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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.

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

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Introduction

This issue is part or the "Regular Selective Information Flow" (RSIF) which Commissioner Hammarberg promised to establish at a round table with the heads of the national human rights structures (NHRSs) in April 2007 in Athens. The purpose of the RSIF is to keep the national structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the Commissioner's Office carefully selects and tries to present to 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 NHRS and the Legal Advice Units believe could be relevant to the work of the NHRSs. A particular effort is made to render the selection as targeted and short as possible.

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

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

A. Judgments

1. Judgments deemed of particular interest to NHRSs

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

Some judgments are only available in French.

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

Erdoğan Yilmaz and Others v. Turkey (no. 19374/03), 14 October 2008

"The Court reaffirms that when an agent of the State is accused of crimes that violate Article 3, the **criminal proceedings and sentencing must not be time-barred** and the granting of an amnesty or pardon should not be permissible (see Yeşil and Sevim v. Turkey, no. 34738/04, § 38, 5 June 2007).In the present case, the Court observes that, following the applicants' complaint of ill-treatment, in March 1997 the public prosecutor initiated a prompt investigation, which led to the prosecution of nine police officers for the offence of ill-treatment. However, in 2006 the proceedings against the officers were dropped as they were time-barred. The Court notes in the first place that, although the public prosecutor filed his indictment with the Istanbul Assize Court on 4 July 1997, the first-instance court pronounced its judgment on 2 December 2002, almost five years and five months later. In the Court's view, the length of the proceedings was excessive and the Government have not provided any explanation for this state of affairs. Despite the fact that the assize court found four police officers guilty of torture at the end of the proceedings, the case was then dropped as the statutory time-limit of five years had elapsed. In this context, the Court reiterates its earlier finding in a number of cases that the Turkish criminal law system can prove to be far from rigorous and have no dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents if criminal proceedings brought against the latter are dropped for being time-barred (see among others, Yeşil and Sevim, cited above, § 42, and Hüseyin Esen v. Turkey, no. 49048/99, § 63, 8 August 2006). The Court finds no reason to reach a different conclusion in the present case" (§§ 56-57).

Mehmet Eren v. Turkey (no. 32347/02), 14 October 2008

"Turning to the present case, the Court observes, at the outset, that a preliminary investigation was indeed conducted by the Diyarbakır public prosecutor. However, the Court is not persuaded that this investigation was conducted **either diligently or effectively**. The Court notes that neither the police officers who had been on duty during the applicant's detention in the Diyarbakır police headquarters nor the doctors who had drafted the reports of 23, 25 and 26 November 1998 and 4 August 1999 were heard by the Diyarbakır public prosecutor. The only step taken by him was to obtain statements from the applicant's representative and the applicant himself. Moreover, the public prosecutor took their statements some 20 months after the lodging of the criminal complaint and, the same day, issued his decision not to prosecute. The Court rejects the Government's submission that the applicant had deprived the prosecuting authorities of the opportunity of obtaining medical evidence by only lodging his complaint 18 months after his release from police custody. The applicant submitted, in support of his criminal complaint, a medical report drawn up by six specialists from the Izmir branch of the Turkish Medical Association, a public professional organisation established by Law no. 6023, in

accordance with Article 135 of the Constitution of the Republic of Turkey. In the Court's view, a report drawn up by this organisation could and should have constituted the basis of an investigation. In any event, the Diyarbakır public prosecutor did not attempt to obtain other medical opinions.*"* (§§ 52-55).

Gülen v. Turkey (no. 28226/02), 14 October 2008

In the present case, the Court observed that a comprehensive investigation was indeed carried out by the authorities into the circumstances surrounding the killing of the applicants' daughter. "Nevertheless, the investigation in the present case cannot be considered to have been effective given the substantial delays involved. In this connection, the Court notes that the prosecuting authorities waited more than five years before initiating criminal proceedings against the accused police officers. Subsequently, the Kadıköy Assize Court took more than four years in reaching a final judgment in the proceedings." (§ 44).

Kücük and Others v. Turkey (no. 63353/00), 14 October 2008

Reiterating that it had found in several cases (e.g. *Kılıç v. Turkey*, n° 22492/93, § 72, *Satık et autres v. Turkey*, n° 31866/96, § 60, 10 October 2000 ; *İhsan Bilgin v. Turkey*, n° 40073/98, § 72, 27 July 2006) that inquiries conducted by provincial administrative committees gave rise to serious doubts in so far as they were not independent of the executive, the Court found unanimously that there had been a violation of Article 2 because of the lack of an effective investigation into the circumstances of Yusuf Küçük's death.

Vladimir Georgiev v. Bulgaria (no. 61275), 16 October 2008

The applicant, taken into custody in good health, had sustained many injuries all over his body which, following his release, had still been visible in photographs and which had been noted in a doctor's report. The Court recalled that where a person, when taken in custody, is in good health, but is found to be injured at the time of release – as in the case at hand –, it is incumbent on the State to provide a plausible explanation how these injuries were caused (see, among many other authorities, *Tomasi v. France*, judgment of 27 August 1992, §§ 108-11; *Selmouni v. France* [GC], § 87). Neither the domestic authorities nor the Government in the proceedings before the Court tried to provide such an explanation, or to produce appropriate evidence that could cast doubt on the account given by the applicant. On the contrary, the decisions of the prosecution authorities make it clear that the guards had used force to restrain the applicant. The Court therefore came to the conclusion that the injuries suffered by the applicant were the result of treatment for which the respondent State bears responsibility.

On this point, the Court observes that they were numerous and widespread. While some of them – for instance, those to his back and forearms – may have been the inevitable result of the guards' effort to make him drop the piece of glass and immobilise him, a number of others – for instance, those to his thorax, flanks, buttocks, thighs and legs – appear to be the result of random blows, probably with truncheons, made with considerable force. According to the applicant's uncontroverted account, most of these blows were administered while he was lying defenceless on the ground after being subdued. The Court therefore finds that the force used against him was clearly excessive, both in intensity and duration. According to its settled case-law, any recourse to physical force in respect of a person deprived of his liberty which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. The Court therefore concluded that the force used against the applicant had clearly been excessive, in violation of Article 3.

Adequacy of the investigation

The Court noted that, although an inquiry had been launched into the applicant's allegations, it had a number of shortcomings. The officers and the applicant's cellmates who had eye-witnessed the three incidents and the two doctors who had examined the applicant during his custody had not been interviewed. Nor had any medical evidence been collected. In particular, the investigation had not accounted for all the applicant's numerous injuries. Furthermore, the internal inquiries carried out by the Ministry of Justice, partly relying on the prosecution's findings, had been even more cursory.The

Court therefore held that there had been a further violation of Article 3 on account of the lack of an effective investigation

Çağlayan v. Turkey (no. 30461/02), 21 October 2008

"The Court further reiterates that the rights enshrined in the Convention are practical and effective, and not theoretical and illusory. Therefore, investigations of the present kind must be able to lead to the identification and punishment of those responsible. In the instant case, however, the proceedings in question did not produce any result due to the application of Law no. 4616, which created virtual impunity for the perpetrators of the acts of violence, despite the evidence against them (see, *mutatis mutandis*, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 147, ECHR 2004-IV, and *Abdülsamet Yaman v. Turkey*, cited above, § 59). Consequently, the Court considers that the criminal-law system, as applied in the applicant's case, has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant (see, *mutatis mutandis*, *Okkalı v. Turkey*, no. 52067/99, § 78, ECHR 2006-...). In the light of the foregoing and given the authorities' failure to pursue the criminal proceedings against the police officers leading to the determination of their responsibility and punishment, the Court does not consider that the above proceedings can be described as thorough and effective so as to meet the procedural requirements of Article 3 of the Convention."(§§ 50-52).

Gülbahar and Others v. Turkey (no. 5264/03), 21 October 2008

"At the time of giving notice of the application, the respondent Government were requested to clarify whether an effective official investigation had been conducted into the applicants' complaints of ill-treatment. The Government were also requested to submit documentary evidence in support of their replies to that question. The only documents submitted to the Court by the Government, however, were the medical reports referred to above and the decisions taken by the prosecutors not to prosecute. According to those decisions, the prosecutors decided not to investigate the allegations of ill-treatment and not to prosecute any members of the security forces because they were of the opinion that the allegations were abstract and uncorroborated by any evidence. The Court observes that, at the time of rendering their decisions, those prosecutors were in possession of the medical reports detailing the three applicants' injuries. In spite of that, no references were made to those injuries in the decisions and no attempt appears to have been made to inquire as to how they were sustained. Furthermore, there is no information in those decisions as to whether any members of the security forces were questioned by the authorities in relation to the applicants' allegations.

As for the first applicant's allegations of ill-treatment, which were not supported by medical evidence but were nonetheless arguable, the Court observes that no thought appears to have been given by the investigating authorities to questioning him with a view to ascertaining the veracity of his allegations." (§§ 73-76).

Nehyet Günay and Others v. Turkey (no. 51210/99), 21 October 2008

The applicants alleged, among other things, that their relative, Deham Günay, had died in circumstances engaging the responsibility of the security forces and that the suffering they had endured following his disappearance amounted to inhuman and degrading treatment.

In the Court's view, the death of the fugitives was a foreseeable possibility, if not a likelihood, and in the total absence of any information for over ten years regarding Deham Günay's possible whereabouts, it considered that the young man could be presumed dead. The Court considered that the competent authorities had failed to take measures which, judged reasonably, could be deemed appropriate to safeguard against the risk run by Deham Günay. Accordingly, the responsibility of the State was engaged regarding the latter's disappearance in circumstances which created a real risk of death, in violation of Article 2. The Court observed that the applicants' concern for the fate of their relative remained, and considered that his disappearance amounted, in their regard, to inhuman and degrading treatment contrary to Article 3.

As to the alleged inadequacy of the investigation

The Court noted a number of shortcomings in the investigation, amongst which were the fact that Nehyet Günay, the main witness to the alleged events, had never been heard; the Silopi Public Prosecutor's Office had not visited the scene of the incident for the purpose of carrying out investigations; the Public Prosecutor's Office appeared to have confined itself to adopting the version of events submitted by the police officers from the outset; neither the applicants nor their lawyer had been informed of the progress of the investigation or its completion; and, lastly, no search had been undertaken by the security forces to find the young man who had disappeared. Consequently, the Court considered that the domestic authorities had not conducted a proper investigation into the circumstances in which Deham Günay had disappeared, which amounted to a further violation of Article 2.

- ## Judgments regarding freedom of expression

Dyundin v. Russia (no. 37406/03) - 14 October 2008 - Folea v. Romania (no. 34434/02) – 14 October 2008- Godlevskiy v. Russia (no. 14888/03)- 23 October 2008 - Matters of public concern (police violence, corruption) and defamation – Violation of Article 10

In ***Dyundin***, the applicant, journalist published of the *Orskiy Vestnik* newspaper containing an interview with two former suspects in a theft case who alleged that the police had beaten them to extract confessions. The interview was followed by the applicant's comment denouncing the authorities' failure to investigate the allegations of ill-treatment and bring those responsible to justice. He (and the newspaper's founder) were convicted for defamation and had to pay a fine and legal costs. The Court did not accept the Government's argument that it was not permissible for the applicant to publish the allegations of ill-treatment after the authorities had refused to bring criminal proceedings against the police officers. Taking into account in particular, the role of journalists and the press in imparting information and ideas on matters of public concern, the Court found that the applicant's publication had been fair comment on a matter of public concern resting on a sufficient factual basis and that it had not exceeded the acceptable limits of criticism. The judgments in the defamation action against the applicant had given rise to a breach of his right to freedom of expression since, by omitting to perform a balancing exercise between the need to protect the plaintiff's reputation and the applicant's right to divulge information on issues of general interest, by refusing to distinguish between the applicant's own speech and his quotation of statements made by others during an interview, and by failing to make an acceptable assessment of the relevant facts, the domestic courts had overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates on matters of public interest and that the interference had not been "necessary in a democratic society". See also *Voskuil v. the Netherlands*, 22 November 2007.

In ***Folea***, the applicant was ordered to pay a fine, damages and court costs for defamation as a result of statements sent to the authorities and the press concerning illegal actions allegedly committed by certain employees of the State Bureau of Inventions and Trademarks ("the OSIM"). The Court noted that the courts had declined to consider evidence adduced by the applicant among other things because the prosecution had terminated the proceedings brought against the complainant on the same charges. The applicant's subsequent appeal had also been rejected by a final, irrevocable judgment for the same reasons as in the first instance, with no further explanation. The Court held that the applicant had not been given a fair hearing, in violation of Article 6 § 1. The Court further noted that the statements the applicant had sent concerned subjects of general interest, namely alleged corruption by senior public servants. His remarks did not concern the private lives of the people concerned and had not been deemed manifestly insulting by the courts or the injured party. Reiterating its finding that the defamation proceedings had not been fair, the Court found that the applicant's sentence was disproportionate to the legitimate aim pursued and that the national authorities had not given relevant and sufficient reasons to justify it. The interference could therefore not be considered "necessary in a democratic society".

