Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 12275 Add
02 June 2010

The state of democracy in Europe and the progress of the Assembly's monitoring procedure

Second cycle periodic reports on the honouring of statutory obligations by Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and Netherlands based on a compilation of conclusions and recommendations issued by Council of Europe monitoring mechanisms as of May 2010

Addendum to the report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Dick MARTY, Switzerland, Alliance of Liberals and Democrats for Europe

1. Web sites of relevant Council of Europe institutions and bodies

Committee of Ministers: http://www.coe.int/t/cm/home_en.asp

Parliamentary Assembly : http://assembly.coe.int/default.asp

Congress of Local and: http://www.coe.int/T/Congress/Default_en.asp

Regional Authorities European Court of Human Rights: http://www.echr.coe.int/echr/Homepage_EN

Commissioner for Human Rights: http://www.coe.int/t/commissioner/default_en.asp

Human Rights and Legal Affairs: http://www.coe.int/t/dghl/default_en.asp

Treaty Office: http://www.coe.int/t/dlapil/default_en.asp

European Charter for Regional or Minority Languages: http://www.coe.int/t/dg4/education/minlang/Default_en.asp

2. GREECE

6 May 2010

CoE member state since **9 August 1949**

Number of CoE Conventions ratified (as of 6 May 2010): **93 (out of 207)**

Number of CoE Conventions signed (as of 6 May 2010): **55**

I. PLURALISTIC DEMOCRACY[1]

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2010**

Next presidential elections: **2015**

Last general elections: **2009**

Next general elections: **2013**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 15 October 1985, ratified on 6 September 1989, entered into force on 1 January 1990

Last **Congress of Local and Regional Authorities** monitoring report: May 2008 [CPR(15)2REP] and **Recommendation 247 (2008)** on regional democracy in Greece adopted on 29 May 2008

Extract of press release of 4 April 2008:

"Congress' Institutional Committee prepares missions to Latvia and Belgium, discusses Greece and Turkey

The Congress' Institutional Committee will meet in Strasbourg on 7 April to discuss regional democracy in Greece, local and regional democracy in Turkey and the revised draft European Charter of Regional Democracy, among other things.

In his report on regional democracy in Greece, Jean-Claude van Cauwenberghe (Belgium, SOC) points to the need for reform at regional level, aimed at democratising regions and coupled with institutional reform to develop regional self-government. The rapporteur is of the opinion that Greece should have only two tiers of sub-state authorities: strong municipalities (but fewer of them) and strong regions – hence the need to integrate the intermediate level, such as prefectures. In addition, central government will have to abandon its "supervisor" mentality if "regionalism" is to progress in Greece, the report says.

[…]"

II. RULE OF LAW

A. VENICE COMMISSION

No opinion concerning Greece

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Greece in 2006 was **30 euros**;

– the **number of professional judges on a full-time basis** in Greece in 2006 was **3,163,** this means 28.4 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Greece was **527**, this means 4.7 for 100,000 inhabitants.

C. The fight against corruption and organised crime[2]

Civil Law Convention on Corruption (ETS No. 174) signed on 8 June 2000, ratified on 21 February 2002, entered into force on 1 November 2003

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

2. Greece is in 71st position with a score of 3.8 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

Criminal Law Convention on Corruption (ETS No. 173) signed on 27 January 1999, ratified on 10 July 2007, entered into force on 1st November 2007, Additional Protocol (ETS No. 191) signed on 15 May 2003, ratified on 10 July 2007, entered into force on 1 November 2007

Extract of: **Second Evaluation Round: Compliance Report on Greece** adopted by GRECO at its 36th Plenary Meeting [Strasbourg, 11–15 February 2008, GrecoRC-II(2007)14E]:

"Conclusions

In view of the above, GRECO concludes that Greece has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the Second Round Evaluation Report. Recommendations iv, ix and x have been implemented satisfactorily, and recommendations iii and vii have been dealt with in a satisfactory manner. Recommendations i, ii and v have been partly implemented, and recommendations vi and viii have not been implemented.

Greece has made efforts to comply with a number of GRECO recommendations, in particular through the adoption of measures to strengthen the anti-money laundering preventive mechanism, to facilitate citizens' access to information, to prevent corruption within the administration – notably by modernising the civil service and enhancing the rights and obligations of public sector employees – and to involve the professions of accountants and auditors in the detection of possible corruption offences. Likewise, progress has also been made in respect of the progressive establishment of mechanisms for the central registration of legal persons by the Union of Chambers of Commerce and the Ministry of Commerce. The listing of companies found guilty of having committed corruption offences by the Minister of Development is another interesting development. Nevertheless, additional measures to prevent corruption in various areas are still needed. For instance, the level of expertise and the means of bodies in charge of financial investigations need to be enhanced. Greece has not yet an appropriate mechanism to efficiently protect whistleblowers from retaliation who report in good faith suspicions of corruption and further similar measures are required to facilitate the reporting of such suspicions. The country also lacks a system of professional limitations in the private sector for persons found guilty of corruption. GRECO encourages the authorities to deal with the outstanding recommendations as soon as possible.

GRECO invites the Head of the Greek delegation to submit additional information regarding the implementation of recommendations i, ii, v, vi and viii by 31 August 2009 at the latest.

Finally, GRECO invites the Greek authorities to translate the report into the national language and to make this translation public."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 28 September 1992, ratified on 22 June 1999, entered into force on 1 October 1999

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 12 October 2006 but not ratified

Greece is not a member of MONEYVAL.

III. PROTECTION OF HUMAN RIGHTS[3]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **February 2009,** following a visit to the country in **December 2008**

Last visit: February 2010

Press release of 19 February 2009:

"Greece: "More and strenuous efforts are needed to protect minority rights" says Commissioner Hammarberg

3. Greece is in 35th position with a score of 9.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

“Effective protection of minority rights is a fundamental pillar of pluralist societies. Greece still needs to make more and strenuous efforts to ensure that these rights are fully respected and protected”. With these words Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, published today a report on human rights of minorities in Greece, focusing on issues relating to the right to freedom of association, statelessness and application of the Sharia Law.

While commending certain efforts made by the authorities in particular in the field of minority education in Thrace, the Commissioner remains deeply worried about the persistent denial of recognition of minorities other than the tripartite ‘Muslim’ one in western Thrace. The Commissioner also expresses his serious concerns by the over-restrictive practice of Greek courts that has led to non-registration of certain minority associations. “The authorities should urgently make possible the effective enjoyment by minority members of their right to freedom of association” said Thomas Hammarberg. “A consultative mechanism should also be created to ensure a continuous dialogue at all levels with minority groups, in accordance with the Council of Europe standards.” The Commissioner also urges the authorities to complete promptly their efforts aimed at restoring the Greek nationality of those minority members who were deprived of it unlawfully by virtue of the former nationality code. “Particular care should be provided to those remained in Greece and who have limited financial resources to cover welfare and medical services” said the Commissioner. “As for the denationalised persons who are abroad, the authorities should consider the possibility of providing them, or their descendants, with satisfaction.”

Furthermore, Commissioner Hammarberg expresses serious concerns about the application of the Sharia Law concerning family and inheritance matters to Muslim Greek citizens in Thrace, by Muftis appointed by the Greek state. “Given the issues of incompatibility of this practice with European and international human rights standards, it is necessary to overhaul this practice and strengthen the substantive review and control by domestic courts of the Muftis’ judicial decisions.”

Finally, the Commissioner calls upon the Greek authorities to proceed promptly to the ratification of or accession to certain major Council of Europe treaties, such as the Framework Convention for the Protection of National Minorities, the European Convention on Nationality and the Fourth Protocol to the European Convention on Human Rights.

The report is based on the Commissioner’s visit to Greece on 8-10 December 2008. It is available, together with the Greek authorities’ comments, on the Commissioner’s website.“

Press release of 13 April 2010:

“Greece: Commissioner Hammarberg encourages initiatives concerning migrants, minorities and police

“I welcome the first steps taken by the Greek government towards the establishment of a fair, accessible and swift refugee protection system. Changes in the field of protecting the rights of migrants, especially asylum seekers, are particularly urgent” said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, as he published today three letters sent to the Greek Government.

Following the Commissioner’s visit to Greece on 8-10 February, the letters were sent to the Ministers for Citizen Protection and of Justice, as well as to the Deputy Minister of Interior. The letters focus on the human rights of migrants, especially asylum seekers, minorities, and the conduct of members of law enforcement agencies.

In view of long-standing, serious shortcomings in the field of asylum, the Commissioner highlights the urgent need for the authorities to support the ongoing reform in this field with the necessary institutional capacity and tools for implementation. The Commissioner also urges the authorities to address the situation of unaccompanied or separated migrant children.

The Commissioner calls for the full and effective implementation of judgments of the European Court of Human Rights concerning freedom of association of members of minorities. He also recommends the ratification by Greece of the Framework Convention for the Protection of National Minorities, signed in 1999. The need to combat anti-Gypsyism, for example through pedagogical and awareness raising measures in schools and society at large, is also addressed.

Finally, the Commissioner welcomes the plans to establish an office to deal with police complaints. In order to ensure effectiveness, the Commissioner highlights the importance of the institutional and practical independence of such a mechanism and the adequacy of its investigatory powers.

During his visit to Greece the Commissioner held discussions with members of the Greek government and international and national organisations, including NGOs. The Commissioner also traveled to Patras, where he met local representatives of the Police and Coast Guard and a number of migrants.

Read the reply of the Minister of Justice

Read the comments of the Ministry for Citizen Protection "

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **28 November 1974**

Protocol No. 6 (ETS No. 114) ratified on **8 September 1998**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **1 February 2005**

Protocol No. 14 (CETS No. 194) ratified on **5 August 2005**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **75** concerning Greece, of which **69** gave rise to a finding of at least one violation and **3** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **662** concerned Greece.

Resolutions adopted by the Committee of Ministers in 2009: **4**

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 6 May 2010): **0**

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **2 August 1991**, entered into force on **1 December 1991**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **4 November 1993**, ratified on **29 June 1994**, entered into force on **1 March 2002**

Last country visit: **September 2009** (then in January 2010 for high-level talks)

Publication of the last report: **June 2009**

Press release of 30 June 2009:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its ad hoc visit to Greece in September 2008, together with the response of the Greek Government. These documents have been made public at the request of the Greek authorities.

In the course of this visit, the CPT reviewed the treatment of persons detained by law enforcement officials and examined the conditions of detention in police and border guard stations as well as in special facilities for illegal migrants, in order to evaluate progress made since the CPT's last visit to Greece in 2007.

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

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **17 November 2005** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **22 September 1997** but not ratified

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) neither signed nor ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the fourth report on Greece was adopted on 2 April 2009 and made public on **15 September 2009**.

Extract of press release of 15 September 2009:

"Council of Europe's Anti-Racism Commission publishes new reports on the Czech Republic, Greece and Switzerland

The European Commission against Racism and Intolerance (ECRI) released today three new reports examining racism, xenophobia, antisemitism and intolerance in the Czech Republic, Greece and Switzerland. The Chair of ECRI, Eva Smith Asmussen, said the reports note positive developments in all three of these Council of Europe member states, but also detail continuing grounds for concern.

[…]

In Greece, the legislative framework on non-discrimination has been consolidated with the adoption of the 2005 Equal Treatment Act and the 2008 amendment of the Criminal Code making the racist motivation of an offence an aggravating circumstance. In an encouraging development, there have been successful prosecution in recent years against antisemitic and anti-Roma publications.

However, on the whole, the legislation prohibiting incitement to racial hatred is still seldom applied and so far, few racial discrimination complaints have been filed due to insufficient legal assistance and information on available remedies. Roma continue to face problems in the fields of employment, housing and justice and the existing Integrated Action Plan should be better implemented. Issues relating to the freedom of association of persons belonging to some ethnic groups have not yet been solved. Significant improvements are called for in the treatment of refugees, asylum seekers and immigrants.

[…]

The reports are part of ECRI´s 4th monitoring round, which focuses on the implementation of its previous recommendations and the evaluation of policies and new developments since its last report. In two years time ECRI will carry out a follow up assesment.

The reports, including government observations, are available at: www.coe.int/ecri"

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 18 October 1961, ratified on 6 June 1984, entered into force on 6 July 1984

European Social Charter (revised) (ETS No. 163) signed on 3 May 1996 but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed and ratified on 18 June 1998, entered into force on 1 August 1998

Extract of the website of the European Social Charter (situation as of February 2010):

"The Charter in domestic law

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

Reports *

Between 1986 and 2009, Greece submitted 20 reports on the application of the Charter.

The 19th report on the accepted provisions of Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14 and Article 4 of the Additional Protocol) was submitted on 19/05/2009. Conclusions in respect of these provisions will be published in January 2010.

The 20th report concerns the accepted provisions relating to Thematic Group 3 "Labour rights" i.e.

– Right to just conditions of work (Article 2)

– Right to a fair remuneration (Article 4)

– Right of workers to be informed and consulted (Article 2 of the Additional Protocol of 1988)

– Right of workers to take part in the determination and improvement of working conditions and working environment (Article 3 of the Additional Protocol of 1988)

It was submitted on 9 December 2009.

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once very four years.

Situation of Greece with respect to the application of the Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[4]

Children

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

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

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

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

Non-discrimination (nationality)

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

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

Non-discrimination (sex)

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

► Adoption of Law 3488/2006 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Non-discrimination (disability)

► Anti-discrimination legislation explicitly prohibiting direct and indirect discrimination in employment on the ground, inter alia, of disability (Act No. 3304/2005).

Employment

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

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

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

4. The Committee rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the Committee).

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

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

Movement of persons

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

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

Social Protection

► The National Social Cohesion Fund was established in 2008 (Law 3631/2008) with the aim to support the most vulnerable groups at risk of poverty through targeted income support.

Education

► Adoption of Law 3304/2005 on equal treatment explicitly prohibits direct and indirect discrimination in access to all kinds and levels of vocational orientation, vocational training, advanced training and vocational reorientation.

Cases of non-conformity

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

1. Access to civil service posts and to “related activities” is closed to non-EU and non-EEA nationals;

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

(Conclusions XIX-1)

► Article 15§1 (and Article 1§4) – Right of physically or mentally disbaled persons to vocational training, rehabilitation and social settlement – Education and training for persons with disabilities

There is no legislation protecting persons with disabilities from discrimination in education.

(Conclusions XIX-1)

Thematic Group 2 “Health, social security and social protection”

► Article 3§1 – Right to safe and healthy working conditions - Safety and health regulations

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

(Conclusions XIX-2)

► Article 3§2 – Right to safe and healthy working conditions – Enforcement of safety and health regulations

It has not been established that the labour inspection services are effective.

(Conclusions XIX-2)

► Article 11§3 – Right to protection of health – Prevention of diseases and accidents

1. It has not been demonstrated that the measures taken to reduce the high level of tobacco consumption are adequate;

2. It has not been demonstrated that sufficient measures have been adopted during the reference period to improve the right to a healthy environment for persons living in lignite mining areas (follow up to Marangopoulus Foundation v. Greece complaint 30/2005, decision on the merits of 6 December 2006).

(Conclusions XIX-2)

► Article 12§1 – Right to social security – Existence of a social security system

The minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate.

(Conclusions XIX-2)

► Article 12§4 – Right to social security - Social security of persons moving between states

Accumulation of insurance or employment periods completed by nationals of States Parties not covered by Community regulations or by bilateral agreements is not guaranteed.

(Conclusions XIX-2)

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

There is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.

(Conclusions XIX-2)

► Article 13§4 – Right to social and medical assistance – Specific emergency assistance for non-residents

It has not been established that all persons, without resources, unlawfully present in Greece may be granted emergency medical and social assistance.

(Conclusions XIX-2)

Thematic Group 3 “Labour rights”

► Article 2§4 – Right to just conditions of work – Reduced working hours or additional holidays in dangerous or unhealthy occupations

Workers in the mining industry do not in practice benefit from compensatory measures due to the arduous nature of their work

(Conclusions XVIII-2)

► Article 2§5 – Right to just conditions of work – Weekly rest period

Certain categories of workers are not covered by the legislation guaranteeing a weekly rest period (workers in agriculture, livestock, hunting and fishing, and domestic staff).

(Conclusions XVIII-2)

► Article 4§1 – Right to a fair remuneration – Decent remuneration

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

(Conclusions XVIII-2)

► Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment

1. Notice periods for employees with fewer than ten years' service are inadequate.

2. The number of days' wages paid as compensation in lieu of notice is inadequate.

(Conclusions XVIII-2)

► Article 2 of the 1988 Additional Protocol – Right of workers to be informed and consulted

It has not been established that the great majority of workers is granted an effective right to information and consultation within the undertaking.

(Conclusions XVIII-2)

► Article 3 of the 1988 Additional Protocol – Right of workers to take part in the determination and improvement of the working conditions and working environment

It has not been established that the great majority of workers is granted an effective right to take part in the determination and improvement of the working conditions and working environment within the undertaking.

(Conclusions XVIII-2)

Thematic Group 4 “Children, families, migrants”

► Article 7§5 – Right of children and young persons to protection - Fair pay

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

(Conclusions XVII-2)

► Article 8§1 – Right of employed women to protection – Maternity leave

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

(Conclusions XVII-2)

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

1. Family benefits are inadequate; the self-employed, who represent about 32% of the active population, do not receive family benefits.

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

(Conclusions XVIII-1)

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

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

(Conclusions XVII-2)

► Articles 19§6 (and 19§10) – Right of migrant workers and their families to protection and assistance – Family reunion

The two-year residence condition in Act No. 2910/2001 for entitlement to family reunion is excessive; this also applies to self-employed workers.

(Conclusions XVIII-1)

► Articles 19§8 (and 19§10) – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation

Migrant workers may be expelled if their presence in Greece poses a simple threat to public order, this also applies to self-employed workers.

(Conclusions XVIII-1)

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Greek Government to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

► Article 10§1 – Conclusions XIX-1

► Article 15§2 - Conclusions XIX-1

Thematic Group 2 “Health, social security and social protection”

► Article 11§1 - Conclusions XIX-2

► Article 11§2 - Conclusions XIX-2

► Article 14§1 - Conclusions XIX-2

► Article 4 of the 1988 Additional Protocol - Conclusions XIX-2

Collective Complaints and State of Procedure in Greece[5]

Collective complaints (under examination)

International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece (No. 49/2008)

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

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

Inadmissibility decision of 13 October 1999.

2. Complaints where the Committee has found a violation which has been remedied

International Federation of Human Rights Leagues v. Greece (No. 7/2000)

Violation of Article 1§2 (prohibition of forced labour), decision on the merits of 5 December 2000.

3. Complaints where the Committee has found a violation which has not yet been remedied

Quaker Council for European Affairs v. Greece (No. 8/2000)

Violation of Article 1§2 (prohibition of forced labour), decision on the merits of 25 April 2000.

World Organisation against Torture v. Greece (No. 17/2003)

Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 7 December 2004.

European Roma Rights Centre v. Greece (No. 15/2003)

Violation of Article 16 (families' right to social, economic and legal protection), decision on the merits of 8 December 2004.

Maragopoulous Foundation for Human Rights v. Greece (No. 30/2005)

Violation of articles 11, 2§4, 3§1 and 3§2 (right to health and right to safety at work), decision on the merits of 6 December 2006”

I. Parliamentary Assembly

No specific recent text concerning Greece

3. HUNGARY

6 May 2010

CoE member state since **6 November 1990**

Number of CoE Conventions ratified (as of 6 May 2010): **77 (out of 207)**

Number of CoE Conventions signed (as of 6 May 2010): **17**

I. PLURALISTIC DEMOCRACY[6]

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2005**

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5. The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the Collective Complaint webpage. Searches on complaints may also be carried out in the European Committee of Social Rights Caselaw database.

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

Next presidential elections: **2010**

Last general elections: **2010**

Next general elections: **2014**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 6 April 1992, ratified on 21 March 1994, entered into force on 1 July 1994

Last Congress of Local and Regional Authorities monitoring report: June 2002

II. RULE OF LAW

A. VENICE COMMISSION

No recent opinion concerning Hungary

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Hungary in 2006 was **39 euros**;

– the **number of professional judges on a full-time basis** in Hungary in 2006 was **2,838,** this means 28.2 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Hungary was **1,743**, this means 17.3 for 100,000 inhabitants.

C. The fight against corruption and organised crime[7]

Civil Law Convention on Corruption (ETS No. 174) signed on 15 January 2003, ratified on 4 December 2003, entered into force on 1 April 2004

Criminal Law Convention on Corruption (ETS No. 173) signed on 26 April 1999, ratified on 22 November 2000, entered into force on 1 July 2002, Additional Protocol (ETS No. 191) signed on 15 May 2003 but not ratified

Extract of: **Second Evaluation Round: Compliance Report on Hungary** adopted by GRECO at its 37th Plenary Meeting [Strasbourg, 31 March – 4 April 2008, GrecoRC-II(2008)4E]:

“Conclusions

In view of the above, GRECO concludes that Hungary has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the Second Round Evaluation Report. Recommendations i, ii, and ix have been implemented satisfactorily and recommendations iii, xi and xii have been dealt with in a satisfactory manner. Recommendations iv, v, viii and x have been partly implemented and recommendations vi and vii have not been implemented.

Hungary has made efforts to strengthen the anti-money laundering preventive system by inter alia improving the awareness of, and feedback to, the different bodies/persons obliged to report suspicious transactions. Likewise, a reform process of the anti-corruption policy is underway to provide a more effective and articulated approach in this field. A number of important steps have been taken to this end, including the preparation of a new Anti-Corruption Strategy for the period of 2008-2014, a reorganisation of tasks within the Ministry of Justice and Law Enforcement (which has the main responsibility for coordinating and implementing anti-corruption activities), the ongoing development of a Code of Ethics for civil servants, etc. In this context, GRECO urges the authorities to pursue vigorously the different initiatives underway, so that plans become

7. Hungary is in 46th position with a score of 5.1 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

implemented measures as soon as possible. In the meantime, additional measures to prevent corruption in public administration still need to be introduced, in particular, by developing meaningful guidance for public officials with respect to the acceptance of gifts, situations of conflicts of interest (including moving to the private sector) and procedures for reporting suspicions of corruption. Further efforts are also required to ensure that corporate criminal liability is not circumvented in practice.

GRECO invites the Head of the Hungarian delegation to submit additional information regarding the implementation of recommendations iv, v, vi, vii, viii and x by 31 October 2009.

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

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 6 November 1997, ratified on 2 March 2000, entered into force on 1 July 2000

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed and ratified on 14 April 2009, entered into force on 1 August 2009

Third Evaluation Round: Second written progress report submitted to MONEYVAL by Hungary [adopted by MONEYVAL at its 28th Plenary Meeting, Strasbourg, 8-12 December 2008, MONEYVAL(2008)42rev1]

News of 27 January 2010:

"On - site evaluation visit to Hungary

A MONEYVAL team of evaluators visited Hungary from 18 to 22 January 2010 under the fourth evaluation round. The visit was coordinated by the Ministry of Finance and the Hungarian Financial Supervisory Authority. The team met with State Secretary Tamas Katona as well as representatives from 25 organisations and agencies including law enforcement agencies, government departments, financial services supervisors, trade associations and the private sector. The meetings were held in Budapest.

