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

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

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Introduction

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

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

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

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

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

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

We invite you to read the INFORMATION NOTE No. 115 (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 January 2009 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.

- **Grand Chamber judgment – Right not to be tried or punished twice**

Sergey Zolotukhin v. Russia (no. 14939/03) (Importance 1) – 10 February 2009 – Violation of Article 4 of Protocol 7 – After having already served three days' detention for disorderly conduct as a result of administrative proceedings against him, the applicant had been detained and tried again for the same offence in criminal proceedings – Definition of a harmonised interpretation of the notion of the "same offence" for the purposes of Article 4 of Protocol No. 7.

The case concerns administrative and criminal proceedings brought against Mr Zolotukhin in 2002 for disorderly conduct. On 4 January 2002 Mr Zolotukhin was arrested for bringing his girlfriend into a military compound without authorisation. He was then taken to the Voronezh Leninskiy district police station. According to the police report the applicant, who was drunk, behaved insolently, used obscene language and attempted to escape. On the same day the Gribanovskiy District Court found the applicant guilty of "minor disorderly acts" under Article 158 of the Code of Administrative Offences and sentenced him to three days' detention.

Subsequently, criminal proceedings were brought against the applicant under Article 213 § 2 (b) of the Criminal Code in relation to his disorderly conduct before the police report was drawn up, and under Articles 318 and 319 of the Criminal Code in relation to his threatening and insulting behaviour

during and after the drafting of the report. He was remanded in custody on 24 January 2002. On 2 December 2002 the same district court found the applicant guilty of the charges under Article 319 of the Criminal Code. He was, however, acquitted of the charges under Article 213, as the court found that his guilt had not been proven to the standard required in criminal proceedings.

In its Chamber judgment of 7 June 2007, the European Court held unanimously that there had been a violation of Article 4 of Protocol No. 7 paragraph 1 ("*No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State*"). The President of the Court granted the Human Rights Training Institute of the Paris Bar Association leave to intervene as a third party.

The Grand Chamber reiterated that Article 4 of Protocol No. 7 imposed a prohibition on trying or punishing an individual twice in criminal proceedings for the same offence.

As to the existence of a "criminal charge" for the purposes of that Article, the Court, upholding the Chamber's findings, took the view that although the proceedings instituted against the applicant before the Gribanovskiy District Court on 4 January 2002 were classified as administrative in national law, they were to be equated with criminal proceedings on account, in particular, of the nature of the offence and the severity of the penalty.

As to whether the offences were the same, the Court noted that it had adopted a variety of approaches in the past, placing the emphasis either on identity of the facts irrespective of their legal characterisation, on the legal classification, accepting that the same facts could give rise to different offences, or on the existence or otherwise of essential elements common to both offences.

After examining the scope of the right not to be tried and punished twice as set forth in other international instruments, in particular the United Nations Covenant on Civil and Political Rights, the European Union's Charter of Fundamental Rights and the American Convention on Human Rights, "*the Court considers that the existence of a variety of approaches to ascertaining whether the offence for which an applicant has been prosecuted is indeed the same as the one of which he or she was already finally convicted or acquitted engenders legal uncertainty incompatible with a fundamental right, namely the right not to be prosecuted twice for the same offence. It is against this background that the Court is now called upon to provide a harmonised interpretation of the notion of the "same offence" – the idem element of the non bis in idem principle – for the purposes of Article 4 of Protocol No. 7. While it is in the interests of legal certainty, foreseeability and equality before the law that the Court should not depart, without good reason, from precedents laid down in previous cases, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (see Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, § 56, ECHR 2007-...)*" (§78).

"*The Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same.*

The guarantee enshrined in Article 4 of Protocol No. 7 becomes relevant on commencement of a new prosecution, where a prior acquittal or conviction has already acquired the force of res judicata. At this juncture the available material will necessarily comprise the decision by which the first "penal procedure" was concluded and the list of charges levelled against the applicant in the new proceedings. Normally these documents would contain a statement of facts concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused. In the Court's view, such statements of fact are an appropriate starting point for its determination of the issue whether the facts in both proceedings were identical or substantially the same. The Court emphasises that it is irrelevant which parts of the new charges are eventually upheld or dismissed in the subsequent proceedings, because Article 4 of Protocol No. 7 contains a safeguard against being tried or being liable to be tried again in new proceedings rather than a prohibition on a second conviction or acquittal […].

The Court's inquiry should therefore focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings." (§§79-81)

In the instant case the Court considered that the facts underlying the two sets of administrative and criminal proceedings against the applicant differed in only one element, namely the threat to use violence against a police officer, and should therefore be regarded as substantially the same.

As to whether there had been a duplication of proceedings, the Court upheld the Chamber's conclusions, finding that the judgment in the "administrative" proceedings sentencing the applicant to three days' detention amounted to a final decision, as no ordinary appeal lay against it in domestic law. The Court further stressed that the fact that the applicant had been acquitted in the criminal proceedings had no bearing on his claim that he had been prosecuted twice for the same offence, nor did it deprive him of his victim status, as he had been acquitted not on account of the breach of his rights under Article 4 of Protocol No. 7, but solely on the ground of insufficient evidence against him.

The Court concluded that the proceedings instituted against the applicant under Article 213 § 2 (b) of the Criminal Code concerned essentially the same offence as that of which he had already been convicted under Article 158 of the Code of Administrative Offences, and that he had therefore been the victim of a breach of Article 4 of Protocol No. 7.

- **Structural problems- Article 46 - Execution of judgments and measures required - Length of pre-trial detention**

Kauczor v. Poland (no. 45219/06) (Importance 2) - 3 February 2009 - In view of the extent of the systemic problem at issue, consistent and long-term efforts, such as adoption of further measures, must continue in order to achieve compliance with Article 5 § 3 of the Convention.

Article 5 § 3

The Court first noted that Mr Kauczor had been detained in total for 7 years, 10 months and 3 days. While it accepted that the seriousness of the offence, which the applicant was suspected of having committed, could have been a valid consideration for detaining him initially, it concluded that the authorities had failed to justify the overall period of his detention, in violation of Article 5 § 3.

Article 6 § 1

The Court found that the length of the criminal proceedings, which had lasted for more than 8 years and 6 months at a single level of jurisdiction, and are still pending, had been excessive, in violation of Article 6 § 1.

Article 46

The Court observed that numerous cases – both already decided and still pending before it – concerning the excessive length of pre-trial detention in Poland revealed a frequently recurring problem consisting of domestic courts' practice that was incompatible with the Convention. While welcoming the steps already taken by Poland to remedy this systemic problem, the Court concluded that, in view of the magnitude of the problem, Poland had to make consistent efforts in the long term and adopt further measures in order to achieve compliance with Article 5 § 3 of the Convention:

"*56. In this context, the Court observes that it has recently delivered a considerable number of judgments against Poland in which a violation of Article 5 § 3 on account of the excessive length of detention was found. In 2007 a violation of that provision was found in thirty-two cases and in 2008, the number was thirty-three. In addition, approximately 145 applications raising an issue under Article 5 § 3 of the Convention are currently pending before the Court. Nearly ninety of these applications have already been communicated to the Polish Government. The latter number comprises some sixty applications which were communicated within the last twelve months with a specific question as to the existence of a structural problem related to the excessive length of pre-trial detention.*

57. It is to be noted that this issue has been recently considered by the Committee of Ministers in connection with the execution of judgments in cases against Poland where a violation of Article 5 § 3 of the Convention was found. In its 2007 Resolution the Committee of Ministers concluded that the great number of the Court's judgments finding Poland in violation of Article 5 § 3 of the Convention on account of the unreasonable length of pre-trial detention revealed a structural problem (see paragraph 34 above). Similarly, the Council of Europe Commissioner for Human Rights raised that issue in his Memorandum to the Polish Government of 20 June 2007 (see paragraph 35 above).

58. The 2007 Resolution taken together with statistical data referred to above (see paragraphs 28 and 56 above) demonstrate that the violation of the applicant's right under Article 5 § 3 of the Convention originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which has affected, and may still affect in the future, an yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

59. Thus, in many similar previous cases in the recent years the Court has held that the reasons relied upon by the domestic courts in their decisions to extend pre-trial detention were limited to paraphrasing the grounds for detention provided for by the Code of Criminal Procedure and that the authorities failed to envisage the possibility of imposing other preventive measures expressly

foreseen by the Polish law to secure the proper conduct of the criminal proceedings (see among many other examples Jablonski v. Poland, no. 33492/96, § 83, 21 December 2000; Jarosław Jakubiak v. Poland, no. 39595/05, §§ 37-45, 3 June 2008 and Kucharski v. Poland, no. 51521/99, §§ 60-63, 3 June 2008). Moreover, while the relevant provisions of the domestic law define detention as the most extreme preventive measure, it appears that it is applied most frequently by the domestic courts (see paragraphs 25 and 28 above).

60. The Court thus concludes, as the Committee of Ministers did, that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of pre-trial detention in Poland reveals a structural problem consisting of "a practice that is incompatible with the Convention" (see mutatis mutandis Broniowski v. Poland [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 229-231, ECHR 2006-...; Bottazzi v. Italy [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases).

61. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and Broniowski v. Poland cited above).

62. It is true that the respondent State has already taken certain steps to remedy the structural problems related to pre-trial detention (see paragraphs 27 and 30-33 above). The Court welcomes these developments and considers that they may contribute to reducing the excessive use of detention as a preventive measure. However, as already noted by the Committee of Ministers (see paragraph 34 above), in view of the extent of the systemic problem at issue, consistent and long-term efforts, such as adoption of further measures, must continue in order to achieve compliance with Article 5 § 3 of the Convention."

- **Lack of medical treatment in detention**

Kaprykowski v. Poland (no. 23052/05) (Importance 2) – 3 February 2009 – Violation of Article 3 – Lack of adequate medical treatment or assistance offered to the applicant (suffering from severe epilepsy) while in detention in Poznań remand detention centre.

The applicant suffers from severe epilepsy and, at the relevant time, had frequent seizures, sometimes even several times a day. He also has other neurological disorders, including encephalopathy and dementia. The case concerned Mr Kaprykowski's complaint that, in view of his state of health, the medical care with which he was provided during periods of his detention in Poznań Remand centre was inadequate. Throughout his incarceration several doctors stressed that he should receive specialised psychiatric and neurological treatment. Notably, in 2001 medical experts recommended that he should undergo brain surgery; and, in 2007, on his release from a stay in hospital, doctors clearly stated that he should be placed under 24-hour medical supervision.

From 5 August 2003 to 30 November 2007, namely four years, the applicant had had to rely solely on the prison health care system. It was a matter of concern that, during most of that time, he had been detained in ordinary detention facilities or, at best, in the ward of a prison hospital. He had been detained in the specialised neurological hospital of Gdańsk Remand Centre on only two occasions, despite his specific condition. During that time, the applicant had to have been aware of the fact that he had been at risk at any moment of needing serious emergency medical treatment and that, apart from his fellow inmates, no immediate medical assistance had been available. Even if examined later by in-house doctors, they had no specialist knowledge of neurology. Given his personality disorder, he had not been able to take autonomous decisions or go about more demanding daily tasks. That had to cause him considerable anxiety and had to have placed him in a position of inferiority vis-à-vis other prisoners.

Indeed, the Court was struck by the Government's argument that the applicant sharing his cell with other inmates, who had known how to react to his seizures, could be considered adequate conditions of detention. The Court stressed its disapproval of remand centre staff having felt relieved of their duty to provide security and care to more vulnerable detainees by making cellmates responsible for providing daily assistance or, if necessary, emergency aid. Moreover, the applicant had been transferred about 18 times, often over long distances, between different detention facilities. That had

to have been unnecessarily detrimental to his already fragile mental health. In the Court's opinion the lack of adequate medical treatment provided to the applicant in Poznań Remand Centre which had effectively placed him in a position of dependency and inferiority vis-à-vis his healthy cellmates had undermined his dignity and had entailed particularly acute hardship that had caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty. In conclusion, the Court considered that the applicant's continued detention without adequate medical treatment and assistance had constituted inhuman and degrading treatment, in violation of Article 3 (see in particular §§ 74-77 of the judgment).

- **Conditions of detention**

Novinskiy v. Russia (no. 11982/02) (Importance 3) - 10 February 2009 - Violation of Article 3 (inhuman treatment) and 34 (hindrance of the right of individual petition)

The applicant, Ernest Novinskiy passed away in 2009 when he was still serving a prison sentence in the Samara Region (Russia) for organising and inciting others to murder and bribery.

The Court held unanimously that there had been a violation of Article 3. The Court noted that "[…]*the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for an overall period of five months and twenty-five days* […] *was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.*

There has therefore been a violation of Article 3 of the Convention, as the applicant was subjected to inhuman treatment on account of the conditions of his detention from 11 June to 5 December 2001 in facilities IZ-63/1 and IZ-77/3" (§§ 112-113).

The Court further found a violation of Article 34 on account of the authorities having coerced a witness who supported Mr Novinskiy into withdrawing his statements in exchange for being released on parole, and having brought and interviewed that witness, after his release and without relation to any criminal proceedings, to a police station under threat of using force or fining him (see in particular § 123).

- **Effective investigation**

Voiculescu v. Romania (no. 5325/03) (Importance 3) - 3 February 2009 – Failure to carry out an effective investigation into the circumstances in which the applicant's mother died – Excessive length of the investigation

Relying on Article 2 (right to life), the applicant complained that the investigation into the circumstances in which her mother had died after being run over by a poorly maintained military vehicle had not been effective.

The Court noted that this kind of investigations have to ensure the implementation of article 2 of the Convention. The investigation has to establish the cause of death and to identify and to convict the responsible of the act. The authorities have an obligation to take adequate measures to furnish all evidences. The Court held unanimously that there had been a violation of Article 2 on account of the length of the investigation (more than seven years), the repeated referrals of the case to different authorities and the lack of impartiality of the military prosecutor in the judicial investigation.

L.Z. v. Romania (n° 22383/03) (Importance 3) - 3 February 2009 - Violation of Article 3 (investigation) – Failure to carry out an effective investigation into allegations of rape in prison by other inmates

The applicant complained, relying mainly on Article 3, that there had been no effective investigation into his allegation that he was raped in prison by other inmates.

