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COUNCIL OF EUROPE ACTIONS TO PROMOTE CHILDREN'S RIGHTS TO PROTECTION FROM ALL FORMS OF VIOLENCE

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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The UNICEF Innocenti Research Centre

The UNICEF Innocenti Research Centre in Florence, Italy, was established in 1988 to strengthen the research capability of the United Nations Children's Fund (UNICEF) and to support its advocacy for children worldwide. The Centre (formally known as the International Child Development Centre) helps to identify and research current and future areas of UNICEF's work. Its prime objectives are to improve international understanding of issues relating to children's rights and to help facilitate the full implementation of the United Nations Convention on the Rights of the Child in both developing and industrialized countries.

The Centre's publications are contributions to a global debate on child rights issues and include a wide range of opinions. For that reason, the Centre may produce publications that do not necessarily reflect UNICEF policies or approaches on some topics. The views expressed are those of the authors and are published by the Centre in order to stimulate further dialogue on child rights.

The Centre collaborates with its host institution in Florence, the Istituto degli Innocenti, in selected areas of work. Core funding for the Centre is provided by the Government of Italy, while financial support for specific projects is also provided by other governments, international institutions and private sources, including UNICEF National Committees.

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FOREWORD

Violence against children is an often invisible and poorly documented reality, in spite of the dramatic impact it has on the life and development of children everywhere. The UN Study on Violence against Children, led by Professor Paulo Pinheiro, has given new, global momentum to the protection of children from all forms of violence. It has led to an increasing recognition of the strong international normative foundation to safeguard children's rights, including the child's right to freedom from violence. The Study has also generated a growing commitment to the development of institutions, policies and actions to promote behaviour change securing the effective protection of children from any form of violence within the home, the school or the community at large.

This process has enhanced our understanding of the widespread prevalence of violence against children. Violence knows no barriers of nationality, class, religions, or gender. Research has demonstrated the widespread and diverse nature of acts of violence against children, and has underscored the fact that the effects of violence can be deep and long lasting.

Ensuring that children are protected from all forms of violence is an obligation under international law, as recognised by the United Nations Convention on the Rights of the Child. Not only must children receive care and protection but they must also be recognized as holders of human rights. The values and principles enshrined in it are fully shared by all 46 Members States of the Council of Europe and their 800 million citizens, of whom 155 million are children.

All children have a right to effective State protection from all forms of violence, in all aspects of their lives. Violence must be prevented and deterred, and child victims need to be supported and assisted in their recovery and reintegration. Children themselves have a key role to play in this process, including by informing policy development and implementation based on their views on violence and their experience as victims. This is also a key pillar of the UN Study on Violence against Children. Clearly, children are not simply miniature human beings with miniature human rights!

UNICEF is one of the lead agencies supporting the development of the UN Study. The Organization is committed to help promote a protective environment for children, that shields them against abuse and exploitation, while ensuring their development and wellbeing. The Innocenti Research Centre (IRC) has produced in recent years a series of studies on violence against children, and is closely associated with the development of the UN Study. With the present review, developed in very close collaboration with the Council of Europe, the IRC seeks to create greater awareness and understanding of the magnitude of this phenomenon, and to promote action to ensure a childhood free from violence to every child, wherever they may live.

The Council of Europe is an outstanding organization that has amassed enormous experience in the development of standards and the promotion of sector-specific strategies within Europe. Since its creation in 1949, the Council of Europe has developed a number of key legal instruments dealing with the protection of children against violence: the European Convention on Human Rights, the European Social Charter, the European Convention for the prevention of torture and inhuman and degrading treatment, to name but a few. The case-law both of the European

Court of Human Rights and the European Committee of Social Rights has highlighted issues affecting children and the boundaries between what member states should and should not tolerate, in particular to cases of children being ill-treated or subject to violence or abuse. By ratifying these treaties, the states commit themselves to banning ill-treatment, violence and abuse against children – including corporal punishment – in the family as well as in public institutions or foster homes, to safeguarding family ties and to ensuring the rights of juveniles, especially if in custody. In addition, the Council of Europe Commissioner for Human Rights also provides much country-specific help to protect children against abuse and trafficking, while the Parliamentary Assembly, the Congress of Local and Regional Authorities and other bodies continue to address children's rights issues in their agenda.

The Council of Europe commitment for children has been recently renewed at the highest level. At their meeting in Warsaw in May 2005, the Heads of State and Government of the Council of Europe stated the following:

> *"We are determined to effectively promote the rights of the child and to fully comply with the obligations of the United Nations' Convention on the Rights of the Child. A child rights perspective will be implemented throughout the activities of the Council of Europe and effective coordination of child-related activities must be ensured within the Organization. We will take specific action to eradicate all forms of violence against children. We therefore decide to launch a three year programme of action to address social, legal, health and educational dimensions of the various forms of violence against children."*

This compendium reflects the most relevant results of these standard-setting activities. The actions of the Council of Europe over more than five decades are reflected in this publication. They clearly demonstrate policy and legal measures that contribute towards improving children's rights.

Addressing the magnitude and complexity of violence against children requires broad-based partnerships. We can only succeed by working together with other stakeholders and international organizations, adopting a common approach and continually seeking better ways to protect the best interests of children. The close co-operation between the Council of Europe and UNICEF, is a testimony of our strong support to the UN Study on Violence against Children. More importantly, it will help us move - decisively - towards a region free from violence.

We look forward to expanded and accelerated action in the follow-up to the study and the important progress that is still to come in the long journey to protect children from all forms of violence.

Maud De Boer Buquicchio
Deputy Secretary General
Council of Europe

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Deputy Executive Director
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INTRODUCTION

The Council of Europe was established to defend parliamentary democracy, human rights and the rule of law. Pursuing the fundamental rights of everyone to respect for their human dignity and physical integrity, the Council is making a powerful impact on the protection of children from all forms of violence across the continent. Its varied components have contributed to making violence against children more visible – and thus revealed the size of the task remaining to prevent and eliminate it. This publication summarises and references the most relevant actions.

Since the 1980s, the Council's key institutions, the Committee of Ministers and the Parliamentary Assembly, have developed resolutions and recommendations with detailed policy implications for member states' work to prevent and respond to violence against children.

Progress has accelerated in the last two decades, with the Council's human rights mechanisms being increasingly used to address children's rights. Landmark judgments of the European Court of Human Rights (hereinafter the Court) have condemned corporal punishment and asserted states' responsibilities to protect children, as vulnerable individuals, not only in state-provided services and institutions but also in the more private sphere of the family. Since 2001, the European Committee of Social Rights has asserted the need for effective legal protection against corporal punishment and against the various forms of commercial sexual exploitation of children.

The Court, the European Committee of Social Rights and the European Committee against Torture have begun to use the standards of the United Nations Convention on the Rights of the Child, which all member states have ratified, to inform their judgments, conclusions and standards. In a 2003 judgment, the Grand Chamber of the Court stressed: "The human rights of children and the standards to which all governments must aspire in realising these rights for all children are set out in the Convention on the Rights of the Child.... The Convention spells out the basic human rights that children everywhere – without discrimination – have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. It further protects children's rights by setting standards in health care, education and legal, civil and social services."

This demonstrates the potent value of having effective regional human rights mechanisms to pursue international standards alongside the United Nations human rights treaty bodies.

There are special challenges for children, given their dependent and generally disempowered status, in finding and using effective remedies for breaches of their rights. Nevertheless, there have been a number of applications to the Court made by children. Recently, the collective complaints procedure under the Social Charter has been used by NGOs to pursue children's rights. The coming period will undoubtedly see a review of how these ultimate and vital avenues for redress can be made more child-friendly and accessible to children and those who represent them.

Various forms of exploitation of children cross national boundaries – such as sexual exploitation including prostitution and pornography, often now involving the internet, and trafficking. This makes inter-governmental co-operation essential. The recent adoption (May 2005) of a new Convention against trafficking is the latest move to ensure co-ordinated

action across member states. The Council of Europe's Commissioner for Human Rights, in his country visits and reports, has increasingly highlighted these and other children's rights issues.

Sadly, there remains hesitation in pursuing children's rights to human dignity and physical integrity and to protect children from violence beyond the door of the family home. Violent and humiliating punishment remains legal within the family in a majority of states, and interview studies with children and young adults find a high prevalence of sexual abuse, both within the family and by close relatives and other adults known to the child.

So one of the most significant development for children is the current determination of the Council to eradicate corporal punishment in the family – identified by children themselves as a key concern. The Forum for Children and Families was established by the European Committee for Social Cohesion and, meeting twice yearly between 2001 and 2004, acted as a focal point for questions relating to children and families in Europe. An innovative aspect of the project was the direct participation in every meeting of children and young people under 18, on an equal basis with adults. The Forum highlighted the continuing legality and social approval of corporal punishment in the family in a majority of member states, contrasting this with the relevant human rights standards and with the success of a small number of countries in challenging all corporal punishment through law reform and public education.

In 2004 the Forum was replaced by the Committee of experts on children and family (CS-EF). The Committee is expected to work in the light of the UN Convention on the Rights of the Child. The overall aim is to promote best practices of parenting and family policies in the best interest of the child.

The Council of Europe, through its co-operation and assistance programmes, supports member States, particularly those of Central and Eastern Europe, willing to adapt their policies for children and families to new individual freedoms and rights and collective and individual responsibilities concerning children's lives. A particular attention is given to the rights of children living in institutions and to their reintegration into family. In this context, the training of professionals dealing with children is particularly important.

A Conference of Ministers responsible for Family Affairs, which met for the first time in 1959, is held regularly and deals also with aspects relating to children (for instance: "Defence of the youth and the family against prejudicial influence in the community", 1960; "Children and young persons at risk" 1973, "Family policies, children's rights, parental responsibilities", 1993; "Towards a child-friendly society", 1999).

In 2004, the Parliamentary Assembly agreed a recommendation (1666) calling for a "Europe-wide ban on corporal punishment"; the following quotes underline the importance the Assembly puts on banning corporal punishment: "The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.

"The Assembly is concerned to note that, so far, only a minority of the 46 member states have formally prohibited corporal punishment in the family and in all other settings. While they have all banned corporal punishment in schools, including private schools and other educational institutions, this does not necessarily extend to residential and all other forms of child care. Nor are such bans systematically and universally respected".

The Assembly invited the Committee of Ministers to launch "a co-ordinated and concerted campaign in all the member states "for the total abolition of corporal punishment of children". As a parallel, the Assembly noted the success of the Council of Europe in abolishing the death penalty across the continent.

Early in 2005, the Committee of Ministers welcomed the recommendation and echoed its call for respect for children's fundamental human rights. The Committee has agreed a new three-year integrated project on "Children and violence", building on its previous more general project on "Responses to violence in everyday life in a democratic society". The new project will aim to increase the visibility and impact of the Council's work in this area, support member states in implementing international and regional human rights standards and in developing effective legal protection for children against all forms of violence.

Together with the current international focus provided by the UN Secretary General's Study on Violence against children, this project will undoubtedly help to achieve the substantial cultural shift that is still needed in most European societies to assert children's status as rights holders who must be accorded the same respect for their human dignity and physical integrity as adults.

1

THE COUNCIL OF EUROPE AND VIOLENCE AGAINST CHILDREN

1. The Council of Europe

The Council of Europe was founded in 1949 to defend human rights, parliamentary democracy and the rule of law, to develop European agreements to standardise member states' social and legal practices, and to promote awareness of a European identity based on shared values and cutting across different cultures. Today, its specific focus areas are human rights, media and democracy, legal co-operation, social cohesion, culture and heritage, education, partial agreements, and conventions.[1] Its current membership is 46 countries.[2]

The major components of the Council of Europe are the Committee of Ministers and the Parliamentary Assembly, together with the Congress of Local and Regional Authorities and an 1800-strong secretariat. The Committee of Ministers is the Council's decision-making body, comprising 46 foreign ministers or their Strasbourg-based representatives (ambassadors/permanent representatives). The Committee monitors respect of commitments by member states, produces concluding conventions and agreements (under article 15.a of the Statute), and adopts recommendations to member states (under 15.b of the Statute). It also supervises the execution of judgements of the European Court of Human Rights (in accordance with article 46 of the European Convention on Human Rights as amended by Protocol No.11). The Committee is supported by a number of Rapporteur Groups, Working Parties, and Rapporteurs, and has adopted important recommendations relevant to violence against children (see below Part I, section 2). In 2005 it established a new three-year integrated project on "Children and violence" (see Part I, section 7).

The Parliamentary Assembly, with 630 members (315 representatives and 315 substitutes) from the 46 national parliaments is the parliamentary organ of the Council of Europe, and aims to achieve greater unity among members through common action, agreements and debates. The work of the Assembly is informed by its ten committees, a number of which have produced reports addressing the question of violence against children. For example, the Social, Health and Family Affairs Committee has produced reports on the sexual exploitation of children,[3] action against trafficking in children,[4] abuse and neglect of children,[5] children in care, teenagers in distress and on a Europe-wide ban on all corporal punishment.[6] The Committee on Equal Opportunities for Women and Men has produced reports addressing violence against women[7], female genital mutilation,[8] and domestic slavery and domestic violence.[9] The Committee on Legal Affairs and Human Rights has produced an opinion on child abuse and neglect[10] and a draft resolution on the sexual exploitation of children.[11] The Assembly has influenced the work of the Committee of Ministers on violence against children through a number of resolutions and recommendations (see Part I, section 3).

The Congress of Local and Regional Authorities of Europe (CLRAE), established in 1994, is a consultative body one of whose main tasks is to advise the Committee of Ministers and the Parliamentary Assembly on all aspects of local and regional policy.[12] It comprises the Chamber of Local Authorities and the Chamber of Regions, and has four statutory committees – the Institutional Committee, the Committee on Culture and Education, the Committee on Sustainable Development, and the Committee on Social Cohesion.

Particularly relevant human rights mechanisms of the Council of Europe include:

(i) the European Court of Human Rights, established in 1959, is the judicial body of the Council of Europe responsible for dealing with alleged violations of the European Convention on Human Rights and Fundamental Freedoms (see Part II, section 1). Originally it worked jointly with the European Commission on Human Rights in a system in which individual applications were first considered by the Commission and then if considered admissible, and if no friendly settlement could be negotiated between the applicant and the state concerned, referred to the Court. In 1998 this two-stage arrangement was replaced by a single full-time Court which deals with all applications.

(ii) the Office of the Commissioner for Human Rights, established in 1999, is an independent non-judicial institution of the Council of Europe focusing on the promotion of education in and awareness of human rights, the identification of possible shortcomings in law and practices with regard to human rights, and the promotion of effective observance and enjoyment of human rights as embodied in the various Council of Europe instruments.[13] The Commissioner carries out visits to countries and publishes Recommendations and Opinions relating to particular problems identified (see Part I, section 4).

(iii) the European Committee of Social Rights, established to monitor compliance of member states with the European Social Charter and Revised Social Charter (see Part II, section 2).

(iv) the Committee for the Prevention of Torture was established by the 1989 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to assess how persons deprived of their liberty are treated through visits to places of detention, and to strengthen their protection (see Part II, section 3).

2. Recommendations of the Committee of Ministers

The Committee of Ministers of the Council of Europe has adopted important recommendations relevant to violence against children. An illustrative indication is provided below:

Recommendation No.R (85) 4 on violence in the family.[14] Section I recommends that governments take preventive measures concerning violence in the family, including awareness raising and public education, training for professionals, and assistance and support for victims. Attention is also given to reporting of violent acts in the family (Section II) and intervention (Section III). Specific mention is made of the need to protect children "against any violence to which the conflict [between a couple] exposes them and which may seriously harm the development of their personality" (para. 10) and the provision of "appropriate counsel" to children in the consideration of giving evidence against family members (para. 16). The Committee recommends that governments "review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a prohibition does not necessarily entail a criminal penalty" (para.12).

Recommendation No.R (87) 20 on social reactions to juvenile delinquency[15] recommends avoiding committing minors to adult courts (para. 5), avoiding minors being kept in police custody and the supervision of conditions of custody (para. 6), using remand only in exceptional circumstances and keeping minors apart from adults (para. 7), the recognition of the minor's right to, inter alia, respect for his or her private life (para. 8), gradually replacing sentences of detention with alternative measures (para. 14), to separating minors from adults in detention or where contact is necessary "protecting minors from harmful influence of adults" (para. 16).

Recommendation No.R (87) 21 on assistance to victims and the prevention of victimisation[16] recommends the creation, development and extension of support towards special categories of victim including children (para. 5).

Recommendation No.R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families[17] recommends measures to ensure that such young people benefit from the same services as others, without discrimination.

Recommendation No.R (90) 2 on social measures concerning violence in the family.[18] General preventive measures include public information about the extent, seriousness and negative consequences of violence in the family (Section A, para. 5 of the Appendix to the Recommendation) and a limitation of justification for violence in the media (Appendix Section A, para. 6). The importance of public education is also emphasised (Appendix Section B.I). Section B.V concerns measures for children and states:

"13. The good care and upbringing of children should be promoted. This includes the training of young parents both before and after the birth of their children, and the provision of advisory services.

14. The general condemnation of corporal punishment and other forms of degrading treatment as a means of education, and of the need for violence-free education should be emphasised.

15. Particular attention should be paid by the social and health services to individuals and families known to be particularly at risk as far as violence against children is concerned.

16. The specific problems that may be encountered in families where there are stepchildren, or foster children or disabled children should be taken into consideration.

17. In order to achieve continuity in the treatment of the family, which is one of the great challenges when working with child abuse, ways of working should be developed that integrate the authority of the members of the various professions concerned.

18. When the interests of an abused child are in conflict with those expressed by its parents, the child's interests should in principle have priority. When there is a need to protect the child by remov-

ing it from its family, short- or long-term, that should not be considered as an end in itself but as a provisional part of an overall family treatment approach for the interests of both parties. Work with the family should continue regardless of the child's removal.

19. A wide spectrum of treatment offers should be developed:

- emotional support for child as well as parents;
- help with socio-economic stress factors;
- treatment of parent/child interaction and marital relationships;
- work with improving the family's social network."

Recommendation No.R (91) 9 on emergency measures in family matters[19] emphasises that courts and other authorities should have sufficient powers and resources to protect children, and states that: "Particular protection should be given to a child whose welfare is in serious danger owing to neglect or any other physical or mental ill-treatment or who has been or may be improperly removed from a person entitled to custody" (Principle 1).