A key findings document was discussed with the Hungarian authorities and left with them at the conclusion of the mission. The draft report will now be prepared for review and adoption by MONEYVAL at its 33rd Plenary meeting (27-30 September 2010).

MONEYVAL`s fourth round evaluations are more focussed and primarily follow up the recommendations made in the 3rd round. Evaluation teams in the fourth round examine all Financial Action Task Force (FATF) key and core Recommendations as well as other Recommendations which were previously rated "non compliant" or "partially compliant". Evaluations are complemented by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in accordance with MONEYVAL's terms of reference."

III. PROTECTION OF HUMAN RIGHTS[8]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **March 2006,** following a visit to the country in **September 2005**

Last visit: October 2009

Press release of 15 October 2009:

"Hungary: Commissioner Hammarberg recommends further action to eradicate intolerance and discrimination

8. Hungary is in 25th position with a score of 5.50 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

Commissioner Hammarberg concluded yesterday a three-day visit to Hungary during which he held discussions with the Prime Minister, the Ministers of Foreign Affairs and of Justice and Law Enforcement and other representatives of national authorities, international and non-governmental organisations. The discussions focused on the fight against intolerance and racism affecting members of minority groups, especially Roma.

The Commissioner expressed to the authorities his grave concern about the observed rise of extremism, intolerance and racist manifestations that have targeted, in particular, members of the Roma minority population. Of special concern has been the public use of anti-Roma hate speech by certain public figures and the lack of strong condemnation of and effective measures against a reoccurrence of such incidents.

The Commissioner appealed to all party leaders to ensure that no xenophobic or anti-Roma statements be made in the forthcoming election campaign.

Commissioner Hammarberg encouraged the authorities to reflect further and to adopt urgent measures in order to fully protect the human rights of all members of minorities and to align legislation and practice with the European Convention on Human Rights and the case law of the European Court of Human Rights. In this context, he encouraged the authorities to give effect to the recommendations made by the European Commission against Racism and Intolerance (ECRI), including the need to penalise with a view to preventing the creation of and participation in the activities of groups which promote racism.

The Commissioner welcomed the efforts made by the competent authorities in order to identify, arrest and punish those responsible for the brutal attacks against Roma. He noted with satisfaction the recruitment of 67 Roma by the police forces and the aim to increase this number to 300 by 2013, as well as the determination shown by the government to make possible the prompt recruitment of 200 Roma graduates in the public sector.

The Commissioner stressed the need to increase public awareness on the situation of minorities which suffer from systematic discrimination or intolerance, such as the Roma, the Jewish community and LGBT (lesbian, gay, bisexual, transgender) people. The use in schools of the Factsheets on Roma History, published by the Council of Europe, was also recommended and authorities showed willingness to make good use of this material.

During his mission, Commissioner Hammarberg also visited the primary school of Erdélyi street in the 8th district in Pest whose pupils are primarily of Roma origin. Despite efforts made so far, de facto segregation in the field of education seems to persist in Hungary. The Commissioner, recalling the relevant opinions of the Advisory Committee of the Framework Convention for the Protection of National Minorities and the Council of Europe Committee of Ministers' recommendations, urges the national and especially the local authorities to take measures for the elimination of Roma pupils' exclusion and segregation and the adoption of positive measures for their full integration in the national education system.

Such efforts should be combined with measures to improve the living conditions of the Roma minority in the country, one third of which reportedly still remains in settlements. The Commissioner refers notably to the government's responsibility under the European Social Charter to provide adequate housing and to ensure the protection of family life and calls upon the Hungarian authorities to enhance social housing and to avoid evictions without making available alternative accommodation for Roma families, as prescribed by the Council of Europe human rights standards.

Finally, the Commissioner calls on the authorities to proceed to the ratification by Hungary of Protocol No 12 to the European Convention on Human Rights, containing a general prohibition of discrimination, and to the acceptance of the collective complaints procedure under the European Social Charter."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **5 November 1992**

Protocol No. 6 (ETS No. 114) ratified on **5 November 1992**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **16 July 2003**

Protocol No. 14 (CETS No. 194) ratified on **21 December 2005**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **29** concerning Hungary, of which **27** gave rise to a finding of at least one violation and **1** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **1,406** concerned Hungary.

Resolutions adopted by the Committee of Ministers in 2009: **0**

Resolutions adopted by the Committee of Ministers in 2010 (as of 6 May 2010): **0**

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

Convention (ETS No. 126)signed on **9 February 1993**, ratified on **4 November 1993**, entered into force on **1 March 1994**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed and ratified on **4 November 1993**, entered into force on **1 March 2002**

Last country visit: March – April 2009

Publication of the last report: **June 2007**

Press release of 28 June 2007:

"The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published today its report on the ad hoc visit to Hungary in January/February 2007, together with the authorities' response. These documents have been made public at the request of the Hungarian Government.

The 2007 visit focused on the situation at Szeged Prison's Special Regime Unit for prisoners serving lengthy sentences (HSR Unit), a unique facility within the Hungarian prison system for inmates serving very long terms and requiring closer attention and support. The CPT's report assesses how this Unit has functioned in practice since its setting-up following the Committee's last periodic visit in 2005.

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

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **10 October 2007** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **25 September 1995**, entered into force on **1 February 1998**

Last opinion (2nd monitoring cycle) by the Advisory Committee adopted in **December 2004** [ACFC/OP/ II(2004)003]

Last CM resolution(2nd monitoring cycle) on the implementation of the Framework Convention adopted in **December 2005** [ResCMN(2005)10]

Third state report (3rd monitoring cycle) received in **June 2009**

Last Advisory Committee 3rd cycle country visit: **December 2009**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **5 November 1992**, ratified on **26 April 1995**, entered into force on **1 March 1998**

Last periodic state report (4th cycle) submitted in **January 2009** [MIN-LANG/PR(2009)1]

Last assessment report (4th cycle) of the Committee of Experts adopted in **September 2009** [ECRML(2010)2]

Last recommendation (4th cycle) of the CM adopted in **March 2010** [RecChL(2010)3]

Last biennial report by the Secretary General to the Parliamentary Assembly: **24 October 2007** [Doc. 11442]

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the fourth report on Hungary was adopted on 20 June 2008 and made public on **24 February 2009**.

Extract of press release of 24 February 2009:

“The European Commission against Racism and Intolerance publishes reports on Bulgaria, Hungary and Norway

Ms Eva Smith Asmussen, Chair of the European Commission against Racism and Intolerance (ECRI), announced today the release of the first three reports of a new series of country monitoring, examining racism and intolerance in Europe. The reports on Bulgaria, Hungary and Norway are the first of ECRI’s fourth round of country monitoring work, which focuses on the implementation of ECRI’s previous recommendations, the evaluation of policies and new developments since its last report.

ECRI underlines that positive developments have occurred in all three of these Council of Europe member states. At the same time, however, the reports detail continuing grounds for concern for ECRI:

[…]

In Hungary, the Equal Treatment Authority which has been operating since 2005 can award compensation to victims of discrimination and impose fines on persons or bodies that commit discrimination. A variety of measures have also been taken to improve the integration of disadvantaged individuals, including Roma, and steps have been taken to improve the situation of asylum seekers. However, the recent rise in racist and xenophobic discourse in Hungarian society is worrying, as is the continuing disadvantage experienced by Roma in every field of daily life. Negative stereotypes also remain with respect to migrants and asylum seekers, who experience difficulties in gaining access to housing and employment.

[…]

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

ECRI’s country-specific reports, with government observations appended, are available at: www.coe.int/ecri

ECRI is an independent human rights body of the Council of Europe which monitors problems of racism and intolerance, prepares reports and issues recommendations to member states.”

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 13 December 1991, ratified on 8 July 1999, entered into force on 7 August 1999

European Social Charter (revised) (ETS No. 163) signed on 7 October 2004, ratified on 20 April 2009, entered into force on 1 June 2009

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed on 7 October 2004 but not ratified

Extract of the website of the European Social Charter (situation as of April 2010):

“The Charter in domestic law

Article 7§1 of the Constitution: “The legal system of the Republic of Hungary shall ensure harmony between the assumed international law obligations and domestic law’.”

Reports *

Between 2002 and 2009, Hungary submitted 6 reports on the application of the Social Charter.

The 6th report, on the provisions related to Thematic group 2 “Health, social security and social protection” (Articles 3, 11, 12, 13 and 14 of the Charter and Article 4 of the 1988 Protocol) was submitted on 2/10/2009. Conclusions in respect of these provisions were published in January 2010.

Following the ratification of the Revised Charter, Hungary is required to submit its 1st report on the accepted provisions related to Thematic group 3 “Labour rights” by 31/10/2009, covering the following articles:

– Right to just conditions of work (Article 2)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6)

– Right of workers to be informed and consulted (Article 21)

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

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

The situation of Hungary with respect to the application of the Charter

Example of progress achieved following conclusions or decisions of the European Committee of Social Rights[9]

Right to specific emergency assistance for non-residents

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

Safety and health conditions at work

► Restrictions on daily or weekly exposure time in the case of occupations subject to extreme temperatures and vibration (Decree no. 26/1996)

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

No cases of non-compliance retained

Thematic Group 2 “Health, social security and social protection”

► Article 3§1 – Right to safe and healthy working conditions - Safety and health regulations

It has not been established that the self-employed and domestic workers are protected by occupational health and safety regulations.

(Conclusions XIX-2)

►Article 11§1- Right tto protection of health - Removal of the causes of ill-health

It has not been shown that sufficient measures have been taken to reduce the mortality rate.

(Conclusions XIX-2)

►Article 12§1 - Right to social security - Existence of a social security system

The minimum monthly old age, survivor's, orphan's and disability pensions as well as the minimum monthly job-seeker aid and entrepreneurial benefit are manifestly inadequate.

(Conclusions XIX-2)

Thematic Group 3 “Labour rights”

► Article 2§1 – Right to just conditions of work - Reasonable working time

A 72 hours working week is allowed by law for employees on stand-by duty.

(Conclusions XVIII-2)

► Article 2§3 – Right to just conditions of work - Annual holiday with pay

The employer is allowed to postpone three fourth of the basic annual leave, including half of the minimum leave as required under the Charter, to a later period in case of “economic interests of particular importance”, a concept which is unclear in respect of Article 2§3 of the Charter.

9. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

(Conclusions XVIII-2)

► Article 6§4 – Right to bargain collectively - Collective action

In the civil service, a strike can only be called by a trade union that is party to the agreement concluded between the Government and the trade unions concerned. Moreover, civil service trade unions may only call strikes with the approval of a majority of the staff concerned. The critera used to define civil servant officials who are denied the right to strike go also beyond the scope of Article 31 of the Charter (any restriction shall be prescribed by law, pursue a legitim purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals).

(Conclusions XVIII-1)

Thematic Group 4 “Children, families, migrants”

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

– corporal punishment in the home is not prohibited;

– the maximum length of pre-trial detention is excessive

(Conclusions XVII-2)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Hungarian Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

Article 1§§2 and 4 – Conclusions XIX-1

Article 10§§1, 2, 3 and 4 – Conclusions XIX-1

Article 15§§1 and 2 – Conclusions XIX-1

Thematic Group 2 “Health, social security and social protection”

Article 3§2 – Conclusions XIX-2

Article 11§2 - Conclusions XIX-2

Article 13§1 - Conclusions XIX-2

Article 13§4 - Conclusions XIX-2

Article 14§1 - Conclusions XIX-2

Thematic Group 3 “Labour rights”

Article 6§3 – Conclusions XVIII-1

Thematic Group 4 “Children, families, migrants”

Article 8§4 – Conclusions XVII-2

Article 16 - Conclusions XVII-2”

I. Parliamentary Assembly

No specific recent text concerning Hungary

4. ICELAND

6 May 2010

CoE member state since **7 March 1950**

Number of CoE Conventions ratified (as of 6 May 2010): **80 (out of 207)**

Number of CoE Conventions signed (as of 6 May 2010): **36**

I. PLURALISTIC DEMOCRACY[10]

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2008**

Next presidential elections: **2012**

Last general elections: **2009**

Next general elections: **2013**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 20 November 1985, ratified on 25 March 1991, entered into force on 1 July 1991

Last **Congress of Local and Regional Authorities** monitoring report: February 2010 [CPL(18)3] and **Recommendation 283 (2010)** on local democracy in Iceland adopted on 19 March 2010

Extract of document CPL(18)3:

"Summary

The report considers the situation of local democracy in Iceland and the effects of the financial crisis on local authorities. It is the first monitoring report since Iceland ratified the European Charter of Local Self-Government in 1991. The overall assessment of the situation shows that the state of local democracy in Iceland is in compliance with the Charter. The national and local authorities in Iceland have made major efforts to deal with a crisis which has had a significant impact on local authorities, without undermining local self-government. These efforts fit in with a willingness to move ahead with the reforms under way, in particular the process of merging municipalities. The recommendation urges the Icelandic authorities to raise the minimum threshold below which the merger of local authorities is compulsory so as to further reduce the number of municipalities, while also granting the city of Reykjavik a special status and setting up a support fund for local authorities particularly hard hit by the crisis. In addition, the Icelandic authorities are urged to introduce appropriate legislation to give local authorities a right of appeal against decisions taken at national level which might infringe principles of local self-government."

II. RULE OF LAW

A. VENICE COMMISSION

No opinion concerning Iceland

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Iceland in 2006 was **60 euros**;

– the **number of professional judges on a full-time basis** in Iceland in 2006 was **47**, this means 15.7 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Iceland was **6**, this means 2.0 for 100,000 inhabitants.

C. The fight against corruption and organised crime[11]

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

11. Iceland is in 8th position with a score of 8.7 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

Civil Law Convention on Corruption (ETS No. 174) signed on 4 November 1999 but not ratified

Criminal Law Convention on Corruption (ETS No. 173) signed on 27 January 1999, ratified on 11 February 2004, entered into force on 1st June 2004, Additional Protocol (ETS No. 191) signed on 15 May 2003 but not ratified

Press release of 16 April 2008:

"The Group of States against Corruption (GRECO) publishes its Third Round Evaluation Report on Iceland

The Council of Europe's Group of States against Corruption (GRECO) has published today its Third Round Evaluation Report on Iceland. The report, which was adopted on 4 April 2008, has been made public following the agreement of the authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], GRECO recognises that Icelandic criminal legislation largely complies with the relevant provisions of the Council of Europe Criminal Law Convention on Corruption (ETS 173). GRECO nevertheless calls upon Iceland to ensure that Members of Parliament are covered by the provisions on bribery and trading in influence. GRECO also found the existing penal sanctions in respect of bribery in the private sector too weak. Finally, it is crucial that a more proactive approach in the detection, prosecution and punishment of corruption starts being pursued in Iceland (only one bribery offence has been prosecuted in the last ten years).

Concerning transparency of party funding [theme II], GRECO commends the introduction of a new legislative framework on political financing, which closely follows the requirements of the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. A few shortcomings were nevertheless identified; in particular, transparency rules in relation to the campaign finances of presidential candidates are still needed. Likewise, it remains critical that further arrangements are introduced to allow an easy and timely access of the public to information on political finances. GRECO emphasised that, to a large extent, the challenges are, today, more in the enforcement of legislation. For this reason, GRECO calls for the review of the current sanctions in order to ensure that they reflect the severity of the range of infringements that are possible under the law in this area.

The report, as a whole, addresses 15 recommendations to Iceland. GRECO will assess the implementation of these recommendations towards the end of 2009."

Extract of: Third Evaluation Round: Compliance Report on Iceland "Incriminations (ETS 173 and 191, GPC 2)" "Transparency of Party Funding" adopted by GRECO at its 46th Plenary Meeting [Strasbourg, 22-26 March 2010, GRECORC-III(2010)2E):

"Conclusions

27. In view of the above, GRECO concludes that Iceland has implemented satisfactorily or dealt with in a satisfactory manner only one of the fifteen recommendations contained in the Third Round Evaluation Report. With respect to Theme I – Incriminations, recommendation v has been partly implemented and recommendations i – iv and vi have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendation viii has been implemented satisfactorily and recommendations i – vii and ix have not been implemented.

28. The information provided by the Icelandic authorities clearly indicates that the process of implementation of all but one recommendations issued in the Third Round Evaluation Report under both Theme I and Theme II is still in its initial stages. The almost complete lack of any concrete results is not only salient in respect of recommendations whose implementation would require legislative changes and amendments according to the authorities. It is also striking that very little substantial progress has been achieved in respect of the few recommendations that would not necessarily require changing the law. As a consequence, only one of the recommendations could be considered fully complied with and only one of them could be categorised as partly implemented. Having said that, GRECO takes note of the declared intention of the Icelandic authorities to carefully deal with each of the pending recommendations. GRECO urges the authorities to do their utmost in this respect, including by reconsidering its stated position regarding recommendation v(i) under Theme I.

29. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Icelandic

delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i - vi regarding Theme I and recommendations I – vii and ix, regarding Theme II) as soon as possible, however – at the latest – by 30 September 2010, pursuant to paragraph 2(i) of that Rule.

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

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 8 November 1990, ratified on 21 October 1997, entered into force on 1 February 1998

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 16 May 2005 but not ratified

Iceland is not a member of MONEYVAL.

III. PROTECTION OF HUMAN RIGHTS[12]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **December 2005,** following a visit to the country in **July 2005**

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **29 juin 1953**

Protocol No. 6 (ETS No. 114) ratified on **22 mai 1987**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **10 November 2004**

Protocol No. 14 (CETS No. 194) ratified on **16 May 2005**

Out of a total of 1,625 judgments delivered by the Court in 2009, there was **no** judgment concerning Iceland.

Out of a total of 119,298 pending cases on 31st December 2009, **14** concerned Iceland.

Resolutions adopted by the Committee of Ministers in 2009: **0**

Resolutions adopted by the Committee of Ministers in 2010 (as of 6 May 2010): **0**

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **19 June 1990**, entered into force on **1 October 1990**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **8 September 1994**, ratified on **29 June 1995**, entered into force on **1 March 2002**

Last country visit: **June 2004**

Publication of the last report: **January 2006**

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **16 May 2005** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995** but not ratified

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

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12. Iceland is in 9th position with a score of 2.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

Convention (ETS No. 148) signed on **7 May 1999** but not ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

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

H. SOCIAL RIGHTS

European Social Charter of 1961(ETS No. 035)signed and ratified on **15 January 1976**, entered into force on **14 February 1976**

European Social Charter (revised) (ETS No. 163) signed on 4 November 1998 but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

Extract of the website of the European Social Charter (situation as of May 2010):

"The Charter in domestic law

Iceland is a dualist state.

Reports*

Between 1981 and 2009 Iceland submitted 22 reports on the application of the Charter.

The 22nd report, submitted on 5 October 2009, concerns the provisions accepted by Iceland related to Thematic Group 2 "Health, Social Security and Social Protection" (Articles 3, 11, 12, 13 and 14 of the Charter). Conclusions in respect of these provisions were published in January 2010.

The next report to be submitted concerns the provisions accepted by Iceland related to Thematic Group 3 "Labour Laws", i.e.

– Right to just conditions of work (Article 2§§1, 3 and 5)

– Right to a fair remuneration (Article 4)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6).

It should have been submitted by 31/10/2009.

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

The situation of Iceland with respect to the application of the Charter

Example of progress achieved following conclusions or decisions of the European Committee of Social Rights[13]

Employment

► Article 180 of the Criminal Code which provided for imprisonment if a person became a public burden, neglected his maintenance obligations and refused to take on a job was repealed (Act of 14 June 1985). Section 81 of the Seamen's Act which provided for criminal sanctions against a crew member rising against the shipmaster even if not using the force, was repealed (Act of 4 May 1990). *Article 1§2 – prohibition of forced labour*

Right to organise

13. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

► The requirement that taxi drivers have to belong to a specified trade union in order to operate was abolished (Act No. 61/1995). The Constitution was amended to expressly recognise the negative right to organise (Act No. 97/1995). *Article 5 - right to organise*

Health

► Act No. 870/2000, revoking the 1983 Regulation, and Act No. 44/2002 replacing Act No. 117/1985, fixed regulations for protecting workers against asbestos and againtst ionsing radiation respectively. *Article 3§1 – right to health and safety in the workplace*

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§2 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

– legislation prohibiting discrimination in employment on grounds other than sex is inadequate;

– certain occupations (primary school teacher, pharmacist and operator of an industrial, craft or factory facility) which are not inherently connected with the protection of the public interest or national security and do not involve the exercise of public authority and therefore are not covered by Article 31 of the Charter are restricted to Icelandic nationals or EEA nationals.

(Conclusions XIX-1 (2008))

►Article 1§4 (15§1 and 15§2) - Right to work - Vocational guidance, training and rehabilitation -Right of persons with disabilities to education, vocational training and guidance

There is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

(Conclusions XIX-1 (2008))

Thematic Group 2 “Health, social security and social protection”

► Article 12§4 – Right to social security - Social security of persons moving between states

Legislation does not provide for retention of accrued benefits when persons move to a state party not bound by Community regulations or by agreement with Iceland; nor does it provide for the accumulation of insurance or employment periods completed by the nationals of States party not covered by Community regulations or bound by agreement with Iceland.

(Conclusions XIX-2 (2009))

Thematic Group 3 “Labour rights”

► Article 2§1 - Right to just conditions of work - Reasonable working time

The working hours for seamen are allowed to reach 72 hours per week.

(Conclusions XVIII-2 (2007))

► Article 4§3 – Right to a fair remuneration - Non-discrimination between and women men with respect to remuneration

1. Iceland does not permit pay comparisons for determining equal work or work of equal value beyond a single employer;

2. There is no provision under Icelandic law for declaring null a dismissal by reprisal and/or reinstating a victim of such a dismissal.

(Conclusions XVIII-2 (2007))

►Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment

The two weeks' notice period in the collective agreement between the Confederation of Icelandic Employers and Skilled Construction aand Industrial workers, for employees with more than six months' service is not reasonable.

(Conclusions XVIII-2 (2007))

► Article 5 – Right to organise

It has not been established whether negative freedom of association is fully protected.

(Conclusions XVIII-1 (2006))

► Article 6§4 - Right to bargain collectively – Collective action

During the reference period the legislature intervened in order to terminate collective action in circumstances which went beyond those permitted by Article 31 of the Charter.

