



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1990/65
2 February 1990

Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Forty-sixth session
Agenda item 11

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF
WORK OF THE COMMISSION

Note by the Secretariat

This report has been submitted by the Council of Europe in accordance with Economic and Social Council resolution 1159 (XLI) of August 1966 concerning the activities of the Council of Europe in the field of Human Rights during 1989.

COUNCIL OF EUROPE
ACTIVITIES IN THE FIELD OF HUMAN RIGHTS
DURING 1989

CHAPTER I - Application of the European Convention on Human Rights and its Protocols

Section 1 - Signatures, ratifications, declarations

22 of the 23 member States of the Council of Europe are parties to the European Convention on Human Rights; Finland, which acceded to the Council of Europe on 5 May 1989, is not yet a Party to the Convention. On 22 March 1989 San Marino made a declaration under Article 25 of the Convention recognising for three years the competence of the European Commission of Human Rights to receive individual petitions. The number of States having recognised the competence of the Commission to receive individual petitions is therefore 22. (ie. all the States Parties to the Convention)

On 22 March 1989 San Marino recognised for three years the compulsory jurisdiction of the European Court of Human Rights. Thus all the States Parties, except Turkey, have made the declaration under Article 46 of the Convention.

Protocol No. 1 to the Convention has not yet been ratified by Liechtenstein, Spain and Switzerland, while Protocol No. 2 has been ratified by all the States Parties.

Protocol No. 4 to the Convention, securing certain rights and freedoms other than those already included in the Convention and the First Protocol, was in force among 14 States (1). These governments have also extended their acceptance of the compulsory jurisdiction and the right of the individual petition to applications concerning the rights guaranteed in the Fourth Protocol.

Protocol No. 6 to the Convention concerning the abolition of the death penalty, opened for signature on 28 April 1983, entered into force on 1 March 1985. It has been ratified by 14 States (2).

Protocol No. 7 to the Convention, securing five new rights, in force since 1 November 1988, has been ratified by 10 States, ie Austria, Denmark, France, Greece, Iceland, Luxembourg, Norway, San Marino, Sweden and Switzerland.

(1) Austria, Belgium, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, San Marino, Sweden.

(2) Austria, Denmark, France, Federal Republic of Germany, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, San Marino, Spain, Sweden and Switzerland.

Protocol No. 8 concening the procedure both of the European Commission and European Court of Human Rights opened for signature on 19 March 1985 will come into force on 1 January 1990. It has now been ratified by all State Parties to the Convention.

The European Agreement relating to persons participating in proceedings of the European Commission and the Court of Human Rights, which entered into force on 17 April 1971, has been ratified by 19 States (1).

(1) Austria, Belgium, Cyprus, Denmark, France, Republic Federal of Germany, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom.

Section 2 European Commission of Human Rights

The European Commission of Human Rights is composed of 21 members who are elected for six years by the Committee of Ministers of the Council of Europe and sit on the Commission in their individual capacity. The Commission meets in Strasbourg and normally holds five sessions of two-weeks each. It may decide to hold such additional sessions as circumstances may require. In 1988 the Commission was assisted in all its functions by a permanent secretariat composed of 32 lawyers and 18 administrative assistants.

During 1988 the Commission's Secretariat opened 4,108 provisional files and registered 1,009 individual applications. The total number of applications pending before the Commission on 31 December 1988 was 1,667. There still remains an important backlog of cases before the Commission: whereas on 31 December 1987 a total of 1,029 cases were awaiting a first examination by the Commission, there were still 1,326 cases in that position on 31 December 1988.

In 1988 the Commission held altogether nine sessions, namely five regular two-week sessions and four additional sessions of one week devoted mainly to hearings.

Decisions, Sessions, Hearings

- Decisions

In 1988 the Commission gave notice of 196 individual applications to the Governments concerned in order to obtain written observations on the admissibility and merits. The Commission furthermore delivered 654 decisions concerning individual applications of which

- 535 were declared inadmissible
- 67 were struck off the list
- 52 were declared admissible (see list in the Appendix)

The Commission adopted 36 Reports, namely:

- 28 on the question of violation under Art. 31 of the Convention
- 8 on a friendly settlement reached under Art. 30 of the Convention
- 3 striking the case off the list under Rule 54 of the Rules of Procedure.

- Sessions

The Commission held 9 sessions in 1988:

191st session	:	18 January	-	22 January
192nd session	:	29 February	-	11 March
193rd session	:	11 April	-	15 April
194th session	:	2 May	-	13 May
195th session	:	4 July	-	15 July
196th session	:	5 September	-	9 September
197th session	:	3 October	-	14 October
198th session	:	7 November	-	11 November
199th session	:	5 December	-	16 December

- Hearings

The Commission held 33 oral hearings in individual applications, namely 29 on admissibility and merits and 4 on merits only.

Legal Aid

The Commission's power to grant free legal aid stems from Resolution (63) 18, adopted on 25 October 1963 by the Committee of Ministers. The provisions governing the grant of legal aid are set out in the Addendum to the Commission's Rules of Procedure.

In 1988, 39 applicants received legal aid from the Commission. The necessary appropriations are made each year in the Council of Europe's budget. The total sum of expenditure under the legal aid scheme in 1988 was approximately 421.000 FF.

Publications prepared by the Secretariat of the European Commission of Human Rights (Rule 20 of the Rules of Procedure of the Commission)

These publications include:

- Press reviews

The reviews include information notes concerning sessions, announcements of sessions and press releases on individual cases after oral hearings. A total of 48 press reviews were published in 1988.

- "Decisions and Reports"

This publication contains complete texts or extracts from the most significant decisions on the admissibility of applications, as well as the Commission's Reports where they have been made public, except on cases which have been brought before the European Court of Human Rights (these Reports are published by the Court itself).

3 volumes appeared in 1988:

No. 41 (April 1985)
No. 42 (July 1985)
No. 43 (October 1985)

as well as a special volume of Summaries and Indexes concerning volumes 21-40.

- Minutes of the session

The minutes with their Council of Europe reference numbers are the following:

DH (88) 1	-	191st session
DH (88) 2	-	192nd session
DH (88) 3	-	193rd session
DH (88) 6	-	194th session
DH (88) 7	-	195th session
DH (88) 8	-	196th session
DH (88) 9	-	197th session
DH (88) 10	-	198th session
DH (88) 11	-	199th session

- "Stock-taking on the European Convention on Human Rights" - Supplement 1987

A yearly supplement to the Stock-taking on the European Convention on Human Rights - A periodic note on the concrete results achieved under the Convention: The first thirty years: 1954 until 1984, by the Secretary to the European Commission of Human Rights.

Section 4 - Activities of the Committee of Ministers of the Council of Europe with respect to the implementation of the European Convention on Human Rights

The Committee of Ministers of the Council of Europe is called on to perform two functions within the framework of the Convention. Firstly, when a case has not been referred to the European Court within the time allowed for under paragraph 1 of Article 32 of the Convention, ie three months from the date of the transmission to the Committee of Ministers of the Commission's report, the Committee of Ministers is required to take a decision on whether or not the Convention has been violated. Secondly, when the European Court has made a final ruling on a case, it is up to the Committee of Ministers to supervise the execution of the judgment of the Court in accordance with Article 54 of the Convention.

