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

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covering the period from 1 to 23 December 2008

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

For any queries, please contact:
irene.kitsou-milonas@coe.int (Legal Advice Unit) or olivier.matter@coe.int (NHRSs Unit)

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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 cervants**

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

We would like to bring to your attention a part of the judgment which was not presented in the press release and which is very important for the interpretation of the ECHR. We invite you to read §§ 64-84 regarding the use by the Court of international instruments other than the ECHR for the interpretation of the latter and §§ 85-86 for the concluding remarks.

- **Right to respect of private life**

S. and Marper v. the United Kingdom [GC] (nos. 30562/04 and 30566/04)) (Importance 1) - 4 December 2008 - Retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences in violation of Article 8 ECHR

You are invited to read the entire judgment as well as the Commissioner's relevant Viewpoint published on 15 December "More control is needed of police databases".

The applicants (the first applicant was arrested and charged with attempted robbery when he was 11 years old; the second was arrested and charged with harassment of his partner) complained about the retention of their fingerprints, DNA samples and profiles after an acquittal (first applicant) or discontinuance of criminal proceedings. They were concerned in particular about possible current and future uses of those data.

The Court referred to CoE, EU law and to national practices: "According to the information provided by the parties or otherwise available to the Court, a majority of the Council of Europe member States allow the compulsory taking of fingerprints and cellular samples in the context of criminal proceedings.

At least 20 member States make provision for the taking of DNA information and storing it on national data bases or in other forms (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden and Switzerland). This number is steadily increasing. In most of these countries (including Austria, Belgium, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain and Sweden), the taking of DNA information in the context of criminal proceedings is not systematic but limited to some specific circumstances and/or to more serious crimes, notably those punishable by certain terms of imprisonment.

The United Kingdom is the only member State expressly to permit the systematic and indefinite retention of DNA profiles and cellular samples of persons who have been acquitted or in respect of whom criminal proceedings have been discontinued. Five States (Belgium, Hungary, Ireland, Italy and Sweden) require such information to be destroyed *ex officio* upon acquittal or the discontinuance of the criminal proceedings. Ten other States apply the same general rule with certain very limited exceptions: Germany, Luxembourg and the Netherlands allow such information to be retained where suspicions remain about the person or if further investigations are needed in a separate case; Austria permits its retention where there is a risk that the suspect will commit a dangerous offence and Poland does likewise in relation to certain serious crimes; Norway and Spain allow the retention of profiles if the defendant is acquitted for lack of criminal accountability; Finland and Denmark allow retention for 1 and 10 years respectively in the event of an acquittal and Switzerland for 1 year when proceedings have been discontinued. In France DNA profiles can be retained for 25 years after an acquittal or discharge; during this period the public prosecutor may order their earlier deletion, either on his or her own motion or upon request, if their retention has ceased to be required for the purposes of identification in connection with a criminal investigation. Estonia and Latvia also appear to allow the retention of DNA profiles of suspects for certain periods after acquittal." (§§ 45-47).

The Court first decided that retention of their cellular samples and DNA profiles on the one hand, and of their fingerprints on the other constitutes an interference with Article 8 (see the reasoning in paras 66-85).

The assessment of the violation is made *in concreto*: “However, while it recognises the importance of such information in the detection of crime, the Court must delimit the scope of its examination. The question is not whether the retention of fingerprints, cellular samples and DNA profiles may in general be regarded as justified under the Convention. The only issue to be considered by the Court is whether the retention of the fingerprint and DNA data of the applicants, as persons who had been suspected, but not convicted, of certain criminal offences, was justified under Article 8, paragraph 2 of the Convention.”

The argumentation leading to the violation is of particular importance and reproduced here (emphasis added):

"In this respect, the **Court is struck by the blanket and indiscriminate nature of the power of retention in England and Wales. The material may be retained irrespective of the nature or gravity of the offence with which the individual was originally suspected or of the age of the suspected offender; fingerprints and samples may be taken – and retained – from a person of any age, arrested in connection with a recordable offence, which includes minor or non-imprisonable offences.** The retention is not time-limited; the material is retained indefinitely whatever the nature or seriousness of the offence of which the person was suspected. Moreover, there exist only limited possibilities for an acquitted individual to have the data removed from the nationwide database or the materials destroyed (see paragraph 35 above); in particular, there is no provision for independent review of the justification for the retention according to defined criteria, including such factors as the seriousness of the offence, previous arrests, the strength of the suspicion against the person and any other special circumstances (see mutatis mutandis the reasoning in *Liberty v. the UK* of 1 July 2008, paras 64-70). Liberty made a third party intervention in the present case).

120. The Court acknowledges that the level of interference with the applicants' right to private life may be different for each of the three different categories of personal data retained. The retention of cellular samples is particularly intrusive given the wealth of genetic and health information contained therein. However, such an indiscriminate and open-ended retention regime as the one in issue calls for careful scrutiny regardless of these differences.

120. The Court acknowledges that the level of interference with the applicants' right to private life may be different for each of the three different categories of personal data retained. The retention of cellular samples is particularly intrusive given the wealth of genetic and health information contained

therein. However, such an indiscriminate and open-ended retention regime as the one in issue calls for careful scrutiny regardless of these differences.

121. The Government contend that the retention could not be considered as having any direct or significant effect on the applicants unless matches in the database were to implicate them in the commission of offences on a future occasion. The Court is unable to accept this argument and reiterates that the mere retention and storing of personal data by public authorities, however obtained, are to be regarded as having direct impact on the private-life interest of an individual concerned, irrespective of whether subsequent use is made of the data (see paragraph 67 above).

122. Of particular concern in the present context is the **risk of stigmatisation**, stemming from the fact that persons in the position of the applicants, who have not been convicted of any offence and are entitled to the presumption of innocence, are treated in the same way as convicted persons. In this respect, the Court must bear in mind that the right of every person under the Convention to be presumed innocent includes the general rule that no suspicion regarding an accused's innocence may be voiced after his acquittal (see *Asan Rushiti v. Austria*, no. 28389/95, § 31, 21 March 2000, with further references). It is true that the retention of the applicants' private data cannot be equated with the voicing of suspicions. Nonetheless, their perception that they are not being treated as innocent is heightened by the fact that their data are retained indefinitely in the same way as the data of convicted persons, while the data of those who have never been suspected of an offence are required to be destroyed.

123. The Government argue that the power of retention applies to all fingerprints and samples taken from a person in connection with the investigation of an offence and does not depend on innocence or guilt. It is further submitted that the fingerprints and samples have been lawfully taken and that their retention is not related to the fact that they were originally suspected of committing a crime, the sole reason for their retention being to increase the size and, therefore, the use of the database in the identification of offenders in the future. The Court, however, finds this argument difficult to reconcile with the obligation imposed by section 64(3) of the PACE to destroy the fingerprints and samples of volunteers at their request, despite the similar value of the material in increasing the size and utility of the database. Weighty reasons would have to be put forward by the Government before the Court could regard as justified such a difference in treatment of the applicants' private data compared to that of other unconvicted people.

124. The Court further considers that the retention of the unconvicted persons' data may be especially **harmful in the case of minors** such as the first applicant, given their special situation and the importance of their development and integration in society. The Court has already emphasised, drawing on the provisions of Article 40 of the UN Convention on the Rights of the Child of 1989, the special position of minors in the criminal-justice sphere and has noted in particular the need for the protection of their privacy at criminal trials (see *T. v. the United Kingdom* [GC], no. 24724/94, §§ 75 and 85, 16 December 1999). In the same way, the Court considers that particular attention should be paid to the protection of juveniles from any detriment that may result from the retention by the authorities of their private data following acquittals of a criminal offence. The Court shares the view of the Nuffield Council as to the impact on young persons of the indefinite retention of their DNA material and notes the Council's concerns that the policies applied have led to the over-representation in the database of young persons and ethnic minorities, who have not been convicted of any crime (see paragraphs 38-40 above).

125. In conclusion, the Court finds that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard. Accordingly, the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society. This conclusion obviates the need for the Court to consider the applicants' criticism regarding the adequacy of certain particular safeguards, such as too broad an access to the personal data concerned and insufficient protection against the misuse or abuse of such data.

126. Accordingly, there has been a violation of Article 8 of the Convention in the present case."

- **Right to property – Structural problem and need for the adoption of general measures**

Viaşu v. Romania (n° 75951/01) (Importance 1) – 9 December 2008 - Inability for the applicant to benefit from compensation for a plot of land – Deficiency in the Romanian legal order – Necessity for Romania to adopt general measures

The Court noted in this judgment the existence of a deficiency in the Romanian legal order as a result of which a large number of people were in the same situation as the applicant. More than a hundred applications pending before the Court lodged by people affected by the restitution laws could in future give rise to further judgments concluding that there had been a violation of the Convention. Accordingly, the Court considered that general measures should be taken by Romania, under Article 46 (binding force and execution of judgments). The Court also specified measures that may be appropriate in order to guarantee effective and rapid implementation of the right to restitution.

The case concerned Mr Viaşu's inability to benefit from his right to compensation for a plot of land under the Romanian restitution laws. The applicant had been the owner of land in the municipality of Cătunele (Romania) which he had been obliged to transfer to the State in 1962. In June 2000 the Cătunele Municipal Council informed the applicant that his application for restitution of the land, lodged under the Restitution Act (Law no. 1/2000), had been granted. By two administrative decisions of 5 April and 17 May 2002, he was acknowledged as being entitled to compensation under that Act as the confiscated land itself could not be returned to him because it was now being used as a mine.

The applicant applied to the authorities several times for payment of the compensation, but was unsuccessful because the Romanian Government had not adopted the regulations necessary to implement the Act.

The Government advanced as justification for this situation the difficulties related to the organisation of the administration in charge of implementing the restitution laws. However, the Court observed that the organisational difficulties encountered by the relevant authorities had been caused by a series of legislative changes to the mechanism for restitution. The Court had already found these changes to be ineffective in practice and to have created a climate of legal uncertainty. The Court now seized this opportunity to point out that various Romanian courts, including the Supreme Court, had complained about this uncertainty and had attempted – without any lasting success – to eliminate "the ambiguousness of uncertain legal situations" and "penalise the lack of diligence on the part of the authorities". The Court considered that the fair balance that had to be struck between the protection of the applicant's property and the demands of the general interest of the community had been upset and that the applicant had borne an individual and excessive burden. Accordingly, there had been a violation of Article 1 of Protocol No. 1.

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

Rupa v. Romania (no. 58478/00) (Importance 2) – 16 December 2008

The Court held unanimously that there had been a violation of Article 3 of the Convention on account of the ill-treatment to which the applicant was subjected on the occasions when he was arrested and detained; a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations; a violation of Article 13 in conjunction with Article 3; a violation of Article 5 §§ 1, 3 and 5; a violation of Article 6 §§ 1, 2 (presumption of innocence) and 3 (c) (right to legal assistance of own choosing); a violation of Article 8; and no violation of Article 34 (the Court considered that there was insufficient factual evidence for it to conclude that the Romanian authorities had intimidated or harassed the applicant in circumstances calculated to induce him to withdraw or modify his application or otherwise interfere with the exercise of his right of individual petition).

As regards the investigation into the applicant's allegations relating to his arrest on 28 January 1998 and his subsequent detention, the Court observed that it had already held that investigations by military prosecutors raised serious doubts as such prosecutors were not independent from the police officers whose actions they were required to investigate.

As regards the applicant's arrest on 11 March 1998 and his detention until 4 June 1998, the Court noted the total lack of response to the applicant's allegations on the part of the authorities before which they had been brought. The Court therefore held that there had been a violation of Article 3 on account of the lack of an effective investigation by the authorities into the applicant's allegations of ill-treatment.

Ataş and Seven v. Turkey (no. 26893/02) (Importance 3) - 16 December 2008

The Court found, as it had in previous cases against Turkey, that bodies like the Provincial Administrative Council, which were in charge of investigations concerning similar allegations directed against security forces, could not be regarded as independent, as they had been made up of civil servants hierarchically dependent on the Governor, an executive officer linked to the very security forces under investigation. Furthermore, the proceedings brought against the accused gendarmes had not produced any concrete results and, the criminal proceedings against them having been

suspended, they had effectively enjoyed virtual impunity, despite the evidence against them. Consequently, the Turkish criminal-law system, as applied in the applicants' case, had proven to be far from rigorous and had had no dissuasive effect. Accordingly, the Court concluded that the domestic authorities had not effectively investigated the applicants' allegations of ill-treatment, in further violation of Article 3.

Demirbaş and Others v. Turkey (nos. 50973/06, 8672/07 and 8722/07) (Importance 2) - 9 December

The applicant in the second application, Haydar Ceylan, complained, under Articles 3 and 13 of the Convention, that he had been subjected to ill-treatment while in police custody and that the authorities had failed to punish those responsible for this.

"The Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by the applicant. An effective investigation was therefore required.

The Court observes that, on 25 April 1999, 3 March 2000 and 22 May 2002, the applicant maintained before the duty judge at the State Security Court and the court itself that he had been subjected to ill-treatment while detained in police custody. Despite the applicant's allegations, the judicial authorities failed to bring any criminal charges promptly. It was not until more than three years later, following the lodging of a formal criminal complaint by the applicant's representative, that an investigation was initiated into the applicant's allegation. It then took the Fatih public prosecutor one year and three months to file a bill of indictment with the Fatih Criminal Court. The latter issued a decision of non-jurisdiction two years and six months after the initiation of the proceedings and seven years after the acts of ill-treatment had occurred. It then sent the case file to the Istanbul Assize Court, which decided to discontinue the proceedings during the first hearing on the merits of the case.

The Court observes that the proceedings in question have not produced any result due to these substantial delays, resulting in the application of the statutory limitations in domestic law (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 59, 2 November 2004). It finds that the domestic authorities cannot be considered to have acted with sufficient promptness or diligence, which created virtual impunity for the main perpetrators of the acts of violence, despite the evidence against them (see *Batı and Others*, cited above, § 147). In the light of the above, the Court concludes that the Haydar Ceylan's allegations of ill-treatment were not subject to an effective investigation by the domestic authorities as required by Article 3 of the Convention. There has accordingly been a violation of Article 3 under its procedural limb". (§§ 67-70).

See also **Selvi v. Turkey (no 5047/02) (Importance 3) - 9 December 2008**

In **Erdal Aslan v. Turkey (nos. 25060/02 and 1705/03) (Importance 3) - 2 December 2008**, the Court considered that the national authorities had not shown the diligence and decisiveness required in view of the seriousness of the circumstances, in order to prevent any appearance of tolerance for the illegal acts committed by State agents and to complete the proceedings before they became time-barred, in further violation of Article 3.

- **Torture and ill-treatment during detention**

Levinţa v. Moldova (no. 17332/03) (Importance 2) – 16 December 2008 – Violation of Article 3 – Torture in police custody – Insufficient medical assistance while in detention – Failure to carry out an effective investigation – Violation of Article 6§1 – Use of evidence obtained as result of torture in the internal proceedings

The applicants, Vitalie Levinţa, and his brother, Pavel Levinţa, complained in particular that: they were ill-treated in November 2000 in order to extract confessions from them and that they were subsequently deprived of sufficient medical assistance; that the authorities failed to properly investigate their allegations of ill-treatment; and, that they were arbitrarily convicted on the basis of their self-incriminating statements, given as a result of ill-treatment. They relied on Articles 3 and 6.

The Court found that the Moldovan Government had not provided any reasonable explanation as to why Vitalie Levinţa had had to have emergency medical treatment after one day in detention in Moldova. Moreover, they had failed to provide a plausible explanation at least for some of the injuries sustained by the applicants while in detention in Moldova. In particular, whatever the cause of the other injuries, those on the soles of the applicants' feet (similar to those sustained in the practice known as *falaka*) could not have been caused as part of a struggle during their arrest or detention. The Court found that such injuries had revealed a clear intent to cause severe pain and could only be considered as torture.

The Court underlined that, after the initial ill-treatment of 4 November 2000, the applicants had not been allowed to see their lawyers for several days, which had to have made them feel even more vulnerable to any abuse. That failing had been an especially serious one due to the credible allegations made by the lawyers that their clients were being ill-treated in order to obtain confessions from them. The Court further stressed that after the applicants had been subjected to torture on 3-4 November 2000, they had a reasonable ground to be afraid of possible further ill-treatment by the same officers. Thus, the failure to transfer the applicants to a safe place on 4 November 2000 had been a continuation of the ill-treatment to which they had been subjected.

The Court noted that, despite the medical emergency team's recommendation of in-patient treatment, the authorities had chosen to leave Vitalie Levința in detention at the police inspectorate, although they had known that the level of medical assistance available there had been insufficient. Nor had Pavel Levința been examined by a doctor following his request for treatment of his arm despite the fact that he had claimed that it had lost its function as a result of ill-treatment. Accordingly, the Court concluded that both applicants had been deprived of the medical assistance which they had required while in detention, contrary to Article 3.

The Court held that the State had failed to carry out a thorough investigation immediately after the events. The Moldovan courts' analysis, made approximately two years after the ill-treatment complained of, and limited to examining the documents in the file, could not have remedied that failure.

The Court found that the mere fact that the domestic courts had relied on evidence obtained as a result of torture, regardless of the extent to which the courts had grounded their judgments on such evidence to convict the applicants, had rendered their entire trial unfair, in violation of Article 6§1.

- **Medical care during detention**

Aleksanyan v. Russia (n° 46468/06) (Importance 2) – 22 December 2008 – Violation of Article 3 - lack of proper medical assistance in the remand prison - Violation of Article 5 § 3 - Failure of the domestic courts to adduce relevant and sufficient reasons to justify his continuous detention – Violation of Article 8 (on account of the searches in the applicant's premises) – Violation of Article 34 – Failure to comply promptly with the interim measures indicated by the Court – Necessity to discontinue the applicant's detention on remand

The applicant is currently detained in Moscow, and held in Town Hospital no. 60. He is a former practising member of the Moscow Bar. Until 2003 he worked as the head of the legal department of *Yukos*. In March 2006 the shareholders of *Yukos* appointed the applicant as executive vice-president of the company. From March 2006 steps were taken to initiate criminal proceedings against the applicant. On 4 and 5 April 2006 his premises were searched by investigators and certain documents were seized. On 6 April 2006 he was arrested and remanded in custody. The applicant's detention has since been repeatedly extended, most recently until January 2009. Over this period his health has progressively deteriorated. His eyesight, which was poor at the time of his arrest, worsened to the extent that he was effectively blind. In addition in September 2006 he was diagnosed as HIV-positive. By October 2007 he had developed AIDS and was suffering from a number of opportunistic infections. On 26 November 2007 the European Court of Human Rights invited the Government of Russian Federation, under Rule 39 of the Rules of Court, to secure immediately, by appropriate means, the in-patient treatment of the applicant in a specialised hospital. On 21 December 2007 the Court confirmed its previous measure and in addition invited the Russian authorities to form a medical commission, to be composed on a bipartisan basis, to diagnose the applicant's health problems and suggest treatment.

Concerning the alleged violation of Article 3, the central issue was the treatment the applicant had received after he was found to be HIV-positive, including whether he had access to anti-retroviral drugs and whether he should have been transferred to a specialist hospital. Having regard notably to the fact that the applicant could have obtained anti-retroviral drugs through his family even if they were not available in the prison pharmacy, the Court was prepared to accept that the absence of such drugs in the prison pharmacy was not, as such, contrary to Article 3 of the Convention. As to the failure to provide him with specialised medical assistance, however, the Court concluded that as from the end of October 2007, at the very least, his medical condition required his transfer to a hospital specialised in the treatment of AIDS. It followed that the national authorities had failed to take sufficient care of the applicant's health at least until his transfer to an external hospital. This had undermined his dignity and entailed particularly acute hardship, causing suffering beyond that inevitably associated with a prison sentence and the illnesses he suffered from, which amounted to inhuman and degrading treatment. There had therefore been a violation of Article 3 of the Convention (see for instance on this topic *inter alia* the following cases : *N. v. the United Kingdom* ([GC], no.

26565/05, § 44, 27 May 2008 ; *Karara v. Finland*, no. 40900/98, Commission decision of 29 May 1998; *S.C.C. v. Sweden* (dec.), no. 46553/99, 15 February 2000; *Arcila Henao v. The Netherlands* (dec.), no. 13669/03, 24 June 2003; *Gelfmann v. France* (no. 25875/03, 14 December 2004; *Mouisel v. France*, no. 67263/01, §§ 47, ECHR 2002-IX; *Sarban v. Moldova*, no. 3456/05, § 82, 4 October 2005).

Concerning the alleged violation of Article 5, the Court held that as from December 2006, the authorities had prolonged the applicant's detention on grounds which could not be regarded as "relevant" and "sufficient", even taking into account their cumulative effect. There had therefore been a violation of Article 5 § 3 of the Convention.

By failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, the Russian Government had failed to honour its commitments under Article 34 of the Convention

The Court noted that the search warrants of April 2006 had been formulated in excessively broad terms which effectively gave the prosecution unrestricted discretion in determining which documents were "of interest" for the criminal investigation. This serious deficiency was in itself sufficient to conclude that the searches of the applicant's premises had been conducted in breach of Article 8 of the Convention.

Having regard to its findings of violations of the Convention, and especially in view of the gravity of the applicant's illnesses, the Court considered that the applicant's continuous detention was unacceptable. It accordingly concluded that, in order to discharge its legal obligation under Article 46 of the Convention, the Russian Government was under an obligation to replace detention on remand with other, reasonable and less stringent, measure of restraint, or with a combination of such measures, provided by Russian law.

Dzieciak v. Poland (n° 77766/01) (Importance 2) – 9 December 2008 – Violation of Article 2 Polish authorities' failure to protect Mr Dzieciak's health and life on account of inadequate medical care during his four years of pre-trial detention - Ineffective investigation into Mr Dzieciak's death.

Mr. Dzieciak suffered from heart disease and had two heart attacks prior to his pre-trial detention on suspicion of drug trafficking. He died in detention on 25 October 2001. The case concerned notably Mrs Dzieciak's allegation that the Polish authorities contributed to her husband's death due to inadequate and belated medical care during the four years he spent in pre-trial detention.

The Court concluded that the quality and promptness of the medical care provided to the applicant during the four years of his pre-trial detention had put his health and life in danger. In particular, the lack of cooperation and coordination between the various state authorities, the failure to take the applicant to hospital for two scheduled operations, the lack of adequate and prompt information to the trial court on the applicant's state of health, the failure to secure him access to doctors during the final days of his life and the failure to take into account his health in the automatic extensions of his detention had amounted to inadequate medical treatment and had constituted a violation of Poland's obligation to protect the lives of those it holds in custody. There had accordingly been a violation of Article 2 on account of the Polish authorities' failure to protect the applicant's life.

The Court considered that the facts of the case required a prompt and diligent reaction from the investigating authorities. The investigation had, however, lasted more than two years and had been discontinued by the prosecutor without having considered doubts expressed by experts about the postponing of the applicant's surgery on three occasions.

More importantly, the incomplete and inadequate character of the investigation was highlighted by the fact that the exact course of events directly preceding the applicant's death had not been established. The prosecutor had failed to establish several crucial elements. Nor had the prosecutor assessed the accuracy of witness statements, or heard other witnesses such as prison guards, the applicant's cell mates or the ambulance team. The Court therefore concluded that the authorities had failed to carry out a thorough and effective investigation into the allegation that the applicant's death had been caused by ineffective medical care during his four years of pre-trial detention, in further violation of Article 2.

Kats and Others v. Ukraine (n° 29971/04) (Importance 2) – 18 December 2008 – Violation of Article 2 - Ukrainian authorities' failure to protect Olga Biliak's right to life on account of inadequate medical care during her pre-trial detention - lack of an adequate investigation into Olga Biliak's death - Violation of Article 5 § 1

The applicants are the parents and son of Olga Olegivna Biliak, who died in a Pre-Trial Detention Centre ("SIZO") in February 2004. At the time of her arrest, she was a registered schizophrenic and infected with HIV.

The Court noted that, in view of the letter sent to the SIZO by Olga Biliak's father, the prison authorities should have been aware of Olga Biliak's HIV status at least as far back as September 2003. Given the vulnerability of those who were HIV-positive to other serious diseases, the Court found that Olga Biliak, refused access to a specialist hospital or SIZO's medical wing, had been provided with a striking lack of medical attention to her health problems. Indeed, although she had been suffering from numerous serious diseases, her treatment had been very basic.