(Conclusions XVIII-1 (2006))

Thematic Group 4 “Children, families, migrants”

No cases of non-compliance retained

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Icelandic Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

(Next report to be submitted by 31/10/2011)

► Article 18§§2 and 3 (Conclusions XIX-1 (2008)

Thematic Group 2 “Health, social security and social protection”

(Next report to be submitted by 31/10/2012)

► Article 12§2 – Conclusions XIX-2 (2009)

Thematic Group 3 “Labour rights”

(Next report to be submitted by 31/10/2013)

– No deferrals

Thematic Group 4 “Children, families, migrants”

(Next report to be submitted by 31/10/2010)

– No deferrals”

I. Parliamentary Assembly

No specific recent text concerning Iceland

5. IRELAND

6 May 2010

CoE member state since **5 May 1949**

Number of CoE Conventions ratified (as of 6 May 2010): **97 (out of 207)**

Number of CoE Conventions signed (as of 6 May 2010): **18**

I. PLURALISTIC DEMOCRACY[14]

A. Free and fair elections

System of government: parliamentary democracy

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

Last presidential elections: **2004**

Next presidential elections: **2011**

Last general elections: **2007**

Next general elections: **2012**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 7 October 1997, ratified on 14 May 2002, entered into force on 1 September 2002

Last Congress of Local and Regional Authorities monitoring report: May 2001

II. RULE OF LAW

A. VENICE COMMISSION

No opinion concerning Ireland

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Ireland in 2006 was **41 euros**;

– the **number of professional judges on a full-time basis** in Ireland in 2006 was **132**, this means 3.1 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Ireland was **100**, this means 2.4 for 100,000 inhabitants.

C. The fight against corruption and organised crime[15]

Civil Law Convention on Corruption (ETS No. 174) signed on 4 November 1999 but not ratified

Criminal Law Convention on Corruption (ETS No. 173) signed on 7 May 1999, ratified on 3 October 2003, entered into force on 1 February 2004, Additional Protocol (ETS No. 191) signed on 15 May 2003, ratified on 11 July 2005, entered into force on 1 November 2005

Press release of 25 January 2010:

“Council of Europe Group of States against Corruption publishes report on Ireland

The Council of Europe’s Group of States against Corruption (GRECO) today published its Third Round Evaluation Report on Ireland, which focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

The report as a whole addresses 10 recommendations to Ireland. GRECO will assess the implementation of these recommendations in the second half of 2011.

Regarding the criminalisation of corruption [theme I], GRECO recognises that overall the criminal law of Ireland complies with the relevant provisions of the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol.

Nonetheless, GRECO encourages the authorities to proceed with their efforts to clarify the legal framework for corruption offences, notably through the criminalisation of trading in influence as an autonomous offence and the extension of the jurisdiction of Irish authorities to prosecute nationals who commit bribery offences abroad when they do not have the status of public official.

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15. Ireland is in 14th position with a score of 8.0 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

Concerning transparency of party funding [theme II], GRECO praises the thorough regulatory system, as well as the role played by the Standards in Public Office Commission in monitoring compliance.

In the context of the on-going reform process, GRECO recommends additional measures to increase transparency and control over political finances. In particular, it is crucial that full party accounts, including financial information on local branches and so-called third parties, are made publicly available. Moreover, monitoring of political funding at local level is to be reinforced.

GRECO also points out that it is essential that the existing sanctioning system is further regulated, notably by ensuring that all legal requirements are matched with effective sanctions in case of non-respect.

Finally, GRECO advises Ireland to consolidate the currently dispersed rules on party funding into a comprehensive, clear and up-to-date legislative instrument."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 15 October 1996, ratified on 28 November 1996, entered into force on 1 March 1997

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) neither signed nor ratified

Ireland is not a member of MONEYVAL

III. PROTECTION OF HUMAN RIGHTS[16]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **April 2008,** following a visit to the country in **November 2007**

Extract of: **2nd Quarterly Activity Report 2008** by Thomas Hammarberg, Commissioner for Human Rights, 1st April to 30th June 2008, presented to the Committee of Ministers and the Parliamentary Assembly [CommDH(2008)17]:

"Ireland assessment report

Based on a week-long visit from 26 to 30 November 2007, the human rights assessment report on Ireland was published on 30 April. In the report - which focuses on children's rights, treatment of asylum seekers, juvenile justice, anti-terrorism measures, discrimination and women's rights - the Commissioner welcomed the proposal to incorporate the best interests of the child in the Irish Constitution. He also underlined the importance of adopting a total ban on corporal punishment and expresses concerns about the high number of children missing from accommodation centres for separated children.

The report outlined certain shortcomings in the proposed Immigration, Residence and Protection Bill which may lead to unfair treatment of asylum-seekers and undocumented migrants. On juvenile justice, the Commissioner expressed his satisfaction regarding the planned closure of St. Patrick's Institution and encouraged further efforts to develop alternatives to the imprisonment of juveniles."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **25 February 1953**

Protocol No. 6 (ETS No. 114) ratified on **24 June 1994**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **3 May 2002**

Protocol No. 14 (CETS No. 194) ratified on **10 November 2004**

Out of a total of 1,625 judgments delivered by the Court in 2009, there was **no** judgment concerning Ireland.

Out of a total of 119,298 pending cases on 31st December 2009, **74** concerned Ireland.

Resolutions adopted by the Committee of Ministers in 2009: **1**

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16. Ireland is in 1st position with a score of 0.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders.

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 6 May 2010): **0**

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

Convention (ETS No. 126)signed and ratified on **14 March 1988**, entered into force on **1 February 1989**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed and ratified on **10 April 1996**, entered into force on **1 March 2002**

Last country visit: January – February 2010

Publication of the last report: **October 2007**

Press release of 10 October 2007:

“The Council of Europe's Committee for the Prevention of Torture (CPT) has today published a report on its fourth periodic visit to Ireland, which took place in October 2006, together with the response of the Irish Government. Both documents have been made public at the request of the Irish authorities.

In the course of the visit, the CPT reviewed the treatment of people detained by the Irish police, the Garda Síochána. It also examined the treatment of inmates and conditions of detention in a number of prisons, as well as visiting the Central Mental Hospital in Dundrum.

The majority of people met by the CPT made no complaints about their treatment while in police custody. However, a considerable number of people did allege verbal and/ or physical ill-treatment by Gardai, and in some cases injuries consistent with the allegations were observed. The CPT has welcomed the initiatives undertaken by the Irish government to stamp out ill-treatment by the Garda, such as the establishment of the Garda Síochána Ombudsman Commission and the progressive installation of CCTV in police stations. However, as the Irish authorities acknowledge, there is clearly no room for complacency in this area.

As regards prisons, the CPT was concerned by the increasing level of inter-prisoner violence, fuelled by the widespread availability of illicit drugs and the existence of a gang culture. The problem of violence appeared to be particularly rife in three of the prisons visited (Limerick, Mountjoy and St Patrick’s Institution) and, in this context, the management of prisoners placed under protective custody was examined. The CPT also noted that while some progress had been made in the provision of healthcare, there was still a need to improve access to psychiatric care and reinforce drug treatment programmes. More generally, the CPT observed that several of the prisons visited remained overcrowded with poor living conditions, and that they offered only a limited regime for prisoners.

With respect to the Central Mental Hospital, the CPT noted that there have been positive developments concerning the treatment of patients, staffing levels and, to a certain extent, patients’ living conditions.

In their response, the Irish authorities provide information on the steps being taken to address the issues raised by the CPT. In particular, they express their determination to put an end to ill-treatment by Gardai, highlighting a number of specific measures. The authorities acknowledge the emerging problem of violence within the prison system and refer to a wide range of initiatives being taken to tackle this phenomenon. They also provide detailed information on the planned development of prison facilities in Ireland over the next few years.

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

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **13 April 2007** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **7 May 1999**, entered into force on **1 September 1999**

Last opinion (2nd monitoring cycle) by the Advisory Committee adopted in **October 2006** [ACFC/OP/ II(2006)007]

Last CM resolution(2nd monitoring cycle) on the implementation of the Framework Convention adopted in **June 2007** [CM/ResCMN(2007)10]

Third state report (3rd monitoring cycle) expected for **1 September 2010**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) neither signed nor ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Ireland was adopted on 15 December 2006 and made public on **24 May 2007**.

Extract of press release of 24 May 2007:

"Reports on racism in Azerbaijan, Finland, Ireland and Monaco

The Council of Europe's expert body on combating racism, the European Commission against Racism and Intolerance (ECRI), today released four new reports examining racism, xenophobia, antisemitism and intolerance in Azerbaijan, Finland, Ireland and Monaco. ECRI recognises that positive developments have occurred in all four of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern for the Commission:

[…]

In Ireland, a National Action Plan Against Racism was launched in 2005, and a number of recommendations made by the Human Rights Audit on the police force regarding combating racism and racial discrimination are currently being implemented. But the criminal legislation has not been amended to include sufficiently strong provisions for combating racist acts which affect in particular visible minorities and Travellers. Further measures are necessary to raise members of minority groups' awareness of existing mechanisms for seeking redress against racism and racial discrimination.

[…]

These new reports form part of a third monitoring cycle of Council of Europe member states' laws, policies and practices aimed at combating racism. ECRI's country-specific reports are available in English, French and the national language of the country concerned at http://www.coe.int/ecri. They cover all member states on an equal footing, from the perspective of protecting human rights. They examine whether ECRI's main recommendations from previous reports have been followed and, if so, to what degree of success and effectiveness."

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 18 October 1961, ratified on 7 October 1964, entered into force on 26 February 1965

European Social Charter (revised) (ETS No. 163) signed and ratified on 4 November 2000, entered into force on 1 January 2001

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed and ratified on 4 November 2000, entered into force on 1 January 2001

Extract of the website of the European Social Charter (situation as of April 2010):

"Charter in domestic law

Ireland is a dualist state.

Reports*

Between 1966 and 2008, Ireland submitted 21 reports on the application of the Charter and 5 reports on the application of the Revised Charter. Ireland failed to submit a 5th report on the Revised Charter relating related to the theme "Employment, Training and Equal Opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25).

The 6th report report, submitted on 25/09/2009, concerns the provisions accepted by Ireland relating to the Thematic Group 2 "Health, social security and social protection" (Articles 3, 11,12, 13 , 14, 23 and 30 of the Revised Charter).

The next report concerns the accepted provisions relating to Thematic Group 3 “Labour Rights” i.e.

– Right to just conditions of work (Article 2)

– Right to a fair remuneration (Article 4)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6)

– Right of workers to be informed and consulted (Article 21)

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

– Right to dignity in the workplace (Article 26)

– Right of workers’ representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

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

It should have been submitted by 31 October 2009.

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Ireland with respect to the application of the Revised Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[17]

Employment

►Introduction of a statutory minimum wage (2000 Act on the National Minimum Wage).

►Repeal of section 9 of the 1939 Offences Against the State Act, which allows the prosecution of public service officials and employees for taking strike action.

Health/Education

► The Protection of Young Persons (Employment) Act, 1996 sets out a broader definition of a child for the purpose of employment by including all persons under the age of 16 years or, if higher, still subject to compulsory education. The limits on working time for children aged 14 and 15 are set at 7 hours per day and 35 hours per week.

Non-discrimination (Employment)

►Employment Equality Act 2004 strengthens protection against discrimination in employment.

Non-discrimination (Birth)

►Elimination of discrimination against children born out of wedlock in respect of custody, and the right of ownership and succession (1987 Status of Children Act).

Non-discrimination (Disability)

►Equal Status Act 2000 and the Disability Act 2005 together provide a general legal framework on social integration of persons with disabilities and their judicial protection in case of discrimination..

Movement of persons

17. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

►The power of the Minister of the Interior to issue expulsion orders has been restricted in that he must take account of the age, family status, employment prospects and length of stay of the person concerned (1999 Immigration Act).

Cases of non-compliance

Thematic group 1 “Employment, training and equal opportunities”

►Article 1§2 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

– there are upper limits on the amount of compensation that may be awarded in discrimination (with the exception of gender discrimination cases) cases;

– an excessive length of compulsory service may be required of army officers.

(Conclusions 2006)

►Article 1§4 - Right to work - Vocational guidance, training and rehabilitation (Article 9 and Article 10§§1 and 3

Access to vocational guidance, higher education and to continuing training is subject to a length of residence requirement for nationals from other States Parties

(Conclusions 2007)

► Article 10§5 – Right to vocational training - Full use of facilities available

Equal treatment for nationals of other States Parties is not guaranteed with respect to fees and financial assistance for training.

(Conclusions 2007)

►Article 18§2 - Right to engage in a gainful occupation in the territory of other States Parties - Simplifying existing formalities and reducing dues and taxes

Existing formalities in respect of the issuing and renewal of work permits were not simplified, during the reference period.

(Conclusions 2007)

►Article 18§3 - Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations

Absence of measures to liberalise the regulations governing the employment of foreign workers.

(Conclusions 2007)

Thematic group 2 : “Health, social security and social protection”

►Article 11§3- Prevention of diseases and accidents - Right to protection of health

– it has not been demonstrated that that adequate measures are in place to prevent the risks arising from asbestos

– it has not been demonstrated that adequate measures are in place to prevent and reduce accidents.

(Conclusions 2009)

►Article 12§1 – Right to social security - Existence of a social security system

– the minimum sickness benefit is inadequate.

– the minimum unemployment benefit is inadequate.

– the minimum survivors’ benefit is inadequate.

– the minimum employment injury benefit is inadequate.

– the minimum invalidity benefit is inadequate.

(Conclusions 2009)

►Article 12§4 - Right to social security - Social security of persons moving between states

Legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by agreement with Ireland.

(Conclusions 2009)

Thematic group 3: “Labour rights”

►Article 2§1 – Right to just conditions of work - Reasonable working time

Legislation on working hours permits a 72 hour working week in the merchant shipping sector.

(Conclusions 2007)

►Article 4§1 - Right to a fair remuneration - Decent remuneration

The minimum wage falls below 60% of the average wage and information on net average wage is not provided.

(Conclusions 2007)

►Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment

1. The minimum statutory notice periods provided for in law (ranging from 1 to 8 weeks) are not adequate[18].

2. Established civil servants do not receive a notice period but instead a 14-day period during which the person concerned may make representations against a proposed dismissal.

(Conclusions 2007)

►Article 4§5 – Right to a fair remuneration - Limits to deduction from wages

Workers may waive their right to limited deductions from wages; and deductions from wages may deprive workers of their very means of subsistence.

(Conclusions 2007)

►Article 5 – Right to organise

1. Certain closed shop practices are permitted in law;

2. National law does not fully protect workers against dismissal on the ground of trade union membership or activities.

(Conclusions 2006)

►Article 6§4 – Right to bargain collectively

Only authorised trade unions (i.e. those holding a negotiation licence) and their members are afforded immunity against civil action in the event of a strike and, under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in strike action.[19]

(Conclusions 2006)

Thematic group 4: “Children, families and migrants”

►Article 7§1 – Right of children and young persons to protection - Prohibition of employment under the age of 15

Children employed by a close relative are not afforded the protection required by this provision of the Revised Charter.

(Conclusions 2006)

►Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory schooling

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18. RecChS(1995)6 adopted by the Committee of Ministers on 22 June 1995
19. RecChS(2001)2 adopted by the Committee of Ministers on 7 February 2001

The mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education and children employed by a close relative are not afforded the protection required.[20]

(Conclusions 2006)

►Article 7§4 - Right of children and young persons to protection - Working time

The Committee is unable to assess whether the working time of young workers employed by a close relative is reasonable.

(Conclusions 2006)

►Article 7§5 – Right of children and young persons to protection - Fair pay

The wage differences in the labour market are excessive: as all young workers under 18 years may be paid 30% less than adult workers.

(Conclusions 2006)

►Article 7§8- Right of children and young persons to protection - Prohibition of night work

The Committee is unable to assess whether children employed by a close relative are prohibited form performing night work.

(Conclusions 2006)

►Article 8§1 – Right of employed women to protection of maternity - Maternity leave

A post-natal maternity leave of at least six weeks is not compulsory.

(Conclusions 2005)

► Article 19§8 and 19§10– Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation; - Equal treatment for the self-employed

No right of appeal to an independent body or court against a deportation order is available to nationals of States party to the Charter which are not members of the EU or party to the 1955 Convention on Establishment.[21]

(Conclusions 2006)

►Article 27§3 - Right of workers with family responsibilities to equal opportunity and treatment - Illegality of dismissal on the ground of family responsibilities

The compensation to be awarded to an employee unlawfully dismissed on the grounds of his/her family responsibilities is subject to a ceiling.

(Conclusions 2007)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Irish Government to provide more information in the next report in respect of the following provisions:

Thematic group 1 “Employment, training and equal opportunities”

(Report to be submitted by 31/10/2011)

►Article 10§4 – Conclusions 2008

►Article 15§3 – Conclusions 2008

►Article 18§1 – Conclusions 2008

Thematic group 2 : “Health, social security and social protection”

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20. RecChS(95)6 adopted by the Committee of Ministers on 22 June 1995.
21. RecChS(95)6 adopted by the Committee of Ministers on 22 June 1995 (renewed on 14 December 1995, 4 March 1999 and 7 February 2001)

(Report to be submitted by 31/10/2012)

►Article 3§4 – Conclusions 2009

►Article 14§§1 and 2 – Conclusions 2009

Thematic group 3: “Labour rights”

(Report should have been submitted by 31/10/2009)

►Article 2§4 – Conclusions 2007

►Article 4§2 – Conclusions 2007

►Article 6§2 – Conclusions 2006

►Article 29 – Conclusions 2007

Thematic group 4: “Children, families and migrants”

(Report to be submitted by 31/10/2010)

►Article 7§§2, 6, 7, 9 and 10 – Conclusions 2006

►Article 19§§6 and 12– Conclusions 2006

►Article 27§1 – Conclusions 2005

Collective Complaints and State of Procedure in Ireland[22]

Collective complaints (under examination)

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Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

► International Federation for Human Rights v. Ireland (No. 41/2006)

No violation.

2. Complaints where the Committee has found a violation which has been remedied

►*World Organisation Against Torture (OMCT) v. Ireland (No. 18/2003)* : Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 8 December 2004.

3. Complaints where the Committee has found a violation which has not yet been remedied

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I. Parliamentary Assembly

No specific recent text concerning Ireland

6. ITALY

7 May 2010

CoE member state since **5 May 1949**

Number of CoE Conventions ratified (as of 7 May 2010): **118 (out of 207)**

Number of CoE Conventions signed (as of 7 May 2010): **44**

I. PLURALISTIC DEMOCRACY[23]

22. The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the Collective Complaint webpage. Searches on complaints may also be carried out in the European Committee of Social Rights Caselaw database.

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2006**

Next presidential elections: **2013**

Last general elections: **2008**

Next general elections: **2013**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 15 October 1985, ratified on 11 May 1990, entered into force on 1 September 1990

No monitoring report by the Congress of Local and Regional Authorities

II. RULE OF LAW

A. VENICE COMMISSION

No recent opinion concerning Italy

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Italy in 2006 was **70 euros**;

– the **number of professional judges on a full-time basis** in Italy in 2006 was **6,450,** this means 11.0 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Italy was **2,231**, this means 3.8 for 100,000 inhabitants.

C. The fight against corruption and organised crime[24]

Civil Law Convention on Corruption (ETS No. 174) signed on 4 November 1999 but not ratified

Criminal Law Convention on Corruption (ETS No. 173) signed on 27 January 1999 but not ratified, Additional Protocol (ETS No. 191) signed on 15 May 2003 but not ratified

Press release of 16 October 2009:

“The Group of States against Corruption publishes its first report on Italy

The Council of Europe’s Group of States against Corruption (GRECO) today published its Joint First and Second Round Evaluation Report on Italy.

The report as a whole addresses 22 recommendations to Italy. GRECO will assess the implementation of these recommendations in the second half of 2011 through its specific compliance procedure.

The report indicates that despite the clear commitment of judges and prosecutors to fighting corruption, this phenomenon is perceived, in Italy, as pervasive and systemic, with numerous sectors of activity being affected (in particular, urban planning, waste management, public procurement and the health sector).

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

24. Italy is in 63rd position with a score of 4.3 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

It also points at the need to articulate an effective preventive policy on corruption, which will require a long-term approach and sustained political commitment. As GRECO stresses, combating corruption must become a matter of culture and not only rules.

Further measures are recommended to tackle the excessive length of judicial proceedings, to improve access to official documents, and to strengthen the transparency and ethics of public administration. All this is of particular relevance with respect to internal auditing, the enforceability of deontological provisions, the prevention of conflicts of interest and whistleblower protection.

The report also expresses concerns at the immunities enjoyed by certain holders of public office, which were recently introduced by Law 124/2008, the so-called "Lodo Alfano".

In the private sector, it remains crucial to toughen the accounting and auditing obligations for all types of companies and to ensure that the corresponding sanctions are effective, proportionate and dissuasive.

Italy joined GRECO in 2007. In 1999, it signed the Council of Europe Criminal Law Convention on Corruption, but has not yet ratified it."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 8 November 1990, ratified on 20 January 1994, entered into force on 1 May 1994

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 8 June 2005 but not ratified

Italy is not a member of MONEYVAL.

III. PROTECTION OF HUMAN RIGHTS[25]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **April 2009,** following a visit to the country in **January 2009**

Press release of 16 April 2009:

""Italy should eradicate discrimination and xenophobia and improve its migration policy" says Commissioner Hammarberg

"Although efforts have been undertaken, serious concerns remain about the situation of Roma, migration policy and practice, and the non-respect of binding interim measures requested by the European Court of Human Rights" said today Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, presenting his report on Italy.

"The authorities should condemn more firmly all racist or intolerant manifestations and ensure effective implementation of anti-discrimination legislation", he said He also recommends that the representation of ethnic groups in the police should be increased and that an independent national human rights institution, such as an Ombudsman, should be established in order to reinforce human rights protection.

Commissioner Hammarberg further recommends improving the situation of Roma. "There is a persistent climate of intolerance against them and their living conditions are still unacceptable in a number of settlements that I visited. Local good practices exist in the country, and they should be broadened." He further expresses his deep concern about the appropriateness of the census in Roma and Sinti settlements and remains worried about its "compatibility with European standards guiding the collection and processing of personal data."

Moreover, the Commissioner urges the authorities to create consultative mechanisms at all levels with Roma and Sinti, avoid evictions without offering alternative housing and offer appropriate education solutions for children. He also hopes that "the new action plan for social welfare and integration measures is soon implemented and the authorities implement promptly their pledge to ratify without reservation the Council of Europe Convention on Nationality, which would benefit in particular de facto stateless Roma children."

25. Italy is in 49th position with a score of 12.14 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

The Commissioner reiterates his critique of the draft law on public security for its possible negative effects on migrants' rights. "Criminalising migrants is a disproportionate measure which risks igniting further discriminatory and xenophobic tendencies in the country" he said. "Furthermore, the recent provision introduced by the Senate which allows medical personnel to report to the police irregular migrants who access the health system is profoundly unjust and could further marginalise migrants."

