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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.

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

A. Judgments

1. Judgments deemed of particular interest to NHRSs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments 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.

- **Right to life**

Esat Bayram v. Turkey (no. 75535/01) (Importance 2) – 26 May 2009 - Violation of Article 2 – Lack of effective investigation following death during military service

The case concerned the applicant's allegation that his 20-year-old brother, Halim Bayram, called up for compulsory military service, was shot and killed by his superior, despite the official conclusion that he had committed suicide. He also alleged that his brother had not received adequate medical care in Çanakkale Military Hospital and that the investigation into his death had been inadequate. The Court fnoted that Mr Bayram's brother had been transferred to the Çanakkale Military Hospital immediately after the incident, where he had undergone an operation, and concluded that there had been no shortcomings on the part of the authorities in providing adequate medical treatment to him. The investigation, however, had revealed some serious inconsistencies and deficiencies, in violation of Article 2.

- **Police misconduct**

Damian-Burueana and Damian v. Romania (no. 6773/02) (Importance 2) – 26 May 2009 – Violations of Article 3 (treatment and investigation) - Violation of Article 6 § 1 (2nd applicant) – Length of proceedings – Violation of Article 8 (2nd applicant) – Lack of protection against arbitrariness

The applicants complained of ill-treatment when arrested and while they were in police custody in Novaci and Turceni, of searches of their persons and homes and of the length of the compensation proceedings. The Court held unanimously that there had been two violations of Article 3, as the authorities had provided no justification for the degree of force used during the applicants' arrest, as a result of which they had sustained serious injuries, and on account of the lack of an effective investigation into their allegations. The Court also held that there had been a violation of Article 6 § 1, as the compensation proceedings instituted by Viorel Damian had lasted for more than eight years and eight months. It further held that there had been a violation of Article 8, since Mr Damian had not been afforded the minimum degree of protection against arbitrariness required by that Article (see §§ 112-116 on the lack of sufficient legal framework regarding searches).

- **Conditions of detention**

Măciucă v. Romania (no. 25763/03) (Importance 3) – 26 May 2009 – Violation of Article 3 – Conditions of detention

The applicant was imprisoned in 1992 and is serving an 18-year sentence for murder. He complained of his conditions of detention in the prison of Jilava. The Court held unanimously that there had been a violation of Article 3 on account in particular of overcrowding in the applicant's cell, coupled with the length of time for which he had been detained in such conditions.

Kokoshkina v. Russia (no. 2052/08) (Importance 3) – 28 May 2009 – Violation of Article 5 § 3 – Excessive length of detention – Violation of Article 3 – Conditions of detention

Arrested in October 2006 on suspicion of drug trafficking, the applicant, Ms Kokoshkina complained about the excessive length and inhuman conditions of her ensuing detention. She was released on bail in May 2008; the criminal proceedings against her are still pending. The Court held unanimously that there had been a violation of Article 3 on account of the conditions of the applicant's detention in a facility in Serpukhov where she had been obliged to live, sleep and use the toilet in an overcrowded cell – less than 3 square meters of personal space for each detainee – with only one hour of exercise per day. It further held unanimously that there had been a violation of Article 5 § 3 as it considered that the length, more than one year and seven months, of the applicant's detention had been excessive.

Isayev v. Ukraine (no. 28827/02) (Importance 3) – 28 May 2009 – Violation of Article 3 –Lack of appropriate medical treatment during detention – Violation of Article 5 § 3 – Excessive length of detention – Violation of Article 6 § 1 – Excessive length of criminal proceedings

Arrested in November 1997 on charges of theft, the applicant Mr Isayev alleged that he had been beaten by the police while in custody and that, suffering from neurological problems, the medical assistance during his detention in the Pre-Trial Detention Centre No. 27, until his release in October 2003 had been inadequate. He was ultimately sentenced to almost six years' imprisonment for numerous robberies and burglaries in March 2007. He also complained about the excessive length of his overall detention and of the criminal proceedings against him. The Court considered that the applicant's complaints concerning his alleged ill-treatment by the police had not been exhausted at domestic level and therefore declared that part of his case inadmissible. The Court noted that from December 2002 it had been clear, and even acknowledged by the penitentiary authorities, that the applicant's right hand and foot were partly paralysed and that he needed specialist treatment which was not available where he was being detained. He was, however, only released ten months later. The Court therefore held unanimously that there had been a violation of Article 3 on account of the inadequate medical treatment provided to the applicant from December 2002. The Court further held that there had been a violation of Article 5 § 3 on account of the excessive length – more than five years and ten months – of the applicant's detention and a violation of Article 6 § 1 on account of the excessive length – nine and a half years – of the criminal proceedings against him.

Siasios and Others v. Greece (no. 30303/07) (Importance 3) – 4 June 2009 – Violation of Article 3 (treatment) – Conditions of detention

The applicants were arrested in 2006 for drugs-related offences and detained at the police station in Kateríni (northern Greece) a number of times between 2006 and 2007 for periods ranging from two months and 14 days (shortest period) to three months and 20 days (longest period). They were subsequently transferred to Salonika Prison (Greece). The applicants complained about the conditions of their pre-trial detention. Referring, *inter alia* to the findings of the Ombudsman (§31), to reports produced by the Council of Europe's European Committee for the Prevention of Torture (CPT), the

Court considered that the detention centre of Kateríni Police Station was not an appropriate place for detention of the length imposed on the applicants. With no outdoor yard for walks or physical exercise, no indoor eating facilities, and no radio or television providing contact with the outside world, the detention centre, although it provided acceptable conditions for short-term detention, was not adapted to the requirements of extended detention. Accordingly, the Court held, unanimously, that there had been a violation of Article 3.

- **Right to a fair hearing**

Batsanina v. Russia (no. 3932/02) (Importance 1) – 26 May 2009 – No violation of Article 6 § 1 (equality of arms) – Justified interference of a prosecutor in the civil proceedings – Violation of Article 6 § 1 (fair hearing) –Authorities' failure to inform the applicant of his appeal hearing

The applicant's husband, a staff member of the State-owned Oceanology Institute of the Russian Academy of Sciences, was placed in 1977 on a waiting list to receive housing. In August 1998 he was on the top of that list. In order to obtain a larger flat from the Institute, it was agreed that Ms Batsanina would transfer the title to her own flat to the Institute. In December 1998 she and the Institute signed an exchange agreement to that effect. However, the Institute subsequently discovered that she had sold her old flat in March 1998.

The Gelendzhik town prosecutor, acting on behalf of the Institute and the person who had been allocated the applicant's flat, brought proceedings against Ms Batsanina and her husband to have the exchange agreement invalidated and to evict the applicant's family from the flat granted to her husband. Ms Batsanina's husband brought a counter-claim seeking the acknowledgement of his right to the new flat received from the Institute.

In June 2001 the Town Court granted the public prosecutor's claim and later the same month it dismissed the counter-claim in a separate judgment. Ms Batsanina appealed; the appeal court upheld both judgments.

The prosecutor was present at the appeal hearing which took place on 16 August 2001. There was no written proof that Ms Batsanina received any summons for that hearing. In January 2003 the Supreme Court refused to initiate supervisory proceedings in respect of the above judgments. It rejected, among other things, Ms Batsanina's complaint about not having been notified of the appeal hearing, noting that the parties had been informed about it.

Ms Batsanina complained of the prosecutor having brought proceedings both on behalf of the State and of a private person, and of her not having been informed of the appeal hearing of 16 August 2001.

Article 6 §1 (proceedings brought by the public prosecutor)

The Court found that the public prosecutor had acted in the public interest. His decision had been based on the relevant Russian law at the time, according to which he had discretion to bring proceedings depending on the particular circumstances of the case. The Court found that the fact that the prosecutor had brought the civil proceedings had not influenced the civil court unduly.

"24. […] since the prosecutor did not participate in the judicial deliberations; his lawsuit was communicated to the applicant and she used the opportunity given to her to reply to the prosecutor's arguments. Nevertheless, the Court reiterates that since a prosecutor or comparable officer, in undertaking the status of a procedural plaintiff, becomes in effect the ally or opponent of one of the parties, his participation was capable of creating a feeling of inequality in respect of one of the parties. In this context, the Court reiterates that while the independence and impartiality of the prosecutor or similar officer were not open to criticism, the public's increased sensitivity to the fair administration of justice justified the growing importance attached to appearances.

25. The Court considers that the fact that a similar point of view is defended before a court by several parties or even the fact that the proceedings were initiated by a prosecutor does not necessarily place the opposing party in a position of "substantial disadvantage" when presenting her case. […]

27. It is noted that the parties to civil proceedings, the plaintiff and the respondent, should have equal procedural rights. The Court does not exclude that support by the prosecutor's office of one of the parties may be justified in certain circumstances, for instance for the protection of vulnerable persons who are assumed to be unable to protect their interests themselves, or where numerous citizens are affected by the wrongdoing concerned, or where identifiable State assets or interests need to be protected. The Court notes in that connection that the applicant's opponent in the proceedings in question was a State-owned organisation. There was also a private person who had a vested interest in the outcome of the proceedings. Although both the Oceanology Institute and Mr M were represented in the proceedings, the Court considers that the public prosecutor acted in the public interest when he brought proceedings against the applicant and her husband. [...]."

In addition, having been legally represented, Ms Batsanina and her husband had had the possibility to defend their case before the domestic courts effectively. The Court held, by six votes to one, that there had been no violation of Article 6 §1 as the two contending parties – the Oceanology Institute and Ms Batsanina – had been in an equal position to present their case.

Article 6 § 1 (non-participation in the appeal hearing)

The Court noted that the authorities had submitted no proof that Ms Batsanina had been notified of the appeal hearing. Although the Government had submitted that the relevant registers had allegedly been destroyed it had not specified on what legal basis. It had likewise not produced a certificate confirming the act of destruction of the registers after the expiry of the period authorised by law. Nor was it mentioned in the appeal judgment that it had been verified whether Ms Batsanina had effectively been informed of that hearing. The Court concluded, therefore, that she had not been given an opportunity to attend the appeal hearing and plead her case, in violation of her right to a fair hearing under Article 6 § 1.

"33. [...] even accepting that the Instructions referred to by the applicant were applicable in his case, the Court cannot discern what storage period applied. It has not been shown that the Government exhausted all reasonable possibilities to adduce the relevant evidence. Lastly, it does not follow from the text of the appeal judgment that the appeal court verified whether the applicant had been effectively informed of the appeal hearing."

The Court concluded, therefore, that the applicant had not been given an opportunity to attend the appeal hearing and plead her case, in violation of her right to a fair hearing under Article 6 § 1.

Judge Gyulumyan expressed a partly dissenting opinion, which is annexed to the judgment.

Borovský v. Slovakia (no. 24528/02) (Importance 3) – 2 June 2009 – Violation of Article 6 § 2 – Presumption of innocence – Prejudicial statements made by public officials before trial reflecting that the applicant was guilty

In August 2000, the police brought criminal proceedings against the applicant, Mr Borovský on suspicion of him having caused prejudice to the creditor of two major companies by having allowed the transfer of securities of those companies to a third party. He received the first decision accusing him of the above-described offence on 7 September 2000. A number of other articles were published in various newspapers before and after that date.

On 18 September 2000, the weekly magazine Profit published an article, including certain citations by the deputy director of the Office of the Finance Police who stated, among other things, that the actions of Mr Borovský had been "premeditated" and "fraudulent".

In August 2001, Mr Borovský was indicted with the offence of abuse of authority and he was acquitted in February 2003.

Mr Borovský sued the editor of Profit magazine for defamation resulting from the publication of the 18 September 2000 article. In September 2002, the court found for the applicant and ordered the editor of Profit to publish an apology for the false statements contained in that article.

In May 2001, before the Constitutional Court the applicant alleged a violation of his right to be presumed innocent caused by the statements of the police officers who had disclosed the content of the investigation file to the media and had announced that he had committed criminal offences. The Constitutional Court found that there had been no violation of Mr Borovský's right to be presumed innocent.

Mr Borovský complained that his right to be presumed innocent had been infringed as a result of the police officers having informed the media of the content of his investigation file, as well as of their statements concerning his guilt.

The Court first found that there had existed justified reasons to suspect Mr Borovský of having committed the offence at issue.

The Court also noted that the right to presumption of innocence would be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he or she is guilty before that person has been proved guilty according to law.

The Court, however, considered that the statements made by the deputy director of the Office of the Finance Police quoted in the 18 September 2000 Profit magazine article had not been limited to describing the status of the pending proceedings or a "state of suspicion" against Mr Borovský. Instead, by qualifying the acts as fraudulent and premeditated, they had given an assessment of the position as if it had been an established fact. That statement, therefore, had implied that the accused

had committed fraud - an offence with which Mr Borovský had not been charged neither at the time or later.

