human rights violations. To this end, when the Commissioner considers it appropriate, the Office of the Commissioner issues recommendations regarding a specific human rights issue in one or more member states. The Commissioner may also give opinions on draft laws and specific practices either on the request of national bodies or acting on the Commissioner's own initiative.

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12.2 The European Committee of Social Rights (ECSR)

The European Committee of Social Rights (ECSR) was established to monitor the compliance of Contracting States to the ESC. The ECSR consists of 15 expert members[382] elected by the CoM, who remain independent and impartial. The Committee's Bureau comprises of an elected President, Vice-President or Vice-Presidents, and General Rapporteur.[383] The Committee has three main functions: firstly, to reach 'decisions' on collective complaints which allege violations of the Charter committed by Contracting States;[384] secondly, to adopt 'conclusions' on each Contracting State's implementation of the Charter under a reporting procedure;[385] and lastly, to rule 'on the conformity of the situation' of Contracting States.[386]

The collective complaints procedure is established under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, presently ratified by 12 member States. The collective complaints procedure applies to the original Charter, and the revised Charter of 1996.[387] Under the revised Charter, the implementation of Charter rights is submitted to the same supervisory process as the original Charter.[388]

The ECSR has made a notable contribution to the recognition, understanding and protection of economic and social rights, particularly under the collective complaints mechanism. Where the ECSR makes 'decisions' on collective complaints it is effectively acting as a quasi-judicial body. The Committee considers live complaints against Contracting States, arising from a set of factual circumstances. It receives written submissions from the parties, and conducts public hearings before them when it so chooses. The ECSR interprets and applies the provisions of the Charter, publishing its decisions with reasons (including any dissenting opinions). However, the Committee is comprised not of judicial officers, but rather of elected experts. It lacks the power to order remedies. While an independent body, its findings are nevertheless subject to adoption by the CoM – a political body. A further limitation of its role is its inability to consider complaints lodged by an individual, only by a recognised organisation, trade union or NGO.

Regardless, the ECSR's role in developing a body of 'jurisprudence' is of much significance. In the realm of the UN, the Member States only last year adopted an

382 Rules of the European Committee of Social Rights, Rule 1.

383 ibid, Rule 8.1.

384 ibid, Rule 2.2.

385 ibid

386 ibid, Rule 2.1.

387 The European Social Charter 1996, Article D.

388 ibid, Article C.

Optional Protocol which establishes an individual complaints mechanism for economic, social and cultural rights.[389] This is despite the fact that the International Covenant recognising such rights had been adopted many decades ago, in 1966.[390] The Optional Protocol is yet to come into force.[391] This lapse of time is perhaps illustrative of a lack of political will to support economic and social rights. To this day, recognition and justifiability of such rights is disputed by governments[392] and legal academics alike.[393] Thus, the operation of a European collective complaints mechanism since 1998 is all the more commendable. The decisions of the ECSR will increasingly be turned to, as courts give consideration to the protection of economic and social rights where enshrined in national constitutions or bills of rights.[394] Further discussion on the procedure for the lodging and assessment of a collective complaint can be found at Chapter 13.

General contact details:

(NOT collective complaints):

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389 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted 10 December 2008, opened for signature 24 September 2009.

390 International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entry into force 3 January 1976.

391 It will enter into force when ratified by 10 contracting States – as of 1 February 2010, 31 States have signed the document, though no one has ratified it yet.

392 United Kingdom, Joint Committee on Human Rights, *Twenty-Ninth Report* (2008), [147]-[152].

393 See, for example, Martha Jackman, 'What's Wrong with Social and Economic Rights' (1999-2000) 11 *National Journal of Constitutional Law* 235; Gaile McGregor, 'The International Covenant on Social, Economic, and Cultural Rights: Will it Get its Day in Court?' (2002) 28 *Manitoba Law Journal* 321, 331.

394 See, for example, the *Constitution of the Republic of South Africa 1996* – Articles 26 (right to housing) and 27 (right to access to health care, food, water and social security).

12.3 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The mandate of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) is to examine the treatment of detained persons by visiting places of detention, in order to strengthen the protection where necessary of such persons from torture and inhuman or degrading treatment or punishment.[395] The CPT should be distinguished from the Committee Against Torture (CAT) of the Office of the United Nations High Commissioner for Human Rights.

The CPT consists of ten elected independent experts, which monitors State implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. CPT delegations for visiting places of detention usually consist of two or more members (elected independent and impartial experts), together with members of the CPT's Secretariat. Visits are organised on either a periodic or ad hoc basis. A CPT delegation has unlimited access to any place of detention, and the right to move inside such places without restriction.[396] They may interview any detained persons in private,[397] and freely communicate with any other persons who can supply information, such as on-duty police officers and non-governmental organisations.[398] The delegation also holds the right to access custody and medical files of detainees.

The CPT may recommend to the Contracting State certain improvements on the material conditions of detention, regime of detention, and extent of legal safeguards. Such recommendations are contained in a confidential report, based on findings of fact, which the Contracting State usually permits from publication. NGOs regularly send information about detention and imprisonment conditions, in order to keep the CPT updated in its monitoring role.[399] However, the CPT cannot specifically deal with individual complaints. The CPT has developed a set of human rights standards in its assessment of places of detention. Further discussion can be found at 16.

395 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 1.

396 ibid, Article 8.2.

397 ibid, Article 8.3.

398 ibid, Article 8.4.

399 Directorate General of Human Rights, 'NGOs and the Human Rights Work of the Council of Europe: Opportunities for Cooperation' (2001), p. 25.

The CPT is made up of members from each Contracting State.[400] Members of the Committee are elected by the CoM, following a nomination process by the Contracting States.[401] They are said to be persons 'of high moral character', and 'known for their competence' in human rights or 'having professional experience' in the prevention of torture and inhuman or degrading treatment or punishment.[402] Past members of the CPT have included lawyers, medical doctors, psychiatrists, psychologists, criminologists, sociologists, political scientists, mathematicians, and a prison chaplain. One of the reasons behind the success of the CPT is that members of this multi-disciplinary committee serve in their individual capacity, and remain independent and impartial.[403]

Another fundamental reason for the CPT's effectiveness is the largely unrestricted mandate conferred upon it by the Convention. A delegation of the CPT may organise visits to places of detention on either a periodic or ad hoc basis.[404] The CPT need only notify the government of the Contracting State of its intention to conduct a visit.[405] The State is then obliged to provide the CPT with access to its territory and the right to travel without restriction, full information on the places where persons deprived of liberty are being held, unlimited access to such places, including the right to move inside these places without restriction, and any other available information which is necessary to the Committee, such as medical files.[406] The CPT may interview detained persons in private,[407] and communicated freely with any person who can supply relevant information, such as on-duty police officers and non-governmental organisations.[408] The Contracting State may only object to a visit in 'exceptional circumstances', on grounds of national defence, public safety, serious disorder, a medical condition of a person, or an urgent interrogation relating to a serious crime in progress.[409]

400 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 4.1 and 4.3.

401 ibid, Article 5.1.

402 ibid, Article 4.2.

403 ibid, Article 4.4.

404 Article 7: 'Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances'.

405 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 8.1.

406 ibid, Article 8.2.

407 ibid, Article 8.3.

408 ibid, Article 8.4.

409 ibid, Article 9.

The CPT's functions have been described as 'unique', and the 'most intrusive of any of the mechanisms available'.[410] They transcend the notion of state sovereignty. Following each visit, the CPT drafts a confidential report which consists of the facts obtained, observations of the Contracting State, and the Committee's recommendations.[411] These recommendations may be directed at the improvement of detention conditions, the detention regime, or the extent of legal safeguards. The reports of the CPT are confidential,[412] although in reality Contracting States usually permit the reports' publication. Failure by Contracting States to co-operate with the Committee or refuse to improve the situation as recommended may lead to the making of a public statement by the CPT.[413]

The CPT has on two occasions made public statements about Turkey, arising out of visits there between 1990 and 1992, and in September 1996. In a statement published in December 1992, the CPT concluded that the practice of torture and other severe ill-treatment of criminal suspects and persons held under anti-terrorism provisions remained widespread.[414] In its latter statement of December 1996, the CPT concluded that despite 'some progress', it had 'once again' found 'clear evidence' of the practice of torture and other severe ill-treatment by Turkish police. It castigated the Turkish authorities for 'failing to acknowledge the gravity of the situation'.[415] For a discussion of the CPT's findings on torture practices in Turkey see KHRP publication '*An Ongoing Practice: Torture in Turkey*'.[416]

It is necessary to emphasise that the CPT does not officially deal with individual complaints and is thus of limited utility in providing redress for individual grievances. The CPT is an observing body which will try and work with a state if they find that CTP standards have not been achieved. Any action taken by the Contracting State seeking to rectify the situation will almost certainly not be retrospective in effect and will seek only to ensure that the prohibition on torture and inhuman or degrading treatment or punishment is not breached in future, no matter the degree of detriment already suffered by an individual. By contrast, there is the possibility of an individual remedy under, for example, ECHR[417]. Nevertheless, forwarding

410 KHRP, *An Ongoing Practice: Torture in Turkey* (2007).

411 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 10.1.

412 ibid, Article 11.1.

413 ibid, Article 10.2.

414 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Public Statement on Turkey, CPT/Inf (93) 1, 15 December 1992.

415 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Public Statement on Turkey, CPT/Inf (96) 34, 6 December 1996.

416 KHRP, *An Ongoing Practice: Torture in Turkey* (2007).

417 European Convention on Human Rights, Article 13.

specific information to the CPT about the inadequate conditions of imprisonment may assist with preventing torture and ill-treatment, in the Committee's role as a preventative and monitoring mechanism. Indeed, the Council of Europe publicly encourages NGO's to do so.

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12.4 The Committee of Ministers and Framework Convention for the Protection of National Minorities

The Committee of Ministers of the Council of Europe, assisted by an Advisory Committee,[418] plays a monitoring role in relation to the FCNM. The CoM evaluates reports submitted by each Contracting State, on whether it has taken adequate measures to implement the Framework Convention. These reports are received by the Secretary General of the Council of Europe, then made available to the public, and forwarded to the CoM.[419] Each of these reports must contain 'full information' on the legislative and other measures undertaken by the Contracting State to implement the Framework Convention.[420] An initial report must be submitted within one year of the Framework Convention coming into force for the Contracting Party.[421] Subsequent reports are submitted on a periodic basis,[422] or where requested by the CoM.[423] Non Governmental and Civil Society Organisations are encouraged to submit alternative reports or information to assist the CoM in evaluating the reports

418 The Advisory Committee is comprised of 18 members (appointed independent and impartial experts). Once the Advisory Committee has prepared its opinion, the Committee of Ministers may adopt conclusions on the matter and make recommendations to the Contracting Party.

419 Convention for the Protection of National Minorities, Article 25.3.

420 ibid, Article 25.1.

421 ibid, Article 25.1.

422 Periodically every five years.

423 Convention for the Protection of National Minorities, Article 25.2.

submitted by the Contracting State.[424] When an NGO submits a shadow report it will not necessarily know whether the information provided was of any use. This may be because the information is often used as communication between the Advisory Committee and the state, which will be done in private. One year after the FCNM has entered into force the first State Report has to be submitted. The second report will then be required after an additional five years. For the Advisory Committee to be able to use the NGO's report fully, it is best to submit it before the Committee considers the State Report. The State Report will normally be considered three months after it is received, which also give a time indicator for NGO's as to the date of submitting the shadow report. If, however, a state report is handed in late, the three-month time limit might be shortened.

The CoM also determines a number of procedural rules relating to the monitoring of the Framework Convention. Resolution 1997(10) outlines the current procedural rules for monitoring arrangements under the Convention.

The Advisory Committee has also developed the practice of conducting regular country visits during which it meets with government officials, parliamentarians, representatives of minorities, NGO's and other relevant parties.

Following its examination of a State's report, the Advisory Committee will adopt an opinion which is then transmitted to the State concerned as well as all States sitting in the CoM. The State concerned has an opportunity to comment on this opinion. It is open to the State concerned to make the Advisory Committee's opinion public at this stage, a possibility a number of States have taken up. In preparing their response, the State concerned may also choose to benefit from further consultations with minority and non-governmental organisations. The CoM adopts country-specific resolutions, which are usually based on the Advisory Committee's opinions.

Follow-up meetings organised in States Parties for which monitoring has been completed are intended to provide an opportunity to bring together all parties concerned by the implementation of the Framework Convention – both Governmental and non-Governmental – and examine ways to put to practice the results of the monitoring.

Although the Advisory Committee and CoM cannot specifically deal with individual complaints, the following are examples of NGO's input in various phases of monitoring:

424 Resolution 97(10) on the monitoring arrangements of the Framework Convention explicitly provides that the Advisory Committee may receive and invite information from sources other than the State Report.

- Drafting shadow reports to the Advisory Committee at the time when the Report of the State is due. These shadow reports may cover the situation of one or more minorities and focus on selected articles or topics or provide information on all articles of the Framework Convention;

- Providing *ad hoc* information on specific issues irrespective of the status of the monitoring with regard to the State concerned;

- Using the Framework Convention as a tool for dialogue, liaising with the State authorities during the preparation of the State Report, obtaining information on the implementation of the Convention and discussing it and participating in follow-up meetings;

- Encouraging the authorities to publish the country-specific opinion of the Advisory Committee as soon as possible, as well as translate it in local languages;

- Contributing to the consultations undertaken by the Advisory Committee upon the preparation of its commentaries on specific themes.

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12.5 The European Commission against Racism and Intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) was established as an independent human rights monitoring body combating racism, xenophobia, anti-Semitism and intolerance in greater Europe. The ECRI is comprised of members from each Member State of the Council of Europe (appointed independent and impartial experts). There are currently 45 members on the ECRI.

In its work ECRI uses a wide definition of racism and racial discrimination covering state sanctioned segregation, apartheid or Nazism. It also includes other forms of racism and discrimination, including targeting of persons on the grounds not

only of race or ethnic origin, but also of religion, nationality, language, or a combination of these grounds.

The ECRI has three main functions: to visit, examine, and report on the situation in each member State, including the proposal of suitable recommendations (country-by-country approach); to work on general themes in combating racism and intolerance, particularly the forming of general policy recommendations addressed to all Member States; and to engage in activities with civil society to promote against racism and intolerance. The country-by-country monitoring deals with all Member States on an equal footing and takes place in five-year cycles, covering nine to ten countries per year. NGO's may actively co-operate with the ECRI by exchanging information relating to its functions and attending thematic and co-operation meetings.

The country-by-country monitoring procedure operates as follows: [425]

- ECRI invites comments from national authorities and civil society on follow-up given to previous recommendations and collects other background information;
- A working group of ECRI examines the information and prepares the monitoring visit;
- Two Rapporteurs from the working group carry out a monitoring visit where they meet government and government partners;
- ECRI plenary adopts a draft report;
- The draft report is sent to the authorities through a national liaison officer for comments;
- The draft report may be revised in light of any comments of the authorities (only factual mistakes are taken into account);
- If the authorities so wish, they can present oral remarks to ECRI's Bureau and Rapporteurs;
- ECRI plenary adopts final report;
- If the authorities so wish they can append their viewpoints in a separate appendix to ECRI's report;

425 Resolution Res(2002)8 on the statute of the European Commission against Racism and Intolerance, Article 11.

- The report is then sent by ECRI to the government in question through the intermediary of the Committee of Ministers.

ECRI makes General Policy Recommendations which are addressed to all Member States and provide guidelines which policy-makers are invited to use when drawing up national strategies and policies in various areas. The themes of the 12 General Policy Recommendations which have been adopted to date are as follows:

- The creation of national legislation to combat racism, xenophobia, anti-Semitism and intolerance at national level;[426]
- Combating racism and intolerance against Roma/Gypsies;[427]
- National surveys on the experience and perception of discrimination and racism from the point of view of potential victims;[428]
- Combating intolerance and discrimination against Muslims;[429]
- Combating the dissemination of racist, xenophobic and anti-Semitic material vial the internet;[430]
- Combating racism and racial discrimination;[431]
- Combating racism while fighting terrorism;[432]
- Combating anti-Semitism;[433]
- Combating racism and racial discrimination in and through school education;[434]
- Combating racism an racial discrimination in policing;[435]
- Combating racism and racial discrimination in the field of sport.[436]

426 General Policy Recommendation No 2; CRI (97) 36rev.
427 General Policy Recommendation No 3; CRI (98) 29 rev.
428 General Policy Recommendation No 4, CRI (98) 30.
429 General Policy Recommendation No 5, CRI (2000) 21.
430 General Policy Recommendation No 6, CRI (2001) 1.
431 General Policy Recommendation No 7, CRI (2003) 8.
432 General Policy Recommendation No 8, CRI (2004) 26.
433 General Policy Recommendation No 9, CRI (2004) 37.
434 General Policy Recommendation No 10, CRI (2007) 6.
435 General Policy Recommendation No 11, CRI(2007) 39.
436 General Policy Recommendation No 12, CRI(2009) 5.

Although ECRI cannot specifically deal with individual complaints, NGO's may actively co-operate with the ECRI by exchanging information relating to its functions and attending thematic and co-operation meetings.