Commissioner Hammarberg remains worried by a number of forced returns, on security-related grounds, to Tunisia of individuals who seriously risk torture in that country. "In their duty to protect societies from terrorism, states should not contravene human rights standards such as the absolute prohibition of torture or inhuman treatment. Italy has ignored binding interim measures requested by the European Court of Human Rights to halt deportations, thus seriously jeopardising the effectiveness of the European system of human rights protection."

Finally, the Commissioner welcomes certain positive steps taken by the Italian authorities, in particular the adoption of intercultural education programmes, the decision to ratify the Council of Europe's Convention on action against trafficking in human beings and the development of a national programme on unaccompanied foreign minors.

The report is based on the visit carried out last January and follows up on the recommendations set up in the Commissioner's memorandum of July 2008. It is published together with the authorities' response and a photo gallery illustrating the visit."

Press release of 10 December 2009:

"Migrants' rights: Commissioner Hammarberg publishes two letters to Italy and Malta

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published today two letters he sent last August to the Minister of Interior of Italy, Roberto Maroni, and to the Minister for Justice and Home Affairs, of Malta Carmelo Mifsud Bonnici.

The Commissioner's letters refer to that month's incident involving a boat which set off from Libya with more than 70 people on board, mainly Eritreans. The boat was adrift in the Mediterranean Sea for twenty days, apparently without any help from several passing vessels. There were only five survivors.

"I publish these letters in order to reopen the discussion on the need to fully align migration practices with human rights standards. This serious incident should be effectively investigated" said the Commissioner. "Four of the five survivors have been granted refugee status in Italy and one is waiting for the decision on her application. This is good news. However, there is still an urgent need to take all necessary measures to prevent the recurrence of such tragedies. Regrettably, the authorities have not replied so far."

In his letters, the Commissioner also underlined that the responsibility to rescue persons at sea appeared to have been neglected. He therefore recommended that both countries concerned engage in a constructive cooperation to develop sea patrolling which is duly respectful of human rights and humanitarian principles.

"The protection of the human rights of migrants needs urgent attention" said the Commissioner. "Every European country should act in a spirit of solidarity towards other countries, discharge its responsibilities under international law and effectively protect migrants, whose fundamental rights are at serious risk." "

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **26 October 1955**

Protocol No. 6 (ETS No. 114) ratified on **29 December 1988**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **3 March 2009**

Protocol No. 14 (CETS No. 194) ratified on **7 March 2006**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **68** concerning Italy, of which **61** gave rise to a finding of at least one violation and **3** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **7,158** concerned Italy.

Resolutions adopted by the Committee of Ministers in 2009: **14**

1 Interim Resolution

Press release of 26 March 2009 :

“Italy: Execution of judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings, including bankruptcy proceedings

The Committee of Ministers adopted last week a new Interim Resolution concerning the excessive length of judicial proceedings in Italy. This new resolution is the follow-up to Interim Resolutions CM/ResDH(2007)2 concerning the problem of excessive length of judicial proceedings and CM/ResDH(2007)27 on bankruptcy proceedings.

The Committee of Ministers noted with interest the progress achieved through the measures adopted so far in the fields of civil, criminal and administrative proceedings. It underlined however that, given the substantial backlog in the civil and criminal fields (approximately 5.5 million pending civil cases and 3.2 million pending criminal cases), as well as in the administrative field, a final solution to the structural problem of length of proceedings still needs to be found.

The Committee therefore called upon the Italian authorities to pursue actively their efforts to ensure the swift adoption of the measures already envisaged for civil and criminal proceedings and to adopt urgently ad hoc measures to reduce the civil, criminal and administrative backlog. It also strongly encouraged the authorities to consider amending Act No. 89/2001 (the Pinto Law) with a view to setting up a funding system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure, and to extend the scope of the remedy to include injunctions to expedite the proceedings put into question.

The Committee of Ministers also noted that the 2006 reform on bankruptcy proceedings contributed to decrease their number and expedite them by reducing the phase of auditing claims. It called upon the Italian authorities to continue their efforts to ensure that the reform fully contributes to the acceleration of bankruptcy proceedings and to take measures to expedite pending proceedings to which the reform does not apply.

The Committee finally invited the Italian authorities to ensure the implementation of the reforms and to assess their effects as they proceed with a view to adopting, if necessary, any further measures. It will continue examining the implementation of these cases at the latest at the end of 2009 for administrative proceedings, and mid-2010 for civil, criminal, and bankruptcy proceedings.

Link to the Interim Resolution CM/ResDH(2009)42

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Under the European Convention on Human Rights, the European Court's judgments require the adoption by the respondent states, under the Committee of Ministers' supervision, of all measures necessary to grant the applicants appropriate redress and to prevent new similar violations in the future.

Further information on the execution of judgments by member states, including the Committee of Ministers’ annual report for 2007 on its supervision of judgments – are available on www.coe.int/t/cm/home_en.asp and www.coe.int/Human_rights/execution. “

Resolutions adopted by the Committee of Ministers in 2010 (as of 7 May 2010): **2**

No Interim Resolution

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **29 December 1988**, entered into force on **1 April 1989**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **30 October 1996**, ratified on **8 March 1999**, entered into force on **1 March 2002**

Last country visit: **July 2009**

Publication of the last report: **April 2010**

Press release of 28 April 2010:

“The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its ad hoc visit to Italy in July 2009, together with the response of the Italian Government. Both documents have been made public at the request of the Italian authorities.

The main purpose of the visit was to look into the new policy of the Italian authorities to intercept, at sea, migrants approaching Italy's Southern Mediterranean maritime border and to send them back to Libya or other non-European States (frequently referred to as the "push-back" policy). In this context, the delegation carrying out the visit focused on push-back operations that took place between May and the end of July 2009 and sought to examine the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment. The delegation also examined the treatment afforded to migrants during the time that they were deprived of their liberty by the Italian authorities in the course of such operations.

In the report, the CPT expresses the view that, in its present form, Italy's policy of intercepting migrants at sea and obliging them to return to Libya or other non-European countries, violates the principle of non-refoulement. The Committee emphasises that Italy is bound by the principle of non-refoulement wherever it exercises its jurisdiction, which includes via its personnel and vessels engaged in border protection or rescue at sea, even when operating outside its territory. Moreover, all persons coming within Italy's jurisdiction should be afforded an appropriate opportunity and facilities to seek international protection. The information available to the CPT indicates that no such opportunity or facilities were afforded to the migrants intercepted at sea by the Italian authorities during the period examined. On the contrary, the persons who were pushed back to Libya in the operations carried out from May to July 2009 were denied the right to obtain an individual assessment of their case and effective access to the refugee protection system.

According to the report, Libya cannot be considered a safe country in terms of human rights and refugee law; the situation of persons arrested and detained in Libya, including that of migrants – who are also exposed to being deported to other countries by Libya – indicates that the persons pushed back to Libya are at risk of ill-treatment.

In its response to the report, the Italian authorities refer to the above-mentioned operations as the "return of migrants, intercepted in international waters, upon request by Algeria and Libya" and as search and rescue operations. The authorities state that in the course of such operations, during the period examined by the CPT, no migrant, once transferred onto an Italian ship, expressed his/her intention to apply for asylum. Further, the authorities state that English and French speaking personnel are present aboard Italian vessels in order to provide adequate information to migrants in the event of an asylum request, and when such a request is articulated the migrant is brought to mainland Italy. The Italian Government further argues that Libya is bound by international conventions under which it must respect human rights, and that it has ratified the 1969 Organisation of the African Union Refugee Convention, under which it must protect all persons who are persecuted and who originate from "areas at risk". The Italian authorities also state that the UNHCR has an office in Libya which can respond to the protection needs of those persons who are returned.

The CPT report and the response of the Italian Government are available on the Committee's website (http://www.cpt.coe.int)"

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **8 June 2005** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **3 November 1997**, entered into force on **1 March 1998**

Last opinion (2nd monitoring cycle) by the Advisory Committee adopted in **February 2005** [ACFC/OP/ II(2005)003]

Last CM resolution(2nd monitoring cycle) on the implementation of the Framework Convention adopted in **June 2006** [ResCMN(2006)5]

Third state report (3rd monitoring cycle) received in **December 2009**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **27 June 2000** but not ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Italy was adopted on 16 December 2005 and made public on **16 May 2006**.

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 18 October 1961, ratified on 22 October 1965, entered into force on 21 November 1965

European Social Charter (revised) (ETS No. 163) signed on 3 May 1996, ratified on 5 July 1999, entered into force on 1 September 1999

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed on 9 November 1995, ratified on 3 November 1997, entered into force on 1 July 1998

Extract of the website of the European Social Charter (situation as of January 2010):

"The Charter in domestic law

Statutory ad hoc incorporation into domestic law based on Act No. 30/1999 (Legge recante ratifica ed esecuzione della Carta Sociale europea riveduta con annesso).

Reports *

Between 1967 and 2009, Italy submitted 20 reports on the application of the Charter and 9 on the application of the Revised Charter.

The 8th report on the accepted provisions of the Revised Charter covered the articles of Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23 and 30 of the Revised Charter). It was submitted on 04/02/2009. Conclusions in respect of these provisions were published in January 2010.

The 9th report, submitted on 26/01/2010, concerns the accepted provisions of the Revised Charter relating to Thematic Group 3 "Labour rights" i.e.

– Right to just conditions of work (Article 2)
– Right to a fair remuneration (Article 4)
– Right to organise (Article 5)
– Right to bargain collectively (Article 6)
– Right of workers to be informed and consulted (Article 21)
– Right of workers to take part in the determination and improvement of working conditions (Article 22)
– Right to dignity in the workplace (Article 26)
– Right of workers' representatives to protection in the undertaking (Article 28)
– Right to information and consultation in procedures of collective redundancy (Article 29)

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Italy with respect to the application of the Revised Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[26]

Non-discrimination (employment)

► Prohibition of discrimination in employment on grounds of religion, personal convictions, disability, age and sexual orientation (Act No. 216/2003).

26. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

Non-discrimination (sex)

► Gender mainstreaming in the labour market (implementing Decree No. 276/2003 concerning Act No. 30/2003 - Biagi Law).

► Introduction of the principle of equal treatment between men and women in the Constitution, Article 51 (Act No. 1/2003).

Non-discrimination (disability)

► Legal protection of persons with disabilities against discrimination (including in the field of education and training (Act No. 67/2006).

Employment

► Regulation of working time in public and private sectors, as well as night work (Legislative Decree No. 66/2003)

► Prohibition on dismissing domestic employees during the compulsory period of maternity leave (national collective agreement on domestic employment of 16 July 1996).

Health

►Prohibition of night work by women between midnight and 6 am from confirmation of pregnancy until the child's first birthday. Female wage earners with a child under 3 years of age cannot be required to perform night work, nor may wage earners of either sex with a disabled dependant (Legislative Decree of 08/04/2003).

►Protection from hazardous forms of work of women who are pregnant, have recently given birth or are breastfeeding (Legislative Decrees No. 645/1996 and No. 25/1999).

► Mandatory medical examination of young workers prior to their employment and periodical examinations during the employment - minors may only be employed in hazardous work for the purpose of vocational training, under the supervision of a competent instructor and only for the time necessary (Legislative Decree No. 345/1999).

Social protection

► Measures against violence in family relations (Acts No. 154/2001 and No. 304/2003).

► Provision for parental leave and extension of benefits for parents of disabled children (Act No. 53/2000).

► Female domestic employees who do not qualify for maternity benefit are entitled to 5 mont "maternity cheques" (Act No. 448/1998).

Children

► Education and Training Reform Act (No. 53/2003).

► Status of Children Act (No. 149/2001).

► Compulsory education until the age of 15 (Act No. 30/2000, Section 1.3).

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► Article 1§3 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

• Foreign nationals' access to public service employment is excessively restricted and constitutes discrimination on grounds of nationality.

• The Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft, thus constituting excessive coercion to work.

(Conclusions 2008)

► Article 1§2 – Right to work – Free placement services

It has not established that the right to free placement services is guaranteed.

(Conclusions 2008)

► Article 15§2 – Right of persons with disabilities to independence, social integration and participation in the life of the community– Employment of persons with disabilities

It has not been established that persons with disabilities are guaranteed effective equal access to employment.

(Conclusions 2008)

► Article 18§1 –Right to engage in a gainful occupation in the territory of other Parties – Applying existing regulations in a spirit of liberality

It has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

(Conclusions 2008)

► Article 18§2 –Right to engage in a gainful occupation in the territory of other Parties – Simplifying formalities and reducing dues and taxes

The formalities for granting residence permits to self-employed workers were not simplified.

(Conclusions 2008)

► Article 24 – Right to protection in cases of termination of employment

The categories of workers excluded from the protection against termination of employment are more extensive than those provided for by this provision.

(Conclusions 2008)

Thematic Group 2 “Health, social security and social protection”

► Article 3§1 - Right to safe and healthy working conditions - Health and safety and the working environment

It has not been established that there is an appropriate national policy on occupational health and safety.

(Conclusions 2009)

► Article 3§3 - Right to safe and healthy working conditions - Provision for the enforcement of safety and health regulations by measures of supervision

It has not been established that labour inspection, insofar as it concerns occupational health and safety, is effective.

(Conclusions 2009)

► Article 11§1 - Right to protection of health - Removal of the causes of ill-health

It has not been established that waiting time does not exceed a medically acceptable period having regard to the patient’s condition and clinical needs.

(Conclusions 2009)

► Article 12§1 - Right to social security - Existence of a social security system

• It has not been established that the amount of the minimum unemployment benefit is adequate.

• The minimum level of contributory old age pension is manifestly inadequate as is the survivor's pension calculated on the basis of the latter.

• The monthly allowance paid for a permanent disability assessed at 100% is manifestly inadequate.

(Conclusions 2009)

► Article 12§3 - Right to social security - Development of the social security system

It has not been established that sufficient steps have been taken to raise progressively the system of social security to a higher level.

(Conclusions 2009)

► Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need

It has not been established that the level of social assistance is adequate.

(Conclusions 2009)

► Article 13§4 - Right to social and medical assistance - Specific emergency assistance for non-residents

It has not been established that all unlawfully present persons in need receive emergency social assistance.

(Conclusions 2009)

► Article 23 - Right of elderly persons to social protection

The level of the minimum contributory old age pension and the social allowance for low income elderly persons are manifestly inadequate.

(Conclusions 2009)

► Article 30 - Right to protection against poverty and social exclusion

It has not been established that there is an overall and coordinated approach to combating poverty and social exclusion.

(Conclusions 2009)

Thematic Group 3 “Labour rights”

► Articles 2§1 – Right to just conditions of work - Reasonable daily and weekly working hours

Working hours in the fishing industry can reach 72 hours per week

(Conclusions 2007)

► Article 4§1 – Right to a fair remuneration - Adequate remuneration

It has not been established that a decent standard of living is guaranteed for a single worker earning the minimum wage.

(Conclusions 2007)

► Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment

• One week’s notice is not a reasonable period of notice for any worker whether or not he or she has completed six months’ service.

• Nine days’ notice is not a reasonable period of notice for workers with five to ten years’ service.

• Twelve days’ notice is not a reasonable period of notice for workers with more than four years’ service;

• Two weeks’ notice is not a reasonable period of notice for workers with more than six months’ service.

• One month’s notice is not a reasonable period of notice for workers with five or more years’ service.

(Conclusions 2007)

► Article 4§5 – Right to a fair remuneration – Limitation of deduction from wages

It has not been fully established that, in practice, the wages paid after any deductions are still sufficient for workers to provide for themselves and their dependants.

(Conclusions 2007)

► Article 6§4 – Right to bargain collectively – Collective action

• It is not able to assess whether the Government’s right to issue ordinances restricting strikes in essential public services falls within the limits of Article G of the Revised Charter.

• The requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive.

(Conclusions 2006)

► Article 21 – Right of workers to be informed and consulted

It has not been established that the rules on the information and consultation of workers applicable during the reference period cover the great majority of the workers concerned.

(Conclusions 2007)

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

It has not been established that the great majority of workers are granted an effective right to participate in the decision-making process within the undertaking concerning the matters referred to in Article 22 of the Revised Charter.

(Conclusions 2007)

Thematic Group 4 “Children, families, migrants”

► Article 7§1 – Right of children and young persons to protection – Prohibition of employment under the age of 15

Legislation on prohibition of employment under the age of 15 is not effectively enforced

(Conclusions 2006)

► Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education

It is not able to assess whether the legislation prohibiting employment under the age of 15 is effectively applied.

(Conclusions 2006)

► Article 7§4 – Right of children and young persons to protection – Length of working time

It is not able to assess whether the working hours of young persons are reasonable.

(Conclusions 2006)

► Article 8§3 – Right of employed women to protection of maternity - Time off for nursing mothers

Domestic workers and home workers are not entitled to paid breaks for the purposes of breastfeeding their infants.

(Conclusions 2007)

► Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training

The number of Roma children in education is too low.

(Conclusions 2007)

► Article 31§1 – Right to housing - Adequate housing

• Not all regions have adopted legislation on Roma and there is not yet framework legislation at national level.

• Italy has failed again to show that it has taken adequate steps on all the territory to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs.

• Italy has failed again to show that it has ensured or has taken steps to ensure that all local authorities are fulfilling their responsibilities in this area.

• Data on Roma are not yet collected at national level.

(Conclusions 2007)

► Article 31§2 – Right to housing - Reduction of homelessness

Italy failed again to establish that the relevant evictions it carried out satisfy the necessary conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions.

(Conclusions 2007)

► Article 31§3 – Right to housing - right to affordable housing

Italy failed again to show that it has taken into consideration the different situation of Roma when introducing measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, on the whole territory.

(Conclusions 2007)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Italian Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

► Article 1§§1 and 4 – Conclusions 2008

► Article 9 – Conclusions 2008

► Article 10§4 – Conclusions 2008

► Article 15§§1 and 3 – Conclusions 2008

Thematic Group 2 “Health, social security and social protection”

(Report to be submitted before 31 October 2012)

No situations deferred.

Thematic Group 3 “Labour rights”

(Report submitted on 26 January 2010)

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2010)

► Article 7§§2, 5 and 10 – Conclusions 2006

► Article 8§2 - Conclusions 2007

► Article 16 - Conclusions 2006

► Article 19§§4, 6, 8, 10 and 12 - Conclusions 2006

► Article 27§§1 and 2 - Conclusions 2006

Collective Complaints and State of Procedure in Italy[27]

Collective complaints (under examination)

Centre on Housing Rights and Evictions (COHRE) v. Italy (No. 58/2009)

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

World Organisation against Torture (OMCT) v. Italy (No. 19/2003)

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27. The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the Collective Complaint webpage. Searches on complaints may also be carried out in the European Committee of Social Rights Caselaw database.

Non violation of Article 17 (right of children to social, economic and legal protection), decision on the merits of 26 January 2005.

European Federation of Employees in Public Services (EUROFEDOP) v. Italy (No. 4/1999)

Non violation of Article 5 (right to organize) and 6 (right to collective bargaining), decision on the merits of 12 December 2000.

2. Complaints where the Committee has found a violation which has been remedied

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3. Complaints where the Committee has found a violation which has not yet been remedied

European Roma Rights Centre (ERRC) v. Italy (No. 27/2004)

Violation of Article 31 (right housing) taken together with Article E, decision on the merits of 7 December 2005. ”

I. Parliamentary Assembly

Extract of: Doc. 11490 Part I (19 January 2008): Progress report of the Bureau of the Assembly and of the Standing Committee (5 October 2007 – 17 December 2007), Rapporteur: Mr René van der Linden (Netherlands, EPP/CD):

“Appendix I

Monopolisation of the electronic media and possible abuse of power in Italy

1. On 5 October, the Bureau:

• took note of a draft opinion by the Monitoring Committee and declassified it;

• agreed to return to this matter at its next meeting.

2. On 22 November, the Bureau agreed to propose to the Assembly that a monitoring procedure concerning the monopolisation of the electronic media and the possible abuse of power in Italy should not be opened at this stage, but that legislative developments in that country should instead be followed in the Monitoring Committee’s periodic reports, assisted, where necessary, by the Committee on Culture, Science and Education and the Committee on Legal Affairs and Human Rights.

3. According to paragraph 3 of the terms of reference of the Monitoring Committee containing in Resolution 1115 (1997) as modified by Resolution 1431 (2005), in case both the Monitoring Committee and the Bureau consider that there is no need to open a monitoring procedure, the Assembly shall confirm this decision by a vote during the discussion of the Progress report of the Bureau. However, during that discussion the Assembly may decide by a majority vote following a request by at least ten members, that a debate be held during the next part-session on the written opinion of the Monitoring Committee which then shall be transformed into a report containing a draft resolution.”

7. LATVIA

7 May 2010

CoE member state since **10 February 1995**

Number of CoE Conventions ratified (as of 7 May 2010): **87 (out of 207)**

Number of CoE Conventions signed (as of 7 May 2010): **9**

I. PLURALISTIC DEMOCRACY[28]

A. Free and fair elections

System of government: parliamentary democracy

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

Last presidential elections: **2007**

Next presidential elections: **2011**

Last general elections: **2006**

Next general elections: **2010**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed and ratified on 5 December 1996, entered into force on 1 April 1997

Last **Congress of Local and Regional Authorities** monitoring report: October 2008 [CPL(15)7REP] and **Recommendation 257 (2008)** on local democracy in Latvia: the participation of non-citizens in public and political life at local level, adopted on 3 December 2008

Extract of Recommendation 257 (2008):

"The Congress, bearing in mind the proposal of the Chamber of Local Authorities:

[…]

11. Recommends that the Latvian authorities:

a. reconsider the recommendations made to Latvia previously by the Congress, which point out the importance of getting non-citizens involved in the country's democratic processes;

b. enact new legislation or amend existing laws, granting non-citizens the right to vote in local elections so as to foster their increased involvement in political life and hence their integration into Latvian society;

c. think initially about the possibility of granting automatic naturalisation to the elderly and those born in Latvia so as to rekindle the naturalisation process, which would create a spirit of reconciliation with the elderly who might not live to see a fully reconciled Latvian society;

d. reconsider the ratification of Protocol No. 12 to the European Convention on Human Rights, which establishes a general ban on discrimination (ETS No. 177), as well as the signature and ratification of the European Charter for Regional or Minority Languages (ETS No. 148);

e. consider signing and ratifying the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

f. open a new debate between the political parties in the government coalition, taking a courageous approach combined with a will to succeed, in an effort to build a cohesive society;

g. regardless of the difficulties linked to financial and economic crisis, keep in place state bodies in charge of society's integration.

12. *Recommends that the Committee of Ministers* transmit this recommendation to the Latvian authorities.

13. *Recommends that the Parliamentary Assembly* take account of the preceding observations and recommendations in the framework of its procedure of periodic reporting on member states not currently under a monitoring or post-monitoring procedure."

