COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE

Strasbourg, 4 February 2008

# 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)

## Issue n°8

## covering the period from 5 to 18 January 2009

***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)***

## TABLE OF CONTENTS

## Introduction

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

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

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

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

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

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

We invite you to use the INFORMATION NOTE No. 114 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in December 2008 and sorted out as being of particular interest.

## A. Judgments

### 1. Judgments deemed of particular interest to NHRSs

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

Some judgments are only available in French.

Please note that the Chamber judgments referred to hereunder become final in the circumstances set out in Article 44 § 2 of the Convention : "a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or ; b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or c) when the panel of the Grand Chamber rejects the request to refer under Article 43".

**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.

- **Pilot judgment**

**Burdov v. Russia (no. 2) (no. 33509/04) (Importance 1) - The Court adopts its first pilot judgment concerning Russia on the non-enforcement or delayed enforcement of final domestic judgments**

On 1 October 1986 the applicant was called up by the military authorities to take part in emergency operations at the site of the Chernobyl nuclear plant disaster. He was engaged in the operations until 11 January 1987 and, as a result, suffered from extensive exposure to radioactive emissions. He is entitled to various social benefits in this connection. Considering that the competent State authorities failed to pay these benefits in full and in due time, the applicant repeatedly sued them in domestic courts from 1997 onwards. The courts granted the applicant's claims but a number of their judgments remained unenforced for various periods of time.

In a judgment of 7 May 2002, the European Court of Human Rights found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the authorities' failure for years to take the necessary measures to comply with these decisions (*Burdov v. Russia*).

In a resolution of 2004 the Committee of Ministers of the Council of Europe indicated that it was satisfied that the Government had paid the applicant the sum of just satisfaction provided for in the judgment of 7 May 2002 within the time-limit imparted. It further noted, in particular, the measures

taken in respect of the category of persons in the applicant's position. Having regard to all the measures adopted, the Committee concluded that it had exercised its functions under Article 46 § 2 of the Convention in this case. It recalled at the same time that the more general problem of non-execution of domestic court decisions in the Russian Federation was being addressed by the authorities, under the Committee's supervision, in the context of other pending cases.

In the meantime the applicant had obtained further judgments in his favour. The Shakhty Town Court's judgment of 17 April 2003 became final on 9 July 2003, but was not fully enforced until 19 August 2005. The same court's judgment of 4 December 2003 became final on 15 December 2003 but was not fully enforced until 18 October 2006. Another judgment of the Shakhty Town Court's, of 24 March 2006, became final on 22 May 2006, but was not fully enforced until 17 August 2007. Two further judgments of 22 May 2007 and 21 August 2007 were enforced respectively on 5 December 2007 and 3 December 2007.

Regarding the part of the judgment related to the relevant domestic material it is worth noting the reference to the 2007 Activities Report of the Commissioner for Human Rights of the Russian Federation "who pointed out that the perception of domestic judgments as what one might call "non-compulsory recommendations" was still a widespread phenomenon not only in society but also in State bodies. It noted that the non-enforcement problem had also arisen in respect of judgments of the Constitutional Court. According to the report, the problem had been discussed between December 2006 and March 2007 at special meetings in all federal circuits involving regional authorities and representatives of the President's Administration. An idea thus emerged of setting up a national filter mechanism that would allow for examination of Convention complaints at the domestic level. The Commissioner concluded that joint efforts should be deployed with a view to eliminating the roots of the problem rather than simply reducing the number of complaints" (§25).

The relevant international material mentioned by the Court (relevant documents of Committee of Ministers and the Parliamentary Assembly) go to the same direction.

The Court held unanimously:

-that there had been a violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights and of Article 1 of Protocol No. 1 (protection of property) to the Convention on account of the State's prolonged failure to enforce three domestic judgments ordering monetary payments by the authorities to the applicant;

-that there had been no violation of Article 6 and of Article 1 of Protocol No. 1 on account of the enforcement of the judgments of 22 May 2007 and 21 August 2007;

-that there had been a violation of Article 13 (right to an effective remedy) on account of the lack of effective domestic remedies in respect of non-enforcement or delayed enforcement of judgments in the applicant's favour;

The Court applied the pilot judgment procedure. Since 2004 and in response to the large number of cases deriving from systemic or structural problems in certain countries the Court has developed a pilot-judgment procedure. This consists in identifying in a single judgment systemic problems underlying a violation of the European Convention on Human Rights and indicating in that judgment the remedial measures required to resolve such situations. The pilot-judgment procedure is not only intended to facilitate effective implementation by respondent states of individual and general measures necessary to comply with the Court's judgments, but also induces the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus reinforcing the principle of subsidiarity which underpins the Convention system. The case law of the Court in that respect is explained in §§ 125-128.

The Court noted "*that the present case can be distinguished in some respects from certain previous "pilot cases", such as Broniowski and Hutten-Czapska, for example. In fact, persons in the same position as the applicant do not necessarily belong to "an identifiable class of citizens" (compare Broniowski [..], and Hutten-Czapska, [..]). Furthermore, the two aforementioned judgments were the first to identify new structural problems at the root of numerous similar follow-up cases, while the present case comes to be considered after some 200 judgments have amply highlighted the non-enforcement problem in Russia. Notwithstanding these differences, the Court considers it appropriate to apply the pilot-judgment procedure in this case, given notably the recurrent and persistent nature of the underlying problems, a large number of people affected by them in Russia and the urgent need to grant them speedy and appropriate redress at the domestic level*" (§§ 129-130).

Thus the Court concluded:

-that the above violations originated in a practice incompatible with the Convention which consists in the State's recurrent failure to honour judgment debts and in respect of which aggrieved parties have no effective domestic remedy;

-that the respondent State must set up, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2, an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles as established in the Court's case-law;

-that the respondent State must grant such redress, within one year from the date on which the judgment becomes final, to all victims of non-payment or unreasonably delayed payment by State authorities of a judgment debt in their favour who lodged their applications with the Court before the delivery of the present judgment and whose applications were communicated to the Government under Rule 54 § 2(b) of the Rules of the Court; and,

-that pending the adoption of the above measures, the Court will adjourn, for one year from the date on which the judgment becomes final, the proceedings in all new cases concerning solely the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by the State authorities, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement between the parties or the resolution of the matter by other means in accordance with Articles 37 (striking out of a case) or 39 (finding of a friendly settlement).

- **Fair trial – Recovery of nationalised property – Structural issue in Romania**

**Faimblat v. Romania (no. 23066/02) (Importance 1) – 13 January 2009 – Violation of Art. 6 § 1 - Romanian courts' dismissal of the applicants' action for recovery of a nationalised property - Defectiveness of the legislation on the restitution of nationalised property and its application.**

A property belonging to the applicant's father was confiscated by the Romanian State in 1941 by virtue of a decree concerning real property owned by Jews. It was then nationalised in 1950 pursuant to a nationalisation decree. On 27 April 2001 the applicants brought administrative proceedings before the Tulcea Town Council, in accordance with the provisions of Law no. 10/2001 on the legal rules applicable to real property wrongfully nationalised between 1945 and 1989, with a view to recovering possession of the property.

Concurrently, they applied to the Tulcea Court of First Instance seeking a declaration that the nationalisation had been illegal. On 13 September 2001 their action was declared inadmissible on the ground that they were required to follow the administrative procedure provided for by Law no. 10/2001. That judgment was upheld on appeal in April 2002. On 18 May 2006 Tulcea Town Council concluded that the property could not be returned, as it had been demolished, and that the applicants were entitled to compensation under Law no. 10/2001. To date, Mr Faimblat has received no compensation.

The Court noted that the domestic courts had not verified whether the administrative authorities had complied with the procedure laid down in Law no. 10/2001, and that this raised doubts about the effectiveness of the applicants' access to a court. In that connection, it emphasised that the Tulcea Court of First Instance had declared their action inadmissible even though no administrative decision had been given by the Tulcea Town Council before expiry of the statutory 60-day time-limit.

As regards the question whether the procedure laid down by Law no. 10/2001 was effective, the Court observed that three years had elapsed between the submission of the completed file by the applicants and the administrative decision, and that the decision had not been enforced although it was final. The Court had previously had occasion to remark that the collective investment fund *Proprietatea*, which was responsible for compensation payments in execution of final decisions, was not operating effectively. The Court further emphasised that the applicants had no effective remedy before a court for as long as the administrative proceedings were pending. It reiterated that the right to a court included a litigant's right to effective protection. It considered that the applicants' access to the procedure made available by Law no. 10/2001 remained theoretical since seven years after Salomeia and Solomon Faimblat had brought their action no compensation had been obtained. It therefore held that their right of access to a court had been infringed, in breach of Article 6 § 1.

The Court observed that the violation found revealed a major structural problem in Romania resulting from the defectiveness of the legislation on the restitution of nationalised property and its application. Approximately 50 similar cases were pending before the Court which could in the future give rise to further judgments concluding that there had been a violation of the Convention. Under Article 46 (binding force and execution of judgments), the Court therefore urged Romania to take as soon as

possible the legislative, administrative and budgetary measures necessary to ensure the rapid execution of final decisions concerning nationalised real estate.

- **Positive obligation for the State to protect the right to life**

**Branko Tomašić and Others v. Croatia (no. 46598/06) (Importance 1) – 15 January 2009 - Violation of Article 2 (right to life) - Croatian authorities' lack of appropriate steps to prevent the deaths of the applicants' relatives.**

The applicants are the relatives of M.T. and her child, V.T., born in March 2005, who were both killed in August 2006 by M. M., V.T.'s father. M.T. and M.M. lived together in the home of M.T.'s parents until July 2005, when M.M. moved out after disputes with the members of the household.

In January 2006 M.T. lodged a criminal complaint against M.M. for death threats he had allegedly made. On 15 March 2006 the first instance court found M.M. guilty of repeatedly threatening M.T. that he would kill her, himself and their child with a bomb. He was sentenced to five months' imprisonment and, as a security measure, was ordered to have compulsory psychiatric treatment during his imprisonment and afterwards as necessary. On 28 April 2006 the appeal court reduced that treatment to the duration of M.M.'s prison sentence. M.M. served his sentence and was released on 3 July 2006. On 15 August 2006 he shot dead M.T. and their daughter, V.T., before committing suicide by turning the gun on himself.

The findings of the domestic courts and the conclusions of the psychiatric examination undoubtedly showed that the authorities had been aware that the threats made against the lives of M.T. and V.T. had been serious and that all reasonable steps should have been taken to protect them. The Court noted, however, that no search of M.M.'s premises and vehicle had been carried out during the initial criminal proceedings against him, despite the fact that he had repeatedly threatened to use a bomb. In addition, although the psychiatric report drawn up for the purposes of those criminal proceedings had stressed the need for continued psychiatric treatment, the Government had failed to show that M.M. had actually been properly treated. Indeed, M.M. had not followed an individual programme during his prison term even though it had been required by law. Nor had he been examined immediately before his release from prison in order to assess whether he had posed a risk of carrying out his death threats against M.T. and V.T. once free. The Court therefore concluded that no adequate measures had been taken by the relevant domestic authorities to protect the lives of M.T. and V.T., in violation of Article 2.

- **Right to life and police operations**

**Leonidis v. Greece (no. 43326/05) (Importance 2) - 8 January 2009 - Violation of Article 2 - Unplanned police intervention – Unlawful use of firearms by the police - Disproportionate use of force**

The case concerned the applicant's allegation that his 18-year-old son was killed by a police officer with excessive use of firepower. The applicant was represented by the Greek Helsinki Monitor.

It was undisputed between the parties that the applicant's son was killed in the course of an unplanned police intervention by an identified police officer. The Court saw no reason to question the facts as established by the Greek courts and accepted that Nikolaos Leonidis had not been killed deliberately.

The Court did not find it necessary to establish whether there was initially a need to pull out a weapon during the chase, since it could not substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life. However, it considered that the police officer should not have kept his finger on the trigger of the weapon after he had already immobilised the applicant's son, but should have placed his gun in its holster instead.

The Court also attached particular importance to the findings of the national administrative courts which had concluded that the use of a firearm by the police officer had been unlawful and that he had not acted with due care. In addition, the legislation governing the use of weapons at the time had been obsolete and no clear guidelines had existed about its application (see in that respect the judgment *Makaratzis v. Greece* [GC] of 20 December 2004; it is also worth noting that like in *Makartzis*, in the part of the judgment related to the relevant domestic law and practice (§§ 42-43) reference was made to the Greek National Commission for Human Rights: "In a letter to the Minister of Public Order dated April 2001, the National Commission for Human Rights (NCHR), an advisory body to the government, expressed the view that new legislation which would incorporate relevant international human rights law and guidelines was imperative (NCHR, 2001 Report, pp. 107-15)".

The Court therefore concluded unanimously that the Government had not done all that could be reasonably expected of it to avoid the real and immediate risks in such hot-pursuit police interventions. Accordingly, there had been a violation of the right to life under Article 2.

Concerning the alleged inadequacy of the investigation, the Court noted that three separate sets of proceedings – criminal, administrative and civil - were conducted in order to establish the facts of the case, to identify those responsible and, if appropriate, to secure the punishment of those concerned. Having regard to the actions taken in the course of these proceedings, the Court was satisfied that an effective investigation had been carried out and concluded by six votes to one that there had therefore been no violation of Article 2 in respect of the effectiveness of the investigation.

- **Use of smoke-bomb by the security forces during a demonstration**

**Iribarren Pinillos v. Spain (no. 36777/03) (Importance 2) – 8 January 2009 - Violation of Article 3 - Injuries sustained by the applicant when a smoke-bomb was fired by the security forces during a demonstration - Violation of Article 6 § 1 (length)**

The applicant complained of injuries he had sustained during clashes with the security forces in 1991. During the night of 15 December 1991 violent clashes took place in the old town of Pamplona. Demonstrators built barricades and lit fires, so the police were obliged to fire smoke-bombs and tear-gas grenades over a period of several hours. The applicant, who was taking part in the disturbances, was seriously injured when he was struck by a smoke-bomb fired at very short range by the anti-riot police. When Red Cross volunteers arrived on the scene the applicant had stopped breathing, part of his face was burned and was paralysed down his left side.

The Court noted that it was not disputed between the parties that the applicant had been injured by a police officer during violent clashes with the security forces. Although the ensuing investigation had not identified the officer who had fired the smoke-bomb, the *Audiencia Provincial* had ruled that the police had committed the offence of assault occasioning bodily harm. Thus the Spanish State's liability for the damage sustained by the applicant had been established.

As to the question whether the applicant had been able to obtain appropriate redress for the damage sustained, the Court observed that he had reasonable prospects of winning his case, account being taken of his compensation claim against the administrative authorities. However, it remained to be determined whether that remedy was also effective in practice.

Noting the conclusions of the Supreme Administrative Court and the Supreme Court, the Court held that it did not find such reasoning persuasive. Firstly, it noted that the criminal courts had not established or sought to establish whether the applicant shared any responsibility for the damage he had sustained. Secondly, the administrative courts had not carried out any further investigation during the administrative complaint proceedings with a view to determining the applicant's share of liability. The Court considered that he could not be required to bear alone the results of being hit by the smoke-bomb. Use of the smoke-bomb and the way in which it had been fired necessarily entailed a risk to the physical integrity and even the lives of the persons present. The Court considered that the Spanish courts had not determined whether the way the security forces had used the missile was strictly necessary and proportionate to the legitimate aim of putting an end to the disturbances. The Court further noted that the Supreme Court had not taken account of the administrative authorities' liability for the events as established by the criminal courts. Nor had it correctly examined the question whether the applicant had suffered actual, monetarily quantifiable damage or the causal link between the offence and the damage suffered. The Court accordingly found that there had been a violation of Article 3.

The Court held further that there had been a violation of Article 6 § 1 on account of the excessive length – 11 years and ten months – of the proceedings complained of.

- **Right to liberty and security**

**Mangouras v. Spain (no. 12050/04) (Importance 2) – 8 January 2009 - No violation of Article 5 § 3 – Custody of the former captain of the ship *Prestige* on suspicion of offence against natural resources and the environment – Amount of bail required**

The applicant complained of the decision to remand him in custody on suspicion of offences including offences against natural resources and the environment. Mr Mangouras was formerly the captain of the ship *Prestige*, which in November 2002, while sailing off the Spanish coast, released into the Atlantic Ocean the 70,000 tons of fuel oil it was carrying when the hull sprang a leak. The spillage caused an ecological catastrophe whose effects on marine flora and fauna lasted for several months and spread as far as the French coast.

A criminal investigation was opened and the applicant was remanded in custody with bail fixed at three million euros. The investigating judge said that, although the oil-spill had been accidental, some of the material in the file indicated irregularities in the applicant's conduct, such as a lack of cooperation with the port authorities when they tried to take the vessel in tow. Mr Mangouras was detained for 83 days and released when his bail was paid by the *Prestige*'s owner's insurers, the London Steamship Owners' Mutual Insurance Association.

The Court could not disregard the growing and legitimate concern both in Europe and internationally about offences against the environment. It noted in that connection the States' powers and obligations regarding the prevention of marine pollution and the unanimous determination among States and European and international organisations to identify those responsible, to ensure that they appeared to stand trial and to punish them.

In the present case the Court accepted that a high level of bail had been fixed. It observed, however, that bail had been paid by the London Steamship Owners' Mutual Insurance Association. They were the insurers of the *Prestige*'s owner, that is, the applicant's employer, and the policy covered civil liability for damage arising from pollution attributable to the ship. Consequently, bail was paid in accordance with the contractual legal relation between the owner and his insurers.