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12.6 The Steering Committee for Equality between Women and Men (CDEG)

The Steering Committee for Equality between Women and Men (CDEG) was established as an intergovernmental body for defending, stimulating and conducting the promotion of equality between the genders. The CDEG is comprised of members from each Member State of the Council of Europe (appointed high-level policy or other experts). Its mandate is assigned by the Council of Europe's CoM. The CDEG itself may set up temporary committees of experts or groups of specialists to implement its role.

The CDEG's current main functions include: to promote gender equality standards, mechanisms and policies; to prevent and combat violence against women and trafficking; to promote co-operation between Member States; to prepare ministerial conferences on gender equality; and to promote and develop the concept of 'gender mainstreaming'. In order to achieve these stated aims the CDEG is instructed by the CoM to conduct analyses, studies and evaluations to confront national policies and pool experiences, to work out concerted policy strategies, measures and tools for implementing equality and, as necessary, to prepare appropriate legal and other instruments.

States which are not members of the Council of Europe may, further to a decision by the CoM, be invited to send representatives as observers without voting rights. For instance, Belarus, Canada, Japan, the Holy See and the US participate in the work of the CDEG. Similarly, the meetings of the Committee may be attended by representatives of the Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities of Europe, the European Commission, the

Organisation for Economic Co-operation and Development, the specialised bodies and institutions of the UN, as well as the ODIHR. More recently, a Gender Equality Grouping has been established which consists of international NGO's with participatory status in the Council of Europe. The Grouping has observer status within the CDEG and is represented at CDEG meetings. The list of International NGO members of the Gender Equality Grouping may be viewed on the Council website.[437] However, the CDEG cannot specifically deal with individual complaints**.**

Contact details:

Steering Committee for Equality between Women and Men (CDEG)
Gender Equality and Anti-Trafficking Division
Directorate General of Human Rights and Legal Affairs
(DG-HL)
Council of Europe
F-67075 Strasbourg Cedex
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Email: dg2.equality@coe.int
Phone: +33 3 8841 3736
Fax: +33 3 8841 2705

12.7 The Group of Experts on Action against Trafficking in Human Beings (GRETA)

The Convention on Action against Trafficking in human Beings entered into force on 1 February 2008. The Group of Experts on Action against Trafficking in Human Beings (GRETA) is a technical body, composed of independent experts. It evaluates each Contracting State on a rounds-basis, in relation to pre-selected provisions of the Convention.[438] This process involves the drafting and adoption of reports addressed to each State, containing suggestions and proposals for the Convention's implementation.[439] The GRETA may organise visits to States to fulfil its role.[440] The State has an opportunity to submit comments in response, which are published together with the GRETA report.[441]

437 Council of Europe Directorate General of Human Rights website, 'The Steering Committee for Equality Between Women and Men' at <http://www.humanrights.coe.int/Equality/Eng/EqualityCommittee/EqualityCommittee.htm>.

438 The Convention on Action against Trafficking in Human Beings, Article 38.1.

439 ibid, Article 38.5.

440 ibid, Article 38.4.

441 ibid, Articles 38.5 and 38.6.

The Convention provides specifically for cooperation with civil society and NGO's.[442] The explanatory notes to Article 35 state that the 'strategic partnership referred to in this article, between national authorities and public officials and civil society means the setting up of cooperative frameworks through which State actors-fulfil their obligations under the Convention, by coordinating their efforts with civil society.'[443] In order to achieve this strategic partnership it is envisaged that round table discussions involving all actors would be held and memoranda of understanding between national authorities and NGO's for providing protection and assistance to victims of trafficking would be concluded.[444] However, the Convention does not specifically deal with individual complaints.

At its first meeting, which took place on the 24 to the 27 February 2009 at the Council of Europe in Strasbourg, GRETA adopted its 'Internal Rules of Procedure' and elected its President and First and Second Vice-Presidents. The GRETA will be comprised of ten to 15 members (independent and impartial experts).[445] Members will be elected by a Committee of the Parties. The Committee of the Parties is a political body, which will be comprised of representatives from the CoM. It may adopt certain recommendations addressed to each particular State, on the basis of GRETA's report.[446] GRETA may involve civil society by submitting requests for information, which would include NGO's.[447]

442 The Convention on Action against Trafficking in Human Beings, Articles 35 and 38.3.

443 ibid, Explanatory notes, Paragraph 352.

444 The Convention on Action against Trafficking in Human Beings, Explanatory notes, Paragraph 353.

445 The Convention on Action against Trafficking in Human Beings, Article 36.2.

446 ibid, Article 38.7.

447 ibid, Article 38.3.

Contact details:

Secretary of the Conventional Group of Experts on
Action against Trafficking in Human Beings (GRETA)
Council of Europe Campaign to Combat Trafficking in Human Beings
Gender Equality and Anti-Trafficking Division
Directorate General of Human Rights and Legal Affairs
Council of Europe
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12.8 The Standing Committee on Transfrontier Television

The Standing Committee on Transfrontier Television was established as a Convention body for monitoring the implementation of the European Convention on Transfrontier Television. It is comprised of one or more appointed delegates from each Contracting State.[448]

The Standing Committee's main functions include: making recommendations on applications of the Convention; facilitating friendly settlements on Convention-related disputes between States; giving opinions on the abuse of rights provided under the Convention; suggesting and examining proposals for modifications of the Convention and examining questions on the Convention's interpretation.[449]

For example, the Standing Committee has expounded that Article 7[450] further applies to homophobic and xenophobic television programme content.[451] It has also expressed that Article 4[452] may be restricted for the protection of the rights of others, such as in relation to copyright.[453]

The Standing Committee may seek expert advice from NGO's to fulfil its role, and invite representatives of such organisations to attend its meetings.[454] However, the

448 The European Convention on Transfrontier Television, Article 20.2.

449 ibid, Article 21.1.

450 The European Convention on Transfrontier Television, Article 7: 'respect the dignity of human beings and fundamantal rights'.

451 Statement (2002) 1 on Human Dignity and the Fundamental Rights of Others.

452 The European Convention on Transfrontier Television, Article 4: 'the freedom of retransmission'

453 Opinion No 10 (2006) on Freedom of Retransmission

454 The European Convention on Transfrontier Television, Article 20.4

Standing Committee does not have competency to deal with requests or complaints lodged by individuals and NGO's and the Convention has no direct legal effect on individuals. The opinions, recommendations and statements adopted by the Standing Committee may be viewed on the Council website.[455]

Contact details:

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on Transfrontier Television
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455 Council of Europe website, homepage of the Standing Committee on Transfrontier Television at <http://www.coe.int/t/dghl/standardsetting/media/T-TT/default_en.asp>.

13. OUTLINE OF THE PROCEDURE FOR LODGING COLLECTIVE COMPLAINTS FOR THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

13.1 Lodging the Collective Complaint for the European Committee of Social Rights

There is no set format for a collective complaint. The complaint should include the name and contact details of the complainant organisation, the Contracting State against which the complaint is directed, and submissions on the complaint's admissibility. There is no fee for lodging the complaint.

13.1.1 Requirements for Admissibility

The Additional Protocol provides that a collective complaint may be lodged only by recognised organisations entitled to such a right.[456] The complaint must be in writing and indicate the relevant Charter provisions which have allegedly been violated.[457] It must also indicate how the Contracting State has not ensured the 'satisfactory application' of the Charter provisions.[458] That is, the subject matter of the complaint, with relevant arguments and supporting documents. A collective complaint must be properly addressed to the Executive Secretary acting on behalf of the Secretary General of the Council.[459] The complaint must also be signed by the person(s) with competence to represent the complainant organisation.[460] The complaint must be written in either English or French, but only for complainants which

456 Further discussion can be found at 14.1.

457 Additional Protocol to the European Social Charter 1995 Providing for a System of Collective Complaints, Article 4.

458 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995, Article 4.

459 See address above. Council of Europe, European Committee of Social Rights, 'Rules', adopted during the 201st session on 29 March 2004 (and revised during the 207th session on 12 May 2005 and during the 234th session on 20 February 2009), Rule 23(1).

460 Council of Europe, European Committee of Social Rights, 'Rules', adopted on 29 March 2004, Rule 23(2).

are international organisations of employers or trade unions, or other international NGO's with consultative status.[461]

13.2 Decision on Admissibility

Once a complaint has been lodged, it is registered chronologically in order of receipt. The ECSR deals with each complaint as it becomes ready for examination. However, precedence may be given in certain circumstances.[462] The President of the Committee may request that the Contracting State provide written information and observations on the *complaint's admissibility*.[463]The complainant similarly may be requested to provide a response to the State's observations.[464] The President is responsible for setting a time limit for responding to such requests.[465] For each complaint, a member of the ECSR is appointed by the President as Rapporteur.[466] The Rapporteur's responsibilities include the drafting of a preliminary decision on the complaint's admissibility.[467] The Rapporteur must form this draft decision 'within the shortest possible time'.[468] The ECSR convenes for its public sessions[469] which are held seven times a year on dates set by the Committee.[470] It examines the draft decision by the Rapporteur, before reaching a final decision by majority vote on admissibility.[471] Both the Contracting State and complainant are notified of the decision,[472] which is made available to the public.[473]

13.3 Decision on the Merits

If the petition is declared admissible, a procedure involving an 'exchange of memorials' commences. Firstly, the ECSR requests that the Contracting State make

461 Council of Europe, European Committee of Social Rights, 'Rules', adopted on 29 March 2004, Rule 18.

462 ibid, Rule 26.

463 ibid, Rule 29.

464 ibid, Rules 28(1) and 29(2).

465 ibid, Rules 28.2 and 29.1; Additional Protocol to the European Social Charter 1988, Article 6.

466 ibid, Rule 27(1).

467 ibid, Rule 27.3.

468 ibid,Rule 30.1.

469 ibid,Rule 15.5.

470 ibid, Rule 15.1.

471 ibid, Rule 16.1.

472 ibid, Rule 30.3.

473 ibid, Rule 30.5

written submissions on the *merits of the complaint*.[474] That is, whether it has ensured the 'satisfactory application' of one or more specific provisions of the ESC as raised by the complainant. Next, the President of the Committee requests that the complainant submit a response to these submissions.[475] Finally, the President may invite the Contracting Party to submit a further response.[476] Once this occurs, the President declares the procedure closed, so that further documents may be submitted only in 'exceptional circumstances with good reason'.[477] Third parties, namely other Contracting States and eligible complainant organisations may submit observations during the exchange of documents.[478] The ECSR may further organise a hearing to examine the complaint's merits, either on its own initiative or upon request by the parties involved.[479] The hearing is held in public,[480] at which the Contracting State and complainant are invited to attend.[481]

In deciding whether situations are in conformity with the Charter, the Committee first checks whether existing laws and regulations are consistent with Charter rights and do not impede their application. If this first 'test' is passed, it then goes on to ensure that the law is properly applied in practice. A situation is 'not in conformity' with the Charter if the relevant legislation is incompatible with its requirements or if compatible legislation is incorrectly or not fully applied.

When the ECSR reaches its decision by majority vote on the merits, it drafts a report encompassing the reasons for its decision.[482] This report is transmitted to the Contracting State and complainant,[483] and the Council of Europe's CoM.[484] The CoM then adopts during one of its sessions a resolution by (two-thirds) majority vote, recognising the ECSR report and its recommendations.[485] The report may be viewed by the public.[486] The case documents of the ECSR (complaints, observations,

474 Council of Europe, European Committee of Social Rights, 'Rules', adopted on 29 March 2004, Rule 31.1.

475 ibid, Rule 31.2.

476 ibid, Rule 31.3.

477 ibid, Rule 31.4.

478 ibid, Rule 32.

479 ibid, Rule 33.1; Additional Protocol to the European Social Charter 1988 Article 7.4.

480 ibid, Rule 33.3.

481 ibid, Rule 33.2.

482 ibid, Rule 34.1; Additional Protocol to the European Social Charter 1988 Article 8.

483 ibid, Rule 34.2.

484 ibid, Rule 34.3.

485 Additional Protocol to the European Social Charter 1988 Article 9.

486 ibid, Rule 34.4.

responses, admissibility and merits decisions, and CoM resolutions) may be viewed on the Council of Europe's website.[487]

Contact details:

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F-67075 Strasbourg Cedex
FRANCE

487 Council of Europe website, 'Collective Complaints' at <http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/aboutcharter_EN.asp#Une_procédure_de_réclamations_collectives>.

14. GUIDELINES AND CASE LAW FOR ASSESSMENT AT THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

14.1 Who May Lodge the Collective Complaint?

A collective complaint may be lodged with the ECSR by any of the following:

- International organisations of employers and trade unions[488] (At present: the European Trade Union Confederation, BUSINESSEUROPE, and International Organisation of Employers);
- Representative[489] national employers' organisations and trade unions within the Contracting State;[490]
- International NGO's with Council of Europe consultative status, and drawn up by the Governmental Committee of the European Social Charter on a list of international NGO's entitled to lodge collective complaints;[491]
- National NGO's (where agreed to by the relevant Contracting State).

The list of recognised international NGO's may be viewed on the Council's website,[492] as can further information on how international NGO's can apply for consultative status with the Council.[493]

488 Additional Protocol to the European Social Charter 1988 Article 1(a); European Social Charter 1961, Article 27(2).

489 The ECSR considers the notion of 'representatively' to be an 'autonomous concept'. Although domestic laws in the Contracting State may deem an organisation or trade union to be 'representative', it may not necessarily be considered so under the Article 1(c) criteria of the Additional Protocol (Complaint No. 9/2000 From the *Confédération française de l'Encadrement CFE-CGC* against France).

490 Additional Protocol to the European Social Charter 1988 Article 1(c).

491 Ibid, Article 1(b).

492 Council of Europe, 'European Social Charter' at <http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/INGOList2009rev_en.pdf>.

493 Council of Europe website –European Social Charter, 'Collective Complaints' at <http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrganisationsIndex_en.asp>.

14.2 Case Law and Guidelines for Social and Economic Rights

The ESC was one of the first international documents to cover social and economic rights, unlike the ECHR which only covered civil and political rights. Its introduction has permitted individuals and groups to allege that a Member State has violated of one or more of their social and economic rights as provided for in the Charter. Where a violation is found, the CoM may adopt a resolution requiring that the Member State bring the situation into conformity with the Charter.

The two cases below illustrate how litigants have previously relied upon the Charter, the Committee's reasoning process, and the outcome of the case.

Case study: ***International Association Autism-Europe v France***

(Complaint No. 13/2002)

Facts

On 27 July 2002, Autism-Europe, an organisation that supports people affected by autism, launched a complaint against France, in reliance upon Articles 15, 17 and E of the Revised European Social Charter. France ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in 1999. The complaint was declared admissible on 12 December 2002. A public hearing was held on 29 September 2003.

Complaints

Relying on Article 15 (right of disabled persons to independence, social integration and participation) and Article 17 (right of children and young persons to social, legal and economic protection), Autism-Europe complained that children and adults with autism did not, and were not likely able to, exercise their right to education in mainstream schooling or through adequately supported placements in specialised institutions.

Relying on Article E (principle of non-discrimination), Autism-Europe complained that autistic persons did not benefit from the right to education that was guaranteed to disabled persons under the Charter, that is, educational institutions or services of an adequate standard and sufficient in number.

Decision on the merits

Articles 15 and 17

The Committee noted that securing a right to education for children, including those with disabilities, plays an important role in advancing equal citizenship rights.

It noted that Article 15.1 under the Revised Charter specifically refers to education, requiring the State's undertaking of 'necessary measures to provide persons with disabilities with guidance, education and vocational training'.

The Committee referred to the underlying purpose of Article 17, to encourage children and young adults to achieve 'full development of their personality and of their physical and mental capacities', stating that this was just as important, or even more so, for children with disabilities. Article 17.1 was said to deal generally with the right to education for all, which emphasizes the provision or maintenance of sufficient and adequate institutions and services.

Article E

The Committee noted the significance of the principle of non-discrimination, in securing the equal enjoyment of all rights. However, it found that Article E did not constitute an independent right on which a collective complaint may be based. Rather, the Committee understood the complainant to be relying on Articles 15 and 17, read in conjunction with Article E.

The Committee cited the decision of *International Commission of Jurist v Portugal* (Complaint No. 1/1998), whereby implementation of the Charter required practical action by Contracting States to give full effect to the Charter rights, not mere legal action. The Committee found that France had failed to achieve 'sufficient progress' in advancing the provision of education for persons with autism. The proportion of autistic children being educated, regardless of whether they were in general or specialist schools, was much lower than other children. A 'chronic shortage' of care and support facilities for autistic adults was also established.

The Committee, in an 11-2 majority decision, found there had been a violation of Articles 15 and 17 of the Revised European Social Charter. On 10 March 2004, the Committee of Ministers adopted Resolution *ResChS(2004)1*, noting the French government's undertaking to bring the situation into conformity with the Charter, and requiring it to submit a progress report in its next report to the European Committee of Social Rights.

Case study: ***International Federation of Human Rights Leagues (FIDH) v France***

(Complaint No. 14/2003)

Facts

The complainant, International Federation of Human Rights Leagues (FIDH), is an international NGO concerned with upholding human rights. It has consultative

status with the Council of Europe and is thereby entitled to lodge complaints with the European Committee of Social Rights.

On 3 March 2003, a complaint was lodged by FIDH, in reliance on Articles 13 and 17 of the Revised European Social Charter. The complaint was declared admissible on 16 May 2003.

