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Regular Selective Information Flow (RSIF) from the Office of the Commissioner for Human Rights to the Contact Persons of the National Human Rights Structures (NHRSs)

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covering the period from 27 October to 9 November 2008

The selection of the information contained on this Issue and deemed relevant to NHRSs is made under the responsibility of the NHRSs Unit and the Legal Advice Unit of the Office of the Commissioner.

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Introduction

This issue is part or the "Regular Selective Information Flow" (RSIF) which Commissioner Hammarberg promised to establish at a round table with the heads of the national human rights structures (NHRSs) in April 2007 in Athens. The purpose of the RSIF is to keep the national structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the Commissioner's Office carefully selects and tries to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRSs who are kindly asked to dispatch it within their offices.

Each issue will cover two weeks and will be sent out by the Commissioner's Office a fortnight after the end of each observation period. This means that all information contained in any given issue will be between two and four weeks old.

Unfortunately, the issues will be available in English only for the time being due to the limited means of the Commissioner's Office. However, the majority of the documents referred to exists in English and French and can be consulted on the web sites that are indicated in the issues.

The selection of the information included in the issues is made by the Commissioner's Office under its responsibility. It is based on what the NHRSs and the Legal Advice Units believe could be relevant to the work of the NHRSs. A particular effort is made to render the selection as targeted and short as possible.

Readers are expressly encouraged to give the Commissioner's Office any feed-back that may allow for the improvement of the format and the contents of this tool.

Part I : The activities of the European Court of Human Rights

We kindly invite you to use the INFORMATION NOTE No. 112 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in October 2008 and sorted out as being of particular interest.

A. Judgments

1. Judgments deemed of particular interest to NHRSs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments which the Office of the Commissioner considers relevant for the work of the NHRSs. They correspond also to the themes addressed in the Peer-to-Peer Workshops. The judgments are thematically grouped. The information, except for the comments drafted by the Office of the Commissioner, is based on the press releases of the Registry of the Court.

Some judgments are only available in French.

Note on the Importance Level :

According to the explanation available on the Court's website, the following importance levels are given by the Court:
1 = High importance, Judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular **State.**
2 = Medium importance, Judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.
3 = Low importance, Judgments with little legal interest - those applying existing case-law, friendly settlements and striking out judgments (unless these have any particular point of interest).

Each judgment presented in section 1 and 2 is accompanied by the indication of the importance level.

- **Requirements regarding effective investigation for police misconduct (violations of Articles 2 and 3 –procedural angle)**

Lupaşcu v. Romania (no. 14526/03) (Importance 3) and Niţă v. Romania (no. 10778/02) (Importance 2) - 4 November 2008

The Court pointed out, firstly, that it had already held that military prosecutors who were required to investigate following a criminal complaint alleging ill-treatment by police officers were not independent. The Court then noted that this lack of independence on the part of military prosecutors and courts had been tangibly expressed in both cases by the lack of impartiality with which they had conducted the investigations concerning the accused police officers.

In the ***Lupaşcu*** case, the Court noted, in particular, that the prosecutor responsible for the investigation had not indicated in his decision of 15 October 2001 whether, by immobilising the applicant with handcuffs against his will in order to take him to the police station, the police officers had exceeded their powers, given that they did not possess an arrest warrant. In addition, there was no reference in that decision to the extremely violent investigation methods used by the police officers to extract a confession, although the applicant had complained of those methods to the prosecutor's office and had described them exhaustively.

In the case of ***Niţă***, the Court noted, among other points, that neither the prosecutors nor the courts had attempted to investigate the doubts which existed as to the dental fractures found on the applicants by stomatologist, by ordering an expert report on their health or by conducting an investigation into the origin of the medical certificate drawn up shortly after the incidents in question.

In the light of the above, the Court considered that the Romanian authorities had not conducted thorough and effective investigations into the allegations of ill-treatment made by the applicants. It therefore concluded, unanimously, that there had been a further violation of Article 3 in both cases.

Evrim Öktem v. Turkey (no. 9207/03) (Importance 3) - 4 November 2008

The case concerns a bullet injury sustained by the applicant, who was 14 years old at the relevant time, during a demonstration that three police officers had attempted to break up using their firearms. Forensic tests carried out on one of the police officers' (R.Ç.) service weapon identified it as the weapon from which the shot had been fired. The applicant's father lodged a criminal complaint against R.Ç.

R.Ç. was questioned on 17 April 1996 and stated that, when confronted with the demonstrators, he had first requested reinforcements but that the demonstrators had rapidly gone on the offensive, chanting that this was to be the place of his grave. He added that he had had to fire shots in the air in an effort to discourage them, that he had also fired at the ground and that a bullet had ricocheted and hit the applicant. The next day the Bakırköy Principal Public Prosecutor instituted criminal proceedings against him. In October 2000 the Bakırköy Criminal Court acquitted R.Ç. However, following an appeal on points of law by the applicant, that judgment was set aside on the ground that judgment against R.Ç. should be deferred under Law no. 4616, providing for the deferral of conviction in respect of certain offences committed before 23 April 1999. Accordingly, the Criminal Court re-examined the case and decided, in September 2002, to defer pronouncement of the verdict in respect of R.Ç. An objection by the applicant was dismissed.

The Court observed that judgment against the police officer R.Ç. was deferred under Law no. 4616, thus affording him *de facto* impunity.

The Court has already held on a number of occasions that in such circumstances, far from being rigorous, the Turkish criminal system had no dissuasive effect capable of ensuring the effective prevention of illegal acts on the part of State agents of the type complained of by the applicant. Accordingly, the Court held that there had been violation of Article 2 in that regard.

- **Cases concerning violations of human rights in the Chechen Republic:**

Khadzhialiyev and Others v. Russia (no. 3013/04) (Importance 1) - Magamadova and Iskhanova v. Russia (no. 33185/04) (Importance 3) - Tsurova and Others v. Russia (no. 29958/04) (Importance 3) – 6 November 2008 – Violation of Article 2 (life and investigation) with respect to the applicants' relatives – Violation of Article 3 (treatment) with respect to the applicants – Violation of Article 5 – Violation of Article 13

Shaipova and Others v. Russia (no. 10796/04) (Importance 3) – 6 November 2008 – No violation of Article 2 (life) – Violation of Article 2 (investigation)

All the applicants alleged that their relatives were abducted and killed by Russian servicemen and that the domestic authorities failed to carry out an effective investigation into their allegations. They relied, in particular, on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy).

The Court concluded to the abovementionned violations in the three first cases. However in the case of **Shaipova and Others**, the Court found that the applicants had not submitted persuasive evidence to support their allegations that Russian servicemen had been implicated in the abduction of their relative. Nor had it therefore been established "beyond reasonable doubt" that the applicant had been deprived of his life by State agents. In such circumstances, the Court found that there had been no violation of Article 2 in respect of the applicants' relative. In the case **Shaipova and Others**, Article 2 of the Convention was violated in its procedural aspect due to the failure of the authorities to carry out effective criminal investigations.

- **Lawfulness and conditions of detention:**

Mikhaniv v. Ukraine (no. 75522/01) (Importance 2) – 6 November 2008 – Violation of Article 3 (treatment) – Inadequate medical care during detention – Violation of Article 5 §§ 1 and 3 – Lawfulness and length of detention – Violation of Article 6 § 1 (length of criminal proceedings)

In January 2000 the applicant was arrested and charged with embezzlement of public funds. He was released in February 2002. The criminal proceedings against him are still pending.

The Court noted that both parties confirmed that the applicant had suffered from post-traumatic encephalopathy, an ulcer and a heart condition during his detention. When first remanded in custody, various medical authorities had examined him and concluded that he had been fit for detention subject to him taking the prescribed medication. However, when detained in Zhytomyr SIZO for six weeks, the applicant had not been given the prescribed drugs as they had not been available in the prison's pharmacy. In the Court's opinion, leaving a detainee without essential medical treatment as prescribed by medical experts for such a substantial period of time and without any satisfactory explanation, amounted to inhuman and degrading treatment [See for instance the case *Nevmerzhitsky v. Ukraine* (no. 54825/00, §§ 53-56, ECHR 2005-II); as well the cases *Koval v. Ukraine* (no. *65550/01*) or *Melnik v. Ukraine* (*no. 72286/01)]*. The Court therefore held by five votes to two that there had been a violation of Article 3 on account of inadequate medical care during Mr Mikhaniv's detention in Zhytomyr SIZO. In their dissenting opinion, Judges Maruste and Berro-Lefèvre consider *inter alia* that the evidential basis for finding a violation of Article 3 is insufficient and that such situations rather fall to be examined under Article 8 as entailing interference with the private life, physical integrity and well-being of the person.

The Court further held unanimously that there had been a violation of Article 5 § 1 on account of the applicant having been arrested on two occasions and detained despite court decisions revoking his detention orders. The Court also held unanimously that there had been a violation of Article 5 § 3 on account of Mr Mikhaniv's detention on remand having lasted for two years and 15 days, and a violation of Article 6 § 1 on account of the excessive length of the criminal proceedings against him which have so far lasted for over eight years and are still pending.

Gulub Atanasov v. Bulgaria (no. 73281/01) (Importance 2) – 6 November 2008 – No violation of Article 5 § 3 – Violation of Article 5 §§ 1, 4 and 5 – Illegal transfer and detention in a psychiatric hospital – Impossibility to review the lawfulness of the detention – No satisfactory right to compensation

The applicant, now deceased, was a Bulgarian national who suffered from schizophrenia. In July 1999 Mr Atanasov was arrested and placed in pre-trial detention on suspicion of robbery and murder. By an order of 6 July 2000 the Plovdiv Court of Appeal decided to place him under house arrest. On 3 August 2000 the investigator responsible for the case ordered that an expert examination be conducted and the applicant was admitted to a psychiatric hospital for that purpose from 8 August to 4 September 2000. In July 2001 the order placing the applicant under house arrest was lifted. The proceedings against him were closed on his death.

Applying the relevant criteria from its case-law concerning the length of pre-trial detention and house arrest to the applicant's case, the Court considered that his right to be judged within a reasonable time or released pending the proceedings had not been breached and concluded unanimously that there had not been a violation of Article 5 § 3.

The Court found that the question of the lawfulness of the applicant's transfer to a psychiatric hospital concerned the legality of the deprivation of liberty within the meaning of Article 5 § 1, even though the applicant's house arrest had been lawful. It further considered that the applicant's transfer from his home to a psychiatric hospital had been illegal under domestic law, since it had not been based on a valid decision by the competent authorities. It therefore concluded unanimously that there had been a violation of Article 5 § 1 on account of the applicant's detention in a psychiatric hospital for 26 days.

The Court also noted that, although the applicant had challenged his house arrest during his detention in the psychiatric hospital, the courts which were called on to examine his appeal were not authorised to review the lawfulness of the investigator's order of 3 August 2000 and, consequently, the

lawfulness of the applicant's detention in the psychiatric hospital. There had accordingly been a violation of Article 5 § 4. Finally, the Court considered that the applicant had not enjoyed a right to compensation with a sufficient degree of certainty and therefore concluded, unanimously, that there had been a violation of Article 5 § 5.

- **Right to a fair trial**

Deak v. Romania (no. 42790/02) (Importance 2) – 4 November 2008 – Violation of Article 6 § 1 (fairness) – Right of access to a Court - Romanian law governing appeals against administrative decisions relating to pension rights

The case concerned the dismissal by the domestic courts, on the grounds of inadmissibility, of an action brought by the applicant relating to her pension rights. The applicant disputed the decision of the domestic courts not to examine her appeal on grounds of lack of jurisdiction. The Court considered that the concrete application in the present case of Romanian law governing appeals against administrative decisions relating to pension rights (*inter alia* excessive formalism on the admissibilty of the appeal) had resulted in interference with the applicant's right of access to a court that amounted to a denial of justice. It concluded unanimously that there had been a violation of Article 6 § 1.

Dinu v. Romania and France (no. 6152/02) (Importance 3) – 4 November 2008 – Violation of Article 6 § 1 (fairness) - Lack of diligence by Romanian and French authorities regarding the enforcement of decisions awarding maintenance – Application of the New York Convention on the Recovery Abroad of Maintenance

In May 1995 the applicant obtained a final decision from the Romanian courts ordering her ex-husband, a Romanian national living in France, to pay her maintenance for their minor son. In July 1995 she commenced the procedure provided for under the New York Convention on the Recovery Abroad of Maintenance. Authority to execute the Romanian decisions was issued in April 2004 and the enforcement proceedings were terminated in September 2007 by the relevant French court, which found that the debt in maintenance arrears had been extinguished on 27 November 2006 at the latest.

The Court found that the Romanian and French authorities had failed to use all necessary endeavours to ensure speedy enforcement of the judicial decisions given in the applicant's favour. Accordingly, it held, unanimously, that there had been a violation of Article 6 § 1 by Romania and France.