After payment of the sum concerned the applicant had returned to Greece, where he reported regularly to the police. The proceedings were still pending at the investigation stage, and that system enabled the Spanish authorities to keep track of the applicant's whereabouts on a permanent basis. However, the Court considered that account had to be taken of the particular circumstances of the case, namely the special nature of the offences committed in the context of a "hierarchy of responsibilities" specific to the law of the sea, which distinguished it from other cases in which it had had occasion to examine the length of pre-trial detention. It took the view that the seriousness of the natural catastrophe justified the Spanish courts' concern to determine who was responsible for it, and that it was accordingly reasonable for them to try to ensure that the applicant would appear to stand trial by fixing a high level of bail.

Moreover, the Court observed that Mr Mangouras had been deprived of his liberty for a shorter period than in previous cases in which applicants had been remanded in custody with the possibility of being released on payment of bail. It held that the amount of bail demanded, although high, had not been disproportionate, regard being had to the legal interest being protected, the seriousness of the offence and the catastrophic consequences, both environmental and economic, stemming from the spillage of the ship's cargo. There had therefore been no violation of Article 5 § 3.

- **Fair trial – Justification of a judgment of an Assize Court**

**Taxquet v. Belgium (no. 926/05) – 13 January 2008 - Right to fair trial - Lack of justification of decisions of Assize Court – Impossibility to summon an anonymous witness - Proceedings before the Assize Court in violation of Article 6 §§ 1 and 3 (d)**

The applicant, Richard Taxquet, is a Belgian national who was accused in 2003 of murdering a government minister and attempting to murder the minister's partner. He was sentenced in January 2004 to 20 years' imprisonment. Relying on Article 6 §§ 1 and 3 (d) of the Convention (right to a fair trial and right to examine witnesses), Mr Taxquet complained that he had not had a fair hearing. The Court held unanimously that there had been a violation of Article 6 §§ 1 and 3 (d). The Court found a violation of Article 6§3 concerning the impossibility to summon an anonymous witness to the proceedings. In a more important manner, and more generally, the Court held a violation of Article 6§1 on account of the lack of justification of the judgments of the Assize Court. You may consult in particular §§.42-44 and §§.47-50 of the judgment.

- **Right to respect for family life**

**Todorova v. Italy (no. 33932/06) (Importance 2) – 13 January 2009 – Violation of Article 8 - Decision to declare the applicant's children eligible for adoption 27 days after the birth**

On 7 October 2005 the applicant gave birth to twins. She did not recognise the children as hers and requested anonymity. On 10 October 2005 the public prosecutor at the Bari Youth Court requested the court to make an urgent order placing the children in residential care. Ms Todorova asked for time to reflect before taking a decision on whether to recognise the children as her own and requested their temporary placement in residential care or with a family in the meantime. She also expressed a wish to appear before the Youth Court. On 13 October 2005 the children were placed in residential care and a temporary guardian was appointed. On 2 November 2005 the Youth Court declared the twins eligible for adoption. On 2 December 2005 Ms Todorova requested leave to give evidence before the court and applied for a stay of the proceedings. The latter application was rejected on 21

December, as the children had already been declared eligible for adoption and had been placed with a family on a provisional basis on 6 December 2005 with a view to their adoption.

On 20 March 2006 the register office of the Bari municipal authority informed the Youth Court that Ms Todorova had applied on 17 March to be allowed to recognise the twins as hers. On 12 April 2006 the court informed the register office of the decisions taken with regard to the twins, emphasising that a child who had been declared eligible for adoption and placed with a view to adoption could no longer be recognised. On 14 July 2006 the Bari Court of Appeal declared inadmissible an application made by Ms Todorova on 21 March 2006 seeking to have the declaration of eligibility for adoption set aside.

The Court noted that the Italian authorities had taken all necessary measures to protect the twins and had endeavoured in good faith to secure their well-being. The children had been placed in residential care, a temporary guardian had been appointed and the procedure for putting them up for adoption had been initiated. The Court observed that, in complex cases of this type, where the various interests at stake – those of the biological mother, the children, the adoptive family and the public interest – were difficult to reconcile, the best interests of the child must take precedence. It stressed that, in that context, compliance with the procedural obligations arising out of Article 8 was particularly important.

While an early decision on the children's future had been desirable, the Court nevertheless considered that declaring them eligible for adoption 27 days after their birth, without hearing evidence from their mother, had been a drastic step. It noted that Ms Todorova had requested leave to give evidence, having begun to entertain doubts as to her decision to give up the children. The Court therefore considered that the procedure followed had prevented the applicant from protecting her right to private and family life.

The Court stressed that disputes of this kind concerned family ties and had extremely important ramifications. The Italian State had therefore failed to ensure that the applicant's consent to giving up her children had been given in full knowledge of the implications and had been attended by the appropriate guarantees, in violation of Article 8.

**Neulinger and Shuruk v. Switzerland (no. 41615/07) (Importance 2) – 8 January 2009 - No violation of Article 8 concerning an order to return Ms Neulinger's son to Israel.**

The applicants, Isabelle M. Neulinger and her son Noam Shuruk, are Swiss nationals. The case concerned the child's return to Israel after being removed by his mother to set up home in Switzerland. In 1999 Ms Neulinger, who is Jewish, settled in Israel where she married Shai Shuruk in 2001. Their son, Noam, was born in Tel Aviv in 2003. Ms Neulinger, fearing that the child would be abducted by the father into a "Loubavitch-Habad" community, applied to the Tel Aviv Family Court, which in 2004 imposed a ban on leaving the country in respect of Noam until he attained his majority. The first applicant was granted interim custody of the child and parental responsibility was granted to both parents jointly. The father's contact rights were subsequently restricted on account of his threatening behaviour. On 10 February 2005 the parents divorced and on 24 June 2005 the first applicant secretly left Israel for Switzerland with her son.

In a decision of 30 May 2006, issued following an application by the child's father, the Tel Aviv Family Court observed that the child was habitually resident in Tel Aviv and that the parents had joint parental responsibility for their son. The court held that the child's removal from Israel without the father's consent was wrongful within the meaning of Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980. On 12 June 2006, following an extremely urgent application by the father, the Justice of the Peace of the Lausanne district ordered the first applicant to hand her and her son's passports into the registry of the Justice of the Peace Court immediately.

In a decision of 29 August 2006, the father's application for his son's return to Israel was dismissed by the Justice of the Peace of the Lausanne district on the ground that there was a grave risk that the child's return to Israel would expose him to physical or psychological harm or otherwise place him in an intolerable situation. On 22 May 2007 the Vaud Cantonal Court, dismissing the father's application, confirmed that this case was an exception to the principle of the child's prompt return, in accordance with Article 13 first paragraph, letter b) of the Hague Convention. On 16 August 2007 the Federal Court allowed an appeal by the father on the ground that that Article had been wrongly applied and ordered the first applicant to return the child to Israel.

The Court held that the child's removal to Switzerland was unlawful in so far as the father and mother had joint parental authority over him which included, under Israeli law, the right to determine the child's residence. Furthermore, Noam's removal abroad rendered the father's contact rights illusory in practice as he lived in Israel. The Court also noted that Noam's return, ordered by the Federal Court, amounted to an interference with the exercise of the right to respect for private and family life within

the meaning of Article 8 of the European Convention. It found that the interference was based on the provisions of the Hague Convention, with the aim of protecting the rights and freedoms of Noam and his father.

Even though the applicants argued that the father's threatening and fanatical conduct constituted a danger for them should they return to Israel, the Court found that the Israeli authorities had demonstrated their determination to take action to protect the applicants through the order given to the parents to live separately, the ban on the father entering Noam's school or the first applicant's flat, the restrictions on his contact rights and the arrest warrant against him for failure to pay maintenance.

Ms Neulinger's claim that she risked being imprisoned if she returned to Israel had not, in the Court's view, been made out and the Court saw no reason to doubt the assurances given by the Israeli authorities, particularly on the basis of their past attitude towards the applicants.

Ms Neulinger did not refer to any other obstacles to her life in Israel, where she had decided to settle in 1999, and where she had a social network. She also worked for the multinational company currently employing her in Lausanne and could therefore reasonably return to Israel. Consequently, the Court stated that whilst returning to Israel might be inconvenient it was in the child's best interests because it allowed him to maintain regular contact with both parents. It did not agree with the applicants that the mother would be unable to influence her son's religious upbringing, because she had joint parental authority with the father.

The Court therefore held that the Federal Court's decision to order the child's return had been based on relevant and sufficient grounds for the purposes of paragraph 2 of Article 8 of the European Convention, as construed in the light of Article 13, first paragraph, letter b) of the Hague Convention, and was proportionate to the legitimate aim sought to be achieved. As in the case of *Maumousseau and Washington v. France* of 2007, the Court considered that a fair balance had been struck between the competing interests, and that the child's best interests had been taken into account.

The Court did not find any failing on the part of Switzerland regarding the measures accompanying Noam's return to Israel. Consequently, the Court held by four votes to three that there had been no violation of Article 8.

Judges Kovler, Steiner and Spielmann expressed separate dissenting opinions, which are annexed to the judgment.

- **Right to respect for private life**

**Schlumpf v. Switzerland (no. 29002/06) (Importance 2) – 8 January 2009 - Violation of Article 6 § 1 - Right to a fair trial – Right to a public hearing – Violation of Article 8 - Applicant's health insurers' refusal to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period to allow for reconsideration**

The applicant, Nadine Schlumpf, was registered at birth under the name Max Schlumpf, of male sex. The case concerned the applicant's health insurers' refusal to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period to allow for reconsideration, as required by the case-law of the Federal Insurance Court as a condition for payment of the costs of such operations.

The applicant submitted that the psychological suffering caused by her gender identity disorder went back as far as her childhood and had repeatedly led her to the brink of suicide. In spite of everything, and although by the age of about 40 she was already certain of being transsexual, she had accepted the responsibilities of a husband and father until her children had grown up and her wife had died of cancer in 2002. The applicant decided in 2002 to change sex and from then on lived her daily life as a woman. She began hormonal therapy and psychiatric and endocrinological treatment in 2003.

An expert medical report in October 2004 confirmed the diagnosis of male-female transsexualism and stated that the applicant satisfied the conditions for a sex-change operation. In November 2004 the applicant asked SWICA, her health insurers, to pay the costs of the sex-change operation, and supplied a copy of the expert report. On 29 November 2004 SWICA refused to reimburse the costs, noting that according to the case-law of the Federal Insurance Court the mandatory clause providing for reimbursement of the costs of a sex-change operation which health-insurance policies were required to include applied only in cases of "true transsexualism", which could not be established until there had been an observation period of two years.

On 30 November 2004 the applicant nevertheless successfully underwent the operation. In mid-December 2004 she again applied to SWICA, who again refused. In late January 2005 the applicant appealed unsuccessfully against that decision. She attempted to show that at the stage medical

science had then reached it was possible to identify true cases of transsexualism without waiting for two years to elapse. She also proposed that the Senior Consultant of the Zurich Psychiatric Clinic be asked to give evidence in the context of a further investigation. On 14 February 2005 the applicant's civil status was modified to reflect her sex-change and she was registered under the forename of Nadine.

In early April 2005 the applicant appealed to the cantonal insurance court and asked for a public hearing. When the cantonal insurance court informed her of the possibility of sending the case back to the health-insurers for a further investigation the applicant withdrew that request in the event of the case being remitted. However, she said that waiver would not apply if the case were to go to the Federal Insurance Court or the European Court of Human Rights.

In June 2005, without holding a hearing, the cantonal insurance court set aside the health- insurers' refusal to pay the costs of the sex-change operation and remitted the case for a further investigation and reconsideration. In July 2005 SWICA appealed to the Federal Insurance Court, arguing that the cantonal insurance court had disregarded the Federal Court's case-law to the effect that costs could only be reimbursed after a period of two years and submitting in addition that the existence of an illness had not been established.

In September 2005 the applicant explicitly asked the Federal Insurance Court for a public hearing and requested that it call expert witnesses to answer questions on the treatment of transsexualism. Her request was refused, among other reasons because the Federal Court considered that the relevant issues were legal questions, so that a public hearing was not necessary. It also reaffirmed the pertinence of the two-year observation period. It noted that despite what various experts had submitted during the proceedings and the stage modern medical science had reached, caution was vital, given in particular the irreversibility of the operation and the need to avoid unjustified operations. The Federal Insurance Court noted that at the time of the operation the applicant had been under psychiatric observation for less than two years and held that the health-insurers had been justified in refusing to reimburse the costs.

The Court considered that it was disproportionate not to accept expert opinions especially as it was not in dispute that the applicant was ill. By refusing to allow the applicant to adduce such evidence, on the basis of an abstract rule which had its origin in two of its own decisions in 1988, the Federal Insurance Court had substituted its view for that of the medical profession, whereas the Court had previously ruled that determination of the need for sex-change measures was not a matter for judicial assessment. The Court held that the applicant's right to a fair hearing before the Federal Insurance Court had been infringed, contrary to Article 6 § 1.

The Court reiterated that the public nature of judicial proceedings was a fundamental principle of any democratic society and emphasised a litigant's right to a public hearing at at least one level of jurisdiction. It observed that the applicant could not be considered to have waived the right to a public hearing before the Federal Court. The Court observed that as the question of the applicant's sex-change was not an exclusively legal or technical matter, and given the difference of opinion between the parties as to the necessity of the observation period, a public hearing was necessary. Consequently, the Court held that the applicant's right to a public hearing had not been respected, contrary to Article 6 § 1.

The Swiss Government submitted that in order to restrict health-insurance costs in the general interest it was necessary to place limits on the services to be reimbursed. The applicant submitted that her age justified an exception and asserted that she had not learned of the two-year waiting period until after the operation.

The Court considered that the period of two years, particularly at the applicant's age of 67, was likely to influence her decision as to whether to have the operation, thus impairing her freedom to determine her gender identity. It pointed out that the Convention guaranteed the right to personal self-fulfilment and reiterated that the concept of "private life" could include aspects of gender identity. It noted the particular importance of questions concerning one of the most intimate aspects of private life, namely a person's gender identity, for the balancing of the general interest with the interests of the individual.

The Court considered that respect for the applicant's private life required account to be taken of the medical, biological and psychological facts, expressed unequivocally by the medical experts, to avoid the mechanical application of the two-year delay. It concluded that, regard being had to the applicant's very particular situation, and bearing in mind the respondent State's latitude in relation to a question concerning one of the most intimate aspects of private life, a fair balance had not been struck between the interests of the insurance company and those of the applicant. There had therefore been a violation of Article 8.

Judges Vajić and Jebens expressed a joint partly dissenting opinion, which is annexed to the judgment.

**Reklos and Davourlis v. Greece (no. 1234/05) (Importance 2) – 15 January 2009 - Violation of Art. 6 § 1 – Violation of Art. 8 - Greek courts' dismissal of the applicants' complaint about photographs having been taken of their new-born baby without their consent – Right to protection of the image of the applicants' son – Excessive formalism of the Court of Cassation**

The applicants are the parents of Anastasios Reklos, who was born on 31 March 1997 in a private clinic. Immediately after birth, the baby was placed in a sterile unit to which only medical staff had access. As part of the photography service offered to clients, two photographs of the new-born baby, viewed face on, were taken by a professional photographer. The parents objected to this intrusion into the sterile environment without their prior consent. On 25 August 1997, following the clinic's refusal to hand over the negatives of the photographs to them, the applicants brought an action for damages before the Athens Court of First Instance. The court dismissed the action as unfounded.

In September 1998 the child's parents appealed unsuccessfully against that decision. On 8 July 2004 the Court of Cassation dismissed the appeal on points of law on the ground that it was too vague. According to the Greek Court of Cassation, the applicants had failed to fulfil one of the requirements for admissibility of their appeal on points of law, consisting in specifying the relevant facts on which the Court of Appeal had based its decision dismissing their appeal. The Court, by contrast, took the view that the Court of Cassation had been apprised of the facts as established by the Court of Appeal. The Court considered that declaring the parents' appeal inadmissible on the sole ground that it had been too vague had amounted to excessive formalism. This had prevented the applicants from having the well-foundedness of their allegations examined by the Court of Cassation, in breach of the right of access to a court set forth in Article 6 § 1.

The Court reiterated that the concept of private life was a broad one which encompassed the right to identity. It stressed that a person's image revealed his or her unique characteristics and constituted one of the chief attributes of his or her personality. The Court added that effective protection of the right to control one's image presupposed, in the present circumstances, obtaining the consent of the person concerned when the picture was being taken and not just when it came to possible publication. The Court observed that, since he was a minor, Anastasios's right to protection of his image had been in the hands of his parents. Their consent had not been sought at any point, not even with regard to the keeping of the negatives, to which they objected. The Court noted that the negatives could have been used at a later date against the wishes of those concerned. The Court concluded that the Greek courts had not taken sufficient steps to guarantee Anastasios's right to protection of his private life, in breach of Article 8.

