DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS

DIRECTORATE OF CO-OPERATION

LEGAL AND HUMAN RIGHTS CAPACITY BUILDING DIVISION

Strasbourg, 29 April 2009

Regular Selective Information Flow (RSIF) for the attention of the National Human Rights Structures (NHRSs)

Issue n°14 covering the period from 30 March to 12 April 2009

Prepared jointly by

the **National Human Rights Structures Unit (NHRS Unit)**
Directorate General of Human Rights and Legal Affairs (DG-HL),
Legal and Human Rights Capacity Building Division

and the **Office of the Commissioner for Human Rights**

The selection of the information contained on this Issue and deemed relevant to NHRSs is made under the joint responsibility of the NHRS Unit and the Office of the Commissioner for Human Rights

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Introduction

This issue is part of the "Regular Selective Information Flow" (RSIF). Its purpose is to keep the National Human Rights Structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the National Human Rights Structures Unit of the DG-HL (NHRS Unit) and the Office of the Commissioner for Human Rights carefully select and try to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRSs who are kindly asked to dispatch it within their offices.

Each issue covers two weeks and is sent by the NHRS Unit to the Contact Persons a fortnight after the end of each observation period. This means that all information contained in any given issue is between two and four weeks old.

Unfortunately, the issues are available in English only for the time being due to the limited means. 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 NHRS Unit and the Office of the Commissioner for Human Rights. It is based on what is deemed 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 any feed-back that may allow for the improvement of the format and the contents of this tool.

The preparation of the RSIF is generously supported by funding from the Ministry of Foreign Affairs of Germany.

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

We invite you to read the INFORMATION NOTE No. 116 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in February 2009 and sorted out as being of particular interest.

We invite you to read as well the INFORMATION NOTE No. 117 covering the activities of the Court undertaken in March 2009.

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 considered 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 NHRS Unit and the Office of the Commissioner for Human Rights, is based on the press releases of the Registry of the Court.

Some judgments are only available in French.

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

Note on the Importance Level :

According to the explanation available on the Court's website, the following importance levels are given by the Court:

1 = High importance, Judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular **State.**

2 = Medium importance, Judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.

3 = Low importance, Judgments with little legal interest - those applying existing case-law, friendly settlements and striking out judgments (unless these have any particular point of interest).

Each judgment presented in section 1 and 2 is accompanied by the indication of the importance level.

- **Grand Chamber judgments**

Léger v. France (no. 19324/02) (Link to the judgment in French) (Importance 1) - 30 March 2009 - Striking out of the list of cases- Detention for more than 41 years- Article 5 § 1 (a) (right to liberty and security)- Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention

1. Summary of the facts

In July 1964 the applicant was arrested and charged with the abduction and murder of Luc Taron, an 11-year-old boy. He made a confession while in police custody but retracted it several months later. He has protested his innocence ever since.

In a judgment of 7 May 1966, Seine-et-Oise Assize Court found the applicant guilty of the offences charged and sentenced him to life imprisonment. He made unsuccessful applications in 1971 and

1974 for a retrial.

He became eligible for parole on 5 July 1979 after 15 years in prison. Between 1985 and 1998 Mr. Léger made numerous applications for release, all of which were refused. In addition, he made several unsuccessful applications for a presidential pardon.

In 1999 he again requested his release on licence. Despite a favourable opinion by the Sentence Enforcement Board, his request was turned down by the Minister of Justice.

In January 2001 the applicant made a further application for release. He submitted that friends had offered to accommodate him on his release in an outbuilding at their home and to give him work in their bakery. The Sentence Enforcement Board issued an unanimous opinion in favour of his release on licence and the applicant's probation and rehabilitation officer also strongly recommended that he be released.

Despite that, Douai Regional Parole Court rejected the request on 6 July 2001 on the grounds that the applicant continued to deny that he had committed the offence of which he had been convicted, that the experts could not exclude the possibility that he was still dangerous and might re-offend and would not be able to do so unless he underwent a course of psychiatric treatment, and that, as the applicant had no intention of following such a programme, it was not clear that he was making "serious efforts to ensure his social rehabilitation". That decision was upheld on appeal on 23 November 2001 by the National Parole Court on the grounds that the applicant's planned rehabilitation had been put in doubt by the intervening bankruptcy of the person who had offered to put him up and give him work and that he was unwilling to seek counselling even though he presented paranoid tendencies.

In January 2005 the applicant again submitted a request for his release on licence, which the prison authorities supported but which was opposed by the public prosecutor, who pleaded in particular the risk that he might re-offend. The court responsible for the execution of sentence ruled that his conduct no longer stood in the way of his release and that the risk of his re-offending had dwindled almost to nothing. It accordingly granted him release on licence.

Consequently, Mr Léger was released on licence on 3 October 2005, after spending more than 41 years in prison.

2. The applicant's complaints before the ECtHR

The application was lodged with the European Court of Human Rights on 6 May 2002 and declared partly admissible on 21 September 2004. A hearing was held in public on 26 April 2005.

The applicant complained that his continued detention had become arbitrary, particularly after the refusal of his 2001 application for release on licence. He also submitted that in practice it was tantamount to a whole-life sentence and therefore constituted inhuman and degrading treatment. He relied on Article 5 § 1 (a) (right to liberty and security) and Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention.

3. The Chamber Judgment of 11 April 2006

In its Chamber judgment of 11 April 2006, the Court held, by five votes to two, that there had been no violation of Article 5 § 1 (a) and no violation of Article 3

Article 5

The Court observed at the outset that there was no uniform parole system in the member States of the Council of Europe. It further reiterated that it has recognised the legitimate aim of a policy of progressive social reintegration of persons sentenced to imprisonment, including those convicted of violent crimes (see *Mastromatteo v. Italy* [GC], no. 37703/99, ECHR 2002-VIII). "*It has to be admitted in this connection that significant progress is still required in order to encourage the return of prisoners to the community through personalised assistance programmes involving supervision from the start of their detention*" (§70).

The Court recalled that in assessing the arbitrariness of a person's detention, it must be ascertained whether there was a sufficient causal link with the initial conviction. In cases concerning the execution of sentences, and in particular decisions to re-detain and not to release, the formal legal connection between the conviction and the recall to prison is not on its own sufficient to justify detention under Article 5 § 1 (a). With the passage of time the causal link required by this provision between the decision not to release or to re-detain and the initial judgment gradually becomes less strong. The link might eventually be broken if a position were reached in which those decisions were based on grounds that had no connection with the objectives of the legislature and the court or on an

assessment that was unreasonable in terms of those objectives. In those circumstances, a detention that was lawful at the outset would be transformed into a deprivation of liberty that was arbitrary and, hence, incompatible with Article 5. The Court reiterated that it is not its task, within the context of Article 5, to review the appropriateness of the original sentence.

The Court observed that the applicant's life sentence has not prevented him from being released since he has now regained his "liberty" following the adjustment of his sentence in the form of release on licence, with a view to avoiding his permanent exclusion from society.

Prior to that, in view of the extremely serious nature of his offence, the Court considered that the applicant's life sentence was not arbitrary for the purposes of Article 5 of the Convention. First the continued detention of the applicant in the instant case never lost its connection with the initial punitive purpose. Secondly, although the applicant's sentence did not contain a minimum term comparable to the "tariff" in the English system, representing the punitive element of the sentence, the Court observed that other factors relating to "risk" and "dangerousness" justified keeping him in detention. In fact, in light of the Court's case-law, *"[o]nce the punishment element of the sentence ... has been satisfied, the grounds for the continued detention ... must be considerations of risk and dangerousness" although such considerations must be "associated with the objectives of the original sentence of murder*". In addition, the element of dangerousness is susceptible by its very nature to change with the passage of time.

"*The Court accordingly concludes that the grounds given were not unwarranted in view of both the initial punitive element and the persistence of factors militating against the applicant's release. Although the courts reached the opposite conclusion only in 2005, after he had been in prison for forty-one years – an exceptionally lengthy period which, as the Court acknowledges, raises serious questions about the management of life prisoners (…) it does not appear that the grounds they had previously given were "unreasonable", regard being had to their margin of appreciation under the Convention, including when they did not endorse the positive opinions of the prison authorities in 2001. One year prior to his release, in 2004, the experts were still unable to exclude with any certainty the possibility that the applicant might represent a danger in view of his character traits and personality."*

The Court concluded by 5 votes to 2 (Judges Costa and Fura- Sandström dissenting) that the applicant's detention after 2001 was justified under Article 5 § 1 (a) of the Convention.

Article 3

The Court recalled that it has not ruled out the possibility that in special circumstances an irreducible life sentence might also raise an issue under the Convention where there is no hope of entitlement to a measure such as parole. In the present case, it noted that applicant regained his liberty after 41 years' imprisonment, an exceptionally lengthy period resulting from a sentence imposed at a time when minimum terms did not exist. However, from 1979 onwards, after he had spent fifteen years in prison, he had the opportunity to apply for release on licence at regular intervals and had the benefit of procedural safeguards. In those circumstances, the Court considered that the applicant cannot maintain that he was deprived of all hope of obtaining an adjustment of his sentence, which was not irreducible *de jure* or *de facto*. It concluded by 5 votes to 2 (Judges Mularoni and Fura- Sandström dissenting) that his continued detention as such, long though it was, did not constitute inhuman or degrading treatment.

3. The Grand Chamber judgment of 30 March 2009

The Grand Chamber of the Court decided by 13 votes to 4 to strike the application out of its list of cases in accordance with Article 37 §1c. Article 37 reads as follows :

« Article 37 – Striking out applications

1 **The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:**

a the applicant does not intend to pursue his application; or

b the matter has been resolved; or

c **for any other reason established by the Court, it is no longer justified to continue the examination of the application.**

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires."

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course » (emphasis added).

The Court noted that Mr Léger had been found dead in his home on 18 July 2008 and that the ensuing request to pursue the proceedings in his place had been submitted by someone who had provided no evidence either of her status as an heir or a close relative of the applicant, or of any legitimate interest. Under Article 37 § 1 *in fine ("the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires")*, the Grand Chamber considered that the respect for human rights did not require the examination of the case to be continued, given that the relevant domestic law had in the meantime changed and that similar issues in other cases before it had been resolved (e.g. *Kafkaris v. Cyprus*).

See the dissenting opinion of judge Spielmann joined by judges Bratza, Gyulumyan and Jebens.

See also: The Commissioner's viewpoint of 12 November 2007: "Time to re-examine the use of life sentences" ; Grand Chamber judgment of 12 February 2008 in *Kafkaris v. Cyprus*.

Šilih v. Slovenia (no. 71463/01) (Importance 1) - 9 April 2009 - Competence *ratione temporis*- Detachability of the procedural obligations under Article 2 and 3 - Violation of Article 2 - Inefficiency of the Slovenian judicial system in establishing the cause of and liability for the applicants son's death - Ombudsman

Facts and procedure before the ECtHR

The applicants' son, aged 20, died in hospital on 19 May 1993 after suffering anaphylactic shock, probably as a result of an allergic reaction to one of the drugs administered to him by a duty doctor in an attempt to treat his urticaria.

On 13 May 1993 the applicants lodged a criminal complaint against the duty doctor for medical negligence, which was subsequently dismissed for lack of sufficient evidence.

On 1 August 1994, following the entry into force of the European Convention on Human Rights in respect of Slovenia, the applicants used their right under the Slovenian Criminal Procedure Act as an aggrieved party to act as prosecutors and lodged a request to launch a criminal investigation. The investigation was reopened on 26 April 1996 and an indictment lodged on 28 February 1997; the case was twice remitted for further investigation before the criminal proceedings were discontinued on 18 October 2000 on the ground, once again, of insufficient evidence. The applicants appealed unsuccessfully.

In the meantime, on 6 July 1995 the applicants also brought civil proceedings against the hospital and the doctor concerned. The first-instance proceedings, stayed between October 1997 and May 2001, were terminated with the claim being dismissed on 25 August 2006, more than 11 years after the proceedings were first instituted. During that period, the case was dealt with by at least six different judges. Subsequently, the applicants lodged an appeal and an appeal on points of law, both of which were unsuccessful.

The case is currently still pending before the Constitutional Court.

The application was lodged with the European Court of Human Rights on 19 May 2001.

In its Chamber judgment of 28 June 2007, the Court held unanimously that there had been a violation of Article 2 of the Convention concerning the lack of effective legal proceedings to establish the cause of and responsibility for the death of the applicants' son in hospital.

On 27 September 2007 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 12 November 2007 the panel of the Grand Chamber accepted that request. A public hearing was held in the Human Rights Building, Strasbourg, on 2 April 2008.

Complaint

The applicants complained about the inefficiency of the Slovenian judicial system in establishing liability for their son's death, in breach of Article 2 (right to life). Further relying on Articles 6 and 13, they also alleged that the legal proceedings were excessively lengthy and that the criminal proceedings were unfair.

The competence *rationae temporis*

The act of death (after suffering anaphylactic shock, probably as a result of an allergic reaction to one of the drugs administered to him by a duty doctor in an attempt to treat his urticaria) took place before the entry into force of the ECHR in respect of Slovenia whereas the civil and criminal procedures were initiated by the applicants after its entry into force.

In §§ 146-151, the Court states **that the problem of determining the limits of its jurisdiction *ratione temporis* in situations where the facts relied on in the application fell partly within and partly outside the relevant period has been most exhaustively addressed by the Court in the case of *Blečić v. Croatia*.** It notes that the test and the criteria established in the *Blečić* case are of a general character, **which requires that the special nature of certain rights, such as those laid down in Articles 2 and 3 of the Convention, be taken into consideration when applying those criteria. It refers to its relevant case law and notes that "*Having regard to the varying approaches taken by different Chambers of the Court in the above cases, the Grand Chamber must now determine** *whether the procedural obligations arising under Article 2 can be seen as being detachable from the substantive act and capable of coming into play in respect of deaths which occurred prior to the critical date or alternatively whether they are so inextricably linked to the substantive obligation that an issue may only arise in respect of deaths which occur after that date*" (emphasis added).

1) The general conclusion regarding the detachability of the procedural violations under Articles 2 and 3

"*Against this background, the Court concludes that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2 it can give rise to a finding of a separate and independent "interference" within the meaning of the Blečić judgment (cited above, § 88). In this sense it can be considered to be a detachable obligation arising out of Article 2 capable of binding the State even when the death took place before the critical date.*

This approach finds support also in the jurisprudence of the United Nations Human Rights Committee and, in particular, of the Inter-American Court of Human Rights, which, though under different provisions, accepted jurisdiction ratione temporis over the procedural complaints relating to deaths which had taken place outside their temporal jurisdiction (see paragraphs 111-18 above).

However, having regard to the principle of legal certainty, the Court's temporal jurisdiction as regards compliance with the procedural obligation of Article 2 in respect of deaths that occur before the critical date is not open-ended.

First, it is clear that, where the death occurred before the critical date, only procedural acts and/or omissions occurring after that date can fall within the Court's temporal jurisdiction. Second, there must exist a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect.

Thus a significant proportion of the procedural steps required by this provision – which include not only an effective investigation into the death of the person concerned but also the institution of appropriate proceedings for the purpose of determining the cause of the death and holding those responsible to account (Vo, cited above, § 89) – will have been or ought to have been carried out after the critical date.

However, the Court would not exclude that in certain circumstances the connection could also be based on the need to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective manner" (§§ 159-163).

2) The application to the present case:

The Court notes and the Government did not dispute that the applicants' procedural complaint essentially related to the aforementioned judicial proceedings which were conducted after the entry into force of the Convention precisely with a view to establishing the circumstances in which the applicants' son had died and any responsibility for it.

In view of the above, the Court finds that the alleged interference with Article 2 in its procedural aspect falls within the Court's temporal jurisdiction and that it is therefore competent to examine this part of the application. It will confine itself to determining whether the events that occurred after the entry into force of the Convention in respect of Slovenia disclosed a breach of that provision (§ 167).

The violation of Article 2 (procedural angle)

In §§ 192-196, the Court summarizes its case law regarding the procedural obligations of the State regarding acts of death of death of patients in the care of the medical profession – the judgment of

principle being *Calvelli and Ciglio v. Italy* of 17 January 2002 - and recalls that the prompt examination of such cases is therefore important for the safety of users of all health services

The Court considered that the excessive length of the criminal proceedings, and in particular the investigation, could not be justified by either the conduct of the applicants or the complexity of the case.