In ***Godlesvskiy,*** the journalist and editor-in-chief of the *Orlovskiy Meridian* newspaper, published an article in the *Orlovskiy Meridian* concerning a criminal investigation launched by the Oryol Regional Prosecutor's office into the activities of certain officers from the region's anti-narcotics unit. He alleged in particular that those officers had discontinued prosecution of drug-dealers in order to share the profits from drug sales and that they were therefore partly responsible for the failure to stamp out drug dealing in the region. Further to a civil defamation action filed by the officers of the Oryol anti-narcotics unit the domestic courts ordered the newspaper to publish a rectification and each plaintiff to

be paid 5,000 Russian roubles (approximately 200 euros). The European Court of Human Rights found in particular that the applicant's article had not mentioned any of the plaintiffs by name but referred collectively to "the police" or "the anti-narcotics unit". Nor did the applicant cite any confidential information with regard to the investigation or the ongoing criminal proceedings. Indeed, the publication, referring to publically available material from the investigation and an official document showing the numbers of deaths by overdose in the region, had been a fair comment on a matter of evident public concern and had not been a gratuitous attack on the reputation of named police officers. Consequently, the Court concluded that the publication had not exceeded the acceptable limits of criticism and that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society".

Petrina v. Romania (no. 780601/01) - 14 October 2008 - Freedom of expression and protection of the reputation of a politician (collaboration with "the *Securitate*") - Violation of Article 8

During a television programme about a bill concerning access to information stored in the archives of the former State security services ("the *Securitate*"), C.I., a journalist with the satirical weekly *Caţavencu*, affirmed that the applicant had collaborated with the *Securitate*. The same journalist published an article in the satirical weekly in November 1997, taking his allegations further. In January 1998 another article on the same subject, containing similar allegations, was published in *Caţavencu* by another journalist, M.D. The applicant lodged two sets of criminal proceedings against C.I. and M.D. for insult and defamation. The two journalists were acquitted, among other things because their remarks had been "general and indeterminate", and the applicant's civil claims were dismissed. A certificate issued in 2004 by the national research council for the archives of the State Security Department "*Securitate*" stated that the applicant was not among the people listed as having collaborated with the *Securitate.*

Following the acquittal of C.I. and M.D. by the domestic courts, the applicant complained that his right to respect for his honour and his good name had been violated. He relied on Article 10. The Court decided to examine the application under Article 8 of the ECHR (right to respect for private and family life) recalling that the protection of one's reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (*Chauvy and others v. France*, 29 June 2004, § 70).

The Court considered that the subject of the debate in issue – the enactment of legislation making it possible to divulge the names of former *Securitate* collaborators, a subject which received considerable media coverage and was closely followed by the general public – was a highly important one for Romanian society. Collaboration by politicians with that organisation was a highly sensitive social and moral issue in the Romanian historical context. However, the Court found that in spite of the satirical character of the weekly *Caţavencu*, the articles in question had been bound to offend the applicant, as there was no evidence that he had ever belonged to that organisation. It also noted that the message contained in the articles was clear and direct, with no ironic or humorous note whatsoever.

The Court did not believe that the "measure of exaggeration" or "provocation" journalists were allowed in the context of press freedom could be seen in the articles in question. It found that reality had been misrepresented, with no factual basis. The journalists' allegations had overstepped the bounds of the acceptable, accusing the applicant of having belonged to a group that used repression and terror to serve the old regime as a political police instrument. Moreover, there had been no legislative framework at the relevant time allowing the public access to *Securitate* files, a state of affairs for which the applicant could not be held responsible. Accordingly, the Court was not convinced that the reasons given by the domestic courts to protect freedom of expression were sufficient to take precedence over the applicant's reputation.

Isak Tepe v. Turkey (no. 17129/02) – Kanat and Bozan v. Turkey (no. 13799/04) – Saygili and Falakaoğlu v. Turkey (no. 39457/03), Unay v. Turkey (no. 5290/02) - 21 October 2008

All these cases concerned convictions for articles or speeches related to the Kurdish question. The Court noted that read as a whole the articles and speeches in question could not be construed as having incited. The Court therefore found that the interferences with the applicants' freedom of expression had not been based on sufficient reasons to show that they "had been necessary in a democratic society".

Salihoğlu v. Turkey (no. 1606/03), 21 October 2008 – Violation of Article 10 – seizure of publication banned by court orders – Restriction not "prescribed by law"

At the relevant time Ms Salihoğlu was president of the Muş Human Rights Association. During a search of the association's premises a copy of the weekly newspaper *Yedinci Gündem* and a copy of its supplement were seized. The applicant was prosecuted for possession of publications banned by court orders; the relevant decisions were two seizure orders made by the Istanbul National Security Court on 16 and 29 September 2001, after publication of the material concerned. In April 2002 she was ordered to pay a fine, based on Article 526 of the former Criminal Code, which punished failure to comply with an order issued by a competent authority.

The Court noted that the court orders pursuant to which the publications had been prohibited had not been issued in proceedings against the applicant and that there was absolutely no proof that she had ever been aware of them. Failure to comply with a court order could not be punishable if it had not been brought to the defendant's attention. The applicant could not have foreseen with a reasonable degree of certainty that possession of the offending publications might leave her liable to criminal penalties under Article 526 of the former Criminal Code. Consequently, the requirement of foreseeability had not been met and the interference had not been prescribed by law, contrary to Article 10. The Court further held that it was not necessary to examine separately the complaint under Article 7.Lastly, the Court observed that it had repeatedly found that an applicant who had not had a hearing before the national courts had not had a fair trial. It accordingly held that there had been a violation of Article 6 § 1.

Sergey Kuznetsov v. Russia (no. 10877/04) – 23 October 2008 – Violation of Article 11 interpreted in the light of Article 10 – Picket - Disproportionate interference

The applicant and a few others held a picket in front of the Sverdlovsk Regional Court to attract public attention to violations of the right of access to a court. The case concerned the applicant's complaint about his subsequent fine for: sending the picket notice too late; obstructing the passageway to the court building; and, distributing publications which alleged that the Regional Court was corrupt and called for the dismissal of its President.

The Court reiterated its case law on prior notification procedures. The latter should not encroach upon the essence of the right to assembly (see most recently *Eva Molnar v. Hungary* in RSIF n° 3). It noted that the applicant had submitted the picket notice eight days, instead of ten days as stipulated in the applicable regulations, before the event. It considered, however, that two-day difference did not prevent the authorities from making the necessary preparations for the picket. Secondly, regarding the alleged blocking of passage, the Court noted in particular that no complaints had been received from visitors, judges or court employees about the alleged obstruction of entry to the courthouse and the applicant had cooperated with the authorities when asked to move. In addition, the alleged hindrance was of an extremely short duration.

Thirdly, however insulting the President of the Regional Court might have considered the publications distributed by the applicant during the picket and the call for his dismissal, that documentation had not contained any defamatory statements, incitement to violence or rejection of democratic principles. The Court noted that the purpose of the picket was to attract public attention to the alleged dysfunction of the judicial system in the Sverdlovsk Region. This serious matter was undeniably part of a political debate on a matter of general and public concern. The Court reiterated that it has been its constant approach to require very strong reasons for justifying restrictions on political speech or serious matters of public interest such as corruption in the judiciary, as broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned. The Court therefore concluded that the Russian authorities had not provided "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of expression and assembly.

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

Salatkhanovy v. Russia (no. 17945/03) – 16 October 2008 - Applicants could no longer claim to be victims of Article 2 - No violation of Article 38 § 1 (a)

On 17 April 2000 the applicants' 16-year-old son, Ayub Salatkhanov, was walking towards the village market when a Russian serviceman, Ch., part of a military convoy, took aim at him and shot him in the heart. Ayub died on the way to hospital. A criminal investigation was launched following which Grozny Garrison Military Court found Ch. guilty of murder and sentenced him to ten years' imprisonment. That judgment was upheld on appeal. The Court noted that the domestic investigation had been launched on the day of the shooting and, in the days that followed, the authorities had taken significant measures such as questioning numerous witnesses and examining the crime scene and the vehicles which had been part of the military convoy. That investigation resulted in a trial which led to Ch.'s conviction and imprisonment. The Court therefore found that the investigation had been effective and that the resulting conviction had amounted to acknowledgement by the authorities of a violation of Ayub Salatkhanov's right to life. As regards redress, Ayub's father had withdrawn his claim for damages in the criminal proceedings and, in any event, both applicants were still entitled to claim compensation in civil proceedings. The Court therefore held unanimously that the applicants could no longer claim to be "victims" of the alleged violation of Article 2. Finally, the Court noted that the Russian Government had submitted documents with detailed information on the progress and results of the investigation which had considerably facilitated its examination of the applicants' case. The Court therefore held unanimously that there had been no failure to comply with Article 38 § 1 (a).

Magomed Musayev and Others v. Russia (no. 8979/02) – 23 October 2008 – Violation of Article 38 § 1 (a) – Violations of Article 2 in respect of the applicants' relatives (life and investigation) - Violation of Article 3 in respect of the applicants (treatment) – Violation of Article 5 - Violation of Article 13 in conjunction with Article 2

On 10 December 2000 a large-scale sweeping operation took place in Raduzhnoye and the neighbouring district during which 21 men were detained, three of whom were the applicants' relatives. The case concerned the applicants' allegation that their three relatives were killed after being abducted by Russian servicemen on 10 December 2000 and that the domestic authorities failed to carry out an effective investigation into their allegation.

The Court held unanimously that there had been a failure by the State to comply with Article 38 § 1 (a) (obligation to furnish necessary facilities for the examination of the case) in that the Government refused to submit documents requested by the Court.

The Court concluded that Russia had been responsible for the deaths of the applicants' three relatives and, noting that the authorities had not justified the use of lethal force by their agents, the Court held unanimously that there had been a violation of Article 2. The Court also noted that the investigation had only been launched almost two-and-half months after the arrest and, according to the limited information available, had not made any progress in almost seven years. The Court therefore also held unanimously that there had been a further violation of Article 2 concerning the Russian authorities' failure to conduct an effective investigation into the circumstances in which the applicants' relatives had been killed. The Court held unanimously that there had been a violation of Article 13 in conjunction with Article 2.

Furthermore, the Court considered that the applicants had suffered distress and anguish as a result of the disappearance of their relatives and their inability to find out what had happened to them during the period when they had been missing. The manner in which their complaints had been dealt with by the authorities had to be considered as inhuman treatment, in violation of Article 3. The Court further found that the applicants' relatives had been held in unacknowledged detention without any of the safeguards contained in Article 5, which constituted a particularly grave violation of the right to liberty and security enshrined in that article.

- **Other judgments deemed of particular interest to NHRSs:**

Renolde v. France (no. 5608/05) – 16 October 2008 – Violation of Article 2 – Failure of the French authorities to protect the right to life of a person committing suicide in pre-trial detention – Violation of Article 3 - Placement in a punishment cell inappropriate in view of the mental disorders of Mr. Renolde

The applicant is the sister of Joselito Renolde, who died on 20 July 2000 after hanging himself in his cell in Bois-d'Arcy Prison, where he was in pre-trial detention. On 2 July 2000 Joselito Renolde attempted to commit suicide by cutting his arm with a razor. The psychiatric emergency team diagnosed an acute delirious episode and prescribed him antipsychotic neuroleptic medication.

The Court held that from 2 July 2000 onwards the authorities had known that Joselito Renolde was suffering from psychotic disorders capable of causing him to commit acts of self-harm. In the light of the State's obligation to take preventive operational measures to protect an individual whose life was at risk, it might have been expected that the authorities, faced with a prisoner known to be suffering from serious mental disturbance and to pose a suicide risk, would take special measures geared to his condition to ensure its compatibility with continued detention.

In the Court's view, seeing that the authorities had not ordered Joselito Renolde's admission to a psychiatric institution, they should at the very least have provided him with medical treatment corresponding to the seriousness of his condition. However, it noted that, according to the experts, poor medicine compliance might have contributed to Joselito Renolde's committing suicide in a state of delirium. Without overlooking the difficulties with which those working in a prison environment were faced, the Court had serious doubts as to the advisability of leaving it to a prisoner known to be suffering from psychotic disorders to administer his own daily medication without any supervision. Although it was not known what had made Joselito Renolde commit suicide, the Court concluded that the lack of supervision of his daily taking of medication had played a part in his death.

