



## Synthèse sur la situation des recommandations du Comité des Ministres dans le paysage juridique du Conseil de l'Europe

Grégor Puppinck<sup>1</sup>.  
27 mars 2012

Le Conseil de l'Europe est orienté vers l'établissement de liens plus étroits entre les Etats de l'Europe, n'a pas de compétence supranationale contrairement à l'Union européenne.

bien que. En tant qu'institution de coopération, il fonctionne sur le mode intergouvernemental. En conséquence, il est conçu comme un instrument de production de normes de droit international qui s'inscrivent dans le schéma classique de la hiérarchie des normes. Le Conseil de l'Europe est ainsi incapable, suivant son Statut, de produire une norme qui ne soit l'expression préalable de la volonté des États.

Selon le Statut du Conseil de l'Europe, une recommandation est l'un des instruments juridiques par lesquels le Comité des Ministres peut communiquer aux gouvernements ses conclusions quant aux mesures qu'il aura estimées propres à réaliser le but du Conseil de l'Europe (à savoir notamment « la conclusion de conventions et d'accords et l'adoption par les gouvernements d'une politique commune à l'égard de questions déterminées »).

La recommandation se distingue d'autres instruments de communication aux gouvernements en ce qu'elle manifeste explicitement un accord quant aux mesures qu'elle contient, quelle que soit d'ailleurs la nature juridique de ces mesures (convention, accord, politique commune, et autres). En adoptant une recommandation, chaque Etat exprime sa volonté et le Comité des Ministres manifeste son accord.

Comme cela a été indiqué par la note du Jurisconsulte, bien que non-contraignante, une recommandation est un instrument juridique ayant une portée juridique. Cette portée juridique peut être appréciée au regard des (1) normes conventionnelles existantes, (2) en particulier de la Convention européenne des droits de l'homme et de son interprétation, (3) du droit interne, et (4) des autres normes internationales en cours d'élaboration.

### 1) A l'égard des conventions existantes du Conseil de l'Europe

Une recommandation étant un instrument juridique de valeur infra-conventionnelle, elle ne peut, lorsqu'elle entre dans le champ d'une convention existante, porter que sur son interprétation. Cette interprétation doit être effectuée selon les normes et dans le respect du droit des traités, sous peine de nuire à la sécurité juridique. Ainsi, les Etats membres ne peuvent recommander aux gouvernements d'adopter des mesures nouvelles qui seraient contraires à une convention existante à laquelle ils sont déjà engagés. Ce serait contraire à la hiérarchie des normes et conduirait les Etats à assumer des engagements incompatibles. Cela étant, les Etats membres peuvent recommander que soit entreprise la révision d'une convention existante.

### 2) A l'égard de la Convention et de la Cour européenne des droits de l'homme

La Convention attribue à la Cour la compétence relative à l'interprétation et à l'application de la Convention et de ses Protocoles pour les questions qui lui sont soumises dans les conditions prévues par les articles 33, 34, 46 et 47. Le Comité des Ministres réunissant l'ensemble des Etats parties à la Convention européenne, dès lors qu'il adopte un instrument juridique entrant dans le champ de cette Convention, contribue à son interprétation, sans que celle-ci soit néanmoins opposable à la Cour.

En pratique, la Cour, en référence à son préambule<sup>2</sup>, interprète la Convention en faveur du développement, et non seulement de la sauvegarde, des droits de l'homme et des libertés fondamentales. A cette fin, elle a développé la doctrine de l'effectivité des droits et de l'interprétation évolutive selon laquelle « la Convention vise à protéger des droits concrets et effectifs, et non théoriques et illusoires »<sup>3</sup>, et est « un instrument vivant, à interpréter à la lumière des conditions de vie actuelles »<sup>4</sup>.

<sup>1</sup> Directeur du *European Centre for Law and Justice*, Docteur en Droit.

<sup>2</sup> « Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses membres, et que l'un des moyens d'atteindre ce but est la sauvegarde et le développement des droits de l'homme et des libertés fondamentales ».

<sup>3</sup> *Artico c. Italie*, arrêt du 13 mai 1980, § 33.

<sup>4</sup> *Vo c. France* [GC], n° 53924/00, § 82.