The civil proceedings, instituted on 6 July 1995, are, more than 13 years later, still pending before the Constitutional Court. Notably, although those proceedings had been stayed for three years and seven months pending the outcome of the criminal proceedings, they had in fact already been at a standstill for two years before that. Indeed, even after the criminal proceedings had been discontinued in October 2000, it took the domestic courts a further five years and eight months to rule on the applicants' civil claim.

The applicants' requests for a change of venue and for certain judges to stand down had admittedly delayed the proceedings to a degree; however, the delays that had occurred after the stay had been lifted had often not been reasonable. Certain hearings for example had been delayed by up to nine or ten months simply due to a change of venue or as a result of the case having been taken over by yet another judge. It was worth noting that the sixth and final judge had concluded the first-instance proceedings in less than three months.

Lastly, it was unsatisfactory for the applicants' case to have been dealt with by at least six different judges in a single set of first-instance proceedings. While the domestic courts were better placed to assess whether an individual judge was able to sit in a particular case, a frequent change of the sitting judge had to have impeded effective processing.

The Court therefore concluded that the domestic authorities had failed to deal with the applicants' claim concerning their son's death with the level of diligence required by Article 2. Consequently, there had been a violation of Article 2 on account of the inefficiency of the Slovenian judicial system in establishing the cause of and liability for the death of the applicant's son.

Article 6 and 13

Given the reasoning which led the Court to finding a violation of Article 2, it held that there was no need to examine separately the case under Articles 6 and 13.

The Ombudsman

The Ombudsman has dealt with the case (see §§ 81-85).

The Government in its observations before the Grand Chamber disputed the Ombudsman's findings in the case, in particular those concerning the staying of the proceedings and the conduct of the hearing of 28 October 2003. They argued that under domestic law the Ombudsman did not have power to interfere in proceedings pending before the domestic courts except in the case of undue delay or manifest abuse of authority. Nor was it the European Court's role to examine whether the manner in which the domestic authorities had taken the evidence was appropriate (§ 190).

The Court stated: "*When considering the present case, the Court cannot fail to note the Ombudsman's public reports and interventions concerning the conduct of the proceedings [...]The situation reflected therein could arguably have contributed to the applicants' mistrust of the manner in which the proceedings were being conducted and triggered some of their repeated challenges to the judges and the court. As regards the Government's argument that the Ombudsman lacked authority to interfere in the impugned domestic proceedings the Court is of the opinion that it is not within its competence to decide on the Ombudsman's powers under the domestic law, an issue which, moreover, bears no relevance to the applicants' complaints*". (§ 209; emphasis added).

- **Right to life**

Horoz v. Turkey (no. 1639/03) (Importance 2) – 31 March 2009 – No violation of Article 2 - Death of the applicant's son, who had been taking part in a hunger strike while held in pre-trial detention

The applicant's son, Muharrem Horoz, was placed in pre-trial detention after being arrested by police on 3 August 1999. The public prosecutor at the Ankara National Security Court sought his conviction for attacking the constitutional order of the State and various terrorist acts committed on behalf of an illegal organisation. In 2001, while detained in the Kandıra F-type prison, Mr Horoz joined a hunger strike organised in protest against the so-called F-type prisons, which provided for one- to three-

person cells instead of dormitories. This strike became a “death fast”, in which only sugared water and vitamins were accepted.

Mr Horoz was hospitalised on several occasions in June and July 2001 after losing consciousness. During the first emergency hospitalisation, he refused any treatment after being resuscitated. In a report of 30 July 2001, the Institute of Forensic Medicine diagnosed a “terminal failure as a result of insufficient nutrition” and recommended that Mr Horoz be released for six months on the ground that his state of health was incompatible with imprisonment. On 1 August 2001 the Ankara National Security Court dismissed the application for release lodged by Mr Horoz’s lawyer, firstly on the basis that conditional release on health grounds, provided for in the Code of Criminal Procedure, applied to “convicted persons” and not to individuals in “pre-trial detention”, and secondly, on the basis that treatment could be provided in the prison wing of a civilian hospital. Mr Horoz, who was hospitalised in the prison wing of the Kocaeli civilian hospital and been in a coma since 27 July 2001, died on 3 August 2001. Following the allegations made by his lawyer to the effect that the prosecutor and judges involved in this case had acted in an arbitrary manner and caused Mr Horoz’s death, the Minister of Justice opened an investigation. On 31 May 2002 an order was issued stating that there was no case to answer.

The Court noted that Mr Horoz’s death had resulted from his hunger strike, and that his mother had not complained either about her son’s conditions of detention or of an absence of appropriate treatment. Furthermore, while it would have been desirable for Mr Horoz to be released following the report by the Institute of Forensic Medicine, it had no evidence permitting it to criticise the judicial authorities’ assessment of the information in that report. Nor does it find any element enabling it to challenge the conclusion that there was no case to answer in the investigation conducted by the Minister of Justice.

The authorities had amply satisfied their obligation to protect Mr Horoz’s physical integrity, specifically through the administration of appropriate medical treatment; indeed, they could not be criticised for accepting Mr Horoz’s clear refusal to allow any intervention, even though his state of health was life-threatening. Thus, it was impossible for the Court to establish a causal link between the State Security Court’s refusal to release the applicant’s son and the latter’s death. The Court also noted that, since Mr Horoz had been in hospital from 27 July onwards, immediate intervention and treatment would have been possible. Accordingly, it concluded that there had been no violation of Article 2.

Judges Tulkens and Popović expressed a joint dissenting opinion, which is annexed to the judgment.

- **Conditions of detention**

Brânduşe v. Romania (no. 6586/03) (Importance 1) – Violation of Article 3 - Conditions of the applicant’s detention in Arad prison (Romania), which is situated near a former refuse tip – Applicability of Article 8 (quality of private life in prison) - Violation of Article 8 - Romanian authorities’ failure to take the necessary measures to deal with the problem of offensive smells coming from the tip

While in pre-trial detention the applicant was at first held at Arad police headquarters. He was then transferred to prisons in Timişoara (Romania) and Arad, where he has spent most of his detention to date. He complained in particular of overcrowding, food of poor quality and unhygienic conditions. The applicant brought judicial proceedings to complain of his conditions of detention and the fact that in Arad Prison he had to put up with stale air and the nauseous stench from a site about 20 metres away from the prison formerly used for the disposal of household waste. This former refuse tip, managed by company S., which is itself run by Arad City Council, was in use from 1998 to 2003. Mr Brânduşe’s applications were rejected by the domestic courts.

The Court noted that Article 3 required in particular that the State ensure that every prisoner was held in conditions compatible with respect for human dignity. With reference to the allegations of overcrowding, it noted that in Arad prison the applicant for several years had had a living space of 2.5 square metres, which in reality was reduced still further by the furniture in the cell. In Timişoara Prison, before 2007, he had had a living space of between 1.5 and 2 square metres. In addition, according to the information supplied by the Romanian Government, Mr Brânduşe had been entitled to one hour of exercise per day in the open air before the entry into force of Law no. 275/2006. The Court reiterated that it had already found breaches of Article 3 in numerous cases on account of inadequate individual living space. It accepted that in the present case there was nothing to indicate that there had been a real intention to humiliate or degrade the applicant, but considered nevertheless that he had been subjected for several years to an ordeal of an intensity which went beyond the level of suffering inevitably inherent in detention. There had accordingly been a violation of Article 3.

While noting that Mr Brânduşe's health had not deteriorated through proximity to the former refuse tip, the Court considered that, in the light of the conclusions of the environmental studies and the length of time for which the applicant had to suffer the nuisances concerned, the applicant's quality of life and well-being were affected to the detriment of his private life in a way which was not merely the consequence of his deprivation of liberty. Indeed, the applicant's complaint related to aspects which went beyond the context of his conditions of detention as such and which, moreover, concerned the only "living space" the applicant had had available to him for a number of years. It therefore considered that Article 8 was applicable in the case.

The Court observed that the Romanian authorities were responsible for the offensive smells, as company S. was run by Arad City Council. In addition, responsibility had been transferred from the Council to S. only in February 2006, and even after that date the environmental authorities had made the Council directly responsible for closing the site. Moreover, the file showed that the tip was in operation effectively from 1998 until 2003, and that the growing volume of waste accumulated proved that it had even been used thereafter by private individuals, as the authorities had not taken measures to ensure the effective closure of the site. However, throughout that period the tip had no proper authorisation either for its operation or its closure. Whereas the applicable provisions imposed the requirement of a permit and compliance with a number of other conditions before the tip could be opened, the local authorities had not followed the procedure laid down and as a result had failed to comply with some of their obligations.

Furthermore, although it was incumbent on the authorities to carry out preliminary studies to measure the effects of pollution, it was only after the event, in 2003 and after a fierce fire on the site in 2006, that they did so. The studies concluded that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the standards established in 1987 and that persons living nearby had to put up with significant levels of nuisance caused by offensive smells. The competent authorities had explicitly penalised Arad City Council for the absence from the site of any means of informing the public about risks for the environment and the health of the population arising from the existence of the refuse tip. Nor had the Romanian Government been able to indicate what measures had been taken to ensure that the inmates of Arad prison, including in particular the applicant, could have effective access to the conclusions of the studies mentioned and to information whereby they could assess the risks to their health. Lastly, the proceedings relating to the work to effect the closure of the former tip were still pending and the Government had not supplied any information about the progress – or even the beginning – of the work to cover over and rehabilitate the site, which was supposed to be completed in 2009. There had accordingly been a violation of Article 8.

Straisteanu and Others v. Moldova (no. 4834/06) (Importance 3) – 7 April 2009 - (1st applicant) Violation of Article 3 (treatment) - (1st applicant) Violation of Article 5 §§ 1 and 3 - Violation of Article 6 § 1 (fairness) - (1st applicant) Violation of Article 13 in conjunction with Article 3 - Violation of Article 1 of Protocol No. 1

The applicants are three Moldovan nationals, Gheorghe Straisteanu, a well-known businessman and former Member of Parliament, and members of his family, Natalia Straisteanu and Daniela Straisteanu. The fourth applicant is SRL Codrana-Lux, a limited liability company incorporated in Moldova, the majority of which is owned by the applicant family. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicants complained that they were the victims of government harassment and intimidation. All the applicants complained that the Government tried to pressure them into giving up property they owned and that proceedings in which the authorities sought to annul the contracts of lease and sale of that property were unfair. Gheorghe Straisteanu also alleged that the harassment had included him being arrested in 2005 and 2006 and charged with car theft and uttering death threats. The Court held unanimously that there had been a violation of Article 3 and a violation of Article 13 in conjunction with Article 3 in respect of the conditions of detention in which Gheorghe Straisteanu had been held. It further held unanimously that there had been a violation of Article 5 §§ 1 and 3 as regards the unlawfulness of his detention between 18 August and 17 November 2005 and 22 July and 18 August 2005. The Court held that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 in respect of all four applicants as a result of the upholding of the Prosecutor General's actions for the annulment of the contracts of sale and lease of land. It held that there was no need to examine the applicants' other complaints under Articles 6, 13 and 14.

- **Ill-treatment in a sobering center**

Wiktorko v. Poland (no. 14612/02) (Importance 2) - 31 March 2009 – Violation of Article 3 - Degrading treatment in a sobering-up centre - Inadequate investigation into the incident

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained that she was subjected to degrading treatment at the sobering-up centre and that the authorities' investigation into the incident was inadequate.

Article 3 (treatment)

The applicant had been stripped naked by three employees of the centre, one woman and two men. The Court took the view, as it had done in other cases before it, that to be stripped naked in the presence of a member of the opposite sex lacked respect and human dignity for the person concerned. Similarly, the applicant had to have been left with feelings of anguish and inferiority capable of humiliating and debasing her, and all the more so given that the two male members of staff had forcibly undressed her.

Even more worryingly, no explanation had been given for the necessity of putting the applicant in restraining belts for such an excessive period of time as ten hours. Such prolonged immobilisation had to have caused her great distress and physical discomfort, which could not be considered compatible with Article 3 standards.

The Court therefore concluded unanimously that the authorities' conduct had amounted to degrading treatment, in violation of Article 3.

Article 3 (investigation)

The Court noted that the investigation of the applicant's complaint had lasted seven months, the investigation having been reopened on two occasions due to significant procedural shortcomings. It further noted that the investigation had focused on justifying why the applicant had been detained and force used against her without addressing the question of why that use of force had infringed her right to respect for human dignity. The authorities had therefore failed to assess the proportionality of the force used, namely they had not justified the forced removal of the applicant's clothing by two male employees or the use of restraining belts to immobilise her until the next day.

In conclusion, the Court found, by five votes to two that the manner in which the case had been examined had been inadequate, in violation of Article 3.

See also RSIF 13 Mojsiejew v. Poland (no. 11818/02) (Importance 1) - 24 March 2009 - Violation of Article 2 on account of the failure of the State to explain the circumstances in which the applicant's son had died in a sobering up centre, and of the ineffective investigation carried out into his death

- **Police misconduct**

Muradova v. Azerbaijan (no. 22684/05) (Importance 2) - 2 April 2009 - Violation of Article 3 - Excessive force used during a demonstration - Lack of effective investigation

On 16 October 2003 supporters of the opposition presidential candidate, who had just lost the election, gathered in the centre of Baku to protest. Violent clashes broke out between the demonstrators and the large numbers of anti-riot police and military personnel deployed. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Ms Muradova alleged that on 16 October 2003 she was hit in the eye with a truncheon by a police officer during a demonstration, and that the incident was not investigated adequately

The Court reiterated that allegations of ill-treatment must be supported by appropriate evidence. In assessing this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

The Court observed that the applicant was not detained during or after the events of 16 October 2003. As such, the situation in the present case differs from those cases where injuries are sustained while in detention or otherwise under the control of the police, in which cases the burden of proof clearly rests on the authorities to provide a satisfactory and convincing explanation as to the cause of the injuries (see, among many authorities, *Selmouni v. France* [GC); *Salman v. Turkey* [GC]; and *Mammadov v. Azerbaijan*, 11 January 2007. Furthermore, the present case should also be distinguished from those cases where it was not disputed that applicants' injuries resulted from the use of force by agents of the State in the course of a specific security operation involving either

persons resisting arrest, disobedient prison inmates or unauthorised demonstrators. In those cases, the Court has held that the burden rested on the Government to demonstrate solely that such use of force was not excessive (see, for example, *Zelilof v. Greece*, no. 17060/03, §§ 46-47, 24 May 2007). In the present case, the very fact that the injuries resulted from the use of force by the police is in dispute (compare with *Stoica v. Romania*, no. 42722/02, §§ 48 and 66, 4 March 2008).

The Court considered that Ms Muradova had produced sufficiently strong evidence in support of her version of the incident, namely her medical records and witness statements. Indeed, the Court was particularly astonished at how the domestic court had dismissed Ms Muradova's civil claim for compensation without any real legal reasoning. Nor had the authorities justified the degree of force used against Ms Muradova, given that she had not been violent during the demonstration, but had tried to leave it to avoid danger, and had not been arrested or prosecuted in relation to the events. The Court therefore held that the force used by the police in respect of Ms Muradova had been excessive, in violation of Article 3.

The Court also found that although a criminal investigation had been launched, it had been unclear whether it had actually examined the actions of the police during the demonstration. In addition, the forensic reports had been issued only after nine months and one year after the events, respectively. Indeed, the conclusion in one of the reports had not excluded the possibility that Ms Muradova's injury had been caused by a hard blunt object; the Court considered that that could well have been a truncheon. Lastly, the investigating authorities had not attempted to seek or hear testimony from the witnesses presented by Ms Muradova during the civil proceedings. That omission in particular had contributed to the general ineffectiveness of the investigation. Accordingly, the Court held that the authorities had not conducted an effective investigation into Ms Muradova's complaint, in violation of Article 3. There has therefore been both a substantive and a procedural violation of Article 3 of the Convention.

In the light of its finding of a violation of the procedural limb of Article 3 on account of the ineffectiveness of the investigation conducted by the domestic investigation authorities and courts, the Court considered that no separate issues arise under Articles 6 and 13 of the Convention and finds that it is not necessary to examine these complaints separately.