I. APPLICATION OF ARTICLE 32 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

During the period in question, the Committee of Ministers has undertaken the following action in application of Article 32 of the European Convention on Human Rights:

SALLUSTIO against Italy	Resolution DH (89) 1 of 18 January 1989
WARWICK against the United Kingdom	Resolution DH (89) 5 of 2 March 1989
VEIT against the Federal Republic of Germany	Resolution DH (89) 6 of 2 March 1989
MINNITI against Italy	Resolution DH (89) 7 of 2 March 1989
MARINUCCI against Italy	Resolution DH (89) 11 of 27 April 1989
USKELA against Sweden	Resolution DH (89) 14 of 26 May 1989
INGRID JORDEBO FOUNDATION OF CHRISTIAN SCHOOLS against Sweden	Resolution DH (89) 15 of 26 May 1989
L against Sweden	Resolution DH ^a (89) 16 of 15 June 1989
J against the United Kingdom	Resolution DH (89) 17 of 15 June 1989
MLYNEK against Austria	Resolution DH (89) 19 of 19 September 1989
KARNI against Sweden	Resolution DH (89) 20 of 19 September 1989
GRACE against the United Kingdom	Resolution DH (89) 21 of 19 September 1989

W. against the United Kingdom	Resolution DH (89) 27 of 19 September 1989
ZENGİN against the Federal Republic of Germany	Resolution DH (89) 29 of 10 November 1989
AKDOĞAN against the Federal Republic of Germany	Resolution DH (89) 28 of 10 November 1989
BIONDO against Italy	Resolution DH (89) 30 of 10 November 1989

II. APPLICATION OF ARTICLE 54 OF THE EUROPEAN CONVENTION ON
HUMAN RIGHTS

During the period in question, the Committee of Ministers has undertaken the following action in application of Article 54 of the European Convention on Human Rights:

UNTERPERTINGER against Austria	Resolution DH (89) 2 of 18 January 1989
X and Y against the Netherlands	Resolution DH (89) 3 of 19 January 1989
ÖZTÜRK against the Federal Republic of Germany	Interim Resolution DH (89) 8
F against Switzerland	Interim Resolution DH (89) 9 of 2 March 1989
WOUKAM MOUDEFO against France	Resolution DH (89) 10 of 2 March 1989 friendly settlement
SCHÖNENBERGER AND DURMAZ against Switzerland	Resolution DH (89) 12 of 27 April 1989
BERREHEEB against the Netherlands	Resolution DH (88) 13 of 27 April 1989
WEEKS against the United Kingdom	Resolution DH (89) 18 of 15 June 1989
MARTINS MOREIRA against Portugal	Resolution DH (89) 22 of 19 September 1989
NEVES E SILVA against Portugal	Resolution DH (89) 23 of 19 September 1989
BELILOS against Switzerland	Resolution DH (89) 24 of 19 September 1989
BOCK against the Federal Republic of Germany	Resolution DH (89) 25 of 19 September 1989
ÖZTÜRK against the Federal Republic of Germany	Resolution DH (89) 31 of 10 November 1989

CHAPTER II - Other measures concerning the protection of human rights

Section 1 - Implementation of the Medium-Term Plan in the field of human rights

i. Reinforcing the effectiveness of the European Convention on Human Rights

The Steering Committee for Human Rights (CDDH) adopted a report on the establishment of the European Commission of Human Rights on a semi-permanent basis. This proposal aims at enabling the Commission to come to grips with the steadily increasing number of applications from individuals and to cope with the particular serious problems confronting it. In September 1989 the Ministers' Deputies decided to establish, as of January 1990, a system whereby payment of retainers would be made to members of the Commission in advance on a monthly basis, with a fixed minimum threshold of participation entitling the payment of the said retainer.

The Steering Committee for Human Rights considered the possibility of merging the European Commission and the European Court of Human Rights in the light of a report prepared by the Committee of Experts for the improvement of procedures for the protection of human rights (DH-PR) and of Recommendation 1087 (1988) of the Parliamentary Assembly. It instructed the DH-PR to draw up the detailed structure of a possible single Court system.

Other possible improvements to the procedures under the European Convention on Human Rights under consideration are the publication of Reports of the Commission drawn-up under Article 31 and the reduction of the two-thirds majority as provided in Article 32, paragraph 1, of the Convention. The consideration of the advisability of enabling individual applicants to refer admitted cases to the European Court of Human Rights, with regard to the complexity of the issue, was postponed until the year 1990.

ii. Specific judicial guarantees in relation to administrative procedures

The CDDH is considering a draft Protocol to the European Convention on Human Rights on specific judicial guarantees in relation to administrative procedures, which is designed to overcome the uncertainty which flows from the existing case-law of the Commission and Court in this area.

iii. Human Rights without Frontiers

Organised by the Committee of Experts for the promotion of education and information in the field of human rights (DH-ED), a Colloquy on "Human Rights without Frontiers" took place on 30 November and 1 December 1989.

The objectives of the Colloquy were as follows:

- to increase official sensitivity towards the human rights and humanitarian problems of a particularly vulnerable group of persons, namely [the rights of] persons requesting entry into a country;

- to ensure a better understanding of the Council of Europe's human rights activities and especially those relating to non-nationals; and
- to develop training programmes for immigration officials and frontier police.

The colloquy concentrated on human rights issues relating to the reception of migrants, notably those which concern asylum seekers and family reunion.

Section 2 - European Convention for the Prevention of Torture

The European Convention for the prevention of torture and inhuman or degrading treatment or punishment entered into force on 1 February 1989. It has been signed by all member States of the Council of Europe and ratified to date by fifteen of them (1).

The Convention makes provision for a Committee empowered to examine the treatment of persons deprived of their liberty and for that purpose to visit places where such persons are held. The Committee may make recommendations to the public authorities in order to strengthen the protection of these persons from torture and inhuman or degrading treatment or punishment. The Convention foresees periodic visits as well as such other visits as are required in the circumstances.

The Committee held its first meeting from 13 to 16 November 1989. The Committee elected its Bureau (President: Mr Antonio Cassese (Italy); 1st Vice-President: Mr Bent Sørensen (Denmark); 2nd Vice-President: Mr Jacques Bernheim (Switzerland)) and adopted its Rules of Procedure. The Committee also examined its working methods and decided in particular to choose in an entirely neutral way, namely by lot, the States in which the first periodic visits would be carried out.

Section 3 - Colloquy on "The Universality of Human Rights in a Pluralistic World"

This Colloquy, organised by the Secretary General of the Council of Europe, in co-operation with the International Institute of Human Rights, as part of the Organisation's 40th anniversary celebrations, was held from 17 to 19 April 1989. It brought together some 100 participants from over 40 countries, amongst which the Dalai Lama, Mr Badinter, France's Constitutional Council President and former Minister of Justice, Mr Lopatka, Poland's Supreme Court President, Mr Bedjaoui, Algeria's former Foreign Minister and member of the International Court of Justice, Mr Pathak, India's Chief of Justice and Mrs Hersch, Professor of Philosophy at the University of Geneva.

The two major themes of the Colloquy were "The difficult advance of human rights towards universality" and "The universality of human rights, a challenge for tomorrow's world".

(1) Austria, Cyprus, Denmark, France, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom.

Section 4 - European Human Rights Prize

On the basis of proposals submitted by the Assembly, the Committee of Ministers decided to award the European Human Rights Prize for 1989 jointly to Mr Lech Walesa and the International Helsinki Federation for Human Rights (IHF) (Vienna), considering that the two prize-winners had served the cause of human rights in an outstanding manner in conformity with the principles of individual liberty, political freedom and the pre-eminence of law, which form the basis of any truly democratic society and which are guaranteed in particular by the European Convention on Human Rights. The prize was awarded on 10 May 1989 in the presence of the President of the Assembly and the President of the Committee of Ministers.

Section 5 - 40th Anniversary of the Universal Declaration of Human Rights

At its 83rd Session, the Committee of Ministers paid tribute to the untiring efforts of the United Nations and its Secretary General in order to find peaceful settlement for regional conflicts and appealed to the international community, when seeking to solve such conflicts, to seek solutions that respect human rights and individual freedoms. To support the United Nations efforts and following a proposal made by the Steering Committee for Human Rights, the Committee of Ministers adopted a message on the occasion of the 40th anniversary of the Universal Declaration of Human Rights.