The Court noted that three days after his suicide attempt, Joselito Renolde had been given the maximum penalty by the disciplinary board, namely 45 days' detention in a punishment cell. No consideration seemed to have been given to his mental state, although he had made incoherent statements during the inquiry into the incident and had been described as "very disturbed". The Court observed that placement in a punishment cell isolated prisoners by depriving them of visits and all activities, and that this was likely to aggravate any existing risk of suicide. It reiterated that the vulnerability of mentally ill people called for special protection. This applied all the more where a prisoner suffering from severe disturbance was placed, as in the present case, in solitary confinement or a punishment cell for a prolonged period, which would inevitably have an impact on his mental state, and where he had actually attempted to commit suicide a few days previously. The Court therefore concluded that the authorities had failed to comply with their obligation to protect Joselito Renolde's right to life, in breach of Article 2.

Moreover, the Court considered that the disciplinary penalty imposed (45 days' detention in a punishment cell, which is the maximum penalty for the most serious category of offence) was not compatible with the standard of treatment required in respect of a mentally ill person and constituted inhuman and degrading treatment and punishment, in breach of Article 3.

Kilavuz v. Turkey **(no. 8327/03) – 21 October 2008 - Violation of Article 2 - Positive obligation to protect the life of a person in detention suffering mental disorders**

The applicant is the mother of Baybars Geren whose body was found hanging from the cell bars, with his belt round his neck and his feet touching the ground, while in detention. Mr. Geren was suffering from delirious syndrome, a condition known as "severe paranoid delusion", and given a course of medical treatment.

The Court noted that the prison authorities could not have denied that Baybars Geren had manifested sufficiently severe signs of mental distress to raise fears that he was putting his own life or the life of others at risk. However, no examination was carried out despite the instructions of the doctor A.G.D. and the requirement in the rules that any inmate placed in an observation cell be given a medical examination. The Court held that it had been incumbent on the national authorities to take the

appropriate preventive measures in fulfilment of their positive obligation to protect Baybars Geren's life from himself.

The Court noted that although Baybars Geren's mental condition had still been uncertain and no decision had been taken in that regard, he had been admitted to prison and then placed alone in an observation cell and allowed to keep his belt and given a sheet. In the Court's view, these shortcomings went beyond mere errors of judgment or carelessness and amounted to negligence in providing the minimum safeguards necessary to prison life.

The Court observed that there was nothing to show that the prison authorities had given the staff on duty on the day of the incident an instruction of any kind capable of preventing a sudden deterioration in Baybars Geren's state; ultimately, he had committed suicide unsupervised by anyone. The Court stressed that the only type of supervision carried out in the cells of the observation block where Baybars Geren had been held consisted of listening from outside a closed gate with a small window through which Baybars Geren's cell could barely be seen. For want of sufficient numbers of staff, that supervision, which had not even been shown to have been regularly undertaken, had been performed by the prison warders as a secondary duty; in any event, the Court was not persuaded that the warders could have saved Baybars Geren since they had not even had the keys to the gate. Accordingly, the Court held that there had been a violation of Article 2, in relation to the deceased, on account of the failure by the prison authorities to do what could reasonably have been expected of them to prevent the incident.

Soldatenko v. Ukraine (no. 2440/07) – 23 October 2008 – Violation of Article 3 – Applicant's extradition to Turkmenistan – Violation of Article 13 – Lack of an effective domestic remedy – Violation of Article 5 §§ 1 (f) and 4

The applicant is currently detained in a penitentiary institution in the Kherson region (Ukraine), awaiting his extradition to Turkmenistan. On 15 January 2007 the applicant asked the European Court of Human Rights to adopt an interim measure under Rule 39 of the Rules of Court in his case. On 16 January 2007 the President of the competent Chamber granted this request and indicated to the Ukrainian Government that the applicant should not be extradited to Turkmenistan pending the Court's decision.

The Court noted the existence of numerous and consistent credible reports of torture, routine beatings and use of force against criminal suspects by the Turkmen law-enforcement authorities. There were reports of beatings of those who required medical help and denial of medical assistance. According to the Report of the United Nations Secretary-General, torture was also used as a punishment for persons who had already confessed. Reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. It appeared from different reports that allegations of torture and ill-treatment were not investigated by the competent Turkmen authorities. It was clear from the available materials that any criminal suspect held in custody ran a serious risk of being subjected to torture or inhuman or degrading treatment. Despite the fact that the applicant was wanted for a relatively minor offence which was not politically motivated, the mere fact of being detained as a criminal suspect in such a situation provided sufficient grounds to fear that he would be at serious risk of being subjected to treatment contrary to Article 3 of the Convention.

With regard to the assurances given, it was not established that the officials concerned had been empowered to make such undertakings on behalf of the State. Furthermore, given the lack of an effective system of torture prevention, it would be difficult to see whether such assurances were respected. Finally, the international human rights reports had also showed serious problems as regards the international cooperation of the Turkmen authorities in the field of human rights and categorical denials of human rights violations despite the consistent information from both intergovernmental and nongovernmental sources. In the light of these different considerations, taken together, the Court was satisfied that the applicant's extradition to Turkmenistan would be in violation of Article 3.

The Court concluded that the applicant had not had an effective domestic remedy by which he could challenge his extradition on the ground of the risk of ill-treatment on return, in violation of Article 13.

The Court found that Ukrainian legislation did not provide for a procedure that was sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending

extradition. There had accordingly been a violation of Article 5 § 1 (f). Furthermore, the Government had failed to demonstrate that the applicant had at his disposal any procedure through which the lawfulness of his detention could have been examined by a court. The Court accordingly concluded that there had also been a violation of Article 5 § 4.

Kyriakides v. Cyprus (no. 39508/05) – Taliadorou and Stylianou v. Cyprus (nos. 39627/05 and 39631/05) - 16 October 2008 – Violation of Article 8 – Damages for the injury to the psychological and moral integrity and reputation

The applicants served as senior officers with the Cypriot Police. In an official report by the Ministerial Council issued in 1993 **Mr Taliadorou and Mr Stylianou** were accused of torturing suspects. In the same report **Mr Kyriakides**, as those two men's commanding officer, was accused of negligence. In 1996 all three applicants were dismissed from the police force. On appeal the Supreme Court found that the constitutional rights of the applicants had been violated and, in particular, that they had been dismissed without a trial or disciplinary proceedings. They were reinstated to their former posts in December 1997. Following proceedings for compensation, the domestic courts awarded them damages for the injury they had sustained to their psychological and moral integrity and reputation. The Supreme Court subsequently reversed that award as it considered that the moral injury sustained was not causally linked to the decision ordering their dismissal.

The case concerned the applicants' complaint about the Supreme Court's reversal of their award for damages and lack of an effective remedy. The Court noted that the domestic courts had held that significant injury, with severe defamatory consequences, had been caused to the applicants' moral and psychological integrity through their dismissal. Finding that the Supreme Court had failed to provide an adequate explanation for the reversal of the applicants' award of moral damages, the Court held unanimously in both cases that there had been a violation of Article 8. Lastly, the Court held unanimously that there had been no violation of Article 6 § 2 in the case of ***Taliadorou and Stylianou*** as it considered that the Supreme Court had not linked the reversal of the award to anything that undermined the applicants' innocence.

Iordache v. Romania (no. 6817/02) – 14 October 2008 - Violation of Article 6 § 1 (fairness) - Violation of Article 8 § 1 - Violation of Article 13 – Parental authority during detention – Stamp duty to lodge an appeal

In 1999 the applicant was sentenced to 20 years' imprisonment and divested of his parental authority for the duration of his detention. In 2000 he brought proceedings against his ex-wife seeking access to his son. His request was rejected at first instance because the child's mother could not be obliged to take the boy to the prison. The applicant's subsequent appeals were rejected because he had not paid the requisite stamp duty. Noting that the stamp duty the applicant had been required to pay amounted to a substantial sum and that the subject of the action taken by the applicant, namely access to his son, was highly important to him, the Court found unanimously that there had been a violation of Article 6 § 1.

The Court further pointed out that it had already found that completely depriving someone by law of their parental rights without the courts verifying the type of offence committed and the interests of the children concerned was incompatible with the basic need to take the interests of the child into account, and could therefore not be said to pursue a legitimate aim. It had also held that a person in the applicant's situation had no effective remedy to defend their rights under Article 8 before the competent courts. Accordingly, the Court unanimously found that depriving the applicant thus of his parental rights had violated his rights under Articles 8 § 1 and 13.

Clemeno and Others v. Italy **(no. 19537/03) – 21 October 2008 – Two violations of Article 8 – Decision to put a child up for adoption while the criminal proceedings for sexual abuse and rape are still pending – Lack of contact between the child and her natural family**

In the framework of accusations of sexual abuse and rape, the Court considered that the use of the urgent procedure in order to take a child, Y, away from her family was a measure which the Italian authorities were perfectly entitled to take in cases of sexual abuse. This was incontestably an odious type of offence which did great damage to the victims. The criminal background could reasonably have led the authorities to believe that keeping Y in her home might cause her harm. Consequently, the Court considered that taking Y into care and removing her from her family could be regarded as

proportionate measures "necessary in a democratic society" for the protection of her health and her rights, and held that there had been no violation of Article 8 in that respect.

The Court noted that the Italian civil courts had put Y up for adoption while the criminal proceedings against her father were still pending. After the acquittal of the father, when ruling on the family's objections to the decision to put Y up for adoption, they had given judgment against the parents. The Court considered that the reasons given by the domestic courts for the decision to put Y up for adoption were insufficient in relation to the child's interest, which required that a decision resulting in a breaking of family links should be ordered only in quite exceptional circumstances, and that everything should be done to maintain personal relations and, where appropriate, at the right time, to "reconstitute" the family. In the present case no programme to draw Y and her natural family back together had been set up, even though the mother had not faced any criminal charges. The Court emphasised that after being taken into care Y had never been able to meet any member of her natural family and that the breaking of every link with them had been total and final. The Italian authorities had not tried to take any steps calculated to maintain links between Y and her family, particularly her mother and her brother, or help the family overcome any difficulties in their relations with Y and reconstitute the family. Consequently, the Court held unanimously that there had been a violation of Article 8 as regards the lack of contact between Y and her natural family while she was in care and the decision to put her up for adoption.

Güzel Erdagöz v. Turkey (no. 37483/02) – 21 October 2008 – Violation of Article 8 – Rectification of the spelling of a forename – Lack of clearly established legislation

In September 2001, the applicant brought an action for rectification of the spelling of her forename, asserting that she was called "Gözel", not "Güzel", and that her friends and family had always called her that. The courts refused her application on the ground that the spelling which the applicant wished to use was based on the regional pronunciation of the word chosen as the name and did not appear in the dictionary of the Turkish language.

The Court considered that the **refusal of the applicant's request by the Turkish courts, which was not based on any clearly established legislation or any sufficient and relevant reasoning, could not be regarded as "necessary in a democratic society".** It held unanimously that there had been a violation of Article 8 .

Guiso-Gallisay v. Italy (no. 58858/00) – 21 October 2008 – Just satisfaction following a violation of Article 1 of Protocol No. 1 – Variation of the case-law on application of Article 41 on indirect expropriation

In this judgment, the Court varied its case-law on application of Article 41 in the case of indirect expropriation. The method used hitherto was to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of not deriving earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the State plus the value of the land in today's prices. However, the Court considered that this method of compensation was not justified and could lead to unequal treatment between applicants, depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. **In order to assess the loss sustained by the applicants, it therefore decided that the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned should be taken into consideration.** The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount.

Bessenyei v. Hungary (application no. 37509/06) – 21 October 2008 – Violation of Article 6 § 1 (length) – Violation of Article 2 § 2 of Protocol No. 4 - Freedom of movement – Ban on the applicant travelling abroad

In June 2001, the applicant was charged with forgery. He was ultimately acquitted in September 2005. Between June 2001 and July 2003 pending his trial he was prevented from travelling abroad on account of the serious nature of the charges against him. The case concerned his complaint about the excessive length of the criminal proceedings against him and the ban on his travelling abroad. The

European Court of Human Rights held unanimously that there had been a violation of Article 6 § 1 on account of the proceedings against the applicant having lasted five years. The Court also noted that the ban on the applicant travelling had lasted more than two years and had not been periodically reassessed: it had been an automatic, blanket measure of indefinite duration and had only ended due to a change in legislation. The ban had not therefore been justified or proportionate in the individual circumstances of the applicant's case and the Court held that there had been a violation of Article 2 § 2 of Protocol No. 4.