Complaints

Relying on Article 13 (right to social and medical assistance), FIDH complained that reform to domestic legislation ending an exemption for illegal immigrants with very low incomes from all charges under the state medical assistance scheme, amounted to a violation of the right to medical assistance.

Relying on Article 17 (right of children and young persons to social, legal and economic protection), FIDH complained that reform to domestic legislation excluding minors from universal medical cover and introducing patient charges, amounted to a violation of the rights of children and young persons.

Decision on the merits

Article 13

The Committee noted that the domestic legislation did not deprive illegal immigrations of *all* entitlements to state medical assistance, since it provided treatment for illegal immigrants residing in France for an uninterrupted period of three months, and for 'life-threatening' emergencies or where 'serious and lasting deterioration' of health would otherwise occur. Although the Committee stated that this provision was not sufficiently precise, and the relevant body to make such decisions not clearly identified, it nevertheless found by a 9-4 majority that the legislation did not amount to a violation of Article 13.

Article 17

The Committee noted that Article 17 protects the right of children and young persons to care and assistance. It found that medical assistance for young persons in France was limited to life-threatening situations. Furthermore, the children of illegal immigrants were only admitted to the state medical assistance scheme if they resided in France, for an uninterrupted period of over three months. The Commission by a 7-6 majority found that there had been a violation of Article 17 of the Charter. On 4 May 2005, the Committee of Ministers adopted Resolution *ResChS(2005)6*, in recognition of the findings of the European Committee of Social Rights.

15. RECOMMENDATIONS AND FOLLOW-UP OPTIONS

States are required to issue reports on an annual basis covering the law and practice within their country which are related to the Charter of Social Rights. These reports will be legally assessed by the Governmental Committee as to whether they are acting in conformity with the ESC. If the Committee concludes that a state is not in conformity with the Charter it will publish this in its decision. The state is then required to remedy the situation in law and/or practice. If the state fails to do so the CoM will intervene as a last stage in the supervisory process. The CoM will address a recommendation to the state concerned. A recommendation calls on the state party to take measures in order to remedy the situation. The defending state shall present, in every subsequent report on the provisions concerned in the complaint, the measures taken to bring the situation in to conformity. Using the state report the CoM will re-assess the situation on a yearly cycle until it is in conformity with the Charter.

Although Member States will not be let 'off the hook' and are checked-up on every year, the enforcement system is not particularly effective: apart from the annual re-assessment of the situation nothing more is done. However, the publicising of the situation can bring about international pressure and thereby force States into rectifying the relevant infringement.

15.1 Conclusion of the European Committee of Social Rights

The ECSR examines the reports and decides whether or not the situations in the countries concerned are in conformity with the ESC. Its decisions, known as 'conclusions', are published every year.

The most recent conclusions, since 2003, are available on the website.[494] The conclusions from the previous years can be found in found in the ESC database.[495]

494 Council of Europe, 'European Social Charter' at <http://www.coe.int/t/dghl/monitoring/socialcharter/>.

495 Council of Europe, 'Conclusions of the European Committee of Social Rights' at <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp>.

16. THE CPT STANDARDS – THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The CPT has developed a set of standards relating to conditions of detention.[496] These rights and guidelines are not formally enforceable and no individual complaints mechanisms have been established. However, they are said to provide a clear advance indication of the CPT's views on such matters. The forwarding of specific information to the CPT on inadequate imprisonment conditions may inform and assist it with preventing torture and ill-treatment on a broader scale, in its role as monitoring body. Further discussion on the role of the CPT can be found at 12.3.

In relation to **police custody**, the CPT has outlined three fundamental rights:

- The right of the person in custody to have the fact of their detention notified to a third party of their choice (such as a family member, friend or consulate);
- The right of access to a lawyer;
- The right to request a medical examination by a doctor of their choice.[497]

In relation to **health care**, the general principle under CPT Standards is the right of all prisoners to the same level of medical care as persons living in the community at large, as a fundamental right of the individual. It should be noted that an inadequate level of health care may in certain circumstances amount to inhuman and degrading treatment.[498]

496 The CPT Standards may be viewed on the Council of Europe website at <http://www.cpt.coe.int/en/docsstandards.htm>.

497 Council of Europe, 2nd General Report [CPT/Inf (92) 3], 13 April 1992. Paragraph 36.

498 Council of Europe, 3rd General Report [CPT/Inf (93) 12], 4 June 1993. Paragraph 31.

In relation to **imprisonment**, the CPT Standards include:

- The right to ready access to proper toilet facilities, adequate access to shower or bathing facilities, and the maintenance of good standards of hygiene;[499]
- The right to natural light and fresh air for all prisoners, which are basic elements of life;[500]
- The right of all prisoners without exception to be offered the possibility to undertake daily outdoor exercise;[501]
- The right to maintain contact with the outside world, with any limitations to be based exclusively on security concerns of an appreciable nature or resource considerations;[502]
- Solitary confinement, the continuous moving of a prisoner from one establishment to another, or the overcrowding of a prison may in certain circumstances amount to inhuman and degrading treatment;[503]
- The right to a duty of care for protection from other prisoner inmates who wish to cause a prisoner harm;[504]
- The right to a duty of care for effective methods of preventing, screening and treating transmissible diseases.[505]

In relation to **juveniles** in detention, the CPT Standards provide:

- The right of juveniles to be accommodated separately from adults;[506]
- The accommodation should be in centres specifically designed for juvenile persons of such age, offering regimes tailored to their needs (including education,

499 Council of Europe, 2nd General Report [CPT/Inf (92) 3], 13 April 1992. Paragraph 49.

500 Council of Europe, 11th General Report [CPT/Inf (2001) 16], 3 September 2001. Paragraph 30.

501 Council of Europe, 2nd General Report [CPT/Inf (92) 3], 13 April 1992. Paragraph 48.

502 ibid, Paragraph 51.

503 Council of Europe, 2nd General Report [CPT/Inf (92) 3], 3 September 2001, Paragraphs 56-57; and 7th General Report [CPT/Inf (97) 10], Paragraphs 12-15.

504 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 11th General Report CPT/Inf (2001)16, 3 September 2001, Paragraph 27.

505 ibid, Paragraph 31.

506 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 9th General Report [CPT/Inf (99) 12], 30 August 1999, Paragraph 25.

sport, vocational training and recreation), and staffed by suitably-trained personnel;[507]

- The right to confidential access to a doctor at any time;[508]
- Any restrictions on contact with the outside world must never be used as a disciplinary measure;[509]
- The use of solitary confinement must be regarded as highly exceptional, and should never be used as a punishment;[510]
- All forms of physical chastisement must be formally prohibited and avoided in practice.[511]

In relation to **women** in detention, the CPT Standards provide:

- Accommodation should be physically separate from that occupied by men;[512]
- The right to a duty of care for protection from other prisoner inmates, particularly in relation to ill-treatment from sexual harassment by men;[513]
- The right of women to the same access to meaningful activities (such as work, training, education, sport), which may otherwise amount to inhuman and degrading treatment;[514]
- The right of pregnant women to give birth outside of a prison;[515]
- The physical restraint of pregnant women during gynaecological examinations or birth delivery may amount to inhuman and degrading treatment;[516]

507 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 9th General Report [CPT/Inf (99) 12], 30 August 1999, Paragraphs 20 and 28.

508 ibid, Paragraph 40.

509 ibid, Paragraph 34.

510 ibid, Paragraph 35.

511 ibid, Paragraph 24.

512 ibid, Paragraph 24.

513 ibid, Paragraph 24.

514 ibid, Paragraph 25.

515 ibid, Paragraph 27.

516 Council of Europe, 10th General Report on the CPT's activities. December 1999, CPT/Inf (2000) 13 [EN]. 18th August 2000. Paragraph 27.

- The welfare of the child must be the governing consideration for a female prisoner with babies or young children;[517]
- The right to ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, and the provision of hygiene items;[518]
- The right to health care of a equivalent standard to that in the outside community includes health care from specifically trained medical staff in women's health, access to preventative health care measures;
- The right to bodily integrity regarding abortion.[519]

In relation to **immigration detention**, the CPT Standards include:

- The right to accommodation which is adequately furnished, clean and in a good state of repair, with sufficient living space;[520]
- The right to outdoor exercise, access to media programmes and publications, and other means of recreation;[521]
- The right to access to medical care;[522]
- Where detained for an extended period of time, accommodation should be in centres specifically designed for immigration detainment purposes, offering material conditions and a regime appropriate to their legal situation, and staffed by suitably-qualified personnel;[523]

517 Council of Europe, 10th General Report on the CPT's activities. CPT/Inf (2000) 13 [EN]. 18th August 2000. Paragraph 29.

518 ibid,Paragraph 31.

519 ibid,Paragraph 32.

520 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 7th General Report on the CPT's, CPT/Inf (97) 10 [EN], 22 August 1997. Paragraph 29.

521 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 7th General Report on the CPT's activities CPT/Inf (97) 10 [EN], 22 August 1997. Paragraph 29.

522 ibid, Paragraph 29.

523 ibid, Paragraph 26.

- The right to inform a person of their choice of their situation, the right to access to a lawyer, and to be expressly informed of all their rights and the applicable procedures (without delay and in a language they understand);[524]

- The right to maintain contact with the outside world during their detention, including access to a telephone and visits from relatives and representatives of relevant organisations;[525]

- Any use of force to expulse a foreign national should be no more than is reasonably necessary.[526]

In relation to **psychiatric establishments**, the CPT Standards include:

- Persons under involuntary placement in psychiatric establishments should be provided with accommodation that offers conditions which are conducive to the treatment and welfare of patients;[527]

- The right to adequate treatment (including psychiatric) and care;[528]

- The right of a patient to give their free and informed consent to treatment, based on full, accurate and comprehensible information about their condition and the treatment proposed;[529]

- The right to bring court proceedings challenging the lawfulness of a person's involuntary detention in a psychiatric establishment;[530]

- The right to maintain contact with the outside world, including the sending and receiving of correspondence, access to a telephone, and receiving visits from family and friends, and confidential access to a lawyer;[531]

524 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 7th General Report on the CPT's activities covering the period 1 January to 31 December 1996, CPT/Inf (97) 10 [EN], 22 August 1997. Paragraph 30.

525 ibid, Paragraph 31.

526 ibid, Paragraph 36.

527 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 8th General Report [CPT/Inf (98) 12], 31 August 1998. Paragraph 32.

528 ibid, Paragraph 32.

529 ibid,Paragraph 41.

530 ibid, Paragraph 52.

531 ibid, Paragraph 54.

- Any restraint of agitated or violent patients should be non-physical, but where physical restraint is necessary, the method chosen should be the most proportionate to the situation;[532]

- Solitary confinement should never be used as a punishment.[533]

16.1 Visits

The publication of visit reports allows other relevant organisations to contribute to the process of taking forward the implementation of recommendations contained in a report and enables the Committee itself to participate directly in public debate on the issues involved.[534]Consequently, authorising publication of visit reports can be seen as one of the most important means of co-operating with the CPT.

Periodic visits

The CPT visits places of detention in Contracting States periodically and on an ad-hoc basis where necessary. Visits are carried out by delegations, usually of two or more CPT members, accompanied by members of the Committee's Secretariat and, if necessary, by experts and interpreters. The member elected in respect of the country being visited does not join the delegation.

The Committee must notify the state concerned but need not specify the period between notification and the actual visit, which, in exceptional circumstances, may be carried out immediately after notification. Governments' objections to the time or place of a visit can only be justified on grounds of national defence, public safety, serious disorder, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress. In such cases the state must immediately take steps to enable the Committee to visit as soon as possible.

Under the Convention, CPT delegations have unlimited access to places of detention and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information.

532 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 8th General Report [CPT/Inf (98) 12], 31 August 1998. Paragraphs 37, 38 and 39.

533 ibid, Paragraph 49.

534 Council of Europe, '19th General Report of the European Committee for the Prevention of Torture or Degrading Treatment or Punishment', at <http://www.cpt.coe.int/EN/annual/rep-19.pdf>.

The recommendations which the CPT may formulate on the basis of facts found during the visit, are included in a report which is sent to the State concerned. This report is the starting point for an ongoing dialogue with the State concerned.

In order to ensure co-operation with the national authority, the Committee meets in camera and its reports are strictly confidential. Nevertheless, if a country fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement.

Of course, the State itself may request publication of the Committee's report, together with its comments. In addition, the CPT draws up a general report on its activities every year, which is made public.

As of 23 December 2009, the CPT had conducted 169 periodic visits and 109 ad hoc visits and has published 229 reports. The CPT has conducted 20 visits to Turkey since 1990. A number of these visits have been ad-hoc visits conducted following a considerable number of reports received by the Committee, from a variety of sources, containing allegations of torture or other forms of ill-treatment of persons deprived of their liberty in Turkey. On two occasions (in 1992 and 1996) the Committee, following a decision made under article 10(2) of the Convention made a public statement about Torture in Turkey. Article 10(2) of the Convention provides for the making of a public statement where a Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations. In October 2008, the CPT held high level talks with the Minister of Justice, and senior officials of the Ministries of Justice, the Interior, Foreign Affairs, National Defence and the Turkish Armed Forces to discuss. Issues discussed during the talks included the conditions of detention of Abdullah Öcalan, who has been held as the sole inmate of the prison on the island of Imralı since 1999 and whose conditions of detention are the subject of an application to the ECtHR. The CPT's representatives also raised at the talks certain allegations of ill-treatment of detained persons by law enforcement officials and prison officers that had recently been reported, as well as the situation of foreign nationals detained under aliens legislation.

Reports

On the basis of the visiting delegation's findings, the Committee draws up a report which it sends to the state concerned.[535] The Committee's report is drawn up in accordance with 'an expedited drafting procedure': the visiting delegation 'submits its draft report, at least two weeks in advance of the Committee meeting, indicating any paragraphs of its draft report which it wishes to have discussed by the Committee; other members may indicate, by not later than the time when the meeting is scheduled to start, any paragraphs of the draft report which they wish to have discussed by the Committee; all other paragraphs are taken as approved without discussion when the Committee draws up its report'.[536]

Reports are comprised of an assessment of the information gathered, any specific problems encountered and, if necessary, recommendations for State action to correct unacceptable conditions or behaviour.[537] These recommendations address, for instance, the material conditions of detention (lighting, size of cells etc.), the regime of detention (range of available activities, contacts with the outside community), and the extent of legal safeguards surrounding detention (access to a lawyer etc.).[538]

When drawing up its report, the Committee is obliged to take into account 'any observations which the Party concerned might submit to it following a visit. Further, the Committee may on its own initiative seek observations or additional information from the Party'.[539]

Subsequent to receiving the CPT report, governments are given a period of time in which to respond to the findings and recommendations and to explain what measures have been taken to implement the CPT recommendations.

The reports exchanged between the CPT and the State are confidential.[540] The general rule is that only the state involved may decide whether a CPT report can be

535 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Rules of Procedure', CPT/Inf/C (2008) 1, 16 November 1989, Rules 38(1) and 38(2).

536 Council of Europe, European Committee of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Rules of Procedure', CPT/Inf/C (2008) 1, 16 November 1989, Rule 38(4).

537 ibid, Rule 38(2).

538 Council of Europe, 'A visit by the CPT- What's it all about?: 15 Questions and Answers for the Police', Geneva May 1999, p.16, at <http://www.cpt.coe.int/EN/documents/doc-visit-by-cpt.pdf>

539 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Rules of Procedure', CPT/Inf/C (2008) 1, 16 November 1989, Rule 38(3).

540 ibid, Rule 39(1).

made public.[541] Almost all states, however, have published the CPT's report about its visit to their country.[542] The CPT encourages 'governments to ensure that persons who are in charge of places of detention visited by the CPT are made aware of the CPT's observations on conditions there, once the report has been communicated to the national authorities'.[543] If the Committee considers that a problem regarding the treatment of persons deprived of their liberty requires urgent action, it may bring this issue to the attention of the authorities immediately at the end of the visit. This is only done in 'exceptional cases'.[544]

CPT reports can be distinguished from the activities of the ECHR and the Commission in two major respects. First, although the CPT in carrying out its functions, has the right to avail itself of legal standards contained in the ECHR and other relevant human rights instruments, it is not bound by the case-law of judicial or quasi-judicial bodies acting in the same field.[545] Rather, it uses human rights standards as a point of reference when assessing the treatment of persons deprived of their liberty in individual countries.[546] Second, the findings of the Commission and Court to the effect that a State has violated a human right are legally binding. In the event of a State's failure to comply with the CPT's recommendations, the CPT may merely issue a public statement on the matter, which carries political, not legal, weight.

541 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Rules of Procedure', CPT/Inf/C (2008), Rule 39(1) (3).

542 Council of Europe, 'A visit by the CPT- What's it all about?: 15 Questions and Answers for the Police', Geneva May 1999, p.16, at <http://www.cpt.coe.int/EN/documents/doc-visit-by-cpt.pdf>.

543 ibid, p. 16.

544 ibid, p.16.

545 Council of Europe, '1st General Report on the CPT's activities covering the period November 1989 to December 1990', CPT/Inf (91) 3 [EN], 20 February 1991, paragraph 5.

546 ibid, paragraph 5.

17. CONCLUSION

While the ECtHR has developed an unrivalled standing as the primary European human rights institution, chapter 12 has sought to illustrate the existence of those lesser known human rights bodies. It has been demonstrated that these institutions vary greatly in mandate, between adjudicating on human rights complaints to the broader protection and monitoring of human rights.