Recommendation No.R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults[20] recommends that governments review legislation and practice with a view to introducing specified comprehensive measures. This was the first international text dealing comprehensively with the issue, and emphasised prevention, the need to inform victims, and the importance of international co-operation. States should ensure that their legislation adequately protects children, that there is support and assistance provided to victims of sexual exploitation and abuse, that international legal and other co-operation are enhanced, and that preventive measures are developed to reduce the risk of children being the victims of abuse of exploitation.

An analysis of this recommendation was commissioned[21] which stated that one main difficulty was the lack of implementation and monitoring mechanisms. The country reports submitted for the analysis[22] revealed a lack of awareness of its requirements, and a lack of resources. This Recommendation was replaced by Recommendation Rec (2001) 16.

Recommendation No.R (93) 2 on the medico-social aspects of child abuse[23] recommends the establishing of effective child protection services. Its Explanatory Memorandum constitutes an important contribution to the understanding of considerations advanced in the Recommendation and its Appendix. The Appendix notes preventive measures at the primary level as including public awareness and information campaigns informing people "of children's rights to a life free from neglect, physical, emotional and/or sexual abuse, of the harmful consequences of child abuse and of positive, non-abusive modes of child-rearing" (para. 1.2a), emphasising the rights of all children to "freedom from abuse and the need to change patterns of upbringing and behaviour which threaten this" (para. 1.2c) and "to minimise levels of violence within society and the resort to violence in child-rearing practices" (para. 1.2d). At the secondary and tertiary levels, prevention includes the provision of services to support child-rearing (para. 1.3c), "the implementation of educational programmes for children concerning their right to a life free from abuse, emphasising body awareness, assertiveness training and their right to say no" (para. 1.3d), and "publicity concerning sources of help (e.g. telephone helplines, sheltered homes for children experiencing problems of neglect or abuse)" (para. 1.3e). Systems for detection and identification of abuse should be improved (para. 2). Investigation and Assessment procedures should ensure, inter alia, that "in intervention in all cases of child abuse the best interests of the child shall be the primary consideration" (para. 3.2) and the same in police investigations and subsequent criminal proceedings. There should be appropriate intervention, treatment and review (para. 4), training for all personnel involved (para. 5) and research to inform systems and policies (para. 6). Proper financing should be allocated to implement this framework (para. 7).

Recommendation No.R (94) 14 on coherent and integrated family policies[24] recommends that governments implement such policies. More detail is given in the Appendix which recognises the family as the fundamental unit of society (para. 1); children should be adequately informed of their rights and duties (para. 7). Paragraph 8 states: "The public authorities should make the necessary provision to enable children to help themselves to have access to their rights, and are entitled to intervene in the private family domain, in accordance with the law, when the child is in danger within it. They need to be aware of the responsibilities and difficulties involved in respecting as far as possible the integrity of the family unit, whilst also identifying and deciding on appropriate action in those cases where the child's rights are violated by family members."

Recommendation No.R (97) 13 concerning intimidation of witnesses and the rights of the defence[25] includes a section (IV) on measures to be taken in relation to vulnerable witnesses, especially in cases of crime within the family: "Special protection should be made available to children together with support against any abuse of authority in the family. Children should be made aware of their rights, in particular, the right to report crime" (para. 19). The Explanatory Report to this Recommendation,[26] on Section IV, recognises the special vulnerability of children to intimidation which prevents disclosure in cases of abuse in the family, their vulnerability to intimidation per se, and their intimidation by court procedures (para. s.91, 96 and 107 respectively).

Recommendation No.R (97) 19 on the portrayal of violence in the electronic media[27] recommends the regulation of gratuitous violence in the media, according to Guideline No.1 under the general legal framework provided by article 10 of the European Convention on Human Rights, as interpreted in the case-law of the European Court of Human Rights, and noting that measures countering gratuitous portrayal of violence in the media "may legitimately aim at upholding respect for human dignity and at the protection of vulnerable groups such as children and

adolescents whose physical, mental or moral development may be impaired by exposure to such portrayal". Guideline 2 includes attention to children:

"As regard access to and use of electronic media by children and adolescents at home and at school, as well as with respect to their understanding of violent messages, words and images transmitted by these media, parents and teachers have a special responsibility. They may assume this responsibility in various ways, including by:

i. developing and maintaining a critical attitude towards the gratuitous portrayal of violence;

ii. using the electronic media in a conscious and selective manner, as well as by demanding quality products and services;

iii. stimulating children and adolescents to develop a critical attitude, eg through media education within the family and in schools;

iv. examining ways of restricting access of children and adolescents to the violence portrayed in the electronic media where this is likely to impair the latter's physical, mental or moral development."

Recommendation No.R (98) 8 on children's participation in family and social life.[28] The recommendation states that such participation is "essential for bringing the UN Convention on the Rights of the Child into life" (Principle II). Principle III states: "Peace and friendship within and between families, societies and nations, including the concepts of non-discrimination, non-violence and tolerance are essential for ensuring respect for the individuality and dignity of the child, and for enabling the realisation of the child's best interests."

Recommendation No.R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation[29] recommends that governments review their legislation and practice, introduce the comprehensive measures suggested in the appendix, and bring the recommendation to the attention of all professionals involved.

Recommendation Rec (2001) 10 on the European Code of Police Ethics.[30] Paragraph 35 states: "The police, and all police operations, must respect everyone's right to life". Paragraph 36 states: "The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances". Paragraph 37 states: "The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective." When police deprive people of their liberty, they "shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody" (para. 56), and shall separate those suspected of crime from those detained for other reasons (para. 58) and adults from children (para. 58).

Recommendation Rec (2001) 16 on the protection of children against sexual exploitation.[31] This replaces Recommendation Rec (91) 11, and recommends that states' governments "ensure that effective measures are taken to protect children against sexual exploitation, review their legislation and practice in the light of the principles contained in the present recommendation and ensure that their implementation is followed closely, assessed on a permanent basis and accompanied by adequate technical assistance." Attention is given to public awareness raising; collection and exchange of information; prevention, identification and assistance; the media; the internet; legislative measures relating to perpetrators and victims.

The main aims of the recommendation are based on:

- the well-being and interest of the child;
- consideration of the views and best experiences of the children themselves;
- an understanding that child pornography and child prostitution and trafficking in children are multidimensional problems;
- promoting co-operation between member states.

Measures are suggested relating to pornography, prostitution and trafficking of children which involve appropriate sanctions, information and education campaigns, training for professionals, and support for victims (Sections IV, V and VI).

The implementation of this recommendation has been carried out through the development of the tool "REACT on sexual exploitation and abuse of children" which was sent to the member States during 2004 and analysed in the beginning of 2005. The analysis can be found in the document PC-S-ES (2005)5.

Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence.[32] The Appendix gives the following definition:

"1. For the purposes of this recommendation, the term 'violence against women' is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere, trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape,

sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation."

General measures concerning violence against women include "raising of public awareness and education of children and young persons" (para. 3d) and research on "the consequence of violence on those who are witness to it, *inter alia*, within the family" (para. 5c).

In public awareness, states should ensure that children's education is free from gender stereotyping (para. 15) and includes information of children's rights, help-lines and sources of support (para. 16). States should also "take steps to ensure the necessary psychological and moral support for children who are victims of violence" (para. 32). Legislative measures in criminal law should include penalising "any abuse of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim" and "any abuse of the position of a perpetrator, and in particular of an adult *vis-à-vis* a child" (para. 35). In civil law, states should "encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest" (para. 40) and to protect children's rights throughout proceedings (paras. 45, 46 and 47). In addition, all forms of violence within the family should be classified as a criminal offence (para. 55) and states should "revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned" (para. 56). With regard to genital mutilation, states should penalise any mutilation (para. 62) and "any person who has deliberately participated in, facilitated or encouraged any form of female genital mutilation, with or without the person's consent" (para. 63); conduct awareness raising campaigns among the particular population groups concerned, including medical professionals (paras. 64 and 65); co-operate in bilateral agreements (para. 66); and consider "granting special protection to these women as a threatened group for gender-based reasons" (para. 67). Regarding violence in conflict and post-conflict situations, states should "penalise all forms of violence against women and children in situations of conflict, in accordance with the provisions of international humanitarian law, whether they occur in the form of humiliation, torture, sexual slavery or death resulting from these actions" (para. 68). All forms of violence against women and children in connection with "honour killings", and all participants, should be penalised (paras. 80 and 82), and preventive steps taken, including information campaigns directed at the population groups and professionals concerned (para. 81). Finally, forced marriages should be prohibited (para. 84) and measures taken to prevent and stop the sale of children (para. 85).

Recommendation Rec (2004)13 of the Committee of Ministers to member states on the participation of young people in local and regional life[33]

This recommends that the governments of member states, taking account of their respective legislative, administrative and constitutional arrangements, promote and support the implementation of the revised European Charter on the Participation of Young People in Local and Regional Life, adopted within Recommendation 128 (2003) of the Congress of Local and Regional Authorities of the Council of Europe.

It encourages, for example, the development at local and regional level of youth consultative bodies such as municipal youth councils, youth parliaments or forums, allowing all young people, whether or not they belong to organisations or associations, to express their opinions and present proposals on the formulation and implementation of policies affecting them, and the promotion of all forms of active participation by children and young people in educational establishments.

Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice[34]

The recommendation builds on previous ones and calls for a more strategic approach, in which the basic aims of juvenile justice and associated measures for tackling juvenile delinquency are:

i. to prevent offending and re-offending;

ii. to (re)socialise and (re)integrate offenders; and

iii. to address the needs and interests of victims.

The juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs. Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending. The recommendation proposes more appropriate and effective measures to prevent offending and re-offending by young members of ethnic minorities, groups of juveniles, young women and those under the age of criminal responsibility. It emphasises that interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances. Expansion of the range of suitable alternatives to formal prosecution should continue: "They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted".

To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.

Recommendation Rec (2005)5 on the Rights of Children Living in Residential Institutions[35] underlines that, despite preventive measures, some chil-

dren will need to be placed outside their family and that the type of placement must primarily take account of the needs and best interests of the child and, whenever appropriate, his or her personal views on the matter. It recommends that governments of member states adopt such legislative and other measures as may be necessary, including national guidelines and action plans, to guarantee that the principles and quality standards set out in the Appendix to the Recommendation are complied with, with a view to achieving full implementation of the rights of children living in residential institutions, irrespective of the reasons for and the nature of the placement.

It sets out basic principles regarding placements – including preventing the need for them wherever possible through family support – as well as listing specific rights to be recognised and protected, and outlining guidelines and quality standards to be respected in all residential, and if possible alternative, care situations. It insists, in its Appendix, on the recognition of specific rights for all placed children, including the right to "respect for the child's human dignity and physical integrity; in particular, the right to conditions of human and non-degrading treatment and a non-violent upbringing, including the protection against corporal punishment and all forms of abuse; ", as well as considers as a basic principle the following "any measures of control and discipline, which may be used in residential institutions, including those with the aim of preventing self-inflicted harm or injury to others, should be based on public regulations and approved standards". Together with its Appendix and the Explanatory Report[36], the Recommendation (2005) 5 contains a large number of considerations that, if duly taken into account, would undoubtedly serve directly and indirectly to reduce the incidence of violence of all kinds in residential care settings.

3. Recommendations and Resolutions of the Parliamentary Assembly

The Parliamentary Assembly has adopted a wide range of resolutions and recommendations to influence the work of the Committee of Ministers relating to violence against children, including:

Recommendation 963 (1983) on cultural and educational means of reducing violence[37] addresses the problems of terrorism, the portrayal of violence in the media, violence in sport and makes specific recommendations on these issues, including setting up studies on the causes of terrorism (para. 14c), developing codes of conduct and monitoring mechanisms regulating violence in the media (para. 21a/b/c), and developing a European convention on violence and sport (para. 30a). The Committee of Ministers should urge states to take a number of positive measures in school education, including "to review the content of existing school and university curricula in order to avoid thoughtless glorification of conflict and violence, and to introduce in schools the systematic teaching on non-violent behaviour" (para. 36bi) and "to ensure that schools adhere to non-violent approaches with regard to their own internal problems and that they avoid any recourse to violent punishment" (para. 36bv).

Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation[38] recommends a number of legislative, administrative and social measures that should be taken to combat the problem of child trafficking and exploitation.

Recommendation 1121 (1990) on the rights of children[39] reiterates, among other things, the needs of the child to special assistance, care and protection (para. 2), to "grow up in an atmosphere of happiness, love and understanding" (para. 3), and the obligations placed on adults by the right to special protection (para. 4), and notes that "parental powers and the authority of other adults on children are derived from a duty for protection and should exist only as long as they are necessary for the protection of the person and property of the child" (para. 6). It then recommends that the Committee of Ministers urge states to ratify and implement all appropriate international instruments, including the European Social Charter, ILO Convention No.138 on the Minimum Age for Admission to Employment, and the UN Convention on the Rights of the Child (para. 12A) and to consider the adoption of an additional protocol to the European Convention on the Rights of the Child embodying children's civil, political, economic and social rights (para. 12B/C), to commission studies on children and the courts and on how children can exercise their rights under international instruments (para. 12D/E), and to better inform children of their rights (para. 12F).

Resolution 1099 (1996) on the sexual exploitation of children[40] calls for states to ratify the UN Convention on the Rights of the Child, the European Convention on the Exercise of Children's Rights, and relevant Council of Europe criminal law conventions (para. 10); to appoint a children's ombudsman and promote public information and awareness raising (para. 11), including informing children through school curricula (para. 16); to take legislative measures against child prostitution, child pornography and other sexual offences (para. 12); to address sex tourism (paras. 13 and 14); and to ensure relevant training of professionals (para. 15). At the European level there should be effective judicial and police co-operation (para. 17) and a European children's ombudsman (para. 19).

Recommendation on 1286 (1996) on a European strategy for children[41] recommends that the Committee of Ministers urges states to eliminate violence in media products intended for children (para. 8iii), "to inform children about the means and remedies available to them in the event of violation of their fundamental rights and, for example, to extend the provision of free help-lines, specialist advocates and child friendly judicial and administrative systems which recognise the claims of individual children for protection against all forms of abuse" (para. 8v) and "to promote education for the prevention of racism, political and religious intolerance and violence and

for the learning of tolerance and peaceful resolution of conflict" (para. 8 ix).

Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states[42] records the Assembly's concern with "the deterioration of the treatment of trafficked women, bordering on slavery" due to the increased involvement of organised criminal groups in traffic in women and forced prostitution (para. 1), defined as: "any legal or illegal transporting of women and/or trade in them, with or without their consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other formed of forced sexual exploitation. The use of force may be physical, sexual and/or psychological, and includes intimidation, rape, abuse of authority or a situation of dependence" (para. 2). The Assembly recommends that the Committee of Ministers produce a convention of traffic in women and forced prostitution, to be open for signature for both member and non-member states of the Council of Europe (para. 4). Recommendations that the Committee of Ministers should make to states include increasing public education and awareness raising targeted at potential victims and training of immigration staff, developing national and international policing, providing appropriate services and support for victims, and strengthening criminal law against the perpetrators of trafficking and forced prostitution and marriage (para. 6).

Recommendation 1336 (1997)1 on combating child labour exploitation as a matter of priority[43] recognises the growth and complexity of the problem of child labour and calls for priority to be given to putting "an immediate end to the most intolerable forms of child labour – slavery and slave-like practices, forced or compulsory labour, including debt-bondage and serfdom, the use of children in prostitution, pornography and the drug trade, and their employment in any type of work that is likely to jeopardise their health, safety, or morals"; girls should receive special protection and work by the very young should be totally prohibited (para. 2). The root causes, including poverty and social exclusion, should be tackled. The minimum age for admission to employment should be raised "to a level consistent with the full physical and mental development of young persons", ultimately not less than the age of completion of compulsory schooling and not less than 15 years (para. 3). The Assembly points to the importance of education, social advocacy, proper data collection, plans of action to eradicate the problem "through an integrated strategy of prevention, regulation and rehabilitation" (para. 9) and polices "consistent with the best interests of the child" (para. 10). The significance of the ILO conventions on child labour, the limited effectiveness of trade sanctions, and the importance of international co-operation are also stressed. These points are elaborated in a set of recommendations to the Committee of Ministers to apply at national and European levels.

Recommendation 1371 (1998) Abuse and neglect of children[44] concerns the wide range of violence and ill-treatment faced by children, both through organised crime and within the family circle, warning that "the horror provoked by various recent instances of sexual violence against children should not distract our attention from violence and ill-treatment within the family circle, from which tens of thousands of children suffer even from the earliest age" (para. 8). Children should be afforded social and legal protection against paedophilia, exploitation for pornography, prostitution, incest, inappropriate criminal proceedings, repetition of offences of sexual violence, abusive sterilisation, violence and mutilations of girls, abuse (including within the family), refusal of necessary care, and fraudulent actions with a view to adoption (para. 9), but national legislation is inadequate in most member states (paras. 10 and 11). There follows a comprehensive set of recommendations for member states covering each of the areas mentioned (para. 13).

Many of the recommendations concerning sexual crimes have received attention in later documents (see below). In relation to abuse within the family, the Assembly recommends addressing the problem:

"i. by concentrating on prevention, establishing care and therapy for abusive families and providing medical and social follow-up for the child and his or her family;

ii. by helping to restore the self-image of mistreated children so that they do not in turn become abusive parents;

iii. by complementing the sexual education given at school with information about the responsibilities and constraints of very young parents involved in caring for new-born children and their needs;

iv. by arranging for a parent or family member suspected of abuse to be removed from the family home, pending the outcome of any investigations, rather than the child, or, in the interest of the child, by arranging for children who have been taken away from abusive families to be adopted by foster families rather than institutions and, in particular, encouraging the accommodation of siblings together in stable 'children's villages', provided that none of the siblings is personally guilty of abusive conduct;

v. by training all professionals who work with children, as well as doctors and health care professionals, to detect abuse and any signs that may lead to a suspicion of physical or psychological violence;

vi. by establishing medical and social services in co-operation with schools so as to provide children both with an easily accessible ear and an initial place in which any physical traces can be detected;

vii. by making a single, free phone number generally available and making schoolchildren aware of this, so that they can contact qualified doctors or psychologists who would be authorised, where appropriate, to launch a medical and social procedure or even a judicial investigation" (para. 10d).

Governments should legislate against incest:

"i. by giving a legal definition of sexual abuse within

the family to make it possible to punish an offence whose seriousness has been ignored for too long;

ii. by organising appropriate staff training for the social services, the police and courts which takes account of the ambivalence which often surrounds such offences, by working to restore young victims' self-image;

iii. by promoting the exchange of experiences of family therapy" (para. 10e).

