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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

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.

- **Grand Chamber judgment - Right to form trade unions by civil servants**

Demir and Baykara v. Turkey (no. 34503/97) (Importance 1) – Grand Chamber - 12 November 2008 – Violation of Article 11 - Denial of right to form trade unions – Annulment of a collective agreement

The applicants complained under Articles 11 (freedom of assembly and association) and 14 (prohibition of discrimination) that the Turkish courts had denied them the right to form a trade union and to enter into collective agreements.

The applicants' right, as municipal civil servants, to form trade unions

The Court considered that the restrictions imposed on the three groups mentioned in Article 11, namely members of the armed forces, of the police or of the administration of the State, were to be construed strictly and therefore confined to the "exercise" of the rights in question. Such restrictions could not impair the very essence of the right to organise. It was moreover incumbent on the State concerned to show the legitimacy of any restrictions. In addition, municipal civil servants, who are not engaged in the administration of the State as such, could not in principle be treated as "members of the administration of the State" and, accordingly, be subjected on that basis to a limitation of their right to organise and to form trade unions.

The Court observed that those considerations found support in the majority of the relevant international instruments and in the practice of European States. The Court concluded that "members of the administration of the State" could not be excluded from the scope of Article 11. At most the national authorities were entitled to impose "lawful restrictions" on them, in accordance with Article 11 § 2. In the present case, however, the Government had failed to show how the nature of the duties performed by the applicants required them to be regarded as "members of the administration of the State" subject to such restrictions. The applicants could therefore legitimately rely on Article 11.

In the Court's view it had not been shown that the absolute prohibition on forming trade unions imposed on civil servants by Turkish law, as it applied at the relevant time, met a pressing social need. At that time, the right of civil servants to form and join trade unions was already recognised by instruments of international law, both universal and regional. Their right of association was also generally recognised in all member States of the Council of Europe. ILO Convention No. 87, the fundamental text securing, internationally, the right of public officials to form trade unions, was already, by virtue of the Turkish Constitution, directly applicable in domestic law, and the State had confirmed by its subsequent practice (amending of Constitution and judicial decisions) its willingness to recognise the right to organise of civil servants. Turkey had also, in 2000, signed the two United Nations instruments recognising this right.

The Court observed, however, that in spite of these developments in international law, the Turkish authorities had not been able, at the relevant time, to secure to the applicants the right to form a trade union, mainly for two reasons. First, the Turkish legislature, after the ratification in 1993 of ILO Convention No. 87 by Turkey, did not enact legislation to govern the practical application of that right until 2001. Secondly, during the transitional period, the Court of Cassation refused to follow the solution proposed by the Gaziantep District Court, which had been guided by developments in international law, and adopted a restrictive and formalistic interpretation of the domestic legislation concerning the forming of legal entities.

The Court thus considered that the combined effect of the restrictive interpretation by the Court of Cassation and the legislature's inactivity between 1993 and 2001 had prevented the Turkish Government from fulfilling its obligation to secure to the applicants the enjoyment of their trade-union rights and that this was not "necessary in a democratic society". Accordingly, there had been a violation of Article 11 on account of the failure to recognise the applicants' right, as municipal civil servants, to form a trade union.

Annulment of a collective agreement which had been applied for the previous two years

The Court pointed out that the development of its case-law as to the substance of the right of association enshrined in Article 11 was marked by two guiding principles: firstly, the Court took into consideration the totality of the measures taken by the State concerned in order to secure trade-union freedom, allowing for its margin of appreciation; secondly, the Court did not accept restrictions that affected the essential elements of trade-union freedom, without which that freedom would become devoid of substance. These two principles were not contradictory but were correlated. This correlation implied that the Contracting State in question, whilst in principle being free to decide what measures it wished to take in order to ensure compliance with Article 11, was under an obligation to take account of the elements regarded as essential by the Court's case-law.

The Court explained that, from the case-law as it stood, the following essential elements of the right of association could be established: the right to form and join a trade union, the prohibition of closed-shop agreements and the right for a trade union to seek to persuade the employer to hear what it had to say on behalf of its members. This list was not finite. On the contrary, it was subject to evolution depending on particular developments in labour relations. Limitations to rights thus had to be construed restrictively, in a manner which gave practical and effective protection to human rights.

Concerning the right to bargain collectively, the Court, reconsidering its case-law, found, having regard to developments in labour law, both international and national, and to the practice of Contracting States in this area, that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention, it being understood that States remained free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any "lawful restrictions" that may have to be imposed on "members of the administration of the State", a category to which the applicants in the present case did not, however, belong.

The Court considered that the trade union Tüm Bel Sen had, already at the relevant time, enjoyed the right to engage in collective bargaining with the employing authority. This right constituted one of the inherent elements in the right to engage in trade-union activities, as secured to that union by Article 11 of the Convention. The collective bargaining and the resulting collective agreement, which for a period of two years had governed all labour relations within Gaziantep Municipal Council except for

certain financial matters, had constituted, for the trade union concerned, an essential means to promote and secure the interests of its members. The absence of the legislation necessary to give effect to the provisions of the international labour conventions already ratified by Turkey, and the Court of Cassation's judgment of 6 December 1995 based on that absence, with the resulting *de facto* retroactive annulment of the collective agreement, constituted interference with the applicants' trade-union freedom.

In the Court's view, at the relevant time a number of elements showed that the refusal to accept that the applicants, as municipal civil servants, enjoyed the right to bargain collectively and thus to persuade the authority to enter into a collective agreement, had not corresponded to a "pressing social need".

The right for civil servants to be able, in principle, to bargain collectively, was recognised by international legal instruments, both universal and regional, and by a majority of member States of the Council of Europe. In addition, Turkey had ratified ILO Convention No. 98, the principal instrument protecting, internationally, the right for workers to bargain collectively and enter into collective agreements – a right that was applicable to the applicants' trade union.

The Court concluded that the annulment of the collective agreement was not "necessary in a democratic society" and that there had therefore been a violation of Article 11 on that point also, in respect of both the applicants' trade union and the applicants themselves.

In view of its findings under Article 11, the Court did not consider it necessary to examine this complaint separately. Judge Spielmann expressed a concurring opinion joined by Judges Bratza, Casadevall and Villiger. Judge Zagrebelsky expressed a separate opinion

- **Grand Chamber judgment – Right to a fair trial**

Salduz v. Turkey (no. 36391/02) (Importance 1) – Grand Chamber – 27 November 2008 - Violation of Article 6 § 3 (c) - Lack of legal assistance while the applicant was in police custody – Violation of Article 6 § 1 - Non-communication to the applicant of the written opinion of the Principal Public Prosecutor at the Court of Cassation

On 29 May 2001 the applicant was arrested on suspicion of having participated in an illegal demonstration in support of the imprisoned leader of the PKK (the Kurdistan Workers' Party, an illegal organisation). He was also accused of hanging an illegal banner from a bridge. On 30 May 2001 the police took a statement from the applicant, without a lawyer being present, in which he admitted having taken part in the demonstration and having written the words on the banner. The applicant subsequently denied the content of his police statement, alleging that it had been extracted from him under duress. The investigating judge remanded the applicant in custody, at which point he was allowed to see a lawyer.

Before the İzmir State Security Court, the applicant again denied the content of his police statement, alleging that it had been extracted from him under duress. On 5 December 2001 the State Security Court convicted the applicant for aiding and abetting the PKK and sentenced him to four years and six months' imprisonment. His sentence was later reduced to two and a half years' imprisonment as he had been under 18 at the time of the offence.

In giving its decision the State Security Court relied on the statements the applicant had given to the police, to the public prosecutor and to the investigating judge. It also took into account the statements made by his co-accused to the public prosecutor and two other pieces of evidence. It concluded that the applicant's confession to the police had been authentic. On 27 March 2002 the Principal Public Prosecutor at the Court of Cassation submitted his written opinion to that court, calling for the judgment of the İzmir State Security Court to be upheld. Neither the applicant nor his representative were given access to that opinion. On 10 June 2002 the Court of Cassation dismissed an appeal by the applicant.

Concerning the access to a lawyer during police custody, the Court found that in order for the right to a fair trial under Article 6 § 1 to remain sufficiently "practical and effective", access to a lawyer should be provided, as a rule, from the first police interview of a suspect, unless it could be demonstrated in the light of the particular circumstances of a given case that there had been compelling reasons to restrict this right. Even where compelling reasons might exceptionally justify denial of access to a

lawyer, such restriction - whatever its justification - must not have unduly prejudiced the rights of the accused under Article 6. The rights of the defence would in principle be irretrievably prejudiced when incriminating statements made during a police interview without access to a lawyer were used as a basis for a conviction.

No justification was given by the Turkish Government for denying the applicant access to a lawyer other than the fact that this was provided for on a systematic basis by the relevant legal provisions. As such, this already fell short of the requirements of Article 6 in this respect.

The Court moreover observed in particular that the State Security Court had used the applicant's statement to the police as the main evidence on which to convict him, despite his denial of its accuracy. For the Court, the applicant had undoubtedly been personally affected by the restrictions on his access to a lawyer, in that his statement to the police had ultimately been used for his conviction. Neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred during police custody.

The Court lastly noted that one of the specific elements of the instant case was the applicant's age. Having regard to a significant number of relevant international law materials concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody was a minor.

In sum, the Court considered that, even though the applicant had had the opportunity to challenge the evidence against him at his trial and subsequently on appeal, the absence of a lawyer during his period in police custody had irretrievably affected his defence rights. There had therefore been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1.

The Court considered, for the reasons given by the Chamber in its judgment of 26 April 2007, that the applicant's right to adversarial proceedings has been breached due to the non-communication of the written opinion of the Principal Public Prosecutor at the Court of Cassation

Judge Bratza expressed a concurring opinion. Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska expressed a concurring opinion and Judge Zagrebelsky expressed a concurring opinion joined by Judges Casadevall and Türmen.

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

Khaylo v. Ukraine (no. 39964/02) (Importance 3) - 13 November 2008

The case concerned, in particular, the applicants' complaint about the authorities' inadequate investigation into the death of their relative (A.Kh.). Firstly, the Court considered that it had been the Ukrainian authorities' duty to investigate A.Kh.'s sudden death, given that he had had no record of any illness and had, according to the applicants, been a key witness in criminal proceedings involving organised crime. It noted that a preliminary inspection of the scene of A.Kh.'s death had been immediately carried out by the police and medical experts. However, the body had not been measured, photographs taken had not been possible to develop as the film had a defect and the door of the bedroom had not been examined properly to determine whether it could have been locked from outside. Indeed, the case file submitted to the Court contained no records of any forensic or corporal evidence, highlighting the fact that some objects which could have been used as evidence (such as the gloves and hammer) had not been seized and examined. Nor had the subsequent remittals of the case in the years that followed A.Kh.'s death redressed the deficiencies of that initial inquiry. The Court was particularly struck by the fact that, in the decision of March 2006 to discontinue the proceedings, mention had been made of a medical certificate issued the day before A.Kh.'s death and which had been submitted by his employer. However, the contents of that certificate had not been used in the analysis of the likely causes of death and A.Kh.'s employer had not been questioned. Finally, the Court doubted whether the initial shortcomings of the investigation could now be redressed, as with the passage of time it was impossible to collect certain evidence or question the individual implicated by the applicants in the death of their relative as, in the meantime, he had moved abroad.

Given those circumstances, the Court held unanimously that there had been a violation of Article 2 on account of the ineffective investigation of the death of the applicants' relative.

Muravskaya v. Ukraine (no. 249/03) (Importance 3) - 13 November 2008

Relying on Article 2 (right to life), the applicant alleged that the authorities failed to carry out an effective and adequate investigation into the death of her son.

The Court observed that the efficiency of the investigation into the disappearance and death of the applicant's son had been undermined at the initial stages. Firstly, the law-enforcement bodies had failed to carry out a prompt and comprehensive search for the applicant's son, meaning that the deterioration of the corpse had reduced the chances of establishing more precisely the cause of death. Secondly, the initial forensic examination had served as a strong argument not to investigate the claim that the applicant's son had died a violent death, despite subsequent reports which had consistently concluded that he had died as a result of a serious facial injury. It was not until 14 months after the corpse had been found that the case had been reclassified. Furthermore, clear instructions to take further investigative steps had not always been followed. In general, the Court noted that a series of delays had hampered the investigation's chances of being brought to a successful conclusion and that the domestic authorities had even acknowledged the investigation's shortcomings and disciplined those concerned, in particular the initial forensic expert. The Court therefore held unanimously that there had been a violation of Article 2 on account of the authorities' failure to carry out an effective investigation into the disappearance and death of the applicant's son.

Dağdelen and Others v. Turkey (nos. 1767/03, 14246/04 and 16584/04) (Importance 3) - 25 November 2008

In connection with an investigation into a bomb plot, the applicants were arrested and held in police custody at the end of April and the beginning of May 1996. Some confessed during that time. Two medical reports were drawn up during and after their period in police custody, and all the applicants were found to have sustained injuries. In 1997 police officers who had taken part in the applicants' interrogations were charged with extracting confessions using torture. The Assize Court ruled in 2002 that the prosecution of the police officers was time-barred. The first three applicants were eventually convicted in 2003 and sentenced to life imprisonment for an attempt to undermine the constitutional order, whilst the last applicant was granted the benefit of amnesty legislation.

The applicants complained, in particular, of torture by police officers while in police custody, of the outcome of the criminal proceedings brought against the police officers concerned and of the length of those proceedings. Önder Dağdelen and Ergül Çiçekler also complained of the use by the court during their trials of confessions that had been extracted from them using torture while they were in police custody, when they had had no access to a lawyer, and of the length of the criminal proceedings against them. The applicants relied, in particular, on Article 3 (prohibition of inhuman and degrading treatment), Article 6 § 1 (right to a fair trial within a reasonable time), Article 6 § 3 (c) and Article 13 (right to an effective remedy).

As to the criminal proceedings against the police officers, the Court observed that they had lasted for more than five years without any decision being taken on the merits. For the Court, it was regrettable that the domestic court had failed to ensure a speedy trial for the State agents charged with ill-treatment and that, as a result of that failure, the prosecution had become time-barred. In view of the significant delay in the conducting of the proceedings before the Assize Court, the Court considered that the Turkish authorities had not acted with due promptness or with reasonable diligence, such that the presumed perpetrators of acts of violence had enjoyed virtual impunity, thus rendering the criminal remedy ineffective, in further breach of Article 3.

Ömer Aydın v. Turkey (no. 34813/02) (Importance 2) -25 November 2008

The applicant alleged that his son had committed suicide because of ill-treatment by his superior officers and that the military prosecutor's office had not conducted an effective investigation. He relied, in particular, on Articles 2 (right to life), 6 (right to a fair hearing) and 13 (right to an effective remedy).

The Court was not convinced that the military authorities should have known that there was a real and immediate risk of suicide. The Court therefore held unanimously that there had been no violation of Article 2 in respect of Fatih Aydın's suicide.

As to the investigation carried out by the military authorities, the Court considered that the military administration had, to a certain extent, proved to be ineffectual in the establishment and follow-up of the mental state of the applicant's son, especially after his conscription into the armed forces, which had played a role in the sequence of events. Whilst there was no reason to call into question the willingness of the investigating authorities to shed light on the circumstances, they had nevertheless failed to establish why the military administration had been so ineffectual. Neither the military prosecutor nor the administrative commission of inquiry had sought to interview the various doctors who had examined the applicant's son and more particularly the psychiatrist who had met him ten days before his suicide, and the results of the investigations made no mention of any responsibility being engaged in that connection. Moreover, the military prosecutor had not sought to clarify a contradiction in statements about a dispute with Fatih Aydın on the day of the incident. The Court therefore held unanimously that the exact circumstances of the conscript's death had not been duly assessed and determined and that there had thus been a violation of Article 2 in respect of the procedure.

Ismailov v. Ukraine (no. 17323/04) (Importance 3) – 27 November 2008

On 14 March 2001 Mr Ismailov was arrested and taken into police custody on suspicion of armed robbery; he was subsequently convicted as charged. He alleged that, during the time he was held in police custody at Simferopol District Police Station on those charges, he was repeatedly kicked and punched by police officers in order to extract a confession from him. On 19 March 2001 the applicant was examined by a medical expert who reported that he had sustained bruising to his eyes and left ear and abrasions to his right temple and lower lip and concluded that those injuries had occurred four to seven days beforehand and that they had been caused by somebody's fists or boots. The applicant lodged numerous complaints about his ill-treatment with various police officials and prosecutors but was unsuccessful. On 5 November 2002 the domestic courts issued a separate ruling which established that the applicant had sustained injuries while in police custody and suggesting that the offenders be identified and punished. Subsequently, the prosecution authorities decided on two occasions not to bring criminal proceedings against the police officers concerned. Those decisions were quashed by the domestic courts and remitted for further enquiries. Ultimately, the investigation was terminated on 20 November 2003 due to lack of evidence; no explanation was provided as to the origin of the applicant's injuries.

The Court further noted that the decisions not to bring criminal proceedings and the various remittals had resulted in it having taken about two years and two months for the authorities to commence the criminal proceedings. That delay significantly diminished any prospect of success of those proceedings. Moreover, the Court was struck by the fact that the decision of 20 November 2003 had not provided any explanation concerning the origin of the applicant's injuries. In conclusion, despite hard evidence that the applicant had been the victim of violence in police custody, the domestic authorities had not made any serious attempt to investigate his allegations. The Court therefore held that the domestic authorities had failed to carry out a prompt and thorough investigation into the applicant's complaint, in further violation of Article 3. It also held unanimously that there was no need to examine the complaint under Article 13.