It was explained in chapter 12.2 that the ECSR has established its ability to act as an effective quasi-judicial body. Its role and practices under the Additional Protocol Providing for a System of Collective Complaints is now similar to that of other international human rights tribunals. However, the Additional Protocol somewhat limits the capacity for development of the ECSR's quasi-judicial role. Being a system of collective complaints, with strict limitations on who can make a complaint, the Additional Protocol does not empower the ECSR with competence to order remedies, merely to declare situations to be incompatible with the Charter. More problematic still is the inherent level of political supervision by the CoM, particularly the fact that the ECSR's decisions are not made public until political supervision is complete. Nonetheless, the ECSR has established itself as the sole European body with the competence to provide authoritative legal interpretations of the Charter both in the reporting and complaints processes.

However, the 'case law' under the Additional Protocol is not well known, and deserves closer examination than it has often received. As social rights receive greater attention both internationally and in national constitutions, the success of the ECSR in developing a coherent jurisprudence of economic and social rights is valuable for understanding how such rights can be interpreted judicially.

The Commissioner for Human Rights' role is to encourage reform to enable the achievement of tangible improvements in the areas of human rights protection and promotion. Being a non-judicial institution, the Commissioner is able to take more far-reaching measures when confronted with information on human rights violations suffered by individuals, as long as this information is reliable.

It has been illustrated that the CPT cannot and is not designed to provide individual remedies.[547] It is thus of limited utility to provide redress for individual grievances,

547 See chapters 12.3 and 16.

even if an organisation of sufficient standing can be convinced to lodge a complaint. Any action taken by the Contracting State seeking to rectify the situation will almost certainly not be retrospective in effect and will seek only to ensure that the prohibition on torture and inhuman or degrading treatment or punishment is not breached in future, no matter the degree of detriment already suffered by an individual. By contrast, there is the possibility of an individual remedy under, for example, ECHR and EU law. However, as discussed above, one of the fundamental reasons for the CPT's effectiveness is the largely unrestricted mandate conferred upon it by the European Convention for the Prevention of Torture.

To ensure a better protection of human rights, the effectiveness of most systems providing for petitions or communications on the part of victims of human rights violations clearly needs to be enhanced. This would essentially require that institutions adhering to the treaty be given more recourse regarding their decisions. The contribution that these institutions make to the effective protection of human rights should not be over-emphasized, especially since many member states do not comply with their obligations to submit reports.

Furthermore, these institutions are greatly encumbered by administrative duties, mainly in the form of reports. One can reach the paradoxical conclusion that timely examination of reports is only possible because many States fail to submit them, and therefore the conduct of those states cannot be properly monitored. However, the procedure does serve some useful purposes so much so that it is an important addition to the ECHR (the ECHR does not provide a general monitoring system, it only gives the CoM the task of supervising the execution of the Court's judgement). In exercising their monitoring role, these institutions also serve another vital purpose. As demonstrated in this section, they can be tasked to examine the state reports, which give them an opportunity to consider those issues within a wider context, after an extensive analysis of practice concerning all member states.

APPENDIX A – THE HELSINKI FINAL ACT

(a) Declaration on Principles Guiding Relations between Participating States

The participating States,

Reaffirming their commitment to peace, security and justice and the continuing development of friendly relations and co- operation;

Recognizing that this commitment, which reflects the interest and aspirations of peoples, constitutes for each participating State a present and future responsibility, heightened by experience of the past;

Reaffirming, in conformity with their membership in the United Nations and in accordance with the purposes and principles of the United Nations, their full and active support for the United Nations and for the enhancement of its role and effectiveness in strengthening international peace, security and justice, and in promoting the solution of international problems, as well as the development of friendly relations and co-operation among States;

Expressing their common adherence to the principles which are set forth below and are in conformity with the Charter of the United Nations, as well as their common will to act, in the application of these principles, in conformity with the purposes and principles of the Charter of the United Nations;

Declare their determination to respect and put into practice, each of them in its relations with all other participating States, irrespective of their political, economic or social systems as well as of their size, geographical location or level of economic development, the following principles, which all are of primary significance, guiding their mutual relations:

I. Sovereign equality, respect for the rights inherent in sovereignty

The participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence. They will also respect each other's right

freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations.

Within the framework of international law, all the participating States have equal rights and duties. They will respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the present Declaration. They consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement. They also have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality.

II. Refraining from the threat or use of force

The participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration. No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle.

Accordingly, the participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State. Likewise they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise they will also refrain in their mutual relations from any act of reprisal by force.

No such threat or use of force will be employed as a means of settling disputes, or questions likely to give rise to disputes, between them.

III. Inviolability of frontiers

The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.

IV. Territorial integrity of States

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.

V. Peaceful settlement of disputes

The participating States will settle disputes among them by peaceful means in such a manner as not to endanger international peace and security, and justice.

They will endeavour in good faith and a spirit of co-operation to reach a rapid and equitable solution on the basis of international law.

For this purpose they will use such means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice including any settlement procedure agreed to in advance of disputes to which they are parties.

In the event of failure to reach a solution by any of the above peaceful means, the parties to a dispute will continue to seek a mutually agreed way to settle the dispute peacefully.

Participating States, parties to a dispute among them, as well as other participating States, will refrain from any action which might aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult.

VI. Non-intervention in internal affairs

The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, inter alia, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State.

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well- being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.

VIII. Equal rights and self-determination of peoples

The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

By virtue of the principle of equal rights and self- determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self- determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.

IX. Co-operation among States

The participating States will develop their co-operation with one another and with all States in all fields in accordance with the purposes and principles of the Charter of the United Nations. In developing their co-operation the participating States will place special emphasis on the fields as set forth within the framework of the Conference on Security and Co- operation in Europe, with each of them making its contribution in conditions of full equality.

They will endeavour, in developing their co-operation as equals, to promote mutual understanding and confidence, friendly and good-neighbourly relations among themselves, international peace, security and justice. They will equally endeavour, in developing their co-operation, to improve the well-being of peoples and contribute to the fulfilment of their aspirations through, inter alia, the benefits resulting from increased mutual knowledge and from progress and achievement in the

economic, scientific, technological, social, cultural and humanitarian fields. They will take steps to promote conditions favourable to making these benefits available to all; they will take into account the interest of all in the narrowing of differences in the levels of economic development, and in particular the interest of developing countries throughout the world.

They confirm that governments, institutions, organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their co-operation.

They will strive, in increasing their co-operation as set forth above, to develop closer relations among themselves on an improved and more enduring basis for the benefit of peoples.

X. Fulfilment in good faith of obligations under international law

The participating States will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties.

In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law; they will furthermore pay due regard to and implement the provisions in the Final Act of the Conference on Security and Co-operation in Europe.

The participating States confirm that in the event of a conflict between the obligations of the members of the United Nations under the Charter of the United Nations and their obligations under any treaty or other international agreement, their obligations under the Charter will prevail, in accordance with Article 103 of the Charter of the United Nations.

All the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others.

The participating States express their determination fully to respect and apply these principles, as set forth in the present Declaration, in all aspects, to their mutual relations and co-operation in order to ensure to each participating State the benefits resulting from the respect and application of these principles by all.

The participating States, paying due regard to the principles above and, in particular, to the first sentence of the tenth principle, "Fulfilment in good faith of obliga-

tions under international law", note that the present Declaration does not affect their rights and obligations, nor the corresponding treaties and other agreements and arrangements.

The participating States express the conviction that respect for these principles will encourage the development of normal and friendly relations and the progress of co-operation among them in all fields. They also express the conviction that respect for these principles will encourage the development of political contacts among them which in time would contribute to better mutual understanding of their positions and views.

The participating States declare their intention to conduct their relations with all other States in the spirit of the principles contained in the present Declaration.

(b) Matters related to giving effect to certain of the above Principles

(i)

The participating States,

Reaffirming that they will respect and give effect to refraining from the threat or use of force and convinced of the necessity to make it an effective norm of international life,

Declare that they are resolved to respect and carry out, in their relations with one another, inter alia, the following provisions which are in conformity with the Declaration on Principles Guiding Relations between Participating States:

- To give effect and expression, by all the ways and forms which they consider appropriate, to the duty to refrain from the threat or use of force in their relations with one another;

- To refrain from any use of armed forces inconsistent with the purposes and principles of the Charter of the United Nations and the provisions of the Declaration on Principles Guiding Relations between Participating States, against another participating State, in particular from invasion of or attack on its territory;

- To refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights;

- To refrain from any act of economic coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind;

- To take effective measures which by their scope and by their nature constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control;

- To promote, by all means which each of them considers appropriate, a climate of confidence and respect among peoples consonant with their duty to refrain from propaganda for wars of aggression or for any threat or use of force inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States, against another participating State;

- To make every effort to settle exclusively by peaceful means any dispute between them, the continuance of which is likely to endanger the maintenance of international peace and security in Europe, and to seek, first of all, a solution through the peaceful means set forth in Article 33 of the United Nations Charter. To refrain from any action which could hinder the peaceful settlement of disputes between the participating States.

(ii)

The participating States,

Reaffirming their determination to settle their disputes as set forth in the Principle of Peaceful Settlement of Disputes;

Convinced that the peaceful settlement of disputes is a complement to refraining from the threat or use of force, both being essential though not exclusive factors for the maintenance and consolidation of peace and security;

Desiring to reinforce and to improve the methods at their disposal for the peaceful settlement of disputes;

1. Are resolved to pursue the examination and elaboration of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods, and to continue to this end to work upon the "Draft Convention on a European System for the Peaceful Settlement of Disputes" submitted by Switzerland during the second stage of the Conference on Security and Co-operation in Europe, as well as other proposals relating to it and directed towards the elaboration of such a method;

2. Decide that, on the invitation of Switzerland, a meeting of experts of all the participating States will be convoked in order to fulfil the mandate described in paragraph 1 above within the framework and under the procedures of the follow-up to the Conference laid down in the chapter "Follow-up to the Conference";

3. This meeting of experts will take place after the meeting of the representatives appointed by the Ministers of Foreign Affairs of the participating States, scheduled according to the chapter "Follow-up to the Conference" for 1977; the results of the work of this meeting of experts will be submitted to Governments.

2. Document on confidence-building measures and certain aspects of security and disarmament

The participating States,

Desirous of eliminating the causes of tension that may exist among them and thus of contributing to the strengthening of peace and security in the world;

Determined to strengthen confidence among them and thus to contribute to increasing stability and security in Europe;

Determined further to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States as adopted in this Final Act;

Recognizing the need to contribute to reducing the dangers of armed conflict and of misunderstanding or miscalculation of military activities which could give rise to apprehension, particularly in a situation where the participating States lack clear and timely information about the nature of such activities;

Taking into account considerations relevant to efforts aimed at lessening tension and promoting disarmament;

Recognizing that the exchange of observers by invitation at military manoeuvres will help to promote contacts and mutual understanding;

Having studied the question of prior notification of major military movements in the context of confidence-building;

Recognizing that there are other ways in which individual States can contribute further to their common objectives;

Convinced of the political importance of prior notification of major military manoeuvres for the promotion of mutual understanding and the strengthening of confidence, stability and security;

Accepting the responsibility of each of them to promote these objectives and to implement this measure, in accordance with the accepted criteria and modalities, as essentials for the realization of these objectives;

Recognizing that this measure deriving from political decision rests upon a voluntary basis;

Have adopted the following:

I

Prior notification of major military manoeuvres

They will notify their major military manoeuvres to all other participating States through usual diplomatic channels in accordance with the following provisions:

Notification will be given of major military manoeuvres exceeding a total of 25,000 troops, independently or combined with any possible air or naval components (in this context the word "troops" includes amphibious and airborne troops). In the case of independent manoeuvres of amphibious or airborne troops, or of combined manoeuvres involving them, these troops will be included in this total. Furthermore, in the case of combined manoeuvres which do not reach the above total but which involve land forces together with significant numbers of either amphibious or airborne troops, or both, notification can also be given.

Notification will be given of major military manoeuvres which take place on the territory, in Europe, of any participating State as well as, if applicable, in the adjoining sea area and air space.

In the case of a participating State whose territory extends beyond Europe, prior notification need be given only of manoeuvres which take place in an area within 250 kilometres from its frontier facing or shared with any other European participating State, the participating State need not, however, give notification in cases in which that area is also contiguous to the participating State's frontier facing or shared with a non-European non-participating State.

Notification will be given 21 days or more in advance of the start of the manoeuvre or in the case of a manoeuvre arranged at shorter notice at the earliest possible opportunity prior to its starting date.

Notification will contain information of the designation, if any, the general purpose of and the States involved in the manoeuvre, the type or types and numerical strength of the forces engaged, the area and estimated time-frame of its conduct.

The participating States will also, if possible, provide additional relevant information, particularly that related to the components of the forces engaged and the period of involvement of these forces.

Prior notification of other military manoeuvres

The participating States recognize that they can contribute further to strengthening confidence and increasing security and stability, and to this end may also notify smaller-scale military manoeuvres to other participating States, with special regard for those near the area of such manoeuvres.

To the same end, the participating States also recognize that they may notify other military manoeuvres conducted by them.

Exchange of observers

The participating States will invite other participating States, voluntarily and on a bilateral basis, in a spirit of reciprocity and goodwill towards all participating States, to send observers to attend military manoeuvres.

The inviting State will determine in each case the number of observers, the procedures and conditions of their participation, and give other information which it may consider useful. It will provide appropriate facilities and hospitality.

The invitation will be given as far ahead as is conveniently possible through usual diplomatic channels.

Prior notification of major military movements

In accordance with the Final Recommendations of the Helsinki Consultations the participating States studied the question of prior-notification of major military movements as a measure to strengthen confidence.

Accordingly, the participating States recognize that they may, at their own discretion and with a view to contributing to confidence-building, notify their major military movements.

In the same spirit, further consideration will be given by the States participating in the Conference on Security and Co-operation in Europe to the question of prior notification of major military movements, bearing in mind, in particular, the experience gained by the implementation of the measures which are set forth in this document.

Other confidence-building measures

The participating States recognize that there are other means by which their common objectives can be promoted.

In particular, they will, with due regard to reciprocity and with a view to better mutual understanding, promote exchanges by invitation among their military delegations.

In order to make a fuller contribution to their common objective of confidence/ building, the participating States, when conducting their military activities in the area covered by the provisions for the prior notification of major military manoeuvres, will duly take into account and respect this objective.

They also recognize that the experience gained by the implementation of the provisions set forth above, together with further efforts, could lead to developing and enlarging measures aimed at strengthening confidence.

II Questions relating to disarmament

The participating States recognize the interest of all of them in efforts aimed at lessening military confrontation and promoting disarmament which are designed to complement political dtente in Europe and to strengthen their security. They are convinced of the necessity to take effective measures in these fields which by their scope and by their nature constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control, and which should result in strengthening peace and security throughout the world.

III General Considerations

Having considered the views expressed on various subjects related to the strengthening of security in Europe through joint efforts aimed at promoting detente and disarmament, the participating States, when engaged in such efforts, will, in this context, proceed, in particular, from the following essential considerations:

- The complementary nature of the political and military aspects of security;
- The interrelation between the security of each participating State and security in Europe as a whole and the relationship which exists, in the broader context of world security, between security in Europe and security in the Mediterranean area;
- Respect for the security interests of all States participating in the Conference on Security and Co-operation in Europe inherent in their sovereign equality;

- The importance that participants in negotiating fora see to it that information about relevant developments, progress and results is provided on an appropriate basis to other States participating in the Conference on Security and Co-operation in Europe and, in return, the justified interest of any of those States in having their views considered.

APPENDIX B – OSCE ACCESSION TABLE

Participating States

With 56 States from Europe, Central Asia and North America, the Organization for Security and Co-operation in Europe (OSCE) forms the largest regional security organization in the world.