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 14th October 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 16th October 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 21st October 2008: here.
- press release by the Registrar concerning the Chamber judgments issued on 23rd October 2008: here.

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

State	Date	Case Title	Conclusion	Key Words by the Office of the Commissioner	Link to the case
Bulgaria	16 Oct. 2008	Stoine Hristov (No. 2) (no. 36244/02)	Violation of Art. 6 § 1 (length)	Excessive length of the proceedings for attempted insurance fraud Non violation of Art. 8: the authorities had taken steps to place the applicant in a non-smoking cell	(link)
Croatia	16 Oct. 2008	Vajagić (no. 30431/03)	Just satisfaction	Just satisfaction following the failure of the domestic authorities to decide on the amount of compensation payable for expropriated land	(link)
Greece	16 Oct. 2008	Vamvakas (no. 36970/06)	Violation of Art. 6 § 1 (fairness)	Court of Cassation had been excessively formalistic with regard to the requirements of the appeal procedure before the Court of Cassation (Refusal to take into account an appended document to the official form)	(link)
Hungary	14 Oct. 2008	Mezey (no. 7909/05)	Violation of Art. 6 § 1 (length)	Excessive length of the proceedings that began in January 2000 and have not yet ended	(link)
Latvia	14 Oct. 2008	Blumberga (no. 70930/01)	No violation of Art. 1 of Protocol No. 1 ; Violation of Art. 6 § 1 (fairness)	Possibility to institute civil proceedings if the applicant considered that the criminal proceedings were inadequate Applicant being denied access to a court (refusal to examine the merits of the claim)	(link)
Poland	21 Oct.	Guziuk (no. 39469/02)	Violation of Art. 5 § 3	Excessive length of his detention (almost five years)	(link)

	2008			during his trial	
Poland	14 Oct. 2008	Hagen (no. 7478/03)	Violation of Art. 5 §3	Excessive length of detention which had lasted for two years and nearly nine months	(link)
Poland	21 Oct. 2008	Kuśnierczak (no. 19961/05)	No violation of Art. 5 § 3	Total length of pre-trial detention (approximately one year and seven months) could not be regarded as excessive	(link)
Poland	21 Oct. 2008	Skibińscy (no. 52589/99)	Just satisfaction	Just satisfaction following a violation of Art. 1 of Protocol No. 1	(link)
Romania	14 Oct. 2008	Vînătoru (no. 18429/02)	Violation of Art. 1 of Protocol No. 1	The restrictions on the use of the applicant's property failed to strike a fair balance between the individual right and the public interest	(link)
Russia	14 Oct. 2008	Buzychkin (no. 68337/01)	Violation of Art. 3 (treatment) Violation of Art. 13	General conditions of detention in remand prisons in Nizhniy Novgorod in Moscow Lack of an effective domestic remedy	(link)
Russia	23 Oct. 2008	Khuzhin and Others (no. 13470/02)	Violation of Art. 6 §§ 1 (fairness) and 2 (presumption of innocence) ; (1st applicant) Violation of Art. 8; (3rd applicant) Violation of Art. 1 of Protocol No. 1	The prosecution officials made statements amounting to a declaration of the applicants' guilt Applicants not allowed to take part in the civil proceedings to which they were parties Police giving the photograph of one of the applicant to a journalist without any legitimate aim Unlawful impounding of one of the applicant's vehicle	(link)
Russia	16 Oct. 2008	Lobanov (no. 16159/03)	Violation of Art. 5 §§ 1 and 5	Delay (one month and 22 days) to release the applicant following a judicial decision ordering immediate release No enforceable right to compensation	(link)
Russia	16 Oct. 2008	Sazonov (no. 1385/04)	Violation of Art. 6 § 1 (fairness)	Domestic authorities' failure to apprise the applicant of an appeal hearing in a libel action	(link)
Russia	14 Oct. 2008	Timergaliyev (no. 40631/02)	Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c)	Failure to provide the applicant with a hearing aid and failure to appoint counsel for the appeal hearing	(link)
Slovakia	14 Oct. 2008	Kanala (no. 57239/00)	Just satisfaction	Just satisfaction following a violation of Art. 1 of Protocol No. 1	(link)
Turkey	21 Oct. 2008	Ali Güzel (no. 43955/02)	Violation of Art. 8	Articles 144 and 147 of Regulation no. 647 on the management of penitentiary institutions and the enforcement of sentences did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion regarding the monitoring of prisoners' correspondence	(link)
Turkey	14 Oct.	Ayhan and Others (no.	Violation of Art. 5 § 3	Excessive length of detention during judicial proceedings	(link)

	2008	29287/02)			
Turkey	21 Oct. 2008	Fedai Şahin (no. 21773/02)	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (almost 16 years)	(link)
Turkey	21 Oct. 2008	İsmail Kaya (no. 22929/04)	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (approximately 10 years and 5 months)	(link)
Turkey	14 Oct. 2008	Kanbur (no. 9984/03)	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings which have continued for more than six years and ten months, for two levels of jurisdiction, since the Court's earlier judgment in 2001 and have not ended.	(link)
Turkey	14 Oct. 2008	Köklü v. Turkey (no. 10262/04)	Violation of Art. 5 §§ 3 and 4 Violation of Art. 6 § 1 (length)	Excessive length of detention on remand No effective remedy to challenge the lawfulness of his detention on remand Length of criminal proceedings	(link)
Turkey	14 Oct. 2008	Mesutoğlu (no. 36533/04)	Violation of Art. 6 § 1 (fairness)	Excessive formalism of the Turkish administrative courts, depriving the applicants of their right of access to a court	(link)
Turkey	21 Oct. 2008	Sadıkoğulları and Erdem (nos. 4220/02 and 8793/02)	Violation of Art. 5 § 3 ; Violation of Art. 6 § 1 (length)	Excessive length of pre-trial detention (nearly 5 years and 11 months) and of criminal proceedings (nearly 10 years and 6 months) for suspicion of belonging to an illegal organisation and taking part in a number of offences including an armed robbery	(link)
Turkey	21 Oct. 2008	Uyan (No. 2) (no. 15750/02)	Violation of Art. 3 (treatment)	The brutality inflicted on the imprisoned applicant, despite his known poor health, constituted inhuman and degrading treatment	(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**
Croatia	23 Oct. 2008	Vučak (no. 889/06) link	Violation of Art. 1 of Protocol No. 1	Inability to regain possession of a house for a prolonged period of time

France	16 Oct. 2008	Fonfrede (no 44562/04) link	Violation of Art. 6 § 1 (fairness)	Failure to provide the applicant, who was not represented by counsel, with the report of the reporting judge of the Criminal Division of the Court of Cassation
France	16 Oct. 2008	Maschino (no 10447/03) link	Violation of Art. 6 § 1 (fairness)	Absence of an effective remedy for the applicant by which to challenge the legality of home searches and seizures
Italy	14 Oct. 2008	Gianazza (no 69878/01) link	Just satisfaction Struck out of the list	Friendly settlement reached following an unlawful deprivation of applicant 's possessions, in violation of Art. 1 of Protocol No. 1
Romania	21 Oct. 2008	Chiorean (no 20535/03) link	Violation of Art. 1 of Protocol No. 1	Actions for recovery of possession of property
Romania	14 Oct. 2008	Dragalina (no 17268/03) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judicial decisions
Romania	21 Oct. 2008	Dragomir (no 31181/03) link	Violation of Art. 1 of Protocol No. 1	Actions for recovery of possession of property
Romania	14 Oct. 2008	Hanganu (no 12848/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judicial decisions
Romania	14 Oct. 2008	Maria Dumitrescu and Sorin Mugur Dumitrescu (no 7293/02) link	Violation of Art. 1 of Protocol No. 1	Inability to use, and collect the rent from, a building which had been returned to the applicant
Romania	14 Oct. 2008	Megheleş and Popa (no 28266/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Final and enforceable judicial decision in the applicants' favour set aside
Romania	14 Oct. 2008	Prodanof and Others n°2 (no 6079/02) link	Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judicial decisions
Romania	14 Oct. 2008	Weigel (no 35303/03) link	Just satisfaction	Just satisfaction following a violation of Art. 1 of Protocol No. 1 (sale by the State of the applicant's property, to third parties who had bought it in good faith, before the final judicial decision confirming his title to the property had been pronounced, combined with a total lack of compensation)
Russia	16 Oct. 2008	Abdulmanova (no 41564/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Failure to enforce a final judgment in the applicant's favour in good time, and quashing of that judgment by way of supervisory review
Russia	23 Oct. 2008	Bogunov (no 27995/05) (link)	Violation of Art. 6 § 1 (fairness), of Art. 1 of Protocol No. 1, of Art. 13	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all

Russia	23 Oct. 2008	Ignatovich (no 19813/03) link	Two violations of Art. 6 § 1 (fairness) Two violations of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all Quashing of a final judgment in favour of the applicant by way of supervisory review
Russia	23 Oct. 2008	Kardashin and Others (no 29063/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all
Russia	23 Oct. 2008	Kazantseva (no 26365/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all
Russia	23 Oct. 2008	Rodichev (no 3784/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all
Russia	23 Oct. 2008	Suslin (no 34938/04) link	Two violations of Art. 6 § 1 (fairness and length) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all Excessive length of a set of civil proceedings aimed at determining the rate of the applicant's monthly disability allowance
Russia	23 Oct. 2008	Tulskaya (no 43715/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour in good time or at all
Turkey	21 Oct. 2008	Senaş Servis Endüstrisi A.Ş. (no 19520/02) link	Violation of Art. 1 of Protocol No. 1	Delay in the payment of additional compensation for expropriation

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***
Croatia	23 Oct. 2008	Oreb (no 9951/06)	link
Croatia	16 Oct. 2008	Štokalo and Others (no 15233/05)	link
Greece	16 Oct. 2008	Geromanolis and Others (nos 30460/06, 30477/06, 30486/06, 30506/06, 30508/06, 30522/06, 30526/06, 30534/06, 30540/06,	link

		30547/06, 30550/06, 30553/06 and 30563/06)	
Hungary	14 Oct. 2008	Hidvégi (no 5482/05)	link
Hungary	21 Oct. 2008	Lajos Németh (no 3840/05)	link
Hungary	21 Oct. 2008	Mészáros (no 21317/05)	link
Hungary	14 Oct. 2008	Mrúz (no 3261/05)	link
Italy	14 Oct. 2008	Abate (no 7612/03)	link
Italy	14 Oct. 2008	Belperio (no 39258/03)	link
Italy	14 Oct. 2008	D'Alessio (no 36308/03)	link
Italy	14 Oct. 2008	Di Brita (no 32671/03)	link
Italy	21 Oct. 2008	Faella (no 32752/02)	link
Italy	21 Oct. 2008	Giovanni Iannotta (no 32768/02)	link
Luxembourg	23 Oct. 2008	Bodeving (no 40761/05)	link
Poland	21 Oct. 2008	Łakomiak (no 28140/05)	link
Poland	21 Oct. 2008	Lidia Nowak (no 38426/03)	link
Poland	21 Oct. 2008	Ratyńska (no 12253/03)	link
Russia	23 Oct. 2008	Guber (no 34171/04)	link
Russia	23 Oct. 2008	Yerkimbayev (no 34104/04)	link
Slovakia	14 Oct. 2008	Čavajda (no 65416/01)	link
"the former Yugoslav Republic of Macedonia"	23 Oct. 2008	Nikolov. (no 13904/02)	link
Turkey	21 Oct. 2008	Ayıc (no. 10467/02)	link
Turkey	21 Oct. 2008	Mahmut and Zülfü (nos 19895/03 and 21302/03)	link
Turkey	14 Oct. 2008	Tarımcı (no 30001/03)	link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 30 September to 13 October 2008**.

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

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

Ooms v. France (n° 38126/06) – 25 September 2008 – Article 7 § 1 – Nullum Crimen Sine Lege – Application of a European Community directive

This case concerns the conviction for sale of adulterated product, which had been notified to the Belgian authorities, containing an additive prohibited by Community regulations incorporated into French law. The Court declared the application (alleged violation of Article 7 § 1) inadmissible as manifestly ill-founded (the sentence imposed by national authorities was prescribed by the law).