They should overcome refusal to provide vital care:

i. by passing legislation enabling doctors to decide to hospitalise children and determine their treatment whenever their health would be endangered by failure or refusal on the part of the persons exercising parental authority;

ii. by establishing an offence of non-assistance to a person in danger in order to make it an offence for persons exercising parental authority to forgo or refuse care, whenever doing so puts the child's health at risk (para. 10i).

The Assembly also invites the Committee of Ministers to draw up a Council of Europe convention addressing the problems of child pornography, particularly on the internet (para. 14a) and a convention setting up a register of convictions for offences against minors (para. 14b).

Recommendation 1398 (1999) on the situation of Children in Albania underlines the fact that the problems facing children of Albania are exacerbated by the country's chaotic transition to democracy. In the report, the rapporteur tried to identify the areas where urgent co-operation could be initiated between Albania and other Council of Europe member States. Therefore, the Assembly recommends that the Committee of Ministers invites the member states to develop aid programmes for Albania in order to adopt a health care and welfare policies for mothers and children (para. 9.ii) and invites Member States directly affected by the trafficking in and prostitution of young Albanian girls to decide urgent measures in order to dismantle prostitution networks (para. 11).

Recommendation 1449 (2000) Clandestine migration from the south of the Mediterranean into Europe[45] notes that a large number of women and children are clandestine migrants living in dangerous and inhuman conditions (paras. 1 and 12). Such living "invariably deprives people of their fundamental and social rights and their human dignity and exposes them to insecure living conditions for as long as they remain clandestine" (para. 3). The Assembly considers that restrictions on lawful migration exacerbate the problem, especially for those most vulnerable, including children (paras. 10 to 13), and recommends a series of measures to redress this (para. 14).

Resolution 1212 (2000) Rape in armed conflicts[46] expresses regret that although rape has been recognised as a war crime, its systematic use continues "as a war weapon inflicting not only psychological harm but also forced pregnancy" (para. 5), reiterates its call to see rape treated as a crime against humanity, and lists a series of measures governments of member states should take to this effect, including application of relevant international standards (paras. 10i/v/xiv), support for victims and the children of victims (paras. 10iv/vi/vii/viii/ix/x/xiv), and programmes of education in tolerance, respect for human dignity and general human rights (para. 10xi).

Resolution 1215 (2000) on the campaign against the enlistment of child soldiers and their participation in armed conflicts[47] recalls that in the modern world, children are involved in armed conflicts in about fifty countries. They are most often victims of them and sometimes also combatants enlisted or conscripted in contempt of their rights, their physical integrity and their lives. The Assembly calls upon the Member States to declare the forced enlistment of child soldiers of under 18 to be illegal (para. 4) and therefore asks them to ratify the ILO Convention n° 182 (1999) on the Worst Forms of Child Labour, the Optional Protocol to the UN Convention on the Rights of the Child and the Rome Statute (1998) setting up the International Criminal Court to judge war crimes and crimes against humanity (para. 5). The Assembly also urges the Member States to allow and foster access to humanitarian aid for the civilian population and in the event of armed conflict, taking particular account of children's needs (para. 7.i). The international community should devise policies in order to foster development in countries where there is conflict so as to stop the recruitment of child soldiers and demobilize those who have already been enlisted and to encourage their reintegration in civilian life by a suitable education system (para. 8).

Recommendation 1450 (2000) Violence against women in Europe[48] condemns violence against women as "a general violation of their rights as human beings – the right to life, safety, dignity and physical and psychological well-being" (para. 5). The Assembly states the urgency of criminalising traditional or religious acts involving violence against women, including honour killings and forced marriage (para. 6). It condemns female genital mutilation as "barbaric torture inflicted on young women", inviting states to implement Recommendation 1371 (1998) (para. 7), and the growth of prostitution and traffic of women (para. 8). It recommends that the Council of Ministers draw up a European programme to combat violence against women and a European charter of domestic work, and invite states to ratify the UN Convention on the Elimination of All Forms of Discrimination against Women, implement Recommendation 1325 (1997), increase international co-operation between state institutions and NGOs, introduce relevant training for police officers and judges, encourage recruitment of female police officers, establish centres for victims of violence, and run awareness raising and public education campaigns (para. 10).

Recommendation 1467 (2000), Clandestine immigration and the fight against traffickers[49] expresses the Assembly's concern at the increasing number of migrants who lose their lives or live in dangerous and inhuman conditions in the course of gaining illegal entry into Europe (para. 2). It states that states should increase measures to combat trafficking in humans

and to allow lawful immigration, as well as those to deter illegal immigration (para. s.7, 8 and 9) and makes a serious of recommendations to this end.

Recommendation 1501 (2001) Parents' and teachers' responsibilities in children's education[50] notes that the family and the school are the two primary educational institutions in a child's life but there is growing confusion over their respective roles which necessitates greater communication and involvement between the two. The recommendations that the Committee of Ministers is urged to pass on to member states include the need to give more consideration to young people's needs and concerns and to involve them more in educational decision-making and in settling problems such as violence at school (para.10vii)

Resolution 1247 (2001)1 Female genital mutilation[51] notes that female genital mutilation is an increasing problem in Council of Europe member states, making it "a matter of urgency to make a distinction between the need to tolerate and protect minority cultures and turning a blind eye to customs that amount to torture and inhuman or barbaric treatment of the type the Council of Europe wishes to eradicate" (para.6). Genital mutilation is prohibited under article 3 of the European Convention on Human Rights "even if carried out under hygienic conditions by competent personnel" (para.7), and leads to serious physical and psychological complications. Girls are even more vulnerable through the practices of forced marriages and virginity tests. The Assembly urges governments:

"i. to introduce specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity;

ii. to take steps to inform all people about the legislation banning the practice before they enter Council of Europe member states;

iii. to adopt more flexible measures for granting the right of asylum to mothers and their children who fear being subjected to such practices;

iv. to adopt specific time limits for prosecution that enable victims to go to court when they reach the age of majority, and to grant organisations the right to bring action;

v. to prosecute the perpetrators and their accomplices, including family members and health personnel, on criminal charges of violence leading to mutilation, including cases where such mutilation is committed abroad;

vi. to conduct information and public awareness-raising campaigns…;

vii. to introduce sex education classes in schools and all relevant groups…;

viii. to make sure that any marriages involving young girls under marriageable age are preceded by interviews between the girls concerned and an administrative or judicial authority to ensure that the girls have given their full consent to such marriages;

ix. to ratify, as a matter of priority, the relevant international conventions with a view to harmonising legislation on women's rights, in particular the United Nations Convention on the Rights of the Child and the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and to ensure that they ratify them without reservations." (para.11)

Recommendation 1523 (2001)1 Domestic slavery[52] refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms, articles 3 prohibiting torture, 4 (1) prohibiting slavery and servitude and 6 on the right of access to a court even where the employer enjoys immunity from jurisdiction, and to the definition of slavery derived from case law of the Court and Commission (para. s.2 and 3). It notes the vulnerability of victims to physical and/or sexual violence and regrets that no member state has expressly prohibited domestic slavery in criminal law. It recommends that the Committee of Ministers urges states to criminalise slavery, trafficking and forced marriage in criminal law; strengthen policing, e.g. at borders, and training of police officers; waive diplomatic immunity for offences committed in private life; ratify the Convention against Transnational Organised Crime and its additional protocols; and take other measures to protect the rights of victims of domestic slavery (para.10).

Recommendation 1526 (2001)1 A campaign against trafficking in minors to put a stop to the east European route: the example of Moldova[53] notes that the purpose of trafficking extends beyond sexual exploitation to encompass trafficking in children's organs, commercial child-bearing and the production of children to supply the illegal adoption market (para.3), and that violence is widespread – the minors and young adults involved, mainly from eastern and central Europe, "are often misled and subjected to coercion and it is no longer unusual for them to be raped and beaten, locked up or deprived of their identity papers and in a state of semi-slavery" (para.5). The Assembly invites the Committee of Ministers to ensure that the issue of trafficking in minors is a regular agenda item reported on by a designated person (para.10) and to systematically raise the issue with political leaders and decision makers in the countries concerned, especially Moldova (para.11). The Assembly asks the Committee of Ministers to recommend that states:

"i. make trafficking in minors an offence that is not subject to statutory limitation, punishable as such and liable to prosecution, irrespective of whether or not the injured party has lodged a complaint, and enact criminal legislation that constitute a genuine deterrent;

ii. set up a specially trained police service for the protection of minors;

iii. develop concerted measures to reduce the demand for trafficking in children and young adults;

iv. appoint a national advocate for victims of trafficking to give a higher profile to the commitment to fight this scourge and give victims and their families someone to turn to;

v. promote the idea of a European network of national advocates to improve the co-ordination of activities and share information and experience so as to decide on the best ways of tackling this problem;

vi. enact legislation that is designed to protect the victims of trafficking and which gives them, under certain conditions, the right to stay in the country legally and receive vocational training with a view to reintegration in their country of origin;

vii. compile a national list of missing minors and young adults and set up a centralised, computerised register for the whole of Europe to help police forces and families find them" (para.12).

Recommendation 1532 (2001) A dynamic social policy for children and adolescents in towns and cities.[54] addresses the problem of "urban youth malaise" and youth violence, particularly in deprived urban areas. It states that the different forms of youth violence – including against the self (suicide, drugs), within groups (bullying, gangs), or against society ("hate-crime") – should be seen as a means of protest and self-assertion, as reflecting the influence of unemployment, poverty, family break-up and adult violence, and "as a strong indicator of adult malaise, intolerance, fear and violence" (para. s.4, 5 and 7). Statistically, children and young people are more often victims than perpetrators of violence (para. 6).

The Assembly is concerned at the development of law enforcement policies across Europe that are in breach of the standards set by the UN Convention on the Rights of the Child, especially concerning children in detention (para. 9). In addition, a greater role should be played by preventive strategies, focusing on all children at risk and including attention to the specific situation and experiences of girls (paras.10 and 11).

The Assembly recommends that states ensure their legislation guarantees children the rights in the UN Convention on the Rights of the Child and ratify all relevant European conventions, especially the European Convention on the Exercise of Children's Rights (para. 16iia/b). A dynamic policy for children and adolescents in towns should be developed, based on:

"• measures and programmes which support parents and families in their parenting role;

• welfare and benefit schemes to support parents and families;

• measures and policies based on the partnership and involvement of all sectors – local and national, public and private;

• measures to address the whole range of risks faced by children and adolescents in the social and physical environment in which they live;

• the development, for children who offend, of alternative forms of dispute resolution: alternatives to judicial processes; alternatives to custody; and community-based measures in line with internationally recognised standards for children in the justice system;

• harmonised standards and practices (for example, specialised courts for minors) in all the Council of Europe member states with regard to children who commit, or who are victims of, offences (for example, family violence, sexual abuse);

• promoting the role of formal and non-formal education in preparing children for adulthood and their role in civic and political society, in promoting values of tolerance and respect for others, and in addressing inequalities based on disadvantage and gender;

• assistance in the transition from school to employment, providing children and adolescents with skills necessary for the labour market;

• leisure pursuits (culture, sports, etc.) for children and adolescents;

• programmes and projects which assist children and young people to address the negative effects of social exclusion and marginalisation;

• mechanisms by which policies affecting all areas of social and political life – employment, housing, crime, health, education, etc. – can be 'child-proofed';

• the establishment of a national children's ombudsman for promotion and monitoring of the rights of the child;

• the positive values of the Internet, the World Wide Web and the new information and communications technologies in providing information for children and young people and in providing a mechanism for co-ordination of their activities;

• the participation of children and adolescents in decision making and policy development;

• fostering of the supporting role of extended families and the local community;

• taking into account gender-based issues and family-planning;

• measures to improve the situation of street children" (para. 16iid).

Resolution (2002) 1 Sexual exploitation of children: zero tolerance[55] noting the problem of trafficking, prostitution and child pornography, and particularly the aggravation of sexual abuse through the use of the internet, the Assembly invites member states to adopt legislation in line with Committee of Ministers Recommendation Rec (2001) 16, to declare the combating of sexual exploitation as a national objective, giving precedence to danger posed to children by the internet, and to ratify the Convention on Cybercrime (para. 5). The Assembly urges states "to take a zero tolerance approach to crimes committed against children" in adopting a policy which, among other things, "gives priority attention to the rights and views of child victims, and which strives actively to find and identify victims so that they may be rehabilitated and fairly compensated" and which bans convicted criminals from occupations which involve contact with children (para. 6). There should be awareness raising and prevention classes in schools and special measures taken to combat computer

crime (paras. 7 and 9), national observatories of sexual crimes and abuse against children (para.11), and a national children's rights ombudsman or commissioner in every state (para. 12). Regulation of children's homes should be increased (para. 14), and there should be full co-operation with Europol (paras. 15 and 16).

Recommendation 1545 (2002) Campaign against trafficking in women[56] notes the links between trafficking and hidden forms of exploitation such as domestic slavery, catalogue marriages and sex tourism (para. 3), and states: "This form of organised crime has serious effects on the physical and moral health of its victims. They suffer from the worst forms of sexual, physical and psychological violence and run the danger of physical disability and social exclusion" (para. 6). The recommendation sets out a series of measures that governments should take to address the problem, including legislation to criminalise and punish traffickers and other associated persons, including those associated with sex tourism, the establishment of a national rapporteur of trafficking in each country affected by the problem, awareness raising and public education campaigns, and services and support for victims. Among preventive measures, the Assembly urges governments to: "launch sex education programmes in schools, with particular emphasis on equality between women and men and the respect for human rights and individual dignity. School curricula should include information on the risks of exploitation, sexual abuse and trafficking in human beings. Teachers should be trained in such a way as to incorporate a gender dimension into their teaching and to avoid gender stereotyping" (para. 10viiif). The Assembly urges the Committee of Ministers to set up a European observatory on trafficking in women and children, draw up a European convention on trafficking in women with reference to Recommendation No. R (2000) 11, and implement that Recommendation and transmit it to the Human Rights Commissioner (para. 11).

Recommendation 1551 (2002) on Building a 21st century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996) underlines that since 1989 the rights of children have been recognised and enshrined in a single document, the United Nations Convention on the Rights of the Child, instrument which has been ratified almost universally, with the exception of the United States. However, there remains a gap between principles and practices. Therefore, the Assembly recommends the creation of a worldwide legally binding plan consistent with the United Nations Conventions which endorses their commitments. The Assembly invites the Member States to revise their domestic legislation in order to make it compatible with the provisions of the United Nations Convention on the Rights of the Child; to adopt a long-term national policy on children's rights, to appoint a national Minister of Children's Rights and to give a higher profile and greater priority to children in budget presentation. It also calls for setting-up a national children's observatory to collect and disseminate all information and data on children (para. 4). Furthermore, the Assembly urges the Committee of Ministers to give further consideration to drafting a European Convention on Children's Rights and to include children's rights in the Council of Europe's European Convention on Human Rights and Fundamental Freedoms (para. 6) and, in co-operation with the European Union, to agree arrangements for setting up a computerised European Data Centre on missing children (para. 7).

Recommendation 1555 (2002) The image of women in the media[57] notes that little progress has been made in the representation of women in the media, which "continues to be stereotyped and sexist", associated with the private sphere of household and family life and presenting women as sex objects (para. 2). Paragraph 8 states: "The Assembly is concerned about the increasing exposure of children to sexist messages. The antisocial forces exerted by the repeated sending of this kind of message are particularly worrying at a time when society is attempting to curb violence against women." There follows a series of recommendations for governments and the Committee of Ministers.

Recommendation 1561 (2002) on social measures for children of war in South-Eastern Europe[58] is the result of the concern of the Assembly of the problems faced by children of war in different countries of South East Europe, and it calls for political action in order to facilitate the return of refugees and internally displaced children and their integration into "normal" life. The Assembly underlines the difficulties encountered for rebuilding a viable post-conflict society and the need to invest in the physical and mental well-being of children and generations of young people who suffered from war. It notes that while children have a legal right to free healthcare, this right is often limited in practice due to the complexity of the insurance schemes and the absence of equipment and medication (para. 8). It therefore recommends to the Committee of Ministers to support the activities undertaken by the Governments of South-Eastern Europe to give the rights of the child a political priority and to fully implement the Convention on the Rights of the Child, to institute the Office of Child Ombudsman in co-operation with the European Network of Ombudsmen for Children (ENOC), to undertake reforms to rationalize the welfare system and to support the role of non-governmental organisations. The Assembly also recommends ensuring access to adequate shelter, food and clothing for every child, to ensure access to free healthcare and that welfare services are equitable throughout each country for every child (para. 12). Similarly, it asks the Council of Europe to strengthen long-term support for the activities of the intergovernmental sector and to instruct the Pompidou Group to extend informal contacts with South-Eastern Europe (para. 12.iii). Furthermore, it focuses on financial support through loans of the Council of Europe Development Bank (para. 13) and invites the international community and individual donor countries to step up their support for reconstruction and humanitarian aid (para. 4) and recommends that international organisations ensure that specific needs of children are addressed in their activities (para. 15).

Resolution 1291 (2002) on international abduction of children by one of their parents[59] notes that the number of international abductions of children is a growing phenomenon. When children are abducted by one parent, that parent often belittles the other. The children are deprived of one of their parents and their wider family for a long time. – sometimes permanently – and their sense of security is threatened. Children are forced to accept a change of country, culture, schools etc. even if children are returned, they are marked by the abduction for the rest of their lives. A number of measures are put forward by the Assembly: to make abduction of a child under 16 years of age a crime punished as such, to give only a small number of specialised courts of jurisdiction to deal with cases of parental child abduction, to promote family mediation as a means of preventing parental child abduction and helping to resolve family conflicts and to support the relevant non governmental organisation, etc.

Recommendation 1601[60] **and Order n° 587 (2003) on improving the lot of abandoned children in institutions** stresses the fact that the UN Convention on the Rights of the Child recognises that children are entitled to grow up in a family environment and that they should be placed in institutions as a last resort. Unfortunately this type of practice continues to exist. The Assembly recommends to the Member States to prepare and publish a map of children's institutions which must be closed down and to draw up a timetable for their closure and to promote an active policy for removing children from institutions and restoring family ties by introducing alternative arrangements (return in their own families, placement in foster families, setting-up day centres or promotion of adoption (para. 4). It also recommends to the Member States to ensure that the diagnosis of children's disabilities and the decision to place them in institutions are accompanied by full safeguards for the fundamental rights of children and that the children living in institutions have access to appropriate healthcare and are given an adequate education and training in order to ensure that when leaving the institutions they will have other prospects than life in the street or a psychiatric hospital (para. 5). The Assembly asks to take advantage of 2003, European Year of People with Disabilities to launch major national information campaigns to make people aware of the rights of children with disabilities in an endeavour to change attitudes and the way in which they and their place in society are perceived (para. 7). In conclusion, it invites the various Council of Europe bodies responsible for monitoring to consider respect for the rights of all children and a de-institutionalisation policy a binding obligation.