Parce que tout processus d'interprétation dynamique doit sans cesse faire la preuve de sa légitimité, la Cour recherche des indications dans le paysage social et juridique des Etats membres, notamment quant aux significations nouvelles à donner aux termes de la Convention. Elle s'appuie pour cela sur les tendances des droits nationaux, sur l'apparition de convergences, voire de consensus, entre législations nationales, ainsi que sur l'ensemble des instruments juridiques interprétant substantiellement les dispositions de la Convention. C'est à ce stade que les recommandations du CM ont trouvé leur principale utilité : la Cour a développé une pratique assez constante d'interpréter la Convention à la lumière des recommandations du CM et des autres instruments juridiques du Conseil de l'Europe.

Bien que non-opposables à la Cour, celle-ci peut cependant difficilement ignorer les recommandations du CM. Elle peut en outre s'en prévaloir pour justifier un développement nouveau de la Convention. La Cour peut en effet légitimement se sentir autorisée à procéder ainsi, en ce qu'une recommandation du CM est adoptée par un organe réunissant l'ensemble des Etats parties à la Convention. L'obligation nouvelle ainsi créée est opposable à tout Etat partie à une procédure devant la Cour, même s'il n'a pas explicitement consenti à l'instrument juridique initialement invoqué pour fonder cette obligation (en cas d'adoption à la majorité ou par consensus).

Bien que la Cour énonce ne pas pouvoir créer un droit qui ne figure déjà dans la Convention<sup>5</sup> et qu'elle ne peut interpréter la Convention contre sa lettre, sa jurisprudence montre que la réalité est plus nuancée. La Cour interprète la Convention de façon extensive<sup>6</sup>, parfois contre l'intention originale de ses auteurs<sup>7</sup>, voire même contre l'interprétation littérale de la Convention<sup>8</sup> (voir en annexe la liste des arrêts de la CEDH faisant référence à des recommandations du CM).

### 3) A l'égard du droit interne

La ratification d'une convention exige en général son adoption par le pouvoir législatif national, ceci afin de respecter la séparation entre les pouvoirs exécutifs et législatifs ainsi que la relation entre les ordres juridiques internes et internationaux. Tel n'est pas le cas des recommandations du CM qui engagent l'Etat sans nécessiter de procédure de ratification. Il en résulte une double contrainte pour le pouvoir exécutif lorsqu'il adopte une recommandation : il doit veiller à ne pas créer, dans l'ordre international, une norme nouvelle relevant du domaine de compétence du législateur national et qui a pour finalité de s'imposer dans l'ordre juridique interne. Cette double contrainte vise à préserver la légitimité démocratique des normes, elle est d'autant plus nécessaire lorsque les matières visées dans la recommandation sont régies en droit interne par des normes soumises à un régime de majorité qualifiée (normes organiques ou constitutionnelles).

### 4) A l'égard d'autres autorités européennes et internationales

Enfin, les recommandations du CM ont également une influence sur les autres instances normatives européennes et internationales, contribuant ainsi à la dynamique d'uniformisation consensuelle du droit. Ainsi par exemple, la Résolution du Parlement européen du 28 septembre 2011 sur les droits de l'homme, l'orientation sexuelle et l'identité de genre aux Nations unies et celle du 15 décembre 2011 sur les conditions de détention dans l'Union font respectivement référence à la recommandation CM/Rec(2010)5 sur des mesures visant à combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre et à la recommandation CM/Rec(2010)1 sur les règles du Conseil de l'Europe relatives à la probation. De simples projets de recommandation du CM peuvent aussi être cités pour illustrer une évolution normative ; tel est le cas par exemple du projet de recommandation du CM sur les droits et le statut juridique des enfants et les responsabilités parentales qui est cité à l'appui des orientations du rapport de la Direction générale des

---

<sup>5</sup> Voir *Johnston and others v. Irlande*, no. 9697/82, judgment of 18 December 1986 § 53; *Emonet and others v. Switzer*

*land*, no.39051/03, judgment of 13 December 2007, § 66; "the Court cannot, by means of an evolutive interpretation, derive from these instruments a right that was not included therein at the outset. This is particularly so here, where the omission was deliberate."

<sup>6</sup> Cela est particulièrement manifeste quant à l'interprétation de l'article 8 relatif à la vie privée.