State	***Date***	***Case Title***	***Alleged violations (Key Words by the Office of the Commissioner)***	***Decision***
Armenia	7 Oct. 2008	NOYAN TAPAN (no. 37784/02) link	Removal of the applicant's lawyer from the courtroom prior to the hearing before the Court of Cassation (Art. 6) Refusal to grant a broadcasting licence (Art. 10)	Inadmissible (manifestly ill-founded concerning Art. 6 and incompatible *ratione temporis* concerning Art. 10)

Bulgaria	30 Sept. 2008	TERZIISKI AND OTHERS (no. 1509/05) link	Length of criminal proceedings (Art. 6§1) Lack of an effective remedy (Art. 13) regarding length of proceedings	Partly inadmissible (manifestly ill-founded) Partly adjourned
Bulgaria	30 Sept. 2008	UMO ILINDEN AND OTHERS (no. 34960/04) link	Allegations of unreasonably lengthy and unfair registration proceedings (Art. 6§1), of refusal to register an association not prescribed by law (Art. 11) and decided on discriminatory grounds (Art. 14)	Partly inadmissible (concerning the length of proceedings) Partly adjourned (concerning the remainder of the application)
Bulgaria	7 Oct. 2008	HRISTOV (no. 17608/02) link	Allegation of unlawful and arbitrary detention (Art. 5§1)	Struck out of the list (applicant apparently lost interest in pursuing his application)
Bulgaria	7 Oct. 2008	YORDANOV (no. 1143/03) link	Alleged excessive length of criminal proceedings (Art. 6§1). Allegations of lack of effective remedies (Art. 13) and interference with the right to peaceful enjoyment of his possessions in regards to the consignment which had been seized (Art. 1 of Prot. 1) and interference with freedom of movement (Art. 2 of Prot. 4)	Partly inadmissible (concerning Art. 2 of Prot. 4) Partly adjourned (concerning the remainder of the application)
Bulgaria	7 Oct. 2008	VOSHTEV (no. 5633/03) link	Allegation of excessive length of criminal proceedings (Art.6§1)	Struck out of the list (applicant lost interest to pursue his application)
Bulgaria	30 Sept. 2008	PETKOV (no. 1399/04) link	Alleged violation of the applicant's right to respect for his privacy and correspondence (Art. 8) and other violations of the Convention	Partly adjourned (concerning Art. 8) Partly inadmissible (concerning the other allegations)
Bulgaria	7 Oct. 2008	ARAMOV (no. 28649/03) link	Allegations of violations of Art. 3, 5§1, 6 and 8.	Partly adjourned (Art. 8 and 13) Partly inadmissible (concerning the remainder of the application)
Croatia	02 Oct. 2008	AMANOVIC (no. 33777/05) link	Complaint about the amount of compensation received further to municipal decision authorising a family to temporarily occupy the applicant's house	Struck out of the list (friendly settlement reached)
Croatia	02 Oct. 2008	RAUS AND RAUS-RADOVANOVIC (no. 43603/05) link	Allegation of violation of Art. 1 of Prot. 1, Art. 6§1, 8, 13 and 14	Inadmissible (manifestly ill-founded)
Croatia	09 Oct. 2008	KARANOVIC (no. 22047/07) link	Denial by domestic courts of the right to compensation for the expropriated house (Art. 1 of Prot. 1 and Art. 8)	Struck out of the list (friendly settlement reached)
Croatia	09 Oct. 2008	HAHN (no. 18012/07) link	Alleged excessive length of proceedings (compensation in connection with forced deportation from Germany) (Art. 6§1)	Struck out of the list (friendly settlement reached)

Croatia	09 Oct. 2008	URUKALO (no. 6938/07) link	Inability to regain possession of a property for many years and to receive compensation due to the Serbian origin of the applicant (Art. 1 of Prot. 1 taken alone and in conjunction with Art. 14). Length of proceedings in an attempt to regain possession of applicant's property occupied during civil war with no compensation (Art. 6§1)	Struck out of the list (friendly settlement reached)
Cyprus	09 Oct. 2008	HADJIHANNAS (no. 2013/07) link	Alleged violations of Art. 6, 13, 14 and Art. 1 of Prot. 1 (refusal to appoint and promote a member of the Maronite minority to different posts within the Cypriot civil service)	Struck out of the list (friendly settlement reached)
Estonia	07 Oct. 2008	UDUT (no. 13741/05) link	Alleged unlawful detention in an expulsion centre (Art. 5§1 ; 5§3 ; 5§4 ; 6§1 ; 8 ; 13)	Struck out of the list (applicant passed away)
Estonia	07 Oct. 2008	M.V. (no. 21703/05) link	Alleged violation of Art. 5§1, 5§2, 5§4, 5§5 and 13 (restriction of legal capacity; compulsory placement in a social welfare institution)	Struck out of the list (friendly settlement reached)
Finland	30 Sept. 2008	VUOKKO AND OTHERS (no. 32389/05) link	Length of proceedings and lack of an effective remedy (Art. 6 and 13)	Struck out of the list (friendly settlement reached)
Finland	30 Sept. 2008	RANTALA (no. 36681/05) link	Length of proceedings (Art. 6§1)	Struck out of the list (friendly settlement reached)
Germany	07 Oct. 2008	SAMADI (no. 22367/04) link	Unfair proceedings (judges biased)	Struck out of the list (unilateral declaration of the Government in accordance with Art. 37)
Germany	07 Oct. 2008	GROMZIG (no. 13791/06) link	*Inter alia* length of proceedings (Art. 6§1)	Partly adjourned (lentgh of proceedings) Partly inadmissible (remainder of the application)
Greece	09 Oct. 2008	MEMAJ (no. 39468/06) link	Length of pre-trial detention and of proccedings Impossibility to receive a specific medical treatment in the prison of Patras	Inadmissible (manifestly ill-founded)
Hungary	30 Sept. 2008	SARKANY (no. 22232/05) link	Length of proceedings (Art. 6§1)	Struck out of the list (friendly settlement reached)
Italy	07 Oct. 2008	BORN (no. 589/06) link	Alleged violation of Art. 1 of Prot. 1 (sale by auction of the applicant's goods)	Inadmissible (manifestly ill-founded)
Moldova	30 Sept. 2008	PERELIGHIN AND OTHERS (no. 77611/01) link	Final judgment in the applicants' favour set aside (Art. 6§1 and 1 of Prot. 1)	Struck out of the list (adequate redress: the applicants had been issued with registration titles over their land)
Poland	30 Sept. 2008	BREJNAK (no. 34831/03) link	Refusal to release the applicant in order to attend his father's funeral (Art. 8)	Struck out of the list (applicant died and applicant's heirs not willing to pursue the examination of the case)

Poland	30 Sept. 2008	ZAKRZEWSKA (no. 22515/06) link	Length of proceedings and lack of an effective remedy	Struck out of the list (final resolution of the case following an unilateral declaration of the government in accordance with Art. 37)
Poland	30 Sept. 2008	TOBOREK (no. 31835/03) link	Length of proceedings (Art. 6§1) Alleged violations of Art. 3, 13, 14 and 1 of Prot. 1	Partly struck out of the list (unilateral declaration of the Government in accordance with Art. 37 concerning length of proceedings); Partly inadmissible (remainder of the application)
Poland	30 Sept. 2008	BEDNAREK (no. 32023/02) link	Refusal of the Polish-German Reconciliation Foundation to grant compensation for forced labour during World War II	Struck out of the list (applicant died and no member of his family has expressed a wish to continue the proceedings)
Poland	30 Sept. 2008	SOBCZYNSKI (no. 355/04) link	Lack of effective access to a court (refusal of a lawyer assigned to represent the applicant under the legal-aid scheme to prepare and lodge a cassation appeal with the Supreme Court)	Struck out of the list (compensation proposed following an unilateral declaration of the Government in accordance with Art. 37 concerning length of proceedings)
Poland	30 Sept. 2008	CZAJKOWSKI (no. 12438/04) link	Decision of the authorities to delete the applicant's name from the register of persons living at a certain address Conditions of detention	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Poland	30 Sept. 2008	BUCZANSKI (no. 1836/03) link	Refusal of the Polish-German Reconciliation Foundation to grant compensation for forced labour during World War II Lack of access to any court in order to appeal against the decision of the Polish-German Reconciliation Foundation	Struck out of the list (impossibility to establish any communication with the applicant or his heirs)
Poland	07 Oct. 2008	NITKIEWICZ (no. 21014/06) link	Allegations of violation of Art. 6§1 (requests for the appointment of a legal-aid lawyer refused and requests for withdrawal of a partial juge unsuccessful)	Partly struck out of the list concerning the access to Court (unilateral declaration of the Government in accordance with Art. 37) ; Partly inadmissible (impartiality of judge)
Poland	07 Oct. 2008	LIS (no. 22020/06) link	Alleged excessive length of criminal proceedings and unfair proceedings	Struck out of the list (friendly settlement reached)
Poland	07 Oct. 2008	KRYM (no. 26938/05) link	Refusal to grant leave to attend a mother's funeral (Art. 3 and 9)	Struck out of the list (unilateral declaration of the Government in accordance with Art. 37)
Poland	07 Oct. 2008	PAPIERNIAK (no. 20278/02) link	Alleged excessive length of the administrative proceedings relating to the issue of a building permit. Alleged violations of Art. 1, 5 and 17 (alleged pollution)	Struck out of the list (applicant's husband no longer wishing to pursue the application)

Poland	07 Oct. 2008	NOWINSKI (no. 14883/04 (link)	Length of proccedings (Art. 6§1), absence of effective remedy (Art. 13) and failure of the State to take measures to secure the relationship between the applicant and his son (Art. 8).	Partly struck out of the list (unilateral declaration of the Government in accordance with Art. 37 concerning length of proceedings) ; Partly inadmissible (Art. 8)
Poland	07 Oct. 2008	LAMPE (no. 12138/04) link	Court of Appeal wrongly dismissed the application for the appointment of a legal-aid lawyer in the cassation appeal proceedings (Art. 6§1 and 6§3 c)	Struck out of the list (unilateral declaration of the Government in accordance with Art. 37)
Portugal	30 Sept. 2008	AGUA DO PORTO SANTO, LDA (no. 37794/06) link	Delay in determining the amount of the compensation and in proceeding to the payment (Art. 1 of Prot. 1)	Inadmissible rationae temporis
Roumania	30 Sept. 2008	MOCANU PETRE (no. 28322/03) link	Non enforcement of a domestic judgment in favor of the applicant (Art. 6 and 1 of Prot. 1)	Struck out of the list (death of the applicant, heir no longer wishing to pursue the application)
Russia	02 Oct. 2008	CHEBOTAREV (no. 3410/04) link	Non enforcement of a domestic judgment in favor of the applicant (Art. 6 and 1 of Prot. 1)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	09 Oct. 2008	KURBANOVA (no. 5139/02) link	Right of access to a Court (Art. 6) Existence of an effective remedy (Art. 13) Property rights (Art. 1 of Prot. 1)	Struck out of the list (applicant's heir expressly stated that he no longer wished to pursue the present application)
Spain	07 Oct. 2008	MONEDERO ANGORA (no. 41138/05) link	Application of the european Arrest Warrant (alleged violation of Art. 5 , 6 , 7 and 13)	Inadmissible (manifestly ill-founded)
the “former Yugoslav Republic of Macedonia”	30 Sept. 2008	DIMITROVSKA (no. 21466/03) link	Allegation of excessive length of proceedings and unfair proceedings (Art. 6). Allegation of appeal dismissed without examining its grounds (Art. 13).	Inadmissible (incompatible *ratione personae)*
The Netherlands	30 Sept. 2008	SAID AND KARIM (no. 8437/04) link	Refusal to grant applicant a provisional residence visa (Art. 8).	Struck out of the list (applicant no longer wishing to pursue his application)
The Netherlands	30 Sept. 2008	HADJI (no. 15195/04) link	Expulsion of a Somali national (Art. 2 and 3) Length of alien’s detention (Art. 5) Effective remedy (Art. 13) and discrimination (Art. 14)	Struck out of the list (applicant died)
United Kingdom	07 Oct. 2008	GREIG (no. 10567/05) link	Allegation of being dismissed from the armed forces on grounds of homosexuality and harassment during the process of dismissal (Art. 3, Art. 8, Art. 13, Art. 14)	Struck out of the list (friendly settlement reached)
United Kingdom	07 Oct. 2008	HOCKING (no. 40160/03) link	Allegation of being dismissed from the armed forces on grounds of homosexuality and harassment during the process of dismissal (Art. 8, Art. 13, Art. 14)	Struck out of the list (case settled and applicant’s representative wishes to withdraw the application)
Turkey	30 Sept. 2008	YILDIRIM (2) (no. 31950/05) link	*Inter alia:* Ill treatment in police custody (Art. 3) ; Effective investigation against accused police officers (Art. 3, 6 and 13) ; Unlawful detention (Art. 5)	Partly adjourned (Art. 3) Partly inadmissible (remainder of the application declared manifestly ill-founded)