A follow-up to Recommendation 1601 (2003) was adopted by the Parliamentary Assembly during the second part of the session 2005 (April 2005).

Recommendation 1610 (2003) Migration connected with trafficking in women and prostitution[61] recommends that the Committee of Ministers draft a Council of Europe convention on trafficking in human beings as soon as possible, ensuring that it includes provisions aiming at the criminalisation of trafficking in national laws, the harmonising of penalties applicable to trafficking, and effective jurisdiction in cases of trafficking, e.g. through extradition. It also recommends asking the Committee for the Prevention of Torture to investigate the conditions of detention of the victims of trafficking in detention centres and prisons, as well as their conditions of deportation.

Recommendation 1632(2003) on Teenagers in distress: a social and health-based approach to youth malaise[62] notes that young people in Europe are increasingly engaging in behaviour likely to put their health and lives at risk. This behaviour includes smoking, excessive alcohol consumption, illegal drug use, eating disorders and unprotected sexual activity. Suicides rates represent the second most frequent cause of death among teenagers. This shows the growing distress common to young people in general. In order to help young people, the Assembly recommends to the Committee of Ministers to pay greater attention to all forms of risk behaviour among young people and to provide adequate measures and promote policies designed to strengthen the family in the traditional role of fostering the successful social integration of young people. In this context, it urges the Member States to launch information and awareness campaigns on the dangers to which young people are exposed through tobacco, alcohol and drug consumption, programmes to prevent suicide, prevention facilities and measures to reduce the social cost of alcohol and tobacco consumption, including higher taxation on these products and to seek the support of the mass media in pursuing these objectives (para. 10).

Resolution 1337 (2003) Migration connected with trafficking in women and prostitution[63] links the increase in trafficking to "the gap between poor and rich countries, the lack of opportunities for young people to build a future, and the poverty which affects women in many countries, which makes them vulnerable to exploitation in the sex industry" (para. 3). In addition, women's vulnerability to various forms of exploitation and abuse is increased through "repressive migration policies and the resulting illegal status of women in the destination countries" (para. 4). "The Assembly stresses the importance of developing legitimate migration opportunities (para. 5), a European strategy to address the root causes of economic migration (para. 6), and legislation for specific trafficking crimes and related offences (para. 7). Priority should be given to the status and rights of victims (para. 8). Paragraph 9 outlines a series of social, legal and administrative measures aimed at combating the problem, including prevention and victim protection.

Recommendation 1596 (2003) on Situation of young migrants in Europe[64] notes that young migrants represent a varied and heterogeneous group. They include, *inter alia*, children, young women and young men who have fallen prey to human traffickers or who have been smuggled into a country in the hope of escaping poverty, persecution or a situation of generalised violence. The Assembly underlines the need to (para. 7 i.) introduce in all domestic laws or policy measures affecting children a specific mention of the situation of migrant children (para. 7 iii.) refrain from detaining minors exclusively on immigration

grounds, (para. 7iv.) introduce in domestic law and policy the definition of "separated children", and afford them an effective system of care and protection, (para. 7x) make sure that return is not in breach of international obligations under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, or the European Convention on Human Rights and other relevant instruments.

As regards the issue of trafficking in children and young people, the Assembly recommends, *inter alia*, (para. 8) assistance to member states to sign and ratify the United Nations instruments applicable to this matter, to establish effective protection regimes for children and young people who are victims of trafficking, and ensure the availability of psychological counselling and assistance upon demand of the victims, their legal guardians or care institutions; assistance to devise and implement appropriate programmes to meet the care and assistance needs of traumatised children and young people who are victims of trafficking in host countries.

Recommendation 1666 (2004) on A Europe-wide ban on corporal punishment of children[65] invites the Committee of Ministers to launch a "co-ordinated and concerted campaign in all member states for the total abolition of corporal punishment of children. The Assembly notes the success of the Council of Europe in abolishing the death penalty and the Assembly now calls on it to make Europe, as soon as possible, a corporal punishment-free zone for children" (para. 7). The Assembly notes that, according to the European Committee of Social Rights, in order to comply with the European Social Charter and Revised Social Charter, "states must ban all forms of corporal punishment and any other forms of degrading punishment or treatment of children" (para. 1). It also refers to relevant European Court of Human Rights judgments (para. 2) and the consistent interpretation of the UN Convention on the Rights of the Child by the Committee on the Rights of the Child – that it requires states both to prohibit all forms of corporal punishment and to educate and inform the public (para. 3). "The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.

"The Assembly is concerned to note that, so far, only a minority of the 46 member states have formally prohibited corporal punishment in the family and in all other settings. While they have all banned corporal punishment in schools, including private schools and other educational institutions, this does not necessarily extend to residential and all other forms of child care. Nor are such bans systematically and universally respected." (paras. 5 and 6)

Recommendation 1703 (2005) on Protection and assistance for separated children seeking asylum[66] notes that half of the world's refugees and displaced persons are children and that they have fled their homes to escape persecution, human rights violations, exploitation, abuse or natural disaster. Children are vulnerable and among them the most vulnerable group is represented by those who are in a foreign country seeking asylum and separated from their parents or legal or customary primary care-givers. The Assembly recommends, *inter alia* (para. 9 i.), an in depth study on access to the territory and to the asylum procedure for separated children seeking asylum as well as on the availability of a system of legal guardianship (para. 9 ii.), a review be made of the practice of member states as regards child-specific forms of persecution (para. 9 iii.), a recommendation is drawn up on the protection and assistance for separated children seeking asylum (para. 9 iv.) support is given to training all those involved in dealing with separated children during the asylum procedure and in the context of anti-trafficking policy and law.

Recommendation 1698 (2005): the rights of children in institutions: follow up to recommendation 1601(2003) of the Parliamentary Assembly[67], reaffirms that maximum priority must be given to improving the quality of education and care in institutions and to closing pedagogically unsuitable, unsanitary and dilapidated institutions. Deinstitutionalisation must be complemented by welfare measures and benefits to help children reintegrate families and by alternatives to institutions. The Assembly stresses that the problem of children living in institutions is common to all member states and that no member state can claim to be beyond criticism. But it notes that in some new member countries, despite undeniable positive changes that have come about, abandonment and placement in institutions of children, often from ethnic minorities, are still continuing. The fate of children in institutions has now become first and foremost a human rights issue. The Assembly recommends inter alia that the Council of Europe add the rights of children living in institutions to the subject covered by the thematic monitoring reports. The member states are invited to supervise and provide advice to institutions, foster and adoptive parents in order to protect the rights of children concerned. Sponsors throughout the international community –European and international institutes, NGOs, etc. – are urged to continue their financial efforts on behalf of the children in institutions and to regularly verify the use of such funds.

4. The Commissioner for Human Rights

The Office of the Commissioner for Human Rights was established in 1999 as an independent and impartial institution within the Council of Europe, responsible for promoting education in, awareness of and respect for human rights as embodied in the human rights instruments of the Council of Europe.[68] During the course of his work, the Commissioner has frequently paid attention to issues of violence affecting children.

In the reports of his country visits, the Commissioner has frequently expressed concern at domestic violence, considering its causes, the role of non-gov-

ernmental organisations in dealing with it, and the position of authorities.[69] Other issues relating to children that the Commissioner has addressed in his country reports include:

- police violence against Roma people and the situation of children generally within the Roma community;[70]
- urban youth violence;[71]
- the conditions of institutions housing children and young people, including orphanages and psychiatric institutions;[72]
- conditions of penal detention for juveniles;[73]
- child abandonment;[74]
- racially motivated violence;[75]
- children as victims of trafficking;[76]
- detention on young asylum seekers.

In the recommendations to the countries concerned, the Commissioner has called for the adoption of legislative and other measures, including proper training of police, to address domestic violence and to protect and support victims.[77] He has also recommended police training in dealing with victims of trafficking,[78] legislative measures against trafficking,[79] and proper enquiries into racially motivated violence, particularly against Roma people.[80]

In his annual reports to the Committee of Ministers and the Parliamentary Assembly, the Commissioner has paid significant attention to the problem of violence within the family, including against children.[81] In his latest Annual Report published in 2003, in which the Commissioner analysed certain recurrent human rights problems in Europe, the rights of the child featured as one of the priority themes. Under this theme, the Commissioner addressed, in particular, the enjoyment of human rights by Roma children, domestic violence, children in particularly vulnerable situations and abandoned children. The Commissioner stressed that domestic violence is a human rights issue which engages the responsibility of the state, and he has called for the enactment and implementation of appropriate legislation and strategies to prevent such violence, for instance through counselling and awareness raising, to end the impunity of the perpetrators, and to change societal attitudes.

Another priority theme in that report was the fight against trafficking in human beings, affecting mainly women and children.[82] The Commissioner called for the strengthening of witness protection; the provision of comprehensive assistance to victims; further training for law enforcement officials; the establishment of appropriate repatriation mechanisms; the strengthening of legislation; awareness raising programmes, and measures to address discrimination and lack of equal opportunity.[83]

In January 2004, the Commissioner co-organised with the Stability Pact Task Force on Trafficking in Human Beings and the Minister for Labour and Social Affairs of Albania a seminar "Combating Trafficking of Children in Europe" in Tirana, Albania. The Seminar stressed the important role of national Ombudspersons and specifically the Child Ombudspersons in combating trafficking in children. The Conclusions of the Seminar focused on the following areas:

- Legislative short-comings and implementation problems
  - The protection of child victims of trafficking
  - The prosecution of the agents of trafficking in human beings
  - The effective prevention of trafficking in human being
- Co-ordination and co-operation in the fight against trafficking in children; the roles of national and international actors.

In an Opinion on the draft Aliens Act of Finland, the Commissioner drew the attention to racial violence, including violence against Roma people, the problem of "honour killings", and the situation of unaccompanied refugee children[84] In a Recommendation concerning sterilisation practices of women in the Slovak Republic, the Commissioner noted the problem of police violence against Roma people[85] and the issues faced by under-aged Roma mothers.[86]

During the June 2004 session of the Parliamentary Assembly of the Council of Europe, the Commissioner organised a seminar focusing on the situation of unaccompanied minors in European asylum policies and on the fight against trafficking in children. The seminar is organised in the context of the Parliamentary Assembly's recommendation 1596(2003) concerning the situation of young migrants in Europe, where the Commissioner was invited "to conduct an investigation on the situation of separated children in Council of Europe member states".

5. Integrated project on responses to violence

The Council of Europe concluded in 2004 a priority project on "Responses to violence in everyday life in a democratic society", which was set up to respond to concerns about violence in Europe by mobilising the resources and experience of the Council of Europe related to the theme.[87] The main aim of the project, running from 2002-2004, was to assist in the implementation of comprehensive policies for combating violence while respecting human rights and the rule of law.

Various forms of violence against children, in many different settings, feature in the project. The project was organised along three main themes – policy principles, social developments, and prevention strategies, broken down further in the following way:

1. Policy principles:

- highlighting shared and specific aspects of policies to combat everyday violence in the member states;
- identifying approaches, strategies and methods common to the sectoral policies and instruments devised under specific objectives "social developments" and "prevention strategies";
- laying down, in an appropriate form, European

principles and standards for general policies on information, awareness-raising, prevention and appropriate punishment measures to curb violence in everyday life.

2. *Social developments:*
   - strengthening and developing harmonious relations in situations marked by diversity of communities, religions and cultures (in liaison with the Action Plan against terrorism);
   - combating the effects of social exclusion, extreme poverty and other marginalising factors (e.g. drug addiction)
   - preventing and curbing the effects of the various forms of trafficking in human beings;
   - formulating good practices to control media violence.
3. *Prevention strategies:*
   - violence in towns;
   - violence in the home;
   - violence linked with sports events;
   - violence in schools;
   - awareness-raising and training (formal and informal) for young people;
   - assistance for the victims of everyday violence and mediation in penal matters.

The project published, inter alia, handbooks and/or guides on preventing violence against children, including corporal punishment, and violence in schools, educational material on teaching peaceful conflict management, recommendations on the involvement of young people in preventing violence and a report on youth justice in Europe.

A Conference on European Ministers responsible for the prevention of violence in everyday life took place in Oslo (Norway, 7-9 November 2004).

The theme of the conference, which was the concluding event of the Integrated Project, was "Preventing everyday violence in Europe: responses in a democratic society".

The Ministers welcomed the results of the project and adopted twelve principles for an integrated policy "Response to violence in everyday life"[88] and recommended the launching of a priority action programme on the prevention of violence against children.

6. Forum for Children and Families and Committee of Experts on Children and Families

The Second Council of Europe Summit of Heads of States and Governments (Strasbourg, October 1997) has put emphasis on the social cohesion issue in Europe, and included among Organisation's future objectives in the social field the work to be carried on in the best interests of children. Following this high level decision and the Parliamentary Assembly Recommendation 1286 (1996) on a European strategy for children, an intergovernmental Programme for Children was launched in 1998. The European Committee for Social Cohesion (CDCS), set up after the Strasbourg Summit, has had the main responsibility for the field and has promoted various activities related to children and families. Following the Programme for Children and its Forum for Children (1998-2000), the CDCS submitted terms of reference for a Forum for Children and Families to the Committee of Ministers for approval in 2001. The Forum has met twice yearly since April 2001 and has acted as a focal point for questions relating to children and families in Europe.

In relation to children and violence, the Forum organised a seminar on "Corporal punishment of children in the family" in November 2002 as a contribution to the Integrated Project on Violence (see above). Following this meeting, a handbook on "Eliminating Corporal Punishment: a human rights imperative for Europe's children" is to be published in 2005, with an overview of legislation in member states. In addition, a manual on how to organise public education campaigns based upon case studies and titled "Protecting children against corporal punishment – awareness-raising campaigns" was published in 2004.

The issue of violence against children and/or among children has been raised on many occasions within the Forum for Children and Families, in particular by young people under the age of 18 who have actively participated, on an equal basis with adults, in every meeting. Children have declared being very concerned by any kind of violence, physical or mental, in all settings: at home, at school, in care, during their leisure time, in media, in the community and in the city. In addition to the debate on corporal punishment, the Forum discussed in April 2004 the topic of emotional abuse and neglect of children by adults supposed to take care of them.

Following up the Forum's work, the CDCS has set up a new committee – **Committee of Experts on Children and Families (CS-EF)**. The CDCS has given to the CS-EF a new mandate to work on, the main aim of which will be to deal with "Supporting parents in the best interests of the child". Within this framework, the possibility of drawing up guidelines for peaceful parenting without the use of physical force is currently being considered. Two working parties were set up by the Committee: one on "Parenting skills, especially for preventing and combating violence affecting children", and the second on "Parenting of children at risk of social exclusion". The CS-EF and its working parties are aiming at producing guidelines to support parenting and enhance a non-violent upbringing. Children's views upon these issues will be collected. This work, to be carried on during 2005 – 2007, should fit into the general commitment of the Council of Europe to fight against all forms of violence against children.

7. New transversal three-year programme on Children and violence

The Committee of Ministers has approved a three-year (2005 – 2007) transversal project that will pursue three objectives: (1) assist member states in imple-

menting international standards at national and local levels, in particular the UN Convention on the Rights of the Child, the European Social Charter and the European Convention on the Exercise of Children's Rights; (2) by 2007, to propose a coherent and comprehensive set of instruments and methodological guidelines covering all aspects of the question as well as (3) to improve the visibility and impact of the Council of Europe's work in the field. There will be three priority fields: (1) the identification of strategies and measures aiming at the integration of the dimension on "children and violence" in the policies related to social exclusion, children in institutional care, education and media, abandoned, displaced and stateless children, family, in particular effective parenting and urban life and inter-community relations; (2) promotion of children's rights in general, notably within education systems, youth movements, social work and judicial proceedings and (3) effective legal protection of children against all forms of violence.