<sup>7</sup> Voir par exemple l'arrêt *Schalk et Kopf c. Autriche*, 24 juin 2010, §§ 101, 105 qui étend le champ d'application de l'article 12 (droit au mariage et vie familiale) à des situations non prévues ; voir aussi l'arrêt *Bayatyan c. Arménie* no 23459/03 reconnaissant le droit à l'objection de conscience au service militaire contre l'intention des rédacteurs de la Convention, telle qu'elle ressort explicitement des travaux préparatoires.

<sup>8</sup> Voir par exemple le récent arrêt *Sindicatul Păstorul Cel Bun c. Roumanie* n° 2330/09 du 31 janvier 2012 dans lequel la Cour indique, contre la première phrase de l'article 11 paragraphe 2, « que l'article 11 n'autorise l'Etat à imposer des restrictions au droit syndical qu'aux trois groupes de personnes visés au paragraphe 2 in fine de cette disposition, à savoir les membres des forces armées, de la police ou de l'administration, et sous réserve que ces restrictions soient légitimes. »

politiques internes de l'Union européenne « *Recognition of parental responsibility: biological parenthood v. legal parenthood* »<sup>9</sup>.

---

<sup>9</sup> *Recognition of parental responsibility: biological parenthood v. legal parenthood, i.e. mutual recognition of surrogacy agreements: What is the current situation in the MS? Need for EU action?* European Parliament, Directorate General for Internal Policies, PE 432.738.

## **Examples of references to recommendations of the Committee of Ministers in the interpretation of the European Convention of Human Rights**

*Seurot v. France*, decision of 18 May 2004, pg. 7-8 – Rec(2002)12 of the Committee of Ministers of 16 October 2002 on education of democratic citizenship;

*Unal Tekeli v. Turkey*, judgment of 16 November 2004, § 59 – Rec(85)2 of the Committee of Ministers of 5 February 1985 on legal protection against discrimination based on sex;

*Matheus v. France*, judgment of 31 March 2005, § 71- Rec(2003)17 of the Committee of Ministers of 9 September 2003 on execution of judgments;

*Petri Sallinen and others v. Finland*, judgment of 27 September 2005, § 87, *Chadimova v. Czech Republic*, judgment of 18 April 2006, § 146- Rec(2000)21 of the Committee of Ministers of 25 October 2000 on the freedom of practice of lawyers;

*Staroszczyk v. Poland and Sialkowska v. Poland* of 22 March 2007, §§ 57-59 and §§ 50-52 – Rec (81)7 of the Committee of Ministers of 14 May 1981 on the means of facilitating the access to justice, Rec (93)1 of the Committee of Ministers of 8 January 1993 on the effective access to law and justice of persons of severe poverty;

*Gebremedhin v. France*, judgment of 26 April 2007, § 58- Rec(98)13 of the Committee of Ministers of 18 September 1998 on access to an effective remedy of asylum seekers...and Rec1236(1994) on the right to asylum adopted by the PACE on 12 April 2004;

*Havelka and others v. Czech Republic*, judgment of 21 June 2007, §§ 137-139- Rec(2005)5 of the Committee of Ministers of 16 March 2005 on the rights of the children living in an institution and Rec(2006)19 of the Committee of Ministers of 13 December 2006 on policies related to aid a positive parentality;

*Huylu v. Turkey*, judgment of 16 November 2006, §§ 63-66 and *Nevmerjitski v. Ukraine*, judgment of 5 April 2005, § 93- Rec(98)7 of the Committee of Ministers of 8 April 1998 on ethical and organizational issues of health care in prisons ;

*Rivière v. France*, judgment of 11 July 2006 and *Dickson v. UK* - Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European prison rules;

*Boulois v. Luxembourg*, judgement of 14 December 2010, § 45 - Rec(2006)2 of the Committee of Ministers of 11 January 2006 to member states on the European Prison Rules;

*Jakóbski v. Poland*, judgment of 7 December 2010, § 53 - Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

*Hajduova v. Slovakia*, judgment of 30 November 2010, § 27 - Rec(2002)5 of the Committee of Ministers on the protection of women against violence;

*Boris Popov v. Russia*, judgment of 28 October 2010, § 42 - Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;

*Gaforov v. Russia*, judgment of 21 October 2010, § 86 - Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the right of rejected asylum seekers to an effective remedy against decisions on expulsion;