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Opinion on Draft Amendments to the Law on the Constitutional Court of Latvia** adopted by the Venice Commission at its 80th Plenary Session [Venice, 9-10 October 2009, CDL-AD(2009)042]:

"By letter of 13 May 2009 the President of the Constitutional Court of the Republic of Latvia requested the Venice Commission to give an opinion on draft Amendments to the Law on the Constitutional Court of Latvia (hereinafter referred to as "the Amendments", CDL(2009)144, with explanatory memorandum).

The Commission appointed Mr Harutyunyan, Mr Hoffmann-Riem and Ms Omejec as rapporteurs. Their comments figure in documentsCDL(2009)145, 146 and 147 respectively.

[…]

Conclusion

The amendments are well drafted and will enable the Constitutional Court of Latvia to improve its efficiency. The main results of the assessment can be summarised as follows:

1. the requirements for a candidate for judge of the Constitutional Court and the amendments to the term of office are in compliance with international standards;

2. the procedural changes (extension of deadlines) have to be welcomed;

3. dissenting opinions should be published with the main part of the judgement;

4. the new remuneration system seems to be acceptable, however it is not possible to assess the level of its accordance with the specific social, economic and political conditions in Latvia;

5. additional vacation only for former ordinary judges contradict the principle of equality between the judges;

6. at least bonus and premium systems, which are attributed on a discretionary basis seem incompatible with the principle of independence of the judiciary;

7. introducing other social guarantees is mainly a question of appropriateness;

8. establishing an administrative unit does not raise concerns, though some clarifications on the hierarchical organisation of this unit would be welcomed"

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Latvia in 2006 was **22 euros**;

– the **number of professional judges on a full-time basis** in Latvia in 2006 was **510,** this means 22.2 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Latvia was **549**, this means 23.9 for 100,000 inhabitants.

C. The fight against corruption and organised crime[29]

Civil Law Convention on Corruption (ETS No. 174) signed on 4 February 2004, ratified on 12 April 2005, entered into force on 1 August 2005

Criminal Law Convention on Corruption (ETS No. 173) signed on 27 January 1999, ratified on 9 February 2001, entered into force on 1 July 2002, Additional Protocol (ETS No. 191) signed on 7 April 2005, ratified on 27 July 2006, entered into force on 1 November 2006

Press release of 23 October 2008:

"The Council of Europe's Group of States against Corruption (GRECO) has published today its Third Round Evaluation Report on Latvia. The report has been made public following the agreement of the authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], GRECO finds that the current provisions on bribery in the Latvian Criminal Law contain a number of inconsistencies and deficiencies as compared with the requirements established by the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). GRECO therefore recommends to clarify the terminology used in the provisions on bribery, in particular as there are significant differences in understanding between practitioners. Furthermore, GRECO stresses the need to criminalise active bribery of 'ordinary' employees in the private sector, indirect trading in influence, active bribery of certain employees in the public sector – who are not considered to be public officials under Latvian law - and bribery of arbitrators and foreign jurors in line with the standards of the

29. Latvia is in 56th position with a score of 4.5 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

Convention and the Additional Protocol. In addition, Latvia is asked to analyse the defence of 'effective regret' and recent cases in which such a defence has been invoked, with a view to minimising its potential for misuse.

Concerning transparency of party funding [theme II], GRECO concludes that the existing legal and institutional framework is well-developed and overall in line with the provisions of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Nevertheless, as became evident in the 2006 Saeima [parliament] elections, the involvement of entities outside the party structure in election campaigns is an issue of serious concern, which undermines the transparency requirements laid down in the Law on the Financing of Political Organisations. Furthermore, GRECO recommends to take further measures to strengthen the independence of the body entrusted with supervision of party funding rules (KNAB), in particular as regards the procedures for the appointment and dismissal of its Director. Finally, the rather short limitation period for violations of party funding rules needs to be extended and measures taken to enhance the liability of natural persons for certain violations of political finance rules.

The report as a whole addresses 13 recommendations to Latvia. GRECO will assess the implementation of these recommendations in the second half of 2010, through its specific compliance procedure."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 11 March 1998, ratified on 1 December 1998, entered into force on 1 April 1999

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 19 May 2006, ratified on 25 February 2010, entered into force on 1 June 2010

Latvia: progress report [second 3rd round written progress report submitted to MONEYVAL, adopted at MONEYVAL's 31st Plenary meeting, Strasbourg, 7-11 December 2009, MONEYVAL(2009)39]

III. PROTECTION OF HUMAN RIGHTS[30]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **May 2007,** following a visit to the country in **June 2006**

Extract of : Memorandum to the Latvian Government: assessment of the progress made in implementing the 2003 recommendations of the Council of Europe Commissioner for Human Rights, for the attention of the Committee of Ministers and the Parliamentary Assembly [Strasbourg, 16 May 2007, CommDH(2007)9]:

"I. Introduction

1. The previous Commissioner for Human Rights, Alvaro Gil-Robles, undertook an assessment mission to Latvia from 3 to 8 October 2003 at the invitation of the Latvian Government. This report[31] highlighted problems concerning police activities, prisons, the judicial system, protection of minorities, educational reform and the protection of rights in the social sphere.

2. The present memorandum was produced in order to ensure continuous dialogue on human rights questions with the Latvian government. It is based on the findings of the staff of the present Commissioner's Office who made a follow-up visit to Latvia from 7 to 11 June 2006. The Commissioner wishes to voice his sincerest gratitude to the Latvian authorities for the successful organisation of this visit and the hospitality provided to the members of his Office.

3. The present memorandum aims to examine the follow-up action taken by the Latvian authorities on the recommendations as set out in the 2003 report. It follows the order of the recommendations, and also incorporates some other subjects not dealt with specifically in the first report. These mainly concern the rise of discrimination and the fight against various forms of racism, which have been central to social debate in Latvia since 2003.

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30. Latvia is in 13th position with a score of 3.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

31. Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, 12 February 2004, CommDH(2004)3, on his visit to Latvia from 5 to 8 October 2003.

4. This memorandum also takes into account information forwarded by representatives of the non-governmental organisations (NGOs) encountered by the delegation members during their visit. The Office of the Commissioner would like sincerely to thank all those encountered during the visit for their co-operative and open-minded approach.

[…]

Summary of Recommendations

The Commissioner recommends the Latvian authorities:

1) To continue the effort to prevent the use of violence within the law-enforcement agencies. In order to ensure efficient sanctioning, the Domestic Security Office should have a sufficiently independent status.

2) To secure that all persons held in custody fully enjoy their right to legal counsel. Lawyers should be provided with proper working conditions in the detention and remand centres.

3) To ensure that material conditions of detention of people remanded in custody reflect the legislative improvements in this area.

4) To continue the efforts to reduce the number of people held in prison, particularly the defendants awaiting trial. To that end, consideration should be given to more frequent use of alternatives to imprisonment.

5) To continue to improve medical treatment for those in detention. All prisoners must have access to effective medical treatment.

6) To continue efforts in the naturalization process. The naturalization should be simplified for the elderly. The registration forms for children born after the 21 August 1991should contain a question allowing parents to request Latvian citizenship. In this context, campaigns targeting young parents should be intensified.

7) To facilitate the use of minority languages in written correspondence between people belonging to the national minorities and the administration.

8) To ensure that the Agency in charge of assessing the quality of education given the same attention to Latvian language and minority language schools and textbooks.

9) To ensure education of teachers in minority languages in order to support the functioning of secondary schools teaching in these languages.

10) To adopt a legal framework to regulate involuntary admissions of mentally disabled patients.

11) To intensify the actions against domestic violence, broader awareness campaigns should be conducted towards the people having direct contact with the victims.

12) To continue and reinforce efforts in the rehabilitation process of victims of trafficking in human beings.

13) To continue and reinforce efforts with regard to the treatment provided to the elderly in retirement homes. The support to the local authorities should be increased.

14) To intensify efforts to resolve the situation of the population living in denationalized housing.

15) To strengthen the combat against all forms of intolerance, to guarantee the security and safety of sexual minorities and to ensure the conditions for developing associations representing them.

16) To carry out the national action plan for the Roma to put an end to all types of discrimination against them.

17) To support and reinforce the institution of the Ombudsman.“

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **27 June 1997**

Protocol No. 6 (ETS No. 114) ratified on **7 May 1999**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) signed on **3 May 2002**

Protocol No. 14 (CETS No. 194) ratified on **28 March 2006**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **7** concerning Latvia, of which **6** gave rise to a finding of at least one violation and **1** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **579** concerned Latvia.

Resolutions adopted by the Committee of Ministers in 2009: **2**

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 7 May 2010): **0**

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

Convention (ETS No. 126)signed on **11 September 1997**, ratified on **10 February 1998**, entered into force on **1 June 1998**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **11 September 1997**, ratified on **10 February 1998**, entered into force on **1 March 2002**

Last country visit: **December 2009**

Publication of the last report: **December 2009**

Press release of 15 December 2009:

“The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published today the report on its visit to Latvia, carried out in November/December 2007, together with the responses of the Latvian Government. These documents have been made public at the request of the Latvian authorities.

During the 2007 visit, the CPT reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and to conditions of detention in police “short-term isolators”.

The Committee also examined in detail various issues related to prisons, in particular the situation of juvenile and female prisoners as well as the regime and security measures applied to life-sentenced prisoners. In addition, the CPT visited a psychiatric hospital and a social welfare institution, where it examined the treatment and living conditions of patients and residents and the legal safeguards in the context of admission procedures.

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

The CPT's report and the responses of the Latvian Government are available in English on the Committee's website (http://www.cpt.coe.int).”

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **19 May 2006**, ratified on **6 March 2008**, entered into force on **1 July 2008**

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **11 May 1995**, ratified on **6 June 2005**, entered into force on **1 October 2005**

Last opinion (1st monitoring cycle) by the Advisory Committee adopted in **October 2008** (not yet public)

No CM resolution on the implementation of the Framework Convention to date

Second state report (2nd monitoring cycle) expected for **1 October 2011**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) neither signed nor ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Latvia was adopted on 29 June 2007 and made public on **12 February 2008**.

Extract of press release of 12 February 2008:

"Council of Europe: Reports on racism in Andorra, Latvia, the Netherlands and Ukraine

The Council of Europe's independent human rights monitoring body specialised in combating racism, the European Commission against Racism and Intolerance (ECRI), today released four new reports examining racism, xenophobia, antisemitism and intolerance in Andorra, Latvia, the Netherlands and Ukraine. ECRI recognises that positive developments have occurred in all four of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern for the Commission:

[…)

In Latvia, a clear prohibition of racial discrimination was included in the Labour code and efforts have been made to increase the number of non-citizens being granted Latvian citizenship, either by encouraging or facilitating naturalisation. Nevertheless there remain a number of problems as to the full integration of the Russian-speaking population. The number of racially-motivated attacks targeting visible minorities has been increasing and the use of racist discourse, by some politicians and in the media, remains a problem.

[…]

These new reports form part of a third monitoring cycle of Council of Europe member states' laws, policies and practices aimed at combating racism. ECRI's country-specific reports are available in English, French and the national language of the country concerned at http://www.coe.int/ecri. They cover all member states on an equal footing, from the perspective of protecting human rights. They examine whether ECRI's main recommendations from previous reports have been followed and, if so, to what degree of success and effectiveness."

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 29 May 1997, ratified on 31 January 2002, entered into force on 2 March 2002

European Social Charter (revised) (ETS No. 163) signed on 29 May 2007 but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

Extract of the website of the European Social Charter (situation as of February 2010):

"The Charter in domestic law

The Charter is recognized as having immediate legal effects in the domestic legal order. Article 68. "Any international treaty which requires a transposition by Law into domestic order shall be ratified by the Parliament (Saeima)".

Reports *

Between 2004 and 2009 Latvia submitted 5 reports on the application of the Social Charter.

The 4th report, on the provisions related to Thematic Group 2 "Health, social security and social protection" (Articles 11, 13 and 14), was submitted on 31/10/2008. Conclusions in respect of these provisions will be published in January 2010.

The 5th report concerns the provisions accepted by Latvia related to Thematic Group 3 "Labour rights" i.e.

– Right to organise (Article 5)

– Right to bargain collectively (Article 6).

It was submitted on 30/10/2009.

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* Following a decision taken by the Committee of Ministers in 2006, under the current report system, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once very four years.

The situation of Latvia with respect to application of the Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[32]

Employment

► The law on the Support of the Unemployed and Jobseekers which entered into force on 1 July 2002 stipulates a range of active measures from which unemployed persons may benefit.

► Unemployment, and particularly long-term unemployment, has considerably decreased.

► Measures have been taken to address the problem of unemployment among disabled people (subsidised work places for disabled implemented by the State Employment Agency and in the framework of the National Employment Plan).

► A prohibition of discrimination in employment is prescribed by the Labour Law which came into force in 2004.

► The duration of alternative service has been reduced to 12 months (same duration as for the military service).

► The police legislation enacted on 1st January 2006 authorizes police officers to form trade unions and to affiliate to them.

Health

► On 1 January 2006, and in accordance with Community regulations, new statutory food hygiene rules came into force.

► An anti-AIDS programme has been set up in 2003. It includes epidemiological monitoring, prevention, especially for major at-risk groups, and special care and treatment for persons with HIV/AIDS (2003-2007 programme).

► Amendments to the law limiting cigarette and tobacco advertising were approved in 2005. These also introduced more restrictions on smoking in public places from 1 July 2008.

Migrants

► Amendments to the Immigration Law had been adopted on 6 April 2006 in order to lighten the procedure for a non-national in view of requesting a temporary residence permit. From now on, a permanent residence permit may be requested by an alien who has continuously resided in Latvia with a temporary residence permit for at least 5 years

Cases of non-conformity

Thematic Group 2 “Health, social security and social protection”

► Article 11§1 – Right to protection of health – Removal of the causes of ill-health

Life expectancy and mortality rate show a clear disparity with other European countries and is not increasing sufficiently.

(Conclusions XIX-2)

► Article 11§2 – Right to protection of health – Advisory and educational facilities

32. “The European Committee of Social Rights rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure“ (Article 2 of the Rules of the Committee).

There is no proof that periodical consultation and screening exist, particularly for pregnant women and children, that medical services exist at school, that periodical medical examinations are carried out throughout schooling and that screening of illnesses responsible for high premature mortality rates are organised.

(Conclusions XIX-2)

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

The level of social assistance benefits is manifestly inadequate; the duration of social assistance benefits is restricted to 9 months per year and the granting of social assistance benefits to nonnationals is subject to an excessive length of residence requirement which is 5 years. There is no evidence that the right of appeal is effectively guaranteed.

(Conclusions XIX-2)

► Article 13§3 – Right to social and medical assistance – Prevention, abolition or alleviation of need

The granting of help and personal advice services to non-nationals is subject to an excessive length of residence requirement of at least 5 years of continuous residence in Latvia.

(Conclusions XIX-2)

► Article 14§1 – Right to benefit from social services – Promotion or provision of social services

Access to social services by nationals of other States Parties is not equally guaranteed due to an excessive length of residence requirement (5 years).

(Conclusions XIX-2)

Thematic Group 3 “Labour rights”

► Article 5 – Right to organise

A minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union, which is an excessive restriction on the right to organise. In addition, retired persons and the unemployed persons do not have the right to organise and associations formed by police personnel are denied fundamental trade union prerogatives.

(Conclusions XVIII-2)

► Article 6§4 – Right to bargain collectively – Collective action

The call of a strike is subjected to conditions of quorum and vote. A trade union shall take a decision regarding the declaration of a strike at a general meeting of the members thereof and in which at least three quarters of the members of such trade union participate. A decision shall be taken if the three quarters of the members of the relevant trade union who are present have voted in favor for it. The same rule governing the declaration of a strike applies for employees of the relevant undertaking. The Committee considers that the exercise of the right to strike is excessively limited.

(Conclusions XVIII-2)

Thematic Group 4 “Children, families, migrants”

► Article 8§1 – Right of employed women to protection – Maternity leave

Six weeks postnatal leave is not compulsory and women may give up their right to all or some of their leave.

(Conclusions XVIII-2)

► Article 8§2 – Right of employed women to protection – Illegality of dismissal during maternity leave

Women unlawfully dismissed while pregnant or on maternity leave are only entitled to compensation for past loss of earnings.

(Conclusions XVIII-2)

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

The level of family allowances has not increased during the reference period. On the contrary, the monthly median income has risen. Although additional financial measures were planned, the Committee considers that the level of family state benefit is still inadequate.

(Conclusions XVIII-2)

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Latvian Government to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§1, §2 and §3 Conclusions XIX-1

Thematic Group 2 “Health, social security and social protection”

► Article 11§3 Conclusions XIX-2

► Article 13§4 Conclusions XIX-2

► Article 14§2 and Conclusions XIX-2

Thematic Group 3 “Labour rights”

► Article 6§2 Conclusions XVIII-2

Thematic Group 4 “Children, families, migrants”

► Article 17 Conclusions XVIII-2”

I. Parliamentary Assembly

No specific recent text concerning Latvia

8. LIECHTENSTEIN

7 May 2010

CoE member state since **23 November 1978**

Number of CoE Conventions ratified (as of 7 May 2010): **79 (out of 207)**

Number of CoE Conventions signed (as of 7 May 2010): **9**

I. PLURALISTIC DEMOCRACY[33]

A. Free and fair elections

System of government: constitutional monarchy

Last general elections: **2009**

Next general elections: **2013**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 15 October 1985, ratified on 11 May 1988, entered into force on 1 September 1988

Last Congress of Local and Regional Authorities monitoring report: June 2006

II. RULE OF LAW

A. VENICE COMMISSION

No recent opinion concerning Liechtenstein

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

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

Liechtenstein has not been able to provide data for this report.

C. The fight against corruption and organised crime

Civil Law Convention on Corruption (ETS No. 174)neither signed nor ratified

Criminal Law Convention on Corruption (ETS No. 173) and Additional Protocol (ETS No. 191) signed on 17 November 2009 but not ratified

Press release of 12 January 2010:

“Liechtenstein joins the Group of States against Corruption

On 1 January 2010, Liechtenstein became a member of the Group of States against Corruption (GRECO), the monitoring body established by the Council of Europe to improve the capacity of countries to prevent and combat corruption. On 17 November 2009 Liechtenstein signed the Criminal Law Convention on Corruption, although it has not ratified it yet.

By joining on an equal footing the other 46 GRECO members, which include all the Council of Europe member states – with the exception of San Marino – and the United States of America, Liechtenstein has accepted to actively commit itself to fighting corruption

An evaluation team will soon carry out an on-site visit to Liechtenstein to examine issues related notably to the capability of institutions to deal with corruption cases, preventive measures taken within the public administration and mechanisms in place to target the proceeds of corruption. This is a “catch-up” evaluation since all the other members have already been evaluated in those areas since the creation of GRECO in 1999.

Next year, GRECO will produce a report summing up the findings and containing possible recommendations for improvement. A further evaluation visit will be organised at a later stage, in the framework of GRECO’s current working areas, which will deal with incriminations of corruption and transparency of party funding.”

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 29 June 1995, ratified on 9 November 2000, entered into force on 1 March 2001

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) neither signed nor ratified

Third Evaluation Round: First written progress report submitted to MONEYVAL by Liechtenstein [adopted by MONEYVAL at its 28th Plenary Meeting, Strasbourg, 8-12 December 2008, MONEYVAL(2008)28]

III. PROTECTION OF HUMAN RIGHTS

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **May 2005,** following a visit to the country in **December 2004**

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **8 September 1982**

Protocol No. 6 (ETS No. 114) ratified on **15 November 1990**

Protocol No. 12 (ETS No. 177) signed on **4 November 2000**

Protocol No. 13 (ETS No. 187) ratified on **5 December 2002**

Protocol No. 14 (CETS No. 194) ratified on **7 September 2005**

Out of a total of 1,625 judgments delivered by the Court in 2009, there was **no** judgment concerning Liechtenstein.

Out of a total of 119,298 pending cases on 31st December 2009, **15** concerned Liechtenstein.

Resolutions adopted by the Committee of Ministers in 2009: **0**

Resolutions adopted by the Committee of Ministers in 2010 (as of 7 May 2010): **0**

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **12 September 1991**, entered into force on **1 January 1992**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **4 November 1993**, ratified on **5 May 1995**, entered into force on **1 March 2002**

Last country visit: **February 2007**

Publication of the last report: **July 2008**

Press release of 3 July 2008:

“The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has today published the report on its visit to Liechtenstein in February 2007, together with the response of the Liechtenstein Government. These documents have been made public at the request of the Liechtenstein Government.

The report contains, in particular, recommendations to strengthen fundamental safeguards which persons deprived of their liberty by the police should enjoy, and to improve the activities offered to inmates at Vaduz Prison, the only prison in the Principality. Further, for the first time in Liechtenstein, the Committee has examined the procedures for involuntary placement (ordered by a civil or criminal court) in psychiatric hospitals, nursing homes or other specialised institutions. In their response, the Liechtenstein authorities provide details on the measures being taken or envisaged in order to address the issues raised in the CPT’s report.

The CPT's visit report and the response of the Liechtenstein Government are available, in English and German, on the Committee's website: http://www.cpt.coe.int.”

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) neither signed nor ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **18 November 1997**, entered into force on **1 March 1998**

Last CM resolution(2nd monitoring cycle) on the implementation of the Framework Convention adopted in **December 2005** [ResCMN(2005)7]

Third state report (3rd monitoring cycle) received in **March 2009**

Last opinion (3rd monitoring cycle) by the Advisory Committee adopted in **June 2009** [ACFC/OP/III(2009)001]

Press release of 9 April 2010:

“National minorities in Liechtenstein: Council of Europe body calls for stronger protection against discrimination

The Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) today called on Liechtenstein to strengthen its legal framework for fighting discrimination, notably by introducing comprehensive anti-discrimination legislation, and to take resolute measures to prevent, combat and monitor manifestations of intolerance and xenophobia.

In its third Opinion on Liechtenstein, published today together with the government’s comments, the Committee welcomes the support given by Liechtenstein to the aims of the Framework Convention and the spirit of cooperation of the authorities in the monitoring process. It also acknowledges the efforts made in recent years with the adoption of new legal and institutional measures to strengthen protection against

discrimination, racism and intolerance and to foster integration of persons with different ethnic, linguistic or religious backgrounds. For example, it has adopted relevant measures on language teaching, religious education, counselling and information.

The Committee encourages the authorities to further their efforts to combat difficulties faced by foreign nationals in access to housing, employment and quality education. There is also a need to develop further the supportive measures taken in the field of language teaching, with adequate financial support by the state.

It also expressed its concern about the reporting of cases of xenophobia and intolerance against persons of different ethnic origin and religion, notably against Muslims and persons of Turkish origin, in particular among the youth.

Foreigners represent, according to 2007 official figures, 33,6% of the permanent population of Liechtenstein.

The Framework Convention for the Protection of National Minorities includes a monitoring system whereby the Committee of Ministers, assisted by an advisory committee, evaluates its implementation.