Breabin v. Moldova (no. 12544/08) (Importance 3) – 7 April 2009 - Violations of Article 3 (treatment and investigation) - Violation of Article 13

In 2004 the applicant was summonsed to the Ministry of Internal Affairs on suspicion of forgery. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), he complained that he was ill-treated by the police. The Court held unanimously that there had been violations of Article 3 on account of the applicant's ill-treatment by police officers and in respect of the failure to conduct an effective investigation into his complaints of ill-treatment. The Court found a further violation of Article 13 on account of the lack of effective remedies in respect of the ill-treatment complained of.

Karatepe and Others v. Turkey (nos. 33112/04, 36110/04, 40190/04, 41469/04 and 41471/04) (Importance 3) – 7 April 2009 - Violation of Article 3 (treatment) (Nine applicants) - Violation of Article 11 – Use of force by the police during a demonstration

The applicants are 17 Turkish nationals living in Turkey. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 11 (freedom of assembly and association), they complained of their arrest by the police in Taksim (Istanbul) in August 2003 during a demonstration organised by an association named Halkevleri ("the houses of the people") to protest in particular against the decision to send Turkish troops into Iraq. The Court noted that the Turkish Government had not established the exact circumstances of the applicants' arrest or the proportionality of the force used by the police. Accordingly, it considered that the violence committed by the security forces had been disproportionate, noting in particular that medical certificates concerning some of the applicants mentioned injuries which made them temporarily unfit for work. Consequently, it held that there had been violations of Article 3 in respect of nine of the applicants. It further held that there had been violations of Article 11, considering that the heavy-handed intervention by the police and the opening of a criminal investigation against the applicants had been disproportionate.

- **Right to liberty and security**

Gavril Georgiev v. Bulgaria (no. 31211/03) (Importance 3) – 2 April 2009 - Violation of Article 5 §§ 1 and 4

At the relevant time the applicant was performing his military service. Relying on Article 5 §§ 1 and 4 (right to liberty and security) Mr Georgiev complained of a disciplinary penalty of four days imposed by the commanding officer of his regiment for beating another soldier. The Court concluded unanimously that there had been a violation of Article 5 § 1, on the ground that the detention had not been ordered by bodies which had jurisdiction to do so, but by the regiment's commanding officer, and also that there had been a violation of Article 5 § 4 in that the applicant had had no remedies whereby he could contest the lawfulness of the detention order.

- **Right to a fair trial / Length of proceedings**

Simaldone v. Italy (no. 22644/03) (Importance 1) – 31 March 2009 – Violation of Article 6 § 1 - Length of proceedings before the administrative courts - Violation of Article 6 § 1 and Article 1 of Protocol 1 - Delay in payment of compensation awarded under the Pinto Act for the excessive length of those proceedings – No violation of Article 13 – The remedy provided under the Pinto Act cannot be considered for the moment as structurally ineffective

Relying in particular on Article 6 § 1, Article 1 of Protocol No. 1 and Article 13, Mr Simaldone complained about the length of the main proceedings and alleged that the compensation awarded under the Pinto Act for this delay had been insufficient; he also complained about the time taken by the domestic authorities to comply with the court of appeal's decision under the Pinto Act, and of the ineffectiveness of the remedy provided for in the Pinto Act.

The Court noted that the administrative proceedings brought by the applicant on 6 October 1992 had lasted more than ten years and three months for one level of jurisdiction, and considered that the amount awarded in compensation for this excessive length of proceedings (EUR 700 on an equitable basis in compensation for the non-pecuniary damage, and EUR 1,000 to his lawyer for costs and expenses) had been insufficient, especially given that it was paid belatedly at the close of Pinto proceedings

The Court reiterated that a compensatory remedy designed to redress the consequences of excessively lengthy proceedings should not generally exceed six months from the date on which the decision awarding compensation became enforceable (see for instance *Cocchiarella v. Italie)*. It noted that the sum awarded to Mr Simaldone had been paid 12 months after the court of appeal's decision under the Pinto Act had been filed with its registry, and did not accept the Government's arguments concerning the calculation of the time-limit. The Court concluded therefore to a violation of Article 6 § 1. The Court also considered that the delay in question had amounted to an unjustified interference by the authorities with Mr Simaldone's right to the peaceful enjoyment of his possessions. It noted that the applicant, after bringing proceedings for compensation, had been subjected to additional frustration resulting from the difficulty in obtaining payment of that compensation. The Court concluded that there had been a violation of Article 1 of Protocol No. 1.

Under Article 13, the Court considered that where a State had made a significant move by introducing a compensatory remedy, the Court had to leave a wider margin of appreciation to the State to allow it to organise the remedy in question (See *Kudła c. Pologne* [GC], n° 30210/96, § 154, CEDH 2000-XI).

The Court emphasised, however, that in eight Grand Chamber judgments delivered in March 2006 it had found that the sums awarded by courts of appeal under the Pinto Act had been paid belatedly or not at all, and that, since 29 March 2006, it had delivered more than 50 judgments against Italy finding a violation of Article 6 § 1 on account of delays in the payment of compensation under the Pinto Act. The Court also observed that since September 2007 a very high number of new applications had been lodged against Italy (about 500 had recently been communicated), solely concerning delays in the payment of Pinto compensation, which indicated the existence of a problem in the functioning of this remedy.

Nonetheless, the Court noted that between 2005 and 2007 about 16,000 decisions had been delivered by the national courts of appeal with jurisdiction under the Pinto Act, and considered that, for the moment, the remedy provided under the Pinto Act was not structurally ineffective. It concluded that there had been no violation of Article 13.

Natunen v. Finland (no. 21022/04) (Importance 2) - 31 March 2009 - Violation of Article 6 §§ 1 and 3 (b)- Recorded telephone conversations obtained through secret surveillance not disclosed at the applicant's trial for drug trafficking – Complaint under Article 6 § 2 (presumption of innocence) - Manifestly ill-founded

In 2002, the domestic courts, relying on evidence collected through telephone recordings included in the file, found Mr Natunen guilty as charged (for aggravated drug offences) and sentenced him to seven years in prison. On appeal he argued that the conversations which had not been included contained information proving his innocence; the prosecution maintained, however, that – in accordance with domestic law – those recordings had been destroyed as they had not been connected to any other offence which would have allowed the police to retain them without breaching the law.

Relying in particular on Article 6 §§ 1, and 3 (b), Mr Natunen complained about the unfairness of the proceedings against him. He alleged in particular that destroying a major part of the telephone recordings was not in conformity with the principle of equality of arms and prevented him from adequately preparing his defence.

The Court reiterated that it is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused. However, the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused. In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest.

Further, the Court pointed out that only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1. Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities. Failure to disclose to the defence material evidence, which contains such particulars which could enable the accused to exonerate himself or have his sentence reduced would constitute a refusal of facilities necessary for the preparation of the defence, and therefore a violation of the right guaranteed in Article 6 § 3 (b) of the Convention (see *C.G.P.*, cited above). The accused may, however, be expected to give specific reasons for his request.

Turning to the present case, the Court first observed that the destruction of some of the recordings obtained through telephone surveillance had made it impossible for Mr Natunen to have his claim of innocence verified. The Court also noted that the recordings had been destroyed by the police at the pre-trial stage without having consulted Mr Natunen or his lawyer and without having given the courts the possibility to assess their relevance. The Court found that that destruction had been a direct result of the application of the relevant domestic legislation in force at the time, which had been defective as it had allowed information supporting the innocence of the suspect to be destroyed before the case had been decided. While the Court noted that the legislation had since been amended, and the defect eliminated, it held that there had been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) as this legislative amendment had come too late for Mr Natunen.

The applicant also complained under Article 6 § 2 of the Convention that the presumption of innocence had not been respected as he had been made to bear the burden of proof about not being involved in the purchase of illegal drugs. The Court reiterated that, as a general rule, it is for the national courts to assess the evidence before them, while it is for the Court to ascertain that the proceedings considered as a whole were fair, which in the case of criminal proceedings includes the observance of the presumption of innocence. The Court observed that, in this case, and subject to its above findings on the applicant's complaint under Article 6 §§ 1 and 3 (b) of the Convention, the District Court convicted the applicant after adversarial proceedings, in which he had the possibility to challenge the evidence produced against him. The applicant's conviction was upheld by the Court of Appeal after a full review of the case in an oral hearing. Both courts gave reasons for their decisions. Having regard to the facts of the case, and given its subsidiary role regarding the assessment of evidence, the Court could not conclude that the prosecutor had failed to establish a convincing *prima facie* case against the applicant. There was no indication that the domestic courts had a preconceived

idea of the applicant's guilt. In these circumstances it cannot be said that the domestic courts had shifted the burden of proof to the defendant. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

Sfântul Vasile Polonă Greek Catholic Parish v. Romania (no. 65965/01) (Importance 2) - Violation of Article 6 § 1 - Length of the proceedings brought by the applicant church - Violation of Article 13 – Lack of effective remedy

On 19 February 1992 the applicant brought proceedings seeking the eviction of the Orthodox parish from a church, a parish building and the land measuring 2,160 square metres on which they stood, claiming that it was still their rightful owner despite losing them in 1948, when the Greek Catholic church in Romania was dissolved.

Relying in particular on Article 6 § 1 and Article 13, the applicant complained of the excessive length of the two sets of proceedings to recover possession of its property and alleged the infringement of its right to an effective remedy in Romanian law to complain of such length.

The Court concluded that the length of both the eviction proceedings (12 years at four levels of jurisdiction) and recovery proceedings (more than six years and ten months, at three levels of jurisdiction) had been excessive and failed to satisfy the "reasonable time" requirement, in breach of Article 6 § 1.

Concerning Article 13, the Romanian Government referred to two remedies available to the applicant parish, namely a disciplinary complaint to the High Council of the Judiciary and an action in the courts. The Court observed that the first of the remedies did not seem to be expressly designed for the solution of a length-of-proceedings problem. It was not certain that such an application by the applicant parish would have had a direct effect on the length of the proceedings and the High Council of the Judiciary could not grant it any compensation for the delays that had already occurred. Disciplinary proceedings against judges could only affect the personal situations of the judges in question, so that such a complaint could not be regarded as an effective remedy (see the decision of the Commission *Karrer and others v. Austria*, n° 7464/76, 5 December 1978, and the judgments of the Court *Horvat v. Croatia*, n° 51585/99, § 47, CEDH 2001-VIII, and *Kormacheva c. Russie*, n° 53084/99, § 62, 29 January 2004). As regards the second remedy mentioned, the Court noted that there was no relevant case-law, which showed that this theoretical remedy was uncertain in practice. It emphasised the vagueness as to the procedure to be followed and the outcome. The Court concluded that the Government had not provided sufficient proof that the applicant parish had an effective remedy for the purposes of Article 13 of the Convention whereby it could have raised a complaint relating to the length of the proceedings.

Gikas v. Greece (no. 26914/07) (Importance 3) – 2 April 2009 - Violation of Article 6 § 1 (fairness) - Violation of Article 13 - Administrative authorities' refusal to comply with a decision by the administrative court concerning the applicants' land

Relying in particular on Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy), the applicants complained of the administrative authorities' refusal to comply with a decision by the administrative court concerning their land. The Court concluded unanimously that there had been a violation of Article 6 § 1 and of Article 13 on account of the duration of the restriction on use of the applicants' land, the authorities' tardiness in complying with an unambiguous judgment and the absence of a remedy whereby the applicants could oblige the administrative authorities to comply. The applicants had not submitted any claim for just satisfaction within the deadline fixed by the Court.

- **Right to respect for private and family life**

A v. Norway (no. 28070/06) (Importance 2) - 9 April 2009 - Violation of Article 8 on account of two defamatory newspaper publications, concerning the applicant's possible involvement in the murder of two young girls, having damaged his reputation and honour

The case concerned the applicant's complaint about the unfavourable outcome of a defamation suit he brought against the *Fœdrelandsvennen* newspaper following their publication of two articles concerning the preliminary investigation into the murder (and in the case of the second article also rape) of two young girls (the so-called Baneheia case) in 2000 and which implicated him. The applicant, 42 years' old at the time, had served prison sentences for murder and assault with a knife. He had been released from prison about a year before two girls, of eight and ten respectively, were

raped and stabbed to death in the area which he visited regularly after his release. He was questioned about the murders as a possible witness but was released after 10 hours; two other men were subsequently convicted of the crimes.

The police's interest in A attracted considerable media attention. Several national newspapers reported on his interrogation and criminal past, but did not disclose his identity. However, the *Fœdrelandsvennen,* the main district newspaper on the southern coast of Norway, published articles on the Baneheia case on two consecutive days in May 2000. These articles disclosed details of the applicant's past criminal convictions and stated that he had allegedly been seen by witnesses in the very same area and at the same time as the girls were killed. The articles also contained other sufficient elements to identify him, namely an interview with him insisting on his innocence, details of his place of work, residence and neighbourhood, and a large picture of him albeit from a distance and somewhat blurred. Also in May 2000, a television station, *TV2*, reported in a news broadcast that members of the press had followed a 42-year old murderer in the city where the two girls were raped and stabbed. It also showed an interview with the applicant on his way to the area of the murders.

A brought defamation proceedings against the *Fœdrelandsvennen* newspaper and *TV2*. The domestic courts found in his favour and awarded him compensation as regards the *TV2* report. In respect of the newspaper articles, however, the domestic courts agreed that the publications had been defamatory in as much as they were capable of giving the ordinary reader the impression that the applicant was regarded as the most probable perpetrator of the murders, yet concluded that, on balance, the newspaper had been right to publish the articles, as it had acted in the interest of the general public, which had the right to be informed of the developments in the investigation and pursuit of the perpetrators.

The Court first noted the domestic courts' ruling that the published articles had been defamatory in nature as they had given the impression that the applicant had been a prime suspect in the murder case of the two girls. Although the applicant had not been mentioned by name, the photographs and details of his places of work and residence had made it possible for persons who already knew him to identify him as a possible suspect of aggravated crimes of a particularly reprehensible nature.

The Court further found that the news report had wrongly conveyed the idea that there had been facts pointing to the applicant as a suspect. While it had been undisputed that the press had the right to deliver information to the public, and the public had the right to receive such information, these considerations did not justify the defamatory allegations against A and the consequent harm done to him. Indeed, the applicant had been persecuted by journalists in order to obtain his pictures and interviews, and in particular during a period in his life when he had been undergoing rehabilitation and reintegration into society. As a result of the journalistic reports, he had found himself unable to continue his work, had to leave his home and had been driven into social exclusion. The Court concluded that the publications in question had gravely damaged A's reputation and honour and had been especially harmful to his moral and psychological integrity and to his private life, in violation of Article 8.

The Court dismissed A's allegations under Article 6§ 2 as it found that Article not applicable to the matters complained of, given in particular that no public authority had charged A with a criminal offence.

Turnalı v. Turkey (no. 4914/03) (Importance 2) – 7 April 2009 – Violation of Article 8 – Rejection of a paternity action

The applicant asserts that she was born from an extra-marital relationship between her mother and Hasan Yavaş. Mr Yavaş died in 2000 without legally recognising Mrs Turnalı as his child. Relying in particular on Article 8 (right to respect for private and family life) and Article 6 § 1 (right to a fair trial), the applicant complained of the Turkish courts' rejection of her action to establish that Mr Yavaş was her father and to be recognised as his heir. The Court noted in particular that Article 296 of the Civil Code required paternity actions to be brought "within one year of the child's birth". It considered that, in the particular circumstances of the case, the fact that Mrs Turnalı had been unable to plead the existence of circumstances capable of justifying her delay in bringing the paternity action was incompatible with the requirements of Article 8. It accordingly held by five votes to two that there had been a violation of Article 8 and that it was not necessary to examine the complaint under Article 6 § 1. It further held, by five votes to two, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

- **Right to respect for private life and prohibition of discrimination**

Žičkus v. Lithuania (no. 26652/02)- 7 April 2009- Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (protection of private and family life)- Collaboration with the special security services (KGB) during the communist era- Inability to seek employment in the private sector

In September 2000, a special governmental commission, responsible under a domestic law introduced in January 2000 for assessing the activities of those who had collaborated with the KGB, found that Mr Žičkus had helped the KGB during the communist era. That information was published in the "Official Gazette" in July 2001. As a result, the same month, he was dismissed from his post in human resources at the Ministry of the Interior, the reason given being the published information in respect of his past activities. He brought proceedings before the administrative courts seeking to have the conclusions of the governmental commission as regards his KGB involvement annulled, but his claim was dismissed. Following those domestic court decisions, Mr Žičkus also alleges that he was disbarred from practising as a barrister.