Furthermore, even though her health had seriously deteriorated in December 2003 and January 2004, a fact not contested by the Government, it had not been until 21 January 2004 that a more in-depth diagnosis of her state of health had been made. Even after 22 January 2004, when the management of the SIZO had acknowledged the need for her to be admitted to hospital and requested the investigating authorities' authorisation to release her on medical grounds, she had remained in a SIZO cell. Moreover, the prison management's application for her urgent release had only been accepted after seven days and the decision to release her had then been processed with a four-day delay, during which time she had already died. Lastly, the Court noted that the Government had not contested the accuracy of the report of 17 November 2006 which had concluded that inadequate medical assistance during Olga Biliak's detention had indirectly caused her death; nor had the Government produced any other medical evidence to refute that conclusion. Accordingly, the Court concluded that there had been a violation of Article 2 on account of the Ukrainian authorities' failure to protect Olga Biliak's right to life.

The Court concluded as well that Ukraine had failed to conduct an effective and independent investigation into Olga Biliak's death, in further violation of Article 2. Moreover Olga Biliak's detention from 29 January to 1 February 2004 had been unlawful, in violation of Article 5 § 1.

Ukhan v. Ukraine (no. 30628/02) (Importance 2) – 18 December 2008 - Violation of Article 3 (treatment) - Violation of Article 13 – Conditions of detention in the Cherkasy SIZO and Stryzhavska penitentiary

The case concerned the applicant's complaint about the conditions of his detention in the various penitentiaries, notably in the Cherkasy Regional Investigative Isolation Unit SIZO no. 30 and Stryzhavska penitentiary no. 81, in which he was held. In particular, he claimed that inadequate medical supervision and treatment had resulted in an untreated head injury paralysing the left-hand side of his body. He also had a number of other chronic conditions which he had contracted or had been aggravated during the second period of his detention, notably by inadequate and delayed diagnosis and failure to attend to his basic needs including poor food and hygiene and lack of arrangements for his reduced mobility. He also alleged that he was ill-treated in police custody when re-arrested in October 2003 and sustained numerous injuries, including the one to his head.

The Court declared that part of the applicant's complaint concerning ill-treatment in police custody inadmissible. However, given the delays and inconsistencies in the diagnosis of the applicant's illnesses, the lack of a comprehensive approach to his medical supervision and treatment, and failure to ensure conditions reasonably adapted to the applicant's health-care needs, the Court considered that the Ukrainian authorities had subjected him to inhuman and degrading treatment. The Court therefore held unanimously that there had been a violation of Article 3 on account of the conditions of Mr Ukhan's detention in the Cherkasy SIZO and Stryzhavska penitentiary, and a further violation of Article 13 on account of lack of remedies in respect of his complaints about the conditions of his detention.

- **Administrative detention following protest rallies in Armenia**

Kirakosyan v. Armenia (no. 31237/03) (Importance 3) - Mkhitaryan v. Armenia (no. 22390/05) (Importance 2) - Tadevosyan v. Armenia (no. 41698/04) (Importance 2) – 2 December 2008 – Protest rallies about the presidential elections –Administrative detention

In March 2003 the first two applicants were visited at home by police officers in connection with their participation in protest rallies about the presidential elections; following an altercation, they were arrested and taken to their local police station (Baghramyan Police Department : *ՀՀ ոստիկանության Բաղրամյանի բաժին*). Mr Tadevosyan was also arrested at home in May 2004 on account of an altercation with the police who had stopped his car for a control. The cases concerned the applicants' ensuing sentence to ten days' administrative detention for disobeying the lawful orders of the police and using obscene language. In particular, they complained about the conditions of their detention,

the unfairness of the proceedings against them and the fact that they did not have a clear and accessible right to appeal. They relied on Article 3 (prohibition of inhuman or degrading treatment), Article 6 §§ 1 and 3 (right to a fair trial) and Article 2 of Protocol No. 7 (right of appeal in criminal matters) to the European Convention on Human Rights.

The European Court of Human Rights held unanimously that in all three cases there had been a violation of Article 3 of the Convention on account of the conditions of the applicants' detention. The Court further held that there had been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) and that there was no need to examine the other complaints under this Article. Lastly, the Court held that there had been a violation of Article 2 of Protocol No. 7 (right of appeal in criminal matters).

- **Confinement to a psychiatric hospital**

Shulepova v. Russia (no. 34449/03) (Importance 2) – 11 December 2008 - Violation of Article 5 § 1 - Violation of Article 6 § 1 (fairness) – Unlawful confinement to a psychiatric hospital – Unfair judicial review

Relying on Article 5 § 1 (right to liberty and security), the applicant complained about the unlawfulness of her confinement to a psychiatric hospital. She also alleged that the judicial review of her detention had been unfair, in breach of Article 6 § 1 (right to a fair hearing).

The Court held unanimously that there had been a violation of Article 5 § 1 concerning the unlawfulness of the applicant's detention as the domestic authorities had not complied with the procedures prescribed by domestic law under the Psychiatric Treatment Act 1992. It further held unanimously that there had been a violation of Article 6 § 1 on account of the unfairness of the judicial proceedings, notably the fact that the psychiatric hospital's employees had been appointed as experts in the applicant's case.

- **Immigrants / Deportation cases**

Muminov v. Russia (n° 42502/06) (Importance 2) – 11 December 2008 – violation of Article 3 (on account of Mr Muminov's expulsion to Uzbekistan) – Violation of Article 13 (authorities' failure to afford Mr Muminov an effective and accessible remedy) - Violation of Article 5 § 4 (Unavailability of any procedure for a judicial review of the lawfulness of detention pending extradition) - No violation of Article 34

The case concerned Mr Muminov's complaint in particular about his expulsion from Russia to Uzbekistan on 24 October 2006, even though he still had appeals pending in Russia with regard to the expulsion order and the refusal of his refugee application despite the fact that the European Court of Human Rights had indicated to the Russian Government that same day that the applicant should not be removed until further notice.

Mr Muminov had been persecuted on account of his alleged involvement in the activities of Hizb ut-Tahrir (a transnational Islamic organisation, which is banned in Russia, Germany and some Central Asian states), which he had consistently denied. Given the materials submitted by the applicant and obtained by the Court, the Court considered that there were serious reasons to believe in the existence of the practice of persecution of members or supporters of that organisation, whose underlying aims appeared to be both religious and political. The evidence before the Court confirmed the existence of a persisting practice of torture, with a view to extracting self-incriminating confessions and to punishing those who were perceived by public authorities to be involved in religious or political activities contrary to State interests. It had been reported that evidence-gathering in such cases had relied on confessions extracted by unlawful means and that ill-treatment had continued to be used against inmates convicted on such charges.

The Court was therefore persuaded that the applicant faced a real risk of being subjected to ill-treatment in Uzbekistan. Accordingly, the applicant's expulsion to Uzbekistan had been in violation of Article 3. The absence of any reliable information as to the situation of Mr Muminov after his expulsion to Uzbekistan, except for his conviction, remained a matter of grave concern for the Court.

The Court held further violations of Art. 13, 5§4 and 5§1 of the Convention. Concerning the alleged violation of Art. 34, the Court observed that the parties had disagreed as to whether the applicant had been expelled before or after the Russian authorities had learnt about a Rule 39 request pending before the Court or its decision to apply Rule 39, as well as about the actual time of his departure from Russia. On 24 October 2006, under Rule 39, the Court indicated to the Russian Government that the applicant should not be expelled until further notice. The Russian Government were notified at 5.17 p.m., Strasbourg time (7.17 p.m. Moscow time). According to the Government, the applicant was expelled to Uzbekistan at 7.20 p.m. (Moscow time) on 24 October 2006.

The Court found that there was an insufficient factual basis for it to conclude that the Russian Government had deliberately prevented the Court from taking its decision on the applicant's Rule 39 request or notifying it of that decision in a timely manner, which would have been in breach of its obligation to cooperate with the Court in good faith. Consequently, there had been no violation of Article 34 of the Convention.

Y v. Russia (n° 20113/07) (Importance 3) – 4 December 2008 – No violation of Article 3 – No danger of ill-treatment upon the applicant's return in China – Conditions of removal from Russia did not amount to a violation of Article 3

The applicants, Mr and Mrs Y., are married. The first applicant, a Chinese national whose asylum application in Russia was rejected, claimed that he would at risk of persecution as a result of his alleged membership of the Falun Gong movement if he returned to China. Mr. Y was finally deported on 13 May 2007. The applicants complained about Mr Y's deportation to China, his unlawful detention, about the disruption of their family life and about the absence of domestic remedies. They relied on Art. 3, 5, 8, 13 and 1 of Prot. 7 (procedural safeguards relating to expulsion of aliens).

The Court held that it had not been established that there were sufficient grounds for believing that the first applicant faced a real risk of treatment contrary to Article 3 of the Convention upon his return to China. As to the fact that the first applicant had been granted refugee status by the UNHCR Office in Moscow in March 2003, the Court found it extremely regrettable that he should have been deported without the UNHCR Office first being informed. However, taking into account the difference in the scope of protection afforded by Article 3 of the Convention and by the UN Convention relating to the Status of Refugees and the particular circumstances of the case before it, the Court considered that this fact alone could not justify altering its conclusions as to the well-foundedness of the first applicant's claim under Article 3.

The Court further acknowledged that the deportation procedure may have caused the first applicant significant stress and mental anguish. However, and in particular taking into account the high threshold set by Article 3 of the Convention, the Court did not find that his removal from Russia involved a violation of Article 3 on account of his medical condition.

- **Right to a fair trial**

Panovits v. Cyprus (no. 4268/04) (Importance 2) – 11 December 2008 - Violation of Article 6 §§ 1 and 3 (c) (fairness) - Two violations of Article 6 § 1 (fairness) – Lack of legal assistance in the initial stages of the questioning by the police – Contempt of court by the defence counsel

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial), the applicant made a number of complaints about the unfairness of the criminal proceedings against him.

The Court held by six votes to one that there had been a violation of Article 6 §§ 1 and 3 (c) on account of the lack of legal assistance in the initial stages of the applicant's questioning by the police. It also held, by six votes to one, that there had been a violation of Article 6 § 1 due to the use of the applicant's confession in his main trial and, unanimously, that there had been no violation of Article 6 § 1 due to the admission of evidence which had attempted to show his "bad character" in that same trial. Lastly, the Court held, by five votes, to two that there had been a violation of Article 6 § 1 on account of the Assize Court's handling of the confrontation with the applicant's defence counsel, convicted of contempt of court, during the applicant's trial.

Bazo González v. Spain (no. 30643/04) (Importance 2) – 16 December 2008 - No violation of Article 6 § 1 – Public hearing of the proccedings before the appellate court considered as not neccesary

The applicant complained, among other things, about the lack of a public hearing before the appellate court in criminal proceedings brought against him for attempted smuggling, in which he was convicted and sentenced to 15 months' imprisonment. He had previously been acquitted at first instance following a public hearing. He relied in particular on Article 6 § 1 (right to a fair hearing). Having regard to the appellate court's examination of the applicant's case, the Court considered that a public hearing had not been necessary. It accordingly held by five votes to two that there had been no violation of Article 6 § 1.

- **Right to respect for family life**

K.U. v. Finland (n° 2872/02) (Importance 1) – 2 December 2008 – Violation of Article 8 - Failure to protect a child's right to respect for private life following an advertisement of a sexual nature being posted about him on an Internet dating site

The case concerned the complaint of the applicant (a Finnish national born in 1986) that an advertisement of a sexual nature was posted about him on an Internet dating site and that, under Finnish legislation in place at the time, the police and the courts could not require the Internet provider to identify the person who had posted the ad.

In March 1999 an unknown individual posted the ad on an Internet dating site in the name of the applicant without his knowledge. The applicant was 12 years old at the time. The ad mentioned his age and year of birth and gave a detailed description of his physical characteristics. There was also a link to the applicant's web page where his picture and telephone number, accurate save for one digit, could be found. The ad announced that he was looking for an intimate relationship with a boy of his age or older "to show him the way". The applicant became aware of that announcement when he received an e-mail from a man, offering to meet him and "to then see what he wanted".

The applicant's father requested the police to identify the person who had posted the ad in order to bring charges. The service provider, however, refused as it considered itself bound by the confidentiality of telecommunications as defined under Finnish law. The Finnish courts refused to oblige the service provider to divulge the identity of the person who had posted the ad.

Although under the domestic law the applicant's case was considered from the point of view of calumny, the Court highlighted the notion of private life, given the potential threat to the boy's physical and mental welfare and his vulnerable age.

The Court considered that the posting of the Internet advertisement about the applicant had been a criminal act which had resulted in a minor having been a target for paedophiles. It recalled that such conduct called for a criminal-law response and that effective deterrence had to be reinforced through adequate investigation and prosecution. Moreover, children and other vulnerable individuals were entitled to protection by the State from such grave interferences with their private life.

The incident had taken place in 1999, that is, at a time when it had been well-known that the Internet, precisely because of its anonymous character, could be used for criminal purposes. The widespread problem of child sexual abuse had also become well-known over the preceding decade. It could not therefore be argued that the Finnish Government had not had the opportunity to put in place a system to protect children from being targeted by paedophiles via the Internet.

Indeed, the legislature should have provided a framework for reconciling the confidentiality of Internet services with the prevention of disorder or crime and the protection of the rights and freedoms of others. Although such a framework has subsequently been introduced under the Exercise of Freedom of Expression in Mass Media Act (which came into force on 1 January 2004), it had not been in place at the relevant time, with the result that Finland had failed to protect the right to respect for the applicant's private life as the confidentiality requirement had been given precedence over his physical and moral welfare. The Court therefore found that there had been a violation of Article 8.

Gulijev v. Lithuania (no. 10425/03) (Importance 3) - 16 December 2009 - Violation of Article 8- Expulsion - Family life- Ties with the country

The applicant is an Azerbaijani national who lives in Austria. His wife and two children are Lithuanian citizens and live in Lithuania.

Relying in particular on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicant complained about his expulsion from Lithuania to Azerbaijan in November 2003. He is prohibited from re-entering Lithuania until 2099.

The Court noted that the authorities' refusal to grant the applicant a temporary residence permit and, consequently, his expulsion from Lithuania, had been based solely on a report by the State Security Department, classified as "secret", which alleged that he had been a threat to national security. However, the contents of that report had never been disclosed to the applicant in the administrative proceedings to deport him. Likewise, no objective material had been presented to the Strasbourg Court to demonstrate that the domestic authorities had good reason to suspect the applicant of having been such a threat. In fact, the authorities had already examined the applicant's background in the past and had seen no reason to refuse him a temporary residence permit. Moreover, in view of the fact that the applicant's wife had strong social and cultural ties with Lithuania and that his daughters had been born in that country and lived there all their lives, the Court could not accept, as suggested by the Government, that the family could have established its residence in Azerbaijan. The applicant's expulsion had therefore amounted to an interference with his right to respect for his family life. Accordingly, the European Court of Human Rights held unanimously that there had been a violation of Article 8 of the Convention.

Adam v. Germany (no. 44036/02) (Importance 3) – 4 December 2008 - Two violations of Article 6 § 1 (fairness) – Length of child access proceedings

The case concerned, in particular, the applicants' complaint about the excessive length of two sets of child access proceedings. Given what had been at stake for Henri Adam, notably further contact with his young son, the Court considered that the proceedings requesting access to his son, which had lasted four years and three months for two levels of jurisdiction, had not been decided with the special diligence required in such cases. It therefore held unanimously that there had been a violation of Article 6 § 1. Given also what had been at stake for Eberhard and Hiltrud Adam, notably access to their young grandson who had lived with them for the first three years of his life and given their embittered relationship with the child's mother, the Court considered that the second set of proceedings requesting access to their grandson, which had lasted almost six years and nine months for two levels of jurisdiction, had not been decided either with the special diligence required. It therefore held unanimously that there had been a further violation of Article 6 § 1.

Kaleta v. Poland (no. 11375/02) (Importance 2) – 16 December 2008 - No violation of Article 8 – Enforcement of the applicant's visiting rights with his daughter

The applicant has a daughter, M., born in 1989 of whom his ex-wife was awarded parental rights by the Polish courts. In June 1995, he was granted visiting rights. The case concerned Mr Kaleta's allegation that the Polish authorities have failed to enforce his right of contact with his daughter. The Court noted in particular that the domestic authorities' enforcement of the applicant's visiting rights had been made particularly difficult by the conflict between himself and his ex-wife. His ex-wife had been fined in 2005 for failing to appear at meetings; the applicant himself had also failed to undertake effective steps to improve contact with his daughter between October 1995 and November 1996. As time went by, his daughter had matured and made her own decisions concerning her father and in January 2005, at that time sixteen, she had stated that she no longer wished to have any contact with him. In those circumstances, the Court held unanimously that there had been no violation of Article 8.

Saviny v. Ukraine (no. 39948/06) (Importance 2) – 18 December 2008 – Violation of Article 8 - Decision to place the three children of the applicant in public care on account of the applicants' lack of financial means and personal qualities (namely their blindness)

The applicants have both been blind since childhood. Their case concerned in particular their complaint about a decision of December 2004 to place their three children, born in 1991, 1998 and 2001, in public care. The domestic authorities based their decision on a finding that the applicants' lack of financial means and personal qualities endangered their children's life, health and moral upbringing. Notably they were unable to provide them with proper nutrition, clothing, hygiene and health care or to ensure that they adapt in a social and educational context.

The Court doubted the adequacy of the evidence on which the authorities had based their finding that the children's living conditions had in fact been dangerous to their life and health. The judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the extent to which the applicants' irremediable incapacity to provide requisite care had been responsible for the inadequacies of their children's upbringing. Indeed, as regards parental irresponsibility, no independent evidence (such as an assessment by a psychologist) had been sought to evaluate the applicants' emotional or mental maturity or motivation in resolving their household difficulties. Nor had the courts examined the applicants' attempts to improve their situation. Furthermore, the Court noted that at no stage of the proceedings had the children been heard by the judges. Moreover, not only had the children been separated from their family of origin, they had also been placed in different institutions. The Court therefore concluded unanimously that there had been a violation of Article 8.

- **Freedom of religion**

Dogru v. France (no. 27058/05) (Importance 1) and Kervanci v. France (no. 31645/04) (Importance 2) - 4 December 2008- Non violation of Article 9- Physical education and religious symbols- Secularism- State education- Proportionality

You are invited to read §§ 61-78 of the judgments for a presentation of the principles applied and the Court's relevant case law

The two cases concerned the applicants' exclusion from school as a result of their refusal to remove their headscarves during physical education and sports classes. The Court observed that the purpose of the restriction on the applicants' right to manifest their religious convictions was to adhere to the requirements of secularism in state schools.

On the basis of the decisions by the *Conseil d'Etat* and the ministerial circulars issued on this question, the Court noted that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have. In that connection the Court referred to earlier judgments in which it had held that the national authorities were obliged to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion. In the Court's view, that concern did indeed appear to have been answered by the French secular model.

In the applicants' cases the Court considered that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was merely the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

The Court also noted that the disciplinary proceedings against the applicants fully satisfied the duty to undertake a balancing exercise of the various interests at stake and were accompanied by safeguards that were apt to protect the pupils' interests. As to the choice of the most severe penalty, the Court reiterated that, where the ways and means of ensuring respect for internal rules were concerned, it was not the Court's role to substitute its own vision for that of the disciplinary authorities which, being in direct and continuous contact with the educational community, were best placed to evaluate local needs and conditions or the requirements of a particular training. The Court therefore considered that the penalty of expulsion did not appear disproportionate, and noted that the applicants had been able to continue their schooling by correspondence classes. It was clear that the applicants' religious convictions were fully taken into account in relation to the requirements of protecting the rights and freedoms of others and public order. It was also clear that the decision complained of was based on those requirements and not on any objections to the applicants' religious beliefs. Accordingly, the Court concluded that the interference in question had been justified as a matter of principle and had been proportionate to the aim pursued. There had therefore been no violation of Article 9.

- **Judgments regarding freedom of expression**

-Defamation

Kazakov v. Russia (no. 1758/02) (Importance 2) - 18 December 2008- Violation of Article 10 – Freedom of expression and proper functioning of the army – Complaints against state officials – Lack of proportionality

The applicant, himself a former military officer, wrote to the supervising commander, complaining that the conduct of the unit commander had not been even-handed and had at times been unlawful. Relying in particular on Article 10, he complained that he was found liable for defamation following his letter of complaint about a military unit commander, ordered to pay damages and make a written apology.

In light of its case-law, the Court noted that noted that while Article 10 applied to military personnel just as it did to other persons, the proper functioning of an army was hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings. Notwithstanding that, it was not open to the national authorities to rely on such rules for the purpose of frustrating the expression of opinions, even if these were directed against the army as an institution (see *Grigoriades v. Greece* of 25 November 1997). However, it appeared that the applicant, being a former officer, was no longer bound by the rules of subordination. Thus, the applicant should be considered as a private individual raising a complaint against a public servant. In that connection, the Court recalled that it had observed in several cases that it may be necessary to protect public servants from offensive, abusive and defamatory attacks which were calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold. However, the Court reiterated that, as the applicant set out his grievances in correspondence submitted in his private capacity, the requirements of protection under Article 10 of the Convention have to be weighed not in relation to the interests of the freedom of the press or of open discussion of matters of public concern but rather against the applicant's right to report irregularities in the conduct of an official to a body competent to deal with such complaints. That citizens should be able to notify competent State officials about the conduct of civil servants which to them appeared irregular or unlawful is one of the precepts of the rule of law.

The Court considered that, in the circumstances of the present case, the fact that the applicant addressed his complaint by way of correspondence to the State official competent to examine the matter, was of crucial importance to its assessment of the proportionality of the interference. Given the text of the applicant's letter as a whole, a complaint which had not been vexatious or written in bad faith, and the context in which it had been written, a private individual reporting irregularities to a body competent to deal with such complaints, the Court found that the defamation proceedings against the applicant, in particular ordering him to issue an apology, had been excessive and disproportionate.

Mahmudov and Agazade v. Azerbaijan (no. 35877/04) (Importance 2) – 18 December 2008 – Violation of Article 10- Article of general interest- Lack of sufficient factual basis –Prison sentence- Chilling effect

Concerning the applicants' conviction for defamation of a politician and well-known expert on agriculture, the Court noted that the article discussed a number of issues concerning the current problems in the agricultural sector. As such, the subject matter of the article constituted a matter of general interest.

Nonetheless, the Court considered that the applicants had asserted without a sufficient factual basis that J.A. had exercised control over thousands of hectares of state-owned agricultural land, and had therefore failed to act in good faith and in accordance with the ethics of journalism. It therefore found that, in the circumstances of the applicants' case, the domestic authorities had been entitled to consider it necessary to restrict the exercise of the applicants' right to freedom of expression and that, accordingly, the applicants' conviction for insult and defamation met a "pressing social need".

However, the Court considered that there had been no justification for the imposition of a prison sentence. Such a sanction, by its very nature, had a chilling effect on the exercise of journalistic freedom. The fact that the applicants had not served their prison sentence did not alter that conclusion, as they had been exempted from serving their sentence only owing to a fortunate coincidence of an amnesty act. It followed that, that sentence of imprisonment had contravened the principle that the press had to be able to perform the role of a public watchdog in a democratic society. In conclusion, the Court held that the criminal sanction imposed on the applicants had amounted to a disproportionate interference with their freedom of expression and, in breach of Article 10

Juppala v. Finland (no. 18620/03) (Importance 1) – 2 December 2008 – Violation of Article 10- Protection of reputation- Suspicion of child abuse – Interference with freedom of expression without pressing social need

The Court held unanimously that there had been a violation of Article 10 concerning Ms Juppala's conviction for defamation of her son-in-law after she had taken her three-year-old grandson to a doctor and voiced a suspicion that he might have been hit by his father.