**Giorgi Nikolaishvili v. Georgia (no. 37048/04) (Importance 2) - 13 January 2009 - Two violations of Art. 5 § 1, Violation of Art. 5 §§ 3 and 4, Violation of Art. 8**

Summoned as a witness in a murder case in which his brother was a suspect, the applicant complained about the unlawfulness of his ensuing arrest. He alleged in particular that the authorities arrested him in order to oblige his fugitive brother to give himself up to the authorities. He relied on Art. 5 §§ 1, 3 and 4 (right to liberty and security). Further relying on Art. 8 (right to respect for private and family life), he also complained that his photograph as a "wanted person" was publicly posted in police stations.The Court held unanimously that there had been a violation of Art. 5 § 1 on account of the applicant's arrest in circumstances undermining his right to security of person and a violation of Art. 5 § 1 (c) on account of the absence of a valid court order authorising Mr Nikolaishvili's detention on remand for certain periods. The Court further held unanimously that there had been a violation of Art. 5 § 3 on account of a lack of sufficient reasons for his detention on remand and a violation of Art. 5 § 4 on account of the absence of an oral hearing during the judicial review of 24 January 2005. Lastly, the applicant's photograph was not published in a newspaper or divulged through other mass media. However, it cannot be denied that, by posting it on the public premises of several police stations in different parts of the country, the authorities deliberately made the photograph easily accessible to the population at large. The applicant was neither an accused nor a suspect in the murder case and, consequently, could not have been designated as a "wanted" person. Furthermore, in identifying the applicant as being wanted in connection with a murder case, the authorities' action amounted to a public denunciation that he had been involved in a very serious crime. The interference with the applicant's "private life" was not prescribed by law and the authorities failed to fulfil their obligation to provide a plausible explanation for this interference. Consequently the Court held that there had been a violation of Art. 8 on account of the public posting at various police stations of the applicant's photograph as a "wanted person".

- **Right to respect for the home**

**Ćosić v. Croatia (no. 28261/06), (Importance 1) - 15 January 2009 - Violation of Art. 8 – Order to vacate a flat**

The applicant, relying on Art. 8 (right to respect for one's home), complained that the authorities obliged her to vacate the flat in which she had been living for more than 18 years.

The Court noted that national courts confined themselves to finding that occupation by the applicant was without legal basis, but made no further analysis as to the proportionality of the measure to be applied against the applicant. However, the guarantees of the Convention require that the interference with an applicant's right to respect for her home be not only based on the law but also be proportionate under paragraph 2 of Art. 8 to the legitimate aim pursued, regard being had to the particular circumstances of the case.

In this connection the Court reiterated that "*the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Art. 8 of the Convention, notwithstanding that, under domestic law, his or her right of occupation has come to an end.*

*However, in the circumstances of the present case the applicant was not afforded such a possibility. It follows that, because of such absence of adequate procedural safeguards, there has been a violation of Art. 8 of the Convention in the instant case*" (§§ 21-23).

- **Freedom of expression**

**Orban and Others v. France (no. 20985/05) (Importance 2) – 15 January 2009- Violation of Article 10 - Publication on torture and summary executions carried out during the war in Algeria by a former special services officer – Conviction of the editors - Matter of public interest - Lack of proportionality**

At the relevant time Mr Orban and Mr de Bartillat were chairman and managing director respectively of Editions Plon. In May 2001 the applicant company published a book entitled *Services Spéciaux Algérie 1955-1957* ("Special Services: Algeria 1955-1957"), in which its author, General Aussaresses, a former member of the special services, described torture and summary executions carried out during the war in Algeria. An initial print run of some 25,000 copies was followed by several reprints. The inside cover described the author as "a Free French veteran" who had been "dispatched by General de Gaulle on the most delicate secret operations". It went on to state that "it was in Algeria that Paul Aussaresses ... was called on to carry out his most painful mission" and that "while his name [was] still unknown to the public at large, this former Free French parachutist ... was already regarded as a living legend within the tightly closed circles of the special services". The author's account was preceded by a "publisher's foreword" which stated, in particular: "We felt it was important to publish this account by a little-known but central figure in this conflict".

In a judgment of 25 January 2002 the court found the defendants guilty. It imposed fines of EUR 15,000 on each of the applicants and a fine of EUR 7,500 on General Aussaresses. It further awarded, among other things, EUR 1 in damages to each of the three associations that had joined the proceedings as civil parties (the *Ligue des Droits de l'Homme* (Human Rights League), the *Mouvement contre le Racisme et pour l'Amitié des Peuples* (Movement against Racism and for Friendship between Nations) and the association *Action des Chrétiens pour l'Abolition de la Torture* (Christian Action for the Abolition of Torture)). The applicant company, for its part, was declared civilly liable. The judgment was upheld on appeal by a judgment of 25 April 2003 by the Paris Court of Appeal. In December 2004 the Court of Cassation dismissed an appeal by the applicants on points of law.

On the question whether the interference had been "necessary in a democratic society", the Court observed first of all that the authorities had had only a limited margin of appreciation, circumscribed by the interest of a democratic society in enabling the press to impart information and ideas on all matters of public interest and guaranteeing the public's right to receive them. Those principles also applied to the publication of books in so far as they concerned matters of public interest.

The Court took the view that the Court of Appeal's finding that the author's aim had been to persuade readers of the legitimacy and inevitability of the torture and summary executions carried out during the war in Algeria was not decisive for assessment of the facts at issue in relation to Article 10. It regarded the book in question above all as a witness account by a former special services officer who had served in Algeria, a "central figure in the conflict" who had been directly involved in practices such

as torture and summary execution in the course of his duties. The publication of a witness account of this kind unquestionably formed part of a debate on a matter of public concern which was of singular importance for the collective memory. The account, which was lent gravitas by the rank of its author, who had become a general, supported one of the conflicting theories in the debate, defended by the author, to the effect that such practices had not only existed but had had the blessing of the French authorities. In the Court's view, the fact that the author had not taken a critical stance with regard to these horrifying practices and that, instead of expressing regret, he had claimed to have been acting in accordance with the mission entrusted to him, formed an integral part of that witness account. Accordingly, there had been no justification for the Court of Appeal's criticism of the applicants, in their capacity as publishers, for not distancing themselves from the general's account.

Furthermore, the Court failed to discern in what sense describing General Aussaresses's mission in Algeria as "his most painful" was tantamount to glorifying him or the events related by him. As to the use of the expression "living legend" to describe the general, it did not regard that either as an attempt to glorify him. Quite apart from the fact that the term was open to varying interpretations, some of them negative, it clearly referred to the general's reputation "within the tightly closed circles of the special services" at the time he had been sent to Algeria.

In light of the argumentation in *Léhideux and Isorni v. France* of 23 September 1998, the Court also observed that although the author's statements had not lost their capacity to bring back memories of past suffering, the lapse of time meant that it was not appropriate to judge them with the same degree of severity that might have been justified ten or 20 years earlier. In that connection the Court reiterated that freedom of expression within the meaning of Article 10 was applicable not only to "information" or "ideas" regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Accordingly, penalising a publisher for having assisted in the dissemination of a witness account written by a third party concerning events which formed part of a country's history would seriously hamper contribution to the discussion of matters of public interest and should not be envisaged without particularly good reason.

The Court further reiterated that the nature and severity of the penalties imposed also had to be taken into consideration in assessing whether the interference had been proportionate. Olivier Orban and Xavier de Bartillat had each been ordered to pay a fine of EUR 15,000, a sum that was, to say the least, high, and which was twice as much as the fine imposed on the author of the statements at issue. Accordingly, the Court concluded that the reasons given by the French courts were not sufficient to persuade it that the applicants' conviction had been "necessary in a democratic society". It therefore held that there had been a violation of Article 10.

- **Freedom of association**

**Association of Citizens "Radko" & Paunkovski v. "the former Yugoslav Republic of Macedonia" (no. 74651/01) (Importance 2) - 15 January 2009 - Violation of Article 11 – Dissolution - Lack of relevant and sufficient reasons justifying the measure**

The applicants are the Association of Citizens "Radko", and its Chairman, Boris Paunkovski, a national of "the former Yugoslav Republic of Macedonia" and of Bulgaria. The case concerned the dissolution of the applicant association for being unconstitutional and for inciting national or religious hatred and intolerance.

The association, named after Ivan Mihajlov-Radko (leader of the Macedonian Liberation Movement from 1925 to 1990), was officially registered in May 2000. Its articles of association defined it as an independent, non-political and public organisation with the aim of "popularising the objectives, tasks and ideas of the Macedonian Liberation Movement" and/or promoting "the Macedonian cultural space and traditional, ethical and human values". A leaflet describing the association's activities stated that the association aims to, among other things, "raise and affirm the Macedonian cultural space, having as its priority the cultural and historical identity of the Slavs from Macedonia who have appeared as Bulgarians throughout the centuries". The association intended to achieve those aims through its own newspaper, publications, library and website and by organising seminars, conferences and forums.

On 21 March 2001 the Constitutional Court annulled the association's articles and programme, finding in particular that "affirmation of the ideas of the Macedonian Liberation Movement, according to the Association, in fact means relief from "Macedonianism", as a Serb-communist doctrine, and from the "imagined Macedonian nation" which was used as an open door for the accession of the whole of Macedonia to Yugoslavia." The Constitutional Court concluded that the programme and the articles of the association "were directed towards the violent destruction of the state order; hindrance of free expression of the national affiliation of the Macedonian people, i.e. negation of its identity and

incitement to national or religious hatred or intolerance." On 16 January 2002 Ohrid Court of First Instance dissolved the association. On 11 February 2002 that decision was upheld on appeal.

The applicants complained about the Constitutional Court's decision, claiming that their activities, articles and programme did not advocate violence or the use of anti-democratic or unconstitutional means. They relied on Article 11 (right to freedom of association). Mr Paunkovski further relied on Article 10 (freedom of expression), complaining that the dissolution of the association took away from him the possibility to express his views on the ethnic origin of certain segments of the population and that the then President had been referring to him in his statement to the media.

The general principles applied by the Court figure in §§ 63-67. In the context of its assessment *in concreto*, the Court noted that the Constitutional Court had not characterised the applicant association as "terrorist" or concluded that it or its members would use illegal or anti-democratic means to pursue their aims. Indeed, there had been nothing in the association's founding acts to indicate that it advocated hostility. In addition, the Constitutional Court had not explained why it had considered a negation of Macedonian ethnicity to be tantamount to violence, especially to violent destruction of the constitutional order, as found in its decision to dissolve the association. Nor had the Government presented any evidence that the applicants had used or had intended to use violent or destructive means for the constitutional order.

On the other hand, it was undisputed that the creation and registration of the association had generated a degree of tension in Macedonian society because of the public's particular sensitivity to the ideology of the association's founder. Naming the Association "Radko", with the offensive connotations that that name implied for the majority of the population, had therefore been likely to arouse hostile feelings. However, the Court found that the naming of the association after an individual who had been perceived negatively by the majority of the population could not in itself have been considered a present and imminent threat to public order. It considered that there was no concrete evidence to show that the association, by using "Radko" as a name, had opted for a policy that had represented a real threat to Macedonian society or the State and therefore concluded by six votes to one that the dissolution had not been justified, in violation of Article 11 (see in particular §76):

"*The Court reiterates its case-law, under which a State cannot be required to wait, before intervening, until an association had begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy (see, mutatis mutandis, Refah Partisi (the Welfare Party) and Others, cited above, § 102). However, sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. One of the principal characteristics of democracy is the possibility it offers of resolving problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate in public certain issues and to find, according to democratic rules, solutions (see Çetinkaya v. Turkey, no. 75569/01, § 29, 27 June 2006; Stankov and the United Macedonian Organisation Ilinden, cited above, §§ 88 and 97; and United Communist Party of Turkey and Others, cited above, § 57). To judge by its constitutive acts, the Court considers that that was indeed the Association's objective. In addition, the Association confined itself to realising these objectives by means of publications, conferences and cooperation with similar associations. The Association's choice of means could hardly have been belied by any practical action it took, since it was dissolved soon after being formed and accordingly did not even have time to take any action. It was thus penalised for conduct relating solely to the exercise of freedom of expression. In this connection, the Court points out that it is not in a position nor is it its role to take the side of any of the parties as to the correctness of the applicants' ideas. It is therefore without relevance that the applicants did not distance themselves explicitly from what the Constitutional Court established as the Association's real aim*."

The Court held by six votes to one that it was not necessary to examine separately Mr Paunkovski's complaints under Article 10 as they were closely connected to and difficult to separate from those under Article 11.

- **Cases concerning Chechnya**

Abdurzakova and Abdurzakov v. Russia (no. 35080/04) (Importance 3) – 15 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 in conjunction with Article 2 (lack of an effective remedy)

Medova v. Russia (no. 25385/04) (Importance 2) – 15 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - No violation of Article 3 (inhuman treatment in respect of the applicant's husband) - Violation of Article 5 (failure to protect right to liberty of the applicant's husband) - Violation of Article 13 in conjunction with Article 2 (lack of an effective remedy) - No violation of Article 34 (alleged intimidation of the applicant) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Abdulkadyrova and Others v. Russia (no. 27180/03) (Importance 3) – 8 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in relation to the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 8 (respect for home) - Violation of Article 1 of Protocol No. 1 to the Convention (breach of property rights) - Violation of Article 13 (lack of an effective remedy) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Arzu Akhmadova and Others v. Russia (no. 13670/03) (Importance 3) – 8 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Dangayeva and Taramova v. Russia (no. 1896/04) (Importance 3) – 8 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 13 (lack of an effective remedy)

Dzhamayeva and Others v. Russia (no. 43170/04) (Importance 3) – 8 January 2009 - Violations of Article 2 (right life and lack of investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy)

Shakhgiriyeva and Others v. Russia (no. 27251/03) (Importance 2) - 8 January 2009 - Violations of Article 2 (right life and lack of investigation) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Zakriyeva and Others v. Russia (no. 20583/04) (Importance 3) - 8 January 2009 - No violation of Article 2 (right to life) - Violation of Article 2 (lack of investigation)

## 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 announcing the Chamber judgments issued on 8 January 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 13 January 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 15 January 2009: 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 |
|---|---|---|---|---|---|
| Armenia | 13. Jan. 2009 | Amiryan (no. 31553/03) Imp. 3<br>Gasparyan (no. 35944/03) Imp. 3<br>Sapeyan (no. 35738/03) Imp. 3 | Violation of Art. 11 | Aministrative penalties were imposed on the applicants for having participated in demonstrations (such an interference was not prescribed by law or not necessary in a democratic society) | link<br>link<br>link |
| Bulgaria | 15 Jan. | Georgi Dimitrov (no. 31365/02) | Two violations of Art. 3 (treatment | Ill-treatment by police officers while in custody | link |

| | | | | | |
|---|---|---|---|---|---|
| | 2009 | Imp. 3. | and investigation) | Ineffectiveness of the investigation | |
| Bulgaria | 8 Jan. 2009 | Myashev (no. 43428/02) Imp. 3. | Violation of Art. 6§1 and Art. 13 | Excessive length of proceedings (more than ten years) concerning a case of illegal possession of firearms | link |
| Bulgaria | 8 Jan. 2009 | Shishmanov (no. 37449/02) Imp 2. | Violation of Art. 3 | Lack of appropriate medical treatment and appropriate diet in the Plovdiv Prison (the applicant suffered from diabetes). | link |
| Bulgaria | 8 Jan. 2009 | Valkov (no. 72636/01) Imp. 3. | Violation of Art. 6 § 1 | Excessive length of proceedings (more than ten years and ten months) for misuse of official authority and forgery | link |
| Cyprus | 15 Jan. 2009 | Charalambides (no. 35885/04) Imp. 3. | Violation of Art. 6 § 1 (length) | Excessive length (approx. 6 years) of criminal proceedings concerning a case on charges of forgery and obtaining funds through misrepresentation | link |
| Cyprus | 15 Jan. 2009 | Michael Theodossiou Ltd (no. 31811/04) Imp. 3. | Violation of Art. 6 § 1 (length) Violation of Art. 1 of Protocol No. 1 | Excessive length (approx. 11 years and 7 months) of expropriation proceedings Insufficient amount of compensation for expropriation | link |
| Croatia | 08 Jan. 2009 | Siničić (no. 25803/05) Imp 3. | Violation of Art. 6 § 1 and Art. 1 of Prot. No. 1 | Delay in the enforcement of a judgment in the applicant's favour | link |
| France | 15 Jan. 2009 | Faure (no. 19421/04) Imp. 2. | Violation of Art. 5 § 1 | The arrest and detention prior to the final conviction of the applicant had not been in accordance with a "procedure precribed by law" (the detention was based on a detention order (arrest warrant) issued by a judgment *in abstentia* of an Assize Court | link |
| France | 15 Jan. 2009 | Guillard (no. 24488/04) Imp. 2. | Violation of Art. 6 § 1 (fairness) | Unfair proceedings concerning the applicant's retirement pension (concerning the excessive use by the *Conseil d'Etat* of the "*désistement d'office*" mechanism further to the failure to submit additional conclusions) | link |
| France | 15 Jan. 2009 | Ligue du Monde Islamique and Organisation Islamique Mondiale du Secours Islamique (no. 36497/05) Imp 3. | Violation of Art. 6 § 1 (fairness) | The complaint of the applicants (defamation) before domestic courts had been declared inadmissible on the ground that the applicants had not completed the formalities required (concerning a declaration to be filled by NGOs that do not have a registered office in France) | link |
| Finland | 13 Jan. 2009 | Sorvisto (no. 19348/04) Imp. 3. | Two violations of Art. 6 § 1 (length) Two violations of Art. 13 Violation of Art. 8 | Excessive length of criminal and civil proceedings for aggravated fraud and lack of effective remedy The search and seizure measures amounted to a violation of the right to respect for private life | link |
| Georgia | 13 Jan. 2009 | Aliev (no. 522/04) Imp. 2. | Two violations of Art. 3 (treatment and investigation) | Conditions of detention in Tbilissi no. 5 Prison and lack of effective investigation | link |
| Greece | 8 Jan. 2009 | Panou (no. 44058/05) Imp 3. | No violation of Art. 2 of Prot. 7 No violation of Art. | The applicants were not deprived of their right to request re-examination of their cases by a | link |