The Court considered that despite the difficult nature of the investigation, the Romanian authorities had been under an obligation to conduct a prompt and thorough medical examination in order to be able to confirm or refute the applicant's serious allegations. It held unanimously that there had been a violation of Article 3 on account of the inadequacy of the investigation by the Romanian authorities.

- **Right to liberty and security**

Giosakis v. Greece (No. 1) (42778/05) (Importance 3) – 12 February 2009 - Two violations of Article 5 § 4

Giosakis v. Greece (No. 2) (36205/06) (Importance 3) – 12 February 2009 - No violation of Article 5 § 3 - Two violations of Article 5 § 4

The applicant, an archimandrite, is currently detained in Korydallos Prison (Greece). The case of *Giosakis v. Greece (No. 1)* concerned his complaints about his pre-trial detention in the course of criminal proceedings against him for incitement to handle, and handling, stolen antiquities, including icons removed from various churches on the island of Kithira (Greece). In the case of *Giosakis v. Greece (No. 2)*, the applicant complained about his pre-trial detention in the course of criminal proceedings against him for incitement to abuse of public office, offering bribes to a judge, incitement to form a criminal organisation, fraud and money laundering. In both cases Mr Giosakis relied, in particular, on Article 5 §§ 1 and 3 (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court).

In the case of *Giosakis v. Greece (No. 1)*, the Court concluded unanimously that there had been a violation of Article 5 § 4 on account of the Indictment Division's refusal of an application for leave to appear in person, and another violation of the same Article in connection with the obligation to decide "speedily" when considering the application for release.

In the case of *Giosakis v. Greece (No. 2)*, the Court concluded unanimously that there had been a violation of Article 5 § 4 in that it had been impossible for the applicant to appear before the investigating judge when submitting his first application for release, and a violation of the same Article in connection with the obligation to decide "speedily" when considering the lawfulness of the detention. It further held that there had been no violation of Article 5 § 3.

- **Right to a fair trial**

Olujić v. Croatia (no. 22330/05) (Importance 1) – 5 February 2009 – Four violations of Article 6§1 - Lack of impartiality of three members of the National Judicial Council in disciplinary proceedings - Unjustified exclusion of the public from the proceedings - Authorities' refusal to examine any of the defence witnesses – Excessive length of proceedings.

The applicant was a judge and the President of the Supreme Court (*Vrhovni sud Republike Hrvatske*), as well as a member of the National Judicial Council (*Državno sudbeno vijeće*, the "NJC"), before being dismissed in October 1998. The case concerned the applicant's complaint about the unfairness of the disciplinary proceedings against him for having harmed the reputation of the judiciary by fraternising in public with known criminals.

In 1996 disciplinary proceedings were brought against the applicant: he was accused of having sexual relationships with minors and of using his position to protect the financial activities of two individuals known for their criminal activities. The NJC found it established that the applicant had indeed used his position in an improper way; that decision was upheld by the Parliament's Chamber of Counties. However, both those decisions were then quashed in April 1998 by the Constitutional Court and the case was sent back to the NJC for fresh examination.

In the resumed proceedings before the NJC, the allegations against the applicant were reduced: he was accused of fraternising in public with two individuals who had a criminal background. In October 1998 the applicant was found guilty and was dismissed from office. In November, the Parliament's Chamber of the counties upheld the NCJ's decision. In December of the same year, the applicant lodged a complaint before the Constitutional Court alleging, among other things, that the disciplinary proceedings had not been held in public; that three members of the NJC, namely A.P., V.M. and M.H., had made statements against him in the media and could therefore not be considered impartial; and, that witnesses in his favour had not been heard. In December 2004 the complaint was dismissed as ill-founded.

Concerning the impartiality of three members of the National Judicial Council, the Court noted that an interview with V.M. had been published in the national daily newspaper "*Večernji list*" in February 1997, when the case was pending before the Chamber of Counties. The fact that V.M. had revealed in that interview that he had voted against the applicant's appointment as President of the Supreme Court, together with the fact that he himself had been a potential candidate for the same post, had created a situation which could raise legitimate doubts as to V.M.'s impartiality. Concerning A.P., who at the time was President of the NJC, the Court noted that an interview with him had been published in the same newspaper in March 1997, when the case was pending before the Constitutional Court. In the interview A.P. stated that Mr Olujić had used his personal influence and contacts in order to protect the interests of two people with a criminal background, and added that the defence's allegations that the case was politically motivated had been untrue. Those statements implied that A.P. had already formed an unfavourable view of the applicant's case and were clearly incompatible with his participation in the proceedings. The Court further noted that an interview with M.H. had been published in another national daily newspaper, "*Slobodna Dalmacija*", in September 1997, when the case was also pending before the Constitutional Court. In the interview he described the applicant as

lacking experience and knowledge, and as a *corpus alienum* (a foreign body) in the Croatian judiciary. The Court considered that those expressions had clearly shown M.H.'s bias against Mr Olujić and that his participation in the proceedings after the publication of the interview had been incompatible with the requirement of impartiality. Accordingly, the Court held that there had been a violation of Article 6 § 1.

Concerning the right to a public hearing, the Court observed that the NJC had excluded the public from the hearing in the case on the ground that it was necessary to protect the dignity of both the applicant and the judiciary. However, the applicant himself had asked that the proceedings be public and had therefore shown that he had not considered that his dignity required protection. Moreover, given that the proceedings had concerned such a prominent public figure and that public allegations had already been made suggesting that the case against him had been politically motivated, it was evident that it was in the interest of the applicant as well as that of the general public that the proceedings before the NJC be open to public scrutiny. Nor had that lack of public access been rectified in the proceedings before the Parliament's Chamber of Counties or before the Constitutional Court. There had therefore been a violation of Article 6 § 1.

Concerning the equality of arms, the Court considered that the reasons relied on by the NJC for refusing to accept any of the witnesses called on behalf of the applicant for the purpose of substantiating his line of defence had not been sufficient. Indeed, the NJC had admitted all the proposals to hear evidence from the witnesses nominated by the counsel for the Government and none of the proposals submitted by the applicant. The Court therefore found that the Croatian authorities' refusal to examine any of the defence witnesses had led to the applicant's ability to present his case having been limited, in breach of Article 6 § 1. Concerning the length of the proceedings, the Court held that the length of the resumed proceedings – over six years – had been excessive and held a violation of Article 6 § 1.

Dauti v. Albania (no. 19206/05) (Importance 2) – 3 February 2009 - Violation of Article 6 § 1 (fairness) – Impossibility to challenge before domestic courts a decision of the Medical Examination Appeals Commission on Capacity for Work

Relying on Article 6 § 1 and Article 13 , Mr Dauti alleged that he had not been able to challenge before the domestic courts decisions given by administrative bodies concerning incapacity benefits. The European Court of Human Rights found in particular that the Medical Examination Appeals Commission on Capacity for Work had not constituted an "independent and impartial tribunal".

"*The Court notes that the Appeals Commission is wholly composed of medical practitioners, appointed by the ISS and ultimately approved by the Ministry of Health, under whose authority and supervision the doctors work. No legally qualified or judicial members sit on the Appeals Commission (see, by contrast, Le Compte, Van Leuven and De Meyere, cited above, § 58.)*

The law and the domestic regulations contain no rules governing the members' term of office, their removal, resignation or any guarantee for their irremovability. The statutory rules do not provide for the possibility of an oath to be taken by its members. It appears that they can be removed from office at any time, at the whim of the ISS and the Ministry of Health, which exercise unfettered discretion. The position of the Appeals Commission members is therefore open to external pressures. Such a situation undermines its appearance of independence. […]

Having regard to the fact that the Appeals Commission does not constitute an "independent and impartial tribunal" and that its decisions, according to the law in force at the material time, could not be challenged before a domestic court, the Court concludes that there has been a breach of the applicant's right of access to a court under Article 6 § 1 of the Convention" (§§ 52-53-55).

Sakhnovskiy v. Russia (no. 21272/03) (Importance 2) – 5 February 2009 - Violation of Article 6 §§ 1 and 3 (c) – Lack of adequate legal assistance

In December 2001 the applicant was convicted of murdering his father and uncle and sentenced to 18 years' imprisonment. Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial), he alleged that the criminal proceedings against him had been unfair, in particular because, at an appeal hearing, he had not been provided with adequate legal assistance and could not effectively defend himself as he could only communicate with the court via a video link. The Court held unanimously that there had been a violation of Article 6 §§ 1 and 3 (c) in that, Mr Sakhnovskiy and his lawyer having had no personal contact before and during the hearing, the role of the lawyer had been reduced to a mere formality. Nor could the lawyer effectively plead the applicant's case as she had had to base it on points of appeal lodged five years earlier by another lawyer.

- **Refusal to allow the applicant to reenter in Russia**

Nolan and K. v. Russia (no. 2512/04) (Importance 1) - 12 February 2009 – Failure to comply with Article 38 § 1 (a) (obligation to furnish necessary facilities for the examination of the case) - Violation of Article 5 §§ 1 and 5 - Violation of Article 8 - Violation of Article 9 - Violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) - Right to respect for private life - Deprivation of liberty

The applicants, Patrick Francis Nolan, and his son, K., are citizens of the United States of America. Mr Nolan is a member of and missionary for the Unification Church, a spiritual movement founded by Mr Sun Myung Moon in 1954. In 1994 the Unification Church invited Mr Nolan to assist in its activities in Russia. He was granted leave to stay by the Ministry of Foreign Affairs of the Russian Federation, renewable on a yearly basis. He was based in Rostov-on-Don (Southern Russia) where he worked with local branches of the Family Federation for World Peace and Unification (FFWPU). In January 2000 the Concept of National Security of the Russian Federation was amended by the acting President of the Russian Federation, to read: "Ensuring the national security of the Russian Federation also includes opposing the negative influence of foreign religious organisations and missionaries...".

On 12 July 2001 the applicant's son, K., was born. On 2 October 2001 the applicant and his wife separated; the applicant's wife returned to the United States and the applicant retained sole custody of the child. In August 2001 the Rostov FFWPU was dissolved by the District Court on the ground that, for more than three consecutive years, it had failed to notify the registration authorities of the continuation of its activities.

In October 2001 Mr Nolan was summoned by the Rostov police who demanded his passport and stamped it to the effect that his residence registration was "terminated". The applicant subsequently obtained registration with the police through other FFWPU branches, first in Novorossiysk and then in Krasnodar. His residence registration in Krasnodar was valid until 19 June 2002.

On 19 May 2002 Mr Nolan travelled to Cyprus. His son stayed in Russia with his nanny. On his way back, on arrival at Moscow airport on the night of 2 June 2002, passport control directed Mr Nolan to the airport transit hall. Asked to wait, he was locked in a small room with no phone, ventilation or windows. Informed that his visa had been cancelled, he was told to lie down and sleep until the morning. On the morning of 3 June 2002, after knocking and shouting for 20 minutes, the applicant was allowed to leave under guard and use the toilet. He was told that he would not be allowed to cross the Russian border, without further explanation. Mr Nolan bought a ticket to Tallinn (Estonia) and was accompanied by a border guard until he boarded his flight. His passport was returned to him, but not his visa.

His complaints before the domestic courts were dismissed on the basis of a report of 18 February 2002 by Russian Federal Security Service (FSB) experts, stating that "the [applicant's] activities in our country are of a destructive nature and pose a threat to the security of the Russian Federation". On 12 April 2003 the applicant was reunited with his son; his nanny, a Ukrainian national, having brought him to Ukraine.

The Court noted that, despite its repeated requests, the Russian Government had failed to produce a copy of the FSB's report of 18 February 2002, which apparently served as the basis for Mr Nolan's expulsion. The Government had fallen short of their obligation to cooperate with the Court, in breach of Article 38 § 1 (a).

The Court found that the conditions of Mr Nolan's overnight stay in the Moscow Airport transit hall had been equivalent in practice to a deprivation of liberty, for which the Russian authorities had been responsible. Given the lack of accessibility and foreseeability of the Border Crossing Guidelines, the Court concluded that the national system had failed to protect Mr Nolan from arbitrary deprivation of liberty, in violation of Article 5 § 1. The Court further found that the applicant had not had an enforceable right to compensation, the Russian courts not having considered that Mr Nolan had been deprived of his liberty. The Court therefore concluded that there had been a violation of Article 5 § 5. *"The Court observes that, pursuant to the relevant provisions of the Russian Civil […], an award in respect of pecuniary and/or non-pecuniary damage may be made against the State only if the detention is found to have been unlawful in the domestic proceedings. In the present case, however, the Moscow City Court and subsequently the Supreme Court did not consider that the applicant had been deprived of his liberty. Thus, the Court finds that the applicant did not have an enforceable right to compensation for the deprivation of liberty which has been found to be in violation of Article 5 § 1 of the Convention"* (§ 104).

On ground of Article 8, the Court observed that the ten months period of physical separation between K. and his father had directly resulted from a combination of Mr Nolan's expulsion from Russia by the authorities and their failure to notify Mr Nolan of that decision. Consequently the Court found that there had been a violation of Article 8, on the account of the Government's failure to assess the impact of their decisions on the welfare of the applicant's son.

On ground of Article 9, the Russian Government had consistently maintained that the threat to national security had been posed by the applicant's "activities" rather than "religious beliefs". However, it had never specified the nature of those activities and had refused to produce the FSB report which could have clarified the factual grounds for Mr Nolan's expulsion. Given the primary religious nature of the applicant's activities and the general policy as set out in the Concept of National Security of the Russian Federation, that is to say that foreign missionaries posed a threat to national security, the Court considered it established that Mr Nolan's banning from Russia had been designed to repress the exercise of his right to freedom of religion. However, since the interests of national security were deliberately omitted as a permitted ground for restrictions on the exercise of the right to freedom of religion in Article 9 of the Convention, such interests could not be relied upon as a justification for the measures taken by the Russian authorities against Mr Nolan. Finding that the Russian Government had not put forward any plausible legal or factual justification for Mr Nolan's expulsion on account of his religious activities, the Court found that there had been a violation of Article 9.