The Court considered that the essential question was how to strike a proper balance when a parent was wrongly suspected of having abused his or her child, while, given the difficulties in uncovering child abuse, protecting children at risk of significant harm. In particular, the Court found it alarming that the Court of Appeal had taken the view that, even though there was no doubt that she had seen her grandson's bruised back, the applicant had not been entitled to repeat what the boy had told her, that is, that he had been hit by his father, an allegation which he had indeed repeated when interviewed by the doctor. Moreover, voicing a suspicion of child abuse, formed in good faith, in the context of an appropriate reporting procedure should be available to any individual without fear of a criminal conviction or an obligation to pay compensation for harm suffered or costs incurred.

It had not been argued before the domestic courts or before the European Court that the applicant had acted recklessly, that is without caring whether her grandson's allegation of abuse had been well-founded or not. On the contrary, even a health care professional had made his own assessment and had rightly considered that the case should be reported to the child welfare authorities. The Court concluded that sufficient reasons for the interference with the applicant's right to freedom of expression had not been provided and that that interference had therefore failed to answer any "pressing social need". Accordingly, there had been a violation of Article 10.

-Freedom of expression and practice of medical profession

Frankowicz v. Poland (no. 53025/99) (Importance 1) -16 December 2008- Violation of Article 10- Disciplinary proceedings- Ban of any critical expression in the medical profession – Lack of proportionality

The applicant is a gynaecologist and was President of the Association for the Protection of the Rights of Patients in Poland. The case concerned disciplinary proceedings brought against the applicant for a report he had prepared on the treatment of a patient in which he was critical of another doctor. He was sanctioned by the Medical Court and given a reprimand. The disciplinary authorities considered the applicant guilty of unethical conduct in breach of the principle of professional solidarity, in violation of the Code of Medical Ethics. The applicant relied on Article 6 § 1 (right to a fair hearing) and Article 10 (freedom of expression).

The Court had previously noted, in the context of lawyers, members of the Bar, that the special nature of the profession practised by an applicant must be considered in assessing whether the restriction on the applicant's right answered any pressing need (see *Steur v. the Netherlands*, no. 39657/98, § 38, ECHR 2003-XI). Medical practitioners also enjoy a special relationship with patients based on trust, confidentiality and confidence that the former will use all available knowledge and means for ensuring the well-being of the latter. That can imply a need to preserve solidarity among members of the profession. On the other hand, the Court considered that a patient has a right to consult another doctor in order to obtain a second opinion about the treatment he has received and to expect a fair and objective evaluation of his doctor's actions.

The fact that the opinion in question was issued within the framework of the applicant's commercial activity, and was critical of another doctor, does not automatically deprive it of genuineness or objectivity. The Court observed that the domestic authorities, in finding that the applicant had discredited another doctor, did not make any serious assessment of the truthfulness of the statements included in the opinion (see *Veraart v. the Netherlands*, 30 November 2006). The Regional Medical Court found that, since no criticism of another doctor was permissible, the question of whether the applicant's report actually reflected reality had been without importance.

Such a strict interpretation by the disciplinary courts of the domestic law as to ban any critical expression in the medical profession is not consonant with the right to freedom of expression. This approach to the matter of expressing a critical opinion of a colleague, even in the context of the medical profession, risks discouraging medical practitioners from providing their patients with an objective view of their state of health and treatment received, which in turn could jeopardise the ultimate goal of the doctor's profession - that is to protect the health and life of patients.

The Court further considered that the applicant's opinion was not a gratuitous personal attack on another doctor, but a critical assessment, from a medical point of view, of treatment received by his patient from another doctor. Thus, it concerned issues of public interest. In conclusion the interference complained of was not proportionate to the legitimate aim pursued and, accordingly, was not “necessary in a democratic society” “for the protection of the rights of others”. Therefore, it found a violation of Article 10.

Further, the Court considered that the applicant’s doubts about the independence and impartiality of the members of the Medical Courts had not been sufficiently substantiated and accordingly held that there had been no violation of Article 6 § 1.

-Press freedom

Gemici v. Turkey (no. 25471/02) (Importance 3) - 2 December 2008- Violation of Article 10 - Conviction for possession of prohibited magazine- Interference not “prescribed by law”

The applicant, at the relevant time, was the chairman of the local branch of the Labour Party (“EMEP”). On 16 November 1999 the police searched the branch’s premises and seized copies of a party magazine whose distribution and sale had been banned by an order issued on the same date. The applicant claimed that he had not been informed of the ban on the magazines in question. The prosecutor brought proceedings against the applicant for failure to comply with the ban. The İzmir District Court ordered the applicant to pay a fine of about 184 United States dollars, without holding a hearing. The criminal court dismissed the objection lodged by the applicant against his conviction, also without holding a hearing

Relying in particular on Article 6 § 1 and Article 10, the applicant alleged that his criminal conviction had infringed his right to freedom of expression and complained that the criminal courts had not held an audience.

The Court considered that the applicant’s conviction for possession of the prohibited magazines represented an interference with his right to freedom to communicate information and ideas, which was protected by Article 10. The Court emphasised that the refusal to comply with a judicial decision could only be considered reprehensible if the latter was brought to the knowledge of the individual

concerned. It noted that there was nothing to indicate that the applicant had been informed of the decision to ban the magazine, and that the order had been issued on the same day as the police search. It considered that the applicant could not have foreseen, "to a degree that was reasonable", that possession of the magazines in question could lead to criminal sanctions being imposed on him. It concluded that there had also been a violation of Article 10 as the "interference was not prescribed by law".

Noting that the applicant had never had an opportunity to appear in person before the judges who were called on to rule on his case, the Court held unanimously that there had been a violation of Article 6 § 1 on account of the failure to hold a hearing during the criminal proceedings against him.

Demirel and Ateş v. Turkey (No. 3) (no. 11976/03) (Importance 3) - 9 December 2008- Closure of newspaper and conviction for publishing statements- Lack of proportionality

The applicants are the owner and editor of a weekly newspaper, Yedinci Gündem.

Relying on Article 10 and Article 1 of Protocol No. 1 (protection of property), the applicants complained about their conviction in June 2002 for publishing statements by Öcalan and the ensuing closure of their newspaper for seven days. Further relying on Article 6 § 1 (right to a fair trial), they also complained that they were not notified of the principal public prosecutor's written opinion on their case on appeal.

The Court stated: "*The Court observes that it has examined a number of cases, two of which were brought by the same applicants, raising similar issues to those in the present case and found a violation of Article 10 of the Convention (see, in particular, Sürek and Özdemir v. Turkey [GC], nos. 23927/94 and 24277/94, 8 July 1999; Özgür Gündem v. Turkey, no. 23144/93, §§ 63-64, ECHR 2000-III; Korkmaz v. Turkey (no. 1), no. 40987/98, 20 December 2005; Korkmaz v. Turkey (no. 3), no. 42590/98, 20 December 2005; Halis Doğan v. Turkey (no. 2), no. 71984/01, 25 July 2006; Karakoyun and Turan v. Turkey, no. 18482/03, 11 December 2007; Demirel and Ateş v. Turkey, nos. 10037/03 and 14813/03, 12 April 2007; and Demirel and Ateş v. Turkey (no. 2), cited above). The Court has examined the present case in the light of its case-law and considers that the Government have not submitted any facts or arguments capable of leading to different conclusions in this instance for the following reasons*" (§24).

It held unanimously that there had been a violation of Article 10 concerning the infringement of the applicants' right to freedom of expression, and a further violation of Article 6 § 1 on account of the non-communication of the written opinion of the principal public prosecutor at the Court of Cassation. It further held unanimously that it was not necessary to examine separately the applicants' complaint under Article 1 of Protocol No. 1

-TV broadcasting of political advertising

TV Vest AS & Rogaland Pensjonistparti v. Norway (no. 21132/05) – 11 December 2008- Violation of Article 10- Prohibition of political advertising – Wide margin of appreciation- Public debate – Lack of proportionality

The applicants complained that the fine imposed by the Media Authority on 10 September 2003, upheld by the Supreme Court in the final resort on 12 November 2004 for breaching the prohibition on political advertising constituted a violation of Article 10 of the Convention.

The Governments of the Republic of Ireland and the United Kingdom were granted leave to intervene as third parties in the written procedure. The Irish Government supplied information relating to the Irish legislative framework, notably about the application of section 10(3) of the Radio and Television Act 1988 which read: "No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute". The UK Government submitted a copy of a judgment handed down by the House of Lords on 12 March 2008 ([2008] UKHL 15) dismissing an appeal by Animal Defenders International, finding that the prohibition on the broadcasting of political advertising in the UK under the Communications Act 2003 was consistent with Article 10 of the Convention.

The Court recalled "*that, according to the Strasbourg Court's case-law, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest. […] Moreover, it is recalled that the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference. The Court has acknowledged that account must be taken of the fact that the audio-visual media have a more immediate and powerful effect than the print media (Jersild v. Denmark, judgment of 23 September*

1994, Series A no. 298, § 31; Murphy, cited above, § 69). It should also be reiterated that in the above mentioned Bowman judgment, concerning certain electoral law limitations on pre-election expenditure, the Court held (see paragraph 41) that in such a context it was necessary to consider the right to freedom of expression under Article 10 in the light of the right to free elections protected by Article 3 of Protocol No. 1 to the Convention" (§§ 59-61).

The Court observed that TV Vest had been fined in breach of the prohibition on television broadcasting of political advertising laid down in the Broadcasting Act. That prohibition was permanent and absolute and applied only to television, political advertising in other media being permitted. The Court noted the absence of European consensus in this area; every country had its history and traditions which gave rise to different views on the necessity of such a ban and whether it was "necessary" for the proper functioning of the "democratic" system in the respective States. The Court accepted that that lack of consensus spoke in favour of granting States greater discretion than would normally be allowed in decisions with regard to restrictions on political debate. The rationale for the statutory prohibition on television broadcasting of political advertising had been, as stated by the Supreme Court, the assumption that allowing the use of such a powerful and pervasive form and medium of expression had been likely to reduce the quality of political debate generally. Complex issues could easily be distorted and financially powerful groups would get greater opportunities for marketing their opinions.

The Court noted, however, that the Pensioners Party did not come under the category of parties or groups that had been the primary targets of the prohibition. The Pensioners Party in fact belonged to a category which the ban in principle had intended to protect. Furthermore, in contrast to the major political parties, which had been given wide edited television coverage, the Pensioners Party had hardly been mentioned. Therefore, paid advertising on television had been the sole means for the Pensioners Party to get its message across to the public through that type of medium. Having been denied this possibility under the law, the Pensioners Party had moreover been put at a disadvantage in comparison to the major parties.

Finally, the Court considered that the specific advertising at issue, namely a short description of the Pensioners Party and a call to vote, had not contained elements such as to lower the quality of political debate or offend various sensitivities. In those circumstances, the Court concluded that the fact that television had a more immediate and powerful effect than other media, could not justify the prohibition and fine imposed on TV Vest.

In the Court's view, there had not therefore been a reasonable relationship of proportionality between the legitimate aim pursued by the prohibition and the means deployed to achieve that aim. The restriction which the prohibition and the imposition of the fine had entailed on the applicants' exercise of their freedom of expression could not therefore be regarded as having been necessary in a democratic society, in violation of Article 10.

- Reception of TV programmes from native country

Khurshid Mustafa and Tarzibachi v. Sweden (no. 23883/06) (Importance 2) – 16 December 2008 – Violation of Article 10

The applicants are Swedish nationals of Iraqi origin, who live in Västerås (Sweden).

Relying on Article 10 (freedom to receive information) and Article 8 (right to respect for private and family life), the applicants complained that they and their three children were forced to move from their rented flat in Rinkeby (a suburb of Stockholm) in June 2006 because they refused to remove a satellite dish.

The Court observed that the satellite dish enabled the applicants to receive television programmes in Arabic and Farsi from their country of origin (Iraq). That information included political and social news and was of particular interest to them as an immigrant family who wished to maintain contact with the culture and language of their country of origin. There had not been any other means at the relevant time for the applicants to have access to such programmes and the dish could not be placed anywhere else. Nor could news obtained from foreign newspapers and radio programmes in any way be equated with information available via television broadcasts. Furthermore, the landlord's concerns about safety had been examined by the domestic courts who had found that the installation had been safe. Moreover, the fact that the applicants had effectively been evicted from their home with their three children had been disproportionate to the aim pursued, namely the landlord's interest of upholding order and good custom. The Court therefore concluded that the interference with the applicants' right to freedom of information had not been "necessary in a democratic society" and held

unanimously that there had been a violation of Article 10. It further held unanimously that there was no need to examine the complaint under Article 8.

- **Freedom of association**

Aliyev and Others v. Azerbaijan (no. 28736/05)- 18 December 2008- Violation of Article 11- Registration of association- Delay - Quality of the law- Interference "not prescribed by law"

The applicants are ten Azerbaijani nationals. In May 2003 they founded "Azerbaijani Lawyers Forum", a non-profit organisation. Relying in particular on Article 11 (freedom of assembly and association), the applicants complained about the significant delay in the state registering their association, with the result that their organisation could not acquire legal status.

The Court concluded that, by failing to take any action in response to the applicants' registration request for almost eight months, the Ministry breached the ten-day procedural time-limit set by the Old State Registration Act. There was no basis in the domestic law justifying such an unreasonable delay in the registration proceedings. Moreover, in the circumstances of the present case, the Ministry's alleged heavy workload cannot be considered a good excuse for such a long delay, as there is no evidence as to whether, during the relevant period, any remedial measures had been taken by the State in order to allow the Ministry's practices to be brought into compliance with the time-limits imposed by the State's own law.

Furthermore, as to the quality of the Old State Registration Act, the Court reiterated its finding (*Ramazanova v. Azerbaijan* of 1 February 2007) that it did not establish with sufficient precision the consequences of the Ministry's failure to take action within the statutory time-limits. In particular, the law did not provide for an automatic registration of a legal entity or any other legal consequences in the event the Ministry failed to take any action in a timely manner, thus effectively defeating the very object of the procedural deadlines. Without such safeguards, the Ministry was able arbitrarily to prolong the whole registration procedure for an indefinite period of time. Accordingly, the law did not afford the applicants sufficient legal protection against the arbitrary actions of the Ministry of Justice. Having found that the Ministry of Justice breached the statutory time-limit for issuing the formal response to the applicants' state registration request and that the domestic law applicable at the relevant time did not afford sufficient protection against this type of delay, the Court concluded that the interference was not "prescribed by law" within the meaning of Article 11 § 2 of the Convention. Having reached that conclusion, the Court did not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

- **Cases concerning Chechnya**

Akhmadova and Others v. Russia (no. 3026/03) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - (Applicants) Violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Article 2 - Violation of Article 38 § 1 (a)

Askharova v. Russia (no. 13566/02) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - (Applicants) Violation of Article 3 (treatment) - (Applicants' relatives) No violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Article 2 - No violation of Article 13 in conjunction with Article 3 - Violation of Article 38 § 1 (a)

Bersunkayeva v. Russia (no. 27233/03) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - (Applicants) Violation of Article 3 (treatment) - (Applicants' relatives) No violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Article 2 - No violation of Article 13 in conjunction with Article 3 - Violation of Article 38 § 1 (a)

Ilyasova and Others v. Russia (no. 1895/04) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - (Applicants) Violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Articles 2 and 3

Musikhanova and Others v. Russia (no. 27243/03) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - (First three applicants) Violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Article 2 - No violation of Article 13 in conjunction with Article 3 - Violation of Article 38 § 1 (a)

Tagirova and Others v. Russia (no. 20580/04) (Importance 3) – 4 December 2008 - No violation of Article 2 (life) - Violation of Article 2 (investigation)

Gandaloyeva v. Russia (no. 14800/04) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - Violation of Article 13 in conjunction with Article 2

Umayeva v. Russia (no. 1200/03) (Importance 3) – 4 December 2008 - Violation of Article 2 (life and investigation) - Violation of Article 13 in conjunction with Article 2

Trapeznikova v. Russia (no. 21539/02) (Importance 2) – 11 December 2008 - Violation of Article 2 (investigation) - Violation of Article 6 § 1 (fairness) - Violation of Article 1 of Protocol No. 1

Nasukhanova and Others v. Russia (no. 5285/04) (Importance 3) – 18 December 2008 - Violations of Article 2 (life and investigation) - (Applicants) Violation of Article 3 (treatment) - Violation of Article 5 - Violation of Article 13 in conjunction with Article 2

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 2 December 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 4 December 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 9 December 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 11 December 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 16 December 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 18 December 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
Austria	18 Dec. 2008	Richter (no. 4490/06) Imp. 3	Violations of Article 6 § 1 (length and fairness)	Excessive length (five years and almost six months) of the proceedings and lack of a hearing before the Administrative Court concerning the applicant's complaint that the ramp of an underground car park failed to comply with the statutory distance from his property.	Link
Austria	18 Dec. 2008	Saccoccia (no. 69917/01) Imp. 2	No violation of Article 6 § 1 No violation of Article 1 of Protocol No. 1	Concerning the execution by Austrian courts of a final forfeiture order issued by a United States court in respect of the applicant's Austrian assets, there was no need for an oral hearing, and there was no disproportionate interference with the applicant's property rights	Link
Azerbaijan	11 Dec. 2008	Efendiyeva (no. 31556/03) Imp. 3	Just satisfaction	Just satisfaction following violations of Art. 6 § 1 and Art. 1 of Prot. No. 1 (concerning the applicant's complaint about the non-enforcement of a final judgment which ordered the applicant to be reinstated to her former post as Head of the Republican Maternity Hospital	Link

				and to be paid compensation)	
Bulgaria	11 Dec. 2008	Manolov and Racheva-Manolova (no 54252/00) Imp. 2	Violation of Article 1 of Protocol No. 1	Unlawful deprivation of property following the Restitution of Stores, Workshops and Storage Houses Act 1991	Link
Bulgaria	11 Dec. 2008	Velted-98 AD (no. 15239/02) Imp. 2	Violation of Article 6 § 1 (fairness)	Inadequate reasoning in a judgment delivered by the Supreme Administrative Court in connection with the privatisation of a public company	Link
Cyprus	4 Dec. 2008	Marangos (no. 12846/05) Imp. 3	No violation of Article 6 § 1	Concerning the alleged denied legal aid in administrative proceedings, the Court concluded that the applicant had been given a reasonable opportunity to present his case and had not been deprived of his right of access to a court	Link
the Czech Republic	4 Dec. 2008	Husák (no. 19970/04) Imp. 3	Violation of Article 5 § 4	The domestic authorities have not provided the applicant with an adequate opportunity to participate in proceedings which were decisive for the continuation of his detention	Link
Denmark	11 Dec. 2008	Hasslund (no. 36244/06) Moesgaard Petersen (no. 32848/06) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length of criminal proceedings against the applicants for aggravated debtor fraud, which had lasted ten years and nine months in the case of Hasslund and almost ten years in the case of Moesgaard Petersen	Link 1 Link 2
Finland	9 Dec. 2008	Eloranta (no. 4799/03) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length (eight years) of criminal proceedings for fraud	Link
France	18 Dec. 2008	Unédic (no. 20153/04) Imp. 2	No violation of Article 6 § 1	Concerning the change in the position of the Cour de cassation with retroactive effect, the Court considered that the requirements of legal certainty and preservation of litigants' legitimate expectations did not give rise to an acquired right to settled case-law	Link
France	18 Dec. 2008	Vaillant (no. 30609/04) Imp. 2	No violation of Article 6 § 1	Since the remittal of the case by the Conseil d'Etat had related solely to a procedural issue, the Court considered that the applicant's doubts as to the impartiality of the judges called upon to rehear his case could not be said to have been objectively justified.	Link
Greece	4 Dec. 2008	Chrysoula Aggelopoulou (no. 30293/05) Imp. 3	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length of proceedings for defamation	Link
Greece	18 Dec. 2008	Nerattini (no. 43529/07) Imp. 2	Violation of Article 6 § 2 Violation of Article 5	The applicant was found guilty of misappropriation of antiquities, an offense he was	Link

			§ 3	not even formally accused of. The pre-trial detention was not based on relevant and sufficient reasons	
Greece	4 Dec. 2008	Reveliotis (no. 48775/06) Imp. 3	Violation of Article 1 of Protocol No. 1	The setting of the date from which the applicant could obtain payment of his old-age pension entitlement had been based solely on the time that the authorities and administrative courts had taken to reach their decisions.	Link
Greece	11 Dec. 2008	Theodoraki and Others (no. 9368/06)	Violation of Article 6 § 1 (length) Violation of Article 13 Violation of Article 1 of Protocol No. 1	Excessive length (over five years and six months) of proceedings before the Supreme Administrative Court No remedy available to the applicants in order to obtain compensation for the freeze on construction work on their properties Progressive freeze on construction work on their properties with no compensation	Link
Moldova	16 Dec. 2008	Năvoloacă (no. 25236/02) Imp. 3	Violation of Article 6 § 1 (fairness)	The Supreme Court of Justice convicted and sentenced the applicant to 20 years' imprisonment without a re-hearing of the case	Link
Moldova	9 Dec. 2008	Unistar Ventures GmbH (no. 19245/03) Imp. 2	Violation of Article 1 of Protocol No. 1	Non-enforcement of a domestic judgment which declared a contract null and void and ordered the restitution of the applicant company's investment	Link
Poland	2 Dec. 2008	Gulczyński (no. 33176/06) Imp. 3	Violation of Article 5 § 3	Excessive length of the applicants' detention on remand (three years and more than eight months)	Link
Poland	2 Dec. 2008	Janicki (no. 35831/06) Imp. 3	Violation of Article 5 § 3	Excessive length of the applicants' detention on remand (four years and more than four months)	Link
Poland	2 Dec. 2008	Marecki (no. 20834/02) Imp. 3	Violation of Article 5 § 3	Excessive length of the applicants' detention on remand (four years and six months)	Link
Poland	16 Dec. 2008	Pawlak (no. 46887/06) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length of proceedings (approx. ten years and four months) for extortion involving the use of violence and threatened use of a firearm	Link
Poland	9 Dec. 2008	Wojciechowski (no. 5422/04) Imp. 3	Violation of Article 5 § 3 Violation of Article 6 § 2	Excessive length (three years and two months) of the applicant's detention until his conviction Violation of presumption of innocence (before the opening of his trial, a court stated that he had committed the offences he had been charged with)	Link
Romania	2 Dec. 2008	SC Ruxandra Trading SRL (no.	Just satisfaction	Application of Art. 41 (just satisfaction) following a violation of Art. 6 § 1 and of Art. 1 of Prot.	Link

		28333/02) Imp. 3		No. 1 on account of the authorities' failure to execute a domestic final judgment	
Romania	16 Dec. 2008	Sergiu Popescu (no. 4234/04) Imp. 3	Violation of Article 6 § 1 (fairness)	Failure to comply with the principle of legal certainty following the quashing of a final judgment on an application by the Procurator General	Link
Russia	4 Dec. 2008	Bakhitov (no. 4026/03) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length, almost seven years (of which four years and one month are considered by the Court in light of its *ratione temporis* competence) of the criminal proceedings	Link
Russia	4 Dec. 2008	Belashev (nº 28617/03) Imp. 2	Violation of Article 3 (treatment) Two violations of Article 6 § 1 (length and fairness)	Overcrowding in Russian detention facilities Excessive length (approximately four years and ten months) of criminal proceedings Lack of a public hearing	Link
Russia	18 Dec. 2008	Brovchenko (no. 1603/02)	Violation of Article 5 §§ 1 and 3, of Article 6 § 1 (length) and of Article 13	Unlawfulness and excessive length of pre-trial detention Excessive length (eight years and 18 days) of criminal proceedings on suspicion of drug dealing Lack of effective remedy regarding length of proceedings	Link
Russia	11 Dec. 2008	Kolovangina (no. 76593/01) Imp. 2	No violation of Article 6 § 1 (fairness)	Domestic courts' refusal to allow the applicant's husband, to whom she had given power of attorney, to lodge a claim on her behalf	Link
Russia	9 Dec. 2008	Matyush (no. 14850/03) Imp. 2	Violation of Article 3 (treatment) Violation of Article 5 §§ 1, 3 and 4	Conditions of detention in Omsk detention facility no. IZ-55/1 Lawfulness of the detention Excessive length (four years, one month and 14 days) of detention Failure to decide "speedily" on the lawfulness of the detention	Link
Russia	11 Dec. 2008	Mirilashvili (no. 6293/04) Imp. 2	Violation of Article 6 § 1 (fairness)	Unfair proceedings (the defence had been put at a serious disadvantage vis-à-vis the prosecution in respect of the examination of a very important part of the case file	Link
Russia	4 Dec. 2008	Trofimov (no. 1111/02) Imp. 2	Violation of Article 6 §§ 1 and 3 (d)	The authorities' failure to summon a major witness had restricted the rights of the defence	Link
Serbia	16 Dec. 2008	Vlahović (no. 42619/04) Imp. 3	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Failure of the Serbian authorities to take all necessary measures to enforce a judgment with regard to salary arrears	Link
Turkey	2 Dec. 2008	Adırbelli and others (no. 20775/03) Imp. 3	Violation of Article 5 §§ 1, 4 and 5	Unlawfulness of the applicants' arrest and unlawfulness of detention in police custody	Link