The Court held that the statement by the deputy director of the Office of the Financial Police had run contrary to Mr Borovský's right to be presumed innocent. Accordingly, there had been a violation of Article 6 §2 of the Convention.

- **Right to access to court**

Elyasin v. Greece (no. 46929/06) (Importance 2) – 28 May 2009 - Violation of Article 6 § 1 – Judgment *in absentia* although the applicant had always resided at the same declared address

The applicant, Yousef Elyasin, is a Syrian national and lives in Athens. Having been convicted of handling stolen goods and bribing a civil servant, he complained that the criminal proceedings against him had been unfair, and in particular of an infringement of his right of access to a court. The Court held that the applicant having been trialed as a person whose home address was unknown, whereas the applicant brought evidence stating he had always been declared at the same address, there had therefore been a violation of Article 6 § 1 and that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

- **Medical negligence**

Codarcea v. Romania (no. 31675/04) (Importance 2) – 2 June 2009 – Violation of Article 6 – Excessive length of the proceedings – Violation of Article 8 – Ineffectiveness of the proceedings seeking compensation for the physical and psychological damage resulting from medical negligence

On 4 June 1996 the applicant, Elvira Codarcea, was admitted to Târgu Mureş Hospital for the removal of an acrochordon on her lower jaw and a post-operative healing problem affecting her right thigh. Doctor B. recommended plastic surgery and performed a blepharoplasty (eyelid surgery). Mrs Codarcea had to be taken into hospital and operated on again, from 8 to 9 August 1996, because – following the blepharoplasty – her eyelids would not close. She was taken into hospital again from 20 to 21 August the same year and this time Dr B. performed a third blepharoplastry as well as more plastic surgery. These operations resulted in paralysis of the right side of her face and other adverse consequences, including neurasthenic depression, requiring specialist medical treatment. Several further operations had to be performed. On 5 June 1998 Mrs Codarcea instituted criminal proceedings as a civil party against Dr B. but the proceedings produced no result and were definitively closed by a decision of the Mureş County Court of 25 June 2004 ruling that the doctor's criminal responsibility was now time-barred. On 18 October 2004 the applicant therefore brought civil proceedings against Dr B. and on 5 May 2005 also sued the hospital where she had been operated on. On 1 July 2005 the civil court held that Mrs Codarcea had been the victim of medical negligence and ordered the doctor to pay pecuniary and non-pecuniary damages. It dismissed the applicant's action against the hospital, however, on the ground that the hospital could not be held liable for the actions of the doctor. After the case had gone right up to the High Court of Cassation, the proceedings were definitively disposed of on 18 April 2008, when the Târgu Mureş Court of Appeal upheld the applicant's right to compensation. In the meantime, on 17 July 2006, enforcement proceedings had been issued against Dr B. by the Târgu Mureş Court of First Instance but had remained unsuccessful because the doctor had become insolvent on account of outstanding maintenance payments and a voluntary act of partition of real property he had concluded after judgment had been found against him.

The applicant alleged that the proceedings she had instituted before the domestic courts on 5 June 1998 had been excessively long and accordingly contrary to Article 6 of the Convention. She complained, under Article 8, that the ineffectiveness of the proceedings had prevented her from securing fair compensation for the physical and psychological damage she had incurred as a result of medical negligence.

Article 6

The Court pointed out first of all that as the case concerned an action for damages in respect of personal injury sustained by a person who – at the beginning of the proceedings – was aged 65, the judicial authorities should have exercised special diligence. While acknowledging the complexity of the medical issues with which the domestic courts were faced, the Court considered that the period of nine years, six months and 23 days which had elapsed between 5 June 1998, when Mrs Codarcea instituted proceedings as a civil party seeking damages, and 18 April 2008, when the Târgu Mureş Court of Appeal gave the final decision in the case, was excessively long and had therefore resulted in a breach of Article 6.

Article 8

The Court reiterated that issues relating to a person's physical and psychological integrity and their agreement to undergo medical treatment fell within the scope of Article 8. It pointed out that States parties to the Convention were under an obligation to introduce regulations compelling both public and private hospitals to adopt appropriate measures for the physical integrity of their patients. It also stressed that any patient should be informed of the consequences of a medical operation and be able to give or withhold their consent in full knowledge thereof. Where a patient had not been so informed, and the operation was performed in a public hospital, the State concerned could be held directly liable.

In the present case the Court noted that Mrs Codarcea had had formal access to a procedure by which she was able to secure a finding of liability against the doctor who had operated on her and an order to pay her damages. However, it had not been possible to recover the amount awarded by the domestic courts because the doctor was insolvent and at the time there was no medical-negligence insurance scheme under Romanian law (the position has since changed).

Accordingly there had therefore been a violation of Article 8 on account of the applicant's inability to obtain the compensation awarded her by a court decision for the consequences of the medical negligence of which she had been a victim.

Judge Myjer expressed a partly dissenting opinion, which is annexed to the judgment.

- **Lengthy non enforcement of domestic decisions and freedom of expression**

Kenedi v. Hungary (no. 31475/05) (Importance 1) – 26 May 2009 – Violation of Article 6 § 1 – Excessively long proceedings– Violation of Article 10 and of Article 13 in conjunction with Article 10 – Lengthy non-enforcement of court judgment authorising access to documents regarding the Hungarian secret services

The applicant, János Kenedi, is a historian, specialising among other things in dictatorships and their secret services.

In September 1998, with a view to publishing a study on the Hungarian State Security Service of the Ministry of the Interior, Mr Kenedi requested access to some documents in the Ministry's possession. In November 1998, the Ministry denied his request, which he then challenged in court. In January 1999, the court ruled in his favour granting him access for research purposes to all documents requested.

In November 1999 the Ministry proposed access if Mr Kenedi signed a confidentiality undertaking. He found this unacceptable and requested the enforcement of the court ruling in his favour. Execution of the judgment was eventually ordered and initiated in December 2000.

Having attempted subsequently to restrict Mr Kenedi from publishing the accessed information, the Ministry was ordered to pay two fines for not complying with the enforcement order. In December 2003, all but one document were transferred to the National Archives and thus became public.

Mr Kenedi has not had unrestricted access to the remaining document to date. Mr Kenedi complained of not being able to have access, within a reasonable time, to all documents he wanted despite the domestic court's ruling in his favour.

Article 6 §1

The Court noted that the proceedings have so far lasted some ten and a half years for three levels of jurisdiction and the execution phase. Referring to its repeated case law on the matter, the Court held that that length of proceedings had been excessive, in violation of Article 6 § 1.

Article 10

The Court also noted that Mr Kenedi had obtained a court judgment granting him access to the documents in question, following which the domestic courts had repeatedly found in his favour in the ensuing enforcement proceedings. The authorities had persistently resisted their obligation to comply with the domestic judgment thus hindering Mr Kenedi's access to documents he had needed to write his study. The Court concluded that the authorities had acted arbitrarily and in defiance of domestic law. Their obstructive actions had also led to the finding of a violation of Article 6 § 1 of the Convention.

The Court held, therefore that the authorities had misused their powers by delaying Mr Kenedi's exercise of his right to freedom of expression, in violation of Article 10.

"43. The Court observes that the Government have accepted that there has been an interference with the applicant's right to freedom of expression. The Court emphasises that access to original

documentary sources for legitimate historical research was an essential element of the exercise of the applicant's right to freedom of expression (see, mutatis mutandis, Társaság a Szabadságjogokért v. Hungary, no. 37374/05, §§ 35 to 39, 14 April 2009).

An interference with an applicant's rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether the present interference was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" in order to achieve those aims.

44. The Court reiterates that the phrase "prescribed by law" in the second paragraph of Article 10 alludes to the very same concept of lawfulness as that to which the Convention refers elsewhere when using the same or similar expressions, notably the expressions "in accordance with the law" and "lawful" found in the second paragraph of Articles 8 to 11. The concept of lawfulness in the Convention, apart from positing conformity with domestic law, also implies qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness (see Rekvényi v. Hungary [GC], no. 25390/94, § 59, ECHR 1999-III).

45. The Court observes that the applicant obtained a court judgment granting him access to the documents in question (see paragraph 10 above). Thereafter, a dispute evolved as to the extent of that access. However, the Court notes that, in line with the original decision, the domestic courts repeatedly found for the applicant in the ensuing proceedings for enforcement and fined the respondent Ministry. In these circumstances, the Court cannot but conclude that the obstinate reluctance of the respondent State's authorities to comply with the execution orders was in defiance of domestic law and tantamount to arbitrariness. The essentially obstructive character of this behaviour is also manifest in that it led to the finding of a violation of Article 6 § 1 of the Convention (see paragraph 39 above) from the perspective of the length of the proceedings. For the Court, such a misuse of the power vested in the authorities cannot be characterised as a measure "prescribed by law".

It follows that there has been a violation of Article 10 of the Convention."

Article 13

Given the Ministry of the Interior's persistent resistance to the enforcement of Mr Kenedi's rights, the Court found that the procedure available in Hungary at the time and designed to remedy the violation of Mr Kenedi's Article 10 rights had proven ineffective. There had, therefore, been a violation of Article 13 read in conjunction with Article 10.

- **Right to respect for family life**

Brauer v. Germany (no. 3545/04) (Importance 1) 28 May 2009 – Violation of Article 14 taken in conjunction with Article 8 – Inability of the applicant born outside marriage before the 1 July 1949 and whose father was resident of the FRG to assert her inheritance rights

The applicant was born in Oberschwöditz, the former German Democratic Republic (GDR). Born outside of marriage, she was immediately recognised by her father. She had regular contact with him despite the fact that they each lived in one of the separate German States; she in the former GDR, he in the FRG. After the German reunification, they had even more frequent contact.

Her father was not married and, save some distant relatives with whom he apparently had no contact, had no descendants. On her father's death in 1998 she attempted to assert her inheritance rights.

Her application was rejected at first instance on the ground that, under the Children Born Outside of Marriage Act (Nichtehelichengesetz) of 1969, a child born outside marriage before 1 July 1949 was not a statutory heir. Furthermore, that cut-off date, justified by the practical and procedural difficulties of establishing paternity of children before that point in time and by the need to protect the "legitimate expectations" of the deceased, had been declared compatible with the Basic Law (Grundgesetz) by the Federal Constitutional Court in 1976 and 1996.

Ms Brauer was not able to benefit either from the equal inheritance rights provided for by the law of the former GDR, where she had lived for a considerable part of her life, since her father had been resident in the FRG at the time when Germany was reunified. Following German reunification, in order to avoid any disadvantage for children born outside marriage in a different social context (i.e. the GDR), the legislature granted those children the same inheritance rights as children born within marriage, provided that the father had been resident in the former GDR at the time when reunification had taken effect.

Following two sets of appeal proceedings, her case was ultimately rejected by the Constitutional Court in November 2003. It considered that the inheritance rights of children born outside marriage before 1 July 1949 had been declared compatible with the Basic Law in 1976 and 1996. Nor did that cut-off

date lose its justification simply because children also born outside of marriage but in an entirely different social context (the former GDR) had the same rights as children born within marriage; the difference in treatment was justified by the aim of avoiding any disadvantage resulting from the former GDR's accession to the FRG.

The applicant complained that, following her father's death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate.

The Court noted that it was not in dispute that the application of the relevant provisions of domestic law had created a situation in which a child born outside marriage before the cut-off date of 1 July 1949 was treated differently not only to children born within marriage but also to children born outside marriage both before – as concerned children covered by the law of the former GDR whose father had been resident in GDR territory at the time of reunification – and after that cut-off date.

"40.The Court reiterates […] that the Convention is a living instrument which must be interpreted in the light of present-day conditions. Today the member States of the Council of Europe attach great importance to the question of equality between children born in and children born out of wedlock as regards their civil rights. This is shown by the 1975 European Convention on the Legal Status of Children born out of Wedlock, which is currently in force in respect of twenty-one member States and has not been ratified by Germany. Very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention.

41.The Court considers that the aim pursued by maintaining the impugned provision, namely the preservation of legal certainty and the protection of the deceased and his family, is arguably a legitimate one."

However, in the Court's view, the arguments put forward for maintaining the provision in question were no longer valid today; like other European societies, German society had evolved considerably and the legal status of children born outside marriage had become equivalent to that of children born within marriage. Furthermore, the practical and procedural difficulties in proving the paternity of children had receded, as the use of DNA testing to establish paternity now constituted a simple and very reliable method.

Indeed, given the evolving European context in this sphere, and the importance attached to equality between children born in and out of marriage by the member States of the Council of Europe, underscored by the 1975 European Convention on the Legal Status of Children born out of Wedlock, the aspect of protecting the "legitimate expectation" of the deceased and their families had to be subordinate to the imperative of equal treatment between children born outside and within marriage.

Furthermore, the applicant's father had recognised her after her birth and had always had regular contact with her despite the difficult circumstances linked to the existence of two separate German States. He had neither a wife nor any direct descendants; protection of distant relatives' "legitimate expectations" could not therefore come into play.