The Court has previously held that the requirement of loyalty to the State is an inherent condition of the employment of civil servants by State authorities responsible for protecting and securing the general interest (see *Sidabras and Džiautas*, 27 July 2004, §§ 57-58 ; see also the communicated cases in RSIF n°13). Consequently, the Court confined itself to examining whether the restriction on employment in the private sector, as applied to the present applicant, was compatible with Article 8 of the Convention. In this connection the Court referred to its conclusions in the cases of *Sidabras and Džiautas* and *Rainys and Gasparavičius* dated 7 April 2005 where it found a violation of Article 14 of the Convention, in conjunction with Article 8, to the extent that the law precluded those applicants from employment in various branches of the private sector on the basis of their "former KGB officer" status under the relevant Act. The present applicant's complaints regarding his disbarment are similar. The Court saw no valid ground to depart from its reasoning in *Sidabras and Džiautas*, to the effect that the applicant's disbarment and the restrictions on his possibilities of being employed in certain branches of the private sector, pursuant to the Law, constituted a statutory distinction of status on the basis of his past as a "former secret collaborator", directly affecting his right to respect for private life. Consequently, the applicant's complaints clearly fall to be examined under Article 14 of the Convention, taken in conjunction with Article 8.

According to the Court's case-law, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Court accepted that the restriction on the applicant's employment prospects under the Law, and hence the difference in treatment applied to him, pursued the legitimate aims of the protection of national security, public safety, the economic well-being of the country and the rights and freedoms of others.

As to the justification for this distinction, the Government argued that the application of the Law was well-balanced in view of the legitimate interest in protecting the national security of the State, the impugned employment restrictions being imposed on persons such as the applicant by reason of his lack of loyalty to the State. However, the Court emphasised that State-imposed restrictions on a person's opportunities to find employment in the private sector by reason of a lack of loyalty to the State cannot be justified from the Convention perspective in the same manner as restrictions on access to their employment in the public service.

The Court was not persuaded by the Government's argument that the Law constituted a proportionate measure since the applicant would have faced no restrictions on his private sector employment prospects if he had confessed of his former collaboration in due time. In this context, the Court noted the lack of differentiation in the Law itself between different levels of former involvement with the KGB. Furthermore, there are no objective materials in the case file verified by the domestic courts to indicate that the applicant poses a current danger to national security if he were to be employed in certain sectors of private business. The Court also observed that the Law came into force in 2000, i.e. almost a decade after Lithuania had declared its independence on 11 March 1990: "*Thus the restrictions on the applicant's professional activities were imposed on him at least a decade after he had ceased collaborating with the KGB. The fact of the Law's belated timing, although not in itself decisive, may nonetheless be considered relevant to the overall assessment of the proportionality of the measures taken. Finally, the Court takes into account the fact that the Lithuanian authorities had themselves recognised the applicant's loyalty to the Republic by bestowing State awards upon him*" (§ 33).

In view of the above, the Court concluded by four votes to three that the ban on the applicant seeking employment in various branches of the private sector, in application of Articles 8 § 4 and 9 of the Law, constituted a disproportionate measure, despite the legitimacy of the aims pursued by that ban. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

Weller v. Hungary (no. 44399/05) (Importance 2) – 31 March 2009 - Violation of Article 14 in connection with Article 8 – Discriminatory deprivation of social benefits on the basis that the children's mother had not had a Hungarian nationality.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life), the applicants, Lajos Weller, and his twin sons, complained that they had been refused maternity benefits in 2005 because the mother of the children had not been eligible on account of her nationality. The Court held unanimously that there had been a violation, in respect of all applicants, of Article 14 taken together with Article 8 of the Convention, because it found that there was no justification for depriving the natural father, a Hungarian national, and the whole family from maternity benefits aimed at supporting its newly born children, on the basis that the children's mother had not had a Hungarian nationality.

- **Right to respect for private life and expulsion**

Cherif and Others v. Italy (no. 1860/07) (Importance 2) - 7 April 2009 - Non violation of Article 8 – Expulsion - Potential threat to national security

The applicants were two Tunisian nationals, Foued Ben Fitouri Cherif and his brother Kais Cherif, and an Italian national, Sonia Brusadelli (the wife of Foued Ben Fitouri Cherif). Foued Ben Fitouri Cherif is currently living in Tunisia; Sonia Brusadelli was born in lives in Dazio (Italy).

The applicants complained in particular of the expulsion to Tunisia in 2007 of Foued Ben Fitouri Cherif, whom the Italian authorities suspected of terrorist activities. The Court considered that Mr Cherif no longer intended to pursue his application, noting inter alia that since his expulsion he had not given the lawyer representing the other applicants authority to act on his behalf. Under Article 37 § 1 in fine ("the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires"), the Grand Chamber considered that the respect for human rights did not require the examination of the case to be continued, given that that similar issues in other cases before it had been resolved (e.g. *Saadi v. Italy* [GC] of 28 February 2009; *Ben Khemais v. Italy* of 24 February 2009). Consequently, it decided unanimously to strike out of its list that part of the application which had been lodged by Foued Ben Fitouri Cherif.

The Court declared admissible the complaint of the other applicants under Article 8, and the remainder of the application inadmissible (Articles 3, 6, 13 and 34 ECHR and Article 1 of Protocol No. 7 on the account of incompetence ratione personae). With reference to the criteria set out in *Boultif v. Switzerland of 2 August 2001* and *Üner v. the Netherlands* [GC] of 18 October 2006, the Court held by four votes to three that there had been no violation of Article 8, in particular on account of the potential danger to national security posed by Foued Ben Fitouri Cherif. The dissenting judges (Judges Tulkens, Jočiene and Popović) did not consider that the criteria set out in the abovementioned judgments were fulfilled.

- **Freedom of expression and protection of journalistic sources**

Sanoma Uitgevers B.V. v. the Netherlands (no. 38224/03) (Importance 3) - 31 March 2009 - No violation of Article 10 - Compulsory handover of journalistic material - Chilling effect - Identification of crime - Proportionality

The applicant, Sanoma Uitgevers B.V., is a limited liability company, specialising in publishing and marketing magazines, incorporated under Dutch law and based in Hoofddorp (the Netherlands). Relying on Article 10 (freedom of expression), the company complained of having been compelled to hand over a CD-ROM that could reveal the identity of journalistic sources who, on the promise of anonymity, had provided information about an illegal street car race which had taken place in January 2002 and of which the publishing company had taken pictures.

The Court reiterated the general principles applied (as set out in *Goodwin v. the UK* of 27 March 1996; most recently *Voskuil v. the Netherlands*, 22 November 2007): "*protection of journalistic sources is one of the basic conditions for press freedom, as is recognised and reflected in various*

international instruments including the Committee of Ministers Recommendation (quoted in § 28). Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest" (§ 54d).

The Court noted at the outset that unlike in other comparable cases – *Ernst and Others*, *Roemen and Schmit* and *Voskuil*- there was no search of the applicant company's premises in the present case: "*It does not follow, however, that the interference with the applicant company's rights can be dismissed as insignificant as the Government argue. Had the applicant company not bowed to the pressure exerted by the police and the prosecuting authorities, not only the offices of Autoweek magazine's editors but those of other magazines published by the applicant company would have been closed down for a significant time; this might well have resulted in the magazines concerned being published correspondingly late, by which time news of current events (see paragraph 12 above) would have been stale. News is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see, for example, Observer and Guardian v. the United Kingdom, 26 November 1991, § 60, Series A no. 216; Sunday Times v. the United Kingdom (no. 2), judgment of 26 November 1991, Series A no. 217, § 51; and Association Ekin v. France, no. 39288/98, § 56, ECHR 2001-VIII). This danger, be it recalled, is not limited to periodicals that deal with a topical issue (cf. Alınak v. Turkey, no. 40287/98, § 37, 29 March 2005). The threat was plainly a credible one; the Court must take it as seriously as it would have the authorities' actions had the threat been carried out.*

That, however, is not sufficient for the Court to find that the interference complained of was in itself disproportionate. The present case is dissimilar to cases such as Ernst and Others, Roemen and Schmit and Voskuil in important respects" (§ 55-56).

The Court noted that in the present case the action complained of was not intended to identify the applicant company's sources for prosecution. Rather, the seizure of the CD-ROM was intended to identify a vehicle used in crimes quite unrelated to the illegal street race. The Court did not dispute that a compulsory handover of journalistic material may have a chilling effect on the exercise of journalistic freedom of expression. However, it does not follow *per se* that the authorities are in all such cases prevented from demanding such handover; whether this is the case will depend on the facts of the case. In particular, the domestic authorities are not prevented from balancing the conflicting interests served by prosecuting the crimes concerned against those served by the protection of journalistic privilege; relevant considerations will include the nature and seriousness of the crimes in question, the precise nature and content of the information demanded, the existence of alternative possibilities to obtain the necessary information, and any restraints on the authorities' obtention and use of the materials concerned.

The Court was satisfied that the information contained on the CD-ROM was relevant to these crimes and, in particular, capable of identifying their perpetrators. Given that the participation of the suspected vehicle in the street race only became known to the police after the race had taken place, the Court was satisfied that no reasonable alternative possibility to identify the vehicle existed at any relevant time: "*It has not been stated, nor indeed is it apparent, that the authorities made use of the information obtained for any other purpose but to identify and prosecute the perpetrators of the ram raids. It may therefore be concluded that the applicant company's sources were never put to any inconvenience over the street race*" (§ 61).

Finally, the Court was bound to agree with the Regional Court that the actions of the police and the public prosecutors were characterised by a regrettable lack of moderation Even so, in the very particular circumstances of the case, the Court found that the reasons advanced for the interference complained of were "relevant" and "sufficient" and "proportionate to the legitimate aims pursued". It held by four votes to three that there has accordingly been no violation of Article 10 of the Convention (see the dissenting opinion of Judge Power joined by Judges Gyulumyan and Ziemele).

See also the Viewpoint of the Commissioner for Human Rights on : "Investigative journalists and whistle blowers must be protected", 17 September 2007.

- **Freedom of assembly**

Hyde Park and Others v. Moldova *(No. 1)* (no. 33482/06) (Importance 3) - Hyde Park and Others v. Moldova *(No. 2)* (no. 45094/06) (Importance 3) - Hyde Park and Others v. Moldova *(No. 3)* (no. 45095/06) (Importance 3) - 31 March 2009- Violation of Article 11- Demonstration-Refusal to authorize a demonstration

The applicants are: Hyde Park, a non-governmental organisation registered with the Moldovan Ministry of Justice at the time of the events, which has since discontinued its registration with the State and was replaced by Hyde Park unincorporated association; and, five Moldovan nationals, Gheorghe Lupuşoru, Anatol Hristea-Stan, Mariana Gălescu, Alina Didilică and Oleg Brega. Relying in particular on Article 11, the applicants complained that the authorities had refused to allow certain of their peaceful demonstrations, namely: in January 2005, before the Romanian Embassy in Chisinau, to protest against the policy of Romania concerning Moldovan students in Romania; in October 2005, in a park in Chişinău, in support of freedom of speech; and, in February 2006, in front of the Parliament, to protest against the non-transparent manner of organising the Eurovision song contest in Moldova. The Court held unanimously that in all three cases there had been a violation of Article 11 on account of the competent domestic authorities – the municipality – having rejected Hyde Park's applications with reasons which had not been provided for in the relevant domestic legislation.

Hyde Park and Others v. Moldova (No. 4) (no. 18491/07) (Importance 2) – 7 April 2009

The applicants are: Hyde Park, a non-governmental organisation registered with the Moldovan Ministry of Justice at the time of the events, since replaced by Hyde Park unincorporated association; and, eight Moldovan nationals, Oleg Brega, Anatolie Juraveli, Roman Cotelea, Mariana Galescu, Radu Vasilascu, Vitalie Dragan, Angela Lungu and Anatol Hristea-Stan. In August 2006 the applicants took part in a demonstration; the protest was broken up by the police and the applicants were detained and taken to Buiucani Police Station where they were charged with unlawful assembly and resisting arrest. Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair hearing), 8 (right to respect for private and family life), 11 (freedom of assembly and association) and 13 (right to an effective remedy), the applicants complained in particular about the authorities' refusal to authorise their demonstration to protest about Chişinău town hall's refusal to erect a monument donated by Romania, the unlawfulness of their arrest, the conditions of their detention at the police station and the unfairness of the ensuing proceedings they brought against the police officers who had arrested them. The Court held unanimously that there had been a violation of Article 11 and Article 5 § 1 and that there was no need to examine separately the complaints under Article 6 and Article 5 §§ 2 and 3.

- **Disappearances cases in Chechnya**

Dokuyev v. Russia (no.6704/03) (Importance 3) – 2 April 2009 - Violations of Article 2 (right to life in respect of the applicants' relative and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment and lack of effective investigation) - Violation of Article 3 (inhuman treatment on account of the mental suffering of the applicants' relative) - Violation of Article 5 (Unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

Dzhabayeva v. Russia (no. 13310/04) (Importance 3) – 2 April 2009 - Violations of Article 2 (in respect of the applicants' relative, Magomed Dzhabayev, and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment in respect of Ms Dzhabayeva on account of her mental suffering) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

Saydaliyeva and Others v. Russia (no. 41498/04) (Importance 3) – 2 April 2009 - Violations of Article 2 (in respect of the applicants' relative, Vakha Saydaliyev, and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment in respect of the mother and partner of Vakha Saydaliyev) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

Dokayev and Others v. Russia (no. 16629/05) (Importance 3) – 9 April 2009 - Violations of Article 2 (right to life in respect of the applicants' relatives, Isa Dokayev, Ruslan Askhabov and Isa Dubayev, and lack of effective investigation into their disappearance) - Violation of Article 3 (inhuman treatment as a result of mental suffering of all applicants except Isa Dokayev's daughter, born after his

abduction) - Violation of Article 5 (unacknowledged detention in respect) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

Dzhabrailova v. Russia (no. 1586/05) (Importance 3) – 9 April 2009 - Violations of Article 2 (right to life in respect of the applicant's daughter, Khanpasha Dzhabrailov, and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment in respect of the applicant on account of her mental suffering) - Violation of Article 5 (unacknowledged detention)

Gaziyeva and Others v. Russia (no. 15439/05) (Importance 3) – 9 April 2009 - Violations of Article 2 (right to life in respect of the applicants' relative, Abdul-Malik Shakhmurzayev, and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment in respect of Abdul-Malik's wife and children on account of their mental suffering) - Violation of Article 5 (unacknowledged detention in respect of Abdul-Malik Shakhmurzayev) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

Malsagova and Others v. Russia (no. 27244/03) (Importance 3) – 9 April 2009 - Violations of Article 2 (in respect of the applicants' relative, Saydi Malsagov, and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment in respect of Saydi's mother and two of his six siblings on account of their mental suffering, and no violation in respect of the rest of his siblings) - Violation of Article 5 (unacknowledged detention in respect of Saydi Malsagov) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2 - Violation of Article 38§1 (a) (refusal to submit documents requested by the Court)

In all the three abovementioned cases the Court found it established that the applicants' relatives had been apprehended by State servicemen and that they had to be presumed dead following their unacknowledged detention and found subsequently the abovementioned violations.

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 31 March 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 2 April 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 7 April 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 9 April 2009 : here.