Turkey	16 Dec. 2008	Davut Mıçooğulları (no. 6045/03) Imp. 3	Revision	Revision of a a judgment of the ECtHR of 24 May 2007 on the ground that on 5 December 2006 part of the applicant's property had been registered in his name in the land register	Link
Turkey	16 Dec. 2008	Dedeman (no. 12248/03) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length of criminal proceedings (3 years) for defamation	Link
Turkey	2 Dec. 2008	Kadiroğlu (no. 33634/04) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length (eight years and seven months) of criminal proceedings	Link
Turkey	2 Dec. 2008	Keş (no. 17174/03) Imp. 3	Violation of Article 6 § 1 (fairness) No violation of Article 6 §§ 1 and 3 (d)	Failure to communicate the written opinion of the Principal Public Prosecutor at the Court of Cassation	Link
Turkey	9 Dec. 2008	Menemen Minibüsçüler Odası (no. 44088/04) Imp. 3	Violation of Article 6 § 1 (fairness)	The applicant company had been unable to intervene in proceedings concerning an operating licence awarded to it	Link
Turkey	9 Dec. 2008	Pehlivan (no. 4233/03) Imp. 3	Violation of Article 5 § 3 Violation of Article 6 § 1 (length)	Excessive length (approximately six years) of detention on remand Excessive length (approximately eight years) of criminal proceedings	Link
Turkey	16 Dec. 2008	Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu (no. 1480/03) Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı (no. 36165/02) Imp. 3	Violation of Article 1 of Protocol No. 1	The applicants, which are foundations under Turkish law, complained about decisions in which the Turkish courts had set aside their title to property they had acquired as a gift – respectively 47 years and 40 years previously – on the ground that their status did not entitle them to acquire immovable property.	Link 1 Link 2
Turkey	9 Dec. 2008	Tanay (no. 18753/04) Imp. 2	Violation of Article 6 § 1 (fairness)	The applicant's claim requesting increased compensation in an expropriation decision was declared time-barred due to a mistake made by the Court of Cassation.	Link
Ukraine	18 Dec. 2008	Aybabin (no. 23194/02) Imp. 3	Violation of Article 6 § 1 (length)	Excessive length (four years and three months) of proceedings for murder	Link
Ukraine	11 Dec. 2008	Farafonova (no. 28780/02) Imp. 3	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length (more than six years and seven months) of criminal proceedings brought against the applicant for hooliganism Lack of an effective remedy	Link
Ukraine	18 Dec. 2008	Lutsenko (no. 30663/04) Imp. 2	Violation of Article 6 § 1 (fairness)	The applicant complained that he was convicted of murder and unlawful possession of firearms	Link

				on the basis of statements made by his co-accused during the pre-trial investigation, which were then retracted as they had allegedly been made under duress.	
Ukraine	18 Dec. 2008	Novik (no. 48068/06) Imp. 3	Violation of Article 5 § 1	Ukrainian legislation had not provided a procedure that had been sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending extradition	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**
Bosnia-Herzegovina	9 Dec. 2008	Kudić (no. 28971/05) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Italy	9 Dec. 2008	Cignoli and Others (no. 68309/01) Link	Violation of Article 1 of Protocol No. 1	Inadequacy of the expropriation compensation awarded to the applicants
Moldova	9 Dec. 2008	Avram (no. 2886/05) Link	Violation of Article 6 § 1 (fairness)	Domestic authorities' failure to enforce final judgments in the applicants' favour
Moldova	9 Dec. 2008	Tudor-Auto S.R.L. (No. 1) ; Triplu-Tudor S.R.L. ; and Tudor-Auto S.R.L. (No. 2)(nos. 36344/03, 36341/03 and 30346/05) Link	Two violations of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1 Violation of Article 13	Domestic authorities' failure to enforce final judgments in the applicants' favour and subsequent quashing of the final judgment in the case of Tudor-Auto S.R.L..
Portugal	16 Dec. 2008	Sousa Carvalho Seabra (no. 25025/05) Link	Violation of Article 1 of Protocol No. 1	Delay in calculating and paying the compensation awarded to the applicant for expropriation
Romania	9 Dec. 2008	Cărpineanu and Others (no. 26356/02)	Violation of Article 1 of Protocol No. 1	Applicants' inability to obtain effective compensation for property belonging to them that had been illegally nationalised

		Link		
Romania	9 Dec. 2008	Ciocan and Others (no. 6580/03) Link	Violation of Article 6 § 1 (fairness)	Failure by the authorities to provide the applicants with adequate and sufficient assistance in their attempts to secure the enforcement of final judgments ordering a private company to reinstate them in their previous posts
Romania	2 Dec. 2008	Dobranici (no. 27448/02) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	State's failure to enforce final judgments in the applicants' favour
Romania	2 Dec. 2008	Giuglan and Others (no. 3834/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	State's failure to enforce final judgments in the applicants' favour
Romania	9 Dec. 2008	Lucreția Popa and Others (no. 13451/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	9 Dec. 2008	Moroianu (no. 16304/04) Link	Violation of Article 1 of Protocol No. 1	Action for recovery of property
Romania	9 Dec. 2008	Pintilie (no. 30680/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	9 Dec. 2008	Popescu and Dimeca (no. 17799/03) Link	Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	16 Dec. 2008	Postolache (no. 24171/02) Link	Violation of Article 1 of Protocol No. 1	Action for recovery of possession.
Romania	2 Dec. 2008	Predescu (no. 21447/03) Link	Violation of Article 1 of Protocol No. 1	Impossibility to make use of a flat even though the courts had recognised the unlawful nature of its nationalisation, on account of its sale by the State to third parties
Russia	11 Dec. 2008	Alekseyeva (no. 36153/03) Link	Two violations of Article 6 § 1 (fairness) Two violations of Article 1 of Protocol No. 1	Prolonged non-enforcement of judgments in the applicants' favour and quashing of a final judgment in favour of the applicant by way of supervisory review
Russia	4 Dec. 2008	Chistyakov (no. 41395/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Supervisory review of a judgment in the applicant favour
Russia	4 Dec. 2008	Gorbunov (no. 9593/06) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce a final judgment in the applicants' favour
Russia	18 Dec. 2008	Igor Kolyada (no. 19097/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.

Russia	18 Dec. 2008	Kotlyarov (no. 750/02) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Lyudmila Dubinskaya (no. 5271/05) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Magomedov (no. 20111/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Supervisory review of a judgment in the applicant favour
Russia	4 Dec. 2008	Mozhayeva (no. 26759/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce a final judgment in the applicants' favour
Russia	4 Dec. 2008	Roman Ponomarev (no. 31105/05) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Semochkin (no. 3885/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Siverin (no. 24664/02) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1 Violation of Article 13	Domestic authorities' failure to enforce a final judgment in the applicants' favour
Russia	18 Dec. 2008	Sladkov (no. 13979/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1 Violation of Article 13	Ibid.
Russia	4 Dec. 2008	Tishkevich (no. 2202/05) Link	No violation of Article 6 § 1	Supervisory review of a judgment in the applicant favour
Russia	11 Dec. 2008	Tkachev (no. 22551/06) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of a final judgment in favour of the applicant by way of supervisory review
Russia	4 Dec. 2008	Trufanova (no. 11756/06) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce a final judgment in the applicants' favour
Russia	18 Dec. 2008	Veselyashkin and Veselyashkina (no. 5555/06) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Voronin (no. 40543/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Russia	4 Dec. 2008	Yevdokiya Kuznetsova (no. 8355/07) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.

Russia	18 Dec. 2008	Ziabreva (no. 23567/06) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Turkey	2 Dec. 2008	Ardıçoğlu (no. 23249/04) Link	Violation of Article 1 of Protocol No. 1	Deprivation of the applicants' coastal property without compensation
Turkey	2 Dec. 2008	Aydoğan and Others (no. 41967/02) Link	(1st and 2nd applicants) Violation of Article 6 § 1 (fairness)	Lack of independence and impartiality of the State security court in criminal proceedings against the applicants
Turkey	16 Dec. 2008	Mehmet Kaplan (no. 29016/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Failure to enforce a final judicial decision awarding the applicant additional expropriation compensation
Turkey	16 Dec. 2008	Terzioğlu and Others (nos. 16858/05, 23953/05, 34841/05, 37166/05, 19638/06 and 17654/07) Link	Violation of Article 1 of Protocol No. 1	Deprivation of property without compensation
Ukraine	11 Dec. 2008	Antonyuk (no. 17022/02) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Prolonged non-enforcement of judgments in the applicants' favour
Ukraine	11 Dec. 2008	Gogin (no. 10398/04) Link	Violations of Article 6 § 1 (length and fairness)	Prolonged non-enforcement of judgments in the applicants' favour and excessive length of a set of civil proceedings concerning the applicant's complaint that the water supply to the house he rented was unsatisfactory
Ukraine	11 Dec. 2008	Kacherskaya and Frolova (no. 28020/03) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Prolonged non-enforcement of judgments in the applicants' favour
Ukraine	11 Dec. 2008	Kalashnykov (no. 22709/02) Link	Violation of Article 6 § 1 (fairness)	Ibid.
Ukraine	11 Dec. 2008	Paslen (no. 44327/05) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Ibid.
Ukraine	18 Dec. 2008	Samoylenko and Polonska (no. 6566/05) Link	Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Ukraine	11 Dec. 2008	Stankovskaya (no. 20984/04) Link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Prolonged non-enforcement of judgments in the applicants' favour
the United Kingdom	9 Dec. 2008	Shireby (no. 28071/02) Link	Violation of Article 14 in conjunction with Article 1 of Protocol No. 1	Applicant's complaint that, as a widower, he had been refused Widow's Payment

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
Cyprus	11 Dec. 2008	Mylonas (no. 14790/06)	Link
Greece	4 Dec. 2008	Examiliotis (No. 3) (no. 44132/06)	Link
Greece	11 Dec. 2008	Typopoiitria Thivas AE (no. 19521/06)	Link
Hungary	9 Dec. 2008	Áron Kiss (no. 15670/04)	Link
Hungary	9 Dec. 2008	Béla Szabó (no. 37470/06)	Link
Hungary	9 Dec. 2008	Lázló Németh (no. 30211/05)	Link
Hungary	9 Dec. 2008	Sefcsuk (no. 37501/06)	Link
Poland	16 Dec. 2008	Chmielecka (no. 19171/03)	Link
Poland	2 Dec. 2008	Jagiełło (No. 2) (no. 8934/05)	Link
Poland	9 Dec. 2008	Klewinowski (no. 43161/04)	Link
Poland	2 Dec. 2008	Krzewski (no. 11700/04)	Link
Poland	2 Dec. 2008	Kufel (no. 9959/06)	Link
Poland	16 Dec. 2008	Ludwiczak (no. 31748/06)	Link
Poland	2 Dec. 2008	Pióro and Łukasik (no. 8362/02)	Link
Poland	16 Dec. 2008	Poznańska (no. 822/05)	Link
Poland	2 Dec. 2008	Serafin and Others (no. 51123/07)	Link
Poland	2 Dec. 2008	Śliwa (no. 10265/06)	Link
Poland	16 Dec. 2008	Zakrzewska (no. 49927/06)	Link
Romania	2 Dec. 2008	Apahideanu (no. 19895/02)	Link
Romania	2 Dec. 2008	Petre Ionescu (no. 12534/02)	Link
Serbia	16 Dec. 2008	Stanković (no. 29907/05)	Link
Slovakia	16 Dec. 2008	Softel spol. s r.o. (No. 1) (no. 32427/06)	Link
Slovakia	16 Dec. 2008	Softel spol. s r.o. (No. 2) (no. 32836/06)	Link
"the former Yugoslav Republic of Macedonia"	18 Dec. 2008	Dimitrievski (no. 26602/02)	Link
Turkey	2 Dec. 2008	Aziz Aydın Arslan (no. 28353/02)	Link
Turkey	16 Dec. 2008	Dokdemir and Others (nos. 44031/04, 44045/04, 44050/04, 44053/04, 44105/04, 44108/04, 44111/04, 44112/04, 44123/04, 44131/04, 44133/04, 44194/04, 44197/04, 44199/04, 45260/04 and 45283/04)	Link
Turkey	2 Dec. 2008	Erdal Çalişkan (no. 36062/04)	Link
Turkey	9 Dec. 2008	Korkut (no. 10693/03)	Link
Turkey	16 Dec. 2008	Mehmet Ali Kaplan and Others v. Turkey (nos. 3224/05, 4884/05, 9504/05, 9545/05, 9568/05, 9600/05, 9658/05, 9695/05, 9720/05 and 13516/05)	Link

Turkey	9 Dec. 2008	Mustafa Açıkgöz (no. 34588/03)	Link
Turkey	9 Dec. 2008	Şevki Şahin (no. 7190/05)	Link
Ukraine	11 Dec. 2008	Chepyzhna (no. 22581/04)	Link
Ukraine	11 Dec. 2008	Loshenko (no. 11447/04)	Link
Ukraine	11 Dec. 2008	Lyutov (no. 32038/04)	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 17 November to 7 December 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 :***

BOUMEDIENE v. BOSNIA AND HERZEGOVINA (nos 38703/06, 40123/06, 43301/06, 43302/06, 2131/07 and 2141/07) - 18 November 2008 - Manifestly ill founded - Transfer from Bosnia-Herzegovina to Guantanamo Bay - Bosnia-Herzegovina has taken all possible steps to protect the basic rights of the applicants

We invite you to read §§ 1-51 for the detailed description of the facts of the case, concerning the transfer and detention of the applicants in the US Naval base at Guantanamo Bay (Cuba).

In paragraph 52-57, the relevant (UN, CoE, OAS, Bosnia and Herzegovina, US) law and practice are cited.

The applicants complained under Articles 1, 2, 3, 5, 6 and 9 of the Convention and Article 1 of Protocols Nos. 6 and 13 to the Convention of the non-enforcement of the decisions of 11 October 2002 and 4 April 2003 of the Human Rights Chamber of Bosnia Herzegovina in their favour.

In fact, on 11 October 2002 the Human Rights Chamber delivered its decision in the case of Mr Boumediene, Mr Boudelaa, Mr Nechla and Mr Lahmar. It found numerous violations of the European Convention on Human Rights and ordered Bosnia and Herzegovina, among other things:

(a) "to use diplomatic channels in order to protect the basic rights of the applicants" and, in particular, "to take all possible steps to establish contacts with the applicants and to provide them with consular support";

(b) "to take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including attempts to seek assurances from the US via diplomatic contacts that the applicants [would] not be subjected to the death penalty"; and

(c) "to retain lawyers authorised and admitted to practice in the relevant jurisdictions and before the relevant courts, tribunals or other authoritative bodies in order to take all necessary action to protect the applicants' rights while in US custody and in case of possible military, criminal or other proceedings involving the applicants.

On 4 April 2003 the Human Rights Chamber delivered its decisions concerning Mr. Ait Idir and Mr Bensayah. They were largely in line with the decision concerning Mr. Boumediene, Mr. Boudelaa, Mr. Nechla and Mr. Lahmar, with an additional order that all possible steps be taken to obtain the release of Mr. Ait Idir and his return to Bosnia and Herzegovina.

Before the Court, the Government maintained that the Court lacked jurisdiction to examine the present case in view of the fact that the applicants had been transferred to the custody of the United States before the entry into force of the Convention in respect of Bosnia and Herzegovina. The applicants maintained that the BH authorities had disregarded their duty, arising out of domestic decisions, to take all possible steps to protect their basic rights. In particular, they stressed that the BH authorities had not visited the detention centre at Guantánamo Bay until more than one year and nine months after the first domestic decision concerning this matter. The applicants criticised Bosnia and Herzegovina also for missing the opportunity to provide factual information to the competent Administrative Review Boards to support their release although it had been invited to do so by the US

authorities. Lastly, the applicants pointed to a domestic decision which criticised the domestic authorities for taking a "particularly passive attitude" towards this matter.

Interights and the International Commission of Jurists, in their third-party submissions of 9 November 2007, argued that the BH authorities had a duty to intervene *vis-à-vis* the US authorities on behalf of the applicants because of the applicants' unlawful transfer and the peremptory (*jus cogens*) nature of the prohibition of arbitrary detention. They referred, in particular, to paragraph 11 of the Human Rights Committee's General Comment no. 29 (see UN Doc. CCPR/C/21/Rev.1/Add.11 (2001)).

The Center for Constitutional Rights, in their third-party submissions of 14 November 2007, analysed successful diplomatic efforts for release and repatriation of Guantánamo Bay detainees and suggested that the combination of early intervention, sustained pressure, unequivocal public statements and intervention at different levels of government had been crucial.

"62. "In view of its conclusion below, the Court considers that it can leave open the question, raised by the Government, as to whether the Court has jurisdiction to deal with the present case notwithstanding the fact that the applicants were transferred to the custody of the United States before the entry into force of the Convention in respect of Bosnia and Herzegovina (see, as regards continuing obligations in respect of alleged violations based on facts pre-dating ratification and which continued within the jurisdiction of a respondent State after ratification, Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99, §§ 401-403, ECHR 2004-VII). Furthermore, the Court does not consider it necessary to examine whether the BH authorities would have had an obligation under the Convention to intervene vis-à-vis the United States authorities on behalf of the applicants even in the absence of domestic decisions ordering so, as suggested by Interights and the International Commission of Jurists (see, by analogy, Bertrand Russell Peace Foundation v. the United Kingdom, no. 7597/76, Commission decision of 2 May 1978, and Dobberstein v. Germany, no. 25045/94, Commission decision of 12 April 1996, according to which the Convention does not contain a right which requires a Contracting Party to espouse an applicant's complaints under international law or otherwise intervene vis-à-vis the authorities of another State on his or her behalf; see, by contrast, Ilaşcu and Others, cited above, §§ 310-352, where the applicants were found to be within the jurisdiction of Moldova with the result that positive obligations devolved on Moldova with respect to the plight of the applicants).

As to the Government's alternative argument, the Court notes that the BH authorities made repeated interventions vis-à-vis the US authorities (see, in particular, paragraphs 26, 42, 49 and 50 above), the first of which was made only one week after the first decision of the Human Rights Chamber concerning this matter. They thereby clearly demonstrated their unequivocal commitment to repatriating the applicants, a point that was endorsed by the applicants' representative (see paragraph 45 above).

Moreover, the BH authorities sent an official to visit the applicants at the detention centre at Guantánamo Bay (see paragraph 45 above). As to the claim that the visit was belated, it is noted that the authorities had to wait until 20 May 2003 to receive preliminary instructions concerning access to Guantánamo Bay detainees and another six months (from 26 December 2003 to 15 July 2004) before they obtained an official invitation from the US authorities. Therefore, the responsibility for any delays cannot be attributed to Bosnia and Herzegovina. Neither can Bosnia and Herzegovina be held responsible for not having access to Mr Bensayah and Mr Lahmar or for not being able to focus more on the applicants' situation at the detention centre, as opposed to the applicants' conduct prior to their transfer (see paragraphs 30 and 39 above concerning the conditions governing access to the applicants).

The BH authorities also removed all internal obstacles to the applicants' returning to Bosnia and Herzegovina on 7 November 2002 and 18 April 2003 (see paragraphs 27 and 29 above).

66. The applicants specifically criticised the failure of Bosnia and Herzegovina to submit to the Administrative Review Boards any information in support of their release. Given that there is no indication that Bosnia and Herzegovina has in its possession any exculpatory evidence, the Court finds this criticism groundless. Lastly, the Court is aware of the finding of the domestic Human Rights Commission in this matter[*]. However, taking into consideration subsequent developments and, in

[*] See §.46 of the decision : "*On 5 April 2006 the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Human Rights Commission"), the legal successor to the Human Rights Chamber, examined a complaint by Mr Boudelaa's wife under Islamic law. It held that the domestic authorities had failed to take all possible steps to protect the basic rights of the applicants and to prevent the death penalty from being pronounced against them. The decision criticised the authorities for taking a "particularly passive attitude" towards the entire matter, including failing even to make a written submission to the Human Rights*

particular, the assurances obtained by the BH authorities that the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment (see paragraphs 49 and 50 above), the Court concludes that Bosnia and Herzegovina can be considered to be taking all possible steps to the present date to protect the basic rights of the applicants, as required by the domestic decisions in issue.

Accordingly, the applications are manifestly ill-founded. They must therefore be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.For these reasons, the Court unanimously

Decides to join the applications. Declares the applications inadmissible."

Ada Rossi and Others v. Italy (nos. 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08) (Importance 3) - 22 December 2008- disability – interruption of medical treatment- victim status of individuals and association- direct/potential victim

NB. For the refusal of the request for interim measures on 19 November 2008, see RSIF no. 6

The applicants are six Italian nationals, represented by their guardians, six Italian associations whose membership consists of the relatives and friends of severely disabled persons and of doctors, psychologists and lawyers who assist the persons concerned, and also a human rights association.

The Court concluded that the applicants could not be said to be direct victims of the alleged violations. It remained for the Court to consider whether they could be regarded as potential "victims". The Court pointed out that it had already accepted that an applicant could be a potential victim in certain cases. However, according to the Court, in order for an applicant to claim to be a victim, he must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally would occur; mere suspicion or conjecture was insufficient in this regard.

Consequently, in the Court's view, if the competent national judicial authorities were called upon to rule on the question of whether the applicants' medical treatment should be continued, they could not disregard either the wishes of the persons concerned as expressed by their guardians – who had adopted a clear position in defence of the right to life of their relatives – or the opinions of the medical specialists. Accordingly, the individual applicants could not claim to be victims of a failure by the Italian State to protect their rights under Articles 2 and 3. These complaints were therefore declared inadmissible.

The Court reiterated that victim status was granted to an association – and not to its members – if it was directly affected by the measure in question, for instance when the association had been set up to defend the interests of its members before the courts.

The Court considered that these applicants would not be prevented from continuing to work in pursuance of their objectives. In conclusion, the applicant associations could not be regarded as victims of a violation of the rights enshrined in the Convention. Accordingly, their complaints under Articles 2 and 3 were declared inadmissible.

As the proceedings in question had involved third parties and the applicants had not been a party to them, the Court declared the complaint under Article 6 § 1 inadmissible as being manifestly ill-founded.

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words by the Office of the Commissioner)***	***Decision***
Austria	27 nov. 2008	PALUSHI (n° 27900/04) Link	Alleged violations of Art. 3 (use of ballpoints pens while in custody, solitary confinement, lack of medical care), 5 and 13	Partly admissible concerning the alleged ill-treatment Partly inadmissible

Commission. The Human Rights Commission considered the complaint concerning non-enforcement of the order to retain lawyers for the applicants to be premature, because no military, criminal or other proceedings had been instituted against them."