Texts adopted by the Parliamentary Assembly in 1989
having a bearing on Human Rights

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FIRST ORDINARY SESSION

RESOLUTION 927 (1989)¹
*on the situation of the ethnic
and Muslim minority in Bulgaria*

The Assembly,

1. Considering its Resolution 846 (1985) on the situation of ethnic and Muslim minorities in Bulgaria, its Recommendation 1109 (1989) on the situation of refugees of Bulgarian nationality in Turkey, and the report on the situation of the ethnic and Muslim minority in Bulgaria presented by its Committee on Relations with European Non-Member Countries (Doc. 6106);

2. Noting with satisfaction that the Bulgarian authorities finally received a sub-committee of the Assembly from 13 to 19 July 1989 under the required conditions, namely that it should be able to choose where it went and with whom it spoke and use its own interpreters;

3. Regretting, however, that it did not have the opportunity of meeting all the "dissidents" mentioned in the programme;

4. Taking note of the following information brought back by the sub-committee:

i. a major human tragedy is taking place in Bulgaria, with hundreds of thousands of Bulgarian Muslims leaving for Turkey;

ii. these Muslims are leaving the country both because of the serious denial of their rights — name-changing, ban on speaking Turkish and restrictions on the practice of their religion — and because they are encouraged by offers of resettlement through the Turkish media;

1. *Assembly debate* on 26 September 1989 (17th Sitting) (see Doc. 6106, report of the Committee on Relations with European Non-Member Countries, Rapporteur: Mr Probst).

Text adopted by the Assembly on 26 September 1989 (17th Sitting).

ASSEMBLÉE PARLEMENTAIRE
DU
CONSEIL DE L'EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

RÉSOLUTION 927 (1989)¹
*relative à la situation de la minorité
ethnique et musulmane en Bulgarie*

L'Assemblée,

1. Considérant sa Résolution 846 (1985) relative à la situation des minorités ethniques et musulmanes en Bulgarie, sa Recommandation 1109 (1989) relative à la situation des réfugiés de nationalité bulgare en Turquie, et le rapport sur la situation de la minorité ethnique et musulmane en Bulgarie présenté par sa commission des relations avec les pays européens non membres (Doc. 6106);

2. Notant avec satisfaction que les autorités bulgares ont finalement accueilli du 13 au 19 juillet 1989 une sous-commission de l'Assemblée dans les conditions requises: itinéraire et interlocuteurs de son choix, et ses propres interprètes;

3. Regrettant toutefois qu'elle n'a pas eu l'occasion de rencontrer tous les «dissidents» figurant au programme;

4. Prenant note des informations qu'a rapportées la sous-commission:

i. la Bulgarie est en train de connaître une tragédie humaine majeure avec le départ pour la Turquie de centaines de milliers de musulmans bulgares;

ii. ces musulmans quittent le pays d'une part en raison du grave refus de reconnaître leurs droits — changement de noms, interdiction de parler turc et restrictions dans la pratique de leur religion — d'autre part parce qu'ils y sont encouragés par les promesses de rétablissement qui leur sont transmises par les médias turcs;

1. *Discussion par l'Assemblée* le 26 septembre 1989 (17^e séance) (voir Doc. 6106, rapport de la commission des relations avec les pays européens non membres, rapporteur: M. Probst).

Texte adopté par l'Assemblée le 26 septembre 1989 (17^e séance).

Resolution 927

Résolution 927

iii. although there were a number of expulsions in May 1989, since then departures, although nominally voluntary, have constituted a mass exodus;

iv. quite apart from the human tragedy they represent, these departures are not a lasting solution, particularly in view of their consequences both for Bulgaria — loss of manpower and disorganisation of rural life — and for Turkey — reception, accommodation and labour-market problems;

5. Noting that the number of immigrants has reached over 300 000, that, as from 22 August 1989, the Turkish Government decided to re-establish the entrance visa obligation for Bulgarian citizens, and that about 20 000 of them have already returned to Bulgaria;

6. Observing that there is disagreement as to the ethnic identity of the majority of the Muslim community: the Bulgarians say that it is composed of Bulgarians islamised during Ottoman rule and the Turks that it consists of Muslims of Turkish ethnic origin undergoing forced assimilation;

7. Recognising that the amendments to the legislation on nationality and passports adopted by the Bulgarian National Assembly on 8 and 9 May 1989 represent a step forward in terms of the provisions of the instruments adopted within the CSCE and United Nations framework and should help to satisfy Turkey's demands aimed at securing a free choice of homeland for the Bulgarian ethnic and Muslim community and guaranteeing that families are reunited;

8. Welcoming the resolution adopted on 21 September 1989 by the relevant committee of Bulgaria's National Assembly stressing the need that the authorities implement the freedom of religion which is guaranteed by the Constitution as well as the free use of different languages in everyday contacts between citizens, and hoping for an immediate application of this resolution by the Bulgarian Government;

9. Observing that dialogue between the Bulgarian and Turkish Governments is currently at a standstill, and that the protocol which they signed in Belgrade on 23 February 1988 has not been implemented, and encouraging the Council of Europe and its member states to contribute to the opening of a constructive

iii. s'il y a eu un certain nombre d'expulsions au mois de mai 1989, depuis lors les départs, même s'ils sont formellement volontaires, ont constitué un exode de masse;

iv. à côté des drames humains qu'ils représentent, ces départs ne constituent pas une solution durable, en raison notamment des conséquences qu'ils entraînent pour la Bulgarie — perte de main-d'œuvre et désorganisation de la vie rurale — et pour la Turquie — problèmes d'accueil, de logement et du marché du travail;

5. Constatant que le nombre d'immigrants a dépassé les 300 000, qu'à partir du 22 août 1989 le Gouvernement turc a décidé de rétablir l'obligation de visas d'entrée pour les citoyens bulgares, et qu'environ 20 000 d'entre eux sont déjà retournés en Bulgarie;

6. Observant que l'appartenance ethnique de la majorité de la communauté musulmane reste controversée: pour les Bulgares elle est composée de Bulgares islamisés pendant la domination ottomane, alors que pour les Turcs elle est constituée de musulmans d'appartenance ethnique turque faisant l'objet d'une assimilation forcée;

7. Reconnaisant que les amendements aux lois sur la nationalité et sur les passeports adoptés par l'Assemblée nationale bulgare les 8 et 9 mai 1989 représentent un progrès sensible dans le sens des dispositions des instruments adoptés dans le cadre de la CSCE et des Nations Unies, et qu'ils devraient contribuer à satisfaire les demandes de la Turquie visant à garantir à la communauté ethnique et musulmane de Bulgarie le libre choix de sa patrie et la réunification des familles divisées;

8. Se réjouissant de l'adoption le 21 septembre 1989 par la commission compétente de l'Assemblée nationale de Bulgarie d'une résolution mettant l'accent sur la nécessité pour les autorités de mettre en œuvre la liberté de religion qui est garantie par la Constitution ainsi que le libre usage de différentes langues dans les contacts quotidiens entre les citoyens, et souhaitant une application immédiate de cette résolution par le Gouvernement bulgare;

9. Constatant que le dialogue entre les Gouvernements bulgare et turc est actuellement au point mort, et que le protocole qu'ils ont signé le 23 février 1988 à Belgrade n'a pas été suivi d'effets, et encourageant le Conseil de l'Europe et ses Etats membres à contribuer à l'ouverture d'un dialogue constructif entre les

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dialogue between the Bulgarian and the Turkish Governments with a view to establishing more satisfactory neighbourly relations which will lead to a migration agreement between the two countries;

10. Noting, moreover, that several countries have already put into practice with regard to Bulgaria the control mechanism relating to the human dimension of the CSCE provided for in the concluding document of the January 1989 Vienna Conference;

11. Recalling that, in its Recommendation 1109, adopted on 6 July 1989, the Assembly recommends that the Committee of Ministers "appeal to the governments of member states so that they provide, as a matter of urgency, concrete and co-ordinated aid to Turkey in order that these exiles be accorded a decent reception corresponding to standards of human dignity",

12. Urges the Bulgarian Government:

i. to end immediately its policy of forced assimilation, which is to be regarded as the main cause of the present exodus, with a view to allowing its ethnic and Muslim minority to resume the practical use of their original names, together with the unrestricted use of the Turkish language and of Muslim religious practices;

ii. to grant its ethnic and Muslim minority the rights of a minority in the spirit of the concluding document adopted by the Vienna CSCE review meeting of January 1989;

13. Also urges the Turkish authorities:

i. as a gesture of goodwill, to avoid any propaganda element in its information services to the ethnic and Muslim minority in Bulgaria;

ii. to take the necessary steps to enable separated families to reunite in accordance with their wishes;

14. Demands that both governments examine together what each country can do to help solve the concrete problems of the ethnic and Muslim minority in Bulgaria in order to avoid the mass exodus;