Albania

- Admission to the OSCE: 19 June 1991
- Signature of the Helsinki Final Act: 16 September 1991; signature of Charter of Paris: 17 September 1991

Andorra

- Admission to the OSCE: 25 April 1996
- Signature of the Helsinki Final Act: 10 November 1999; signature of Charter of Paris: 17 February 1998

Armenia

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 17 April 1992

Austria

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Azerbaijan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 20 December 1993

Belarus

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 26 February 1992; signature of Charter of Paris: 8 April 1993

Belgium

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Bosnia and Herzegovina

- Admission to the OSCE: 30 April 1992
- Signature of the Helsinki Final Act: 8 July 1992

Bulgaria

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Canada

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Croatia

- Admission to the OSCE: 24 March 1992
- Signature of the Helsinki Final Act: 8 July 1992

Cyprus

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Czech Republic

- Admission to the OSCE: 1 January 1993

Denmark

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Estonia

- Admission to the OSCE: 10 September 1991
- Signature of the Helsinki Final Act: 14 October 1992; signature of Charter of Paris: 6 December 1991

Finland

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

France

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Georgia

- Admission to the OSCE: 24 March 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 21 January 1994

Germany

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Greece

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Holy See

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Hungary

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Iceland

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Ireland

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Italy

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Kazakhstan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 23 September 1992

Kyrgyzstan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 3 June 1994

Latvia

- Admission to the OSCE: 10 September 1991
- Signature of the Helsinki Final Act: 14 October 1991; signature of Charter of Paris: 6 December 1991

Liechtenstein

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Lithuania

- Admission to the OSCE: 10 September 1991
- Signature of the Helsinki Final Act: 14 October 1991; signature of Charter of Paris: 6 December 1991

Luxembourg

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

The former Yugoslav Republic of Macedonia

- Admission to the OSCE: 12 October 1995

Malta

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Moldova

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 26 February 1992; signature of Charter of Paris: 29 January 1993

Monaco

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Montenegro

- Admission to the OSCE: 22 June 2006
- Signature of the Helsinki Final Act: 1 September 2006

Netherlands

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Norway

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Poland

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Portugal

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Romania

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Russian Federation

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

San Marino

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Serbia

- Admission to the OSCE: 10 November 2000

Slovak Republic

- Admission to the OSCE: 1 January 1993

Slovenia

- Admission to the OSCE: 24 March 1992
- Signature of the Helsinki Final Act: 8 July 1992; signature of Charter of Paris: 8 March 1993

Spain

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Sweden

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Switzerland

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Tajikistan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 26 February 1992

Turkey

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Turkmenistan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 8 July 1992

Ukraine

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 26 February 1992; signature of Charter of Paris: 16 June 1992

United Kingdom

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

United States of America

- Admission to the OSCE: 25 June 1973
- Signature of the Helsinki Final Act: 1 August 1975; signature of Charter of Paris: 21 November 1990

Uzbekistan

- Admission to the OSCE: 30 January 1992
- Signature of the Helsinki Final Act: 26 February 1992; signature of Charter of Paris: 27 October 1993

APPENDIX C - LIST OF OSCE INSTITUTIONS

Parliamentary Assembly
Raadhusstraede 1
1466 Copenhagen K, Denmark
Tel.: +45 33 37 80 40; Fax: +45 33 37 80 30
E-mail: osce@oscepa.dk

The Office for Democratic Institutions and Human Rights
19 Aleje Ujazdowskie
00-557 Warsaw, Poland
Tel.: +48 22 520 06 00; Fax: +48 22 520 06 05
E-mail: office@odihr.pl
E-mail: tolerance@odihr.pl (Tolerance and Non-Discrimination Programme)

The OSCE High Commissioner on National Minorities
Prinsessegracht 22
2514 AP The Hague, The Netherlands
Tel.: +31 70 312 55 00; Fax: +31 70 363 59 10
E-mail: hcnm@hcnm.org

The OSCE Representative on Freedom of the Media
Kaerntner Ring 5-7
A-1010 Vienna, Austria
Tel.: +43 1 512 21 45-0
Fax: +43 1 512 21 45-9
E-mail: pm-fom@osce.org

APPENDIX D - LIST OF OSCE FIELD MISSIONS (BY REGION)

South-Eastern Europe

OSCE Presence in Albania
Sheraton Tirana Hotel & Towers 1st Floor
Tirana, Albania
Tel.: +355 4 235 993; Fax: +355 4 235 994
E-mail: Post.Albania@osce.org

OSCE Mission to Bosnia and Herzegovina
Fra Andjela Zvizdovica 1
71000 Sarajevo, Bosnia and Herzegovina
Tel.: +387 33 752 100; Fax: +387 33 442 479
E-mail: info.ba@osce.org

OSCE Mission to Croatia
Florijana Andraseca 14
10000 Zagreb, Croatia
Tel.: +385 1 309 66 20
Fax: +385 1 309 66 21
E-mail: osce-croatia@osce.org

OSCE Mission in Kosovo
Beogradska 32
38000 Pristina, Kosovo, Serbia
Tel.: +381 38 240 100; Fax: +381 38 240 711
E-mail: press.omik@osce.org

OSCE Mission to Serbia
Cakorska 1, 11000 Belgrade, Serbia
Tel.: +381 11 367 24 25
Fax: +381 11 360 61 19
E-mail: ppiu-serbia@osce.org

OSCE Mission to Montenegro

Bulevar Svetog Petra Cetinjskog 147
81000 Podgorica, Montenegro
Telephone: +381 81 406401
Fax: +381 81 406431
E-mail: omim@osce.org

OSCE Spillover Monitor Mission to Skopje
QBE Makedonija Building, 11 Oktomvri Str. 25
MK-1000, Skopje
The former Yugoslav Republic of Macedonia
Tel.: +389 2 3234 000; Fax: +389 2 3234 234
E-mail: info-mk@osce.org

Eastern Europe

OSCE Office in Minsk
Prospekt Gasety Pravda 11
220116 Minsk, Belarus
Tel.: +375 17 272 34 97
Fax: +375 17 272 34 98
E-mail: office-by@osce.org

OSCE Mission to Moldova
Str Mitropolit Dosoftei 180
2012 Chisinau, Moldova
Tel.: +373-22-887809; Fax: +373 22 22 34 96
E-mail: Moldova@osce.org

OSCE Project Co-ordinator in Ukraine
16 Striletska St., 01034 Kyiv, Ukraine
Tel.: +380 44 492 03 82
Fax: +380 44 492 03 84
E-mail: osce-ukraine@osce.org

OSCE Representative to the Latvian-Russian
Joint Commission on Military Pensioners
Mahlerstrasse 12/5/651
A-1010 Vienna, Austria
Tel.: +43 1 514 36 207; Fax: +43 1 514 36 22
E-mail: helmut.napiontek@osce.org

Caucasus

OSCE Office in Baku
4, M. Magomayev Lane, 2nd floor
Icheri Sheher
Baku AZ1004, Azerbaijan
Tel.: +994 12 497 23 73
Fax: +994 12 497 23 77
E-mail: office-az@osce.org

OSCE Mission to Georgia
Krtsanisi Governmental Residence
Krtsanisi St.
0114 Tbilisi Georgia
Tel.: +995 32 202 303; Fax: +995 32 202 304
E-mail: po-ge@osce.org

The Personal Representative of the
OSCE Chairman-in-Office on the Conflict
Dealt with by the OSCE Minsk Conference
4 Freedom Square, GMT Plaza, 1st Floor
0105 Tbilisi, Georgia
Tel.: +995 32 99 87 32; Fax: +995 32 98 85 66
E-mail: prcio@osce.org

OSCE Office in Yerevan
89 Teryan St., Yerevan 0009, Armenia
Tel.: +374 10 54 10 62, 63, 64
Fax: +374 10 54 10 61
E-mail: yerevan-am@osce.org

Central Asia

OSCE Centre in Almaty
67 Tole Bi Street, 2nd Floor
480091 Almaty, Kazakhstan
Tel.: +7 3272 79 37 62; Fax: +7 3272 79 43 88
E-mail: almaty-kz@osce.org

OSCE Centre in Ashgabad
Turkmenbashy, Shayoly 15
744005 Ashgabad, Turkmenistan
Tel.: +993 12 35 30 92; Fax: +993 12 35 30 41
E-mail: info_tm@osce.org

OSCE Centre in Bishkek
139 St. Toktogula
720001 Bishkek, Kyrgyzstan
Tel.: +996 312 66 50 15
Fax: +996 312 66 31 69
E-mail: pm-kg@osce.org

OSCE Centre in Dushanbe
12, Zikrullo Khojaev Str.
734017 Dushanbe, Tajikistan
Tel.:, +992 372 24 58 79, +992 372 24 33 38
Fax: +992 372 24 91 59
E-mail: cid-tj@osce.org

OSCE Project Co-ordinator in Uzbekistan
Afrosiyob Street 12 b, 4th Floor
700015 Tashkent, Republic of Uzbekistan
Tel.: +998 71 120 44 70
Fax: +998 71 120 61 25
E-mail: osce-cit@osce.or

APPENDIX E – EXAMPLE COMPLAINT FORM TO THE OSCE

If you wish to lodge a complaint about a human rights violation with the OSCE Centre, please fill in this form. Please attach copies of relevant documents, such as court decisions, results of medical examinations, etc. Information provided by you will be treated as confidential. After your complaint has been considered, an OSCE staff member will contact you.

1.
First name:
Last name:
Citizenship (citizen of Cornucopia, refugee, stateless person, other – please indicate):
Date of birth: Sex: M/F
Contact address:
Phone/fax/e-mail:
Alternate contact information:

If you are NOT the victim of the alleged human rights violation, please also fill in the following:

2.
Victim's first name:
Victim's last name:
Victim's citizenship (citizen of Cornucopia, refugee, stateless person, other – please indicate):
Date of birth: Sex: M/F
Contact address:
Phone/fax/e-mail:
Alternate contact information:
Your relationship to the victim:

A3 SAMPLE INDIVIDUAL

COMPLAINT FORM A3

3. Which state structure/institution is the perpetrator of the violation?

4. What kind of violation took place?

5. When did the violation take place?

6. Has the victim applied to a court? If yes, which court? At what stage are the court proceedings?

(Please attach copies of court decisions, if any exist.)

7. Does the victim have a lawyer? If yes, please give his/her contact information

(phone/address/fax/e-mail):

A3

8. Did the victim apply to any other governmental/non-governmental/international organization/institution prior to lodging a complaint with the OSCE Centre in Cornucopia? If yes, please list them. What were their responses *(please attach if available)*?

9. Why are you applying to the OSCE Centre in Cornucopia? What kind of assistance do you expect to receive?

Date: Signature

This form should be made available in a language(s) spoken in the mission's area of responsibility.

It is also useful to have a one-page description of the mission's mandate to offer to complainants along with the form. This description could contain information about the types of violations the mission does not deal with (due to its mandate, size, priorities, etc.).

This Form can be found on the OSCE website:
http://www.osce.org/publications/odihr/2003/10/12354_162_en.pdf

APPENDIX F: EXTRACT OF THE VIENNA CONCLUDING DOCUMENT

CONCLUDING DOCUMENT

OF THE VIENNA MEETING 1986 OF REPRESENTATIVES OF THE PARTICIPATING STATES OF THE CONFERENCE ON SECURITY

AND CO-OPERATION IN EUROPE, HELD ON THE BASIS OF

THE PROVISIONS OF THE FINAL ACT RELATING TO THE

FOLLOW-UP TO THE CONFERENCE

VIENNA 1989

CONCLUDING DOCUMENT

OF THE VIENNA MEETING 1986 OF REPRESENTATIVES OF THE PARTICIPATING STATES OF THE CONFERENCE ON SECURITY

AND CO-OPERATION IN EUROPE, HELD ON THE BASIS OF

THE PROVISIONS OF THE FINAL ACT RELATING TO THE

FOLLOW-UP TO THE CONFERENCE

[extract below]

(11) They confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and cooperation among themselves, as among all States.

(12) They express their determination to guarantee the effective exercise of human rights and fundamental freedoms, all of which derive from the inherent dignity of

the human person and are essential for his free and full development. They recognize that civil, political, economic, social, cultural and other rights and freedoms are all of paramount importance and must be fully realized by all appropriate means.

(13) In this context they will

(13.1) - develop their laws, regulations and policies in the field of civil, political, economic, social, cultural and other human rights and fundamental freedoms and put them into practice in order to guarantee the effective exercise of these rights and freedoms;

(13.2) - consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Covenant on Civil and Political Rights and other relevant international instruments, if they have not yet done so;

(13.3) - publish and disseminate the text of the Final Act, of the Madrid Concluding Document and of the present Document as well as those of any relevant international instruments in the field of human rights, in order to ensure the availability of these documents in their entirety, to make them known as widely as possible and to render them accessible to all individuals in their countries, in particular through public library systems;

(13.4) - effectively ensure the right of the individual to know and act upon his rights and duties in this field, and to that end publish and make accessible all laws, regulations and procedures relating to human rights and fundamental freedoms;

(13.5) - respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms;

(13.6) - encourage in schools and other educational institutions consideration of the promotion and protection of human rights and fundamental freedoms;

(13.7) - ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

(13.8) - ensure that no individual exercising, expressing the intention to exercise or seeking to exercise these rights and freedoms or any member of his family, will as a consequence be discriminated against in any manner;

(13.9) - ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated; hey will, *inter alia,* effectively apply the following remedies:

- the right of the individual to appeal to executive, legislative, judicial or administrative organs;

- the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, including the right to present legal arguments and to be represented by legal counsel of one's choice;

- the right to be promptly and officially informed of the decision taken on any appeal, including the legal grounds on which this decision was based. This information will be provided as a rule in writing and, in any event, in a way that will enable the individual to make effective use of further available remedies.

(14) The participating States recognize that the promotion of economic, social, cultural rights as well as of civil and political rights is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual. They will therefore continue their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, including in particular by the adoption of legislative measures. In this context they will pay special attention to problems in the areas of employment, housing, social security, health, education and culture. They will promote constant progress in the realization of all rights and freedoms within their countries, as well as in the development of relations among themselves and with other States, so that everyone actually enjoys to the full his economic, social and cultural rights as well as his civil and political rights.

(15) The participating States confirm their determination to ensure equal rights of men and women. Accordingly, they will take all measures necessary, including legislative measures, to promote equally effective participation of men and women in political, economic, social and cultural life. They will consider the possibility of acceding to the Convention on the Elimination of All Forms of Discrimination against Women, if they have not yet done so.

(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will*, inter alia,*

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) - respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly,

- organize themselves according to their own hierarchical and institutional structure,

- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

- solicit and receive voluntary financial and other contributions;

(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) - in this context respect, *inter alia,* the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) - allow the training of religious personnel in appropriate institutions;

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limi-

tations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

(18) The participating States will exert sustained efforts to implement the provisions of the Final Act and of the Madrid Concluding Document pertaining to national minorities. They will take all the necessary legislative, administrative, judicial and other measures and apply the relevant international instruments by which they may be bound, to ensure the protection of human rights and fundamental freedoms of persons belonging to national minorities within their territory. They will refrain from any discrimination against such persons and will contribute to the realization of their legitimate interests and aspirations in the field of human rights and fundamental freedoms.

(19) They will protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others.

(20) The participating States win respect fully the right of everyone

- to freedom of movement and residence within the borders of each State, and

- to leave any country, including his own, and to return to his country.

(21) The participating States will ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

(22) In this context they will allow all refugees who so desire to return in safety to their homes.

(23) The participating States will

(23.1) - ensure that no one will be subjected to arbitrary arrest, detention or exile;

(23.2) - ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person;

(23.3) - observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement Officials;

(23.4) - prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

(23.5) - consider acceding to the Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment, if they have not yet done so;

(23.6) - protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices.

(24) With regard to the question of capital punishment, the participating States note that capital punishment has been abolished in a number of them. In participating States where capital punishment has not been abolished, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments. This question will be kept under consideration. In this context, the participating States will co-operate within relevant international organizations.

(25) With the aim of developing mutual understanding and confidence, promoting friendly and good neighbourly relations, strengthening international peace, security and justice and improving the implementation of their CSCE commitments, the participating States will further develop co-operation and promote dialogue between them in all fields and at all levels on the basis of full equality. They agree that full respect for and application of the principles and the fulfilment of the other CSCE provisions will improve their relations and advance the development of their co-operation. They will refrain from any action inconsistent with the provisions of the Final Act and other CSCE documents and recognize that any such action would impair relations between them and hinder the development of co-operation among them.

(26) They confirm that governments, institutions, organizations and persons have a relevant and positive role to play in contributing to the achievement of the aims of their co-operation and to the full realization of the Final Act. To that end they will respect the right of persons to observe and promote the implementation of CSCE provisions and to associate with others for this purpose. They will facilitate direct contacts and communication among these persons, organizations and institutions within and between participating States and remove, where they exist, legal and administrative impediments inconsistent with the CSCE provisions. They will also

take effective measures to facilitate access to information on the implementation of CSCE provisions and to facilitate the free expression of views on these matters.

(27) The participating States heard accounts of the Meeting of Experts on Questions concerning Respect, in their States, for Human Rights and Fundamental Freedoms, in all their Aspects, as embodied in the Final Act, held in Ottawa from 7 May to 17 June 1985. They welcomed the fact that frank discussions had taken place of matters of key concern. Noting that these discussions had not led to agreed conclusions, they agreed that such thorough exchanges of views themselves constitute a valuable contribution to the CSCE process. In this respect it was noted in particular that proposals made at the Meeting had received further consideration at the Vienna Follow-up Meeting. They also welcomed the decision to allow public access to part of the Meeting and noted that this practice was further developed at later meetings.

[…]

HUMAN DIMENSION OF THE CSCE

The participating States,

Recalling the undertakings entered into in the Final Act and in other CSCE documents concerning respect for all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character,

Recognizing the need to improve the implementation of their CSCE commitments and their co-operation in these areas which are hereafter referred to as the human dimension of the CSCE,

Have, on the basis of the principles and provisions of the Final Act and of other relevant CSCE documents, decided:

1. to exchange information and respond to requests for information and to representations made to them by other participating States on questions relating to the human dimension of the CSCE. Such communications may be forwarded through diplomatic channels or be addressed to any agency designated for these purposes;

2. to hold bilateral meetings with other participating States that so request, in order to examine questions relating to the human dimension of the CSCE, including situations and specific cases, with a view to resolving them. The date and place of such meetings will be arranged by mutual agreement through diplomatic channels;

3. that any participating State which deems it necessary may bring situations and cases in the human dimension of the CSCE, including those which have been raised

it the bilateral meetings described in paragraph 2, to the attention of other participating States through diplomatic channels;

4. that any participating State which deems it necessary may provide information on the exchanges of information and the responses to its requests for information and to representations (paragraph 1) and on the results of the bilateral meetings (paragraph 2), including information concerning situations and specific cases, at the meetings of the Conference on the Human Dimension as well as at the main CSCE Follow-up Meeting.