Bacso v. Romania (no. 9293/03) (Importance 3) – 4 November 2008 – Violation of Article 6 § 1 (fairness) – Violation of Article 1 of Protocol No. 1 – Action for recscission of the contract of sale of a flat which had been nationalised in 1975 – *Res Judicata* provisions

The applicants used to be the owners of a flat in Braşov (Romania), which was nationalised in 1975. In April 1997 the State sold the flat to a third party who had been living in it as a tenant until then. In 1998 the applicants brought an action for recovery of possession, rescission of the contract of sale and eviction of the purchaser. The Braşov Court of Appeal allowed their action in part in January 2000 by acknowledging their title as owners of the flat. The applicants brought a second action for rescission of the contract of sale, which was dismissed in September 2002 by the Braşov Court of Appeal on the ground that the matter had already been dealt with (*res judicata*).

The Court considered that the fact of having had access to a court, merely to hear their action be declared inadmissible through the operation of *res judicata* provisions had deprived the applicants of any clear or practical access to a court. Consequently, it concluded unanimously that there had been a violation of Article 6 § 1 and held that it was not necessary to rule separately on the complaint based on the alleged lack of impartiality of the Braşov Court of Appeal. The Court also concluded, unanimously, that there had been a violation of Article 1 of Protocol No. 1 on account of the ineffectiveness of the applicants' title to their property and the total lack of compensation.

Bota v. Romania (no. 16382/03) (Importance 3) – 4 November 2008 – Violation of Article 6 § 1 (fairness) – Violation of Article 1 of Protocol No. 1 – Application by the Prosecutor-General following a final judgment seen as an appeal in disguise

The applicant was the sole member and the manager of S., a limited liability company. He complained of his two-year suspended prison sentence for tax evasion following an application lodged by the Procurator-General to set aside a final judgment in which he had been acquitted of the offence. He also complained that a final decision awarding him compensation for detention during the proceedings had been set aside. The Court found that the domestic court had not been justified in setting aside Mr Bota's acquittal and that the application by the Procurator-General had merely been an appeal in disguise that had upset the fair balance between the interests at stake. It held, unanimously, that there had been a violation of Article 6 § 1. It also held that setting aside the judgment in which the applicant had been awarded compensation had resulted in a violation of Article 6 § 1 and Article 1 of Protocol No. 1 (see also the case *Savu v. Romania* under section 3 of this issue of the RSIF)

- **Right to respect for familiy life and deprivation of liberty**

Eryk Kozłowski v. Poland (no. 12269/02) (Importance 3) – 4 November 2008 – Violation of Article 8 – Restrictions of the applicant's contacts with his family during his period of detention

In June 1999, the applicant born in 1975 was arrested on suspicion of robbery. He was convicted as charged in September 2001 and sentenced to four years and six months' imprisonment. The Court noted that between June 1999 and September 2001 the applicant's parents had only been allowed to visit him six times. With the passage of time and given the severity of the consequences for the applicant's family life of the lack of contact with his parents, as well as the authorities' general obligation to assist the applicant in maintaining contact with his family during his detention, the Court considered that the situation called for a careful review of the necessity of keeping him in complete isolation from his mother. However, no alternative means of ensuring that the applicant's contact with his parents would not lead to any collusive action or otherwise obstruct the process of taking evidence had been considered, such as, for instance, supervision by a prison officer. Nor had the competent authorities given detailed reasons for their decisions. The Court concluded unanimously that there had been a violation of Article 8 on account of restrictions of the applicant's contacts with his family (see *inter alia Messina v. Italy (no. 2),* no. 25498/94, § 61, 28 September 2000 ; *McLeod v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52 ; *Płoski v. Poland*, no. 26761/95, § 35, 12 November 2002 ; *Aliev v. Ukraine*, n°41220/98, §187, 29 April 2003).

- **Respect for family life**

Carlson v. Switzerland (no. 49492/06) (Importance 2) – 6 November 2008 – Violation of Article 8 – Application of the Hague Convention on the Civil Aspects of International Child Abduction – Proceedings for the return of an abducted child

The applicant, an American national, is the father of C., whose mother is a Swiss national. During the summer of 2005 the child's mother, who lived in the United States with her husband and son, went to Switzerland with the child and decided to establish her residence there. On 28 September 2005 she petitioned for divorce before a court in the Baden district and requested interim measures for the duration of the divorce proceedings, particularly with a view to obtaining a residence order in respect of the child. On 31 October 2005 the applicant asked the Swiss courts to order that his son be returned to the place where he was habitually resident. He alleged that, as he and his wife jointly exercised parental responsibility for the child, the prolongation of the child's residence in Switzerland constituted his wrongful removal or retention within the meaning of Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction. Following that request, the president of the Baden district court ordered the applicant's wife to submit C.'s passport and prohibited her from leaving Swiss territory. At the same time, he decided to join the proceedings on the child's return to the divorce proceedings. On 17 February 2006 the president of the district court dismissed the applicant's request, on the ground, in particular, that the applicant had been unable to submit evidence in support of his allegation that, although he had agreed to the mother's temporary residence in Switzerland, this had only been on the condition that she return the child to the United States once her visit to Switzerland had ended.

The Court reiterated that Article 16 of the Hague Convention indicated that proceedings on the merits of residence rights were to be suspended until a decision had been reached about the child's return. Thus, the district court's decision to join the two proceedings had been contrary to the terms of the Hague Convention and had also had the effect of prolonging the proceedings before the domestic courts with responsibility for ruling on the return of the abducted child. In addition, the Court noted that the lapse of time between the submission of the applicant's request and the decision by the president of the district court did not comply with Article 11 of the Hague Convention, which stated that the relevant authorities were to act "expeditiously" in proceedings for the child's return, and that any failure to act for more than six weeks could give rise to a request for reasons for the delay. Furthermore, contrary to the clear implications of the wording of Article 13 of the Hague Convention, the president of the district court had reversed the burden of proof and had required the applicant to "establish" that he had not "consented to or subsequently acquiesced in" the child's removal or non-return. In the Court's view, this method of proceeding had placed the applicant at a clear disadvantage from the outset in the proceedings concerning the child's return. The Court noted that even if the Court of Appeal had correctly applied the above-mentioned Article 13, this would not have been sufficient to correct the breach of the principle of equality of arms at first instance, since the information obtained through the reversal of the burden of proof was relevant in the domestic courts' assessment of the situation. The Court was not therefore convinced that C.'s "best interests", understood as a decision on his immediate return to his habitual place of residence, had been taken into account by the Swiss courts when evaluating the request for his return, as required by the Hague Convention. The Court considered that the applicant's right to respect for his family life had not been protected in an effective manner by the domestic courts and concluded, unanimously, that there had been a violation of Article 8.

- **Religious freedom**

Leela Förderkreis E.v. and Others v. Germany (no. 58911/00) (Importance 2) - 6 November 2008 – Information campaign regarding the potential dangers of sects and right to manifest one's religion or belief – Non violation of Article 9 –Violation of Article 6 §1 (length of proceedings)

The applicants are three associations registered under German law, They are religious or meditation groups belonging to the Osho movement, formerly known as the Shree Rajneesh or Bhagwan movement, which emerged in Germany in the 1960s and 1970s.

In 1979 the German Government launched a campaign to draw attention to the potential dangers of such groups. The Government referred to them as "sects", "youth sects", "youth religions" and "psycho sects" and issued warnings that they were "destructive", "pseudo-religious" and "manipulated their members". In October 1984 the applicant associations brought proceedings in which they requested that the Government refrain from describing them in such negative terms. Following the domestic courts' dismissal of their claims, they brought a constitutional complaint. In June 2002 the Federal Constitutional Court prohibited the use of "destructive", "pseudo-religious" and "manipulated their members" but, considering that the Government could provide the public with adequate information about such associations, authorised the remaining terms.

The Court noted that the proceedings had lasted in total 18 years and one month, of which more than 11 years had been before the Federal Constitutional Court. Even in the unique context of German reunification, the Court considered that that length had been excessive and therefore held unanimously that there had been a violation of Article 6 § 1.

The Court assumed that the Government's information campaign had interfered with the applicants' right to manifest their religion or belief. That interference had, under the Basic Law, been "prescribed by law" and pursued the "legitimate aim" of providing information about the dangers of groups which were commonly known as sects.

The information campaign had aimed to settle a matter of major public concern at the relevant time by warning citizens of a phenomena viewed as disturbing, that is to say the emergence of new religious movements and their attraction for young people. The campaign had not, however, in any way prohibited the applicant associations' freedom to manifest their religion or belief. Indeed, the Constitutional Court had set certain limits by authorising some statements and not others. The authorised terms ("sects", "youth sects" and "psycho sects"), even if somewhat pejorative, had been used at the relevant time quite indiscriminately for any kind of non-mainstream religion. The Court further noted that the Government refrained from further using the term "sect" in their information

campaign following an expert recommendation issued in 1998. The Court therefore found that the Government's statements, as delimited by the Constitutional Court, had not overstepped what a democratic State might regard as in the public interest. Accordingly, the interference with the applicant associations' right to manifest their religion or belief had been justified and had been proportionate to the aim pursued. The Court held, by five votes to two, that there had been no violation of Article 9. In their partly dissenting opinions, Judge Lazarova Trajkovska and Judge Kalaydjieva put forward the duty of neutrality of the State in such matters.

- **Judgments regarding freedom of expression**

Balsyte-Lideikiene v. Lithuania (no. 72596/01) (Importance 2) - 4 November 2008 – Hate speech – Confiscation of a calendar and ban of further distribution – Non disproportionate interference with freedom of expression – Violation of Article 6§1 (fair trial)

The applicant formerly owned a publishing company. In March 2001 the domestic courts found that the applicant had breached Article 214 of the Code on Administrative Law Offences on account of her publishing and distributing the "Lithuanian calendar 2000" which, according to the conclusions of the experts, promoted ethnic hatred. She was issued with an administrative warning and the unsold copies of the calendar were confiscated.

The Court considered that the administrative penalty and the confiscation of the publication had interfered with Mrs Balsytė-Lideikienė's right to freedom of expression. The punishment was aimed at protecting the reputation and rights of the ethnic groups living in Lithuania and referred to in "Lithuanian calendar 2000".

The Court took into account the Lithuanian Government's explanation as to the context of the case, namely that after the re-establishment of the independence of the Republic of Lithuania on 11 March 1990 the questions of territorial integrity and national minorities had been sensitive. The Court also noted that the publication had received negative reactions from some diplomatic representations and that under international law Lithuania had an obligation to prohibit any advocacy of national hatred and to take measures to protect persons who might be subject to such threats as a result of their ethnic identity.

The Court considered that the applicant had expressed aggressive nationalism and ethnocentrism and statements inciting hatred against the Poles and the Jews [extract from § 79 of the judgment: "The applicant expressed aggressive nationalism and ethnocentrism ("The Lithuanian nation will only survive by being a nationalist nation – no other way exists!"), repeatedly referred to the Jews as perpetrators of war crimes and genocide against the Lithuanians ("The soviet occupying power, with the help of ... many Jews... carried out the genocide and colonisation of the Lithuanian nation", "Through the blood of our ancestors to the worldwide community of the Jews", "... executions against the Lithuanians and the Lithuanian nation, carrying out pro-Jewish politics"). She also used the same language with reference to the Poles ("In 1944 ... the Polish Krajova Army killed 12 Lithuanians for the sole reason that they were Lithuanians", "In 1944 ... the Polish Krajova Army brutally killed more than a hundred Lithuanians ... the Poles, in war conditions, carried out ethnic cleansing. In the whole territory of Lithuania [the members of the Krajova Army] killed about 1 000, and in the ethnic Lithuanian lands about 3 000 more innocent people for the sole reason that they were Lithuanians. The ... events should be regarded as the genocide of the Lithuanian nation..."]. The Court considered that these statements were capable of giving the Lithuanian authorities cause for serious concern. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court found that in the present case the domestic authorities had not overstepped their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant.

The Court recalled that the nature and severity of the penalties imposed are among the factors to be taken into account when assessing the proportionality of an interference with the freedom of expression. Further, it reiterated that it must also exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern. However, the Court noted that even though the confiscation measure imposed on the applicant could be deemed relatively serious, Mrs Balsytė-Lideikienė had not had a fine imposed on her, but only a warning, which was the mildest administrative punishment available. It concluded that the interference with the applicant's right to freedom of expression could reasonably have been considered necessary in a democratic society for

the protection of the reputation or rights of others. It therefore unanimously held that there had been no violation of Article 10.