15. Asks the member states of the Council of Europe to promote the opening of negotiations between Bulgaria and Turkey with a view to easing the tension

Gouvernements bulgare et turc en vue de l'établissement de relations de voisinage plus satisfaisantes, qui aboutira également à un accord sur les migrations, entre les deux pays;

10. Prenant note par ailleurs de ce que plusieurs pays ont déjà mis en œuvre à l'égard de la Bulgarie le mécanisme de contrôle dans le domaine de la dimension humaine de la CSCE prévu par le document de clôture de la Conférence de Vienne de janvier 1989;

11. Rappelant que, dans sa Recommandation 1109, adoptée le 6 juillet 1989, l'Assemblée recommande au Comité des Ministres «d'intervenir auprès des gouvernements des Etats membres pour qu'ils apportent d'urgence une aide concrète et coordonnée à la Turquie pour lui permettre d'offrir à ces exilés un accueil décent et conforme aux exigences de la dignité humaine»,

12. Lance un appel pressant au Gouvernement bulgare pour qu'il:

i. mette immédiatement un terme à sa politique d'assimilation forcée, qui doit être considérée comme la cause principale de l'exode actuel, afin de permettre aux membres de sa minorité ethnique et musulmane de reprendre effectivement leurs noms d'origine, et de recourir sans restriction à l'usage de la langue turque et à la pratique de la religion musulmane;

ii. reconnaisse à sa minorité ethnique et musulmane les droits d'une minorité dans l'esprit du document de clôture de la réunion de Vienne sur les suites de la CSCE à Vienne de janvier 1989;

13. Lance également un appel pressant aux autorités turques pour que:

i. comme geste de bonne volonté, elles évitent d'inclure tout élément de propagande dans les informations qu'elles transmettent à la minorité ethnique et musulmane de Bulgarie;

ii. elles prennent les mesures nécessaires pour permettre aux familles divisées de se réunir selon les modalités qu'elles souhaitent;

14. Demande aux deux gouvernements d'examiner ensemble ce que chaque pays peut faire pour aider à résoudre les problèmes concrets de la minorité ethnique et musulmane en Bulgarie et éviter l'exode de masse;

15. Demande aux Etats membres du Conseil de l'Europe de promouvoir l'ouverture de négociations entre la Bulgarie et la Turquie en vue du relâchement

between the two countries, which could have dangerous political and economic consequences for the whole of the continent ;

16. Instructs its Committee on Migration, Refugees and Demography to examine on the spot the conditions under which Muslims from Bulgaria are received and settled in Turkey, to check that compliance with Assembly Recommendation 1056 on national refugees and missing persons in Cyprus is observed, and report back to it in due course, with proposals, in the light of Recommendation 1109, on the level of assistance the member states of the Council of Europe should supply to the Turkish Government to carry out its resettlement programme.

de la tension entre ces deux pays qui peut conduire à des conséquences politiques et économiques dangereuses pour l'ensemble du continent ;

16. Charge sa commission des migrations, des réfugiés et de la démographie d'examiner sur place dans quelles conditions les musulmans en provenance de Bulgarie sont accueillis et installés en Turquie, de vérifier si le respect de la Recommandation 1056 de l'Assemblée relative aux réfugiés nationaux et aux personnes disparues à Chypre est assuré, et de lui faire rapport en temps utile, avec des propositions, à la lumière de la Recommandation 1109, quant au niveau de l'aide que les Etats membres du Conseil de l'Europe devraient offrir au Gouvernement turc pour la réalisation de son programme de rétablissement.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FIRST ORDINARY SESSION

RESOLUTION 928 (1989)¹
on arms sales and human rights

The Assembly,

1. Recognising the inalienable right of every country to defend itself individually or collectively in the event of armed attack, in accordance with Article 51 of the United Nations Charter, and the right of nations to ask for aid and assistance from other countries to ensure respect for that principle;
2. Aware also of the substantial political, economic and commercial interests involved in the international trade in all kinds of armaments, including foreign policy, balance of payments, economies of scale and employment considerations in the exporting countries;
3. Convinced that current levels of arms exports, while now declining, clearly go beyond that required for the legitimate self-defence and security purposes of many recipient nations, and that purchases of arms are often pursued at the expense of the economic and social development of countries in the Third World;
4. Realising, furthermore, that employment in the armaments sector is highly uncertain due to fluctuating sales, that the spin-off from military to civilian technology is often highly overestimated, and that the "multiplier effect" of civilian exports is much greater in Third World countries than is the case with arms sales;
5. Believing, too, that many arms exports may be used for the violation of human rights over which the exporting country has no control, except to refuse to

1. *Assembly debate* on 27 September 1989 (19th Sitting) (see Doc. 6115, report of the Political Affairs Committee, Rapporteur: Mr Speed; and Doc. 6094, opinion of the Committee on Economic Affairs and Development, Rapporteur: Mr Holtz).

Text adopted by the Assembly on 27 September 1989 (19th Sitting).

ASSEMBLÉE PARLEMENTAIRE
DU
CONSEIL DE L'EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

RÉSOLUTION 928 (1989)¹
*relative au commerce des armes
et aux droits de l'homme*

L'Assemblée,

1. Reconnaissant le droit inaliénable de tout pays de se défendre individuellement ou collectivement en cas d'attaque armée, conformément à l'article 51 de la Charte des Nations Unies, et le droit des nations de demander aide et assistance à d'autres pays afin d'assurer le respect de ce principe;
2. Consciente également des substantiels intérêts politiques, économiques et commerciaux des pays exportateurs dans le commerce international de toutes sortes d'armements, intérêts qui touchent à la politique étrangère, à la balance des paiements, aux économies d'échelle et à des considérations d'emploi;
3. Convaincue que le volume actuel des exportations d'armes, bien qu'en diminution, dépasse nettement ce qui est nécessaire à des fins légitimes d'autodéfense et de sécurité pour de nombreuses nations importatrices, et que les achats d'armes se font souvent au détriment du développement économique et social des pays du tiers monde;
4. Constatant, par ailleurs, que l'emploi dans le secteur des armements est très incertain en raison des fluctuations dans les ventes, que souvent les retombées de la technologie militaire dans le domaine civil sont fortement surestimées et que l'« effet multiplicateur » des exportations civiles est beaucoup plus grand pour les pays du tiers monde que dans le cas des ventes d'armes;
5. Croyant également que de nombreuses exportations d'armes peuvent être utilisées pour la violation des droits de l'homme sur laquelle le pays exportateur

1. *Discussion par l'Assemblée* le 27 septembre 1989 (19^e séance) (voir Doc. 6115, rapport de la commission des questions politiques, rapporteur: M. Speed; et Doc. 6094, avis de la commission des questions économiques et du développement, rapporteur: M. Holtz).

Texte adopté par l'Assemblée le 27 septembre 1989 (19^e séance).

export arms which could be used for domestic repression, and recalling, in this context, its Recommendation 962 (1983) on development cooperation and human rights, stating that the "principle of non-interference in the domestic affairs of other states should not apply whenever human rights are at stake", and the positive reply thereto by the Committee of Ministers;

6. Concerned that the full facts and figures of international arms sales are not always revealed to the parliaments or public of member countries; and that the final destination of arms as defined in end-user certificates can be concealed;

7. Alarmed also that arms sales increasingly involve not only traditional arms, but also systems that permit the production and launching of even more ominous weapons or weapon components (such as nuclear, chemical and biological ones) with incalculable consequences for the regions concerned and the world as a whole;

8. Hopeful that the vastly improved relations between East and West can lead to more effective arms sales control on an international scale, while aware that the main threat to world peace now could come from escalating Third World conflicts fed by arms exports from the developed world;

9. Convinced that the above situation requires particularly strong political guidance and parliamentary involvement as well as closer international cooperation and assistance, to help assist recipient states with confidence-building measures for their internal and external security and with practical advice on the economics of disarmament and development,