Notes

1 See the Council of Europe website at www.coe.int/

2 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia & Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, "The former Yugoslav Republic of Macedonia", Turkey, Ukraine, UK

3 "Sexual exploitation of children: zero tolerance", Report of the Social, Health and Family Affairs Committee, *Doc.9535*, 5 September 2002

4 "A campaign against trafficking in children to put a stop to the east European route: the example of Moldova", Report of the Social, Health and Family Affairs Committee, *Doc.9112*, 5 June 2001

5 "Abuse and neglect of children", Report of the Social, Health and Family Affairs Committee, *Doc.8041*, 17 March 1998

6 "A Europe-wide ban on corporal punishment of children", *Doc.9716*

7 "Violence against women in Europe", Report of the Committee on Equal Opportunities for Women and Men, *Doc.8667*, 15 March 2000

8 "Female genital mutilation", Report of the Committee on Equal Opportunities for Women and Men, *Doc.9076*, 3 May 2001

9 "Domestic slavery: Servitude, au pairs and mail-order brides", *Order 575*, and "Campaign to combat domestic violence in Europe", *Doc.9907*

10 "Abuse and neglect of children", Opinion of the Committee on Legal Affairs and Human Rights, *Doc.8076*, 24 April 1998

11 "Children", Report of the Committee on Legal Affairs and Human Rights, *Doc.7659*, 24 September 1996

12 Statutory Resolution (2000) 1 on the Congress of Local and Regional Authorities of Europe

13 Resolution (99) 50 on the Council of Europe Commissioner for Human Rights (Adopted by the Committee of Ministers on 7 May 1999, at its 104th Session, Budapest)

14 Adopted by the Committee of Ministers on 26 March 1985, at the 382nd meeting of the Ministers' Deputies

15 Adopted by the Committee of Ministers on 17 September 1987, at the 410th meeting of the Ministers' Deputies

16 Adopted by the Committee of Ministers on 17 September 1987, at the 410th meeting of the Ministers' Deputies

17 Adopted by the Committee of Ministers on 18 April 1988, at the 416th meeting of the Ministers' Deputies

18 Adopted by the Committee of Ministers on 15 January 1990, at the 432nd meeting of the Ministers' Deputies

19 Adopted by the Committee of Ministers on 9 September 1991, at the 461st meeting of the Ministers' Deputies

20 Adopted by the Committee of Ministers on 9 September 1991, at the 461st meeting of the Ministers' Deputies

21 "Analysis of the country reports – implementation of Recommendation No. R (91) 11", Professor Stewart Asquith, University of Glasgow. See May-Chahal, C. & Herczog, M. (coordinators) (2003), *Child sexual abuse in Europe*, Council of Europe Publishing, pp.40 and 209-211

22 Albania, Armenia, Austria, Azerbaijan, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Italy, Kazakhstan, Moldova, Netherlands, Norway, Portugal, Russian Federation, Slovak Republic, Sweden, Switzerland, Tajikistan, "the former Yugoslav Republic of Macedonia", UK

23 Adopted by the Committee of Ministers on 22 March 1993, at the 490th meeting of the Ministers' Deputies

24 Adopted by the Committee of Ministers on 22 November 1994, at the 521st meeting of the Ministers' Deputies

25 Adopted by the Committee of Ministers on 10 September 1997, at the 600th meeting of the Ministers' Deputies

26 Explanatory Memorandum, Recommendation Rec (1997) 13 on intimidation of witnesses and the rights of the defence, Adopted by the Committee of Ministers on 10 September 1997, at the 600th meeting of the Ministers' Deputies

27 Adopted by the Committee of Ministers on 30 October 1997, at the 607th meeting of the Ministers' Deputies

28 Adopted by the Committee of Ministers on 18 September 1998, at the 641st meeting of the Ministers' Deputies

29 Adopted by the Committee of Ministers on 19 May 2000, at the 710th meeting of the Ministers' Deputies

30 Adopted by the Committee of Ministers on 19 September 2001, at the 765th meeting of the Ministers' Deputies

31 Adopted by the Committee of Ministers on 31 October 2001, at the 771st meeting of the Ministers' Deputies

32 Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies

33 Adopted by the Committee of Ministers on 17 November 2004, at the 904th meeting of the Ministers' Deputies

34 Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies

35 Adopted by the Committee of Ministers on 16 March 2005, at the 919th meeting of Ministers Deputies

36 Document CM (2005) 24 Addendum, 15 February 2005

37 Adopted by the Assembly on 28 January 1983, 28th sitting

38 Adopted by the Assembly on 6 October 1987, 15th sitting

39 Adopted by the Assembly on 1 February 1990, 27th sitting

40 Adopted by the Assembly on 25 September 1996, 28th sitting

41 Adopted by the Assembly on 24 January 1996, 4th sitting

42 Adopted by the Assembly on 23 April 1997, 13th sitting

43 Adopted by the Assembly on 26 June 1997, 22nd sitting

44 Adopted by the Assembly on 23 April 1998, 15th sitting

45 Adopted by the Assembly on 28 January 2000, 8th sitting

46 Adopted by the Assembly on 3 April 2000, 9th sitting

47 Adopted by the Assembly on 7 April 2000, 16th sitting

48 Adopted by the Assembly on 3 April 2000, 9th sitting

49 Adopted by the Assembly on 29 June 2000, 23rd sitting

50 Adopted by the Assembly on 26 January 2001, 8th sitting

51 Adopted by the Standing Committee, 22 May 2001

52 Adopted by the Assembly on 26 June 2001, 18th sitting

53 Adopted by the Assembly on 27 June 2001, 21st sitting

54 Adopted by the Assembly on 24 September 2001, 25th sitting

55 Adopted by the Assembly on 27 September 2002, 32nd sitting

56 Adopted by the Assembly on 21 January 2002, 1st sitting

57 Adopted by the Assembly on 24 April 2002, 13th sitting

58 Adopted by the Standing Committee, acting on behalf of the Assembly, on 29 May 2002

59 Adopted by the Assembly on 26 June 2002, 21st sitting

60 Adopted by the Assembly on 2 April 2003, 13th sitting

61 Adopted by the Assembly on 25 June 2003, 21st sitting

62 Adopted by the standing Committee, acting on behalf of the Assembly, on 25 November 2003

63 Adopted by the Assembly on 25 June 2003, 21st sitting

64 Adopted by the Assembly on 31 January 2003, 8th sitting

65 Adopted by the Assembly on 24 June 2004, 23rd sitting

66 Adopted by the Assembly on 28 April 2005, 14th sitting

67 Adopted by the Assembly on 25 April 2005, 9th sitting

68 See articles 1 and 2 of Resolution (99) 50 on the Council of Europe Commissioner for Human Rights

69 *CommDH (2003) 10*, Report on the visit to the Czech Republic, 24-26 February 2003, paras.38-9 and 44; *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, paras.37-41 and 60(2); *CommDH (2002) 13*, Report on the visit to Romania, 5-9 October 2002, pp.11-12; *CommDH (2002) 6*, Report on the visit to Hungary, 11-14 June 2002, paras.18-21 and 55(4); *CommDH (2001) 5*, Report on the visit to the Slovak Republic, pp.6-9; *CommDH (2001) 1*, Report on the visit to Andorra, 10-12 January 2001, p.7; *CommDH (2000) 4*, Report on the visit to Moldova, 16-20 October 2000, p.4

70 *CommDH (2003) 10*, Report on the visit to the Czech Republic, 24-26 February 2003, paras.5, 18-21 and 44; *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, para.29; *CommDH (2001) 7*, Report on the visit to Finland, 4-7 June 2001, p.5; *CommDH (2001) 5*, Report on the visit to the Slovak Republic, pp.3-5 and 9

71 *CommDH (2001) 2*, Report on the visit to Spain and the Basque country, 5-8 February 2001

72 *CommDH (2003) 10*, Report on the visit to the Czech Republic, 24-26 February 2003, paras.40-1; *CommDH (2002) 13*, Report on the visit to Romania, 5-9 October 2002, pp.6 and 8-11; *CommDH (2002) 6*, Report on the visit to Hungary, 11-14 June 2002, paras.22-3

73 *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, paras.4, 14 and 32-3

74 *CommDH (2002) 13*, Report on the visit to Romania, 5-9 October 2002, pp.6, 8-9 and 17

75 *CommDH (2001) 7*, Report on the visit to Finland, 4-7 June 2001, p.5

76 *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, paras.42-6 and 60(2); *CommDH (2002) 13*, Report on the visit to Romania, 5-9 October 2002, pp.9-10 and 17

77 *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, paras.60(2) and 60(8); *CommDH (2001) 5*, Report on the visit to the Slovak Republic, p.13

78 *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, para.60(2)

79 *CommDH (2003) 4*, Report on the visit to Poland, 18-22 November 2002, para.60(8)

80 *CommDH (2003)10*, Report on the visit to the Czech Republic, 24-26 February 2003, para.44

81 *CommDH (2003) 7*, 3rd Annual Report. January to December 2002, pp.27, 47-8, 86, 130-1, 137, 149-50, 154, 157, 171-2, 177 and 199; *CommDH (2002) 2*, 2nd Annual Report, April 2001 – December 2001, pp.60-1, 62 and 122; *CommDH (2001) 9*, Annual Report, 15 October 1999 – 1 April 2001, p.72

82 *CommDH (2003) 7*, 3rd Annual Report. January to December 2002, pp.27, 47, 50, 63, 147-8, 157, 172-3, 177 and 314

83 *CommDH (2003) 7*, 3rd Annual Report. January to December 2002, pp.50-1

84 *CommDH (2003) 13*, Opinion on certain aspects of the proposal by the Government of Finland for a new Aliens Act, paras.14 and 21

85 *CommDH (2003) 12*, Recommendation of the Commissioner for Human Rights concerning certain aspects of law and practices relating to sterilization of women in the Slovak Republic, para.38

86 *CommDH (2003) 12*, Recommendation of the Commissioner for Human Rights concerning certain aspects of law and practices relating to sterilization of women in the Slovak Republic, paras.27 and 40

87 See www.coe.int/T/E/Integrated_Projects/violence/

88 A detailed version of these principles can be found in the Final Report of the Integrated Project "Responses to violence in everyday life in a democratic spciety", *Confronting everyday violence in Europe:an integrated approach. Council of Europe, Strasbourg, 2004.*

2

COUNCIL OF EUROPE HUMAN RIGHTS MECHANISMS AND VIOLENCE AGAINST CHILDREN

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms

1.1 The Convention

The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) primarily guarantees civil and political rights. It has been ratified by 45 of the 46 member states of the Council of Europe.[89] The Convention protects the rights of everyone, including children. Although it makes very little reference to children,[90] some of its articles have been used effectively by the Commission and the Court to protect and promote children's rights in Europe. The main articles relevant to violence against children are:

Article 2 (Right to life). Every person's life shall be protected by law.

Article 3 (Prohibition of torture and inhuman or degrading treatment or punishment). This Article states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 (Prohibition of slavery and forced labour). Under this article, no one may be held in slavery or servitude or, with certain exceptions, required to perform forced or compulsory labour. This has relevance, for example, to the trafficking and related exploitation of children.

Article 5 (Right to liberty and security). This states that everyone has the right to liberty and security of person and that none shall be deprived of his or her liberty except in certain cases of lawful detention, including "the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority" (para. 1d).

Article 6 (Right to a fair trial). This Article states that everyone facing a criminal charge is entitled to "a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (para. 1). Publicity will be limited where the interests of juveniles require this (para. 2). Paragraph 3 guarantees minimum procedural rights applicable to everyone charged with a criminal offence.

Article 8 (Right to respect for private and family life). The right to respect for private life in paragraph 1 includes the right to physical integrity. Paragraph 2 prohibits "interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". The Article can protect children from violence directly by the right to physical integrity, which must be respected as part of private life, and indirectly in the sense that justification for interfering with family life must be considered in relation to the need to protect the child.

In addition, **Article 1 (Obligation to respect human rights)** states that Contracting Parties should ensure that the rights of the Convention apply to "everyone within their jurisdiction", and **Article 14 (Prohibition of discrimination)** states that this should be "without discrimination on any ground". Article 14 is not a free-standing anti-discrimination provision but can be used together with any other Article to challenge discrimination in relation to the rights safeguarded by

the Convention – all articles apply to all persons without discrimination, including children. **Article 13 (Right to an effective remedy)** requires an effective remedy for everyone whose rights and freedoms as set out in the Convention have been violated.

Article 2 of Protocol No. 1 to the Convention (Right to education) stipulates that the State must respect the rights of parents to ensure education and teaching in conformity with their own religious and philosophical convictions. This may include refusal by parents that corporal punishment be applied to their children.

Article 5 of Protocol No. 7 (Equality of spouses) provides that the enjoyment of equality of rights and responsibilities between spouses does not prevent States from taking such measures as are necessary in the interests of the children.

Protocol No. 6 abolished the **death penalty**, except in time of war; **Protocol 13** put an end to this penalty **in all circumstances**.

Protocol No. 12 introduced, after its entry into force on 1st April 2005, a **general prohibition of discrimination** on any ground in relation to any right set forth by law (not just the Convention rights).

1.2 Case law of the European Court of Human Rights

This section while not providing a full analysis of the case law, highlights cases which shed particular light on the interpretation and application of the articles of the Convention that have been relied upon in cases of violence against children, notably articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment or punishment), 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life).

1.2.1 General principles

Much of the case law developed by the European Court of Human Rights concerning violence against children, has centred on the issue of corporal punishment, but has direct relevance for all violence against children.[91] A series of judgments from the Court, dating back to 1978, has challenged the corporal punishment of children in penal systems, schools and in some cases in the family home. Cases of corporal punishment were largely based on Article 3 of the Convention which prohibits torture and inhuman or degrading treatment or punishment. It has been established that to qualify as a breach of this absolute prohibition, ill-treatment must reach a certain level of severity. However, the assessment of whether this level is reached is a relative one, depending "on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim" (*Ireland v UK*, 1978[92]). Other violence-related cases, some of them dating back to the 1960s, have also relied heavily on Article 8 of the European Convention. It has been well established that the right to respect for private life includes respect for physical integrity (e.g. *X & Y v the Netherlands*, 1985[93]), and that the protection of children from violence may both permit proactive measures by States under paragraph 2 of Article 8 which justifiably interfere with family life (e.g. *X & Y v Austria*, 1962[94], guardianship and contacts with children after divorce and *O. v. UK* 1987, placement of children) and create positive obligations for the state under Articles 2, 3 and 8 of the Convention requiring both the effective investigation on the allegation of ill-treatment and the establishment and effective application of a criminal law system which punishes all forms of rape and sexual abuse (*M.C. v Bulgaria*, 2003[95]). However, provided that such a criminal system exists and is effective, limitations may be set up in respect of parallel civil proceedings for damages arising from rape or sexual abuse (e.g. *Stubbings and Others v. the UK*, 1996[96]).

1.2.2 Domestic violence

In relation to domestic violence, the Court's and Commission's case-*law is twofold. In the first place, on the basis of Article 8 § 2 of the Convention it allows States to take measures interfering with family life to protect the child's physical and sexual integrity; and, secondly, on the basis of Articles 2 or 3 of the Convention, creates positive obligations for the State requiring preventive action by the competent authorities, effective investigation of any allegation of ill-treatment within the family sphere and finally the prosecuting and punishment of the abusers.

Interference with family life

Both the Commission and the Court have usually accepted that parents' violence, neglect or sexual abuse against their children may justify the latter's placement into public care, suspension of parental rights, including custody, or restrictions on the parents' contacts with their children. With some exceptions[97], this kind of measures is usually considered by the Court to be in the best interests of the child and so a large margin of appreciation is recognised to States in this respect.

In *X & Y v Austria* (1962)[98] the Commission found it compatible with the Convention that a father who had assaulted his children, was denied contact with them, even when the children themselves complained it breached their right to family life. In *X v the Netherlands* (1963),[99] the award of custody of a child to her mother was found to be consistent with Article 8 because her father had been convicted of indecently assaulting her. However, *Nowacka v Sweden* (1989)[100] later illustrated that even when the ill-treatment or abuse has not been judicially determined in the domestic courts, evidence that it has occurred can still be considered justifiable for interference in family life. The Court (below) had already adopted this approach in several cases concerning the placement of children into public care, as well as in cases concerning neglect, physical and sexual abuse by parents or the mother's partner, where the social services had not taken adequate measures (e.g. *O. v. UK*, 1987 cited above and *E and Others v UK*, 2002[101]).

In several cases in the UK concerning the placement of children into public care and the restrictions

on the parents' contacts with their children, the Court did not criticise the measures taken as such, which it considered to have been taken within the State's margin of appreciation. However, it considered that, having regard to the impact of these decisions on family life, the decision-making process had to be such as to secure that the views and interests of the natural parents should be made known to and duly taken into account by the competent authority and that they should be able to exercise in due time any available remedies. The Court may also have regard in this context to the length of the decision-making process or of any related judicial proceedings.[102]

This reasoning has been taken up subsequently by the Court in several judgments. For instance, in the case of *Covezzi and Morselli v Italy* (2003)[103] the applicants' children were taken into pubic care, after a member of the family had denounced repeated sexual abuses by several adult members of the family against the applicants' children and their cousins. The adults in question, including the applicants, were later convicted for sexual abuse on minors and lost their parental rights. The Court considered that the children's urgent placement without hearing the applicants was based on relevant and sufficient reasons, as were the restrictions on contacts, having regard to the mother's lack of co-operation with the social services and the consistent refusal of the children to return to their home. However, in the Court's view, the length and shortcomings of the proceedings before the children's court left the parents without any remedy to contest the temporary placement decision. In a recent case against the United Kingdom[104] concerning the taking into care of a 17 year old girl's child, on suspicion that he had been sexually abused by her boyfriend, the Court arrived at the conclusion that the local authority's refusal to disclose to the mother a video of the child's interview with a psychologist deprived her of an adequate involvement in the decision-making process.

Obligation to protect children

The case of A v UK (1998),[105] the first on parental corporal punishment considered by the Court, is also one of the most significant cases concerning corporal punishment and parental violence against children, both in challenging the acceptability of legal defences for the use of corporal punishment and in emphasising that state responsibility for protection extends to the family home; that states must ensure that laws and other measures provide adequate protection including effective deterrence. The applicant was a boy who had been repeatedly caned by his stepfather, causing significant bruising. The stepfather was prosecuted in the UK for causing actual bodily harm but was found not guilty on the grounds that the punishment was "reasonable chastisement". The European Court unanimously found that the punishment violated Article 3 of the Convention, concluding that the law "did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3" (para. 23). Citing X and Y v Netherlands (1985, see below) and, significantly, articles 19 and 37 of the UN Convention on the Rights of the Child.[106] The judgment stated: "Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity" (para. 22).

This case-law has subsequently been followed in several cases concerning neglect, physical and sexual abuse within the family sphere. For instance in *Z and others v UK* (2001)[107], the applicants were four siblings who, between the initial referral to social services in October 1987 and the final emergency foster care placement in June 1992, suffered severe neglect and emotional abuse at the hands of their parents, despite continuous monitoring and reporting by social services during that period. Proceedings against the local authority under domestic law, claiming damages for negligence on the basis that the authority had failed to have proper regard for the children's welfare and to take effective steps to protect them, ultimately failed because it was ruled that public policy considerations were such that local authorities should not be held liable in negligence in respect of the exercise of their statutory duties safeguarding the welfare of children. The Court held that there had been a violation of articles 3 and 13 (the right to an effective remedy) of the European Convention, and made substantial awards in respect of pecuniary and non-pecuniary damages.

In the case of E and others v UK (2002),[108] three sisters reported suffering physical and sexual abuse from their mother's partner, WH, over a period of at least 10 years between 1967 and 1989, and their brother suffered from physical abuse, assaults and threats of violence, despite visits by social services and disclosures to social services, the police and a psychiatrist. WH was convicted in 1977 and 1989 in respect of seven offences. In 1992, psychiatric reports stated that the three sisters showed symptoms consistent with severe post traumatic stress disorder. The applicants applied for compensation in the UK in respect of the abuse they suffered, largely unsuccessfully. They were denied an investigation into their allegations of negligence and maladministration by the local authority due to the lapse in time since the events occurred. The Court held that there had been a violation of articles 3 and 13, and made awards for pecuniary and non-pecuniary damages. The Judgment stated that "the pattern of lack of investigation, communication and co-operation by the relevant authorities disclosed in this case must be regarded as having had a significant influence on the course of events and that proper and effective management of their responsibilities might, judged reasonably, have been expected to avoid, or at least, minimise the risk or the damage suffered. There has, accordingly, been a breach of Article 3" (paras. 100 and 101). The Judgment illustrates that the positive obligation to protect children under Article 3 extends beyond imposing criminal sanctions for such ill-treatment and requires state intervention in accordance with the fulfilment of statutory duty.

In its rulings in both *Z and others v UK and E and others v UK*, the Court re-iterated that Article 3 enshrined one of the most fundamental values of a democratic society, prohibiting in absolute terms tor-

ture or inhuman or degrading treatment or punishment. States which had ratified the Convention were bound to ensure that individuals within their jurisdiction were not subjected to such treatment, including that administered by private individuals. The measures taken should provide effective protection, especially of children and other vulnerable people, and include steps to prevent ill-treatment of which the authorities had or ought to have had knowledge. There was no question that the neglect and abuse suffered by the applicants reached the level of severity prohibited by Article 3.