Relying on Article 1 of Protocol 7, the Court found that Mr Nolan, at the relevant time a lawful resident with a valid annual multiple-entry visa, could be considered to have been expelled from Russia. Furthermore, Mr Nolan had been living in the country since 1994 and, his son still a resident, he could legitimately have expected to continue his residence there.

The Court observed that the Russian Government had not corroborated their claim that Mr Nolan's expulsion had been necessary in the interests of national security or public order, an exception permitted under paragraph 2 of Article 1 of Protocol No. 7. Accordingly, there was no reason to apply that exception and the applicant should have been allowed to exercise the procedural safeguards set out in paragraph 1 prior to his expulsion. The Government, however, had not provided any explanation as to why the decision to expel Mr Nolan of 18 February 2002 had not been communicated to him until such time as he had effectively been removed from the country three months later. Nor had he been allowed to have his case reviewed. The Court therefore found a violation of Article 1 of Protocol No. 7.

- **Right to respect for private life**

Iordachi and Others v. Moldova (no. 25198/02) (Importance 1) - 10 February 2009- Violation of Article 8- Moldovan law does not provide adequate protection against abuse of State power in the field of interception of telephone communications - Violation of Article 13 (right to an effective remedy)

The applicants, members of "Lawyers for Human Rights", a Chişinău-based non-governmental organisation specialised in the representation of applicants before the European Court of Human Rights, relying on Articles 8 and 13 of the Convention, alleged that, given the current legislation in force, they are at a serious risk of having their telephones tapped, on account of their bringing cases to the Court.

Article 8

The Court first noted that, as regards the initial stage of the procedure for telephone surveillance, the relevant legislation did not define clearly the nature of the offences for which interception might be sought or the categories of persons who might be liable to have their telephones tapped. Further, the law did not provide for a clear time-limit on the interception warrants and was not clear enough on what constituted a reasonable suspicion which could justify telephone interception.

In respect of the second stage of the surveillance system, when the tapping actually takes place, the Court observed that the investigating judge plays a rather limited role. In addition, no clear rules existed about how the screening, preserving and destroying of the data collected on the basis of secret surveillance, were to be carried out.

In light of the fact that the Moldovan courts had authorised virtually all requests for interception made by the prosecuting authorities in 2007, the Court concluded that the system of secret telephone surveillance was largely overused. The Court therefore held that the law in force did not provide protection against abuse of State power, in violation of Article 8:

"*As regards the interception of communications of persons suspected of offences, the Court observes that in Kopp (cited above, § 74) it found a violation of Article 8 because the person empowered under Swiss secret surveillance law to draw a distinction between matters connected with a lawyer's work and other matters was an official of the Post Office's legal department. In the present case, while the Moldovan legislation, like the Swiss legislation, guarantees the secrecy of lawyer-client communications […], it does not provide for any procedure which would give substance to the above provision. The Court is struck by the absence of clear rules defining what should happen when, for example, a phone call made by a client to his lawyer is intercepted.*

The Court notes further that in 2007 the Moldovan courts authorised virtually all the requests for interception made by the prosecuting authorities (see paragraph 13 above). Since this is an uncommonly high number of authorisations, the Court considers it necessary to stress that telephone tapping is a very serious interference with a person's rights and that only very serious reasons based on a reasonable suspicion that the person is involved in serious criminal activity should be taken as a basis for authorising it. The Court notes that the Moldovan legislation does not elaborate on the degree of reasonableness of the suspicion against a person for the purpose of authorising an interception. Nor does it contain safeguards other than the one provided for in section 6(1), namely that interception should take place only when it is otherwise impossible to achieve the aims. This, in the Court's opinion, is a matter of concern when looked at against the very high percentage of authorisations issued by investigating judges. For the Court, this could reasonably be taken to indicate that the investigating judges do not address themselves to the existence of compelling justification for authorising measures of secret surveillance.

The Court is of the view that the shortcomings which it has identified have an impact on the actual operation of the system of secret surveillance which exists in Moldova. In this connection, the Court notes the statistical information contained in the letter of the Head of the President's Office of the Supreme Court of Justice (see paragraph 13 above). According to that information, in 2005 over 2,500 interception warrants were issued, in 2006 some 1,900 were issued and over 2,300 warrants were issued in 2007. These figures show that the system of secret surveillance in Moldova is, to say the least, overused, which may in part be due to the inadequacy of the safeguards contained in the law (see Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria, cited above, § 92).

In conclusion, the Court considers that the Moldovan law does not provide adequate protection against abuse of power by the State in the field of interception of telephone communications. The interference with the applicants' rights under Article 8 was not, therefore, "in accordance with the law". Having regard to that conclusion, it is not necessary to consider whether the interference satisfied the other requirements of the second paragraph of Article 8. (§§ 50-54).

It follows that there has been a violation of Article 8 in this case".

Article 13

Noting that the Convention could not be interpreted to require a general remedy against the current state of domestic law, the Court found no violation of this Article.

- **Freedom of expression**

Women on Waves and Others v. Portugal (no. 31276/05) (Importance 1) - 3 February 2009 - Violation of Article 10 - The Portuguese authorities' decision to prohibit the ship Borndiep, which had been chartered with a view to staging activities promoting the decriminalisation of abortion, from entering Portuguese territorial waters was not "necessary in a democratic society"

The applicants were Women on Waves, a Dutch foundation based in Amsterdam, and two Portuguese associations, Clube Safo and Não te Prives (Group for the defence of sexual rights), based in Santarém and Coimbra (Portugal) respectively. The three applicant associations are particularly active in promoting debate on reproductive rights.

In 2004 Women on Waves chartered the ship Borndiep and sailed towards Portugal after being invited by the two other applicant associations to campaign in favour of the decriminalisation of abortion. Meetings on the prevention of sexually transmitted diseases, family planning and the decriminalisation of abortion were scheduled to take place on board from 30 August to 12 September 2004. On 27 August 2004 the ship was banned from entering Portuguese territorial waters by a ministerial order, on the basis of maritime law and Portuguese health laws, and its entry was blocked by a Portuguese warship.

On 6 September 2004 the Administrative Court rejected a request by the applicant associations for an order allowing the ship's immediate entry. The court took the view that the associations appeared to be intending to give Portuguese women access to abortion procedures and medicines that were illegal in Portugal. The applicant associations appealed against that decision but without success. They subsequently applied to the Supreme Administrative Court, which found that the matter in dispute was not of sufficient legal or social significance to justify its intervention.

According to Women on Waves, a number of demonstrations in support of the three associations took place in Figueira da Foz and Lisbon and the situation attracted considerable media attention

The applicant associations complained under Article 5 (right to liberty and security) and Article 2 of Protocol No. 4 (freedom of movement) that the refusal to allow the Borndiep to enter Portuguese territorial waters was illegal. They also relied on Articles 6 (right to a fair hearing), 10 (freedom of expression) and 11 (freedom of assembly and association).

The Court decided, firstly, that in the light of the circumstances of the case, the situation complained of would be examined under Article 10 of the Convention alone.

The Court noted that the restriction was made in accordance with the law (national law and Article 25 of the UN Convention on the Law of the Sea). While the Court acknowledged the legitimate aims pursued by the Portuguese authorities, namely the prevention of disorder and the protection of health, it reiterated that pluralism, tolerance and broadmindedness towards ideas that offended, shocked or disturbed were prerequisites for a "democratic society".

It pointed out that the right to freedom of expression included the choice of the form in which ideas were conveyed, without unreasonable interference by the authorities, particularly in the case of symbolic protest activities (see also *Thoma v. Luxembourg* of 29 March 2001). The Court considered that in this case, the restrictions imposed by the authorities had affected the substance of the ideas and information imparted. It noted that the choice of the Borndiep for the events planned by the applicant associations had been crucially important to them and in line with the activities which Women on Waves had carried out for some time in other European States.

The Court observed that, unlike the case of *Appleby v. the United-Kingdom* (6 May 2003), the applicant associations had not trespassed on private land or publicly owned property, and noted the lack of sufficiently strong evidence of any intention on their part to deliberately breach Portuguese abortion legislation. It reiterated that freedom to express opinions in the course of a peaceful assembly could not be restricted in any way, so long as the person concerned did not commit any reprehensible acts.

The Court considered that in seeking to prevent disorder and protect health, the Portuguese authorities could have resorted to other means that were less restrictive of the applicant associations' rights, such as seizing the medicines on board. It highlighted the deterrent effect for freedom of expression in general of such a radical act as dispatching a warship.

The Court therefore concluded unanimously that there had been a violation of Article 10 as the interference by the authorities had been disproportionate to the aims pursued. See also with that respect the case of Open Door and Dublin Well Woman v. Ireland (no. 14234/88; 14235/88).

The Court further held that it was unnecessary to examine separately the complaints under Articles 5, 6 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention.

Eerikäinen and Others v. Finland (no. 3514/02) (Importance 1) - 10 February 2009 - Violation of Article 10 - Criminal proceedings - Protection of reputation of the others - Matter of public interest - Lack of proportionality

The applicants are the publishing company *Yhtyneet Kuvalehdet Oy*; its former editor-in-chief, Matti Paloarol, now deceased, and a freelance journalist, Pentti Eerikäinen. Relying on Article 10, the applicants complained that they had been ordered by the Supreme Court to pay damages because of a newspaper article Mr Eerikäinen had written in 1997 concerning criminal proceedings pending against a business woman accused of deceiving the Social Insurance Institution and insurance companies. The Court observed that the reporting on the criminal case in the 1997 article had been based on public facts, concerned a matter of legitimate public interest and its purpose had been to contribute to a public discussion:

"*While reporting and commenting on court proceedings, provided that they do not overstep the bounds set out above, contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, it is to be noted that the public nature of court proceedings does not function as a carte blanche relieving the media of their*

duty to show due care in communicating information received in the course of those proceedings (see Council of Europe Recommendation No. Rec(2003)13 on the provision of information through the media in relation to criminal proceedings; […]). In this connection, the Court notes that the Finnish Guidelines for Journalists, as in force at the relevant time, stated that the publication of a name and other identifying information in this context was justified only if a significant public interest was involved" (§ 63).

It concluded that the applicants had not gone too far when communicating the identity of the accused business woman to the public, and that, by having ordered them to pay damages, the Finnish Government had violated Article 10 of the Convention:

"*The Court considers that the general subject matter which was at the heart of the article concerned – namely, the abuse of public funds – was a matter of legitimate public interest, having regard in particular to the considerable scale of the abuse. From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the press, there were justified grounds supporting the need to encourage public discussion of the matter in general.*

The Court observes that it is not evident that the Supreme Court in its analysis as to whether the applicant's privacy had been invaded attached any importance to the fact that the information given was based on a bill of indictment prepared by the public prosecutor and that the article clearly stated that the applicant had merely been charged.

Nor is it apparent what significance the Supreme Court attached to the publication of X's photographs together with her name. The publication of a photograph must, in the Court's view, in general be considered a more substantial interference with the right to respect for private life than the mere communication of the person's name. As the Court has held, although freedom of expression also extends to the publication of photos, this is an area in which the protection of the rights and reputation of others takes on particular importance (see Von Hannover, no. 59320/00, §§ 50-53 and 59, ECHR 2004-VI). Nor did the Supreme Court analyse the significance of the fact that the photographs had been taken with the applicant's consent and with the intention of their being published, albeit in connection with an earlier article and a different context.

Having regard to the foregoing the Court concludes that the grounds relied on, although relevant, were not sufficient to justify the interference with the applicants' right to freedom of expression, in terms of a "pressing social need". There has therefore been a violation of Article 10 of the Convention". (68-72).

You may wish to read the third party intervention submitted by the European Federation of Journalists (§§ 36-41).

Marin v. Romania (no. 30699/02) (Importance 3) - 3 February 2009- Non violation of Article 10-Defamation - Private life – Proportionality - Violation of Article 6 - Fair trial

In 1998, the applicant while employed as a teacher, she sent a letter to the Minister for Education in which she criticised an inspector. The applicant complained, under Article 6 § 1 (right to a fair trial), about the criminal proceedings which the inspector had brought against her for defamation. She also alleged, under Article 10 (freedom of expression), that her letter had been published in the magazine *Şcoala românească* without her permission. The Court held unanimously that there had been a violation of Article 6 § 1 in that the applicant had been convicted of insulting behaviour without having been given the opportunity to present her defence on this new charge, and no violation of Article 10, on the ground that the authorities' interference with the applicant's freedom of expression had been proportionate. While the applicant's letter dealt with a matter of general interest, namely the corruption of civil servants, the statements which gave rise to her conviction, were directed against aspects of the private life of the inspector.

Brunet-Lecomte and Others v. France (no. 42117/04) (Importance 3) - 5 February 2009 - Non violation of Article 10 - Money laundering - Statements beyond the degree of exaggeration and provocation - Proportionality

The applicants were Philippe Brunet-Lecomte and Bernard Monnot, and a private company, LM Développement, which publishes the monthly magazine *Objectif Rhône-Alpes* and has its registered office in Lyons. Mr Brunet-Lecomte is the publication director of *Objectif Rhône-Alpes* and Mr Monnot is the former manager of the Lyons branch of the Banque Cantonale de Genève (BCG), a Swiss-based bank.

The February 2001 issue of *Objectif Rhône-Alpes* featured the headline "Dirty money: a Lyons banker accuses the Banque Cantonale de Genève" and contained an interview with Mr Monnot, who referred

to “large-scale money laundering” and “black-market money from tax evasion and criminal activities” with reference to the BCG.

The Lyons branch of the BCG brought proceedings against Mr Monnot and Mr Brunet-Lecomte for the offence of public defamation of a private person, submitting that the interview and the commentary introducing it were defamatory and infringed the presumption of its innocence. The applicants disputed that the statements in question were defamatory and argued that the interview was in the public interest.