| | | | | | |
|---|---|---|---|---|---|
| | | Patsouris (no. 44062/05) Imp 3. | 6§1 | higher court | link |
| Hungary | 8 Jan. 2009 | Aupek (no. 15482/05) Imp 3. | Violation of Art. 6 § 1 (right to a fair trial within a reasonable time) | Excessive length of criminal proceedings | link |
| Poland | 13 Jan 2009 | Janusz Dudek (no. 39712/05) Imp. 3. | Violation of Art. 6 § 1 (length) | Excessive length (over five years) of criminal proceedings regarding charges of abuse of power. | link |
| Poland | 13 Jan 2009 | Lewandowski and Lewandowska (no. 15562/02) Imp. 3. | Violation of Art. 3 (treatment and investigation) | Ill-treatement by the police of the applicants' son and lack of an effective investigation | link |
| Poland | 13 Jan 2009 | Filon (no. 39163/06) Imp. 3<br>Lemejda (no. 11825/07) Imp. 3<br>Łoś (no. 24023/06) Imp. 3. | Violation of Art. 5 § 3 | Excessive length of the applicants' detention on remand | link<br>link<br>link |
| Poland | 13 Jan 2009 | Mirosław Orzechowski (no. 13526/07) Imp. 3. | Violation of Art. 6 § 1 (fairness) | Unreasoned refusal to grant legal aid in the cassation proceedings | link |
| Poland | 13 Jan. 2009 | Rybacki (no. 52479/99) Imp. 3. | Violation of Art. 5 § 3<br>Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness) | Excessive length (two years and nine months) of detention on remand<br>Restrictions on the applicant's contacts with his lawyer during seven months (presence of a person appointed by the prosecutor) | link |
| Portugal | 13 Jan. 2009 | Avellar Cordeiro Zagallo (no. 30844/05) Imp. 2. | Violation of Art. 1 of Prot. No. 1 | The applicants have been deprived of their land without receiving any compensation. | link |
| Romania | 13 Jan. 2009 | Bălăucă (no. 23887/03) Imp. 3.<br>Bozian (no. 8027/03) Imp.3. | Violation of Art. 1 of Protocol No. 1<br>Violation of Art. 14 in conjunction with Art. 1 of Protocol No. 1 | The applicants had been unlawfully required to pay taxes on the retirement allowances. Such a tax payment was furthermore considered as discriminatory | link<br>link |
| Russia | 8 Jan. 2009 | Alekseyenko (no. 74266/01) Imp. 2. | Violation of Art. 6 § 1 and 8 | The proceedings before the Presidium of the Supreme Court did not comply with the requirements of fairness<br>Violation of the applicant's right to correspondence while in detention | link |
| Russia | 8 Jan. 2009 | Barabanshchikov (no. 36220/02) Imp 2 | Violation of Art. 3 (treatment and investigation) | Inhuman treatment imposed on the applicant by the police during an arrest<br>Lack of effective investigation | link |
| Russia | 8 Jan. 2009 | Khudyakova (no. 13476/04) Imp.2. | Violation of Art. 5 §§ 1 (f), 4 (unlawfulness and length) | The applicant's detention over fourteen months pending her extradition from Russia to Kazakhstan exceeded a reasonable time and was not in accordance with the law | link |

| | | | | | |
|---|---|---|---|---|---|
| Russia | 8 Jan 2009 | Kuimov (no. 32147/04) Imp. 3. | Violation of Art. 8 | The applicant was denied access to his adoptive daughter, suffering from acute encephalomyelitis, following her placement by the authorities in intensive care and subsequently in foster care. | link |
| Russia | 8 Jan. 2009 | Laryagin and Aristov (nos. 38697/02 and 14711/03) Imp. 3. | Violation of Art. 6 § 1 | The relevant court could not be regarded as a "tribunal established by law" | link |
| Russia | 15 Jan. 2009 | Menchinskaya (no. 42454/02) (Imp. 2) | Violation of Art. 6 § 1 (fairness) | Participation of the prosecutor (on the side of the State agency) in civil proceedings in which the applicant claimed unemployment allowances was considered as in breach of the principle of equality of arms | Link |
| Russia | 15 Jan. 2009 | Oblov (no. 22674/02) Imp.3. | Violation of Art. 6 § 1 (length) | Excessive length (approx. 4 years and 5 months) of criminal proceedings for murder. | link |
| Russia | 8 Jan. 2009 | Obukhova (no. 34736/03) Imp.2. | Violation of Art. 10 | Following defamation proceedings concerning an article the applicant (a journalist for the newspaper, *Solotoye Koltso)* had published about a judge's involvement in a road traffic accident, she was prohibited from publishing any further information on this topic, which was considered as an excessively broad injunction and interference | link |
| Russia | 15 Jan. 2009 | Sharomov (no. 8927/02) Imp.2. | Violation of Art. 6 § 1 (fairness) | Unfairness of the supervisory review proceedings. | link |
| Russia | 15 Jan. 2009 | Yudayev (no. 40258/03) Imp.3. | Violation of Art. 5 §§ 1 and 4 | Unlawfulness of detention on remand<br>Lack of speediness of review of the appeal against a detention order | link |
| Serbia | 13 Jan. 2009 | Crnišanin and Others (nos. 35835/05, 43548/05, 43569/05 and 36986/06) Imp. 3. | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Protocol No. 1 | Failure of the state to enforce final court judgments given in their favour concerning monthly paid benefits, insurance and social security contributions | link |
| Spain | 8 Jan. 2009 | Golf de Extremadura S.A. (no. 1518/04) Imp. 2. | Violation of Art. 6 § 1 | The way in which the Supreme Court construed the provisions governing appeals on points of law deprived the applicant company of the right of access to a court in the context of proceedings concerning a building development project | link |
| "The former Yugoslav Republic of Macedonia" | 8 Jan. 2009 | Petkoski and Others v. (no. 27736/03) Imp. 2. | Violation of Art. 6 § 1 | The courts' refusal to deal with the applicants' case amounted to a violation of the right of access to a court (the applicants, members and founders of the agricultural cooperative Rasanec, requested that a decision to restructure the cooperative be annulled) | link |

| | | | | | |
|---|---|---|---|---|---|
| Turkey | 8 Jan. 2009 | Akpolat (no. 35561/06) Imp.3. | Violation of Art. 5 §§ 3, 4 and Art. 6§1 | Excessive length of the applicant's detention on remand (six years and nine months) ; Impossibility to challenge the lawfulness of the detention ; Excessive length of criminal proceedings (almost eight years) for participation in activities of an illegal organisation, the PKK (the Kurdistan Workers' Party) | link |
| Turkey | 13 Jan. 2009 | Amer (no. 25720/02) Imp. 3. | Violation of Art. 6 § 1<br>Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (e) | Excessive length (just over four years and nine months) of criminal proceedings for murder<br>Lack of assistance of an interpreter to enable the applicant to understand the accusations against him | link |
| Turkey | 13 Jan. 2009 | Ayhan Erdoğan (no. 39656/03) Imp. 3. | Violation of Art. 10 | Violation following the conviction of the applciant, a lawyer, to pay compensation to an Istanbul district mayor for having referred to him as "cruel and a bigot" in a petition for a client | link |
| Turkey | 13 Jan. 2009 | Bozlak and Others (no. 34740/03) Imp 3. | Violation of Art. 6 § 1 (length) | Excessive length of criminal proceedings against the applicants for membership of an illegal organisation, the PKK (Workers' Party of Kurdistan). | link |
| Turkey | 8 Jan. 2009 | Filiz Uyan (no. 7496/03) Imp. 2. | Violation of Art. 3 | The applicant was not allowed to have a gynaecological examination without her handcuffs being removed and without the presence of three male security officers | link |
| Turkey | 13 Jan. 2009 | Halıs Akın (no. 30304/02) Imp. 3. | Violation of Art. 2 | At the relevant time the legislation governing the use of firearms in frontier areas was incompatible with Art. 2 (the applicant was injured by shots fired by gendarmes). | link |
| Turkey | 8 Jan. 2009 | Kesikkulak (no. 7263/04) Imp. 3. | Violation of Art. 5 § 3 | Excessive length of the applicant's pre-trial detention (approx. eleven years). | link |
| Turkey | 13 Jan. 2009 | Mehmet Cevher İlhan (no. 15719/03) Imp. 3. | Violation of Art. 10 | Criminal conviction of the applicant, a journalist, for articles published in *Yeni Asya*. | link |
| Turkey | 13 Jan. 2009 | Yeter (no. 33750/03) Imp. 3 | Violation of Art. 2 (life and investigation) | The applicants' relative was tortured to death during his police custody<br>The authorities failed to carry out an effective investigation | Link |
| United Kingdom | 8 Jan. 2009 | Bullen and Soneji (no. 3383/06) Imp. 3. | Violation of Art. 6 § 1 | Length of confiscation proceedings for money laundering (approx. five years and six months) | link |
| United Kingdom | 8 Jan. 2009 | Grant (no. 10606/07) Imp. 3. | No violation of Art. 8 | Concerning a complaint about the applicant being deported to Jamaica in November 2007 (*inter alia* following robbery and drug offences), the Court found that the applicant's deportation from the | link |

| | | | | | |
|---|---|---|---|---|---|
| | | | | United Kingdom was proportionate to the legitimate aim pursued and therefore necessary in a democratic society | |

## 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** |
|---|---|---|---|---|
| Bulgaria | 15 Jan. 2009 | Koprinarovi (no 57176/00) link | Violation of Art. 1 of Prot. No. 1 | Violation on account of the applicants having been ordered to vacate their property following the application of restitution legislation |
| Italy | 8 Jan. 2009 | Sotira (no. 16508/05) link | Violation of Art. 1 of Protocole No. 1 | Unlawful deprivation of property through an indirect expropriation |
| Romania | 8 Jan. 2009 | Călinescu (no. 8780/04) link<br>Cernescu and Manolache (no. 28607/04) link<br>Constantinescu Elena and Others (no. 28584/04) link<br>Gherase (no. 16890/04) link<br>Pascanu (no. 41819/05) link | Violation of Art. 1 of Prot. No. 1 | Deprivation of property without any adequate compensation (despite the system set up in the laws n°10/2001 and n° 247/2005) |
| Romania | 8 Jan. 2009 | Gavriş (no. 13480/03) link | Violation of Art. 1 of Protocol No. 1<br>Violation of Art. 14 in conjunction with Art. 1 of Protocol No. 1 | The applicants had been unlawfully required to pay tax on the allowances they received on retirement. Such a tax payment was furthermore considered as discriminatory |
| Romania | 13 Jan. 2009 | Grosu (no. 2611/02) link | Just satisfaction | Following its judgement of 28 June 2007, the Court held concerning the just satisfaction that the Romanian State was to issue the applicant with title to the property concerned and a sum of money. |
| Romania | 13 Jan. 2009 | Marinescu (no 17955/05) link | Violation of Art. 1 of Protocol No. 1 | Deprivation of the applicant's right to property without any compensation |
| Romania | 8 Jan. 2009 | Rusen (no. 38151/05) link | Violation of Art. 6 § 1 | Violation of the right to access to a tribunal and the possibility to receive legal assistance |

| | | | | |
|---|---|---|---|---|
| Romania | 8 Jan. 2009 | Sersescu (no. 10230/05) link | Violation of Art. 6 § 1 and of Art. 1 of Prot.No. 1 | Quashing of a final decision |
| Russia | 8 Jan. 2009 | Kondrashov and Others (nos. 2068/03 and al.) link<br>Kulkov and Others (nos. 25114/03, and al.) link | Violation of Art. 6 and of Art. 1 of Prot. No. 1 | Non-enforcement and quashing of the judgments delivered in the applicants' favour |
| Russia | 15 Jan. 2009 . | Kozodoyev and Others (no 2701/04; 3597/04…) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. No. 1 | Domestic authorities' failure to enforce final judgments in the applicants' favour |
| Russia | 15 Jan. 2009 | Zhuravlev (no 5249/06) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. No. 1 | Ibid. |
| Russia | 13 Jan. 2009 | Nina Kazmina and others (no 746/05 and al.) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. No. 1<br>No violation of Art. 34. | Ibid. |
| Turkey | 13 Jan. 2009 | Arat and Others (nos. 42894/04 and al.), link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. No. 1 | Failure of the authorities for nine years to take the necessary measures to comply with the final judicial decisions (the alleged lack of funds of the Town Council cannot excuse such a delay). |
| Turkey | 13 Jan. 2009 | Kemal Kilic (no. 36424/06) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Protocol No. 1 | Delay in the enforcement of a final judicial decision awarding monies to the applicant |
| Turkey | 8 Jan. 2009 | Ali Durmaz (no. 22261/03) Link | Violation of Art. 6 § 1 and Art. 1 of Prot No. 1 | Non-enforcement of a final judgment in the applicant's favour |
| Turkey | 13 Jan. 2009 | Yavuz Sarikaya (no 11098/04) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. No. 1 | Delay in the enforcement of a final judicial decision awarding monies to the applicant |
| Turkey | 13 Jan. 2009 | Berber (no 20606/04) link | Violation of Art. 1 of Prot. No. 1 | Deprivation of the applicant's property without any compensation |
| Turkey | 13 Jan. 2009 | Gur and Yildiz (no 473/03) link | Violation of Art. 1 of Prot. No. 1 | Delay in the enforcement of a final judicial decision in the applicant's favour |
| United Kingdom | 13 Jan. 2009 | Thorne (no 28091/02) link | Violation of Art. 14 in conjunction with Art. 1 of Protocol No. 1 | As a widower, the applicant had been refused widows' benefits, notably Widow's Payment and Widowed Mother's Allowance. |

### 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 |
|---|---|---|---|
| Austria | 15 Jan. 2009 | Holzinger (No. 3) (No 9318/05) | Link |
| Austria | 15 Jan. 2009 | Klug (No 33928/05) | Link |
| Greece | 15 Jan. 2009 | Argyrou and Others (no 10468/04) | Link |
| Finland | 13 Jan. 2009 | Kukkonen, n°2 (no. 47628/06) | Link |
| Finland | 13 Jan. 2009 | Uoti (no. 61222/00) | Link |
| Hungary | 8 Jan. 2009 | Kustár (no. 42260/05) | Link |
| Poland | 13 Jan. 2009 | Arkadiusz Kubik (no. 45097/05) | Link |
| Poland | 13 Jan. 2009 | Górkiewicz (no. 41663/04) | Link |
| Poland | 13 Jan. 2009 | Kliber (no. 11522/03) | Link |
| Poland | 13 Jan. 2009 | Makuszewski (no. 35556/05) | Link |
| Poland | 13 Jan. 2009 | Pelizg (no. 34342/06) | Link |
| Poland | 13 Jan. 2009 | Sokołowska (no. 7743/06) | Link |
| Poland | 13 Jan. 2009 | Tekiela (no. 35785/07) | Link |
| Poland | 13 Jan. 2009 | Wysocka and Others (no. 23668/03) | Link |
| Poland | 13 Jan. 2009 | Załuska (no. 41701/07) | Link |
| Russia | 8 Jan. 2009 | Markova (no. 13119/03) | Link |
| Russia | 8 Jan. 2009 | Rypakova v. (no. 16004/04) | Link |
| Slovakia | 8 Jan. 2009 | Dudičová (no. 15592/03) | Link |
| Slovenia | 8 Jan. 2009 | Umek (no. 35463/02) | Link |
| "The former Yugoslav Republic of Macedonia" | 8 Jan. 2009 | Kangova (no. 17010/04) | Link |
| Turkey | 8 Jan. 2009 | Hasefe (no. 25580/03) | Link |

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 8 to 23 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 :***

| ***State*** | ***Date*** | ***Case Title*** | ***Alleged violations (Key Words by the Office of the Commissioner)*** | ***Decision*** |
|---|---|---|---|---|
| 15 States : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom | 9 Dec. 2008 | *Société établissements Biret et Cie S.A.* and *Société Biret International* (n°13762/04) Link | Alleged violation of Art. 6 (fair trial), 13 and 1 of Prot. n° 1 (concerning *inter alia* the possibility to challenge the legality of two European Directives, which were not in compliance with the regulations of the World Trade Organisation) | Inadmissible partly as incompatible *ratione personae* (a Member State of the European Community or the European Community itself are not liable before the EctHR)<br>Inadmissible partly as manifestly ill-founded : concerning the embargo measures adopted by France, the Court considers that France only complied with its obligations under the law of the European Community, which offers an equivalent protection to the one afforded by the ECHR (in conformity with the position of the Court as defined in the case *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi dite « Bosphorus Airways » v. Ireland* ([GC], n° 45036/98, ECHR 2005-VI) |
| 15 States : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom | 9 Dec. 2008 | Connolly (n° 73274/01) Link | Alleged violation of Art 6 § 1 (fair trial before the European Commission, the Court of First Instance and the Court of Justice of the European Communities) of Art. 13, of Art. 10 (concerning the disciplinary measures taken against the applicant, an employee of the EU, concerning the publication of a book on money laundering without prior authorisation of his hierarchy) and of Art. 1 of Prot. 1 | Inadmissible as incompatible *rationae personae* : the decisions of the organs of the European Community do not fall within the competence of the EctHR, and the Member States of the EU did not intervene in the proceedings (cf. *inter alia,* concerning the internal legal system of an international organisation endowed with its own legal personality separate from that of its members, the decision *Boivin c. 34 Etats membres du Conseil de l'Europe*, n° 73250/01, in RSIF n°3) |
| Cyprus, Turkey and the United Nations | 11 Dec. 2008 | Stephens (no. 45267/06) Link | Alleged violation of Art. 8, 1 of Prot. No. 1 and 2 of Protocol No. 4 (the applicant complained that her house had been severely damaged by fighting that took place in 1974 between the Turkish and Greek-Cypriot forces and that she was continuously denied access to her house, which was under the UN's control. She further complained that she had not been given compensation for the interferences with her rights) | Inadmissible partly as incompatible *ratione personae* (the applicant cannot claim the status of victim; the United Nations are not a contracting party to the Convention) and as manifestly ill-founded (Greece and Turkey do not have effective control over the buffer zone in which the applicant's house is located) |
| Poland | 9 Dec. 2008 | Toscano (n° 11172/07) Link<br>Von Loesch (n° 7948/07) Link<br>Stumpe (n° 7913/07) Link<br>Zimmermann (n° 5239/07) Link<br>Fenske (n° 28742/08) Link | Alleged violation of Art. 1 of Prot. No 1 (concerning the expulsion of the applicant's family after World War II)<br>Alleged failure of the Polish Parliament to pass a rehabilitation law | Inadmissible as incompatible *ratione temporis (*purported individual acts of violence, expulsion, dispossession and seizure or confiscation were instantaneous acts which occurred before the ratification of Protocol No. 1 by Poland) and as incompatible *ratione materiae (*no specific obligation under the Convention to provide redress for wrongs or damage caused prior to the ratification of the Convention)<br>See also with that respect the decision *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland*, no. |

| | | | | |
|---|---|---|---|---|
| | | Marrek (n° 28716/08) Link<br>Heuer (n° 13410/07) Link | | 47550/06, 7 October 2008 |