Spinov v. Ukraine **(no. 34331/03) (Importance 3) – 27 November 2008**
Relying, in particular, on Article 3 (prohibition of inhuman or degrading treatment and lack of an effective investigation), the applicant alleged that he was ill-treated by the police during his arrest and subsequently at the police station and that the investigation into his allegations was inadequate.
The Court noted that the applicant's injuries had been given a plausible explanation by the domestic authorities following the questioning of the police officers concerned and the subsequent medical report of 3 March 2003. The Court therefore concluded that the recourse to physical force during the applicant's arrest had been made necessary by his own conduct and could not be held to have been excessive. There had therefore been no violation of Article 3 in that respect. The Court also held that there had been no violation of Article 3 concerning the ill-treatment at the police station as, given the information available, it was impossible to establish "beyond reasonable doubt" that aspect of the applicant's allegation.
However, the decisions not to bring criminal proceedings and the ensuing remittals had resulted in it having taken more than four years and seven months for the authorities to commence the criminal proceedings. That delay significantly diminished any prospect of success of those proceedings. Furthermore, the domestic courts as well as the higher prosecutors had noted serious omissions in the enquiries into the applicant's allegations and had given instructions as to the way in which the investigation should have been carried out. Given the number of remittals, it was clear that those instructions had not been followed diligently. The Court therefore concluded that the domestic

authorities had failed to carry out a prompt and thorough investigation into the applicant's allegations of ill-treatment at the police station, in violation of Article 3.

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

Akhmadov and Others v. Russia (no. 21586/02) (Importance 3) – 17 October 2008 – Violations of Articles 2 alone (right to life and requirements regarding effective investigation) and taken in conjunction with 13 – Failure to comply with Article 38 § 1 (a)

The applicants complained, in particular, of the killing of their relatives by State agents and of the absence of an adequate investigation into the events. They also complained that their relatives' right to liberty and security had been breached, that they had endured mental suffering on account of these events, that they had been discriminated against and that there was a lack of effective remedies in respect of those violations. The applicants referred to Articles 2, 3, 5, 13 and 14 of the Convention.

The Court held unanimously that there had been: a violation of Article 2 (right to life) of the European Convention on Human Rights as regards the deaths of Amkhad Gekhayev and Zalina Mezhidova; a **violation of Article 2** of the Convention on account of the authorities' failure to carry out an adequate and effective investigation into the deaths of Amkhad Gekhayev and Zalina Mezhidova; **no violation of Article 3** as regards the alleged mental suffering of the applicants; **no violation of Article 5** (right to liberty and security);**a violation of Article 13** (right to an effective remedy) **in conjunction with Article 2**; **no violation of Article 13 in conjunction with Articles 3 and 5**; **no violation of Article 14** (prohibition of discrimination); and **a failure to comply with Article 38 § 1 (a)** (obligation to furnish necessary facilities for the examination of the case) in that the Government refused to submit documents requested by the Court.

- **Conditions of detention**

Slavcho Kostov v. Bulgaria (no. 28674/03) (Importance 2) – 27 November 2008 – Violation of Article 3 (treatment) – Violation of Article 13 – Conditions of detention at Sliven detention facilities – Inadequate compensation awarded to the applicant

In September 1995 the applicant was arrested and placed in pre-trial detention on charges of aiding and abetting murder. Released in October 1995, the criminal proceedings against him were subsequently terminated due to lack of evidence. In 1999 he brought compensation proceedings concerning in particular the conditions of his detention at Sliven Regional Investigation Service detention facility under the State and Municipalities Responsibility for Damage Act 1988. In 2001 the courts ruled in the applicant's favour, finding among other things that he had been held in "extremely harsh conditions", notably in an overcrowded cell, with no access to a toilet, bathing or other hygiene facilities. Furthermore, he had only been given food once a day and had not been allowed visits from friends or relatives. He was awarded 3,000 Bulgarian levs (BGN) (approximately EUR 1,538) compensation for non-pecuniary damage, less BGN 1,880 (approximately EUR 964) by way of court fees on the dismissed part of his claim.

The Court noted the domestic courts' findings concerning the fact that the applicant had been held in "extremely harsh conditions" at Sliven detention facility. In those circumstances, the Court considered that the distress and hardship the applicant had endured had exceeded the unavoidable level of suffering inherent in detention and therefore held unanimously that there had been a violation of Article 3. Furthermore, the Court established that it was not possible to determine which part of the compensation awarded to the applicant had been intended to redress his detention at the Sliven detention facility in conditions which the domestic courts considered "extremely harsh" but it could not have been more than the sum left following payment of the court fees, namely BGN 1,120 (EUR 574). It considered that amount inadequate. The Court therefore held unanimously that there had also been a violation of Article 13 on account of the lack of adequate redress for the violation under Article 3.

Malai v. Moldova (no. 7101/06) (Importance 3) – 13 November 2008 - Violation of Article 3 (treatment) - Violation of Article 5 § 3 - Violation of Article 13 – Conditions of detention

The case concerned the applicant's complaint about the unlawfulness and conditions of his pre-trial detention following charges for unlawful fishing. He alleged in particular that he had initially been kept for about 24 hours in a small cell called the "aquarium" which had no bed, chair, toilet or sink and which was intended for periods of detention which did not exceed three hours. He had then been

transferred to an overcrowded, insect-infested cell below ground level with no ventilation and only a very weak electric light. He could only sleep maximum one hour per day as there were no beds. There was no toilet, just a bucket which was not kept separate from the rest of the cell. The food was also insufficient and of poor quality.

The Court noted that the applicant's submissions concerning the conditions of his detention had been consistent with reports on detention establishments in Moldova by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT"). Nor had the Government disputed the applicant's allegations concerning lack of food, the weak electric light, the sanitary facilities and the insect bites all over his body. The Court therefore held unanimously that there had been a violation of Article 3 on account of the hardship the applicant had endured during his detention. Recalling that it had previously found on numerous occasions that domestic remedies to complain about poor conditions of detention in Moldova had not been effective, the Court held unanimously that there had also been a violation of Article 13 in conjunction with Article 3. Lastly, the Court noted that the reasons given by the domestic courts to justify the applicant's pre-trial detention had not been "relevant or sufficient" and therefore held unanimously that there had been a violation of Article 5 § 3.

Savenkovas v. Lithuania (no. 871/02) (Importance 2) – 18 November 2008 – Violation of Article 3 (treatment) – Violation of Article 8 – Conditions of detention in Lukiškės Remand Prison – Systematic censorship of correspondence

Mr Savenkovas was convicted in October 2000 of robbery, illegal possession of ammunition, assault and an attempt to abscond. He was sentenced to five years and ten months' imprisonment. That decision was upheld on appeal. He was released in July 2003 but has since been detained and prosecuted on another charge. The case concerned the applicant's complaints, in particular, about the conditions of his detention in two Vilnius prisons until July 2003 and censorship of his correspondence by the prison administration.

The European Court of Human Rights noted that the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") had reported severe overcrowding (1.3 m^2 per person) in Lukiškės Remand Prison following its visit to the establishment in 2000. The applicant, as a remand prisoner, had had to stay in those cramped conditions some 23 hours per day, with no access to work, educational or recreational facilities. Furthermore, each cell had had an open toilet without sufficient privacy. The Court considered that those conditions had failed to respect basic human dignity and had to have been prejudicial to the applicant's physical and mental state. The Court therefore held unanimously that the severely overcrowded and unsanitary conditions of the applicant's detention at Lukiškės Remand Prison had amounted to degrading treatment, in violation of Article 3. However, it dismissed the applicant's complaints concerning the conditions of his detention in Rasų Prison as it considered them unsubstantiated. The Court further found that at the relevant time there had been systematic censorship of prisoners' correspondence, with the apparent exception of letters to State institutions and the Court, and that the Government had not given sufficient reasons to show that such extensive control had been necessary in a democratic society. It therefore held that there had also been a violation of Article 8.

Isyar v. Bulgaria (no. 391/03) (Importance 2) – 20 November 2008 – Violation of Article 3 (treatment) – Violation of Article 6 § 3 (e) – Conditions of detention in the Sofia Prison – Obligation for the applicant to pay the interpretation costs incurred in the criminal proceedings

In September 2000 the applicant was arrested and prosecuted for drug trafficking. On 12 January 2001 he was transferred to Sofia Prison. In March 2001 the Svilengrad District Court found him guilty as charged and sentenced him to 15 years' imprisonment and a fine. The court also ordered him to pay all the costs incurred during the preliminary investigation and the examination of the case at first instance. An ordinary appeal and an appeal on points of law by the applicant were dismissed; the Supreme Court of Cassation ordered him to pay the interpretation costs incurred during the proceedings before it. The applicant complained of the poor conditions of his detention in Sofia Prison, on account of overcrowding, a lack of organised activities for prisoners, deplorable standards of hygiene, lack of free access to the sanitary facilities at any time of the day and poor-quality food. He also complained of having been ordered to pay the interpretation costs incurred during the proceedings against him.

The European Court of Human Rights noted that the applicant's allegations concerning his conditions of detention were corroborated by other evidence in its possession, and in particular by the report on Sofia Prison drawn up in 2006 by the CPT. In view of the cumulative effect of the poor conditions of detention, and bearing in mind the length of the applicant's detention and his particular circumstances, the Court held unanimously that there had been a violation of Article 3 of the Convention. The Court further noted that the way in which the courts had interpreted the domestic law had resulted in the applicant's being obliged to pay the interpretation costs incurred in the criminal proceedings against him, thereby depriving him of his right to the free assistance of an interpreter. It therefore held unanimously that there had been a violation of Article 6 § 3 (e).

- **Lawfulness and length of detention**

Maire d'Eglise v. France (no. 20335/04) – Violation of Article 5 § 1 – No violation of Article 5 § 2 – Applicant taken into police custody without legal basis in French law

On 11 June 2002, in response to a warrant issued by the investigating judge of the Créteil tribunal de grande instance, the applicant's home was searched in connection with an investigation into suspected fraud, handling of stolen goods, offering and soliciting of bribes by an employee and forgery and uttering. The applicant was taken into police custody when the search began. The search ended on 12 June at 9 p.m. and the applicant was interviewed by the investigating judge on 13 June at about 12 noon. The applicant alleged that his time in police custody had exceeded the statutory limit of 24 hours (which could be extended by a further 24 hours), and that he had had to wait 53 hours before being interviewed by the investigating judge. He also submitted that he had not been informed promptly and in detail of the reasons for his arrest, or of the nature and cause of the accusation against him.

The Court observed that in the applicant's case the deprivation of his liberty between 9 p.m. on 12 June 2002 and 12 noon on 13 June 2002 had had no legal basis in French law. It therefore held unanimously that there had been a violation of Article 5 § 1. The Court further noted that the applicant had been informed, on being taken into police custody, of the nature of the offences referred to in the warrant and which were the subject of the investigation. It therefore held unanimously that there had been no violation of Article 5 § 2.

Bochev v. Bulgaria (no. 73481/01) (Importance 2) – 13 November 2008 – Violation of Article 5 §§ 3, 4 and 5 – Lawfulness of detention - Violation of Article 8 – Interception of pre-trial detainee's non-legal correspondence

The applicant, currently serving a 30-year sentence in Sofia Prison for, in particular, murdering a police officer, complained about the unlawfulness and excessive length of his pre-trial detention, the judicial review of that detention and the lack of an enforceable right to compensation. He also complained about the excessive length of the criminal proceedings against him and the monitoring of his correspondence by the prison administration.

The European Court of Human Rights held unanimously that there had been a violation of Article 5 § 3 of the Convention on account of the domestic courts not having properly justified detaining the applicant for more than seven years and five months. The Court also held unanimously that there had been a violation of Article 5 § 4 concerning: the judicial review of all aspects of the lawfulness of his detention; the fact that the proceedings were not truly adversarial as the applicant had not had the opportunity to reply to the public prosecutor's comments; and, the domestic courts' failure to rule on certain requests for release. The Court further held unanimously that there had been a violation of Article 5 § 5 on account of the lack of an enforceable right to compensation for those breaches of Article 5 §§ 3 and 4. Lastly, the Court noted in particular that the Government had failed to explain what had been the legitimate aim of systematically intercepting all of pre-trial detainees' non-legal correspondence in the period up to April 1999. The Court therefore held unanimously that there had been a violation of Article 8.

Rashed v. Czech Republic (no. 298/07) (Importance 2) – 27 November 2008 – Violation of Article 5 §§ 1 and 4 – Asylum seeker deprived of his liberty without any formal decision – Insufficient quality of the Czech asylum law in force at the relevant time

In August 2006 the applicant, an Egyptian national, applied for asylum on arriving at Prague international airport and was placed in the reception centre in the airport's transit zone. In September 2006 he was transferred to the Velké Přílepy facility of the Ministry of the Interior, where he remained until April 2007. He was then returned to the reception centre. In June 2007 he left the country on a voluntary-return basis after his asylum application had been rejected.

The Court noted that the applicant had been deprived of his liberty without any formal decision to take him into custody. But no judicial decision on the lawfulness of his detention had been given during the ten-month detention period. Consequently, the Court held unanimously that there had been a violation of Article 5 § 4. Furthermore, the Court observed that the quality of the Czech asylum law in force at the relevant time had not been sufficient for it to constitute a legal basis for the applicant's deprivation of liberty, as it did not afford adequate protection or the necessary legal certainty to prevent arbitrary interference by the public authorities with the rights guaranteed by the Convention. The Court therefore found unanimously that there had been a violation of Article 5 § 1.

Solovey and Zozulya v. Ukraine (nos. 40774/02 and 4048/03) (Importance 2) – 27 November 2008 – Violation of Articles 5 §§ 1 and 3 – Applicant detained solely on the basis of an order made by a prosecutor – Unlawful detention – Length of detention

The applicants are currently serving, respectively, a 10-year and 14-year prison sentence for aggravated murder and robbery. The Court noted that: in respect of three separate periods the applicants had been detained solely on the basis of an order made by a prosecutor, who, as a party to the proceedings, could not in principle be regarded as "an independent officer authorised by law to exercise judicial power"; in respect of three other separate periods there had been no clear basis in domestic law for the applicants' detention; and, in respect of one period of detention, which had been ordered by a court, no time-limit or reasons to justify the applicant's detention had been given. The Court therefore held unanimously that there had been a violation of Article 5 § 1 concerning the unlawfulness of the applicants' detention on remand. It also held that there had been a violation of Article 5 § 3 on account of the excessive length, some two years and three months for each applicant, of their overall detention on remand.

Fešar v. the Czech Republic (no. 76576/01) (Importance 2) – 13 November 2008 - Violation of Article 5 §§ 3 and 4 – Excessive length of pre-trial detention – Excessive length of the proceedings before the Constitutional Court to examine the lawfulness of the detention

In May 1996 the applicant was arrested on suspicion of tax evasion; he was convicted as charged in May 1998 and sentenced to 18 months' imprisonment. Given the length of his pre-trial detention, he was released. In the meantime, in April 1997 the applicant had lodged a constitutional appeal concerning his continued detention. In January 2001 the Constitutional Court examined that appeal and quashed a decision of March 1997 to continue his remand in custody. The case concerned the applicant's complaint about the excessive length of his pre-trial detention and of the proceedings before the Constitutional Court to determine the lawfulness of his continued detention. He relied on Article 5 §§ 3 and 4 (right to liberty and security) of the Convention. The Court found that the reasons given to justify the applicant's detention for nearly two years had not been relevant or sufficient and therefore held unanimously that there had been a violation of Article 5 § 3. It further found that the period taken to examine the applicant's constitutional appeal, more than three years and nine months, had been excessive, and therefore held that there had also been a violation of Article 5 § 4.

- **Right to a fair trial**

Ommer v. Germany (No. 1) (no. 10597/03) and Ommer v. Germany (No. 2) (no. 26073/03) (Importance 2) – 13 November 2008 - Violation of Article 6 § 1 (length) – Length of criminal proceedings

The applicant, Manfred Ommer, is a Germany national who was an Olympic Games sprinter in the 1970s and he was President of FC Homburg, a German Football League club, from 1986 to 1993. In

February 1987 Mr Ommer was questioned on charges of fraud with regard to business activities for an investment trust corporation, DETAG. He was ultimately acquitted in November 2001. His constitutional complaint about the excessive length of the criminal proceedings against him was dismissed in September 2002. In December 1990 he was notified of further fraud charges against him in relation to another company IHV, a real estate company; those investigation proceedings against him were discontinued in February 2003. The cases concerned Mr. Ommer's complaints about the excessive length of the criminal proceedings against him concerning DETAG and of the investigation proceedings against him concerning IHV. He also alleged that German law did not provide adequate compensation for those length-of-proceedings complaints. He relied on Article 6 § 1 (right to a fair trial within a reasonable time).

The Court noted that the proceedings in the first case had lasted more than 15 years and seven months at the investigation stage and three levels of jurisdiction. The domestic courts had acknowledged that that duration had been excessive. However, the Court considered that the applicant had not been granted adequate redress for those excessive length of proceedings: the domestic courts had not been in a position to reduce the applicant's sentence as he had been acquitted; and, although the applicant had been reimbursed certain legal fees and loss of earnings, that had only been a consequence of his acquittal and not to provide compensation for the protracted length of proceedings against him. Nor did the Court find that any other remedy available under domestic law had been capable of providing the applicant with adequate compensation. The Court therefore found that the applicant had not lost his status as a victim and held unanimously that there had been a violation of Article 6 § 1.