Following the German reunification, the legislature had adapted inheritance rights in order to protect children born outside of marriage whose father had been resident in the territory of the former GDR; that nevertheless had only aggravated the existing inequality in relation to children born outside marriage before 1 July 1949 whose father had been resident in the FRG, such as the applicant.

Finally, the application of the relevant provision of the Children Born outside Marriage Act had excluded the applicant from any statutory entitlement to her father's estate, without any financial compensation.

The Court could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant's exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it. There had therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

Given that conclusion, the Court held that there was no need to examine separately the complaint under Article 8.

Amanalachioai v. Romania (no. 4023/04) (Importance 2) – 26 May 2009 – Violation of Article 8 – Lack of Romanian authorities to ensure family unity and to guarantee the exercise of the applicant's parental rights

In 1999, the applicant's wife died from leukemia. On 27 January 2001, their daughter D., who was born in 1994, left with her father's consent to spend her holidays with her maternal grandparents, who then informed the applicant on 4 February 2001 that they did not intend to return D. to him.

On 7 February 2001 he lodged an urgent application with the District Court seeking the immediate return of his daughter, and an order was made in his favour. A number of unsuccessful attempts were made to enforce the order. Mr Amanalachioai himself attempted to fetch D. but became embroiled in a quarrel with the grandparents as a result of which D. was injured and required treatment for more than 15 days.

In the context of proceedings for the child's return, the County Court found on 8 June 2001 that Mr Amanalachioai could not offer his daughter the same material and psychological conditions as D's grandparents, to whom the girl was much attached.

An appeal by Mr Amanalachioai against the judgment of 8 June 2001 was dismissed by the Court of Appeal on 23 October 2001. The Court of Appeal considered that "for the time being" it was in the child's interest to continue to live with her grandparents.

In October 2002 the Supreme Court of Justice dismissed an appeal by the applicant to have the decision of 23 October 2001 set aside. The court found that D. would be brought up in "optimum conditions" if she remained with her grandparents.

In May 2002 his new urgent application to secure D.'s return was declared inadmissible.

Mr Amanalachioai alleged that the Romanian authorities had not taken appropriate measures to secure the unity of his family through the immediate return of his daughter D. and to guarantee the exercise of his parental rights.

The Court reiterated that, while domestic authorities enjoyed a wide margin of appreciation in assessing the necessity of entrusting a child to a person other than the child's parents, family ties could only be severed in "very exceptional" circumstances and everything had to be done to preserve personal relations and, if and when appropriate, to "rebuild" the family.

The fact that a child could be placed in a more beneficial environment for his or her upbringing would not on its own justify removal from the care of the child's biological parents. The Court observed that Mr Amanalachioai was able to offer the child certain material conditions and that his educational and emotional abilities were satisfactory.

The domestic courts had found decisive the argument that D. was very attached to her grandparents and had settled well with them. However, those factors did not correspond to "very exceptional" circumstances capable of justifying the severance of family ties.

Decisions governing family relations could not be taken solely on the basis of the passage of time or to consolidate de facto situations. The Court took the view that the domestic courts, with their rather inactive attitude, had contributed to sustaining a situation created by the authorities' lack of diligence – a crucial factor in the context of an application for immediate return – in enforcing the urgent-proceedings order.

The Court noted that, in the context of the courts' temporary refusal to grant the return of D. to her father, it had been necessary to take measures to ensure that Mr Amanalachioai could exercise his parental rights and that the family relationship could be developed, but this had not been the case. The authorities should have been more concerned about the weakening of this family relationship.

The Court accordingly held by six votes to one that the applicant's right to respect for his family life had not been effectively protected, in breach of Article 8, and that the passiveness of the authorities had resulted in the severance of the relationship between D. and her father.

Judge Fura-Sandström appended a dissenting opinion to the judgment.

- **Right to respect for private (professional) life**

Bigaeva v. Greece (no. 26713/05) (Importance 1) – 28 May 2009 – Violation of Article 8 – Restrictions on professional life – No violation of Article 8 in conjunction with Article 14 – Wide national margin of appreciation regarding the conditions of nationality for admission to the legal practice

The applicant, Violetta Bigaeva is a Russian national and lives in Athens. In 1993 she settled in Greece, obtained a work permit and was admitted in 1995 to the Athens Law Faculty. In August 1996 she obtained a residence permit on the basis of her student status. In 2000 she obtained a Master's degree, then in 2002 a postgraduate qualification, and decided to continue with her doctorate.

In the meantime, in 2000, the applicant had been admitted to pupillage by the Athens Bar Council (the "Council"). Under the Legal Practice Code, an eighteen-month pupillage is a prerequisite for admission to the Bar. According to a certificate issued in 2007 by the Council, the applicant had been admitted to pupillage by mistake; it had been assumed that she was a Greek citizen as she had a Master's degree from a Greek university.

After she had completed her pupillage, in 2002, the Council refused to allow Mrs Bigaeva to sit for the Bar examinations on the grounds that she was not a Greek national, as required by Article 3 of the Legal Practice Code. The applicant then lodged with the Supreme Administrative Court an application to have that refusal set aside, together with a request for the stay of execution of the decision in question.

In September 2002 the Supreme Administrative Court granted Mrs Bigaeva's request for a stay of execution so that she could sit for the examinations. After passing them, she applied to the Ministry of Justice to be admitted to the Athens Bar Council's roll. As the Ministry failed to reply, the applicant again appealed to the Supreme Administrative Court, this time against the Ministry's tacit refusal to admit her to the Council's roll. The Supreme Administrative Court dismissed Mrs Bigaeva's two appeals in 2005, taking the view, among others, that in view of the important role of lawyers in the administration of justice, the State enjoyed wide discretion in regulating the conditions of access to the profession. Accordingly, the Supreme Administrative Court found that the rejection of the applicant's request to sit for the Bar examinations had been legal and had not infringed her right to the free development of her personality and, accordingly, that the Ministry of Justice had justifiably denied her request for admission to the Bar Council's roll.

Mrs Bigaeva alleged that the rejection of her request to sit for the examinations with a view to being admitted to the Athens Bar Council's roll constituted an unlawful interference with her right to respect for her professional life and that the exclusion of foreign nationals from the legal profession represented a discriminatory measure.

Article 8

The Court observed that restrictions imposed on professional life might fall within the ambit of Article 8 when they affected the way an individual built his social identity by developing relationships with other human beings.

In the present case, the prospect of sitting for the examinations after her pupillage was the climax of a long personal and academic endeavour for Mrs Bigaeva, reflecting her desire to become integrated into Greek society.

The authorities, who did not raise the issue of nationality until the end of the process, allowed her to carry out her pupillage and left her with hope, even though she was clearly not going to be entitled to sit for the subsequent examinations.

The Court held by four votes to three that there had been a violation of Article 8, as the authorities had shown a lack of coherence and respect towards Mrs Bigaeva and her professional life.

Article 8 in conjunction with Article 14

Mrs Bigaeva accused the State of excluding non-EU foreign nationals from access to the legal profession, in an arbitrary and discriminatory manner.

The Court reiterated that the Convention did not guarantee the right to freedom of profession and that the legal profession was somewhat special because of its public-service aspects.

It was therefore for the Greek authorities to decide on the conditions of nationality for admission to legal practice. The Court could not call into question the decision they had taken not to allow Mrs Bigaeva to sit for the examinations organised by the Council on an objective and reasonable basis, namely Article 3 of the Legal Practice Code.

The Court accordingly held unanimously that there had been no violation of Article 8 taken together with Article 14 of the Convention.

Judges Vajić, Malinverni and Nicolaou appended a joint partly dissenting opinion to the judgment.

- **Right to respect for correspondence**

Szuluk v. the United Kingdom (no. 36936/05) (Importance 1) – 2 June 2009 - Violation of Article 8 – Monitoring by prison authorities of medical correspondence concerning life-threatening condition between the applicant and his external specialist doctor

The applicant, Edward Szuluk, is currently in prison in Staffordshire (United Kingdom). He was sentenced in November 2001 to 14 years' imprisonment for drugs offences. In April 2001, while on bail pending trial, the applicant suffered a brain hemorrhage for which he had two operations. Following his discharge back to prison, he was required to go to hospital every six months for a specialist check-up.

The applicant complained, unsuccessfully, before the local courts that his correspondence with the neuro-radiology specialist who was supervising his hospital treatment had been monitored by a prison medical officer.

Relying on Article 8, Mr Szuluk complained that the prison authorities had intercepted and monitored his medical correspondence.

Article 8

The Court noted that it was clear and not contested that there had been an "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence. It further observed that it was accepted by the parties that the reading of the applicant's correspondence had been governed by law and that it had been aimed at the prevention of crime and the protection of the rights and freedoms of others.

Mr Szuluk submitted that the monitoring of his correspondence with his medical specialist inhibited their communication and prejudiced reassurance that he was receiving adequate medical treatment while in prison. Given the severity of his medical condition, the Court found the applicant's concerns to be understandable. Moreover, there had not been any grounds to suggest that Mr Szuluk had ever abused the confidentiality given to his medical correspondence in the past or that he had any intention of doing so in the future. Furthermore, although he had been detained in a high security prison which also held Category A (high risk prisoners), he had himself always been defined as Category B (prisoners for whom the highest security conditions were not considered necessary).

Nor did the Court share the Court of Appeal's view that the applicant's medical specialist, whose *bona fides* had never been challenged, could be "intimidated or tricked" into transmitting illicit messages or that that risk had been sufficient to justify the interference with the applicant's rights. This was particularly so since the Court of Appeal had further acknowledged that the importance of unimpeded correspondence with secretarial staff of MPs (Members of Parliament), although subject to the same kind of risks, outweighed any risk of abuse.

Indeed, uninhibited correspondence with a medical specialist in the context of a prisoner suffering from a life-threatening condition should be given no less protection than the correspondence between a prisoner and an MP. Moreover, the Court of Appeal had conceded that it could, in some cases, be disproportionate to refuse confidentiality to a prisoner's medical correspondence and changes had since been enacted to the relevant domestic law to that effect. The Court also found that the Government had failed to provide sufficient reasons to explain why the risk of abuse involved in correspondence with named doctors whose exact address, qualifications and bona fides were not in question should be perceived as greater than the risk involved in correspondence with lawyers.

The Court therefore concluded that the monitoring of Mr Szuluk's medical correspondence had not struck a fair balance with his right to respect for his correspondence. Accordingly, there had been a violation of Article 8.

- **Freedom of expression**

Standard Verlags GmbH v. Austria (No. 2) (no. 21277/05) (Importance 1) – 4 June 2009 – No violation of Article 10 – Freedom of expression v. "legitimate expectation" of protection of and respect for private life of a public figure

The applicant, a limited liability company with its seat in Vienna, is the owner of the daily newspaper *Der Standard*. In May 2004, the newspaper published an article entitled "A society rumour". It commented on rumours in the "upper crust of Viennese society" that Ms Klestil-Loeffler, the wife of the then Austrian President, intended to divorce and had close contacts with two men, notably Herbert Scheibner, Head of the FPÖ parliamentary group.

The presidential couple subsequently brought proceedings against *Der Standard* under sections 6 and 7 of the Media Act. The Vienna Regional Criminal Court ruled in their favour by judgment of 15 June 2004 and held that *Der Standard* had reported on the strictly personal sphere of the couple's life – alleging that Mrs Klestil-Löffler was a double adulteress and Mr Klestil a deceived husband – which had most likely undermined them in public. In reply to *Der Standard*'s defense that the article merely

reported on a rumour, the Regional Court noted that even the dissemination of a rumour could breach section 7 of the Media Act, if it conveyed the impression that there was some truth in it.

Further relying on the Media Act, the Austrian courts refused to take evidence on whether the rumours at issue actually existed at the time, dismissing the applicant company's argument that the article was related to public life. In particular, the courts made a distinction between a politician allegedly having marital problems and his or her state of health, which could have a bearing on the exercise of his or her functions.

On appeal the applicant company alleged in particular that the presidential couple had, like no other before, kept the public informed about their private life and used it as a "marketing strategy". It also argued that the article's aim was to make fun of the gossip in bourgeois society. The judgment of 15 June 2004 was, however, upheld by the Vienna Court of Appeal in a judgment of 20 January 2005.

Similarly, in proceedings brought by Mr Scheibner in June 2004, the Regional Court found in his favour, noting that the article had reported on the strictly personal issue of his alleged relationship with Mrs Klestil-Löffler which had no link with his public functions and in a way which was likely to undermine him in public. The Court of Appeal again confirmed the Regional Court's reading of the article's contents.

The applicant company complained about the Austrian courts' decisions in the proceedings against it.