- ***Other decisions***

| ***State*** | ***Date*** | ***Case Title*** | ***Alleged violations (Key Words by the Office of the Commissioner)*** | ***Decision*** |
|---|---|---|---|---|
| Austria | 11 Dec. 2008 | Deuring (n° 15746/06) Link | Alleged violation of Art. 6 (length of proceedings, failure to summon witnesses, separation of prosecution and judgment functions before the Independent Administrative Panel) and of Art. 7 | Manifestly ill-founded (*inter alia* because the applicant was afforded an adequate redress by national authorities concerning the length of proceedings ; concerning Art. 7, the national authorities remained into the acceptable limits of interpretation of law) |
| Belgium | 9 Dec. 2008 | Espinosa Silvestre (n° 42339/07 ) Link | Alleged violations of Art. 6 §§ 1 and 3 d) (fairness of the proceedings) and 6 § 2 (Presumption of innocence) | Inadmissible as manifestly ill-founded (no appearance of violation) |
| Bosnia and Herzegovina | 9 Dec. 2008 | Halilović (n° 23968/05) Link | Alleged violation of Art. 3 (conditions of detention), of Art. 5 (unlawfulness of detention), of Art. 2, and of Art. 6 | Partly adjourned concerning conditions and lawfulness of detention<br>Partly manifestly ill-founded (Art. 6 does not as such guarantee a right to have criminal proceedings instituted against third persons; no positive obligation under Art. 2 in the present case) |
| Bulgaria | 16 Dec. 2008 | Delev (n° 1116/03) Link | Alleged violation of Art. 13 (lack of effective remedies), of Art. 3, of Art. 6 § 1 (excessive length) and Art. 1 of Prot. No. 1 | Struck out of the list (applicant no longer wishing to pursue his application) |
| Croatia | 11 Dec. 2008 | Ivosevic (n°35005/07) Link | Alleged violation of Art. 6 § 1 (length of proceedings) | Struck out of the list (friendly settlement reached) |
| Czech Republic | 9 Dec. 2008 | Adamíček (n° 35836/05) Link | Alleged violation of Art. 6 § 1 (right of access to the constitutional court, and length of proceedings) | Partly adjourned (concerning the conditions of admissibility of the appeal to the constitutional court)<br>Partly struck out the list (the applicant has been awarded a compensation at national level concerning the length of proceedings) |
| Finland | 9 Dec. 2008 | Uoti (n° 43180/04) Link | Alleged violation of Art. 6 § 1 (length of the criminal proceedings) and of Art. 13 (lack of effective remedy) | Inadmissible as manifestly ill-founded (the applicant cannot claim to be a victim as he has been afforded redress for the breach of the "reasonable time" requirement at domestic level) |
| Finland | 9 Dec. 2008 | Danker (n° 39543/04 ) Link | Alleged violation of Art. 6 § 1 (length of the criminal proceedings) and of Art. 13 (lack of effective remedy) | Inadmissible as manifestly ill-founded (the applicant cannot claim to be a victim as he has been afforded redress for the breach of the "reasonable time" requirement at domestic level) |
| France | 9 Dec. 2008 | Taguine (n° 27182/06) Link | Alleged violation of Art. 5 § 3 (length of pre-trial detention) | Struck out of the list (applicant no longer wishing to pursue its application) |
| France | 9 Dec. 2008 | Sci Parc De Vallauris (n° 31050/06) Link | Alleged violation of Art. 1 of Prot. 1 (concerning the necessity to pay certain taxes and the intervention of a *loi de finances rectificative*), of Art 6§1, of Art. 14, and of Art. 13 | Inadmissible partly as manifestly ill-founded (*inter alia* because a fair balance was struck concerning Art. 1 of Prot. 1) and partly as incompatible *ratione materiae* (Art. 6 does not |

| | | | | |
|---|---|---|---|---|
| | | | | apply to the civil part of tax proceedings) |
| Georgia | 9 Dec. 2008 | Jashi (n° 10799/06) Link | Alleged violation inter alia of Art. 3 and Art. 2 (conditions of detention, lack of psychiatric and medical treatment, real risk to the life of the applicant). | The application, which was partly struck out of the list, is restored insofar as it concerns the complaints under Article 3<br>The Court decides to adjourn the examination of the application. |
| Italy | 16 Dec. 2008 | Bigliazzi (n° 29631/06) Link | Alleged violation of Art. 10, of Art. 11. and of Art 2 of Prot. n° 4 (concerning some decisions taken by the Prefect of Genoa pertaining to demonstrations during the G8 summit) | Inadmissible as manifestly ill-founded (inter alia because the restrictions to access some parts of the city could be considered as necessary in a democratic society in the interests of national security or public safety) |
| Lithuania | 16 Dec. 2008 | Jakelaitis (n° 17414/05) Link | Alleged violations of Art. 6 (length of the criminal proceedings, unfair trial) and of Art. 8 (some elements of the criminal investigation leaked to the media) | Inadmissible as incompatible *ratione temporis* |
| Moldova | 9 Dec. 2008 | Soloviov (n° 19265/05) Link | Alleged violations of Art. 6 § 1 and of Art. 1 of Prot. No. 1 (failure to enforce a judgment) | Struck out of the list (friendly settlement reached) |
| Poland | 9 Dec. 2008 | Grudziński (n° 13828/02) Link | Alleged violation of Art. 6 § 1 (right of access to a court concerning the excessive fees required for proceeding with a cassation appeal ) | Inadmissible for non-exhaustion of domestic remedies (the applicant did not lodge an interlocutory appeal) |
| Poland | 16 Dec. 2008 | Laskowski (n° 9075/08) Link | Alleged violation of Art 6 § 1 (unreasonable length of the criminal proceedings). | Struck out of the list (friendly settlement reached) |
| Poland | 9 Dec. 2008 | Galusiewicz (n° 8651/04) Link | Alleged violation of Art. 6 § 1 (unreasonable length of proceedings), of Art. 13 (lack of an effective domestic remedy), of Art. 11 and of Article 3 of Prot. No. 1 (following the annulment of a housing co-operative's resolution) | Partly struck out of the list (unilateral declaration of the government concerning the length of proceedings and the lack of effective remedy)<br>Partly inadmissible as manifestly ill-founded |
| Poland | 9 Dec. 2008 | Przewdziekowski (n° 70370/01) Link | Complaint under Art. 1 of Prot. No.1 (deprivation of property without any compensation) | Struck out of the list (after the death of the applicant, no request has been submitted by the applicant's heirs to pursue the examination of the case) |
| Poland | 16 Dec. 2008 | Sobolewski (n° 39655/05) Link | Alleged violation of Art. 8 (interception of the correspondance of the applicant in detention with the EctHR), of Art 6 § 1 and Art 6 § 3 c) (fairness of the civil and criminal proceedings) | Inadmissible partly as incompatible *ratione personae* (the applicant cannot claim to be a victim of a violation of Art. 8 as a redress has been granted at domestic level) and partly as manifestly ill-founded (no appearance of violation of Art. 6) |
| Poland | 9 Dec. 2008 | Zaremba (n° 38019/07) Link | Alleged violations of Art. 6 § 1 (length of proceedings) and alleged lack of effective remedy | Struck out of the list concerning the length of proceedings (unilateral declaration of the government concerning)<br>Inadmissible as manifestly ill-founded (concerning the lack of effective remedy |
| Poland | 16 Dec. 2008 | Adamska (n° 13314/07) Link | Alleged violation of Art. 6 (length of proceedings) | Struck out of the list (friendly settlement reached) |
| Poland | 9 Dec. 2008 | Remesz and others (n° 32224/04) Link | Alleged violation of Art. 6 (length of proceedings) and 13 (lack of effective remedy) | Struck out of the list (friendly settlement reached) |
| Portugal | 16 Dec. 2008 | Machado (n° 6290/07) Link | Alleged violations of Art. 6 (length and fairness of civil and administrative proceedings), 13, 14, 17, 34, 35, 41, 46 and 1 of Prot. 1 | Inadmissible as incompatible *ratione personae* concerning the length of civil proceedings (the violation has been redressed at domestic level)<br>Inadmissible as manifestly ill-founded concerning the remainder of the application |

| | | | | |
|---|---|---|---|---|
| Romania | 16 Dec. 2008 | Croitor (n° 28827/03) Link | Alleged violations of Art. 6 (fairness, length), of Art. 14 (discrimination on political grounds), and of Art. 1 of Prot. 1 | Struck out of the list (applicant no longer wishing to pursue her application) |
| Romania | 16 Dec. 2008 | Tănasă (n° 16009/05) Link[*] | Alleged violations of Art. 1 of Prot.1 and of Art. 6 (concerning allegedly unlawful taxes and unfair trial) | Struck out of the list (friendly settlement reached) |
| Romania | 9 Dec. 2008 | Sârbuț (n° 23382/05) Link | Alleged violations of Art. 1 of Prot.1, of Art. 1 of Prot. 12 and of Art. 6 (concerning allegedly unlawful taxes, discriminatory treatment and unfair trial) | Struck out of the list (friendly settlement reached) |
| Romania | 9 Dec. 2008 | Craciunescu (n° 13236/03) Link | Alleged violations of Art. 1 of Prot.1 and of Art. 6 (concerning allegedly unlawful taxes and unfair trial) | Struck out of the list (friendly settlement reached) |
| Romania | 9 Dec. 2008 | Croitoru (n° 4407/05) Link | Alleged violations of Art. 1 of Prot.1, of Art. 1 of Prot. 12 and of Art. 6 (concerning allegedly unlawful taxes, discriminatory treatment and unfair trial) | Struck out of the list (friendly settlement reached) |
| Romania | 9 Dec. 2008 | Smaranda (n° 6006/05) Link | Alleged violations of Art. 1 of Prot.1, of Art. 1 of Prot. 12 and of Art. 6 (concerning allegedly unlawful taxes, discriminatory treatment and unfair trial) | Struck out of the list (friendly settlement reached) |
| Romania | 9 Dec. 2008 | Iacob (n° 1592/03) Link | Alleged violations of Art. 1 of Prot.1 and of Art. 6 (concerning allegedly unlawful taxes and unfair trial) | Struck out of the list (friendly settlement reached) |
| Russia | 11 Dec. 2008 | Yakurin (n° 65735/01) Link | Alleged violations of Art. 2, 6 and 34 (*inter alia* concerning the independence and impartiality, publicity of the trial hearing and the lack of legal representation on appeal) | Partly struck out the list in accordance with Art. 37§1(b) (the matter has been resolved) in so far as it relates to the complaints concerning the independence and impartiality of the Moscow Circuit Military Court, the publicity of its hearing and the lack of legal representation on appeal in the original criminal proceedings against the applicant<br>Partly inadmissible |
| Russia | 11 Dec. 2008 | Angelova (n° 37912/02) Link | Alleged violation of Art. 5 (detention of the applicant in the framework of criminal proceedings brought against her on suspicion of bribe taking in the Republic of Belarus) | Struck out of the list (applicant no longer wishing to pursue her application) |
| Russia | 11 Dec. 2008 | Shmakov (n° 15647/06) Link | Alleged violations of Art. 6 and 13 (prolonged non-enforcement of a judgment) | Struck out of the list (the applicant withdrew his application) |
| Russia | 11 Dec. 2008 | Shemilova and Shemilov (n° 42439/02) Link | Alleged violations of Art. 6, of Art. 1 of Prot. 1 and of Art. 2 of Prot. 4 (deliberate destruction of the applicants' house and other property by federal servicemen and refusal to award some compensation) | Partly admissible (concerning the destruction of the property and the domestic courts' refusal to allow the claims for compensation)<br>Partly inadmissible as manifestly ill-founded (no appearance of violation of Art. 2 of Prot. 4) |
| Russia | 16 Dec. 2008 | Malkin (n° 67363/01) Link | Alleged violation of Art. 5§1 (the applicant had not been released as ordered by the Supreme Court in its judgment) and more generally alleged unlawfulness of the detention | Partly admissible (concerning the State's failure to release him in accordance with the Supreme Court's decision)<br>Partly inadmissible as manifestly ill-founded (concerning the remainder of the application) |
| Russia | 11 Dec. 2008 | Sankin (n° 77783/01) Link | Alleged violations of Art. 3, 5§1 and 13 (ill-treatment by police officers, lack of investigation, unlawful detention) | Struck out of the list (the applicant withdrew his application as the violations had been fully remedied by the State by the conviction of the police officers and by awarding and paying the applicant the |

[*] See with that regard the case *Driha c. Roumanie* (n° 57001/00, CEDH 2005-VII, §§ 19-26).

| | | | | |
|---|---|---|---|---|
| | | | | compensation for the damage) |
| Russia | 16 Dec. 2008 | Lobanovskaya (n°31755/03) Link | Alleged violations of Art. 6 §§1 and 3 d) (the applicant could not question witnesses and had not been brought before the appeal court) | Inadmissible partly because of the failure to exhaust domestic remedies and partly because the applicant could no longer claim the status of victim (concerning the right to attend an appeal hearing a new appeal hearing had been ordered) |
| Russia | 11 Dec. 2008 | Ierchova and others (n° 26268/03) Link | Alleged violations of Art. 6§1 and 1 of Prot. 1 (non execution of final decisions in the applicants favour) | Struck out of the list (applicants no longer wishing to pursue their application) |
| Serbia | 16 Dec. 2008 | Brdanin (n° 5699/07) Link | Alleged violation of Art. 6§1 and Art. 1 of Prot. 1 (concerning the excessive length of the civil suit) | Struck out of the list (friendly settlement reached) |
| Slovakia | 16 Dec. 2008 | Zeman And Others (n° 37537/02) Link | Alleged violation of Art. 1 of Prot. 1 (the dismissal of the applicants' action in the proceedings had been allegedly arbitrary, and the legislative framework allegedly prevented the applicants from enjoying their possessions peacefully) | Inadmissible partly as manifestly ill-founded and partly for non-exhaustion of domestic remedies |
| Slovenia | 16 Dec. 2008 | Lipovsek (n° 5582/03) Link | Alleged violations of Art. 6§1 and of Art. 13 (length of civil proceedings and lack of effective remedy) | Struck out of the list (friendly settlement reached) |
| Slovenia | 16 Dec. 2008 | Koren (n° 26566/03) Link | Alleged violations of Art. 6 and of Art. 13 (fairness and length of civil proceedings, fairness of proceedings and lack of effective remedy) | Struck out of the list concerning the length of proceedings (the applicant can no longer claim the status of victim as an adequate redress has been granted at national level)<br>Inadmissible concerning the remainder of the application |
| Slovenia | 16 Dec. 2008 | Speglic (n° 7352/04 et al.) Link | Alleged violations of Art. 6§1 and of Art. 13 (length of civil proceedings, fairness of proceedings and lack of effective remedy), of Art. 1 of Prot. and of Art. 5 of Prot. 7 | Struck out of the list (friendly settlement reached) |
| Slovenia | 16 Dec. 2008 | Susnik (n° 7348/04 et al.) Link | Alleged violations of Art. 6§1 and of Art. 13 (length of civil proceedings and lack of effective remedy) | Struck out of the list (friendly settlement reached) |
| Spain | 9 Dec. 2008 | Vaquero Hernández, Dorado Villalobos, Bayo Leal (n° 1883/03 et al.) Link | Alleged violations of Art. 6 (impartiality, presumption of innocence, rights of defence, etc) concerning criminal proceedings lodged against members of the *Guardia Civil* following the disappearance and death of members of ETA. | Partly inadmissible (concerning the alleged lack of independence and impartiality of the tribunal)<br>Partly admissible (concerning the remainder of the application) |
| The Netherlands | 16 Dec. 2008 | Hossein Kheel (n° 34583/08) Link | The applicant complained that her return to Afghanistan would be in breach of Art. 3, 8 and 13 | Struck out of the list (the applicant has been granted a residence permit) |
| The Netherlands | 16 Dec. 2008 | Mahwi (n° 14033/08) Link | The applicant complained that his expulsion to Iran would be in breach of Art. 3 and 8 | Struck out of the list (the exclusion order imposed on the applicant has been lifted and the applicant has been granted a residence permit) |
| The Netherlands | 16 Dec. 2008 | Sekasi (n° 39828/03) Link | The applicant complained that his expulsion to Uganda would expose him to a real risk of being subjected to treatment in breach of Article 3 of the Convention | Struck out of the list (the applicant withdrew his application in view of the fact that he had been granted asylum) |
| The United Kingdom | 9 Dec. 2008 | Hill (n° 28006/02) Link | Alleged violation of Art. 14 taken in conjunction with both Art. 8 and 1 of Prot. No. 1 (discrimination on ground of sex in the British social security legislation) | Struck out of the list (applicant no longer wishing to pursue their application) |
| The United Kingdom | 9 Dec. 2008 | Martin (n° 28032/02) Link | Alleged violation of Art. 14 taken in conjunction with both Art. 8 and 1 of Prot. No. 1 (discrimination on ground of sex in the British social security | Struck out of the list (friendly settlement reached) |