As concerned the second case, the Court noted that the investigation proceedings had lasted approximately 12 years and two months. It considered that the authorities had not acknowledged that that duration had been excessive. Adequate redress had not been provided through the investigation proceedings having been discontinued as they had mainly only been discontinued because the applicant could not or no longer be found guilty of having committed a crime. Nor did the Court consider that, in the circumstances of the case, a complaint to the Federal Constitutional Court was an effective remedy that the applicant had been obliged to exhaust. The Court therefore found that the applicant had not lost his status as a victim and further held unanimously that there had been a violation of Article 6 § 1.

Miroshnik v. Ukraine (no. 75804/01) – Importance 2 – 27 November 2008 – Two violations of Article 6 § 1 (fairness) – Violation of Article 1 of Protocol No. 1 - Non-enforcement of a decision in favour of the applicant - Lack of independence of the military courts in the proceedings concerning an unlawful dismissal

Dismissed from the armed forces in December 1998, the applicant subsequently brought several sets of proceedings in the military courts against the military enlistment offices and the Ministry of Defence concerning, in particular, his uniform expenses and the unlawfulness of his dismissal. In June 1999 it was ordered that the applicant be paid his uniform expenses in full; in March 2001 the claim concerning the applicant's dismissal was returned to him for failure to submit evidence.

The Court held unanimously that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 on account of non-enforcement of the decision to pay the applicant in full his uniform expenses. It also noted that under domestic law not only had the judges of the military courts, as servicemen belonging to the armed forces, been subordinate to the Ministry of Defence, but they had also depended on that ministry for accommodation and funding, logistical support and maintenance. Indeed, that procedure of financing was repealed in 2002. The Court therefore found a further violation of Article 6 § 1 on account of the lack of the military courts' independence in the proceedings with regard to the lawfulness of the applicant's dismissal.

- **Right to respect for family life**

Jucius and Juciuvienė v. Lithuania (application no. 14414/03) – 25 November 2008 – Violation of Article 8 - Deficiencies in the decision-making process by which permanent custody was awarded to the grandparents

The applicants, Marijus Jucius, and his wife, Gertrūda Juciuvienė, are Lithuanian nationals. In April 1999 Mr. Jucius' sister and her partner died and the applicants were awarded temporary custody of

their nieces, RŠ and DŠ, at that time four years' old and six months' old. The girls' grandparents subsequently made applications to adopt the girls; the applicants submitted a counterclaim. In August 2002 the domestic courts decided to grant permanent custody to the grandparents on the grounds that they had better financial and living conditions, despite RŠ's wish to remain with her "parents" (the applicants). However, when the bailiff attempted to execute that decision in March 2003, RŠ refused to leave the applicants. DŠ was taken to her grandparents. Given RŠ's resistance to being placed in the permanent custody of her grandparents, it was decided to reopen the proceedings. The decision of August 2002 was subsequently overruled and the sisters were separated, RŠ having expressed her desire to stay with the applicants and DŠ with her grandparents.

The case concerned the applicants' complaint about deficiencies in the decision-making process by which permanent custody of the girls was originally awarded to their grandparents. The European Court of Human Rights considered that the proceedings had been of crucial importance for the applicants and had involved an assessment of their character as well as of their nieces' wishes. To ensure the best interests of the girls, it had therefore been essential that the applicants and their nieces be given the opportunity to be heard and fully participate in a hearing. The applicants' appeal had, however, been determined by way of a written procedure. The Court also recalled "*that effective respect for family life requires that future relations between parent and child should not be determined by the mere effluxion of time (see W. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 29, § 65). However this is what happened in the present case. It was RŠ' continued resistance to the enforcement of the decisions* […] *which led to the reopening of the proceedings*" (§32). The Court therefore held unanimously that there had been a violation of Article 8.

- **Publication in the press of records kept by the police**

Cemalettin Canlı v. Turkey (no. 22427/04) (Importance 2) – 18 November 2008 – Violation of Article 8 – Publication in the national press of details of records kept by the police

In 2003 while criminal proceedings were pending against the applicant, a police report entitled "information form on additional offences" was submitted to the court, mentioning two sets of criminal proceedings brought against him in the past for membership of illegal organisations. However, in 1990, the applicant had been acquitted in the first criminal case and the second set of proceedings had been discontinued. The applicant complained that the records kept by the police and the publication in the national press of the details of those records had had adverse effects on his private life.

The Court noted that Mr. Canlı had never been convicted by a court of law concerning the allegations of membership of illegal organisations. It thus considered that referring to the applicant as a "member" of such organisations in the police report had been potentially damaging to his reputation, and that the keeping and forwarding to the criminal court of that inaccurate police report had constituted an interference with Mr Canlı's right to respect for his private life. The Court observed that the relevant Regulations obliged the police to include in their records all information regarding the outcome of any criminal proceedings relating to the accusations. Nevertheless, not only had the information in the report been false, but it had also omitted any mention of the applicant's acquittal and the discontinuation of the criminal proceedings in 1990. Moreover, the decisions rendered in 1990 had not been appended to the report when it had been submitted to the court in 2003. Those failures, in the opinion of the Court, had been contrary to the unambiguous requirements of the Police Regulations and had removed a number of substantial procedural safeguards provided by domestic law for the protection of the applicant's rights under Article 8. Accordingly, the Court found that the drafting and submission to the court by the police of the report in question had not been "in accordance with the law". The Court concluded unanimously that there had been a violation of Article 8.

- **Judgments regarding freedom of expression**

Kayasu v. Turkey (nos. 64119/00 and 76292/01) (Importance 2) – 13 November 2008 - Violation of Article 10 - Freedom of expression of judges – Limits of acceptable criticisms against armed forces

The case concerned a disciplinary sanction and a criminal conviction which the applicant received on account of a complaint and an indictment he had drawn up against the instigators of the military *coup d'état* of 12 September 1980. In August 1999 the applicant, acting as a private citizen, lodged a

criminal complaint against former generals of the army who had been the main instigators of the military coup of 12 September 1980. No action was taken on the complaint and the case received a certain amount of press coverage.

On 30 March 2000 the Supreme Council of Judges and Public Prosecutors imposed a disciplinary sanction on the applicant in the form of a reprimand. The Council found that the words used by the applicant in his complaint were liable to offend certain statesmen who had worked to secure the stability and viability of the State. The applicant appealed against that decision but was unsuccessful.

In the meantime, on 28 March 2000, in his capacity as the Adana public prosecutor the applicant had drawn up an indictment against Mr. Kenan Evren, a former Chief of Staff and former President of Turkey who had been the main instigator of the military coup of 12 September 1980. The criminal proceedings against the applicant resulted in a judgment delivered by the Joint Chambers of the Court of Cassation on 15 May 2001 and followed by the Ninth Division of the Court of Cassation on 11 December 2002, in which he was convicted of abusing his position and causing offence to the armed forces and was sentenced to suspended criminal fines. As to the charge of causing offence, the Turkish courts held that the indictment drawn up by the applicant had gone beyond the bounds of criticism and was directed at the armed forces as a whole, accusing them of being an institution that abused its power and had no hesitation in pointing its weapons at citizens and destroying the rule of law. They also found that by distributing the document in question to journalists, the applicant had sought to reach a wider audience, thereby demonstrating his intention to insult and offend the State's military forces.

From 20 April 2000 the applicant was suspended from his post as a public prosecutor; subsequently, on 27 February 2003 the Supreme Council of Judges and Public Prosecutors dismissed him from his post. An application by the applicant to the Objections Committee, four of whose nine members had sat as members of the Supreme Council of Judges and Public Prosecutors that had given the decision to which he objected, was rejected on 3 November 2003.

The Court observed that the applicant's particular status as a public prosecutor had meant that he had a crucial role within the national legal service in the administration of justice (see e.g. *Nikula v. Finland* of 21 March 2003). It had already had occasion to point out that public officials serving in the judiciary were to be expected to show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary were likely to be called into question. The Court nevertheless found that an interference with the freedom of expression of a member of the legal service in a position such as the applicant's called for close scrutiny on its part (see e.g. *Wille v. Liechtenstein* of 28 October 1999).

The Court observed that the statements in question had been made in the particular context of a historical, political and legal debate concerning, among other things, the possibility of prosecuting the instigators of the *coup d'état* of 12 September 1980 and the Constitution, which had been adopted following a referendum in November 1982 and was still in force. This was unquestionably a debate of general interest, in which the applicant had intended to participate both as an ordinary citizen and as a public prosecutor.

As to the content of the documents in question, the Court considered that while the statements were acerbic and at times sarcastic, they could hardly be described as insulting. The Court further noted, with regard to the fact that the applicant had made use of his position as a prosecutor in notifying the press, that it could certainly not condone his conduct, bearing in mind his duty of loyalty to the State that employed him. However, it observed that what was at stake in the present case went beyond the expression of a personal opinion: the statements in question had essentially been intended to highlight a failure of the democratic regime. The Court considered that it had to attach some importance to that issue in weighing up the competing interests under the Convention (see *inter alia De Diego Nafria v. Spain* of 14 March 2002). Accordingly, the Court found that the applicant's conviction for causing offence had not met any "pressing social need" capable of justifying such a restriction.

Furthermore, the imposition of a criminal sanction of that nature on an official belonging to the national legal service would inevitably, by its very nature, have a chilling effect, not only on the official concerned but on the profession as a whole. For the public to have confidence in the administration of justice they must have confidence in the ability of judges and prosecutors to uphold effectively the principles of the rule of law. It followed that any chilling effect was an important factor to be considered in striking the appropriate balance between the right of a member of the legal service to

freedom of expression and any other legitimate competing interest in the context of the proper administration of justice.

The Court concluded that the interference with the applicant's right to freedom of expression in the form of a sanction for causing offence to the armed forces, as a result of which he had been permanently dismissed from his post as a prosecutor and prohibited from practicing law, had been disproportionate to any legitimate aim pursued. There had therefore been a violation of Article 10.

In addition, the Court observed that the impartiality of the bodies of the Supreme Council of Judges and Public Prosecutors that had been called upon to review the applicant's objection had been open to serious doubt. Therefore the applicant had not had a remedy in respect of his complaint under Article 10, in breach of Article 13.

Krone Verlag GmbH & Co Kg v. Austria (No. 5) (no. 9605/03) (Importance 3) – 14 November 2008 – Violation of freedom of expression - Use of public money, matter of general interest – Statement of facts and value judgments – Disproportionalilty of the sanction

The applicant, Krone Verlag GmbH & Co KG, is the owner of the daily newspaper Neue Kronenzeitung with its registered office in Vienna. In May 1999 the newspaper ran a series of articles criticising Mr. Bruck, at that time managerial director of Techno-Z FH, a scientific research company sponsored notably by the Region of Salzburg. The articles accused Mr. Bruck in particular of "financial wanderlust" and shortcomings in Techno-Z FH's bookkeeping. Mr. Bruck was dismissed from his post in October 1999. Relying on Article 10, the applicant company complained about its ensuing conviction for defamation and that it was fined 14,500 euros in compensation.

The Court stressed that the press was one of the means by which politicians and public opinion could verify the use of public funding: "*Turning to the circumstances of the present case and having regard to the above principles, the Court finds that a matter of public interest undoubtedly includes questions concerning the use of public funding. The press is one of the means by which politicians and public opinion can verify that public money is spent according to the principles of accounting and not used to enrich certain individuals. The Court therefore considers that the applicant company's interest in disseminating information on the subject matter outweighed the interests of Mr. Bruck and that the applicant company complied with its duties and responsibilities as a public "watch-dog*" (§ 40).The Court found that there existed a sufficient factual basis for the value judgments at issue, because the applicant had based its articles on the company's financial and audit reports which had revealed inaccurate book-keeping, very high travel expenses and the payment of high royalties. The Court further found that even if the remaining statements at issue had been considered statements of fact, the applicant company had proved that they had been on the whole correct.

Although it would have been advisable for the applicant company to have obtained comments from Mr. Bruck before publishing the articles, the mere fact that it had not done so had not been sufficient to hold that the interference with the applicant company's right to freedom of expression had been justified. Therefore, the Court found that the applicant company's conviction and the imposition of a fine for having made the statements in question had been disproportionate to the aim pursued, namely the protection of the reputation and rights of others. Accordingly, it held unanimously that there had been a violation of Article 10 of the Convention.

Brunet-Lecomte et Sarl Lyon Mag' v. France (n° 13327/04) (Importance 2) - 20 November 2008 – Violation of Article 10- Freedom of expression and reputation – Information on teaching methods, matter of public interest - Disproportionality

The second applicant, Sarl Lyon Mag', is the publisher of the magazine Lyon Mag', of which the first applicant is the publication director.

In December 2001 an article entitled "L., the Lyons III maniac" ("L. l'énergumène de Lyon III") was published in the magazine Lyon Mag'. The article dealt with the teaching methods used by L., a lecturer at Lyons III University, and his conduct during lectures. In January 2002 the magazine published a reply written by L. in exercise of his right of reply. The text was published together with comments by the magazine's editors in which the term "maniac" appeared twice. The applicants were prosecuted for public defamation of a civil servant and were ordered to pay a fine of EUR 2,000 plus EUR 3,000 in damages, and to publish the operative part of the judgment in full in Lyon Mag'. The

domestic courts considered that, in the context of the exercise of the right of reply, the use of the term "maniac" to refer to the lecturer had shown contempt damaging to his reputation.

The Court began by noting that, while the term "maniac" was undoubtedly ironic, its use, even repeatedly, could not by itself be considered defamatory in the circumstances of the present case. It took the view that the comments in question had not exceeded the degree of exaggeration or provocation generally allowed to the press, had not been serious and had concerned a subject of topical public interest. As to the need to protect L.'s office and moral authority, the Court considered that these should not take precedence over the applicants' interest in conveying information on the lecturer and his teaching methods and the interest of the general public in Lyons in receiving such information. Finally, taking into account the nature and severity of the penalties imposed, the Court considered that the applicants' conviction amounted to disproportionate interference with their right to freedom of expression. It therefore held unanimously that there had been a violation of Article 10.

- **Right to privacy, patient confidentiality, abuse of press freedom and insufficient redress**

Armonas v. Lithuania (no. 36919/02) and Biriuk v. Lithuania (no. 23373/03) (Importance 1) - Violation of Article 8 – Publications regarding the applicants' HIV - Legislative limitations on judicial discretion in redressing the damage suffered by those concerned

The applicants are two Lithuanian nationals: Judita Armonienė, who lives in the village of Ąžuolpamušio (Lithuania) and lodged the application with the European Court of Human Rights on behalf of her husband, Laimutis Armonas now deceased; and, Gitana Biriuk who lives in the village of Kraštų (Lithuania). The case concerned the applicants' complaint that they were awarded derisory damages despite decisions in their favour with regard to serious breaches of their privacy.

In January 2001 *Lietuvos Rytas*, Lithuania's biggest daily newspaper, published an article on its front page concerning an AIDS threat in a remote part of Lithuania. In particular, medical staff from the AIDS centre and Pasvalys hospital were cited as having confirmed that Mr. Armonas and Ms Biriuk were HIV positive. Ms Biriuk, described as "notoriously promiscuous", was also said to have had two illegitimate children with Mr. Armonas.

Subsequently Mr. Armonas and Ms Biriuk sued, separately, the newspaper for a breach of their right to privacy. In July 2001 and April 2002 the courts ruled in their favour, finding that the article was humiliating and that the newspaper had published information about Mr. Armonas' and Ms Biriuk's private life without their consent which did not correspond to any legitimate public interest. In Mr. Armonas' case, the courts concluded that he had not proven that the newspaper had made the information about him public intentionally and therefore, under Article 54 § 1 of the Law on the Provision of Information to the Public, awarded the maximum sum allowed in such circumstances, 10,000 Lithuanian litai (LTL) (approximately EUR 2,896). In Ms Biriuk's case, the courts first held that the article, published with the aim of creating a sensation and increasing sales, had deliberately sought to humiliate her and, under the same law, tripled the statutory sum to LTL 30,000 (approximately EUR 8,676). That amount was, however, subsequently reduced on appeal to LTL 10,000 as, again, it had not been established that the information had been published intentionally.

The Court noted that the protection of private life has to be balanced, among other things, against the freedom of expression guaranteed by Article 10 of the Convention. In that context the Court emphasised the duty of the press to impart information and ideas on matters of public interest However, the Court noted that a fundamental distinction needs to be made between reporting facts – even if controversial – capable of contributing to a debate in a democratic society and making tawdry allegations about an individual's private life. As to respect for the individual's private life, the Court reiterated the fundamental importance of its protection in order to ensure the development of every human being's personality. That protection extends beyond the private family circle to include a social dimension.

"More specifically, the Court has previously held that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. The above considerations are especially valid as regards the protection of the confidentiality of a person's

HIV status (cf. Council of Europe materials, paragraphs 20-21 above). The disclosure of such data may dramatically affect his or her private and family life, as well as the individual's social and employment situation, by exposing that person to opprobrium and the risk of ostracism (see *Z* ***v.*** *Finland*, judgment of 25 February 1997, *Reports* 1997-I, §§ 95-96)." (§40).

In the context of its *in concerto* assessment, the Court saw no reason to depart from the conclusion of the national courts, which acknowledged that there had been interference with the family's right to privacy.

In the Court's view, the publication of the article in question, the sole purpose of which was apparently to satisfy the prurient curiosity of a particular readership, could not be deemed to contribute to any debate of general interest to society. Furthermore, the Court noted that publication of such information in the biggest national daily newspaper could have a negative impact on the willingness of others to take voluntary tests for HIV. In this context, it is of special importance that domestic law provides appropriate safeguards to discourage any such disclosures and the further publication of personal data.