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Bulgaria	02 Apr. 2009	Belev and (41) others (nos. 16354/02, et al) Imp. 2.	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Delay in enforcing recovery of the applicants' debts due to a series of actions and omissions by the public authorities in the enforcement proceedings	Link
Greece	02 Apr. 2009	Kallergis (no. 37349/07) Imp. 3.	Violation of Art. 6 § 1 (fairness)	Excessive formalism displayed by the Court of Cassation, which had resulted in the applicant's appeal on points of law being declared inadmissible	Link
Greece	02 Apr. 2009	Kola (no. 1483/07) Imp. 3.	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (approximately six years and two months, of which almost four years for the procedure on appeal)	Link
Greece	02 Apr. 2009	Kydonis (no 24444/07) Imp. 2.	Violation of Art. 10 (freedom of expression)	Violation on account of the absence of proportionality between the restriction imposed on the	Link

* The "Key Words" in the various tables of the RSIF are elaborated under the sole responsibility of the NHRS Unit of the DG-HL and the Office of the Commissioner for Human Rights.

				applicant's freedom of expression (criminal conviction for defamation) and the legitimate aim pursed by the authorities, namely the protection of a politician's reputation	
Hungary	07 Apr. 2009	Fonyódi (application no. 30799/04) Imp. 3.	Revision	In its judgment of 7 October 2008 the Court found a violation of Art. 6 § 1 concerning the applicant's complaint about excessive length of civil proceedings. The applicant requested the revision of that judgment arguing that an invoice concerning legal fees should have been taken into account in her claim for costs. The Court decided to revise the judgment accordingly.	Link
Poland	31 Mar. 2009	A.E. (no. 14480/04) Imp. 3.	Violation of Art. 6 § 1 (length) Violation of Art. 2 § 2 of Prot. No. 4	Excessive length, over nine years, of the criminal proceedings The authorities have not reassessed sufficiently frequently the ban on the applicant to leave the country (which lasted eight years)	Link
Poland	31 Mar. 2009	Plonka (no. 20310/02) Imp. 3.	Violation of Art. 6 § 1 in connection with Art. 6 § 3 (c)	The applicant had not been assisted by a lawyer at the beginning of the criminal proceedings and there had been no evidence of her having waived her right to legal representation.	Link
Romania	31 Mar. 2009	Luminița-Antoaneta Marinescu (no. 32174/02) Imp. 3.	Violation of Art. 6 § 1 (fairness) Two violations of Art. 1 of Prot. No. 1	Failure to execute a decision in the applicant's favour ordering that the applicant be given possession of a plot of land which had belonged to her grandfather Partial cancellation of the title deeds concerning another plot of land	Link
Romania	31 Mar. 2009	Mihuță (no. 13275/03) Imp. 3.	Violation of Art. 5 §§ 3 and 4	Insufficient justification of the need to prolong the (ten months and three weeks) Lack of examination of alternative measures to detention Deprivation of an effective remedy before a court	Link
Romania	31 Mar. 2009	Rache and Ozon (no. 21468/03) Imp. 3.	Violation of Article 6 § 1 (fairness)	Lack of sufficient reasons to justify the conviction of the applicants for defamation and insult following the publication of an article concerning a majority shareholder of a company which is one of the main producers of carbonated drinks and mineral water in Romania	Link
Romania	07 Apr. 2009	Stoişor and Others (no. 16900/03) Imp. 3.	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Infringement of the principle of legal certainty due to the setting aside of a final judgment in the applicants' favour concerning a building that they owned	Link
Romania	07 Apr. 2009	Tiron (no. 17689/03) Imp. 3.	Two violations of Art. 5 § 3	Failure to bring the applicant promptly before an officer authorised by law to exercise judicial power Failure to give "relevant and sufficient" reasons to justify the need to keep the applicant in pre-trial detention	Link
Russia	09 Apr. 2009	Grigoryevskikh (no. 22/03) Imp. 3.	Violation of Art. 3 (treatment) Violation of Art. 6 §§ 1 and 3 (c)	Poor conditions of detention pending trial in detention facility IZ-36/2 in Borisoglebsk (Russia) Unfairness of criminal proceedings (lack of legal assistance and use of a video link during the appeal	Link

				hearing)	
Russia	09 Apr. 2009	Kolesnichenko (no. 19856/04) Imp. 3.	Violation of Art. 8	The Court found, that the search of the home and office of the applicant (an advocate member of the Perm Regional Bar) carried out in the context of criminal proceedings against one of the applicant's clients had not been "necessary in a democratic society"	Link
Russia	09 Apr. 2009	Kondratyev (no. 2450/04) Imp. 3.	Violation of Article 5 § 3	Excessive length of the applicant's pre-trial detention (3 years and 26 days) for firearms trafficking and aggravated murder.	Link
Sweden	07 Apr. 2009	Mendel (no. 28426/06) Imp. 2.	Violation of Art. 6 § 1 (fairness)	The applicant had not been able to make an appeal against a decision which had withdrawn permission for the applicant to participate in a programme organized by the State for the long-term unemployed	Link
Turkey	31 Mar. 2009	Barış (no. 26170/03) Imp. 3.	Violation of Art. 5 § 3 Violation of Art. 6 § 1 (length)	Excessive length of the applicant's detention (over 10 years and 5 months) Excessive length of criminal proceedings (over 14 years and 9 months)	Link
Turkey	31 Mar. 2009	Can and Gümüş (nos. 16777/06 and 2090/07) Imp. 3.	Violation of Art. 5 §§ 3 and 4 Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of the applicants' detention pending trial (11 and over 6 and a half years respectively) Excessive length of criminal proceedings (14 and over 9 and a half years respectively) Lack of effective remedy in this respect	Link
Turkey	31 Mar. 2009	Mehmet Sıddık Eren and Others (no. 7860/02) Imp. 3.	Violation of Art. 5 §§ 3, 4 and 5	The applicants' deprivation of liberty without judicial review had exceeded four days and six hours Lack of effective remedy with that respect	Link
Turkey	07 Apr. 2009	Nafiye Çetin and Others (no. 19180/03) Imp. 3.	Violation of Art. 2 (investigation) Violation of Art. 3 (investigation)	Failure to carry out an effective investigation into the death of the applicants' 20-year-old son and brother, following his detention in police custody	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**
Romania	31 Mar. 2009	Ilic (no. 26061/03) link	Violation of Art. 6 § 1 (fairness)	Violation on account of the annulment by the domestic courts of an appeal lodged by the applicant because she had not paid stamp duty.
Romania	31 Mar. 2009	Ţeţu (no. 10108/02) link	Just satisfaction	Following its judgment of 7 February 2008 in which the Court concluded that there had been a violation of Art. 1 of Prot. No. 1, the

				Court concluded that the Romanian State was to return the applicant's flat, which had been sold to tenants, and that, failing such restitution, it was to pay him EUR 55,000.
Russia	02 Apr. 2009	Kravchenko (no. 34615/02) link Kuzmina (no. 15242/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Quashing of final judgments in favour of the applicants by way of supervisory review.
Russia	09 Apr. 2009	Eduard Chistyakov (no. 15336/02) link	Violation of Article 6 § 1 (fairness)	Quashing of final judgments in favour of the applicant by way of supervisory review.
Turkey	31 Mar. 2009	Mehmet Siret Atalay (no. 3816/03) link Tınarlıoğlu (no. 3820/03) link	Violation of Art. 1 of Prot. No. 1	Delays in payment of additional compensation for expropriation of the applicants' land.

4. Length of proceedings cases

The judgments listed below are based on a classification which figures in the Registry's press release.

The role of the NHRSs may be of particular relevance in that respect as well, as these judgments often reveal systemic defects, which the NHRSs may be able to fix with the competent national authorities.

With respect to the length of non criminal proceedings cases, the reasonableness of the length of proceedings is assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (See for instance Cocchiarella v. Italy [GC], no. 64886/01, § 68, published in ECHR 2006, and Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII).

State	**Date**	**Case Title**	**Link to the judgment**
Finland	31 Mar. 2009	Toive Lehtinen (No. 2) (no. 45618/04)	Link
Germany	09 Apr. 2009	Hub (no. 1182/05)	Link
Greece	02 Apr. 2009	Bekiari and Others (no. 28264/07)	Link
Greece	02 Apr. 2009	Gogias (no. 26421/07)	Link
Greece	02 Apr. 2009	Kondyli and Others (no. 35812/07)	Link
Greece	02 Apr. 2009	Konstantinidou and Others (no. 29529/07)	Link
Greece	02 Apr. 2009	Mantzos and Others (no. 16630/07)	Link
Greece	02 Apr. 2009	Vassiliadis (no. 32086/06)	Link
Greece	02 Apr. 2009	Vegleris and Bratsas (no. 17114/07)	Link
Romania	31 Mar. 2009	Ciovică (no. 3076/02)	Link
Slovakia	07 Apr. 2009	Ladoméry (no. 39783/05)	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 9 to 22 March 2009**.

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

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

Ould Dah v. France (n° 13113/03) (Importance 1) – 30 March 2009 – Alleged violation of Article 7 – Inadmissible as manifestly ill-founded - Conviction of a Mauritanian army officer by a French court for acts of torture committed in Mauritania – Retroactivity of the new Criminal Code – Incorporation of the UN Convention against Torture of 1984 into French Law – Universal jurisdiction – Incompatibility of the Mauritanian amnesty law with the duty of States to investigate acts of torture or barbarity

Ely Ould Dah is a Mauritanian national who was born in 1962. He arrived in France in August 1998 to attend a training course at Montpellier Army College as an officer of the Mauritanian army. On 8 June 1999 the International Federation for Human Rights (*Fédération internationale des ligues des droits de l'homme*) and the French Human Rights League (*Ligue des droits de l'homme*) lodged a criminal complaint against him, with an application to join the proceedings as civil parties. They accused him of having tortured prisoners during clashes between different ethnic groups in Mauritania in 1990 and 1991. The proceedings were based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 and ratified by France on 26 June 1987.

Mr Ould Dah was arrested by the French authorities on 1 July 1999 and charged with torture or acts of barbarity. He was remanded in custody until 28 September 1999. Subsequently he was released on bail, and took advantage of this to abscond. In April 2000 a warrant was issued for his arrest. After the Court of Cassation had dismissed, at last instance, an appeal by the applicant against the indictment order issued by the investigating judge, the case was finally tried by the Gard Assize Court, which, on 25 July 2005, after hearing submissions by the applicants' lawyers in his absence, sentenced him to 10 years' imprisonment. The sentence was pronounced despite the fact that Mr Ould Dah had had the benefit, in his country, of an amnesty law passed in 1993. The Assize Court based its decision on, *inter alia*, Articles 303 and 309 of the old Criminal Code and 222-1 of the new Criminal Code and on the United Nations Convention against Torture of 1984.

The application was lodged with the European Court of Human Rights on 22 April 2003. Relying on Article 7 of the European Convention on Human Rights (no penalty without law), Mr Ould Dah complained that he had been prosecuted and convicted in France for an offence committed in Mauritania, whereas he could not have foreseen that French law would override Mauritanian law. He also complained that torture had not been classified under French law as an autonomous offence at the relevant time and that the provisions of the new Criminal Code had been applied to him retrospectively.

The Court reiterated, among other things, that Article 7 of the Convention embodied the principle that only the law could define a crime and prescribe a penalty. In accordance with that principle, the criminal law could not be applied retrospectively where it was to an accused's disadvantage. Furthermore, offences and the relevant penalties must be clearly defined by law. This requirement was satisfied where the individual could clearly identify what acts and omissions would make him criminally liable. In other words, the criminal law had to be accessible and foreseeable.

Firstly, the applicant did not contest the fact that the French courts had decided to try him, but the fact that they had applied French criminal law in convicting him. He submitted that only Mauritanian law should apply and, more particularly, the Amnesty Law of 1993 from which he claimed he should benefit. The Court reiterated that the prohibition of torture occupied a prominent place in international law and that the prohibition was binding. It also observed that at the material time the United Nations Convention against Torture of 1984 had already come into force and had been incorporated into French law. The "absolute necessity" of prohibiting and penalising torture thus justified, in the exercise of universal jurisdiction (i.e. the right of States to prosecute the perpetrators of acts of torture committed outside their own jurisdiction), not only that the French courts declared that they had

jurisdiction to try the case, but also that they would apply French law. Otherwise, application of the Mauritanian amnesty law, which served merely to grant impunity to the perpetrators of torture, would deprive the universal jurisdiction provided for by the United Nations Convention of 1984 of its substance. Like the United Nations Committee of Human Rights and the International Criminal Tribunal for former Yugoslavia, the Court considered that an amnesty law was generally incompatible with the duty on States to investigate acts of torture or barbarity.

Secondly, Mr Ould Dah argued that French criminal law itself did not fulfill the dual condition of accessibility and foreseeability since at the relevant time acts of torture and barbarity constituted aggravating circumstances in relation to other crimes or offences, and were not an offence in themselves. The Court observed, however, that acts of torture and barbarity had been expressly provided for in the Criminal Code prior to the 1994 reform. The submission that at the time they had constituted not separate offences but aggravating circumstances was not decisive: the applicant could in any event be accused and convicted of such acts, particularly as the French courts had not imposed a heavier penalty than the maximum one prescribed by law at the time.

With regard to the complaint based on the alleged retrospective application of the provisions of Article 222-1 of the new Criminal Code, which had come into force on 1 March 1994, the Court found that they had not introduced a new offence, but simply different legislative provision for conduct that had already been classified as an offence under the old Criminal Code. Having regard to all the foregoing factors, the applicant could thus have reasonably foreseen the risk of being prosecuted and convicted for the acts of torture committed by him between 1990 and 1991. The Court concluded that the application was manifestly ill-founded.

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Austria	19 Mar. 2009	Vaida (no 24998/04) link	Alleged violation of Art. 6 § 1 (deprivation of access to the domestic courts in which the applicant was not duly summoned and informed of the proceedings), and Art. 5 of Prot. No. 7 (violation of the right to equality between the spouses pending the proceedings).	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria	10 Mar. 2009	Tzvetkova (no 16501/04) link	The applicant complains about the excessive length of criminal proceedings brought against him.	Struck out of the list (friendly settlement reached)
Croatia	12 Mar. 2009	Kovacic (no 34430/07) link	Alleged violations of Art. 6 § 1 (length of civil proceedings) and Art. 13 (lack of an effective remedy in this respect)	Struck out of the list (friendly settlement reached)
Croatia	12 Mar. 2009	Talijancic (no 55642/07) link	Idem.	Idem.
Cyprus	19 Mar. 2009	G. M. P. Katsambas LTD. (no 176/07) link	Idem.	Idem.
Finland	17 Mar. 2009	Lehtonen (no 24406/07) link	Alleged violations of Art. 6 § 1 (length of criminal proceedings) and Art. 13 (lack of effective remedy in this connection)	Struck out of the list (friendly settlement reached)
France	17 Mar. 2009	Dominique and Gerard Prieur (no 2154/07) link	Relying on Art. 6 and 8, the applicants complain about the telephone taping of their conversations with their lawyers. They further complain about the refusal of the domestic courts to cancel the transcriptions of these conversations	Struck out of the list (applicants no longer wishing to pursue their application)
France	17 Mar.	Ucinski (no 49874/06)	Alleged violation of Art. 6 § 3 c) (concerning the refusal to grant to the	Struck out of the list (applicant no longer wishing to pursue his

	2009	link	applicant free legal assistance before the Court of cassation) and Art. 8 (following the permanent ban imposed on the applicant's to enter or to live in France)	application)
France	17 Mar. 2009	Duda (no 37387/05) link	Alleged violation of Art. 5 of Prot. 7 and of Art. 1 of Prot. 12 (concerning the interim rules that were set in the Law of 4 March 2002 pertaining to the transmission of the family name from parents to children and concerning an alleged violation of the right to equality between spouses)	Partly inadmissible *ratione personae* as France did not ratify Protocol n°12 Partly inadmissible for non exhaustion of domestic remedies before French administrative courts
France	17 Mar. 2009	Société Civile Immobilière Internationale D'henin-Lietard (Simenin) and others (no 26181/06) link	The applicant complains under Art. 8, about the search of his home and the seizure of his properties. The applicant further complains about the lack of effective remedy to challenge the lawfulness of the seizure and to obtain the restitution of the seized properties	Inadmissible for non exhaustion of domestic remedies
France	17 Mar. 2009	Guyen (no 37190/07) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of civil proceedings)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
France	17 Mar. 2009	Flamenbaum, Akierman and 16 others (nos 3675/04; 23264/04) link	Alleged violation of Art. 8 (violation of the right to a safe environment due to the extension of the airport of Deauville-Saint-Gatien) and Art. 1 of Prot. 1 (due to the decrease in the value of the applicant's properties)	Partly admissible concerning in particular the noise caused by the airport and its extension and concerning the decrease in the value of the applicants' properties and the soundproofing works that the applicants had to undertake Partly inadmissible concerning the remainder of the application.
Germany	10 Mar. 2009	Eule (no 781/06) link	The applicant complains under Art. 6 § 1 about the length and fairness of the proceedings	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
Germany	17 Mar. 2009	Berger (no 10731/05) link	The applicant complains under Art. 6 § 1 that the length of the criminal proceedings was unreasonable.	Inadmissible (the applicant's conduct, namely because of misleading information, was contrary to the purpose of the right of individual petition)
Greece	12 Mar. 2009	Axioglou and others (no 45145/06) link	Alleged violation of Art. 6 § 1 (length of proceedings), and Art. 1 of Prot. 1. (the domestic courts refused to grant to the applicants a compensation for the value of the applicants' company that was situated on the expropriated lands)	Inadmissible as manifestly ill-founded : the Court considers under Art. 6 that the length of proceedings could not be considered as excessive and under Art. 1 of Prot. 1 that the interference in the applicant's right to respect for property could not be considered as disproportionate.
Italy	10 Mar. 2009	Vadacca and others (no 9062/07) link	Alleged violation in particular of Art. 8 (concerning the impossibility for the applicant, arrested on suspicion of pedophilia, to maintain contacts with his children during the length of the proceedings)	Inadmissible as manifestly ill-founded : the Court considers that the interference in the applicant's right to family could not be considered as disproportionate considering the necessity to protect the minors.
Lithuania	17 Mar. 2009	Zarskis (no 33695/03) link	Alleged violation of Art. 5 § 1 (lack of adequate medical remedy in prison and in pre-trial detention), Art. 6 § 1 (length and fairness of criminal proceedings), Art. 13 and Art. 17	Partly struck out of the list (unilateral declaration of the Government concerning the length of criminal proceedings) Partly inadmissible (concerning the remainder of the application)
Luxembourg	19 Mar. 2009	Bento (no 26992/05) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings brought against the applicant's former employer)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)