The Court observed that the first-instance court had appointed experts to produce political science, bibliographical, psychological and historical reports with the aim of establishing whether "Lithuanian calendar 2000" promoted ethnic hatred, whether it contained anti-Semitic, anti-Polish, anti-Russian expressions, or assertions of the superiority of Lithuanians *vis-à-vis* other ethnic groups. The Court noted that when finding Mrs Balsytė-Lideikienė guilty, both national courts extensively quoted the experts' conclusions, which had a key place in the proceedings against her. However, she was not given the opportunity to question the experts in order to subject their credibility to scrutiny or cast any doubt on their conclusions.. For these reasons, the Court concluded by six votes to one that there had been a violation of this Article 6 §1.

Mihaiu v. Romania (no. 42512/02) (Importance 2) – 4 November 2008 – Defamation - Lack of factual basis and of good faith - Non violation of Article 10 – Violation of Article 6 §1 (fair trial)

The applicant, who is a journalist, published an article in August 1999 in the satirical newspaper *Academia Cațavencu* entitled "The word that sullies ideals" in which he made accusations against the editor of the daily newspaper *Adevărul*, D.T. The applicant claimed, among other things, that D.T. had accepted a luxury wrist-watch from the Balli group during a press conference organised by the group, which – according to the article in question – had brought about the insolvency of one of Romania's biggest businesses. The article was accompanied by a photo showing a man's wrist wearing a Bulgari watch. The Bucharest County Court held that the constituent elements of defamation had been made out and sentenced him to a criminal fine and ordered him to pay damages.

Relying on Article 6 §§ 1 and 3 b), c) and d) (right to a fair trial), the applicant alleged that the Bucharest County Court had convicted him without having heard him in person and without a direct assessment of the evidence. He also submitted that his conviction for defamation had resulted in a violation of Article 10 (freedom of expression).

The Court has stated that when journalists are reporting facts, they must act in good faith and on an accurate factual basis, and must provide reliable and precise information in accordance with the ethics of journalism (*Fressoz and Roire v. France*, 21 January 1999, § 54). Noting that the comments to the effect that D.T. had participated in the conference and accepted a wrist-watch had not been supported by any evidence, the Court was not convinced of the applicant's alleged good faith. On the contrary, it considered that when repeating statements attributed to third parties, the applicant should have exercised the utmost rigour and special care before publishing the article. Accordingly, in the absence of good faith and any factual basis and although the article in question had been published in the context of a broader and highly topical debate in Romania, namely, the independence of the press, the Court did not discern in the applicant's comments the expression of a "degree of exaggeration" or "provocation" that were covered by journalistic licence. Accordingly, the Court found the reasons given in support of the applicant's conviction to be relevant and sufficient and held that the interference with the applicant's right to freedom of expression had been "necessary in a democratic society". Accordingly, it held, unanimously, that there had been no violation of Article 10.

The Court also held that the applicant's conviction without having been heard in person and, above all, after his acquittal by the court of first instance, was contrary to the requirements of a fair trial. Accordingly, it held, by six votes to one, that there had been a violation of Article 6 § 1.

Kandzhov v. Bulgaria (no. 68294/01) (Importance 2) – 6 November 2008 – Violation of Article 5 § 1 – Violation of Article 5 § 3 – Violation of Article 10 – Arrest and detention on charges of hooliganism and insult – Interference in the freedom of expression not prescribed by law and not necessary in a democratic society

On 10 July 2000 the applicant was arrested for putting up two posters allegedly insulting the Minister of Justice and gathering signatures calling for the Minister's resignation. Criminal proceedings were instituted against the applicant for insult and for hooliganism under the relevant provisions of the Criminal Code. The same day a prosecutor ordered that the applicant be detained for 72 hours. In April 2001 he was convicted as charged and sentenced to four months' imprisonment, suspended for three years.The Pleven Regional Court quashed the lower court's judgment and acquitted him. This verdict was upheld by the Supreme Court of Cassation in January 2002.

Relying on Article 5 §§ 1 and 3 and Article 10, the applicant complained that his arrest and detention for displaying a banner allegedly insulting the Minister of Justice and gathering signatures calling for the Minister's resignation had been unlawful, and that after his arrest he had not been brought promptly before a judge.

With respect to Article 5 § 1, in so far as the charge of insult was concerned, at the relevant time it was a privately prosecutable offence and could not attract a sentence of imprisonment. The levelling of charges of insult could not therefore have served as a basis for the applicant's detention between 11 and 14 July 2000. By making an order to this effect the Pleven District Prosecutor's Office had blatantly ignored the clear and unambiguous provisions of domestic law. As regards the period immediately preceding the Prosecutor's order, it was clear that the police had no power to conduct preliminary investigations in respect of privately prosecutable offences such as insult. The applicant's police detention on this basis had therefore also been unlawful.

As regards the charge of hooliganism, the Supreme Court of Cassation specifically found that the applicant's actions had been entirely peaceful, had not obstructed any passers-by and had been hardly likely to provoke others to violence. On this basis, it had concluded these actions had not amounted to the constituent elements of the offence of hooliganism. Nor had the orders for the applicant's arrest and for his detention – which had not been reviewed by a court – contained anything which could be taken to suggest that the authorities could have reasonably believed that the conduct in which he had engaged had constituted hooliganism. It followed that the applicant's detention between 10 and 14 July 2000 had not constituted a "lawful detention" effected "on reasonable suspicion" of his having committed an offence and that there had therefore been a violation of Article 5 § 1.

The applicant had been brought before a judge three days and 23 hours after his arrest. In the circumstances, this did not appear prompt as was required under Article 5 § 3. He had been arrested on charges of a minor and non-violent offence. The Court could see no special difficulties or exceptional circumstances which would have prevented the authorities from bringing the applicant before a judge much sooner. There had therefore been a violation of Article 5 § 3.

With respect to Article 10, it was clear for the Court that in gathering signatures calling for the resignation of the Minister of Justice and in displaying two posters making statements about the Minister, the applicant had been exercising his right to freedom of expression. His arrest and subsequent detention for doing so, quite apart from the opening of criminal proceedings against him, therefore amounted to an interference with the exercise of this right. It had already been established that the applicant's arrest and detention had not been "lawful". It followed that the applicant's arrest and detention had not been "prescribed by law" under Article 10 § 2.

Furthermore, assuming that the measures taken against the applicant could be taken to pursue the legitimate aims of preventing disorder and protecting the rights of others, they had clearly been disproportionate to these aims. These measures had clearly not been "necessary in a democratic society" (See for instance *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, §§ 96-110). In a democratic system the actions or omissions of the Government and of its members had to be subject to close scrutiny by the press and public opinion. Furthermore, the dominant position which the Government and its members occupied made it necessary for them – and for the authorities in general – to display restraint in resorting to criminal proceedings, and the associated custodial measures, particularly where other means were available for replying to the unjustified attacks and criticisms of their adversaries. There had therefore been a violation of Article 10.

- **Pension rights**

Carson and Others v. the United-Kingdom (no. 42184/05) (Importance 2)– Refusal to up-rate pensions in line with inflation of the applicant's who were not living in the UK – Difference in treatment objective and reasonable – Non violation of Article 14 in conjunction with Article 1 of Protocol 1 (protection of property)

The applicants spent most of their working lives in the United Kingdom, paying National Insurance Contributions in full, before emigrating or returning to South Africa, Australia or Canada. The case concerned the applicants' complaint about the United Kingdom authorities' refusal to up-rate their pensions in line with inflation.

In 2002, Ms Carson brought proceedings by way of judicial review to challenge the failure to index-link her pension. She claimed that she had been the victim of discrimination as British pensioners were treated differently depending on their country of residence. In particular, despite having spent the same amount of time working in the United Kingdom, having made the same contributions towards the National Insurance Fund and having the same need for a reasonable standard of living in her old age as British pensioners who were living in the United Kingdom or in other countries where up-rating was available through reciprocal agreements, her basic State pension was frozen at the rate payable on the date she left the United Kingdom. Her application for judicial review was dismissed in May 2002 and ultimately on appeal before the House of Lords in May 2005.

First, as regards the question of whether the applicants were in an analogous situation to British pensioners who had chosen to remain in the United Kingdom, the Court noted that the Contracting State's social security system was intended to provide a minimum standard of living for those resident within its territory. Insofar as concerned the operation of pension or social security systems, individuals ordinarily resident within the Contracting State were not therefore in a relevantly analogous situation to those residing outside the territory.

Furthermore, the Court was hesitant to find an analogy between applicants who live in a "frozen pension" country and British pensioners resident in countries outside the United Kingdom where up-rating was available through a reciprocal agreement. National Insurance Contributions were only one part of the United Kingdom's complex system of taxation and the National Insurance Fund was just one of a number of sources of revenue used to pay for the United Kingdom's Social Security and National Health systems. The applicants' payment of National Insurance Contributions during their working lives in the United Kingdom was not therefore any more significant than the fact that they might have paid income tax or other taxes while domiciled there. Nor was it easy to compare the respective positions of residents of States in close geographical proximity with similar economic conditions, such as the United States of America and Canada, South Africa and Mauritius, or Jamaica and Trinidad and Tobago, due to differences in social security provision, taxation, rates of inflation, interest and currency exchange.

As emphasised by the British domestic courts, the pattern of reciprocal agreements was the result of history and perceptions in each country as to perceived costs and benefits of such an arrangement. They represented whatever the Contracting State had from time to time been able to negotiate without placing itself at an undue economic disadvantage and to apply to provide reciprocity of social security cover across the board, not just in relation to pension up-rating. In the Court's view, the State did not therefore exceed its very broad discretion to decide on matters of macro-economic policy by entering into such reciprocal arrangements with certain countries but not others.

At any rate, the Court concluded that the difference in treatment had been objectively and reasonably justified. While there was some force in the applicants' argument, echoed by *Age Concern*, that an elderly person's decision to move abroad might be driven by a number of factors, including the desire to be close to family members, place of residence was nonetheless a matter of choice. The Court therefore agreed with the Government and the national courts that, in that context, the same high level of protection against differences of treatment was not needed as in differences based on gender or racial or ethnic origin. Moreover, the State had taken steps, in a series of leaflets which had referred to the Social Security Benefits Up-rating Regulations 2001, to inform United Kingdom residents moving abroad about the absence of index linking for pensions in certain countries. The Court held by six votes to one that there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol no. 1.

The Court held unanimously that it was not necessary to consider separately the applicants' complaint under Article 14 in conjunction with Article 8.

Kokkinis v. Greece (no. 45769/06) (Importance 3) – 6 November 2008 – Violation of Article 1 of Protocol No. 1 – Limitation of the retroactive effect of claims against the State with regard to pension rights (Presidential Decree no. 166/2000)

The applicant, who was a civil servant, retired in February 1982. The Public Accounting Department dismissed a request submitted by the applicant in December 1998 for reassessment of his old-age pension. He applied to the Audit Court, which upheld his claim in January 2002. However, the court held that the amounts in question were payable only from 1 January 1999. It held that the limitation period provided for in Article 60 § 1 of Presidential Decree no. 166/2000 – limiting the retroactive

effect of claims against the State with regard to pension rights – began to run from the publication of its own judgment, namely the decision granting the applicant's request to retire. The applicant appealed unsuccessfully on points of law.

The Court noted that the date from which the applicant could receive payment of his pension rights had been determined exclusively on the basis of the time that the authorities and administrative authorities had taken to give their decisions. Although the applicant had requested the reassessment of his pension in December 1998, the decision upholding his claim was not given until four years later. The Court noted that the application of such a criterion appeared vague and likely to lead to contradictory and unjustified results. In consequence, the Court concluded unanimously that there had been a violation of Article 1 of Protocol No. 1.

- **Confiscation measure and protection of property**

İsmayılov v. Russia (no. 30352/03) (Importance 1) – 6 November 2008 – Violation of Article 1 of Protocol No. 1 – Confiscation measure considered as excessive and disproportionate

On arrival in Moscow in November 2002, the applicant, an Azerbaijani national living in Moscow, was charged with smuggling for not declaring the 21,348 US dollars (approximately 17,059 euros) he was carrying with him from the sale of a flat he had inherited in Baku. He was found guilty as charged and given a suspended sentence of six months' imprisonment; the money was also confiscated. The case concerned the applicant's complaint that that confiscation order had not been lawful. The Court noted that the lawful origin of the money had not been in dispute and that the applicant had had no criminal record and had not been suspected of money laundering, corruption or other serious financial offences. Since he had already been punished for the smuggling offence with a criminal conviction; the desired deterrent effect had therefore already been achieved and the Court was not convinced that it had been necessary to take away his money. Accordingly, the Court concluded that the confiscation measure had been excessive and disproportionate in the circumstances and held by six votes to one that there had been a violation of Article 1 of Protocol No. 1.

- **Right to individual petition**

Ponushkov v. Russia (no. 30209/04) (Importance 3) - 6 November 2008 - Censorship of the applicant's correspondence with the European Court of Human Rights – Hindrance to the effective exercise of the right to individual application - Violation of Article 34 – Violation of Article 6 § 1

The applicant is currently serving a sentence of life imprisonment in Minusinsk (Russia) for notably murder, robbery, kidnapping and unlawful possession of arms.