It was undisputed that the interference with the applicant company's right to freedom of expression was "prescribed by law" (the Media Act) and served the legitimate aim of protecting the rights and reputation of others.

The Court reiterated that the right of the public to be informed could in certain special circumstances be extended to aspects of the private life of public figures, particularly politicians.

"46. In this context the Court reiterates that in cases like the present one, in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the contribution made by photos or articles in the press to a debate of general interest.

47. Another important factor to be taken into account is whether the person concerned exercised any official functions. The Court has underlined that a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions and reporting details of the private life of an individual who does not exercise official functions.

48. The Court has accepted that the right of the public to be informed can in certain special circumstances even extend to aspects of the private life of public figures, particularly where politicians are concerned. However, anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life.

[...]

52. The Court finds that the reasons given by the Austrian courts were "relevant" and "sufficient" to justify the interference. It observes that the courts fully recognised that the present case involved a conflict between the right to impart ideas and the right of others to protection of their private life. It cannot find that they failed properly to balance the various interests concerned. In particular the courts duly considered the claimants' status as public figures but found that the article at issue failed to contribute to any debate of general interest. They made a convincing distinction between information concerning the health of a politician which may in certain circumstances be an issue of public concern and idle gossip about the state of his or her marriage or alleged extra-marital relationships. The Court agrees that the latter does not contribute to any public debate in respect of which the press has to fulfill its role of "public watchdog", but merely serves to satisfy the curiosity of a certain readership."

Considering therefore that even public figures could legitimately expect to be protected against the propagation of rumours relating to intimate aspects of their private life, the Court found that the interference in question had been necessary in a democratic society for the protection of the reputation and rights of others. Furthermore, the measures imposed on the applicant company had not been disproportionate. Therefore, the Court held, by five votes to two, that there had been no violation of Article 10.

Judge Jebens and Judge Spielmann expressed a dissenting opinion, which is annexed to the judgment.

- **Protection of property**

Ünal Akpinar İnşaat İmalat Sanayi Ve Ticaret S.A. and Akpinar Yapi Sanayi S.A. v. Turkey (no. 41246/98) (Importance 2) – 26 May 2009 – Violation of Article 1 of Protocol No. 1 –Unjustified delays to recover debts – Inadequate compensation

Ünal Akpınar İnşaat İmalat Sanayi ve Ticaret S.A. and Akpınar Yapı Sanayi S.A., are two joint stock companies incorporated under Turkish law.

In July 1981 the Turkish Water Board, an administrative body responsible to the Ministry of Energy and Natural Resources, put out a public call for tenders for the construction of the Şanlıurfa aqueduct, part of the South-East Anatolia Economic Development Project. A contract was then signed between the Water Board and the applicant companies.

A few years later the companies broke off the work, arguing that the terms of the contract no longer reflected the unforeseeable economic changes that had taken place since it was signed. In the context of proceedings they brought against the Water Board for sums owed and damages, the Turkish courts gave a number of rulings awarding various sums to the applicant companies. Final judgment was given on 30 December 2004.

The applicants submitted that the rulings whereby the courts had awarded them certain sums of money had each in turn become final. Relying on Article 1 of Protocol No. 1, they alleged that the Water Board had waited until the final termination of the proceedings before paying them a derisory sum which could not compensate them for the losses caused by inflation and the fluctuation of the exchange rates. They further complained of the unfairness and excessive length of the civil proceedings they had had to bring to recover the sums they were owed.

The Court noted that the proceedings in question had been finally terminated by a judgment of 30 December 2004. Consequently, in January 2006, that is, more than 14 years after being served with a first notice to pay, the Water Board paid the applicants, in respect of their claims, a total of 288,446.89 Turkish liras (TRY), the approximate equivalent of 133,475 euros (EUR). Although that compensation in that amount could be considered to have been appropriate and to have been paid within a reasonable time, the Court took the view that the same was not true of three other sums awarded to the two companies in the final judgment.

The Court noted that as a State body, the Water Board did not lack resources to ensure repayment of any sums disbursed unduly.

In particular the applicants should not have been obliged to make use of judicial or administrative proceedings to recover what they were owed, especially as they had to run the risk of loss through delays in those proceedings. The appropriateness of the compensation they were awarded had decreased significantly on account of the delay in settling the debt, and the companies had been placed in a situation of uncertainty, given that the arrangements for payment disregarded economic factors – including in particular monetary depreciation in Turkey – which aggravated the loss they had sustained.

In that connection, the Court observed that on a number of occasions it had ruled that the adequacy of compensation was diminished if its payment did not take into account factors likely to reduce its value. Admittedly, Article 1 of Protocol No. 1 could not be taken to mean that States were obliged to take measures to make good the effects of inflation and maintain the value of debts or other assets. The present case, however, called for special treatment, in that the depreciation of the sums owed was heavily aggravated by the fact that the applicants, having been prevented from enjoying immediately the benefit of the final provisions of the judgments in their favour, were compelled to accept unjustified delays of five or in one case seven years to recover debts which, at the time when they were settled, were worth scarcely one per cent of what they should have been worth. Accordingly, there had been a violation of Article 1 of Protocol No. 1.

The Court considered that it was not necessary to examine separately the complaints under Article 6 § 1.

- **Judgments concerning Chechnya**

Basayeva and Others v. Russia (nos. 15441/05 and no. 20731/04) (Importance 3) – 28 May 2009 – Violations of Article 2 (right to life in respect of Lecha Basayev and Lema Dikayev, and lack of effective investigation into their disappearance) – Violations of Article 3 (inhuman treatment in respect of Lema Dikayev during his abduction) – Violations of Article 3 (inhuman treatment in respect of the mental suffering of the applicants) – Violation of Article 5 (unacknowledged detention of Lecha Basayev and Lema Dikayev) – Violation of Article 13 (lack of an effective remedy) taken in conjunction with Article 2

Khumaydov and Khumaydov v. Russia (no. 13862/05) (Importance 3) – 28 May 2009 – No violation of Article 2 (right to life in respect of Ms Magomadova) – Violation of Article 2 (lack of effective investigation into the disappearance of Ms Magomadova)

Nenkayev and Others v. Russia (no. 13737/03) (Importance 3) – 28 May 2009 – Violation of Article 2 (right to life in respect of Muslim Nenkayev and lack of effective investigation into his disappearance) – No violation of Article 3 (inhuman treatment as regards Muslim Nenkayev) – Violation of Article 3 (inhuman treatment in respect of the mental suffering of the parents of Muslim, and of his brother Isa) and no violation of Article 3 (in respect of the rest of the applicants) – Violation of Article 5 (unacknowledged detention of Muslim and Isa Nenkayev) – Violation of Article 13 (lack of an effective remedy) taken in conjunction with Article 2 – No violation of Article 13 (lack of an effective remedy) taken in conjunction with Articles 3 and 8 (private and family life)

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 26 May 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 28 May 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 2 June 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 4 June 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
Italy	26 May 2009	Rossitto (no. 7977/03) Imp.3	Violation of Art. 1 of Protocol No. 1	*De facto* expropriation resulting in uncertainty of the future of the applicant's property, lack of any remedy capable of rectifying the situation and interference with her full enjoyment of her right of property	Link
Poland	26 May 2009	Kordos (no. 26397/02) Imp.3	Violation of Art. 6 § 1 (fairness)	Violation of access to a court on account of excessive court fees required from the applicant for proceeding with her appeal	Link
Romania	26 May 2009	SC ALEDANI SRL (no. 28874/04) Imp.3	Violation of Art. 6 § 1 (fairness)	Infringement of the principle of legal certainty on account of the annulment of the final judgment confirming the applicant company's success in the action against another company	Link
Romania	26 May 2009	Tănase and Others (no. 62954/00) Imp.3	Struck out	Struck out of the list on account of the fact that the Government recognised the violations of Articles 3, 6, 8, 13 and 14 of the Convention and of Article 1 of Protocol No. 1 and also undertook to pay monetary compensation to all applicants	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.

Turkey	26 May 2009	Naif Demirci (no. 17367/02) Imp.3	Violation of Art. 5 §§ 1, 4 and 5	Length of detention in police custody (9 days) after an investigation into an illegal organization and deprivation of access to remedies or compensation	Link
Greece	28 May 2009	Stamouli and Others (no. 1735/07) Imp.2	Violation of Art. 6 § 1 (fairness)	Violation on account of infringement of the applicants' right of access to a court	Link
Greece	28 May 2009	Varnima Corporation International S.A. (no. 48906/06) Imp.2	Violation of Art. 6 § 1 (fairness)	Violation on account of infringement of the principle of equality of arms	Link
Greece	28 May 2009	Z.A.N.T.E.-Marathonisi A.E. (no. 14216/03) Imp. 3	Just satisfaction	In the judgment of 6 December 2007 the Court found a violation of Art. 1 of Prot. 1 In this judgment the Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company, to which it awarded EUR 2,000,000 for pecuniary damage and EUR 25,000 for costs and expenses	Link
Russia	28 May 2009	Karyagin, Matveyev and Korolev (nos. 72839/01, 74124/01 and 15625/02) Imp.3	No violation of Art. 6 §§ 1 and 3	The Court held that the discrepancies between the two versions of a judgment (copy of the judgment served on them and that examined by the appeal court) had not made the proceedings unfair against the applicants	Link
Finland	02 June 2009	R.H. (no. 34165/05) Imp.3	Violation of Art. 6 § 1 (fairness)	Violation on account of the refusal to hold an oral hearing at the appellate stage	Link
Romania	02 June 2009	Silviu Marin (no. 35482/06) Imp.3	Violation of Art. 1 of Prot. No. 1	Breach of the applicant's right to enjoyment of property and uncertain situation of the applicant's land due to the annulment of a decision 13 years after its adoption	Link
Turkey	02 June 2009	Demirören (no. 583/03) Imp.3	Violations of Article 6 § 1 (length)	Violation of Art. 6 § 1 (14 years and five months for two levels of jurisdiction)	Link
Turkey	02 June 2009	Doğangün (no. 30302/03) Imp.3	Violation of Art. 1 of Prot. No. 1	Failure to obtain the full execution of a final judgment within a reasonable time after a *de facto* expropriation	Link
Turkey	02 June 2009	Günaydın Turizm ve İnşaat Ticaret Anonim Şirketi (no. 71831/01) Imp.3	Violation of Art. 1 of Prot. No. 1	Violation on account of transfer of the applicant company's property to the Public Treasury without any compensation	Link

Turkey	02 June 2009	Tamer Aslan and Others (no. 1595/03) Imp.3	Violations of Art. 6 § 1 (length and fairness)	The Court held that there had been a violation on account of the excessive length of the proceedings – which lasted for between five and nine years depending on the applicant – and because the State Security Court had lacked independence and impartiality	Link
Turkey	02 June 2009	Yılmaz Bozkurt (no. 21213/03) Imp.3	Violation of Art. 6 § 1 (length)	Violation on account of the excessive length – about 14 years – of criminal proceedings	Link
Greece	04 June 2009	Parousis v. (no. 34769/06) Imp.3	Violation of Art. 6 § 1 (length) No violation of Art.3	Excessive length of proceedings (more than five years for three levels of jurisdiction) The Court considered that the way in which the Greek authorities had handled the applicant's health problems had not subjected him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention Accordingly, it held, unanimously, that there had been no violation of Article 3	Link
Greece	04 June 2009	Pistolis and Others (no. 54594/07)	Violation of Art. 6 § 1 (fairness)	The restriction on the applicant's right of access to a court had been disproportionate to the aim of safeguarding legal certainty and securing the proper administration of justice	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**
Italy	26 May 2009	Cavalleri (no. 30408/03) link	Violation of Art. 6 § 1 (length), Art. 8, Art. 13, Art. 1 of Prot. No. 1 and Art. 2 of Protocol No. 4	Infringements of the applicant's rights resulting from bankruptcy proceedings
Italy	26 May 2009	Colombi (no. 24824/03) link	Idem.	Idem.
Italy	26 May 2009	Mur Italy (no. 6480/03) link	Violation of Art. 6 § 1 (length)	Idem.
Italy	26 May 2009	Vicari Italy (no. 13606/04) link	Violation of Art. 6 § 1 (length), Art. 8 and No violation of Art. 13	Idem.