Austria	27 nov. 2008	POTZMADER (n° 8416/05) Link	Alleged violation of Art. 6 (length of the criminal proceedings)	Inadmissible as manifestly ill-founded (the overall duration of the proceedings can be regarded as "reasonable" especially due to the complexity of the case)
Austria	27 nov. 2008	GROGER (n° 20026/06) Link	Alleged violation of Art. 6 (length of proceedings)	Inadmissible due to the non-exhaustion of domestic remedies
Austria	27 nov. 2008	KUGLER (n° 65631/01) Link	Alleged violations of Art. 6 (*inter alia* concerning length of proceedings) and of Art. 1 of Prot. 1 (concerning the refusal to grant a building permit)	Partly admissible (concerning the excessive length of the proceedings, the lack of an oral hearing and the equality of arms related to some proceedings) Partly inadmissible (concerning the remainder of the application *inter alia* because under Art.1 of Prot. 1 no excessive burden was imposed on the applicants)
Belgium	2 Dec. 2008	BRAND (n° 7663/07) Link	Alleged violation of Art. 6 §§ 1 and 3 (on account of a refusal to reopen proceedings following conviction in default of appearance)	Struck out of the list (unilateral declaration of the government)
Bosnia Herzegovinia	18 Nov. 2008	LUKIC (34379/03) link	Under Art. 6 and 1 of Prot. 1, the applicants complained of non-enforcement of a final and enforceable judgment	Inadmissible as manifestly ill-founded (redress afforded by national authorities)
Bulgaria	2 Dec. 2008	BZNS (EDINEN) (n° 28196/04) Link	*Inter alia* alleged violation of Art. 6 (length of proceedings related to the nationalisation of the property)	Partly adjourned concerning the length of proceedings Partly inadmissible as manifestly ill-founded (remainder of the application)
Bulgaria	2 Dec. 2008	KANCHEVA ET TONEVA-EKONOMIDU (n° 43009/ 04) Link	Alleged violations of Art. 6 (length of proceedings) and of Art. 6, 13 and 1 of Prot. 1 (non execution of a domestic judgment)	Partly adjourned (concerning the length of criminal proceedings) Partly inadmissible as manifeslty ill-founded concerning the remainder of the application
Bulgaria	2 Dec. 2008	NATSEV (n° 2707/04) Link	Alleged violations of Art. 8, 13, 1 of Prot. 1 and 6 concerning the law of 1997 related to the intelligence special means (*loi sur les moyens spéciaux de renseignement*)	Partly adjourned concerning Art. 8 and 13 (with respect to the law on the intelligence special means) Party inadmissible
Bulgaria	18 Nov. 2008	Nikolov (n° 19036/04) Link	Alleged violations of Art. 5§5, 6§1, art. 1 of Prot. 1, of Art. 14 and Art. 13	Partly adjourned (concerning Art. 6§1 and the judicial taxes the applicant was condemned to pay) Partly inadmissible
Bulgaria	18 Nov. 2008	NIKOLOV (II) (4946/04) link	Alleged violations of Art. 6§1, 8, 13, 14, and 1 of Prot. 1	Partly adjourned (on ground of Art. 6 § 1 and 1 of Prot. 1 concerning the proceedings related to the execution of a specific domestic judgment)
Bulgaria	2 Dec. 2008	SLAVOV and OTHERS (n° 20612/02 ; 42563/02 ; 42596/02 ; 16059/03 ; 32427/03) Link	Alleged violations inter alia of Art. 6, 13, 14 and 1 of Prot. 1 (concerning the compensation in respect of the properties taken under the 1946 Confiscation Act)	Partly struck out of the list (some applicants were no longer wishing to pursue their application) Partly inadmissible as manifestly ill-founded or as incompatible *ratione materiae*
Bulgaria	2 Dec. 2008	TODOROV [II] (n° 38454/04) Link	Alleged violations of Art. 5, 6 and 13	Partly adjourned (concerning the length of proceedings and the alleged lack of an effective remedy) Partly inadmissible (concerning the remainder of the application)
Croatia	4 Dec. 2008	Buj (n° 38186/06) Link	Alleged violations of Art. 6 and 1 of Prot. 1 (unreasonable length of the proceedings had prevented the	Struck out of the list (applicant no longer wishing to prusue his application)

			applicant from freely using his property)	
Croatia	4 Dec. 2008	Marsanic (n° 54077/07) Link	Alleged violation of Art. 6§1 (overall length of civil and enforcement proceedings)	Struck out of the list (friendly settlement reached)
The Czech Republic	18 Nov. 2008	Pikova (n° 2913/04) Link	Alleged violations of Art. 6 (length of proceedings and equality of arms) and of Art. 1 of Prot. 1 (arbitrary deprivation of the property acquired by the applicant's parents)	Partly adjourned (concerning the equality of arms and the allegations related to the right to property) Partly inadmissible for non-exhaustion of domestic remedies (concerning the remainder of the application)
The Czech Republic	2 Dec. 2008	Schwarzkopf and Taussik (n° 42162/02) Link	Alleged violation of Art. 6 (unfairness of restitution proceedings concerning difficulties in the interpretation of the law 87/1991) and alleged violation of Art. 14 and of Art. 6 (length of proceedings)	Inadmissible as manifestly ill-founded and as incompatible *ratione temporis*
Finland	2 Dec. 2008	JERKKOLA (n° 27708/07) Link	Alleged violation of Art. 6 (length of the proceedings)	Struck out of the list (friendly settlement reached)
France	25 Nov. 2008	TRUMMEL ET LE GALL (n° 15406/04) Link	Alleged violations of Art. 6 (fairness of the proceedings)	Inadmissible : partly manifestly ill-founded ; partly incompatible *ratione materiae* and partly incompatible *ratione temporis*
France	25 Nov. 2008	Prud'Homme (n°9842/04) Link	Alleged violations of Art. 6 (fair trial)	Struck out of the list (friendly settlement reached)
Iceland	2 Dec. 2008	GUDJONSSON (n° 40169/05) Link	Alleged violation of Art. 1 of Prot. 1, of Art. 14, of Prot. 12 (concerning an exclusive right within a farm's net zone to fish lumpfish and other species)	Inadmissible as manifestly ill-founded
Iceland	2 Dec. 2008	ÓLAFSSON (n° 20161/06) Link	Inter alia alleged violations of Art. 11, 9, 10, 14 and 1 of Prot. 1 (concerning the imposition of an obligation by law to pay the Industry Charge to the Federation of Icelandic Industries for a restrcited group of citizens)	Complaint declared admissible as it raises serious issues of facts and law under the Convention
Italy	2 Dec. 2008	CAPALDO (no 28546/04) Link	Alleged violations of Art. 8 (concerning the custody of daughter of the applicant), of Art. 6§1 and of Art. 5 of Prot. 7	Inadmissible as manifestly ill-founded *(inter alia* because the interference in the right to family life could not be considered as disproportionate in light of the child's interest)
Italy	25 Nov. 2008	CAT BERRO (no 34192/07) Link	Relying on Art. 5, 6, 41, 46 and 53, the applicant complains about the unlawfulness of his detention and the impossibilty to challenge its lawfulness	Inadmissible due to non-exhaustion of domestic remedies
Italy	18 Nov. 2008	TIMPANI (n° 7732/02) link	Alleged violations of Art. 3 (concerning alleged ill-treatment during detention) and of Art. 5 of Prot. 7 (concerning the fact that the applicant did not see his daughter since 1999)	Inadmissible as manifestly ill-founded (the measures taken by the national authorities could not be considered as contrary to the Convention)
Luxembourg	4 Dec. 2008	FASBINDER (n° 36399/06) Link	Alleged violation of Art. 6 (concerning especially the proceedings before the *juge d'instruction* and concerning the acces to the *Cour de cassation*)	Inadmissible as manifestly ill-founded (concerning the proceedings before the *juge d'instruction)* and as incompatible ratione temporis (concerning the access to the *Cour de cassation)*
Moldova	18 Nov. 2008	BLIDARI (n° 2604/05) link	Alleged violations of Art. 6 § 1 and of Art. 1 of Prot. 1 (failure to enforce final judgments in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue his application)

Moldova	18 Nov. 2008	HAROVSCHI (33852/04) link	Alleged violations of various procedural violations (failure to summon the applicant to the hearing, failure to respond to a claim for the recognition of a contract as of unlimited duration, and failure of the courts to request documents essential for the examination of the case and to give sufficient reasons for the judgments) and of Art. 1 of Prot. 1	Inadmissible as manifestly ill-founded (no sufficient elements in the case supported the alleged violations)
Moldova	18 Nov. 2008	JUTOV (2275/05) link	Alleged violations of Art. 6§1 (right of access to court due to the failure to enforce a judgment) and Art. 2 (concerning the death of the applicant's daughter)	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	25 Nov. 2008	Ryba (n° 56087/07) Link	Alleged violation of Art. 6 (length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	18 Nov. 2008	ANDRZEJCZAK (n° 53713/00) Link	Alleged violations of Art. 6 concerning the fairness of the proceedings (*inter alia* wrong assessement of evidence) and the right of access to a court.	Struck out of the list (friendly settlement reached)
Poland	18 Nov. 2008	BŁACHUT (n° 34484/05) Link	Alleged violations of Art. 6§1 and 13 (concerning the refusal to grant legal aid for the proceedings before the Supreme Court)	Struck out of the list (unilateral declaration of the Government)
Poland	25 Nov. 2008	RYCKIE n°2 (n°10902/07) Link	Alleged violation of Art. 6 (length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	*25 Nov. 2008*	RUSIECKI (n° 36246/97) Link	The applicant complains about various violations of Art. 5	Partly admissible (concerning the length of the detention during the criminal proceedings) Partly inadmissible : incompatible *ratione materiae* and manifestly ill-founded (concerning the remainder of the application)
Romania	*18 Nov. 2008*	FERENCZI (n° 5196/04) Link	Alleged violations of Art 6 § 1 (right of acces to a tribunal and length of proceedings), of Art. 1 of Prot. 1 (refusal of the authorities to order the restitution of the nationalised property) and of Art. 2 of Prot. 4 (nationalised property because the applicant left the country)	Partly adjourned (concerning the alleged violations of Art. 6 and 1 of Prot. 1) Partly inadmissible *ratione temporis* (concerning the alleged violation of Art. 2 of Prot. 4)
Romania	*25 Nov. 2008*	GROSARU (n° 78039/01) Link	Alleged violation of Art. 3 of Prot. 1 (refusal of the authorities to grant the applicant his mandate as member of the Parliament for the Italian minority) and alleged violations of Art. 13 and 6	Partly admissible (concerning Art. 3 of Prot. 1 and 13) Partly inadmissible
Romania	*25 Nov. 2008*	*SZIKES (n° 40694/04) Link*	Alleged violation of Art. 6 (unreasonable delay of the proceedings)	Struck out of the list (friendly settlement reached)
Romania	*25 Nov. 2008*	TEODORESCU (n° 40891/04) Link	Alleged violation of Art. 10 and 17 (concerning the conviction of the applicant for defamation)	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	*25 Nov. 2008*	Lazar (30159/03) Link	Alleged violations of Art. 1 of Prot. 1 and of Art. 6§1 (Non-execution of a judgement ordering restitution of property)	Struck out of the list (unilateral declaration of the government)
Romania	*25 Nov. 2008*	NEGUSSE MEKONNEN (n° 19011/06) Link	Alleged violation of Art. 3 and 13 (alleged risk of ill-treatment if the applicant is expelled to Ethiopia; alleged lack of effective remedy and alleged discrimination)	Inadmissible : the applicant cannot claim the status of victim as she is not at risk of being expelled (applicant is "*tolérée*" under Romanian law)
Romania	*18 Nov.*	Solomon (n° 24400/04)	Alleged violations of Art. 6§1 and 1 of Prot. 1 (obligation to restitute a	Struck out of the list (friendly settlement reached)

	2008	Link	sum granted following a final judgment)	
Romania	*18 Nov. 2008*	NEAȚA (n° 17857/03) Link	Alleged violation of Art. 6§1 (fairness) and Art. 3	Inadmissible as manifestly ill-founded (concerning the fairness of proceedings related to a fine imposed on the applicant) and for non exhaustion of domestic remedies (concerning Art. 3)
Russia	*27 Nov. 2008*	GONCHAROVY (n° 77989/01) Link	Alleged violation of Art. 4 of Prot n° 7 (*non bis in idem*), of Art. 6, Art. 5 and Art. 3, 7, 8, 13, 14 and 17	Inadmissible for non-exhaustion of domestic remedies (concerning Art. 5§1) and as manifestly ill founded (remainder of the application)
Russia	*20 Nov. 2008*	KHARATOV (n° 13751/05) Link	Alleged violations of Article 5 §§ 1-4 (lawfulness of detention) and of Art. 6§1 and 13 (fairness of proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	27 Nov. 2008	OOO ROUSATOMME T (NO 2) (n° 12064/04) Link	Alleged violations of Art. 6§1, 13 and 1 of Prot. 1 (non execution of a domestic judgment)	Inadmissible as manifestly ill-founded (delay in execution cannot be considered as excessive)
Russia	4 Dec. 2008	RYCHKOV (n°2210/04) Link	Alleged violations of Art. 3 and 5 (custodial measure), 6 (length and fairness of proceedings), 13 and 17 (effective remedy)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	4 Dec. 2008	SLADKOV (n° 3027/03) Link	Alleged violations of Art. 3 and 6 § 1 (for having contracted tuberculosis while in detention)	Inadmissible as manifestly ill-founded (no appearance of violation concerning Art. 3) and as incompatible *ratione materiae* (re Art. 6§1)
Russia	27 Nov. 2008	TOPORKOV (n° 66688/01) Link	Alleged violations of Art. 3 and 13 (concerning ill-treatment by police officers) and of Art. 5 and 6 (lawfulness of detention and fairness of the proceedings)	Partly admissible (concerning the alleged violations of Art. 3 and 13) Partly inadmissible (concerning Art. 5 and 6)
Russia	4 Dec. 2008	YELDASHEV (n° 5730/03) Link	Alleged violations of Art. 6§1 (delay in the enforcement of judgment and fairness of proceedings) and of Art. 4 (delayed discharge amounted to compulsory labour)	Partly admissible (concerning the non-enforcement of the judgments) Partly inadmissible as manifestly ill-founded
Serbia	25 Nov. 2008	PETKOVIC (n° 18392/05) Link	Alleged violations of Art. 6§1 and 13 (inability to collect the fees that had been awarded in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue his application)
Slovakia	25 Nov. 2008	DANIHEL (n° 20756/06) Link	Alleged violation of Art. 6§1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Slovakia	2 Dec. 2008	DVORAKOVA AND OTHERS (n° 21805/06) Link	Alleged violation of Art. 6§1 (length of proceedings)	Partly struck out of the list (unilateral declaration of the government) Partly inadmissible as manifestly ill-founded and for non exhaustion of domestic remedies (concering the third applicant)
Slovakia	2 Dec. 2008	FURDIK (n° 42994/05) Link	Alleged violations of Art. 2 (failure of the authorities to protect the life of the applicant's daughter) and of Art. 6§1 (inability to seek appropriate redress)	Inadmissible as manifestly ill-founded and as incompatible *ratione materiae*
SLOVENIA	25 Nov. 2008	MASLARIC (n° 23465/04, 39233/04, 43741/04, 43758/04, 43784/04) Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings) and of Art. 13 (lack of an effective remedy)	Struck out of the list (friendly setllement reached)

SLOVENIA	25 Nov. 2008	JOKA (n° 21116/03 ; 24256/04 ; 27666/04) Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings) and of Art. 13 (lack of an effective remedy)	Struck out of the list (friendly setllement reached)
SLOVENIA	25 Nov. 2008	NEZIROVIC (n° 16400/06) Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings in particular before the first-instance court) and of Art. 13 (lack of an effective remedy)	Inadmissible partly for non-exhaustion of domestic remedies and partly as manifestly ill-founded (regarding the implementation of the 2006 Act on the Protection of the Right to a Trial without undue Delay)
SLOVENIA	25 Nov. 2008	PIRKMAJER (n° 30745/03) Link	The applicant seeking to obtain the "moral rehabilitation" of his late father complained inter alia about a violation of Art. 6, Art. 2 of Prot. 7 and Art. 7	Partly inadmissible ratione temporis Partly inadmissible as manifestly ill-founded (no appearance of violation of Art 6§1)
SLOVENIA	2 Dec. 2008	JERKOVIC (n° 30649/03) Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings) and of Art. 13 (lack of an effective remedy)	Inadmissible partly for non-exhaustion of domestic remedies (although the Court is not persuaded that the applicants were offered adequate compensation in respect of non-pecuniary damage suffered as a result of the alleged violation of their right to a trial within a reasonable time)
Spain	2 Dec. 2008	Fuentes Zapata (n°3129/05) Link	Alleged violation of Art. 6 (fairness of the appeal proceedings)	Inadmissible as manifestly ill-founded
SWEDEN	18 Nov. 2008	SKOLDINGER (n° 31156/07) Link	The applicant complained that he was subjected to compulsory care orders	Struck out of the list (the applicant passed away and the heirs may be regarded as not willing to pursue the application)
The Former Yugoslav Republic Of Macedonia	18 Nov. 2008	BAJRAKTAROV (n° 34112/02) Link	Alleged violation of Art. 6§1 (excessive length) and of Art. 1 of Prot. 1 (applicant had not been awarded the compensation claimed)	Inadmissible as manifestly ill-founded : the proccedings were conducted in a reasonable time ; and the applicant neither had a right nor a claim amounting to a "legitimate expectation" of obtaining interest on funds confiscated (no "property" within the meaning of Art. 1 of Prot. 1)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	BALALOVSKI (n° 35773/06) Link	Alleged violation of Art. 6 (length of proceedings; domestic courts allegedly erred on facts and law; lack of impartiality)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	GORGIEV (n° 29996/06) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	ARSOVSKA (n° 29984/06) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	MARUSKOV and Others (n°10278 /06) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time; lack of impartiality), and of Art. 11	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	NOVOSELSKI (n°6831/06) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time; lack of impartiality)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	EVTOVSKI (n° 2394/06) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time; lack of impartiality)	Struck out of the list (friendly setllement reached)

The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	GORGIEV (n°30 917/05) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time; lack of impartiality) and alleged violations of Art. 8 and 1 of Prot. 1	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	KOCANKOVSKI (n° 2543/05) Link	Alleged violation of Art. 6 (the case of the applicant not heard within a reasonable time; lack of impartiality; equality of arms)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	AZIR and Others (n°31155 /04) Link	Alleged violation of Art. 6 and 13 (the case of the applicant not heard within a reasonable time; lack of an effetive remedy)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	MANEV (n° 34692/06) Link	Alleged violation of Art. 6 (length of proceedings)	Struck out of the list (friendly setllement reached)
The Former Yugoslav Republic Of Macedonia	2 Dec. 2008	STOJANOVSKI (n° 30350/06) Link	Alleged violation of Art. 6 (length of proceedings; lack of impartiality) and Art. 11	Struck out of the list (friendly setllement reached)
United Kingdom	18 Nov. 2008	WILKINSON (n° 27869/05) Link	Violation of article 14 taken in conjunction with 1 of Protocol No. 1 (discrimination on ground of sex following the refusal to grant a Widow's Bereavement Tax Allowance ("WBA") to the Inland Revenue ("IR"))	Struck out of the list (friendly setllement reached)
United Kingdom	18 Nov. 2008	SCOTT (n° 3249/03) Link	Violation of article 14 taken in conjunction with both article 8 and 1 of Protocol No. 1 (discrimination on ground of sex in the British social security legislation)	Inadmissible partly as incompatible *ratione personae* and partly as manifestly ill-founded*
United Kingdom	18 Nov. 2008	BLACH (n° 27958/02) Link	Violation of article 14 taken in conjunction with both article 8 and 1 of Protocol No. 1 (discrimination on ground of sex in the British social security legislation)	Struck out of the list (applicant no longer wishing to pursue its application)
United Kingdom	2 Dec. 2008	FASCIONE (n° 17233/03) Link	Violation of article 14 taken in conjunction with both article 8 and 1 of Protocol No. 1 (discrimination on ground of sex in the British social security legislation)	Partly struck out of the list (friendly settlement reached) Partly inadmissible as manifestly ill-founded
United Kingdom	2 Dec. 2008	K.R.S. (n° 32733/08) Link	Alleged violations of Art. 3 and 13 (concerning the expulsion of the applicant, an Iranian national, from the United Kingdom to Greece)	Inadmissible as manifestly ill-founded. According to the Court the objective information before it on conditions of detention in Greece is of some concern but the Court finds that there were no claims under the Convention to arise from those conditions; it should also be pursued first with the Greek domestic authorities. Accordingly the Court lifts the interim measure indicated under Rule 39 of the Rules of Court
Turkey	18 Nov. 2008	ER (n° 21377/04) Link	Alleged violation of Art. 5 §§ 3, 4 and 5, of Art. 6§1 and of Art. 3 of Prot. 7	Partly adjourned (concerning the length of criminal proceedings) Partly inadmissible
Turkey	18 Nov. 2008	HUMARTAS (n°38714/04) Link	Alleged violation of Art. 5 §§1 and 5 and of Art. 6§1	Partly adjourned (concerning the length of criminal proceedings) Partly inadmissible as manifestly ill-founded

* You may find similar inadmissibility decisions concerning the alleged violation of article 14 taken in conjunction with both article 8 and 1 of Protocol No. 1 (discrimination on ground of sex in the British social security legislation) on the website of the European Court of Human Rights: http://www.echr.coe.int/echr/. You may also find some relevant information *inter alia* in the following decisions: *Willis v. the United Kingdom,* no. 36042/97, §§ 14-26, ECHR 2002-IV and *Runkee and White v. the United Kingdom*, no. 42949/98, §§ 40-41, 25 July 2007.

Turkey	18 Nov. 2008	GUNES (n°1991/04) Link	Alleged violation of Art. 6 (fairness and length)	Partly adjourned (concerning the length of criminal proceedings) Partly inadmissible as manifestly ill-founded
Turkey	18 Nov. 2008	GUNGORMEZ (n°38734/04) Link	Alleged violation of Art. 6 (fairness and length)	Partly adjourned (concerning the length of criminal proceedings) Partly inadmissible as manifestly ill-founded
Turkey	18 Nov. 2008	CELIKASLAN n° 42985/02) Link	Alleged violation of Art. 3 (rape and torture while in police custody) and of Art. 6 and 13	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application)
Turkey	18 Nov. 2008	AYASHI (n° 3083/07) Link	The applicant, an Iranian national claimed that he would face a risk of execution if deported to Iran. He further alleges violation of Art. 6 and Prot. 6	Inadmissible : the applicant can no longer claim to be a victim of a violation of the Convention as he was granted a temporary residence permit
Turkey	2 Dec. 2008	DOGAN (n° 17553/03) Link	Alleged violation of Art. 4 and 1 of Prot. 1 (authorities' failure to pay the applicant his severance benefits, wages and indemnities despite a decision from a court)	Struck out of the list (unilateral declaration by the Government)
Turkey	18 Nov. 2008	ARIKAN (n°14071/04) Link	Alleged violation of Art. 3 (ill-treatment while in custody), 5, 6, 13 and 14	Partly adjourned (concerning the lack of legal assistance during custody and concerning the length of proceedings) Partly inadmissible as manifestly ill-founded
Turkey	18 Nov. 2008	YALCIN (n° 33121/04) Link	Alleged violation of Art. 6 (length of proceedings; domestic courts allegedly erred on facts and law)	Partly adjourned (concerning the length of administrative proceedings) Partly inadmissible as manifestly ill-founded
Turkey	18 Nov. 2008	KALAY (n° 12664/04) Link	Alleged violation of Art. 3 (ill-treatment by police officers) and Art. 5 (unlawfull arrest)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application)
Turkey	18 Nov. 2008	BATIR (n° 2173/03) Link	Alleged violation of Art. 5§3 (length of custody), of Art. 6 and of Art. 2 of Prot. 7 (inter alia fairness of proceedings)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application)
Turkey	25 Nov. 2008	DEMIR (n° 39801/03) Link	Alleged violation of Art. 1 of Prot. 1, of Art. 17 and Art. 18 (concerning the refusal of the authorities to proceed to the payment of a sum of money)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application as the authorities have agreed to proceed to the payment)
Turkey	25 Nov. 2008	AKIN and KAMACI (n° 44570/04) Link	Alleged violation of Art. 1 of Prot. 1, of Art. 17 and Art. 18 (delay in the execution of a judgment granting a sum of money to the applicant)	Inadmissible as manifestly ill-founded (the sum has been paid by the authorities and the delay in the payment did not amount to a financial loss for the applicant)
Turkey	25 Nov. 2008	CETINOGLU and others (n°7700/04) Link	Alleged violation of Art. 1 of Prot. 1, of Art. 17 and Art. 18 (delay in the execution of a judgment granting a sum of money to the applicant)	Inadmissible as manifestly ill-founded (the sum has been paid by the authorities and the delay in the payment did not amount to a financial loss for the applicant)
Turkey	25 Nov. 2008	ORAL (n°1) (n° 32362/03) Link	Alleged violation of Art. 1 of Prot. 1 (lack of payment of a compensation for expropriation)	Inadmissible as manifestly ill-founded (a fair balance between the general interest and the applicant's right to property was preserved)
Turkey	2 Dec. 2008	UCAR (n° 24631/04) Link	Inter alia alleged violations of Art. 8, 9, 10, 13 and 14 (concerning mainly the right to correspondance of the applicant while in detention)	Inadmissible as incompatible *ratione temporis*
Turkey	2 Dec. 2008	SOYBAS ET I.O.D. YAPI MALZEMELERI SAN. VE TI (n°2900/05)	Alleged violation of Art. 6§1 (fairness of the proceedings) and f Art.1 of Prot. 1 (compensation for expropriation allegedly not sufficient)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application)

Ukraine	25 Nov. 2008	SHALIMOV (n° 20808/02) Link	Alleged violations of Art. 3 (concerning the impossibility for the applicant to see his family for four years while he was in pre-trial detention)	Partly adjourned : refusal of family visits (Art. 8), excessive length of detention, failure of the courts to consider his complaints about the unlawfulness of his detention, length and fairness of the criminal proceedings and lack of effective remedies Partly inadmissible
Ukraine	25 Nov. 2008	PLYATSEVYY (n° 8783/04) Link	Alleged violations of Art. 3 (alleged ill-treatment by police officers), of Art. 5 (lawfulness of detention) and Art. 6 (fairness)	Inadmissible partly for non-exhaustion of domestic remedies (concerning Art. 3) and party as manifestly ill-founded (concerning Art. 5 and 6)
Ukraine	25 Nov. 2008	SERGEYEV (n° 36780/06) link	Alleged lengthy non-enforcement of the judgment in the applicant's favour	Inadmissible for non-exhaustion of domestic remedies
Ukraine	25 Nov. 2008	Burlachenko (n° 5712/04) Link	Alleged violations of Art. 3 and 5 (unlawfulness and poor conditions of detention), of Art. 6§1 and 13 (excessive length of the criminal proceedings, non-enforcement of a judgment) and of Art. 9 (applicant not able to celebrate Easter)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue her application)
Ukraine	25 Nov. 2008	Boyarchenko (n° 31338/04) Link	*Inter alia* alleged violations of Art. 6 and 13 (fairness), of Art. 1 of Prot. 1 (excessive financial burden imposed on the applicant by the court)	Inadmissible as manifestly ill-founded
Ukraine	2 Dec. 2008	SERDYUK (n° 7687/03) Link	Alleged violation of Art. 6 (applicant not able to have the court's determination of his participation in the Chernobyl relief works) and inter alia of Art. 2 and 1 of Prot. 1	Inadmissile partly as manifestly ill-founded and partly as incompatible ratione personae

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 15 December 2008 : link
- on 22 December 2008: link
- on 5 January 2009 : 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.