The first case to have been examined by the Court concerning sexual abuse within the family (and also within the school sphere), *Stubbings and Others v. the United Kingdom*[109] did not concern Article 3, but Article 6 of the Convention, and the procedural requirements necessary for an effective protection of the children's rights in this context. The relevant limitation periods under English law prevented victims of child sexual abuse from commencing civil proceedings against the abuser (normally the father or stepfather) after six years from the date of their eighteenth birthday. However, the Court considered that the very essence of the right to access to court was not impaired because English law allowed a six-year period for initiating civil proceedings and a criminal prosecution, subject to the need for sufficient evidence, could be brought at any time.

In a recent case against the United Kingdom, the applicants alleged that they had been denied access to a court because their actions against the local authority claiming damages for negligence and breach of statutory duty, for failure to investigate and take preventive measures in relation to their allegations of abuse, were struck off the list on the basis of a decision by the House of Lords that such a statutory duty of care did not exist under English law. The Court found no violation of Article 6 but considered, under Article 13 of the Convention, that the applicants had not had an appropriate remedy for obtaining a determination of their allegations that the local authority had failed to protect them from abuse.

1.2.3 Violence in the school sphere

Violence in the school sphere has been dealt with by the Commission and Court in several cases concerning the use of corporal punishment by teachers or headmasters.

In a case of school caning (*Warwick v UK*, 1986[110]) which did not reach the Court, the Commission found that the institutional nature of school was not of the same order as that of the judicial setting, illustrating the importance of the setting in which the punishment takes place, although this did not preclude the finding that the punishment was sufficiently degrading to breach Article 3. A similar decision by the Commissions was given in *Y v UK* (1991),[111] but this also found that the treatment was unacceptable regardless of who administered it and what pedagogical reasons were given.

Campbell and Cosans v UK (1982)[112] concerned two Scottish mothers who alleged that the corporal punishment used in their sons' schools was contrary to Article 3. This allegation was rejected by the Court since neither boy had actually received corporal punishment, establishing that a breach of Article 3 requires the humiliation to be experienced rather than only threatened, though the Commission refused to exclude the possibility of adverse effects on young children of the use of violence around them. The Court did find, however, that since the pupil had been suspended from his school when he refused to accept corporal punishment, he had been denied his right to education and the UK had failed to respect the parents' philosophical convictions under Article 2 of Protocol 1 to the Convention.

In *Costello-Roberts v UK* (1993)[113] the Court found that the punishment of a boy in a UK private school, who was hit with a soft-soled shoe on his clothed buttocks, did not reach the level of severity to breach Article 3 of the Convention. This judgment was by five votes to four, and the Court emphasised that it did not wish to be taken as approving in any way of school corporal punishment and that the treatment of the boy was at or near the borderline. Nevertheless, the case established that even in a private setting the responsibility of the state is engaged, if a violation of one of the Convention rights results from non-observance of its obligations. It found that a school's disciplinary regime fell under the scope of the right to education, and the state is responsible for that right for all children, whether in public or private school. State responsibility is also incurred, if punishment violates Article 8, although this was deemed not to have occurred in this case.

Challenges to the Court's position on corporal punishment in schools by appealing to the right to respect for family life (*Seven Individuals v Sweden*, 1982[114]) and for freedom of religion and family life (*Philip Williamson and others v UK*, 2000[115]) have been unsuccessful.

1.2.4 Protection of children from physical and sexual abuse

The case of *X & Y v the Netherlands* (1985),[116] concerning the impossibility of criminal proceedings being initiated against the perpetrator of a sexual assault of a 16 year old girl with mental disabilities because of the legal requirement that the victim make the complaint herself, established the principle that physical integrity is a component of respect for private life under Article 8. The Court found that there is a positive obligation to respect private life, the nature of which will depend on the particular aspect of private life at issue. In the context of a sexual abuse, a criminal system allowing for the punishment of the abusers was required.

In the case of *Osman v UK* (1998)[117], the first applicant's husband was shot dead by a former teacher of her son, the second applicant, who was wounded in the incident, despite what the applicants complained were the clear warning signs that the perpetrator represented a serious threat to the physical safety of the family. Referring to Articles 2, 6, 8 and 13 of the Convention, the applicants alleged that there had been a failure by the police to protect the lives of the father

and the son and to prevent the harassment of the family, and that they had no access to court or effective remedy in respect of that failure. The Court considered that there had been no violation of Article 2 (by seventeen votes to three), arguing that although this Article implies a positive obligation on the state to take preventive measures to protect an individual whose life is at risk from the criminal acts of another individual, it is necessary to establish that the authorities knew or ought to have known of such risk and failed to take reasonable measures to avoid this risk, which was not so in this case. The same conclusion applied to the finding of non-violation of Article 8. However, the Court unanimously found that there had been a violation of Article 6 § 1 – the UK court had failed to give proper consideration to the applicants' allegations against the police and had interpreted the law in a way tantamount to giving the police immunity, thus denying the applicants a fair and public hearing. Article 13 was not considered a separate issue, given the finding of a violation of Article 6.

1.2.5 Juvenile Justice

The Court has examined the question of the protection of children in the sphere of criminal justice both under Articles 5 and 6, as well as Article 3 of the Convention.

In *Tyrer v UK* (1978)[118] the Court ruled that judicial birching of a juvenile breached Article 3 of the European Convention. The fact that it was the cumulative effect of many factors which made the punishment degrading and humiliating enough to be covered by Article 3 is relevant to other potential cases of ill-treatment and abuse. The judgment was also influenced "by the developments and commonly accepted standards in the penal policy of the Member States of the Council of Europe" (para. 31). There was a strong emphasis on the institutional nature of the punishment – in the context of the judicial system.

T v UK (1999)[119] and *V v UK* (1999)[120] relied on articles 3, 5, 6 and 14 of the Convention. These cases concerned the trial and sentencing of two ten-year old boys, *T* and *V*, who had murdered a two-year old boy in a particularly horrific way. It was argued that the huge media publicity given to their case in the UK, the conducting of the trial over three weeks with the formality of an adult criminal trial, albeit with some modifications, the publication of the boys' identities following the trial, and the process of establishing the duration of the prison sentence, including the discretion left to the Home Secretary in fixing it after eight years' detention, denied the boys a fair hearing and violated their rights not to be subjected to inhuman or degrading treatment or punishment. In its judgment, the Court cited a number of international standards relating to juvenile justice, namely the UN Convention on the Rights of the Child and concerns raised by the Committee on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the International Covenant on Civil and Political Rights, and the Committee of Ministers of the Council of Europe Recommendation No. R (87) 20 (see Part I, section 2 above). The Court found that there had been a violation of articles 6, in respect of the trial and of the fixing of the sentence, and 5 § 4; it was considered that there had been no violation of Articles 3 and 5 § 1, and no separate issue under Article 14.

The Court considered that, given the lack of consensus in Europe over the age of criminal responsibility (10 years in the UK), the attribution of criminal responsibility to the boys did not in itself breach Article 3. In deciding there had been no violation of Article 3 in relation to the trial itself, the Court noted that there was no intention by the authorities to humiliate the applicants or cause suffering, stating: "the Court is not convinced that the particular features of the trial process as applied to him caused, to a significant degree, suffering going beyond that which would inevitably have been engendered by any attempt by the authorities to deal with the applicant following the commission by him of the offence in question" (para. 77, T *v UK*; para. 79, *v. UK*). However, there were significant dissenting opinions on this issue, with five Judges stating:

"The combination in this case of (i) treating children of ten years of age as criminally responsible, (ii) prosecuting them at the age of eleven in an adult court, and (iii) subjecting them to an indeterminate sentence, reached a substantial level of mental and physical suffering…. Article 3 guarantees an absolute right to protection against inhuman and degrading treatment. Its focus is the suffering and the humiliation a person is subjected to. There is no reason to presume that the minimum level of suffering qualifying as ill-treatment cannot be inflicted by a court exercising its lawful authority in the course of a trial, especially where, for a number of reasons, that trial amounts to a public humiliation…. [W]e are of the view that the suffering or humiliation of the person is wholly independent of whether or not the State authorities acted with the intention of humiliating the person, or causing suffering…. We would emphasise that for Article 3 what counts is not the subjective element (motive or purpose) on the part of the State, but the objective effect on the persons involved."[121]

The Judges also differed in their opinion on the age of criminal responsibility, arguing that in the majority of European states the age of criminal responsibility is much higher than in the UK, showing a clear tendency amounting to a general standard whereby offenders aged from 10 to about 13 or 14 are given educational measures with a view to reintegration into society and do not assume full criminal responsibility until the age of 18 or above.

The Court found that Article 6 had been violated. The judgment recalls the Commission's view that "the public trial process in an adult court with attendant publicity must be regarded in the case of an eleven-year-old child as a severely intimidating procedure and concluded that, having regard to the applicant's age, the application of the full rigours of an adult, public trial deprived him of the opportunity to participate effectively in the determination of the criminal charges against him, in breach of Article 6 § 1" (para. 82, *T v UK*; para. 84, *V v UK*). It states that the Court:

"… agree[s] with the Commission that it is essential that a child charged with an offence is dealt with

in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.

"It follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition…." (paras. 84 and 85, *T v UK*; paras. 86 and 87, *V v UK*).

In *T*'s case, the Court "does not consider that it was sufficient for the purposes of Article 6.1 that the applicant was represented by skilled and experienced lawyers" (para. 89). In *V*'s case, considerable psychiatric evidence to the Court attested to the distress of the boy throughout the trial. The Court concluded in both cases that the boys had been unable to effectively participate in the criminal proceedings before them, and were therefore denied a fair hearing under Article 6 § 1.

2. The European Social Charter and the Revised European Social Charter[122]

2.1 The European Social Charter

The European Social Charter (1961) is a Council of Europe treaty that protects human rights. The 1996 Revised European Social Charter which came into force in 1999 is gradually replacing the initial 1961 treaty. Thirty-seven States are bound by the Charter (19 by the Revised Charter and 18 by the 1961 Charter). The main articles relating to violence against children are articles 7 and 17.

Article 7 (The right of children and young persons to protection). This article concerns protection at work for young people, and provides for minimum ages to admission to employment (paras.1 and 2), the right to continue to benefit fully from compulsory education (para. 3), limitations on working hours in accordance with needs of children's development, particularly their need for vocational training (para. 4), the right to a fair wage (para. 5), the right to undertake vocational training as part of the working day (para.6), the right to paid holiday (para. 7), the exemption from night work, with few exceptions (para. 8), and the right to medical control (para. 9). Paragraph 10 goes beyond employment in scope and is closely related to article 17, as it concerns the right to "special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work".

Article 17 (The right of mothers and children to social and economic protection). This article states: "With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services."

2.2 The Revised European Social Charter

The Revised European Social Charter (1996, in force from 1999) which is intended to eventually replace the 1961 charter, has been ratified by 19 member states.[123] Article 7 remains the same except that the minimum age for dangerous occupations is now fixed at 18 (unspecified before). New paragraphs are added to article 17 relating to education for children, and article E on non-discrimination has been added.

Article 7 (The right of children and young persons to protection). As for 1961 Charter (see above).

Article 17 (The right of children and young persons to social, legal and economic protection). This article in the revised Charter explicitly states that "With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed … to protect children and young persons against negligence, violence or exploitation." (para. 1b)

Article E (Non-discrimination). This prohibits discrimination in the enjoyment of rights in the Charter "on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".

2.3 The European Committee of Social Rights

The European Committee of Social Rights (referred to below as "the Committee") ascertains whether countries have honoured the undertakings set out in the Charter. Its fifteen independent, impartial members are elected by the Council of Europe's **Committee of Ministers** for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter (Article 24 of the Charter, as amended by the 1991 **Turin Protocol**).

2.3.1 Interpreting the Charter

When the Charter was originally drawn up, it was intended that the provisions of article 7 would apply to children having reached school age, and the provisions in article 17 to children of pre-school age.[124] In its fifth Conclusions, the European Committee of Social Rights – which supervises conformity of the law and practice of states with the European Social Charter and Revised Charter (see below) – again noted the broader scope of paragraph 7.10 in comparison with paragraphs 7.1 to 7.9 and urged Contracting Parties in their reports to give "the fullest possible information on measures specifically designed to protect children and young persons against physical and moral dangers, children and young persons in the family, at school and in society as a whole as well as in the world of work, from the age at which they are required to attend school until the age at which they become adults".[125] The Explanatory Report to the Revised Charter explains that arti-

cle 17 applies to all children under 18, without prejudice to provisions in article 7.10.

In its General introduction to Conclusions XV-2 (2001), the Committee developed and clarified its interpretation of article 17 in the light of the case law developed under other international instruments regarding the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights, and of developments in national legislation. It stated:

"As the scope of Article 7 paras. 10 and 17 is to a large extent overlapping, the Committee has decided, with respect to the Contracting Parties having accepted both provision to deal, inter alia, with the following issues under Article 7 para. 10:

- Protection of children against moral dangers at work and outside work;
- Involvement of children in the sex industry and in begging.

The following issues will mainly be dealt with under Article 17:

- Establishment of parentage and adoption;
- Children and the law;
- Children in public care;
- Protection of children from ill-treatment and abuse."[126]

The Committee has further developed the content of Article 7.10 in Conclusions 2004 Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies. Trafficking of human beings is also covered because it is a form of exploitation. In order to comply with Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions. An effective policy against commercial sexual exploitation of children shall cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. To implement such a policy, Parties shall adopt legislation, which criminalize all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above. Parties shall prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, begging, pickpocketing, servitude or the removal of organs, and shall take measures to prevent and assist street children. Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, Parties should also adopt measures in law and in practice to protect children from their misuse. Since the Internet is becoming one of the most used tool for the spread of child pornography, the Committee considers that Internet service providers should be responsible for controlling the material they host, securing the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee also made general observations under Article 17 concerning corporal punishment, the placement of children in institutions, and young offenders.

- *Corporal punishment*

The Committee observed in its General introduction to the fifteenth Conclusions, that while it had not previously criticised governments for not clearly prohibiting corporal punishment, it had requested information about legislation and practice in this respect. Having observed that the UN Committee on the Rights of the Child encourage states to reform their legislation to prohibit all corporal punishment, including in the family, and in the light of the Judgement in the *A v UK* case by the European Court on Human Rights and of the Council of Ministers' condemnation of corporal punishment in Recommendation No.R (90)2, the Committee stated that it "attaches great importance to the protection of children against any form of violence, ill-treatment or abuse, whether physical or mental". Furthermore, it added:

"The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence. The Committee does not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved.

"Moreover, in a field where the available statistics show a constant increase in the number of cases of ill-treatment of children reported to the police and prosecutors, it is evident that additional measures to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not.

"For these reasons, the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law."[127]

- *Placement of children in institutions*

The Committee has long been concerned with the situation of children in institutions and in this general observation stated that it considers that "any restrictions or limitations of custodial rights of parents should be based on criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family". However, it also acknowl-

edges "the positive obligation of the states concerned to take measures, such as foster family placement, to protect children against dangers to which they may be exposed by their families or close surroundings". Referring to article 20 of the UN Convention on the Rights of the Child,[128] the Committee states that long term care of children outside the home should be primarily in foster families, and that long term placement of very young children in residential units should be avoided as far as possible. These priorities should be reflected in the national organisation of public care. Regarding those children who will nevertheless be placed in institutions, the Committee states:

"Children placed in institutions shall be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate, institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially….

"Fundamental rights and freedoms such as right to integrity, privacy, secrecy of mail and telephone conversations, protection of property and contacts with persons close to the child shall be guaranteed in legislation also for children living in institutions. Only the restrictions necessary for the security, physical and mental health and development of the child or the health and security of the others are admissible. The conditions for any restrictions to the freedom of movement and for isolation as a disciplinary measure or punishment, should also be laid down in legislation and be limited to what is necessary for the purpose of the upbringing of the young person."[129]

• *Young offenders*

In connection with young offenders, article 17 requires that:

"… the procedure with respect to children and young persons must be suitable for them and that they must be afforded the same procedural guarantees as adults, although proceedings involving minors should be conducted rapidly. Moreover, minors should as a rule not be held on remand in custody, and if so only for serious offences and for a short duration. Furthermore, minors should in such case be kept separate from adults."[130]

Referring to the Council of Ministers' Recommendation No. R (87) 20, the Committee states that prison sentences should be exceptional for young offenders and should be for a short duration only, laid down by a court. Young offenders should be separated from adult prisoners.

2.3.2 Monitoring the implementation of the Charter

Every year the States Parties submit a **report** indicating how they implement the Charter in law and in practice. Each report concerns some of the **accepted provisions** of the Charter.

The European Committee of Social Rights examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as "**conclusions**", are published every year.

If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a **recommendation** to that state, asking it to change the situation in law and/or in practice. The Committee of Ministers' work is prepared by a **Governmental Committee** comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers' organisations and trade unions[131].

A **system of collective complaints** was introduced under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995, in force from 1998), and as at 23 June 2003 had been accepted by 13 member states.[132] Trade unions, employers' organisations (European and national) and NGOs[133], under the collective complaints procedure, may appeal to the ECSR where they consider the Charter or the Revised Charter is not respected in a state that has ratified this Protocol. The Committee examines the complaint and, if the formal requirements have been met, declares it admissible. Once the complaint has been declared admissible, a written procedure is set in motion, with an exchange of memorials between the parties. The Committee may decide to hold a public hearing. The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a **report**, which is made public within four months of its being forwarded. Finally, the Committee of Ministers adopts a **resolution**. If appropriate, it may **recommend** that the state concerned take specific measures to bring the situation into line with the Charter.