The Court took into account that the national law at the material time did contain norms protecting the confidentiality of information about the state of health of a person. The Court also noted that the domestic courts indeed awarded compensation for non-pecuniary damage. However the principal issue was whether the compensation was proportionate to the damage sustained and whether the State, in adopting Article 54 § 1 of the Law on the Provision of Information to the Public, which limited the amount of such compensation payable by the mass media, fulfilled its positive obligation under Article 8 of the Convention. The Court acknowledged that certain financial standards based on the economic situation of the State are to be taken into account when determining the measures required for the better implementation of the foregoing obligation. Member States of the Council of Europe may regulate questions of compensation for non-pecuniary damage differently; the imposition of financial limits is not in itself incompatible with a State's positive obligation under Article 8 of the Convention. However, such limits must not be such as to deprive the individual of his or her privacy and thereby empty the right of its effective content.

"The Court recognises that the imposition of heavy sanctions on press transgressions could have a chilling effect on the exercise of the essential guarantees of journalistic freedom of expression under Article 10 of the Convention (see, among many authorities, *Cumpănă and Mazăre* ***v.*** *Romania* [GC], no. 33348/96, §§ 113-114, ECHR 2004-XI). However, in a case of an outrageous abuse of press freedom, as in the present application, the Court finds that the severe legislative limitations on judicial discretion in redressing the damage suffered by the victim and sufficiently deterring the recurrence of such abuses, failed to provide the applicant with the protection that could have legitimately been expected under Article 8 of the Convention. This view is confirmed by the fact that the impugned ceiling on judicial awards of compensation contained in Article 54 § 1 of the Law on the Provision of Information to the Public was repealed by the new Civil Code soon after the events in the present case" (§47). The Court concluded by six votes to one that the State failed to secure the applicant's right to respect for her family's private life.

- **Right to receive compensation for expropriation**

Fakiridou and Schina v. Greece (no. 6789/06) (Importance 2) – 14 November 2008 – Violation of Article 1 of Protocol No. 1 – Compensation for expropriation being dependant on the initiative of third parties

The applicants are the owners of a plot of land which they inherited in the centre of Komotini. In 1933, by virtue of a decree amending the town's development plan, a large part of the land in question was expropriated. In 1979 a decision designating the plots of land that had been expropriated and the proportional shares of the compensation due to the owners was adopted. In 1989 two owners of an adjacent plot of land, which had not been expropriated but would increase in value once the expropriation took place, applied to the Greek courts to be granted permission themselves to pay the compensation due to the applicants and thus enable the expropriation to be carried out. In 2005 the Supreme Administrative Court allowed them to pay compensation to the applicants once the amount had been set. Alongside those proceedings, the applicants applied to the administrative authorities and, having been unsuccessful, to the Greek courts, seeking to have the order for the expropriation of their land revoked. In August 2005 the Supreme Administrative Court dismissed their application.

The Court observed that the applicants' land had been subject to an encumbrance since 1933, and that since 1979 the authorities had not taken any steps to carry out the expropriation and pay compensation to them. The only procedure aimed at compensating the applicants had been initiated by the owners of the adjacent land. In the Court's view, the State's obligation to respect and protect individuals' property could not be dependent on the initiative of third parties. It therefore concluded that such interference with the applicants' rights had upset, to their detriment, the fair balance that had to be struck between the protection of property and the demands of the general interest, in breach of Article 1 of Protocol No. 1.

- **Free elections**

Tănase and Chirtoacă v. Moldova (no. 7/08) (Importance 3) - 18 November 2008- Right to stand as candidate in free elections and to take seat in Parliament if elected - Prohibition of individuals of multiple nationalities from being elected - Disproportionality

The application was lodged on 27 November 2007. On 17 June 2008 a Chamber of the Fourth Section of the Court to which the case had been allocated decided, in view of the forthcoming legislative elections in Moldova, to give priority to the application (Rule 41 of the Rules of Court) and communicated it to the Government.

In 1991 the Romanian Parliament also adopted a new law on citizenship: former Romanian nationals and their descendants who had lost their nationality before 1989 were allowed to re-acquire Romanian nationality. The applicants subsequently requested and obtained Romanian nationality, the restriction on Moldovan nationals holding other nationalities having been repealed in June 2003.

On 10 April 2008 the Moldovan Parliament reformed the electoral legislation, notably by introducing a ban on those with dual or multiple nationality from becoming members of Parliament (Law no. 273). Other important amendments included the increasing of the electoral threshold and a ban on all forms of electoral blocks and coalitions. Those amendments were enacted and entered into force in May 2008. The next general elections in Moldova will be held in spring 2009. Mr. Chirtoacă has stated to the press that he would actively participate in those elections but, as it is impossible under Moldovan legislation to hold a dual mandate, he would not give up his position of mayor of Chişinău even if he was elected. Mr. Tănase has made it clear that he will stand and take his seat if elected but that he has no intention to renounce his dual nationality.

The Court noted that Mr Chirtoacă had been quite clear in his statements to the press that he did not intend to cumulate the functions of Mayor and MP. Therefore, he was not affected by Law No. 273 and in the present case could not claim to be a victim. Accordingly, the Court declared inadmissible the application in respect of Mr. Chirtoacă. Mr. Tănase, on the other hand, was directly affected by the new electoral law because, if elected, he would have to make the difficult choice between sitting as an MP and renouncing his dual nationality. Indeed, awareness of that difficult choice could have an adverse affect on the applicant's electoral campaign, both in terms of his personal investment and effort and in terms of the risk of losing votes with the electorate.

Regarding Article 3 of Protocol No. 1 (right to free elections): Firstly, the Court noted that Moldova was apparently the only European country which allowed individuals to have multiple nationalities but prohibited them from being elected to Parliament. The Court stressed that in a democracy, loyalty to a State did not necessarily mean loyalty to the actual government of that State or to a particular political party. There were other methods available to the Moldovan Government to ensure loyalty of MPs to the nation, such as requiring them to take an oath. Such measures had been adopted by other European countries.

Indeed, ECRI and the Venice Commission had underlined the incompatibility between certain provisions of the new electoral law and the undertakings Moldova had accepted when ratifying the Council of Europe's European Convention on Nationality, which in particular guaranteed to all those holding multiple nationality and residing on the territory of Moldova equal treatment with other Moldovans who hold exclusively Moldovan nationality.

Moreover, the Court was struck by the fact that in 2002 and 2003 the Moldovan Parliament had actually adopted legislation allowing Moldovans to hold dual nationality. At that time the authorities had not apparently had any concerns about the loyalty of those opting for dual nationality. Nor had the Government mentioned that the political rights of those who had decided to acquire another

nationality would be impaired. Since 2003, and no doubt encouraged by the new policy, a large section of the Moldovan population had obtained dual or multiple nationality in the legitimate expectation that their existing political rights would not be curtailed.

In the specific context of Moldova's political evolution, the Court was not satisfied that Law No. 273 could be justified, particularly in view of the fact that such a far-reaching restriction had been introduced approximately a year or less before the general elections. Such practice was at odds with the recommendations by the Council of Europe's Venice Commission concerning the crucial nature of the stability of the law for the credibility of the electoral process. Those in favour of the electoral reform had even categorically rejected the opposition's proposal to have the draft submitted to the Council of Europe for expertise. Nor had the Government reacted in any way to the unequivocal concern expressed by the Council of Europe.

The Court therefore concluded that the means employed by the Moldovan Government for the purpose of ensuring loyalty of its MPs to the State had been disproportionate, in violation of Article 3 of Protocol No. 1.Given the above finding, the Court considered that there was no need to examine separately Mr. Tănase's complaint under Article 14.

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 13th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 14th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 18th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 20th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 25th November 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 27th 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	27 Nov. 2008	Debelianovi (no. 61951/00) Imp.3	Just satisfaction	Just satisfaction following a vviolation of Art. 1 of Prot. No. 1, mainly on account of the fact that the applicants had not received any compensation for the loss of enjoyment of their property, which was listed as a cultural monument	Link
Bulgaria	27 Nov. 2008	Kalinova (no. 45116/98) Imp. 3	Just satisfaction	Just satisfaction following a violation of Art. 1 of Prot. No. 1 on account of the annulment of the applicant's title to a house by an over-extensive application of the legislation on restitution of property nationalised during the communist regime	Link
Bulgaria	27 Nov. 2008	Mirchev and Others (no. 71605/01) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length of criminal proceedings (more than seven years and six months) for abuse of office and misappropriation	Link

France	20 Nov. 2008	Loueslati (no. 36141/03) Imp. 3	No violation of Article 6 § 1 (right of access to the investigation division)	Lack of diligence of the applicant (civil party in initiating proceedings) and of his lawyer to inform the investigating judge of their changes of addresses	Link
Lithuania	25 Nov. 2008	Švenčionienė (no. 37259/04) Imp. 3	Violation of Article 6 § 1 (fairness)	Applicant unable to attend an appeal hearing in divorce proceedings (the notice about the appeal hearing was sent at the wrong address)	Link
Poland	13 Nov. 2008	Muszyński (no. 24613/04) Imp. 3	Violation of Article 5 § 3	Excessive length of pre-trial detention (two years and three months for a case of murder)	Link
Poland	13 Nov. 2008	Wierzba (no. 20315/04) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length of criminal proceedings (five years and almost three months for two levels of jurisdiction in a case of robbery)	Link
Portugal	13 Nov. 2008	Pijevschi (no. 6830/05) Imp. 3	Violation of Article 6 § 1 (fairness)	Appellate courts' particularly strict interpretation of a procedural rule on time-limits for filing submissions – conflicting with the interpretation given by the Court of First Instance – had deprived the applicant of the right of access to the Court of Appeal for a review of the correctness of his conviction	Link
Romania	13 Nov. 2008	Hagiescu and Others (no. 7901/02) Imp. 3	Violation of Article 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	The applicants' action for recovery of possession of property had been dismissed by virtue of a new special law of 8 February 2001. The application of the latter to pending proceedings contravened the *res judicata* principle. In addition, the applicants had still not received any compensation and had no guarantee of recovering possession of the property at any time soon	Link
Romania	25 Nov. 2008	Toşcuță and Others (no. 36900/03) Imp. 3	Violation of Art. 1 of Prot. No. 1	Annulment of the applicants' title deeds in respect of plots of land for which the applicants had not received any compensation	Link
Russia	27 Nov. 2008	Krivonosov (no. 3023/03) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length, almost six years, of the criminal proceedings for fraud	Link
Serbia	18 Nov. 2008	Damnjanović (no. 5222/07) Imp. 3	No violation of Article 6 § 1 No violation of Article 8	The State had taken the necessary steps to enforce the final custody judgment in favour of the applicant and to enforce the interim custody order	Link
Serbia	25 Nov. 2005	Kostic (no. 41760/04) Imp. 2	Violation of Art. 1 of Prot. No. 1	Non-enforcement of a demolition order awarded in favour of the applicants concerning a co-owned house	Link
Slovakia	13 Nov. 2008	Sýkora (no. 31519/02) Imp. 3	Struck out of the list (applicant no longer wishing to pursue his application)	Applicant had not replied to the Court's requests for information since October 2007	Link

Turkey	18 Nov. 2008	Köksal Özdemir (no. 21007/04) Imp. 3	Violation of Article 5 § 1 (c)	The continued detention of the applicant in police custody had been unlawful, as the maximum period laid down by law was 24 hours, and no extension was granted by the competent authority	Link
Turkey	25 Nov. 2008	Oral (no. 2) (no. 18384/04)	Violation of Article 6 § 1 (fairness)	Unfairness of tax-audit proceedings against the applicant, who had not been given the possibility to submit his comments on an expert's report	Link
Turkey	18 Nov. 2008	M. Tosun (no. 33104/04) Imp. 3	Violation of Article 5 § 3 Violation of Article 6 § 1 (length)	Excessive length (nine years and almost eight months) of the applicant's detention on remand Excessive length (13 years and still pending) of the criminal proceedings	Link
Ukraine	27 Nov. 2008	Svershov (no. 35231/02) Imp. 2	Violation of Article 5 §§ 1, 2 and 3	Pre-trial detention justified on the sole ground of a bill of indictment Excessive length (one year and seven months) of the applicant's pre-trial detention Domestic courts' failure to review the lawfulness of the applicant's detention	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**
France	20 Nov. 2008	Société IFB (no 2058/04) link	Violation of Art.6 § 1 (fairness)	Inability to obtain effective review of the lawfulness of the searches and seizures of property carried out on the premises of the applicant by the tax authorities
Moldova	13 Nov. 2008	Russu (no. 7413/05) link	Violation of Article 6 § 1 (fairness)	Domestic courts' failure to summon the applicant when her case was examined on appeal.
Romania	13 Nov. 2008	Onofrei (26841/03) link	Violation of Art. 1 of Prot. No. 1 taken 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 the applicants had been discriminated against as compared with other servicemen in an analogous position
Romania	13 Nov. 2008	Poppov (no. 26839/03) link	Violation of Art. 1 of Prot. No. 1 taken alone and in	The severance pay due to the applicants on account of their discharge to the reserve list had been unlawfully liable to

			conjunction with Art. 14	income tax and the applicants had been discriminated against as compared with other servicemen in an analogous position
Romania	13 Nov. 2008	Ranete (no. 26837/03) link	Violation of Art. 1 of Prot. No. 1 taken 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 the applicants had been discriminated against as compared with other servicemen in an analogous position
Romania	13 Nov. 2008	Preoteasa (no. 40335/02) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	13 Nov. 2008	Dreptu (no. 19835/03) link	Violation of Art. 1 of Prot. No. 1	Action for recovery of possession of property
Romania	13 Nov. 2008	Moroianu and Others (no. 25008/05) link	Violation of Art. 1 of Prot. No. 1	Action for recovery of possession of property
Romania	13 Nov. 2008	Reichardt (no. 6111/04) link	Violation of Art. 1 of Prot. No. 1	Action for recovery of possession of property
Romania	13 Nov. 2008	Kerekeş (no. 2736/02) link	Violation of Art. 1 of Prot. No. 1	Inability for the applicants to use, and collect the rent from, a building which had been returned to them
Romania	25 Nov. 2008	Enescu and SC Editura Orizonturi SRL (no. 9585/04) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Annulment of a final judgment following an appeal by the principal public prosecutor
Romania	25 Nov. 2008	Ghiga (no. 77211/01) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	25 Nov. 2008	Paicu (no. 24714/03) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	25 Nov. 2008	Şurtea (no. 24464/03) link	Violation of Art.6 § 1 (fairness)	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	25 Nov. 2008	Trifu (no. 1242/02) link	Violation of Art.1 of Prot. No. 1	Applicant's prolonged inability to make use of his flat and to receive rent.
Russia	20 Nov. 2008	Agasaryan (no. 39897/02) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Quashing of a final judgment in favour of the applicant by way of supervisory review
Russia	20 Nov. 2008	Bezborodov (no. 36765/03) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Failure to enforce final judgments in the applicants' favour
Russia	20 Nov. 2008	Ivan Galkin (no. 38872/02) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Failure to enforce final judgments in the applicants' favour

Russia	20 Nov. 2008	Shakirzyanov (no. 39888/02) link	Violation of Art. 1 of Prot. No. 1	Failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Azaryev v. Russia (no. 18338/05) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour Partial quashing of a final judgment in favour of the applicant by way of supervisory review
Russia	14 Nov. 2008	Bronich v. Russia (no. 805/03) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Galikhanova (no. 15407/05) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Kabanov (no. 37758/03) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Kuzminskiy (no. 40081/03) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Larionov (no. 42431/02) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1 Violation of Art.13	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Vakulenko (no. 38035/04) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1 Violation of Art.13	Domestic authorities' failure to enforce final judgments in the applicants' favour
Russia	14 Nov. 2008	Litvinova (no. 34489/05) link	Violation of Art.6 § 1 (fairness)	Domestic authorities' failure to apprise the applicant of the appeal hearing in good time
Russia	14 Nov. 2008	Zhuk (no. 42389/02) link	Violation of Art.6 § 1 (fairness) Violation of Art.1 of Prot. No. 1	Delayed execution of final judicial decisions given in the applicant's favour
Turkey	18 Nov. 2008	Serin (no. 18404/04) link	Violation of Art. 6 (fairness)	Violation on account of the amount of the court fees charged to the applicant and the refusal to grant him legal aid
Turkey	25 Nov. 2008	Gencer (no. 31881/02) link	Violation of Art. 6 § 1 (fairness)	Unfairness of decisions which annulled the right of the applicant to lease land which had been the main source of income for him and his family
Turkey	13 Nov. 2008	Devecioğlu (no. 17203/03) link	Violation of Article 6 § 1(fairness)	The authorities had deprived the applicants of their property without paying compensation
Turkey	13 Nov. 2008	Erükçü (no. 4211/02) link	Violation of Article 6 § 1(fairness)	The applicant had been tried as a civilian by a military court
Ukraine	25 Nov. 2008	Krutko (No. 2) (no. 33930/05)	Violation of Article 6 § 1 (fairness)	Domestic authorities' failure to enforce final judgments in the applicants' favour

		link		
Ukraine	25 Nov. 2008	Peretyatko (no. 37758/05) link	Violation of Article 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Ukraine	25 Nov. 2008	Stadnyuk (no. 30922/05) link	Violation of Article 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Ukraine	13 Nov. 2008	Veritas (no. 39157/02) link	Violation of Article 6 § 1 (fairness)	Supreme Court had overstepped the limits of its jurisdiction in the applicant's case.
Ukraine	13 Nov. 2008	Shapkina (no. 20028/04) link	Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour

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***
Finland	13 Nov. 2008	Rafael Ahlskog (no. 23667/06)	link
France	20 Nov. 2008	Gunes (no. 32157/06) **(Importance 2)**	link
Italy	13 Nov. 2008	Fontana (no. 1452/03)	link
Italy	13 Nov. 2008	Buffolino (no. 32769/02)	link
Italy	13 Nov. 2008	Di Maria (no. 32750/02)	link
Italy	13 Nov. 2008	Di Vico (no. 32751/02)	link
Italy	13 Nov. 2008	La Frazia (no. 32775/02)	link
Italy	13 Nov. 2008	Morone (no. 32770/02)	link
Italy	13 Nov. 2008	Rubortone (no. 32776/02)	link
Turkey	18 Nov. 2008	Aksoy and Others (nos. 14037/04, 14052/04, 14072/04, 14077/04, 14092/04, 14098/04, 14100/04, 14103/04, 14112/04, 14115/04, 14120/04, 14122/04 and 14129/04)	link
Turkey	18 Nov. 2008	Pınar Şener (no. 17883/04)	link
Turkey	25 Nov. 2008	Emin Şirin (no. 40750/04)	link
Turkey	25 Nov. 2008	Yalçın Korkmaz (no. 23085/04)	link
Ukraine	13 Nov. 2008	Kushnarenko (no. 18010/04)	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 27 October to 16 November 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 :***

Mann Singh v. France (no. 24479/07**) – 27 November 2008 - Inadmissibility decision - Religious symbols and public safety**

The case concerned the requirement for photographs intended for use on driving licences to show the subject "bareheaded and facing forward", and the consequent refusal of permission to a practicing Sikh to wear a turban in the identity photographs to be used on his licence.