Please note that the Irish Human Rights Commission (IHRC) issues a monthly table on priority cases before the European Court of Human Rights with a focus on asylum/ immigration, data protection, anti-terrorism/ rule of law and disability cases for the attention of the European Group of

NHRIs with a view to suggesting possible amicus curiae cases to the members of the Group. Des Hogan from the IHRC can provide you with these tables (dhogan@ihrc.ie) .

Communicated cases published on 15 December 2008 on the Court's Website and selected by the Office of the Commissioner

The 15 December batch contains a number of cases with alleged violations of procedural provisions (Articles 5 and 6) with respect to: Belgium, Croatia, Greece, Moldova, Latvia, Spain, Turkey.

State	Date of communication	Case Title	Key Words by the Office of the Commissioner
Croatia	26 Nov. 2008	PEŠA	Alleged violation of Article 3 (conditions of detention in Zagreb Prison), of Articles 5§3 and §4, of Article 6§2 (presumption of innocence due to statements made by high-ranking State officials in the media).
Poland	1 Dec. 2008 2 Dec. 2008	SZULC ZABLOCKI	The two complaints deal with issues related to the Polish Lustration Act (see judgment *Matyjek v. Poland* of 24 April 2007).
Russia	28 Nov. 2008	DAVITIDZE	*Inter alia:* Alleged lack of ill treatment during and after arrest and lack of adequate psychiatric treatment during detention. Alleged lack of effective investigation (Art. 2). The applicant also rely on Art. 6 of the Convention.
Spain	1 Dec. 2008	C.C.	Alleged violation of Article 8 due to divulgation of information about the applicants health (HIV) the information figured in a domestic decision).
Spain	5 Dec. 2008	GUTIÉRREZ SUÁREZ	In particular alleged violation of Article 10 due to the applicant's conviction for breach of honour of the King Hassan II due to publications related to drug trafficking.
Spain	5 Dec. 2008	OTEGI MONDRAGON	Alleged violation of Article 10 further to conviction for statements by the applicant (spokesperson of *Sozialista Abertzaleak*) against the reputation of the King of Spain.
Sweden	4 Dec. 2008	VEJDELAND and Others	The applicants were convicted for agitation against a national or ethnic group (they had distributed leaflets in an upper secondary school. The leaflets were produced by the organisation National Youth and contained statements of contempt against homosexuals). The applicants allege violation of Article 10 and Article 7 (crime non prescribed by law). See the reasoning of the Supreme Court referring to the case law of the ECtHR.
United Kingdom	8 Dec. 2008	ALI	The applicant complaints under Article 2 of Protocol No. 1 to the ECHR that his exclusion from the school violated his right to education. See the reasoning of the House of Lords regarding the non violation of that provision.
United Kingdom	28 Nov. 2008	NEALE THOMSON	The two cases deal with the interception of communications of the applicants (serving police officer in the Isle of Man).
United Kingdom	28 Nov. 2008	OMOJUDI	The applicant –convicted of sexual assault- and registered as sex offender- was deported to Nigeria. He complains under Article 8 of the ECHR that his deportation violated his right for his family and private life. He further complains that the delay by the Probation Service in providing him with the risk assessment report interfered with his right to effectively present his case before the Court (Article 34).

United Kingdom	27 Nov. 2008	NILSEN	The applicant who serves life sentences for murders alleges a violation of Article 10 due to the refusal by national courts to allow the return by his solicitor to the applicant of the manuscript on his autobiography in order to do further work and prepare it for publication.
Turkey	2 Dec. 2008	ABDOLKHANI and KARIMNIA	The applicants, refugees of Iranian nationality, complain about the conditions of detention in the Hasköy detention facility (between 21 June and 26 September 2008). Rule 39 was applied.

Communicated cases published on 22 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	10 Dec. 2008	PANKOV	Alleged violation of Articles 2 and 3 due to use of force by State agent during military service and due to lack of effective investigation. Alleged violation of Article 13 due to lack of an effective domestic remedy.
Greece	9 Dec. 2008	RUKAJ	Alleged violation of Article 10 due to criminal sentence imposed to the applicant (of Albanian nationality) further to defamation proceedings (following an employment injury the applicant accused his employer of lack of safe working conditions).
Moldova	12 Dec. 2008	CIORAP	*Inter alia:* Alleged violation of Article 3 due to conditions of detention at the Hîneşti Police station. See question to the parties regarding the victim status of the applicant.
Moldova	5 Dec. 2008	LIPENCOV	Alleged violation of Article 3 due to the first applicant's inhuman treatment by the police at the Ciocana police station and due to lack of an effective investigation. Also, alleged violations of Articles 5 (unlawful detention) and 8 (unlawful search of the applicants' apartment).
Romania	5 Dec. 2008	MARCU	Alleged violations of Article 3 (conditions of detention at the Jilava Prison and lack of an effective investigation); of Article 8 (withdrawal of parental rights and lack of access to medical files); of Article 34 (refusal of the prison authorities to allow the applicant's requests of photocopies from his prison file).
Romania	9 Dec. 2008	PURICEL	Alleged discrimination in the enjoyment of the applicant's right to a pension on the grounds of nationality/residence (the applicant had given up her Romanian nationality).
Romania	5 Dec. 2008	FRANDEŞ	The applicant's father was killed during the conflict between Romanians and Hungarians in Târgu-Mureş (1990). The applicant complains on the grounds of Article 2 (right to life; substantive and procedural angle).
Russia	8 Dec. 2008	KELLER	Alleged violation of Article 2 due to the death of the applicant's son in police custody and due to lack of ineffective investigation. Detention in breach of Article 5.
Russia	5 Dec. 2008	GUSEV	Alleged violation of Article 3 due to ill treatment by the police at the Avtozavodskiy District Police station (Nizhniy Novgorod) and due to lack of an

			effective investigation. Also, alleged violation of Article 13 due to lack of an effective domestic remedy.
Russia	5 Dec. 2008	MAMEDOV	Alleged violation of Article 3 due to ill treatment during and after the applicant's arrest and due to lack of an effective investigation. Also, alleged violation of Article 13 due to lack of an effective domestic remedy (the applicant is an Azerbaijani national serving a sentence of imprisonment for drug trafficking in the town of Surgut in the Khanty-Mansiysk Autonomous Region in Russia).
Spain	9 Dec. 2008	BERISTAIN UKAR	Alleged violation of Article 3 due to ill treatment by the police during the applicant's arrest and detention in San Sebastian and Madrid. NB a) the applicant refers to the CPT's report on Spain. b) see the statement of facts for the reasoning of the constitutional tribunal.
Ukraine	4 Dec. 2008	KOVALCHUK	Alleged violation of Article 3 due to ill treatment in police custody and lack of an effective investigation.

Communicated cases published on 5 January 2009 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**
Armenia and Moldova	15 Dec. 2008	SHOLOKHOV	Alleged violation of Articles 6§1 and 1 of Protocol 1 due to non enforcement of final judgments (the applicant is a Moldovan national of Russian origin; the Minsk Convention and the Moscow Convention are of relevance here).
Austria	16 Dec. 2008	DIE FREIHEITLICHN IN KAERNTEN	Alleged violation of Article 10 due to preliminary injunction imposed to the applicant (Austrian political party; *the Liberals of Carinthia*) further to publications related to the chairperson of the Social Democratic party in Carinthia.
Azerbaijan	12 Dec. 2008	SALIMOV and Others MUSTAFAYEV	The applications deal with alleged breaches of the right to participate in free elections -Art. 3 of Prot. 1-; elections to the Parliament of 6 November 2005). The cases deal with the elections law, the composition of the election commissions, the existence of domestic remedies, the existence of alleged discrimination on the ground of political affiliations. See also Communicated cases in RSIF n° 5.
Bosnia-Herzegovina	9 Dec. 2008	HALILOVIC	Alleged violation of Article 3 due to the applicant's conditions of detention in Zenica Prison Forensic Psychiatric Annex Also, alleged violation of Articles 5§1 (unlawful detention). See also the decision on the inadmissibility of the complaints under Articles 2 and 6 and 8.
Bulgaria	19 Dec. 2008	HADZHIEV	In particular alleged violation of Article 8 due to the interception of communications. Reference is made to the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* of 28 June 2007.
Cyprus	12 Dec. 2008	KAMENOS	Alleged violations of Articles 6§1 (fairness of proceedings), 6§2 (presumption of innocence), 6§3 and 7 regarding the disciplinary proceedings against the applicant former judge. See the statement of facts and the questions to the parties.

France	17 Dec. 2008	ASSOCIATION LECTORIUM ROSICRUCIANUM	Alleged violation of Article 9 and 14 in particular due to the refusal by the administrative courts to recognise the applicant as a cultural association.
Germany	16 Dec. 2008	AFFLERBACH	Alleged violation of Articles 6§1 and 8 due to the length of proceedings regarding the determination of the applicant's contact rights with his daughter; alleged violation of Article 13 due to lack of an effective domestic remedy regarding the length of proceedings.
Moldova	15 Dec. 2008	IORGA	The application deals with the lack of an effective investigation: the applicant's son disappeared from his military unit and his dead body was found hanging from a tree.
Russia	16 Dec. 2008	PETROV BOGDANOV	See in particular alleged violation of Article 3 due to the conditions of detention.
Russia	17 Dec. 2008	BARANICHENKO	Alleged violation of Article 1 of Protocol 1 and Article 8 due to the destruction of the applicant's flat during air strikes in Chechnya.
Romania	17 Dec. 2008	BULFINSKY	The application deals with the incitement to commit an offence by undercovered agents.
Spain	15 Dec. 2008	Aguilera Jiménez ; Palomo Sánchez ; Fernandez Olmo ; Alvarez Lelegui ; Beltrán Lafulla ; Blanco Balbas	Alleged violation of Articles 10 and 11 due to the dismissal of the applicant's further to their adherence to a trade union.
Turkey	16 Dec. 2008	ARPAT	*inter alia* alleged violations of Articles 3 and 11 further to the applicant's arrest (related to NGOs demonstration in 2003).

D. Miscellaneous (Referral to grand chamber, hearings and other activities)

Cases accepted for referral to the grand chamber (15.12.08)

The following cases have been referred to the Grand Chamber of the European Court of Human Rights:

- Oršuš and Others v. Croatia (application no. 15766/03);
- Gäfgen v. Germany (no. 22978/05);
- Kart v. Turkey (no. 8917/05);
- Medvedyev and Others v. France (no. 3394/03).

At its last meeting, the Grand Chamber panel of five judges accepted the above cases for referral to the Grand Chamber, under Article 43 of the European Convention on Human Rights. The panel also adjourned one case:

- Foka v. Turkey (no. 28940/95)

Judgments in a further 67 cases are now final, after requests for them to be referred to the Grand Chamber were rejected.

You may find additional information concerning the cases referred to the Grand Chamber and list of the rejected cases using the link to the press release : Link.

60th anniversary of the Universal Declaration of Human Rights : Three regional human rights courts meet in Strasbourg (08.12.08)

As part of the celebrations to mark the 60th anniversary of the Universal Declaration of Human Rights, Jean-Paul Costa, President of the European Court of Human Rights, has opened a seminar on regional human rights courts at the European Court of Human Rights. The seminar has been organised with the French Ministry of Foreign and European Affairs and the Strasbourg-based International Institute of Human Rights, and in association with the African Foundation for International Law and the Inter-American Institute of Human Rights.

The aim of the meeting is to establish a lasting network between the judges of human rights courts, in order to step up cooperation between these courts and strengthen regional human rights protection mechanisms on a political and practical level.

President Costa welcomed the fact that the three regional human rights courts – the European Court of Human Rights, the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights – were meeting for first time for a joint event.

He reiterated the political and moral role of the Universal Declaration, and the close ties between it and the European system for human rights protection, which was a direct extension of the Universal Declaration. President Costa expressed his esteem for the Universal Declaration, which, "60 years after it was drafted, continues to act as a benchmark for the Strasbourg Court".

President Costa also used this occasion to pay a solemn tribute to René Cassin: one of the main authors of the Declaration, he was the first French judge at the Strasbourg Court (which he presided from 1965 to 1968), established the International Institute of Human Rights, which is named after him, and was awarded, among other honours, the Nobel Peace Prize (1968).

Declaration by Jean-Paul Costa, President of the European Court of Human Rights, on the occasion of World Human Rights Day and the 60th anniversary of the Universal Declaration of Human Rights (10.12.08)

In 2008 Human Rights Day coincides with the 60th anniversary of the Universal Declaration of Human Rights. Without the Universal Declaration, one of the first great achievements of the United Nations, nothing would have been possible. It called into being most of the later international human rights protection instruments, and the European Convention on Human Rights, signed as early as 1950, directly follows the line it traced.

The three regional human rights courts (African, European and Inter-American) have just held a major colloquy in the Human Rights Building, on 8 and 9 December, which provided an opportunity to compare case-law and practice.

It will soon be fifty years since the Strasbourg Court began to apply and interpret the Convention, and it is proud to have delivered more than 10,000 judgments, which have binding force and translate into concrete and enforceable terms the main principles solemnly set forth in the Declaration.

Our Court has drawn the broad lines of the right to a fair trial, the right to respect for private life, freedom of the press, the right to life and physical integrity and so on. More recently, it has intervened in new fields, such as education, the environment and bioethics. It has affirmed its case-law on protection of the rights of aliens, including in the (certainly legitimate and indispensable) context of combating terrorism. It has also tackled new social problems, such as those of a sexual nature.

The Court has successfully responded to the need to take into account the evolution of our societies and the appearance of new problems and new technologies. The diversity of the cases it has to deal with and the ever growing number of applications show that, more and more, people are turning towards the Court and placing their trust in it, with the result that its workload has been significantly increased. The celebrations – today of the 60th anniversary of the Universal Declaration, next year of the 50th anniversary of our Court – must not be focused on the past alone: we also have to think about the long-term future of the European human-rights protection system, to which we must give a new lease of life.

In the same way, Human Rights Day should celebrate what has been achieved in the past and turn towards the future. For sixty years the United Nations and the regional organisations like the Council of Europe have led humanity forward on the path of justice and freedom. But there is still a long road to travel. Let us unite our forces for the journey!

Hearings:

You may consult the webcasts of the following hearing, dated 7 January 2009 in the following cases:
Scoppola v. Italy (Grand Chamber) (no. 10249/03)

Original language version, English, French, Press releases

Visit from the President of the Moldovan Parliament (08.12.2008) :

On 8 December 2008 President Costa welcomed Marian Lupu, President of the Moldovan Parliament, to the Court. Mihai Poalelungi, the judge elected in respect of Moldova, and Erik Fribergh, Registrar, was also present at this meeting.

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 Ministers' Deputies adopted the following final resolutions:

- Resolution CM/ResDH(2009)1 : Mehemi against France
- Resolution CM/ResDH(2009)2 : Rivière against France 8
- Resolution CM/ResDH(2009)3 : Piron and Epoux Machard against France
- Resolution CM/ResDH(2009)4 : Görgülü against Germany
- Resolution CM/ResDH(2009)5 : Amihalachioaie against Moldova
- Resolution CM/ResDH(2009)6 : Rutten against the Netherlands 20
- Resolution CM/ResDH(2009)7 : Tønsbergs Blad As and Haukom against Norway
- Resolution CM/ResDH(2009)8 : O. and Y. against Norway
- Resolution CM/ResDH(2009)9 : Ekeberg and others against Norway
- Resolution CM/ResDH(2009)10 : A. and E. Riis against Norway
- Resolution CM/ResDH(2009)11 : Berecova against the Slovak Republic
- Resolution CM/ResDH(2009)12 : Evaldsson and others against Sweden
- Resolution CM/ResDH(2009)13 : Stockholms Försäkrings- och Skadeståndsjuridik Ab against Sweden
- Resolution CM/ResDH(2009)14 : Wettstein against Switzerland
- Resolution CM/ResDH(2009)15 : Boultif against Switzerland
- Resolution CM/ResDH(2009)16 : Case of Ern Makina Sanayi ve Ticaret A.Ş against Turkey
- Resolution CM/ResDH(2009)17 : Emir against Turkey
- Resolution CM/ResDH(2009)18 : Yıltaş Yıldız Turistik Tesisleri A.Ş against Turkey
- Resolution CM/ResDH(2009)19 : Brecknell and 4 other cases against the United Kingdom
- Resolution CM/ResDH(2009)20 : Roche against the United Kingdom
- Resolution CM/ResDH(2009)21 : in 7 cases against Croatia concerning the lack of access to a court in civil proceedings stayed automatically by provisions of law
- Resolution CM/ResDH(2009)22 : H.K. against Finland
- Resolution CM/ResDH(2009)23 : Ezzouhdi against France
- Resolution CM/ResDH(2009)24 : Bova and 12 others cases against Italy
- Resolution CM/ResDH(2009)25 : Ciccolella and Lepore against Italy
- Resolution CM/ResDH(2009)26 : Lilja and Wassdahl against Sweden
- Resolution CM/ResDH(2009)27 : Miller against Sweden
- Resolution CM/ResDH(2009)28 : in 20 cases concerning delays by the administration in paying additional compensation for expropriation against Turkey
- Resolution CM/ResDH(2009)29 : Tuş and others and 4 other cases against Turkey
- Resolution CM/ResDH(2009)30 : Padalov against Bulgaria

- Resolution CM/ResDH(2009)31 : Camasso against Croatia
- Resolution CM/ResDH(2009)32 : Podoreški against Croatia
- Resolution CM/ResDH(2009)33 : Brosted against Denmark
- Resolution CM/ResDH(2009)34 : in the case of Theodorakis and Theodorakis – Tourism and Hotels S.A. against Greece
- Resolution CM/ResDH(2009)35 : 2 cases concerning non-execution of court orders to evict tenants against Italy
- Resolution CM/ResDH(2009)36 : Carvalho Magalhães against Portugal
- Resolution CM/ResDH(2009)37 : in 2 cases concerning length of certain proceedings before civil courts against Portugal
- Resolution CM/ResDH(2009)38 : Valin against Sweden
- Resolution CM/ResDH(2009)39 : Karakoç against Turkey
- Resolution CM/ResDH(2009)40 : in the case of Abdulkadir Aydın and others against Turkey
- Resolution CM/ResDH(2009)41 : 17 cases concerning discrimination between widows and widowers on grounds of gender regarding social security benefits against the United Kingdom

The Ministers' Deputies adopted the following interim resolution:

Interim Resolution CM/ResDH(2008)99, Execution of the judgment of the European Court of Human Rights Xenides-Arestis against Turkey (judgment of 7 December 2006, final on 23 May 2007), 4 December 2008:

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter "the Convention");

Recalling the judgment of 7 December 2006, in which the European Court of Human Rights held that Turkey was to pay to the applicant before 23 August 2007, 800,000 euros in respect of pecuniary damage, 50,000 euros in respect of non-pecuniary damage and 35,000 euros in respect of costs and expenses;

Deploring the fact that Turkey has not yet complied with its obligation to pay these amounts to the applicant;

Recalling the obligation undertaken by all Contracting States to abide by the judgments of the Court, in accordance with Article 46, paragraph 1 of the Convention;

Strongly insists that Turkey pay the sums awarded in respect of just satisfaction in the Court's judgment of 7 December 2006, as well as the default interest due

The annotated agenda of the 1043rd meeting:

We invite you as well to consult the annotated agenda of the 1043rd meeting, and in particular the section 2 of the annotated agenda*, regarding the new cases brought before the Committee of Ministers:

- CM/Del/OJ/DH(2008)1043genpublicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section1publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section2.1publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section2.2publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section4.1publicE / 09 January 2009

* In the annotated agenda of the Human Rights meetings, Section 1 deals with the final resolutions; Section 2 with the new cases: Section 3 with the just satisfaction; Section 4 with the cases raising special questions (individual measures, measures not yet defined or special problems); Section 5 with the supervision of general measures already announced; and Section 6 with the cases presented with a view to preparing a draft final resolution

- CM/Del/OJ/DH(2008)1043section4.2publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section4.3publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section5publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section6.1publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043section6.2publicE / 09 January 2009
- CM/Del/OJ/DH(2008)1043statpublic / 09 January 2009

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)

Collective Complaint concerning the right to housing in Slovenia declared admissible
The decision on admissiblity for the complaint European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, no. 53, may now be consulted on line.
Complaint no. 53
Collective complaints webpage

233nd session of the European Committee of Social Rights (ECSR) (1-5.12.08)
You may find relevant information on this session using the following link.

The European Committee of Social Rights will hold its next session from 16 to 20 February 2009. You may find relevant information on the 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

European Social Charter Seminar in Sarajevo
In the framework of the Third Action Plan, in order to ensure the effectiveness of fundamental social rights in Bosnia and Herzegovina, a seminar on the European Social Charter was held in Sarajevo on 16 December 2008.
Programme

Conference-debate on the Council of Europe and social rights
The Delegation for European and International Affairs has organised a conference-debate entitled *"Droits sociaux, droits de l'homme : le Conseil de l'Europe et nous?"* held at the Ministry of Health, Salle Laroque, Paris on 19 December 2008. The conference focused on the impact of the instruments of the Council of Europe on social and health policy, and in particular on the role of the European Social Charter.
Programme (French only)

40th anniversary of the European Committee of Social Rights
\\transitsrc\Transit_src\Internet\DGHL\Monitoring\SocialCharter\Web\Images\ECSR40anniv.jpg An exchange of views was held on 1st December 2008 with Ms Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, in honour of the 40th anniversary of the Committee's first working session.