In 2003, five collective complaints were submitted concerning states' failure to comply with article 17, specifically the lack of explicit legal prohibition of all corporal punishment of children.[134] In each case, the complaint alleges that the state concerned "has not effectively prohibited all corporal punishment of children, nor has it prohibited any other form of degrading punishment or treatment of children and provided adequate sanctions in penal or civil law".[135] These five complaints were declared admissible by the European Committee of Social Rights on 10 December 2003. The Committee found a violation of Article 17 in three of the complaints: in OMCT v. Greece Collective complaint No. 17/2003 the Committee found that there was a breach of Article 17 on the grounds that corporal punishment was not adequately prohibited in the home, in secondary schools and in institutions caring for children. It highlighted that even if violence against the person is punished under criminal law provisions and subject to increased penalties where the victim is a child, this does not constitute sufficient prohibition to comply with Article 17§1 of the Revised Charter. The Committee found that the legal provisions relied upon by the Greek government did not constitute an adequate legal basis. In OMCT v. Belgium Collective complaint No. 21/2003 the Committee reached a similar decision; it found that the law did not adequately prohibit all forms of violence,

including corporal punishment by parents and "other persons", including for educational purposes and therefore the situation in Belgium was in violation of Article 17 of the Charter. Likewise the Committee found Ireland to be in violation of Article 17, in OMCTv. Ireland Collective complaint No. 18/2003. The Committee noted in the decision that the corporal punishment of children within the home is permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement, although the criminal law will protect children from very serious forms of violence. As regards the situation of children in foster care, residential care and certain child minding settings, the Committee noted the existence of guidelines, standards and inspections, etc. but noted that these did not have the force of law and therefore the common law defence of reasonable chastisement remained prima facie applicable.

The Committee found that there was no violation in the cases of OMCT V. Italy Collective complaint No. 19/2003 and OMCT v. Portugal Collective complaint No. 20/2003. As regards the situation in Italy the Committee noted that the law (both criminal law and civil law) as interpreted by the courts adequately prohibited all forms of violence regardless of where is occurs or to the identity of the alleged perpetrator. Similarly in Portugal the Committee noted that the law as interpreted by the Supreme Court was sufficient.

There is no right of individual appeal under the European Social Charter. Proposals have been made to include certain of the social and economic rights in the Charter in the European Convention on Human Rights, thus enabling individual appeal to the European Court on Human Rights, or to add an individual petition system to the Charter but states have not yet accepted these solutions.

2.3.3 Conclusions of the Committee

In its 2001 Conclusions relating to article 7.10 of the European Social Charter, the Committee requests further information on the extent of the problem of sexual exploitation of children,[136] legislation prohibiting use of children in sex industry[137] and the supervisory system and sanctions accompanying this prohibition,[138] any other measures to protect children from sexual exploitation (such as those in the Council of Ministers' Recommendation Rec 2001/16)[139] and the success of those measures.[140] It also asks for information on efforts to prevent begging and to assist street children and beggars[142], and for statistics related to street children[143] and illegal child labour.[144]

- In its 2001 Conclusions relating to article 17 of the Social Charter, in connection with **children in public care** the Committee expressed particular concern at the placement of children in care being in institutions rather than fostering and alternatives,[145] and at the general situation of children in residential care,[146] and repeatedly requested information on the different types of alternative care available, including the different types of institutions that exist, and the numbers of children involved and their distribution among the different forms of care.[147] Regarding institutions, the Committee also requested information on: relevant regulations and monitoring systems;[148] the complaints mechanisms available for children in care;[149] the conditions under which institutions could interfere with personal integrity and other rights;[150] the criteria and procedures for removing child from parents;[151] disciplinary measures applied to children in care;[152] and procedures for reviewing placements in institutions.[153] It also asked about measures to assist homeless children.[154]
- Regarding the **protection of children from ill-treatment**, the Committee expressed concern at: penal code provisions on acts of violence and neglect against children only apply to under 14s;[155] reporting not being mandatory;[156] the reasonable chastisement defence;[157] and the lack of prohibition of corporal punishment in all settings, including the family.[158] The Committee asked for information on the organisation of services for detecting ill-treatment of children and protecting them;[159] facilities available to children subject to maltreatment, abuse, neglect;[160] preventive measures;[161] legislation concerning abuse/exploitation of children, and its implementation;[162] and whether legislation prohibits all forms of corporal punishment of children in schools, institutions, home and elsewhere. In its 2003 Conclusions, the Committee declared two states to be in non-conformity of article 17 of the Charter because of the lack of prohibition of all corporal punishment.[163]
- In connection with **children in conflict with the law**, the Committee expressed particular concern about: the use of solitary confinement;[164] the low age of criminal responsibility;[165] the low minimum age for marriage;[166] the length of pre-trial detention;[167] and the numbers of conditions of young offenders in institutions.[168] The Committee also repeatedly requested information on: the numbers of young offenders receiving prison/detention sentences and the maximum length of such sentences;[169] the use of pre-trial detention and the numbers of duration involved;[170] the range of sanctions available, especially alternatives to deprivation of liberty;[171] circumstances in which cases are subject to adult/criminal law and sentencing;[172] legislation and its implementation;[173] and whether or not minors are separated from adults in detention.[174] It also asked for details on the minimum age for marriage.[175]
- Similar issues arose in the 2003 Conclusions relating to article 17.1 of the Revised Social Charter. In considering the **protection of children from ill-treatment and abuse**, the Committee requested further information on the facilities available to children subject to maltreatment, abuse and neglect,[176] and expressed concern at the lack of a national programme on abuse, violence and neglect of children.[177] However, a greater emphasis was placed on the need for explicit prohibition of all forms of corporal punishment in all settings, especially the home, than previously: the Committee requested details of the effect of a 1996 court judgement which declared all corporal punishment to be unlawful[178] and expressed concern that not all corporal punishment was prohibited

in all settings[179] and particularly that it was not prohibited in the family.[180] Three states were declared to be not in conformity with article 17.1 of the Revised Charter because of this lack of prohibition of all corporal punishment.[181]

- In the case of **children in public care**, the Committee again asked for details on the numbers of children taken into different types of care, including the numbers in institutions and the types of institutions that exist.[182] It was also concerned with the regulations covering care provision[183] and, as previously, with issues of monitoring of institutions,[184] complaints mechanisms,[185] and the criteria for interference with personal integrity.[186] Finally, the Committee requested information on the procedures for reviewing placements in institutions[187] and the measures being taken to address the problem of child abandonment.[188]
- The Committee's concerns on the **situation of young offenders** led them to ask similar questions to those previously asked under the Social Charter. Again, the Committee requested information on the number of young offenders receiving prison/detention sentences and the maximum and average lengths of those sentences;[189] details on arrangements in penal institutions;[190] progress being made in legislation;[191] the conditions and statistics associated with pre-trial detention;[192] the experiences of juvenile in conflict with criminal law;[193] and the measures being taken to improve prison conditions.[194] The Committee expressed particular concern at the length of pre-trial detention,[195] poor conditions in prisons,[196] and the frequency of imprisonment as a sentence for crime.[197]

In Conclusions 2004[198] relating to Article 7.10 of the Revised European Social Charter, the Committee examined compliance with this provision along the grid elaborated during the 2004 supervision cycle (see above). Accordingly, for all countries concerned (Bulgaria, Cyprus, Estonia, France, Ireland, Italy, Lithuania, Norway, Romania, Slovenia and Sweden) it considered:

a. first, the existence of legislation criminalising the **three forms of sexual exploitation**: child prostitution, child pornography and trafficking of children;
b. secondly, it examined the practice, mainly in terms of the existence of a National Action Plan on Sexual Exploitation.

For all countries, except Bulgaria, Norway and Slovenia, legislation was there. In Bulgaria a bill was pending on the issue of children pornography, and in Slovenia two bills were pending on, respectively, possession of children pornography and children trafficking for sexual exploitation. In Norway, this issue is not provided by specific legislation, but it is covered by other provisions so far. As regards the inclusion of Internet as a means of spreading children pornography in legislation covering this issue, the situation was less clear-cut. A few countries explicitly include new information technologies, especially Internet, among the means for the production, diffusion, sale, distribution and possession of children pornography (Cyprus, France, Italy, Norway, Sweden), while the others are questioned on it. The situation is similar as regards the National Action plans on sexual exploitation. Finally, with few exceptions, countries are asked about legislation and practice covering the other forms of exploitation (domestic exploitation, begging, pick pocketing, servitude or the removal of organs). The situation of street children being particularly serious in Bulgaria and Romania, the Committee examined the measures taken in the field, there was improvement in Romania, while it sought further information before ruling on the conformity of the situation in Bulgaria.

In Conclusions XVII-2 (published in March 2005) and Conclusions 2005 (published April 2005)[199] the Committee in relation to Article 17 found further states, namely Hungary, Malta, Poland, Spain, Turkey, France, Slovenia and Romania[200] to be in breach of this provision as **all forms of corporal punishment** were not adequately prohibited, in particular within the home. As regards Portugal the Committee noted a Portuguese Supreme Court decision interpreting the Criminal code as prohibiting the use of any form of physical violence against children and asked the next report to explain how this decision effectively prohibits the corporal punishment of children in the home. The Committee also requested the next report to provide information on whether this ruling has been confirmed in legislation.

As regards young offenders and juvenile justice the Committee found that several states were not in conformity with Article 17 on the grounds that the age of criminal responsibility was manifestly too low (Malta, Turkey), minimum length of certain prison sentences for minors too long (Turkey) and maximum periods of pre-trail detention for young offenders too long (France, Hungary Turkey).

In relation to Article 7§10 and the right to protection against all forms of sexual exploitation the Committee found certain states not to be in conformity as legislation failed to adequately protect all persons under 18 years of age from sexual exploitation (for example Poland, Portugal where possession of child pornography is not a criminal offence).

3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – ETS No. 126

3.1. The Convention and the Committee

The Preamble to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) of 1987 (in force since 1989) refers to provisions of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It states in particular that "the protection of persons deprived of their liberty against torture and inhuman or degrading treatment

or punishment could be strengthened by non-judicial means of a preventive character based on visits". Therefore, the Convention for the Prevention of Torture establishes the Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which "shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment" (Article 1).

The Explanatory Report to the Convention states that the supervisory system of the Convention for the Protection of Human Rights and Fundamental Freedoms, based on complaints from individuals or States alleging human rights violations, has achieved important results; however, it recognizes the need to supplement this system by a non-judicial machinery of a preventive character (para. 13). The Committee should therefore not carry out judicial functions or adjudicate that violations of the relevant international instruments have been committed (para. 17). The Committee's activities are "aimed at future prevention rather than the application of legal requirements to existing circumstances" (para. 27). The notion of "deprivation of liberty" for the purpose of the ECPT is to be understood within the meaning of article 5 of the ECHR, as elucidated by the case-law of the Court and Commission of Human Rights. This being said, the distinction between "lawful" and "unlawful" deprivation of liberty arising in connection with Article 5 of the ECHR is immaterial in relation to the Committee's competence (para. 24).

The purpose of the Committee is not to condemn States but, in a spirit of co-operation and through advice, to seek necessary improvements, if necessary, in the protection of persons deprived of their liberty (para. 20). If a State fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement on the matter (para. 74).

3.2. The Standards

The CPT first met in 1989 and carried out its first visits in 1990. "Periodic" visits are carried out on a regular basis, while visits "required by the circumstances" enable the CPT to follow up specific issues or to target situations requiring prompt attention. While not being a judicial body, the CPT has developed a set of continually evolving standards, which it employs during visits, to assess existing practices and to encourage States to meet its criteria.

Places of detention visited by the CPT include police stations, prisons, holding centres for immigration detainees, psychiatric establishments, social care homes and educational institutions. All criteria developed in this respect (police custody; imprisonment; training of law enforcement personnel; health care services in prisons; foreign nationals detained under aliens legislation; involuntary placement in psychiatric establishments; women deprived of their liberty) also apply, *mutatis mutandis*, in respect of juveniles. Further, Section VII of the Volume of CPT Standards is specifically devoted to such persons, "to highlight the importance which [the Committee] attaches to the prevention of ill-treatment of juveniles deprived of their liberty" (para.20).

The CPT Standards are complementary to those set out in other international instruments – the UN Convention on the Rights of the Child (1989), the Beijing Rules (1985), the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the Riyadh Guidelines (1990) (para. 21). Particular attention is drawn to the principle of depriving juveniles of their liberty only as a last resort and for the shortest possible period of time (para. 21).

The Standards developed in the 9th General report of the CPT are divided into the following sections[201]:

- **Safeguards against the ill-treatment of juveniles**

This section notes that, as is the case for adults, deliberate ill-treatment is more likely to occur in police establishments than in other places of detention (para. 23) and that it is during the period immediately following deprivation of liberty that the risk of torture and ill-treatment is at its greatest. It is therefore essential that juveniles immediately enjoy the rights to notify a relative or another third party of the fact of their detention, the right of access to a lawyer and the right of access to a doctor. In addition, police officer themselves should be obliged to ensure that an appropriate person is notified of the juvenile's detention, and they should not interview a juvenile unless such an appropriate person and/or a lawyer is present.

The Committee also warns against corporal punishment: "In a number of other establishments visited, CPT delegations have been told that it was not uncommon for staff to administer the occasional 'pedagogic slap' to juveniles who misbehaved. The Committee considers that, in the interests of the prevention of ill-treatment, all forms of physical chastisement must be both formally prohibited and avoided in practice. Inmates who misbehave should be dealt with only in accordance with prescribed disciplinary procedures" (para. 24).

Juveniles should, as a principle, always be accommodated separately from adults, to protect them from abuse (para. 25), except in exceptional situations (e.g. children and parents being held as immigration detainees) where it is in the best interests of juveniles not to be separated from particular adults. The CPT notes however that "to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation" (para. 25).

Other safeguards include mixed gender staffing, and conducting searches only by staff of the same gender, with intimate searches being conducted out of sight of custodial staff of the opposite gender (para. 26) – "these principles apply a *fortiori* in respect of juveniles" (para. 26).

- **Detention centres for juveniles**

Young offenders should be held in **detention centres** specifically designed for juveniles, offering regimes tailored to their needs and staffed with persons trained in dealing with the young. There should also be a multidisciplinary approach "in order to

respond to the individual needs of juveniles within a secure educative and socio-therapeutic environment" (para. 28). Accommodation at these centres should provide positive and personalised conditions of detention. It should be of an adequate size, well lit and ventilated, properly furnished, well-decorated, and offer visual stimuli. Personal items should be allowed (para. 29). The personal hygiene needs of juvenile girls should not be overlooked, as "the failure to provide such basic necessities can amount, in itself, to degrading treatment" (para. 30). As regards regime, there should be "a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme" (para. 31).

The **custody and care of juveniles** is a particularly challenging task. The staff called upon to fulfil that task should be carefully selected for their maturity and ability to cope with the challenges of working with – and safeguarding the welfare of – this age group. Moreover, the management of such detention centres should be entrusted to persons with advanced leadership skills (para. 33).

Considerable importance should be attached to the maintenance of good contact with the outside world. Such contact "should never be restricted or denied as a disciplinary measure" (para. 34).

The CPT is also particularly concerned about the placement of juveniles in conditions resembling **solitary confinement**, a measure which can compromise their physical and/or mental integrity (para. 35). Resort to such a measure must be highly exceptional and should be for the shortest possible period. In all cases, appropriate human contact should be guaranteed, access to reading material granted, and at least one hour of outdoor exercise offered every day. As is the case for adults, all disciplinary procedures applied to juveniles should be accompanied by formal safeguards and be properly recorded. In particular, juveniles should have the right to be heard on the subject of the offence which they are alleged to have committed, and to appeal before a higher authority against any sanctions imposed; full details of all such sanctions should be recorded in a register kept in each establishment where juveniles are deprived of their liberty" (para. 35).

Effective **complaints and inspection procedures** should also be established in juvenile establishments (para. 36).

Concerning **medical issues**, juveniles should be properly interviewed and physically examined by a medical doctor as soon as possible after admission to the centre (para. 39). They should have confidential access to a doctor at any time, and guaranteed access to a range of specialist medical care, including dentistry (para. 40).

3.3. Reports of the Committee

In its visit reports published in 2002, 2003 and 2004, the CPT expresses a number of concerns and makes recommendations specifically addressing the situation of juveniles in detention, including in police establishments, juvenile detention centres, detention centres for foreigners, psychiatric hospitals, social care homes and educational institutions.

In connection with *police establishments*, the Committee was concerned at reports of ill-treatment by law enforcement officers[202] and the lack of proper investigation and prosecution in such cases.[203] The Committee recommended that law enforcement officials be reminded that ill-treatment of detainees is unacceptable and carries sanctions, and that forensic examination is arranged in cases of suspected ill-treatment.[204]

As regards *juvenile detention centres*, most of the Committee's concerns centred on the conditions at detention centres[205] and the use and conditions of solitary confinement.[206] Other concerns were raised about the approach to disciplinary sanctions,[207] the lack of adequate legislation governing the imprisonment of young offenders,[208] particular safeguards provided to offenders,[209] the lack of co-operation between different services in detention centres,[210] and the educational and vocational facilities offered in detention centres.[211]

In indicating the ways in which States could make progress towards complying with the CPT's standards, the Committee recommended the improvement of solitary confinement measures, including the provision of reading materials.[212] Many recommendations concerned the conditions of detention generally (material conditions and regime), particularly the need to provide and increase involvement in educational and recreational activities, including physical education,[213] but also regarding refurbishment, the provision of a call system, personal hygiene facilities, access to a telephone, and the problem of overcrowding.[214] Attention should be paid to the procedures in operation to deal with issues of discipline and of suicidal inmates, including the use of restraints,[215] and there should be better recording of incidents involving the use of restraints and other incidents.[216] Staff should be properly trained and should be reminded that all forms of physical chastisement must be formally prohibited and avoided in practice.[217]

The Committee identified a need to improve facilities for outdoor exercise, including safety for sexual offenders,[218] and the provision of health services.[219] A comprehensive strategy to address the problem of the inter-prisoner violence and intimidation should be developed and implemented,[220] and proper complaint procedures should be established.[221]

The *detention of foreign nationals* was a cause of concern, in terms of the general conditions. Specific measures should be taken to ensure that juveniles are offered activities suitable to their age, including outdoor exercise.[222] The unacceptable use of sedation prior to deportation by air was also stressed.[223] The Committee strongly recommended the need for instructions on the use of force and regulation of the means of restraint in the deportation of foreign nationals.[224]

As regards *children/juveniles accommodated in social care homes*, the CPT stressed that proper care should be based on an individualised approach and that it implied the drawing up of a therapeutic and educational programme that takes individual account of

one's personality and degree of mental and/or physical disability. The programmes should, in particular, involve a wide range of multidisciplinary activities, such as psychomotor therapy, occupational therapy, individualised school tuition, oral expression and art/music therapy, allowing children to develop their autonomy, social skills and skills in communicating and relating to others. In addition, children/juveniles should be offered open air activities (walks, outings, games, sporting activities) every day, suited to their abilities. It is essential that these programmes include appropriate physical care geared to minors' physical development and the development of habits conducive to a healthy lifestyle[225]. The CPT also highlighted that the care for juveniles includes responsibility for protecting them from other residents who might cause them harm. This means in particular that staff be alert to residents' behaviour and be both resolved and properly trained to intervene when necessary. Likewise, an adequate staff presence should be ensured at all times, including at night/weekends. Further, appropriate arrangements should be made for particularly vulnerable residents, such as those who have motor disabilities or are bedridden, by taking care, for example, not to place them or leave them alone with residents identified as behaving in an aggressive manner[226].