Romania	26 May 2009	Cârstea (no. 28998/04) link	Violation of Art. 6 § 1 (fairness) and Art. 1 of Prot No. 1	Domestic authorities' failure to enforce a final judgment in the applicant's favour in good time
Romania	26 May 2009	Mureşan (no. 8015/05) link	Violation of Art. 6 § 1 (fairness)	Violation on account of the annulment of a final judgment in applicant's favour following an appeal by the principal public prosecutor
Turkey	26 May 2009	Ekmekçi and Others (nos. 2841/05, 2873/05, 2875/05 etc.) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 6 § 1 (length) (Mr Güler)	Failure to provide the applicants with a copy of the opinion of State Counsel at the Supreme Administrative Court Excessive length of the proceedings
Russia	28 May 2009	Senchenko and Others (nos. 32865/06, 3137/07, 3158/07 etc.) link	Violation of Art. 6 § 1 (fairness) and Art. 1 of Prot. No. 1	Quashing of binding judgments on the ground of an alleged misinterpretation of material law in favour of the applicants by way of supervisory review
Ukraine	28 May 2009	Filshteyn (no. 12997/06) link	Violation of Article 6 § 1 (fairness), Art 13, Art. 1 of Prot. No. 1	Failure of the domestic authorities to enforce final judgments in the applicants' favour in good time or at all
Ukraine	28 May 2009	Ovcharov and Khomich (nos. 32910/06 and 50081/06) link	Violation of Art. 6 § 1 (fairness) and Art. 13	Idem.
Ukraine	28 May 2009	Nuzhdyak (no. 16982/05) link	Violation of Art. 6 § 1 (fairness) and Art. 1 of Prot. No. 1	Idem.
Ukraine	28 May 2009	Stukalkin (no. 35682/07) link	Idem.	Idem.
Ukraine	28 May 2009	Zakharchenko (no. 34119/07) link	Idem.	Idem.
Ukraine	28 May 2009	Zhushman (no. 13223/05) link	Idem.	Idem.
Ukraine	28 May 2009	Shylkin and Poberezhnyy (nos. 6924/06 and 8252/06) link	Violation of Art. 1 of Protocol No. 1 Violation of Art.13 (Mr Shylkin)	Idem.
Romania	02 June 2009	Czaran and Grofcsik (no. 11388/06) link	Violation of Article 1 of Protocol No. 1	Deprivation of the applicant's possessions, with a total lack of compensation
Romania	02 June 2009	Glatzand Others (no. 15269/03) link	Idem.	Idem.
Romania	02 June 2009	Enyedi (no. 32211/02) link	Violation of Art. 1 of Prot. No. 1 and Art. 6 § 1 (length)	Idem.
Romania	02	Groza and Marin	Violation of Art. 6 § 1 (fairness) and Art. 1 of	Violations on account of delayed and partial enforcement of a final judgment in the

	June 2009	(no. 21246/03) link	Prot. No. 1	applicants' favour
Romania	02 June 2009	Draica (no. 35102/02) link	Just satisfaction	In a judgment of 3 June 2008 the Court found a violation of Article 1 of Protocol No. 1 (protection of property In this judgment the Court awarded the applicant EUR 3,000 for non-pecuniary damage and EUR 250 for costs and expenses
Turkey	02 June 2009	Erdoğan and Fırat (nos. 15121/03 and 15127/03)	Violation of Article 1 of Protocol No. 1	Violation on account of delay in paying compensation for expropriation
Turkey	02 June 2009	Hacısalihoğlu (no. 343/04)	Idem.	Violation on account of the expropriation of the applicant's property without compensation

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**
Bulgaria	28 May 2009	Demirevi (no. 27918/02)	Link
Bulgaria	28 May 2009	Ilievi (no. 7254/02)	Link
Greece	28 May 2009	Roïdakis (No. 2) (no. 50914/06)	Link
Greece	28 May 2009	Tselika-Skourti (no. 44685/07)	Link
Russia	28 May 2009	Yeliseyev (no. 12098/04)	Link
Ukraine	28 May 2009	Nesterova (no. 10792/04)	Link
Hungary	02 June 2009	Sinkó (no. 3925/05)	Link
Poland	02 June 2009	Pabjan (no. 24706/05)	Link
Slovakia	02 June 2009	Bošková (no. 21371/06)	Link
Slovakia	02 June 2009	Grausová (no. 14757/06)	Link
Slovakia	02 June 2009	Hudečková (no. 16933/03)	Link
Slovakia	02 June 2009	Novák (no. 1494/05)	Link
Slovakia	02 June 2009	Silka (no. 284/06)	Link
Turkey	02 June 2009	Arıkan and Others (no. 43033/02)	Link
Turkey	02 June 2009	Emsal Ayaz and Others (no. 32837/02)	Link
Austria	04 June 2009	Strobel (no. 25929/05)	Link
Greece	04 June 2009	Kyriazis (no. 35806/07)	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 4 to 16 May 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.

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Belgium	12 May 2009	Quraishi (no 6130/08) link	Alleged violation of Art. 3 (risk of being tortured if deported to Greece), Art. 13 (lack of an effective remedy to seek its suspension) and Art. 5 (unlawfulness of detention)	Inadmissible (partly for non-exhaustion of domestic remedies concerning the claims under Art. 3, partly as manifestly ill-founded, concerning the remainder of application)
Belgium	12 May 2009	Tas (no 44614/06) link	Alleged violation of Art. 3 (inhuman and degrading treatment on account of confiscation of the applicant's goods), Art. 7 § 1 (retroactivity of new law) and Art. 1 of Prot. 1	Inadmissible, partly as manifestly ill-founded (concerning Art. 1 of Prot. 1 and Art. 7)), partly for non exhaustion of domestic remedies (concerning Art. 3)
Bulgaria	12 May 2009	Todorovi (no 19108/04) link	Alleged violation Art. 1 of Prot. 1 (arbitrary deprivation of properties) Alleged violation of Art. 6 § 1 and Art. 13 (length of proceedings and lack of an effective remedy in that regard)	Inadmissible, partly for failure to abide by the six-month time limit and partly for being manifestly ill-founded (concerning the right to respect for property) and partly as manifestly ill-founded (no appearance of violation of the Convention concerning the remainder of application)
Bulgaria	12 May 2009	Zhelyazkov (no 11332/04) link	Alleged violation of Art. 4 §§ 2, 3 (forced labour), Art. 2 of Prot. 7 (right of appeal in criminal matters), Art. 5 §§ 1, 2, 3, 4, 5, Art. 6 § 1, 2, 3, Art. 10, Art. 13, Art. 14	Partly adjourned (concerning Art. 4 and Art. 2 of Prot. 7), partly manifestly ill-founded (no appearance of violation of the Convention concerning the remainder of application)
Finland	05 May 2009	Tossavainen (no 38182/07) link	The applicant complained under Art. 6 § 1 that the total length of his administrative proceedings had been incompatible with the reasonable time requirement	Struck out of the list (friendly settlement reached)
Finland	05 May 2009	Manninen (no 39087/07) link	The applicant complained under Art. 6 § 1 that the total length of his compensation proceedings had been incompatible with the reasonable time requirement	Idem.
Finland	05 May 2009	Tarpeenniemi (no 32692/05) link	The applicant complains under Art.6 §§ 1 and 3(d) that the Court of Appeal should have devoted a full examination to his case and organised an oral hearing instead of applying the filtering procedure	Idem.

Georgia	05 May 2009	The Mrevli Foundation (no 25491/04) link	Alleged violation of Art. 6 § 1 (quashing of a final judgment and reopening of the proceedings), Art. 1 of Prot. 1 and Art. 13 (lack of an effective remedy to claim damages for an unlawful annulment of a contract)	Inadmissible, partly for failure to abide by the six-month time limit (concerning Art. 6), partly incompatible *ratione temporis* (concerning Art. 1 of Prot. 1) and partly as manifestly ill-founded (concerning the lack of effective remedy)
Georgia	12 May 2009	Induashvili (no 16299/07) link	Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot. 1(non-enforcement of the decision in the applicants favour)	Struck out of the list (applicant no longer wishing to pursue his application)
Georgia	12 May 2009	Davitashvili (no 22433/05) link	Alleged violation of Art. 6 § 1 (outcome of the second set of employment proceedings and quashing of a decision in the applicant's favour), Art. 1, Art. 11, Art. 14, Art. 17	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
Germany	12 May 2009	Ernewein and Others (no 14849/08) link	The applicants are all French citizens and an Association the "*Orphelins de pères malgré-nous d' Alsace-Moselle*"); Alleged violation of Art. 2, 3, 4, 5, 9, 10 and 14 (treatment of their late fathers and their families), Art. 1 of Prot. 1. (no compensation for the orphans of deceased "malgré nous") and Art. 14 in conjunction with Art. 1 of Prot. 1. (having been discriminated to have a compensation as victims of the forcible conscription, treatment and death of late fathers)	Inadmissible, as partly incompatible *ratione materiae* (concerning the claims under Art. 1 of Prot. 1. and Art. 14 in conjunction with Art. 1 of Prot. 1), partly incompatible *ratione temporis* (concerning the remainder of application) and partly incompatible *ratione personae* (concerning the complaints of the Association)
Germany	12 May 2009	Greenpeace E.V. and Others (no 18215/06) link	Alleged violation of Art. 8 (absence of specific measures to curb respirable dust emissions of diesel vehicles, which makes grave danger to people's health) and Art. 6 (absence of motivation in the decision of the Federal Constitutional Court not to admit the constitutional complaint)	Inadmissible as manifestly ill-founded
Hungary	05 May 2009	Mora (no 22857/04) link	The applicant complains under Art. 6 § 1 of the protraction of inheritance litigation before the domestic courts	Struck out of the list (applicant no longer wishing to pursue his application)
Hungary	12 May 2009	Farkas (no 14350/06) link	The applicant complains under Art. 6 § 1 about the protraction of civil proceedings which had started in 1985 and not yet been terminated at the time of the introduction of the application	Idem.
Italy and Belgium	12 May 2009	Gasparini (no 10750/03) link	Alleged violation of Art. 6 (absence of fair hearing; Internal mechanism of settlement of conflicts in NATO)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention) The procedure was not manifestly deficient (see the *Bosphorus* judgment of 30.06.05)
Italy	12 May 2009	Tosti (no 27791/06) link	Alleged violation of Art. 6 (unfairness of proceedings), Art. 9 and 10 (unjustified disciplinary action)	Inadmissible as manifestly ill-founded

Latvia	05 May 2009	Kuzelevs (no 22398/03) link	The applicant complains under Art. 3 that, contrary to his wishes, his anti-HIV therapy was discontinued as the prison authorities did not contact the Infectology Centre of Latvia He complained under Art. 14 that the anti-HIV therapy was discontinued because of the mere fact of his imprisonment	Struck out of the list (applicant no longer wishing to pursue his application)
Latvia	05 May 2009	Dobrovolskis (no 2233/03) link	Alleged violation of Art. 5 § 3 and Art. 6 § 1 (length of detention on remand and of criminal proceedings), Art. 5 § 4 (prolongation of the detention without the applicant being present, inability to contest the unlawfulness of the detention) and Art. 6 §§ 1, 2 and 3 (breach of the presumption of innocence by the Riga Regional Court)	Partly struck out of the list (unilateral declaration of the Government concerning the claims under Art. 5 § 3 and 6 § 1) Partly inadmissible (concerning the remainder of application)
Moldova	12 May 2009	Sclifos (no 22235/08) link	Alleged violation of Art. 3, Art. 6 § 1, Art. 1 of Prot. 1 and Art. 14 (failure to enforce the final judgment in the applicant's favour amounting in inhuman and degrading treatment)	Struck out of the list (friendly settlement reached)
Moldova	12 May 2009	Deinego (no 31428/05) link	Alleged violation of Art. 6 § 1 (right to a fair hearing) and Art. 13 (no effective remedies available in order to appeal to the Supreme Court of Justice)	Struck out of the list (friendly settlement reached)
Poland	05 May 2009	Urbaniec (no 4064/04) link	Alleged violation of Art. 6 (access to a court of appeal) and Art. 14	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	05 May 2009	Drosinski (no 10302/06) link	The applicant complains under Art.3 of inadequate conditions and medical care in Częstochowa Remand Centre	Idem.
Poland	05 May 2009	Mikolajski (no 45299/07) link	Alleged violation of Art. 6 § 1, Art. 3 (excessive length of criminal proceedings), Art. 13 Art. 2 of Prot. 1	Struck out of the list (friendly settlement reached)
Poland	12 May 2009	Deptuch (no 27559/07) link	Alleged violation of Art. 2 and Art. 6 (outcome of the proceedings and dismissal by the Court of Appeal of his application for the appointment of a legal-aid lawyer in the cassation appeal proceedings)	Idem.
Poland	12 May 2009	Grzybowska (no 7598/07) link	Alleged violation of Art. 6 § 1 (unfairness of the proceedings, right to access to a court)	Idem.
Poland	12 May 2009	Dziedzic (no 22645/05) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of the proceedings)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible for non exhaustion of domestic remedies
Poland	12 May 2009	Ostanek (no 28145/05) link	Alleged violation of Art. 3 (conditions of detention and inadequate medical care in Radom Remand Centre), Art. 6 §	Struck out of the list (applicant no longer wishing to pursue his application)