Turkey	30 Sept. 2008	TASDELEN (no. 71830/01) link	Non-enforcement of a judgment in applicant's favour (Art. 1 of Prot. 1)	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Turkey	07 Oct. 2008	BALKAR (BALTUTAN) AND ANO INSAAT VE TICARET LTD. STI (no. 9522/03) link	Length of civil proceedings (Art. 6) and delay in the payment of the amount due under the contract on account of the lengthy civil proceedings (Art. 1 of Prot. 1)	Partly inadmissible Partly adjourned (length of civil proceedings)
Turkey	30 Sept. 2008	CANGOZ (no. 13087/02) link	Length of pre-trial detention (Art. 5§3) and of criminal proceedings (Art. 6§1)	Struck out of the list (friendly settlement reached)
Turkey	30 Sept. 2008	TEPE (AVCI) (no. 34786/04) link	Ill treatment by police officers; Ineffective investigation; Lack of an effective remedy	Inadmissible (*rationae temporis*)
Turkey	30 Sept. 2008	KOL et KOL (no. 3816/04 ; 3827/04) link	Non enforcement of judicial decisions (Art 1 of Prot. 1, 17 and 18)	Inadmissible (manifestly ill-founded)
Turkey	30 Sept. 2008	ALKAYA (no. 24582/03) link	Allegation of unfair proceedings (Art. 6§1)	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Turkey	30 Sept. 2008	UBAY (no. 16252/04) link	Allegation of unfair proceedings (Art. 6) ; Property rights (Art. 1 of Prot. 1)	Inadmissible (non-exhaustion of domestic remedies)
Turkey	30 Sept. 2008	GORGULU ET AUTRES (no. 6802/03) link	Delay in payment of an expropriation compesation (Art. 6 and 1 of Prot. 1)	Struck out of the list (friendly settlement reached)
Turkey	07 Oct. 2008	OZTURK (no. 25286/04) link	Fairness of the proceedings (Art. 6§1). Allegation of violations of Art. 6, 13 and 1 of Prot. 1	Inadmissible (manifestly ill-founded)
Ukraine	30 Sept. 2008	SHYTIK (no. 2911/03) link	Alleged unfair proceedings (especially alleged infringement of the principle of equality of arms)	Inadmissible (manifestly ill-founded)
Ukraine	07 Oct. 2008	BROSHEVETS KIY (no. 9884/02) link	Alleged ill-treatment during detention (Art. 3) Length of criminal proceedings Lengthy restriction on his freedom of movement	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Ukraine	07 Oct. 2008	DOVGANYUK (no. 3648/06 link	Delay in enforcement of a judgment in favor of the applicant	Struck out of the list (friendly settlement reached)
Ukraine	07 Oct. 2008	NOSOV (no. 33755/04) link	Alleged ill-treatment during detention. Conditions of detention and alleged unlawful detention	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Ukraine	07 Oct. 2008	KIRICHENKO (no. 1068/06) link	Non enforcement of a judgment	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)
Ukraine	07 Oct. 2008	KLYMETS (no. 7960/06) link	Failure to enforce the judgment in favour of the applicant	Struck out of the list (applicant may be regarded as no longer wishing to pursue his application)

C. The communicated cases

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

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

- on 20 October 2008 : link
- on 27 October 2008 : link
- on 3rd November 2008 : link
- on 10 November 2008 : link

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

Communicated cases published on 3 November 2008 on the Court's Webiste and selected by the Office of the Commissioner

State	Date of communication	Case Title	Key Words by the Office of the Commissioner
Azerbaijan	16 Oct. 2008	Gulmammadova (see also cases Hasanov and Isgandarov, communicated on 28 October. They figure in the batch of 10 November)	The applicant's apartment was occupied by H. and his family, who were IDPs from Lachin, a region under occupation of Armenian military forces following the Armenian-Azerbaijan conflict over Nagorno-Karabakh; a judgment of 20 April 1998 by the Yasamal District Court granted eviction order; the judgment remains unenforced.
Poland	16 Oct. 2008	Popenda (see also Krzysztof Kowalczyk and Karbwniczek, communicated on 27 and 28 October respectively). They figure in the batch of 10 November	Pre-trial detention of the applicant with charge of money laundering. The applicant complaints about the lawfulness and the length of his pre-trial detention. In its questions to the parties, the Court refers inter alia to the Committee of Minister's Resolution CM/ResDH(2007)75 regarding 44 cases against Poland on the same issue and asks whether the length of detention reveals the existence of a structural problem. In addition, the application concerns Art. 5§2 and 4 ECHR as well as Art. 8 (deprivation of family visits)
Serbia	17 Oct. 2008	Milosevic	The application deals with non enforcement of a final custody judgment (Art. 6 ECHR).Under Art. 8 of the Convention, the applicant further complains about the violation of her right to respect for her family life due to the said non-enforcement, as well as the fact that this non-enforcement has now apparently made it possible for the respondent to reclaim sole custody of their child. In addition, the issue of an effective domestic remedy in cases of non enforcement of domestic decisions is in question.

Switzerland	20 Oct. 2008	Haas	The application deals with the refusal to give a medical prescription to the applicant who suffers from a mental disorder and wishes to commit suicide. He alleges a violation of his private life (Art. 8 ECHR).
Netherlands	23 Oct. 2008	Mudiangombe Kabasu (see also Bushara Alpayah Bushara, communicated on 10 November. It figures in the batch of 10 November)	The applicant complains under Art. 2 and 3 of the Convention that he would face a real risk of treatment in breach of those Articles if he were to be expelled to the Democratic Republic of Congo. The applicant further complains that the Administrative Jurisdiction Division of the Council of State did not constitute an effective remedy as guaranteed by Art. 13 of the Convention.
Turkey	27 Oct. 2008	Ali Turgay and Others (IV), Ali Turgay and Others (VI), Hüseyin Bektaş (VI) and Hüseyin Bektaş (VII). (See also Turgay and Others (V), Düşün,and Others (II), Düşün,and Others communicated on 28 October. They figure in the batch of 10 November).	The applicants, are the owners, executive directors, editors-in-chief, news directors and journalists of four weekly newspapers, *Haftaya Bakış*, *Toplumsal Demokrasi*, *Yaşamda Demokrasi* and *Yedinci Gün*. The applications concern the suspension of the publication of the above mentioned newspapers during the spring 2008 (Art. 10 ECHR). In addition, they deal with alleged violation of Art. 6 (fair trial).
Ukraine		Dubetska and Others	The applicants complain under Art. 8 of the Convention that the State authorities have failed to protect their home, private and family life from excessive pollution generated by two State-owned industrial facilities [the Chervonogradska coal-processing factory and the Velykomostivska (Vizeyska) mine].

Communicated cases published on 10 November 2008 on the Court's Webiste and selected by the Office of the Commissioner

State	**Date of communication**	**Case (s) Title**	**Key Words by the Office of the Commissioner**
Austria	24 Oct. 2008	Several	Applications dealing with length of civil proceedings and Art. 1 of Protocol No. 1 (peaceful enjoyment of possessions)
Azerbaijan	24 Oct. 2008	Gambar Hajili Kerimli	The three applications concern the invalidation of the elections' results in the applicants' constituencies following the parliamentary elections of 6 November 2006. Under Art. 3 of Protocol No. 1 to the ECHR, the cases deal inter alia with the safeguards against arbitrariness offered by the invalidation process.

Bulgaria	24 Oct. 2008	Oreshkov	The application deals with alleged violation of Art. 3 due to the conditions of detention of the applicant in the Burgas prison; of Art. 8 (non respect of the applicant's correspondence) and the existence of a national effective remedy to complain about the violations of the above mentioned provisions.
France	27 Oct. 2008	Consorts Canivet	The application deals with the non execution –since 25 years- of a judgement ordering expulsion of unlawful occupants from the applicant's property (Tahiti).
Georgia	23 Oct. 2008	SARL Ronly Holdings	Execution of foreign arbitral awards in light of the 1958 New York Convention on the recognition and execution of foreign arbitral awards.
Georgia	30 Oct. 2008	Nikoloz Mtchedlichvili	The application deals with appropriate health care and conditions of detention (the applicant seized the Ombudsman on 7 May 2008).
Russia	23 Oct. 2008	Slyadnev	The applicant was charged inter alia with the creation of an armed gang, aggravated robbery, illegal possession of gold and silver and illegal possession of arms. The application concerns in particular the alleged violation of Art. 3 (placement of the applicant in a metal cage during the hearings before the Magadan Regional Court).
United-Kingdom	24 Oct. 2008	MGN Limited	The application concerns the alleged interference with freedom of expression of the applicant (publisher of the daily *Mirror*) further to the award of damages and of costs (including the success fees) for breach of confidentiality due to the publications by the Mirror of details concerning Naomi Campbell's treatment for drug addiction.
Turkey	22 Oct. 2008	Akcam	The applicant is a professor of history who researches and publishes extensively on the issue of the Armenian massacre. On 6 October 2006 the applicant published an editorial opinion in *AGOS*, a bilingual Turkish-Armenian newspaper, entitled "Hrant Dink, 301 and a Criminal Complaint". In this editorial opinion the applicant criticised the prosecution of Hrant Dink, the late editor of *AGOS*, for the crime of "insulting Turkishness" under Article 301 of the Turkish Criminal Code. He also requested, in an expression of solidarity, to be prosecuted on the same ground by virtue of his opinions on the issue of the Armenian massacre. The applicant alleges in particular , under Art. 10 § 1 of the Convention, that the impugned Article 301 of the Turkish Criminal Code amounted to a restriction on the right to freedom of expression which could not be justified under Art. 10 § 2 of the Convention due to the unforeseeability of the restriction imposed (see the Questions to the Parties).

D. Miscellaneous

Hearings:

The webcast of the Grand Chamber Hearing in the case **Enea v. Italy** (no. 74912/01), dated 5 November 2008, is now available for consultation:
Original language version, English, French

Press releases

Speeches by the President of the Court:

Strasbourg, 16 October 2008
Colloquium on economic, social and cultural rights organised by the CNCDH (French Human Rights Commission) at the Council of Europe (in French only)

Part II : The execution of the judgments of the Court

A. New information

The Committee of Ministers will hold its 1043rd Human Rights meeting on the supervision of the Court's judgments on 2-4 December 2008.

B. General and consolidated information

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

You may also find some relevant information on the state of execution of the cases classified by country using the following link :

http://www.coe.int/t/e/human%5Frights/execution/03%5FCases/

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

A. European Social Charter (ESC)

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

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

Council of Europe anti-torture Committee holds high-level talks with Turkish authorities (20.10.08)

Representatives of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) went to Ankara for talks with Mehmet Ali ŞAHIN, Minister of Justice, and senior officials of the Ministries of Justice, the Interior, Foreign Affairs, National Defence and the Turkish Armed Forces.

Issues discussed during the talks on 13 October 2008 included the conditions of detention of Abdullah Öcalan, who has been held for more than nine years as the sole inmate of the prison on the island of Imralı. The CPT's representatives also raised other matters with the Turkish authorities, in particular, recent allegations of ill-treatment of detained persons by law enforcement officials and prison officers, as well as the situation of foreign nationals detained under aliens legislation.

C. European Commission against Racism and Intolerance (ECRI)

You may consult in particular the country-by-country monitoring reports established by the ECRI using the following link:
http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/default.asp#TopOfPage

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

Follow-up Seminar in Slovenia (16.10.08)

The authorities and the Council of Europe organise a **follow-up seminar** on Tuesday, 21 October to discuss how the findings of the monitoring bodies of the Council of Europe's Framework Convention for the Protection of National Minorities are being implemented in Slovenia.

Publication of the Advisory Committee Opinion on Montenegro (15.10.08)

The **Opinion** of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Montenegro has been made public at the government's request.

The Advisory Committee – an expert body set up under the Council's Framework Convention for the Protection of National Minorities - visited Montenegro in December 2007 and adopted its report on 28 February 2008. The Committee of Ministers will now draw on the report as it prepares a Resolution on the issue.

The Advisory Committee adopts Opinions on Latvia and Bosnia and Herzegovina (14.10.08)

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted two country-specific opinions last week under the first and second cycles of monitoring the implementation of this convention in States Parties.