10. Calls upon the Council of Europe member states:

a. to work in favour of reduced, better controlled arms exports to Third World countries, and to create, as a first step, control mechanisms, including at parliamentary level, to oversee hardware arms exports in particular;

b. to initiate the setting up of an open register on the production of and trade in conventional weapons, to which all members of the United Nations will be invited to adhere, such a register to be organised in

n'a d'autre contrôle que le refus d'exporter des armes utilisables pour la répression intérieure, et rappelant dans ce contexte sa Recommandation 962 (1983) relative à la coopération au développement et aux droits de l'homme, déclarant que « le principe de la non-ingérence dans les affaires intérieures d'autres Etats ne s'applique pas lorsque sont mis en cause les droits de l'homme », ainsi que la réponse positive du Comité des Ministres;

6. Inquiète de ce qu'on ne révèle pas toujours au parlement et au public des pays membres les faits et les chiffres des ventes internationales d'armes, et que la destination finale des armes telle que définie dans les certificats de dernier utilisateur peut être cachée;

7. S'inquiétant également de ce que de plus en plus les ventes d'armes ne portent pas seulement sur les armes traditionnelles, mais aussi sur les systèmes qui permettent la production et le lancement d'armes ou de composants encore plus sinistres (par exemple nucléaires, chimiques et biologiques) aux incalculables conséquences pour les régions visées et pour le monde tout entier;

8. Espérant que les relations largement améliorées entre Est et Ouest pourront permettre un contrôle plus efficace des ventes d'armes à l'échelle internationale, et pensant que la principale menace à la paix mondiale pourrait venir aujourd'hui de l'escalade de conflits du tiers monde nourris par les exportations d'armes des pays développés;

9. Convaincue que cette situation exige une conduite politique rigoureuse et une participation parlementaire, ainsi qu'une coopération et aide internationales plus étroites afin d'apporter aux pays importateurs, par des mesures génératrices de confiance, une sécurité interne et externe, et des conseils pratiques sur les aspects économiques du désarmement et du développement,

10. Invite les États membres du Conseil de l'Europe:

a. à favoriser la réduction et un meilleur contrôle des exportations d'armes vers le tiers monde, et à créer, dans un premier temps, des mécanismes de contrôle, y compris au niveau parlementaire, concernant en particulier les exportations de matériel lourd proprement dit;

b. à préconiser la création d'un registre ouvert de la production et du commerce des armes classiques, auquel seront incités à adhérer tous les États membres des Nations Unies, un tel registre étant

co-operation with existing specialist organisations such as the Stockholm International Peace Research Institute (SIPRI) and the London International Institute for Strategic Studies (IISS);

c. to establish common criteria and definitions for arms sales, including modernisation and maintenance of equipment already supplied, to draw attention to the risk of armed conflict in the regions of recipient states, and to pay particular regard to international obligations in the field of human rights;

d. to incorporate, where this is not already the case, such criteria in their national legislation while ensuring that they are scrupulously adhered to, and to establish parliamentary control bodies to this end;

e. to use their best endeavours to promote an international conference under the auspices of the United Nations, with the active participation of all the major arms-exporting countries, with a view to limiting, monitoring and controlling arms exports, bearing especially in mind the dangers to world peace of Third World conflicts, and to create towards this end a co-ordinating body on North-South arms trade policies;

f. to promote, using where possible existing regional organisations, confidence-building and enhanced security measures for recipient countries consistent with programmes reducing levels of arms exports;

g. to urge Third World countries to devote scarce resources primarily to civilian investment, rather than excessive armament, making this one of the factors to be considered when granting official development assistance and debt relief, and to promote democracy in Third World societies aimed at the realisation of human rights and socially and environmentally sound policies, and hence help avoid their militarisation;

h. to build upon the 1982 United Nations' proposals and encourage national studies on the economics and practicalities of disarmament and development that can be implemented by exporting and recipient states alike;

i. to ask the Organisation for Economic Co-operation and Development (OECD) to study the

organisé en coopération avec des organismes spécialisés existants, tels que l'Institut international de recherche sur la paix de Stockholm (SIPRI) et l'Institut international d'études stratégiques (IISS) de Londres;

c. à établir des définitions et des critères communs pour les ventes d'armes, en tenant compte de la modernisation et de l'entretien des équipements déjà fournis, à attirer l'attention sur le risque de conflits armés dans les régions où se situent les Etats importateurs, et à consacrer une attention particulière aux obligations internationales en matière de droits de l'homme;

d. à inscrire, lorsque tel n'est pas encore le cas, ces critères dans leur législation nationale, tout en veillant à leur application scrupuleuse, et à cette fin prévoir des instances de contrôle parlementaires;

e. à déployer les plus grands efforts pour susciter une conférence internationale sous les auspices des Nations Unies, avec la participation active des principaux pays exportateurs d'armes, en vue de limiter et de contrôler les exportations en cause, en songeant spécialement au danger que comportent les conflits du tiers monde pour la paix mondiale, et à créer à cette fin un organe de coordination pour les politiques de commerce des armes Nord-Sud;

f. à encourager, si possible par l'intermédiaire d'organismes régionaux existants, des mesures génératrices de confiance et d'un accroissement de sécurité pour les pays importateurs, conformément à des programmes de diminution du volume des exportations d'armes;

g. à exhorter les pays du tiers monde à consacrer leurs faibles ressources à des investissements de nature civile essentiellement, et non pas au surarmement, faisant de ce comportement un des facteurs à considérer lors de l'allégement de la dette et de l'octroi de l'aide au développement, et à promouvoir la démocratie dans les sociétés du tiers monde dans le but d'assurer le respect des droits de l'homme et de saines politiques dans le domaine social et de l'environnement, et ainsi contribuer à en éviter la militarisation;

h. s'inspirant des propositions des Nations Unies de 1982, à encourager les études nationales sur les aspects économiques et les possibilités du désarmement et du développement, études qui peuvent être réalisées tant par les Etats exportateurs que par les Etats importateurs;

i. à prier l'Organisation de coopération et de développement économiques (OCDE) d'étudier les

problems, possibilities and consequences related to the conversion from military to civilian production, building on past experiences;

j. to give high priority to encouraging a level of harmonisation of national legislation controlling and licensing arms exports, and to take urgent steps to ensure the credibility of and compliance with end-user certificates for arms export sales with the maximum possible parliamentary scrutiny and contact.

problèmes, les possibilités et les conséquences liées à la transformation de la production militaire en une production civile, en tirant parti des expériences passées;

j. à donner un ordre de priorité élevé à l'encouragement de l'harmonisation des législations nationales de contrôle et d'autorisation des exportations d'armes, et à prendre des mesures d'urgence pour assurer la crédibilité et le respect des certificats de dernier utilisateur pour les exportations d'armes, avec le maximum possible de surveillance et de contacts parlementaires.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FIRST ORDINARY SESSION

RECOMMENDATION 1114 (1989)¹

*on the situation
of minorities in Romania*

The Assembly,

1. Considering the report on the situation of minorities in Romania, presented by its Committee on Relations with European Non-Member Countries (Doc. 6105);
2. Recalling the principles underlying its policy of opening up to the countries of Central and Eastern Europe — observance and implementation of international human rights instruments adopted within the framework of the United Nations and the CSCE — and its decision to grant special guest status to the Parliaments of Hungary, Poland, the USSR and Yugoslavia;
3. Recalling that its Committee on Relations with European Non-Member Countries has on many occasions sought to establish a dialogue with the Romanian authorities, and regretting that they did not reply to the invitation to participate in the hearing on the situation of minorities in Romania held in Strasbourg on 3 July 1989;
4. Vigorously condemning the activities of the *Securitate* (political police) and the systematisation plan devised by President Ceauşescu, under which almost half of the 13 000 or so Romanian villages are to be destroyed and whose implementation has already commenced in the Bucharest area;
5. Aware that, while these human rights violations affect the “unhappy Romanian people” as a whole, they are more specifically directed against the Hungarian and the Tzigane minorities, whereas the

1. *Assembly debate on 26 September 1989 (17th Sitting)* (see Doc. 6105, report of the Committee on Relations with European Non-Member Countries, Rapporteur: Mr Noerens).

Text adopted by the Assembly on 26 September 1989 (17th Sitting).