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

Council of Europe anti-torture Committee publishes reports on Moldova (04.12.08)

The Council of Europe's Committee for the Prevention of Torture (CPT) has published the report on its fourth periodic visit to Moldova in September 2007, together with the response of the Moldovan authorities. These documents have been made public with the agreement of the Moldovan Government.

In the light of the information gathered during the 2007 visit, the CPT concluded that, despite clear efforts made by the Moldovan authorities in recent years, the phenomenon of ill-treatment by the **police** remained of serious proportions. The Committee has called upon the authorities to continue to deliver, from the highest level, a strong message of "zero tolerance" of ill-treatment. The CPT has also asked the authorities to carry out an inquiry into allegations of ill-treatment by staff at the temporary

detention facility (IDP) of the General Police Directorate in Chişinău. The report contains recommendations aimed at strengthening the formal safeguards against ill-treatment, improving screening for injuries and introducing independent monitoring of police detention facilities.

Conditions of detention in IDPs continued to render them unsuitable for holding remand prisoners for prolonged periods of time. The CPT has called upon the authorities to give the highest priority to the implementation of the decision to transfer the responsibility for persons remanded in custody to the Ministry of Justice.

As regards the **prisons visited** in 2007, no allegations of recent physical ill-treatment of inmates by staff were received, with the exception of Penitentiary establishment No. 18 in Brăneşti. At Penitentiary establishment No. 13 in Chişinău, the CPT's delegation focused on the manner in which a mass disobedience by inmates on 6 September 2007 had been handled, and expressed concern about the proportionality of the force used by staff.

Prison overcrowding remained a problem, there being on average only 2 m² of living space per prisoner in the establishments visited. The CPT has stressed the need for adopting policies designed to limit or modulate the number of persons sent to prison. The report also contains recommendations aimed at improving the conditions of detention of life-sentenced prisoners at Penitentiary establishment No. 17 in Rezina as well as the situation of inmates with multi-resistant TB held in that establishment.

A follow-up visit was carried out to Penitentiary establishment No. 8 in Bender. This establishment, located in the Transnistrian region, is part of the prison system of the Republic of Moldova and has been the subject of four visits by the CPT. It was clear at the time of the 2007 visit that the Moldovan authorities had taken steps to alleviate, as far as possible, the difficult situation of prisoners in this establishment. Nevertheless, the Committee has called upon the Moldovan authorities to pursue actively negotiations with the municipal authorities of Bender, with a view to restoring the supply of running water and electricity as well as the connection to the municipal sewage disposal system.

At **Chişinău Clinical Psychiatric Hospital**, most of the patients spoke positively of the attitude of health-care staff. The CPT has made recommendations aimed at improving the living conditions and treatment of patients, and at strengthening the safeguards in the context of compulsory hospitalisation.

In contrast, at the **Psycho-neurological Home in the village of Cocieri**, the CPT's delegation heard many allegations of physical and verbal ill-treatment of residents by orderlies. The Committee has recommended that the selection procedures for orderlies be reviewed and a comprehensive training programme developed for them. Measures to avoid arbitrary placements in psycho-neurological homes have also been recommended.

In their response, the Moldovan authorities provide information on the measures being taken to address the issues raised in the CPT's report. For example, the authorities have drawn up guidelines for prosecutors on the carrying out of investigations into cases of ill-treatment. Further, prison ethics committees have been set up, with a view to fostering a culture among prison staff where it is regarded as unacceptable to have resort to ill-treatment. The authorities also refer to steps taken to improve the training of orderlies in psychiatric hospitals and psycho-neurological homes, and to employ more staff.

The Moldovan authorities have also authorised the publication of two earlier CPT reports, concerning ad hoc visits carried out in November 2005 and March 2006.

The CPT's visit reports and the responses of the Moldovan authorities are available on the Committee's website at http://www.cpt.coe.int

Council of Europe anti-torture Committee visits French Guyana (05.12.08)

A delegation of the CPT carried out a visit to French Guyana from 25 November to 1 December 2008.

The main objectives of the visit were to examine the situation at Remire Montjoly Prison, the only prison in this French administrative region, as well as the situation of foreign nationals detained under aliens legislation. The delegation also reviewed the treatment of persons held by the police, the gendarmerie and the customs administration.

The delegation visited the following places: Remire Montjoly Prison; Matoury Immigration Detention Centre ; St Georges de l'Oyapock Immigration Detention Facility ; Immigration waiting area at Cayenne-Rochambeau Airport ; Cayenne Police Station, including the judicial police investigation services ; Custody Facilities of the Border Police at Cayenne-Rochambeau Airport, Matoury (located within Matoury Immigration Detention Centre) and St Georges de l'Oyapock ; Facilities of the

Gendarmerie Territorial Brigades at Cayenne, Regina and St Georges de l'Oyapock ; Secure rooms at Cayenne Hospital ; Customs Service holding cell at Suziny (Cayenne).

Council of Europe anti-torture Committee visits the United Kingdom (05.12.08)

A delegation of the CPT recently carried out a two-week visit to the United Kingdom. The visit, which began on 18 November 2008, was the CPT's sixth periodic visit to that country.

During the visit, the delegation focused its attention on the conditions of detention and the treatment of persons in three "local" prisons, two of which are in the High Security Estate, and in a juvenile detention facility in England. The delegation also visited Northern Ireland to examine developments there since its last visit in 1999, particularly as concerns the situation in the two prisons for male adults. The safeguards afforded to persons deprived of their liberty by the police were also examined in both England and Northern Ireland. Finally, the delegation examined issues relating to persons held under immigration legislation and an immigration removal centre was visited.

In the course of the visit, the CPT's delegation held consultations with the Home Secretary Jacqui SMITH, the Lord Chancellor and Secretary of State for Justice , Jack STRAW, the Minister of State for Northern Ireland, Paul GOGGINS, and the Parliamentary Under Secretary for Justice, Shahid MALIK, as well as with the Chief Executive of the UK Border Agency, Lin HOMER, and other senior officials from the Home Office, Northern Ireland Office, Youth Justice Board and National Offender Management Service for England and Wales.

In respect of England and Wales, the delegation also met the Chief Inspector of Prisons, Anne OWERS, the Prisons and Probation Ombudsman, Stephen SHAW and one of the Independent Police Complaints Commissioners, Mike FRANKLIN.

In Northern Ireland, the delegation met senior officials from the Police Service and the Prison Service, as well as with the Police Ombudsman, Al HUTCHINSON, the Prison Ombudsman, Pauline McCABE, and the Chief Commissioner of the Northern Ireland Human Rights Commission, Monica McWILLIAMS. Further, it held discussions in London and Belfast with representatives of non-governmental organisations active in areas of concern to the CPT. At the end of the visit, the delegation presented its preliminary observations to the United Kingdom.

Council of Europe anti-torture Committee publishes report on Romania (11.12.08)

At the request of the Romanian authorities, the CPT has published the report on its sixth visit to Romania, carried out in June 2006, together with the response of the Romanian Government.

During the 2006 visit, the CPT reviewed the measures taken by the Romanian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and the conditions of detention in a number of police establishments and detention facilities for foreign nationals. The CPT also examined in detail various issues related to prisons, especially the detention regime and security measures applied to life-sentenced prisoners and prisoners classified as "dangerous". In the course of visits to a psychiatric hospital and a medical-social centre, the CPT reviewed the placement procedures and the legal status of patients/residents.

In their response to the visit report, the Romanian authorities provide information on the measures being taken to implement the CPT's recommendations. The CPT's report and the response of the Romanian Government are available on the Committee's website http://www.cpt.coe.int.

Council of Europe anti-torture Committee holds high-level talks in Kosovo[*] (15.12.08)

Representatives of the CPT recently held high-level talks in Pristina, in order to discuss the modalities to enable the CPT to continue its work in Kosovo in line with the existing Agreement signed in August 2004 between the Council of Europe and the United Nations Interim Administration in Kosovo (UNMIK).

In the context of these talks, which were held from 9 to 11 December 2008, the CPT's representatives met the Special Representative of the Secretary-General of the United Nations in Kosovo, Ambassador Lamberto Zannier, the Head of the OSCE Mission in Kosovo, Ambassador Werner Almhofer, the Deputy Head of the European Union Rule of Law Mission (EULEX), Mr Roy Reeve, as well as senior officials of UNMIK, the OSCE and EULEX. Under the auspices of UNMIK, discussions

[*] "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo".

were also held with representatives of the Advisory Office on Good Governance and Human Rights of the Kosovo authorities.

Separately, consultations were held with the Chief of Staff of KFOR, Brigadier General David H. Berger, on the continuation of the CPT's work with regard to KFOR's powers to deprive persons of their liberty.

The CPT's representatives were Ms Renate Kicker, 1st Vice-President of the CPT, Mr Tim Dalton, member of the CPT, and Mr Michael Neurauter, Head of Division in the Committee's Secretariat.

Council of Europe anti-torture Committee visits Azerbaijan (16.12.08)

A delegation of the CPT carried out an ad hoc visit to Azerbaijan from 8 to 12 December. The main objective of the visit was to review improvements made in the light of the recommendations in the reports on previous CPT visits to Azerbaijan, concerning the treatment of prisoners – including inmates sentenced to life imprisonment – and psychiatric patients.

In the course of the visit, the delegation held consultations with the Minister of Justice, Fikrat MAMMADOV, and the Deputy Minister of Health, Sanan KARIMOV, as well as with other senior officials from the above-mentioned Ministries. The delegation also met representatives of civil society.

The delegation visited the following establishments: Central Penitentiary Hospital, Baku ; Gobustan Prison ; Central Psychiatric Hospital, Baku ; Republican Psychiatric Hospital No. 1, Mashtaga ; Regional Psycho-Neurological Dispensary, Sheki.

Council of Europe anti-torture Committee visits Bulgaria (22.12.08)

A delegation of the CPT carried out an ad hoc visit to Bulgaria from 15 to 19 December 2008. The main objective of the visit was to review progress made as regards the implementation of previous CPT recommendations, in particular those contained in the report on the 2006 periodic visit to Bulgaria. The visit focused on the treatment of persons detained by the police, the situation of foreign nationals deprived of their liberty, and conditions of detention in investigation detention facilities and prisons.

In the course of the visit, the delegation held consultations with Roumen ANDREEV, Deputy Minister of Internal Affairs, Boyko RASHKOV, Deputy Minister of Justice, and Petar VASSILEV, Director of the Main Directorate for Execution of Sentences, as well as with senior officials from the Ministries concerned and from the State Agency for Refugees. The delegation also met Ginyo GANEV, Ombudsman of Bulgaria, and representatives of civil society.

At the end of the visit, the delegation presented its preliminary observations to the Bulgarian authorities.

The delegation visited the following places: Pernik Regional Directorate of Internal Affairs ; Slivnitsa District Police Directorate ; Sofia City Directorate of Internal Affairs ; 1st District Police Directorate, Sofia ; 5th District Police Directorate, Sofia ; Special Home for temporary placement of foreign nationals, Busmantsi ; Pernik Investigation Detention Facility ; Slivnitsa Investigation Detention Facility ; Sofia Prison.

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)

Albania: publication of the the Advisory Committee Opinion on national minorities (01.12.08)

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Albania has been made public by the Albanian Government. The Advisory Committee adopted this Opinion in May 2008 following a country visit in February. The government comments on the Opinion have also been made public.

Poland: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (01.12.08)

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Poland from 1-4 December 2008 in the context of the monitoring of the implementation of the Convention by this country.

Georgia: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (08.12.08)

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) visited Georgia from 8-13 December 2008 in the context of the monitoring of the implementation of the Convention by this country. In addition to Tbilisi, the delegation visited Marneuli, Akhalkalaki, Sagarejo (Kakheti region) and Gori.

Azerbaijan: Adoption of Committee of Ministers' recommendations on minority protection (15.12.08)

The Committee of Ministers has just adopted a resolution on the protection of national minorities in Azerbaijan.

UNMIK/Kosovo: monitoring of the implementation of minority rights continues (15.12.08)

UNMIK (the United Nations Interim Administration Mission in Kosovo) progress report on the implementation of the Framework Convention for the Protection of National Minorities (FCNM) in Kosovo is now public.

E. Group of States against Corruption (GRECO)

The Group of States against Corruption publishes report on Austria (19.12.08)

The GRECO published its Joint First and Second Round Evaluation Report on Austria (link to the report). The report has been made public with the agreement of the country's authorities. These are its key conclusions.

Some interesting anti-corruption initiatives have been adopted in Austria but overall, the country is still at an early stage in the fight against corruption, with the exception of the Municipality/Land of Vienna. Various sectors of society seem exposed to risks of corruption which have not necessarily been assessed or acknowledged yet. A study of the phenomenon of corruption, and the establishment of a national coordination mechanism would provide a general framework to trigger or accompany various future improvements. In this connection, the role of the Bureau of Internal Affairs of the Ministry of the Interior (BIA) needs to be strengthened and clarified.

Overall, the Austrian police and prosecutorial bodies are perceived as not being independent enough, and sometimes suffer from a lack of staff, training opportunities and coordination mechanisms. As regards the immunity of parliamentarians, there is a need to establish criteria to better distinguish acts that are connected with their duties and those which are not. GRECO also found that insufficient attention is paid by law-enforcement agencies to the proceeds from corruption and that the legal framework for seizure and confiscation of criminal proceeds requires improvements.

There is also room for improvement as regards transparency and other preventive anti-corruption measures in the administration (concerning, for example, the legal basis on access to information, the involvement of the Austrian Court of Audit in the prevention and detection of corruption, whistleblower protection and the elaboration of a code of conduct for public officials). Moreover, although the recent introduction of corporate criminal liability is to be welcomed, accompanying measures are needed to ensure the full application of this new mechanism.

GRECO has formulated 24 recommendations, in total, in the above-mentioned areas. GRECO will assess measures taken by Austria to implement these recommendations in the context of a specific compliance procedure in the first half of 2010.

Report: English / French / German

OUTCOME of the 40th Plenary Meeting of GRECO - GRECO 40 (1-5.12.08)

Adoption of evaluation reports : GRECO examined and adopted the Third Round Evaluation Report on Poland dealing with Incriminations and Transparency of Party Funding and the Joint First and Second Round Evaluation Report on the Russian Federation. Measures taken by Poland and the Russian Federation in reply to the recommendations GRECO addressed to both countries will be assessed in 18 months. The Delegation of the Russian Federation was headed by the Minister of Justice, Mr Alexander Konovalov.

Compliance reports : GRECO also examined and adopted the Joint First and Second Round Compliance Report on Montenegro (a total of 24 recommendations were assessed), the Second Round Compliance Reports on Moldova (15 recommendations assessed) and the United States of America (8 recommendations assessed), and finally, the Addendum to the Second Round Compliance Report on Estonia (which concludes the Second Evaluation Round concerning Estonia).

2009 programme : the Programme of Activities for 2009 was approved and the composition of Evaluation Teams was established for Third Round Evaluations of Croatia, Malta, Ireland, Germany, "the former Yugoslav Republic of Macedonia", Turkey, Bulgaria and Hungary.

Next plenary meeting : The next plenary meeting is scheduled for 16-20 February 2009.

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

Public Statement in respect of Azerbaijan (12.12.08)
MONEYVAL issued its first public statement under Step VI of its Compliance Enhancing Procedures at its 28th Plenary meeting (8-12 December 2008).
Link to statement on Azerbaijan

Outcome of the 28th Plenary meeting (17.12.08)
MONEYVAL, at its 28th plenary meeting (Strasbourg, 8-12 December 2008):

- adopted the mutual evaluation reports of Estonia (executive summary) and Azerbaijan (executive summary)
- adopted the first year progress reports submitted by Andorra (report), Hungary, Liechtenstein (report), Malta (report), Moldova (report/ annex)
- adopted the second year progress reports submitted by Slovenia and Hungary
- adopted the Second Compliance Report on San Marino under Step I of the compliance enhancing procedures (report / annex)
- revised the Rules of Procedure for the third evaluation round

The publication of the above-mentioned progress reports will take place shortly. The Czech Republic presented a first year progress report and, following examination of the report, has been invited to clarify certain issues before a decision is taken on adoption.

Part IV : The intergovernmental work

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

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

Azerbaijan signed on 2 December 2008 the Convention for the Protection of the Architectural Heritage of Europe (ETS No. 121), and ratified the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190).

Belgium signed on 1 December 2008 the European Convention on the Adoption of Children (Revised) (CETS No. 202).

Estonia signed on 15 December 2008 the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181).

Hungary signed on 1 December 2008 the Council of Europe Convention on the avoidance of statelessness in relation to State succession (CETS No. 200).

The **Liechtenstein** ratified on 17 December 2008 the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

"the former Yugoslav Republic of Macedonia" ratified on 16 December 2008 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182).

Moldova ratified on 1 December 2008 the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199).

Monaco ratified on 24 December 2008 the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181).

Montenegro signed on 8 December 2008 the European Landscape Convention (ETS No. 176).

Serbia ratified on 8 December 2008 the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181).

The **United Kingdom** ratified on 17 December 2008 the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Rec(2008)12E / 10 December 2008
Recommendation of the Committee of Ministers to member states on the dimension of religions and non-religious convictions within intercultural education (Adopted by the Committee of Ministers on 10 December 2008 at the 1044th meeting of the Ministers' Deputies)

C. Other news of the Committee of Ministers

3 December - International Day of Persons with Disabilities - Statement by the Spanish Chairmanship of the Committee of Ministers of the Council of Europe :

“Today we celebrate the International Day of Persons with Disabilities, which touches the core values of the Council of Europe. This Organisation that has as its principles the protection and promotion of

human rights, democracy and the rule of law pays great attention to the rights of people with disabilities.

Increasing the personal autonomy of people with disabilities, acknowledging disability as an element of human diversity, developing public policies aimed at enabling these people to enjoy the same opportunities as all other citizens and ensuring the exercise and enjoyment of their civil, political and social rights, must remain among the main goals of the Council of Europe. In this respect, the Council of Europe Disability Action Plan sets the guidelines for future action.

Spain has been the third country of the Council of Europe to ratify the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, whose entry into force should also be celebrated. As Spain has stated in the document setting out its Chairmanship priorities, it wishes to pay special attention to creating effective conditions so that people belonging to this vulnerable group may fully exercise their rights.

Spain considers that the endeavour to implement social policies is a sign of the European identity that contributes to strengthen the idea of Europe. The Spanish Chairmanship has as one of its objectives the reinforcement of this common European field of social policy, which represents the ambitions of the citizens of our countries."

Expert Seminar on the Council of Europe Convention on Action against Trafficking in Human Beings (04.12.08)

An Expert Seminar on the Council of Europe Convention on Action against Trafficking in Human Beings took place, in the framework of the Spanish Chairmanship of the Committee of Ministers, in Madrid on 2-3 December 2008. The seminar aimed to promote ratification of the Convention and to provide technical assistance on the implementation of the measures contained therein. Ms Bibiana Aido Almagro, Minister for Equality of Spain, Ms Victoria Scola, Special Ambassador of the Spanish Chairmanship of the Committee of Ministers, and Ms Maria Jesús Figa, Under Secretary of State of the Spanish Ministry of Foreign Affairs and Cooperation gave opening addresses.
- Programme of the Seminar

- Press release (ES)

Council of Europe publishes report on minority languages in Spain (11.12.08)

The Council of Europe Committee of Ministers has made public the second report on the situation of minority languages in Spain. This report has been drawn up by a committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages.

On the basis of the report, the Committee of Ministers calls on Spain to improve the use of regional or minority languages amongst judicial staff and in the State administration offices. Further efforts are needed to protect Asturian, and specific legislation should be adopted for the Aragonese and Catalan languages in Aragon. The Spanish authorities are also encouraged to clarify the status of Galician in Castile and León, Portuguese in the town of Olivenza, Berber in the Autonomous City of Melilla and Arabic in the Autonomous City of Ceuta, and take appropriate steps to protect these languages in co-operation with the speakers.

The full text of the report and the Committee of Ministers' recommendations can be downloaded from the Charter's website: http://www.coe.int/minlang ("Documents" section).

Statement by Miguel Ángel Moratinos on the occasion of the International Human Rights Day (10.12.08)

"On the occasion of the International Human Rights Day and the 60th anniversary of the Universal Declaration of Human Rights, I wish to confirm the paramount importance that the Spanish Chairmanship of the Committee of Ministers attaches to the promotion of human rights and fundamental freedoms. The action of the Council of Europe has bestowed the principles of the Universal Declaration of Human Rights with a concrete legal backing, through the European Convention of Human Rights and its supervisory mechanism, the European Court of Human Rights" declared the Chairman of the Committee of Ministers and Spain's Minister for Foreign Affairs and Co-operation, on 10 December. File

1044th meeting of the Committee of Ministers (10.12.08)

During their meeting on 10 December 2008, which was the first meeting of the Spanish Presidency, the Deputies set up a committee instructed to prepare one or more legally binding instrument(s), as appropriate, to prevent and combat violence against women and domestic violence. The ad hoc

committee shall present, by 30 June 2009, an interim report on its position on the subjects and contents of the proposed instrument(s), its working methods and the time table for its work.

The Deputies also approved terms of reference for the Consultative Council of European Prosecutors as well as for Groups of Specialists on Biomedical Research, on the Protection of the Human Embryo and Foetus, and on Human Genetics.

A written report was presented by the former Chair of the Deputies (Sweden) on the informal meeting held on 7 October 2008 between the Chair and incoming Chair of the Deputies with Presidents of monitoring institutions of the Council of Europe together with the Commissioner for Human Rights. Delegations strongly supported the former Chair's initiative and report. The Deputies decided to discuss this matter in greater detail in a forthcoming meeting on the basis of proposals to be made by its competent rapporteur groups.

The Committee of Ministers adopted Recommendation CM/Rec(2008)12 to member states on the dimension of religious and non-religious convictions within intercultural education. With this new instrument, the Council of Europe provides its member states with a set of principles, objectives and teaching approaches to be used in this context. This dimension is of fundamental importance for the promotion and strengthening of the Council of Europe's fundamental values – respect for human rights, promotion of democracy and the rule of law – in order to foster mutual understanding, tolerance and a culture of "living together."

During the meeting, an exchange of views was also held with the President of the Consultative Council of European Prosecutors (CCPE). Finally the Ministers' Deputies appointed Mr Philippe Seguin (France) as the External Auditor of the Organisation.

2009: the year of the celebration of the 60th anniversary of the Council of Europe

Statement by Spain's Minister for Foreign Affairs and Co-operation, Miguel Ángel Moratinos, Chairman of the Committee of Ministers, Mr Lluís Maria De Puig, President of the Parliamentary Assembly, and Mr Terry Davis, Secretary General of the Council of Europe, on the occasion of the launching of the 2009 celebration of the Council of Europe's 60th anniversary

"The Council of Europe was created 60 years ago with the aim of achieving greater unity between its members. Its core objective is to preserve and promote human rights, democracy and the rule of law. The coming year, 2009, is an opportunity to mark this anniversary and to look towards the future and the challenges it brings.

We are proud that this Organisation, bringing together 47 member States, has defended and promoted human rights and fundamental freedoms for six decades. The most significant achievement is the European Convention on Human Rights, together with its unique control mechanism, the European Court of Human Rights, which guarantees the fundamental rights and freedoms of 800 million Europeans and will also commemorate this year its 50th anniversary.

The Council of Europe has made a major contribution to democratic processes all over Europe, not least through its standard-setting, its advisory role in constitutional matters and the monitoring of elections.

It has defended and extended the rule of law with over 200 treaties drawn up by its member States in co-operation, as well as through support for an independent and efficient judiciary in member States, and efforts to fight phenomena such as corruption, organised crime and money laundering. The Organisation is constantly responding to new challenges.

2009 will see a number of events being organised to celebrate this important anniversary. A major event will be the 119th Session of the Committee of Ministers, bringing together the Ministers of Foreign Affairs of member States in Madrid on 12 May.