*Alekseyev v. Russia*, judgment of 21 October 2010, § 51- Rec(2010)5 of the Committee of Ministers of the Council of Europe to member States on measures to combat discrimination on grounds of sexual orientation or gender identity;

*Peter Laduna v. Slovakia*, decision of 20 October 2010, § B(5)- Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

*A. v. Croatia*, judgment of 14 October 2010, § 45 - Rec(2002)5 on the protection of women against violence;

*Naydyon v. Ukraine*, judgment of 14 October 2010, § 41 - Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

*A.B. v. Russia*, judgment of 14 October 2010, § 82 - Recommendation no. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the ethical and organisational aspects of health care in prison;

*Maria Atanasiu and Others v. Romania*, judgment of 12 October 2010 - Rec(2004)6 on the improvement of domestic remedies;

*Constantin Timciuc v. Romania*, decision of 12 October 2010, § 143 - Rec(2003)13 of the Committee of Ministers of the Council of Europe to member states on the provision of information through the media in relation to criminal proceedings;

*Pakhomov v. Russia*, judgment of 30 September 2010, § 42 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules; and § 44 – Rec No. R(98)7 of the Committee of Ministers of 8 April 1998 on Health Care in Prisons; and § 45 - – Rec No. R(93)6 of the Committee of Ministers of 18 October 1993 on Control of Transmissible Diseases in Paris;

*Nikolov v. Bulgaria (V)*, decision of 28 September 2010, Rec No. R(87)18 of the Committee of Ministers of 17 September 1987 on simplification of criminal justice;

*Iskandarov v. Russia*, judgment of 23 September 2010, § 80 – Rec No. R(98)13 of the Committee of Ministers on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights;

*Schelling v. Austria (No.2)*, decision of 16 September 2010, Rec No. R(2000)2 of the Committee of Ministers on ensuring that there are adequate possibilities of reopening proceedings at domestic level where the Court has found a violation of the Convention;

*Sanoma Uitgevers B.V. v. The Netherlands*, judgment of 14 September, § 40 – Rec No. R(2000)7 of the Committee of Ministers of 8 March 2000 on right of journalists not to disclose their sources of information;

*Yordanova and Others v. Bulgaria*, decision of 14 September 2010, Rec(2005) of the Committee of Ministers on housing conditions of the Roma; and CM/Rec(2008)5 of the Council of Ministers of 20 February 2008 on policies for Roma and/or Travellers in Europe;

*Palade v. Romania*, decision of 31 August 2010, § 27 – Rec(2003)13 of the Committee of Ministers of 10 July 2003 on provision of information through the media in relation to criminal proceedings;

*Asku v. Turkey*, judgment of 27 of July 2010, § 6(2) – CM/Rec(2008)5 of the Committee of Ministers of 20 February 2008 on policies for Roma and/or Travellers in Europe;

*Babar Ahmad and Others v. The United Kingdom*, partial decision of 6 July 2010, § 76 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules; and § 77 – Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life sentence and other long-term prisoners;

*Davydov and Others v. Ukraine*, judgment of 1 July 2010, § 101 – Rec No. R(82)17 of the Committee of Ministers of 24 September 1982 on Custody and Treatment of Dangerous Prisoners; and § 102 – Rec No. R(87)3 of the Committee of Ministers of 12 February 1987 on The European Prison Rules; and § 103 Rec No. R(99)22 of the Committee of Ministers of 30 September 1999 on Prison Overcrowding and Prison Population Inflation;

*Stanev v. Bulgaria*, decision of 29 June 2010, § 63 – Rec No. R(99)4 of the Committee of Ministers of 23 February 1999 on principles concerning the legal protection of incapable adults;

*Gradek v. Poland*, judgment of 8 June 2010, § 24-25 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on the European Prison Rules;

*Artyomov v. Russia*, judgment of 27 May 2010, § 97 – Rec No. R(98)7 of the Committee of Ministers on ethical and organisational aspects of health care in prison; and § 98 – Rec No. R(93)6 of the Committee of Ministers on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison;

*Alajoss Kiss v. Hungary*, judgment of 20 May 2010, § 15 – R(99)4 of the Council of Ministers of 23 February 1999 on Principles Concerning the Legal Protection of Incapable Adults; and § 17 – Rec(2006)5 of the Committee of Ministers of 5 April 2006 on Council of Europe Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society: Improving the