The Court acknowledged that the impugned regulations, which required subjects to be shown "bareheaded" in identity photographs for use on driving licences amounted to interference with exercise of the right to freedom of religion and conscience, that the interference in question had been prescribed by law and that it had pursued at least one of the legitimate aims listed in the second paragraph of Article 9 of the Convention, namely ensuring public safety.

In line with its case law (more recently see *Leyla Sahin v. Turkey*, 10 November 2005), the Court reiterated that, as enshrined in Article 9, freedom of thought, conscience and religion was one of the foundations of a "democratic society" within the meaning of the Convention. While religious freedom was primarily a matter of individual conscience, it also implied freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shared.

However, the Court also recalled that Article 9 did not protect every act motivated or inspired by a religion or belief (*Kalaç v. Turkey*, 1 July 1997). Furthermore, it did not always guarantee the right to behave in a manner governed by a religious belief and did not confer on people who did so the right to disregard rules that had proved to be justified.

Thus, the Court reiterated that the fact that a Muslim student was required to provide an identity photograph showing her bareheaded in order to be issued with a degree certificate (decision of the former European Commission of Human Rights in *Karaduman v. Turkey* of 3 May 1993) , or that persons were required to remove a turban or headscarf for the purposes of an airport security check or on consular premises, did not amount to interference with the exercise of their right to freedom of religion (*Phull and El Morsli v.* France, 4 Mars 2008).

In the present case the Court noted that identity photographs for use on driving licences which showed the subject bareheaded were needed by the authorities in charge of public safety and law and order, particularly in the context of checks carried out under the road traffic regulations, to enable them to identify the driver and verify that he or she was authorised to drive the vehicle concerned. It stressed that checks of that kind were necessary to ensure public safety within the meaning of Article 9 § 2. The Court considered that the detailed arrangements for implementing such checks fell within the respondent State's margin of appreciation, especially since the requirement for persons to remove their turbans for that purpose or for the initial issuance of the licence was a sporadic one. It therefore held that the impugned interference had been justified in principle and proportionate to the aim pursued.

You may also refer to the case law of the former Commission of Human Rights on similar issues (e.g. *X. v. the United-Kingdom* of 12 July 1978).

Trifunovic v. Croatia (no. 34162/06) – 6 November 2008 - Termination of the applicant's specially protected tenancy – Inadmissibility of the application – Complaint under Article 1 of Protocol n°12 declared incompatible as rationae temporis

The applicant's husband, V.T., was an officer serving in the Yugoslav Peoples' Army ("the YPA"). In 1984 the YPA awarded him, and he became the holder of, a specially protected tenancy (*stanarsko pravo*) of a flat in Zagreb. Pursuant to the relevant legislation, the applicant as his wife automatically became a co-holder of the specially protected tenancy of the flat in issue.

The applicant complained under Article 8 of the Convention about the termination of her specially protected tenancy and the resultant risk of eviction from the flat that she considered as her home. In particular, she claimed that the domestic courts had ordered her to vacate the flat even though she had not been provided with a place to stay.

She further complained under Article 1 of Protocol No. 1 to the Convention that, as a result of the termination of her tenancy, she had been unable to purchase and become the owner of her flat. She alleged further violations of Article 6 § 1 and 2, of Article 7, of Article 13 taken in conjunction with Article 8.

Lastly, the applicant complained under Article 1 of Protocol No. 12 that she had been discriminated against in the enjoyment of her specially protected tenancy and the right to purchase the flat on the basis of her husband's conviction.

The Court held that the application was inadmissible as manifestly ill-founded. Concerning more specifically the alleged violation of Article 8, the domestic authorities did not fail to strike a fair balance between the general interest involved and the protection of the applicant's right to respect for her home. Concerning the allegation of violation of Article 1 of Protocol 1, it is incompatible *rationae materiae* as the special protected tenancy did not constitute a "possession" within the meaning of Article 1 of Protocol 1.

Lastly the interference with the rights guaranteed under Article 1 of Protocol 12 could only occur before 1 April 2005, the date of entry into force of Protocol No. 12. This complaint is consequently declared inadmissible *ratione temporis.*

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words by the Office of the Commissioner)***	***Decision***
Andorra	13 Nov. 2008	Torres Duedra and Others (28496/07) link	Alleged violation of Art. 6 § 1 (right of access to a court)	Inadmissible as manifestly ill-founded (the calculations in the delay to bring a judicial action did not impair the right of access to a court)
Austria	06 Nov. 2008	Muller (38412/04) link	Alleged violations of Art. 6 (length and alleged unfairness of the proceedings), of Art. 2 and 4 of Prot. No. 7.	Struck out of the list (friendly settlement reached)
Austria	06 Nov. 2008	Schmedt (7301/05) link	Alleged violations of Art. 6 § 1 (length of proceedings, including in particular an alleged long period of inactivity before the Administrative Court)	Struck out of the list (friendly settlement reached)
Cyprus	13 Nov. 2008	Hadjipanayiotou (33710/06) link	Alleged violations of Art. 6 § 1 (length of proceedings), of Art. 6 and 8 and Art. 1 of Prot. No. 1	Struck out of the list (friendly settlement reached)
France	13 Nov. 2008	Mazeas (11270/04) link	Alleged violations of Art. 6 § 1 (right of access to a tribunal) and of Art. 13	Inadmissible as manifestly ill-founded. The judicial immunity granted to the employer of the applicant (the Latin Union) did not

				impair the substance of the right to access to a tribunal
France	13 Nov. 2008	Beaubatie (16294/04) link	Alleged violations of Art. 1 of Prot. n°1 and of Art. 6 § 1 (concerning the transfer of a lease)	Inadmissible as manifestly ill-founded (a fair balance between the general interest involved and the protection of the applicant's rights was reached)
France	13 Nov. 2008	Monte Da Fonte (50294/06) link	Alleged violation of Art. 6 § 1 (access to a court)	Inadmissible as the applicant had the possibility to challenge a fine ("*contravention*") for certain minor offences
Germany	4 Nov. 2008	Weinohrl (no. 5947/05) link	Alleged violations of Art. 6 § 1 (right to fair hearing): about the Social Court of Appeal's rejection of applicant's request to hear evidence from a further expert	Inadmissible as manifestly ill-founded. The applicant was not denied a fair hearing in the proceedings.
Germany	4 Nov. 2008	Manka (no. 23210/04) link	Alleged violations of Art. 6 § 2 (decision to collect personal identification data concerning the applicant for the police records whereas the investigation into the alleged offence had been discontinued) and of Art. 8 (no justification for the interference with his private life)	Struck out of the list (applicant no longer wishing to pursue his application)
Hungary	13 Nov. 2008	Tarsasag A Szabadsagjog okert (no. 37374/05) link	Alleged violations of Art. 10 (right to have access to information of public interest)	Admissible as the complaint raises serious issues of fact and law (access to a complaint pending before the Constitutional Court concerning constitutional scrutiny of some recent amendments to the Criminal Code related to certain drug-related offences)
Italy	4 Nov. 2008	Ludwig (no. 8148/04) link	Alleged violations of Art. 1 of Prot. 1 (applicants complaining that they had been unlawfully deprived of their land)	Struck out of the list (applicant no longer wishing to pursue his application)
Latvia	4 Nov. 2008	Lisovecs (no. 15043/04) link	Alleged violations of 5 § 3 (length of the pre-trial detention) and of Art. 6 § 1 (length of criminal proceedings)	Struck out of the list (unilateral declaration made by the Government pursuant to Art. 37§1)
Moldova	4 Nov. 2008	Lozinschi and Rujavnița (no. 33052/05 and no. 31504/05) link	Alleged violations of Art. 6 § 1 (right of access to court infringed due to the failure to enforce a final judgment) and of Art. 1 of Prot. 1 (protection of property)	Inadmissible (the applicants' conduct was contrary to the purpose of the right of individual petition, they acted *mala fides* as incomplete and therefore misleading information may also amount to abuse of the right of application. The applicants did not mention that they had initiated proceedings for compensation and that they had already been granted compensation)
Moldova	13 Nov. 2008	Aroma Floris 25058/04 link	Alleged violations of Art. 6 § 1 (right of access to court due to the failure to enforce court orders), of Art. 13, of Art. 1 of Prot. n°1	Struck out of the list (the applicant company has been awarded adequate redress by the domestic courts)
Poland	13	Gustaw (no.	Alleged violations of Art. 7, of	Partly struck out of the list

	Nov. 2008	39507/04) link	Art. 8, of Art. 13, of Art. 14 (the applicant, detained, was not able to attend his father's funeral)	(concerning Art. 8 and on the basis of an unilateral declaration by the Government) Partly inadmissible
Poland	13 Nov. 2008	Kofin (no. 42439/06) link	Alleged violations of Art. 6 § 1, of Art. 6 § 3 (b) and of Art. 6 § 3 (c) taken in conjunction with Art. 13	Struck out of the list (the applicant had died)
Poland	13 Nov. 2008	Jasnowski and Jasnowska (no. 31419/03) link	Alleged violations of Art. 6 § 1 (excessive length of administrative proceedings)	Inadmissible (non exhaustion of domestic remedies)
Poland	13 Nov. 2008	Galka (no. 11604/06) link	Alleged violations of Art. 6 § 1 (the Court of Appeal dismissed the application for the appointment of a legal-aid lawyer in the cassation appeal proceedings)	Struck out of the list (friendly settlement reached)
Romania	4 Nov. 2008	Popescu Mircea (no. 35017/02) link	Alleged violations of Art. 6 § 1, of Art. 17, of Art. 18 (non execution of a final decision, unfairness of the proceedings), of Art. 1 of Prot. 1 (protection of property)	Inadmissible (incompatible *rationae personae* as the delay in the execution of a final decision is not due to the behaviour of the authorities)
Romania	4 Nov. 2008	Ceraceanu No 2 (no. 31231/02) link	Alleged violations of Art. 10 (freedom of expression) and Art. 6 (unfair proceedings)	Inadmissible (the applicant cannot be considered as a victim as the domestic courts had already redressed the violations of the Convention)
Russia	13 Nov. 2008	Kolesnikov (no. 37059/05) link	Alleged violations of Art. 6 and of Art. 1 of Prot. n°1 (concerning the alleged failure of the bailiffs to enforce judgments)	Inadmissible *rationae temporis* (complaint introduced out of time)
Russia	13 Nov. 2008	Adamyan (no. 9649/06) link	Alleged violations of Art. 6 § 1 and of Art. 1 of Prot. n°1 (non-enforcement of judgments)	Inadmissible *rationae personae* (the applicant cannot claim to be a victim)
Russia	13 Nov. 2008	Alekseyev (no. 5836/05) link	Alleged violations of Art. 6, of Art. 1 of Prot. n°1 (especially concerning the delay in the execution of the judgments)	Inadmissible as manifestly ill-founded (the period of enforcement of one year was compatible with the requirements of the Convention)
Russia	06 Nov. 2008	Novosibirsk Regional Branch Of The Republican Party Of Russia (no. 31163/06) link	Alleged violations of Art. 11 (concerning the dissolution of this branch of a political party due to certain irregularities)	Struck out of the list (applicant no longer wishing to pursue its application)
Russia	06 Nov. 2008	Krumin (no. 31231/02) link	Alleged violations of Art. 5 (alleged unlawfulness of the pre-trial detention), of Art. 6 and of Art. 13 (alleged unfair proceedings	Struck out of the list (applicant no longer wishing to pursue its application)
Russia	06 Nov. 2008	Khuriyev (no. 2168/04) link	Alleged violations of Art. 6 (unfair proceedings)	Struck out of the list (applicant no longer wishing to pursue its application)
Russia	06 Nov. 2008	Sabanchiyeva and others (no. 38450/05) link	Alleged violations *inter alia* of Art. 3, of Art. 6, of Art. 8, of Art. 3, 8 and 9 taken alone and in conjunction with Art. 13 and 14, of Art. 34, and of Art. 38 § 1 (concerning the refusal to return the bodies of relatives of the	Partly admissible (concerning the conditions in which bodies of the deceased were stored and the complaints that the Article 3 rights of the deceased had been breached by the refusal to return their bodies to the families; and

			applicants, who are 50 Russian nationals living in the Republic of Kabardino-Balkaria in the town of Nalchik)	concerning the complaints under Art. 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention about the refusal to return the bodies of the deceased to their families) Partly inadmissible (concerning the remainder of the application)
Russia	13 Nov. 2008	Vereshchak (no. 160/04) link	Alleged violations of Art. 3, of Art. 6, of Art. 1 of Prot. n°1 (conditions of detention, fairness of the proceedings, seizure of possessions)	Struck out of the list (applicant no longer wishing to pursue its application)
Serbia	4 Nov. 2008	Zivkovic (no. 17234/04) link	Alleged violations of Art. 6 (excessive length of proceedings, as well as their overall fairness and impartiality)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible (concerning the remainder of the application)
Slovakia	13 Nov. 2008	Kusy (no. 29385/06) link	Alleged violations of Art. 6 § 1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Slovakia	13 Nov. 2008	Sidlova (no. 2348/06) link	Alleged violations of Art. 6 § 1, of Art. 13 (length of proceedings and absence of an effective remedy), of Art. 14 (inability to afford a lawyer qualified in the constitutional proceedings)	Struck out of the list (friendly settlement reached)
Slovakia	13 Nov. 2008	Juskova and Jusko (no. 17234/04) link	Alleged violations of Art. 6 § 1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Slovenia	4 Nov. 2008	Sevcnikar (no. 28205/04) link	Alleged violations of Art. 6 § 1 (length of proceedings) and Art. 13 (lack of effective remedy)	Struck out of the list (applicant no longer wishing to pursue his application)
The Czech Republic	4 Nov. 2008	Kohner (no. 14566/05) link	Alleged violations of Art. 6 § 1, of Art. 6 § 3 (d) (unfairness of the proceedings)	Struck out of the list (friendly settlement reached)
"the former Yugoslav Republic of Macedonia"	13 Nov. 2008	Cvetkoski (no. 40650/05) link	Alleged violations of Art. 6 § 1 (unreasonable length of the proceedings). The applicant further complains that the domestic courts had erred in law and that they had disregarded his submissions concerning his health	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
"the former Yugoslav Republic of Macedonia"	13 Nov. 2008	Petkovski (no. 27314/04) link	Alleged violations of Art. 3, of Art. 6 § 1, of Art. 14 (*inter alia* length of proceedings and unfair proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
"the former Yugoslav Republic of Macedonia"	13 Nov. 2008	Ajvazi (no. 30956/05) link	Alleged violations of Art. 6 § 1 (length of proceedings and unfair proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
"the former Yugoslav Republic of	13 Nov. 2008	Trajanov (no. 36510/05) link	Alleged violations of Art. 6 § 1, of Art. 14, of Art. of Art. 1 of Prot. n°1 (length of proceedings,	Partly struck out of the list (following the unilateral declaration of the Government concerning the