			1 (refusal of a period of leave in the enforcement of the sentence), Art. 8 (restriction of access to a telephone), Art. 34	
Poland	12 May 2009	Wisniewski (no 16190/04) link	Alleged violation of Art. 6 § 1 (unfairness of the proceedings and lack of an effective access to the Supreme Court)	Partly struck out of the list (unilateral declaration of the Government concerning the lack of access to the court) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Poland	12 May 2009	Pawlak (no /06) link	Alleged violation of Art. 6 § 1 (unfairness of the proceedings and lack of an effective access to the court)	Partly struck out of the list (unilateral declaration of the Government concerning the lack of access to the court) Partly inadmissible as manifestly ill-founded (concerning the remainder of application)
Poland	05 May 2009	Szymczak (no 16534/08) link	Alleged violation of Art. 6 § 1 and Art. 13 (length of proceedings and lack of an effective remedy in that respect)	Struck out of the list (friendly settlement reached)
Romania	12 May 2009	Georgescu (no 43518/06) link	Alleged violation of Art. 6 § 1 (lack of fairness and length of civil proceedings)	Idem.
Romania	12 May 2009	Lorincz (no 42268/04) link	Alleged violation of Art. 6 § 1 (length of proceedings)	Struck out of the list (unilateral declaration of the Government)
Romania	12 May 2009	Teodorescu Bota (no 25100/04) link	Alleged violation of Art. 10	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	12 May 2009	S.C. Industrial Gaz Proiect S.R.L. (no 17290/03) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of judicial decision in the applicant's favour)	Struck out of the list (friendly settlement reached)
Romania	12 May 2009	Schmidt (no 7097/06) link	Idem.	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	07 May 2009	Meshcheryakov (no 6642/03) link	Alleged violation of Art. 2, 3, 5, 7 and 17 (ill-treatment by police officers following arrest, unlawful detention)	Idem.
Russia	07 May 2009	Dyukarev (no 18999/07) link	Alleged violation of Art. 6, 8 and 14 and Art. 2 of Prot. No. 4 (in particular quashing of final judgment in the applicants favour)	Idem.
Russia	07 May 2009	Myasnikova (no 2712/04) link	Alleged violation of Art. 6, 13 and Art. 1 of Prot. No. 1 (delayed enforcement of a judgment)	Struck out of the list (friendly settlement reached)
Spain	05 May 2009	Menendez Garcia (no 21046/07) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings), Art. 8 § 1 (seeking a declaration of paternity) and Art. 13 (lack of effective remedy)	Partly inadmissible (for non-exhaustion of domestic remedies concerning the claims under Art. 13) and partly manifestly ill-founded

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 25 May 2009 : link
- on 2 June 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 25 May 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 25 May 2009 concerns the following States (some cases are however not selected in the table below): Bulgaria, Cyprus, Italy, Poland, Portugal, Romania, Russia, Serbia, Slovenia, Sweden, Switzerland, the Netherlands and Turkey.

State	Date of communication	Case Title	Key Words
Cyprus	05 May 2009	Tzilivaki and Others (no.3082/07)	Alleged violation of Art. 2 – Authorities' procrastination in excavating the site of the crash of Greek military transport aircraft sent as reinforcement during the Turkish invasion in 1974 and exhuming the victims' remains – Alleged violation of Art. 8 – Failure of the authorities during several years to provide them with information concerning the excavation and exhumation of the remains of their relatives – Alleged violation of Art. 6 § 1 and 13 – Lack of an effective remedy *See reference to the Commissioner for Administration*
Italy	04 May 2009	Bettinelli (no 22393/08)	Alleged violation of Art. 3 – Conditions of detention – Disability
Italy	04 May 2009	Mostafa (no 42382/08)	Alleged violation of Art. 2 and 3 – Risk to be submitted to the torture or killed if deportation to Iraq (the applicant is a member of the Kurdish minority)
Russia	07 May 2009	Bedikyan (no. 1160/05)	Alleged violation of Art. 3 – Ill-treatment by police officers and authorities' refusal to properly investigate the incident – Alleged violation of Art. 6 – Fairness of the proceedings

Russia	04 May 2009	Yeliseyev (no. 46717/07)	Alleged violation of Art. 3 –Conditions of detention in SIZO-1 of Vladivostok – Alleged violation of Art.13 –Lack of an effective remedy in that respect
Russia	04 May 2009	Timoshenko (no. 1381/08)	
Russia	04 May 2009	Khanikov (no. 26471/08)	
Russia	04 May 2009	Popandopulo (no. 4512/09)	Alleged violation of Art. 3 and Art. 13 – Conditions of detention in remand prison IZ-47/1 of St Petersburg and lack of adequate medical assistance – Lack of an effective remedy in that respect – Alleged violation of Art. 6 § 1 – Length of proceedings
Serbia	07 May 2009	Ilić (no. 21811/09)	The applicants complain under Art. 1 of Prot. 1 about the continuing refusal of the respondent State to release all of his foreign currency deposits together with the interest originally stipulated In the case of Ilić the applicant complains also about the non-enforcement of the final judgment rendered in his favour and about the lack of an effective domestic remedy
Serbia	07 May 2009	Malešević (no. 43036/06)	
Serbia	07 May 2009	Petković (no. 18734/05)	
Sweden	04 May 2009	Ali Atik and Others (no. 14499/09)	In particular alleged violation of Art. 3 – The applicants claim that they would face risk of alleged torture in the case of deportation to their country, Yemen and Uzbekistan respectively
Sweden	04 May 2009	V.G.(no. 17865/09)	
Switzerland	07 May 2009	Kathiresu (no 16010/08)	Alleged violation of Art. 3 – Risk of being subjected to inhuman and degrading treatment in the case of deportation to Sri-Lanka In the case of Kathiresu, the applicant complains also about the lack of an effective remedy in that connection
Switzerland	07 May 2009	Nadarajah (no 21009/08)	

Communicated cases published on 2 June 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 2 June 2009 concerns the following States (some cases are however not selected in the table below): Austria, Belgium, Bulgaria, Cyprus, Finland, France, Georgia, Greece, Moldova, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, the Czech Republic, the United Kingdom, Turkey and Ukraine.

State	**Date of communication**	**Case Title**	**Key Words**
Belgium	11 May 2009	Mikhael Rashu (no 41608/08)	Alleged violation of Art. 3 – Risk of being victim of poor living conditions for asylum seekers in the case of deportation to Greece – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art 5 § 1 – Unlawful detention
Bulgaria	12 May 2009	Zhelyazkov (no 11332/04)	In its decision of 12 May 2009, the Court declared the application partly inadmissible and partly adjourned concerning the claims under Art. 4 and 2 of Prot. 7 ; The Government is requested to confirm if the applicant's unpaid labour during detention is compatible with the Art. 4 § 3 and if he had a possibility of appeal according to Art. 2 § 1 of Prot. 7

Cyprus and Turkey	13 May 2009	Guzelyurtlu and Others (no. 36925/07)	Alleged violation of Art. 2 – State authorities' failure to conduct an effective investigation into the killing of the applicants' relatives – Alleged violation of Art. 13 – Lack of effective remedy in that regard
Finland	11 May 2009	X (no. 34806/04)	Alleged violation of Art. 3 - Conditions of detention and stay in the Vanha Vaasa hospital – Alleged violation of Art. 5 § 1 - Lawfulness of the applicant's involuntary confinement – Alleged violation of Art. 6 § 1 – Fairness of hearing in determining the criminal charge – Alleged violation of Art. 8 § 2 and 13 - Forced administration of medication to the applicant and lack of an effective remedy in that respect
France	12 May 2009	I. M. (no 9152/09)	Alleged violation of Art. 3 and Art. 2 (in the case of B.A.) – Risk of being killed or tortured if deportation to Sudan and to Chad respectively – Alleged violation of Art. 8
France	12 May 2009	B. A. (no 14951/09)	
Georgia	14 May 2009	Meskhidze (no 55506/08)	Alleged violation of Art. 3 – Detention in prison no 1 in Tbilisi, despite the applicant's serious health problems – Lack of medical assistance
Greece	14 May 2009	Konstas (no 53466/07)	Alleged violation of Art. 6 § 1 – Fairness of hearings – Alleged violation of Art. 6 § 2 and Art. 13 – Presumption of innocence (due to the statements made by various Ministers during the trial) and lack of an effective remedy in that regard
Moldova	14 May 2009	Stepuleac (no. 20269/09)	Alleged violation of Art. 5 § 1 – Arrest in the absence of a reasonable suspicion of having committed a crime – Alleged violation of Art. 5 § 3 – Lack of sufficient reasons for ordering and extending their detention pending trial (house arrest) – Alleged violation of Art. 6 § 2 (Presumption of innocence) The complaints are related to the April 2009 events
Moldova	14 May 2009	Stepuleac (no. 24065/09)	
Norway	11 May 2009	O.M. (no. 888/09)	The applicant affirms that in the case of his deportation to Iraq he would risk losing his life. The Government is requested to confirm if the applicant has exhausted domestic remedies in that connection and if his expulsion to Iraq would be compatible with Article 3 of the Convention
Poland	11 May 2009	Giszczak (no. 40195/08)	Alleged violation of Art. 8 - Refusal to allow the applicant to leave the prison to visit his dying daughter in the hospital and later to attend his daughter's funeral
Poland	11 May 2009	Piekarz (no. 28198/07)	Alleged violation of Art. 2 – Lack of adequate medical care in the Rzeszów sobering-up centre – Alleged violation of Art. 5 § 1 – Unlawful arrest and detention – Alleged violation of Art. 6 § 1
Poland	11 May 2009	Płaza (no. 18830/07)	Alleged violation of Art. 6 § 1 – Length of proceedings – Alleged violation of Art. 8 – Deprivation of access to the child, despite the enforceable agreement granting this access
Russia	14 May 2009	Ananyev and 10 others (no. 42525/07)	Alleged violation of Art. 3 and Art. 13 – Inhuman and degrading conditions of detention in remand prison no. IZ-66/1 of Yekaterinburg and lack of an effective remedy in that connection
Spain	12 May 2009	Del Pino García and Ortín Méndez (no 23651/07)	Alleged violation of Art. 6 §1 – Access to a court – Inadmissibility of *amparo* by the Constitutional Tribunal – Alleged violation of Art. 8 – Right to home – Noise due to works carried in their building
Turkey	11 May 2009	Akman and 19 other applications	Alleged violation of Art. 6 § 1 – Fairness of proceedings – Alleged violation of Art. 6 § 3 – Right to legal assistance – Alleged violation of Art. 8 – Interference with the right to correspondence – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 in conjunction with Art. 8
Turkey	12 May 2009	Demirbaş and 18 others applications	The complaints concern the dissolution of the municipal council of the community of Sur (in Diyarbakir)

Turkey	13 May 2009	Ercep and four other applications	Alleged violation of Art. 9 – Refusal to carry out military service because of religious convictions – In that connection, alleged violation of Art. 5 § 1 – Military courts – Alleged violation of Art. 6 – The applicant does not consider competent the military court to try the civilians – Alleged violation of Art. 13 – Absence of effective remedy in respect of the above allegations – Alleged violation of Art. 7
Turkey	11 May 2009	Usun (no 29732/08)	Alleged violation of Art. 3 – Ill-treatment in pre-trial detention (Bağcilar) – Effectiveness of the investigation in that regard
Turkey	11 May 2009	Gündüz and others (no 4611/05)	Alleged violation of Art. 2 – The death of the applicants' relative was due to lack of adequate medical care in the military service – Alleged violation of Art. 6 – Complaints on impartiality and lack of independence of the High Administrative Military Court
Cases concerning Chechnya			
Russia	07 May 2009	Temergeriyeva and Others (no. 7820/07)	Alleged violation of Art. 2 – The applicants suggest that their relative was killed by federal forces - Alleged violation of Art. 3 – Mental suffering because of the disappearance of their close relative and the State's failure to conduct an effective investigation in that respect – Alleged violation of Art. 5 – Unlawfulness of detention and lack of guarantees against arbitrariness – Alleged violation of Art. 13 – Lack of an effective remedy in respect of the complaints under Articles 2 and 5
Russia	15 May 2009	Abdulayeva (no. 38552/05)	Alleged violation of Art. 3 – Mental suffering on account of refusal to return the body of the applicant's relative – Alleged violation of Art. 8 and Art. 9 – Interference with the right to family and private life and freedom of religion by refusing to return the body of the applicant's son for burial according to Islam traditions – Alleged violation of Art. 9 in conjunction with Art. 14 – Discrimination on grounds of religion – Alleged violation of Art. 13 – Lack of effective remedy in respect of the above complaints The applicant is represented before the Court by lawyers at the Stichting Russian Justice Initiative, Moscow
Russia	15 May 2009	Maayeva and Maayev (no. 7964/07)	Alleged violation of Art. 2 – Disappearance of the applicants' relative and lack of effective investigation into this disappearance – Alleged violation of Art. 3 – Mental suffering in connection with the disappearance – Alleged violation of Art. 5 § 1 - Unacknowledged detention of the applicants relative – Alleged violation of Art. 13 The applicants are represented before the Court by lawyers of EHRAC/Memorial, a non-governmental organisation with offices in Moscow and London

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

Visit to Qatar (29.05.2009)

From 29 to 31 May 2009 President Costa visited Qatar in order to participate in the Qatar Law Forum (link to the site).