Quality of Life of People with Disabilities in Europe 2006-2015;

*Khaydarov v. Russia*, judgment of 20 May 2010, § 78 – Rec No. R(98)13 of the Committee of Ministers on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights;

*Ozerov v. Russia*, judgment of 18 May 2010, § 33 – Rec(2000)19 of the Committee of Ministers of 6 October 2000 on role of public prosecution in the criminal justice system;

*Uitgeversmaatschappij de Telegraaf B.v. and Others v. The Netherlands*, partial decision of 18 May 2010, § 50 – Rec No. R(2000)7 of the Committee of Ministers of 8 March 2000 on the right of journalists not to disclose their sources of information;

*Khodzhayev v. Russia*, judgment of 12 May 2010, § 65 - Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the rights of rejected asylum seekers to an effective remedy against decisions on expulsion;

*Maria Karolina Steck-Risch and Others v. Liechtenstein*, decision of 11 May 2010, § 4B(3) - Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

*Laska and Lika v. Albania*, judgment of 20 April 2010, § 75 - Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

*Flinkkilä and Others v. Finland*, judgment of 6 April 2010, § 45 - Rec(2003)13 on the provision of information through the media in relation to criminal proceedings;

*Pavlenko v. Russia*, judgment of 1 April 2010, § 61 - Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rule;

*Depalle v. France*, judgment of 29 March 2010, § 54 - Recommendation No. R (97) 9 of the Committee of Ministers on a policy for the development of sustainable environment-friendly tourism in coastal areas;

*Brosset-Triboulet and Others v. France*, judgment of 29 March 2010, § 55 - Recommendation No. R (97) 9 of the Committee of Ministers on a policy for the development of sustainable environment-friendly tourism in coastal areas.

*Kondratyev v Ukraine*, judgment of 15 December 2011, § 57 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules;

*Laduna v Slovakia*, judgment of 13 December 2011, § 32 – Rec No. R(87)3 of the Committee of Ministers of 12 February 1987 on European Prison Rules; and § 33 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules;

*Berzinis v. Lithuania*, decision of 13 December 2011, Rec(2004)6 of the Committee of Ministers of 12 May 2004 on subsidiary character of the supervision mechanism set up by the Convention;

*Negrea v. Romania*, decision of 4 October 2011, pg. 7 - Rec(2003)13 of the Committee of Ministers of 10 July 2003 on the provision of information through the media in relation to criminal proceedings;

*L.M. v. Latvia*, judgment of 19 July 2011, § 49 - Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder;

*Stummer v. Austria*, judgment of 7 July 2011, § 54 - Rec(2006)2 of the Committee of Ministers of 11 January 2006 on the European Prison Rules;

*Bayatyan v. Armenia*, judgment of 7 July 2011, § 54 – Recommendation no. R(87)8 of the Committee of Ministers on the right to conscientious objection; § 54 - Rec(2010)4 of the Committee of Ministers on the right to freedom of thought, conscience and religion of members of the armed force;

*Giuran v Romania*, judgment of 21 June 2011, § 36 - Rec(2000)2 on the re-examination or reopening of certain cases at the domestic level following judgments of the European Court of Human Rights;

*Igor Nasković v. Serbia*, decision of 14 June 2011, § 50- Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;

*Csüllög v. Hungary*, judgment of 7 June 2011, § 17 - Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules;

*Bogusław Krawczak v. Poland*, judgment of 31 May 2011, § 61 - Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

*Golha v. The Czech Republic*, judgment of 26 May 2011, § 32 - Rec (2010)3 of the Committee of Ministers of the Council of Europe to member States on effective remedies for excessive length of proceedings;

*Župa v. The Czech Republic*, judgment of 26 May 2011, § 21 - Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder;

*R.R. v. Poland*, judgment of 26 May 2011, § 172 - Committee of Ministers' Recommendation No. R (90)13 to Member States on Prenatal Genetic Screening, Prenatal Genetic Diagnosis, and Associated Genetic Counselling;

*Finger v. Bulgaria*, judgment of 10 May 2011, § 56 - Rec(2010)3 to member states on the need to improve the effectiveness of domestic remedies for excessive length of proceedings;

§ 56(2) - Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to grant compensation to interested parties for damage suffered;