Macedonia"			fairness of the proceedings, alleged discrimination, and alleged violation of the right to property)	length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
"the former Yugoslav Republic of Macedonia"	13 Nov. 2008	Dimitrov (no. 41669/05) link	Alleged violations of Art. 6, of Art. 8 (length of proceedings and unfair proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
the Netherlands	13 Nov. 2008	Frijns (no. 11838/06) link	Alleged violations of Art. 1 of Prot. 1 and of Art. 6 and 13 (the applicant complained *inter alia* that he suffered excessive damage as a result of the new zoning plan without being granted compensation)	Inadmissible as manifestly ill-founded (*inter alia* the measures adopted could not be considered as disproportionate with respect to Art. 1 of Prot. 1)
the United Kingdom	04 Nov. 2008	Courten (no. 4479/06) link	Alleged violations of Art. 14 in combination with Art. 1 of Prot. n°1 (as a survivor of a same-sex couple who were unable to marry the applicant has been denied the tax exemption from inheritance tax available to married couples)	Inadmissible as manifestly ill-founded (the applicant could not claim that he was in an analogous situation to married couples)
the United Kingdom	13 Nov. 2008	Collingborn (no. 13913/05) link	Alleged violations of Art. 14 in combination with Art. 1 of Prot. n°1 (the applicant was unable to "inherit" his deceased wife's State Earnings-Related Pension Scheme entitlement constituting a discrimination on the ground of sex)	Inadmissible as manifestly ill-founded (the difference in treatment may be regarded as reasonably and objectively justified)
the United Kingdom	13 Nov. 2008	Dickie (no. 11581/02) link	Alleged violations of Art. 14 in combination with Art. 1 of Prot. n°1 (the applicant was unable to "inherit" his deceased wife's State Earnings-Related Pension Scheme entitlement constituting a discrimination on the ground of sex)	Inadmissible as manifestly ill-founded (the difference in treatment may be regarded as reasonably and objectively justified)
Turkey	04 Nov. 2008	Poweract Industries (no. 109/04) link	Alleged violations of Art. 6 § 1, of Art. 14 and of Art. 1 of Prot. n°1 (*inter alia* refusal of the authorities to institute criminal proceedings against three customs officers and non-enforcement of the judicial decision)	Partly adjourned (concerning the non-enforcement of a judicial decision) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	04 Nov. 2008	Kose (no. 37616/02) link	Alleged violations of Art. 6 § 1, of Art. of Art. 1 of Prot. n°1 (the applicants expropriated from their respective plots of land complained about the excessive delay in the payment of additional compensation, coupled with the low interest rates applied)	Partly adjourned (concerning certain applicants) Partly struck out of the list (the other applicants are no longer wishing to pursue their application)
Turkey	04 Nov. 2008	Surmeli (no. 16128/04, of Art. 21182/04,	Alleged violations of Art. 6 § 1, of Art. 1 of Prot. n°1 (deprivation of the applicants' land without	Partly adjourned (concerning the deprivation of property without any payment of compensation)

		of Art. 23014/04) link	paying any compensation in exchange; unfair proceedings)	Partly inadmissible as manifestly ill-founded (concerning the other allegations)
Turkey	13 Nov. 2008	Gurban (no. 4947/04) link	Alleged violations of Art. 3, Art. 5 § 1, of Art. 5 § 3, of Art. 6 § 1, of Art. 13 (*inter alia* concerning the imposition of an irreducible life sentence and concerning the conditions of imprisonment in a solitary confinement, the length of pre-trial detention, and the right to a fair trial)	Partly adjourned (concerning the life imprisonment without any prospects of conditional release, the excessive length of the criminal proceedings against him and the lack of an effective remedy to complain of the excessive length of the proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	04 Nov. 2008	Adiyaman (no. 32254/05) link	Alleged violations of Art. 6 and 3 (*inter alia* concerning the right to a fair trial)	Partly adjourned (concerning the length of the proceedings and the publicity of the debates before the military courts) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	04 Nov. 2008	Cinar (no. 8345/04) link	Alleged violations of Art. 3, 5 and 6 (concerning alleged ill-treatment while the applicant was in custody, the lawfulness of detention and the right to a fair trial	Partly adjourned (concerning the lack of independence and impartiality before the *cour de sûreté de l'Etat*, the length of proceedings, and the lack of legal assistance while the applicant was in custody) Partly inadmissible as manifestly ill-founded (concerning the remainder of the allegations)
Turkey	04 Nov. 2008	Atamer and others (no. 17400/03, of Art. 39517/05) link	Alleged violations of Art. 17, of Art. 18, and of Art. 1 of Prot. n°1 (concerning the failure for the administration to fully execute a final judicial decision)	Inadmissible as manifestly ill-founded (a fair balance between the general interest involved and the protection of the applicant's rights was reached)
Turkey	13 Nov. 2008	Adalmis and Kilic (no. 25301/04) link	Alleged violations of Art. 5 § 3 , 5 § 4 , 5 § 5 , 6 § 1 (inter alia concerning the excessive length of custody, the excessive length of pre-trial detention and the excessive length of the proceedings)	Partly adjourned (Concerning the unfairness of the proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	13 Nov. 2008	Hadep and others (no. 51292/99) link	Alleged violations of Art. 3 of Prot. 1 (concerning the free expression of the opinion of the people in the choice of the legislature) and of Art. 6, of Art. 13, of Art. 14, of Art. 18 (access to a court, discrimination on ground of ethnic origin)	Inadmissible as manifestly ill-founded and as incompatible rationae personae [See in relation with this decision the judgment *Yumak et Sadak c. Turquie* ([GC], n° 10226/03, 8 juillet 2008)]
Turkey	13 Nov. 2008	Duzen and others (no. 34879/04) link	Alleged violations of Art. 11 and of Art. 6 and Art. 13 (alleged violation of freedom of association due to a disciplinary sanction imposed following the participation in a demonstration and lack of an effective remedy)	Struck out of the list (the alleged violation was redressed at national level)
Turkey	13 Nov. 2008	Koc and Tosun (no. 23852/04) link	Alleged violation of the applicants' right to property	Inadmissible *rationae temporis* (complaint lodged out of time)

Ukraine	04 Nov. 2008	Kulikovskiy (no. 50063/07) link	Alleged violations of Art. 3, of Art. 5, of Art. 6, of Art. 13 (the applicant a Belarusian national is at risk of being exposed to a violation of the Convention in case of extradition; he further complains about the lawfulness of his detention)	Struck out of the list (the applicant wished to withdraw his application)
Ukraine	04 Nov. 2008	Borylo (no. 2267/06) link	Alleged violations of Art. 3, of Art. 6 § 1 (fairness of the proceedings and delay in executing a decision)	Inadmissible as manifestly ill-founded (*inter alia* because the delay in the execution seemed reasonable)
Ukraine	04 Nov. 2008	Zinchenko, Kirilenko, and Solodukha (no. 18127/05, of Art. 35011/05, of Art. 10299/06) link	Alleged violations of Art. 1, of Art. 6 § 1, of Art. 8, of Art. 13, of Art. 1 of Prot. n°1 (lengthy non-enforcement of the judgments in favour of the applicant)	Struck out of the list (applicants no longer wishing to pursue their applications)
Ukraine	04 Nov. 2008	Khurava (no. 8503/05) link	Alleged violations of Art. 1, of Art. 3, of Art. 6 § 1, of Art. 13, of Art. 17 (*inter alia* length of the court and enforcement proceedings)	Partly adjourned (concerning the length of certain proceedings, the interference with the applicant's property right as a result of the lengthy examination of her claims and the lack of effective remedies in this respect) Partly inadmissible as manifestly ill-founded

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 weekly communicated cases which were published on the Court's Website :

- on 1st December 2008 : link
- on 8 December 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 1st December 2008 on the Court's Website and selected by the Office of the Commissioner

State	Date of communication	Case Title	Key Words by the Office of the Commissioner
Belgium	12 Nov. 2008	MUSKHADZHIYEVA and others	The applicants, Madam MUSKHADZHIYEVA and her four children, are Russian nationals (Chechen Republic), who were seeking asylum. In application of the so-called Dublin II regulation (Council Regulation (EC) No 343/2003 of 18 February 2003), they were detained and subsequently deported to Poland. The applicants complain *inter alia* about the conditions of their detention in the closed centre 127bis, the lawfulness and the possibility to obtain a judicial review of their detention, and about an alleged violation of their right to private and family life
Bulgaria	13 Nov. 2008	FILIPOVI	Mr Filipov, husband of the first applicant and father of the second applicant, was shot and killed by the police during an arrest operation. The applicants complain under Article 2 that the use of force was not absolutely necessary and that the investigation of the killing was not effective.
Bulgaria	10 Nov. 2008	Iordanovi	*Inter alia:* Alleged lack of adequate medical treatment given to Mr. Iordanov while he was in custody. Alleged lack of effective investigation (Art. 2). The applicants are also relying on Art. 3, 13 and 5 of the Convention.
Finland	12 Nov. 2008	Vilen	The applicant requested sickness benefits due to his incapacity for work. He complains about the lack of access to the documents prepared by the Social Insurance Institution's medical expert. He also alleges that the reasoning of the Appellate Board was insufficient.
France	13 Nov. 2008	Boutagni	The applicant, accused of being involved in the Casablanca terrorist attacks dated 16 May 2003, is at risk of being expelled to Morocco and complains about a risk of violation of Articles 3 and 8 of the Convention
Germany	13 Nov. 2008	Axel Springer AG	The applicant, a company editing the newspaper "Bildzeitung", complained that it could not, pursuant to the decisions of the German civil courts, publish articles related to the detention of drugs by a famous German actor.
Greece	12 Nov. 2008	Alfantakis	The applicant alleges that his sentence further to criticism of a report by a prosecutor was disproportionate.
Italy	12 Nov. 2008	Udorovic	Relying on Art. 6 § 1, the applicant, an Italian citizen belonging to the Sinti community, complains about the unfairness of the administrative proceedings regarding the expulsion from a Roma settlement (*inter alia* the applicant complained about the lack of public hearing)
Poland	10 Nov. 2008	Kubaszewski	The applicant is member of the Kleczew Municipal Council. In the course of a session of the Kleczew Municipal Council, he criticized severely the Municipal Council and gave an interview to a local newspaper. Domestic courts found that the allusion to money laundering did no fall under the permissible criticism and ordered the applicant to publish an official apology. The applicant complains about an alleged violation of Art. 10 of the Convention.
Portugal	12 Nov. 2008	Alves Da Silva	The applicant complains under Article 10 about a violation of his right to freedom of expression because he was convicted for aggravated defamation (following the critics of a mayor in a sarcastic manner through the use of a puppet)
Turkey	13 Nov. 2008	Adalmis and Kilic	The communicated case deals with the fairness of the criminal proceedings brought against the applicants, and especially with the lack of assistance of a lawyer at the beginning of the custody.
Turkey	13 Nov. 2008	M.B.	The applicants, Iranian nationals converted to Christianity, allege that they run the risk, if deported to

			Iran, of being subjected to death penalty and ill-treatments. They complained further about the lawfulness of their detention, their access to a lawyer and their right to an effective remedy (the applicants were finally deported by Turkish authorities on 30 July 2008, the same day the President of the Chamber of the Court granted interim measures indicating that the applicants should not be deported until 3 September 2008. The applicants managed however to re-enter Turkish territory on 22 August 2008).
Turkey	12 Nov. 2008	Temel	The case concerns alleged violations of Article 5 (unlawfulness of the detention), Article 6 (right to a fair trial and in particular the right to receive assistance from a lawyer of his choice) and Article 10 (concerning the conviction of the applicant following a public statement during a press conference of the HADEP, the "*Parti de la démocratie du peuple*")
Ukraine	10 Nov. 2008	Burnus	The applicant complained that the criminal investigation regarding the death of her son had been ineffective and that her right to a fair trial had been violated in so far as nobody had been punished for the death of her son
Ukraine	10 Nov. 2008	Devdera	The applicant complains under Article 3 that he was ill-treated by police officers in the course of his arrest and questioning. He further complains of a lack of an effective investigation into the matter
Ukraine	10 Nov. 2008	Dudnyk	The applicant alleges that the State authorities have failed to conduct an effective investigation into the circumstances leading to the death of her son, killed in the Cherkasy Technological University. She further complains under Article 6 § 1 about the outcome of civil proceedings against the University.
Ukraine	10 Nov. 2008	Mazur and Others	The applicants are all members of the "Ukrainian National Assembly" party. They complain about the infringement of Art. 3, 6, 10 and 11 of the Convention (*inter alia* following their participation in a mass rally "Ukraine without Kuchma")
Ukraine	10 Nov. 2008	Samardak	The applicant alleges that he was ill-treated by police officers during his questioning. He further alleges that there was no effective remedy for his complaint
Ukraine	10 Nov. 2008	Zaychenko	The applicant is one of the leaders of the opposition party "Ukrainian National Assembly" (UNA). He alleges the infringement of Art. 3, 5, 6, 10 and 11 of the Convention (*inter alia* following his participation in a political rally on 9 March 2001)
United Kingdom	14 Nov. 2008	J.M.	The applicant complains under Article 8 of the Convention and Article 1 of Protocol No. 1, taken in conjunction with Article 14, that she has suffered discrimination on the basis of her sexual orientation: if she had entered into a heterosexual relationship, her maintenance obligation would have been approximately GBP 30 less per week.
United Kingdom	13 Nov. 2008	O'Donoghue and Others	The applicants complain *inter alia* that in the framework of the procedure for marriage the Certificate of Approval scheme provided by section 19 of the *Asylum and Immigration (Treatment of Claimants etc.) Act* 2004 violates Article 12 of the Convention, taken alone or in conjunction with Article 14, as well as Article 9 taken in conjunction with Article 14. This communicated case may disclose the existence of a structural problem and may be suitable for a "pilot judgment" (see question n°3 to the parties).
United Kingdom	12 Nov. 2008	SW	The applicant complains that her rights have been violated as a result of the removal of her children from her care and the conduct of the related court proceedings, including the length of proceedings.
United Kingdom	10 Nov. 2008	Zuluaga & Others	Mr. Zuluaga, a Colombian citizen, was deported from the United Kingdom (his application to be granted the refugee status was rejected). The applicants complain that this deportation violated Article 8 of the Convention.

Communicated cases published on 8 December 2008 on the Court's Website and selected by the Office of the Commissioner

State	***Date of communication***	***Case Title***	***Key Words by the Office of the Commissioner***
Bulgaria	20 Nov. 2008	Svoboden Szheleznicharski Sindikat 'Promyana'	The applicant union complains under Article 11 that the National Company "Railway Infrastructure" EAD refused to enter into a collective agreement with the applicant and that Bulgarian law, as interpreted by the courts, cannot compel the "Railway Infrastructure" EAD to do so. The applicant union complains further under Article 14 that the refusal was discriminatory.
Bulgaria	17 Nov. 2008	Raza	Mr. Ali Raza, a Pakistani national, was granted a permanent residence permit but subsequently an order for his expulsion was taken based *inter alia* on the fact that Mr. Raza's presence in the country presented a serious threat to national security. Mr. Raza and his relatives allege that such an expulsion would constitute a violation of Article 8 and 13 of the Convention and that the detention of Mr. Raza violates Article 5 of the Convention.
Poland	17 Nov. 2008	Sambor	The applicant complains under Article 3 that he was ill-treated by the police at the time of the intervention and that no effective investigation was subsequently undertaken. He further alleges a breach of Article 5 § 1 (e) on the ground that alternative means could be used to immobilise a mentally ill person than shooting at him with live ammunition, and a breach of Article 8 because part of his house was demolished by the anti-terrorist brigade. He alleges also breaches of Articles 2, 13 and 17
Romania	20 Nov. 2008	Elefteriadis	The applicant complains under Article 3 that while he was in detention he was obliged during more than seven years to share his cell with smokers.
Romania	20 Nov. 2008	Bogdan Vodă Greek-Catholic Parish	The applicant complains about the non-enforcement of a final judgment in its favour for more than ten years. The applicant alleges that this delay in the enforcement constitutes a violation of its right to access to a court, its freedom of religion and its right to peaceful enjoyment of possessions. Such a delay shall also be considered, according to the applicant, discriminatory in breach of Art. 14 of the Convention
Spain	20 Nov. 2008	Aizpurua Ortiz and others	56 applicant complain under Article 1 of Protocol 1 about their right to receive a supplementary pension despite a collective labour agreement
Turkey	21 Nov. 2008	Murat Arslan and 66 other applications	The applicants were all found guilty of breaching prison order by the decisions of the respective Disciplinary Boards of F-Type Prisons. Pursuant to the Regulations on the administration of penitentiary institutions and the execution of sentences, they were all sentenced to various types of disciplinary sanctions. Their appeal requests were rejected by the Enforcement Judges and the Assize Courts respectively, on the basis of the case files, without hearing the applicants or their lawyers, in accordance with Law No. 4675 on Enforcement Judges, of 16 May 2001. They allege various violations of the Convention.
Turkey	21 Nov. 2008	Ademoviç	The applicant complains under Article 5 § 1 of the Convention that his provisional arrest (pursuant to Article 16 of the European Convention on Extradition) was unlawful and the length of his provisional arrest was excessive. The applicant further complains about the lack of an effective remedy and the length of the criminal proceedings

United Kingdom	17 Nov. 2008	Kennedy	The applicant arrested for drunkenness was taken into custody and held overnight in a cell shared by another detainee, who was found dead with severe injuries. The applicant was charged with his murder. The applicant complains that the Investigatory Powers Tribunal Rules restricted his rights under Article 6 § 1 of the Convention. He complains *inter alia* under Article 8 that the interception of his communications breaches his right to respect for his private life and correspondence, and in particular, that the legal framework established by Regulation of Investigatory Powers Act 2000 ("RIPA") does not meet the foreseeability requirement of Article 8 § 2 and is therefore not "in accordance with law".

D. Miscellaneous (Interim measures, hearings and other activities)

Interim measures

On 18 November 2008 the European Court of Human Rights received an application (no. 55185/08) lodged by the guardian of Mrs Ada Rossi, a person in a persistent vegetative state receiving artificial nutrition and hydration, and by VI.VE Onlus, Federazione Nazionale Associazioni Trauma Cranico, ARCO 92, Gli Amici di Luca, Genesis and Associazione Rinascita Vita Onlus, associations whose membership consists of relatives and friends of severely disabled persons and of doctors, psychologists, lawyers and experts in bioethics who assist such persons. On 19 November 2008 the Court received an application from Associazione Rinascita Vita Onlus (no. 55483/08).