ASSEMBLÉE PARLEMENTAIRE
DU
CONSEIL DE L'EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

RECOMMANDATION 1114 (1989)¹

*relative à la situation
des minorités en Roumanie*

L'Assemblée,

1. Considérant le rapport sur la situation des minorités en Roumanie, présenté par sa commission des relations avec les pays européens non membres (Doc. 6105);
2. Rappelant les principes sur lesquels repose sa politique d'ouverture vers les pays d'Europe centrale et de l'Est — respect et mise en œuvre des instruments internationaux relatifs aux droits de l'homme conclus dans le cadre des Nations Unies et de la CSCE — sur la base desquels elle a attribué le statut d'invité spécial aux Parlements de la Hongrie, de la Pologne, de l'URSS et de la Yougoslavie;
3. Rappelant que sa commission des relations avec les pays européens non membres a recherché à maintes reprises le dialogue avec les autorités roumaines, et regrettant que celles-ci n'aient pas répondu à l'invitation à participer à l'audition sur la situation des minorités en Roumanie qui s'est tenue le 3 juillet 1989 à Strasbourg;
4. Condamnant de la manière la plus énergique les agissements de la *Securitate* (police politique) et le plan de systématisation du Président Ceauşescu, qui tend à faire disparaître près de la moitié des quelque 13 000 villages roumains, et dont la réalisation a déjà commencé dans la région de Bucarest;
5. Constatant que, si ces violations des droits de l'homme affectent l'ensemble du « malheureux peuple roumain », elles sont plus particulièrement dirigées contre les minorités hongroise et tzigane, alors que

1. *Discussion par l'Assemblée le 26 septembre 1989 (17^e séance)* (voir Doc. 6105, rapport de la commission des relations avec les pays européens non membres, rapporteur: M. Noerens).

Texte adopté par l'Assemblée le 26 septembre 1989 (17^e séance).

German and Jewish minorities are gradually leaving the country on a fee-paying basis;

6. Noting that, contrary to all its international obligations, the Romanian regime blatantly disregards the rights conferred on its "cohabiting nationalities" in terms of freedom of expression, freedom of the press, freedom to engage in political activities, cultural freedom, freedom of religion and freedom of circulation, and expressing its admiration for the courage and resolution of the Romanian dissidents;

7. Considering that members of the Hungarian minority are increasingly opting for flight to Hungary and that this country, which has acceded to the United Nations Convention relating to the Status of Refugees, deserves the support of the Council of Europe and the assistance of its member states in coping with the increasingly serious problems posed by this influx of refugees;

8. Noting that the Romanian regime is increasingly cutting itself off from the other countries signatory to the Helsinki Final Act, and refuses to recognise the universal nature of human rights or any machinery to promote respect for human rights, including that provided for by the concluding document of the Vienna Conference of January 1989;

9. Convinced that it would be unwise to exclude Romania from the CSCE process, because it is a valuable vehicle for dialogue and international pressure,

10. Recommends that the Committee of Ministers:

i. offer the Hungarian Government its assistance in coping with the influx of Romanian refugees of Hungarian nationality, in particular by inviting it to become an associate member of the Social Development Fund;

ii. urge the governments of the member states:

a. to exercise all such sanctions as may be necessary against the Romanian Government, while carrying out a food-aid programme for the benefit of the Romanian population via non-governmental organisations;

b. to encourage their towns and villages to "adopt" the Romanian villages threatened with destruction, particularly as part of *Opération villages roumains*, in spite of the difficulties they will have to face;

c. to make unremitting use of the means afforded by the supervisory machinery for the human dimension

les minorités allemande et juive quittent progressivement le pays moyennant finances;

6. Notant que, contrairement à tous ses engagements internationaux, le régime roumain fait fi des droits reconnus à ses « nationalités cohabitantes » sur le plan des libertés d'expression, de presse, d'activité politique, de culture, de religion et de circulation, et exprimant son admiration face au courage et à la volonté des dissidents roumains;

7. Considérant qu'un nombre croissant de membres de la minorité hongroise choisit de fuir en Hongrie et que celle-ci, qui a adhéré à la Convention des Nations Unies sur le statut des réfugiés, mérite l'appui du Conseil de l'Europe et l'aide de ses Etats membres face aux problèmes d'accueil de plus en plus sérieux qu'elle connaît;

8. Notant que le régime roumain s'isole de plus en plus au sein de la communauté des pays signataires de l'Acte final d'Helsinki et qu'il refuse de reconnaître le caractère universel des droits de l'homme ainsi que tout mécanisme visant à promouvoir leur respect, notamment celui prévu par le document de clôture de la Conférence de Vienne de janvier 1989;

9. Convaincue qu'il serait inopportun d'exclure la Roumanie du processus de la CSCE, parce que celui-ci constitue un instrument précieux de dialogue et de pression internationale,

10. Recommande au Comité des Ministres:

i. de proposer son assistance au Gouvernement hongrois pour l'accueil des réfugiés roumains de nationalité hongroise, notamment en l'invitant à devenir membre associé du Fonds de développement social;

ii. d'inciter les gouvernements des Etats membres:

a. à appliquer au Gouvernement roumain toutes les sanctions qui s'avèrent nécessaires, tout en mettant en œuvre un programme d'aide alimentaire à la population roumaine par l'intermédiaire des organisations non gouvernementales;

b. à encourager leurs villes et leurs communes à « adopter » les villages roumains menacés de disparition, notamment dans le cadre de l'« Opération villages roumains », tout en sachant les difficultés qui les attendent;

c. à recourir sans relâche aux moyens que leur offre le mécanisme de contrôle de la dimension

Recommendation 1114

of the CSCE provided for in the concluding document of the Vienna Conference of January 1989;

iii. promote a direct dialogue between the Hungarian and Romanian authorities, for instance under the auspices of the Council of Europe;

iv. request the Romanian Government to accept a fact-finding visit by a small group of members of the Committee on Relations with European Non-Member Countries to discuss this recommendation with parliamentarians and appropriate government officials, and to allow it to undertake unsupervised its own programme of visits and meetings using its own interpreters, in preparation for a further report by the committee.

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humaine de la CSCE prévu par le document de clôture de la Conférence de Vienne de janvier 1989;

iii. de promouvoir un dialogue direct entre les autorités hongroises et roumaines, par exemple sous les auspices du Conseil de l'Europe;

iv. de demander au Gouvernement roumain d'accepter une visite d'information d'un groupe restreint de membres de la commission des relations avec les pays européens non membres pour discuter cette recommandation avec des parlementaires et agents gouvernementaux appropriés, et d'autoriser ce groupe à entreprendre sans surveillance son propre programme de visites et de rencontres en employant ses propres interprètes, en guise de préparation à un prochain rapport par la commission.

Recommendation 1116

Convention on Human Rights, either by adding health to the prohibited grounds of discrimination or by drawing up a general clause on equality of treatment before the law;

B. invite those member states which have not already done so to ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;

C. instruct the Committee of experts on data protection to investigate the problems arising in connection with computerised data concerning carriers of the HIV virus;

D. invite the member states of the Council of Europe:

i. to make all necessary arrangements for protecting the confidentiality and/or anonymity of seropositive persons and AIDS victims;

ii. not to apply Article 5, paragraph 1.e, of the European Convention on Human Rights to justify automatic isolation or hospitalisation solely on grounds that the applicant or holder is infected by the HIV virus;

iii. not to refuse the right of asylum on the sole ground that the asylum-seeker is contaminated by the HIV virus or suffers from AIDS;

iv. where appropriate, to apply only in conformity with the principles of common law the concept of criminal liability to persons who, while knowing that they carry the virus, have transmitted it to other persons by having sexual relations with them, provided that no coercion was involved and the other persons are adults and duly informed.