On 3 October 2002 the *tribunal de grande instance* held that the statements by Mr Monnot were defamatory and emphasised their virulent nature and the serious implications they entailed for all or part of the BCG’s management, while also noting the context of the dispute between the bank and Mr Monnot since his dismissal in 1996. The court further noted that Mr Brunet-Lecomte had not verified Mr Monnot’s accusations against the BCG. It found that the prosecution was barred as a result of an amnesty and, ruling on the civil claim, ordered the applicants to pay 1 euro (EUR) in damages.Mr Monnot and Mr Brunet-Lecomte appealed unsuccessfully. The Court of Appeal upheld the award of EUR 1 in damages and observed that the applicants had acted in bad faith, displaying a lack of caution and moderation.

The Court reiterated that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. It pointed out that resorting to a degree of exaggeration and not systematically distancing themselves from quotations were aspects of journalists’ freedom and of their role in imparting information.

The Court noted the virulent and unqualified nature of Mr Monnot’s statements accusing the BCG of laundering “dirty money” in the amount of 313 million francs. It highlighted the credibility conferred on Mr Monnot by his status as a former manager and noted that he had accused the BCG of acts punishable under the criminal law although no such conduct had been established by the criminal courts.

The Court observed that in the relevant article in *Objectif Rhône-Alpes*, Mr Brunet-Lecomte had published a strongly worded introduction to Mr Monnot’s statements, going beyond the degree of exaggeration, or even provocation, that constituted appropriate journalistic practice. It considered that Mr Brunet-Lecomte, despite being a media professional, had omitted to take precautions and to qualify the statements by Mr Monnot. The Court was not satisfied that he had acted in good faith as required by the ethics of journalism.

The Court further noted the purely symbolic nature of the sum of EUR 1 which the applicants had been ordered to pay in damages.

Taking into consideration the content of the statements published without reservation and held to be defamatory, their potential public impact and the amount awarded in damages, the Court concluded that the French authorities’ interference with the applicants’ right to freedom of expression had been proportionate and that there had been no violation of Article 10.

- **Right to property**

Vontas and Others v. Greece (no. 43588/06) (Importance 2) – 5 February 2009 – Violation of Article 1 of Protocol No. 1 - Greek courts' interpretation of domestic law led to an interference with the applicants' right to property

The case concerned a dispute between the applicants and the State about the ownership of a plot of land on the island of Spetses (Greece). Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained that the result of the proceedings before the Greek courts amounted to a deprivation of possessions contrary to Article 1 of Protocol No. 1. The Court held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 in that the Greek courts’ interpretation of domestic law led to an interference with the applicants’ rights which was not justified. The Court found in particular that the decisions of the Greek courts had led to injustice as, concrete evidence having been ignored, Roman-Byzantine law had been applied in the case and the Greek courts had found the State to be the rightful owner of the disputed land. The Court further held under Article 41 (just satisfaction), by six votes to one, that Greece had to restore to the applicants their ownership rights over the disputed land.

In its partly dissenting opinion, Judge Maliverni considered that that “*the Court should rather, in this case, have ordered the payment of compensation to the applicants for the damage sustained as a result of the unfair hearing they were given, which “has led to injustice” (§41). In this case the violation of Article 1 of Protocol No. 1 is of a far more procedural than substantive nature. It was the incorrect*

application of domestic law (the vetustas rule instead of other rules) that led to a violation of Article 1 of Protocol No. 1".

- **Cases concerning Chechnya**

Idalova and Idalov v. Russia (no. 41515/04) (Importance 3) – 5 February 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)

Khaydayeva and Others v. Russia (no. 1848/04) (Importance 3) – 5 February 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)

Khadisov and Tsechoyev v. Russia (no. 21519/02) (Importance 2) – 5 February 2009 - Violations of Article 3 (prohibition of torture and lack of effective investigation) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 in conjunction with Article 3 (lack of an effective remedy) - No violation of Article 34 (right to individual petition) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

The first two cases concern the disappearances of the applicants' relatives after being abducted by Russian servicemen and the failure of the domestic authorities to carry out an effective investigation. The third case concerns the torture of the applicants by officers of the Ministry of the Interior and Russian servicemen in order to make them confess to being involved with paramilitary groups.

Ayubov v. Russia (no. 7654/02) (Importance 3) – 12 February 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 5 (unacknowledged detention) - Violation of Article 1 of Protocol No. 1 (protection of property) on account of Russian servicemen having set on fire the applicant's family home and cars - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2 and Article 1 of Protocol No. 1

Bantayeva and Others v. Russia (no. 20727/04) (Importance 3) – 12 February 2009 Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of all the applicants except for Salman Bantayev's youngest daughter) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2

Meshayeva and Others v. Russia (no. 27248/03) (Importance 3) – 12 February 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of Leoma Meshayev's wife, brother and children and of Bislan Saydayev's mothers and brothers) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2 - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Those three cases concern the disappearances of the applicants' relatives after being abducted by Russian servicemen.

2. Other judgments issued in the period under observation

You will find in the column "Key Words" of the table below a short description of the topics dealt with in the judgment. For a more complete information, please refer to the following link:

- press release by the Registrar concerning the Chamber judgments issued on 3 February 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 5 February 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 10 February 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 12 February 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
Bulgaria	12 Feb. 2009	Spas Spasov (no. 31646/02) Imp. 3.	No violation of Article 5 § 3	The Court held that the domestic courts had provided "relevant" and "sufficient" reasons in their decisions for keeping the applicant in detention (23 months), and found no serious shortcomings in the conduct of the criminal proceedings.	link
Croatia	05 Feb. 2009	Gabric (no. 9702/04) Imp. 3.	Violation of Article 1 of Protocol No. 1	The confiscation by the Croatian custom authorities of the applicant's undeclared German currency (in addition to a fine) was disproportionate	link
Greece	05 Feb. 2009	Sarantidis (no. 23163/07) Imp. 3.	Violation of Article 6 § 1 (length)	Excessive length of proceedings (more than six years) for embezzlement	link
Poland	03 Feb. 2009	Kupiec (no. 16828/02) Imp. 2.	No violation of Article 6 § 1	The Court found that the court fees requested from the applicant could not be considered as disproportionate (namely because those fees were linked to the exaggerated amount of the applicant's claim) and did not deprive the applicant of his right of access to a court	link
Romania	3 Feb. 2009	Jones (n° 36478/02) Imp. 3	Violation of Art. 1 of Prot. 1	The action of the administrative authorities had prevented the applicant from securing the return of his nationalised property	Link
Russia	12 Feb. 2009	Denisenko and Bogdanchikov (no. 3811/02) Imp. 3	(1st applicant) Three violations of Article 3 (treatment); Violation of Article 3 (investigation) ; No violation of Article 5 §§ 1 and 3	Ill-treatment imposed on the first applicant during his police custody, his detention in remand centre IZ-77/2, and on account of the conditions of his confinement during the court hearing of his case at the Khamovniki District Court. Failure to carry out an effective investigation into those allegations of ill-treatment	
Russia	05 Feb. 2009	Makeyev (no. 13769/04) Imp. 3.	Violation of Article 6 §§ 1 and 3 (d)	Unfairness of criminal proceedings for armed robbery (the applicant had not been able to cross-examine the three witnesses against him)	link
Russia	12 Feb. 2009	Samokhvalov (no. 3891/03) Imp. 2.	Violation of Article 6 § 1 (fairness) in conjunction with Article 6 § 3 (c)	Unfairness of criminal proceedings held against the applicant in his absence	link
Russia	05 Feb. 2009	Sun Huan Xin (no. 31004/02) Imp. 2.	Violation of Article 1 of Protocol No. 1	Unlawfulness of the confiscation measure imposed on the applicant's money (who was charged with attempted smuggling) by the Russian customs' authorities, because	link

				the national law provided for confiscation only in cases of "criminally acquired" money, which was not the case for the applicant.	
Turkey	03 Feb. 2009	Amutgan (no. 5138/04) Imp. 3.	Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1	Violation of right of access to a lawyer while in police custody	link
Turkey	03 Feb. 2009	Çimen (no. 19582/02) Imp. 3.	Violation of Article 6 § 1 (fairness) Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1	Violation of right of access to a lawyer while in police custody Unfairness of criminal proceedings (namely concerning the non-communication of the written opinion of the Principal Prosecutor at the Court of Cassation)	link
Turkey	03 Feb. 2009	Şükran Yıldız (no. 4661/02) Imp. 3.	Violation of Article 5 §§ 3 and 4 Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1	Violation of right of access to a lawyer while in police custody Excessive length of the applicant's detention on remand (four years and three months) and impossibility to challenge effectively the lawfulness of this detention.	link
Turkey	10 Feb. 2009	Güçlü (no. 27690/03) Imp. 3.	Violation of Article 10	The criminal conviction of the applicant for disseminating separatist propaganda on account of a speech he had given at a press conference on "democracy and the Kurdish problem" was considered as disproportionate (the applicant was encouraging an open debate on political and historical issues and was informing the public on a matter of general interest)	link
Turkey	03 Feb. 2009	İpek and Others (nos. 17019/02 and 30070/02) Imp. 2.	Violation of Article 5 § 1 (c) Violation of Article 5 §§ 3, 4 and 5	Unlawfulness of arrest of the applicants, Mr İpek and Mr Demirel Excessive length of the applicants' detention in police custody (detention of minors in police custody for more than three days) ; lack of effective remedy to challenge the lawfulness of the detention ; and lack of an enforceable right to compensation	link
Turkey	03 Feb. 2009	Ayla Özcan (no. 36526/04) Imp. 3.	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length of criminal proceedings (almost five years for forgery of official documents) and lack of effective remedy in the Turkish legal system	link

3. Repetitive cases

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

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

State	**Date**	**Case Title**	**Conclusion**	Key words by the Office of the Commissioner
Albania	03 Feb. 2009	Hamzaraj (no. 45264/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Non-enforcement of Commission decisions awarding the applicants compensation
Albania	03 Feb. 2009	Nuri (no. 12306/04) link	Idem	Idem
Bulgaria	12 Feb. 2009	Dimitar and Anka Dimitrovi (no. 56753/00) link Mihaylovi (no. 6189/03) link Miteva (no. 60805/00) link Simova and Georgiev(no. 55722/00) link	Violation of Article 1 of Protocol No. 1	The applicants have lost their property following the restitution legislation
Portugal	10 Feb. 2009	Kindler de Barahona (no. 31720/05) link	Violation of Article 1 of Protocol No. 1	Failure and delay to grant to the applicants an adequate compensation following their expropriation in 1975 in the context of a land reform policy
Romania	05 Feb. 2009	Drăculeț (no. 20294/02)	Just satisfaction	Just satisfaction (concerning a violation of Art. 1 of Prot. 1 on account of the double registration of title to a plot of land)
Romania	03 Feb. 2009	Ilutiu (no. 18898/02) link	Just satisfaction	Just satisfaction (concerning a violation of Art. 1 of Prot. 1 on account of the sale by the State of the applicant's property to a third party, combined with the failure to grant to the applicant an effective compensation for nine years)
Russia	10 Feb. 2009	Bezzubikova (no. 32048/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Protracted failure to execute a judicial decision ordering that the applicant be allocated subsidised housing
Russia	12 Feb. 2009	Bodrov (no. 17472/04) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of a final judgment in favour of the applicant by way of supervisory review
Turkey	03 Feb. 2009	Kalyoncu (no. 41220/07) link	Violation of Art. 1 of Prot. No. 1	Failure to grant to the applicants a compensation for being deprived of their land, which, according to domestic law,

				could not be subject to private property
United Kingdom	03 Feb. 2009	Booth (no. 27961/02) link Mitchard (no. 42711/02) link Murray (no. 28045/02) link Turner (no. 42709/02) link Twomey (no. 28095/02) link	Violation of Art. 14 in conjunction with Art. 1 of Prot. No. 1	Violation on account of the refusal of the authorities to grant the applicants widows' benefits, notably the Widow's Payment and the Widow's 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**
Belgium	3 Feb. 2009	Leonardi (no. 35327/05)	Link
Belgium	3 Feb. 2009	Poelmans (no. 44807/06)	Link
Georgia	10 Feb. 2009	Kharitonashvili (no. 41957/04)	Link
Russia	12 Feb. 2009	Mikhaylovich (no. 30019/05)	Link
Turkey	3 Feb. 2009	Saçlı and Others (no. 42710/04)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 19 January to 1 February 2009**.

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 :***

Janatuinen v. Finland (no 4692/04) (Importance 3) – 20 January 2009 - Alleged violation of Art. 8 (interception of the applicant's telephone conversations) – Inadmissible on account of non-exhaustion of domestic remedies – Complaint lodged at domestic level solely with the Ombudsman

The police suspected the applicant's husband of an aggravated drugs offence. They obtained permission to place his telephone under secret surveillance.

On 30 December 1999 the applicant phoned a third person, K., requesting him to come over and bring along a bag containing items belonging to her husband. The police intercepted this conversation. The facts are not clear on whether the conversation was recorded or not but, at any rate, it was cited in the subsequent criminal complaint and included in the pre-trial investigation material.

By a letter dated 4 January 2001 the applicant's husband lodged a complaint with the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*) criticising the conduct of the police, in particular their use and handling of the information obtained through the surveillance.

The Ombudsman concluded that the interception of the conversation, having lasted longer than necessary, and the inclusion of its contents in the pre-trial material constituted an unlawful act.

The Ombudsman found, however, that there was no reason to suspect that the act was anything other than a one-off mistake. He also considered its impact quite trivial under the circumstances. He stressed however the importance of the principle at stake. He did not find it necessary to engage in investigating which police officer should be held accountable for the unlawful act. He considered it sufficient to express his opinion on the matter to Chief Inspector A. and to the head of the National Bureau of Investigations. This opinion was also to be forwarded, for future guidance, to the police officers who had been involved in the investigation in question.

The Court found unanimously that the application should be rejected for non exhaustion of domestic remedies.