The opinions on Latvia and Bosnia and Herzegovina were adopted on 9 October 2008 and are restricted for the time-being. These two opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations. The Opinions of the Advisory Committee are made public upon the adoption of the Committee of Ministers' resolution but can be made public at an earlier stage at the country's initiative.

Outline for the State Reports to be submitted under the third monitoring cycle, in conformity with Article 25 of the Framework Convention for the Protection of National Minorities (adopted by the Committee of Ministers at the 1029th meeting of the Ministers' Deputies on 11 June 2008) **(14.10.08)**

Rule 21 of Resolution (97) 10 of the Committee of Ministers sets the periodical basis for transmission of state reports on the implementation of the Framework Convention at five years, calculated from the date on which the previous report was due. The State Parties to the Framework Convention in which the Convention entered into force on 1 February 1998 will have to submit a new state report before 1 February 2009. This date therefore sets the beginning of the third monitoring cycle under the Framework Convention for a number of States Parties.

In view of the above and on the basis of Rule 41 of the Rules of Procedure of the Advisory Committee, by virtue of which the latter may "suggest to the Committee of Ministers an outline for subsequent state reports to be submitted under Article 25, paragraph 3, of the Framework Convention", a draft outline for state reports under the third monitoring cycle was prepared and approved by the Advisory Committee at its 31st plenary meeting on 28 February 2008.

The Advisory Committee proposes an **Outline** comprising three main parts:

The first part deals with the practical arrangements made by States Parties to continue implementing the Framework Convention, to increase the involvement of civil society in the process and to pursue the dialogue with the Advisory Committee.

The second part requests information on specific progress in implementing the recommendations included in the Committee of Ministers' Resolution. It should also comprise an article-by-article description of legislative and other measures taken, as well as policies designed to address problems and needs identified in earlier cycles of monitoring. Particular attention should be paid to reflecting on the effects of policies, long-term strategies and processes launched to implement the Framework Convention, as well as on the impact of involving the civil society and other stakeholders in these processes.

The third part invites States Parties, where appropriate, to answer a number of specific questions which may arise from specific national circumstances.

E. Group of States against Corruption (GRECO)

Outcome of the 39th Plenary Meeting of the GRECO (13.10.08)

At its 39th Plenary Meeting (Strasbourg, 6-10 October 2008), the Group of States against Corruption - GRECO adopted: the Third Round Evaluation Report on Latvia, the Joint First and Second Round Evaluation Report on Monaco, the Joint First and Second Round Compliance Report on Azerbaijan, the Second Round Compliance Report on Portugal and the Addendum to the Second Round Compliance Report on Poland.

Explanations were provided by the Italian delegation concerning the abolition of the Office of the Italian High Commissioner against Corruption.

GRECO also announced the Third Round evaluation visits that will be carried out during 2009, namely in respect of Lithuania, "the former Yugoslav Republic of Macedonia", Bulgaria, Germany, Malta, Romania, Cyprus, Ireland, Croatia, Greece, Turkey and Hungary.

Matters of mutual interest were discussed during an exchange of views with Ms Huguette LABELLE, Chair of the Board of Directors, Transparency International (TI).

Ms Brigitte STROBEL-SHAW, representative of the UNODC, updated GRECO on the follow-up to the two sessions of the Conference of the States Parties to the United Nations Convention against Corruption (Jordan 2006 and Bali 2008).

GRECO held a Tour de Table on the Civil Law Convention on Corruption and examined, inter alia, obstacles to signature and/or ratification, as well as provisions of the Convention which involved or involve particular challenges for domestic legislation.

The Bureau of GRECO will hold its next meeting on 7 November 2008 and the 40th Plenary will meet in Strasbourg from 1 to 5 December 2008.

The Group of States against Corruption (GRECO) publishes its Third Round Evaluation Report on Latvia (23.10.08)

The Council of Europe's Group of States against Corruption (GRECO) has published its Third Round Evaluation Report on Latvia. The report has been made public following the agreement of the authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], GRECO finds that the current provisions on bribery in the Latvian Criminal Law contain a number of inconsistencies and deficiencies as compared with the requirements established by the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). GRECO therefore recommends to clarify the terminology used in the provisions on bribery, in particular as there are significant differences in understanding between practitioners. Furthermore, GRECO stresses the need to criminalise active bribery of 'ordinary' employees in the private sector, indirect trading in influence, active bribery of certain employees in the public sector – who are not considered to be public officials under Latvian law - and bribery of arbitrators and foreign jurors in line with the standards of the Convention and the Additional Protocol. In addition, Latvia is asked to analyse the defence of 'effective regret' and recent cases in which such a defence has been invoked, with a view to minimising its potential for misuse.

Concerning transparency of party funding [theme II], GRECO concludes that the existing legal and institutional framework is well-developed and overall in line with the provisions of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Nevertheless, as became evident in the 2006 Saeima [parliament] elections, the involvement of entities outside the party structure in election campaigns is an issue of serious concern, which undermines the transparency requirements laid down in the Law on the Financing of Political Organisations. Furthermore, GRECO recommends to take further measures to strengthen the independence of the body entrusted with supervision of party funding rules (KNAB), in particular as regards the procedures for the appointment and dismissal of its Director. Finally, the rather short limitation period for violations of party funding rules needs to be extended and measures taken to enhance the liability of natural persons for certain violations of political finance rules.

The report as a whole addresses 13 recommendations to Latvia. GRECO will assess the implementation of these recommendations in the second half of 2010, through its specific compliance procedure.

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

Mutual evaluation report on Romania public (17.10.08)
The mutual evaluation report on Romania, as adopted at MONEYVAL's 27th plenary meeting (7-11 July 2008) is now available for consultation.
Link to report

Part IV : The intergovernmental work

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

Bosnia and Herzegovina signed on 15 October 2008 the European Convention on the Protection of the Archaelogical Heritage (Revised) (ETS No. 143), and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199).

Bosnia and Herzegovina ratified on 22 October 2008 the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82) and the European Convention on Nationality (ETS No. 166).

Hungary signed on 15 October 2008 the European Convention for the Protection of Animals for Slaughter (ETS No. 102), and the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 123).

Monaco signed on 22 October 2008 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

Montenegro ratified on 20 October 2008 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182), and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

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

B. Recommandations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

You may find some relevant information for your work concerning the **decisions adopted during the 1038th and 1039th meetings** by the Committee of Ministers using the following links:
CM/Del/Dec(2008)1038E / 17 October 2008
CM/Del/Dec(2008)1039E / 24 October 2008

Agenda 2020: European Ministers adopt a blueprint on future of youth policy (13.10.08)
A blueprint for the Council of Europe activities in the youth field for the next decade was agreed by youth ministers and high-level policy makers from the the 49 signatory countries of the European Cultural Convention at the the 8th Conference of European ministers responsible for youth affairs which ended on Saturday, 11 October in Kyiv.

Kyiv Declaration – Agenda 2020

The next Council of Europe conference of ministers of youth will be held in 2012.
For more information on the conference
For more information on the Council of Europe activities in the youth sector

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

Presidential elections in Azerbaijan, Statement by Carl Bildt, Chairman of the Committee of Ministers of the Council of Europe (16.10.08)

The Chairman-in-office of the Committee of Ministers of the Council of Europe, Carl Bildt, Minister for Foreign Affairs of Sweden, took note of the assessment by the international observation mission of the Presidential elections held in Azerbaijan on 15 October 2008. "I am pleased to note that the elections were generally carried out in a calm and quiet atmosphere and welcome the improvements noted in the conduct of this election. However, shortcomings were identified in a number of areas. The Azerbaijani authorities need to ensure an accurate and transparent process for complaints and appeals. It is highly regrettable that part of the opposition decided not to take part in the elections."

Minister Bildt recalled the importance for the Azerbaijani authorities to implement all their commitments to the Council of Europe, in particular regarding freedom of the media and to increase their efforts to promote the development of a pluralist civil society.

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

- ***THEMES***

Combating violence against women : strengthening co-operation between PACE and European Parliament (14.10.08)

"Our two assemblies have a vital role to perform in combating violence against women," said José Mendes Bota (Portugal, EPP/CD), PACE member, at the hearing organised by the European Parliament on prevention of domestic violence, in the presence of Jacques Barrot, Vice-President of the European Commission and Anna Zaborska, Chair of the European Parliament's gender equality committee. "Eighty million women in Europe had suffered assault" but "reliable statistics were needed" according to Mr Mendes Bota, who had come to present the outcomes of the parliamentary dimension of the Council of Europe campaign "Stop violence against women" (2006-2008). "One-third of the Council of Europe member states do not regard violence against women as a criminal offence," he observed, calling on European parliamentarians to support the proposed convention on the severest and most widespread forms of violence against women unanimously adopted by the PACE on 3 October.
Recommendation 1847
Resolution 1635

PACE committee head: problem of IDPs in Europe far from eradicated (16.10.08)

Ten years after the adoption of the UN's Guiding Principles on internal displacement, the problem of internally-displaced people is far from being eradicated on European soil, according to the head of PACE's Migration Committee.

Addressing an Oslo conference to evaluate progress since the adoption of the UN Principles, Corien W. A. Jonker (Netherlands, EPP/CD) pointed out that there are still around 2.5 million internally displaced people in Europe – many of whom fled their homes more than a decade ago – while new conflicts, such as the one in Georgia, are creating fresh waves of uprooted people.

"Contrary to all expectations, the number of IDPs in Europe has not drastically decreased," Mrs Jonker said. "Somewhere, our efforts and policies have failed, despite international human rights and humanitarian norms becoming increasingly more elaborate."

She pointed out that legal mechanisms alone – whether under evolving national laws or under the European Convention and other Council of Europe instruments – have their limits: "They cannot provide protection if the root causes of displacement are not tackled and eradicated ... until lasting political solutions are found, any long-term solution to the problems of displaced persons will be difficult to deliver."

Mrs Jonker also said that if the international community had actively engaged in finding a solution for the "peaceful, safe and timely return" of IDPs, the recent ethnic cleansing in the Russian-controlled zone of Georgia could have been prevented.
Full speech

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

- ***COUNTRIES***

PACE rapporteur: now the ball is in Belarus's court (15.10.08)

Commenting on the suspension of the visa ban against some high-ranking Belarusian officials, decided by the EU Council for External Relations, PACE's rapporteur on the situation in Belarus Andrea Rigoni said: "The European Union has made the right decision. Breaking the isolation of the Belarusian authorities will help Europe reach out to ordinary Belarusians and will eventually contribute to the spreading of European values both in society and in the political system."

"With this decision, the European Union has given a clear demonstration of its willingness to engage in a step-by-step and two-way process with the Belarusian leadership. Now the ball is in Belarus's court: Europe needs to see further tangible progress in Belarus in the core areas of democracy, human rights and the rule of law, in order to pursue confidently the line that it has undertaken with the suspension of the visa-ban."

"In my capacity as PACE Rapporteur on Belarus, I have always made it clear that dialogue is the way forward to bring Belarus closer to Europe. I am pleased that the European Union is moving in this direction and I hope that the Council of Europe will also give proof of political courage and openness to dialogue, while continuing to defend its values."

Azerbaijan's presidential poll marked considerable progress, but did not meet all election commitments (16.10.08)

The presidential election in Azerbaijan marked considerable progress, but did not meet all of the country's international commitments, observers from the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) concluded in a joint statement.

The election was conducted in a peaceful manner, but was characterized by a lack of robust competition and vibrant political discourse facilitated by the media, and thus did not reflect all principles of a meaningful and pluralistic democratic election. Regrettably, some opposition parties boycotted the election, citing longstanding obstacles. This further limited the scope for meaningful choice for the electorate.

"There were notable improvements in the conduct of this election, but additional efforts are necessary to meet crucial international commitments, especially those related to pluralism, the fairness of the campaign environment, and the media," said Ambassador Boris Frlec, Head of the OSCE/ODIHR election observation mission.

"While the voting day can be generally viewed positively and described as marking considerable progress, election observation is done against a broader background of human rights, democracy and the rule of law. In this connection, the issue of freedom of the media in Azerbaijan remains a source of further concern," said Andres Herkel, Head of the PACE delegation.

"According to our observations on election day, the elections were well prepared and largely carried out smoothly. However, a lack of genuine competition, due to the boycott of major opposition parties, and the absence of a real campaign have to be deeply deplored," said Marie Anne Isler Beguin, Head of the EP delegation.

The authorities made efforts to create more equitable conditions for candidates, and the election was organized in an overall efficient manner, although shortcomings were observed on election day, in particular during the crucial phase of the vote count and tabulation. The observers noted that the campaign was generally low-key, with the incumbent not campaigning personally, and other candidates commanding little apparent public support. The Central Election Commission has reported a high turnout of 75 per cent.