Recommandation 1116

Convention européenne des Droits de l'Homme, soit en ajoutant la santé parmi les motifs de distinction interdits, soit en élaborant une clause générale d'égalité de traitement devant la loi;

B. d'encourager ceux des Etats membres qui ne l'ont pas encore fait à ratifier la Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel;

C. de charger le comité d'experts sur la protection des données d'examiner de façon urgente les problèmes liés aux données informatisées concernant les porteurs du virus VIH;

D. d'inviter les Etats membres du Conseil de l'Europe:

i. à prendre toutes les dispositions pour assurer le respect de la confidentialité et/ou de l'anonymat des personnes séropositives ou atteintes du SIDA;

ii. à ne pas faire application de l'article 5, paragraphe 1.e, de la Convention européenne des Droits de l'Homme pour justifier l'isolement ou l'hospitalisation d'office au seul motif que le demandeur est infecté par le virus VIH;

iii. à ne pas refuser le droit d'asile pour le seul motif que le demandeur est contaminé par le virus VIH ou atteint du SIDA;

iv. et, éventuellement, à engager, seulement selon les principes du droit commun, la responsabilité pénale de personnes qui, se sachant porteuses du virus, en ont contaminé d'autres en ayant avec elles des relations sexuelles lorsqu'il n'y a pas eu contrainte et que la personne contaminée est adulte et dûment informée.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FIRST ORDINARY SESSION

RECOMMENDATION 1116 (1989)¹
on AIDS and human rights

The Assembly,

1. Having regard to its Resolution 812 (1983) on the acquired immune deficiency syndrome (AIDS), and its Recommendation 1080 (1988) on a co-ordinated European health policy to prevent the spread of AIDS in prisons;
2. Referring to the Committee of Ministers' Recommendation No. R (87) 25 concerning a common European public health policy to fight the acquired immunodeficiency syndrome (AIDS);
3. Noting that, although the Council of Europe has been concerned with prevention ever since 1983, the ethical aspects have been touched upon only cursorily;
4. Considering nevertheless that it is essential to ensure that human rights and fundamental freedoms are not jeopardised on account of the fear aroused by AIDS;
5. Concerned in particular at the discrimination to which some AIDS victims and even seropositive persons are being subjected;
6. Stressing in this connection the overriding need to protect medical secrecy and ensure the anonymity of AIDS victims and seropositive persons;
7. Convinced that a humane approach is entirely consistent with efforts to combat the disease,
8. Recommends that the Committee of Ministers:
A. instruct the Steering Committee for Human Rights to give priority to reinforcing the non-discrimination clause in Article 14 of the European

1. *Assembly debate* on 29 September 1989 (21st Sitting) (see Doc. 6104, report of the Legal Affairs Committee, Rapporteur: Mr Stig Gustafsson).

Text adopted by the Assembly on 29 September 1989 (21st Sitting).

ASSEMBLÉE PARLEMENTAIRE
DU
CONSEIL DE L'EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

RECOMMANDATION 1116 (1989)¹
relative au SIDA et les droits de l'homme

L'Assemblée,

1. Rappelant sa Résolution 812 (1983) relative au syndrome immuno-déficitaire acquis (SIDA), et sa Recommandation 1080 (1988) relative à une politique européenne coordonnée de la santé pour prévenir la propagation du SIDA dans les prisons;
2. Se référant à la Recommandation n° R (87) 25 du Comité des Ministres concernant une politique européenne commune de santé publique de lutte contre le syndrome d'immunodéficience acquise (SIDA);
3. Constatant que si le Conseil de l'Europe s'est préoccupé dès 1983 de la prévention, les aspects éthiques n'ont été qu'effleurés;
4. Estimant pourtant qu'il est primordial de veiller à ce que les droits de l'homme et les libertés fondamentales ne soient pas mis en péril au nom de la peur qu'inspire le SIDA;
5. Inquiète en particulier des discriminations dont sont victimes certains malades ou même des personnes séropositives;
6. Soulignant à cet égard la nécessité impérieuse de garantir le secret médical et d'assurer l'anonymat des personnes malades ou séropositives;
7. Convaincue qu'une approche humaniste est pleinement compatible avec la lutte contre la maladie,
8. Recommande au Comité des Ministres:
A. de charger le Comité directeur pour les droits de l'homme d'accorder la priorité au renforcement de la clause de non-discrimination de l'article 14 de la

1. *Discussion par l'Assemblée* le 29 septembre 1989 (21^e séance) (voir Doc. 6104, rapport de la commission des questions juridiques, rapporteur: M. Stig Gustafsson).

Texte adopté par l'Assemblée le 29 septembre 1989 (21^e séance).

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FIRST ORDINARY SESSION

RECOMMENDATION 1117 (1989)¹
on the condition of transsexuals

The Assembly,

1. Considering that transsexualism is a syndrome characterised by a dual personality, one physical, the other psychological, together with such a profound conviction of belonging to the other sex that the transsexual person is prompted to ask for the corresponding bodily "correction" to be made;
2. Considering that modern medical progress, and in particular recourse to sexual conversion surgery, enable transsexuals to be given the appearance and, to a great extent, the characteristics of the sex opposite to that which appears on their birth certificate;
3. Observing that this treatment is of a nature to bring the physical sex and the psychological sex into harmony with one another, and so give such persons a sexual identity which, moreover, constitutes a decisive feature of their personality;
4. Believing that account of the changes brought about should be taken in the transsexual's civil status records by adding such details to the original record so as to update the data concerning sex in the birth certificate and identity papers, and by authorising a subsequent change of forename;
5. Considering that a refusal of such amendment of the civil status papers exposes persons in this situation to the risk of being obliged to reveal to numerous people the reasons for the discrepancy between their physical appearance and legal status;

1. *Assembly debate* on 29 September 1989 (21st Sitting) (see Doc. 6100, report of the Legal Affairs Committee, Rapporteur: Mr Rodotà).

Text adopted by the Assembly on 29 September 1989 (21st Sitting).

ASSEMBLÉE PARLEMENTAIRE
DU
CONSEIL DE L'EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

RECOMMANDATION 1117 (1989)¹
relative à la condition des transsexuels

L'Assemblée,

1. Considérant que le transsexualisme est un syndrome caractérisé par une personnalité double, l'une physique, l'autre psychique, la personne transsexuelle ayant la conviction profonde d'appartenir à l'autre sexe, ce qui l'entraîne à demander que son corps soit « corrigé » en conséquence;
2. Considérant que les progrès de la médecine moderne, et notamment le recours à la chirurgie de « conversion sexuelle », permettent de donner aux transsexuels l'apparence et, dans une large mesure, les caractères du sexe opposé à celui qui figure dans leur acte de naissance;
3. Constatant qu'un tel traitement est destiné à mettre en concordance le sexe physique et le sexe psychique, et à donner ainsi à la personne une identité sexuelle qui constitue d'ailleurs un élément déterminant de sa personnalité;
4. Estimant qu'il convient de tenir compte des modifications intervenues dans l'état civil du transsexuel, en ajoutant ces indications sur le registre d'état civil pour la mise à jour dans son acte de naissance et dans ses papiers d'identité des mentions révélatrices de son sexe, et en lui permettant de changer par la suite de prénom;
5. Considérant que le refus d'une telle rectification dans les actes d'état civil expose l'intéressé à devoir divulguer dans sa vie courante à de nombreuses personnes les raisons du décalage existant entre son physique et son être légal;

1. *Discussion par l'Assemblée* le 29 septembre 1989 (21^e séance) (voir Doc. 6100, rapport de la commission des questions juridiques, rapporteur: M. Rodotà).

Texte adopté par l'Assemblée le 29 septembre 1989 (21^e séance).

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6. Noting that transsexualism raises relatively new and complex questions to which states are called upon to find answers compatible with respect for human rights;

7. Observing that, in the absence of specific rules, transsexuals are often the victims of discrimination and violation of their private life;

8. Considering, furthermore, that the legislation of many member states is seriously deficient in this area and does not permit transsexuals, particularly those who have undergone an operation, to have civil status amendments made to take account of their appearance, external morphology, psychology and social behaviour;

9. Considering the case-law of the European Commission and Court of Human Rights;

10. Referring to the resolution which the European Parliament adopted on 12 September 1989, in which, among other things, it called on the Council of Europe to enact a convention for the protection of transsexuals,

11. Recommends that the Committee of Ministers draw up a recommendation inviting member states to introduce legislation whereby, in the case of irreversible transsexualism:

a. the reference to the sex of the person concerned is to be rectified in the register of births and in the identity papers;

b. a change of forename is to be authorised;

c. the person's private life is to be protected;

d. all discrimination in the enjoyment of fundamental rights and freedoms is prohibited in accordance with Article 14 of the European Convention on Human Rights.