Moldova	17 Mar. 2009	Buruian (no 13433/06) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (concerning the failure to enforce a judgment in the applicant's favour) and of Art. 13 (lack of effective remedy in this respect)	Struck out of the list (friendly settlement reached)
Moldova	17 Mar. 2009	Uscov (no 25398/05) link	The applicant complains under Art. 6 § 1 about his deprivation of access to a court as a result of the refusal of the Supreme Court of Justice to examine his case.	Struck out of the list (friendly settlement reached)
Moldova	17 Mar. 2009	Pasternac (no 49246/06) link	The applicant complains under Art. 6 § 1 and Art. 1 of Prot. 1 about the failure of domestic authorities to enforce a judgment in his favour	Struck out of the list (friendly settlement reached)
Poland	10 Mar. 2009	Stall (no 5274/06) link	Alleged violation of Art. 6 § 1 (deprivation of access to a court on account of the excessive court fees required from the applicant)	Struck out of the list (unilateral declaration of the Government concerning the alleged violation)
Poland	10 Mar. 2009	Tarnarzewska (no 36003/06) link	Alleged violations of Art. 6 (excessive length of administrative proceedings), of Art. 13 (inefficiency of the applicant's complaints about the inactivity of the administration), and of Art. 1 of Prot. 1 (refusal to convert the applicant's property right to perpetual use into full ownership following the bureaucratic errors and long lasting legal uncertainty)	Struck out of the list (friendly settlement reached)
Poland	17 Mar. 2009	Kozlowska (no 51095/08) link	Alleged violation of Art. 6 (in particular on account of the fact that the Regional Court refused to appoint the applicant a legal-aid lawyer with a view to filing a cassation appeal)	Struck out of the list (friendly settlement reached)
Poland	17 Mar. 2009	Pisz (no 22074/03) link	Alleged violation of Art. 6 § 1 (length and fairness of administrative proceedings), of Art. 8 (interference with the applicants' right to respect for private and family life on account of chemical substances emitted by a launderette), of Art. 13 (lack of effective remedy) and of Art. 1 of Prot. 1	Struck out of the list (friendly settlement reached)
Poland	17 Mar. 2009	Zakrzewski (no 6881/03) link	Alleged violation in particular of Art. 6 § 1 (excessive length of criminal proceedings), Art. 2 and 3 (conditions of arrest and detention), Art. 5 § 3 (excessive length of pre-trial detention, in particular on account of ill-treatment by police officers), Art. 8 (impossibility for the applicant to contact his mother and censorship of his correspondence).	Struck out of the list (friendly settlement reached)
Poland	17 Mar. 2009	Matusiak (no 16566/08) link	The applicant complains under Art. 6 § 1 about the excessive length of proceedings. The applicant further complains under Art. 13 that the 2004 Act did not provide for an effective remedy against the excessive length of proceedings.	Struck out of the list (friendly settlement reached)
Poland	17 Mar. 2009	Kubik (no 20331/08) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of the proceedings)	Struck out of the list (friendly settlement reached)
Portugal	17 Mar. 2009	Domingos Cipriano (no 38379/06) link	Alleged violation of Art. 6 § 1 (unfairness of criminal proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Portugal	17 Mar. 2009	Desprets (no 14283/06) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)

Portugal	17 Mar. 2009	Soares Da Silva (no 25383/06) link	Alleged violation of Art. 6 § 1 (excessive length of the proceedings)	Struck out of the list (friendly settlement reached)
Portugal	17 Mar. 2009	Conceicao Guedes Fernandes (no 48384/06) link	Idem.	Idem.
Portugal	17 Mar. 2009	Monteiro Bettencourt (no 29412/07) link	Idem.	Idem.
Portugal	17 Mar. 2009	Silva Correia (no 31895/07) link	Idem.	Idem.
Portugal	17 Mar. 2009	Pinto Strecht Ribeiro (no 45372/07) link	Idem.	Idem.
Portugal	17 Mar. 2009	Bordalo Maia (no 19136/08) link	Idem.	Idem.
Romania	17 Mar. 2009	Popa Valentin Iustin (no 26104/06) link	The applicant complains under Art. 6 § 1 about the length and the unfairness of proceedings. He further complains that the outcome of the proceedings had constituted an interference with his property rights.	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), Partly inadmissible (concerning the remainder of the application)
Romania	10 Mar. 2009	Craciun (no 24138/04) link	The applicant complains under Art. 6, 8, 14 and Art. 5 of Prot. 7, in particular about the decision of the domestic courts to grant the applicant's child's custody to the applicant's former wife and about the unfairness of the proceedings	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	10 Mar. 2009	Enache (no 21932/05) link	Alleged violation of Art. 1 of Prot. 1 (concerning the applicant's undue taxation), Art. 6 (unfairness of the proceedings) and Art. 1 of Prot. 12 (discrimination on grounds of the authorities' refusal to reimburse the taxes unduly paid by the applicant)	Struck out of the list (friendly settlement reached)
Romania	17 Mar. 2009	David Constantin (no 163/04) link	The applicant complains about the supervisory review of a final decision in the applicant's favour due to an extraordinary appeal lodged by the Prosecutor General.	Struck out of the list (friendly settlement reached)
Romania	17 Mar. 2009	Postu (no 45059/04) link	Alleged violation of Art. 1 of Prot. 1 (concerning the applicant's undue taxation), Art. 6 (unfairness of the proceedings) and Art. 1 of Prot. 12 (discrimination on grounds of the authorities' refusal to reimburse the taxes unduly paid by the applicant)	Struck out of the list (friendly settlement reached)
Romania	17 Mar. 2009	Heutschi (no 21526/05) link	Alleged violations of Art. 1 of Prot. 1 (concerning the applicant's undue taxation) and of Art. 6 (unfairness of the proceedings)	Struck out of the list (unilateral declaration of the government)
Russia	19 Mar. 2009	Lavrentyeva (no 4625/07) link	The applicant complains under Art. 6 and Art. 1 of Prot. No.1 about the non-execution of the judgment in her favour.	Struck out of the list (friendly settlement reached)
Russia	19 Mar. 2009	Shchebetovskiy (no 12508/07) link	Idem.	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	19 Mar.	Popova (no 39409/07)	Idem.	Struck out of the list (friendly settlement reached)

	2009	link		
Russia	19 Mar. 2009	Imangulov (no 51339/07) link	The applicant complains under Art. 6 about the prolonged non-enforcement of a judgment in his favour.	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	19 Mar. 2009	Kochkareva (no 37984/07) link	The applicant complains under Art. 6 and Art. 1 of Prot. No.1 about the non-execution of a judgment in her favour.	Struck out of the list (friendly settlement reached)
Russia	19 Mar. 2009	Morina (no 5584/04) link	The applicant complains under Art. 6 and Art. 1 of Prot. No.1 about the non-execution of a judgment in her favour. She also complains under Art. 5 and 6 about the length and unfairness of the criminal proceedings against her and her husband.	Idem.
Russia	19 Mar. 2009	Stepanova (no 44916/06) link	The applicant complains under Art. 6 and Art. 1 of Prot. No.1 about the non-execution of the judgment in her favour.	Idem.
Serbia	10 Mar. 2009	Mitrev and Others (no 13757/06) link	Under Art. 6 § 1, the applicants complains about the excessive length of their civil suit.	Idem.
Serbia	17 Mar. 2009	Debeljevic (no 30903/04) link	The applicant complains about the non-execution of a judgment in her favour.	Struck out of the list (applicant no longer wishing to pursue his application)
Serbia	17 Mar. 2009	Milosevic (no 36166/08) link	Alleged violations of Art. 6 (non-enforcement of a final judgment granting the sole custody of a child to the applicant ; excessive length of proceedings), of Art. 8 (due to the non-enforcement of the final judgment) and Art. 13 (lack of an effective domestic remedy for procedural delay)	Struck out of the list (applicant no longer wishing to pursue his application)
Serbia	17 Mar. 2009	Knezevic (no 46616/07) link	Invoking Art. 6, 8, 13 and Art. 5 of Prot. 7, the applicants complain about: the fairness and outcome of civil proceedings; the length of these proceedings ; the enforcement proceedings; and the absence of an effective domestic remedy for procedural delay.	Partly struck about of the list (unilateral declaration of Government concerning the length of proceedings and the lack of an effective remedy in this respect) Partly inadmissible (concerning the remainder of the application)
Slovakia	17 Mar. 2009	Martikan (no 50184/06) link	Alleged violation of Art. 5 §§ 1, 4, Art. 6 §§ 1 and 3 (c) and Art. 14 on account of the applicant's unlawful detention. Alleged violation of Art. 13 on account of the lack of an effective remedy.	Inadmissible as manifestly ill-founded : the Court considers in particular that the detention of the applicant does not appear arbitrary or discriminatory and it does not exceed the time-limits laid down in the law.
Slovenia	10 Mar. 2009	Sojat (no 1449/05; 40698/05; 40738/05; 42252/05; 45038/05) link	The applicants complain under Art. 6 § 1 about the excessive length of civil proceedings. They also complain under Art 13 that they did not have an effective domestic remedy in this regard.	Struck out of the list (applicants no longer wishing to pursue his application)
Slovenia	10 Mar. 2009	Debelak (no 18422/03) link	The applicant complains under Art. 6 § 1 about the excessive length of civil proceedings and under Art. 13 about the lack of an effective domestic remedy in that regard.	Struck out of the list (applicant no longer wishing to pursue his application)
Slovenia	10 Mar. 2009	Skok (no 4185/03) link	Idem.	Idem.
Slovenia	10 Mar.	Kozina (no 42788/04)	Alleged violation of Art. 6 § 1 (excessive length of civil	Partly struck out of the list (friendly settlement reached

	2009	link	proceedings), of Art. 13 (lack of effective domestic remedy in this regard), and of Art. 1 of Prot. 1 (the domestic courts' have not assessed what part and which items of the common property belonged to the applicant) and Art 5 of Prot. 7 (right to equality of spouses)	concerning the allegations of length of proceedings and lack of effective remedy in this connnexion) Partly inadmissible as manifestly ill-founded (no appearance of violation of Art. 1 of Prot.1 and of Art. 5 of Prot. 7)
Sweden	17 Mar. 2009	Karlsson (no 29636/07) link	The applicant complains that the length of the tax proceedings was in breach of the "reasonable time" requirement set out in Art. 6 § 1.	Struck out of the list (friendly settlement reached)
"The Former Yugoslav Republic Of Macedonia"	10 Mar. 2009	Dimitriev (no 16345/03) link	The applicant complains under Art. 6 §§ 1 and 3 (d) that he had been deprived of the right to a fair trial (especially concerning the proceedings that led to the conviction of the applicant for defamation)	Partly struck out of the list (the applicant's complaints related to his conviction for causing bodily injury can be considered as "resolved") Partly inadmissible (concerning the remainder of the application) in particular for non-exhaustion of domestic remedies
"The Former Yugoslav Republic Of Macedonia"	10 Mar. 2009	Lazarevska (no 33867/04) link	The applicant complains under Art. 6 that the Supreme Court had lacked jurisdiction as it incorrectly applied national law; that it should have remitted the case for re-examination; and that it had based its decision on the employer's allegations.	Inadmissible, partly for non-exhaustion of domestic remedies and partly as manifestly ill-founded (no appearance of violation of the Convention)
"The Former Yugoslav Republic Of Macedonia"	10 Mar. 2009	Mamudovski (no 49619/06) link	The applicant complains under Art. 5 and 6 that his defence rights had been infringed, since the domestic courts had refused his request for examination of witnesses on his behalf.	Inadmissible for non-exhaustion of domestic remedies
"The Former Yugoslav Republic Of Macedonia"	10 Mar. 2009	Mirceski (no 20958/06) link	The applicant complains under Art. 6 that the Supreme Court had not been impartial. He further alleged that the Supreme Court's decision had affected his rights under Article 8. He further complains about violations of Art. 13 and Art. 5 of Prot. 7	Inadmissible, partly for non-exhaustion of domestic remedies (concerning the violation of Art. 8), partly as manifestly ill-founded (no appearance of violation of the Convention)
"The Former Yugoslav Republic Of Macedonia"	17 Mar. 2009	Kiril Stojanovski (no 25962/06) link	Alleged violation of Art. 6 (length of proceedings), of Art. 1of Prot. 1 (use of the applicant's shares as a bank deposit without his approval) and Art. 6 (the applicant did not have the opportunity to be present in person when the public prosecutor adopted his decision).	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible (concerning, the remainder of the application)
The United Kingdom	10 Mar. 2009	Wilson (no 30505/03) link	The applicant complains under Art. 6 § 1 about the excessive length of the proceedings relating to his claim for industrial injuries disablement benefit and reduced earnings allowance, and under Art. 13 about the lack of an effective remedy in this connection.	Struck out of the list (unilateral declaration of the Government concerning the length of the proceedings which can also be considered as a sufficient redress for the complaint about the lack of an effective remedy)
Turkey	17 Mar. 2009	Sen (no 10194/05) link	The applicant complains under Art. 6 § 1, about the excessive length of civil proceedings. He further claims to be victim of a violation of Art. 1 of Prot. 1 (as the rectification of the title-deed register had reduced the size of his plot)	Partly adjourned (concerning the length of civil proceedings) Partly inadmissible as manifestly ill-founded (the applicant has not suffered any real loss due to the rectification of the title-deed register)
Turkey	17 Mar. 2009	Kaya (no 874/04) link	Alleged violation of Art. 3 (ill-treatment in police custody) and Art. 13 (lack of effective remedy in this respect)	Inadmissible as manifestly ill-founded (in particular because the applicant has failed to adduce sufficient evidence to substantiate his allegations)
Turkey	10	Bozcaada	Invoking Art 6, 9 and 13 and Art. 1 of	Inadmissible as manifestly ill-

	Mar. 2009	Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi (no 42668/04) link	Prot. 1 the applicant complains about the refusal of the domestic courts to order the registration of the applicant's immovable properties on the land register/	founded : this matter had already been settled in a previous decision of the European Court and the applicant cannot claim to be a victim of a violation of Art. 1 of Prot. 1 (the applicant has no property within the meaning of Art. 1 of Prot. 1)
Turkey	10 Mar. 2009	Sarikaya (no 47512/07) link	The applicant complains under Art. 6 § 1 about the excessive length of proceedings, and under Art. 13 about the lack of an effective remedy in this respect.	Struck out of the list (friendly settlement reached)
Ukraine	17 Mar. 2009	Ivanchenko (no 3016/06) link	The applicant complains under Art. 1 of Prot. No.1 about the non-execution of a judgment in his favour.	Struck out of the list (the applicant obtained the partial execution of the judgment at domestic level and wished to withdraw 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 weekly communicated cases which were published on the Court's Website :

- on 20 April 2009 : link

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

NB. The statements of facts and complaints have been prepared by the Registry (solely in one of the official languages) on the basis of the applicant's submissions. The Court cannot be held responsible for the veracity of the information contained therein.