The Court held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length, approximately five years and 11 months, of the criminal proceedings against the applicant. It declared inadmissible the applicant's complaints under Article 3 as, in particular, no detailed information had been provided concerning his alleged harsh conditions of detention in a facility in Irkutsk.

However, the Court considered that the censorship of the applicant's correspondence had therefore constituted an interference with his right to individual petition and the Court held that Russia had failed to comply with its obligations under Article 34 of the ECHR:

"79. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 160, and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references).

80. It is important to respect the confidentiality of the Court's correspondence with the applicants since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned. The opening of letters by prison authorities can therefore hinder applicants in bringing their cases to the Court (see *Klyakhin v. Russia*, no. 46082/99, §§ 118 and 119, 30 November 2004).

81. In the instant case it is not in dispute that three of the Court's letters were opened by the detention facility administration. The applicant stated that the letters had been read and enclosures withheld. The Government denied that, stating that the letters had been opened for registration purposes only. The Court is not convinced by that argument. Given that the sender's and the addressee's names were indicated on the envelope, it was possible to register the letters without opening them. In such circumstances the Court considers that the applicant's fear that the letters were opened by the detention facility administration with the intention of reading them was objectively justified.

82. As regards the enclosures of the letters, the Court is not persuaded by the Government's assertion that they were handed over to the applicant. In situations where the envelope was torn open by a State official, it is incumbent on the Government to prove that the letter was delivered to the applicant in its entirety. In the absence of any such proof, the Court gives credit to the applicant's statement that the enclosures were withheld by the detention facility administration.

83. The Court observes that pursuant to Article 91 of the Penal Code correspondence with the Court is privileged and is not subject to censorship […]. The Court's letters were therefore opened in breach of domestic law, as was acknowledged by the Government. The Court takes note of the fact that one of the two employees who had been responsible for the opening of the letters was disciplined. The Government did not explain however why the second employee went unpunished. Nor did they indicate whether other employees of the detention facility had been instructed against censorship of the Court's letters in future.

84. The Court considers that opening of its correspondence could have an intimidating effect on the applicant, while withholding of enclosures which contained the Government's further observations and their comments on the applicant's claims for just satisfaction deprived the applicant of the possibility to learn the Government's position before the Court. The applicant's situation was particularly vulnerable as he had no representative in the proceedings before the Court and therefore depended on the detention facility administration to facilitate his correspondence with the Court and the rest of the world (compare *Klyakhin,* cited above, § 122*,* and *Cotleț v. Romania*, no. 38565/97, § 71, 3 June 2003). The opening of the Court's letters and withholding of enclosures has therefore constituted an interference with the exercise of the applicant's right of individual petition which is incompatible with the respondent State's obligation under Article 34 of the Convention."

See *a contrario* **Tkachevy v. Russia** (no. 42452/02) where the Court held that the alleged actions by the Russian authorities had not been capable of influencing the applicants' intention to maintain their application before the Court, and concluded that there had been no violation of Article 34.

2. Other judgments issued in the period under observation

You will find in the column "Key Words" of the table below a short description of the topics dealt with in the judgment. For a more complete information, please refer to the following link:
- press release by the Registrar concerning the Chamber judgments issued on 4th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 6th November 2008: here.

We kindly invite you to click on the corresponding link to access to the full judgment of the Court for more details. Some judgments are only available in French.

State	Date	Case Title and Importance of the case	Conclusion	Key Words by the Office of the Commissioner	Link to the case
Bulgaria	6 Nov. 2008	Yosifov (no. 74012/01) (Imp. 2)	Violation of Article 5 § 4	The applicant did not have the opportunity for almost one year to challenge the lawfulness of his detention	Link
Greece	6 Nov. 2008	Angelov (no. 22035/05) (Imp. 3)	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length of criminal proceedings (more than four years and five months for drug trafficking) and absence of a domestic remedy	Link
Greece	6 Nov. 2008	Petroulia (no. 919/06) (Imp. 3)	Violation of Article 6 § 1 (length)	Excessive length of criminal proceedings (more than nine years for fraud and forgery against a banking establishment)	Link
Moldova	4 Nov. 2008	Tudor-Comert (no. 27888/04) (Imp. 3)	Violation of Article 6 § 1 (access to a court)	The amount claimed as compensation (in excess of 1,000,000 USD), that of the court fees requested (EUR 21,021) and the Moldovan courts' failure to determine the company's ability to pay the fees to lodge an appeal had limited the latter's right of access to court	Link
Poland	4 Nov. 2008	Bruczyński (no. 19206/03) (Imp. 3)	Violation of Article 5 §§ 3 and 5	Excessive length of pre-trial detention and no enforceable right to compensation	Link
Poland	4 Nov. 2008	Cynarski (no. 30049/06) (Imp. 3)	Violation of Article 5 § 3	Excessive length of pre-trial detention	Link
Poland	4 Nov. 2008	Demski (no. 22695/03) (Imp. 3)	Violation of Article 6 § 1 (fairness) in conjunction with Article 6 § 3 (d)	Inability for the applicant to obtain examination of the main witness, the victim, in criminal proceedings brought against the applicant (due to the failure of the authorities to make every reasonable efforts in that respect)	Link
Poland	4 Nov. 2008	Janulis (no. 20251/04) (Imp. 3)	Violation of Article 5 § 3 and 8	Excessive length of pre-trial detention and censorship of the correspondence while in detention	Link
Ukraine	6 Nov. 2008	Yeloyev (no. 17283/02) (Imp. 3)	Violation of Article 5 §§ 1, 3 and 4 Violation of Article 6 § 1 (length)	Unlawfulness of pre-trial detention Excessive length (five years and five months) of the detention on remand Denial of the right to review the lawfulness of the detention Excessive length (nearly eight years) of the criminal proceedings	Link

3. Repetitive cases

The judgments listed below are based on a classification which figures in the Registry's press release: "*In which the Court has reached the same findings as in similar cases raising the same issues under the Convention*".

The role of the NHRSs may be of particular importance in this respect: they could check whether the circumstances which led to the said repetitive cases have changed or whether the necessary execution measures have been adopted.

State	Date	Case Title	Conclusion	Key words by the Office of the Commissioner
Poland	04 Nov. 2008	Wilkowicz (no. 74168/01) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Prolonged non-payment of sums owed by a State body (Military Pensions Office) to the applicant. Failure to enforce a judgement in favor of the applicant.
Romania	04 Nov. 2008	Anghelescu (No. 2) (no. 14578/03) link	Violation of Art. 1 of Prot. No. 1	Inability to use, and collect the rent from, a building which had been returned to the applicant
Romania	04 Nov. 2008	Bone (no. 12776/06) link	Violation of Art. 1 of Prot. No. 1	Inability to recover possession of property that had been nationalised and subsequently sold by the State
Romania	04 Nov. 2008	Ernest (no. 2230/02) link	Violation of Art. 1 of Prot. No. 1	Idem as in the case Bone v. Romania (see above)
Romania	04 Nov. 2008	Gingis (no. 35955/02) link	Violation of Art. 1 of Prot. No. 1	Idem as in the case Bone v. Romania (see above)
Romania	04 Nov. 2008	Jantea (no. 29798/03) link	Violation of Art. 1 of Prot. No. 1	Idem as in the case Bone v. Romania (see above)
Romania	04 Nov. 2008	Olimpia-Maria Teodorescu (no. 43774/02) link	Violation of Art. 1 of Prot. No. 1	Idem as in the case Bone v. Romania (see above)
Romania	04 Nov. 2008	Delca (no. 25765/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Delayed execution of a final judgment given in the applicant's favour
Romania	04 Nov. 2008	Mihai (no. 26842/03) link	Violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 14	The severance pay due to the applicants on account of their discharge to the reserve list had been unlawfully liable to income tax and there had been a discrimination as compared with other servicemen in an analogous position
Romania	04 Nov. 2008	Aurel Radu (no. 26838/03) link	Violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 14	Idem as in the case Mihai v. Romania (see above)
Romania	04 Nov. 2008	Vasiliu (no. 26833/03) link	Violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 14	Idem as in the case Mihai v. Romania (see above)

Romania	04 Nov. 2008	Văsui (no. 26834/03) link	Violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 14	Idem as in the case Mihai v. Romania (see above)
Romania	04 Nov. 2008	Zaharia (no. 26835/03) link	Violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 14	Idem as in the case Mihai v. Romania (see above)
Romania	04 Nov. 2008	Orha (no. 1486/02) link	Friendly settlement on the just satisfaction	Friendly settlement following a judgment of the ECtHR of 12 October 2006 (concerning the failure to enforce a final court judgment finding that the applicants' property had been expropriated and awarding compensation for expropriation) The applicants are *inter alia* recorded as owners of the land in question in the land registry.
Romania	04 Nov. 2008	Savu (n. 19982/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Final decision in the applicant's favour set aside following an application by the Procurator-General. See also the case *Bota v. Romania* under section 1 above
Russia	06 Nov. 2008	Arulepp (n° 35774/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Lengthy non-enforcement of decisions in the applicants' favour (concerning periodic benefits granted to the applicant, victim of Chernobyl)
Russia	06 Nov. 2008	Dementïev (n° 3244/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Lengthy non-enforcement of decisions in the applicants' favour Quashing of a final judgment in favour of the applicant by way of supervisory review
Turkey	04 Nov. 2008	Gani Özcan (n.11189/04) link	Violation of Art. 1 of Prot. No. 1	Inability to obtain compensation for the revocation of the applicant's title to land.
Ukraine	06 Nov. 2008	Krivonojko et Demtchenko (nos 7435/05 et 7715/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Lengthy non-enforcement of decisions in the applicants' favour (for more than three years and six months)

4. Length of proceedings cases

The judgments listed below are based on a classification which figures in the Registry's press release.

The role of the NHRSs may be of particular relevance in that respect as well, as these judgments often reveal systemic defects, which the NHRSs may be able to fix with the competent national authorities.

With respect to the length of non criminal proceedings cases, the reasonableness of the length of proceedings is assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (See for instance Cocchiarella v. Italy [GC], no. 64886/01, § 68, published in ECHR 2006, and Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII).

State	***Date***	***Case Title***	***Link to the judgment***
Belgium	04 Nov. 2008	Bell (no. 44826/05)	link
Greece	06 Nov. 2008	Dali (n° 497/07)	link
Greece	06 Nov. 2008	Karvountzis (n° 35172/05)	link
Moldavia	04 Nov. 2008	Boboc (no. 27581/04)	link
Moldavia	04 Nov. 2008	Panzari (no. 27516/04)	link
Poland	04 Nov. 2008	Bartczak (no. 15629/02)	link
Poland	04 Nov. 2008	Graczyk (no. 21246/05)	link
Romania	04 Nov. 2008	Văcăruş (no. 1012/02)	link
Slovakia	04 Nov. 2008	Bič (no. 23865/03)	link
Sweden	04 Nov. 2008	Iselsten (no. 11320/05)	link
"the former Yugoslav Republic of Macedonia"	06 Nov. 2008	Pecevi (n° 21839/03)	link
"the former Yugoslav Republic of Macedonia"	06 Nov. 2008	Velova (n° 29029/03)	link
"the former Yugoslav Republic of Macedonia"	06 Nov. 2008	Dimitrieva (n° 16328/03)	link
Turkey	04 Nov. 2008	Ağrakçe (no. 29059/02)	link
Turkey	04 Nov. 2008	Zöhre Akyol (no. 28668/03)	link

B. The decisions on admissibility / inadmissibility / striking out of the list including due to friendly settlements

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 14 October to 26 October 2008**.

They are aimed at providing the NHRSs with potentially useful information on the reasons of the inadmissibility of certain applications addressed to the Court and/or on the friendly settlements reached.

Decisions deemed of particular interest for the work of the NHRS :

Alboize-Barthes and Alboize-Montezume v. France (no. 44421/04) – 21 October 2008 – Alleged violations of Article 8 taken in conjunction with Article 14 and of Article 1 of Protocol 1 taken in conjunction with Article 14 – Alleged discrimination among children born out of wedlock.

This case deals with the alleged difference in treatment between children born out of wedlock in succession case depending on how their relationship to their parents was established (distinction between natural filiation established on a volontary basis and the natural filiation established through the "possession d'état d'enfant naturel").

The case was declared inadmissible *rationae materiae* concerning the allegation of violation of Article 1 of Protocol 1 taken in conjunction with Article 14 and inadmissible for non exhaustion of domestic proceedings concerning the alleged violation of Article 8 taken in conjunction with Article 1 of Protocol 1.