4. Other human rights instruments

4.1 The Convention on Cybercrime (2001) – ETS No. 185

The Convention entered into force on 1 July 2004.

The Preamble includes reference to the UN Convention on the Rights of the Child (1989) and the ILO Worst Forms of Child Labour Convention (1999). Article 9 of the Convention concerns offences related to child pornography and states that Parties shall adopt "legislative and other measures" to criminalise various specified uses of the computer involving child pornography. Paragraph 3 defines a child as all persons under the age of 18, though allows Parties to reduce this limit to not lower than 16.

4.2 The European Convention on the Exercise of Children's Rights (1996) – ETS No. 160

This Convention, in force since 2000, promotes the exercise of children's rights in family proceedings before a judicial authority, including the right to be informed and to express their views in proceedings (article 3) and the right to apply for a special representative (article 4). The judicial authority is under a duty to inform and consult the child (article 6) and to avoid unnecessary delay (article 7). The Explanatory Report to the Convention lists categories which may be specified as family proceedings as including care procedures, the removal or restriction of parental responsibilities, and protection from cruel and degrading treatment (para. 17). States are free to apply the Convention to proceedings other than family proceedings if they wish (para. 15). The Convention establishes a Standing Committee to review problems associated with it (article 16). Under article 18, this Committee may meet after the Convention has been in force for three years.

4.3 The European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches (1985) – ETS No. 120

Article 3 (Measures), paragraph 5, states: "The Parties shall take appropriate social and educational measures, bearing in mind the potential importance of the mass media, to prevent violence in and associated with sport, in particular by promoting the sporting ideal through educational and other campaigns, by giving support to the notion of fair play, especially among young people, so as to enhance mutual respect both amongst spectators and between sports players and also by encouraging increased active participation in sport."

4.4 The European Convention on the Compensation of Victims of Violent Crimes (1983) – ETS No. 116

This Convention provides for compensation to be paid by the state, if not available from other sources, to victims of violent crimes "who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence" and/or to "the dependants of persons who have died as a result of such crime" (article 2). It is the responsibility of Parties to ensure that legislation and administration arrangements allow for this (article 1). The Explanatory Report to the Convention states that the violence inflicted may be physical or psychological, and the health impaired may be mental as well as physical (para. 19). Reparation does not necessarily require the prosecution or conviction of the offender (para. 21).

4.5 A convention on action against trafficking

An Ad hoc Committee on action against trafficking in human beings (CAHTEH) has been established under the authority of the Committee of Ministers and instructed to prepare a European Convention on action against trafficking in human beings.

As Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, has stated when she addressed the first meeting of the Committee: "Trafficking in human beings has become one of Europe's major scourges. It affects men, women and children and has reached such an unprecedented level that we can refer to it as a new form of slavery, prohibited by Article 4 of the ECHR."[227] In January 2005 the Parliamentary Assembly issued an Opinion on the draft Convention, in which it welcomed the decision to draw up a Convention, but "nevertheless regrets the fact that the current wording of the draft is far from guaranteeing effective and sufficient protection of victims, contrary to the objective pursued" (para. 8)[228].

The Convention was adopted in May 2005 and constitutes a critical step to protect children from trafficking and ensure the human rights of child victimsi.

Notes

89 Except Monaco, who have signed but not yet ratified the Convention.

90 See Article 5 § 1.d, Article 2 of Protocol No. 1, and Article 5 of Protocol No. 7. Furthermore, both Article 14 of the Convention and Protocol No. 12 forbid discrimination based on age.

91 All decisions and judgments can be found at http://hudoc.echr.coe.int/hudoc/

92 Judgment, 18 January 1978, Application No.5310/71

93 Judgment 26 March 1985, Application No.8978/80

94 Decision 8 May 1962, Application No.900/60; Judgment of 8 July 1987

95 Judgment 4 December 2003, Application No.39272/98; see the first precedent, X and Y v the Netherlands, cited below under no. 28.

96 Judgment 20 October 1996, Applications no.22083/93 and 22095/93

97 See, amongst others, Olson v. Sweden (no. 1), judgment of 24 March 1988, Series A no. 130, §§ 59-62; Eriksson v. Sweden, judgment of 22 June 1989, Series A no. 1989, § 71; Johansen v. Norway, judgment of 7 August 1996, Reports 1996-III, which concerned the special modalities of application of the contested measures or the lack of execution by administrative authorities of judicial decisions in favour of the parents.

98 Decision 8 May 1962, Application No.900/60

99 Decision, 16 January 1963, Application No.1449/62

100 Decision 13 March 1989, Application No.12805/87

101 Judgments 8 July 1997 cited below and 26 November 2002, Application No.33218/96

102 See, amongst others, B. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, §§ 63-65

103 Covezzi and Morselli v Italy judgment of 9 May 2003, §§ 110-112, 120-123, 136-138.

104 T.P. and K.M. v. the United Kingdom judgment of 10 May 2001, § 78-83.

105 Judgment 23 September 1998, Application No.25599/94

106 Article 19 states: "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instance of child maltreatment described heretofore, and, as appropriate, for judicial involvement." Article 37 states: "States Parties shall ensure that: (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) no child shall be deprived of his or her life unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

107 Judgment 10 May 2001, Application No.29392/95

108 Judgment 26 November 2002, Application No.33218/96. However, in the D.P. and J.C. v. the United Kingdom judgment of 10 October 2002, the Court found no violation of Article 3, because the sporadic incidents recorded by the social workers could not be regarded as revealing a clear pattern of victimisation or abuse on the part of the children's stepfather, the children never informed the social workers and were not reluctant to stay in the family home.

109 Stubbings and Others v. the United Kingdom judgment of 22 October 1996, Reports 1996-IV, §§ 52-57.

110 Commission Report 18 July 1986, Application No.9471/81

111 Commission Report 8 October 1991, Application No.14229/88

112 Judgment 25 February 1982, Application No.7511/76; 7743/76

113 Judgment 25 March 1993, Application No.13134/87

114 Decision 13 May 1982, Application No.8811/79

115 Decision September 2000, Application No.55211/00

116 Judgment 26 March 1985, Application No.8978/80

117 Judgment 28 October 1998, Application No.23452/94

118 Judgment 25 April 1978, Application No.5856/72

119 Judgment 16 December 1999, Application No.24724/94

120 Judgment 16 December 1999, Application No.24888/94

121 Joint Partly Dissenting Opinion of Judges Pastor Ridruejo, Ress, Makarczyk, Tulkens and Butkevych, appended to *T v UK* and *V v UK* (see notes 81 and 82). See also Party Dissenting Opinion of Judges Rozakis and Costa.

122 Note the European Social Charter is used to denote both the 1961 Charter and Revised Charter, when more precision is required the practice is to referred to the 1961 Charter or the Revised Charter.

123 Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia, Sweden

124 *Conclusions I*, pp.40-41, and see Samuels, L. (2002), *Fundamental social rights: Case law of the European Social Charter*, 2nd edition (Council of Europe Publishing)

125 *Conclusion V*, p.73

126 General Introduction to *Conclusions XV-2*, 1 September 2002, pp.26-7

127 General Introduction to *Conclusions XV-2*, 1 January 2001, pp.27-9

128 Article 20 states: "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

129 General Introduction to *Conclusions XV-2*, 1 January 2001, pp.29-31

130 General Introduction to *Conclusions XV-2*, 1 January 2001, pp.31-2

131 European Trade Union Confederation (ETUC), Union of Industrial and Employers' Confederations of Europe (UNICE) and International Organisation of Employers (IOE).

132 Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, Norway, Portugal, Slovenia, Sweden

133 NGO's with consultative status with the Council of Europe which are on a list drawn up for this purpose by the Governmental Committee, and in respect of states which have accepted this; national NGOs.

134 No.17/2003 *World Organisation Against Torture (OMCT) v Greece*; No.18/2003 *World Organisation Against Torture (OMCT) v Ireland*; No.19/2003 *World Organisation Against Torture (OMCT) v Italy*; No.20/2003 *World Organisation Against Torture (OMCT) v Portugal*; No.21/2003 *World Organisation Against Torture (OMCT) v Belgium*

135 See www.coe.int/T/E/Human_Rights/Esc/5_Collective_complaints/Index.asp

136 Romania, *Conclusions 2002*, 1 September 2002, pp.145-6; Slovenia, *Conclusions 2002*, 1 September 2002, p.196

137 Belgium, *Conclusions XV-2*, 1 January 2001, pp.83-5; France, *Conclusions 2002*, 1 September 2002, p.42; Italy, *Conclusions 2002*, 1 September 2002, p.88; Poland, *Conclusions XV-2*, 1 January 2001, pp.430-1; Portugal, *Conclusions XV-2*, 1 January 2001, pp.481-2; Slovak Republic, *Conclusions XV-2*, 1 June 2001, p.180

138 Belgium, *Conclusions XV-2*, 1 January 2001, pp.83-5; Finland, *Conclusions XV-2*, 1 January 2001, p.155; France, *Conclusions 2002*, 1 September 2002, p.42; Germany, *Conclusions XV-2-Add*, 1 June 2002, p.43; Italy, *Conclusions 2002*, 1 September 2002, p.88; Luxembourg, *Conclusions XV-2-Add*, 1 June 2002, p.75; Poland, *Conclusions XV-2*, 1 January 2001, pp.430-1; Portugal, *Conclusions XV-2*, 1 January 2001, pp.481-2; Slovak Republic, *Conclusions XV-2*, 1 June 2001, p.180; Slovenia, *Conclusions 2002*, 1 September 2002, p.196

139 Finland, *Conclusions XV-2*, 1 January 2001, p.155; Italy, *Conclusions 2002*, 1 September 2002, p.88; Romania, *Conclusions 2002*, 1 September 2002, pp.145-6; Slovenia, *Conclusions 2002*, 1 September 2002, p.196

140 Luxembourg, *Conclusions XV-2-Add*, 1 June 2002, p.75

141 France, *Conclusions 2002*, 1 September 2002, p.42

142 France, *Conclusions 2002*, 1 September 2002, p.42; Italy, *Conclusions 2002*, 1 September 2002, p.88; Slovenia, *Conclusions 2002*, 1 September 2002, p.196

143 Romania, *Conclusions 2002*, 1 September 2002, pp.145-6

144 Romania, *Conclusions 2002*, 1 September 2002, pp.145-6

145 Belgium, *Conclusions XV-2*, 1 January 2001, pp.109-12; Portugal, *Conclusions XV-2*, 1 January 2001, pp.504-6; Malta, *Conclusions XV-2-Add*, 1 June 2001, pp.125-7; Turkey, *Conclusions XV-2-Add*, 1 June 2001, pp.271-4

146 UK, *Conclusions XV-2*, 1 January 2001, pp.612-17

147 Austria, *Conclusions XV-2*, 1 January 2001, pp.66-8; Belgium, *Conclusions XV-2*, 1 January 2001, pp.109-12; Denmark, *Conclusions XV-2*, 1 January 2001, pp.139-42; Finland, *Conclusions XV-2*, 1 January 2001, pp.169-72; France, *Conclusions XV-2*, 1 January 2001, pp.220-5; Germany, *Conclusions XV-2-Add*, 1 June 2001, pp.59-61; Greece, *Conclusions XV-2*, 1 January 2001, pp.257-8; Iceland, *Conclusions XV-2*, 1 January 2001, pp.281-3; Italy, *Conclusions XV-2*, 1 January 2001, pp.315-17; Malta, *Conclusions XV-2-Add*, 1 June 2001, pp.125-7; Netherlands, *Conclusions XV-2*, 1 January 2001, pp.367-9; Poland, *Conclusions XV-2*, 1 January 2001, pp.465-70; Portugal, *Conclusions XV-2*, 1 January 2001, pp.504-6; Slovak Republic, *Conclusions XV-2-Add*, 1 June 2001, pp.228-30; Spain, *Conclusions XV-2*, 1 January 2001, pp.536-8; Sweden, *Conclusions XV-2*, 1 January 2001, pp.567-9; Turkey, *Conclusions XV-2-Add*, 1 June 2001, pp.271-4; UK, *Conclusions XV-2*, 1 January 2001, pp.612-17

148 Austria, *Conclusions XV-2*, 1 January 2001, pp.66-8; Belgium, *Conclusions XV-2*, 1 January 2001, pp.109-12; Denmark, *Conclusions XV-2*, 1 January 2001, pp.139-42; Finland, *Conclusions XV-2*, 1 January 2001, pp.169-72; France, *Conclusions XV-2*, 1 January 2001, pp.220-5; Germany, *Conclusions XV-2-Add*, 1 June 2001, pp.59-61; Greece, *Conclusions XV-2*, 1 January 2001, pp.257-8; Ireland, *Conclusions XV-2*, 10 January 2001, pp.33-7;
Italy, *Conclusions XV-2*, 1 January 2001, pp.315-17; Luxembourg, *Conclusions XV-2-Add*, 1 June 2001, pp.91-4; Malta, *Conclusions XV-2-Add*, 1 June 2001, pp.125-7; Netherlands, *Conclusions XV-2*, 1 January 2001, pp.367-9; Poland, *Conclusions XV-2*, 1 January 2001, pp.465-70; Portugal, *Conclusions XV-2*, 1 January 2001, pp.504-6; Slovak Republic, *Conclusions XV-2-Add*, 1 June 2001, pp.228-30; Spain, *Conclusions XV-2*, 1 January 2001, pp.536-8;Turkey, *Conclusions XV-2-Add*, 1 June 2001, pp.271-4

149 Austria, *Conclusions XV-2*, 1 January 2001, pp.66-8; Belgium, *Conclusions XV-2*, 1 January 2001, pp.109-12; Denmark, *Conclusions XV-2*, 1 January 2001, pp.139-42; Finland, *Conclusions XV-2*, 1 January 2001, pp.169-72; France, *Conclusions XV-2*, 1 January 2001, pp.220-5; Germany, *Conclusions XV-2-Add*, 1 June 2001, pp.59-61; Greece, *Conclusions XV-2*, 1 January 2001, pp.257-8; Iceland, *Conclusions XV-2*, 1 January 2001, pp.281-3; Ireland, *Conclusions XV-2*, 10 January 2001, pp.33-7; Italy, *Conclusions XV-2*, 1 January 2001, pp.315-17; Malta, *Conclusions XV-2-Add*, 1 June 2001, pp.125-7; Netherlands, *Conclusions XV-2*, 1 January 2001, pp.367-9; Norway, *Conclusions XV-2*, 1 January 2001, pp.398-400; Poland, *Conclusions XV-2*, 1 January 2001, pp.465-70; Portugal, *Conclusions XV-2*, 1 January 2001, pp.504-6; Slovak Republic, *Conclusions XV-2-Add*, 1 June 2001, pp.228-30; Spain, *Conclusions XV-2*, 1 January 2001, pp.536-8; Sweden, *Conclusions XV-2*, 1 January 2001, pp.567-9; Turkey, *Conclusions XV-2-Add*, 1 June 2001, pp.271-4; UK, *Conclusions XV-2*, 1 January 2001, pp.612-17

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153 Poland, *Conclusions XV-2*, 1 January 2001, pp.465-70

154 Denmark, *Conclusions XV-2*, 1 January 2001, pp.139-42; Ireland, *Conclusions XV-2*, 10 January 2001, pp.33-7

155 Luxembourg, *Conclusions XV-2-Add*, 1 June 2001, pp.91-4

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164 Luxembourg, *Conclusions XV-2-Add*, 1 June 2001, pp.91-4

165 Ireland, *Conclusions XV-2*, 10 January 2001, pp.33-7; Malta, *Conclusions XV-2-Add*, 1 June 2001, pp.125-7; Turkey, *Conclusions XV-2-Add*, 1 June 2001, pp.271-4; UK, *Conclusions XV-2*, 1 January 2001, pp.612-17

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176 Italy, *Conclusions 2003*, vol.1

177 Romania, *Conclusions 2003*, vol.2

178 Italy, *Conclusions 2003*, vol.1, p.321

179 France, *Conclusions 2003*, vol.1

180 Romania, *Conclusions 2003*, vol.2; Slovenia, *Conclusions 2003*, vol.2

181 France, *Conclusions 2003*, vol.1, pp.185 and 187; Romania, *Conclusions 2003*, vol.2, pp.62 and 65-6; Slovenia, *Conclusions 2003*, vol.2, pp.175 and 177

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183 France, *Conclusions 2003*, vol.1; Italy, *Conclusions 2003*, vol.1

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185 France, *Conclusions 2003*, vol.1; Italy, *Conclusions 2003*, vol.1; Slovenia, *Conclusions 2003*, vol.2

186 Italy, *Conclusions 2003*, vol.1; Slovenia, *Conclusions 2003*, vol.2

187 Romania, *Conclusions 2003*, vol.2

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197 Romania, *Conclusions 2003*, vol.2

198 Publication of Conclusions 2004 is still provisional; therefore no precise reference to page numbers is possible yet.

199 The first part of Conclusions XVII-2 and Conclusions 2005 were published in March and April 2005, the second part will be published in June 2005. The Conclusions cited are available on the Social Charter web site: http://www.coe.int/T/E/Human_Rights/Esc/

200 The legislation however has not been amended but outside the reference period.

201 The 2003 Volume of CPT Standards represents a collection of extracts on particular issues originally published in the Committee's General Reports.202 Section VII (pages 63-69) specifically concerns "juveniles deprived of their liberty" and is taken from the 9th General Report of the CPT.

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204 Macedonia, *CPT Report to the Government on the visit from 21 to 26 October 2001, CPT/Inf (2003) 3*, 16 January 2003, para.28

205 UK, *CPT Report to the Government on the visit from 4 to 16 February 2001, CPT/Inf (2002) 6*, 18 April 2002, paras.11 and 12

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225 Finland, *CPT Report to the Government on the visit from 7 to 17 September 2003, CPT/Inf (2003) 38*, 18 April 2002, page 5

226 Romania, *CPT Report to the Government on the visit from 22 to 26 October 2001, CPT/Inf (2004) 8*, 2 April 2004, para. 24

227 Romania, CPT *Report to the Government on the visit from 22 to 26 October 2001, CPT/Inf (2004) 8*, 2 April 2004, para. 15

228 Address of Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, to the 1st meeting of the Ad hoc Committee on action against trafficking in human beings (CAHTEH), 15 September 2003

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