The participating States decide further to convene a Conference on the Human Dimension of the CSCE in order to achieve further progress concerning respect for all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character. The Conference will hold three meetings before the next CSCE Follow-up Meeting.

The Conference will:

- review developments in the human dimension of the CSCE including the implementation of the relevant CSCE commitments;

- evaluate the functioning of the procedures described in paragraphs 1 to 4 and discuss the information provided according to paragraph 4,

- consider practical proposals for new measures aimed at improving the implementation of the commitments relating to the human dimension of the CSCE and enhancing the effectiveness of the procedures described in paragraphs 1 to 4.

On the basis of these proposals, the Conference will consider adopting new measures.

The first Meeting of the Conference will be held in Paris from 30 May to 23 June 1989.

The second Meeting of the Conference will be held in Copenhagen from 5 to 29 June 1990.

The third Meeting of the Conference will be held in Moscow from 10 September to 4 October 1991.

The agenda, timetable and other organizational modalities are set out in Annex X.

The next main CSCE Follow-up Meeting, to be held in Helsinki, commencing on 24 March 1992, will assess the functioning of the procedures set out in paragraphs 1

to 4 above and the progress made at the Meetings of the Conference on the Human Dimension of the CSCE. It will consider ways of further strengthening and improving these procedures and will take appropriate decisions.

APPENDIX G – DOCUMENT OF THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

Provisions of the Moscow Document

Moscow 1991

In order to strengthen and expand the human dimension mechanism described in the section on the human dimension of the CSCE in the Concluding Document of the Vienna Meeting and to build upon and deepen the commitments set forth in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, the participating States adopt the following:

(1) The participating States emphasize that the human dimension mechanism described in paragraphs 1 to 4 of the section on the human dimension of the CSCE in the Vienna Concluding Document constitutes an essential achievement of the CSCE process, having demonstrated its value as a method of furthering respect for human rights, fundamental freedoms, democracy and the rule of law through dialogue and co-operation and assisting in the resolution of specific relevant questions. In order to improve further the implementation of the CSCE commitments in the human dimension, they decide to enhance the effectiveness of this mechanism and to strengthen and expand it as outlined in the following paragraphs.

(2) The participating States amend paragraphs 42.1 and 42.2 of the Document of the Copenhagen Meeting to the effect that they will provide in the shortest possible time, but no later than ten days, a written response to requests for information and to representations made to them in writing by other participating States under paragraph 1 of the human dimension mechanism. Bilateral meetings, as referred to in paragraph 2 of the human dimension mechanism, will take place as soon as possible, and as a rule within one week of the date of the request.

(3) A resource list comprising up to six experts appointed by each participating State will be established without delay at the CSCE Institution. The experts will be eminent persons, including where possible experts with experience related to national minority issues, preferably experienced in the field of the human dimension, from whom an impartial performance of their functions may be expected.

The experts will be appointed for a period of three to six years at the discretion of the appointing State, no expert serving more than two consecutive terms. Within four weeks after notification by the CSCE Institution of the appointment, any participating State may make reservations regarding no more than two experts to be appointed by another participating State. In such case, the appointing State may, within four weeks of being notified of such reservations, reconsider its decision and appoint another expert or experts; if it confirms the appointment originally intended, the expert concerned cannot take part in any procedure with respect to the State having made the reservation without the latter's express consent. The resource list will become operational as soon as 45 experts have been appointed.

(4) A participating State may invite the assistance of a CSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. In such case, the State will select the person or persons concerned from the resource list. The mission of experts will not include the participating State's own nationals or residents or any of the persons it appointed to the resource list or more than one national or resident of any particular State. The inviting State will inform without delay the CSCE Institution when a mission of experts is established, which in turn will notify all participating States. The CSCE institutions will also, whenever necessary, provide appropriate support to such a mission.

(5) The purpose of a mission of experts is to facilitate resolution of a particular question or problem relating to the human dimension of the CSCE. Such mission may gather the information necessary for carrying out its tasks and, as appropriate, use its good offices and mediation services to promote dialogue and co-operation among interested parties. The State concerned will agree with the mission on the precise terms of reference and may thus assign any further functions to the mission of experts, inter alia, fact-finding and advisory services, in order to suggest ways and means of facilitating the observance of CSCE commitments.

(6) The inviting State will co-operate fully with the mission of experts and facilitate its work. It will grant the mission all the facilities necessary for the independent exercise of its functions. It will, inter alia, allow the mission, for the purpose of carrying out its tasks, to enter its territory without delay, to hold discussions and to travel freely therein, to meet freely with officials, nongovernmental organizations and any group or person from whom it wishes to receive information. The mission may also receive information in confidence from any individual, group or organization on questions it is addressing. The members of such missions will respect the confidential nature of their task. The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts or of any publicly available information transmitted to it. The inviting State will comply with any request from a mission of experts to be accompanied

by officials of that State if the mission considers this to be necessary to facilitate its work or guarantee its safety.

(7) The mission of experts will submit its observations to the inviting State as soon as possible, preferably within three weeks after the mission has been established. The inviting State will transmit the observations of the mission, together with a description of any action it has taken or intends to take upon it, to the other participating States via the CSCE Institution no later than two weeks after the submission of the observations. These observations and any comments by the inviting State may be discussed by the Committee of Senior Officials, which may consider any possible follow-up action. The observations and comments will remain confidential until brought to the attention of the Senior Officials. Before the circulation of the observations and any comments, no other mission of experts may be appointed for the same issue.

(8) Furthermore, one or more participating States, having put into effect paragraphs 1 or 2 of the human dimension mechanism, may request that the CSCE Institution inquire of another participating State whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimension of the CSCE. If the other participating State agrees to invite a mission of experts for the purpose indicated, the procedure set forth in paragraphs 4 to 7 will apply.

(9) If a participating State (a) has directed an enquiry under paragraph 8 to another participating State and that State has not established a mission of experts within a period of ten days after the enquiry has been made, or (b) judges that the issue in question has not been resolved as a result of a mission of experts, it may, with the support of at least five other participating States, initiate the establishment of a mission of up to three CSCE Rapporteurs. Such a decision will be addressed to the CSCE Institution, which will notify without delay the State concerned as well as all the other participating States.

(10) The requesting State or States may appoint one person from the resource list to serve as a CSCE Rapporteur. The requested State may, if it so chooses, appoint a further Rapporteur from the resource list within six days after notification by the CSCE Institution of the appointment of the Rapporteur. In such case the two designated Rapporteurs, who will not be nationals or residents of, or persons appointed to the resource list by any of the States concerned, will by common agreement and without delay appoint a third Rapporteur from the resource list. In case they fail to reach agreement within eight days, a third Rapporteur who will not be a national or resident of, or a person appointed to the resource list by any of the States concerned, will be appointed from the resource list by the ranking official of the CSCE body

designated by the Council. The provisions of the second part of paragraph 4 and the whole of paragraph 6 also apply to a mission of Rapporteurs.

(11) The CSCE Rapporteur(s) will establish the facts, report on them and may give advice on possible solutions to the question raised. The report of the Rapporteur(s), containing observations of facts, proposals or advice, will be submitted to the participating State or States concerned and, unless all the States concerned agree otherwise, to the CSCE Institution no later than two weeks after the last Rapporteur has been appointed. The requested State will submit any observations on the report to the CSCE Institution, unless all the States concerned agree otherwise, no later than two weeks after the submission of the report. The CSCE Institution will transmit the report, as well as any observations by the requested State or any other participating State, to all participating States without delay. The report will be placed on the agenda of the next regular meeting of the Committee of Senior Officials or of the Permanent Committee of the CSCE, which may decide on any possible follow-up action. The report will remain confidential until after that meeting of the Committee. Before the circulation of the report no other Rapporteur may be appointed for the same issue.

(12) If a participating State considers that a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State, it may, with the support of at least nine other participating States, engage the procedure set forth in paragraph 10. The provisions of paragraph 11 will apply.

(13) Upon the request of any participating State the Committee of Senior Officials or the Permanent Committee of the CSCE may decide to establish a mission of experts or of CSCE Rapporteurs. In such case the Committee will also determine whether to apply the appropriate provisions of the preceding paragraphs.

(14) The participating State or States that have requested the establishment of a mission of experts or Rapporteurs will cover the expenses of that mission. In case of the appointment of experts or Rapporteurs pursuant to a decision of the Committee of Senior Officials or of the Permanent Committee of the CSCE, the expenses will be covered by the participating States in accordance with the usual scale of distribution of expenses. These procedures will be reviewed by the Helsinki Follow-up Meeting of the CSCE.

(15) Nothing in the foregoing will in any way affect the right of participating States to raise within the CSCE process any issue relating to the implementation of any CSCE commitment, including any commitment relating to the human dimension of the CSCE.

(16) In considering whether to invoke the procedures in paragraphs 9 and 10 or 12 regarding the case of an individual, participating States should pay due regard to whether that individual's case is already sub judice in an international judicial procedure. Any reference to the Committee of Senior Officials in this document is subject to the decision of that Committee and the Council.

APPENDIX H – TABLE OF ACCESSIONS TO THE EU

EU Member States:

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

Candidate Countries:

Croatia
Former Yugoslavian Republic of Macedonia
Turkey

APPENDIX I – CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

CHARTER OF FUNDAMENTAL RIGHTS

OF THE EUROPEAN UNION

(2000/C 364/01)

18.12.2000 EN Official Journal of the European Communities C 364/1

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment. To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations. The Union therefore recognizes the rights, freedoms and principles set out hereafter.

C 364/8 EN Official Journal of the European Communities 18.12.2000

CHAPTER I

Dignity

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

. the free and informed consent of the person concerned, according to the procedures laid down by law,

. the prohibition of eugenic practices, in particular those aiming at the selection of persons,

. the prohibition on making the human body and its parts as such a source of financial gain,

. the prohibition of the reproductive cloning of human beings.

Article 4.

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5.

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

18.12.2000 EN Official Journal of the European Communities C 364/9

CHAPTER II

Freedoms

Article 6.

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7.

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8.

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9.

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10.

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

C 364/10 EN Official Journal of the European Communities 18.12.2000

Article 11.

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12.

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which

implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13.

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14.

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15.

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

18.12.2000 EN Official Journal of the European Communities C 364/11

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16.

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17.

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18.

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19.

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

C 364/12 EN Official Journal of the European Communities 18.12.2000

CHAPTER III

Equality

Article 20.

Equality before the law

Everyone is equal before the law.

Article 21.

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22.

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23.

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex.

Article 24.

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

18.12.2000 EN Official Journal of the European Communities C 364/13

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25.

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26.

Integration of persons with disabilities The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

C 364/14 EN Official Journal of the European Communities 18.12.2000

CHAPTER IV

Solidarity

Article 27.

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28.

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29.

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30.

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31.

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

18.12.2000 EN Official Journal of the European Communities C 364/15

Article 32.

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33.

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34.

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35.

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

C 364/16 EN Official Journal of the European Communities 18.12.2000

Article 36.

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37.

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38.

Consumer protection

Union policies shall ensure a high level of consumer protection.

18.12.2000 EN Official Journal of the European Communities C 364/17

CHAPTER V

Citizens' Rights

Article 39.

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40.

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41.

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

. the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

. the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

. the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

C 364/18 EN Official Journal of the European Communities 18.12.2000

Article 42.

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43.

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a

Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44.

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45.

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46.

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

18.12.2000 EN Official Journal of the European Communities C 364/19

CHAPTER VI

Justice

Article 47.

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48.

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49.

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognized by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50.

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

C 364/20 EN Official Journal of the European Communities 18.12.2000

CHAPTER VII

General Provisions

Article 51.

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52.

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53.

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member

States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

18.12.2000 EN Official Journal of the European Communities C 364/21

Article 54.

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and

freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

C 364/22 EN Official Journal of the European Communities 18.12.2000

APPENDIX J – EUROPEAN PARLIAMENT ONLINE PETITION FORM

The form can be found on the European Parliament Website:

https://www.secure.europarl.europa.eu/parliament/public/petition/secured/submit.do?language=EN

* Mandatory information

Name and address _____

*Surname: _____ *First name : _____
Mr Mrs

*Postal address: _____

*Town : _____ *Post code : _____

*Country: _____

Other :E-mail address (if applicable): _____

Name of the association: _____

If you are acting on behalf of an organisation, association, pressure group, trade union, etc., please give its name: _____

*Nationality: _____ Other: _____

Information concerning the petition

*If the Committee on Petitions declares your petition admissible, do you agree to its being considered in public? YES NO

*Do you consent to your name being recorded on a public register, accessible through Internet? YES NO

APPENDIX K – EXAMPLE EUROPEAN PARLIAMENT COMMITTEE ON PETITIONS' NOTICE TO MEMBERS

EUROPEAN PARLIAMENT **2009 - 2014**

Committee on Petitions

22.1.2010

NOTICE TO MEMBERS

Subject: Petition 1087/2009 by Marcin Czerniec (Polish), on the situation in Kamieniec Zabkowicki following the floods in 1997 and funding for flood protection measures via the 'Programme for the Oder – 2006'

1. Summary of petition

The petitioner, who is Mayor of the town of Kamieniec Zabkowicki (Lower Silesia), refers to the flood disaster in Poland in 1997 and the severe damage inflicted on his home town. With a view to implementing the necessary flood prevention measures along the River Oder, the responsible Polish authorities have drawn up the 'Programme for the Oder – 2006', which is cofinanced by the EU. The petitioner questions the authorities' budget and schedule for the programme and, in particular, the associated planned reservoir near Kamieniec Zabkowicki, and he also feels that insufficient account is being taken of the local population's safety and need for effective protection against future floods; he therefore asks the European Parliament to intervene.

2. Admissibility

Declared admissible on 19 November 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 22 January 2010

The petitioner is greatly concerned about the postponement or the failure to adhere to the timetable for the building of a dam on the Nysa Klodzka river at Kamienec Zablokowicki. This district is regularly affected by floods with huge material damages which justify an urgent need for having a dam as a technical measure that can prevent losses and damages in the region.

The allegations made by the petitioner insofar as they concern the planning and the building of the dam in the affected district of Kamienec Zablokowicki do not lie within the current competence of the Commission.

This being said, the Commission would like to inform the members of the Committee on Petitions that the Structural and Cohesion Funds can be used to co-finance a number of environmental investments in Poland, including water and wastewater treatment plants, solid waste management and flood prevention measures from the "Operational programme Infrastructure and Environment" for the period 2007-2013. The technical measures concerning the development of water reservoirs and other anti flood measures can be supported from the funds allocated for priority axis III: "Resource management and counteracting environmental risks". The maximum co-financing rate for this priority axis is set at 85% and the maximum amount of assistance from the Cohesion Fund to that priority axis, as calculated with reference to the total eligible public and private expenditure, is set at EUR 556 788 510.

Increasing the protection against the negative effects of natural hazards and the prevention of serious accidents, eliminating their effects and restoring the environment to a proper condition, as well as strengthening particular elements of the environment management system is, one of the most important measures under this priority for assistance from EU funds. Sustainable flood prevention should be based on interdisciplinary planning for the whole catchment area, and should reflect the three-step hierarchy of measures.

At the top of the hierarchy of measures are 'catchment based measures' which aim at slowing down the run-off and increasing retention of water. This should be based on improving river basin land-use, preventing rapid run-off both in rural and urban areas and restoration of natural flood zones. This includes restoration of the abilities of natural wetlands and floodplains, which also can bring ecological benefits such as maintaining biodiversity, recharging underground aquifers, areas for recreation,

opportunities for tourism, etc. The main measures which tend to be more effective than flood defences are, among others, restoration of vegetation and forests, conservation and effective protection and where possible restoration of wetlands, floodplains, including river meanders, reconnection of rivers with their floodplains, reducing drainage, reversing the straightening of water courses and bank reinforcements ('let rivers spread'), development of manageable flood polders, which should be used as grassland, or to restore alluvial forest, dismantle manmade obstacles to flow, etc.

The second level of the hierarchy of measures should focus on the protection of human health and safety and valuable goods and property, primarily in urban areas. Priority should be put on the rehabilitation of the existing infrastructure where necessary, in order to ensure that they are safe and provide a sufficient level of protection. The new infrastructural measures can be planned only if, despite implementation of the other measures, there is still a risk (and provided that certain conditions, in particular those in Article 4(7) of the Water Framework Directive, are met).

The information related to new modifications that may deteriorate the status of water bodies shall be included in the so-called River Basin Management Plans. Once the Commission has received the River Basin Management Plans from Poland, a detailed assessment will be carried out to ascertain that they comply with the directive. The deadline for the reporting of such plans is 22.3.2010.

The third level of measures are the situations where, despite preventive measures, floods cannot be avoided and have to be managed. Such measures are of particular importance due to the increase of extreme weather events because of climate change. The prerequisite for successful mitigation of flood damage is flood forecasting and warning. Comprehensive national and local contingency plans to respond to flood events should be prepared and maintained in operational status wherever flooding may occur due to direct flooding, breaches of dams or dykes, or other water related problems.

This hierarchy of anti-flood measures has been integrated into the project selection criteria and creates the basis for the proper and transparent selection of projects to be funded from the Cohesion Fund.