Please note that the Irish Human Rights Commission (IHRC) issues a monthly table on priority cases before the European Court of Human Rights with a focus on asylum/ immigration, data protection, anti-terrorism/ rule of law and disability cases for the attention of the European Group of NHRIs with a view to suggesting possible amicus curiae cases to the members of the Group. Des Hogan from the IHRC can provide you with these tables (dhogan@ihrc.ie).

Communicated cases published on 20 April 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 20 April 2009 concerns the following States (some cases are however not selected in the table below): Austria, Azerbaijan, Bulgaria, Germany, Greece, Hungary, Italy, Latvia, Romania, Russia, Serbia, "the former Yugoslav Republic of Macedonia", the Netherlands, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words
Azerbaijan	1 Apr. 2009	Amirov N° 25512/06	Alleged violation of Article 6 due to the dismissal of a professor of the Ganja State University because he had allegedly insulted policemen. Alleged lack of impartiality of the domestic courts due to the applicant's political

			activity (head of Ganja city branch of the opposition party Musavat)
Germany	31 Mar. 2009	Sfountouris & Others N° 24120/06	The applicants complain under Art. 1 of Prot. 1 taken alone and in conjunction with Art. 14 about the refusal of the German authorities to compensate the applicants for the damages suffered due to the action in Greece of German armed forces during World War II
Greece	31 Mar. 2009	Dimitras And Others N° 6099/08	The applicants complain that in the framework of judicial proceedings, they were obliged to disclose information about their religious beliefs, and in particular the fact that they were not Orthodox Christians (see also in that respect the violation found in *Alexandridis v. Greece of* 21 February 2008)
Greece	31 Mar. 2009	Dimitras N° 3269/07	
Italy	31 Mar. 2009	Barelli and others N° 15104/04	Alleged violations of Art. 3, 6 and 8 following the action of the social services with respect to the applicants' children, and in particular concerning the lack of contacts between the applicants and their children.
Italy	30 Mar. 2009	Trabelsi N° 50163/08	The applicant alleges a risk of violation of Articles 3 and 8 in case of deportation to Tunisia (Interim measures were granted by the President of the second section of the European Court of Human Rights)
Romania	2 Apr. 2009	Florea N° 37186/03	The applicants complain *inter alia* about their conditions of detention in Jivala Prison, as well as about further violations of Art. 6 and 8
Romania	2 Apr. 2009	Gagiu N° 18869/04	
Romania	2 Apr. 2009	Todireasa N° 35372/04	
Romania	2 Apr. 2009	Rosca Pelau N° 30484/04	The applicant complains about the conditions of detention and the lack of adequate medical treatment in Bucharest police general detention centre and Jilava prison and about further violations of Art. 5 and 6.
Russia	1 Apr. 2009	Isakov *N° 14049/08*	The applicant, assisted by lawyers of the EHRAC/Memorial Human Rights Centre, alleges a risk of violation of Art. 3 in case of extradition to Uzbekistan. He further alleges violations of Art. 5 and 13.
Russia	1 Apr. 2009	Kunitsyna N° 9406/05	Alleged violation of Art. 10 following the publication of a newspaper article dealing with the everyday life of a State-owned elderly care medical institution and mentioning expressly the mother of a former deputy of the national parliament
Russia	1 Apr. 2009	Markaryan N° 12102/05	Alleged violations of Art. 3 (ill-treatment by the police and ineffective investigation) and Art. 6 (in particular on account of the refusal to examine a video recording presented by a witness)
Russia	1 Apr. 2009	Redaktsiya gazety 'zemlyaki' N° 16224/05	Relying on Article 10, the applicant company complains about the court decisions in his defamation case. Among other things, it claims that the domestic courts acted *ultra vires* when ordering it to bring its apologies to the plaintiff. The applicant newspaper further complains about the unfairness of the proceedings.
Russia	1 Apr. 2009	Ulyanov N° 22486/05	Alleged violations of Art. 3, 5, 6 and 17. The applicant alleges in particular that he was induced by the police officers into committing the offence of supply of drugs (through a so-called "test purchase" of heroin)
"the former Yugoslav Republic of Macedonia"	1 Apr. 2009	Vasilkoski & Others N° 28169/08	Alleged violation of Art. 5 (insufficient reasons for the applicants' detention and ineffectiveness of the review proceedings)
the Netherlands	30 Mar. 2009	Deveci N° 33874/07	Alleged violations of Art. 8 and 3 (concerning the excessive formalism displayed by the Dutch authorities obliging the applicant to return to Turkey to apply for a provisional residence visa)
Turkey	2 Apr. 2009	Metin N° 26773/05	Alleged violations of Art. 2, 3, 6 and 13 (concerning the death of the applicants' son during compulsory military service and concerning the lack of efficient subsequent investigation)
Ukraine	31 Mar. 2009	Baysakov And Others N° 54131/08	Alleged violation of Art. 3 (on account of the risk of torture in case of extradition of the applicant to Kazakhstan) and of Art. 6 and 13
Ukraine	31 Mar. 2009	Dovzhenko N° 8193/04	Alleged violations of Art. 3 and 5 (in particular following the applicant's apprehension, summons, handcuffing and public exposure in handcuffs) and of Art. 6 and 13
Ukraine	31 Mar. 2009	Fyodorov And Fyodorova N° 39229/03	Alleged violations of Art. 3 (police misconduct and lack of effective investigation) and of Art. 6, 8 and 10 (on account of the psychiatric examination of the applicant and the diagnosis of chronic delusional disorder)
Cases concerning Chechnya, Dagestan and Ingushetia			
Russia	1 Apr. 2009	Alikhanov And Others N° 17054/06	The applicants, from the Republic of Dagestan, complain about violations of Art. 2, 3, 5, 6 and 13
Russia	1 Apr.	Bersanova	The applicant, from the Republic of Ingushetia, and represented before the Court

	2009	N° 43811/06	by lawyers of EHRAC/Memorial, alleges violations of Art. 2, 3, 5 and 13
Russia	1 Apr. 2009	Mezhiyeva N° 44297/06	The applicant, from Chechnya, represented before the Court by lawyers of the Stichting Russian Justice Initiative, complains about violations of Art. 2, 13 and 14.
Russia	1 Apr. 2009	Nasukhanov And Others N° 1572/07	The applicants, from Chechnya, represented before the Court by lawyers of the Stichting Russian Justice Initiative, complain about violations of Art. 2, 3, 5 and 13.
Russia	1 Apr. 2009	X and Y N° 43411/06	The applicants, from Chechnya, represented before the Court by lawyers of the Stichting Russian Justice Initiative, complain about violations of Art. 3, 5 and 13.

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

Hearing in Oršuš and Others v. Croatia (01.04.09)

The Court held a Grand Chamber hearing in the case of ***Oršuš and Others v. Croatia.*** The case concerns the applicants' complaint that they were segregated at primary school because they were Roma. Press Release, webcast of the hearing

Launch of a special website for the 50th anniversary of the Court (20.04.09)

The fiftieth anniversary of the European Court of Human Rights is being celebrated throughout 2009 with a series of initiatives, including the launch of a special event-oriented website that will be enhanced and up-dated in the course of the year. The website is being launched on 20 April 2009 because it was exactly 50 years ago, on 20 April 1959, that the Court was inaugurated, on the tenth anniversary of the Council of Europe. Link to the site

Visit to Latvia (09.04.09)

From 13 to 16 April 2009, President Costa made an official visit to Latvia, accompanied by Ineta Ziemele, the judge elected in respect of Latvia, and Michael O'Boyle, the Deputy Registrar. On 13 April President Costa was received by Gunārs Kūtris, the President of the Constitutional Court. On 14 April President Costa met Māris Riekstiņš, the Minister of Foreign Affairs, and Valdis Dombrovskis, the Prime Minister, and made a speech at Riga University. He was then received by Valdis Zatlers, the President of Latvia, and Mareks Segliņš, the Minister of Justice. On 15 April President Costa met the judges of the Supreme Court and the Constitutional Court and MPs. On 16 April President Costa gave a press conference in Riga before a further meeting with Gunārs Kūtris, the President of the Constitutional Court.

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 2 to 4 June 2009 (the 1059st meeting of the Ministers' deputies).

B. General and consolidated information

Please note that useful and updated information (including developments occurred between the various Human Rights meetings) on the state of execution of the cases classified by country is provided :
http://www.coe.int/t/e/human%5Frights/execution/03%5FCases/

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2007 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights:
http://www.coe.int/T/E/Human_Rights/execution/

The simplified global database with all pending cases for execution control (Excel document containing all the basic information on all the cases currently pending before the Committee of Ministers) can be consulted at the following address :
http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

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

A. European Social Charter (ESC)

Two complaints (v. Croatia and v. France) declared admissible (09.04.09)

It is possible to consult on line the decisions on admissibility for the complaints International Centre for the Legal Protection of Human Rights v. Croatia, no. 52 and *Confédération générale du travail* v. France.

Decision on admissibility, no. 52 : The Centre on Housing Rights and Evictions "*alleges that Croatia violates Article 16 of the Charter (the right of the family to social, legal and economic protection), read alone or in the light of the non-discrimination clause of the Preamble to the Charter, on the grounds that the "ethnic Serb" population displaced during the conflict in the former Yugoslavia has been subjected to disproportionate discriminatory treatment regarding their housing needs, as the families, belonging to this category of persons, have not been allowed to reoccupy their former dwellings inhabited prior to the conflict, nor have they been granted financial compensation for the loss of their homes. The ongoing denial of adequate restitution or compensation is a violation of their housing and human rights*".

Decision on admissibility, no. 55 : "*The CGT, referring in particular to Working Hours Act No. 2008-789 of 20 August 2008 (Official Gazette of the French Republic of 21 August 2008) claims that :*
- the annual working days system infringes the right to reasonable working hours provided by Article 2§1 and Article 4§2 of the Revised Charter;
- the rules on on-call service infringe the right to reasonable working hours provided by Article 2§1 of the Revised Charter and the right to rest periods provided by Article 2§5 of the Revised Charter;
- the rules on the "Solidarity Day" and on the annual working days system infringe the right to a fair remuneration provided by Article 4§2 of the Revised Charter.
The complaint also contains allegations relating to Article 11§1 and 3 and to Article 4§1 of the Revised Charter".

For further information you may consult the page on *Collective Complaints*

***New factsheet* on Right to Health**

Click here for additional factsheets: Children's rights, People with disabilities, Migrants' Rights, Equality between Women and Men, Right to Education.

The European Committee of Social Rights held a session from 11 to 15 May 2009. You may consult the Agenda of the 235th session and find relevant information on the sessions using the following link:
http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp.

You may find relevant information on the implementation of the Charter in States Parties using the following country factsheets:
http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp

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

Council of Europe anti-torture Committee visits the Slovak Republic (09.04.09)

A delegation of the CPT carried out a periodic visit to the Slovak Republic from 24 March to 2 April 2009. It was the Committee's fourth visit to the Slovak Republic.

The CPT's delegation reviewed the measures taken by the Slovak authorities in response to recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the situation of remand prisoners (including juveniles) and persons serving life-sentences. The treatment of persons apprehended by the police and the conditions of detention of foreign nationals held in immigration centres were also examined.

The delegation held consultations with Štefan Harabin, Deputy Prime Minister and Minister of Justice, Vladimír Čečot, State Secretary for the Interior, Daniel Klačko, State Secretary for Health, Dobroslav Trnka, Prosecutor General, and María Kreslová, Director-General of the Corps of Prison and Court Guards. Discussions were also held with Pavel Kandráč, Public Defender of Rights, and members of civil society active in areas of concern to the CPT.

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

Council of Europe anti-torture Committee visits Hungary (09.04.09)

A delegation of the CPT recently carried out a ten-day visit to Hungary. The visit, which began on 24 March 2009, was the CPT's fourth periodic visit to this country.

The CPT's delegation reviewed the measures taken by the Hungarian authorities to implement the recommendations made by the Committee after previous visits. In particular, the delegation followed up on the safeguards offered to persons detained by the police, the holding of remand prisoners on police premises and the treatment of foreign nationals held under aliens legislation. The delegation also examined in detail various issues related to prisons, including the situation of prisoners held in a Maximum Security Unit (KBK) and other inmates considered to require high security arrangements (Grade 4 prisoners). For the first time in Hungary, it visited a prison establishment in which private contractors are involved, in Tizsalök. In addition, the delegation visited civil psychiatric establishments/units and reviewed the situation of people undergoing forensic psychiatric assessment and prisoners receiving treatment or under observation in the Judicial and Observation Psychiatric Institute (IMEI).

During the visit, the CPT's delegation held consultations with Tibor DRASKOVICS, Minister of Justice and Law Enforcement, Tamás SZÉKELY, Minister of Health, Erika SZÜCS, Minister of Labour and Social Care, and Tamás KOVÁCS, Prosecutor General, as well as with senior officials of the Ministries and Services concerned. It also met Máté SZABÓ, Parliamentary Commissioner for Civil Rights. Further, it had meetings with representatives of international and non-governmental organisations active in areas of concern to the CPT.

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

C. European Commission against Racism and Intolerance (ECRI)

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

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E. Group of States against Corruption (GRECO)

Group of States against Corruption (GRECO) publishes report on Sweden (31.03.09)

The GRECO has published its Third Round Evaluation Report on Sweden. The report has been made public with the agreement of the country's authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption (Theme I, link to the report), GRECO recognises that Swedish legislation on bribery complies in a strict legal sense with the *Criminal Law Convention on*

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

Corruption and its Additional Protocol; however, it notes that the rather general legislation and limited practice, makes it difficult to foresee all its consequences. Moreover, the offence *trading in influence* is not criminalised as such under Swedish law. GRECO stresses that current legislation, which for several years has been subject to domestic criticism, would benefit from a revision in respect of public and private sector corruption. Making *trading in influence* a separate offence and widening the possibilities for prosecuting corruption offences committed abroad should also be considered. Following the adoption of the Report, GRECO was informed that on 19 March 2009, the Swedish Government entrusted the former Chief Justice of the Supreme Court, Mr Bo Svensson, with the task of carrying out a study with a view to modernising current anti-corruption legislation.

Concerning transparency of party funding (Theme II, link to the report), the Swedish system falls short of the standards provided for in *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*. Sweden's long standing tradition of self regulation in this area neither provides for a sufficiently broad and comprehensive approach, nor is there an independent monitoring mechanism in place and there are no particular sanctions or other means for the enforcement of the few principles that have been agreed upon by the political parties represented in Riksdagen. Consequently, it is difficult to assess the flow of private donations to political parties. In GRECO's view, the generally low level of transparency in political financing is difficult to understand in respect of a country, which guarantees a high degree of transparency in most areas of public life. The current system needs to be reviewed in order to comply with Council of Europe standards.

The report addresses a total of 10 recommendations to Sweden. GRECO will assess the implementation of these recommendations in the second half of 2010, through its specific compliance procedure.

Report: Theme I (Incriminations) / Theme II (Transparency of Party Funding)

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

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

Luxembourg and Serbia 22nd and 23rd states to ratify the Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008. The Convention was ratified by Luxembourg on 9 April 2009 and by Serbia on 14 April 2009. For both Luxembourg and Serbia the Convention will enter into force on 1 August 2009.

The Convention has been ratified by Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Luxembourg, Malta, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Spain and the United Kingdom.

It has also been signed but not yet ratified by another 18 Council of Europe member states: Andorra, Belgium, Finland, Germany, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, Netherlands, San Marino, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

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

Part IV : The intergovernmental work

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

Bosnia and Herzegovina ratified on 30 March 2009 the European Convention on Cinematographic Co-production (ETS No. 147), and the Additional Protocol to the Anti-Doping Convention (ETS No. 188).

The **European Community** signed on 2 April 2009 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).

Luxembourg ratified on 9 April 2009 the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

Spain ratified on 2 April 2009 the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Brazil brings the "population" of the Venice Commission to 1.2 billion (01.04.09)

The Committee of Ministers of the Council of Europe agreed to a request by Brazil to join the Enlarged Agreement establishing the European Commission for Democracy through Law (Venice Commission) and invited Brazil to appoint a member to sit on the Commission.