State	***Date***	***Case Title***	***Alleged violations (Key Words by the Office of the Commissioner)***	***Decision***
Armenia	14 Oct. 2008	Yakovlev (no. 33264/03) link	Allegation of violations of Art. 3 (torture in the Police Department and lack of effective investigation) and Art. 6 § 1 (fair trial)	Struck out of the list (applicant passed away)
Bulgaria	14 Oct. 2008	Pavlova (no. 39855/03) link	Alleged excessive length of proceedings (Art. 6 § 1). Alleged lack of effective remedies (Art. 13). Alleged violations of Art. 2 (in its procedural aspect), 3, 7, 10 and 14.	Partly adjourned (concerning the length of the proceedings and the alleged lack of effective remedies) Partly inadmissible as manifestly ill-founded (concerning the other allegations)
Bulgaria	14 Oct. 2008	Tonchev (no. 18527/02) link	*Inter alia:* Allegation of failure to provide effective protection against the ill-treatment to which the applicant's son has been subjected (Art. 3 and 8); Length of proceedings and access to a court (Art. 6 § 1) Alleged lack of an effective remedy (Art. 13)	Partly admissible (concerning the length of the proceedings and the State's positive obligations to provide effective protection to the applicant's son) Partly inadmissible (concerning the remainder of the application)
Bulgaria	14 Oct. 2008	Moralian and Europroperty Eood (no. 21703/03 ; 22002/03) link	Alleged violation of Art. 1 of Prot. 1 (alone and taken in conjunction with Art. 14) and alleged lack of an effective remedy (Art. 13) following the refusal to deliver documents necessary to the construction of a buiding.	Admissible and adjourned (concerning the first applicant) Inadmissible *rationae personae* (concerning the second applicant)
Estonia	21 Oct. 2008	Karberg (no. 23154/07) link	Complaints relating to the length of the proceedings, the detention order and the review procedure as well as the attachment of the property (Art. 5, 6 and 1 of Prot.1)	Struck out of the list (applicant no longer wishing to pursue his application)
France	21 Oct. 2008	Syndicat CFDT des services de sante et des services sociaux de Cote-d'or (n° 11052/06) link	Right to a fair trial (Art. 6 § 1) concerning the adoption of article 8 of the law n° 2003-47 dated 17 January 2003	Inadmissible *ratione personae* concerning the Syndicat CFDT Admissible and adjourned concerning the 221 physical persons
France	21 Oct. 2008	Thiebaux (no. 11033/04) link	Alleged violations of Art. 6 and Art. 17 in the application of Art. 412 of the Penal Code (alleged failure of the authorities to use the applicant's address)	Inadmissible (non exhaustion of domestic remedies)
France	21 Oct. 2008	Sabeh El Leil (no. 34869/05) link	Alleged violation of applicant's right to access a court following the dismissal of an employee of the Embassy of Koweït in Paris (Art. 6 § 1)	Admissible
France	21 Oct. 2008	Bourechak (no. 24328/05) link	Alleged violation of Art. 5 § 4 (delay in the applicant's right to obtain speedily a decision on the lawfulness of his detention)	Inadmissible (non exhaustion of domestic remedies)

France	21 Oct. 2008	Keravis (no. 24370/06) link	Alleged violations of Art. 3, Art. 6§1, Art. 6§1 in combination with Art. 14, and Art. 13	Partly struck out of the list (government declaration on alleged violation of Art. 6) ; partly inadmissible (manifestly ill- founded for other complains)
Georgia	21 Oct. 2008	Chakvetade (no. 29869/07) link	Alleged violations of Art. 5 and 6: unreasonable amount of bail and arbitrary refusal from the Kutaisi Appellate Court to hear the applicant's appeal	Struck out of the list (friendly settlement reached)
Germany	14 Oct. 2008	Drosser-Brand (no. 31503/06) link	Alleged violations of Art. 6, 8 and 14 due to arbitrary German courts' decisions transferring the right to decide where the applicant's son should live.	Inadmissible (manifestly ill-founded): the German courts' procedural approach was reasonable in the circumstances and provided sufficient material to reach a reasoned decision on the question of custody in this particular case
Germany	14 Oct. 2008	Haase (no. 36106/05) link	Alleged violation of Art. 6 § 1 (length of proceedings). Alleged violation of Art. 8 (cancellation by the regional and constitutional Court of the applicant's right to visit his daughter)	Inadmissible (manifestly ill-founded): the length of the decisional process did not constitute a violation of Art. 8
Hungary	21 Oct. 2008	Buzassy (no. 42530/05) link	Alleged violation of Art. 6 (protraction of the proceedings) and of Art. 13 due to the Budapest Regional Court's reluctance to re-assess the evidence in favour of the applicant	Struck out of the list (friendly settlement reached)
Italy	21 Oct. 2008	Sgarbi (no. 37115/06) link	Alleged violations of Art. 6 (fair trial) and of Art. 10 due to sentences further to defamatory statements	Inadmissible (manifestly ill-founded) further to a detailed examination of the allegations in light of the Court's case law
Luxembourg	16 Oct. 2008	Leandro Da Silva (no. 30273/07) link	Alleged violations of Art. 6 (length of proceedings), 8, 14, 17, and 1 of Prot. 1	Partly inadmissible (adjournment of the examination of the alleged violation of Art. 6); partly inadmissible: non exhaustion of domestic remedies regarding Art. 1 of Prot. 1; manifestly ill founded regarding the other allegations.
Luxembourg	16 Oct. 2008	Tlemsani (no. 27132/06) link	Alleged violation of Art. 6 § 1 (Length of proceedings)	Inadmissible (non exhaustion of domestic remedies)
Moldova	21 Oct. 2008	Gatcan (no. 29493/06) link	Alleged violations of Art. 6 § 1 (right of access to court infringed due to failure to enforce final judgment) and of Art. 1 of Prot. 1 (protection of property)	Struck out of the list (friendly settlement reached)
Moldova	21 Oct. 2008	Mereniuc (no. 29497/06) link	See the case *Gatcan* above	Struck out of the list (friendly settlement reached)

Poland	14 Oct. 2008	Kaczoroski (no. 45602/06) link	Alleged violations of Art. 5§3 (excessive length of his pre-trial detention), of Art. 6 § 1 (length of criminal proceedings) and of Art. 6§3-b and d (inadequate time and facilities for the preparation of the applicant's defence; shortcomings in proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	14 Oct. 2008	Mikolajczyk (no. 13515/07) link	Alleged violations of Art. 3 (inadequate conditions and medical care in Łódź Remand Centre)	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	21 Oct. 2008	Tomula 38595/05 link	Alleged violation of Art. 6§1 (length of proceedings)	Struck out of the list (declaration by the government)
Poland	21 Oct. 2008	Rachwalski and Ferenc (no. 47709/99) link	Alleged violations of Art. 3 (humiliating treatment by police officers), 5 and 8 (entering by the police and search of the applicants' house), 6 and 13 (right to fair trial)	Partly admissible (Art. 3, 5 and 8) ; Partly inadmissible (allegations based on Art. 6 and 13 incompatible *ratione materiae)*
Poland	21 Oct. 2008	Mizera (no. 26634/07) link	Alleged violation of Art. 3 (inadequate conditions in Zaręba Górna Prison)	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	21 Oct. 2008	Markieta (no. 49718/06) link	Alleged violations of Art. 6§1 (length of proceedings) and of Art. 1 of Prot. 1 (inability to use the applicant's property during the proceedings)	Struck out of the list (friendly settlement reached)
Poland	21 Oct. 2008	Mamzer and Dylich (no. 12447/04) link	Alleged violations of Art. 6§1 (length of proceedings) and Art. 13 (lack of domestic remedy regarding length of proceedings)	Struck out of the list (declaration by the government)
Poland	21 Oct. 2008	Malagocki (no. 53122/07) link	Alleged violation of Art. 6§1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	21 Oct. 2008	Wolek, Kasprow and Leski (no. 20953/06) link	Alleged violations of Art. 10 (domestic courts' decisions interfered with freedom of expression) and Art. 6 (unfair trial)	Allegations on Art. 10 : inadmissible by majority (manifestly ill founded; proportionate interference with freedom of expression); Allegations on Art. 6 unanimously inadmissible (manifestly ill founded): nothing in the case file indicated that the domestic proceedings were unfair or that the national courts proceeded arbitrarily. The applicants were represented by a lawyer during the domestic proceedings and had the opportunity to call witnesses and present their arguments, to which the courts responded adequately by means of carefully reasoned conclusions.

Poland	14 Oct. 2008	Zalustowicz (no. 40696/07) link	Alleged violation of Art. 8 (applicant –in prison- was not authorised to attend his mother's funeral)	Struck out of the list (friendly settlement reached)
Poland	14 Oct. 2008	Bojko (no. 5634/03) link	Length of criminal proceedings (Art. 6§1)	Inadmissible (non exhaustion of internal proceedings)
Poland	14 Oct. 2008	Wozniak (no. 10511/07) link	Alleged violation of Art. 6§1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Portugal	14 Oct. 2008	Ferreira Alves (no. 46436/06) link	Procedure regarding visiting rights of a non custodial parent: Alleged violations of Art. 3, 6, 6§1, 8, 13, 14, Art. 2 of Prot. 1, and Art. 5 of Prot. 7	Partly adjourned (length of proceedings) ; Partly inadmissible (all other allegations manifestly ill-founded: the Court concluded that the trial was fair)
Romania	14 Oct. 2008	Baduica (no. 41317/04) link	Alleged violation of Art. 6 § 1 (lack of fairness and length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Romania	14 Oct. 2008	Galea (no. 25510/04) link	Alleged violation of Art. 6 § 1, 1 of Prot. 1, and of Art. 13 and 14 (non enforcement of domestic decision)	Struck out of the list (friendly settlement reached)
Romania	14 Oct. 2008	Juravle (no. 7524/02) link	Alleged violation of Art. 6 § 1 and § 3, 8 and Art. 1 of Prot. 1 (non-enforcement of a domestic decision)	Inadmissible (manifestly ill-founded): non exhaustion of domestic remedies regarding allegations on Art. 6 § 1 and 1 of Prot. 1; no distinct violation regarding the remaining allegations.
Romania	14 Oct. 2008	Avram (no. 28122/02) link	Alleged violation of Art. 6 § 1 (access to court) and 1 of Prot. 1	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	21 Oct. 2008	Rotaru (no. 14566/05) link	Alleged violation of Art. 6, 13, 14 and 1 of Prot. 1 (extraordinary powers of General Prosecutor)	Struck out of the list (friendly settlement reached)
Romania	21 Oct. 2008	Popa (no. 34768/04) link	See the case *Rotaru* above	Struck out of the list (friendly settlement reached)
Russia	16 Oct. 2008	Kuchkov (no. 16279/05) link	Alleged violations of Art. 10 (concerning the failure of the applicant to prove the truth of a value judgment, misreading the distinction between statements of fact and value judgments) and of Art. 6 (courts allegedly went beyond the scope of the action brought by the claimant)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	16 Oct. 2008	Tatlybayev (no. 25977/05) link	Alleged violations of Art. 6 § 1 and of Art. 1 of Prot. 1 (non-enforcement and supervisory review of the judgment granting the applicant's pecuniary claim against the Government)	Struck out of the list (applicant no longer wishing to pursue his application)

Russia	16 Oct. 2008	Merkushev (no. 26761/03) link	Alleged violation of Art. 6, 8, and 14, and Art. 1 of Prot. 1 (non-enforcement of a judgment concerning the applicant's command for the provision of a flat and discharge allowance). Alleged violations of Art. 13 (no effective domestic remedy against the non-enforcement of the judgment)	Inadmissible as manifestly ill-founded because *inter alia* the applicant was responsible for the delay in the enforcement of the judgment (the applicant had refused several times the command's offers)
Russia	21 Oct. 2008	Ivakhnenko (no. 12622/04) link	Alleged violations of Art. 3 (conditions of detention, lack of adequate medical assistance, coercition to confess), Art. 13, Art. 4, Art. 5 (lawfulness of the arrest and the detention), and Art. 6 (fair trial)	Partly adjourned (concerning the conditions of pre-trial detention facility and the lack of adequate medical assistance) Partly inadmissible rationae temporis (concerning the lawfulness of the pre-trial detention) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Russia	21 Oct. 2008	Mikhaylov (no. 4543/04) link	The applicant was convicted of illegal business activity and its art collection was confiscated. He complained about a violation of Art. 6§1 (length of civil proceedings), of Art. 6§1 and Art. 13 (unlawfulness and ineffectiveness of the criminal proceedings), Art. 6§1 and Art. 1 of Prot. 1 (violation of his right of access to a court in civil case)	Partly adjourned (concerning the access to the appeal court, the length of the civil proceedings and the alleged interference with his right to a property) Partly inadmissible (concerning the remainder of the application)
Russia	21 Oct. 2008	Tsoriyev (no. 39432/05) link	Alleged violation of Art. 6§1 and of Art. 1 of Prot. 1 (delayed enforcement of a judgment granting the applicant pension arrears and non-pecuniary damages)	Inadmissible as manifestly ill-founded [the delay in the execution (8 months and 10 days) did not appear excessive]
Russia	21 Oct. 2008	Djavakhadze (no. 74022/01) link	Alleged violation of Art. 6 § 1 (unfair proceedings) and of Art. 1 of Prot. 1 (unlawfully deprivation of property)	Inadmissible as manifestly ill-founded (no appearance of violation of Art. 6 § 1 and the assessment made by the domestic courts cannot be regarded as having been arbitrary or manifestly unreasonable with regard to Art. 1 of Prot. 1)
Serbia	21 Oct. 2008	Iles (no. 3625/08) link	Alleged violation of Art. 6§1 (length of proceedings to obtain a child maintenance) and of Art. 13 (no effective remedy)	Struck out of the list (friendly settlement reached)
Serbia	21 Oct. 2008	Kojovic (no. 32496/03) link	Alleged violations of the Convention concerning *inter alia* the continuing refusal of the respondent State to release his foreign currency savings, with interest, or the lack of compensation for the destruction of the family's property during	Struck out of the list (applicant died)