"*The Court reiterates that the only remedy the applicant made use of at the domestic level was a complaint lodged with the Ombudsman. […] The Court confirms the prominent role played by ombudsmen in the protection of human rights and freedoms, providing, as they do, the individual with swift, free and easily accessible protection against breaches of fundamental rights and ensuring the individual's fundamental right to good and proper administration of his or her affairs by the authorities at all levels (see, mutatis mutandis, Jasar v. the former Yugoslav Republic of Macedonia (dec.), no. 69908/01, 19 January and 11 April 2006).*

However, the Court has previously found that, as a general rule, a complaint to an ombudsman cannot be regarded as an effective remedy as required by Article 35 § 1 of the Convention, in particular due to the non-binding nature of his or her decisions (see, mutatis mutandis, Leander v. Sweden, 26 March 1987, § 82, Series A no. 116, Lehtinen v. Finland (dec.), cited above, J.L. v. Finland (dec.), no. 32526/96, 16 November 2000, and Jasar v. the former Yugoslav Republic of Macedonia (dec.), cited above).

In the present case the applicant's complaint to the Parliamentary Ombudsman did not lead to the full establishment of the facts, let alone to proceedings capable of attributing guilt and awarding monetary redress. Therefore, the Court considers that, in the particular circumstances of the case, recourse to that remedy did not constitute, even in practice, an effective remedy in respect of the applicant's grievances.

[…]

The Court reiterates that in the cases of Lehtinen and J.L. (both cited above), the Court found that the applicants, who had only lodged a complaint with the Ombudsman, had not exhausted domestic remedies within the meaning of Article 35 § 1. In both cases the national law provided for specific court remedies which the applicants had failed to use. In that respect, the present case is different from Lehtinen and J.L.

In the case of Raninen (cited above) the Court found that the Government had not demonstrated that either a criminal prosecution or an action for damages would in the particular circumstances of that case have offered reasonable prospects of success. Nor had any specific court remedy been available to the applicant. The present case is therefore similar to the Raninen case in that the applicant only had at her disposal the general court remedies provided by the Constitution. In both cases the Ombudsman had found the conduct of the authorities unlawful. In the case of Raninen, however, the Ombudsman had found that the civil servant whose conduct had been criticised by the applicant had acted in good faith (see Raninen v. Finland, cited above, § 42).

In the present case the Ombudsman clearly acknowledged that a mistake had been made. Even though the Ombudsman found the impact of the unlawful act to be quite trivial in the circumstances, the Court cannot assume that his statement would have rendered the applicant's claims futile. Nor can the Court assume that, had the applicant chosen to file a criminal complaint, a pre-trial investigation would have been dispensed with in view of the minor nature of the offence.

The Court finds that the applicant has not put forward any convincing arguments as to the inadequacy or ineffectiveness of the general court remedies in the particular circumstances of the case or pointed to any special circumstances absolving her from the requirement to avail herself of at least one of those remedies. The Court reiterates that in case of doubt, a remedy has to be tried.

Accordingly, the Government's objection is upheld and the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies."

Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands (no. 13645/05) (Importance 3) – 20 January 2009- Inadmissibility as manifestly ill-founded - Complaint about the unfairness of proceedings before the Court of Justice of the European Communities with regard to its right to dredge cockles in a tidal wetland area, the Wadden Sea

The applicant, Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A., is an association of individuals and enterprises based in Kapelle (the Netherlands) engaged in mechanical cockle fishing. Until December 2004 the association's members dredged cockles in the Wadden Sea, which is a protected area under domestic law. The applicant association complained that its right to adversarial proceedings had been violated before the European Court of Justice (ECJ) as, in its preliminary ruling proceedings, the ECJ had refused to allow the association to respond to the Opinion of the Advocate General. The association relied on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

In so far as the applicant association's complaint was to be understood as directed against the European Community itself, the application had to be rejected, the European Community at present not being a party to the European Convention.

However, the Court still had to consider the Netherlands' responsibility with regard to the applicant association's complaint, particularly in view of the fact that the ECJ's intervention had been actively sought by a domestic court in proceedings before it.

The Court referred to its case-law* (see namely *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland* [GC], no. 45036/98, §§ 152-56, ECHR 2005-VI), according to which there was a presumption that a Contracting Party has not departed from the requirements of the Convention where it had taken action in compliance with legal obligations flowing from its membership of an international organisation as long as that organisation offered protection of fundamental rights in a manner which could be considered at least equivalent to that provided by the Convention. It therefore had to examine whether the procedure before the ECJ had been accompanied by sufficient guarantees of fair procedure.

The Court noted that the ECJ, under Rule 61 of its Rules of Procedure, could reopen the oral proceedings after hearing the Advocate General's opinion, either of its own initiative or at the request of the parties. Indeed, the applicant association had submitted such a request for reopening; as apparent from the ECJ's decision of 28 April 2004, it had only been refused because the applicant association had not shown that reopening the proceedings was useful or necessary.

Following the ECJ's ruling, the Council of State could have sought a new preliminary ruling from the ECJ. Otherwise, had the applicant been able to show beyond reasonable scientific doubt that mechanical cockle fishing would not adversely affect natural habitat in the Wadden Sea, the Council of State could have decided in its favour. The Court could not therefore find that the applicant association had shown that the fair trial guarantees available to it in this case had been manifestly deficient. It had therefore failed to rebut the presumption that the procedure before the ECJ provided equivalent protection of its fundamental rights. Accordingly, in so far as it was directed against the Netherlands, the application had to be rejected as manifestly ill-founded.

Oao Neftyanaya Kompaniya Yukos v. Russia (n° 14902/04) (Importance 3) – 29 January 2009 – Partly admissible - Proceedings concerning the tax liability of the company Oao Neftyanaya Kompaniya Yukos – Status of victim

On 29 January, a Chamber of the Court has declared partly admissible the application in the case of *Oao Neftyanaya Kompaniya Yukos v. Russia* and has decided that a hearing should be held in this case.

* One may note that the present case differs from *Boivin v. France and 33 other States* (dec.) (no. 73250/01) (see in that respect the RSIF n°3) in that the applicant's complaint is based on an intervention of the ECJ actively sought by a domestic court in proceedings pending before it. It cannot therefore be found that the respondent Party is in no way involved.

The Court dismissed by a majority the Government's request to discontinue the examination of the case due to the liquidation of the applicant company and accepted Mr Gardner as the valid representative of the applicant company.

The reasoning regarding the status of victim before the Court:

"*439. On 26 December 2007 the Government informed the Court that by decision of the City Court of 12 November 2007 the applicant company had been liquidated (see paragraphs 273 and 274 above). The Government submitted that accordingly the Court had lost jurisdiction ratione personae in respect of the application and relying on Article 35 § 3 of the Convention requested to discontinue the examination of the case. In addition, they contested the authority of Mr J. P. Gardner to act continuously on behalf of the applicant company.*

440. The Court notes that it is undisputed between the parties that the applicant company was not under compulsory administration in April 2004 and that the case was properly introduced with the Court by the company's counsel Mr Gardner (see, by contrast, Capital bank AD v. Bulgaria (dec.), no. 49429/99, 9 September 2004, and Credit and Industrial Bank v. the Czech Republic, no. 29010/95, §§ 43-52, ECHR 2003-XI (extracts)).

441. While under Article 34 of the Convention the existence of a "victim of a violation" is indispensable for putting the protection mechanism of the Convention into motion, this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the whole proceedings. As a rule, and in particular in cases which, as the one at hand, primarily involve pecuniary, and, for this reason, transferable claims, the existence of other persons to whom that claim is transferred is an important criterion, but cannot be the only one. Human rights cases before the Court generally also have a moral dimension, which it must take into account when considering whether to continue with the examination of an application after the applicant has ceased to exist. All the more so if the issues raised by the case transcend the person and the interests of the applicant (see Capital Bank AD v. Bulgaria, no. 49429/99, §§ 74-80, ECHR 2005-XII (extracts), and, mutatis mutandis, Karner v. Austria, no. 40016/98, § 25, ECHR 2003-IX, with further references).

442. The Court has repeatedly stated that its judgments in fact serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of Convention States (see Karner, § 26).

443. The Court notes that the various alleged breaches of Articles 6, 7, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1 in the present case concern the tax assessment and enforcement proceedings in respect of the applicant company which eventually resulted in its bankruptcy and ceasing to exist as a legal person. Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality (see Capital Bank AD, cited above, § 80).

444. This issue in itself transcends the interests of the applicant company and therefore the Court rejects the Government's request. The Court also accepts Mr Gardner as the valid representative of the applicant company".

The Court decided by a majority to join to the merits the examination of the issue of exhaustion in so far as the applicant company's complaints about the enforcement proceedings, including the auctioning of OAO Yuganskneftegaz, are concerned.

The Court declared, by a majority, admissible without prejudging the merits:

– the applicant company's complaints under Article 6 of the Convention concerning various defects in the proceedings concerning its tax liability for the year 2000;

– the complaints under Article 1 of Protocol No. 1, taken alone and conjunction with Articles 1, 13, 14 and 18 of the Convention, about the lawfulness and proportionality of the 2000-2003 Tax Assessments and their subsequent enforcement, including the sale of OAO Yuganskneftegaz;

– the complaints under Article 7 of the Convention about the lack of proper legal basis, selective and arbitrary prosecution and the imposition of double penalties in the Tax Assessment proceedings for the years 2000-2003.

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words by the Office of the Commissioner)***	***Decision***
Bulgaria	20 Jan 2009	Dzhehri (no 25951/03) link	Alleged violation of Art. 1 of Prot. No. 1 (confiscation of the entire amount which the applicant had not declared when crossing the border)	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria	20 Jan 2009	Todorova (III) (no 20806/04) link	Alleged violation Art. 6 § 1 (fairness and excessive length of civil proceedings) and 13 (lack of an effective remedy)	Partly adjourned (concerning the length of civil proceedings and the lack of effective remedy) Partly inadmissible as manifestly ill-founded (no appearance of violation concerning the remainder of the application)
Bulgaria	20 Jan 2009	Nayden Kostov (no 11063/03) link	Alleged violation Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Bulgaria	20 Jan 2009	Kamenov (no34062/02) link	Alleged violation of Art. 6 § 1 (unfairness of criminal proceedings) and Art. 7 (no punishment without law)	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria	20 Jan 2009	Marinov (no 43010/04) link	Alleged violation of Art. 3, 6 and 8 (excessive length of the criminal proceedings) of Art. 5 § 1 c) (unlawful detention), Art. 2 of Prot. 4 (unlawful restriction to freedom of movement) and 13 (lack of an effective remedy)	Partly adjourned (concerning the length of criminal proceedings and the lack of effective remedies), Partly inadmissible (no appearance of violation concerning the remainder of the allegations)
Bulgaria	20 Jan 2009	Shipkov (no 26483/04) link	Alleged violation of Art. 5 § 1 (unlawful detention), Art. 5, §§ 2 and 3 (length of pre-trial detention), and Art. 6 § 3 a) and 3 c), (deprivation of legal assistance), Art. 6, §§ 1 and 2, (excessive length of criminal proceedings) and Art. 13 (lack of effective remedies)	Partly adjourned (concerning the length of pre-trial detention) Partly inadmissible (no appearance of violations)
Finland	20 Jan 2009	Lappalainen (no 22175/06) link	Alleged violations of Art. 6 (length of civil proceedings) and Art. 8 (the applicant alleged that the publication of his name in a newspaper article concerning a criminal case of assault breached his right to respect for his private life)	Partly adjourned (concerning the length of the proceedings) Partly inadmissible as manifestly ill-founded (no failure of the Finnish authorities to afford an adequate and balanced protection of the applicant's right to respect for his private life)
Finland	20 Jan 2009	Nevala (no10391/06) link	Alleged violation of Art. 6 (length and fairness of the proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible (concerning the fairness of proceedings)
Finland	20 Jan 2009	Parviainen (no 35525/05) link	Alleged violation of Art. 6 (fairness of the proceedings in the framework of a paternity application)	Struck out of the list (applicant no longer wishing to pursue his application)
Finland	20 Jan 2009	Granath (no 41853/05) link	Alleged violation of Art. 6 (length and fairness of the administrative proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Georgia	27 Jan 2009	Khmiadashvili (no 26920/07) link	*Inter alia* alleged violations of Art. 3 (condition of detention), and Art. 5 (allegations pertaining to certain aspects of the detention and the criminal proceedings)	Struck out of the list (friendly settlement reached)
Germany	20 Jan 2009	Ullmann (no 378/06) link	Alleged violations of Art. 8. (following the withdrawal of the applicants parental custody due to injuries observed on the applicants' son) and of Art. 6	Inadmissible as manifestly ill-founded (the German courts based their decisions on relevant and sufficient grounds and struck a fair balance between the competing interests)