For further information: www.coe.int/minorities"

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **5 November 1992**, ratified on **18 November 1997**, entered into force on **1 March 1998**

Last periodic state report (4th cycle) submitted in **February 2008** [MIN-LANG/PR(2008)2]

Last assessment report (4th cycle) of the Committee of Experts adopted in **September 2008** [ECRML(2008)7]

No CM recommendation to date

Last biennial report by the Secretary General to the Parliamentary Assembly: **24 October 2007** [Doc. 11442]

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Liechtenstein was adopted on 14 December 2007 and made public on **29 April 2008**.

Extract of press release of 29 April 2008:

"The European Commission against Racism and Intolerance (ECRI) publishes new reports on Liechtenstein, Malta, Moldova, San Marino and Serbia

The Chairperson of ECRI today announced the release of five new reports examining racism, xenophobia, antisemitism and intolerance in Liechtenstein, Malta, Moldova, San Marino and Serbia. ECRI recognizes that positive developments have occurred in all five of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern for the Commission.

In Liechtenstein, the Government adopted a five-year National Action Plan to Combat and Prevent Racism. Many different measures have been taken to train officials and to raise awareness among the general public about the need to combat racism and racial violence. But despite measures taken by the authorities, Muslims still face some obstacles in practising their religion and children of immigrant background are still faced with disadvantages in access to education.

[…]

ECRI's country-specific reports are available at: www.coe.int/ecri."

H. SOCIAL RIGHTS

European Social Charter of 1961(ETS No. 035)signed on **9 October 1991** but not ratified

European Social Charter (revised) (ETS No. 163) neither signed nor ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

I. Parliamentary Assembly

No specific recent text concerning Liechtenstein

9. LITHUANIA

7 May 2010

CoE member state since **14 May 1993**

Number of CoE Conventions ratified (as of 7 May 2010): **88 (out of 207)**

Number of CoE Conventions signed (as of 7 May 2010): **12**

I. PLURALISTIC DEMOCRACY[34]

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2009**

Next presidential elections: **2014**

Last general elections: **2008**

Next general elections: **2012**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 27 November 1996, ratified on 22 June 1999, entered into force on 1 October 1999

Last Congress of Local and Regional Authorities monitoring report: May 2001

II. RULE OF LAW

A. VENICE COMMISSION

No recent opinion concerning Lithuania

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Lithuania in 2006 was **26 euros**;

– the **number of professional judges on a full-time basis** in Lithuania in 2006 was **732,** this means 21.5 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Lithuania was **854**, this means 25.1 for 100,000 inhabitants.

C. The fight against corruption and organised crime[35]

Civil Law Convention on Corruption (ETS No. 174) signed on 18 April 2002, ratified on 17 January 2003, entered into force on 1 November 2003

Criminal Law Convention on Corruption (ETS No. 173)signed on **27 January 1999**, ratified on **8 March 2002**, entered into force on **1 July 2002**, **Additional Protocol** (ETS No. 191)neither signed nor ratified

Press release of 17 February 2010:

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

35. Lithuania is in 52nd position with a score of 4.9 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

"Council of Europe's Group of States against Corruption publishes Report on Lithuania

The need to lower the level of proof required to convict a person for corruption and more clarity in supervision of party financing in Lithuania are the highlights of a report published today by GRECO, the Council of Europe's monitoring body dedicated to the fight against corruption.

Prepared within the framework of GRECO's Third Evaluation Round, the report focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding incriminations of corruption [theme I], the Lithuanian Penal Code puts a premium on consistency and this limits legal loopholes in the existing bribery law. With the exception of trading in influence, the corruption offences contained in the Penal Code reflect most of the main requirements of the Criminal Law Convention on Corruption. That said, Lithuania will have to ratify the Additional Protocol to this Convention, which applies to arbitrators in commercial, civil and other matters as well as jurors. Some adjustments are also required, for instance spelling out clearly that it does not matter whether the beneficiary of a bribe is the bribe-taker him/herself or a third party. The report stresses that the level of proof required to convict a person for corruption appears to be too high. As a consequence, many possibly corrupt acts are not prosecuted. The prosecution of corruption-related offences would benefit from using, more widely, evidence based on objective factual circumstances.

Concerning transparency of party funding [theme II], Lithuania's Law on the Financing and Financial Control of Political Parties and Political Campaigns of August 2004 is largely in line with the principles contained in Recommendation (2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns. Nevertheless, some improvements are required. In particular, the scope of the parties' consolidated accounts should systematically take into consideration their various components and structures, the valuation of in-kind donations must be clarified and the role of campaign treasurers be strengthened. Currently, supervision of political financing is clearly the weakest element: the responsibility in this area is split between the Central Electoral Commission and the State Tax Inspectorate and the checking by both of these institutions is more of a formalistic nature. This is all the more worrying since it is common knowledge that parties and candidates handle more money than which is officially declared.

The report as whole addresses 21 recommendations to Lithuania. GRECO will assess the implementation of these recommendations in the first half of 2011, through its specific compliance procedure."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 3 June 1994, ratified on 20 June 1995, entered into force on 1 October 1995

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) neither signed nor ratified

Third Evaluation Round: Second written progress report submitted to MONEYVAL by Lithuania [adopted by MONEYVAL at its 32nd Plenary Meeting, Strasbourg, 15-18 March 2010, MONEYVAL(2010)2]

III. PROTECTION OF HUMAN RIGHTS[36]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **May 2007,** following a visit to the country in **May-June 2006**

Last visit: October 2009

Press release of 17 February 2010:

"Commissioner Hammarberg continues dialogue with Lithuanian authorities on discrimination issues and minority rights

36. Lithuania is in 10th position with a score of 2.25 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published today letters sent to the Prime Minister of Lithuania and to the Speaker of the Seimas (Parliament), on discrimination issues, minority rights and steps taken to investigate whether the CIA detained terrorist suspects on Lithuanian territory.

The letters follow the Commissioner's visit to Lithuania last October in which he held discussions with the President and the Prime Minister, as well as other representatives of the national authorities and civil society representatives.

In his letters, the Commissioner cautions against the adoption of legislative provisions which would contain unduly broad restrictions on speech or freedom of assembly, or which would discriminate against people based on their sexual orientation. Efforts should be made to increase public awareness of the situation of groups which are subjected to discrimination or intolerance, and to encourage respect for everyone's rights.

As regards the rights of national minorities, the Commissioner notes that the decision of the Constitutional Court to allow the possibility to transcribe names of persons in a minority language on passports was a positive step, and expresses the hope that an acceptable solution will be found for the use of minority languages for bilingual topographical indications.

The Commissioner also welcomes the parliamentary investigation into the alleged existence in Lithuania of a secret detention centre for terrorist suspects which in fact demonstrated that there indeed was cooperation with the US security services in the preparation of such a facility in the country.

Finally, the Commissioner recommends the ratification by Lithuania of Protocol No. 12 to the European Convention on Human Rights, containing a general prohibition of discrimination, and the acceptance of the collective complaints procedure under the European Social Charter.

Read the reply of Andrius Kubilius, Prime Minister of Lithuania

Read the reply of Irena Degutienė, Speaker of the Seimas "

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **20 June 1995**

Protocol No. 6 (ETS No. 114) ratified on **8 July 1999**

Protocol No. 12 (ETS No. 177) neither signed nor ratified

Protocol No. 13 (ETS No. 187) ratified on **29 January 2004**

Protocol No. 14 (CETS No. 194) ratified on **1 July 2005**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **9** concerning Lithuania, of which **8** gave rise to a finding of at least one violation and **1** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **362** concerned Lithuania.

Resolutions adopted by the Committee of Ministers in 2009: **2**

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 7 May 2010): **0**

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

Convention (ETS No. 126)signed on **14 September 1995**, ratified on **26 November 1998**, entered into force on **1 March 1999**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **14 September 1995**, ratified on **26 November 1998**, entered into force on **1 March 2002**

Last country visit: **April 2008**

Publication of the last report: **June 2009**

Press release of 25 June 2009:

“The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published today the report on its April 2008 visit to Lithuania. The report has been made public at the request of the Lithuanian authorities.

During the 2008 visit, the CPT reviewed the measures taken by the Lithuanian authorities to implement the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police holding facilities. The CPT’s delegation also examined in detail various issues related to prisons, including the situation of juvenile and life-sentenced prisoners. Further, for the first time in Lithuania, the Committee’s delegation visited a forensic psychiatric hospital and a social welfare institution.

The CPT's visit report is available on the Committee's website (http://www.cpt.coe.int)”

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **12 February 2008** but not ratified

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **23 March 2000**, entered into force on **1 July 2000**

Last CM resolution(1st monitoring cycle) on the implementation of the Framework Convention adopted in **December 2003** [ResCMN(2003)11]

Last state report (2nd monitoring cycle) received in **November 2006**

Last opinion (2nd monitoring cycle) by the Advisory Committee adopted in **February 2008** (not yet public)

Third state report (3rd monitoring cycle) expected for **1 July 2011**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) neither signed nor ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Lithuania was adopted on 24 June 2005 and made public on **21 February 2006**.

H. SOCIAL RIGHTS

European Social Charter of 1961(ETS No. 035)neither signed nor ratified

European Social Charter (revised) (ETS No. 163) signed on 8 September 1997, ratified on 29 June 2001, entered into force on 1 August 2001

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

Extract of the website of the European Social Charter (situation as of May 2010):

“The Charter in domestic law

Automatic incorporation into domestic law and superiority of International treaties ratified by the Seimas (Parliament) over national legislation (Article 138 of the Constitution and Article 11 of the Law on Treaties).

Reports *

Between 2003 and 2009, Lithuania submitted 7 reports on the application of the Revised Charter.

The 6th report on the revised Charter covered the accepted provisions relating to Thematic Group 2 “Health, social security and social protection” (Articles 3, 11, 12, 13, and 14 of the Revised Charter). It was submitted on 18/12/2008. Conclusions in respect of these provisions were published in January 2010.

The 7th report, submitted on 06/11/2009, covers the accepted provisions related to Thematic Group 3 “Labour rights” i.e.

– Right to just conditions of work (Article 2)

– Right to a fair remuneration (Article 4)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6)

– Right of workers to be informed and consulted (Article 21)

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

– Right to dignity in the workplace (Article 26)

– Right of workers’ representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

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

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

The situation of Lithuania with respect to the application of the Revised Charter

Examples of progress achieved following conclusions or decisions of the ECSR[37]

Children

Extension of the number of child allowance beneficiaries (Child Allowances Act, entry into force 1 July 2004).

Cases of non-compliance

Thematic group 1 “Employment, training and equal opportunities”

► Article 1§2 – Right to work - Policy of full employment

Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The employment rights of persons who have in the past been employed in the security services of the former Soviet Union are restricted beyond the scope of Article G.

(Conclusions 2008)

► Article 1§4 (and 9 and 10§3) - Right to work - Vocational guidance, training and rehabilitation

It has not been established that equal treatment is guaranteed to all nationals of States Parties and with regard to continuing vocational training for workers (Article 10§3) on the ground that it has not been established that the right to individual training leave is guaranteed to workers.

(Conclusions 2008)

► Article 9 - Right to vocational guidance

It has not been established that equal treatment is guaranteed to all nationals of States Parties.

(Conclusions 2008)

► Article 10§3 - Right to vocational training - Vocational training and retraining of adult workers

It has not been established that the right to individual training leave is guaranteed to workers.

37. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

(Conclusions 2008)

► Article 15§2 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

Legislation does not make reasonable accommodation of the workplace a requirement.

(Conclusions 2008)

► Article 15§3 - Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community

There is no general anti-discrimination legislation to protect persons with disabilities, which explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities.

(Conclusions 2008)

Thematic group 2 : “Health, social security and social protection”

► Article 11§1 - Right to protection of health Removal of the causes of ill-health

It has not been established that significant efforts are being made to increase life expectancy, which is significantly lower than in other European countries and which is not

increasing sufficiently.

(Conclusions 2009)

► Article 12§1 - Right to social security - Existence of a social security system

– the minimum level of the unemployment insurance benefit is manifestly inadequate;

– the level of the old age state social insurance basic pension is manifestly inadequate.

(Conclusions 2009)

► Article 12§4 – Right to social security - Social security of persons moving between states

– entitlement to state social insurance pensions is subject to a residence requirement;

– the retention of accrued benefits related to work accidents, occupational disease, sickness or maternity for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Lithuania is not guaranteed;

– it has not been established that nationals of States Parties not covered by Community regulations or bound by an agreement with Lithuania are entitled to accumulate insurance or employment periods completed in other countries.

(Conclusions 2009)

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need

– the level of social assistance paid to single persons without resources, including the elderly, is manifestly inadequate;

– the granting of social assistance benefits to nationals of other States Parties is subject to an excessive length of residence requirement.

(Conclusions 2009)

Thematic group 3: “Labour rights”

► Article 2§1- Right to just conditions of work - Reasonable working time

During the reference period, for some categories of workers a working day of up to 24 hours could be allowed and in the absence of absolute maximum limits on daily and weekly working hours under flexible working time regimes the working week could be more than 60 hours.

(Conclusions 2005)

► Article 4§5 – Right to a fair remuneration - Limits to deduction from wages

In certain cases after deductions the remaining salary is not enough to ensure the subsistence of the worker.

(Conclusions 2007)

► Article 5 – Right to organise

The requirement of 30 members to form a trade union is excessive and undermines the freedom to organise.

(Conclusions 2006)

► Article 6§2 - Right to bargain collectively - Negotiation procedures

– trade unions may only initiate collective action if two-thirds of an undertaking's employees vote in favour of a strike (Article 77.1 of the Labour Code), which is an undue restriction on trade unions' right to collective action;

– strikes are totally forbidden in public electricity, district heating and gas supply enterprises (Article 78.1 of the Labour Code).

(Conclusions 2006)

Thematic group 4: “Children, families and migrants”

► Article 8§1 – Right of employed women to protection of maternity - Maternity leave

There is no compulsory period of 6 weeks post-natal maternity leave.

(Conclusions 2005)

► Article 8§2 – Right of employed women to protection of maternity - Illegality of dismissal during maternity leave

National law did not, for at least part of the reference period (2001-2002), ensure that adequate damages were payable to a woman dismissed in violation of this provision.

(Conclusions 2005)

► Article 8§5 – Right of employed women to protection of maternity - Prohibition of dangerous, unhealthy or arduous work

Pregnant women, women who have recently given birth and breastfeeding women who were obliged to take leave due to the health and safety risks at work were not remunerated or compensated during this period.

(Conclusions 2005)

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

There is no equal treatment of nationals of other States Parties in respect of the payment of family benefits because of an excessive residence requirement.

(Conclusions 2006)

► Article 17§1 – Right of children and young persons to social, legal and economic protection - Assistance, education and training

Corporal punishment of children is not prohibited within the family.

(Conclusions 2005)

► Article 19§7 (and 19§10) – Right of migrant workers and their families to protection and assistance; - Equality regarding legal proceedings, and - Equal treatment for the self-employed

Migrant workers from non-European Union States Parties to the Charter are not entitled to apply for state-guaranteed legal aid.

(Conclusions 2006)

► Article 27§1 – Right of workers with family responsibilities to equal opportunity and treatment

Participation in working life

Fathers who are not single are discriminated against with regard to the right to work part-time.

(Conclusions 2005)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Lithuanian Government to provide more information in the next report in respect of the following provisions:

Thematic group 1 “Employment, training and equal opportunities”

► Article 10§2 – Conclusions 2008

► Article 18§4 – Conclusions 2008

► Article 25 – Conclusions 2008

Thematic group 2 : “Health, social security and social protection”

► Article 3§§2 and 3 – Conclusions 2009

► Article 11§2 – Conclusions 2009

► Article 14§1 – Conclusions 2009

Thematic group 3: “Labour rights”

► Article 4§1 – Conclusions 2007

► Article 6§4 6 Conclusions 2006

Thematic group 4: “Children, families and migrants”

► Article 7§§ 3, 5, 6 and 10 6 Conclusions 2006

► Article 8§4 – Conclusions 2005

► Article 17§2 – Conclusions 2005

► Article 27§3 – Conclusions 2005

► Article 31§§1 and 2 – Conclusions 2005“

I. Parliamentary Assembly

No specific recent text concerning Lithuania

10. LUXEMBOURG

10 May 2010

CoE member state since **5 May 1949**

Number of CoE Conventions ratified (as of 10 May 2010): **125 (out of 207)**

Number of CoE Conventions signed (as of 10 May 2010): **49**

I. PLURALISTIC DEMOCRACY[38]

A. Free and fair elections

System of government: constitutional monarchy

Last general elections: **2009**

Next general elections: **2014**

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

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 15 October 1985, ratified on 15 May 1987, entered into force on 1 September 1988

Last Congress of Local and Regional Authorities monitoring report: April 2005

II. RULE OF LAW

A. VENICE COMMISSION

Extract of: **Interim Opinion on the Draft Constitutional Amendments of Luxembourg** adopted by the Venice Commission at its 81st Plenary Session [Venice, 11-12 December 2009, CDL-AD(2009)057]:

"Introduction

1. In a letter of 2 June 2009 Mr Paul-Henri Meyers, Chairperson of the Luxembourg Commission on Institutions and Constitutional Review, acting on behalf of this Commission and through the intermediary of Mr Lucien Weiler, President of the Chamber of Deputies, requested an opinion from the Venice Commission on its proposed constitutional review, geared to amending and reorganising the Constitution (CDL(2009)131).

2. The Venice Commission instructed a Working Group comprising Mr Chagnollaud, Mr Colliard, Mr van Dijk, Mr Jowell, Mr Trocsanyi and Mr Velaers to prepare an opinion on this matter. The individual comments by the rapporteurs are reproduced in documents CDL(2009)129, 130, 158, 160 and 161.

3. On 14 October 2009 the Working Group held a meeting in Luxembourg with the Commission on Institutions and Constitutional Review and the Luxembourg Conseil d'Etat.

4. The present opinion, which is based on the rapporteurs' individual comments and information gleaned at the meeting on 14 October 2009, was adopted by the Venice Commission at its 81st plenary session (Venice, 11 and 12 December 2009).

[…]

Conclusions

124. The constitutional writers' aim is to bring the text of the Constitution into line with constitutional practice and remove any obsolete provisions. The present constitutional review largely achieves this aim in terms of increased coherency.

125. The question once again is whether this is a new Constitution or a Constitution which is to retain the date 1868 after a process of comprehensive review and renumbering of articles.

126. The text of the Chapter on public freedoms and fundamental rights does not entirely correspond to the relevant international treaties applicable in Luxembourg, particularly in connection with restrictions on rights and freedoms. In order to avoid any ambiguity here, and if the constitutional writers do no wish to incorporate systematically the texts of the treaties in question, it might be worth considering inserting cross-referencing clauses corresponding to the contractual guarantees and clearly stating in the Constitution that the substantive provisions of international human rights conventions are directly applicable and take precedence over the whole domestic legal system.

127. The main changes affect the institutional structure, especially the Grand Duke's powers and prerogatives. In this field, it is for the Luxembourg constitutional writers to choose the type of monarchy that is best suited to Luxembourg society, provided that the principles of democracy and the rule of law are observed. It is incumbent on them to specify the extent to which the Grand Duke remains vested with the duties conferred on him in 1998 ("symbolic function", function of "guardian of the institutions" and "arbitrating function")."

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Luxembourg in 2006 was **121 euros**;

– the **number of professional judges on a full-time basis** in Luxembourg in 2006 was **174,** this means 36.8 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Luxembourg was **43**, this means 9.1 for 100,000 inhabitants.

C. The fight against corruption and organised crime[39]

Civil Law Convention on Corruption (ETS No. 174) signed on 4 November 1999 but not ratified

Criminal Law Convention on Corruption (ETS No. 173) signed on 27 January 1999, ratified on 13 July 2005, entered into force on 1 November 2005, Additional Protocol (ETS No. 191) signed on 11 June 2003, ratified on 13 July 2005, entered into force on 1 November 2005

Press release of 25 August 2008:

"The Group of States against Corruption (GRECO) publishes its Third Round Evaluation Report on Luxembourg

The Council of Europe's Group of States against Corruption (GRECO) has published today its Third Round Evaluation Report on Luxembourg. The report, which was adopted on 13 June 2008, has been made public following the agreement of the authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], Luxembourg's legal framework complies to a large extent with the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). The shortcomings that do appear often reflect apparent oversights by parliament or a lack of consistency between neighbouring provisions. This is the case for the criminalisation of bribery of foreign public officials and the employees of international organizations, and that of trading in influence. The provisions on private sector bribery also raise certain questions. As regards the basic offences of active and passive bribery, it is not always clear whether unilateral acts of corruption – giving and receiving – can be prosecuted without the need to show that there was a corrupt pact between the parties, which is always difficult to establish, when it exists. In some cases, Luxembourg has restricted its jurisdiction over corruption-related offences. In practice, the number of convictions for corruption remains very low, reportedly due to the criminal authorities' lack of legal and other resources.

Concerning transparency of party funding [theme II], GRECO welcomed the adoption of the law on political party funding of 21 December 2007. This legislation, which came into force on 1 January 2008, introduces public funding of routine party activities. At the same time, it introduces rules on transparency and monitoring, and penalties for breaches of the regulations, which fill an important gap in Luxembourg legislation. Some gaps still remain, in so far as insufficient account was taken of the financing of election campaigns and of candidates for election. Because the law breaks such new ground, the impact of the improvements in the area of transparency, monitoring (by the Court of Auditors) and sanctions still need to be determined; at least on paper, there are some lacunae.

The report as a whole addresses 17 recommendations to Luxembourg. GRECO will assess the implementation of these recommendations in the beginning of 2010, through its specific compliance procedure."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 28 September 1992, ratified on 12 September 2001, entered into force on 1 January 2002

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 16 May 2005 but not ratified

Luxembourg is not a member of MONEYVAL.

III. PROTECTION OF HUMAN RIGHTS[40]

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39. Luxembourg is in 12th position with a score of 8.2 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **July 2004**, following a visit to the country in **February 2004**

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **3 September 1953**

Protocol No. 6 (ETS No. 114) ratified on **19 February 1985**

Protocol No. 12 (ETS No. 177) ratified on **21 March 2006**

Protocol No. 13 (ETS No. 187) ratified on **21 March 2006**

Protocol No. 14 (CETS No. 194) ratified on **21 March 2006**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **3** concerning Luxembourg, of which **2** gave rise to a finding of at least one violation.

Out of a total of 119,298 pending cases on 31st December 2009, **54** concerned Luxembourg.