			World War Two	
Serbia	21 Oct. 2008	Popovic (no. 42569/05) link	Alleged violation of Art. 6 § 1 (length of proceedings to obtain reimbursement of money paid for medical prescriptions)	Struck out of the list (applicant no longer wishing to pursue his application as the case was resolved domestically)
Serbia	21 Oct. 2008	Lazarevic (no. 23978/07) link	Alleged violation of Art. 6 § 1 (length of proceedings in front of the labour court)	Struck out of the list (friendly settlement reached)
Slovenia	14 Oct. 2008	Josic and others (no. 10115/03 ; 18798/04 ; 18921/04 ; 19737/04 ; 21155/04) link	Alleged violation of Art. 6 § 1 (length of proceedings) and of Art. 13 (no effective remedy)	Struck out of the list (settlement reached and matter resolved at national level)
Slovenia	14 Oct. 2008	Potocnik and 4 others (nos. 3045/03 ; 7894/03 ; 9696/03 ; 13566/04 ; 14698/04) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings) and of Art. 13 (no effective domestic remedy)	Partly struck out of the list (settlement reached and matter resolved at national level for non-pecuniary compensations) Partly inadmissible as manifestly ill-founded (concerning the requests for compensation of pecuniary damages)
Sweden	21 Oct. 2008	M.H. (no. 10641/08) link	The applicant complained that he would face a real risk of being subjected to torture and imprisoned or killed if forced to return to Gaza due to his previous political activities (Art. 2 and 3). He further complains of a risk of violation of Art. 5 and 6	Inadmissible as manifestly ill-founded (*inter alia* because the applicant did not establish that he would be exposed to a real risk of violation of the Convention)
The Czech Republic	14 Oct. 2008	Blaha and Blahova (no. 8160/04) link	Alleged violation of Art. 6§1 (length of proceedings)	Inadmissible (failure to exhaust domestic remedies)
The Czech Republic	14 Oct. 2008	Regal (no. 12359/03) link	Alleged violations of Art. 5§1, Art. 6§1, Art. 8§1, Art. 10§2, Art. 14, Art. 17 and of Art. 1 of Prot. 1 in the framework of a conflict between two neighbours	Inadmissible for non exhaustion of domestic remedies concerning the length of proceedings Inadmissible rationae materiae concerning Art. 5, 6 and 8 Inadmissible as manifestly ill-founded concerning Art. 8, 10, 14 and 17
The Netherdlands	14 Oct. 2008	Rushingwa and others (no. 5956/07) link	Alleged violation of Art. 8 due to refusal to allow the husband and children of the applicant, a Congolese national, to reside with her in the Netherlands	Struck out of the list (applicant wished to withdraw her application)
The Netherdlands	21 Oct. 2008	Poppe (no. 32271/04) link	Alleged violation of Art. 6§1 (alleged unfair trial in criminal proceedings, especially concerning the requirement of impartiality)	Admissible as the case raises serious issues of fact and law under the Convention
United Kingdom	14 Oct. 2008	Wright (no. 28111/02) link	Alleged violation of Art. 14 taken in conjunction with both Art. 8 and 1 of Prot. No. 1 (alleged discrimination on ground of sex in the British social security legislation)	Struck out of the list (applicant no longer wishing to pursue his application)

United Kingdom	14 Oct. 2008	Echegaray (no. 27990/02) link	Idem as in *Wright* above	Inadmissible as incompatible *ratione personae* (the applicant's late wife had not paid sufficient national insurance contributions to qualify as a surviving spouse for any of the bereavement benefits claimed)
United Kingdom	14 Oct. 2008	Povey (no. 30405/02) link	Idem as in *Wright* above	Struck out of the list (partly because of a friendly settlement and partly because the applicant was no longer wishing to pursue his application)
United Kingdom	14 Oct. 2008	Reid (no. 42412/02) link	Idem as in *Wright* above	Struck out of the list (applicant no longer wishing to pursue his application)

C. The communicated cases

The European Court of Human Rights publishes on a weekly basis a list of the communicated cases on its Website. These are cases concerning individual applications which are pending before the Court. They are communicated by the Court to the respondent State's Government with a statement of facts, the applicant's complaints and the questions put by the Court to the Government concerned. The decision to communicate a case lies with one of the Court's Chamber which is in charge of the case.

There is in general a gap of three weeks between the date of the communication and the date of the publication of the batch on the Website. Below you will find the links to the lists of the weelkly communicated cases which were published on the Court's Website :

- on 24th November 2008 : link

The list itself contains links to the statement of facts and the questions to the parties. This is a tool for NHRSs to be aware of issues involving their countries but also of other issues brought before the Court which may reveal structural problems. Below you will find a list of cases of particular interest identified by the Office of the Commissioner.

NB. The statements of facts and complaints have been prepared by the Registry (solely in one of the official languages) on the basis of the applicant's submissions. The Court cannot be held responsible for the veracity of the information contained therein.

Communicated cases published on 24 November 2008 on the Court's Webiste and selected by the Office of the Commissioner

State	**Date of communication**	**Case Title**	**Key Words by the Office of the Commissioner**
Azerbaijan	14 November (12 November for Rzayev)	4 cases: Namat ALIEV Eldar NAMAZOV Elchin Rzayev Yagub Mammadov (stament of facts not available)	The applications deal with alleged breaches of the right to participate in free elections (Art. 3 of Prot. 1). The first three applicants stood for the elections to the Parliament of 6 November 2005 as candidates of opposition blocs (Azadliq; Yeni Siyaset). The cases deal with the elections law, the composition of the election commissions, the existence of domestic remedies, the existence of alleged discrimination on the ground of political affiliations.

Moldova	6 November	SRTV	Impossibility to broadcast on the territory of Moldova by the applicant company – Romanian public television company (see the statement of facts)
Moldova	7 November	Alexandru GAVRILOVICI (represented by the Moldovan NGO Lawers for Human Rights)	Criminal proceedings against the applicant further to statements made before the regional council which examined the issue of financial aid to the applicant's wife and son (they suffered from chronically renal failure and were disabled on account of their disease); Conditions of detention at the regional police commissariat.
Portugal	7 November	Fernardo dos SANTOS COUTO	The case deals with alleged discrimination between heterosexuals and homosexuals due to more severe offences for homosexual acts with adolescents at the time in question (the Criminal Code as amended by Act no. 59/2007 - entered into force on 15 September 2007 - provides for one single offence for heterosexual and homosexual acts with adolescents).
Romania	6 November	2 cases: Association "21 December 1989" and Teodor Mărieş (no. 33810/07); Elena and Nicolas Vlase (no. 18817/08)	The cases concern the violent events that took place in December 1989 during the demonstrations against the Ceauşescu regime (the son of Elena and Nicolas Vlase was killed during the repression of the demonstrations). The cases deal in particular with effective investigation matters.

D. Miscellaneous

Relinquishment of jurisdiction in favour of the Grand Chamber (03.11.08)

The Chamber dealing with the cases of *Depalle v. France* and *Brosset Triboulet* (link to the decision) and *Brosset-Pospisil v. France* (link to the decision) has relinquished jurisdiction in favour of the Grand Chamber.
The cases concern injunctions issued against the applicants, ordering them, at their own cost and without compensation, to demolish their homes, which were built on plots of land in the maritime public property.

Hearings:

The webcast of the Grand Chamber Hearing in the case **Varnava c. Turquie** (n° 16064/90), dated 19 November 2008 is now available for consultation
Original language version, English, French
Press releases

Grand Chamber judgment : The Court holds a public hearing on Thursday 27 November 2008 at 11 a.m. to deliver its Grand Chamber judgment in the case of ***Salduz v. Turkey***. The case concerns the lack of legal assistance available to the applicant while in police custody and the fact that he did not have access to the public prosecutor's submissions to the Court of Cassation.

You may also consult the statements of facts concerning the forthcoming hearings (2 December 2008) in the following cases:

- **Savino v. Italy** (no. 17214/05)
  Persichetti v. Italy (no. 20329/05)
  Statement of facts in French only
- **Borgo and others v. Italy** (no. 42113/04)
  Statement of facts in French only

In the three abovementionned cases, the applicants complain that they had not had access to a "tribunal", within the meaning of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, for the adjudication of their claims. They argue that the Judicial Committee and Section for officials of the Chamber of Deputies were not tribunals established by law or independent and impartial as provided for by the Convention.
See Press Release.

Ten years of the "new" European Court of Human Rights : President of the European Court of Human Rights calls upon Governments to reaffirm their commitment to international human rights protection (30.10.08)

Ten years after the setting up of a full-time European Court of Human Rights guaranteeing a right of individual petition to over 800 million Europeans, the President of the Court Jean-Paul Costa hailed the establishment of the "new" Court in 1998 as a landmark in the development of international human rights protection.

Speaking in Strasbourg, the President said: "Much has been achieved over the last ten years, which has seen over 9,000 judgments delivered and human rights jurisprudence evolve into a common language understood and used by legal professionals and others throughout Europe and beyond. It is enormously important that the Court should be able to continue to play to the full its role as a guarantor of democracy and the rule of law in the 47 States through which its jurisdiction extends. This means that the Court will have to adapt to cope with the massive inflow of cases which it has experienced since 1998, that further reforms to the system are required and, above all, that at the beginning of the 21st century and a few weeks before the 60th anniversary of the Universal Declaration of Human Rights all the member Governments of the Council of Europe must reaffirm their commitment to effective international human rights protection, while ensuring that their domestic systems offer citizens the possibility to seek redress for human rights breaches at home."

To mark the 10th anniversary, the Court also launched its new monolingual (French or English) web portal (www.echr.coe.int). The newly designed portal has a link to a special page dedicated to the 10th anniversary where information can be found on the activities of the "new" Court, including up-to-date statistics, photo galleries and events such as the seminar held on 13 October 2008 to discuss the Court's situation and outlook.

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its fourth and last special "human rights" meeting of 2008 from 2 to 4 December (the 1043rd meeting of the Ministers' deputies). The Committee will supervise the adoption of individual measures needed to erase the consequences for applicants of violations established by the Court (including the payment of any just satisfaction awarded) and/or general measures (legislative or other changes) aimed at preventing new similar violations.

265 new cases will be examined, a number of which raises questions related to the adoption of new general measures. The others are either linked to issues which are already examined under other cases, or do not reveal any structural problem.

In the remaining cases, the Committee will examine progress made, notably as far as some 300 legislative or other reforms are concerned.

At the meeting, the Committee will also consider the adoption of final resolutions in 108 cases in which all of the necessary execution measures have been taken, and will assess whether some 28 further cases are ready to be closed.

A preliminary list of items/cases to be examined at the meeting is available on the Committee of Ministers website. To this list should be added the judgments which became final after the last "human rights" meeting (September 2008).

Interim Resolutions and the most important decisions will become public at the end of the meeting. Other decisions, and the annotated agenda (with information on the progress made in the different cases), will be made public once formally adopted a fortnight after the meeting.

B. General and consolidated information

Please note that useful and updated information (including developments occurred between the various Human Rights meetings) on the state of execution of the cases classified by country is provided :
http://www.coe.int/t/e/human%5Frights/execution/03%5FCases/

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2007 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights:
http://www.coe.int/T/E/Human_Rights/execution/

The simplified global database with all pending cases for execution control (Excel document containing all the basic information on all the cases currently pending before the Committee of Ministers) can be consulted at the following address :
http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

Part III : The work of other Council of Europe monitoring mechanisms

A. European Social Charter (ESC)

The next Session of the European Committee of Social Rights will be held from 1 to 5 December 2008. You may find relevant information on both sessions using the following link : http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp.

You may find relevant information on the implementation of the Charter in States Parties using the following country factsheets:
http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp

Seminar held in Moscow, Russian Federation (07.11.08)
A seminar in the framework of the Third Summit Action Plan was held in Moscow, Russian Federation on 13 November 2008. The aim of this seminar is to provide comprehensive information on the European Social Charter to the Russian authorities with a view to a wider application of the Charter.
Programme
The Russian Federation signed the revised Social Charter on 14 September 2000. It has not yet ratified it.