Italy	20 Jan 2009	L.M. and F.I. (no 14316/02) link	Alleged violation of Art. 6 (fairness and length of the proceedings), Art. 8 (concerning the impossibility for the applicant to establish relations with his daughter) and Art. 13 (lack of effective remedy)	Inadmissible as manifestly ill-founded *inter alia* because the Court considers that the decisions taken by the domestic courts stroke a balance between the interests of the applicant and his child
Italy	20 Jan 2009	Immobiliare Banditella SRL (no 14360/05) link	Alleged violation of Art. 1 of Prot. No. 1 (on account of deprivation of property following an indirect expropriation)	Struck out of the list (friendly settlement reached)
Moldova	27 Jan 2009	Tataru (no 38421/05) link	Alleged violation of Art. 6 § 1 and 1 of Prot. No. 1 (non-enforcement of the judgment of domestic courts in the applicant's favour)	Struck out of the list (friendly settlement reached)
Moldova	27 Jan 2009	Nedelcov (no 19261/05) link	Alleged violation of Art. 6 § 1 (alleged violation of the right of access to court due to the late enforcement of a judgment in the applicant's favour)	Inadmissible as manifestly ill-founded (no appearance of any violation as the domestic judgment was enforced within a reasonable time)
Moldova	27 Jan 2009	Glavcev (no 24246/05) link	Alleged violation of Art. 6 § 1 and 1 of Prot. No. 1 (alleged non-enforcement of the judgment of domestic courts in the applicant's favour)	Idem.
Moldova	27 Jan 2009	Comandari (no 12224/05) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (alleged violation of the right of access to court due to the late enforcement of a judgment in the applicant's favour)	Idem.
Poland	27 Jan 2009	Pilecki (No. 2) (no 18158/07) link	Alleged violation of Art. 6 (length of the proceedings)	Struck out of the list (friendly settlement reached)
Poland	27 Jan 2009	Hanus (no 42783/06) link	Alleged violation of Art. 6 § 1 (fairness of proceedings and right to access to a court, especially due to the fact that the legal-aid lawyer has refused to prepare a cassation complaint before the Supreme Administrative Court) and Art. 1 of Prot. No. 1 (right to the peaceful enjoyment of possessions)	Struck out of the list (friendly settlement reached)
Poland	27 Jan 2009	Adamski (no 6973/04) link	Alleged violation of Art. 3 (ill-treatment due to the excessive and disproportionate use of force by the police forces during the applicant's arrest and lack of effective investigation), and of Art. 5 § 1 c) and d) (unlawful detention, minor's interrogation without his parents being present)	Partly inadmissible as manifestly ill-founded (no evidence to indicate that the use of force against the applicant during the arrest was excessive and no indication that the subsequent investigation was not effective) Partly inadmissible for non-exhaustion of domestic remedies (concerning the allegations on ground of Art. 5)
Portugal	27 Jan 2009	Calapez Correia and others (no 653/06) link	Alleged violation of Art. 1 of Prot. 1 (inadequate compensation afforded and delay in the payment of such compensation).	Inadmissible *ratione temporis* (failure to respect the six-months time limit to file an application before the EctHR).
The Czech Republic	20 Jan 2009	Zilova and others (no 32899/05) link	Alleged violation of Art. 6 § 1 (length of proceedings, fair trial), Art. 8 and Art. 1 of Prot. 1 (obligation for the applicants to destruct their house)	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	27 Jan 2009	Andrita (no 67708/01) link	Alleged violations of Art. 2 (concerning the failure of the authorities to carry out an effective investigation into the circumstances of the death of the applicant's daughter) and 6 (concerning the right of access to a court and the alleged impossibility to seek damages for the death of the daughter)	Partly inadmissible *ratione temporis* (for Art. 2 and 6) Partly inadmissible as manifestly ill-founded (for Art. 6)

Romania	27 Jan 2009	Pitic (no 5149/06) link	Alleged violation of Art. 6 § 1 (fair trial, independence and impartiality of judges before the Court of cassation), Art.1. of Prot. 1 (obligation to restitute a sum of money obtained following a final domestic decision), Art. 14. and Art. 12 (principle of equality in fiscal matters)	Struck out of the list (friendly settlement reached)
Russia	20 Jan 2009	Artemov (no 53006/99) link	Alleged violation of Art. 3 (ill-treatment by police officers and lack of effective investigation) and Art 6 (unfairness of the proceedings and failure of the court to examine some of the witnesses on the applicant's behalf)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	22 Jan 2009	Sadykov (no 41840/02) link	Alleged violation of Art. 3 (ill-treatment by police officers and lack of effective investigation), Art. 5 § 1. (lawfulness of deprivation of liberty), Art. 5§2 (failure to inform the applicant promptly of the reasons for arrest or charges), Art 5§3 (the applicant's detention had allegedly not been authorised by a court), Art. 5§4 (no information on the right of access to a lawyer), Art. 5§5 (inability to obtain compensation for unlawful detention), Art 6 § 1, 2, 3; Art. 8, Art. 1 of Protocol No. 1 (the damage inflicted on property), Art. 13, Art 34 and Art. 38§1	Partly admissible concerning allegations on ground of Articles 3, 13 and 1 of Prot. 1) Partly inadmissible *ratione temporis*
Russia	22 Jan 2009	Palanov (no 0561/04) link	Alleged violation of Art. 6 § 1 and 13 (non-enforcement of a judgment of domestic courts in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	22 Jan 2009	Trepashkin (no. 2) (no 14248/05) link	Alleged violation of Art. 3 (conditions in the remand prisons and detention centre, conditions of transportation from the remand prisons), Art. 5 § 1 c) and a) (unlawful detention), and Art. 5 § 4 (inability to take part in the hearings before the court), Art 6 § 1 and § 3 (a), (b) and (c) (lack of independent and impartial courts, failure to clarify the criminal charges against the applicant), Art. 13 (lack of effective remedy), and Art 34 (pressure on the applicant in connection with his complaint to the Court)	Partly admissible (concerning the conditions of detention, the unlawfulness of the applicant's detention, and concerning the conditions afforded to the applicant to prepare his defence and meet his lawyers in private) Partly inadmissible as manifestly ill-founded (concerning the allegations of Art. 5 § 1 (a) and 5 § 4), (other allegation of Art. 6, Art. 13). The Court further decides to pursue the examination of the allegation of the respondent Government's failure to comply with its obligations under Art. 34
Slovenia	27 Jan 2009	Stober (no 17517/03) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings), and Art. 13 (lack of an effective domestic remedy)	Struck out of the list (friendly settlement reached)
Sweden	20 Jan 2009	Levin (no 35141/06) link	Alleged violation of Art. 8 (following the taking into public care of the applicant's three children, and concerning the very restricted access to her children as well as concerning the very limited contact among the children)	Partly adjourned (concerning the restriction on the applicant's access rights to her children), partly inadmissible as manifestly ill-founded (no appearance of violation concerning the remainder of the application)
Sweden	20 Jan 2009	Siverling (no 19692/07) link	Alleged violation of Art. 6 (length of proceedings, failure to compensate the applicant for the length of proceedings).	Struck out of the list (applicant no longer wishing to pursue his application as the alleged violation has been redressed at domestic level)
Sweden	27 Jan	Mika (no 31243/06)	Alleged violation of Art. 6 §§ 1 and 3(d) (unfairness of the proceedings	Inadmissible as manifestly ill-founded (no appearance of any violation of

	2009	link	concerning the principle of equality of arms)	rights and freedoms set out in the Convention and its Protocols)
Sweden	27 Jan 2009	Carlberg (no 9631/04) link	Allegation of violations of Art. 6 (the Tax Authority's taxation decisions were allegedly enforced prior to a court having determined the request for a stay of execution as well as the principal tax dispute), Art. 7, Art. 6§2 (presumption of innocence), Art. 13 (lack of effective remedy), and Art. 4 of Prot. No. 7 (principle *non bis in idem)*	Inadmissible as manifestly ill-founded (*inter alia* because the applicant has been afforded adequate redress and can no longer claim to be a victim of violations of Article 6 § 1, and because there was no appearance of violation of Art 6 § 2 or of the principle of *non bis in idem)*
"The former Yugoslav Republic of Macedonia"	20 Jan 2009	Stefanovski (no 21252/04) link	The applicant complains under Art. 6 that the Appeal and Supreme Courts had wrongly applied the substantive law to the facts established by the first-instance court; that the judgment of domestic court had not been based on the grounds of appeal submitted by the employer; that the Supreme Court had not given reasons for its decision; and that this decision had not been adopted within a reasonable time.	Inadmissible as manifestly ill-founded (no appearance of violation) and as incompatible *ratione temporis*
The Netherlands	20 Jan 2009	W. (no 20689/08) link	Following the conviction of the applicant, a minor found guilty of causing bodily harm, the public prosecutor ordered, under the DNA Testing (Convicted Persons) Act (*Wet DNA-onderzoek bij veroordeelden),* that cellular material be taken from the applicant in order for his DNA profile to be determined. The applicant alleges *inter alia* a violation of Art. 8, of Art. 6 § 1 in conjunction with Art. 13, Art. 6 §§ 2 and 3 (concerning namely the presumption of innocence), and of Art. 14 (principle of equality)	Inadmissible, as partly manifestly ill-founded (no appearance of violation of Art. 8) and partly for non-exhaustion of domestic remedies (concerning the allegations of Art. 6 §§1, 2, 3; 13; 14) See also the case *Van der Velden v. the Netherlands* (dec.), no. 29514/05, 7 December 2006 and *a contrario* the case *S. and Marper v. United Kingdom* [GC], nos. 30562/04 and 30566/04, 4 December 2008)
The Netherlands	20 Jan 2009	Post (no 21727/08) link	Alleged violation of Art. 5 (unlawful deprivation of liberty)	Inadmissible as incompatible *ratione personae* : "*As the case file contains no document in which the applicant herself has indicated that she wishes Ms Spronken, a lawyer practising in Maastricht, to file an application with the Court on her behalf and in the absence of any indication whatsoever whether and, if so, why in the present case it would have been impossible for the applicant or her representative to respect this very simple yet crucial procedural requirement to submit a power of attorney within the six months' period fixed for this purpose, the Court cannot but conclude that the case must be rejected for want of an "applicant" for the purposes of Article 34 of the Convention*".
Turkey	27 Jan 2009	Guven and Others (no 44052/02) link	Alleged violation of Art. 10 (refusal by the national authorities to allow the applicants to give concerts and seizure of their cassettes or albums)	Struck out of the list (applicants no longer wishing to pursue his application)
Turkey	20 Jan 2009	Yavuz and others (no 29662/03) link	Alleged violation of Art. 2 (the applicants' son had been killed by a rocket launched by army forces), Art. 13 (lack of effective investigation), Art 1 of Prot. 1 (the rocket has damaged the applicants' house)	Struck out of the list (applicants no longer wishing to pursue his application)

Turkey	27 Jan 2009	Kahraman (no 7128/05) link	Alleged violations of Art. 6 (unreasonable length of proceedings, lack of impartial trial), and of Art. 1 of Prot. 1 (*de facto* expropriation of the applicant's land)	Partly adjourned (concerning the protection of the right to property), partly inadmissible as manifestly ill-founded (the Court considered that the decisions of the domestic courts have been based on legal provisions, see Köktepe v. Turkey §§ 94-96)
Turkey	27 Jan 2009	Mutlu Et Zeynep Mutlu Egitim Vakfi (no 32310/04) link	Alleged violation of Art. 6 (fairness of civil and administrative proceedings, lack of motivation of the decisions of domestic courts) and of Art. 2 and 3 of Prot. 7	Inadmissible as partly manifestly ill-founded (no appearance of violation of Art. 6), and partly as incompatible *ratione personae* (Turkey has not ratified Protocol 7)
Ukraine	27 Jan 2009	Dubrova (no 7314/03) link	Alleged violation of Art. 6 § (length, unfairness and outcome of the proceedings), Art 10 § 1 (refusal of the Supreme Court to hear the applicant's oral submissions), Art. 1 of Prot. No.1, Art. 5 and Art. 8 (concerning the order by the domestic courts for the applicant to live in the same house with Mr V., who was dangerous and posed a real threat to her life and property)	Struck out of the list (applicant no longer wishing to pursue his application)
Ukraine	27 Jan 2009	Poloz (no 42550/04) link	Alleged violation of Art. 6 §§ 1 and 3 (d) (inability to question six witnesses whose evidence had been used against the applicant, lack of independent and impartial trial)	Struck out of the list (applicant no longer wishing to pursue his application)
Ukraine	27 Jan 2009	Velizhanina (no 18639/03) link	Alleged violation of Art. 8 (disproportionate interference with her right to respect for her home), Art 6 § 1 (absence of fair trial and deprivation of a fair hearing)	Inadmissible as manifestly ill-founded (the domestic judicial authorities have not overstepped their margin of appreciation in deciding that the applicant had insufficient interest in retaining a specially protected tenancy)
Ukraine	27 Jan 2009	Malkova (no 29902/04) link	Alleged violation of Art. 5 § 1 (the applicant had allegedly been forced by officials of the Prosecutor's Office to visit the court hearing), Art. 10 (arbitrary interference with her right to express the opinion), Art. 6 and Art. 13 (unfairness of the proceedings, due to the impossibility to be properly represented by legal counsel)	Inadmissible partly as incompatible *ratione temporis* (concerning Art. 10) and partly as manifestly ill-founded (concerning the remainder of the application)
Ukraine	27 Jan 2009	Masyuchenko (no 22138/07) link	Alleged violation of Art. 6 § 1 (error in the assessment of the evidence and the establishment of the facts by the domestic courts)	Inadmissible as manifestly ill-founded and for non-exhaustion of domestic remedies (namely the Resolution of the Plenary Supreme Court did not unduly restrict the applicant's access to the court of cassation)
Ukraine	27 Jan 2009	Lyubchenko (no 15808/04) link	Alleged violation of Art. 6 § 1 (excessive length and fairness of proceedings)	Inadmissible as manifestly ill-founded (namely because the applicant also contributed to the overall length by lodging various motions, by contesting the rulings and judgments and by failure to appear before the court despite the fact that she was aware of the dates of hearings : the length of proceedings could not be considered consequently unreasonable)
Ukraine	27 Jan 2009	State Holding Company Luganskvugillya (no 23938/05) link	In the framework of the legislation on market circulation of shares, the applicant (a state holding company) complains about a violation of Art. 1 (failure of State to secure the applicant company's rights), and Art. 13 (failure of the domestic courts to examine its appeals in cassation)	Inadmissible as incompatible *ratione personae : "the applicant company is a legal entity that was registered as a corporation, owned and managed by the State, which participated in the exercise of governmental powers in the area of management of coal industry, having a public-service role*