The applicants complain principally, under Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights, of the possible effects of the decision of the Milan Court of Appeal to authorise B.P., the guardian of E.E., who is severely disabled and has been in a persistent vegetative state for several years, to discontinue his daughter's artificial nutrition and hydration.

The applicants requested the Court to apply Rule 39 of its Rules of Court in order to obtain a stay of execution of the decision in question.

On 19 November 2008 the President of the Chamber to which the case had been allocated decided to refuse the requests for interim measures made by the applicants. The applicants were informed of the decision and asked to indicate whether they wished to maintain their applications. Should they decide to do so, the Court will rule in due course on the admissibility and merits of the applications.

Between 11 and 14 November 2008 the European Court of Human Rights **received eleven applications lodged by Afghan nationals** placed in administrative detention pending their removal to their country of origin on a flight organised by the French and British authorities. The applicants complain essentially, under Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment) that if they were removed to Afghanistan they would face a real risk of torture or ill-treatment by the Taliban. They also allege a violation of Article 4 of Protocol No. 4 to the Convention (prohibition of collective expulsion of aliens).

The applicants requested the Court to apply Rule 39 of the Rules of Court and to invite the French authorities to suspend their removal to Afghanistan pending consideration of their applications by the Court. On 14 November 2008 the Court informed the French Government, under Rule 40 of the Rules of Court, of the lodging of the applications.

On 17 November 2008 the President of the Chamber to which the cases had been allocated decided, in the interests of the parties and of the proper conduct of the proceedings before the Court, to indicate to the French Government under Rule 39 of the Rules of Court that the applicants should not be removed to Afghanistan.

In 2005, the Court applied Rule 39 in another case brought by an Afghan national (see *Sultani v. France*, no. 45223/05, judgment of 20 September 2007).

Rule 39 reads as follows:

"*1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.*
2. Notice of these measures shall be given to the Committee of Ministers.
3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

In its judgment in the case of *Mamatkulov and Askarov v. Turkey* of 4 February 2005, the Grand Chamber of the Court departed from the previous case law (*Cruz-Varas v. Sweden* of 20 March 1991) and declared that interim measures have binding force and should be abided by member States as part of their obligations under Article 34 of the European Convention on Human Rights (right to individual application). Article 34 *in fine* reads: "*The High Contracting Parties undertake not to hinder in any way the effective exercise of this right*."

As the Court stressed in *Mamatkulov*: "Likewise, under the Convention system, interim measures, as they have consistently been applied in practice […] play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention. Indications of interim measures given by the Court, as in the present case, permit it not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; such indications also subsequently allow the Committee of Ministers to supervise execution of the final judgment. Such measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention." (§ 125)

"The Court reiterates that by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34." (§ 128).

Further, the Court has pointed out "that an interim measure is provisional by nature and the need for it is assessed at a given moment because of the existence of a risk that might hinder the effective exercise of the right of individual application protected by Article 34. If the Contracting Party complies with the decision to apply the interim measure, the risk is avoided and any potential hindrance of the right of application is eliminated. If, on the other hand, the Contracting Party does not comply with the interim measure, the risk of hindrance of the effective exercise of the right of individual application remains, and it is what happens after the decision of the Court and the government's failure to apply the measure that determines whether the risk materialises or not. Even in such cases, however, the interim measure must be considered to have binding force. The State's decision as to whether it complies with the measure cannot be deferred pending the hypothetical confirmation of the existence of a risk. Failure to comply with an interim measure indicated by the Court because of the existence of a risk is in itself alone a serious hindrance, at that particular time, of the effective exercise of the right of individual application." (*Olaechea Cahuas v. Spain*, 10 August 2006, § 81).

Further readings: Thomas Hammarberg, "States should protect the right of individuals to apply to the Strasbourg Court", Viewpoint, 3 September 2008.

Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Italy, 19-20 June 2008, CommDH(2008)18, 28 July 2008, see in particular §§ 82-100.

Hearings:

You may consult the webcasts of the following hearings, dated 2 December 2008 in the following cases: ***Savino v. Italy*** (Chamber) (no. 17214/05) ; ***Persichetti v. Italy*** (Chamber) (no. 20329/05) ; and ***Borgo and others v. Italy*** (Chamber) (no. 42113/04) :
Original language version, English, French,
You may also consult the statements of facts in those cases:
Statement of facts in French only (for the cases *Savino* and *Persichetti*)
Statement of facts in French only, Press Release (for the case *Borgo and others*)

Speeches of the President of the Court and Visits :

- On 10 November 2008 President Costa visited Lisbon, where he took part in a Forum organised by the Council of Europe's North-South Centre on "The principle of universality of human rights and its implementation at international and regional level". The President visited the Supreme Court of Portugal, where he gave a speech to mark the 30th anniversary of Portugal's ratification of the European Convention on Human Rights. He was also received by Alberto Costa, the Portuguese Minister of Justice. He was accompanied by Ireneu Cabral Barreto, the judge elected in respect of Portugal. Speech at the Lisbon Forum, North-South Centre of the Council of Europe (in French only): Lisbon, 10 November 2008
- Visit to the Court of Justice of the European Communities : Luxembourg, 24 November 2008
- On 29 November 2008 in Strasbourg, President Costa chaired the autumn session of the *Académie des Marches de l'Est*, which awarded this year's Europe Prize to Simone Veil. (Speech, in French only)
- A delegation of the Court of Bosnia and Herzegovina visited the Court on 18 and 19 November 2008. Among those receiving the delegation were President Costa, Ljiljana Mijovic, the judge elected in respect of Bosnia and Herzegovina.
- On 18 November 2008 Rieta Kieber-Beck, Minister for Foreign Affairs of Liechtenstein, was received by President Costa. Mark Villiger, the judge elected in respect of Liechtenstein, and Erik Fribergh, Registrar, attended also the meeting.
- On 14 November 2008 President Costa was in Paris with a delegation from the Court and took part in a working meeting with the Conseil d'Etat.
- A delegation from the Japanese Supreme Court visited the Court on 12 November 2008 and was received by President Costa.

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers held its fourth and last special "human rights" meeting of 2008 from 2 to 4 December (the 1043rd meeting of the Ministers' deputies).

A complete overview of the decisions adopted in the 1043rd meeting will be provided in the next issue of the RSIF.

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)

Conclusions of the European Committee of Social Rights
The conclusions for the European Social Charter (revised) and the 1961 Charter may now be consulted on line by volume and by State.
Conclusions 2008 and XIX-1
Conclusions by State

European Committee of Social Rights: Election of 4 Members
The following candidates have been elected as members of the ECSR from 1 January 2009, for a term of office which will expire on 31 December 2014:

- Mr Petros STANGOS (Greece)
- Mr Alexandra ATHANASIU (Romania)
- Mr Luis JIMENA QUESADA (Spain)
- Mr A. Rüchan ISIK (Turkey)

Committee of Ministers Resolution CM/ResChS(2008)10

Seminar on the European Social Charter in Montenegro
In order to achieve a wider implementation of the European Social Charter and ensure fundamental social rights in Montenegro, a seminar was held on 27 November 2008 in the framework of the Third Summit Action Plan.
Programme

Seminar on the European Social Charter in Moldova
\\transitsrc\Transit_src\Internet\DGHL\Monitoring\SocialCharter\Web\Images\ChisinauNov2008.JPG In the framework of the Third Summit Action Plan, a seminar was held in Chisinau, Moldova, on 18 November 2008, to evaluate the position of the Republic of Moldova in regard to the European Social Charter.
Programme (French only)

The European Committee of Social Rights will hold its session 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

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 Switzerland (13.11.08)

At the request of the Swiss authorities, the Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published the report on its fifth visit to Switzerland, carried out in September/October 2007, together with the response of the Swiss Government.

During the 2007 visit, the CPT followed up a certain number of issues examined during previous visits, in particular the fundamental safeguards against ill-treatment offered to persons in police custody and the situation of persons deprived of their liberty under aliens legislation. Regarding prisons, the CPT paid particular attention to the conditions of detention of persons against whom a

compulsory placement measure or institutional therapeutic measures have been ordered, as well as to conditions in the security units. It also examined the situation of juveniles and young adults in education centres.

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

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

Council of Europe anti-torture Committee: visits in 2009 (25.11.08)

In 2009, as part of its programme of "periodic" visits, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) intends to examine the treatment of persons deprived of their liberty in the following ten countries:

- Austria (2004)
- Belgium (2005)
- Greece (2005)
- Hungary (2005)
- Luxembourg (2003)
- Poland (2004)
- Slovak Republic (2005)
- Sweden (2003)
- Turkey (2004)
- Ukraine (2005)

The date of the previous periodic visit to each country is indicated in the brackets.

Persons in possession of information concerning deprivation of liberty in any of these countries which they believe could assist the CPT are invited to bring it to the Committee's attention.
Other "ad hoc" visits that appear to the CPT to be required in the circumstances will also be organised during 2009.

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)

Switzerland: Adoption of Committee of Ministers' recommendations on minority protection (19.11.08)

The Committee of Ministers has adopted a resolution on the protection of national minorities in Switzerland. The resolution contains conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

The resolution is largely based on the corresponding Opinion of the Advisory Committee on the Framework Convention. The detailed Opinion of the Advisory Committee of independent experts, together with the comments on the Opinion by the government of Switzerland are also available on line. The first Advisory Committee Opinion on Switzerland was adopted on 20 February 2003.

E. Group of States against Corruption (GRECO)

The Group of States against Corruption (GRECO) publishes its report on Monaco (14.11.08)

The Council of Europe's Group of States against Corruption (GRECO) has published its Joint First and Second Round Evaluation Report on Monaco (link to the report). The report is made public with the agreement of the country's authorities.

The recent ratification of the Criminal Law Convention on Corruption (ETS 173) of the Council of Europe was a first step for the Principality of Monaco in respect of the introduction of specific anti-corruption measures, and it was indicated that GRECO's report would serve as a basis for further discussions and new initiatives in this area. GRECO has issued 28 recommendations. Measures taken by Monaco to implement these recommendations will be assessed by GRECO in the context of a specific compliance procedure in the second half of 2010.

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

FATF / MONEYVAL Joint Typologies Meeting 2008 (Monaco, 24-26 November 2008)

The 7th experts' meeting on typologies was held jointly with the Financial Action Task Force (FATF) in Monaco, from 24 to 26 November 2008 and gathered over 150 experts from 50 countries and international organisations. It focused on the ways in which money launderers operate through the securities industry, sporting clubs and money service businesses and examined emerging trends and patterns of behaviour in these areas. Speeches:
His Serene Highness, Prince Albert II of Monaco
Mr António Gustavo Rodrigues, President of the FATF
Dr Vasil Kirov, Chairman of MONEYVAL

Part IV : The intergovernmental work

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

Azerbaijan signed on 17 November 2008 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)

Armenia, **Denmark**, **Finland**, **Iceland**, **Norway** and the **United Kingdom** signed on 27 November 2008 the European Convention on the Adoption of Children (Revised) (CETS No. 202)

Bosnia and Herzegovina signed and ratified on 17 November 2008 the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104)

Finland, **Luxembourg** and **Moldova** signed on 27 November 2008 the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (CETS No. 203)

Liechtenstein signed on 17 November the Convention on Cybercrime (ETS No. 185), the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)

Norway denounced on 17 November 2008 the European Convention on the Adoption of Children (ETS No. 58)

Poland ratified on 17 November 2008 the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

Russia ratified on 27 November 2008 the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), and Protocol No. 2 to the European Outline Convention on Transfronfier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169)

B. Recommendations and Resolutions adopted by the Committee of Ministers

Committee of Ministers adopts new Resolution on youth policy (27.11.08)

The Council of Europe's youth policy priorities for the coming years are at the heart of the Resolution just adopted by the organisation's decision-making body - the Committee of Ministers. The resolution spells out what the organisation needs to do in the field of youth work in three priority areas: human rights and democracy, cultural diversity and intercultural dialogue, and social inclusion of young people.

The document also outlines concrete approaches and methods to be used regarding youth policy and co-operation, youth research and knowledge of youth as well as the development of youth mobility, youth work, education and training.

Full text of the resolution CM/Res(2008)23
For more information on the 8th Conference of Ministers responsible for Youth
For more information on the Council of Europe activities in the youth sector

C. Other news of the Committee of Ministers

End of the Swedish Chairmanship of the Committee of Ministers: tangible results (27.11.2008)

The six-month Swedish Chairmanship of the Council of Europe Committee of Ministers came to an end at a special meeting in Strasbourg.
Under the joint chairmanship of Carl Bildt, Minister for Foreign Affairs of Sweden, and Miguel Angel Moratinos, Minister for Foreign Affairs of Spain, who is taking over from him, the Ministers' Deputies of the 47 member states took a number of specific decisions as a result of Sweden's active Chairmanship.
The Deputies:

- adopted the Priorities for future action in co-operation with the European Union, in anticipation of an overall assessment of relations between the two organisations that was to be presented at the 119th ministerial session in Madrid on 12 May 2009;
- took note of a study entitled "The Council of Europe and the Rule of Law - An Overview" and decided to publish it;
- adopted the 2009-2011 Strategy for "Building a Europe for and with children", took note of the relevant programme of activities and invited member states to appoint a national contact for children's rights with whom the Council could co-operate;
- adopted the Council of Europe Convention on Access to Official Documents, while taking note of the Opinion of the Parliamentary Assembly on the subject;
- adopted the Declaration by the Committee of Ministers on the Code of Good Practice on Referendums.

Report on the Swedish Chairmanship of the Committee of Ministers
The Swedish Chairmanship of the Committee of Ministers
Speech by Carl Bildt
File

Spain presents its priorities for its chairmanship of the Committee of Ministers over the next six months (27.11.08)
Programme of the Spanish chairmanship
The Spanish chairmanship of the Committee of Ministers
Speech by Miguel Ángel Moratinos

Opening for signature of two new treaties (27.11.08)

On the occasion of the special meeting at which Spain succeeded Sweden as the chair of the Committee of Ministers, two treaties were opened for signature.

- **The European Convention on the Adoption of Children (Revised) (CETS 202)** was signed by Armenia, Denmark, Finland, Iceland, Norway and the United Kingdom.
  The aim is to take account of social and legal developments while keeping to the European Convention on Human Rights and bearing in mind that the child's best interests must always take precedence over any other considerations.
  New provisions introduced by the convention:
  · The father's consent is required in all cases, even when the child was born out of wedlock.
  · The child's consent is necessary if the child has sufficient understanding to give it.
  · It extends to heterosexual unmarried couples who have entered into a registered partnership in States which recognise that institution. It also leaves States free to extend adoptions to homosexual couples and same sex-couples living together in a stable relationship.
  · The new convention strikes a better balance between adopted children's right to know their identity and the right of the biological parents to remain anonymous.
  · The minimum age of the adopter must be between 18 and 30, and the age difference between adopter and child should preferably be at least 16 years.

- **The Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Genetic Testing for Health Purposes (CETS 203)** was signed by Finland, Luxembourg and Moldova.
  Biological and medical research has led to remarkable progress in the field of human health. The rapid developments in this sphere have prompted the Council of Europe to consider the ethical and legal aspects of applications of genetics, particularly genetic testing, and to draw

up legal rules to protect fundamental human rights with regard to these applications. The new Protocol sets down principles relating inter alia to the quality of genetic services, prior information and consent and genetic counseling. It lays down general rules on the conduct of genetic tests, and, for the first time at international level, deals with the directly accessible genetic tests for which a commercial offer could develop in future. It specifies the conditions in which tests may be carried out on persons not able to consent. Also covered are the protection of private life and the right to information collected through genetic testing. Finally, the Protocol touches on genetic screening.

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***

Albania: parties must maintain momentum for change ahead of a challenging election (20.11.08)

Albania's political parties should "commit themselves to maintaining the current momentum for political change" ahead of the major challenge of the coming elections, according to PACE's two monitoring co-rapporteurs on Albania. In an information note declassified yesterday, Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG) also said Albania should implement adopted legislation more promptly and effectively, and criticised a lack of co-operation with some Council of Europe bodies.
Information note (PDF)

Monaco: welcome progress on modernising democracy, but some promises not yet honoured (21.11.2008)

PACE's co-rapporteurs on Monaco have welcomed the progress achieved by the Principality since it joined the Council of Europe four years ago, but pointed to some promises it has not yet honoured. In a declassified information note on a recent visit, Leonid Slutsky (Russia, SOC) and Pedro Agramunt (Spain, EPP/CD) said adoption of the law on the functioning of the National Council would be a key part of the on-going programme to modernise the Principality's democratic institutions. They also called on Monaco to honour "without further delay" its promise to ratify the revised European Social Charter.
Information note (PDF)

"The former Yugoslav Republic of Macedonia", hampered by political climate of distrust, still faces old and new challenges (20.11.2008)

"The former Yugoslav Republic of Macedonia" still faces systemic challenges, eight years after the closing of PACE's monitoring procedure, and new challenges to democratic institutions have emerged, according to the Chair of PACE's Monitoring Committee. In an information note on his recent visit, declassified, Serhiy Holovaty (Ukraine, ALDE) called for "constructive dialogue" between the majority and opposition, currently hampered by a climate of distrust and mutual accusations. The parliamentary elections had been "a bad example of a democratic process", he said, making the 2009 presidential and local elections a crucial test of the country's democracy.
Information note (PDF)

Moldova 'moving in a positive direction' but must apply laws more effectively (20.11.08)

Moldova is "moving in a positive direction" in fulfilling the requirements to close the monitoring procedure, according to PACE's two monitoring co-rapporteurs for the country, but they pointed out that new laws must be applied more effectively. In an information note on a recent visit, declassified yesterday, Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD) said that the 2009 parliamentary elections will be "the ultimate test" of Moldova's democracy.
Information note (PDF)

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

Restrictions on movement into and from the conflict territories in Georgia a cause for great humanitarian concern (21.11.08)

In the framework of the follow-up to Resolution 1633 (2008)on the consequences of the war between Georgia and Russia, Corien Jonker (Netherlands, EPP/CD), Chairperson of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE), visited Georgia from 16 to 21 November, where she had meetings in Tbilisi with representatives of the authorities, humanitarian agencies, NGOs and the international community.