6. Constatant que le transsexualisme soulève des questions relativement récentes et complexes auxquelles il appartient aux Etats d'apporter des solutions dans le respect des droits fondamentaux;

7. Constatant que, faute de règles spécifiques, le transsexuel est souvent victime de discriminations et de violations de sa vie privée;

8. Considérant, d'autre part, que la législation de nombreux Etats membres comporte de graves lacunes à cet égard et ne permet pas au transsexuel, et notamment au transsexuel opéré, de faire rectifier son état civil pour tenir compte de son apparence, de sa morphologie externe, de son psychisme et de son comportement social;

9. Considérant la jurisprudence de la Commission et de la Cour européennes des Droits de l'Homme;

10. Se référant à la résolution que le Parlement européen a adoptée le 12 septembre 1989, dans laquelle il demandait notamment au Conseil de l'Europe d'élaborer une convention pour la protection des transsexuels,

11. Recommande au Comité des Ministres d'élaborer une recommandation invitant les Etats membres à réglementer par un texte législatif cette matière, aux termes duquel, dans le cas de transsexualisme irréversible:

a. la mention concernant le sexe de l'intéressé devrait être rectifiée dans le registre des naissances, ainsi que dans ses pièces d'identité;

b. le changement du prénom devrait être autorisé;

c. la vie privée devrait être protégée;

d. toutes discriminations dans la jouissance des libertés et droits fondamentaux devraient être interdites conformément à l'article 14 de la Convention européenne des Droits de l'Homme.

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ANNEX

Applications declared admissible

The following cases were declared admissible in 1988:

- Radio Groppera v. Switzerland (No. 10890/84) concerning the prohibition on Swiss cable network companies from distributing radio programmes initially broadcast from a transmitter in Italy (1 March 1988);
- Karni v. Sweden (No. 11540/85) concerning access to court following a refusal to permit the applicant to continue as a part-time doctor in the Swedish health service (8 March 1988);
- Jacobsson v. Sweden (No. 11309/84) concerning access to court in order to challenge a new building plan which adversely affected the applicant's use of his property (8 March 1988);
- Boschet v. Belgium (No. 10835/84) concerning the successive exercise of the functions of member of the Chamber and first-instance judge by the same member of the judiciary in the same criminal case (10 March 1988);
- Darby v. Sweden (No. 11581/85) concerning the obligation for the applicant to pay church taxes as part of municipal taxes and the impossibility for him to obtain exemption from that obligation on account of residence criteria (11 April 1988);
- Azevedo v. Portugal (No. 11296/84) concerning the length of criminal proceedings (14 April 1988);
- Kruslin v. France (No. 11801/85) concerning the use in criminal proceedings of a tape recording of a telephone conversation held by the applicant (6 May 1988);
- S. v. Netherlands (No. 10808/84) concerning the length (7 years) of criminal proceedings for embezzlement (7 May 1988);
- Skarby v. Sweden (No. 12258/86) concerning judicial review of a refusal to grant a building permit (9 May 1988);
- G. v. United Kingdom (No. 11932/86) concerning the refusal of legal aid for the applicant's appeal against conviction for perjury (9 May 1988);
- Fox, Campbell and Hartley v. United Kingdom (Nos. 12244/86, 12245/86 and 12383/86) concerning the applicants' arrest and detention under the Northern Ireland (Emergency Provisions) Act 1978 as suspected terrorists (10 May 1988);
- Meier-Sax v. Switzerland (No. 12421/86) concerning the length of proceedings relating to a preliminary issue in the applicant's claim for compensation for noise emanating from a military shooting site (11 May 1988);

- H. and H. v. United Kingdom (No. 12175/86) concerning secret surveillance measures (12 May 1988);
- E. v. Norway (No. 11701/85) concerning the Norwegian provision of review of administrative decisions concerning deprivation of liberty and other enforcement measures (12 May 1988);
- Skoogström v. Sweden (No. 12867/87) concerning the period which elapsed between the applicant's arrest and his appearance before a judge (12 May 1988);
- G. v. Austria (No. 11744/85) concerning the length of civil proceedings (6 July 1988);
- Q. v. Switzerland (No. 12744/87) concerning the refusal to designate a lawyer in criminal proceedings (6 July 1988);
- Huvig v. France (No. 11105/84) concerning the right to a fair trial (6 July 1988);
- Keus v. Netherlands (No. 12228/86) concerning the prolongation of the applicant's placement at the Government's disposal (6 July 1988);
- Weber v. Switzerland (No. 11034/84) concerning the right to a fair trial (7 July 1988);
- Huber v. Switzerland (No. 12794/87) concerning the function of the Zurich District Attorney in criminal proceedings (8 July 1988);
- Chichlian and Ekindjian v. France (No. 10959/84) concerning the right of defence in criminal proceedings (8 July 1988);
- Chauhan v. United Kingdom (No. 11518/85) concerning compulsory membership of trade union (12 July 1988);
- Thyne, Wilson, Weeks and Gunnell v. United Kingdom (Nos. 11787/85, 11978/86, 12000/86 and 12009/86) concerning the alleged absence of a procedure by which the applicants, who had been given discretionary life sentences, can have their continuing detention reviewed by a court (6 September 1988);
- Clerc v. France (No. 12393/86) concerning the length of criminal proceedings (8 September 1988);
- Delta v. France (No. 11444/85) concerning the right to a fair trial (criminal proceedings) (8 September 1988);
- Nyberg v. Sweden (No. 12574/86) concerning a prohibition on a removal of a child from the foster parents to the natural parents (4 October 1988);

- Funke v. France (No. 10828/84) concerning proceedings taken against the applicant on the basis of the French Customs Code (6 October 1988);
- Axelsson v. Sweden (No. 12213/86) concerning the right of access to court in order to have administrative decisions refusing reserve taxi licences reviewed (10 October 1988);
- Nimmo v. United Kingdom (No. 12327/86) concerning security clearance procedures (11 October 1988);
- Karlsson v. Sweden (No. 12782/87) concerning a refusal to grant the applicant a permit to acquire property and the lack of judicial proceedings to review that decision (12 October 1988);
- Skoogström v. Sweden (No. 14073/88) concerning the right to be brought promptly before a judge after arrest (14 October 1988);
- Vermeire v. Belgium (No. 12849/87) concerning inheritance rights of illegitimate children (8 November 1988);
- Isgro' v. Italy (No. 11339/85) concerning the principle of a fair trial in criminal proceedings and in particular that of equality of arms and of presumption of innocence (9 Novembre 1988);
- Soering v. United Kingdom (No. 14038/88) concerning extradition to the United States and the risk of death penalty (10 November 1988);
- Zanghi v. Italy (No. 11491/85) concerning length of civil proceedings (5 December 1988);
- Brigandi v. Italy (No. 11460/85) concerning length of civil proceedings (5 December 1988);
- L.G. v. Italy (No. 10659/83) concerning length of criminal proceedings and the rights of the defence (5 December 1988);
- Philis v. Greece (No. 12750/87) concerning the right for a private consultant engineer to sue in person his debtors for their failure to pay him the sums due (7 December 1988);
- D. et al v. Belgium (No. 11966/86) concerning the failure by the State to pay damages to the applicants to which they were entitled according to a judicial decision (8 December 1988);
- Rademacher and Pferrer v. Federal Republic of Germany (No. 12811/87) concerning the fairness of criminal proceedings brought about by undercover agents of the German police (8 December 1988);
- Koendjibiarie v. Netherlands (No. 11487/85) concerning the proceedings for prolonging the applicant's detention at the Government's disposal for treatment in a mental hospital (9 December 1988);

- Autronic AG v. Switzerland (No. 12726/87) concerning the applicant's complaint that it is not allowed to receive Soviet television programmes by means of its dish antennae (13 December 1988);
 - W. v. Austria (No. 12489/86) concerning anonymous witnesses (14 December 1988);
 - Motta v. Italy (No. 11557/85) concerning length of criminal proceedings (14 December 1988);
 - P. v. Austria (No. 13017/87) concerning the length of criminal proceedings (14 December 1988);
 - D. v. Federal Republic of Germany (No. 11157/84) concerning the length of civil proceedings concerning damages for alleged medical negligence (15 December 1988);
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