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

Council of Europe anti-torture Committee publishes report on "the former Yugoslav Republic of Macedonia" (04.11.08)

The Council of Europe's Committee for the Prevention of Torture (CPT) has published the report on its June/July 2008 ad hoc visit to "the former Yugoslav Republic of Macedonia" , together with the authorities' response.

The 2008 visit focused on the treatment and conditions of detention of sentenced and remand prisoners. In this context, it assessed developments in relation to prison healthcare services and examined the use of means of restraint within prison. Particular attention was also paid to the issue of safeguards against ill-treatment of persons deprived of their liberty by law enforcement officials. The visit was prompted by the fact that the authorities' response to the report on a previous visit in 2007 did not address many of the issues identified by the Committee.

The CPT remains concerned about the apparent lack of action taken to tackle serious concerns such as ill-treatment of detained persons (including juveniles) by police and prison officers and the poor conditions of detention in prisons. The report states that little progress was observed during the 2008 visit and highlights the necessity for the authorities to provide the Committee with accurate and reliable responses as a prerequisite for cooperation.

The CPT's report on the June/July 2008 visit and the response of the national authorities are available on the CPT's website http://www.cpt.coe.int.

Both documents have been made public at the request of the national authorities.

C. European Commission against Racism and Intolerance (ECRI)

General and consolidated information on the country-by-country monitoring reports established by the ECRI may be consulted using the following link:
http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/default.asp#TopOfPage

D. Framework Convention for the Protection of National Minorities (FCNM)

National Minorities in Serbia: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (31.10.08)

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Serbia from 3-7 November 2008 in the context of the monitoring of the implementation of this convention by this country. In addition to Belgrade, the delegation visited Novi Sad, Bujanovac, Niš and Novi Pazar.

This is the second visit of the Advisory Committee in Serbia: the expected legislation on the national councils of national minorities and other relevant laws together with the effective implementation of the norms in all regions of Serbia were at the centre of the discussion. The Delegation had meetings with the representatives of all relevant ministries, the State and Provincial Ombudsmen and the Parliament. In addition to contacts with public officials, the Delegation also met persons belonging to national minorities and Human Rights NGOs in Belgrade and in all the regions visited.

Serbia submitted its second state report under the Framework Convention in March 2008. Following its visit, the Advisory Committee will adopt its own report (called Opinion) in early 2009, which will be sent to the Serbian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Serbia.

Election of the Bureau of the Advisory Committee on the Framework Convention (31.10.08)

On Wednesday, 8 October 2008, during the 33rd Plenary, the Advisory Committee elected members of the Bureau for a period of two years.
The following members were elected: Mr Alan PHILLIPS (President, member elected in respect of the UK), Ms. Ilze BRANDS-KEHRIS (Latvia, 1st Vice President, member elected in respect of Latvia) and Mr Rainer Hofmann (2nd Vice-President, member elected in respect of Germany)

E. Group of States against Corruption (GRECO)

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F. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

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[*] No work deemed relevant for the NHRSs for the period under observation.

Part IV : The intergovernmental work

A. The new signatures and ratifications of the Treaties of the Council of Europe

Bulgaria acceded on 31 October 2008 to the Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 028).

Norway signed and approved on 27 October 2008 the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199).

B. Recommandations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

1040th meeting of the Committee of Ministers (05.11.08)

On 5 November 2008, the Committee of Ministers pursued their discussions on the consequences of **the conflict in Georgia** on the basis of the draft action plan proposed by the Swedish Chairmanship. They agreed to come back to this item at the latest on 14 November 2008.

At the initiative of the Swedish Chairmanship, the Committee of Ministers held a thematic exchange of views on the **Council of Europe action in the field of gender equality.** The Committee of Ministers identified a number of broad policy lines for the future. Emphasis was placed on achieving de facto equality between women and men by focussing on the implementation and monitoring of relevant Committee of Ministers' recommendations; on improving gender mainstreaming; and to strive for greater balance in selection processes for different bodies, entities and committees of the Council of Europe and within the member states, while giving particular attention to raising the profile of gender equality issues at all levels. The Committee asked the Secretary General to prepare an annual report on the follow-up given to the above decisions as well as on the implementation of the gender equality policy in the Council of Europe, including within Council of Europe bodies, entities and committees.

The Committee of Ministers also adopted a reply to Parliamentary Assembly Recommendation 1819 (2007) on "Gender equality principles in the Parliamentary Assembly". The Committee of Ministers underlined that "gender equality is not only a principle of equality of women and men, as a sine qua non of democracy and an imperative of social justice", it is also a "matter of both fairness and common sense". With this in mind, the Committee of Ministers has been pursuing a gender mainstreaming policy, which promotes equality, highlights the gender perspective of every policy and activity and makes use of the skills and talents of society as a whole.

The Chairman of the Ministers' Deputies Liaison Committee with the European Court of Human Rights (CL-CEDH) made an oral report on **the effects of the non-entry into force of Protocol No. 14** to the European Convention on Human Rights and on discussions held on measures to improve the Court's efficiency.

The Chairman of the Ministers' Deputies informed the Committee about the adoption by the General Assembly of the United Nations on 3 November 2008 of the Resolution on **co-operation between the United Nations and the Council of Europe**. The Resolution was co-sponsored by 46 member states of the Council of Europe.

* No work deemed relevant for the NHRSs for the period under observation.

Finally, the Committee of Ministers adopted a Recommendation to its member states on the **European Rules for juvenile offenders** subject to sanctions or measures. This instrument should contribute to a better protection of the rights and wellbeing of juveniles who enter in conflict with the law and to the development of a child-friendly justice system in the member states.

You may find some relevant information for your work concerning the decisions adopted during the 1040th meeting by the Committee of Ministers using the following links: **CM/Del/Dec(2008)1040E / 07 November 2008**

Council of Europe takes part in human rights conference in Stockholm (05.11.08)

The Council of Europe's Committee of Ministers Chair Sweden hosted a conference on "Systematic Work for Human Rights Implementation" on 6-7 November at Clarion Hotel Sign in Stockholm to ensure that the reality within countries corresponds with regional and international human rights standards.

Titled *Rights work!* the conference was organised by Sweden in close cooperation with the Council of Europe. Conference speakers included: Ms Nyamko Sabuni, Swedish Minister of Integration and Gender Equality, Gunilla Carlsson, Swedish Minister of International Development Cooperation, Thomas Hammarberg, Council of Europe's Commissioner for Human Rights and Yavuz Mildon, President of the Council of Europe's Congress of Local and Regional Authorities.

The Congress recommended ways of improving coordinated action on human rights between local and regional governments. The conference brought together over 200 participants, including representatives from governments, municipalities and NGOs, both from Council of Europe member states and from other countries with experience in systematic human rights protection work at a national level.

The four main themes of the Conference were:
· National human rights action plans and baseline studies
· Methods for mainstreaming and following up systematic work for human rights implementation
· Systematic work for human rights implementation at the local and regional level
· The role of civil society and national human rights institutions in systematic work for human rights implementation

Thomas Hammarberg addressed the "Rights Work! – International Conference on Systematic Work for Human Rights Implementation" in Stockholm on 6-7 November 2008.

The Commissioner underlined that work for human rights should be a continuous and inclusive process which brings national, regional and local authorities, political decision-makers, national human rights structures, civil society representatives and other stakeholders together for the implementation of agreed human rights standards.

International organisations are ready to assist countries in their systematic work for human rights and the Commissioner will issue recommendations on the theme shortly to give further guidance to member states.

See also the viewpoint of the Commissioner: "Concrete and comprehensive action plans are needed to ensure implementation of human rights"
See the Conference website

European conference on protection of the rights of people with disabilities opens in Strasbourg (29.10.08)

European conference on "Protection and promoting the rights of persons with disabilities in Europe: towards full participation, inclusion and empowerment" took place in Strasbourg.

The event aims to promote the recognition and application of the UN Convention on the Rights of Persons with Disabilities and the implementation of the **Council of Europe Disability Action Plan 2006-2015.**

“Our societies have an obligation to integrate people with disabilities and enable them to enjoy all their rights and fulfill all their responsibilities on an equal footing with everyone else,“ said Maud de Boer-Buquicchio, Council of Europe Deputy Secretary General, in her opening remarks.

“This is not only a moral imperative and a legal obligation, it is also an investment. It is about investing in people and getting a return for society as a whole,” she added.

Ambassador Per Sjögren, Permanent Representative of Sweden to the Council of Europe emphasised that “despite the standards and changing attitudes, persons with disabilities still have difficulties in some member states accessing certain rights and freedoms, for example in such fields such as employment, education or political life. Now is the time for action. For putting norms and standards into practice in our societies. For making rights real for persons with disabilities,” he said.

The conference was organised by the Council of Europe Directorate General for Social Cohesion and the Nordic Cooperation on Disability under the aegis of the Swedish Chairmanship of the Committee of Ministers of the Council of Europe and Presidency of the Nordic Council of Ministers.

Other speakers at the opening session included Lokman Ayva, member of the Parliamentary Assembly of the Council of Europe, and Marie-Dominique Dreysse, Deputy-Mayor of Strasbourg.

Swedish Minister for Elderly Care and Public Health Maria Larsson attended the conference on 30 October.

Participants discussed full participation, inclusion and empowerment of people with disabilities in Europe and attend six separate workshops addressing issues such as children with disabilities, women and girls with disabilities, ageing and disability, Universal Design/accessibility, mainstreaming – roles and responsibilities, quality of services and support.

The conference was attended by some 150 governmental and non-governmental disability experts and decision-makers from all Council of Europe member and observer states.

The Council of Europe “Action Plan to promote the rights and full participation in society of people with disabilities : improving the quality of life of people with disabilities in Europe 2006-2015" was launched at the European Disability Conference in St Petersburg, Russia on 21-22 September 2006. It is now available in 21 languages and in English and French Braille and easy-to-read formats.

Speech by Maria Larsson, Swedish Minister for Elderly Care and Public Health
Speech by Per Sjögren, Chairman of the Ministers’ Deputies
Conclusions de Alexander Vladychenko
Speech by Maria Larsson
Speech by Per Sjögren
Speech by Maud de Boer-Buquicchio
Speech by Thomas Hammarberg
Video of the Opening session
Programme
PowerPoint Presentations
File

Part V : The parliamentary work

A. Reports, Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe

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B. News of the Parliamentary Assembly of the Council of Europe

- ***COUNTRIES***

PACE's Presidential Committee to visit Tbilisi (27.10.08)

The Presidential Committee of the Council of Europe Parliamentary Assembly (PACE), led by its President, Lluís Maria de Puig, visited Tbilisi on 30 October 2008.

The visit is part of the follow-up to Resolution 1633 on "The consequences of the war between Georgia and Russia", adopted by the Assembly on 2 October 2008. The Assembly's Bureau asked the Presidential Committee to visit Tbilisi and Moscow for meetings at the highest level with the authorities concerning the implementation of the resolution

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The parliamentarians met the Speaker of the Parliament David Bakradze, the Prime Minister Lado Gurgenidze, the Minister of Foreign Affairs Eka Tkeshelashvili, the Minister of Internal Affairs Ivane Merabishvili, the Minister of Reintegration Temur Iakobashvili, and the Secretary of the National Security Council Alexander Lomaia. They also meet with the heads of the EU Monitoring Mission, the European Commission Delegation and the OSCE Mission. The follow-up to be given to Resolution 1633 will be discussed by PACE's Standing Committee in Madrid on 28 November 2008.

Nota bene: the Presidential Committee is a consultative body for the Bureau and the President of the Assembly. It consists of the President of the Assembly, the chairpersons of the five political groups (Luc van den Brande, EPP/CD; Andreas Gross, SOC; Mikhail Margelov, represented for this visit by David Wilshire, First Vice-Chairperson, EDG; Mátyás Eörsi, ALDE; Tiny Kox, UEL) and the Secretary General of the Assembly, Mateo Sorinas.

PACE President welcomes Georgian commitment to meet Assembly requirements (31.10.08)

"I am heartened by the clear political will of the Georgian authorities to fully implement the requirements of the Assembly as expressed in Resolution 1633," said Lluís Maria de Puig, the President of the Parliamentary Assembly of the Council of Europe (PACE), at the end of a one-day visit to Tbilisi (30 October).

The President was visiting Georgia with PACE's Presidential Committee in the framework of the implementation by Georgia and Russia of Resolution 1633 on the consequences of the war between the two countries, adopted by the Assembly at its October 2008 session.

During its visit, the Presidential Committee held high-level meetings with government officials and parliamentarians to discuss the follow-up given by the Georgian authorities to the Assembly's demands.