| | | | | |
|---|---|---|---|---|
| | | | legislation) | |
| The United Kingdom | 16 Dec. 2008 | M.H. and A.S. (n° 38267/07 and 14293/07) Link | Both applicants complained that their removal to Sri Lanka would breach Art. 2 and 3 | Struck out of the list (the applicants benefit from the undertaking of the Government that they will not be returned to Sri Lanka pending the re-examination of their claims in light of the judgment of the EctHR in *NA. v. the United Kingdom*, no. 25904/07, 17 July 2008) |
| The United Kingdom | 9 Dec. 2008 | Abbey (n° 19537/06) Link | Alleged violation of Art. 3 (given his illnesses and the lack of medical treatment available in Ghana, the deportation of the applicant would breach Art. 3 ) | Struck out of the list (the return of the applicant to Ghana was entirely voluntary, although prompted by family circumstances) |
| Turkey | 9 Dec. 2008 | Noğay (n° 33297/04) Link | Alleged violations of Art. 6, 11 and 13 (concerning the disciplinary sanction imposed on the applicant for having participated in a demonstration and the impossibility to challenge this sanction) | Struck out of the list (the matter can be considered as resolved within the meaning of Art. 37 § 1 (b)) |
| Turkey | 16 Dec. 2008 | Doğru (n° 33155/04) Link | Alleged violations of Art. 5 and 6 (following the arrest, detention and judgment of the applicant on suspicion of being involved in the activities of an illegal organisation, the TKP-ML/TIKKO) | Partly adjourned (concerning the length of the criminal proceedings)<br>Partly inadmissible (concerning the remainder of the application) |
| Turkey | 16 Dec. 2008 | Yücel and Others (n° 40056/04) Link | Alleged violations of Art. 6§1 and 1 of Prot. 1 (unreasonable length and unfairness of the domestic proceedings which had breached the applicants' right to property) | Partly adjourned (concerning the length of proceedings before the Büyükçekmece Civil Court and the Istanbul Administrative Court)<br>Partly inadmissible (concerning the remainder of the application) |
| Turkey | 16 Dec. 2008 | Işik (n° 33102/04) Link | Alleged violations of Art. 5, 6, 13 and 14 (following the arrest and detention of the applicant on suspicion of being involved in the activities of the PKK (the Kurdistan Workers' Party) | Partly adjourned (concerning the length of the criminal proceedings, the non-communication of the opinion of the Chief Public Prosecutor at the Court of Cassation, the absence of legal assistance during the applicant's detention in police custody, the lack of an effective remedy)<br>Partly inadmissible |
| Turkey | 9 Dec. 2008 | Dögüş and Others (n° 45374/04) Link | Alleged violations of Art. 6§1 and f Art. 1 of Prot. 1 (length of proceedings, insufficient compensation and delay in the payment of the compensation) | Inadmissible as manifestly ill-founded (the length of proceedings could not be regarded as excessive and the compensation could be regarded as sufficient) |
| Turkey | 9 Dec. 2008 | Çelenk (n° 17462/03) Link | Allegations that domestic courts had erred in law and violated the applicant's right to respect for property | Struck out of the list (applicants no longer wishing to pursue their application) |
| Turkey | 9 Dec. 2008 | Dogan (n° 29361/07) Link | Alleged violations of Art. 5 and 6 (concerning the custody of the applicant in the anti-terrorism branch of the Istanbul police headquarters and concerning the subsequent detention on remand and judicial proceedings) | Partly adjourned *(*concerning the right to be released pending trial, the right to compensation under Art. 5§5 and the right to a fair hearing within a reasonable time)<br>Partly inadmissible (concerning the remainder of the application) |
| Turkey | 9 Dec. 2008 | Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi (n° 22522/03 ; et al.) Link | Alleged violations of Art. 1 of Prot. 1, of Art 14 and of Art 9 (concerning the refusal to register the property of the applicant, a foundation belonging to a religious minority, on the lands' register) | Inadmissible as manifestly ill-founded (*inter alia* because the applicant's claim did not fall within the autonomous notion of "property" as protected by the Convention) |
| Turkey | 9 Dec. 2008 | Boz (n° 7906/05) Link | Alleged violations of Art. 6§1 and 1 of Prot. 1 *(inter alia* concerning the fairness of the proceedings before the administrative organs and the administrative courts) | Partly adjourned (concerning the default to communicate the submissions of the Advocate General of the Conseil d'Etat)<br>Partly inadmissible (concerning the |

| | | | | |
|---|---|---|---|---|
| | | | | remainder of the application) |
| Turkey | 9 Dec. 2008 | Beydili (n° 4806/03) Link | Alleged violations of Art. 6, 13 and 1 of Prot. 1 (lengthy non enforcement of judicial decisions in the applicant favour) | Inadmissible for non-exhaustion of domestic remedies (the applicant did not register on a "creditors' list) |
| Turkey | 9 Dec. 2008 | Sabahi Tekin and others (n° 9417/04) Link | Alleged violations of Art.2, 3, 5 and 13 (alleged negligence of the police officers to drive the applicants' relative to the hospital, alleged ill-treatment and lawfulness of the detention) | Struck out of the list (applicants no longer wishing to pursue their application) |
| Turkey | 16 Dec. 2008 | Bakircioglu Et Autres (n° 41123/04) Link | Alleged violations of Art. 6§1, 3, 1 of Prot. 1, 13 (*inter alia* length and fairness of the proceedings) | Partly adjourned (concerning the length of the proceedings and the lack of an effective to challenge this length)<br>Partly inadmissible as manifestly ill-founded for the remainder of the application |
| Turkey | 16 Dec. 2008 | Oktay (n° 24803/05) Link | Alleged violations of Art. 8, 9 and 10 (concerning the decision to refuse to transmit the letters of the applicant to Abdullah Öcalan) | Inadmissible as manifestly ill-founded (the interference could not be considered as disproportionate due to the risk pertaining to existing terrorist threats) |
| Turkey | 16 Dec. 2008 | Kartal and others (n° 29768/03) Link | Alleged violations of Art. 3, 5 § 1 c), 9, 10 and 11 (concerning *inter alia* allegations of ill-treatment by the police officers and the lawfulness of the custody) | Inadmissible as manifestly ill-founded (*inter alia* because the use of force during the arrest could not be considered as disproportionate, and because the dispersion of the demonstration could be considered as necessary in a democratic society) |
| Turkey | 16 Dec. 2008 | Sogut (n° 33098/04) Link | Alleged violations of Art. 1 of Prot. 1, of Art. 6, of Art. 2 and of Art. 13 (lengthy non-enforcement of a decision in favour of the applicant) | Inadmissible as manifestly ill-founded (*inter alia* because the delay in the payment by the municipality did not cause any financial loss to the applicant) |
| Turkey | 16 Dec. 2008 | Bilsev and Zein (n° 43579/04) Link | Alleged violations of Art. 5, 6 and 10 (Inability to take part to the hearing before the "Cour de sûreté de l'Etat") | Struck out of the list (applicant no longer wishing to pursue their application) |
| Turkey | 9 Dec. 2008 | Unsal and others (n° 26868/04) Link | Alleged violation of Art. 1 of Prot. 1 (concerning the cancellation of a building permit) | Struck out of the list (applicants no longer wishing to pursue their application) |
| Turkey | 9 Dec. 2008 | Reyhan and Others (n° 14501/03) Link | Alleged violations of Art. 8, 9, 10, 14, 17 and 18 (right to correspondence of the applicants while in detention) | Struck out of the list (applicants no longer wishing to pursue their application) |
| Turkey | 9 Dec. 2008 | Keskin (n° 25987/03) Link | Alleged violation of Art. 1 of Prot. 1 (insufficient compensation following an expropriation and delay in the payment of the compensation) | Struck out of the list (applicant no longer wishing to pursue their application) |
| Turkey | 9 Dec. 2008 | Usta and Others (n° 5313/05) Link | Alleged violations of Art. 5 and 6 (following the arrest of the applicants by the counterterrorism police, the custody of those applicants and the proceedings initiated against them) | Partly adjourned (concerning the length of the criminal proceedings, concerning the length of pre-trial detention and concerning the possibility to challenge the detention or to obtain compensation for an unlawful detention)<br>Partly inadmissible for the remainder of the application |
| Turkey | 9 Dec. 2008 | Turkes (n° 6246/03) Link | Alleged violations of Art. 3, 5 and 13 | Struck out of the list (applicant no longer wishing to pursue their application) |
| Turkey | 16 Dec. 2008 | SS Akgunler Yapi Kooperatifi (n° 22277/03) Link | Alleged violations of Art. 1 of Prot. 1 and of Art. 6§1 (lengthy non-enforcement of a decision in the applicant's favour) | Inadmissible as incompatible *ratione temporis* |
| Turkey | 9 Dec. | Sut and Ozdemir (n° | Alleged violations of Art. 5, 6 § 3 c), 18 (*inter alia* concerning the unlawful | Struck out of the list (applicants no longer wishing to pursue their |

| | | | | |
|---|---|---|---|---|
| | 2008 | 14338/02) Link | deprivation of liberty of the applicants) | application) |
| Turkey | 9 Dec. 2008 | Uskup (n° 30805/04) Link | Alleged violations of Art. 1 of Prot. 1 and of Art. 17 and 18 (lengthy non-enforcement of a decision in the applicant's favour) | Inadmissible as manifestly ill-founded (the applicant has received compensation and cannot longer claim to be a victim) |
| Turkey | 9 Dec. 2008 | Muhendislik A.S. (n° 33096/04) Link | Alleged violations of Art. 6§1, 13, and 1 of Prot. 1 (lengthy non-enforcement of a decision in the applicant's favour) | Struck out of the list (applicant no longer wishing to pursue his application) |
| Ukraine | 16 Dec. 2008 | Vitrenko And Others (n° 23510/02) Link | Alleged violations of Art. 10 (defamation proceedings against member of the Progressive Socialist Party of Ukraine), 6§1, 13 and 3 of Prot. 1 (right to free elections) | Inadmissible partly as manifestly ill-founded (*inter alia* because the interference with the right to freedom of expression could be considered as legitimate and necessary and because there was no further appearance of violation) and partly as incompatible *ratione materiae*. |
| Ukraine | 16 Dec. 2008 | Len (n° 852/05) Link | *Inter alia* alleged violations of Art. 1, 6, 13 and of Art. 1 of Prot. No. 1 (lengthy non-enforcement of the decisions in the applicants favour; insufficient amounts awarded; inability to recover indexed deposits with the Savings Bank of Ukraine) | Partly adjourned (concerning the lengthy non-enforcement of the proceedings)<br>Partly inadmissible as manifestly ill-founded concerning the remainder of the application |

## C. The communicated cases

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

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

- on 12 January 2009 : link
- on 19 January 2009: link
- on 26 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 12 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 |
|---|---|---|---|
| Albania | 19 Dec. 2008 | BEJKO no.18439/05 | Alleged violation of Articles 6§1 and 1 of Protocol 1 due to non enforcement of Tirana Municipal Council's decision; of Article 6§1 due to length of proceedings. |
| Austria | 18 Dec. 2008 | KOPF and LIBERDA no. 1598/06 | Alleged violation of Article 8 due to the refusal of the national courts to grant access to the applicants' former foster child and alleged violation of Article 6§1 due to length of civil proceedings. |
| Germany | 18 Dec. 2008 | MUTLAG no. 40601/05 | Alleged violation of Articles 8 and 3 due to expulsion to Jordan. |
| Poland | 08 Jan. 2009 | PIŃKOWSKI no. 16579/03 | In particular alleged length of pre-trial detention (Article 5§3). The questions to the parties refer to the existence of a structural problem. |
| Poland | 19 Dec. 2008 | MOCZULSKI no. 49974/08 | Alleged violation of Article 6 §1 due to length of lustration proceedings and due to non respect of equality of arms and to lack of impartiality of the Court. Issue of exhaustion of domestic remedies. |
| Poland | 19 Dec. 2008 | PAWLIK no. 7417/05 | Lack of an effective investigation by the authorities further to aggression suffered by the applicant (the applicant has also sent his complaint to the Ombudsman). |
| Russia | 18 Dec. 2008 | DOROGAYKIN no. 1066/05 | Alleged violation of conditions of detention in remand centre IZ 22/1 in Bernaul. |
| Russia | 18 Dec. 2008 | FINOZHENOK no. 3025/06 | During operations in Chechnya, death of the applicant's mother and brother. Alleged violations of Article 2 (substantive and procedural angle, of Article 8 and Article 1 Protocol 1 (destruction of flat and belongings), of Article 13 (effective domestic remedy). |
| Russia | 18 Dec. 2008 | KHODZAYEV No. 52466/08 | The application concerns alleged violation of ECHR provisions (3, 5§1, 5§2, 5§4, 6§1) due to arrest and possible extradition to Tajikistan. |
| Sweden | 16 Dec. 2008 | A.G. No. 22107/08 | Risk of being subjected to ill treatment if the applicant were forced to return to Sudan. |
| The U-K | 17 Dec. 2008 | AL SKEINI and 5 Others no. 55721/07 | The applicants allege that their relatives were within the jurisdiction of the UK under Article 1 of the ECHR when they were killed through the acts of the British armed forces in Iraq .They complain under Articles 2 (and in the case of the 6th applicant, Article 3) about the failure to carry out a full and independent investigation into the circumstances of each death. The issue of the jurisdiction of the UK within the meaning of Article 1 ECHR is at stake. |
| Turkey | 07 Jan. 2009 | 35 applications | Alleged violation of Article 1 Protocol 1 due to *de facto* expropriations |
| Turkey | 19 Dec. 2008 | HUN no. 17570/04 | Alleged violation of Article 6 (police incitement; under-covered agents ; use of evidence; see judgment in *Ramanauskas v. Lithuania*). |
| Ukraine | 16 Dec. 2008 | TITARENKO no. 31720/02 | Alleged violation of Article 3 (condition of detention in the Debaltsevo Temporary Detention Centre and presence in the hearings in a cage); of Article 8 due to refusal to allow family visits while the applicant was in detention; alleged lack of an effective remedy; alleged violation of Article 5§3 and §4. |

**Communicated cases published on 19 January 2009 on the Court's Website: no cases selected by the Office of the Commissioner**

**Communicated cases published on 26 January 2009 on the Court's Website and selected by the Office of the Commissioner**