However, in the early part of the last decade, after the "Millenium floods" the petitioner refers to, there was a realisation that here was a need for a new EU legal instrument on the prevention, protection and preparedness against floods, to complement measures such as the Water Framework Directive. The new Floods Directive (2007/60/EC of 23.10.2007 on the assessment and management of flood risks) will require Member States to assess flood risk (by end 2011), to prepare detailed flood hazard and risk maps (by end 2013) as well as to prepare flood risk management

plans. These plans shall aim at the reduction of flood risk for risk receptions such as human population, economic activity, the environment and cultural heritage. The first plans shall be established by 22.12.2015 and shall be valid for 6 years and thereafter reviewed every 6 years. The Commission expects that the issues raised in the letters will be dealt with in the future Flood Risk Management Plan for the Oder. However, prior to the publication of such a plan and the Commission's assessment of the compliance of these plans with the requirements of the directive, the Commission cannot assess the compliance of Poland with the directive.

Conclusions:

This particular investment is not included on the list of key projects to be submitted for co-financing in the years 2007-2013; it is the ultimate responsibility of the managing authority[575] to reconsider the importance of the above investments and possibly its additional inclusion on the indicative list of key projects within the framework agreed with the European Commission.

The European Commission cannot take any direct action with respect to the petitioner's concerns and is not able to undertake any steps towards supporting individual projects co-financed by EU funds. For further information the petitioner could be invited to contact the Polish authorities mentioned here.

APPENDIX L – TABLE OF ACCESSIONS TO THE COUNCIL OF EUROPE

State	Date joined
Belgium	Founder
Denmark	Founder
France	Founder
Luxembourg	Founder
Netherlands	Founder
Norway	Founder
Sweden	Founder
United Kingdom	Founder
Greece	9 August 1949
Turkey	9 August 1949
Iceland	7 March 1950
Germany	13 July 1950
Austria	16 April 1956
Cyprus	24 May 1961
Switzerland	6 May 1963
Malta	29 April 1965
Portugal	22 September 1976
Spain	24 November 1977
Lichtenstein	23 November 1978
San Marino	16 November 1988
Finland	5 May 1989
Hungary	6 November 1990

Poland	26 November 1991
Bulgaria	7 May 1992
Estonia	14 May 1993
Lithuania	14 May 1993
Slovenia	14 May 1993
Czech Republic	30 June 1993
Slovakia	30 June 1993
Romania	7 October 1992
Andorra	10 November 1994
Latvia	10 February 1995
Albania	13 July 1995
Moldavia	13 July 1995
Macedonia	9 November 1996
Ukraine	9 November 1995
Russia	28 February 1996
Croatia	6 November 1996
Georgia	27 April 1999
Armenia	25 January 2001
Azerbaijan	25 January 2001
Bosnia and Herzegovina	24 April 2002
Serbia	3 April 2003
Monaco	5 October 2004
Montenegro	11 May 2007

APPENDIX M – EUROPEAN SOCIAL CHARTER (REVISED)

EUROPEAN SOCIAL CHARTER

(REVISED)

Strasbourg,

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

2. All workers have the right to just conditions of work.

3. All workers have the right to safe and healthy working conditions.

4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6. All workers and employers have the right to bargain collectively.

7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

8. Employed women, in case of maternity, have the right to a special protection.

9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

10. Everyone has the right to appropriate facilities for vocational training.

11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

12. All workers and their dependents have the right to social security.

13. Anyone without adequate resources has the right to social and medical assistance.

14. Everyone has the right to benefit from social welfare services.

15. Disabled persons have the right to independence, social integration and participation in the life of the community.

16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

17. Children and young persons have the right to appropriate social, legal and economic protection.

18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

21. Workers have the right to be informed and to be consulted within the undertaking.

22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

23. Every elderly person has the right to social protection.

24. All workers have the right to protection in cases of termination of employment.

25. All workers have the right to protection of their claims in the event of the insolvency of their employer.

26. All workers have the right to dignity at work.

27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.

28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.

29. All workers have the right to be informed and consulted in collective redundancy procedures.

30. Everyone has the right to protection against poverty and social exclusion.

31. Everyone has the right to housing.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1.to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3. to establish or maintain free employment services for all workers;

4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. to provide for public holidays with pay;

3. to provide for a minimum of four weeks' annual holiday with pay;

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

2. to issue safety and health regulations;

3. to provide for the enforcement of such regulations by measures of supervision;

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3. to recognise the right of men and women workers to equal pay for work of equal value;

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3. to provide or promote, as necessary:

a) adequate and readily available training facilities for adult workers;

b) special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

5. to encourage the full utilisation of the facilities provided by appropriate measures such as:

a) reducing or abolishing any fees or charges;

b) granting financial assistance in appropriate cases;

c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;

2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;

2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3. to endeavour to raise progressively the system of social security to a higher level;

4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

   a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

   b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within

their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;

2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

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

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

   b) to protect children and young persons against negligence, violence or exploitation;

   c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;

2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

   a) remuneration and other employment and working conditions;

   b) membership of trade unions and enjoyment of the benefits of collective bargaining;

   c) accommodation;

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

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

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a) access to employment, protection against dismissal and occupational reintegration;

b) vocational guidance, training, retraining and rehabilitation;

c) terms of employment and working conditions, including remuneration;

d) career development, including promotion.

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

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

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a) to the determination and the improvement of the working conditions, work organisation and working environment;

b) to the protection of health and safety within the undertaking;

c) to the organisation of social and socio-cultural services and facilities within the undertaking;

d) to the supervision of the observance of regulations on these matters.

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– to enable elderly persons to remain full members of society for as long as possible, by means of:

a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

  a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

  b) the health care and the services necessitated by their state;

– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

  a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

  b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

   a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

   b) to take account of their needs in terms of conditions of employment and social security;

   c) to develop or promote services, public or private, in particular child day-care services and other childcare arrangements;

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b) to review these measures with a view to their adaptation if necessary.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;

2. to prevent and reduce homelessness with a view to its gradual elimination;

3. to make the price of housing accessible to those without adequate resources.

Part III

Article A – Undertakings

1. Subject to the provisions of Article B below, each of the Parties undertakes:

   a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

   b) to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

   c) to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

4. Each Party shall maintain a system of labour inspection appropriate to national conditions.

Article B – Links with the European Social Charter and the 1988 Additional Protocol

1. No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.

2. Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropri-

ate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

Part IV

Article C – Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D – Collective complaints

1. The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.

2. Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol.

Part V

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Article F – Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G – Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are 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.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I – Implementation of the undertakings given

1. Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

   a) laws or regulations;

   b) agreements between employers or employers' organisations and workers' organisations;

   c) a combination of those two methods;

   d) other appropriate means.

2. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J – Amendments

1. Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.

2. Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.

3. Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it.

In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

4. Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Part VI

Article K – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L – Territorial application

1. This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.

3. The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.

4. Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M – Denunciation

1. Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A, paragraph 1, sub-paragraph b.

3. Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N – Appendix

The appendix to this Charter shall form an integral part of it.

Article O – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Charter in accordance with Article K;

d) any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;

e) any amendment in accordance with Article J;

f) any denunciation in accordance with Article M;

g) any other act, notification or communication relating to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this revised Charter.

Done at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office.

Appendix to the Revised European Social Charter

Scope of the Revised European Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.

3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

a) to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

b) where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

a) if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;

b) if the undertaking concerned ceases to operate;

c) if the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the abovementioned age.

Article 19, paragraph 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Article 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.

2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.

3. This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.

4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.

2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

Article 24

1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.

2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:

   a) workers engaged under a contract of employment for a specified period of time or a specified task;

   b) workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;

   c) workers engaged on a casual basis for a short period.

3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:

   a) trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;

   b) seeking office as, acting or having acted in the capacity of a workers' representative;

   c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

   d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

   e) maternity or parental leave;

   f) temporary absence from work due to illness or injury.

4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.

2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.

3. The workers' claims covered by this provision shall include at least:

   a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

   b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

   c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and

"other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

a) Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;

b) Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;

c) Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;

d) Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the *threat* of war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term "amendment" shall be extended so as to cover also the addition of new articles to the Charter.

APPENDIX N – EXAMPLE DECISION ON ADMISSIBILITY OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

DECISION ON ADMISSIBILITY

COMPLAINT No. 9/2000

From the *Confédération française de l'Encadrement CFE-CGC*
against France

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as «the Committee"), during its 168th session attended by:

Messrs Matti MIKKOLA, President
Rolf BIRK, Vice-Président
Stein EVJU, Vice-President
Konrad GRILLBERGER
Alfredo BRUTO DA COSTA
Ms Micheline JAMOULLE
Messrs Nikitas ALIPRANTIS
Tekin AKILLIOĞLU

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having regard to the complaint registered as number 9/2000, lodged on 20 June 2000 by Me Jean-Jacques GATINEAU, *avocat au Conseil d'Etat et à la Cour de Cassation,* on behalf of the *Confédération française de l'Encadrement CFE-CGC,* represented by its President Mr Jean-Luc CAZETTES, requesting that the Committee find that France fails to apply in a satisfactory manner Articles 2, 4, 6 and 27 of the revised European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 29 September 2000 by the French Government represented by the Director of Legal Affairs of the Ministry of Foreign Affairs,

Having regard to the revised European Social Charter and, in particular, to Articles 2, 4, 6 and 27 which read as follows:

Article 2 — The right to just conditions of work

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. to provide for public holidays with pay;

3. to provide for a minimum of four weeks' annual holiday with pay;

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work."

Article 4 — The right to a fair remuneration

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3. to recognise the right of men and women workers to equal pay for work of equal value;

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions."

Article 6 — The right to bargain collectively

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article 27 — The right of workers with family responsibilities to equal opportunities and equal treatment

"With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b) to take account of their needs in terms of conditions of employment and social security;

c) to develop or promote services, public or private, in particular child day-care services and other childcare arrangements;

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 6 November 2000;

Delivers the following decision, adopted on the above date:

1. The CFE-CGC is a trade union, established in France, whose members are managerial staff. According to French law, it is nationally representative. It submits to be representative also for the purposes of the collective complaints procedure.

2. It alleges that Act n° 2000-37 of 19 January 2000 on the reduction of working hours constitutes a violation of Articles 2, 4, 6 and 27 of the revised European Social Charter. Moreover, should the Committee find a violation of these provisions, it requests the Committee, "to order the French Government to pay the CFE-CGC trade union the sum of FRF 78 billion as compensation for collective damage caused to the profession".

3. In its observations on admissibility, the French Government considers that the complaint "seems to meet all of the formal requirements of the Additional Protocol, in particular Article 4, and of the Committee's Rules of Procedure."

4. However, the Government asks the Committee to reject the CFE-CGC's claim for damages. It considers that it cannot be based on any of the articles of the Additional Protocol.

5. The Committee notes that the Protocol providing for a system of collective complaint was ratified by France on 7 May 1999 and entered into force for this State on 1 July 1999. In addition, France ratified, on 7 May 1999, the revised Social Charter, which entered into force in its respect on 1st July 1999. According to Article 4 of the Protocol, the complaint is presented in writing and concerns Articles 2, 4, 6 and 27 of the Revised Social Charter, provisions accepted by France at the time of ratification of the Revised Charter.

6. Exercising its activities in France, the *Confédération française de l'Encadrement* CFE-CGC is a trade union within the jurisdiction of this country as required by Article 1 para. c of the Protocol. Furthermore, the CFE-CGC is considered by French law as being nationally representative. The Committee recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint n°6/1999, *Syndicat national des professions du tourisme* v. France, decision on admissibility, para. 6).

7. Having made an overall assessment of the documents in the file, the Committee considers that the CFE-CGC is a representative trade union for the purposes of the collective complaints procedure. It also notes that this is not contested by the Government.

8. Moreover, the complaint submitted on behalf of CFE-CGC is signed by Mr Jean-Luc CAZETTES, president of the trade union, entitled according to Article 47 of the Union's statute to represent it. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of procedure is fulfilled.

9. Noting that the complainant alleges that the situation in France does not comply with Articles 2, 4, 6 and 27 of the Revised European Social Charter, without prejudice to a decision concerning whether failure to satisfactorily apply the said Articles may give grounds for a claim for compensation, the Committee in the present case considers that this ancillary claim made by the CFE-CGC in its complaint does not preclude the admissibility of the complaint and that the issue of compensation shall be considered at the stage of the assessment of the merits of the complaint.

10. For these reasons, the Committee, on the basis of the report presented by Mr Matti MIKKOLA, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7 para. 1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter that the present complaint is admissible.

Invites the French Government to submit in writing by 31 January 2001 all further relevant explanations or information.

Invites the Contracting Parties to the Protocol to communicate to it by the same date any observations which they wish to submit.

Invites the *Confédération française de l'Encadrement CFE-CGC* to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the French Government.

In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 31 January 2001.

APPENDIX O – EXAMPLE DECISION ON THE MERITS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

European Committee of Social Rights

Comité européen des Droits sociaux

DECISION ON THE MERITS

COMPLAINT No. 12/2002

The Confederation of Swedish Enterprise

against Sweden

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 194th session attended by:

Messrs Jean-Michel BELORGEY, President

Nikitas ALIPRANTIS, Vice-President
Ms Polonca KONCAR, Vice-President
Messrs Rolf BIRK
Matti MIKKOLA
Konrad GRILLBERGER
Tekin AKILLIOĞLU
Ms Csilla KOLLONAY LEHOCZKY
Messrs Lucien FRANCOIS
Andrzej SWIATKOWSKI

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

After having deliberated on the 2 April and 14 and 15 May 2003,

On the basis of the report presented by Mr Rolf BIRK,

Delivers the following decision adopted on 15 May 2003:

PROCEDURE

1. On 19 June 2002, the Committee declared the complaint admissible.

2. In accordance with Article 7 para. 1 and para. 2 of the Protocol providing for a system of collective complaints and with the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated, on 13 November 2002, the text of the admissibility decision to the Swedish Government, to the Confederation of Swedish Enterprise, to the Contracting Parties to Protocol, to the states that have made a declaration in accordance with Article D para. 2 of the revised European Social Charter, as well as to the European Trade Union Confederation (ETUC), the Union of the Confederations of Industry and Employers of Europe (UNICE) and the International Organisation of Employers (IOE), inviting them to submit their observations on the merits of the complaint. In accordance with Article 25 para. 2 of the Committee's Rules of Procedure, the President fixed a deadline of 30 August 2002 for the presentation of observations.

3. On 4 September 2002, the Swedish Government presented its observations on the merits of the complaint. The ETUC submitted its observations on 30 August 2002. The IOE submitted observations on 18 September 2002.

4. The President set 4 November 2002 as the deadline for the Confederation of Swedish Enterprise to present its observations in response to the Government. At the request of the Confederation of Swedish Enterprise the deadline was extended to 28 November 2002. The observations were registered on 2 December 2002.

5. During its 192nd session (3 – 7 February 2003), the European Committee of Social Rights decided, in accordance with Article 7§4 of the Protocol providing for a system of collective complaints and Article 29§1 of the Committee's Rules of Procedure, to organise a hearing with the representatives of the parties.

6. The hearing took place in public at the Human Rights Building in Strasbourg on 31 March 2003. The Confederation of Swedish Enterprise was represented by Mr Kent BRORSSON, Director of Labour Law of the Confederation of Swedish Enterprise, and by Mr Gustav HERRLIN, Head of Labour Law of the Swedish Construction Federation. The Government was represented by Mr Örjan HÄRNESKOG, Legal Adviser and Mr Stefan HULT, Head of the Labour Law Division, both from the Ministry of Industry, Employment and Communications.

In accordance with Article 29 para. 2 of its Rules of Procedure, the Committee invited the ETUC and IOE to participate in the hearing. ETUC was represented by Mr Klaus LÖRCHER, Legal Adviser, by Mr Ulf EDSTRÖM and by Mr Kurt JUNESJÖ of the Swedish Trade Union Confederation (LO). IOE did not participate in the hearing. The President also granted a request for participation in the hearing by the Swedish Building Workers' Trade Union (SBWU), which was represented by Mr Ola WIKLUND, Advocate.

The Committee heard addresses by Mr BRORSSON, Mr HERRLIN, Mr HÄRNESKOG, Mr LÖRCHER, Mr EDSTRÖM and Mr WIKLUND and replies to questions put by members of the Committee. Following the hearing, the Secretariat received supplementary observations from Mr WIKLUND dated 10 April 2003, from Mr EDSTRÖM dated 17 April 2003 and from Mr BRORSSON dated 9 May 2003. These observations were sent to the parties for information.

SUBMISSIONS of the participants in the procedure

a) The Complainant Organisation

7. The Confederation of Swedish Enterprise (SN) asks the Committee to state that Sweden is in breach of Article 5 of the Revised Charter because the right not to join a trade union is violated in practice in two respects:

   – firstly, pre-entry closed shop clauses continue to exist in collective agreements;

   – secondly, non-unionised workers are forced to accept compulsory deductions (wage monitoring fees) from their wages at source for direct transfer to a trade union.

b) The Swedish Government

8. The Government asks the Committee to find the complaint unfounded in both respects. In the Government's opinion the absence of legislation prohibiting pre-entry closed shop clauses cannot constitute a violation of Article 5 and the deduction of wage monitoring fees from the wages of non-unionised workers does not amount to compulsory unionism or undue pressure to join the union and the right not to join a trade union is therefore not infringed.

c) The European Trade Union Confederation (ETUC)

9. The ETUC considers that the negative aspect of the right to organise should be interpreted restrictively so as not to weaken the material content of the positive right to organise. ETUC holds that the situation as regards pre-entry closed shop clauses does not infringe Article 5 and it therefore asks the Committee to re-ex-

amine its previous conclusions relating to Sweden on this point. ETUC finally asks the Committee to conclude that Sweden complies with Article 5 in respect of the wage monitoring fees.

d) The International Organisation of Employers (IOE)

10. The IOE states that it supports the arguments of the complainant in both aspects of the complaint. IOE considers that trade union monopoly clauses are contrary to the letter and spirit of the Revised Charter and that the wage monitoring fees represent strong and unjustified moral pressure on non-unionised workers.