Resolutions adopted by the Committee of Ministers in 2009: **2**

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 10 May 2010): **1**

No Interim Resolution

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **6 September 1988**, entered into force on **1 February 1989**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **4 November 1993**, ratified on **20 July 1995**, entered into force on **1 March 2002**

Publication of the last report: **April 2004**

Last country visit: **April 2009**

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **16 May 2005**, ratified on **9 April 2009**, entered into force on **1 August 2009**

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **20 July 1995** but not ratified

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **5 November 1992**, ratified on **22 June 2005**, entered into force on **1 October 2005**

Last assessment report (1st cycle) of the Committee of Experts adopted in **April 2008** [ECRML(2008)6]

Last periodic state report (2nd cycle) submitted in **May 2010** [MIN-LANG/PR(2010)4, available in French only]

No CM recommendation to date

Last biennial report by the Secretary General to the Parliamentary Assembly: **24 October 2007** [Doc. 11442]

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

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40. Luxembourg is in 20th position with a score of 4.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

Last report by ECRI: the third report on Luxembourg was adopted on 16 December 2005 and made public on **16 May 2006**.

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 18 October 1961, ratified on 10 October 1991, entered into force on 9 November 1991

European Social Charter (revised) (ETS No. 163) signed on 11 February 1998 but not ratified

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

Extract of the website of the European Social Charter (situation as of January 2010):

"The Charter in domestic law

Automatic incorporation into domestic law.

Reports *

Between 1993 and 2009, Luxembourg submitted 12 reports on the application of the Charter.

The 11th report on the accepted provisions of Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14) was submitted between 30 June 2009 and 14 August 2009. Conclusions in respect of these provisions will be published in January 2010.

The 12th report concerns the accepted provisions relating to Thematic Group 3 "Labour rights" i.e.

– Right to just conditions of work (Article 2)

– Right to a fair remuneration (Article 4§§1, 2, 3)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6)

It should have been submitted before 31 October 2009.

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once very four years.

Situation of Luxembourg with respect to the application of the Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[41]

Social Protection

► The minimum age requirement for entitlement to the guaranteed minimum wage has been lowered to 25 years and the condition of residence reduced to 5 years (Act of 29 April 2000).

Employment

► It is now forbidden to give a woman notice of dismissal during maternity leave and a woman unlawfully dismissed may now request that her dismissal be annulled and that she be maintained in her job (Act of 7 July 1998).

Non-discrimination (Disability)

► Adoption of an Anti-Discrimination Act which comprises a general ban on direct and indirect discrimination in society on grounds including disability (28 November 2006)

41. The Committee rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the Committee).

►Adoption of an Anti-Discrimination Act which prohibits direct and indirect discrimination on the ground of disability in relations between public-sector workers and their employers (29 November 2006)

Cases of non-conformity

Thematic Group 1 “Employment, training and equal opportunities”

► Article 10§4 – Right to vocational training - Full use of available facilities

Nationals of non-EU states party to the Charter or the revised Charter residing or working lawfully

in the country are not guaranteed equal treatment with regard to financial assistance for training.

(Conclusions XIX-1)

Thematic Group 2 “Health, social security and social protection”

► Article 12§4 – Right to social security - Social security of persons moving between states

Accumulation of insurance or employment periods completed by nationals of States Parties not covered by Community regulations or by bilateral agreements is not guaranteed.

(Conclusions XIX-2)

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

– Eligibility to the guaranteed minimum income (RMG) benefit is linked to dismissal for serious misconduct.
– Persons aged under 25 and in need are not entitled to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees.
– Persons who do not accept the job offered or fail to accept employment measures lose their entitlement to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees.
– Persons who have been dismissed for serious misconduct and therefore lose entitlement to the RMG benefit are not provided adequate income replacement guarantees under the Emergency Residence Act.
– Foreign nationals, lawfully resident in Luxembourg are not entitled to social benefits on an equal footing with nationals.

(Conclusions XIX-2)

► Article 13§4 – Right to social and medical assistance – Specific emergency assistance for non-residents

Legislation and practice do not guarantee that all unlawfully present foreigners receive emergency social assistance for as long as they might require it.

(Conclusions XIX-2)

Thematic Group 3 “Labour rights”

► Article 2§4 – Right to just conditions of work - Right to compensatory time off in dangerous occupations.

There is no system for reducing working time or giving additional paid leave to those employed in dangerous or unhealthy occupations.

(Conclusions XVIII-2)

►Article 4§2 – Right to a fair remuneration - Right to increased remuneration for overtime. After the ninth hour of overtime

State officials and employees are not entitled to an increased compulsory rest period or to increased remuneration if the overtime was performed between 6 and 10 p.m. or not during the week-end or public holidays.

(Conclusions XVIII-2)

► Article 5 – Right to organise

National law does not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality.

(Conclusions XVIII-1)

Thematic Group 4 “Children, families, migrants”

► Article 7§4 – Right of children and young persons to protection - Working conditions between the age of 15 and 18 (working time).

Working time for young people under 16 (up to 8 hours per day and 40 hours per week) is excessive.

(Conclusions XVIII-2)

► Article 7§5 – Right of children and young persons to protection - Fair pay

The wages paid to apprentices in their third year are less than two thirds of the minimum wage of an adult.

(Conclusions XVIII-2)

► Articles 19§4– Right of migrant workers and their families to protection and assistance – Right to equal treatment in trade union matters

Discrimination towards the rights of non-EEA and non-EU migrant workers, since they can only constitute up to one-third of the members elected to joint works councils

(Conclusions XVIII-1)

►Articles 19§6 and 19§10 – Right of migrant workers and their families to protection and assistance – Family reunion; – Equal treatment for the self-employed

The Government has not established that all migrant workers who are nationals of Contracting Parties are entitled to family reunion. The same applies to self-employed workers.

(Conclusions XVIII-1)

► Articles 19§7 and 19§10 - Right of migrant workers and their families to protection and assistance – Right to equal treatment in respect of legal proceedings

Nationals of States that have not ratified the 1954 Hague Convention on Civil Procedure are obliged to lodge a security when applied for by the defendant and agreed to by the court. The same applies to self-employed workers.

(Conclusions XVIII-1)

►Article 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation; – Equal treatment for the self-employed

The grounds for expulsion provided by the amended Act of 28 March 1972 on the entry and stay of foreign nationals, their medical examination and employment go beyond those permitted by the Charter. The same applies to self-employed workers.

(Conclusions XVIII-1)

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Government of Luxembourg to provide more information in the next report:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

►Article 15§1 - Conclusions XIX-1

►Article 15§2 - Conclusions XIX-1

Thematic Group 2 “Health, social security and social protection”

► Article 12§1 - Conclusions XIX-2

► Article 12§3 - Conclusions XIX-2

► Article 14§1 - Conclusions XIX-2

► Article 14§2 - Conclusions XIX-2

Thematic Group 3 “Labour rights”

► article 4§1 - Conclusions XVIII-2”

I. Parliamentary Assembly

No specific recent text concerning Luxembourg

11. MALTA

10 May 2010

CoE member state since **29 April 1965**

Number of CoE Conventions ratified (as of 10 May 2010): **77 (out of 207)**

Number of CoE Conventions signed (as of 10 May 2010): **24**

I. PLURALISTIC DEMOCRACY[42]

A. Free and fair elections

System of government: parliamentary democracy

Last presidential elections: **2009**

Next presidential elections: **2014**

Last general elections: **2008**

Next general elections: **2013**

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 13 July 1993, ratified on 6 September 1993, entered into force on 1 January 1994

Last Congress of Local and Regional Authorities monitoring report: November 2002

II. RULE OF LAW

A. VENICE COMMISSION

No opinion concerning Malta

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in Malta in 2006 was **28 euros**;

– the **number of professional judges on a full-time basis** in Malta in 2006 was **34**, this means 8.3 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in Malta was **6**, this means 1.5 for 100,000 inhabitants.

C. The fight against corruption and organised crime[43]

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

Civil Law Convention on Corruption (ETS No. 174) signed on 15 January 2003, ratified on 31 March 2004, entered into force on 1 July 2004

Criminal Law Convention on Corruption (ETS No. 173) signed on 20 November 2000, ratified on 15 May 2003, entered into force on 1 September 2003, Additional Protocol (ETS No. 191) signed on 15 May 2003 but not ratified

Press release of 10 November 2009:

"The Council of Europe's Group of States against Corruption (GRECO) has published today its Third Round Evaluation Report on Malta. The report has been made public following the agreement of the Maltese authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption (Theme I), GRECO finds that all the offences covered by the Criminal Law Convention on Corruption (ETS 173), as ratified by Malta, have been incorporated into the Criminal Code. However, the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) has not been ratified yet and some of the offences contained therein (i.e. bribery of arbitrators and foreign jurors) are not criminalised under Maltese law. Overall, Malta has established a solid legal framework, which would only require a few amendments to be in full compliance with the Criminal Law Convention, but it is noteworthy that in practice there appears to be a generally low level of investigated/adjudicated corruption cases in Malta.

Concerning transparency of political funding (Theme II), GRECO notes that political parties and election candidates are heavily dependent on private sources for their financing as there is almost no direct general public funding available. Political parties are under no transparency requirement or supervision in respect of their income and expenditure. The situation is slightly different in respect of election candidates, who are obliged to declare their income and expenses following elections; however, the existing rules appear ineffective. Moreover, Malta has progressively become a two-party system and politics in Malta are increasingly party orientated. GRECO calls for further regulations to provide for reasonable transparency and monitoring in respect of political financing, in order to be in line with Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, the principles of which Malta currently falls short.

The report as a whole addresses 9 recommendations to Malta. GRECO will assess the implementation of these recommendations in the first half of 2011, through its specific compliance procedure."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 5 November 1998, ratified on 19 November 1999, entered into force on 1 March 2000

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 16 May 2005, ratified on 30 January 2008, entered into force on 1 May 2008

Third Evaluation Round: First written progress report submitted to MONEYVAL by Malta [adopted by MONEYVAL at its 28th Plenary Meeting, Strasbourg, 8-12 December 2008, MONEYVAL(2008)41rev1]

III. PROTECTION OF HUMAN RIGHTS[44]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **March 2006,** following a visit to the country in **November-December 2005**

Press release of 10 December 2009:

"Migrants' rights: Commissioner Hammarberg publishes two letters to Italy and Malta

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43. Malta is in 45th position with a score of 5.2 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

44. Malta is in 11th position with a score of 2.50 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published today two letters he sent last August to the Minister of Interior of Italy, Roberto Maroni, and to the Minister for Justice and Home Affairs, of Malta Carmelo Mifsud Bonnici.

The Commissioner's letters refer to that month's incident involving a boat which set off from Libya with more than 70 people on board, mainly Eritreans. The boat was adrift in the Mediterranean Sea for twenty days, apparently without any help from several passing vessels. There were only five survivors.

"I publish these letters in order to reopen the discussion on the need to fully align migration practices with human rights standards. This serious incident should be effectively investigated" said the Commissioner. "Four of the five survivors have been granted refugee status in Italy and one is waiting for the decision on her application. This is good news. However, there is still an urgent need to take all necessary measures to prevent the recurrence of such tragedies. Regrettably, the authorities have not replied so far."

In his letters, the Commissioner also underlined that the responsibility to rescue persons at sea appeared to have been neglected. He therefore recommended that both countries concerned engage in a constructive cooperation to develop sea patrolling which is duly respectful of human rights and humanitarian principles.

"The protection of the human rights of migrants needs urgent attention" said the Commissioner. "Every European country should act in a spirit of solidarity towards other countries, discharge its responsibilities under international law and effectively protect migrants, whose fundamental rights are at serious risk." "

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **23 January 1967**

Protocol No. 6 (ETS No. 114) ratified on **26 March 1991**

Protocol No. 12 (ETS No. 177) neither signed nor ratified

Protocol No. 13 (ETS No. 187) ratified on **3 May 2002**

Protocol No. 14 (CETS No. 194) ratified on **4 October 2004**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **5** concerning Malta, of which **4** gave rise to a finding of at least one violation and **1** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **18** concerned Malta.

Resolutions adopted by the Committee of Ministers in 2009: **0**

Resolutions adopted by the Committee of Ministers in 2010 (as of 10 May 2010): **0**

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **7 March1988**, entered into force on **1 February 1989**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed and ratified on **4 November 1993**, entered into force on **1 March 2002**

Last country visit: **May 2008**

Publication of the last report: **September 2007**

Press release of 10 September 2007:

"The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the report on its most recent visit to Malta (June 2005), together with the responses of the Maltese Government. These documents have been made public at the request of the Maltese authorities.

The main objective of the June 2005 visit was to assess the implementation of the recommendations concerning the detention centres for foreigners made by the CPT after its earlier visit in January 2004. For this purpose, the CPT carried out follow-up visits to Lyster and Safi Barracks as well as to several police holding facilities. The CPT also sought detailed information concerning the judicial inquiry into incidents at Safi Barracks in January 2005 and went to Mount Carmel Psychiatric Hospital and to Corradino Correctional Facility in order to meet foreign detainees and consult medical files.

In their responses, the Maltese authorities highlight several measures taken in response to the CPT's recommendations, mainly relating to the legal safeguards to be offered to immigration detainees and their living conditions.

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

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **16 May 2005**, ratified on **30 January 2008**, entered into force on **1 May 2008**

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **11 May 1995**, ratified on **10 February 1998**, entered into force on **1 June 1998**

Last opinion (2nd monitoring cycle) by the Advisory Committee adopted in **November 2005** [ACFC/OP/ II(2005)006]

Last CM resolution(2nd monitoring cycle) on the implementation of the Framework Convention adopted in **January 2007** [CM/ResCMN(2007)2]

Third state report (3rd monitoring cycle) expected for **1 June 2009**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **5 November 1992** but not ratified

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on Malta was adopted on 14 December 2007 and made public on **29 April 2008**.

Extract of press release of 29 April 2008:

"The European Commission against Racism and Intolerance (ECRI) publishes new reports on Liechtenstein, Malta, Moldova, San Marino and Serbia

The Chairperson of ECRI today announced the release of five new reports examining racism, xenophobia, antisemitism and intolerance in Liechtenstein, Malta, Moldova, San Marino and Serbia. ECRI recognizes that positive developments have occurred in all five of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern for the Commission.

[…]

In Malta, the legal and institutional framework against racism and racial discrimination has been strengthened and primary anti-discrimination legislation covering different areas of life has been introduced. But irregular migrants, asylum seekers, persons with humanitarian protection and refugees remain vulnerable to racial discrimination in accessing different services and to exploitation on the labour market. The legal provisions against racist expressions and racially-motivated offences are not yet fully applied.

[…]

ECRI's country-specific reports are available at: www.coe.int/ecri"

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 26 May 1988, ratified on 4 October 1988, entered into force on 3 November 1988

European Social Charter (revised) (ETS No. 163) signed and ratified on 27 July 2005, entered into force on 1 September 2005

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) neither signed nor ratified

Extract of the website of the European Social Charter (situation as of April 2010):

"The Charter in Domestic law

Malta is a dualist state.

Reports*

Between 1990 and 2008 Malta submitted 16 reports on the application of the Charter and 3 reports on the application of the Revised Charter.

The 2nd report concerns the provisions accepted by Malta related to Thematic Group 2 "Health, Social Security and Social Protection" (Articles 3, 11, 12, 13, 14, 23 and 30 of the Revised Charter). Conclusions in respect of these provisions were published in January 2010.

The 3rd report, submitted on 29 January 2010, concerns provisions accepted by Malta related to Thematic Group 3 "Labour Rights), i.e.

– Right to just conditions of work (Article 2§§1, 2, 3, 5 and 6)

– Right to a fair remuneration (Article 4)

– Right to organise (Article 5)

– Right to bargain collectively (Article 6)

– Right to dignity in the workplace (Article 26)

– Right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

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

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Malta with respect to the application of the Revised Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[45]

Health

► The regulations on the medical supervision of young workers apply to all workers in all sectors (1994 Act on the promotion of health and safety at work)

► The right to maternity leave has been extended to part-time employees (1996 regulation), six weeks post natal leave is now compulsory and in general the right to maternity leave has been strengthened (Industrial Relations and Employment Act (cap 452) and Protection of Maternity (Employment) Regulations 2003)

► Prohibition on assigning an employee while she is pregnant, following delivery or while she is breastfeeding, to work which may pose hazards for the course of her pregnancy or her own or the child's physical and mental health (administrative regulation 92/2000)

Non-discrimination (Sex)

► Elimination of gender-based discrimination with regard to the payment of survivor's pension and sickness benefit (changes made with effect from 1 January 1998)

► Elimination of discrimination between spouses in wedlock and with regard to children including replacement of paternal responsibility by parental authority (Act No. XXI of 1993)

45. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

►Protection against discrimination strengthened (Equal Treatment in Employment Regulations L.N. 461 of 2004 were adopted under the Employment and Industrial Relations Act XXII of 2002)

Nationality

► Entitlement to the social security benefits provided for in the Social Security Act of 1987 has been extended to include nationals of other Contracting Parties (European Social Charter Order, 1999)

Employment

► Under the Police Act as amended in 2002 police officers from the rank of inspector and above may form one professional association, while all police officers of other ranks may form another.

► Creation of Malta Council for Economic and Social Development to promote social dialogue in Malta.

► Organisation of Working Time Regulations 2003 LN 247 of 2003 provide for a minimum period equivalent to four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated. Also legislation now provides that when a worker falls sick during his/her annual leave, he/she does not lose his /her right to holiday leave, and may recover his holiday leave.

► New legislation regulates minimum periods of weekly rest (Organisation of Working Time Regulations 2003 LN 247 of 2003)

► Female employees related to the employer and part-time employees protected against dismissal during maternity leave. (Protection of Maternity (Employment) Regulations 2003)

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§2– Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

Access to posts in the public service and public sector is too restricted for nationals of other States Parties.

(Conclusions 2008)

► Article 1§4 (9 and 15§1) Right to work - Vocational guidance, training and rehabilitation

– It has not been established that the right to vocational guidance in the education system is guaranteed.

People with disabilities are little integrated into mainstream training institutions. (Article 9)

guaranteed in training. (Article 15§1)

(Conclusions 2008)

► Article 10§2 - Right to vocational training - Apprenticeship

It has not been established that nationals of other States Parties lawfully resident or regularly working in Malta are guaranteed equal treatment as regards access to apprenticeships.

(Conclusions 2008)

► Article 10§5 - Right to vocational training - Full use of facilities available

It has not been established that the measures to monitor the efficiency of vocational training for young workers are adequate.

(Conclusions 2008)

► Article 15§2– Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

It has not been established that persons with disability are guaranteed an effective equal access to employment.

(Conclusions 2008)

►Article 24 – Right to protection in case of dimissal

Employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees.

(Conclusions 2008)

Thematic Group 2 “Health, social security and social protection”

► Article 3§3 - Right to safe and healthy working conditions - Enforcement of safety and health regulations

It has not been established that the labour inspection services are effective.

(Conclusions 2009)

► Article 11§1 – Right to protection of health - Removal of the causes of ill-health

It has not been established that the health care system is fully accessible to the entire population.

(Conclusions 2009)

► Article 11§2 - Right to protection of health - Advisory and educational facilities

It has not been established that:

– public information and awareness-raising is a public health priority;

– prevention through screening is used as a contribution to the health of the population.

(Conclusions 2009)

►Article 12§1 – Existence of a social security system - Right to social security

The rates of sickness benefits for a single person, of unemployment benefits, including the Special Unemployment Benefit for a single person, and of the invalidity pension and the survivors’ pension are manifestly inadequate; and the duration for which unemployment benefit is payable is too short.

(Conclusions 2009)

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need

– it has not been established that the right to assistance is guaranteed for as long as there is a need for it;

– it has not been established that the right of appeal is effectively guaranteed;

– it has not been established that the equality of treatment of foreign nationals legally resident or regularly working in Malta for eligibility to social assistance, is guaranteed.

(Conclusions 2009)

► Article 13§3 – Right to social and medical assistance - Non-discrimination in the exercise of social and political rights

– it has not been established that help and advice services operate in accordance with this provision;

– it has not been established that nationals of other States Parties legally resident or regularly working in Malta are provided equal access to these services.

(Conclusions 2009)

Thematic Group 3 “Labour rights”

► Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment

– one week’s notice is insufficient for workers with fewer than six months’ service;

– notice of less than a month is insufficient for certain workers with more than one year’s service;

– one week’s notice is insufficient during the probationary period for employees who have worked more than one month;

– the payment corresponding to the duration of the notice of dismissal that must be paid by employers to employees on fixed-term contracts is insufficient.

(Conclusions XVIII-2 (2007))

►Article 4§5 – Right to a fair remuneration - Limitation of deduction from wages

It has not been established that the workers can ensure their subsistence and that of their dependents once deductions are made from wages.

(Conclusions XVIII-2 (2007))

► Article 6§1 – Right to bargain collectively - Joint consultation

It has not been established whether adequate joint consultation between employees and employers exists at the enterprise level and whether measures are in place to promote adequate consultation at the enterprise level.

(Conclusions XVIII-1 (2006))

Thematic Group 4 “Children, families, migrants”

► Article 7§3 – Right of children and young persons to protection - Prohibition of employment of young persons subject to compulsory education

Children are permitted to work up to 4 hours per day and cannot therefore enjoy the full benefit of their education.

(Conclusions XVII-2 (2005))

► Article 8§1 - Right of employed women to protection - Maternity leave

It has not been established that:

– post-natal maternity leave was not compulsory for at least six weeks,
– employees who had not given their employer three weeks’ notice prior to the commencement of maternity leave were only entitled to it from the date of confinement and only then for five weeks,
– employees related to the employer were not entitled to maternity leave on the same terms as other employees,
– employees were obliged to refund their maternity allowances to the employer if they decided not to resume their jobs at the end of their maternity leave.

(Conclusions XVII-2 (2005))

► Article 8§2- Right of employed women to protection - Illegality of dismissal during maternity leave

During the reference period female employees related to the employer, and part time employees were not protected against dismissal during maternity leave.

(Conclusions XVII-2 (2005))

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

It has not been established whether the childcare facilities are affordable and of good quality.

(Conclusions XVIII-1 (2006))

► Article 17 - Right of mothers and children to social and economic protection

– children born outside marriage are discriminated against in matters of succession and inequalities exist between children of a first and second marriage;
– corporal punishment in the home is not prohibited;
– the age of criminal responsibility is manifestly too low.