The International Election Observation Mission comprises a total of some 440 observers from 43 countries, including 45 long-term and some 340 short-term observers deployed by the OSCE/ODIHR, as well as 31 parliamentarians and staff from PACE, and 10 from the EP.

PACE co-rapporteurs welcome creation of fact-finding group in Armenia (24.10.08)

The co-rapporteurs for the monitoring of Armenia of the Council of Europe Parliamentary Assembly (PACE), John Prescott (United Kingdom, SOC) and Georges Colombier (France, EPP/CD), welcomed the Presidential Decree establishing an expert fact-finding group to look into the events in Armenia on 1 and 2 March 2008 and the circumstances that led to them.

"This is as an important step towards meeting the Assembly's demands that an independent, transparent and credible inquiry into these events be conducted," said the two parliamentarians. However, they also stressed that the manner in which this group conducts its work, as well as the access it has to the relevant state institutions at all levels, will ultimately decide if the inquiry will be seen as credible in the eyes of the Armenian public. "All parties should nominate their representatives as quickly as possible. It is now time to deliver results," they said.

The co-rapporteurs expressed their hope that the establishment of the expert fact-finding group would soon be followed by similarly positive steps regarding the fate of the persons deprived of their liberty in relation to the events of 1 and 2 March, which continues to be an issue of great concern to the Assembly.

"We would like to be able to report to the Monitoring Committee, when it meets on 17 December, that there has been tangible and irreversible progress with regard to the independent and credible inquiry, as well as the issue of persons deprived of their liberty in relation to the events on 1 and 2 March," the co-rapporteurs stressed.
Resolution 1609 (2008)
Resolution 1620 (2008)

PACE media freedom rapporteur reacts to Zagreb car bombing (24.10.08)

Andrew McIntosh (United Kingdom, SOC), rapporteur on media freedom of the Council of Europe Parliamentary Assembly (PACE) and Chair of the Sub-Committee on the Media, made the following statement:

"I am deeply shocked by the car bomb attack killing Ivo Pukanic, the owner of the Croatian weekly newspaper Nacional, and his marketing director Niko Franjic in Zagreb yesterday evening. Murdering a journalist who has exposed organised crime, corruption and human rights violations is an attack on the democratic foundation of a state. My sympathy goes to the families of the two men.

The brutal silencing of Mr Pukanic will not silence his newspaper, or the many other investigative journalists who seek to expose corruption, wrongdoing and abuses of human rights.

Death threats against journalists in Croatia are not uncommon. It is a challenge for democracy and the rule of law, if such cases are not fully investigated. I recall the Assembly's 2007 Resolution and Recommendation on threats to the lives and freedom of expression of journalists, and welcome the resolute responses given by the government of Croatia to the murders yesterday. It is now for the prosecutors, the police and the courts to identify, prosecute and punish the perpetrators of these terrible murders."

Resolution 1535 (2007)
Recommendation 1783 (2007)R

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

Council of Europe Commissioner Hammarberg to assess human rights situation in Monaco (16.10.08)

Prison conditions, measures against discrimination, and independent national human rights structure are some of the main topics that the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, assessed during his two-day high-level visit to Monaco starting on 20 October.

During the course of his visit, Commissioner Hammarberg was received by His Serene Highness Prince Albert II. Mr Hammarberg also held meetings with the State Minister and the Ministers of Foreign Affairs, Interior, Finance and Justice, as well as with representatives of the judiciary.

The Commissioner also met with representatives of civil society and visit institutions human rights relevance, such as the Monaco prison and police station.

The visit is organised in the framework of the Commissioner's mandate to assess the implementation of human rights commitments by all Council of Europe member states. An assessment report with relevant recommendations will be published early 2009.

"Serbia: progress made but more efforts needed to implement human rights" (17.10.08)

"Despite some steps in the right direction, obstacles to the effective implementation of human rights standards remain in Serbia", says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, completing a high-level official visit to the Republic of Serbia. Other than Belgrade, the Commissioner visited the Sandzak-Raska region, the autonomous province of Vojvodina, Kovin, Pozarevac and Southern Serbia. He also conducted hands-on site visits to institutions with human rights relevance, including closed institutions, such as prisons, remand centres and police stations; psychiatric hospital; refugee/Internally Displaced Persons camp as well as Roma settlements.

A number of structures for human rights protection are in place and should be actively protected and promoted, such as the Constitutional Court, the Ombudsman, and the Commissioner for Free Access to Information. Some important pieces of legislation, such as the general Anti-Discrimination law are still pending before parliament. The Commissioner underlined that a fully functioning and efficient Parliament is crucial to making reform a reality and stresses that parliamentary obstructionism works contrary to the democratic process.

"Social exclusion of Roma demands our immediate attention," the Commissioner said. "Just minutes away from Belgrade's newest shopping mall for example, Roma endure inhuman conditions. Many displaced Roma lack identification documents hindering access to basic health and education."

"Human Rights Defenders work for the benefit of society and should not be seen as a threat", warns the Commissioner. "I have been shocked by some unfortunate media reporting. State condemnation of threats to human rights defenders is imperative."

The Commissioner commends the judicial reform process, which should contribute to tackling some particular concerns including lengthy proceedings and a persistent perception of corruption within the judiciary. The unresolved situation of refugees and Internally Displaced Persons', as well as minority rights protection and non-discrimination in all its forms were among other thematic priorities assessed by the Commissioner.

"Serbia can be proud that its Vojvodina province represents a microcosm of Europe" the Commissioner commented, and "although challenges remain, has taken many steps towards developing true multi-ethnic harmony."

In his discussions with the Prime Minister and the Ministers of justice, interior, human and minority rights, labour and social policy, public administration and local self-government and religion, the Commissioner explored opportunities to address pertinent issues in the field of protection and promotion of human rights effectively. Talks were held with senior officials from the Ministries of education and health. Meetings were also held with the Speaker of the Parliament, and other parliamentarians. Further talks included the Ombudsman, the Supreme Court President, the Prosecutor General and the National Anti-Trafficking Coordinator. The Commissioners delegation also held roundtable meetings with civil society representatives

Before concluding the visit, the Commissioner shared his impressions with the Prime Minister, and discussed ways to increase civil society engagement in strategy and policy development. A report is expected for early 2009.

"United Kingdom must reshape its juvenile justice system," says Commissioner Hammarberg (17.10.08)

"The system of juvenile justice in the United Kingdom should be reformed. It is too punitive and too little focused on rehabilitation" stated the Council of Europe Commissioner for Human Rights. Thomas Hammarberg presented a series of reform proposals in a memorandum addressed to the UK authorities.

The Commissioner observes the very low age of criminal responsibility in the UK and recommends that the authorities come into line with the rest of Europe where the average age of criminal responsibility is higher.

Moreover, Commissioner Hammarberg is concerned about the overuse in the country of child detention and the high numbers of children in custody in England and Wales. "Arrest, detention and use of child custody must be a last resort and for the shortest appropriate period of time" he said, welcoming the Criminal Justice and Immigration Act 2008 which received Royal Assent on 8 May 2008.

Conditions of children in custody and the use of restraints and distraction techniques are also criticised. "Although the overall conditions in the two premises I visited are good and the staff I met was very dedicated, I am worried about the methods of restraint that staff are allowed to use in child custody institutions.'' The Commissioner commends the government for suspending the use of the "nose distraction technique" and the "double basket hold" but urges discontinuation of all these methods. He also highlights the fundamental role of local authorities which "should be given full responsibility for ensuring the provision of services to children in detention and cover the costs and assume all of their legal responsibilities for children held there."

Commissioner Hammarberg urges the authorities to ban corporal punishment in all custodial settings and reminds the Government of its obligations to protect children from all forms of harm and ill-treatment.

Finally, he observes that the high re-offending rates of children leaving custody "seriously question the efficacy and purpose of the entire youth justice system in England and Wales and the use of detention in particular" adding that "repression is not the only answer to juvenile crime: alternative approaches could provide better responses to it."

The Memorandum is based on the Commissioner's visits to the United Kingdom in February and April 2008, when he held discussions with State authorities and non-governmental organizations and visited a number of institutions including the Oakhill Secure Training Centre and the Young Offender Institution Huntercombe.

Link to the memorandum and the authorities' response

"Increased efforts must be made to ensure human rights protection in the areas affected by the South Ossetia conflict", says Commissioner Hammarberg in his report (22.10.08)

Publishing a report after his second special mission to the areas affected by the South Ossetia conflict, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stated that "the human rights and humanitarian situation remain critical. All relevant actors must promptly alleviate the human suffering of thousands of people."

The Commissioner reports that by mid-October, more than 95,000 internally displaced persons (IDPs) have been able to return to their homes out of an estimated 131,000. "This is a positive signal" he said. "Decision-makers must effectively implement the principle of the right to voluntary return and guarantee safety and reconstruction of houses."

"There has been progress in ensuring care and support to IDPs, including some 20,000 people who are not likely to be able to return to their homes in the near future" he continued. "Work is underway to build 2,100 single-family housing units, which would provide a good provisional solution for a large number of IDPs. With winter approaching, it is crucial to address their needs with urgency."

Commissioner Hammarberg also stressed that similar efforts are needed for the more than 220,000 IDPs from previous displacements, underlining that "the strides taken to improve the situation of IDPs cannot be a substitute for the right to a safe return."

De-mining still remains an acute need as "large quantities of unexploded ordnance and bombs still pose a real danger to people, including sub-munition 'duds' from cluster bombs. Systematic de-mining is needed, both in the 'buffer zone' and in the areas under Georgian control. This requires full cooperation and information sharing between both sides."

Another serious problem is the safety of individuals, in particular in the northern part of the 'buffer zone'. "It is imperative to bring a complete end to looting and violence, but it is also important to address longer-term concerns, in particular as regards the level of professionalism and respect for human rights among the law enforcement officers. The authorities and the international community must monitor closely the situation on the ground to detect and defuse any resurgence of violence or ethnic targeting."

Resuming the exchanges of prisoners which have taken place so far, Commissioner Hammarberg said that 179 people and 43 dead bodies were handed over by the de facto authorities of South Ossetia to the Georgian authorities, who in turn handed over 41 people and 2 dead persons. "Ten more corpses shall soon be delivered from Tskhinvali to Tbilisi" said the Commissioner. "It is of greatest importance to take every possible step to find missing persons and to clarify what has happened in each case. Turning every stone in the cases of missing persons is also important to stop the criminal hostage-takings perpetrated to pressure the other side for information or releases."

Finally, the Commissioner calls upon international actors to enhance their coordination and ensure that monitors are capable to handle human rights crisis. Moreover, he urged the relevant authorities to guarantee as a matter of urgency that "all humanitarian organisations have access to all relevant areas, from all directions, all the time."

The report is based on the Commissioner's visit carried out from 25 to 27 September 2008 in the areas affected by the South Ossetia conflict to assess the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in August. The full text is available on the Commissioner's website.

"Increased efforts must be made to ensure human rights protection in the areas affected by the South Ossetia conflict", says Commissioner Hammarberg in his report

Read the full text of the report

B. Thematic work

"European countries still fail to respect the rights of persons with disabilities" says Commissioner Hammarberg (20.10.08)

"More than 80 million persons are still neglected in Europe simply because of their disabilities. More inclusive policies must be implemented, stamping out social stigma and all kinds of barriers". With

these words, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, released his latest Viewpoint and an issue paper on the rights of persons with disabilities.

“For far too long policies have focused exclusively on institutional care, medical rehabilitation and welfare benefits. More emphasis must be given to the human rights of persons with disabilities – charity is not enough.”

“States should take specific rights-based actions to improve inclusion and participation. Planning and systematic work is needed to shape inclusive societies. It is therefore encouraging that several European states have now adopted disability plans and strategies, but the move from rhetoric to concrete implementation has been too slow.”

Commissioner Hammarberg also analyses the different obstacles which prevent persons with disabilities from fully enjoying a good quality of life in Europe and sets out a number of recommendations to help member States address more effectively the most urgent needs of persons with disabilities and foster a cultural change in society.

Read the Viewpoint
Issue Paper: "Human Rights and Disability: Equal rights for all"
Speech: "Protecting and promoting the rights of people with disabilities in Europe: towards full participation, inclusion and empowerment" (Strasbourg, 31/10/2008)

C. Miscellaneous (newsletter, agenda…)

The Commissioner - CommDH(2008)32 / 22 October 2008
3rd quarterly activity report 2008 by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (1st July to 30th September 2008)