Visit to Austria (08.06.2009)

President Costa was on an official visit to Austria on 8 and 9 June 2009, accompanied by Elisabeth Steiner, the judge elected in respect of Austria, and Søren Nielsen, Section Registrar.

On 8 June 2009 President Costa was received by Gerhart Holzinger, President of the Constitutional Court, and took part in a working session of the Court. He also met Clemens Jabloner, President of the Administrative Court, and Irmgard Griss, President of the Supreme Court.

On 9 June 2009 President Costa was received by Heinz Fischer, President of Austria, and Claudia Bandion-Ortner, Minister of Justice.

Relinquishment of jurisdiction in favour of the Grand Chamber (16.06.2009)

The Chamber dealing with the case of Demopoulos v. Turkey and seven other cases raising a similar issue has relinquished jurisdiction in favour of the Grand Chamber. The applicants in these cases are Greek Cypriots who complain in particular that they have been deprived of the enjoyment of their possessions since Turkey's occupation of the northern part of Cyprus in 1974.

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers held a "human rights" meeting from 2 to 4 June 2009 (the 1059th meeting of the Ministers' deputies). The decisions adopted at the meeting figured in RSIF No. 17. The remainder of the texts adopted during this meeting will be included in RSIF No. 19.

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 2008 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/dghl/monitoring/execution/default_en.asp

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)

Centre on Housing Rights and Evictions (COHRE) lodges complaint against Italy (29.05.09)

The complaint was registered on 29 May 2009. The complainant organisation pleads a violation of Articles16 (the right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non discrimination) of the Revised Charter. The complainant organisation alleges that the recent so-called emergency security measures and racist and xenophobic discourse have resulted in unlawful campaigns and evictions leading to homelessness and expulsions, disproportionately targeting Roma and Sinti.

For further information you may consult the page on Collective Complaints, where you may also find the case document no. 1 of the above-mentioned complaint.

Meeting on non-accepted provisions in Azerbaijan (05.06.09)

In the framework of the procedure for the implementation of Article 22, a meeting on non-accepted provisions was held in Baku, from 22 to 23 June 2009, with the aim of ensuring the effectiveness of fundamental social rights in Azerbaijan.
Draft Programme

The European Committee of Social Rights will hold its next session from 29 June to 3 July 2009. You may consult the agenda here.

You may find relevant information on the implementation of the Charter in States Parties using the following country factsheets:

http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp

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

Council of Europe anti-torture Committee publishes report on Turkey (28.05.09)

The CPT has published the report on its visit to Turkey, carried out in November/December 2006, together with the response of the Turkish Government. Both documents have been made public at the request of the Turkish authorities.

The main objective of the visit was to examine the situation of patients held in psychiatric hospitals, in particular as regards living conditions and treatment (including electroconvulsive therapy - ECT). The delegation also looked into the legal safeguards related to involuntary placement procedures and their implementation in practice. For the first time in Turkey, the delegation also visited two social welfare institutions.

In their response to the visit report, the Turkish authorities provide information on the measures being taken to implement the CPT's recommendations.

C. European Commission against Racism and Intolerance (ECRI)

ECRI releases three new reports on racism (26.05.09)

ECRI released on 26 June 2009 three new reports examining racism, xenophobia, antisemitism and intolerance in Belgium, Germany and Slovakia. The ECRI reports note positive developments in all three of these Council of Europe member states, but also detail continuing grounds for concern, said the Chair of ECRI, Eva Smith Asmussen.

In **Belgium**, the Federal Action Plan to combat racism, antisemitism, xenophobia and related violence was adopted in 2004 and its implementation is in progress. Steps have been taken to improve the content and the implementation of legislation to combat racial discrimination and racism. However, cases of racial discrimination, particularly against non-citizens, persons of immigrant background, Muslims and Travellers, still occur in fields such as access to employment, education and housing. The persistence of racist, antisemitic, islamophobic and xenophobic discourse by some politicians and on the Internet is worrying.

In **Germany**, the adoption of the General Equal Treatment Act (AGG) has strengthened the legal and institutional framework against racism and discrimination; there are signs of improved dialogue with the Muslim community and the authorities have begun to develop a strong new focus on integration, aiming to help migrants participate fully in German society. However, violent racist, xenophobic and antisemitic attacks continue to be reported, and support for parties expressing racist, antisemitic or revisionist views has increased. At the same time, discrimination in daily life is reported by members of the Muslim, Turkish, Black as well as Roma and Sinti communities.

In **Slovakia**, a new Criminal Code containing several provisions on racially-motivated crimes was adopted in 2006 and the Anti-Discrimination Act, which prohibits discrimination based on, among others, race, religion, national or ethnic origin, colour and language, was passed in 2004. However, the situation of the Roma remains worrying in areas such as education, housing, employment and health and instances of police brutality against members of this minority still occur. A rise in racist political discourse by some politicians targeting primarily Hungarians, as well as Roma and Jewish people, has been noted. The integration of refugees is still an issue that needs to be tackled, namely through the integration strategy devised by the Slovak authorities.

These new reports form part of a fourth monitoring cycle of the Council of Europe member states' laws, policies and practices aimed at combating racism. ECRI's country specific reports are available in English, French and the national language of the country concerned at www.coe.int/ecri. They cover all member states on an equal footing, from the perspective of protecting human rights.

Read the report on Belgium; Read the report on Germany; Read the report on Slovakia

ECRI publishes its Annual Report (02.06.09)

The ECRI released its annual activity report for 2008. This Annual Report describes ECRI's main activities in 2008 and also highlights the main trends with regard to the presence of racism, xenophobia, antisemitism and intolerance across Europe.

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

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

E. Group of States against Corruption (GRECO)

The Council of Europe's Group of States against Corruption (GRECO) publishes its Third Round Evaluation Report on Spain (28.05.09)

The Council of Europe's Group of States against Corruption (GRECO) published on 28 May 2009 its Third Round Evaluation Report on Spain focusing on two distinct themes: criminalisation of corruption and transparency of party funding.

The report as a whole addresses 15 recommendations to Spain. GRECO will assess the implementation of these recommendations in the first half of 2011, through its specific compliance procedure.

Regarding the criminalisation of corruption [theme I], despite the fact that Spain has been a member of GRECO since 1999, it has not yet ratified the Criminal Law Convention on Corruption and its Additional Protocol (the latter has been signed on 27 May 2009). GRECO identified some important shortcomings: for example, with respect to bribery in the public sector, the complex legal framework is deficient in its international dimension. Moreover, bribery in the private sector is not criminalised at all; this is an important lacuna since this form of corruption may cause significant damage to society at large given the value of the sums (and potential bribes) involved in business transactions. Finally, GRECO found some of the penal sanctions too weak in respect of bribery and trading in influence.

Concerning transparency of party funding [theme II], GRECO acknowledged the efforts displayed in this area through the introduction of new legislation in 2007. GRECO advised on the next steps to be taken to improve the system: for example, to grant public access to meaningful and timely information on political party accounts, including financial information on local branches and political foundations. It is also essential that the existing sanctioning system be further regulated and that the financial discipline of political parties be strengthened, in particular by reinforcing their internal audit control.

Link to the report: Incriminations / Transparency of Party Funding

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

MONEYVAL Publishes its Annual Report of Activities 2008 (05.06.09)

MONEYVAL released on 5 June 2009 its annual activity report for 2008. This report provides detailed information about the Committee's activities, its achievements for the 2007-2008 year, and co-operation with other international players in the global AML/CFT network of assessment bodies. In 2008, MONEYVAL adopted 9 Third Round mutual evaluation reports, 7 first progress reports, 2 second progress reports and took action under the Compliance Enhancing Procedures in respect of two of its jurisdictions. The mutual evaluation, progress and compliance reports are publicly available on the website, as well as the 2008 typology reports.

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

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* 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

Slovenia signed on 25 May 2009 the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (CETS No. 203).

"the former Yugoslav Republic of Macedonia" signed on 27 May 2009 the European Social Charter (Revised) (ETS No. 163), and ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

Spain signed on 27 May 2009 the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191).

Denmark and **Norway** signed on 27 May 2009 without reservation as to ratification Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

France, **Georgia**, **Slovenia** and **Spain** signed on 27 May 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

Germany has accepted on 29 May 2009 the provisional application in its respect of certain provisions of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

See Part VII Special File.

Norway ratified on 4 June 2009 the European Convention on Nationality (ETS No. 166).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Launch of the Council of Europe Platform on Children's Rights (28.05.09)

On 2-3 June 2009, the Council of Europe, in the framework of the Slovenian Presidency of the Committee of Ministers, held a high-level conference in Strasbourg to discuss integrated national strategies for the protection of children against violence, as well as child-friendly services and ways of building a culture of children's rights. See the conference website; File on children's rights; File on protecting the children from sexual exploitation.

Statement by the Chairmanship of the Committee of Ministers about elections in South Ossetia, Georgia (02.05.09)

The Chairmanship of the Committee of Ministers of the Council of Europe closely followed the (so-called) "parliamentary elections" in South Ossetia, Georgia on Sunday 31 May 2009 and reiterated its full support for the sovereignty and territorial integrity of Georgia within its internationally recognised borders. The Council of Europe urges the parties concerned to continue the search for a peaceful and lasting settlement of the conflict.

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

Part V : The parliamentary work

The PACE's summer session in Strasbourg will be held on 22-26 June 2009. The biennial debate on "the state of human rights in Europe", addresses by Irish President Mary McAleese and Slovenian Prime Minister Borut Pahor, and debates on Belarus and Armenia are among highlights of PACE's session. Parliamentarians are also due to decide on the creation of a "partner for democracy" status within the Assembly, aimed at the parliaments of countries neighbouring Europe, and will consider a challenge to the credentials of the Ukrainian delegation.

See the draft agenda

A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (adopted by the Standing Committee in Ljubljana)

The Standing Committee of the PACE met in Ljubljana on Friday 29 May 2009 at the invitation of the Slovenian National Assembly.

PACE President Lluís Maria de Puig held separate meetings on the same day with Slovenian President Danilo Türk and the President of the National Assembly Pavel Gantar.

The meeting of the Standing Committee was opened by Mr de Puig, followed by a welcome address from Mr Gantar. Assembly members held an exchange of views with Slovenian Foreign Minister Samuel Žbogar, the Chairperson of the Council of Europe Committee of Ministers, and Slovenian Justice Minister Aleš Zalar on the priorities of Slovenia's six-month Chairmanship.

Recommendation 1870: Protecting financial aid granted by Council of Europe member states to poor countries against financial funds known as "vulture funds" (29.05.09)

Resolution 1668: Ban on cluster munitions (29.05.09)

Recommendation 1871: Ban on cluster munitions (29.05.09)

Resolution 1669: The rights of today's girls – the rights of tomorrow's women (29.05.09)

Recommendation 1872: The rights of today's girls – the rights of tomorrow's women (29.05.09)

Resolution 1670: Sexual violence against women in armed conflict (29.05.09)

Recommendation 1873: Sexual violence against women in armed conflict (29.05.09)

B. Other news of the Parliamentary Assembly of the Council of Europe

- *Countries*

Belarus: PACE committee calls for the restoration of Special Guest status (26.05.09)

PACE meeting in Paris on 26 May, came out unanimously in favour of restoring the Special Guest status of the Belarusian Parliament, which has been suspended since 1997, with a view to "engaging in political dialogue with the authorities" while supporting "the strengthening of democratic forces and civil society".

The Assembly is to take a decision on the matter at its forthcoming summer plenary session (Strasbourg, 22-26 June).

The committee said that the country's authorities had recently undertaken measures that were steps in the right direction, in particular the release of opposition figures considered as political prisoners, registration of the opposition movement "For Freedom!", inclusion of three independent media outlets in the state distribution network and the appointment of consultative councils involving civil society.

According to the report, by Andrea Rigoni (Italy, ALDE), there is nevertheless cause for concern, particularly in the areas of the electoral process, respect for political freedom and media pluralism. It is also still possible to carry out death sentences in Belarus.

In the light of these factors, the committee considers that the lifting of the suspension should be accompanied by monitoring of the situation to assess whether the country is making "substantive and irreversible" progress towards Council of Europe standards.

PACE granted the Belarusian Parliament Special Guest status in 1992. In the absence of progress in the areas of democracy, human rights and the rule of law, this status was suspended in 1997 and Belarus' application to join Council of Europe was shelved the following year.