*NB. The 26 January batch contains a number of cases with alleged violations of procedural provisions (Articles 5 and 6) with respect to: Armenia, Azerbaijan, Romania, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.*

| State | Date of communication | Case Title | Key Words by the Office of the Commissioner |
|---|---|---|---|
| Austria | 14 Jan.2009 | GRAZIANI-WEISS no. 31950/06 | The applicant complains under Article 4 § 2 that he has to perform the duties of a legal curator against his will and without payment, since the person concerned has no means to pay for his services. He also alleges a violation of Article 14, apparently taken in connection with Article 4 § 2 of the Convention, since only practising lawyers, their associates, and public notaries and their associates are on the court list of legal curators, and not other persons who have studied law but work in other professions |
| Belgium | 14 Jan. 2009 | MIRZAE n° 49950/08 | Risk of being subjected to ill treatment if the applicant were expelled to Greece (and possibly return to Afghanistan). |
| Bulgaria | 06 Jan. 2009 | STOYANOVI no. 42980/04 | Alleged violation of Article 2 due to the death of the applicant's son (when performing parachute jumps from a Mi-17 helicopter during anti-terrorist training of the Ministry of the Interior) and due to lack of an effective investigation. |
| Bulgaria | 06 Jan. 2009 | CHERVENKOV n° 45358/04 | Alleged violation of Article 3 (conditions of detention in Burgas prison – special regime); of Article 8 (control of correspondence with the applicant's lawyer); of Article 13 due to lack of effective domestic remedy. |
| Bulgaria | 05 Jan. 2009 | PETROV n° 22926/04 | Alleged violation of Article 3 due to police misconduct during arrest, lack of an effective investigation, dye to incompressible life sentence; of Articles 8 and 13. |
| Cyprus, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands Poland, Portugal, Slovakia, Slovenia | 14 Jan. 2009 | ARTEMI and GREGORY n° 35524/06 | The applicants complained under Articles 2 and 3 of Protocol No. 4 of an unjustified restriction of their right to free movement and residence throughout the territory of the European Union and, in particular, in northern Cyprus, as a result of the suspension of the *acquis communautaire* in northern Cyprus by the Treaty of Accession of 2003. They also added that the suspension violated the right of displaced persons to return to their homes in northern Cyprus. The suspension exceeded what was strictly necessary in the circumstances and amounted to a permanent restriction of their rights. Moreover, the respondent States failed to observe their positive obligations "to take diplomatic, economic, judicial or other measures that [were] in [their] power" as required by their positive obligations under Article 1 of the Convention to ensure the implementation of the applicants' right of free movement and residence in the northern part of Cyprus by exerting diplomatic and legal pressure on Turkey |

| | | | |
|---|---|---|---|
| and Sweden | | | in the context of its negotiations in relation to accession to the EU.<br>The applicants also complained that the EU's enlargement policy discriminated against them as the European Commission imposed an obligation to ensure the right of displaced persons to return as a requirement for accession in the cases of Bosnia and Herzegovina, Croatia and Serbia. In the case of Turkey the European Commission imposed conditions in relation to displaced Kurdish persons whereas no such condition concerning displaced Greek Cypriot persons has been imposed. They further raised the same complaint under Article 14 of the Convention against all the respondent States and under Article 1 of Protocol No. 12 to the Convention in respect of Cyprus, Finland, Luxembourg and the Netherlands.<br>The applicants further complained under Article 13 of the Convention of the lack of an effective remedy since the suspension of the *acquis communautaire* in northern Cyprus was not subject to review by the European Court of Justice.<br>The applicants complained under Article 17 that the respondent States sought to eliminate their right of free movement and residence in Cyprus by incorporating permanent restrictions of such rights into EU primary law. They also maintained that the said restrictions contributed to ethnic cleansing and were contrary to UN Security Council resolutions. |
| Denmark | 09 Jan. 2009 | SITHAM-PARANATHAN no. 58359/08 | The applicant complains that an implementation of the deportation order to return him to Sri Lanka would be in violation of Article 3 of the Convention. |
| Georgia | 15 Jan. 2009 | KOIAVA n° 44654/08 | In particular alleged violation of Article 3 due to inadequate medical care in the penitentiary hospital of Tbilisi and medical centre of Ksani. |
| Romania | 16 Jan. 2009 | nos 29007/06, 31323/06, 31920/06, 34485/06, 38960/06, 38996/06, 39027/06 39067/06 | The complaints deal with in particular with alleged violations of Articles 2 and 3 (procedural angle) further to attacks against the applicants who participated in demonstrations against the communist regime in 1989 (Cluj-Napoca) |
| Romania | 15 Jan. 2009 | 30 cases | The cases deal with the issues addressed in the judgments in *(nos 1 and 2)* dealing with the destruction of the applicants' -of Roma origin- houses further to the events which took place in the village of Hădăreni. |
| Russia | 14 Jan. 2008 | MOROZOV no. 38758/05 | The applicant complains under Article 3 of the Convention about the allegedly appalling conditions of his detention in a temporary detention centre and remand centres Novocherkassk, Ryazan and Yekaterinburg, as well as about the conditions of his transport. Also, alleged violation of Article 3 (procedural angle) due to lack of an effective investigation and of Article 13 due to lack of an effective remedy. |
| Sweden | 07 Jan. 2009 | E.S. | The application deals in particular with the failure |

| | | | |
|---|---|---|---|
| | | no. 5786/08 | to provide sufficient protection for the applicant, given that her stepfather was not prosecuted for the facts underlying the present application, notably for having filmed or for having attempted to film the applicant with a hidden camera without her consent (Article 8). Also: alleged violation of Article 13 (lack of an effective domestic remedy). |
| The Netherlands | 12 Jan. 2009 | CISSE no. 61751/08 | The applicant complains under Article 8 of the Convention that, in order to be granted a residence permit in the Netherlands, he first has to leave that country and apply and wait for a provisional residence visa. He fears that, due to a lack of travel and identity documents, he will be unable both to return to his native Liberia and to obtain a visa. Even if he did succeed, he would be separated from his father for such a long time that the latter might succumb to his illnesses in the meantime. |
| Turkey and Romania | 09 Jan. 2008 | SARIGÜL no. 9936/04 | The complaint against Romania deals in particular with the conditions of the applicants arrest and expulsion to Turkey.<br>The complaint against Turkey deals with the lawfulness of the applicants' arrest and detention. |
| United-Kingdom | 14 Jan. 2009 | KNAGGS and KHACHIK no. 22921/06 | The applicants complain under Article 8 that the probe was not "in accordance with law" and accordingly constituted an unjustified interference with their right to respect for private life. Under Article 6§1 the applicants complain that the admission of evidence relating to the probe and the telephone call data, and the restrictions on their ability to challenge its admission, breached their right to a fair trial. They argue that the failure of the police to record Mr Knaggs' movements during the directed surveillance exercise also unfairly limited their ability to challenge the probe evidence. Finally, they complain that the blanket ban on intercept evidence and any associated question or evidence breaches their rights under Article 6 § 1 because as a result of the ban, there is no way to challenge a suspected unlawful disclosure. Under Article 13, the applicants complain that they were denied an effective remedy in respect of the above violations. |
| United-Kingdom | 16. Jan 2009 | REDFEARN no. 47335/06 | The applicant complains under Articles 9, 10, 11 and 14 of the Convention that the United Kingdom failed to protect him from dismissal from Serco Limited by reason of his membership of or involvement in or affiliation to a political party (British National Party –BNP). |

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

**Seven applications against Georgia concerning hostilities in South Ossetia (14.01.09)**

A Chamber of the European Court of Human Rights has recently examined seven applications against Georgia concerning hostilities which broke out in South Ossetia at the beginning of August 2008. The applications were lodged by six inhabitants of South Ossetia and a member of the Russian Armed Forces attached to the peace keeping corps in Tskhinvali, South Ossetia : Abayeva v. Georgia (no. 52196/08); Bekoyeva v. Georgia (no. 48347/08) ; Bogiyev v. Georgia (no. 52200/08) ; Bagushvili v. Georgia (no. 49671/08) ; Tekhova v. Georgia (no. 50669/08) ; Tedeyev v. Georgia (no. 46657/08) ; Konovalov v. Georgia (no. 53894/08).

The cases mainly concern an alleged violation of the applicants' or their close relatives' right to life, inhuman or degrading treatment, interference with the right to respect for private and family life and home, damage to property or its destruction, absence of an effective domestic remedy and discrimination on the ground of ethnic origin/nationality. The applicants rely on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention.

The Chamber decided to give priority to the applications under Rule 41 of the Rules of Court and to communicate them to the Georgian Government under Rule 54 § 2 (b).

These applications belong to a group of more than 3,300 cases with a similar factual background which have been lodged with the Court since August 2008.

**Visit to the French Conseil supérieur de la magistrature (12.01.09)**

On 8 January 2009, President Costa was received by the Conseil supérieur de la magistrature in Paris for a meeting concerning the European Court of Human Rights.

# Part II : The execution of the judgments of the Court

## A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 17 to 19 March 2009 (the 1051st meeting of the Ministers' deputies).

## 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)

**Seminar to be held in Brussels on non accepted provisions of the Revised Charter (16.01.09)**
A seminar will be held in Brussels on 3 February 2009 with regard to non accepted provisions and the implementation of the Revised Charter in Belgium.
*Draft programme (French only)*

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

We invite you to consult the latest version of « European Social Charter, Collected texts » updated to 30 June 2008.

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

**Council of Europe anti-torture Committee publishes report on Serbia (14.01.09)**

The Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has published the report on its periodic visit to Serbia in 2007, together with the Serbian authorities' response. These documents have been made public at the request of the Serbian Government.

During the 2007 visit, a number of allegations of physical ill-treatment of persons detained by the police were received. The CPT has made a series of recommendations to address this issue, as well as to improve the practical implementation of fundamental safeguards against ill-treatment, such as access to a lawyer (including for detained juveniles), access to a doctor and access to an interpreter for detained foreign nationals.

As regards prisons, the delegation received almost no allegations of ill-treatment of inmates by staff at Sremska Mitrovica Correctional Institution, and only a few allegations at Belgrade District Prison. This contrasted with the situation at Požarevac-Zabela Correctional Institution, where a number of recent allegations of physical ill-treatment were received. The CPT has recommended measures aimed at decreasing tension in the last-mentioned establishment, in particular in the high security unit and the remand section.

The CPT observed disturbing levels of overcrowding in all the prison establishments visited, especially in sections for remand prisoners. The Committee has taken note of the ongoing and planned refurbishment and expansion projects concerning various prisons and has called upon the Serbian authorities to devise, as a matter of high priority, a comprehensive and fully-budgeted refurbishment programme for Belgrade District Prison. The situation was exacerbated by the absence of constructive activities for prisoners in remand sections, and the inadequate provision of purposeful activities and work opportunities for sentenced prisoners. On a more positive note, the CPT welcomed the ongoing refurbishment of the Special Prison Hospital.

Turning to psychiatry, hardly any allegations of physical ill-treatment of patients by staff were received at the Specialised Neuro-Psychiatric Hospital in Kovin. However, inter-patient violence was a problem. In addition, the CPT has expressed concern about the frequent resort to mechanical restraints in the establishment, sometimes for prolonged periods. As regards safeguards surrounding involuntary placement, the Committee found that they remain unsatisfactory and has made recommendations to improve the situation. In the light of the poor material conditions found in the

Kovin Hospital, the CPT has also recommended that the establishment be the subject of a comprehensive refurbishment programme. More generally, the Committee welcomed the adoption, in 2007, of a Strategy for the Development of Mental Health Care aimed at reducing the size or closing down some of the psychiatric hospitals in Serbia, and developing community care; the CPT has encouraged the Serbian authorities to implement these plans as a matter of priority.

No allegations of ill-treatment were received at the Special Institution for Children and Juveniles in Stamnica. However, instances of inter-resident violence were observed, which was hardly surprising given the combination of severe overcrowding and low staffing levels in various parts of the establishment. The CPT has expressed particular concerns about the living conditions and lack of activities in Pavilions 1 to 6 (the "upper zone") and made recommendations on this issue. More generally, the CPT has recommended that steps be taken to reorganise the system for provision of care to persons with mental disabilities, as well as to improve the legal safeguards surrounding the placement of people in specialised institutions.

In their response, the Serbian authorities provide information on the measures being taken to address the issues raised in the CPT's report.

The CPT's visit report and the response of the Serbian authorities are available on the Committee's website http://www.cpt.coe.int

## 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)

CM/ResCMN(2009)2E / 14 January 2009
Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Montenegro (Adopted by the Committee of Ministers on 14 January 2009 at the 1045th meeting of the Ministers' Deputies)

CM/ResCMN(2009)1E / 14 January 2009
Framework Convention for the Protection of National Minorities – Election of an expert to the list of experts eligible to serve on the Advisory Committee on the Framework Convention for the Protection of National Minorities, and appointment of an ordinary member of the Advisory Committee in respect of a casual vacancy in respect of Austria (Adopted by the Committee of Ministers on 14 January 2009 at the 1045th meeting of the Ministers' Deputies)

## E. Group of States against Corruption (GRECO)

_*

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

**MONEYVAL publishes its second report on Azerbaijan (14.01.09)**

The Council of Europe MONEYVAL Committee (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) has published the Second Evaluation report on Azerbaijan. This report analyses the implementation of international and European standards to combat money laundering and terrorist financing, assesses levels of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations and includes a recommended Action Plan to improve the Azerbaijan anti-money laundering and combating the financing of terrorism (AML/CFT) system.

# Part IV : The intergovernmental work

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

**Hungary** ratified on 7 January 2009 the Council of Europe Convention on the avoidance of statelessness in relation to State succession (CETS No. 200).

## B. Recommendations and Resolutions adopted by the Committee of Ministers

See the resolutions concerning the Framework Convention for the Protection of National Minorities above under item III D.

## C. Other news of the Committee of Ministers

**Non-renewal of licences of foreign broadcasters in Azerbaijan (15.01.09)**

In a common statement, Miguel Ángel Moratinos, Chairman of the Committee of Ministers and Spanish Minister of Foreign Affairs and Co-operation, and Lluís Maria De Puig, President of the Parliamentary Assembly of the Council of Europe declared:

"When it acceded to the Council of Europe in 2001, Azerbaijan undertook to guarantee the freedom of expression and independence of the media, which are essential preconditions for the functioning of a democratic society. We find it highly regrettable that the Azerbaijani National Radio and Television Council recently decided not to renew the licences of several foreign broadcasters. This cannot but create obstacles to pluralism of information in this country to the detriment of the interests of the Azerbaijani population. As pluralism is the basis of the principles in any democratic society, we hope that the decision adopted will be reconsidered and that steps can be taken quickly to rectify this situation. As it has done in the past, the Council of Europe is ready to provide assistance to the Azerbaijani authorities to this end."

**1045th Meeting of the Ministers' Deputies (14.01.09)**

During their meeting on 14 January 2009, the Ministers' Deputies pursued their discussions on the Council of Europe and the conflict in Georgia. They agreed to resume consideration at their 1046th meeting (21 January 2009) of an information note prepared by the Secretariat on the steps taken under the procedure initiated between Georgia and the Russian Federation in application of Article 23 of the Convention on the Transfer of Sentenced Persons (ETS No. 112).

The priorities of the Czech Presidency of the Council of the European Union were presented to the Ministers' Deputies by Minister Cyril Svoboda, Chairman of the Legislative Council of the Government of the Czech Republic. The discussion that followed focused in particular on co-operation between the Council of Europe and the European Union, on the European Union enlargement policy and on the Eastern Partnership initiative.

Concerning Belarus, the Ministers' Deputies took note of the progress in the implementation of the assistance programme in 2008 and of the prospects for 2009. They instructed the Secretariat to continue planning these activities and to submit to them a detailed programme with the necessary financial information in due course.

The Deputies also finalised the programme for the 2009 celebration of the 60th anniversary of the Council of Europe. The main event will be the 119th ministerial session which will take place in May 2009 in Madrid, which will bring the essential political impetus to the anniversary.

In the light of the decision adopted by the 11th Council of Europe Conference of Ministers responsible for Sport (Athens, Greece, 10-12 December 2008), the Deputies finally confirmed the designation of Mr Jaime LISSAVETZKY (Spanish State Secretary for Sport) as the candidate to the position of European member of the World Anti-Doping Agency (WADA) Executive Committee for 2009-2010.

# Part V : The parliamentary work

Relevant information regarding the session of the Parliamentary Assembly of the Council of Europe' Session (26-30 January 2009) will be provided in the next issue of the Regular Selective Information Flow.

However you may already find relevant information using the following link: http://assembly.coe.int/default.asp

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

–*

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

- ***COUNTRIES***

**Armenia: PACE co-rapporteurs make monitoring visit (13.01.09)**

Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) on the monitoring of obligations and commitments by Armenia, went to Yerevan from 14 to 16 January 2009, for a follow-up visit in connection with the implementation of PACE Resolutions 1609 (2008) and 1620 (2008) on the functioning of democratic institutions in Armenia. Their report was debated during the Assembly plenary session, on 29 January.

**PACE's Presidential Committee visited Moscow (16.01.09)**

The Presidential Committee of the Council of Europe Parliamentary Assembly (PACE), led by its President, Lluís Maria de Puig, visited Moscow on 19 January 2009 as part of the follow-up to the Assembly's resolution on the consequences of the war between Georgia and Russia.

Following the adoption of Resolution 1633 on "The consequences of the war between Georgia and Russia" on 2 October 2008, the Assembly's Bureau asked the Presidential Committee to visit Tbilisi and Moscow for meetings with the authorities at the highest level concerning the implementation of the resolution. The visit to Tbilisi took place on 30 October 2008.

The Assembly was due to debate a new report on this question on 28 January during its Winter plenary session in Strasbourg (26-30 January 2009).

## C. Miscellaneous

**PACE Bureau calls for an immediate ceasefire in Gaza (09.01.09)**

The Bureau of the PACE meeting in Barcelona, adopted a statement to call for an immediate ceasefire in Gaza: Link to the statement.

Moreover, the Bureau decided to propose to the Assembly to hold a debate on the issue at the plenary part session (Strasbourg, 26-30 January 2009) and to invite Israeli and Palestinian representatives to take part.

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

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

## A. Country work

**Italy: "Serious problems remain, but constructive talks are a promising first step" says Thomas Hammarberg concluding his visit to Rome (16.01.09)**

"The situation of Roma and immigration policy are still a matter of concern. But the commitments now made by the authorities to improve the situation are a positive step." Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, concluded with these words a two-day visit to Rome, where he followed up on the recommendations made in a memorandum published in July 2008.

"The conditions in Roma camps are still unacceptable," he said after visiting Casilino 900 and four other settlements in the capital. "In spite of the harsh living conditions, Roma people struggle for integration. In many cases, their children go to school and are already part of society. No measures should be taken which would stop the integration process."

Underlining the need to design policies in consultation with the Roma, the Commissioner welcomed the commitment given by Undersecretary of the Interior Mantovano and Mayor of Rome Alemanno to receive Roma representatives and further the dialogue. "This is a good decision. Consultation and mutual understanding are fundamental to finding effective solutions and meeting human rights requirements." Commissioner Hammarberg also recommended that Italian citizenship be given to Roma children who were born in Italy and have no identity documents.

On migrants, the Commissioner expressed concern about a recent government statement on shortened procedures the consequence of which might reduce the guarantees granted to asylum seekers. "It is absolutely necessary to protect the right to seek asylum and adopt a migration policy based on human rights," said the Commissioner. Therefore, he welcomed the pledge by Undersecretary Mantovano that the guarantees will not be reduced. Commissioner Hammarberg also supported the idea of coordination and stronger cooperation between European countries to handle migration flows in a coherent and humanitarian way.

Finally, the Commissioner reiterated that Italy should fully respect the judgments of the European Court of Human Rights, and in particular its requests to suspend expulsions of foreign nationals who could face a risk of torture in their country. "The Court is a pillar of the European system of human rights protection. Italy should not disregard any binding request of the Court." The findings of the visit will be published in a report due in the spring.