At the dawn of this 60th anniversary year, we wish to stress the essential role that the Council of Europe will continue to play in the future, since the values and principles it was created to defend and promote cannot yet be considered as fully guaranteed in our region. We hope that 2009 will bring with it significant developments as regards those values, in Europe and beyond, and we are fully confident in the strength of the Council of Europe, with its values and capacities, to contribute decisively to that objective."

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

- ***WINTER SESSION (26-30 JANUARY 2009)***

PACE Winter Session highlights (05.12.08)

Debates on the humanitarian consequences of the war between Georgia and Russia, and the implementation of PACE Resolution 1633 on the consequences of the war, are among the highlights of PACE's Winter session (26-30 January 2009).

A current affairs debate on "The protection of citizens' rights during the present financial crisis" is also scheduled. Other items on the agenda include debates on private military and security firms: the erosion of the state monopoly on the use of force, the investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine, and the nomination of candidates and election of judges to the European Court of Human Rights.

José Luis Rodríguez Zapatero, Prime Minister of Spain (to be confirmed), Miguel Ángel Moratinos, Chairperson of the Committee of Ministers, and Philippe Kirsch, President of the International Criminal Court, will address the Assembly. Terry Davis, Secretary General of the Council of Europe, will present his annual report on the state of the organisation.

Draft agenda

- ***COUNTRIES***

PACE envoy presses for a new Constitution for Turkey (02.12.08)

The need for speedier political reforms, including a full revision of the 1982 Constitution, more democratic state institutions and improved social dialogue were among the issues raised by the Chair of PACE's Monitoring Committee Serhiy Holovaty (Ukraine, ALDE) during a three-day "post-monitoring dialogue" visit to Turkey (24-26 November).

Other issues discussed included freedom of expression and association, political party closures, Article 301 of the Penal Code, the rights of religious communities, allegations of ill-treatment of prisoners and the execution of the Strasbourg Court judgments involving Turkey.

The Assembly resolved last June to closely follow the constitutional drafting process and "if need be, to seriously consider the possibility of re-opening the monitoring procedure for Turkey", closed in 2004.

Fact-finding visit of President of the Monitoring Committee

Boat people and irregular migration: the situation in the Canary Islands and in the rest of Spain (09.12.08)

The members of the Migration Committee met the authorities of the Canary Islands, during a series of seminars on 11-12 December, to gain a better understanding of the challenges faced by 'boat people' and the phenomenon of irregular migration to the Canaries and the rest of Spain. Meeting later, the committee is also due to adopt the report by Corien Jonker (Netherlands, EPP/CD) on the humanitarian consequences of the war between Georgia and Russia and the report by Tina Acketoft

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

(Sweden, ALDE) on the need for international recognition and protection of environmentally induced migrants.

Draft agenda

'The Canary Islands can be the voice of Africa in Europe' (11.12.08)

"Illegal immigration in the Canary Islands is a matter of concern to us all, and it is not a short-lived phenomenon. It is there to stay", declared Juan Fernando Lopez Aguilar (Spain, SOC), head of the Spanish delegation to PACE, in Las Palmas de Gran Canaria today at the opening of the meeting held by the Assembly's Migration Committee in the capital of the archipelago.

Inés Rojas, member of the Canary Islands government responsible for social affairs, said that "the Canary Islands can be the voice of Africa in Europe. We must stop talking about Africa and start talking with Africa". Ms Rojas described the new face of illegal immigration: "Increasingly, we are faced with boats crammed full of children. Over 6 000 children and young people have landed on our coasts since 1999. Most of them came in makeshift boats with just one adult to accompany them."

José Miguel Garcia, President of the Gran Canaria Council, called for improved living conditions in illegal immigrants' countries of origin. "The 21st century could be Africa's century. We must do everything possible to improve the living conditions of its inhabitants."

"We are faced with two realities: on the one hand, the figures, and on the other, the human tragedies. But these two realities are in fact one," said Corien Jonker, Chair of the PACE Migration Committee. "I welcome the fact that the Spanish Chair of the Council of Europe Committee of Ministers has put migration right at the top of its agenda. We must all join together in finding answers."

War between Georgia and Russia: PACE committee calls for investigation and prosecution of human rights violations (12.12.08)

Adopting a draft resolution on the humanitarian consequences of the war between Georgia and the Russian Federation, PACE´s Committee on Migrations, Refugees and Population called on both states and the de facto authorities in South Ossetia and Abkhazia to investigate and where appropriate prosecute all human rights violations and violations of humanitarian law.

Following the proposals of the rapporteur (Corien Jonker, Netherlands, EPP/CD), the parliamentarians also called for reparations for violations of international human rights and humanitarian law to be provided, including restitution of property and payment of compensation. The mandate of the European Union Monitoring Mission (EUMM), they said, should be extended to cover protection and possibly peace-keeping covering both sides of the de facto borders of South Ossetia and Abkhazia. The text is due to be discussed during the next PACE plenary session (26-30 January 2009).

PACE co-rapporteurs concerned about the possibility of fresh hostilities between Georgia and Russia (17.12.08)

The two Monitoring Committee co-rapporteurs of the Council of Europe Parliamentary Assembly (PACE) on the consequences of the war between Russia and Georgia have expressed serious concern that the escalation of tensions and provocations along the administrative borders could lead to "renewed clashes or an outbreak of hostilities" between the two member states.

In a preliminary draft explanatory memorandum made public by PACE's Monitoring Committee, meeting in Paris, Luc van den Brande (Belgium, EPP/CD) and Mátyás Eörsi (Hungary, ALDE) called for access for international monitors to South Ossetia and Abkhazia, and said this access, as well as the establishment of a new internationalised peacekeeping format and force, was "crucial" for stability in the region.

Both co-rapporteurs visited Tbilisi with PACE's Presidential Committee at the end of October They will present to the Monitoring Committee their final report, including a preliminary draft resolution, after the visit of the Presidential Committee to Moscow, foreseen for 18-19 January 2008. The Monitoring Committee will adopt its final report at its meeting on 26 January 2009. The Assembly is due to debate the conflict for the second time on Wednesday 28 January during its Winter plenary Session.

Preliminary draft explanatory memorandum

Strengthening democracy in Europe: a shared aim for PACE and the Congress (02.12.08)

PACE President calls for delivery of humanitarian aid (01.12.08)

Charging persons for political motivation is 'unacceptable': PACE committee demands suspension of Armenian delegation's voting rights (18.12.08)

Declaring it "unacceptable" that persons could be charged and deprived of their liberty for political motivation in Armenia in relation to the events of 1 and 2 March 2008, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) yesterday recommended suspending the voting rights of Armenia's eight-member delegation to the Assembly until the authorities "have clearly demonstrated their political will to resolve this issue." The co-rapporteurs would visit the country in January 2009, with a view to reporting back to the Committee on the first day of the January 2009 part-session on any progress with respect to the release of these persons.

The Assembly is due to decide on the matter on Thursday 29 January during its forthcoming Winter plenary Session (26 – 30 January 2009).

Draft resolution(provisional version)

Resolution 1620 (2008)

Resolution 1609 (2008)

- ***THEMES***

➢ ***Immigrants***

PACE committee urges more help for immigrant girls abducted by their own families (05.12.08)

➢ ***Economic crisis***

Human Rights Day: 'We must not allow an economic crisis to become a human rights catastrophe', says PACE President (09.12.08)

On the eve of Human Rights Day, 10 December, Lluís Maria de Puig, the President of the Parliamentary Assembly of the Council of Europe (PACE), made the following statement:

"It is when times are hard that the commitment to protecting human rights is tested most severely. History tells us that an economic downturn usually leads to a rise in prejudice and discrimination. We must redouble our efforts to fight them, as well as the resulting intolerance.

Europe faces a return to recession and unemployment, together with their escort of poverty, insecurity and distress. There must be a safety net for the most disadvantaged, those who are always hit hardest in difficult times. States have a duty to care for the very poorest in our society.

Governments have their share of responsibility for the present crisis, by failing to ensure adequate transparency and oversight in financial markets, but they must not allow an economic crisis to become a human rights catastrophe."

➢ ***Gender Equality***

Parliamentary hearing on girls' rights, including equality in the classroom (03.12.08)

Girls in Europe's schools get less attention than boys, experts warn (05.12.08)

➢ ***Violence against women***

PACE welcomes first step towards a Council of Europe Convention on combating violence against women (12.12.08)

"I welcome the decision by the Committee of Ministers to approve the terms of reference of an *ad hoc* committee to draft a legal instrument aiming at preventing and combating violence against women and domestic violence," said Carina Hägg, Chair of the PACE Sub-Committee on Violence against Women. "Thanks to the involvement of Assembly members and the efforts of the Committee of Ministers supported by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, it is now possible to start work on drafting a convention," she added.

"But it is only a first step," she went on to say. "PACE will be closely following the negotiations and will defend the position that it adopted unanimously on 3 October in favour of a convention encompassing

the gender dimension and covering the most severe and widespread forms of violence against women, including domestic violence, forced marriages and sexual violence."

PACE Recommendation 1847 (2008) on "Combating violence against women: towards a Council of Europe convention"

Term of reference of the ad hoc committee

- ***Private military and security firms***

PACE rapporteur warns against uncontrolled activities of European private military and security companies (16.12.08)

In his report on private military and security firms and the erosion of the state monopoly on the use of force, adopted today by the Political Affairs Committee, Wolfgang Wodarg (Germany, SOC) criticises the shift in public security obligations to the private sector. At present, there are thought to be over one million people working as private soldiers or security officers in over one hundred countries. In 2006, the turnover in this sector was estimated at 200 billion US dollars.

Mr Wodarg warns against the uncontrolled activities of European private military and security companies, whose practices often run counter to the principles upheld by European states and undermine the moral standing and international reputation enjoyed by those states.

C. Miscellaneous

You may find some relevant information on the activities of the Parliamentary Assembly of the Council of Europe in the electronical newsletter "PaceNews". The **Issue 46** of the PaceNews is dated 22 December 2008 and covers inter alia the activities of the Parliamentary Assembly of the Council of Europe as described in the issue 7 of the RSIF.

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

A. Country work

Commissioner Hammarberg visited Greece to discuss situation of asylum seekers and minorities (10.12.08)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, ended a three-day visit to Alexandroupolis and Athens where he discussed with authorities certain major issues relating to asylum seekers and minorities. "The aim of the visit was to form my own impression of the situation and enhance the dialogue with the government to contribute to improving the situation" said Commissioner Hammarberg. The Commissioner's agenda included visits to Feres border guard station, Fylakio holding facility for irregular migrants and the mined area nearby in Kastanies. On the 10th he held meetings in Athens with the Minister of Interior, officials from the Ministry of Foreign Affairs and with competent national and international organisations.

A report with the findings of the visit is expected to be published early 2009.

Cyprus: Commissioner Hammarberg in Nicosia to discuss human rights and present his report (10.12.08)

On 12 December, the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, arrived in Nicosia to discuss major human rights issues with national authorities and representatives of international organisations.

Commissioner Hammarberg met the Minister of Justice and Public Order, Dr. Kypros Chrysostomides, and representatives of the European Union and the United Nations. On the occasion of the visit, he also presented his report based on the findings of a visit to the Republic of Cyprus carried out last July. The Commissioner also crossed the Green Line to meet with the leader of the Turkish Cypriot Community, Mr. Mehmet Ali Talat.

The Commissioner was due to speak on the need to implement European human rights standards during a conference dedicated to the 60th anniversary of the adoption of the Universal Declaration of Human Rights. The event is hosted by the Commissioner for Administration (Ombudsman), Ms. Eliana Nicolaou, and the University of Cyprus.

Cyprus: Commissioner Hammarberg recommends more efforts on migrants and trafficking (11.12.08)

"Encouraging steps have been undertaken, but more efforts are needed to handle migration issues and combat trafficking in human beings" said in Nicosia Thomas Hammarberg handing over his report on a visit to the Republic of Cyprus to the Minister of Justice and Public Order, Dr. Kypros Chrysostomides.

While acknowledging the authorities' efforts to enhance the asylum service, the Council of Europe Commissioner for Human Rights observes that "these measures alone will not suffice to treat asylum-seekers' and refugees' demands in an effective and speedy manner. Practical cooperation to handle the influx via the Green Line is also needed" he said. Moreover, the Commissioner underlines that it is "vital that asylum-seekers are properly informed about their rights, including employment rights, welfare assistance, health care and education. The authorities should also adopt a new legislation to grant free legal aid to asylum-seekers."

Commissioner Hammarberg is equally concerned about migrants awaiting deportation and the conditions and length of detention of rejected asylum-seekers. "Their number and the time they must spend in detention should be kept to a strict minimum" he said. "It is also essential to further efforts to improve conditions of detention, ensure access to judicial review of deportation and detention decisions, grant detainees better access to information and education activities and guarantee that they can regularly receive visitors."

On trafficking in human beings, Commissioner Hammarberg notes with appreciation the legislative and administrative measures taken to combat the phenomenon and to support the victims. On the

other hand, he deplores that the so-called cabaret "artiste" work permit was still in place at the time of the visit, making it more difficult to combat effectively this new form of slavery. "The authorities must urgently abolish this work permit and ensure that no other scheme could be used for the same unlawful purpose" he said.

Finally, the Commissioner urges the authorities to strengthen their efforts to combat domestic violence and welcomes both the creation of a Commissioner for children's rights and measures envisaged to solve the problem of overcrowded prisons.

The report, published together with the Government's comments, is based on a visit the Commissioner carried out in July 2008 when he met with high-level state officials of the Republic of Cyprus and crossed the Green Line to hold talks with representatives of the Turkish Cypriot Community.

Commissioner Hammarberg visits Belgium to assess the human rights situation (10.12.08)

Prison conditions, migrants, measures against discrimination, women's and children's rights were some of the main topics that the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, assessed during his five-day high-level visit to Belgium starting on 15 December.

Commissioner Hammarberg and his team visited institutions of human rights relevance in Brussels and Antwerp, such as prisons, centres for detention of minors and shelters for women. It was on the Commissioner to hold meetings with federal government representatives, included the Prime Minister, Yves Leterme, the ministers for foreign affairs, interior, justice and for migration and asylum policy, ministers of the French Community and Wallonia region, as well as minister-presidents of the Flemish region and the German-speaking community..

Further meetings were to be held with the Presidents of the Constitutional Court of Belgium, the federal ombudsmen, the ombudsmen for children, the centre for equal opportunities and opposition to racism, the institute for the equality of women and men, as well as representatives of non-governmental organisations and the Bar associations.

After his meetings, the Commissioner's preliminary observations were presented during a **press conference.** The visit falls within a series of activities carried out in accordance with the Commissioner's mandate to assess the implementation of human rights commitments by all Council of Europe member states. An assessment report with relevant recommendations will be published early 2009.

B. Thematic work

"Counter-terrorism measures must not violate the right to privacy" says Commissioner Hammarberg (04.12.08)

"Freedom has been compromised in the fight against terrorism after 11 September. Government decisions have undermined human rights principles with flawed arguments about improved security" said the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, publishing his issue paper on "Protecting the right to privacy in the fight against terrorism."

"Not only terrorism, but also our reaction to it pose a long-term, engrained threat to human rights. The time has come to review steps taken to collect, store, analyse, share and use personal data" said Commissioner Hammarberg. "Data protection is crucial to the upholding of fundamental democratic values: A surveillance society risks infringing this basic right."

"In the war on terror, the notion of privacy has been altered" he continued. "General surveillance raises serious democratic problems which are not answered by the repeated assertion that those who have nothing to hide have nothing to fear. This puts the onus in the wrong place: It should be for States to justify the interferences they seek to make on privacy rights."

Individuals are at risk of being targeted for being suspected extremists or threats to the constitutional legal order. Targets of this kind are moreover increasingly selected through unreliable and ineffective computer profiles. "Large numbers of innocent people are subjected to surveillance, harassment, discrimination, arrest or worse" underlined Commissioner Hammarberg. "This robs targeted individuals of fundamental safeguards, leads to alienation of the groups in question and thus actually undermines security. Moreover, these measures have a negative potential for discrimination which must be averted."

In the issue paper, the Commissioner recommends that the response to these trends be a re-assertion of the basic principles of the rule of law as enshrined in international conventions and case-

law. “In the fight against terrorism and organised crime, human rights standards and principles should not be abandoned but, rather, re-affirmed” stressed the Commissioner. “Terrorism must be fought, but not at the expense of human rights protection” he concluded.

Read the issue paper

Do not miss the opportunity to step up the global fight against racism and discrimination! (05.12.08)

Joint statement of the EU Fundamental Rights Agency and the Council of Europe's Commissioner for Human Rights on the Durban review conference

The Council of Europe's Commissioner for Human Rights and the Director of the European Union's Fundamental Rights Agency jointly call on European governments to remain engaged in the preparations for a United Nations review conference against racism in April 2009.

"Racism is a global phenomenon. No country, no region, is free of this social ill - including the European countries", say Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, and Morten Kjaerum, Director of the European Union Agency for Fundamental Rights (FRA).

Respect for equality in diversity is a central premise for building democratic and inclusive societies. The Durban agenda against racism and discrimination must be matched with concrete action and endured vigilance at local, national and European levels. This follow-up conference provides an opportunity to illustrate and review many of the concrete and important steps taken in European countries to realise the goals proclaimed at the World Conference. We can take pride in the advancements that European countries have made, but much remains to be done to fight racism globally and regionally.

Recent reports published by the Commissioner for Human Rights, the EU's Fundamental Rights Agency and the European Commission show that in Europe groups that are particularly vulnerable to racism include Roma, Sinti, Travellers, members of African, Jewish and Muslim communities, migrants, refugees, asylum-seekers, other national, ethnic or religious minorities, and indigenous peoples. Discrimination based on ethnic origin is seen by 62 percent of respondents to be the most widespread form of discrimination in the European Union. Many people in Europe become victims of multiple forms of discrimination. Elderly or disabled members of minorities, female migrants, Roma women and children, refugees who are homosexual, and many other groups experience particularly entrenched and painful forms of discrimination.

Read the joint statement

“Ten years on, human rights defenders continue to pay a high price” says Thomas Hammarberg in a joint statement with the UN and regional human rights mechanisms and representatives (09.12.08)

On the occasion of the 10th anniversary of the Declaration on Human Rights Defenders, Commissioner Hammarberg, together with five UN and regional human rights mechanisms and representatives, issued a joint statement alerting on the persistent challenges that defenders face today.

“Ten years after the adoption of the Declaration, defenders continue to pay a high price while advocating for and protecting human rights, be they civil, political, economic, social or cultural” the statement says.

The signatories underline the plight of defenders who, due to the sensitivity of their work, are most exposed to attacks and abuses. “They need specific and enhanced protection as well as targeted and deliberate efforts to make their working environment a safer, more enabling and accepting one” said the signatories, calling on member or participating states of their respective organisations and other stakeholders to take proactive measures to support the work of human rights defenders.

Ten years ago the UN General Assembly adopted the Declaration by consensus. The text provides new possibilities for the support and protection of defenders and their activities, by articulating existing human rights in a way that makes them easier to apply to the reality of defenders.

Read the joint statement

Commissioner Hammarberg marks the 60th anniversary of the Universal Declaration of Human Rights (09.12.08)

On the eve of the 60th anniversary of the Universal Declaration of Human Rights, Thomas Hammarberg has published today two audio messages and a video statement marking this anniversary.

The Council of Europe Commissioner for Human Rights stresses in his messages that "the Declaration is a landmark document which has shaped the spirit of human rights activities all over the world." He underlines two main strong points: "First, it is the most authoritative definition of what human rights are and which recognises social and economic rights as full human rights. Second, its legitimacy does not come only from its acceptance by governments, but in particular from the vibrant support it receives in all societies. For these reasons it is a major source for all people committed to change the world for the better."

The Commissioner further affirms that "there is still a long way to go to have the Declaration's principles respected in everyday life. I see a deterioration of human rights protection in several areas: data protection, discrimination, xenophobia, protection of vulnerable groups of people. Counter-terrorism measures have also contributed to a widespread deterioration of human rights. In particular, complicity or silence in the US-initiated war on terror has brought Europe brutally backward. Furthermore, in times of economic crisis, there are already signs that the less wealthy will suffer most from the recession the world is facing. It is therefore crucial that all measures are taken to ensure the protection of social rights."

Commissioner Hammarberg concluded stressing that the Declaration's 30 articles "are still topical today and have kept intact all their potential to address fundamental human needs in the future. It is essential that we use the Declaration for a grassroots work of human rights re-education and explanation to the public about the fundamental values. The Declaration must be therefore used to inspire policies and attitudes to let people enjoy inalienable rights everywhere, anytime."

Video statement

Audio messages : Interview and Statement

Other podcasts available on the Council of Europe portal

Viewpoint : "More control is needed of police databases" (15.12.08)

Fighting crime, including international terrorism, requires the use of modern and effective methods of investigation. The use of fingerprints, cellular samples and DNA profiles in our criminal justice systems is undeniable when determining innocence or guilt. But caution still needs to be taken when we decide on whose data should be stored in police databases and for how long.

See the **full text of the Viewpoint**

Viewpoint : "Arbitrary procedures for terrorist black-listing must now be changed" (01.12.08)

The 'war on terror' has gravely undermined previously agreed human rights standards. The counter-terrorism measures taken since 9/11 must now be thoroughly reviewed and changed, not only in the United States and other affected countries, but also in inter-governmental organisations. Innocent victims must have their names cleared and receive compensation and steps must be taken to prevent similar injustices in future. Those suspected of association with terrorism must not find themselves on so-called "black-lists" without any prospect of having their case heard or reviewed by an independent body.

See the **full text of the Viewpoint**

P2P workshop on "the role of national human rights structures in promoting and protecting the rights of persons with disabilities", Budapest (2-3 December 2008)

The two-day workshop was attended by a total of 47 persons, including participants, speakers and organisers. Participants were from NHRSs from Albania, Andorra, Armenia, Austria, Azerbaijan, Bulgaria, Croatia, Estonia, Greece, Hungary, Luxembourg, Montenegro, the Russian Federation (representatives of offices of Regional Ombudsmen), Serbia (including a representative of the Office of the provincial Ombudsman of Vojvodina), "the former Yugoslav Republic of Macedonia", as well as from Kosovo. The Office of the Catalan Ombudsman was also attending as representative of the IOI.

A representative of the legal and capacity building division in DGHL and the project officer in Georgia for the project "enhancing the capacity of Public defender of Georgia" also attended the workshop, as the Georgian ombudsman's office is presently setting up a specialised centre for the rights of persons with disabilities in Tbilisi, with support of DGHL. Presentations were given by experts from the CPT, the Mental Disability Advocacy Centre (MDAC), the Luxembourg Advisory Committee on Human Rights and from the ICDT. Gerard Queen from the Irish Human Rights Commission and Anna Nilssen from the Office of the Swedish Disability Ombudsman were keynote speakers.

The workshop consisted of five working sessions. During the first session, participants identified obstacles preventing persons with disabilities from full enjoyment of their rights, and discussed how to ensure that persons with disabilities have access to the NHRSs. This was followed by a session giving an overview of the international legal standards. Two substantive rights - namely the right not to be discriminated against, particularly in the field of education, and the right to legal capacity – were then discussed more in detail during the working sessions three and four. The last session covered the role of independent national mechanisms, as laid down in art 33 of the UN Convention on the Rights of Persons with Disabilites, and how to conduct visits to places where persons with disabilities are deprived of their liberty. This has obvious connections to the role of 'National Preventive Mechanisms' under the Optional Protocol to the UN Convention against Torture.

A de-briefing paper will be drafted and disseminated amongst NHRSs and other relevant actors.

Second meeting of the Mediterranean ombudsmen and creation of the Association of Mediterranean Ombudsmen (18-19 December 2008)

The head of the NHRSs Unit of the Commissioner's Office made a presentation at the second meeting of Mediterranean ombudsmen held in Marseille (France) on 18 and 19 December 2008. The conference was organised by the French *Médiateur de la République* in cooperation with the Moroccan *Wali Al Madhalim* and the Spanish *Defensor del Pueblo*.

28 National Human Rights Structures took part in that meeting, which led to the creation of the Association of Mediterranean Ombudsmen, the adoption of its Statutes, and a first Resolution.

C. Miscellaneous (newsletter, agenda…)

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