Read full report (provisional version)

Bulgaria promises better implementation of European Human Rights Court judgments (29.05.09)

Christos Pourgourides (Cyprus, EPP/CD), who is preparing a report on the implementation of judgments of the European Court of Human Rights, visited Bulgaria (28-29 May). This is the first in a series of visits aimed at applying parliamentary pressure on states where delays or difficulties in implementing Court judgments have arisen. He will later travel to Greece, Italy, Moldova, Romania, the Russian Federation, Turkey and Ukraine.

Ending the two-day visit to Sofia, Christos Pourgourides (Cyprus, EPP/CD), rapporteur of the PACE on the implementation of judgments of the European Court of Human Rightswith a call for greater domestic parliamentary supervision to ensure Bulgaria implements the Court's judgments.

The rapporteur welcomed the Bulgarian Justice Ministry's "Concept Paper" on overcoming significant problems that have arisen with respect to the implementation of the Strasbourg Court's judgments. This document was adopted by Bulgaria's Council of Ministers on 9 March 2009, and has been sent to the National Assembly. Mr Pourgourides emphasised the need for the Concept to be implemented in practice, and received assurances from several ministries to this effect.

During the visit, he met the Minister of Justice and the Deputy Minister of the Interior, as well as other officials and the members of the Bulgarian delegation to PACE to discuss this question, partly on the basis of a May 2008 memo which listed outstanding issues for Bulgaria.

May 2008 memorandum listing outstanding issues for Bulgaria

Pre-electoral visit by PACE delegation to Albania (03.06.09)

A four-member delegation from the PACE, led by Corien Jonker (Netherlands, EPP/CD), carried out a pre-electoral mission to Tirana on 4-5 June, ahead of the parliamentary elections to be held in Albania on 28 June 2009.

The delegation was due to meet with the Prime Minister Sali Berisha, the Speaker of Parliament Jozefina Topalli, the Foreign Affairs Minister Lulezim Basha, the Interior Minister Bujar Nishani and the heads of the political parties taking part in the elections. Talks are also planned with the parliamentary delegation to PACE, the Chair of the Central Electoral Commission, members of the *ad hoc* committee on the implementation of the Electoral Code and representatives of civil society and the media.

Statement by the PACE pre-electoral mission

- *Themes*

Readmission agreements: a neutral mechanism or a threat to irregular migrants? (27.05.09)

PACE's Committee on Migration, Refugees and Population held in Paris on 27 May 2009 a hearing on so-called readmission agreements. The hearing was part of the preparations of a report by Tineke Strik (Netherlands, SOC) entitled "Readmission agreements: a neutral mechanism for the return of irregular migrants?"

Readmission agreements are concluded either between the EU and third countries or bilaterally between two countries. Their aim is to facilitate the return of irregular migrants to their home countries, or to countries through which they have travelled. Once a return decision has been taken, the readmission agreement kicks in and, under certain circumstances, the readmitting state thus has a

contractual obligation to take the person back. A migrant can be considered irregular when he or she is in a country without necessary documents.

The members of the Committee heard interventions by experts in the field, such as from the European Commission Directorate-General on Justice, Freedom and Security, the International Organisation for Migration, the UNHCR and from several NGOs, such as “Migreurope”. It emerged that there are two strands of thought, namely those who find readmission agreements to be neutral in terms of human rights and others, who believe they might in some cases constitute a threat to migrants.

According to the rapporteur, the intentions with readmission agreements might be innocent, but that they can nevertheless cause problems in terms of human rights. Mrs Strik said that the type of bilateral agreement that sees migrants being returned without having had the opportunity to put forward an application for asylum might be contrary to international refugee law, in particular if returned to a country where no functioning asylum system is in place. The use of these agreements, that are however not readmission agreements in the formal sense, she added, should be viewed with great skepticism and should be followed carefully.

During its meeting the Committee also approved a draft texts on the protection of long-term displaced persons in Europe (John Greenway, United Kingdom, EDG), as well as an opinion on the ban of cluster munitions (Claire Curtis-Thomas, United Kingdom, SOC).

Human rights in Europe: Monitoring Committee adopts report with a view to the debate of 24 June (05.06.09)

The PACE Monitoring Committee meeting in Paris on 5 June 2009, has adopted its contribution to the debate on the state of human rights in Europe to be held by the Assembly on 24 June, during its forthcoming plenary session in Strasbourg. The text contains conclusions drawn from the specific reports on the eleven States currently subject to a monitoring procedure (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, Russian Federation, Serbia and Ukraine) and the three subject to post-monitoring dialogue (Bulgaria, Turkey and "the former Yugoslav Republic of Macedonia").

Among the subjects the Committee worries about, are issues relating to the independence of judicial systems, political prisoners, freedom of expression and of association, the situation of refugees and non-discrimination.

Draft resolution and explanatory memorandum

- *Speeches*

Slovenia ‘a symbol of Europe’s transformation’ (29.05.09)

“Slovenia symbolises to perfection Europe's transformation, its turbulent history and its future as we would like to imagine it,” PACE President Lluis Maria de Puig told parliamentarians and Slovenian leaders today, opening a meeting of PACE’s Standing Committee in Ljubljana. “Slovenia is also proof that a country's contribution to European integration can be gauged not just by its size and GDP, but also by the political will of its leader, the scale of the ambitions of its people, and their determination.” Mr de Puig later met Slovenian President Danilo Türk.

Read full speech

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

A. Country work

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B. Thematic work

"Governments should welcome complaints about social rights", says Commissioner Hammarberg (25.05.09)

"The protection of social rights is particularly critical during times of economic crisis", writes Commissioner Thomas Hammarberg in his most recent fortnightly Viewpoint. He welcomes the new ratifications of the revised European Social Charter by Hungary and the Slovak Republic and urges states to become parties to a special procedure for collective complaints. This procedure allows for trade unions, employers' organizations and other civil society groups to file complaints to the European Committee of Social Rights. "It has already been shown that input from such bodies have made the Charter more relevant and effective", stresses the Commissioner.

Read the Viewpoint

Read the Viewpoint 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

Part VII : Special file
Bringing into force two procedural measures of Protocol 14 to the ECHR: The single judge formation and the new competences of the committee of three judges

Some elements of this special file are based on the Opinion 271 (2009) on the Draft Protocol 14bis to the ECHR adopted by the Parliamentary Assembly on 30 April 2009

I. Why those two procedures were chosen?

1. In the light of the non-entry into force of Protocol No. 14 to the ECHR and the negative impact that this is having on the output of the European Court of Human Rights (the Court), there is widespread agreement, that if a temporary, interim solution is not quickly found to help the Court to substantially increase its case-processing capacity, the Court will be in danger of collapsing under the weight of its caseload. It follows that the Court must urgently find a way in which to deal with, in particular, three matters: judges must not spend too much time on obviously inadmissible cases (approximately 95% of all applications), they must deal expeditiously with repetitive cases that concern already clearly established systemic defects within states (this represents approximately 70% of cases dealt with on the merits), and by so doing, concentrate their work on the most important cases and deal with them as quickly as possible.

2. The case-processing capacity of the Court is likely to increase by 20 to 25% if two procedures envisaged in Protocol No. 14 to the ECHR were already now to be put into effect, i.e., the single-judge formation (to deal with plainly inadmissible applications) and the new competences of the three-judge committee (clearly well-founded and repetitive applications deriving from structural or systemic defects). In other words, decisions on clearly inadmissible applications, which are presently dealt with by a committee of three judges, could be handled by a single judge, and clearly well-founded and repetitive cases deriving from a structural defect at national level, could be handled in all aspects (admissibility, merits, just satisfaction) by a committee of three judges instead of a seven-judge Chamber, as at present.

3. It would appear that the idea of bringing into force of the two procedural measures, namely the single judge procedure and the three-judge committee for repetitive cases, in anticipation of the entry into force of Protocol No. 14, was mooted during a meeting the Court's President had with the Ministers' Deputies in October 2008, when President Costa drew attention to the extremely serious situation facing the Court.

II. Two options in order to put the two procedures into practice (the work of the Council of Europe between November 2008 and April 2009):

4. This idea was quickly followed-up by the Committee of Ministers. On 19 November 2008, the Ministers' Deputies, noted "with grave concern the continuing increase in the volume of individual applications brought before the Court and its impact on the processing of applications by the Court which creates an exceptional situation and threatens to undermine the effective operation of the Convention system" and "agreed that it is urgent to adopt measures aimed at enabling the Court to increase its case-processing capacity". The Ministers' Deputies therefore asked the Steering Committee for Human Rights (CDDH) and the Committee of Legal Advisers on Public International Law (CAHDI) to see what measures could be taken to increase the Court's case-processing capacity, in particular by instituting the new single-judge formation and committee procedures already envisaged in Protocol No. 14.

5. The CDDH and the CAHDI issued their respective reports in March 2009 which were discussed by the Ministers' Deputies and its Human Rights Rapporteur Group during the month of April.

6. On the basis of discussions within the Committee of Ministers and its Rapporteur Group, as well as the decision taken by the Ministers' Deputies on 16 April 2009 to request the Assembly for an Opinion on draft Protocol No. 14 bis, the following two options have been tabled in order to facilitate

putting into practice the two simplified case-processing procedures prior to the entry into force of Protocol No. 14:

• Option 1. An agreement on the provisional application of the two provisions - by a Conference of High Contracting Parties to the ECHR - on the margins of the 119th Ministerial Session in May 2009. This would require consensus amongst the 47 States parties to the Convention, following which each state would be able to make a declaration to the effect that it accepts the provisional application of the two provisions of Protocol No. 14 in its respect.

• Option 2. Adoption of a new legal instrument (an Additional Protocol = Protocol No. 14 bis). This Protocol would be adopted by the Committee of Ministers by the usual majority of two-thirds and would come into force after its ratification by a limited number of states.

7. Options 1 and 2 will be engaged in parallel, leaving it to each state to decide which of the two is best suited to its own constitutional and domestic legal order as it was demonstrated during the discussions in the CDDH. Indeed, each State Party to the ECHR would be free to choose the option which it considers to be most appropriate and/or the one which would more rapidly be operational under its own constitutional system.

8. The measures proposed, if put into effect, would ease the Court's workload and result in an arrangement whereby applications with respect to certain states could be dealt with under the accelerated procedure, in parallel with the procedure currently applicable in pursuance of Protocol No. 11 to the ECHR. Finally, were Protocol No. 14 to come into effect, the provisional arrangements, described above, would cease to exist and the accelerated case-processing procedures would apply to all States Parties to the ECHR

9. On 6 May 2009, the Ministers' Deputies approved Protocol 14 bis as amended further to the opinion No. 271 (2009) given by PACE on Thursday 30 April on the basis of the report prepared by the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Klaas De VRIES, Netherlands.

III. The decisions taken in the 119th session of the Committee of Ministers held in Madrid (12 May)

10. At the 119th session of the Council of Europe Committee of Ministers held in Madrid, they adopted this new protocol that will allow, pending entry into force of Protocol No. 14, the immediate and provisional application of two procedural elements of Protocol No. 14 with respect to those states that express their consent:

- a single judge will be able to reject plainly inadmissible applications, whereas now this requires a decision by a committee of three judges.
- the competence of three-judge committees will be extended to declare applications admissible and decide on their merits in well-founded and repetitive cases, where there already is a well-established case law of the Court. Currently, these cases are handled by chambers of seven judges.

11. Protocol No.14 bis (CETS 204) was opened for signature on 27 May. President Costa welcomed the opening for signature. He observed that, while the entry into force of Protocol No. 14 was still, more than ever, the primary objective, Protocol No. 14 bis contained procedural provisions that would enable the Court to work more efficiently. Press Release

Its entry into force is subject to the ratification by three member States. Its provisions shall apply to applications pending before the Court against each of the States for which the Protocol has entered into force. As of 17 June, five States have signed the Protocol: Denmark, France, Georgia, Luxembourg, Norway, Slovenia and Spain. On 27 May, Denmark and Norway ratified the Protocol. 0n 17, June Ireland was the third State to ratify the Protocol which will enter into force on 1 October 2009 in Denmark, Ireland and Norway.

12. In the margins of the Ministerial Session in Madrid and in accordance with Article 25 of the Vienna Convention on the Law on Treaties, a Conference of the High Contracting Parties to the Convention adopted an agreement by consensus by virtue of which states may individually consent, on a provisional basis, to the direct application of the two mentioned procedural elements of Protocol 14 to the complaints filed against them. This agreement is complementary to Protocol No. 14bis since

it opens a second legal avenue towards achieving the same result. As of 17 June 2009, four States have accepted the provisional application in their respect of certain provisions of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194): Germany (as of 1 June), Luxembourg and the Netherlands as of 1 July and Switzerland (as of 1 June).

For up-dated information, you may consult the Website of the Council of Europe's Treaty office: http://conventions.coe.int/Default.asp