*Shkalla v. Albania*, judgment of 10 May 2011, § 78 - Committee of Ministers Recommendation No. R (2000) 2;

*Dimitrov and Hamanov v. Bulgaria*, judgment of 10 May 2011, § 52 – Rec(2010)3 of the Committee of Ministers on the need to improve the effectiveness of domestic remedies for excessive length of proceedings;

*Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, judgment of 5 May 2011, § 29 – CM/Rec(2007)16 of the Committee of Ministers of 7 November 2007 on measures to promote the public service value of the Internet;

*Vasyukov v. Russia*, judgment of 5 April 2011, § 43 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules;

*Yevgeniy Alekseyenko v. Russia*, judgment of 27 January 2011, § 73 - Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules; and § 75 – Rec No. R(98)7 of the Committee of Ministers of 8 April 1998 on Health Care in Prisons; and § 76 – Rec No. R(93)6 of the Committee of Ministers of 18 October 1993 on Control of Transmissible Diseases in Paris;

*Reinboth and Others v. Finland*, judgment of 25 January 2011, § 50 – Rec(2003)13 of the Committee of Ministers of 10 July 2003 on the provision of information through the media in relation to criminal proceedings;

*Hacioglu v. Romania*, judgment of 11 January 2011, § 37 – Rec(2006)2 of the Committee of Ministers of 11 January 2006 on European Prison Rules;

*Dowsett v. United Kingdom*, decision of 4 January 2011, § C - Rec(2000) 2 of the Committee of Ministers of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

*D.D. v. Lithuania*, judgment of 14 February 2012, § 85 - Rec(99)4 by the Committee of Ministers of the Council of Europe stating that the person concerned should have the right to be heard in any proceedings which could affect his or her legal capacity;

*Vejdeland and Others v. Sweden*, judgment of 9 February 2012, § 6 - Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity;

*Axel Springer AG v. Germany*, judgment of 7 February 2012, § 96 - Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings, adopted on 10 July 2003;

*Gatis Kovalkovs v. Latvia*, decision of 31 January 2012, § 40 - Rec(2006)2 to member states on the European Prison Rules;

*Korneykova v. Ukraine*, judgment of 19 January 2012, § 24 – Rec(87)20 of the Committee of Ministers to Member States of the Council of Europe on social reactions to juvenile delinquency; § 25 - Rec(2003)20 of the Committee of Ministers to Member States of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

*Krone Verlag GMBH & Co KG and Krone Multimedia v. Austria*, judgment of 17 January 2012, § 31 - Rec(85)11 on the position of the victim in the framework of criminal law and procedure; § 32 - Rec(2001)16 on the protection of children against sexual exploitation; § 33 - (2003)13 on the provision of information through the media in relation to criminal proceedings;

*Fetisov and Others v. Russia*, judgment of 17 January 2012, § 66 - Rec(2006)2 to member States on the European Prison Rules;

*Kurier Zeitungsverlag und Druckerei GMBH v. Austria*, judgment of January 17 2012, § 26 - Rec(85)11 on the position of the victim in the framework of criminal law and procedure; § 27 - Rec(2001)16 on the protection of children against sexual exploitation; § 28 - Rec(2003)13 on the provision of information through the media in relation to criminal proceedings;

*Stanev v. Bulgaria*, judgment of 17 January 2012, § 244 - Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults;

*Lahtonen v. Finland*, judgment of 17 January 2012, § 45 – Rec(2003)13 of the Committee of Ministers of 10 July 2003 on provision of information through the media in relation to criminal proceedings;

*Gorovenky and Bugara v. Ukraine*, judgment of 12 January 2012, § 23 – Rec(2001)10 of the Committee of Ministers on European Code on Police Ethics;

*Standard Verlags GMBH v. Austria (No. 3)*, judgment 10 January 2012, §19 – Rec(2003)13of the Committee of Ministers of 10 July 2003 on provision of information through the media in relation to criminal proceedings;

*Ananyev and Others v. Russia*, judgment of 10 January 2012, § 57 – Rec No. R(99)22 of the Committee of Ministers of 30 September 1999 on prison overcrowding and prison population inflation;

*Gladkiy v Russia*, judgment of 21 December 2012, § 43 - Rec(2006)2 of the Committee of Ministers of 11 January 2006 to member states on the European Prison Rules;