Since 2002, when the Venice Commission became an enlarged agreement allowing non-European countries to become full members, 9 states have joined the Commission: Kyrgyzstan (2004) , Chile (2005) , the Republic of Korea (2006), Morocco and Algeria (2007), Israel and Tunisia (2008), Peru and Brazil (2009). The membership of Brazil brings the number of the member states to 56 and the population “covered” by the expertise of the Commission close to 1.2 billion people.

Terry Davis concludes his visit to Ljubljana (01.04.09)

On 1 April, the Secretary General concluded his two-day visit to Ljubljana in the context of the preparation of the forthcoming Slovenian chairmanship of the Committee of Ministers.

Ministers' Deputies meeting (02.04.09)

On 1 April 2009, the Ministers’ Deputies continued their consideration of the conflict in Georgia on the basis of a report submitted by the Secretary General. They agreed to resume their discussions at their 1055th meeting (22 April 2009), in the presence of the Secretary General.

The Deputies considered the draft agenda for the 119th Session of the Committee of Ministers which is to be held in Madrid on 12 May 2009 on the occasion of the celebration of the Council of Europe’s 60th anniversary.

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

Statement by the Spanish Minister for Foreign Affairs and Co-operation and the Committee of Ministers' Chairman-in-Office, Miguel Ángel Moratinos (06.04.09)

The Chairman of the Committee of Ministers of the Council of Europe has been informed about the recent aggression against Mr. Lev Ponomarev, head of the “All Russia movement for human rights”, in front of his residence in Moscow. Once again an attack has been made against a human rights defender.

The Chairman of the Committee of Ministers expresses his serious concern about this and hopes that the authorities of the Russian Federation, as a member state of the Council of Europe, will take the necessary measures to bring the persons responsible to justice as soon as possible.

Miguel Ángel Moratinos on the International Roma Day (07.04.09)

"The Council of Europe has more than forty years experience working for and with Roma," noted the Chairman of the Committee of Ministers on the occasion of the International Roma Day. He stressed that through its partnership agreement with the European Roma and Travellers Forum signed in 2004, the Organisation "reinforces the participation and representation of Roma at the European level."

File: Roma and Travellers

Situation in Moldova: statement by the Chairman of the Committee of Ministers and the President of Parliamentary Assembly (07.04.09)

"We have learned with concern about the violent events which have taken place in Chisinau following the 5 April parliamentary elections in Moldova. The storming of public buildings is unacceptable and we urge a halt to any further violence on all sides," declared Miguel Ángel Moratinos and Lluís Maria De Puig. "We underline at the same time the importance of securing people’s right to peaceful assembly. We call on all political leaders in the country to enter into a dialogue with a view to preventing any further violence," they added.

Georgia: statement by Miguel Ángel Moratinos (08.04.09)

"On the eve of the opposition demonstration which is to take place in Tbilisi tomorrow, I call on the Georgian authorities, the organisers and the participants in the demonstration to act in a responsible and peaceful manner and exercise maximum restraint," stated the Committee of Ministers' Chairman on 8 April. "Dialogue between political forces is the only course of action which can bear fruitful results for the future of Georgia. It is the responsibility of all Georgian political leaders to secure such a dialogue and the support of the population to this process," he added.

Part V : The parliamentary work

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

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

➢ *Countries*

Moldova: PACE co-rapporteurs appeal for calm (08.04.09)

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs on Moldova for the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), who were present in Moldova to observe the elections of Sunday 5 April 2009, today called for "an end to violence and provocation" in the capital city, Chisinau.

"We are concerned about the deterioration of the situation in a European country which nevertheless benefits from our attention and our support. Moldova needs to achieve political stability in the context of a democracy which will be able to assert itself only through elections, and not through violence", they declared.

The co-rapporteurs stated that they would continue to monitor the situation in the country closely so that they can report to the members of the Monitoring Committee in Strasbourg during the spring Session of the PACE (27-30 April 2009).

Situation following elections in Moldova (07.04.09)

Moldova's elections met many international standards, but further improvements are needed (06.04.09)

PACE to observe the parliamentary elections in Moldova (31.03.09)

Montenegro's elections met almost all international standards, but further democratic development is needed, observers say (30.03.09)

The parliamentary elections in Montenegro met almost all international commitments and standards, but the process again underscored the need for further democratic development, the international election observation mission concluded.

Overall, the elections were organized professionally, and political parties were able to present their programmes to voters freely. The voting and counting process was evaluated highly positively by the observers, with very few incidents reported.

The observers noted, however, that lack of public confidence remained a key challenge, as frequent allegations of electoral fraud and a blurring of state and party structures created a negative atmosphere among many voters. Other challenges include the need to harmonize and reform the electoral framework, lack of adequate legal redress, and insufficient critical reporting by most broadcast media.

PACE monitoring of Russia: 'measurable progress' but less than expected in key areas, say co-rapporteurs (31.03.09)

Russia has made "measurable progress" in several areas in fulfilling its obligations to the Council of Europe, but this is "less important than we had hoped for and expected after a nearly five-year

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

period", especially on some key commitments, according to a new assessment by the monitoring co-rapporteurs of the Council of Europe Parliamentary Assembly (PACE).

In an information note made public during a two-day meeting of the Assembly's Monitoring Committee in Valencia (30-31 March), Luc van den Brande (Belgium EPP/CD) and Theodoros Pangalos (Greece, SOC) said the current state of the monitoring procedure was "both complex and ambiguous", a situation compounded by the consequences of the August 2008 war between Russia and Georgia.

In their 16-page report, they noted the "clear political will" of the authorities to co-operate with the Assembly and engage in open dialogue. Although there had been "measurable progress" on electoral laws, media pluralism, relations with civil society and the functioning of the judiciary and prosecutors' office, further reforms in all these areas were required. They welcomed in particular a pledge to seek the opinion of the Council of Europe's Venice Commission, its group of independent legal experts, on current electoral legislation, and said they expected this request soon.

However, the co-rapporteurs said it was "not acceptable" that Russia is the only Council of Europe member state that has not ratified Protocol No. 6 abolishing the death penalty in law, in clear contradiction with Council of Europe principles. They again urged Russia to ratify Protocol No. 14, streamlining the work of the Strasbourg Court, and to stop being "the odd ones out".

On external relations, they said Russia and its neighbours should respect each others' interest for peace and security, but warned against the use of the "near abroad" concept. They expressed concern that energy had been used as a political tool in the recent gas dispute between Russia and Ukraine, but also welcomed Russia's efforts to help settle the Transnistrian conflict.

In conclusion, the co-rapporteurs stressed that the commitments made by Russia when it joined the Council of Europe, and its obligations as a member state, were "non-negotiable and have to be fulfilled in their entirety".

Eleven of the Council of Europe's 47 member states are currently subject to PACE's monitoring procedure (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, Russia, Serbia, Ukraine), which involves regular dialogue with a country's authorities and periodic assessments by the Assembly.

Full text of the information note (PDF)

PACE co-rapporteurs call for restraint and calm from all sides with regard to the planned protest rallies in Georgia (30.03.09)

PACE rapporteur in Moscow calls for support of judges 'who take their independent role seriously' (01.04.09)

PACE rapporteur shocked by the attack on Lev Ponomarev (01.04.09)

Sabine Leutheusser-Schnarrenberger (Germany, ALDE), rapporteur on behalf of the PACE Committee on Legal Affairs and Human Rights on "allegations of politically-motivated abuses of the criminal justice system" has expressed her shock at the attack on Lev Ponomarev, head of the "All Russia movement for human rights".

Amendments to Armenian Criminal Code are welcomed, but 'it's their application that counts' (02.04.09)

The co-rapporteurs for Armenia of the Parliamentary Assembly of the Council of Europe (PACE), Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), today welcomed the adoption of amendments to Articles 300 and 225 of the Armenian criminal code. The co-rapporteurs underlined that, in its opinion, the Venice Commission considered that these amendments would be a clear improvement to the Law, and considerably reduce the scope for over-broad and abusive interpretation.

"We note that the changes introduced to the Law within the agreed timeframe, on the basis of proposals by the special working group set up by the Speaker of the National Assembly, are fully in line with what was indicated to us in January this year. This is a clear signal from the Parliament that it wants to avoid any politically-motivated application of these articles. It is clear to us that this should have a considerable effect on the cases in relation to those deprived of their freedom in relation to the events of 1 and 2 March 2008 which are currently before the courts," said the co-rapporteurs.

However, they stressed that it is the application of these amendments that will ultimately count. We hope that the authorities, and especially the Prosecutor General, will now follow the clear signal made by the National Assembly," said the co-rapporteurs. "We repeat that the Assembly has demanded that all persons deprived of their liberty in relation to the events of 1 and 2 March, and who did not personally commit violent crimes, should be released. These amendments offer an effective mechanism for Armenia to comply with that demand," said the co-rapporteurs. "However, we want to stress that there are also persons deprived of their liberty who are not covered by Articles 300 and 225 of the Criminal Code. We will therefore continue our dialogue with the authorities, and the National Assembly of Armenia, with the aim of securing their release."

The co-rapporteurs will report back to the Monitoring Committee during the April part-session on the progress made by Armenia in implementing Resolutions 1609 (2008), 1620 (2008) and 1643 (2009), especially with regard to the persons deprived of their liberty in relation to the events of 1 and 2 March 2008.

PACE monitoring co-rapporteurs visit Ukraine (02.04.09)

PACE's monitoring co-rapporteurs on Ukraine, Renate Wohlwend (Liechtenstein, EPP/CD) and Sabine Leutheusser-Schnarrenberger (Germany, ALDE), made a fact-finding visit to the country from 6 to 7 April.

Parliamentary Assembly monitoring visit to Azerbaijan (06.04.09)

Andres Herkel (Estonia, EPP/CD) and Evguenia Jivkova (Bulgaria, SOC), co-rapporteurs for the monitoring of Azerbaijan by the Parliamentary Assembly of the Council of Europe (PACE), will make a fact-finding visit to the country on 7-11 April.

Progress on election day, but some problems remain, observers in Skopje say (06.04.09)

The second round of the presidential and municipal elections in the former Yugoslav Republic of Macedonia on Sunday met most OSCE and Council of Europe commitments and standards for democratic elections, although some of the issues identified in the first round, including credible reports of intimidation, were of increased concern, international election observers said

PACE post-monitoring dialogue: Turkey must continue its reforms (07.04.09)

The effective separation of powers in Turkey, and the democratic functioning of its institutions, are "crucial for the modernisation of the Turkish state", according to an information note from PACE's Monitoring Committee, in the framework of "post-monitoring dialogue" with the country, posted on the Assembly's website.

Information note (PDF)

Bulgaria made 'cosmetic changes' in its haste to get into the EU (07.04.09)

In the haste to meet strenuous EU accession deadlines, some of Bulgaria's reforms – particularly the reform of the judiciary – have undergone "cosmetic changes" which have pushed them in an undesired direction, according to a new report from the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) in the framework of "post-monitoring dialogue" with the country.

Information note (PDF)

Comments by the Bulgarian delegation (PDF)

- *Themes*

José Mendes Bota: 'It is time for Europe to become an area devoted to the protection of the

fundamental rights of women' : Towards a convention on Combating violence against women: call on parliamentarians (09.04.09)

"It is time for Europe to become an area devoted to the protection and promotion of the fundamental rights of women," declared José Mendes Bota, PACE Rapporteur on "Combating violence against women: towards a Council of Europe convention", on the occasion of the first meeting of the Ad hoc Committee on preventing and combating violence against women and domestic violence.

The role of women parliamentarians in the resolution of conflicts (31.03.09)

PACE rapporteur: witnesses before the Hague Tribunal must be offered long-term protection (09.04.09)

“Witnesses have played, and continue to play, a key role in ending impunity for war crimes, in particular in the Balkans,” said Jean-Charles Gardetto (Monaco, EPP/CD) today, speaking at the end of a visit to The Hague.

Conference in Lisbon on the status and political participation of women in the Euro-Mediterranean region (01.04.09)

The North-South Centre of the Council of Europe and the Council of Europe Parliamentary Assembly (PACE) Sub-Committee on Equal Participation of Women and Men in Decision-Making held a conference on the theme: “status and political participation: women as agents of change in the Euro-Mediterranean region” in Lisbon on 2 and 3 April 2009.

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

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B. Thematic work

Joint statement on the occasion of the International Roma Day (8 April 2009)

The Council of Europe Commissioner for Human Rights, the European Union Agency for Fundamental Rights (FRA), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) issue the following joint call to governments, intergovernmental organisations and civil society to step up their efforts in tackling the human rights violations that the Roma continue to face in Europe :

As we celebrate the International Roma Day, our organisations are deeply concerned by the continuing discriminatory treatment and exclusion of the Roma, and particularly by the recent escalation in hate motivated incidents and racist rhetoric reported in a number of States. In times of economic crisis, communities such as the Roma, along with migrants and other vulnerable groups, tend to become easy 'scapegoats' for extremist movements and populist politicians. Such 'scapegoating' has already resulted in damaging inter-ethnic relations and an increase in the number of violent hate crimes in some countries. As the economic crisis deepens, political leaders in any State need to unequivocally and publicly condemn all forms of violence targeting the Roma. In order to avoid inciting ethnic tensions, politicians and other public figures must carefully consider their statements, and journalists must apply ethical reporting rules in their articles or radio/TV programmes. Together, we strongly condemn all forms of discrimination and violence against the Roma and call for concerted action from the responsible authorities at all levels in this regard.

In spite of the existence of strong anti-discrimination legislation and policies to promote the inclusion of the Roma in many countries, evidence shows that discrimination against the Roma persists, notably in education, employment, health care, housing, and access to justice and public services. Roma women and children are particularly vulnerable. Segregation in education, a particularly egregious type of discrimination violating the right of Roma children to access quality education and diminishing their employment prospects, endures in several states.

The continuing marginalisation and exclusion of the Roma represents a push-factor for recent migration movements, which have become one of the key challenges in Europe today. The biased portrayal of Roma migrants in the media and political misuse of the image of the Roma have contributed to discrimination and ill-treatment of the Roma in some countries. Roma with citizenship in an EU country have the right to move and reside freely within the EU, but nevertheless often face discriminatory treatment. We are particularly concerned about racial profiling of Roma in some States and the potential violation of their freedom of movement and human rights. The FRA, Council of Europe Commissioner for Human Rights, the OSCE/ODIHR and the OSCE HCNM will therefore pay increased attention to migration-related challenges and assist States in addressing migration while ensuring the effective protection of human rights and fundamental freedoms of the Roma.

Our institutions, based on their specific mandates, will continue to review Roma-related policies, measure their impact, identify good practices and assist States in developing and implementing sustainable integration policies. Partnership with the Roma communities must be one of the guiding principles for the design and implementation of such policies and programmes.

The designation of 8 April as International Roma Day dates back to the fourth congress of the International Romani Union in Warsaw in 1990. The International Roma Day serves as tribute to the first meeting of international Roma representatives on 8 April 1971, near London.

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

Study on recent migration of Roma in Europe (09.04.09)

On the occasion of the International Roma Day, on 8 April, the Council of Europe Commissioner for Human Rights and the OSCE High Commissioner on National Minorities released a study on recent migration of Roma in Europe. The study provides an analysis of the existing human rights standards concerning migration in Europe and highlights discriminatory practices that Roma migrants still face. The study concludes with a set of recommendations for action by states in order to enhance effective protection of the human rights of Roma migrants in Europe.

Read the study on recent migration of Roma in Europe

"Foreign policy should be based on a principled approach to human rights" (30.03.09)

"The protection of human rights is not only a national but also an international concern and responsibility", said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his latest Viewpoint published today. Pointing out that European governments have an obvious self interest in stability and peace, Commissioner Hammarberg encourages them to have a meaningful and sincere dialogue on human rights to find effective ways to implement active foreign policies based on human rights. "Several governments in Europe are now guided by a strategy directive for human rights in their foreign affairs policy. This has proved to be an effective way of clarifying basic principles and priorities. The adoption of such directives and reports on their implementation has provided a sound basis for in-depth discussions on human rights in foreign relations."

Read the Viewpoint

Read in Russian (.pdf or .doc)

C. Miscellaneous (newsletter, agenda…)

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