				in that activity of the State. The applicant company had no independent function, exercising certain public functions related to administration of State property owned in the coal mining industry that is heavily subsidised and regulated by the State (see Dubenko v. Ukraine, no. 74221/01, §§ 21 - 32, 11 January 2005). Moreover, as it ensues from the Order of the Ministry of Coal Industry of 8 July 2008, the applicant company, which existed as a separate legal entity, had to be liquidated on the basis of the decision of that ministry. The Court accordingly concludes that the applicant company is not a "person, non-governmental organisation or group of individuals" within the meaning of Article 34 of the Convention".
Ukraine	27 Jan 2009	Rembezi (no 39006/02) link	Alleged violation of Art. 2, 3 (degrading treatment), Art 6 § 1 and Art. 13 (lack of adequate investigation)	Struck out of the list (applicant no longer wishing to pursue his application)
Ukraine	27 Jan 2009	Krykunova (no 39142/06) link	Alleged Violation of Art. 6 § 1, Art. 1 of Prot 1 (excessive length of civil proceedings), Art. 10 and Art. 13.	Struck out of the list (applicant no longer wishing to pursue her 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 16 February 2009 : link
- on 23 February 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 16 February 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
Austria	29 Jan. 2009	Falter Zeitschriften Gmbh N°3084/07	The applicant, owner and publisher of the weekly newspaper Falter, complains under Art. 10 about its conviction due to the publication of an article concerning a security officer in the Traiskirchen refugee camp, who was sued on charge of raping an asylum seeker from Cameroon, but who was finally acquitted. The applicant further complains about the impartiality of the presiding judge and about a breach in the equality of arms.
Austria	29 Jan. 2009	X and Others N° 19010/07	The applicants complain under Art. 14 taken in conjunction with Art. 8 that they are being discriminated against on account of their sexual orientation. They submit that there is no reasonable and objective justification for allowing adoption of one partner's child by the other partner as far as heterosexual couples are concerned, while prohibiting the adoption of one partner's child by the other partner in case of homosexual couples (as the Supreme Court's judgment in the case at stake demonstrates, Article 182 § 2 second sentence of the Austrian Civil Code is interpreted as excluding the adoption of one homosexual partner's child by the other partner, without severing the relationship between the natural parent and the child; the applicants argued in particular that, in respect of heterosexual couples, Article 182 § 2 of the Civil Code allowed for stepchild adoption, i.e. the adoption by one partner of the other partner's child, while the latter's legal relationship with the child remained unaffected).
Croatia	29 Jan. 2009	Savez Crkava Rijec Zivota And Others N° 7798/08	The applicants, registered as religious communities in Croatia, complain about *inter alia* a violation of Art. 9 following the refusal of the domestic authorities to conclude an agreement which would regulate the relations between the applicants and the State (this refusal implies according to the applicants that certain religious services cannot be provided). The applicants further complains about a discriminatory treatment and about a violation of the right of access to a court and the lack of effective remedy.
Hungary	26 Jan. 2009	Alajos Kiss N°38832/06	The applicant, diagnosed with manic depression, alleges that his exclusion from the electoral register solely on the strength of his placement under partial guardianship amounted to a violation of Art. 3 of Prot. No. 1 (right to free elections), read alone or in conjunction with Art. 14. Moreover, the applicant alleges that since the restraint at issue is contained in the Constitution itself, no remedy is conceivable against it, in breach of Art. 13 read in conjunction with Art. 3 of Prot. No. 1.
Latvia	27 Jan. 2009	Buks N°18605/03	The applicant complains *inter alia* about his conditions of detention in a confinement cell and about the lack of medical treatment while in detention. He further complains about a violation of Art. 6 and of Art. 3 of Prot. 1 (due to the alleged impossibility to vote to legislative elections while in pre-trial detention)
Latvia	27 Jan. 2009	Jasinskis N° 45744/08	The applicant complains under Article 2 about the fact that the police took his son to the police station without waiting for the arrival of the ambulance which had been called (the son subsequently died of his injuries). He further complains about a lack of effective investigation.
Poland	26 Jan. 2009	Grabowski N° 30447/07	The applicant complains under Articles 3, 8 and 13 that serious restrictions were placed, while he was in detention, on his contacts with his family, in particular contacts with his wife.

Romania	27 Jan. 2009	Bucşa N° 1023/06	The applicant complains about his poor conditions of detention (which allegedly led to a tuberculosis), about the lack of medical treatment and the lack of effective investigation.
Russia	30 Jan. 2009	A. N° 44187/04	The applicant complains *inter alia* about conditions of detention in a temporary detention centre and other detention facility and about the lack of HIV-specific treatment.
Russia	29 Jan. 2009	Beloborodov N° 11342/05	The applicant complains *inter alia* about alleged ill-treatment during police custody and the subsequent lack of effective investigation into those allegations.
Russia	29 Jan. 2009	Shamardakov N° 13810/04	The applicant alleges that he was subjected to inhuman or degrading treatment by police officers during and/or after his arrest in the Republic of North Ossetia-Alania in 2003 on suspicion of murder. He complains also about the lack of effective investigation with respect to those alleged ill-treatments. The applicant further complains *inter alia* about violations of Art. 6 and 13: alleged lack of access to a lawyer after arrest and during the first days of detention; use of evidence obtained under duress; alleged violation of presumption of innocence (pursuant to the publication of information in a newspaper owned by the Ministry of Interior); refusal during retrial to give the applicant access to the case file; alleged partiality of a judge; and lack of effective remedies with respect to those allegations.
The Netherlands	27 Jan. 2009	R.W. N° 37281/05	The applicant alleges *inter alia* that Criminal Records Register (*Justitieel Documentatie Systeem*) holds the information that criminal proceedings against the applicant on suspicion of sexual abuse of a minor were discontinued because of insufficient evidence, whereas that information would not be retained in the Register if the criminal proceedings had been discontinued for the reason that the applicant had been wrongly considered a suspect. He complains further about the subsequent refusal to issue him with a certificate of good behaviour.
The United Kingdom	26 Jan. 2009	J.N. and others N° 58043/08	One of the applicants, an Ugandan national, living in the UK with the second applicant and their son alleges about a risk of violation of Article 8 in case of deportation to Uganda.
Turkey	26 Jan. 2009	Öner N° 43504/04	The applicant complains about ill-treatment during police custody and the lack of subsequent effective investigation. She further complains about a violation of Article 6 (fairness and length of proceedings)
Turkey	28 Jan. 2009	Akgol N° 28495/06	Alleged violation of Art. 6 (failure to take into account some evidence and impossibility to question a witness) and of Art. 10 and 11 (due to the intervention of the police during a demonstration to commemorate the death of a student after a racist attack)
Ukraine	28 Jan. 2009	Akhmetova N° 5583/04	Alleged violations *inter alia* of Art. 5 (concerning the lawfulness of detention on suspicion of drug trafficking, the lack of prompt information on the reasons of the arrest, the failure to be brought promptly before a judge, the impossibility to challenge the lawfulness of the detention)
Ukraine	28 Jan. 2009	Ulyanov N° 16472/04	Alleged violations inter alia of Article 8 (due to the search of the office and other possessions of the applicant, a professional lawyer), of Art. 5 (lawfulness of detention), of Art. 6 (access to a court, length of detention), and of Art. 13 (lack of effective remedy)

Communicated cases published on 23 February 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	5 Feb. 2009	Hamzaraj (no. 2) And 4 other cases N° 45265/04	The applicants rely on Art. 1 of Prot. No. 1 in so far as the authorities have not yet recognised their property rights, namely concerning proceedings before the Commission on Restitution and Compensation of Property and the Agency for the Restitution and Compensation of Properties
Armenia	4 Feb. 2009	Nersesyan N°15371/07	Alleged violation inter alia of Art. 6 (fair hearing). The applicant complains that his right to effective access to court has been violated due to the fact that the Court of Cassation sitting *in camera* decided to return his appeal on points of law without giving sufficient reasons for its decision
Bulgaria	3 Feb. 2009	Petrov N° 20024/04	The case concerns the fairness of the criminal proceedings (Art. 6) and the refusal of the Ruse Regional Court to provide the applicant with copies of documents of his case file (hindering the effective exercise of his right of application, ensured by Article 34). The remainder of the application has been declared inadmissible as manifestly ill-founded in a decision dated 3 February 2009.
Bulgaria	3 Feb. 2009	Radkov N° 27795/03	The applicant complains that letters from his lawyers and from the Registry of the ECtHR had been opened and read by the administration of Lovech Prison. The remainder of the application has been declared inadmissible by the Court in a decision dated 3 February 2009.
Bulgaria	2 Feb. 2009	Nikolova & Vandova N° 20688/04	The case concerns the fairness of labour law proceedings (Art. 6) and the personal information that the second applicant, lawyer of the first applicant, had to produce to have access to the file (Art. 8)
Bulgaria	2 Feb. 2009	Yotova N° 43606/04	The applicant complains about the lack of effective investigation into allegations of violations of Art. 2 and 3 and complains about a discrimination based on her Roma origin.
Greece	4 Feb. 2009	Anastassakos and Others N° 41380/06	The applicants complain *inter alia* about the failure, intentional or negligent, of court officials or police officers to guarantee the confidentiality of the prosecutor's internal report at a time when they were only suspected of committing offences. They further complain about the lack of investigation and about the lack of effective remedy to obtain compensation for such violations.
Greece	2 Feb. 2009	Galanis 8725/08	The applicant complains about the length of administrative proceedings and about the lack of effective remedy concerning the length of administrative proceedings
Greece	2 Feb. 2009	Ibishi and 15 Others N° 47236/07	The applicants, Albanian nationals of Roma ethnic origin, complain about a violation of Art. 3 (firstly because of the State's failure to provide them with a stopping place where they can settle and of the fact that it consigned them to living under unacceptable conditions and increased the likelihood of their being subjected to eviction or other sanctions; secondly, because of their eviction by means of demolition of their sheds and destruction of their belongings; thirdly, because of their living conditions after their eviction). They further complain about violations of Art. 8, 13 and 14 of the Convention.
Hungary	4 Feb. 2009	Papp N° 19313/08	The applicant, who was ten weeks pregnant, was sentenced to 30 days' confinement after her conviction in regulatory offence proceedings for having committed prostitution. She wished to terminate her pregnancy. She alleges *inter alia* under Art. 8 that, as she could not

			obtain the interruption of the execution of her sentence, her pregnancy could not be interrupted because of the lapse of the twelve-week time-limit in accordance with the 1992 Act on Protection of Fœtal Life.
Luxembourg	3 Feb. 2009	Ewert N° 49375/07	In the framework of criminal proceedings, the applicant complains *inter alia* about the excessive formalism of the Court of cassation (resulting in the dismissal of the applicant's complaint) and about the seizure of documents containing correspondence between the applicant and his lawyer.
Moldova	5 Feb. 2009	Dragostea Copiilor - Petrovschi – Nagornii N° 25575/08	The applicant complains about a violation of Art. 6 and 1 of Prot. 1 concerning an allegedly unlawful change of a judge rapporteur before the Supreme Court of Justice, and concerning the upholding by the Supreme Court of Justice of a revision request.
Poland	5 Feb. 2009	Kurlowicz N° 41029/06	The applicant complains about a violation of Art. 10 following his criminal conviction for defamation for presenting untrue statements during the session of the City Council in Knyszyn.
Romania	5 Feb. 2009	Micu N°29883/06	The applicant complains about alleged ill-treatment during police custody in Bucarest and about the lack of effective investigation into those allegations. He further complains about his conditions of detention and the fairness of criminal proceedings.
Romania	4 Feb. 2009	Antica And Sc R Sa N° 26732/03	The applicants complain about a violation of Article 10 (following their conviction for defamation for the publication of two articles concerning the case *Megapower*, a major bankruptcy case involving Romanian officials) and of Article 6 (concerning the fairness and the length of civil proceedings)
Romania	3 Feb. 2009	Association '21 Decembre 1989 Bucarest' and Maries N° 45886/07 STOICA N° 32431/08	The applicants complain about violations of Art. 3 (concerning ill-treatment during the events, namely demonstrations, of June 1990) and about the excessive length of criminal proceedings and alleged violations of Art. 8 and 34.
Russia	6 Feb. 2009	Korogodina N° 33512/04	The case concerns inter alia the alleged failure of the authorities to carry out an affective investigation into the circumstances of the death of the applicant's son following the doctors' negligent failure to diagnose her son correctly. The applicant further complains about the length of criminal and civil proceedings.
Russia	6 Feb. 2009	Kurbanov N° 19293/08	The applicant complains *inter alia* about the unlawfulness of his detention pending extradition to Uzbekistan, and complains about the length of this detention and the impossibility to challenge its lawfulness.
Russia	6 Feb. 2009	Vasiliy Vasilyev N° 16264/05 ZUYEV N° 16262/05	The applicants complain *inter alia* about his conditions of detention in facility no. IZ-33/1 in Vladimir, as well as about the lawfulness of his arrest and detention.
Ukraine	5 Feb. 2009	Zakharkin N° 1727/04	The applicant complains that he was ill-treated by police officers in Ivano-Frankivsk Temporary Detention Centre, about the lack of effective investigation and about a violation of Art. 5

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

Cases accepted for referral to the grand chamber (09.02.09)

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

- *Guiso-Gallisay v. Italy* (no. 58858/00)
- *Kononov v. Latvia* (no. 36376/04)

Judgments in a further 28 cases are now final after requests for them to be referred to the Grand Chamber were rejected.

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

Hearings:

You may consult the webcasts of the following hearing, dated 11 February 2009 in the following cases: **Depalle v. France and Brosset Triboulet and Others v. France** (Grand Chamber) (no. 34044/02)

Original language version, English, French, Press releases

Visit to the French Constitutional Council (13.02.09)

On 13 February 2009 President Costa led a Court delegation to Paris for a meeting with the French Constitutional Council.

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)

Reports by State (2009 - XIX-2)

The reports for the following countries are now available on line for the next reporting cycle (2009): Albania, Azerbaijan, Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Italy, Germany, Latvia, Lithuania, Poland, Portugal, Malta, Moldova, Slovakia, Slovenia, Spain, Sweden, the "former Yugoslav Republic of Macedonia", Ukraine and United Kingdom

Link to national reports

Collective complaints procedure: Training session for lawyers on 19-20 February 2009 in Strasbourg (13.02.09)

The Council of Europe (Roma and Travellers Division and Department of the European Social Charter) organised a 2nd study session for persons involved in providing legal assistance to Roma and Traveller communities under the collective complaints procedure of the European Social Charter. The primary aim is to provide participants with practical information on how to lodge a complaint before the European Committee of Social Rights, in order to defend Roma and Traveller communities' social rights.

Programme

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

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

Council of Europe anti-torture Committee publishes response of the Kingdom of the Netherlands (04.02.09)

The CPT published the response of the Government of the Kingdom of the Netherlands to the report on the CPT's most recent visit to that country, in June 2007. The response has been made public at the request of the Dutch authorities.

The CPT's report on the June 2007 visit was published in February 2008.

Council of Europe anti-torture Committee publishes report on the Czech Republic (05.02.09)

The CPT has published the report on its ad hoc visit to the Czech Republic in March/April 2008, together with the response of the Czech government. Both documents have been made public at the request of the Czech authorities.