The President expressed his concern at the recent tension along the administrative borders with South Ossetia and Abkhazia, especially in the light of the continuing lack of access for EU and OSCE monitors to these two breakaway regions. However, he was encouraged that, despite this, the Georgian authorities showed a clear openness to engage in constructive dialogue to ensure stability within Georgia as well as in the wider Caucasus region.

* No work deemed relevant for the NHRSs for the period under observation.

The President welcomed the constructive attitude of the Georgian authorities, and their clear sense of realism, in facing the many challenges resulting from the war. “I am especially impressed by the work of the ad hoc committee of the Georgian Parliament, chaired by a member of the opposition, to conduct a credible inquiry into the circumstances surrounding the war between Georgia and Russia,” the President declared. “I am equally impressed by the many initiatives taken by the Parliament to strengthen democracy in the aftermath of the conflict.”

In the framework of the implementation of Resolution 1633 by Russia and Georgia, the Presidential Committee will soon make a similar visit to Moscow to discuss with the highest parliamentary and executive authorities the follow-up given by Russia to the Assembly’s demands as spelled out in the resolution.

PACE post-monitoring visit to Bulgaria (03.11.08)

Within the framework of the post-monitoring dialogue with Bulgaria, Serhiy Holovaty (Ukraine, ALDE), Chair of PACE Monitoring Committee, made a fact-finding visit to Sofia on 5-7 November 2008, during which he had discussions with the President of the National Assembly, Minister of the Interior, Minister of Justice and President of the Supreme Court. Mr Holovaty also met the leaders of the parliamentary groups, the Ombudsman, religious dignitaries and representatives of national minorities, NGOs and the media.

PACE post-monitoring visit to “the former Yugoslav Republic of Macedonia” (03.11.08)

Serhiy Holovaty (Ukraine, ALDE), Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), made a fact-finding visit to Skopje on 3-5 November 2008, within the framework of the post-monitoring dialogue with “the former Yugoslav Republic of Macedonia”. Discussions are scheduled with, among others, the President of the Republic, President of the Assembly, Prime Minister, Deputy Prime Minister responsible for European integration, Minister of Foreign Affairs, Minister of the Interior, Minister of Justice, Minister of Local Self-Government and President of the Supreme Court. He also had discussions with the Ombudsman and with representatives of political parties, the media, civil society and the diplomatic corps.

PACE President: the start of dialogue on Nagorno-Karabakh is a window of hope for the entire region (04.11.08)

Following the start of dialogue aimed at finding a peaceful solution to the Nagorno-Karabakh conflict, the President of the Parliamentary Assembly of the Council of Europe, Lluís Maria de Puig, has urged the Presidents of Armenia and Azerbaijan to continue down this road.

“I wish to congratulate Presidents Aliyev and Sarksyan, and President Medvedev, who facilitated the meeting, on their commitment to finding a peaceful solution to the Nagorno-Karabakh conflict. The start of this dialogue, which will be followed by intensified diplomatic efforts and the promotion of a series of confidence-building measures, is a window of hope for the entire region,” said the President.

“As I pointed out during my visits to Baku and Yerevan last July, our Assembly has worked relentlessly over the past 15 years to bring about a political solution to the conflict in compliance with international standards and principles and the commitments which the two states made upon joining the Council of Europe. Such a solution is now closer than ever,” he added.

“The Parliamentary Assembly stands ready to help the Parliaments of Armenia and Azerbaijan in all their efforts so that the process just started proves successful,” he concluded.

PACE President condemns Vladikavkaz bombing (07.11.08)

“I strongly condemn this vicious attack on civilians, who were simply going about their daily business at a market,” said Lluís Maria de Puig, the President of the Parliamentary Assembly of the Council of Europe (PACE), following the bombing of a minibus in Vladikavkaz yesterday.

“This act will achieve nothing, but will sow only terror and grief. I would like to extend my sincere condolences to the families of those who died, and assure the Russian authorities that they can count on the support of the Parliamentary Assembly in combating those who were behind this horrendous act.”

- ***THEMES***

  - ***Terrorism / Rendition flights***

Dick Marty testifying at the Abu Omar trial in Milan: 'Let justice take its course!' (06.11.08)

On 5 November Dick Marty, Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on the "illegal transfer of detainees and secret detentions in Europe", testified as a witness at the Milan court hearing the trial of CIA agents and Italian secret service agents involved in the kidnapping of Abu Omar. He was questioned closely on the result of his inquiry. In particular, he showed how the Abu Omar affair was part of a global CIA strategy involving several European states, a strategy "beyond any legal framework and in grave violation of the European Convention on Human Rights".

"As in the US and Germany, the doctrine of 'state secrecy' has been invoked by the Italian government to try and block the judicial procedures aiming to establish the truth about serious human rights violations committed under its responsibility. This is unacceptable and unworthy of a state governed by law. Let justice take its course!" said Mr Marty.

"State secrecy is not being invoked to protect secrets – because the facts in question are largely known – but rather to protect the civil servants and politicians responsible for these abuses," he said.

Mr Marty continued: "The Abu Omar affair is one of the rare cases where the alleged perpetrators of kidnapping carried out as part of the CIA's 'extraordinary rendition' programme are facing justice. The trials in the US and Germany, involving the El-Masri affair, have run into the sand after the 'state secrets' doctrine was invoked. Parliamentary enquiries, such as the one carried out by the German Bundestag's committee of enquiry, have also come up against the executive's refusal to provide certain information requested by the parliamentarians."

"Yet human rights defenders will keep trying: other cases, both civil and criminal, have been brought or are in preparation, particularly in the US," concluded Mr Marty.

Second Marty report, June 2007
First Marty report, June 2006
Dick Marty's 'amicus curiae' brief to the US Supreme Court

You may also consult an updated chronology of the CoE's investigation into illegal transfers and secret detentions in Europe as well as background information on the work of the Committee on Legal Affairs and Human Rights as regards terrorism and human rights issues.

  - ***Environment***

Parliaments have a key role to play in water management (06.11.08)

Can nuclear power meet the demands of sustainable development? (07.11.08)

Parliaments active in guaranteeing the right to water (30.10.08)

A conference to prepare for the "parliamentarian process" of the 5th World Water Forum, jointly organised by the Parliamentary Assembly of the Council of Europe (PACE), the Grand National Assembly of Turkey and the World Water Council, took place at the Council of Europe on 6 November.

On this occasion, members of the parliaments of around 30 Council of Europe member states and non-member states shared their legislative experience relating to the adaptation of water management to global changes (including climate change), decentralisation policies, the right to water and sanitation, and transboundary water basins. Experts and representatives of NGOs and water companies also took part in the discussions.

The main aim of this preparatory conference is to start work on the parliamentarians' contribution to the political process of the 5th World Water Forum, an event scheduled to take place in Istanbul from 16 to 22 March 2009, under the aegis of the Turkish Government and the World Water Council.

Conference programme

Launch of PACE Human Rights Prize: call for nominations (29.10.08)

The Parliamentary Assembly of the Council of Europe (PACE) called for nominations for an annual Human Rights Prize, which will reward "outstanding civil society action in the defence of human rights in Europe".

Individuals and NGOs can be nominated for the prize, which will be selected by a seven-member panel from nominations put forward by at least five sponsors before 31 December 2008. The first Prize will be awarded at a ceremony in Strasbourg during the summer plenary session (22-26 June 2009) of the Assembly, which brings together 636 parliamentarians from 47 Council of Europe member states.

“We depend on civil society to ‘speak truth to power’ when it comes to human rights,” said PACE President Lluís Maria de Puig, launching the prize. “NGOs and human rights defenders carry out difficult and sometimes dangerous work, saving lives, exposing injustice and demanding change. When it is outstanding, this work deserves to be applauded. This prize is for them.”
Human Rights Prize website

C. Miscellaneous

You may find some relevant information on the activities of the Parliamentary Assembly of the Council of Europe in the electronical newsletter “PaceNews”. The **Issue 44** of the PaceNews is dated 31 October 2008 and covers inter alia the activities of the Parliamentary Assembly of the Council of Europe as described in the issues 3 and 4 of the RSIF.

Part VI : The work of the Office of the Commissioner for Human Rights

A. Country work

"Commissioner Hammarberg discusses Roma rights with Romanian Foreign Minister" (29.10.08)

"The protection of Roma rights is a European-wide concern but each government must take responsibility for the situation in their own country – including react against Anti-Ziganism", said Commissioner Hammarberg after a series of meetings in Bucharest on 26-28 October.

In an exchange with Foreign Minister Lazar Comănescu, he welcomed the bilateral talks between the governments in Romania and Italy and underlined the importance of protecting the rights of migrants, including the Roma.

The Commissioner also met the head of the National Agency for the Roma; the chair of the Roma Education Fund; the President of the National Council for Combating Discrimination; the deputy Secretary of state from the National Agency for Child Protection, the state counselor of the Romanian Government and the Roma representative in the parliament. He also consulted representatives of non-governmental organizations protecting the human rights of Roma.

At a European conference on the Rights of the Child, Commissioner Hammarberg appealed to all governments in Europe to address seriously the problem of many Roma children who are stateless or lack birth certificates and identity documents. "It's shameful that this problem is still largely unresolved", he said.

Georgia: Hammarberg to boost implementation of the six human rights and humanitarian principles (press release issued on 07.11.08)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, visited areas affected by the South Ossetia conflict from 12 to 14 November in order to review the current situation as regards the implementation of the six principles for urgent human rights and humanitarian protection.

"This visit will focus on the effective measures which have been taken to protect detainees, prisoners of war and persons in hiding" he said. "I will also continue the dialogue with relevant authorities to assess the implementation of the six principles for urgent protection of human rights and humanitarian security which I proposed in my report after the first visit to the region in August".

They cover the right to return of the displaced persons; the provision of adequate aid and living conditions for the displaced until their return home; demining efforts; the law and order in the war affected areas; humanitarian exchanges of prisoners of war, other detainees and stranded persons as well as ensuring international presence and assistance in the affected areas to address human rights and humanitarian issues.

Commissioner Hammarberg travelled to Tbilisi, Gori and Tskhinvali where he visited places and institutions of human rights relevance, such as collective centres for displaced persons. In addition, he met among others the Ministers for Foreign Affairs and for Reintegration, parliamentarians, the Public Defender and representatives of international organisations.

B. Thematic work

Thomas Hammarberg's keynote speech during the annual Conference of the European region of the International Lesbian and Gay Association (ILGA Europe) (31.10.08)

The Conference took place in Vienna and gathered 230 participants from 40 countries. The Commissioner stressed the importance to apply in a non discriminatory way the existing human rights treaties and conventions in the absence of a specific instrument which recognizes that sexual orientation and gender identity cannot be a reason for persecution and discrimination of lesbian, gay, bisexual and transgender (LGBT) persons. He also presented a strategic vision on possible ways to develop the LGBT human rights agenda and announced a one-day expert meeting on the rights of transgender persons. Finally, he highlighted the need for more and comparable data on discrimination against LGBT persons in the 47 member States of the Council of Europe.
Commissioner' speech
Conference's website

"Member States must protect and support the work of human rights defenders" (04.11.08)

After a two-day round table with human rights activists from all parts of Europe, Commissioner Hammarberg, stated that "human rights defenders should be seen as key partners in governmental endeavours to promote and protect the rights of individuals".

"Such defenders are carrying out very valuable work to raise awareness among the population about human rights" said the Commissioner. "They point at gaps and deficiencies in the national policies and protection systems and they can also assist authorities in addressing these and finding solutions." During the round table, human rights activists and journalists from all over Europe have shared with the Commissioner their experiences of obstacles and problems in their daily work of promoting human rights for everyone in their respective countries.

"I am concerned about the many methods used to impede the work of human rights defenders" he continued. "I have received reports about outright threats to their lives, legal or administrative harassments and conditioning state funding to not issuing public reports. I am deeply worried about instances of pressure from officials and other individuals to silence or dissuade applicants or their legal representatives from bringing cases to the European Court of Human Rights."

The 2008 Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities reinforced the mandate of the Commissioner and his possibilities of promoting a conducive working environment, including to raise individual cases with Governments, in close cooperation with the United Nations Special Rapporteur and the Office for Democratic Institutions and Human Rights. The Declaration designated the Commissioner as the main regional mechanism to strengthen the protection of human rights defenders and their activities.

"Human rights defenders work on a wide range of issues. We must ensure that their work is not only protected, but supported by both national authorities and international organizations" he concluded.

In their Declaration adopted at the end of the round table, human rights defenders called upon Council of Europe member States to enhance the support to the Commissioner's work.

"Systematic work for human rights must be continuous and inclusive" (07.11.08)

Thomas Hammarberg addressed the "Rights Work! – International Conference on Systematic Work for Human Rights Implementation" in Stockholm on 6-7 November 2008.

(See above under Part IV C of this issue of the RSIF)

C. Miscellaneous (newsletter, agenda…)

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* No work deemed relevant for the NHRSs for the period under observation.