## C. Thematic work

**"Discrimination against transgender persons must no longer be tolerated" (05.01.09)**

"Transgender persons encounter severe problems in their daily lives as their identity is met with insensitivity, prejudice or outright rejection" says Commissioner Hammarberg in his latest Viewpoint. Analysing the various difficulties transgender people face, the Commissioner underlines that "they are discriminated against in all member states, in areas such as employment, health care and housing". He concludes calling on member states to "take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field."

Read the full Viewpoint

## D. Miscellaneous (newsletter, agenda…)

The Office of the Commissioner for Human Rights publishes a regular electronic newsletter.

You may consult the latest issue: No.23 / 12 December 2008-23 January 2009

# Part VII : Special file : The protection of human rights of lesbian, gay, bisexual and transgender persons (LGBT) persons

Session 3 of the annual meeting of Contact Persons of NHRSs (19-20 November 2008) was dedicated to the protection and promotion of the human rights of LGBT persons. Some contact persons expressed the wish to receive more information regarding the European Court of Human Rights' case law on this topic. Further to this request we have decided to sketch out a special file with particular focus on the Court's case law. In addition we have included the most relevant international texts as well as the relevant case law of the European Court of Justice. For any further queries, please contact Mr Dennis van der Veur (dennis.van-der-veur@coe.int), Advisor to the Commissioner for Human Rights who is in charge of this theme within the Commissioner's Office.

### *1. Relevant texts of the Committee of Ministers*

- Decision to enhance activities in field of combating discrimination based on sexual orientation and gender identity (the Decision includes the setting up of the Committee of experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT) under the Steering Group for Human Rights, which has the task to prepare a Recommendation on discrimination based on sexual orientation and gender identity)
- Reply to PACE Recommendation 1474 (19 Sept. 2001)
- CM follow up on the condition of transsexuals Parliamentary Assembly Recommendation 1117 (1989)

### *2. Relevant texts of the Parliamentary Assembly of the Council of Europe (PACE)*

- Recommendation 924 (1981) Discrimination against homosexuals
- Recommendation 1117 (1989) on the condition of transsexuals
- Recommendation 1470 (2000) on the "Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe"
- Recommendation 1474 (2000) on the "Situation of lesbians and gays in Council of Europe member states"
- Recommendation 1635 (2003) Lesbians and gays in sport.
- In 2009 expected: Report of the Committee on Legal Affairs and Human Rights "Discrimination on the basis of sexual orientation and gender identity" .

### *3. Relevant texts of the Congress of Local and Regional Authorities*

Recommendation of the **Congress of Local and Regional Authorities** (Recommendation 211(2007) on Freedom of assembly and expression by lesbians, gays, bisexuals and transgendered persons

### *4. Relevant texts of Commissioner Hammarberg*

- Speech of Commissioner Hammarberg at the annual ILGA-Europe Annual Conference ''Thinking Globally, Acting Locally''
- The Commissioner has published the following Viewpoints on themes related to LGBT human rights:
  a. 'Gay Pride marches should be allowed – and protected' (24 July 2006);
  b. 'Homophobic policies are slow to disappear' (16 May 2007);
  c. "Time to recognise that human rights principles apply also to sexual orientation and gender identity" (14 May 2008)
  d. "Discrimination against transgender persons must no longer be tolerated" (05 January 2009)

### 5. Case law of the European Court of Human Rights

Generally the Court, while reiterating that the non-discrimination provision of the European Convention on Human Rights (ECHR), article 14, unlike article 26 of the International Covenant on

Civil and Political Rights, does not erect an autonomous anti-discrimination provision, but rather one that can only be applied in conjunction with a substantive provision of the Convention, has consistently stated that differences based on sex and sexual orientation must 'have particularly serious reasons by way of justification'.*

The short overview below will mention the most important (leading) cases per area of concern.

### A. Private sphere

1. Total bans on private homosexual relations between adults capable of valid consent violate Article 8 (private life)
- *Dudgeon* v. *United Kingdom* (22 Oct. 1981) (Court judgment)
- *Norris* v. *Ireland* (26 Oct. 1988) (Court judgment)
- *Modinos* v. *Cyprus* (22 April 1993) (Court judgment)

2. Ages of consent to male-female, male-male and female-female sexual activity must be equal under articles 8 (private life) and 14 (non-discrimination)
- *Sutherland* v. *U.K.* (1 July 1997) (Commission report)
- *L. and V.* v. *Austria*, *S.L.* v. *Austria* (9 January 2003) (Court judgments); see *S.L.* para. 37:

"the Court reiterates that sexual orientation is a concept covered by Article 14 ... Just like differences [in treatment] based on sex, ... differences [in treatment] based on sexual orientation require particularly serious reasons by way of justification ..."

3. Non-sado-masochistic group sexual activity in private cannot be prohibited under Article 8 (private life)
- *A.D.T.* v. *U.K.* (31 July 2000) (Court judgment) (non-sado-masochistic)
- *Laskey* v. *U.K.* (19 Feb. 1997) (Court judgment) (sado-masochistic can be prohibited if more than minor physical injury results); or is the test now consent? see *K.A.* v. *Belgium* (17 Feb. 2005) (woman withdrew her consent)

### B. Legal recognition of gender reassignment

- *B.* v. *France* (25 March 1992) (Court judgment) (violation of Article 8, private life) (France required to change legal sex on birth certificate)

- *Christine Goodwin* v. *U.K.*, *I.* v. *U.K.* (11 July 2002) (Court judgments) (violation of Article 8, private life; see IV.A below for Article 12) (U.K. required to change legal sex on birth certificate)

- *Grant* v. *U.K.* (23 May 2006) (Court judgment) (violation of Article 8, private life) (U.K. required to grant pension to post-operative transsexual woman at same age as other women)

- *L.* v. *Lithuania* (11 Sept. 2007) (Court judgment) (violation of Article 8, private life) (absence of legislation, no compensation required if legislation passed within 3 months of judgment)

### C. Insurance coverage for medical expenses related to gender reassignment

- *van Kück* v. *Germany* (12 June 2003) (Court judgment) (violation of Article 8, private life) (where insurance plan covers "medically necessary" treatment, gender reassignment must be included)

- *Schlumpf v. Switzerland* (8 January 2009) (Court judgment) (Violation of Article 6 § 1, Violation of Article 8) – See this issue of the RSIF above

### D. Employment

- *Smith & Grady* v. *U.K.*, *Lustig-Prean & Beckett* v. *U.K.* (27 Sept. 1999, violation, 25 July 2000, compensation) (Court judgments) (violation of Article 8, private life) (dismissal from armed forces); see *Grady*, para. 97:

"To the extent that they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes [of heterosexual members of the armed forces] cannot,

* *Karner v. Austria, 24 July 2003.*

of themselves, be considered by the Court to amount to sufficient justification for the interferences with the [lesbian and gay members'] rights ... any more than similar negative attitudes towards those of a different race, origin or colour."

The Court found that the investigations conducted into the applicants' sexual orientation and their discharge on the grounds of their homosexuality in pursuance of the Ministry of Defence policy, were not justified under Article 8 § 2 of the Convention.

### E. Custody

- Custody of an LGBT individual's genetically-related children after a divorce: *Mouta* v. *Portugal* (21 Dec. 1999) (Court judgment) (violation of Articles 8, family life, with Article 14) (sexual orientation cannot be cited as negative factors in deciding which parent should have custody of a child after a different-sex marriage ends in divorce); see para. 36:

"the [Lisbon] Court of Appeal made a distinction based on considerations regarding the applicant's sexual orientation, a distinction which is not acceptable under the Convention [like distinctions based on religion] (see, *mutatis mutandis*, ... *Hoffmann* ... [Jehovah's Witness mother] ...)."

- applies to adoption of children by unmarried individuals: *E.B.* v. *France* (22 January 2008) (Court judgment) (violation of Article 14 combined with Article 8, private or family life, by 10 votes to 7 on the facts, 14 to 3 on the principle); implicitly overrules *Fretté* v. *France* (26 Feb. 2002) (Court judgment) (no violation of Article 14 combined with Article 8, by 4 votes to 3)

### F. Right of a transsexual person to contract a different-sex legal marriage

- *Sheffield & Horsham* v. *UK* (30 July 1998) (Court judgment), para. 66 (no violation of Article 12, right to marry, by 18 votes to 2: "the right to marry guaranteed by Article 12 refers to the traditional marriage between persons of opposite biological sex"). *Sheffield* overruled by *Christine Goodwin* v. *U.K.*, *I.* v. *U.K.* (11 July 2002) (Court judgments) (violation of Article 12; unanimously) (U.K. required to permit transsexual persons to marry a person of the sex opposite to their reassigned sex)

### G. Rights of transsexual parents

- *X, Y & Z* v. *UK* (22 April 1997) (Court judgment), para. 52 ("Article 8 cannot ... be taken to imply an obligation for the respondent State formally to recognise as the father of a child a person who is not the biological father"). for practical purposes, overruled in the U.K. by *Christine Goodwin* and *I.*, because recognition of transsexual men as legal fathers, where their non-transsexual female partners have undergone donor insemination, will follow from recognition of transsexual men as legal men

### H. Discrimination against unmarried same-sex partners (compared with unmarried different-sex partners)

- *Karner* v. *Austria* (24 July 2003) (Court judgment) (violation of Article 8, respect for home, together with Article 14) (only unmarried different-sex and not same-sex partners could succeed to a tenancy after the death of the official tenant)

### I. Freedom of expression, assembly and association

State interference (or failure by the state to protect against private interference) with lesbian, gay, bisexual and transgender (LGBT) books, magazines, newspapers, films, videos, meetings, marches, parades and demonstrations, or the establishment and operation of LGBT associations, should normally violate Articles 10 and 11:

- *Scherer* v. *Switzerland* (No. 17116/90) (14 Jan. 1993) (report of the former European Commission of Human Rights) (applicant's conviction of publishing obscene material for showing a video in a gay sex shop violated Article 10); (30 March 1994) (Court judgment) (struck out of the Court's list because the applicant had died)

- *Plattform "Ärzte für das leben"* v. *Austria* (21 June 1988) (police have a "positive obligation" to protect a demonstration against counter-demonstrators who try to disrupt it)

- *Stankov and the United Macedonian Organisation Ilinden* v. *Bulgaria* (2 Oct. 2001)

84. ... The definitions of those exceptions [in Art. 11(2)] are necessarily restrictive and must be interpreted narrowly ...
86. ... Freedom of assembly as enshrined in Article 11 ... protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote ...
97. ... Freedom of assembly and the right to express one's views through it are among the paramount values of a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. ... [the Bulgarian government feared separatism]
107. ... [I]f every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion. ... The national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular they may be.

- *Bączkowski* v. *Poland* (3 May 2007) (violation of Article 11 and Article 14 combined with Article 11) (refusal to grant permit for LGBT Pride March in Warsaw in June 2005):

See in particular para. 67: *"The Court acknowledges that the assemblies were eventually held on the planned dates. However, the applicants took a risk in holding them given the official ban in force at that time. The assemblies were held without a presumption of legality, such a presumption constituting a vital aspect of effective and unhindered exercise of the freedom of assembly and freedom of expression. The Court observes that the refusals to give authorisation could have had a chilling effect on the applicants and other participants in the assemblies. It could also have discouraged other persons from participating in the assemblies on the ground that they did not have official authorisation and that, therefore, no official protection against possible hostile counter-demonstrators would be ensured by the authorities".*

### 6. Case law of the European Court of Justice

See in particular the website of the European Court of Justice where you may find all judgments referred to below (except *P.*).

#### A. Gender identity and employment

- Case C-13/94, *P.* v. *S. and Cornwall County Council* (30 April 1996), [1996] European Court Reports (ECR) I-2143, (dismissal of transsexual employee was sex discrimination contrary to Council Directive 76/207/EEC)

- Case C-117/01, *K.B.* v. *National Health Service Pensions Agency* (7 Jan. 2004), [2004] ECR I-0000 (ineligibility of transsexual male partner of non-transsexual female employee for survivor's pension, because they are currently unable to marry, was in principle sex discrimination contrary to Article 141 of the EC Treaty)

- Case C-423/04, *Richards* v. *Secretary of State for Work and Pensions* (27 April 2006) (Council Directive 79/7/EEC requires that a post-operative transsexual woman be granted a retirement pension at 60, like other women, not 65, as in the case of men)

#### B. Sexual orientation and employment

- Case C-249/96, *Grant* v. *South-West Trains* (17 Feb. 1998), [1998] ECR I-621 (no sex discrimination contrary to Article 141 EC where employment benefit denied to female employee's unmarried female partner but male employee's unmarried female partner qualified)

**-** Case C-267/06, *Tadao Maruko* v. *Versorgungsanstalt der deutschen Bühnen* (1 April 2008) (Council Directive 2000/78/EC banning sexual orientation discrimination in relation to all aspects of employment, including pay, "preclude[s] legislation ... under which, after the death of his life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving

spouse, even though [if], under national law, life partnership places persons of the same sex in a situation comparable to that of spouses so far as concerns that survivor's benefit", despite Recital 22: "This Directive is without prejudice to national laws on marital status and the benefits dependent thereon.") (issue similar to that in *M.W.* v. *UK* and *Schalk & Kopf*, IV.D. and IV.H. above)

## 7. Other international texts

### A. UN: References to LGBT human rights in reports on UN treaty bodies or Special Procedures

1) Statement by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Human Rights Council, 19 September 2006. He noted:

''One issue which in the past has given rise to particular controversy in relation to this mandate concerns the situation of individuals who are gay, lesbian, bisexual or transsexual. Yet, based on the information I have received it is difficult to imagine an issue which should be less controversial in terms of this mandate. In essence, the members of this group have come to my attention in two contexts. The first concerns those who have been killed for the very fact of their sexual identity, often by agents of the State, and their murders go unpunished. Indeed no prosecution is ever brought. In contrast, the second context involves prosecution with a vengeance, directed not against the murderers but against those who engage in consensual practices in private. I continue to receive reports of such individuals who have been sentenced to death by stoning. Both of these phenomena involve a fundamental negation of all that human rights norms stand for. These practices should be a matter of deep concern rather than a source of controversy.

2) Section in report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Commission on Human Rights, E/CN.4/2004/9, 5 January 2004, at para. 123: transgender youth have been described as 'among the most vulnerable and marginalized young people in society.'

3) Committee on Economic, Social and Cultural Rights (CESCR) In General Comments 18, of 2005 (on the right to work),* 15, of 2002 (on the right to water)† and 14, of 2000 (on the right to the highest attainable standard of health),‡ it has indicated that the Covenant proscribes any discrimination on the basis of, inter-alia, sex and sexual orientation' that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of [the right at issue]'.

4) The Committee on the Rights of the Child (CRC), General Comment 4, of 2003,§ it stated that, 'State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention [on the Rights of the Child] without discrimination (art.2), including with regard to 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. These grounds also cover [inter alia] sexual orientation.'

5) The Committee on the Elimination of Discrimination Against Women (CEDAW), has criticised States for discrimination on the basis of sexual orientation. For example, it addressed the situation in Kyrgyzstan and recommended that, 'lesbianism be reconceptualised as a sexual orientation and that penalties for its practice be abolished'.**

6) The UN Human Rights Council's Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has referred to sexual orientation.

---

* Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, E/C.12/GC/18, 24 November 2005.

† Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, E/C.12/2002/11, 26 November 2002.

‡ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.

§ Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003. CRC/GC/2003/4, 1 July 2003.

** Concluding Observations of the Committee on the Elimination of Discrimination Against Women regarding Kyrgyzstan, A/54/38, 5 February 1999, at para. 128.

7) International Covenant on Civil and Political Rights, the Human Rights Committee (HRC) has considered in *Toonen v. Australia (*1994) that, 'the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation'.[*]

8) The Special Representative of the Secretary-General on the situation of human rights defenders has condemned the intimidation of and attacks on lesbian, gay, bisexual, transgender and intersex activists.[†] She has drawn attention to such human rights violations as arbitrary detention, torture, summary execution, arbitrary and unreasonable impediments to freedom of expression, movement, association and participation in political and public life.

### B. OSCE

1) OSCE Human Rights Defenders report where LGBT issues are mentioned:
http://www.osce.org/publications/odihr/2008/12/35711_1217_en.pdf

2) Hate Crime report 2007 (and 2006 and soon 2008) where there is an important LGBT section (p.109 and further)
http://www.osce.org/publications/odihr/2008/10/33850_1196_en.pdf

3) Manual Human Rights in the armed forces: chapter 14
http://www.osce.org/publications/odihr/2008/04/30553_1090_en.pdf

### C. EU

Fundamental Rights Agency report 'Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States'

### D. OAS

Resolution AG/RES. 2435 on "Human Rights, Sexual Orientation, and Gender Identity" by the General Assembly of the Organization of American States during its 38th session in 3 June 2008

### E. Other relevant texts and reports (including INGO reports)

- **Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (***the Yogyakarta Principles***)**

- **Statement on human rights, sexual orientation and gender identity on behalf of 66 States** that was delivered during the December 18, 2008 UN General Assembly

International Commission of Jurists, 'Sexual Orientation and Gender Identity in Human Rights Law. References to Jurisprudence and Doctrine of the United Nations Human Rights System', November 2007

Amnesty International, 'Crimes of hate, conspiracy of silence. Torture and ill-treatment based on sexual identity', AI Index ACT 40/016/2001, August 2001, at 21

[*] *Toonen v. Australia*, supra n.32, at para. 8.7.
[†] Report of the Special Representative of the Secretary-General on human rights defenders, Commission on Human Rights, E/CN.4/2006/95/Add.1, 22 March 2006, at para 290.