One of the main objectives of the visit was to examine the application of testicular pulpectomy ("surgical castration") on sentenced sex-offenders. The CPT's delegation interviewed nine sexual offenders who had already undergone surgical castration, and five who were in the preparatory stages of the process to be castrated. In addition, the files of 41 sex offenders who had been surgically castrated between 1998 and 2008 were studied, and interviews on the treatment of sex offenders were carried out with medical practitioners, scientists and government officials. The CPT

found that surgical castration was carried out not only on violent sex offenders but also on persons who had committed non-violent crimes, such as exhibitionism.

In its report, the CPT expresses several fundamental objections to the use of surgical castration as a means of treatment of sex-offenders. Firstly, it is an intervention that has irreversible physical effects, and direct or indirect mental health consequences. Further, there is no guarantee that the result sought (i.e. lowering of the testosterone level) will be lasting. Moreover, given the context in which the intervention is offered, it is questionable whether consent to the option of surgical castration will always be truly free and informed. The CPT also points out that effective alternative therapies for the treatment of sex offenders are currently available.

In the CPT's view, surgical castration of detained sex offenders amounts to degrading treatment and the Committee calls upon the Czech authorities to end immediately this practice.

In their response, the Czech authorities state that surgical castration is carried out with the free, informed, consent of the patient and that they do not consider the reasons given by the CPT in favour of abandoning its use as "sufficient and established".

During the 2008 visit, the CPT also paid a follow-up visit to Section E of Valdice Prison, which accommodates persons sentenced to life imprisonment as well as "troublesome" or "dangerous" high security prisoners. It found that the treatment and conditions of detention of these prisoners continued to raise serious concerns and recommended that the Czech authorities undertake a thorough review of Section E.

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

B. European Commission against Racism and Intolerance (ECRI)

Communicating on racism and racial discrimination (09.02.09)
The question of how to communicate effectively on issues related to combating racism and racial discrimination will be discussed at a seminar in Strasbourg on 26 and 27 February 2009 with national anti-discrimination bodies and communication experts.
Programme
Briefing paper

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

Sweden: Follow-up seminar on the implementation of the Framework Convention of National Minorities (02.02.09)
The Swedish authorities and the Council of Europe organised a follow-up seminar on 5-6/2/2009 to discuss how the findings of the monitoring bodies of the Framework Convention are being implemented in Sweden.
Programme
Media advisory

E. Group of States against Corruption (GRECO)

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

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

G. Group of Experts on Action against Trafficking in Human Beings (GRETA)

GRETA to meet for first time (09.02.09)

The first meeting of the Group of Experts on Action against Trafficking in Human Beings (GRETA) will take place on 24-27 February 2009 at the Council of Europe in Strasbourg. At this first meeting GRETA will prepare and adopt its internal rules of procedure and elect its President and Vice-President. GRETA will also hold an exchange of views on the evaluation procedure for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings [CETS No. 97] by the parties in preparation for the first monitoring cycle of the Convention.

GRETA is responsible for monitoring implementation of the Convention by the Parties. GRETA will regularly publish reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Convention will be required to step up their action.

For additional information on that topic you may consult the Website on Action against Trafficking in Human Beings

Part IV : The intergovernmental work

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

Croatia ratified on 5 February 2009 the Convention on Contact concerning Children (ETS No. 192).

Latvia ratified on 2 February 2009 the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

Poland ratified on 12 February 2009 the European Charter for Regional or Minority Languages (ETS No. 148).

The **United Kingdom** signed on 9 February 2009 the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

1047th Meeting of the Ministers' Deputies (04.02.09)

During their meeting on 4 February 2009, the Ministers' Deputies pursued their discussions on the Council of Europe and the conflict between the Russian Federation and Georgia.

In the light of the fact that the United Nations Development Programme (UNDP) and the Council of Europe share similar missions and wish to co-operate in areas of mutual concern to enhance the effectiveness of their development efforts, in particular those in support of democracy and good governance at local and regional level, the Deputies approved a Memorandum of Understanding between the Council of Europe and the UNDP. In this context, they also authorised the Secretary General to sign it.

Finally, the Secretary General of the Parliamentary Assembly informed the Deputies about the results of the 1st part of the 2009 Session and other Assembly activities.

1048th Ministers' Deputies Meeting (11-12.02.09)

During their meeting on 11 and 12 February 2009, the Ministers' Deputies pursued their discussions on the Council of Europe and the conflict between the Russian Federation and Georgia. In this context, they invited the Secretary General to report on a regular basis on the human rights situation in the areas affected by the conflict, in close co-operation with the Commissioner for Human Rights, and using all available sources of information, so as to provide the Committee of Ministers with a basis for an assessment of the situation and possible decisions on action. The Ministers' Deputies also requested the Secretary General to provide as soon as possible an update of relevant information documents.

The Ministers' Deputies took note of a preliminary opinion on putting into practice certain procedures envisaged in Protocol No. 14 to the European Convention on Human Rights to increase the Court's case-processing capacity. The final opinion is expected by 31 March 2009.

The Ministers' Deputies also took note of practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution and agreed to come back to them in the context of one of their forthcoming human rights meetings.

Furthermore, an annual exchange of views on co-operation with the United Nations in particular on human rights questions was held with the participation of experts from capitals. The following topics were considered in this context:

a. General discussion on the main results and developments of the 63rd session of the UN General Assembly;

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

b. Stock-tacking of the functioning of the Universal Periodic Review mechanism so far;
c. Overview of co-operation between the Council of Europe and the United Nations in the human rights field in 2008;
d. Reporting under human rights treaties: new IT developments.

Concluding this debate, the Deputies welcomed the steps taken so far in implementation of their decisions of 21 March 2007 on co-operation between the Council of Europe and the United Nations in the field of human rights and encouraged the future chairs of the Committee of Ministers, the relevant Council of Europe bodies and the Secretariat to pursue their efforts in this regard.

A Declaration on the role of community media in promoting social cohesion and intercultural dialogue, was adopted by the Ministers' Deputies.

The Ministers' Deputies agreed to the request by Peru to join the Venice Commission and invited Peru to appoint a member to sit on the Commission.

High-level European Conference "Women and disabilities: access to training and employment" (12-13.02.09)

See Press Release

Part V : The parliamentary work

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

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

PACE rapporteur disappointed at Kosovo[∞] Assembly's failure to elect Ombudsperson (13.02.09)

"I am extremely disappointed that for the fourth time the Kosovo Assembly has failed to elect an Ombudsperson," said Björn von Sydow (Sweden, SOC), PACE Rapporteur on the situation in Kosovo.

"The Ombudsperson is the main human rights mechanism available to the people in Kosovo. It is an effective institution which, moreover, enjoys the trust of all communities. The fact that this position has been held *ad interim* since January 2006 risks undermining the credibility of the Institution.

I appeal to the sense of responsibility of the members of the Kosovo Assembly, and call on them to find a remedy to this state of affairs, and to do their utmost to ensure that Kosovo has human rights mechanisms which are independent, reliable and accessible to everybody."

Statement by the rapporteur following his recent visit to Kosovo

Bosnia and Herzegovina urgently needs constitutional reform, says PACE President in Sarajevo (04.02.09)

The President of the Parliamentary Assembly of the Council of Europe (PACE), Lluís Maria de Puig, has noted the hard work being done by Bosnia and Herzegovina to overcome inter-ethnic division, despite the complexity of the situation, but said it is still "struggling" to preserve stability and build a functional democratic state. Addressing a session of the "Parliament for Europe" in Sarajevo, he urged greater efforts to bring domestic laws into line with the European legal order, strengthen state institutions and urgently carry out constitutional reform using the expertise of the Council of Europe's Venice Commission.

After his address, Mr de Puig launched the Bosnian, Croatian and Serbian translations of his book International parliaments, which highlights the growing global importance of these bodies and provides a guide to around forty of them.

Resolution 1626 (2008)

Serbia: Transparent and efficient functioning of democratic institutions, which citizens can trust, is an essential pre-condition for closing the monitoring procedure said Council of Europe Parliamentary Assembly co-rapporteur on Serbia Andreas Gross at the end of a two-day visit to the country **(11.02.09)**

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

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

PACE delegation visits Belarus to sound out prospects for developing constructive dialogue (12.02.09)

A three-member delegation from the PACE is due to visit Minsk from 16 to 19 February 2009 to sound out the Belarusian authorities on the prospects for developing a constructive dialogue with the Council of Europe and its Assembly in the fields of democracy, human rights and the rule of law.
Draft programme (PDF)
Statement by the rapporteur, 28 November 2008
Statement by the rapporteur, 15 October 2008

Albania's new Lustration Law should be reviewed by Council of Europe Venice Commission, say PACE co-rapporteurs (12.02.09)

The co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) for Albania have made it clear that there is scope for a major party-political confrontation ahead of June's election over Albania's new Lustration Law and urged all concerned to do all they can to avoid this.

They urged the Constitutional Court and the government to send the adopted Lustration Law to the Council of Europe Venice Commission to ensure that it fully complies with Albania's obligations as a Council of Europe member state.

One way to avoid creating a crisis, the co-rapporteurs pointed out, might be to delay implementation of the Lustration Law until the Constitutional Court has reviewed its constitutionality and the Venice Commission has had the opportunity to consider it.

C. Miscellaneous

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

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

A. Country work

"Greece must uphold all asylum-seekers' rights" says Commissioner Hammarberg in a new report (04.02.09)

"The situation of asylum seekers in Greece is critical. The authorities must urgently improve the asylum system, guaranteeing the full respect of international human rights standards. The problems in Greece also call for further efforts to coordinate European policies on mixed migration".

Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, presented his report on a visit to Greece carried out from 8 to 10 December 2008. The report makes an overview of the main features of the Greek asylum system, identifies shortcomings and set concrete recommendations to improve the protection of asylum-seekers' human rights.

While commending the recent legislation aimed at providing a comprehensive protection regime for asylum seekers, the Commissioner stresses the need to improve refugee protection and access to the asylum procedure, especially in border areas such as the Evros department. "There are grave and systemic deficiencies in the Greek asylum practice" he said. "This situation puts at risk the fundamental right to seek asylum". He also calls upon the authorities to effectively incorporate into asylum practice the international standards on foreign nationals' detention and forced return and to revisit the existing readmission agreement with Turkey.

Commissioner Hammarberg is also concerned about insufficient reception capacity for refugee applicants, including minors. "Living conditions in certain centres for irregular migrants are unacceptable. Migrants, including asylum-seekers and unaccompanied minors, must enjoy humane reception conditions. Special attention should be paid to children's needs."

The report underlines the need to decentralise the asylum procedure and enhance the training of human resources involved in the processing of asylum applications. It also points at the lack of sufficient interpretation and legal aid for asylum seekers and recommends effective measures to ensure the independence and the effectiveness of second instance in the asylum procedure.

Finally, the Commissioner recommends that the Greek authorities ensure the protection of migrants' physical security in the mined areas of Evros. "I am deeply concerned at the existence of these mined areas and at the significant number of foreign nationals who have lost their lives or limbs on the minefields" he said. "Greece has an obligation to complete the clearance of the mined areas and to effectively protect migrants' physical security. The authorities must also provide a prompt and generous assistance to all mine victims, especially migrants".

Read the report, Link to the video, Link to the photo gallery

Commissioner Hammarberg starts official visit to Georgia (09.02.09)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, started a week-long special visit to Georgia in order to review the current status of implementation of the six principles for urgent human rights and humanitarian protection.

"The visit is part of an ongoing monitoring I am carrying out on the respect for human rights and humanitarian principles in the areas affected by last year's conflict" said the Commissioner. "I intend to further the dialogue with all actors involved and boost the implementation of the six principles presented in September."

Commissioner Hammarberg intended to visit places and institutions of human rights relevance in Tbilisi, Sukhumi, the Gali district and the Kodori valley. He intended to meet with leading national authorities and representatives of international organisations, including the United Nations Observer Mission in Georgia and the International Committee of the Red Cross. Further meetings were to be held with relevant actors dealing with human rights and humanitarian issues in Sukhumi.

A report is expected to be published in the coming weeks after the visit.

Commissioner Hammarberg calls for a continued and meaningful international presence in Abkhazia (13.02.09)

Thomas Hammarberg, concluded on 12 February 2009 his fourth follow up mission to areas affected by the South Ossetia conflict, during which he visited Tbilisi, Sokhumi and Gali.

During a press conference held in Tbilisi at the end of the visit, the Commissioner called upon all relevant actors to ensure a continued United Nations presence after 15 February 2009, when the current UN mission mandate expires.

“All the interlocutors I met have underlined the need for an international presence in Abkhazia” said Commissioner Hammarberg. “A mere technical extension of the UN mission for some months is not enough. The UN presence must be substantive and meaningful also in terms of providing security and humanitarian and human rights protection to the population. The coming months must be used by the concerned parties to agree on concrete tasks in this regard for the UN presence in Abkhazia.”

The Commissioner also called upon all concerned parties to give free and unhindered access to the international organisations to all war-affected areas, from all directions, at all times, so that the already victimised population can be provided with all necessary humanitarian assistance, including the provision of food and sustainable housing as components of their adequate standard of living.

“It is also imperative that the displaced persons are informed of their options and rights and consulted in the devising of any assistance plan to them“, concluded the Commissioner.

B. Thematic work

"Children should not be treated as criminals" (02.02.09)
“Children should not be treated as criminals. Young offenders are children first and foremost and should be protected by all the agreed relevant human rights standards” says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his latest Viewpoint. Analysing the “disturbing trend in Europe to lock up more children at an earlier age” the Commissioner underlines the need to find alternative solutions to children’s imprisonment and to reinforce preventive measures. “Time has come to move the argument away from fixing an arbitrary age for criminal responsibility. Governments should now look for a holistic solution to juvenile offending”.

Read the Viewpoint
Read in Russian (.pdf or .doc)

C. Miscellaneous (newsletter, agenda…)

Statement of Thomas Hammarberg on the occasion of the Conference to commemorate the 20th anniversary of the murder of Patrick Finucane (14.02.09)