“Following my visit this week to the region of Abkhazia and the border district of South Ossetia, I am greatly concerned by the restrictions on movement into and from the conflict territories in Georgia and the great humanitarian concerns affecting the day-to-day lives of the people in the region,” said Corien Jonker.

“The aim of my six-day visit has been to look into the humanitarian consequences of the war between Georgia and Russia, for a report to be debated by PACE in January 2009. During the course of my visit, I travelled to Sukhumi and the Gali region before holding meetings in Tbilisi with governmental and parliamentary authorities, international organisations and non-governmental organisations. I then visited the so called ‘border zone’ with South Ossetia.”

“I was impressed by the response of the Georgian authorities to the immediate needs of newly displaced persons and the seriousness of their approach to finding durable solutions for those persons recently displaced who have little prospect for return in the near future. The rapid construction of housing under way will alleviate the desperate accommodation needs of many of the new IDPs. The approach to the new IDPs is, however, in stark contrast to the way in which the problems of old IDPs from the earlier conflict were dealt with, and the Government now needs to ensure that the needs of all IDPs, old and new, are met,” Ms Jonker said.

She also regretted the on-going lack of security in the border zones of Abkhazia and South Ossetia. She noted that while there was some Georgian police presence, and international monitoring by the EU Monitoring Mission (EUMM) and the OSCE, this was not sufficient to guarantee the safety and return of those living closest to the border.

“The international response in terms of aid has been enormous, and it is important that the $4.5 billion pledged is delivered and that it be transparently accounted for by the Georgian authorities. Immediate humanitarian relief still has to be funded and methods have to be found to provide greater assistance for those living in the regions of Gali and the Kodori Valley as well as the conflict zone of South Ossetia and the Akhalgori district,” Ms Jonker added.

“While I was not allowed to visit Tskhinvali on this trip, I have every intention of finding a way to visit the area in the future to meet the people and examine the damage and also the living conditions of the remaining population,” she concluded.

PACE post-monitoring visit to Turkey (21.11.08)

As part of the post-monitoring dialogue with Turkey, Serhiy Holovaty (Ukraine, ALDE), Chair of the PACE Monitoring Committee, made a fact-finding visit to Ankara and Istanbul from 23 to 27 November 2008, where he had talks with the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Justice, and with the Head and Chief Prosecutor of the Supreme Court of Cassation, and the Chief Judge of the Constitutional Court. Mr Holovaty also met representatives of the political parties, the media, civil society, the diplomatic corps and religious dignitaries.

PACE Rapporteur calls for the progressive engagement of Belarus in a political process with Europe (28.11.08)

"I very much welcome the decision of the Belarusian authorities to allow the printing of two independent newspapers – Narodnaya Volya and Nashe Niva – in Belarus and their distribution through the state network," the PACE rapporteur on Belarus Andrea Rigoni (Italy, ALDE) said.

"This is another tangible sign that the Belarusian leadership has a clear understanding of Europe’s expectations and is prepared to respond to them with actions, along the lines indicated in a recent non-paper by the Belarusian authorities on how to improve EU-Belarus relations.

For their part, European organisations should give clear signs that they are prepared to support democratisation and political liberalisation in Belarus by relying on dialogue and a step-by-step approach. The European Union has already opted for this approach. The Council of Europe should do the same and I hope that my report, to be debated in 2009, will contribute to this."

- ***THEMES***

➢ ***Economic and financial crisis***

PACE Political Affairs Committee: G20 meeting signals a new approach (18.11.08)

Global safety and security depend on co-operation between world leaders, according to the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (PACE), meeting in Paris. The G20 meeting is a start for co-operation the committee declared. It welcomed the positive attitude adopted by the leaders who participated in the meeting in Washington DC last weekend.

Aware that the current financial crisis will need continuous efforts and more elaborate measures in the coming months, the committee nevertheless considers that this meeting constitutes an encouraging start and concrete proof that in the face of the inevitable globalisation and interdependence of the economy and the deterioration of financial activity, the industrial and emerging countries have shown that they are capable of rising to the challenge by reacting rapidly as one.

It would be desirable, indispensable even, that this positive initiative be followed up rigorously and carefully and that international institutions be closely associated with it. Regional organisations such as the Council of Europe and, in particular the Parliamentary Assembly, could also, for their part, contribute to finding solutions, the committee said.

Democracy may be at risk from economic downturn, warns PACE committee, calling for a debate (27.11.08) Full text of the statement

UK's role in the economic collapse of Iceland on PACE agenda (28.11.08)

Speaker of the Spanish Senate says economic crisis poses a challenge to the European model of social protection (28.11.08)

➢ ***Freedom of expression***

PACE rapporteur: 'whistle-blowers make democracies stronger' (12.11.08)

Urging Council of Europe member states to adopt laws which protect "whistle-blowers", the rapporteur of the Council of Europe Parliamentary Assembly (PACE) on the subject has said that encouraging insiders to report wrong-doing or go public with their concerns can "make democracies stronger". Speaking at a hearing in Moscow organised by the Assembly's Legal Affairs Committee, Pieter Omtzigt (Netherlands, EPP/CD) said: "It is the essence of democracy and the rule of law that warnings by those who are uneasy about something are reported, investigated and resolved. This makes democracies stronger, because they can avoid mistakes."

Attendees at Monday's hearing included lawyer Mikhail Trepashkin, a former colonel in the Russian security service (FSB), who claimed to have evidence that FSB agents were involved in the September 1999 bombing of apartment blocks in Russia, as well as German journalist Hans-Martin Tillack, who was pursued by Belgian prosecutors to reveal his sources after alleging corruption within the European Commission.

Mr Omtzigt said he was "stunned" by the lengths the authorities had gone to in both cases to suppress their voices, rather than properly investigating their claims: "Mr Trepashkin faced prison and solitary confinement, when a proper investigation of the apartment bombings – in which hundreds were killed – would have been more fruitful." In Mr Tillack's case, the rapporteur pointed out, it was the journalist who was investigated rather than his claim of fraud.

Other participants included Elaine Kaplan, a former US Special Counsel in charge of whistle-blower protection, and Anna Myers from the NGO "Public Concern at Work" in the United Kingdom, the only European country so far to adopt a law protecting whistle-blowers.

Mr Omtzigt's report is due to be approved by the committee during the January plenary session of the Assembly.

- ***Violence against Women***

Combating gender-based violence in Spain: meeting in Madrid (24.11.08)

Recent developments in Spain in the field of combating gender-based violence, and the effects of the Spanish law on integrated protection measures for the victims, were discussed at the meeting of the Sub-committee on Violence against Women in Madrid on 27 November. The Spanish Minister for Equality, Bibiana Aído, was scheduled to participate in this exchange of views. The sub-committee also assessed progress with the drafting of a Council of Europe convention on combating violence against women.
Draft agenda

Combating violence against women: now is the time for a Council of Europe convention (25.11.08)

"Too many women in Europe are battered and killed by their partners or former partners, simply because they are women," Council of Europe Parliamentary Assembly (PACE) President Lluís Maria de Puig said in a statement on the occasion of the International Day for the Elimination of Violence against Women. "No Council of Europe member state is immune. It is time to put a stop to this repeated, widespread violation of human rights. National parliaments must pass the requisite laws. At European level, there is an urgent need to strengthen protection for victims, prosecute those who perpetrate violence and take measures to prevent it," he added.

"On the occasion of the International Day for the Elimination of Violence against Women, I would like to reiterate PACE's unanimous call, made on 3 October, to the Council of Europe Committee of Ministers to draft, without delay, a convention to combat the most serious and widespread forms of violence against women, in particular domestic violence and forced marriages. On the eve of the Spanish chairmanship of the Council of Europe, PACE reiterates its determination to promote and to continue rallying support among parliamentarians for such a convention and say, loudly and clearly, "Stop domestic violence against women".

Deputy Secretary General hopes for speedy progress on a Council of Europe treaty (27.11.08)

Combating violence against women: mobilising parliamentarians in order to speed up the draft convention (27.11.08)
See also **Recommendation 1847 (2008)**

The involvement of men is essential for achieving gender equality, according to PACE (28.11.08)

- ***Immigration***

Migration to Europe: a threat, or an opportune remedy to ageing of the population? (21.11.08)

PACE Standing Committee to discuss in Madrid arrival of 'boat people' in Europe (24.11.08)

PACE calls for minimum standards of reception in Europe for 'boat people' (28.11.08)

The question about the need for immigration on a greying continent should be raised, according to Corien Jonker (25.11.08)

How to deal with protracted displacement of persons inside their own countries? (26.11.08)

John Greenway calls for full implementation of international humanitarian law (28.11.08)

- ***Environment***

Indoor pollution and its links to illness to be considered at a conference in Strasbourg (28.11.08)

C. Miscellaneous

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

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

A. Country work

Commissioner Hammarberg and Patriarch Ilia II join forces in Georgia on prisoners and missing persons (17.11.08)

Commissioner Hammarberg concluded on Friday 14 November his special visit to the areas affected by the South Ossetia conflict. He followed up the implementation of the six principles for human rights and humanitarian protection of the victims of the conflict and gave new impetus to exchanges of detainees as well as to the efforts to clarify the fate of missing persons.

The Commissioner secured the release by Georgian authorities of one adolescent Ossetian and his father, who were arrested on 8 October in the previous "buffer zone", and brought them to Tskhinvali on 12 November. He also ensured the return of ten corpses from Tskhinvali to Tbilisi. "This is an important step undertaken to help clarify what happened to Georgian soldiers reported as missing in action" he said.

Commissioner Hammarberg also met with His Holiness Ilia II, the Patriarch of the Georgian Orthodox Church, to discuss the need for further humanitarian and human rights work to ensure that persons who are deprived of their liberty are released, and if appropriate, exchanged. "We agreed on the crucial importance to further these efforts and the need for continued assistance to clarify the fate of missing persons following the conflict" said the Commissioner. "We also discussed some concrete cases and agreed to join efforts for the release of detained persons or corpses".

During the mission, the Commissioner visited Tskhinvali, where he met de facto President Kokoity and de facto Ombudsman, David Sanakoev. He also travelled to Gori and the previous "buffer zone", where he met with returnees and listened to their grievances and concerns. In Tbilisi, he visited a collective centre and talked with displaced persons about their situation.

"I am concerned over the insufficient humanitarian aid provided to returnees and to the persons who are still displaced" he said. "I am particularly worried about the lack of livelihood and income-generating projects, which would allow these already victimised persons to pass the winter in acceptable living conditions and prevent a new wave of displacement among the returnees".

In addition, the Commissioner had meetings with the Minister for Reintegration, Temuri Yakobashvili, the first Deputy Foreign Ministry, Giorgi Bokeria, representatives of international organisations and international observer missions as well as non-governmental organisations and the diplomatic community. He also met with the Georgian Public Defender, Sozar Subari, and the Chairman of the Defence and Security Committee of the Parliament, Givi Targamadze, in relation to securing exchanges. A report from the visit will be issued by the end of November.

Armenia: special visit of Commissioner Hammarberg to assess inquiry progress (19.11.08)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, carried out a special visit to Armenia from 20 to 22 November to assess the situation of persons deprived of their liberty in relation to the event of 1-2 March and the inquiry into those events.

"I intend to assess the situation of persons deprived of their liberty and the progress made in discovering the responsibilities of the March events" he said. "It is essential that a true and factual description of what actually happened is established. If this can be done it will also benefit future work to protect human rights in Armenia."

During the visit, he met with the President of the Republic, Serge Sargsyan, the Speaker of the National Assembly, the Minister for Foreign Affairs, the Head of the National Police and the

Prosecutor General. He also held meetings with the Chairman of the ad hoc inquiry committee of the National Assembly and the members of the newly-established fact-finding group tasked with the inquiry into the March events, the Human Rights Defender, as well as representatives of international organisations and civil society. Commissioner Hammarberg also visited places of deprivation of liberty.

Last September, the Commissioner published his findings stating that there was an urgent need to reach a satisfactory solution for prisoners and to hold accountable those responsible for the March events.

"French detention and immigration policies risk reducing human rights protection" says Commissioner Hammarberg in his report (20.11.08)

"Security concerns should not undermine a full respect for human rights norms. Some French policies on detention and immigration risk undermining these standards." With these words, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, presented his report on France, identifying problems as regards prison conditions, preventive detention (*rétention de sûreté*), juvenile justice and rights of migrants.

While welcoming some improvements since the 2006 report, the Commissioner criticises the "unacceptable living conditions faced by many detainees, who have to cope with overcrowding, lack of privacy, dilapidated facilities and substandard hygiene" adding that "the high level of suicides in French prisons is a symptom of structural deficiencies in the penitentiary system." Urging the authorities to solve rapidly these problems, he also stressed that "the proposed revision of prison legislation must not ignore respect for prisoners' fundamental rights, and more effective solutions and financial means should be provided to improve both material conditions and the treatment of people suffering from mental disorders."

Commissioner Hammarberg is also concerned about the risk of arbitrary decisions in the context of preventive detention, and calls for the greatest possible vigilance. "Dangerousness, on the basis of which preventive detention is ordered, is not a clear legal or scientific concept" he said. "Harsh measures have to be applied in some circumstances in order to protect society, but their use should not become routine. They must remain the last resort, and other recidivism prevention measures should be applied in the first instance."

With more than 3,000 minors imprisoned each year in France, the Commissioner is also worried about the tough stance taken by the juvenile justice system. "Without underestimating the seriousness of some acts committed by minors, the problem of juvenile delinquency will not be solved by imposing harsher penalties. A successful policy should entail measures facilitating prevention, rehabilitation and the social integration of young people in difficulty. In all cases, the emphasis should be on education rather than punishment."

Furthermore, Commissioner Hammarberg observes that French immigration policy, in particular the quota of irregular migrants to be expelled, raises serious human rights concerns. "'Migrants are not numbers and even those without permit have human rights. Many of them have contributed to the development of the country and they do deserve a humane treatment'" he said. "No further arrests should be made in schools areas or prefectures and those detained at the border or in holding centres should be given enough time to complete asylum applications, in decent living conditions". He recommends that regularisation and family reunification procedures be more transparent and calls on the French authorities to cease setting targets for the numbers of irregular migrants to be expelled.

The report also focuses on the situation of Roma and Travellers, for whom "solutions must be found to guarantee respect for their dignity. Moreover, the various special rules applicable to Travellers, such as those relating to voting rights and travel permits, should be abolished and better access to health care, education and employment for Roma should be secured."

Finally, the Commissioner invites the French authorities to consult national human rights structures and NGOs more systematically and protect their independence. "Their role is fundamental to ensure a constant monitoring of the human rights situation. An enhanced dialogue with them would be highly beneficial for human rights in France".

The report is based on the findings of a visit carried out last May as part of the activities to assess the respect of human rights commitments by all Council of Europe's member States. It is published

together with a factual memorandum on the Commissioner's previous visit in January and the Government response.

Read the report
Memorandum following the visit to detention places for arriving migrants within the airport of Roissy and the administrative detention centre for irregular migrants in Mesnil-Amelot (PDF)

B. Thematic work

"In times of economic crisis it is particularly essential to ensure the protection of social rights" (17.11.08)

Enormous sums of tax payers' money have been poured into the banking system in order to prevent a global financial meltdown. Ordinary people have been forced to pay for the reckless practices of a few. On of this, there are already signs that it is the less wealthy who will suffer most from the recession the world is now facing.
See the full text of the Viewpoint of the Commissioner.

"Commissioner Hammarberg meets transgender human rights experts" (18.11.08)

On November 18, Commissioner Hammarberg met with 12 transgender human rights experts whom he invited to discuss the human rights situation of this community. Participants presented and discussed the international legal standards in the field of gender identity discrimination, access to health care, recognition of gender before the law, discrimination in the fields of employment, housing, education, transphobic hate crimes. The Commissioner stressed that all these issues, in particular the very basic human rights of transgender persons, need to be more strongly addressed in light of current human rights mechanisms. Because of a lack of data, the Commissioner also underlined the need for more research in each of these areas. As a follow-up, a Viewpoint on transgender human rights is planned for early 2009 and the meeting discussions will be used for further work.
See also the **Programme** of the meeting.

C. Miscellaneous (newsletter, agenda…)

Hammarberg receives the Dag Hammarskjold award (17.11.08)

The Dag Hammarskjold award for 2008 will go to Commissioner Thomas Hammarberg for his consistent work for human rights. The prize was announced on 16th of November by the board of the Academy of Smaland in Sweden. Hammarberg donated the prize money (SEK 30. 000) to Amnesty International.