(Conclusions XVII-2 (2005))

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Maltese Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

► Article 15§3 – Conclusions 2008

► Article 20 – Conclusions 2008

Thematic Group 2 “Health, social security and social protection”

(Report to be submitted before 31 October 2012)

► Article 3§1 – Conclusions 2009

► Article 3§2 – Conclusions 2009

► Article 3§4 – Conclusions 2009

► Article 12§4 – Conclusions 2009

► Article 13§4 – Conclusions 2009

► Article 14§1 – Conclusions 2009

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

► Article 2§1 – Conclusions XVIII-1 (2006)

► Article 4§1 - Conclusions XVIII-2 (2007)

► Article 4§3 - Conclusions XVIII-2 (2007)

► Article 5 - Conclusions XVIII-1 (2006)

► Article 6§3 - Conclusions XVIII-1 (2006)

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2010)

► Article 7§5 – Conclusions XVII-2 (2005)

► Article 7§10 – Conclusions XVII-2 (2005)”

I. Parliamentary Assembly

No specific recent text concerning Malta

12. NETHERLANDS

10 May 2010

CoE member state since **5 May 1949**

Number of CoE Conventions ratified (as of 10 May 2010): **140 (out of 207)**

Number of CoE Conventions signed (as of 10 May 2010): **19**

I. PLURALISTIC DEMOCRACY[46]

A. Free and fair elections

System of government: constitutional monarchy

Last general elections: **2006**

Next general elections: **2010**

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

B. Local and regional democracy

European Charter on Local Self-Government (ETS No. 122) signed on 7 January 1988, ratified on 20 March 1991, entered into force on 1 July 1991

Last Congress of Local and Regional Authorities monitoring report: May 2005

II. RULE OF LAW

A. VENICE COMMISSION

No opinion concerning the Netherlands

B. FUNCTIONING OF THE JUDICIARY

On **8 October 2008**, the **European Commission for the Efficiency of Justice (CEPEJ)** published its 2nd report on the evaluation of European judicial systems.

It emerges from this report that:

– the **total public budget** allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in the Netherlands in 2006 was **99 euros**;

– the **number of professional judges on a full-time basis** in the Netherlands in 2006 was **2,072,** this means 12.7 for 100,000 inhabitants;

– the **number of public prosecutors** in 2006 in the Netherlands was **675**, this means 4.1 for 100,000 inhabitants.

C. The fight against corruption and organised crime[47]

Civil Law Convention on Corruption (ETS No. 174) signed on 13 July 2007, ratified on 17 December 2007, entered into force on 1 April 2008

Criminal Law Convention on Corruption (ETS No. 173) signed on 29 June 2000, ratified on 11 April 2002, entered into force on 1 August 2002, Additional Protocol (ETS No. 191) signed on 26 February 2004, ratified on 16 November 2005, entered into force on 1 March 2006

Press release of 10 September 2008:

“The Group of States against Corruption (GRECO) publishes its Third Round Evaluation Report on the Netherlands

The Council of Europe’s Group of States against Corruption (GRECO) has published today its Third Round Evaluation Report on the Netherlands. The report has been made public following the agreement of the authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], GRECO acknowledges that, on the whole, Dutch legislation complies with the Council of Europe’s Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). Nevertheless, the sanctions for private sector bribery need to be increased and the offence as such should be aligned more closely to public sector bribery as established under Dutch law. In addition, the Netherlands is urged to analyse whether there is a need, for the sake of legal certainty, to clarify the term ‘public official’ used in the Criminal Code, and is asked to reconsider its position on the reservations it has made to the Convention, regarding trading in influence and jurisdiction. Moreover, GRECO recommends that due priority be given, in the process of political reform currently underway in the Kingdom of the Netherlands, to ensuring that the legislation of all countries in the Kingdom is in line with the Convention and its Additional Protocol.

Concerning transparency of party funding [theme II], the current legal framework on the financing of political parties is not in line with the requirements of Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns. It should, first and foremost, be ensured that all entities represented in parliament report annually on their financial situation in appropriate detail and that these reports are made available to the general public.

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47. The Netherlands are in 6th position with a score of 8.9 in the "Corruption Perceptions Index 2009" launched by the non-governmental organisation Transparency International (it scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption; for instance, New Zealand has the top score of 9.4 while Somalia is in 180th position with the lowest score at 1.1).

Furthermore, the Netherlands is asked to establish independent monitoring of political finance rules and make infringements of these rules subject to effective, proportionate and dissuasive sanctions. A draft law on the Financing of Political Parties, which has been prepared by the Ministry of the Interior and Kingdom Relations, appears to already address a number of GRECO's concerns and is thus a significant step in the right direction.

The report as a whole addresses 19 recommendations to the Netherlands. GRECO will assess the implementation of these recommendations in the first half of 2010, through its specific compliance procedure."

D. The fight against money laundering

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) signed on 8 November 1990, ratified on 10 May 1993, entered into force on 1 September 1993

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed on 17 November 2005, ratified on 13 August 2008, entered into force on 1 December 2008

The Netherlands are not a member of MONEYVAL

III. PROTECTION OF HUMAN RIGHTS[48]

A. ACTIVITIES OF THE COMMISSIONER FOR HUMAN RIGHTS

Last report: **March 2009**, following a visit to the country in **September 2008**

Press release of 11 March 2009:

"Netherlands: "Progress made but more efforts needed to ensure the implementation of human rights standards" says Commissioner Hammarberg's report

"The policies towards migrants and asylum-seekers require further review". This was emphasised by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, when presenting today his report on the Netherlands. The report addresses also issues on children's rights, integration, actions against discrimination and intolerance, and anti-terrorism measures.

While recognizing progress, the report calls for an improvement of the safeguards for asylum-seekers. The Commissioner voiced also concern about the plans to process more applications through an enhanced accelerated procedure. "A fast procedure is certainly suitable for clear-cut cases, but it can be detrimental to all others and is clearly unsuitable for vulnerable groups such as victims of violence and unaccompanied children."

The Commissioner recommends assessing the current immigration laws regarding the provisions for family reunification and formation, stressing that "tests, fees and age requirements must not amount to a disproportionate obstacle."

On children's rights the report focuses on the juvenile justice system. "It is unacceptable that young offenders and children in need of protection, notably because they are victims of crimes, share the same institutions" he states, regarding the detention of children with civil protection orders in custodial institutions. Moreover, he criticises the low age of 12 years for criminal responsibility and the application of adult criminal law to minors who can be detained in adult prisons.

On protection against discrimination and intolerance, Commissioner Hammarberg recommends better coordination and a holistic approach. He expresses concerns about the risks of ethnic profiling and recommends enhancing the protection of minority rights, in particular of Roma and Sinti. He underlines that discrimination in the labour market "is one of the most pressing problems, especially for young people from certain ethnic minority communities and women."

"Racist and intolerant tendencies also raise serious concerns" added the Commissioner. "The debate on 'integration' should be based on careful and precise use of language and an evaluation of measures taken to combat segregation on the housing market is needed."

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48. The Netherlands are in 7th position with a score of 1.00 in the "World Press Freedom Index 2009" made by the non-governmental organisation Reporters Without Borders (in comparison, Denmark, Finland, Ireland, Norway and Sweden share the 1st position with a score of 0.00 while Eritrea is on the 175th and last position with a score of 115.50).

Furthermore, the Commissioner recommends reviewing anti-terrorism measures to ensure full compliance with international human rights standards, judicial oversight and effective procedural guarantees. He also expresses his concerns about the use of administrative law and sanctions to address terrorism, as this could lead to circumventing the fundamental safeguards offered by criminal law.

Based on a visit to the European part of the Kingdom of the Netherlands carried out in September 2008, the report, together with the authorities' comments, is available on the Commissioner's web site."

B. EUROPEAN CONVENTION ON HUMAN RIGHTS

ECHR (ETS No. 005)ratified on **31 August 1954**

Protocol No. 6 (ETS No. 114) ratified on **25 April 1986**

Protocol No. 12 (ETS No. 177) ratified on **28 July 2004**

Protocol No. 13 (ETS No. 187) ratified on **10 February 2006**

Protocol No. 14 (CETS No. 194) ratified on **2 February 2006**

Out of a total of 1,625 judgments delivered by the Court in 2009, there are **4** concerning the Netherlands, of which **2** gave rise to a finding of no violation.

Out of a total of 119,298 pending cases on 31st December 2009, **568** concerned the Netherlands.

Resolutions adopted by the Committee of Ministers in 2009: **3**

No Interim Resolution

Resolutions adopted by the Committee of Ministers in 2010 (as of 10 May 2010): **3**

No Interim Resolution

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

Convention (ETS No. 126)signed on **26 November 1987**, ratified on **12 October 1988**, entered into force on **1 February 1989**, **Protocols No. 1** (ETS No. 151)**and No. 2** (ETS No. 152)signed on **5 May 1994**, ratified on **23 February 1995**, entered into force on **1 March 2002**

Last country visit: **June 2007**

Publication of the last report: **February 2008**

Press release of 5 February 2008:

"The Council of Europe's Committee for the Prevention of Torture (CPT) has today published the report on its fourth periodic visit to the Netherlands in June 2007.

As regards the Kingdom in Europe, the CPT considers that the boats 'Kalmar' and 'Stockholm', used for detaining irregular migrants, are unsuitable for prolonged detention and should be taken out of service at the earliest opportunity. By contrast, the conditions in the Rotterdam airport Expulsion Centre were found to be adequate.

The CPT visited the high-security terrorist departments at 'De Schie' and 'Vught' Prisons. It has recommended that placement in such departments be based upon a comprehensive, individual risk assessment. Further, every placement in a terrorist department should be regularly reviewed, based upon criteria clearly laid down in law. In addition, the CPT has concerns about the very restrictive regime in these departments, which may in certain cases lead to de facto isolation of a prisoner.

With respect to the 'De Hartelborgt' Youth Detention Centre, the CPT has recommended various improvements concerning care, treatment and the disciplinary regime. Amongst other things, an individualised pedagogical or treatment plan should be drawn up for each resident, collective sanctions should not be permitted and the use of so-called 'time out' should be regulated.

The CPT continues to have concerns about certain fundamental safeguards during police custody. In particular, criminal suspects are still not entitled to have access to a lawyer during the initial period of detention (of up to six hours) by the police for examination purposes.

As regards Aruba, last visited in 1994, the CPT has recommended that the authorities adopt a vigorous policy to combat police ill-treatment, and that periods of detention on police premises be substantially reduced. The CPT has welcomed the action recently taken by the Aruban authorities to improve the material conditions in police stations, such as in Oranjestad, and recommends that efforts be made to ensure minimum standards for police detention are sustained.

In respect of immigration detainees, the CPT has recommended, among other measures, an improvement in material conditions, regime activities and access to medical care for persons detained at the 'Centro pa detencion di illegalnan'.

KIA Prison is the subject of numerous recommendations concerning, inter alia, inter-prisoner violence. Further, an increase in constructive activities for prisoners and an improvement in the provision of health care, in particular psychiatric and psychological care, are essential requirements.

In the course of the visit to the Netherlands Antilles, several allegations of physical ill-treatment by the police were received. The CPT has recommended the adoption of a vigorous policy to combat police ill-treatment. Prolonged detention on police premises is criticised once again, and the conditions of detention in certain police stations such as Kralendijk, were found to be unacceptable. The Netherlands Antilles authorities have undertaken a programme of refurbishment.

As regards the immigration detention centre, 'Illegalen Barakken', the Committee has made a number of recommendations with regard to material conditions, the lack of activities and the need to provide at least one hour of outdoor exercise every day.

Bon Futuro Prison was found to be clearly dangerous and unsafe for both prisoners and staff. Measures have been identified aimed at eradicating ill-treatment by staff and preventing inter-prisoner violence. The CPT has recommended in particular that members of the emergency response team be adequately selected, trained and supervised. In addition, a broad range of recommendations have been made concerning staffing levels, material conditions and access to meaningful activities and to health-care.

As regards the remand prison on the island of Bonaire, the CPT has recommended urgent action to provide inmates with organised health-care, an appropriate regime of activities and access to outdoor exercise.

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

Next country visit: date unknown to date

D. COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Convention (CETS No. 197) signed on **17 November 2005**, ratified on **22 April 2010**, entered into force on **1 August 2010**

E. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Convention (ETS No. 157)signed on **1 February 1995**, ratified on **16 February 2005**, entered into force on **1 June 2005**

Last opinion (1st monitoring cycle) by the Advisory Committee adopted in **June 2009** [ACFC/OP/I(2009)002]

"Summary of the Opinion:

"Following the receipt of the initial State Report of the Netherlands on 16 July 2008 (due on 1st June 2006), the Advisory Committee commenced the examination of the State Report at its 33rd meeting on 6-8 October 2008. In the context of this examination, a delegation of the Advisory Committee visited the Netherlands from 25 to 27 February 2009, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on the Netherlands at its 35th meeting on 25 June 2009.

The Advisory Committee considers that the Netherlands has made commendable efforts with respect to the implementation of the Framework Convention with regard to the Frisians living in Fryslân. Measures have been taken to facilitate the use of Frisian in relations with the administration and the judiciary, teaching of Frisian is available in primary and secondary schools and instruction in Frisian is slightly increasing. Further efforts are however needed in terms of teacher training, supervision of Frisian teaching and the amount of teaching in Frisian needs to be further discussed with Frisian representatives in order to adequately meet their

demands. A possible devolution of powers from the central to the local authorities is currently being discussed and it is expected that reforms in this area will result in enhancing the preservation and development of Frisian language and culture.

The Advisory Committee finds that the personal scope of application of the Framework Convention which is presently limited to the Frisians, has not been satisfactorily addressed by the authorities. The Roma and Sinti, many of whom have long ties with the Netherlands have been excluded from the protection of the Framework Convention. In addition, they have been left out from any institutionalised and direct dialogue with the national authorities and measures to address their socio-economic and educational situation have not been adopted at national level.

The Advisory Committee welcomes the comprehensive legal and institutional measures taken by the Dutch authorities both at national and local levels to combat discrimination. At the same time, it considers that the overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, have had negative consequences on the preservation of a climate of mutual understanding between the majority population and the ethnic minorities."

No CM resolution on the implementation of the Framework Convention to date

Second state report (2nd monitoring cycle) expected for **1 June 2011**

F. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Convention (ETS No. 148) signed on **5 November 1992**, ratified on **2 May 1996**, entered into force on **1 March 1998**

Last periodic state report (3rd cycle) submitted in **September 2007** [MIN-LANG/PR(2007)7]

Last assessment report (3rd cycle) of the Committee of Experts adopted in **November 2007** [ECRML(2008)3]

Last recommendation (3rd cycle) of the CM adopted in **July 2008** [RecChL(2008)4]

Last biennial report by the Secretary General to the Parliamentary Assembly: **24 October 2007** [Doc. 11442]

G. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

Last report by ECRI: the third report on the Netherlands was adopted on 29 June 2007 and made public on **12 February 2008**.

Extract of press release of 12 February 2008:

“Council of Europe: Reports on racism in Andorra, Latvia, the Netherlands and Ukraine

The Council of Europe’s independent human rights monitoring body specialised in combating racism, the European Commission against Racism and Intolerance (ECRI), today released four new reports examining racism, xenophobia, antisemitism and intolerance in Andorra, Latvia, the Netherlands and Ukraine. ECRI recognises that positive developments have occurred in all four of these Council of Europe member countries. At the same time, however, the reports detail continuing grounds for concern for the Commission:

[…]

In the Netherlands, work is underway for the establishment of a network of professional local anti-discrimination bureaus throughout the country, with the aim of improving the protection provided to victims of racism and racial discrimination and the monitoring of these phenomena. However, the tone of Dutch political and public debate on integration and other issues relevant to ethnic minorities has experienced a dramatic deterioration. The criminal justice system, and notably the police, still needs to enhance its role in monitoring and countering racially-motivated offences.

[…]

These new reports form part of a third monitoring cycle of Council of Europe member states’ laws, policies and practices aimed at combating racism. ECRI’s country-specific reports are available in English, French and the national language of the country concerned at http://www.coe.int/ecri. They cover all member states on an equal footing, from the perspective of protecting human rights. They examine whether ECRI’s main recommendations from previous reports have been followed and, if so, to what degree of success and effectiveness.”

H. SOCIAL RIGHTS

European Social Charter of 1961 (ETS No. 035) signed on 18 October 1961, ratified on 22 April 1980, entered into force on 22 May 1980

European Social Charter (revised) (ETS No. 163) signed on 23 January 2004, ratified on 3 May 2006, entered into force on 1 July 2006

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed on 23 January 2004, ratified on 3 May 2006, entered into force on 1 July 2006

Extract of the website of the European Social Charter (situation as of February 2010):

"The Charter in domestic law

Automatic incorporation into domestic law.

Reports *

Between 1982 and 2009, the Netherlands submitted 20 reports on the application of the Charter and 2 on the application of the Revised Charter.

The 2nd report on the accepted provisions of the Revised Charter covered the articles of Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23 and 30 of the Revised Charter). It was submitted on 10/04/2009. Conclusions in respect of these provisions were published in January 2010.

The 3rd report, which was submitted on 15/02/2010, concerns the accepted provisions of the Revised Charter relating to Thematic Group 3 "Labour rights" i.e.

– Right to just conditions of work (Article 2)
– Right to a fair remuneration (Article 4)
– Right to organise (Article 5)
– Right to bargain collectively (Article 6)
– Right of workers to be informed and consulted (Article 21)
– Right of workers to take part in the determination and improvement of working conditions (Article 22)
– Right to dignity in the workplace (Article 26)
– Right of workers' representatives to protection in the undertaking (Article 28)
– Right to information and consultation in procedures of collective redundancy (Article 29)

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* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of the Netherlands with respect to the application of the Revised Charter

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights[49]

Non-discrimination (sex)

► Adoption in 1994 of a general Act on equal treatment covering all forms of discrimination – Extension of the prohibition of discrimination between men and women to categories of persons eligible for pensions, to pension rules and the implementation of pensions schemes (Amendment of the Equal Opportunities Act (WGB), in 1998).

► Prohibition of dismissing an employee because he has brought legal or extra judicial proceedings to obtain equal remuneration (Act on "Reparation" of 1989).

49. « The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

► Entitlement of unmarried parents to exercise joint parental authority – Maintenance of joint parental authority even if the parents separate (Amendments to the Civil Code in 1995 and 1998).

Non-discrimination (nationality)

► Entitlement of migrant workers to be treated not less favorably than nationals as regards legal proceedings (Law of 8 March 1980).

► Adoption in 2000 of a new Student Finance Act guaranteeing to all nationals of non-EU States Party to the Charter and the revised Charter, the equality of treatment with respect to financial assistance.

Employment

► Repeal of Article 6 of the Exceptional Decree of 1945 on professional relations pursuant to which a worker had to obtain prior authorization in order to terminate his employment (Act on Flexibility and Security of 1999).

► Granting of the right to a one month period of notice of dismissal to all workers (including part-time workers and those working from home) regardless of their status (Act on Flexibility and Security, which entered into force in 1999).

► Abolition of the closed shop clause in the print workers collective agreement following collective bargaining negotiations.

► Reduction from 100 to 50 employees of the threshold from which a works council must be created in the workplace (Amendments to the WOR in 1998).

► Authorization of employees and workers, national insurance and subsidized institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

Health

► Extension of maternity leave from 12 to 16 weeks (Act of 22 February 1990).

► Entitlement of women working in private households and in the public health services for less than three days a week to maternity leave and maternity benefit during at least sixteen weeks (2000 Self-employed Persons Disablement Benefits Act - WAZ).

Cases of non-conformity

Thematic Group 1 “Employment, training and equal opportunities”

► Article 18§3 –The right to engage in a gainful occupation in the territory of other Parties – Liberalising regulations

The regulations governing access to the national labour market for foreign nationals are too restrictive.

(Conclusions 2008)

Thematic Group 2 “Health, social security and social protection”

► Article 12§4 - The right to social security – Social security of persons moving between states

Legislation does not provide for the retention of supplementary benefits when persons move to a State Party not bound by Community regulations or by an agreement with the Netherlands.

(Conclusions 2008)

► Article 13§4 - The right to social and medical assistance - - Specific emergency assistance for non-residents

It has not been established that all unlawfully present persons in need receive emergency social assistance.

(Conclusions 2009)

Thematic Group 3 “Labour rights”

► Article 4§1 – Right to a fair remuneration - Adequate remuneration

The statutory minimum wage of workers aged between 18 and 21 years falls below the requirements of this provision.

(Conclusions XVIII-2)

► Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment

• Legislation does not require any period of notice during probationary periods;

• One month's notice is insufficient for workers with a service of five years or more.

(Conclusions XVIII-2)

► Article 6§4 – Right to bargain collectively – Collective action

The fact that Dutch judges may determine whether recourse to a strike is premature constitutes an impingement on the very substance of the right to strike as this allows the judge to exercise the trade unions' prerogative of deciding whether and when a strike is necessary.

(Conclusions XVIII-1)

Thematic Group 4 "Children, families, migrants"

► Article 7§3 – Right of children and young persons to protection – Prohibition of employment of young persons subject to compulsory education

• Children aged 15, still subject to compulsory education, are allowed to work for more than half of the long summer school holidays;

• It is possible for children aged 15, still subject to compulsory education, to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school.

(Conclusions XVII-2)

► Article 7§5 – Right of children and young persons to protection – Fair pay

Young workers' wages and apprentices' allowances are not fair.

(Conclusions XVII-2)

► Article 7§6 – Right of children and young persons to protection –Inclusion of time spent on vocational training in the normal working time

There is no evidence that the great majority of young workers and apprentices have a right to remuneration for time spent on vocational training with the consent of the employer.

(Conclusions XVII-2)

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

All forms of violence against children are not prohibited.

(Conclusions XVII-2)

► Article 19§6 – Right of migrant workers and their families to protection and assistance – Family reunion

Welfare support benefits are not counted towards the income level above which family reunion is approved.

(Conclusions XVIII-1)

► Article 19§8 – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation

A migrant worker's family members who have settled in the Netherlands as a result of family reunion are expelled when the migrant worker is expelled.

(Conclusions XVIII-1)

► Article 19§10 – Right of migrant workers and their families to protection and assistance – Equal treatment for the self-employed[50]

In its Conclusions under Article 19§§6 and 8, the Committee has concluded that the situation in the Netherlands is not in conformity with the Charter. Accordingly, the Committee concludes that the situation in the Netherlands is also not in conformity with Article 19§10 of the Charter.

(Conclusions XVIII-1)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Dutch Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

► Article 1§4

► Article 10§§4 and 5

► Article 15§§1, 2 and 3

Thematic Group 2 “Health, social security and social protection”

(Report to be submitted before 31 October 2012)

► Article 3§4

► Article 12§1

► Article 23

Thematic Group 3 “Labour rights”

(Report submitted on 15 February 2010)

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2010)

► Article 7§§9 and 10

► Article 8§2

Collective Complaints and State of Procedure in the Netherlands[51]

Collective complaints (under examination)

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Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

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2. Complaints where the Committee has found a violation which has been remedied

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3. Complaints where the Committee has found a violation which has not yet been remedied

Defence for Children International (DCI) v. the Netherlands (No. 47/2008)

Violation of Article 31§2 (right housing) and 17§1c (right of children and young persons to social, legal and economic protection) decision on the merits of 20 October 2009.”

I. Parliamentary Assembly

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50. In the case of equal treatment between wage-earners and self-employed migrants and between selfemployed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 9 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for nonconformity as described under the aforementioned paragraphs apply to self-employed workers.

51. The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the Collective Complaint webpage. Searches on complaints may also be carried out in the European Committee of Social Rights Caselaw database.”

No specific recent text concerning the Netherlands