RELEVANT DOMESTIC LAW

11. On the basis of the submissions by the parties, the relevant domestic law may be summarised as follows:

Swedish law contains no express statutory protection of the right not to join a trade union. In Judgment No. 20/2001 (the Swedish Construction Federation v. SBWU, judgment of 7 March 2001) by the Swedish Labour Court it is stated that "Through the incorporation of the European Convention on Human Rights the negative freedom of association has been given legal protection […]." The Court further states that "[…] the protection of the negative freedom of association under Swedish law is grounded exclusively on the European Convention on Human Rights."

12. a) With respect to pre-entry closed shop clauses

The pre-entry closed shop clauses under consideration in this case are clauses contained in so-called substitute agreements, i.e. collective agreements concluded between trade unions and individual employers who are not members of an employers' organisation. The clauses, which differ in wording, provide in essence that the employer shall give priority to trade union members when recruiting employees. If an employer does not act in accordance with such a clause the trade union may in principle invoke a breach of the collective agreement.

13. Although it follows from Section 7 of the Employment Protection Act that dismissal of workers who refuse to join a particular trade union or who wish to withdraw from a union is unlawful, Swedish law does not prohibit pre-entry closed shop clauses and the Swedish Labour Court has found such clauses to be lawful, notably in Judgment No. 68/1986.

14. b) With respect to wage monitoring fees

According to certain collective agreements concluded between trade unions and employers' organisations, *in casu* the construction sector collective agreement (*Byggnadsavtalet*) concluded between SBWU and the Swedish Construction Federation, the trade union has a right to check and examine the correctness of the wages paid to workers, normally by reviewing pay records. For this monitoring activity the union is entitled to a percentage of each worker's wage which is deducted by the employer from the wages of workers, members of SBWU and non-unionised workers alike. This "wage monitoring fee" (*granskningsavgift*) is transferred to the relevant local chapter of the trade union party to the collective agreement. In the construction sector collective agreement the wage monitoring fee is set at 1.5%. Wage monitoring may involve examination of material (reporting lists, etc.) submitted by the employer to the local union chapter as well as in some cases visits to the enterprise.

15. The Swedish Labour Court has on several occasions confirmed that provisions on wage monitoring fees in collective agreements which impose payment also on non-unionised workers are lawful, most recently in Judgment No. 20/2001. In this judgment the Labour Court held the compulsory deduction of wage monitoring fees from the wages of non-unionised workers provided by the above-mentioned construction sector agreement not to be in breach of Article 11 of the incorporated European Convention on Human Rights. The Labour Court did not directly address the question of whether the monitoring fees were in conformity with the Revised Charter, but stated - referring to the 1961 European Social Charter and the 1989 Community Charter - that "there is nothing to support that any of these legal instruments entails a more far-reaching protection of the negative freedom of association than that following from the case law of the European Court of Human Rights." It also follows from domestic case law that the wage monitoring fee cannot be lawfully imposed on workers who are members of another trade union than the one party to the collective agreement as this would constitute violation of the positive right to organise of those workers (Labour Court Judgments No. 19/1954 and No. 222/1977).

AS TO THE LAW

16. The complainant alleges that the situation in Sweden as regards pre-entry closed shop clauses on the one hand and wage monitoring fees on the other hand is in violation of Article 5, the relevant part of which reads as follows:

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom."

I. Pre-entry closed shop clauses

A. Arguments of the parties

17. SN refers to several different clauses. Firstly, according to substitute agreements concluded by SBWU before 1 January 2000, but still in force, union members should "take precedence in cases of employment". At the hearing, the complainant cited further examples from other agreements to which SBWU is a party, such as "all work pertaining to this agreement shall be completed by members of the Swedish Building Workers' Union" and "members of the Swedish Building Workers' Union residing within a 10 kilometre radius of a worksite have priority in the hiring of workers". Secondly, in certain more recent agreements concluded by the SBWU the wording has been changed to stipulate that "the parties to this collective agreement agree on the value of workers' trade union membership." Thirdly, the Swedish Electricians' Union and the Swedish Painters' Union carry substitute agreements with a clause pursuant to which "the employer is required to encourage that employees be members of [*name of union*]."

18. In SN's view these clauses are clearly pre-entry closed shop clauses, the intention of which is to give priority in recruitment to members of the trade union. This state of affairs is not altered by the recent changes in wording of the clauses in certain agreements. The clauses cannot be interpreted in any other way than that the employer has a legal obligation to take measures to ensure that the person employed is a member of the union(s) concerned.

19. According to SN close to 10,000 substitute agreements, the majority (about 9,000) concluded by SBWU, contain clauses, which may be construed as pre-entry closed shop clauses. Approximately 5,000 of the agreements concluded by SBWU contain unconditional and directly applicable pre-entry closed shop clauses. SN emphasises that not all pre-entry closed shop clauses in existence are necessarily known and the above statistics may therefore not provide an exhaustive picture of the situation.

20. In SN's view the dialogue between the Government and certain trade unions is not an appropriate method of implementing the obligations arising from Article 5 of the Revised Charter. Although SBWU has, as a result of the dialogue, informed all employers in writing that the union does not intend to invoke any existing closed shop clauses, SN observes that this attitude could, in the absence of a legal guarantee, be revised at any time in the future and the union could at any time attempt to enforce a closed shop by industrial action.

21. SN refers to the Labour Court's Judgment No. 68/1986 in which the Court found the following clause in a substitute collective agreement to be valid and lawful:

"Members of the Building Workers Union, resident in the municipality where the workplace is situated, take precedence in cases of employment." SN further refers to the case law of the Committee, which already in Conclusions XIII-1 (1990-1991) noted that Swedish law did not afford protection against pressure to join a trade union in order to obtain employment. The Committee subsequently reached a decision of non-conformity on this point due to the existence in practice of pre-entry closed shop clauses. SN also points out that the Swedish Government has not so far taken any action to bring the situation in law into conformity with Article 5.

22. The Government supports the principle that trade union membership should be voluntary, but it also states that absolute protection against any pressure or influence cannot be expected: the interests of non-unionised workers must be balanced against the legitimate interests of trade unions. It further disputes that conclusions can be drawn from the 1986 Labour Court judgment quoted by the complainant, because it pre-dates the incorporation of the European Convention on Human Rights, which introduced a legal protection of the negative freedom of association the full extent of which is still to be determined.

23. The Government states that in 3,671 agreements concluded by SBWU the clause according to which union members "take precedence" has recently been replaced by a clause whereby the parties "agree on the value of trade union membership." In the Government's view such a "policy clause" has no binding legal effect and places no obligation on employers to put pressure on jobseekers. According to the Government the agreements concluded by SBWU containing the "old" clauses gradually disappear (the Government estimates that as many as about 2,500 disappear every year), which is, it implies, at least in part due to a successful dialogue carried on with this and other trade unions.

24. As to the clauses to be found in agreements concluded by the Swedish Electricians' Union and the Swedish Painters' Union according to which the employer "undertakes to work towards the employees […] being members of [*name of trade union*]", the Government again holds that these are not pre-entry closed shop clauses *per se* but "policy clauses" which cannot be construed as involving any form of legal pressure or obligation to become a member of the trade union.

25. The Government finally states that the absence of legislation prohibiting pre-entry closed shop or priority clauses, which are in any case bound to disappear in the near future, cannot be said to violate Article 5. Even if the situation technically were to be found contrary to the Revised Charter this would not imply a serious violation. The clauses do not constitute a major problem in practice - indeed the clauses are rarely an issue of conflict between employers and trade

unions; legal disputes are more or less non-existent and the Government has therefore not deemed it necessary to legislate.

B. Assessment of the Committee

26. The Committee observes firstly that Article 5 must be interpreted in the light of Article I, which reads as follows:

"Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

a) laws or regulations;

b) agreements between employers or employers' organisations and workers' organisations;

c) a combination of those two methods;

d) other appropriate means."

27. It results from the combination of these provisions that when, in order to implement undertakings accepted under Article 5, use is made of agreements concluded between employers' organisations and workers' organisations, in accordance with Article I.b, States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.

28. The commitment made by the Parties, under which domestic legislation or other means of implementation under Article I, bearing in mind national traditions, shall not infringe on employers' and workers' freedom to establish organisations, implies that, in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant national authority, whether legislative, regulatory or judicial, is to intervene, either to bring about their repeal or to rule out their implementation.

29. Furthermore, the freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom.

30. The clauses at issue set out in the collective agreements in question which reserve in practice employment for members of a certain union are clearly contrary to the freedom guaranteed by Article 5. They restrict workers' free choice

as to whether or not to join one or other of the existing trade unions or to set up separate organisations of this type. Accordingly, the Committee considers that an obligation of this nature strikes at the very substance of the freedom enshrined in Article 5 and therefore constitutes an interference with that freedom.

31. The Committee considers that under these circumstances there is a violation of Article 5.

II. Wage monitoring fees

A. Arguments of the Parties

32. SN describes wage monitoring as a simple and rudimentary operation which is "almost completely devoid of its original purpose" and offers no real benefit to workers. In this respect wage monitoring differs from so-called "output monitoring" of piecework wages, where physical or technical measurements are usually required, and for which the union also collects a fee (*mätningsavgift*).

33. It is SN's opinion that the compulsory deduction of wage monitoring fees from the wages of workers who are not members of the union and who do not wish to become so violates their negative right to organise and thus Article 5 of the Revised Charter. SN finds the fees to be considerable (about 300 SEK per month) and states that they are transmitted to the trade union thereby in fact representing a contribution to general union activities. SN states that the employers' organisations have several times attempted to re-negotiate the agreements with a view to abolishing the fees for non-unionised workers, but so far to no avail.

34. Furthermore, although the Labour Court did not conclude as much in the above-mentioned Judgment No. 20/2001, SN holds the wage monitoring fee to be a covert union membership fee. It observes here that the monitoring fee is not imposed on workers who are members of a trade union other than the one holding the collective agreement. This is the result of other Labour Court decisions in cases brought by the Syndicalist Union. In a 1954 judgment (No. 19/1954) the Court held that where a wage monitoring fee exceeded the cost of the monitoring work this would represent a contribution to the general activities of the union (*in casu* SBWU) and could be put on an equal footing with a regular membership fee. For workers belonging to another trade union, the Syndicalist Union, such a fee would constitute a violation of the positive right to organise. A similar result on this point was reached by the Court in Judgment No. 222/1977.

35. SN underlines that the crucial issue is not whether the wage monitoring fee involves membership or strong pressure to join, but instead that the non-unionised worker is compelled to contribute financially to a union he or she has chosen not to join.

36. The Government observes that the system with deductions at source from each individual worker's wage was in fact introduced following a proposal by the employers' organisation during the collective negotiations in the construction sector. SBWU had initially preferred another model, whereby the fee was to be calculated as a percentage of the total sum of wages paid by the employer and not deducted from the wages of each employee. It is recalled that the complainant's affiliate organisations are parties to collective agreements providing for the existing fee system and the Government emphasises that nothing prevents the employers' organisation from seeking a re-negotiation of the agreements, if they so wish.

37. The Government further refers to the SBWU viewpoint according to which the monitoring fee does not entail a contribution to the general union activities because of the strict separation of the union's finances in non-profit activities and business activities.

38. The Government summarises its position as follows:

- the monitoring fee does not represent or impose any obligation or pressure on the worker to join the union nor does it lead to the non-unionised worker being associated with the ideology or politics of the union as confirmed by Labour Court Judgment No. 20/2001;

- workers do in fact benefit from wage monitoring as substantial sums of money are transferred to workers every year as a result of corrections made in connection with wage monitoring by the trade union;

- the deductions are made from all workers' wages, and if deductions were not made for non-unionised workers this would represent an incentive for workers not to be unionised.

The Government concludes that the deduction of fees cannot be put on an equal footing with union membership and that it does not entail undue pressure on workers to join the union. Consequently, there is no violation of the negative right to organise under Article 5 of the Revised Charter.

B. Assessment of the Committee

39. The Committee observes firstly that the fees deducted from the wages of workers pursuant to a collective agreement concluded between SBWU and the Swedish Construction Federation are, according to the collective agreement, for the service of wage monitoring. The Committee considers that the system of wage monitoring may, depending upon national traditions, be assumed either by public authorities, or, on the explicit or implicit authorisation of the legislator, by professional associations or trade unions. In the latter case this could legitimately require the payment of a fee.

40. Consequently, the Committee considers that the payment of a fee to the trade union for financing its activity of wage monitoring cannot be regarded in itself as unjustified. It also considers that it cannot be regarded as an interference with the freedom of a worker to join a trade union as the payment of the fee does not automatically lead to membership of the SBWU and in addition is not required from workers members of trade unions other than SBWU.

41. However, the Committee considers that doubts exist as to the real use of the fees and that, in the present case, if they were to finance activities other than wage monitoring, these fees would, on the grounds indicated in paragraph 29 be deducted, at least for a part, in violation of Article 5.

42. In the present case, the Committee is not in a position to verify the use of the fees and in particular to verify to what extent the fees are proportional to the cost of the service carried out and to the benefits wage monitoring confers on the workers. These are decisive factors in determining a violation of Article 5 with reference to paragraphs 39 and 40 or 41. The Committee considers therefore that it is for the national courts to decide the matter in the light of the principles the Committee has laid down on this subject or, as the case may be, for the legislator to enable the courts to draw the consequences as regards the conformity with the Charter and the legality of the provisions at issue.

43. The Committee reserves the right to supervise the situation in practice through the reporting procedure and, as the case may be, the collective complaints procedure.

CONCLUSION

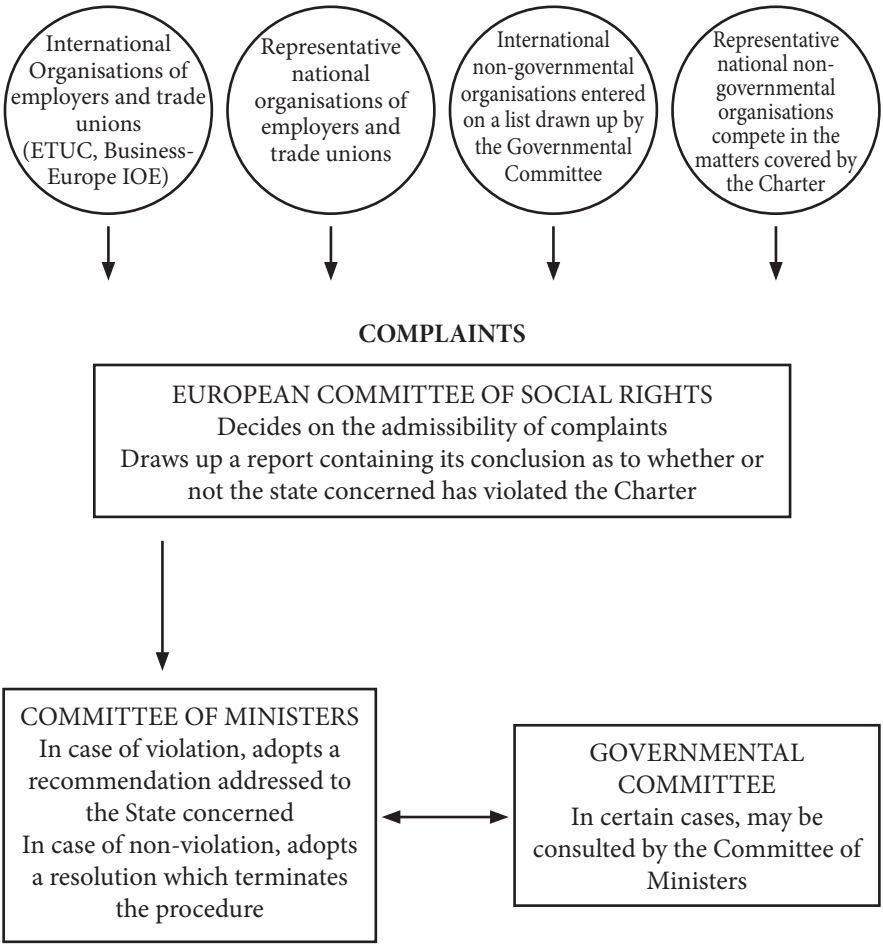
On the above grounds, the Committee concludes

– unanimously that the situation in respect of pre-entry closed shop clauses constitutes a violation of Article 5 of the Revised Social Charter;

– by 7 votes to 3 that the wage monitoring fees as such do not constitute a violation of Article 5 of the Revised Social Charter.

APPENDIX P – EUROPEAN SOCIAL CHARTER COLLECTIVE COMPLAINTS PROCEDURE

COLLECTIVE COMPLAINTS PROCEDURE



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